



A Cesspool of Judicial Corruption

The David Hinkson Story

An appeal to the world court of public opinion. When any government agency is empowered to manufacture, subvert and perjure evidence with impunity, the truth becomes immaterial.

Roland Hinkson

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FOREWORD *by wesley w. hoyt*

The Presumption of Innocence is the fundamental right, at the foundation of all personal freedoms in America which embodies the concept “it is better to free ten guilty men than to convict one who is innocent.”

For the last 30 years, the government has been using various techniques to replace basic, God-given Constitutional rights, such as the Presumption-of-Innocence, with various legal devices, such as the “Presumption of Governmental Regularity and Correctness.” An example of how this device is used is that judges proclaim they will “always believe the government witness over the accused” (in situations where all other factors are equal). Judges who follow the Presumption of Government Regularity and Correctness consider only the government’s witness to be an accurate reporter of events and consider the citizen not believable; hence, the evisceration of the Presumption of Innocence.

There are case law rulings creating this abomination of justice, which is contrary to the *U.S. Constitution*. What should happen under our Constitution is, when only the word of a citizen is pitted against the testimony of a government witness, without corroborating evidence, the Presumption of Innocence **REQUIRES** that judges accept the statements of the accused as true. But this new device allows the judge to base his decision on something other than fundamental constitutional principles and to arbitrarily conclude that the government is right and the citizen wrong.

The Presumption of Governmental Regularity and Correctness is a malicious tool, created as an alternative to Constitutional law, fashioned by the New World Order (NWO) movement, to defeat the Constitutional rights of the individual in America. It is the chief technique that allows

collaborating government and foreign private interests to transform this country into a police state.

Another technique used in transforming this nation from a free state into a police state, is the attack on the innocent; those “politically incorrect” people willing to speak out against tyranny and corruption. Against them the government uses false charges, manufactured by rogue government agents on behalf of the elite who deem themselves to be “politically correct,” i.e., the NWO movement.

“They,” these rogue agents and the prosecutors and judges who support them, deliberately attack innocent individuals who criticize the NWO movement simply because of differing views of how governmental authority should be administered, managed and applied.

The tie-that-binds these entities is a form of peer pressure mixed with legalized bribery that encourages government employees to stick together, causing judges, prosecutors and government agents to feel obligated to support each other, even if their conscience tells them that they are prosecuting an innocent person on false charges.

Legalized bribery comes in the form of “cash awards” for government employees from \$10,000 to \$25,000 per conviction to “recognize and reward” each official under 5 USC §§ 4502, 4503 & 4504 and 5 USC §4302 to enhance their “performance” or for so-called “superior accomplishment” or “a special act or service” or if the act “achieves a significant reduction in paperwork.” The criteria is so loose, any employee can be given a cash award for almost anything; consider the power this law gives the head of each agency to manipulate employees. In addition, the government employee can also receive “time off from duty without loss of pay” as a part of the reward for bringing down a politically incorrect person.

A politically incorrect person not only believes in the U.S. Constitution as the Supreme Law of the Land, but uses his freedom of speech to point

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out law violations by the government. Such was the case for David Hinkson who developed ionized minerals as a dietary supplement and started a business that went from zero to \$4.0 million in sales in four years. Then he came under the scrutiny of Rogue agents at the IRS, FDA and FBI who were helped by cooperating private individuals all of whom wanted to put him in prison so they could steal his business.

Because of something called the “Crony System,” a member of the government invariably refuses to challenge another government employee who is attacking a politically incorrect person; this part of the Crony System operates like a conspiracy of silence.

Also, rogue agents are given wide latitude to vindictively pursue their own personal agenda, such as when an agent feels insulted by someone who challenges their authority, as happened in David Hinkson’s case. The rogue agents are allowed to pursue their own agenda because they are supposed to be the protectors of the judges and prosecutors who supervise them. These agents create a “bunker” mentality among the judges and prosecutors in a paranoid atmosphere with a pretense of constant danger. These rogue agents are in a symbiotic relationship with both judges and prosecutors that leaves the ordinary citizen “out of the loop” and creates conditions ripe for victimizing the innocent politically incorrect person.

The attacks by rogue agents are not limited to dissenters who make “politically incorrect” statements. Sometimes such agents are directed by NWO leaders to attack creative individuals, such as inventors who develop products that might compete with the private interests of big-pharma or the oil and gas industry or other industries that provide profit to the NWO bankers.

Once falsely charged with a crime, the innocent person’s prosecution will be supported by members of the Crony System, which ultimately relies upon the Presumption of Governmental Regularity and Correctness

in order to bind these different techniques together to ensure a conviction. Convicting as many dissidents as possible not only silences the opposition, it provides funding to the American Prison Industry (API), another creation of the NWO bankers. The API depends upon Revenue Bonds for funding which have been sold in regional and world markets and must be repaid by taxes that support prisoners; the more prisoners, the more tax dollars to repay Revenue Bonds. In order to obtain a conviction, not only is the Presumption of Innocence defeated, but evidence of other defenses a politically incorrect individual might have, such as alibi or self defense, are simply excluded by a cooperating activist judge, who is receiving some form of payoff.

In some cases, such as in the Hinkson case, the judge would not allow the jury to hear evidence crucial to his alibi defense which could have resulted in his acquittal. For example, when the government failed to produce David’s U.S. Passport, the judge also refused to order it produced which would have proved that David was in Ukraine and Russia when he supposedly was soliciting Elvin Joe Swisher to murder federal officials.

Also, the judge excluded from the jury’s consideration Swisher’s official military file which absolutely proved that Swisher was a liar. He had not received military awards or decorations, had not killed anyone in combat and had not served in Korea; in fact, Swisher was court-martialed for misconduct and busted from a Corporal to a PFC without ever having traveled to Korea or served in a conflict.

Failure to produce David’s Passport by the government and exclusion of Swisher’s military file by the trial judge, who lied from the bench when he ruled that the file contained information that supported Swisher’s service in Korea is nothing less than prosecutorial and judicial misconduct – however, there is no one to prosecute them.

When there is no physical evidence that a crime occurred, such as the accusation that David Hinkson tried to hire Swisher to murder federal

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officials, then the only evidence is “hearsay” from the lying mouth of a government witness such as Swisher upon which to base the conviction. When Swisher made the claim that the accused said he wanted to hire him to murder federal officials, other than a flat denial, which he did, there was no other way to rebut such testimony than to show that the informant was lying about his other in-court statements, i.e., about faked military heroism and awards.

When Swisher bragged to the jury about his fake status as a decorated Korean combat veteran, he clothed himself with unassailable credibility because everybody loves and believes a war hero! He said that David wanted to hire him as a hit man because Swisher had killed “many” in combat. If the jury had learned that Swisher was lying about being a war hero, in combat and serving in Korea and never received any decorations, awards or medals, his credibility would have been stripped from him. Thus, the government was able to use two fraudulent stories to convict David of crimes he did not commit and which never happened. The first story was that Swisher was credible because he was the equivalent of a super-hero injured war veteran and the second was that David Hinkson tried to solicit him to murder federal officials. Take out the first lie with the military record and the second lie also fails.

The failure of the judge to allow David to show that Swisher was lying about his military record, which the government went to great pains to make the center piece of its case, denied David the chance to prove that he was not guilty, or at least prove there was reasonable doubt as to his guilt.

The judge applied the Presumption of Government Regularity and Correctness when he excluded Swisher’s military file from the evidence that could be considered by the jury by saying that if admitted, it would only “confuse” the jury. Applying that precedent to future cases, one can see that the government will convict every innocent person who is falsely

accused until the Presumption of Governmental Regularity and Correctness has been overturned.

Bearing false witness was prohibited under Biblical law. In addition, the eternal Law of Witnesses requires that at least two witnesses must testify as to the same set of facts if the accused is charged with a hearsay crime (remember that in the trial of Christ, the Sanhedrin went looking for two witnesses who would testify to the same false charge and couldn’t find any liars to tell the same story, so finally, the Savior Himself had to supply the “crime” by stating that He was divine, which supposedly was blasphemy). Congress must pass a law to require at least two witnesses in the case of hearsay crimes.

Consider, if someone testifies: “You did it,” that there is no way to overcome such a statement because a mere denial, such as “No, I didn’t,” is merely what we commonly call “he said/she said.” Under the pre-1980 system the accused would win if it was just his word against the government witness, but under the present system, the government wins every time because the Presumption of Governmental Regularity and Correctness. In such a situation, the only choice for the accused is to prove that, for a variety of reasons, circumstances show that he didn’t do it. At that point it is up to a third party, such as a judge or a jury to “weigh” the evidence and decide who is believable and whether there is reasonable doubt as to the guilt of the defendant. That is why the Presumption of Government Regularity and Correctness damages the rights of the individual, because it virtually insures a conviction in every case by mandating acceptance of the government’s version.

Another technique used by the U.S. Department of Justice is to provide news releases, at the outset of the case, filled with false accusations in order to demonize the accused by mounting community disdain against him. This is a form of jury-tampering based on attempts by the government to mold the minds of prospective jurors against the

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accused. There is no mechanism to prevent the government from leaking false information to the media damaging to the reputation of the accused because there is no one to prosecute the prosecutors—unless Congress makes such conduct illegal.

Another technique is to hold the accused in jail, so that he cannot participate in his own defense. By presenting false accusations of additional criminal activity that never existed, which activity has been fabricated specifically for the detention hearing, the accused is denied a bond and, thus, cannot get out of jail before trial. Typically, in order to be in a position to have the court deny bond in a murder for hire case, the government will falsely claim that the accused has a “list” of persons he is planning to kill. This makes the defendant appear to be very dangerous and thus, justifies holding him in pre-trial detention. Note: There is no mechanism for holding the government accountable or responsible for bringing false allegations against the accused at a bond hearing, so those false allegations which held the person in jail before trial are quickly forgotten; nonetheless, they served the purpose of holding the accused in detention and denying him the opportunity to participate in his own defense. Thus, by these techniques, the innocent politically incorrect individual becomes a political prisoner of the U.S. Government.

The techniques described above are only a few of those used by the government against the politically incorrect; but all such techniques appear to have come from a KGB-style play book on how to destroy political dissenters. Paul Craig Roberts, former Assistant Secretary of the Treasury for Ronald Regan and Stephen F. Downs, who lectures at New York University Law School both have isolated a problem with the prosecution for “fake” terrorist related crimes of almost a thousand innocent persons by the U.S. Government. Professor Downs refers these acts as “Preemptive Prosecutions.” They base them on a government assessment that the accused is likely to commit a crime in the future (or

are just a general nuisance to the current administration). Therefore, he/she is indicted, tried, convicted and imprisoned by a modern Kangaroo Court (by a Soviet style purge, but in the name of public safety).

The government’s motivation to prosecute fabricated cases is multi-fold, but includes: 1. justification of agency budgets (e.g., FBI \$8.3 Billion); 2. advancement of the police state in Amerika (e.g., Patriot Act approved snooping -- Military Commissions Act eliminated Habeas Corpus, etc.); 3. profits from goods and services that supposedly promote public safety (e.g., sales and proliferation of total body scanners); and 4. pretense-justification of U.S. aggression in countries that support terrorism (e.g. it is okay to murder civilians in Somalia because that nation has supporters in the USA who have or might commit acts of terrorism). The bottom line is that the War on Terrorism is big business and the ultimate winners are the Bilderbergs (see below) who finance and profit from all industries that feed on the management of the purported threat of terrorism, which needs to publicly prosecute the politically incorrect who challenge the underlying assumptions of the government and this all consuming mantra.

Once convicted, a politically incorrect person likely will serve a lengthy sentence and be forgotten in the Gulag of the American Prison Industry and probably will die in prison for crimes he did not commit and which never occurred in the first place. Such is case with David Hinkson; although there are thousands of examples of others who were innocent or severely overcharged in order to give them lengthy sentences that exceed their life span.

Over the years, laws identifying so-called “hearsay crimes” have foolishly been enacted by Congress with assurances from the Department of Justice that these laws would “never be used” to target innocent individuals. For instance, see minutes of Congressional Hearings where members of the Congressional Committee were concerned that the new structuring law they were approving might be applied to them when they

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withdrew or deposited more than \$10,000 in cash in two or more transactions on more than one day. In fact, these laws have become the primary weapons used by the DOJ to prosecute the politically incorrect.

Hearsay crimes, such as murder-for-hire, are enhanced by the government's ability to make phony tapes and videos that imitate the voice of the accused appearing to threaten some ghastly deed; as in the case of Edgar J. Steele, a First Amendment lawyer who stood up for the rights of the politically incorrect. Steele also is from North Idaho and the fraudulent attacks on him emanate from the same office of the FBI as the David Hinkson case. This office is known to liberally use the false testimony of government informants as the basis for prosecutions.

It is important to remember that government informants always have something very significant to gain by acting as a cooperating witness. In years past, government informants were paid for their testimony, which made juries suspicious. When the paid witness was not believed because he has little or no credibility, the government would lose cases. Today, however, informants are allowed to keep the "booty" stolen from the politically incorrect. It becomes their fee for testifying for the government in lieu of direct payment, as happened in both the Hinkson and Steele cases (Hinkson had \$6,600 in cash stolen by government informant Marianna Raff and Steele had \$45,000 in silver coins stolen by government informant Larry Fairfax).

Significant to both cases is that the federal government did not prosecute either of these informants for theft and discouraged the state of Idaho from doing so. In fact, the federal government wields great influence with its state law enforcement counterparts and easily can get them not to prosecute a government informant (see the case of John Connelly, former Boston Mass. FBI chief, about whom it is said, "he tarnished the badge"). Thus, these informants who stole from the accused got off "scot-free" for the theft, which turns out to be the payment for

cooperation. The FBI insisted that Raff, who was a felony habitual offender, be set free from county jail to testify for the government even though she had committed multiple serious offences and Fairfax, will likely spend about a year in prison and never have to be accountable for the theft of Edgar Steele's silver savings.

It is interesting to note that in David Hinkson's case, the government's informant, Swisher, was convicted of felonies including forgery, perjury and theft of approximately \$200,000 of government property arising out of earlier fraudulent representations that he had made to the Veterans Administration. His false presentation to the VA in June 2004 allowed him to obtain fraudulently disability and medical benefits by presenting false testimony of heroism with medals and forged military documents. Swisher used the exact same fraudulent statements about heroism, etc. six months later, in January 2005, to gain credibility with the jury when he presented fictitious allegations in the murder-for-hire prosecution of David.

The corrupt Idaho Office of the U.S. Attorney shielded Swisher from prosecution for his fraud on the VA until an honest prosecutor from Montana was assigned to the case by the U.S. Inspector General's Office; otherwise, he never would have been prosecuted.

It took over two years to indict, prosecute and sentence Swisher to prison. Although David was innocent, he was sentenced to 43 years in prison (which means that David will be almost age 90 when he is eligible for parole, or he will die in prison). Swisher, for all his lies and fraud, received less than a year in a "country club" prison.

In subsequent appellate proceedings, attorneys representing the government have admitted that Swisher lied to the Court and the jury in the Hinkson case, but the Ninth Circuit Court of Appeals would not reverse David's conviction because that would have embarrassed one of their colleagues who acted as David's trial judge. It was more important to the

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Ninth Circuit to protect a colleague under the Crony System than to allow an innocent man to go free. David's case now awaits Certiorari before the U.S. Supreme Court.

There are many political prisoners in America today because people are beginning to resist the grand socialist scheme developed by NWO groups. The chief power brokers of the world are in a NWO group of bankers known as the Bilderbergs, a non-government organization (NGO) manipulating various government agencies to achieve their devious purpose, which is to form a "One World Order" with their own puppet as the dictator. Part of their agenda is to silence all opposition, especially those politically incorrect Americans who have the unmitigated temerity to criticize the NWO or say anything they feel any time they want.

The former U. S. Secretary of Agriculture under Dwight Eisenhower, Ezra Taft Benson, a man revered by many as a true prophet in our day, warned that such power groups would infiltrate our agencies (e.g., the CIA, FBI, FDA, IRS, DOJ and the Courts) with the intent to take away personal freedoms. In 1988, he testified of a secret combination that "seeks to overthrow the freedom of all lands, nations, and countries [that] is increasing its evil influence and control over America and the entire world."

This book, *A Cesspool of Judicial Corruption-The David Hinkson Story*, provides an anatomy of the government's investigation, indictment, trials, sentencing and appeal in the David Hinkson case and shows the connection between the malicious prosecution of David and the Bilderberg-NWO agenda. It gives the reader a blow-by-blow account of the secret combinations at work and the pragmatics of how it is possible, in a free society, for police state tactics to operate in tandem with what has been termed: the greatest experiment in personal liberty in the history of mankind, i.e., The United States of America under The U.S. Constitution. This book is a classic example of Preemptive Prosecution.

Below is a list of how these secret New World Order forces have been and will continue to obliterate the *U.S. Constitution* unless they are stopped: First, they influence Congress and state legislatures to adopt new laws which subvert personal freedom in the name of enhanced security; second, they manipulate government workers to implement the new progressive socialism and blind them to the fact that it will be the same kind of tyranny like Hitler's Nazi Germany and Stalin's Communist Russia; and third, the very ones who should be protecting and enforcing individual liberties, the judges have sold out to the NWO, and these are the ones who interpret and apply the new laws used to override the Constitutional rights of the individual. The judges then pretend that they cannot see the injustice and therefore claim they are simply enforcing these new rigid, wooden and inflexible rules as if it is the will of the people—all of which defies both common sense and our Constitutional rights. But the net effect is that it silences the politically incorrect.

Prior to becoming involved in the movement to "take America back" before it becomes "Amerika," the question that each of us should answer is: "Is it worth becoming involved when my expression of opinion may be considered politically incorrect and I may become the target of false accusations?"

My hope for all who read this work is that they will protect themselves by banning together with like-minded individuals as a force for good to overcome government corruption. May we ban together with people who believe in the *U.S. Constitution* and who desire to expose those who enforce this twisted revision of our precious God-given form of government that our Founding Fathers shaped for us. Remember, "exposure is the first step in the cure for corruption."

It is also my hope that those with good intentions will speak up and demand, en masse, the repeal of laws that defile our freedoms; demand the elimination of false prosecutions; and demand the release of all political

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prisoners, such as David R. Hinkson and Edgar Steele. Otherwise, the evils of bearing false witness against those who exercise Freedom of Speech will be at our doors with machineguns at-the-ready just as they were at David Hinkson's door on November 21, 2002, but with no one left to stop it.

Wesley W. Hoyt, former prosecuting attorney

November 21, 2010 (Eight years later)

PREFACE *by roland c. hinkson*

David Roland Hinkson, my son, is currently incarcerated in the most severe penitentiary in the United States of America. I am very ashamed—not of my son, David—but of the Federal Government ruling our Country. Let me explain.

All my life I had been proud of my Country and yet remain proud of my heritage. Silently, throughout the years, a cloud drifted over my awareness causing me to feel secure because I believed that our leaders were fighting to preserve the freedoms our forefathers provided. I questioned nothing. It was my America against the international criminals (the Axis powers etc.). I've always loved and defended this, My Country.

Since I'm now in my 80s, I have had the opportunity to observe nearly a century of history. I grew up during the Depression that began at my birth. I remember listening on our Radio to Adolph Hitler's thunderous ranting. I remember vividly the announcement of the Nazi two week invasion of Poland. I thrilled at the words of Winston Churchill when he paid homage to the few courageous, young pilots defending England. I listened on December 7, 1941, to our popular president, Franklin Delano Roosevelt broadcast that the Government of Japan attacked Pearl Harbor and we are now at war. And I never believed, even for a moment, I would live to see America become a totalitarian state.

I am not suggesting that all the good law enforcement people, FBI, FDA, IRS, CIA and judges, are participating in a conspiracy to overthrow our Nation. We must enlist these people to join our cause.

People my age share memories of the glory and pride of living in the greatest country in the world, if not in the history of mankind. I now grieve for the young and wonder if they will ever know what we have lost.

What I now understand is that we have slept through the transition and allowed "red termites," fascists and New World Order Progressives to

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eradicate all those ideals that we have clung to and cherished. God, only, knows what price we will pay.

It's likely that at least a single copy of this Book will survive and someone will read it in the future—but clandestinely. And that someone may secretly ask, "If only my parents or grandparents had possessed the courage of our Founding Fathers."

It is my blessing to be able to pay tribute to a rare man, who has been unwavering in support of David, Ted Mendalski. Ted is a man in his mid-80s to whom we have heartfelt gratitude. Many other people who love and care about David have also given us and David hope and comfort. We ask the Lords blessing upon them.

Of course, we acknowledge the tremendous contribution of Wes and Sandy Hoyt for their courageous stand for truth and justice. Wes is a rare breed for an attorney. His intrepid audacity is truly amazing.

I am fully aware that the people who I've pinpointed for dishonor will want to justify their behavior and sue me. So be it. I've tried to be accurate and fair and to label my opinions when they apply as opinions. I must confess that I believe that it is highly unlikely that any meaningful investigation will ever occur to bring charges against any of the identified conspirators. The parties have the full backing of our current government. The Government will subtly punished honorable whistleblowers and stymie any effort to expose the culprits simply because they don't want the truth out.

Prayerfully, I beseech God to grant you insight and wisdom, and if you comprehend the message in this book, may you join in with me and those who care enough to fight.

In 1776, our forefathers built a train called *The Republic*. It struggled for over two-hundred years through the corridors of time along rails known as the "Freedom Track." Abraham Lincoln and others warned us that external forces aren't the biggest threat to derailing our Republic;

rather, the biggest threat lies in internal termites gnawing away at the foundation of the Republic, *The Constitution of the United States of America*.

ONE *the jury is coming in*

It was cold outside on Thursday, the 27th day of January 2005. Home Land Security guards dressed in black full-body armor clutching automatic weapons surrounded the Federal Court Building in Boise, Idaho—security was tight. Wesley W. Hoyt, David Hinkson's attorney, got a phone call from the Court.

"The Jury is coming in."

Faye (David's mother) and I along with Wes arrived at the Building, moved quickly down the shiny corridors into the modern, brightly-lit Court Room on the 6th floor; we took our seats. Moments later guards, followed by Federal agents, opened the door leading into the spectators' gallery. They shuffled in the notorious David Roland Hinkson—chained like an animal. Tension filled the air.

An aisle divided the seating in the spectators' gallery of the court room. Four people for the defense (David's mother, father, wife and brother) sat on the left half of the gallery. Thirty-four, most of which apparently had worked to get David convicted, sat on the right. All were anxiously awaiting the return of the jury for their verdict.

By 3 p.m., the jury had only a partial verdict (They said they were hopelessly deadlocked on three of the eleven counts charged). But by 5 p.m., the final Verdict was in. The jurors acquitted (meaning the charges dropped) on eight counts.

David arose uttering a sigh of relief as the thirty-four spectators stared silently and blankly at the jury. However, the final statement from the Jury Forman changed the whole atmosphere. On three counts, he said,

"We find the Defendant guilty as charged for the solicitation of murder of three Federal officials. . . ."

A festive fervor erupted from the Thirty-Four, and words were overheard as one of the elated Clan snickered,

"Tonight we celebrate!"

The government agents and their enlisted friends finally achieved their goal. "Justice, law and order must prevail—if the American ideal is to be upheld." That was their noble message. Of course, they were proclaiming that everyone is entitled to a fair trial and considered innocent unless convicted by his/her peers in a court of law. And of course, government agents seek only the truth; they would never bend the rules to get a conviction, would they? So isn't it nonsense to assume that an accused may, in fact, be innocent if charged by an honorable government agent? Mustn't we accept the new doctrine of "presumption of regularity and correctness" of government officials instead of the silly notion that a man is innocent unless proven guilty in a fair trial—Where there's smoke there must be fire?"

For the past several years, David's life was on "fire." David had become a notorious villain, as he described in his own words what had happened to him; he wrote:

On the morning of the 21st of November, 2002, I was startled out of a sound sleep by screams. I looked over at the door, and I saw approximately eight men storming into my [bed]room dressed in black and holding machineguns. I heard over and over, "Freeze, mother f***er."

I heard someone say, as I was being held down, 'Where's your gun?' All of the machineguns were pointed at me. I was still partially asleep when the only agent not in SWAT or military dress dragged me out of bed [at 5:45 a.m.] . . . That man was IRS Criminal Investigation Division (CID) Agent Steven Hines. . . .

Hines, in an effort to cover-up for the fact that he should not have been in that raiding party, testified [under oath, of course] (on September 26, 2003), that it was his friend, FBI Agent William Long who had held the gun to my head on that November morning.

Both agents were swarthy and of diminutive stature. Agent Long was also there, but he dressed in SWAT Team gear with his face covered, so there was plausible deniability. David had done nothing conceivable to merit this Gestapo type assault!

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However, FBI agent Will Long later verbally threatened David saying, "I'll put you away for the rest of your life."

Why? We don't know absolutely. We can only speculate. David had previously sued Hines and several other agents of the IRS and agents of the Justice Department for their violations of Due Process (accusing him of killing people who are not dead). So it was a form of payback by another agency. And agent Long was in contact with Ted Gunderson, the former head of the Los Angeles Division of the FBI, who we allege was trying to steal David's business and needed a little help from local law enforcement.

To shed a little light on how some—not all—government agents operate, John Pugsley, president of *The Sovereign Society*, pointed out that, "History proves that governments inevitably grows corrupt, and that corruption leads to an increasing use of police and military force, both against foreign 'enemies' and against its own citizens."

It's clear from the circumstances of this case: that when government agents conspire to target someone, such as David, they broker special favors for individuals who agree to act as cooperating witnesses or confidential informant. They entice them to provide false information or to act as witnesses.

By cooperating with officials, criminals often get their charges reduced or dropped or are allowed to keep something they have stolen from the targeted-individual without ever being prosecuted for their own crime of theft. All they have to do is bear false witness against a "target," or there may be other financial inducements.

David had pulled the chain of many agents up the line of command in the IRS because he was willing to confront them on their illegal activity. A conspiracy to take David down was in the making. For all participants, there was a prize to gain. When certain ex-employees initiated their greedy attempts to steal David's assets or business, they found a way to bring down David.

David had an unusual ability for a lay person to comprehend and research law. Although, he had no formal legal training while living in Nevada in the early 1990s, he had successfully assisted, without charge, a number of acquaintances to defend against government confiscation of their real estate.

He had a license as an insurance broker and real estate broker. His talents included being a Navy helicopter mechanic, but he had expertise in many other trades and ventures.

He did confound government agents with his insights, bold onslaughts and willingness to attack their corruption whenever he recognized it. David's grasp of IRS fraud by the privately owned Federal Reserve, with its scam to bilk money out of Americans, drove him to oppose and expose them. However, his actions merely empowered those who were determined to scalp him.

Assistant United States Attorney (AUSA) Nancy Cook of North Idaho offered to drop the charges they had filed, if David would plea-bargain and pay a \$5,000 fine. I regret that David took my advice in refusing to go against his principles in this case. I told him that personally I'd never submit to intimidation. It turned out that his loss is unfathomable—millions of dollars and a personal hell.

I wrote a story for the *Americans' Bulletin* publication at the time. I said:

David refused to cooperate with these federal villains, so they came up with a new tactic: accuse David of Murder-for-Hire, a favorite charge. That would certainly infuriate the public: so release to the media accusations that David wanted to kill agents of the federal government. Thus, they knew they would likely compromise the jury-pool.

Maybe the worst scandal in FBI's history was the Joseph Salvati case. Salvati spent three decades in prison for a crime he didn't commit (as reported by www.aim.org). The Justice

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Department and Judge put him there using uncorroborated, false testimony from an informant under the protection of the Federal Bureau of Investigation [FBI]. There is compelling evidence that the Bureau knew Salvati was an innocent man and then conspired to keep him in prison. Yet, after his release from 30 years in prison the FBI agent responsible said, 'What do you want, tears or something?'

Judge Hinkle who released Salvati, said, "The conduct of certain individuals in the bureau... stains the legacy of the FBI." In David's case, the legacy is not merely stained it is self destructing.

What I now see is an agency where lies, fabrications and falsehoods are Ok, or wrongful acts are swept under the rug. Of course, many honorable FBI agents outweigh the mavericks that advance their personal agendas with total disregard for the lives of ordinary Americans.

"Dave" I said, "No jury will be so stupid as to believe this murder-for-hire nonsense that they're now accusing you of. Nancy Cook [who was trying so hard to ensnare David] must be a first year law student."

But I was finally awakened as I watched the fraud unfold, the perjuring agents, the dishonorable judges, the cowardly media and gullible, manipulated public all share in a despicable railroading of an innocent man.

Now that David lost his rights as an American citizen and the new laws presume he is guilty unless he can prove he is innocent, what will happen to him?

TWO *david in the hands of the marshal*

U.S. Deputy Marshal David Meyer had custody of David. Seven weeks earlier at David's evidentiary hearing, on December 7, 2004, Meyer had taken the witness-stand and testified under oath that it was too risky to hold the trial in Moscow, Idaho—where David would be tried by his peers (as guaranteed by the *Constitution*) for his so-called crimes that ostensibly occurred. It was very likely that the testimony of this man helped influence the powers that be to surround the entire Federal Building with armed *Home Land Security* guards.

At the Hearing, Deputy Marshal Meyer admitted upon cross-examination that he "had no personal knowledge that David was a threat to anyone." David's attorney said, "It appears that you relied solely upon hearsay information from other persons, who had never sworn an oath or given an affirmation." He did not respond.

After the Hearing, although the halls of the Federal Building looked empty, I could hear voices inside the Court Room. Then I spotted Deputy Marshal Meyer in the hall leaving the room. I stopped him and said I had a few questions.

I said, "I told you that I had called your office three times, but I got no response from you. You told me you never got the messages."

But now finally, he did agree to meet with me at 4:00 p.m. in his office. I arrived a few minutes early and brought along WaterOz General Manager Greg Towerton (a former U.S. Air Force investigator and personal body guard of President Ronald Reagan).

We went into the Deputy Marshal's secured office (in the same Federal Building). I came right to the point by asking:

"Are you the person who made the decision to deny my son the right to use his own computer in assisting in his own defense? Or was the decision made by a superior while you only followed instructions?"

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He answered saying, "Who wants to know?"

"I want to know! David is being denied the opportunity to defend himself."

Greg Towerton brought up the case of Sammy Hussein, who they confined in the same facility with David and was at trial during the same time in a different court room. Sammy had been charged as a terrorist-supporter using his computer as a terrorist tool on the Internet to commit anti-American acts in support of international terrorism (He was later acquitted).

Greg then said, "Yet you have refused to allow David to use his computer to simply perform legal research in aid of his own defense."

Towerton went on to say that, "all other means of research, the jail law library and the Internet have been denied to him."

"That was a special case," Meyer retorted. Greg countered saying,

"What was so special about Sammy's case? You must have known that if there were any validity to the charges against Sammy, there would be an increased risk of danger to our National security by allowing Sammy to use the same computer he used for terrorism. It could have been used to further terrorism while he was in jail; yet you disallowed David the right to perform legal research on his laptop-computer."

I followed up by saying, "You were called to testify regarding security issues associated with having his trial in [Moscow, Idaho]. Your testimony indicated that you believed David was a serious security risk and needed an extremely high level of guarding.

You testified that other detention facilities within the State of Idaho were inadequate to protect the public from what you perceived as the potential threat posed by David or his so-called "followers."

What he implied was that the State of Idaho or Federal Government could not provide sufficient security to protect the government from David unless they surround the Court Building with armed guards carrying

military, automatic assault-weapons. The government circulated charges that David was head of two militias. I summarized our view of David Meyer's actions by telling him:

"Mr. Meyer, obviously you are being arbitrary and capricious and are giving greater privileges to foreign nationals than to Americans. This should be especially embarrassing to you when that foreign national [Sammy] was charged with terrorism—which means that the official policy of the U.S. Marshal's Office in Idaho is to be soft on foreign terrorists and harsh on American citizens. It is quite apparent that the only reason for your erratic differential treatment is simple arbitrariness, which is illegal under our system of justice."

I then said, "If I had been able to establish that you were the person who made the decision to deny David his computer, we could have engaged in a dialogue about how that decision was made and why it was not justified; and hopefully, I would have been given the opportunity to convince you to change your mind. However, by avoiding the direct question as to who was responsible for that decision, it was not possible to probe the subject further."

At the conclusion of our meeting I said, "Am I to assume that you did make the decision?"

His response was evasive. "Assume anything you like!"

I continued by telling him that it makes him appear to be discharging the duties of his office in a deceptive fashion when—I learned later—he did, indeed, make the decision.

Later, I wrote to him advising that by not truthfully owning up to the fact that he was the decision maker, he created a deception, so I had to look elsewhere to find the truth. "This appears," I said, "to be a pattern that is not acceptable in a government that boasts of 'high integrity.' Supposedly it functions 'By the People, of the People and For the People'—is this merely sugar coating for the unwary public?"

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In confirmation of Meyer's deception, I contacted authorities at Ada County Jail (Boise, Idaho). They said that they themselves would not have denied David the use of his own computer since they had the capacity to make a reasonable accommodation for David to do legal research for his own defense. "That decision," I was told, "was made my Deputy Marshal David Meyer."

government to honor David's rights under the *Constitution* to participate in his own defense."

Obviously, we were not welcome in Meyer's office, and I suspect that he was highly relieved to watch us depart. In all fairness, I gave Deputy Marshal David Meyer a chance to exonerate himself. His responsibility and oath does not merely "suggest" that he follow the *Constitution*— but rather, "it demands that he obeys the *Consitution*."

Later, I followed up our visit with a letter:

I said, "As you know, at the time of his [David's] arrest, he was home-alone, asleep at 5 o'clock in the morning when almost 50 masked agents (25 of them armed with machineguns) dragged him out of bed, threw him on the floor, cuffed and transported him to jail. Apparently, you moved him under your authority then also. Again, under your authority, you placed him in a solitary cell in Moscow with a sign saying 'KILLER' hanging on the cell door for guards and inmates to see and to create hatred toward David, which started the process of mistreatment.

He was moved to Ada County Jail where rumors were circulated that he was a 'Cho Mo' (child molester) [This designation assures abusive treatment from the other prisoners]. He was taken to maximum security, housed with violent inmates, denied his doctor-prescribed diet and his visitation rights from his wife and mother—even though they had traveled thousands of miles to see him—all of which I now have learned was specifically denied by you. The list goes on and on, but you would know better than anyone what was done.

I told Meyer that the time is quickly passing when it would have any value for David to use a computer in his defense. I said that it's absolutely, critical that you give David every chance to develop his defense because the United States Government has falsely accused him of so many crimes.

"Yet," I said, "so far, we have seen nothing to show any intent by the

Granted, there is a lot at stake for the government in this case, not the least of which is the embarrassment when the public finds out what drastic measures government agents took, all based on rumors and lies.

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THREE *conditions at ada county jail*

Long before the Jury convicted David of any crime, the authorities held him at various jails mostly in solitary confinement for going on two years before they even charged him. Because they bound, chained and handcuffed him, they thus subjected him to danger. While bringing David to the Court room the guards handled him roughly. A bolt protruding from the concrete floor ensnared his ankle-chains causing him to fall helplessly backwards hitting his head on the concrete floor.

When I had heard how badly Ada County Jail had been treating the inmates, I wrote a letter of complaint (March 2, 2004) to the Idaho Governor, Dirk Kempthorne, about the "Inhumane Conditions" at the Ada County Jail. I wrote:

David is being housed with convicts and treated like a criminal, contrary to Federal law pertaining to pretrial detainees. The non-medical jailers twice arbitrarily revoked by his medically-prescribed diet. In retaliation for speaking up against jail conditions David experienced all the indignities of prison life in spite of the presumption of his innocence.

Three primary care areas in dire need of your attention are prisoner's food, health/hygiene and legal access. The nutritional value of the food served to the prisoners delivers about one-half of the daily calories required by law, as substantiated by a dietitian. While we have been aware of this situation for months, I have monitored the type and quantity of food served at the Jail for the past three weeks by talking directly to prisoners. Each day, the prisoners report the abysmal type, quantity and qualities of food actually served and tell me they are CONSTANTLY HUNGRY. Our son's body now shakes continually from the effects of malnutrition.

Apparently in response to other complaints, Boise Channel 6 recently did an investigative report concerning the food being

served to prisoners at the Ada County Jail. We were flabbergasted and found it to be extremely deceptive when the Sheriff's Department 'staged' a meal unlike any the prisoners had ever had when the camera crew arrived last week. The prisoners were served a fish dinner with nutritional accompaniments in a restaurant-style meal, causing the caloric value to jump from the typical 1200 calories per day derived from bologna sandwiches and corn flakes to the required 2500. I think I had raised enough ruckuses to cause Channel 6 to come to the County's defense.

Because of this 'charade', Channel 6 reported on the Sunday night news, February 29, 2004, that the food at the Jail is equivalent to local area restaurants! We point out that it was clearly an attempt to 'cover up' the poor conditions when jail officials claimed publicly that the meal served on the day that the Channel 6 News team visited was typical [I attached *Memorandum on Denial of Human Rights and Improper Jail Conditions*]. This ongoing lack of nutrition in the prison population has caused serious health issues for many, including one instance of starvation.

Prisoners are given little pieces of cloth called shoes with no real substance or arch support. Sheets and clothing often come back from the laundry dirtier than when they went, apparently because no detergent is used (another money saver?). Because guards bring food into the area where prisoners congregate, rather than them going to a dining hall, food is spilled on the carpet and never cleaned, causing an ongoing stench and health hazard. Prisoner's opportunity for exercise in the small exercise yard is inhibited by poor footwear and starvation.

There is a pervasive lack of access for prisoners to the legal system, research and attorney-client privileged communications. Calls and visits from our son's attorney have been recorded or monitored, which has a chilling effect on any attempts at communication. The law library is often closed when it is David's time to use it. He is restricted to one hour of use twice per week, which is usually cut arbitrarily to 20 minutes. The law books are not current nor are there complete sets of books, as

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the Jail quit purchasing law books several years ago for the stated reason that all the 'law is now on the internet'; however, inmates are denied access to computers and the internet—clearly, a "catch 22." Our son has a paid-up Lexis Nexus account, but has been denied the opportunity to use his own laptop for legal research. An innocent man should be allowed to participate in the defense of his case, and provision should be made for him to use the internet if an adequate law library is not available. While the public has been given the impression that the prisoners are being decently treated, they are being abused.

It appears to us that Ada County is saving money on food, shoes, detergent and other 'life necessities' in order to build a Jail Addition to house more federal prisoners to obtain more revenue from the Federal Government. Please take note of the attached *Memorandum on Denial of Human Rights and Improper Jail Conditions* with attached *Inmate Grievance Forms*—several have been signed by as many as thirty-seven prisoners [The lengthy Memorandum is not included in this book].

We are deeply concerned about the mistreatment of our son and the generalized abuse of all prisoners at the Ada County Jail. The jail authorities treat dismissively these *Inmate Grievance Forms*, and the jailers have retaliated.

We ask you, as governor of the State of Idaho, to personally inquire into the matters set forth herein, as we fear that more retaliation may come from the jailers if your office does not address the problem properly. Please do a formal investigation and apply your influence to correct this mistreatment. Best wishes to you and your staff in their conscientious endeavors to restore justice.

Sincerely yours, Faye and Roland Hinkson.

A few weeks later, we got a short response containing the usual evasion. As you might suspect, nothing ever came of this. Conditions remained the same.

After months of pain and suffering, delays and fearful anticipation, David finally got his day in court. Until his trial, he didn't even know for

sure who his accusers were. But his jailers continued to treat him as a pariah. The Justice Department thoroughly vilified him in the eyes of the public with a broad brush by spreading rumors via the media—rumors that the media refused to investigate. Like all the other media in the U.S., they print only what the government wants them to print.

Now David would face his accusers. But what would or could they say against him? So he went to trial and was about to learn just how far the puppet accusers were prepared to go.

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FOUR *the chief accuser testifies at trial*

Back in the Federal Building in Boise David sat quietly at the Counsels' table next to his Attorneys, Wes Hoyt and Tom Nolan. The trial preliminaries concluded after a few days, and various persons testified. The only witness whose testimony ultimately survived on behalf of the government's prosecution team was Swisher.

At mid-time during the Trial (on January 14, 2005–9:13 a.m.), AUSA Michael P. Sullivan called to the stand the government's star witness, 68 year old "War Hero" Elven Joe Swisher. Swisher approached the stand wearing his favorite black leather jacket with a Purple Heart lapel-pin proudly displayed. He took the Oath—"Tell the truth, the whole truth . . ."

"I do."

Sullivan then asked Swisher to relate his educational and professional background.

"I received a Master's Degree from Columbia. I was six hours away from completing my dissertation for a PhD in psychology and Sociology."

My understanding of his testimony was that he did not complete his doctorate because of health reasons. Also in an earlier deposition, he testified that he was four hours away from getting a PhD. I don't understand what he meant by "six hours" or "four hour away" from getting a doctorate. But it sounded good, and the Jurors were impressed. Then he added, "I was certified as a social worker,[but] I switched careers in the early seventies to metallurgy and mining."

Throughout Sullivan's questioning, Swisher detailed how David had approached him, offered money and wanted him to kill three federal officials.

Obviously, testimony from such an apparently credible witness made an indelible impression on the minds of everyone listening. A friendly reverence and cordiality prevailed. After moments of silence following Sullivan's question, David's lead counsel, Mr. Tom Nolan (from California) approach Swisher to cross-examined him; he asked,

"Were you hired in a federal case as an expert witness against Mr. Hinkson?"

Swisher claimed that due to his age he needed to refresh his memory of his prior testimony in an earlier case by reviewing the transcript, as he could not remember his prior grand jury testimony. The Judge granted him permission. Thus, he was able to fashion a somewhat consistent response to earlier testimony.

But just before Attorney Nolan rested David's defense, something dramatic happened. At approximately 1:57 p.m. Sandy Hoyt, the wife and secretary of Attorney Wesley Hoyt, entered the Court Room disrupting the proceeding by waving a document. The impact of that document was explosive and could trigger a mistrial. Within ten minutes, the Judge ordered an unscheduled recess.

We sat nervously wondering if this was the turning point, and the Judge would declare a mistrial. Of course, Faye and I already knew that Swisher was a liar.

I reflected back on my first meeting with this witness. He had called me on the phone telling me how impressed he was with David and his products, and that he is planning a business trip to New Mexico and could enroot drive through Ouray, Colorado, where we live. He said he'd like to help us with an issue we were facing but needed us to help pay for the extra gas. We agreed.

Joe Swisher and his wife, Barbara, arrived on June 3, 2001. We put them up as house guests for a couple of days. Joe told us that he was a Korean War combat veteran and had fought in a Korean War skirmish. He

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allowed me to see a copy of his booklet, *A Marine Remembers*. I was impressed. I didn't know his age, but he appeared to be close to my age. Since I received an Honorable Discharge from the U.S. Army in July of 1948, I never doubted that Swisher could have served in the Korean War. He talked about the healing benefits of WaterOz products and of his spiritual beliefs.

To my shock and chagrin, I got a call from David on July 19th, 2001, telling me that Jeri Gray (the *WaterOz* office manager) paid Swisher \$2,500 and charging me for coming to Ouray while enroute to New Mexico. We had graciously hosted them and fed them for two days. And this was our reward. I immediately called David's attorney, Britt Groom, the man who originally introduced Swisher to David. I told Groom that Swisher is a thief and liar. But, at that time, I had no reason to believe he is also a fraud.

At Trial Swisher's testimony shocked everyone. He testified to nearly all the accusations published about David in the media. In addition, he had talked about how much money David promised him and that he was entitled to certain land and equipment—"as promised," he said.

When Attorney Hoyt learned that Swisher would be a government witness against David, without hesitation, Hoyt began his due diligence investigation.

Swisher was born January 13, 1937. The Korean War began June 25th, 1950, and lasted until July 27th, 1953. A moment's calculation suggested a problem. How could Swisher have been in the Korean War at age thirteen? And by time the war concluded, he'd be only about 16 years old. But his booklet, *A Marine Remembers*, made the timing appear more plausible. Now he was on a "Special Secret-Mission." Not even the Marine Corp would have knowledge of this episode—"It was top secret," he proclaimed.

The Hoyts contacted the National Personnel Records Center immediately. But they told the Hoyts that Swisher's file was currently unavailable. However, during the Trail Sandy Hoyt was successful in getting a preliminary response from the Records Center. She was informed that Swisher had earned no medals, was not injured or in combat; then they sent a letter concerning Swisher's true discharge document (DD-214) signed by Archives Technician, Bruce R. Tolbert (later referred to as the Tolbert Letter).

When Sandy Hoyt entered the Court Room (on January 14th, 2005), she was waving this document. All of Swisher's testimony against David could become suspect in the minds of the jurors if the jurors were to learn of the contents of this document and if Swisher turned out to be a fraud.

On Friday (January 14) while Swisher was testifying on the stand, Attorney Nolan asked him about the Purple Heart lapel-pin on his chest. Swisher reached into his pocket and pulled out an Idaho certified copy of his DD-214, which did confirm that he, in fact, had earned the Purple Heart. Then Prosecuting Attorney Michael Sullivan held up a duplicate copy of the same DD-214. But both were in conflict with the Tolbert Letter.

At this point Nolan asked to approach the Bench. At sidebar outside the presence of the jury, Nolan and Hoyt told the Judge that they now have information indicating that the document Swisher had taken from his pocket while on the witness stand (the so-called "replacement DD-214") was provably fraudulent.

Attorney Hoyt asked AUSA Sullivan, "When did you learn about the DD-214 [that Swisher had held up]."

Sullivan said he had received a copy earlier that morning.

"Why didn't you tell us," Hoyt retorted.

"Why should I?"

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Nolan called for a mistrial because the government had withheld exculpatory evidence. But Judge Tallman denied the motion for a mistrial, stating:

"The court finds, as a matter of fact, that if Swisher's document is a copy of a genuine military record—and at this point, I don't have any way to determine that—but it appears to be genuine, at least in appearance." He left the sentence dangling. Tallman cleared the Jury from the Courtroom. He then said,

"Until the government received the Tolbert Letter it had no reason to believe that Swisher's document was 'discloseable' under Brady or Giglio because it was not impeaching."

So Judge Tallman decided to instruct the jury to strike that portion of the cross examination of Swisher's that relates to the Purple Heart. Yet, he failed to address the real issue: "Was Swisher a credible witness, or is he a liar." An apparent felony was committed in the presence of an appellate court judge, but the Judge just brushed it under the rug.

When the jury returned, Tallman said, "Ladies and gentlemen, it's been a long day; and I now realize that I made a mistake in allowing the questioning with regard to the Purple Heart Medal."

When David's life was at stake, wouldn't it have been prudent and reasonable to, at least, verify the credibility of a witness' testimony. An honorable, fair-minded judge would have done so.

The Defense told Tallman that the National Personnel Records Center stands by the letter of January 14th, and that they will provide an authentic, certified copy of his DD-214 but only in response to a subpoena signed by the Court. Judge Tallman signed a subpoena later that day.

On Friday morning, January 21, again outside the presence of the jury, the prosecutor provided a photocopy of a letter to the Court "for in-camera review" [for the Judge in his chambers]. But a new question arose. When

did the government get copies of the documents? In other words, when did the government, in fact, know about the fraudulent DD-214.

A letter from Lieutenant Colonel K.G. Dowling, Assistant Head of the Military Awards Branch of the Marine Corps went to Ben Keeley (now deceased) of the Idaho Division of Veterans Services.

The Record refers to a letter called the "Dowling Letter"—dated December 30, 2004. What appeared to be a "received" stamp had the date "January 10, 2005." Upon close examination it can be detected— that this date had been altered—Was this alteration a crime committed by the FBI? At the top of the letter was a fax line dated Thursday, January 13, 2005. It had a caption, "ID. STATE VETERANS SVS" in Lewiston, Idaho (where Keeley's office was located).

January 13 was the day before Swisher took the stand to testify against David. The prosecution gave various answers about when it received the *Dowling Letter* or learned of its existence. This is important because it shows that the government was hiding exculpatory evidence. If the Justice Department and Judge wanted to dig out the truth, why would they alter evidence or suborn the truth?

On the morning of January 21st, Sullivan gave the *Letter* to the District Court (Tallman). The Prosecutor stated that he "believed Agent Long got the letter the day before by going to the Veterans' Administration." Later, in his opposition to David's motion for a new trial, Sullivan stated in his brief that the letter was "obtained by federal investigators a few days earlier from the Boise Veteran's Affairs office."

The Ninth Circuit assigned Tallman by designation to the step down role as district judge to replace Judge B. Lynn Winmill (who recused himself). Tallman was actually a Ninth Circuit Court of Appeals judge).

Michael P. Sullivan and Michael Taxay composed the Federal Prosecution Team. They stated that, "government investigators obtained the letter on or about January 20." They claimed they first learned of the

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Dowling Letter on January 18 or 19 at the Boise, Idaho, office of the Department of Veterans' Affairs. There is no indication in the record that either Nolan or Hoyt had any idea of the existence of the Dowling Letter until the government provided it to the Court on January 21.

The Dowling Letter indicated that Keeley had earlier contacted the Personnel Management Support Branch of Marine Corps Headquarters, after Swisher attempted to use his "replacement DD-214" to obtain veterans' benefits from the Idaho Division of Veterans Services. What this meant is that Swisher must have determined that perjury might be the only way he could wiggle out of exposure for stealing benefits from the Veterans Administration—to the tune of thousands of dollars (\$200k in benefits).

Dowling wrote back to Keeley:

We have thoroughly reviewed the copy of the Certificate of Release or Discharge from Active Duty (DD Form 214) and supporting letter which you submitted on behalf of Mr. Swisher with your request. The documents you provided do not exist in Mr. Swisher's official file. The official DD Form 214 in his record of the same date was signed by Mr. Swisher and does not contain any awards information in box 26, and contains no "wounds" information in box 27. Given this information, we have reason to believe that the documents you submitted are not authentic. Specifically, the DD 214 you submitted on behalf of Mr. Swisher indicates that Mr. Swisher is entitled to the Silver Star Medal, Navy and Marine Corps Medal (Gold Star in lieu of the Second Award), Purple Heart, and Navy and Marine Corps Commendation Medal with Combat V.

However, our review of his official military records, those of this headquarters, and the Navy Department Board of Decorations and Medals failed to reveal any information that would indicate that he was ever recommended for, or awarded any personal decoration.

Additionally, the Navy and Marine Corps Commendation Medal, which is listed in block 26 of the DD 214 that you submitted did not exist at the time of Mr. Swisher's transfer to the Marine Corps Reserve in 1957. On March 22, 1950, a metal pendant was authorized for issue in connection with a Letter of Commendation and Commendation Ribbon. On September 21, 1960, the Secretary of the Navy changed the name of the award to the "Navy Commendation Medal."

Thus, we now have irrefutable confirmation that Swisher is a fraud and perjurer. Would the fact that Swisher was capable of lying under oath cast a shadow on any of his testimony? What kind of impact would the revelation of Swisher's lies have on his circle of friends and acquaintances?

The government reluctantly admitted that the Jurors convicted David of murder-for-hire based solely on the testimony of one "witness," Elven Joe Swisher. Based on the testimony of this lying blackmailer, Deputy Marshal Meyer dragged David away in chains. David was yet to learn his fate.

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FIVE *the judge locks up david and throws away the key*

Sentencing, although set for April 25, was postponed until June 3, 2005. To hopefully mitigate the severity of the punishment we brought new, exculpatory testimony to the Court. Judge Richard C. Tallman responded with an Order dated June 1, 2005, denying any new consideration—he knew all that he cared to know.

At sentencing, on June 3rd, in the same Federal building in the same courtroom, David, who suffered from a head injury with stitches on his head, was shackled both hands and feet. He had not slept that night, was exhausted and delirious. He took his seat behind the defense counsel table which supported a couple of monitors. Next to him sat his two lawyers and the prosecutors. The table was about 20 feet from the elevated judge's bench.

IRS Special Agent Steven Hines spoke and was followed with the government's closing argument. David presented his allocution statement for his own defense; it played like a broken record in his delirious mind—all night.

We, David and his family, envisioned that Tallman may possibly pronounce a severe sentence maybe as much as ten years, but we were hoping for three years or less because of the perjured, questionable testimony of the sole, so-called "witness," Elven Joe Swisher.

The Judge (who had shaved off his beard before sentencing) read for nearly two hours from his notebook, tap-dancing around all of the cases he had reviewed—but he totally ignored the *Constitution*. We sat patiently.

Tallman's demeanor was quite affable. He came across as an honorable judge who was only following the law and would rule reasonably and justly. Judge Tallman then said:

"Defendant is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a total term of 516 months [43 years]."

As Tallman's words rang out, David stood up; and as his attorney, Wesley Hoyt, who sat next to him observed, "David collapsed. His body fell across the table knocking a TV monitor to the floor." Guards instantly subdue him and dragged him out the side door as David hollered at Judge Tallman, "I hope you die of cancer, you son of a bitch,"

Of course, this was a great opportunity for the government to accuse David of attempting to add Tallman to his "hit list." Probably if David could have catapulted Tallman into space, he would have done so—gleefully. But unfortunately, a gang of marshals shackled and constrained David as they dragged him out of the courtroom.

In the "Criminal Proceedings Document" (filed June 3, 2005) the Court published its spin on the incident:

... [The] Court spoke as to the applicable sentencing factors and then began to impose the sentence at which time the defendant Mr. David Roland Hinkson erupted in the courtroom and tried to rush the judge's bench, knocking over a television monitor and water pitcher on defense counsel's table before deputy marshals could restrain him. After United States marshals were able to contain Mr. Hinkson, he was escorted out of the courtroom into a detention cell.

Proudly they succeeded in restraining Superman, who could leap over tables, tall buildings and outrun speeding trains or bullets. David was taken to a holding cell but later brought back to conclude sentencing. He remained silent. When sentencing resumed, Tallman declared,

"The Court recommends that the Defendant be placed in the maximum security facility at Florence, Colorado. Monetary penalties include a \$100,000.00 fine—due immediately. A Special Assessment of \$2,435.00 is due immediately, plus \$300.00 Special Assessment with

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another \$720 due immediately, and finally \$135,000.00 in U.S. currency as previously ordered."

Tallman is about three years older than David. He graduated from Northwestern Law School. After serving as a law clerk for Judge Morell E. Sharp of the United States District Court for the Western District of Washington he worked from 1979 to 1980 as a trial attorney (prosecutor) in the General Litigation and Legal Advice Section of the Criminal Division at the U.S. Department of Justice in Seattle, Washington.

Former President Bill Clinton, in May of 2000, appointed him to the Ninth Circuit Court of Appeals along with a pack of last minute political appointees before Clinton left office. He was an associate and partner at Schweppe, Krug & Tausend from 1983 to 1989. From 1990 until 1999, he was chairman of the white-collar criminal defense practice group at the former Bogle and Gates law firm. After that Firm closed on March 31, 1999, Tallman formed the firm *Tallman & Severin* and then went to the Ninth Circuit as a judge.

His associations and experience as a prosecutor hardly made him an open minded, unbiased evaluator of truth and justice. As a former prosecutor, without any experience as lower court judge, he soared to the appellate court bench. Because of his close association with the prosecutors at the Department of Justice and lack of experience as a judge, we dubbed Tallman as "The Black-robed Prosecutor."

Tallman had no doubt that David was rolling in money stashed in foreign banks worldwide. Throughout the trial, there was reference to David's great wealth. By recommending the SuperMax facility in Florence, Colorado, he was able to assure that David would suffer the most severe confinement available in the United States. The government will now silence David forever, and no one will ever hear his name again.

Because I'm David's father, I probably know my son better than anyone, and I was in close, continual contact with him. I had been on the

phone with David during a great deal of the time while these unbelievable accusations were germinating and sprouting.

I told David, "Don't worry, Dave, no intelligent juror would believe this non-sense." Until I sat through his trial, I had believed that justice would, in fact, prevail. But by time Judge Tallman sentenced David I lost all respect for our Justice System here in the United States of America. I personally witnessed a Kangaroo court in full swing. Since I knew the full story, how Tallman had lied and abused his discretion, how the prosecutors had lied, how the greedy accusers had conspired with government agents my respect for our Justice System plummeted.

I had lived under the misconception that jurors would learn all the facts so they could make a reasoned and just determination. Although not appointed as County Judge, I had the recommendation of my former governor and congressman. Now I understand how they play the game. My personal experience during the time I spent in law school (University of Utah, 1957-58) convinced me that our legal system worked. I honored and respected the American legal community.

I still believe that most citizens are conscientious about wanting to see justice prevail. Yet with smoke and mirrors our masters can and do manipulate jurors into believing nearly anything. But until our *Constitution* is totally insignificant or dead, a single juror can, in truth, stop this type of tyranny. Regardless of instructions from a judge, even one juror can, constitutionally, HANG THE JURY merely by voting for an acquittal.

Now that this man, Judge Tallman, chose to destroy David's life by denying him a fair, constitutional and just trial, what were we to expect would happen? But how will they treat David while we continue to battle for justice?

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SIX *the count of monte cristo goes to his dungeon*

The conditions in which David found himself were appalling. I learned that SuperMax (aka ADX) is located outside a little town called Florence (near Pueblo, Colorado). On the barren thirty-seven acre compound, there are three correctional facilities with different levels of security. ADX generally houses about 430 male prisoners. The prison as a whole contains a multitude of motion detectors and cameras. The fortress has one-thousand, four-hundred remote-controlled steel doors inside and is surrounded by twelve feet high razor-wire fences. Between the Prison walls and the razor-wire, attack dogs guard the area. This is the modern day Alcatraz and most severe dungeon surviving.

Most of the furniture inside is made entirely of concrete (desk, stool and bed). The Prison provides a skimpy thin one inch mattress over the concrete slab for the inmates "comfort." Crammed into the lighted cell is a toilet and shower (controlled by a timer or auto shutoff) and a sink. A steel mirror is bolted to the wall.

To prevent total insanity, there is a radio and small black and white TV monitor providing recreational, educational and religious programming. They consider these as privileges that they can take away as punishment; they are remotely controlled and placed so that the inmate doesn't actually touch them.

The slit for a window (four inch by forty-eight inches) is designed to prevent the prisoner from knowing his precise location within the complex—he can see only sky and roof. For one hour per day the inmate can leave his solitary, confinement if he wants to exercise in what the inmates describe as an "empty swimming pool" (the design is so the inmate won't know his location). Communication with the outside world

is forbidden, and the correctional officers even slip food through a cell door. In David's case, he never got a chance to speak to a single guard for long periods, days and weeks.

Time Magazine published an article (November 5, 2006) by Mary Anne Vollers on "Inmates Housing Facilities and Population" where she provided data concerning the physical setting at ADX "Supermax" Penitentiary in Florence, Colorado. She wrote:

At a cost to taxpayers of \$60 million, ADX was built in 1994 but opened in 2004. The facility had 490 inmates' beds. By November 2006, there were only 208 employees down from the original 240. The average cell size is 7 feet X 12 feet square but with very little free space for movement—due to a concrete bed, sink, toilet etc. Most inmates are kept in cells for 23 or more hours per day—every day. They will see only sky or concrete through a tiny window—the outside world is forbidden. If anyone gets to exercise during part of the one remaining hour, he will do so alone in a separate concrete chamber. Food is hand delivered by guards. The entire prison is secured by numerous cameras, 1,400 remote-controlled steel doors, and 12 foot high, razor-sharp wire fences with laser beams and attack dogs guarding the space between the fences.

[Vollers points out] that only five percent of ADX's inmates enter directly from their sentencing [They transfer ninety percent of the inmates from another prison]. ADX, a control unit, holds the most dangerous and disruptive inmates [22% have killed fellow prisoners in other jails. Some of the inmates are notorious convicts. Here are a few notorious inmates:

Omar Abdel-Rahman (the blind Sheik planner of the World Trade Center bombing—1993),

Robert Hansen (former FBI spy for the Soviet Union),

Ted Kaczynski (the Unabomber),

Zacarias Moussaoui (World Trade Center conspirator),

Richard Reed (Shoe Bomber),

Terry Nichols (Oklahoma City Fed Building bombing) and

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Tim McVeigh (executed on June 11, 2001, after his conviction in the Oklahoma City Fed Building bombing).

Yet some of the inmates are totally non-violent and have entered the system via political reasons [David is an example—through fraud and deception by dishonest government agents and a lying judge]."

SEVEN *ten-thousand tears*

From David Hinkson—In ADX Federal Prison (Supermax) Florence, Colorado (June 20, 2005— his first letter):

It's Monday evening and I just finished reading my 3rd Romance Novel. You know I've always been a hopeless Romantic, who just wanted to be loved. I have spent my whole life in service of my family and others. It was my desire to search for the truth in physics, law, health and religion that guided me where few have dared to go. In my life, I have spent thousands of hours testing my theories and searching for answers. I started from the basic premise that everything had not been invented.

I found out that the world is full of so much fraud that a person can feel very hopeless. Fraud is in physic, in [the] food supply and religion. Every time I would get a copy of the law from the government I would go to the *Congressional Record*. And every time it was a fraud, from the Turtle Law to the Wetlands Act.

I lost interest in law when I moved to Idaho. I focused on health and science totally. Every day I would pray and ask God to give me wisdom, and I searched for answers to these many health problems. When I made the calcium, I do not know why I made it, but God told me in a dream. I knew that you can buy calcium in the store for very low price, and I did not understand why I should make a calcium product.

I figured out about the black board chalk on my own (in a dream). I did not understand a very important word: 'FORM.' The possibility of forms of chemical components is endless. The way I made the minerals was not as complicated as building a weapon of mass destruction, but I came up with a concept that stated if it is in any form the body does not like, it will be rejected.

I discover heat ruins most minerals, and no one has processed them with this concept in mind. The body uses HCL as

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found in the stomach, but this acid does not dissolve copper and many other minerals. But by soaking the copper dust that is pure in high strength HCL, I got it to melt over a long period of time—when in Chemistry it is not supposed to melt. I gave you the wrong information about the . . . [I deleted this because it reveals his methods]. Only after a dream did I come up with this idea. No one has ever produced products like I have shown you. Although creating each mineral product has a different method, it took eight years of experiments to come up with these formulas. After I believed these new concepts I was determined to prove them and make a difference.

I was never motivated by greed or money. I do not understand why so many people would ban together to hassle me and my work. If I could get away, they would probably find more liars and have a new trial. They can try you with no evidence and just bring a gang of liars. I am proud of my work and all I have achieved. I believe God was directing me, and I felt like I was doing his work. To expose fraud is to expose evil—the devil, as you would say.

I really believed we had free speech in the country. I knew I could not make disease claims, and I didn't make any. I just had my recommended protocols with two disclaimers. They have turned everything I have ever done in my life that was good, Godly or courageous into a felony and have banished me from my life and work.

I would gladly give my life to have helped the Africans and others who have AID's. If I am to die now I want my work to continue. I have no way to even help defend myself—not even allowed a phone call. I am truly dammed.

Everyone I've been good to has turned on me in the orchestrated attack against me and my family. No one is safe because there is no Law or Rules of Evidence. The big word is conspiracy. Just buy a few cars for people, or promise them money or threaten them with prison and off you go to the gallows.

Please do not let anyone destroy my work or steal it. If anyone steals my work and takes the credit, I could not bear the pain. Especially if they don't give the credit, to whom it belongs:

God. Without God's help and inspiration, I never would have achieved anything. I know I've sinned, but I have asked forgiveness. Even my words which were wrong with James Harding were just BS [David had gotten carried away with claims of sexual prowess to impress this stranger, J.C. Harding].

I love Tanya with all my heart [Tetyana—She and David were to be married shortly after the date David was arrested. We managed to perform their marriage while he was in jail waiting for his anticipated release]. She maybe will never know how deep my love is for her.

I have been cheated out of my whole life. I have marched to my own tune not even caring what my parents thought. I made no effort to convince you of my work or my crazy concepts. I am filled with happiness that you believe in me and what I have achieved. I know that if they kill me you will be proud of my memory.

The minerals work: Sickle cell, copper, AIDS, silver, zinc and calcium, Multiple Sclerosis, RNA, sulfur, anti-aging, Indium, wrinkle, copper etc. All these diseases that are [considered] impossible to cure we have reversed.

Swisher walked at a normal gait to the witness stand to testify without his wheel chair—because of WaterOz minerals. Annette [Hasalone—who later stole David's formulas] lived because of these minerals, and we saved [Steve] Bernard's daughter with these minerals. I would only wish now to spend what is left of my life in service of God, the sick and needy. But I fear Satan and his U.S. Government forces will not stop until they have stopped my work.

Please! Dad I love—Please let Greg continue to run currant operations. He is a good man. You will do what is right. Money at this time should not matter. It doesn't matter to me; what matters is helping stop the AIDS virus from killing innocent children and their parents.

I do not know if I will ever come home, and I do not know if I can live like this much longer. I pray for strength. But my heart hurts so bad. If I wrote a book, I would call it 10,000 Tears. The pain of endlessly being accused of crimes you did not do is only a small part of my pain—knowing that my work has been stopped

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and my Family has been tortured along with me and the fear of knowing you are the dammed.

You say in six months you can do something. I have lost faith in my Country, and the people who sit on the juries and [who] fill the prisons. I feel nothing except endless pain and remorse for ever believing that this was a good country or had a way of life that should be shared with others. It's all a lie. Maybe you can fix it, but as a group, the American people don't care.

I will try to stay alive as long as possible, but I hurt all the way to my soul. They say an appeal takes two more years, but I do not believe I can make two more years. I now have a cancer on my face and my thumb. I know in a very few short years, I will die of a disease [that] I found a cure for. I should have died of cancer in 1986. It was this quest, searching for products that work that lead me to enter the health field.

I will always remember you as a knight who fought for what you believed in every step of the way. Keep taking your indium and you will live to be 200 years old. I have faith. I hope and pray that I will someday be able to invent and create again in a world that is not over run with evil and fascism.

I get one stamp on Wednesday, so I will mail these letters to you. God bless you, and I'm so proud that you and Mom are my Parents.

I always thought that a purple heart was a good thing that showed courage and bravery for county. I did not know that people who had purple hearts could be experienced liars. I think they have insulted our servicemen.

I'm still in Oklahoma—not allowed postage or a phone call. They say I'm in transit. They say I can use the phone when I get to Florence Colorado. But they might put me in isolation there also. My prisoner # is 08795-023.

Ron was telling me today that the USP prison in Florence Colorado is the most dangerous, violent prison in the Country. There are about 250 stabbings a year. They send the most dangerous people in the Country there. He does not understand why they would send me there. He said it is easy to be killed there because all they have to do is to not like you, and they will

kill you. The Judge and Hines have done everything to make sure I die. I'm really frightened.

I will mail this letter on Wed. They say I might be here three weeks before I go to Florence. I love you and really miss talking to you. Sometimes I look forward to being with Gary [Gary was our youngest son; he was killed in an auto accident at age 19]. I have lived my life as full as anyone, and I am very tired, bored and terrified. I hope you have good news. I sure could use some.

But the news was deplorable.

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EIGHT *a letter from hell*

David wrote two letters using a short stubbed pencil and were later transcribed by his mother, Faye. She can't read these letters without choking up and her eyes filling with tears.

From David Hinkson–In ADX Federal Prison (Supermax) Florence, Colorado (June 25, 2005–his second letter):

Dear Mom and Dad,

I have sent you two letters from Idaho and two letters from Oklahoma; I hope you got them. I sent one letter to the factory with Greg [Gregory Towerton–manager of David's company, WaterOz] and Dad's name on it. Greg was supposed to forward your part to you. I was hoping you would type the different physics ideas and print them out, double-space them and send them back. I still have more concepts to get to you [Even under the most adverse circumstances, David's creative mind never ceases]. I need you to have the final unifying field theory. I will work on this next. I hope you got my stuff out of the jail in Idaho. Your newest power of attorney was with my stuff. I hope everything is going well and you and Mom are okay. I hope everything is OK. I am very glad that you invited Greg, Marie and the children to come up to visit on the Fourth of July. I love Greg like a brother, and I trust him. I cried tears of joy that my family is still intact. These evil criminals have terrorized everyone in my family, including my children.

Now I would like to tell you about what happened after I left Oklahoma. On Monday [June 13th] they came at 4:00 o'clock in the morning and said, "You are leaving." I got ready, and soon they shackled me up and took me to some elevators, and [then] we went down and walked for a quarter-mile. We got strip-searched, naked, and got new clothes. Then I joined a group of about 300 men, and we walked single file to a 747. I'm not sure the exact model of the plane. It had six seats across and held about 300 passengers. We waited about one hour, and we flew

to the City with the big arch [St. Louis]. Some prisoners got off, and some got on. Then one hour later we flew to Florence [Colorado]. We then were put into a bus with a built-in cage and drove 45 minutes to the prison.

In Oklahoma everybody went to where there were phones and regular people, but not me. I got the "hole" treatment. Again, when I got to Florence they took everybody to a regular place with phone access and human contact, commissary etc.–but not me.

They took three of us (a colored man, named Joe Manning, and Gerald Guerrero and me) and threw us into a very small cell with the same dimensions as what I gave you in Idaho [solitary confinement–a virtual tomb–in Florence, Idaho]. There was a bunk bed; so two could stay there, but they put all three of us in. I ended up on the floor sleeping with the toilet as my companion. There's no room to even get out of bed. The shower had no shower curtain; so the water splashed on my bed if we tried to take a shower. There is a window but it has a steel cover over it so nothing can be seen, [it has] steel bars in front of the windows.

I was told that the PSI or PSR (pre-sentence investigation or report) is what is used to decide how you are to be treated while in prison. They claimed that they did not get my PSI, and that's why I am again in the punishment hole. Here the hole is called the "shoe!" There is no salt [David asked for salt for his wound received at Canyon County Jail], no phone access, no paper, no stamps nor envelopes. I'd begged for books and got some reading books. I have read two books (400 pages each). The first one is called *Left Behind* (Tim La Haye and Jerry Jenkins) and the second is *Tribulation Force*. These books are a series about tribulation of Jesus and God. I found these books to be very interesting and biblical.

I'm told that if they find my PSI they will put me in regular population. I have been talking in the vents to two black guys next door, and one has a very sick mother–one was "framed" without any evidence against him. His name is Antonio Howell (#33283037). I told him you are collecting horror stories and to send you his.

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After you complained, I got one phone call and reached my wonderful mother. She said you would visit on Friday. Sam was the counselor who said you could visit. [After driving a long distance to the Prison and even though the staff told me I could come, they denied me access.]

I've put you down so you can visit. If they put me in regular population you could visit me for two hours three days in a row, and we would be in the same room [This hasn't happened yet, in six years]. I could kiss my mother. If you visit now we would have to look through the glass [This is still the case]. Wes or Anderson [Steve Anderson was another attorney working with Wes on the tax case] are allowed to visit any time.

I never realized how blessed I was or how much God directed my efforts. My past work is so exciting. I hope the moon project [a confidential health project we dubbed as the Moon Project] is going well. I was told that there are 1200 inmates here and 200 stabbings a year—a very violent place. I hope I can get along so I have phone access. Wes can call the prison and request I get extra phone time to take care of legal work.

Also, have Greg send as fast as possible \$460 per month to Federal Bureau of Prisons, David Hinkson 08795-023, P.O. Box 474701, Des Moines Iowa 50947-0001. It is my understanding that I get 300 minutes per month only [We contracted with a prison telephone service to provide local service at five cents per minute to talk to David, but the jailers denied us. They charge twenty-five cents a minute and obviously want our money.]

If Wes, [as a] lawyer, requests extra time, I could get a total of 600 minutes. This figures out to be 2 calls per day. If I pay for the calls out of my own commissary funds it is \$3 per call. That is about the same as paying \$2 per call and having to pay for line-charges and long distance. The total price for 2 calls per day should be about \$200 per month. Then I am allowed \$220 for Commissary. I need glasses for my eyes. I have to re-buy everything. So the \$450 should cover everything including the phone calls to you and Wes....

After you get my things from Idaho, please send me my pictures of you and Tanya (also affidavits and motions to

dismiss). Also, send my story I wrote too that I wanted to send out and my product catalog. [Also] send *Learn Russian* books by Nicoli and English and Russian *Books of Mormon* or just a book—one in Russian, one in English; so I can practice my reading.

All legal mail should say, "Identifying Attorney", indicate that correspondence qualifies as a "special mail" opened in front of an inmate. I also will want my newest speech that I read to Lucas [Former Army major who became involved with WaterOz]. Lucas can mail it to you. I need Greg's cell number also. I also need your second home phone number and Dad's cell phone number. I also could use a Russian novel or some literature. I know 4000 [Russian] words, and I need to practice. But I guess the *Book of Mormon* will be great.

I know you are traumatized by these crazy Feds as much as I was. Such stupid and insane accusations made no sense and were not even believable. I feel like I am the damned. Even if I got out, what protection do I have from agents who just pay liars to lie.

I hope to call you soon if I ever get out of the "shoe." It seems that everyone I meet has a story about a lack of evidence and crooked trials. One inmate said, "Aren't you sorry you did not take a plea-bargain.?" We were offered seven years. I don't think I could ever say I was stupid enough to talk stupid with everyone I met and to plead guilty to stupid, insane lies just because you're damned if you do not.

I can't get any books sent in unless they come from a bookstore.

Today Joe left and went to regular population. I'm still here with Gerry. Now there are two of us. Sam is my supposed counselor. He is the one that said Dad could come in on Friday. Nobody will tell me anything. Maybe you can ask or find out how long I will be in the "shoe." Maybe you can send Sam the news release I wrote.

I'm very much in need of some study books. I would love to a learn Spanish, also just a beginner's book. I got a letter from Frankie today [an honorable female employee—now deceased—who had worked at the Pentagon with high security clearance] and I will write her back if I get more stamps.

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Mom, thank you for the nice song you sent me. I remember how angry you got over the PSI and it's lies. Can you imagine that's what they use to decide how to treat you. Maybe those Feds are refusing to send it so I stay in the "shoe!" Have Wes call and demand a daily lawyers call. Maybe that will get me to a phone. I'm still being sued, and the lawyers need to talk to me. I found out they do not allow me to have any access to computers in here. All my writing must be with a pen [a short stubbed pencil that makes his fingers ache]. I do not know how everything is working out. He [Judge Tallman] personally arranged to fix the jury.

I was high-pressured into signing a new power of attorney, but it was destroyed. So let's not cause any fighting over it. It was destroyed, but I signed a new one for you. I'm just so glad that you are out there and care, and I have total faith in you, and I know you love me. And I love you. I have the best parents in the whole world. I'm so lucky. Tell Tanya I love her so much. She is truly your new daughter. At some point maybe she should give up. She is in so much pain, and she is the best. I love her so much. Tell her I love her and will try to call her as soon as I can, and she could visit me when she gets back, and I will kiss her on her lips. Again, I love you Mom and Dad. Please call my children and tell them I love them. I hope you can still have hope.

How much more can my family and friends endure? So many people have betrayed me. You know, it was Jeri Gray who demanded I go to the seminar in California—where they tried to set me up. Even Steve Bernard was a rat using an alias name. I've seen so much disloyal behavior I just do not know how I can ever trust anyone even with simple tasks. Everything I have ever done has been turned into a crime. I will send this letter now. Thanks gained thanks for being my parents. I love you.

A counselor just came by, and she told me some very bad news. She said I was sent to the wrong prison. I'm supposed to go to a ADX. ADX is a prison across the street. It is where they sent Timothy McVeigh. It is the prison where people go that are the worst criminals in the world. No human contact ever. Maybe you can talk to Sam and find out what is going on. When they said they use the PSI to control how you are treated, you

remember the lies that were in the paper. I guess I'm public enemy No. 1. Now I'm still in the Shoe, but I guess I will never be allowed visits except through the glass. I was also told the phone would be limited, and I'll have no human contact.

I do not know if I can keep going with the endless attacks against me. I'm also very worried about the safety of [all of] you in my family. I just cannot believe how corrupt this is against me. I was told I will be forever in a hole like this one. What have I ever done to be treated like this by my Country? I hope you can visit me, but you should call first and make sure that they will let you in to see me. Please have Wesley come see me or try to get me a Phone.

No matter what happens I love you forever. Every lawyer has sold us out except Wes. He spends all of his time thinking, and he needs professional help to help him. Everybody he brings in sells us out. Parnes sold us out [as well as] Nolan and Conley. A good lawyer knows there is no hope, and they just put on a show. How do we know that Anderson or the Florida lawyer [Elliot Scherker] will not betray us. Maybe Mr. "E" [Eyob Samara] will betray us. I'm so afraid. I do not know what to do. I do not know if you'll get this letter. You never got the other letters. At least that's what Mom told me when I made the one phone call. Craig [our second son, David's brother] keeps on working and building, and you are not working to wind down things here (as far as investments).

Gerry told me that he plea-bargained and plead guilty to a charge that he did not do. They agreed to give him 24 months. At sentencing they gave him two years plus upward departure of 12 more years. He said you cannot plea-bargain. Even if you want to, they will still do upward departure.

I hope I am not jeopardizing you and your life. Is there a future? I just wanted to be an inventor and help people. I'm not allowed to be "not guilty" or use the law. Please have Wes visit me. Please send me some study books and some pictures. I love you. I hope to see you. I hope you're not as discourages I am. Please write me back or have Wes send me some legal mail so I know what is happening as soon as possible. I will end this letter now. Goodbye, I love you forever."

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Is there anything I can say to the Warden that may ease David's pain?

NINE *letter to the adx warden*

On February 7, 2008, I sent a letter to Ron Wiley USP Florence ADMAX U.S. Penitentiary (PO Box 8500 Florence, CO 81226).

Dear Warden Wiley:

It has come to my attention that certain personnel at ADX are in violation of the provisions of the LEGAL RESOURCE GUIDE TO THE FEDERAL BUREAU OF PRISONS (BOP) (2008) concerning treatment of inmates. I am not writing to you to register a grievance as an informal or formal complaint. Nor am I seeking a review by the "Bureau of Prisons Administrator Remedy Program." However, I am involved in an investigation of abuses of inmates at Federal penal institutions. Since I have a son incarcerated at ADX under BOP's custody and care, and since you have the responsibility as custodian of ADX I am beginning my focus there. I also commend the competence of some personnel I've met at ADX.

Yet, I understand that staff may take disciplinary measures against inmates if they pose a disturbance to the safe and orderly management of a facility. Of course, violations carry "sanctions corresponding to the severity of the offense." By the same token, rules and regulations must be consistent with Statutory Law. If known that unlawful abuses by staff do occur within the confines of prison walls, the public may likely become incensed. As you know for authorities to exacerbate such abuses by inflicting retaliatory or capricious disciplinary actions against an inmate "is not permitted under any circumstance."

My familiarity with the Bureau of Prison [BOP] Guide helps me to be of service to you. I assume that you wish to carry out your responsibilities in an honorable manner and that you would appreciate any valid input that is offered. My intent is to identify and expose those who misunderstand their stewardship. The public is entitled to know the names and behavior of each violator. My allegiance is to my readers, not to any agency of the government.

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I plan to visit my son next Thursday or Friday (pending weather conditions) but will make myself available at your convenience most any time or place. I'm hopeful that we may spend a short time together and that such a meeting will be mutually beneficial. Please accept my concerns as intended.

Sincerely yours, Roland Hinkson.

He made no response nor arranged any meeting. I felt that he ignored the BOP rules and made lame excuses.

After a year without any "misbehavior," an inmate may possibly make five fifteen-minute calls in a month. But frequently those calls are interrupted within seconds. Seldom—if at all—do the guards allow the inmate to redial to reestablish a connection. For example, while calling me and Faye, they cut him off within 30 seconds—of making a treasured call. It happened too often, but maybe it wasn't intentional.

Prison Counselor Richard Madison demanded that David sign over \$20 per month from his commissary account. We sent a book (November 19, 2005) entitled *Betrayed by the Bench*, but they refused to give it to David. One year later (November 30th, 2006) they allowed him to make one extra call for the month. But on February 12, 2007, he said they allowed no shower—no reason was given. On March 29, 2007, David expressed how depressed he is getting: "I don't know if I can stand it much longer." Even though they no longer chained him hand and foot whenever they moved him about, he was growing bitter.

In the ADX dungeon here's the way they maintain discipline. In a report written by a staff member of a violation of a rule he said, "On June 22, 2007, SIS staff became aware of a 3-way telephone call that had taken place at 7:40 a.m. this date. Hinkson had made a telephone call to his father in Ouray, Colorado. Three minutes into the phone call Hinkson's father verbally stated he would call a third party and get them on the line.

At 3:57 into the call Hinkson got his third party on the line, and Hinkson began speaking with this third party from that point on."

That third party was David's attorney, Wes Hoyt. The reason I made the call to Wes while on David's call was due to the fact that the staff at ADX had refused over nearly a month to allow David to notarize a document required by the Supreme Court of Wisconsin in a lawsuit against a shyster lawyer. David responded to the Report which stated as follows: "I asked my dad to call the attorney, but I did not ask him to call the attorney while I was on the phone with him. I was talking to my dad on his home phone and he called the attorney on the speaker phone [cell phone]. I could hear my dad talking to the attorney and I could hear the attorney. I did talk to the attorney too."

"On line 19, [the] "Committee's Decision" is based on the following information:

Based upon the written report and also in the UDC listening to the recording, the inmate did not ask his father to place a 3rd party call, but once the father placed the 3rd party call the inmate participated in a 3rd party call by communicating directly with the attorney in this phone call.

"On line 20, Committee Action: Recommend[ation] was] removal from K-Unit in Step Down Program in J-Unit of Step Down Program [in other words, David was to spend another year in solitary confinement. It was signed by UDC Chairman K Fluck and Member Wilma Haygood."

This so-called UCD Committee Report investigation they held in the hallway outside David's solitary cell. Fluck and Haygood commented to David: "You and your father are stupid." The result of this episode was that for another year they would move David to a SuperMax Control Unit with fewer phone privileges, to be chained hands and feet even when

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taken to the 10 minute shower during the one remaining hour of solitary confinement of each 24 hours.

Of interest, David learned that Fox News aired an episode (July 31, 2007) where high profile inmates at ADX were playing bingo. This reminds me of the Nazi propaganda during World War II where the Jews were set up in a fake city for the world to see how humanely they treated their captives—then afterwards took them to the gas chambers. Good press is important to the Administrators of BOP facilities. So, is BOP's ADX, in fact, as they claim, "encouraging inmates to participate in a range of programs that have been proven to reduce recidivism and to help offenders to become law abiding citizens?"

TEN *from my diary*

I have maintained a skeletal diary for many years. Life's experience has convinced me that I need to verify meetings, conversations and events. All too often, misunderstandings or liars challenge my recollections. Keywords and dates jog my subconscious—stimulating my memory. In order to illustrate the pattern of events that took place in David's life over the years, I need only consult my Diary.

David was born in Artesia, California, on July 18th, 1956. Faye and I had been married since June 17th, 1954. In order to finance my attendance at law school I worked throughout the summer break often for 16 hours per day and made enough money to carry us through the school year. David often played in the snow on the University of Utah Campus (Salt Lake City, Utah).

Eisenhower was president. Desegregation was in its infancy. And worldwide, the British and French Empires were collapsing. Communism was spreading throughout the world. The USSR was losing in Afghanistan. The Recession of 1958 was a sharp worldwide economic downturn; it was the worst auto year since World War II. I dropped out of law school.

We moved to Compton, California. We made a deposit on a duplex apartment house, and I managed to get a job on the Southern Pacific Railroad as a brakeman and worked out of Northern California. I made enough in one month by working 16 hours per day—and saving every penny—to cover the deposit on the apartment house. By remodeling and adding on, I turned the duplex into a triplex. In addition, I received a scholarship under a Ford Foundation Grant to attend the University of Southern California (USC) to become a Specialist Teacher. At the same time, I was active in politics. During this time (in the fall of 1962) David started kindergarten. I was Scout Master and by 1968, David became a 1st Class Scout.

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Faye and I were making payments for land we had purchased in Ouray, Colorado (a quaint little resort town). Although I was working successfully as a building contractor in Long Beach, in the fall of 1970, we moved to Ouray. Richard Nixon succeeded Lyndon Johnson as president about the time we settled.

By time David graduated from high school via a GED from Western State (In January of 1973), President Nixon had resigned from the presidency, and Gerald Ford finished Nixon's term as president. One year later, on January 1, 1974, during the Viet Nam War David, at age 17, joined the U.S. Navy. While in the Navy, he worked as a helicopter mechanic. He Graduated from the Naval Air Technical Training Center, Millington, Tennessee, Jet Engine Repair School, on August 6th, 1974, and was discharged from the Navy December 17th, 1976. He also at became a certified welder.

David later went to Ricks College in Rexburg, Idaho (renamed BYU Ricks) and later to Dixie College in southern Utah. On May 5th, 1976, the Teton Dam broke. David came home to Ouray with four snowmobiles he bought that he salvaged from the Teton Dam flood (In Idaho). He was very proficient as a mechanic, could fix nearly anything.

On December 15, 1979, he married Marda Marie Clark. We gave them a job running a care-home we owned. Next, he attended the University of Colorado at Boulder, Colorado, and received a GRI Certificate in real-estate. He became a licensed Colorado and Utah real-estate broker (December 1981), an Escrow Agent and, in addition, he became an insurance broker in both Idaho and Nevada.

During this time, a severe recession in the United States began in July of 1981 and didn't end until November 1982. Ronald Reagan was president; yet in Ouray, we had been suffering even earlier—and later—from our local recession. Some economists believe that the primary cause of the recession was a "contractionary monetary policy" established by the

Federal Reserve System to control high inflation. David and Marie thought they could do better elsewhere. So after one year they moved to Provo, Utah (December 26, 1980).

They moved next to Las Vegas in 1982, bought and sold real-estate, operated three dry cleaning stores and handled cleaning and laundry for casinos. During this time David's youngest brother, Gary Michael, was killed in Ouray (August 5th, 1982) in his 1968 Plymouth Roadrunner sports car that he had just overhauled.

Times were tough for me and Faye, also. For a couple of years, I traveled back and forth biweekly from Ouray to Las Vegas, Nevada. I joined a real estate firm as a broker in Las Vegas and then opened my own real estate office. We had acquired 20 rundown apartment units in Las Vegas, but even Las Vegas was struggling. It was not an easy time in 1984 for David to bring his family to Vegas, but there was more money there than he had seen anywhere in our vicinity.

I helped David get accounts with the larger casinos to launder their bedspreads. He met people easily. He had an uncanny ability to meet people. He was totally uninhibited. I would put him on the phone talking to mortgage brokers; we were looking for real estate options or whatever.

Protocol is not in David's vocabulary. He would talk to rich or powerful people as though they were just other kids on the block. George Mitzel is a good example. David introduced me to George on February 15, 1984. George had been a multimillionaire, built the Castaways Casino on the Las Vegas Strip—nearly all out of pocket. The four-hundred million dollar Mirage Hotel now stands on the same site. George had bought twenty percent of a 950,000 acre tract of land called the Valley Wells Ranch. It's a long story how things ended. However, David, George and I acquired the Plaza Quality Cleaners in 1985, but that venture failed.

Faye and I made the decision to either both move to Las Vegas permanently or try to make a go of Ouray. We stayed in Ouray even

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though in Las Vegas financial prospects were looking very promising. In Ouray we turned our large 7,000 square foot home into an "Alternative Care Facility." We later increased the size to 10,000 square feet.

David continued to manage our apartments, and he tried other ventures. In April 1985, he started manufacturing soap—that failed. Then he bought an auto garage with all the tools. David could fix anything, but he didn't understand people. The people he trusted just stole his shop full of tools.

On September 1st, 1985, David called me saying,

"Dad, I'm flat broke. I have one dollar to my name." He closed the garage the next month (on October 12, 1985) and said he's going to go back to school—but didn't. He did manage to keep some bedspread accounts though. Yet, on April 12, 1986, he called me again saying,

"I lost the Tropicana account. We don't have any money."

What David had learned about Las Vegas real estate turned him in a new direction. He bought a home for \$129,000 with nothing down. On October 18, 1986, he started working a new job installing elevators. Politics was involved, and David quit because of Union intrigue. It seems that David can do anything if he sets his mind to it—except he can't judge character or social complexities.

It didn't take David long to figure out another possibility. He located 5 acres of real estate outside the city limits of Las Vegas. He made a deal with a man who was dying of AIDS. The deal was that David would pay \$15,000 in cash. He used creative finance borrowing \$30,000 from an equity lender to finish improvements for water, power and septic. David then made a deal (on March 8th, 1987) to buy a livable 70X14 mobile-home for \$10,000 cash.

By March 28th, 1987, he had both land and a house for his family. Sadly, just two months later, David's newborn baby, Ashley, died. The family buried her with her Uncle Gary in Ouray.

David fought on—clearing land, digging trenches, drilling for water and fighting local bureaucracy. The BLM granted an easement across federal property to unlock his landlocked property. By February 1988, David and family were still living hand to mouth.

In August, 1988, David initiated a new pursuit—Import/Export. He connected with an experienced promoter who turned out to be dishonest. Interesting events occurred. But by the end of March, 1989, David was no longer in the Import/Export business—that romance was over.

Yet something good came from this relationship. He met a prominent attorney, George Graze dei of the Law Firm Graziadei and Cantor in Las Vegas. David built and networked the law firm's computer system. George took David under his wing. George was a punctilious man with an impressive office-complex over the Valley Bank Building. David had done him an unexpected service. George was grateful but—I think—puzzled. Anyway, George had an air-conditioning problem at his home and asked David if he'd look at it.

"No problem," David said. And it wasn't—for David.

George recognized a talent in David. Before long, David started studying Law and became a paralegal working part time for the Firm writing legal briefs and doing pro bono research. He would plop himself in Mr. Graze dei's Complex in an unspecified area and would designate it as his new office. George was prim and proper, well groomed, and masterful. David, by contrast, would walk into George's office shirttail hanging out and sit on the edge of George's large, oak desk. And their friendship continues.

In 1988 David successfully cured himself in what he believes was a cancer. He used an herbal formula used by the Indians.

He said, "I got the formula and shared it with many people. I've worked on many things in the area of energy, health and physics that I

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would like to share, but time restraints prevented me from achieving many of my goals."

During the month of August, 1990, hostilities between the United States, and Iraq began heating up. Iraq annexed Kuwait on the 8th of August. David called me a month later, on September 25, 1990. He told me about an opportunity that I should look into to acquire a telephone "switch" (a large-scale computer used to route telephone calls in a central office). We met with the company president, worked out details; but the Company's Board of Directors, chose a different path.

This was a volatile time for America. In 1990 David made a little money here and there—just enough to get by. The Cold War had ended, but on January 16, 1991, President George H.W. Bush announced the beginning of the Gulf War and called up the reserves. The Navy did not call up David for that war.

During this time, David was still searching for the hidden combination to unlock his success. More problems, but then he clicked. Persistent, successful people try, experiment but never give up. The sun also rises.

ELEVEN *David hits the jackpot, finally*

Seems that everything he tried failed one way or another. By 1991, he was still dabbling with the telephone company deal and didn't get his first check until December 22nd; but by November, he was in a dispute with Clark County over his water well (where his house-trailer was located). Also, he was still trying to resolve a dispute with the Federal Government over ownership of water at the Valley Wells Ranch. All was time consuming and unprofitable.

In January of 1992, a close friend of David's, Dale Hunt, got him a job as a doorman at the Las Vegas Tropicana Hotel. This night-job put food on the table and left David time to pursue his interests. He never relented on attacking and exposing what he recognized as government fraud.

By July, David was in full swing and was becoming a real nuisance to politicians, such as Harry Reid. He bought a small printing press then printed about 600,000 plus leaflets. He organized volunteers from Veterans of Foreign Wars, to pass out these revealing flyers. This led (on January 7th, 1993) to an invitation to go on the Lou Epton Radio Show. David became Lou's most popular guest and was on the air as much as three times a week. He had plenty to say about the Bureau of Land Management (BLM), Nature Conservancy, crooked politicians in Clark County and the Nevada State Government.

By May Clark County sued him, but he countersued. David, now armed with knowledge of the law, became an irritating opponent. The Court postponed a trial set for June 20th to a later date. David eventually won his countersuit, but a judge's order stymied him. In September, David quit his job at the Tropicana to move to Idaho.

By November of 1993, David had researched how to manufacture Ozone generators at a much cheaper cost than those offered in the market place (mostly by doctors). He called his new machine a "spa-ozonator."

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He named his Company "WaterOz." The name combined the terms "water" and "Ozone." David also came up with another idea.

He said, "I discovered a new type of heating systems that creates a byproduct from un-used gas, and the cost to run it is very low. This is a new type of gas that "implodes." I started producing colloidal mineral products; and later upgraded to a new technology, which I developed to produce mineral products in a solution." As though this wasn't enough, he came up with other concepts.

"I discovered a new way to make minerals without using electricity or heat. Also, I developed a cold plasma energy system called REEC (Radiant Energy Electrical Conversion)." An excerpt from his papers illustrates the depth of his thinking:

He rewrote Einstein's Unified Field Theory (See: <http://www.davidhinkson.info>).

On radiant-energy he says:

The theory: When an object is Radioactive the Radiant Energy which is emitted is similar to sunlight, in the respect that if sunlight hits an object or target and the light source is shut off, the object does not continue to radiate sunlight. When a target is radiated with Radiant Energy and the Radiant Energy source is shut off, the target does not continue to emit Radiant Energy, it does not retain Radiant Energy, it has been radiated. When a lead wall is put up between the Radiant Source and an object the source is shut off, and the target has no or limited *residual effect*... Example: when welders want to test the integrity of their welds they often x-ray the welds using Radiant Energy from a nuclear source (which is contained in lead), the Radiant Energy showers the welded metal. The Image shows up on the film (which was placed behind the steel). After the process is over, the steel is not radioactive but has been radiated. This nuclear REEC devise converts radiant energy from nuclear waste directly into AC current. This nuclear battery is small and creates a huge amount of electrical current without using fusion.

He then promoted his products on the radio. Next, he started his own global radio network over shortwave radio, and he broadcasted locally. Sales were growing.

He hired a local handicapped couple, Phil Kofahl (nicknamed "Goose") and his wife Stacey. For security, they moved their house trailer onto BLM land next to David's property. They lived rent-free. Stacey learned how to assemble ozone-gas producing air purifiers for which David paid her \$25 per unit; and with Phil's (Goose's) help, they were able to assemble as many as 100 units per week. They made upwards of \$10,000 per month. The area turned into something that looked like a Gypsy camp. They made more money than ever before in their lives.

David sued the Clark County Commissioners on November 24th. By June of 1994, he filed his Brief against the Federal Government. On radio and as an invited speaker at assemblies he accused the Federal Government of fraud, deception and treason. One year later, December 1995, he bought land in Idaho and started building a home and 10,000 SF building near Grangeville, Idaho.

But no good deed ever goes unpunished. Greedy and lazy, low life people would rather steal from the honest, but they breathe the same air as the producers.

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TWELVE *swisher's blackmail begins*

On July 19, 2001, I called Britt Groom, as mentioned earlier, to tell him that Joe Swisher is a liar and thief. Joe and his wife, Barbara, had been guests in our home just days before I called Britt. At that time, David had only known Swisher for about six months. I told David not to have anything to do with this guy. But Jeri Gray, who became manager of WaterOz, wanted Swisher to continue doing the analysis because Jeri maintained that no one else was qualified. David tolerated the situation with Swisher until January 3, 2003, when things came to a head.

Greg Towerton called to tell me that Swisher plans to sue David and WaterOz. This was no surprise, because Britt Groom had previously warned me that if I didn't pay Swisher \$5,000.00 he would testify against David.

Next day, January 4th, Swisher called. He said, "Give me fifty percent of WaterOz or I'll testify [in the Tax Case] about the Cyanide." He claimed that his testing showed that there was Cyanide in some of the products tested. WaterOz does not add Cyanide to any product. Yet Swisher does use Cyanide for his testing at his house. David immediately announced over the factory loud-speaker: "Joe Swisher is trying to blackmail me." After that, David would not even talk to Swisher.

David had previously sent Lonnie Birminham, an employee whom David had trained to make the minerals, to Swisher's house after the November 21, 2002, raid. The reason was that David thought Chris Paitryot sabotaged the labels.

David as well as everyone else was confused and uncertain about what to do about all this intrigue. Richard Bellon, a paralegal David hired, had told David that he, David, needed Joe Swisher as a witness and that Swisher needed access to the factory. However, when Swisher did come to the factory, Cindy told him:

"You have no business here."

"I beg your pardon," Swisher said.

But Swisher did gain access and had an unsupervised reign of the factory.

Once we uncover the nesting place of vermin, we gag on their stench while the stench turns our stomachs. Under which rocks can we find such people?

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THIRTEEN *who is this guy swisher?*

A former close friend of Swisher's, Joe Volk, didn't believe at first that Swisher is a fraud. Swisher was Commandant of the local Marine Corp League unit. The other members were proud to have such a combat veteran like Swisher as their chief. Mr. Volk was a former active member of the United States Marine Corp and a member of the National Marine Corps League (NMCL) until an incident with Commandant Elven Joe Swisher.

Joe Volk and his wife, Barb, shared celebrations of the 4th of July or on other occasional events with Joe Swisher and his wife, Barbara. Volk was an authentic combat veteran, who had fought in Viet Nam with Mike Clausen (his honored friend). Joe Volk introduced Swisher to Mike. Swisher followed up this contact seeking Clausen's and Volk's help with regards to Veterans Administration (VA) benefits.

In an affidavit concerning Mike Clausen, Joe Volk testifies:

Clausen earned the Medal of Honor as a result of a January 31, 1970, incident in a mine field outside Da Nang, Viet Nam, rescuing 18 fallen soldiers during 'Operation King Fisher,' in which I participated as a member of Alpha Company, First Battalion, Marines. On that day Clausen walked through the tall grass in this mine field with a helicopter nearby and, at the peril of his own life, physically carried 18 wounded U.S. servicemen to the chopper. . . . The men were spread out over that mine field and they were taking enemy ground fire. During his four year tour of duty, Clausen received a total of 113 commendations and medals for his numerous acts of bravery and distinguished service in addition to the Medal of Honor.

Swisher borrowed a copy of Clausen's information about the 'replacement' Medal of Honor awarded to Clausen by President Richard M. Nixon so that he, Swisher, could use that information as a template for the creation of Swisher's forged 'Replacement DD-214.' . . . Swisher used information of

Clausen's to present to various courts and governmental officials--and which was used by him to bestow the honor due to distinguished service veterans upon himself.

By contrast, Swisher, with his fictitious stories of valor, was able to obtain the Clausen information that helped Swisher manufacture his own fictitious claims of valor using the facts from true stories of real combat heroes such as Clausen. . . . Swisher learned from Clausen that the most highly respected hero was the one who rescued American soldiers. So when Swisher manufactured his story he weaved his plot around a rescue operation, involving supposed American, Korean War POWs in order to engender greater empathy.

Later as we unravel the story, the Appellate judges in reviewing the Record in David's Case struggled with various issues. In the first written *Appellate Opinion* the two Majority Judges marveled at Judge Tallman's statement that "a quick review of the file indicates that Mr. Swisher was, in fact, involved in top secret activities." The judges said, "We were somewhat surprised in view of the contents of the file." The *Opinion* continued:

Outside the presence of the jury . . . The Court [Tallman] told Counsel [Noland and Hoyt] that it would conduct a more thorough review of the file over the weekend. When the trial reconvened on Monday, January 24, the Court discussed Swisher's official military file with Counsel--off the record. Then, on the record and without the jury present, the Court stated its conclusions. The Court stated that the file had been sent in response to the Court's subpoena to the National Personnel Records Center [the irrefutable authority] . . . and the *Dowling Letter* concluded that the "replacement DD-214" and the "supporting letter" purportedly signed by Woodring were "not authentic" [They were, in fact, fake-- a fraud]. But the Court [Tallman] stated that it [he] found the file "very difficult to decipher."

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Tallman had said: "It is not at all clear to me what the truth of the matter is."

He said that the problem he had in reviewing the documents (in private chambers) "is that the documents we have, themselves, are neither self-authenticating nor self-explanatory. I have no idea, if somebody is involved in secret military operations [or] whether or not their personnel file would ever reflect those missions."

His determination to support the federal prosecutors and to convict David overpowered any commonsense—the final authority on document verification is the National Personnel Record's Center. His feeble attempt to fantasize the obvious was beyond pathetic. We have a signed affidavit from a witness who inadvertently caught Swisher during the trial departing from Judge Tallman's office. Obviously, Tallman prostituted his office as an unbiased appellate court judge and is simply a liar.

Judge Tallman denied David's motion for a new trial. Certainly, Tallman had to know better. If he ruled according to the absolute evidence, David would likely have walked—a free man. Tallman chose to lie!

He gave several reasons for declining to grant a new trial on the basis of David's newly discovered evidence (that Swisher's documents were forgeries etc.). Tallman had grasped for straws in order to support his former colleagues, the federal prosecutors.

The Appellate judges pointed out that "First, the Court [Tallman] concluded that Hinkson had not been diligent in seeking the evidence he now submitted to the Court. Second, the Court concluded that the evidence was not "newly discovered" because "the substance of both proffered documents is not new and is generally cumulative of previously available information." Finally, most importantly, the Court concluded that the proffered "new" evidence is not material to the issue at trial."

What utter nonsense. What we just read was that David's attorneys were not diligent, that timing at trial is more important than a man's life, and the testimony of a pathological liar is not material to a defendant's case.

On April 22, 2005, Judge Tallman denied David a new trial and continued to rule that Swisher may have really been involved in secret operations as he had testified, regardless of the screaming evidence. Tallman's opinion reflects a belief that Swisher's testimony is at least equal to the official records of the National Personnel Records Center and of the United States Marine Corp. And unless David can show that Swisher's testimony is, absolutely, false and David can't prove his innocence, he surely must be guilty and must spend the rest of his life in prison.

Based on Swisher's "insightful and honest encounters" with David we must not question any of Swisher's testimony. The Justice Department (and some within the judiciary) is more concerned with who wins in a contest than who is innocent or guilty.

Can one person launch a ship into a cesspool-sea that destroys anyone in its path? Let's see.

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FOURTEEN *how and when did this all begin?*

In 2000, former Idaho County Prosecuting Attorney (PA) Dennis Albers, was again running for re-election. The Idaho Supreme Court ordered him never to seek that office again because of his corrupt performance in the 1980 trial involving one Elven Joe Swisher, who later became the government's star witness against David.

David had learned that the Idaho Supreme Court permanently barred this prosecutor from ever running for the Prosecutor's Office again and used that information to oppose the election of Albers as the Idaho County PA.

Unfortunately, David had a run-in with Albers over a case where a non-employee sued David for half of his business. The case resulted in David having to pay over \$100,000 in damages and created some bad blood between David and Albers.

Annette Hasalone, a former employee of WaterOz, who later admitted she stole David's formulas, had also stolen his product promotion tape and gave it to Dr. Joel Swisher (no relation to Elven Joe Swisher). He plagiarized the tape for a company called ENIVA (He died a couple of days later). But Annette Hasalone ultimately sued ENIVA for firing her once they learned of her incompetence. She admitted in their trial that she stole David's trade secrets to promote ENIVA products.

David's product marketing information helped ENIVA immediately grow from marginal sales into a million dollars per month. Only because of the suit, did Annette admit her theft. She even testified in Court that she had taken David's trade secrets and sold them to ENIVA.

During the election campaign David sent out 10,000 letters to the voters in Idaho County reciting the fact that Albers had been admonished by the Idaho Supreme Court never to seek election as the PA again. The

reason for the restriction was Albers past serious ethics violation in speaking to a juror during the 1980 criminal trial against Joe Swisher. Albers was soundly defeated, crestfallen from the loss of an assured victory, and he swore to take it out on Hinkson—which he did.

"You belong in jail and I'll put you there and take your business," Albers swore. Thereupon Albers orchestrated an unrelenting attack on David by conspiring with others, including Annette Hasalone, who claimed she had once been a WaterOz employee. Ironically, the dietary supplement products which David had invented, including ionized metals such as silver, gold, zinc and copper, all helped this woman recover from a serious illness, a lung infection which nearly took her life. But as the saying goes, no good deed goes unpunished; so she, along with others, proceeded with their attempts to destroy David and steal his business.

Jodi Walker of the *Lewiston Tribune* reported that Dennis Albers, the Feds and court records were her major source of negative information on David. When Jodi revealed her news source to Linda Duran by saying that Albers had much more information about David that she did not print in her newspaper, Attorney Hoyt declared, "She waived her First Amendment Newspaper Reporter Privileges. It also confirmed that Albers was behind the scenes stirring the pot as one of her major sources of information."

Albers was the district attorney in Grangeville during Joe Swisher's Trial in the 1980s for allegations of Swisher raping, over a ten year period, all of his daughters. Albers spoke to one of the jurors during the trial (while passing time during a recess)—That conversation caused a mistrial. Neither Albers nor any other justice entity ever pursued the charges. The Idaho Supreme Court castigated Albers by informing him that he could never hold public office again (which he later ignored). One of Swisher's daughters testified, years later, about her agony. She was fearful of possible retaliatory acts by her father.

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David paid over \$6,000 to print and mail a letter exposing Albers' past bad deeds to every voter in Idaho County. Polls indicated that Albers had a 30% lead. When David's letters arrived in the mailboxes of voters the day before the election Albers lost by minus 30%. Albers swore he'd get even. "I'll put you in jail and get your business," he threatened.

He made good on the threat—a prosecuting attorney has absolute, unfettered control of all criminal cases; he can file or not file; he can dismiss at will, and there is no one who can question him. After all, David cost Albers \$60,000 per year (as I recall) for the four year term, and since he planned to retire thereafter, he lost a lifetime pension. But now we understand that a "deal" was later made so that Albers as a deputy prosecutor will be able to put in the additional years needed to fully fund and receive his PERA retirement.

Dennis Albers and a WaterOz employee, Dan Gautney, and Phil Kofahl (an independent contractor), began supplying false information to IRS Agent Gerald Vernon (alias Morgan) and IRS Agent Steven Hines about David being the head of two militias, storing sniper rifles, machineguns and 100 pound bags of gun powder in the factory, about making threats against various people, etc. From other evidence, it is clear that Albers is one of the key individuals who started the rumors. But he hid behind others as fall-guys to blame for his source of information.

Agent Vernon (who had worked closely with Albers—when Annette Hasalone first started her campaign against David) sent the same type of information to the Idaho Department of Labor (IDOL). Working together these collaborators corroborated each other's stories and painted a picture making David look like an extremely dangerous cult-terrorist leader.

There was a woman named Mariana Raff, a pathological liar, who had stolen \$6,600.00 cash from David. She worked as his house keeper for a time and learned where David kept his money. Further, Mariana helped

her family members steal over \$80,000.00 from David in a Mexican real estate purchase scam. Part of the motivation for Mariana to lie against David was that she recognized that with David in jail, neither this woman nor her family would be accountable or responsible for the stolen funds. The government finally had to admit their knowledge of the fraudulent stories manufactured by Ms. Raff, with the help of the FBI, when her credibility was finally destroyed by repeated criminal; she committed such acts as burglarizing a drug store and a post office, to mention a few of her crimes.

There is an expression, "Hell has no fury like a woman scorned;" but it is equally true of men with power.

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FIFTEEN *albers expands his intrigue*

In 2000, Albers attempted to recruit former WaterOz employee Steven Bernard as a plaintiff to file suit against David for claims similar to those brought by Annette Hasalone. Albers suggested that Bernard could expect to collect an award of around \$100,000, and that he, Albers, would take the case on a contingency fee basis. Bernard flatly turned Albers down. He testified that, "Albers said he wanted to have Mr. Hinkson charged with murder-for-hire and put in jail for the rest of his life." However, Albers continued to spread false stories against David—including 404(b) "evidence" that the government used about an alleged plot that David wanted to kill him.

David is confident that Dennis Albers and Annette Hasalone cooked up the lost wages scheme as a back-up just in case a jury didn't buy Annette's story. There is now speculation by some that Albers may have taken a bribe to throw the case for Joe Swisher.

Joe openly brags about having large amounts of gold, from his mining operation—that he smelts down into gold-bars—it's all untraceable.

Others recruited into the scam included Kevin Hagen. He had admitted that Annette Hasalone's mother-in-law, Bobbie Eve, had hidden Annette's payroll records. Supposedly David offered him money to kill the convicted felon Mark Eve and his nefarious wife, Annette "Hasalone" Eve—added to the list were Albers, Judge Lodge and IRS Agent Steve Hines. Kevin claims that while at Dennis Albers office, he told Dennis that David had offered him money to kill Albers and that "David had lots of automatic or semiautomatic rifles at the factory." He related that when the government asked him "if Hinkson had ever tried to hire him to kill Albers," he said, "'yeah' because, as Lonnie Birmingham had said, 'He did not know what else to do and that Hinkson had always talked crazy stuff about Albers anyway.'" Kevin had worked as a cop for 24 years with the

Idaho State Patrol then as a city cop in Idaho Falls, Idaho. We don't know for sure his motivation, but shortly later he committed suicide.

Another recruit was Mariana Raff, who supposedly told Albers that David tried to hire her Mexican brothers to kill Albers.

An interoffice memo at the Idaho Department of Labor (IDOL), in early 2000, identified Jodi Walker of the *Tribune* with having informed the Regional Director Linda Duran that, according to Albers, Hinkson was a "dangerous person."

Thus Albers with the assistance of his close ally and shirttail relative, Jodi Walker, was able to build throughout Idaho County and beyond a negative image of David.

Agents Vernon and Hines, after March of 2000, pursued their endeavor to indict David by using fraudulent administrative summonses to obtain his financial records—without allowing him the time (as required by law) to answer the summons. As an example, Albers turned over David's financial records he had obtained in discovery in the Hasalone v. Hinkson case to IRS agents Vernon and Hines. He immediately turned them over when presented with a summons without giving David time to object. Vernon said that he faxed the summons to Albers, and Albers immediately released the Hinkson financial records to Vernon. Regardless, David had no chance to object.

Dan Gautney betrayed David also in other ways. In a hunting accident where his nephew shot him in the foot, David compassionately paid his wages when he couldn't work. Once out of the hospital Gautney returned to the factory. David created another job that allowed Dan to sit at the shipping computer at WaterOz doing very little work, but drawing his full pay.

He had recovered to the point where, working in shipping, he was interacting with the UPS deliveryman. The UPS driver saw Dan loading customer-returned air purifiers directly into his vehicle. The driver

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reported this to the Company. Dan was taking home the customer-returned items for parts. He disassembled them using the parts to create new units for sale—to enrich himself.

Tracy Adams and Debbie Morley (employees of WaterOz) had worked for Askers Grocery Store in Grangeville with Dan. Tracy says Dan thought of himself as a lady's man and was always hitting on someone. Tracy knew Gautney's wife, Judy. Tracy believed they were good friends. When Tracy visited Judy, Tracy stated that she saw as many as five WaterOz Ozonators (air purifiers) assembled by Gautney from parts he had stolen from air purifiers (that customers had returned).

Other WaterOz employees observed Dan at the factory coming in early and copying files.

Gautney admitted to Tracy, "I've been taking records from WaterOz so that if Dave ever fires me or does me wrong, I can get him."

Of course, law enforcement never resolved or even considered the unauthorized copying of WaterOz files. After learning of Dan's thefts WaterOz fired Gautney, and Tracy acknowledged that the Company fired him for his thefts and dishonesty.

The conspiracy to destroy David grew to new dimensions. Annette Hasalone now recruited Dan, who already wanted to get even with David, to join with her and Albers. Then she and Dan approached Steve Bernard and told him they were working together to "get Hinkson." "I'm gonna bring him and his factory down," Gautney said after being fired.

Debbie Morley testifies that Gautney and Hasalone were working together. Gautney's shadowy scheme prevented WaterOz from being able to properly adjust customer accounts because without recording the returned item there was no tracking mechanism; so the customer's warranty was not honored, and no replacement unit was sent out.

Tracy witnessed the misconduct of Annette Hasalone, Steve Bernard and Dan Gautney as each attempted, through intimidation, to obtain an

ownership percentage-interest in WaterOz. Gautney wanted a portion of the air purifier business. Of course, Annette wants a lion's share of the Company.

Steve Bernard stepped into the muck then baled. But according to Tracy he had approached her to help him and Dan Gautney "bring down Dave Hinkson." What really bothered Debbie Morley mostly was after all the help David gave Dan while in the hospital and afterward while rehabilitating, she remembers Dan saying "I'm gonna bring Dave and his factory down."

David had a total of only one meeting with Joe Swisher at Swisher's house (or garage laboratory) in Cottonwood, Idaho. This was David's one and only time to step foot in Swisher's house; it occurred immediately after the FBI SWAT Team Raid (on November 21, 2002). Swisher was in a wheel chair with an exposed catheter dangling. Lonnie Birmingham accompanied David on that trip.

The purpose of that meeting was to get an affidavit that David had prepared for Swisher to sign blaming Chris Jon Paitryot [Karl Waterman] for the mislabeling of the WaterOz products. The affidavit blamed Chris for all the parts per million (PPM) label problems (an FDA issue) because Chris was an easy scapegoat as he had disappeared a few days before the Raid (he likely had been informed by federal officials that a raid was about to take place).

Chris was the first person David trained and that had learned his trade secrets, his proprietary formulas. The second person David trained to oversee the actual manufacturing process of the mineral supplements was Lonnie Birmingham. David and Lonnie prepared a sample of each product made by Chris Paitryot that he had calibrated and could see that all of the WaterOz products had been mislabeled (or the products were deficient). Consequently, Swisher agreed to sign David's affidavit blaming Chris for the PPM labeling discrepancy.

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But later David found out that Chris had not processed the Potassium long enough—which was the reason that the PH level had not dropped sufficiently; probably because Chris fled the factory a few days before the Raid. David thinks that "Chris is a Federal Agent and a rat." Regardless, David knew that either Paitryot or Joe Swisher were responsible for reporting incorrect product-content.

Chris mysteriously left WaterOz days before the Raid; then he returned and then left again (after a later event, the Bellon takeover). David filed a missing person's report on Chris. Curiously, when Chris came back he asked David to sign over a car title (David had generously assisted this man in acquiring a car).

David learned of Chris' true colors. A loyal and trusted employee warned David: "Many of your workers such as Chris Paitryot are informers."

Of course, Swisher accused the WaterOz mineral maker, Chris Paitryot. He said Chris had poisoned the product. But the PH of 10 was wrong. For this accusation to stand, Chris would have had to prepare special batches of each product for Swisher's testing, each of which was perfectly in "spec" with the labeling. If Paitryot were the villain, he would have had to dilute the product before it was bottled; and after testing samples, he would have had to add more distilled water to the tank or to have amplified the samples by adding more concentrate so that it tested correctly. Obviously, it was Swisher, the professed mining engineer, who provided the false test results showing that the PPM content of all WaterOz products were consistent with the PPM on the labels, when they were not.

Attorney Groom convinced David to plead guilty to mislabeling the product even though David had done nothing wrong. But he had little choice but to plead guilty because he was the ultimate, final "person in charge." Thus, David pled guilty to a crime created or committed by

Swisher when David had relied on Swisher's test results that his products were in compliance.

The handicapped couple, Phil Kofahl (known as "Goose" and Stacey, who had lived on David's property in Las Vegas, followed David to Idaho since they had been making more money from David than ever before in their lives. David paid them in cash because he knew that they could not have survived without regular wages. David had invited them to join him when he moved his operation to Idaho County in 1997.

They were among the first people to be associated with David in his new business, but it didn't take too long for them to want more than just a job building Ozonators on a piecemeal basis—actually, Stacey Kofahl assembled the Ozonator machines—not Goose. Maybe because of seniority—and greed— they felt entitled to some of David's soaring business.

Goose participated with a small group in the first of a long series of attempted takeovers. But David put a stop to that conspiracy. Goose then began stealing equipment and supplies from WaterOz (such as fencing material—which he gave to a friend in Kooskia, a nearby town in Idaho). Bill Rich, David's friend and WaterOz customer, early one morning caught Kofahl loading supplies into the trunk of his car. He reported it to David. After the preceding attempted takeover, David viewed this theft as the last straw and fired Stacey—David said that Goose technically had never even worked for WaterOz.

Goose was now ripe for joining the other conspirators associated with Albers. Annette Hasalone may have been the one to recruit Goose. The Kofahls now claimed that they followed Hinkson to Grangeville, Idaho, because David offered to give them approximately 200 of his 300 acres of land in exchange for their labor.

Goose had been spreading rumors concerning David being a militiaman. Over time, the ripening process heightened. In a telephone

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interview two years later (On February 16, 2000) Goose told IRS Agent Vernon that David was affiliated with a militia leader from Portland named Bill Rich-Rich (now deceased) was a member of a government-sponsored citizen's militia in Portland, Oregon. Bill Rich had on occasion discussed the subject of militias openly at WaterOz, but Phil Kofahl and Dan Gautney, and likeminded people, spread that idea in a negative way—they tried to use it against David claiming that he was the head of at least two illegal militias.

Kofahl states that he witnessed Mr. Rich delivering several assault rifles, dozens of high capacity magazines, crates of ammunition, and night vision gear. However, Bill Rich, when interviewed by authorities, confirmed that he never possessed assault rifles ammunition or night vision gear.

Kofahl claimed that he saw several of Hinkson's rifles, including a HK MP5 that looked like British Sten guns (which do not exist).

Of course, no one else corroborated his story because no one else ever saw his fictitious cache of weapons. Even the Feds ignored the accusations. When I removed David's gun collection from a locked cabinet I found his BB-gun, a 22 caliber rifle and a hunting rifle. His 45 caliber pistol was stolen—we have reason to believe who is the thief (a former employee).

Goose said he feared that David would retaliate against him for his exposure revelations shared with the IRS and FBI, so he asked to have his name kept confidential. IRS Agent Vernon (alias Morgan) reported that when he asked Kofahl why he feared Hinkson, Goose reported to him that Hinkson was closely affiliated with the Minuteman and Montana Militias and that many of his employees were also members of the militia movement, that David would have one of his followers perform violent acts.

Goose was confident that if he could report any IRS "reporting failures" by David, he stood to collect a substantial reward. He filed IRS Form 211 and Form 2662 then waited for the slot-machine to payoff. Agent Vernon reported, however, that's "the reason Kofahl is informing on Hinkson is that he believes that Hinkson sells a dangerous product, and he is also bitter about Hinkson's refusal to pay the Kofahls for services they performed."

Goose alleged that David's profit margin at WaterOz is "enormous", that the major cost is packaging, that the cost of producing a gallon of product is 30 cents and that the a gallon container sells for \$30 to \$40 dollars—a preposterous speculation from a man devoid of any business knowledge or sense. He also stated that David gave a party" where he celebrated his first million [gross income]." Goose testified to Vernon that he "knows that Hinkson has a bank account in Belize—both under his own name and that of his father, Roland Hinkson."

I wish I knew where such bank account exists; we certainly could have used the money in David's defense.

Kofahl's venom was unceasing. He stated that David produced audiotapes of his radio talk-shows on topics such as "How to beat the IRS." He accused WaterOz of selling products that caused a customer's death. He latched onto anything his imagination could conceive then stated it as fact. Even though the statements proved groundless, the government officials never challenged them. Rather, the government incorporated even the most preposterous statements incorporated in their case against David. After all, the goal was to get a conviction—not to learn the truth. Phil Kopahl (Goose) died May 27, 2003, of cardio respiratory arrest (secondary to lung cancer).

Jeri Gray, "David's close friend," took a vacation with Annette Hasalone, went to Las Vegas and drove to Parumph, Nevada. Speculation has it that she met with Stacey (the widow of "Goose" Kophal—who moved

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to Parumph). Stacy became as of December 26, 1998, the beneficiary of the reward for turning David over to the IRS.

Some people are willing to sell their souls for pocket change. One must take pity on these types. They failed to learn that anything worth having is worth working for—not worth stealing for.

IXTEEN OTHER EMPLOYEE BETRAYERS

Later, others saw an opportunity to extract money from David while he was down. “Fast Buck Chuck,” one of David’s former employees, had a reputation of suing anyone at the drop of a hat. Charles “Chuck” Kohagen (a man in his 50s) thought of himself as a militia man. He often talked loudly to customers about guns. He bragged he had read books on poison quills, hand to hand combat and how to protect himself from the government. Tracy Adams knew Charles and Judy Kohagen quite well. She also knew that no militia groups came to the factory or met at the factory. Although Chuck would try to impress others with his bravado, he never showed anyone at the factory any guns or poison quills.

Chuck’s bad temper was quite often unleashed on his wife, Judy. She also worked at WaterOz (in shipping). Chuck’s favorite way of confronting someone, including Judy (who would just cry), was to point his finger into a person’s face while yelling at her/him, violating the individual’s personal space. This was especially true with female employees—such as no-nonsense Debby, who simply brushed his hand away.

Lonnie Birmingham lived next door to Judy and Chuck. He provided transportation for Judy to the WaterOz factory at the times when Chuck was abusive to her—which was at least once a week. However, in August or September 2003, when Chuck really needed an attorney to help him—as his Morley marriage was falling apart—he went to Dennis Albers.

Lonnie had become more than merely a next-door neighbor to Judy and Chuck. But Chuck wanted Judy stranded and completely dependent on him, and it bothered Chuck that Lonnie came to Judy’s rescue when he would abuse her.

Chuck asked Judy about Lonnie: “Why are you always with Lonnie?” and “What do you and Lonnie have going?”

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Quite a bit was going on. Lonnie was constantly engaging in horseplay at WaterOz or rubbing the backs and necks of the female employees. As a prank, Lonnie would hide in the shower of the women's bathroom at WaterOz, and when one of the women would enter, he would jump out from behind the curtain and scare them. Witnesses said that Judy enjoyed the backrubs that Lonnie was providing.

Debi Doty (in her mid 40's) was another WaterOz employee who also worked evenings at the River's Restaurant. She said she waited on a table, where Lonnie and Judy were sitting very close to one another "as if they were a couple." Lonnie told David that he needed David's master-set of keys for some reason; he took the house key then claimed he lost it. While David was away on one of his trips, Lonnie performed a strip-tease at David's home. David was gone on the day of the strip-tease, and Mariana Raff (David's housekeeper) invited all the women to come to the house. Judy and some other female employees came to the house—during working hours of course. They trooped over; and apparently, Lonnie who by this time was really acting crazy on drugs proceeded to perform. Jeri Gray, who was supposed to be in charge, said later she didn't know what her role was at WOZ.

David had no idea what was going on. He emphasized that he never would have approved a strip-tease. But foolishly, he felt that if the employees were playful with one another, they were happy, and this was team building and was actually good for employee morale. So he allowed practical jokes, with his tacit approval.

However, the practical jokes got out of hand. Lonnie became the subject of paybacks. For example, in the Factory's cafeteria area the ladies doused Lonnie with Soaker-Squirt-Guns, put honey on Lonnie's steering wheel, jacking up his car and inserting blocks under the frame so the tires were just above the ground so the vehicle wouldn't go anywhere.

Chuck was well aware of the "friendship" between Lonnie and his wife. But once he found out that more than friendship was involved Judy pleaded sexual harassment and became a shrieking objector making a big scene. Chuck stormed into the Factory where he got in Lonnie's face with his pointed finger.

In a following sexual harassment lawsuit against Lonnie and WaterOz (June 10, 2004) Chuck testified that Lonnie Birmingham assaulted him knocking him to the ground. Lonnie spent three days in jail resulting from a conviction for assault and battery for putting Chuck in a wrestling hold on the floor of the WaterOz factory. Judy's case didn't get off the ground because she screwed up by not following the advice of her attorney. She "cried wolf" too late because she failed to report the sex issue for two days.

Chuck and Judy quit WaterOz and went to work at Jackson's Wrecking nearby. Then Chuck filed in Federal District Court Title 7 employment suit against WaterOz. A third party defendant joined Lonnie (September 1, 2004) because he was the cause of the Kohagen grief. But he defaulted by failing to show up at Court. Ultimately, WaterOz had to pay thousands to Chuck Kohagen. Surely, Chuck had gone to the right attorney, Dennis Albers, in filing yet another suit to help bring down David. All of these lawsuits occurred while David was rotting in jail. During these lawsuits, the government would not allow David to defend himself or his Company.

Opportunities that orchestra leaders can grasp if there are no moral restraints in their paths are plentiful. Convince a man that you're an honest friend now you'll know the combination to his safe.

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SEVENTEEN *gunderson and his coconspirators*

Things were finally turning around for David in 1997. He hired Bruce Leseman to act as the general contractor. Bruce in turn hired all the sub-contractors to build the first phase of the WaterOz factory-building in Idaho County while David was still in Las Vegas.

He was still active on the radio the following year and was getting quite popular. However, an unfortunate incident occurred. On December 9th, 1997, Ted L. Gunderson, a retired FBI chief, invited David via telephone to speak on his broadcast (WWCR, worldwide short-wave radio, Nashville, Tennessee). David or Ted had said that Art Bell, a popular night-radio talk-show host, was accused of being involved with an under aged person. This Art Bell was not the person to whom David had been referring.

David may have spoken "out of school" but did publically apologize for not verifying his misinformation. But Annette Hasalone testified in court that David caused the Death of Art Bell. Of course, Bell is alive and well. This is just another lie that the government allowed the jurors to hear. Annette lost credibility with the jurors because of her testimony that David killed Art Bell—when they knew Bell is still alive.

Art Bell clarified what had happened: "On May 16th of the year 1997, my son, Art Bell IV, was kidnapped, transported across state lines and raped by a substitute teacher from his own high school. The assailant was HIV positive. My son was a minor. He was only 16 years old at the time. The teacher involved was tried, convicted and is now serving a life sentence."

Art Bell sued for defamation, but he dropped the charges against David. Bell's son had been a victim. Yet Art Bell had looked mistakenly guilty in the eyes of many of his listeners. But he did not drop litigation against Gunderson.

Ted Gunderson stated in his résumé he previously had over 700 persons under his command in the FBI and controlled a \$22 Million budget:

At the time of my retirement, [he said] I was one of the top executives, specifically the Senior Special Agent in Charge of the Los Angeles Division. I had three Special Agents in charge as well as more than 700 personnel under my command. As the Senior Special Agent in charge it was my responsibility to oversee all phases of the FBI's investigative jurisdiction throughout most of Southern California which encompassed a population of more than 14 million people. I was also responsible for the handling of all administrative matters as well as liaison with other government agencies and the media.

One of the most ardent government whistleblowers on the internet is Stew Webb. On Stew's Webpage, he voraciously continues to attack Gunderson. He published: "It is now known [that] Gunderson owed Bobbie Eve [a woman in her late 70s], Annette Hasalone's mother-in-law [and Jeri Gray's twin sister], \$110,000.00, that Bobbie loaned Gunderson for his 1996 Presidential bid. Gunderson stole her monies from the campaign using Jim Keys, alias Jim Kloberg, another FBI plant."

As David's story unfolded, Gunderson's role became extremely suspicious, considering that all the characters Stew mentions were, in fact, the people David had allowed into his life and business. Mr. Webb wrote: "Gunderson, Anthony Hilder, Annette Hasalone, J.C. Harding and Joe Swisher set up Former Talk Show Host and www. WaterOz.com Owner Hinkson on a fake murder-for-hire charge, in order to steal Hinkson's www.WaterOz.com Business. . . ."

An interesting theory is that Gunderson saw a way to pay back Bobbie—if all went well Bobbie could take over David's growing enterprise. In fact, Bobbie did call David asking to work with David as a volunteer

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saying her reference was Ted Gunderson. Bobbie had an identical twin sister, Jeri Gray, both worked for the Las Vegas Stardust Hotel and both had been "pit-bosses."

Stew Webb said:

Bell dropped the suit against Hinkson, but Bell won his suit against Gunderson for slander and defamation of character. . . Gunderson and others have repeatedly lied and perjured themselves [Jan. 24, 2005] in depositions and testimony in U.S. Federal Court in Boise, Idaho. This is far from being the end of this case. Hinkson, another Patriot American, was set up by Fraudster Ted Gunderson and his FBI-CIA goons."

[Webb also said:] This has been a pattern of false murder for hire allegations by FBI-CIA Gunderson. Ted Gunderson was called before the United States Senate in 1971 and reprimanded for his role in the murder setup of five Black Panther members (two were acquitted). . . . Panther leader Bobby Seals was falsely accused and spent two years in jail before being found innocent of murder. The United States government settled in a lawsuit for several Million Dollars. This has been a pattern of false murder-for-hire allegations by FBI-CIA Gunderson.

Gunderson has a website wherein he attacks the Federal Government and claims to be the defender of American citizens.

Stew Webb argues that this is merely another FBI hoax to ensnare unsuspecting victims to entrap them in saying or doing something illegal in order to set them up for prosecution. Ted Gunderson called me after David's trial trying to assure me that Stew was the undercover FBI agent.

I asked Gunderson, "Ted, why would you turn on the FBI to expose their antics."

He said, "Ever since Louis Freeh became director (September 1, 1993 - June 25, 2001), the Bureau has been corrupt." If Ted were sincere and has changed his loyalties to the American people, I ask only that he explain

the events surrounding David's victimization. Now would be the time to make a full confession, not a denial.

He praised J. Edgar Hoover and said he had worked closely with Hoover. I told him how highly I had regarded the FBI in the past for honesty and justice. He explained how Stew Webb was a plant that I should not trust or listen to him. Then he sent me a letter which Stew was purported to have sent to the FBI asking for special treatment because of his services to them.

After David's so-called trial, I had spoken on a radio broadcast and made statements about the Kangaroo Court. I called Judge Tallman a liar. I am cautious about falsely accusing anyone of any wrongdoing without proof. My motivation stems from a religious belief that man will be accountable for his own transgressions. To participate in a lie is dishonorable. The definition of a "lie" has nothing to do with factual verification or truth. If one believes something is true and it isn't, he is not lying. To the contrary, if one believes something is false but says it's true, even though it may be true, he is lying.

In months that followed, Gunderson and others approached me; they were either for, or against Stew. My concern was that if Gunderson had a confidential letter sent to the FBI from Stew Webb how did Gunderson get it (now that he was out of the FBI and supposedly exposing the FBI fraud?).

I never learned until later that all the following people emanated from Gunderson's camp: Bobbie Eve, Annette Eve "Hasalone," Mark Eve (Bobbie's son and Annette's husband), Anthony Hilder, James "J.C." Harding, and his girl-friend Annie Bates.

These people attached themselves to David—big time.

David made Bobbie his general manager. She had access to everything. She brought to WaterOz her son, Mark, and daughter-in-law,

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Annette. Annette was hiding from California law enforcement while the authorities in Nevada wanted Mark.

David allowed Bobbie to run the show. He generally worked until 3:00 a.m. and slept till noon because it was too hot to work during the day.

Bobbie hired and fired—pretty much at will. She hired her daughter-in-law, Annette—a woman without any skills or education (8th grade education). Haselone was a fugitive from justice because she had failed to complete probation when she arrived at WaterOz in 1997. California charged her with felony selling of drugs to minor children in Yolo County, California. When she moved to Idaho County, Idaho, she had no money, no car—nothing. The Las Vegas police wanted Mark (her husband) when he escaped to Idaho. His crime was vehicular assault of a pedestrian in Las Vegas, Nevada.

By January of 1998, WaterOz was financially ascending.

David said, "In 1998 I worked with Anton Botha of South Africa in testing AIDS patients. We used a new type zinc and copper therapy that had 100 percent results. Also I developed a technique to treat TB (tuberculosis). The clinical studies on AIDS and tuberculosis were done in Swaziland and the Dominican Republic."

The first time I ever visited David at his new property in Idaho (Grangeville and his factory) was August 24, 1998. He held a BBQ for his employees and introduced me to all of them. I didn't know of any intrigue going on. All seemed well. David said that Annette had been dying from a fatal lung infection when she first learned about his products. Supposedly, she became an enthusiastic supporter of WaterOz.

Some parties believe that Gunderson engineered the theft of his own presidential campaign funds. Annette Hasalone had worked in Gunderson's campaign. I have spoken with people who believe that she helped Gunderson steal money from elderly women—hence the affectionate almost familial-like bond. Apparently, Ted had his sidekick,

Anthony Hilder, later send Hilder's girlfriend, "Annie" [Anne Loraine Bates—born in 1976], to recruit J.C. Harding to setup David. Anne's mother, Bonnie Bates, is rearing Annie's son in Sandusky, Ohio.

David believes that Gunderson uses Anthony Hilder to perform his "dirty work." Regardless, Gunderson admitted that Bobbie helped him with his campaign, and he has close personal ties with Bobbie's twin sister, Jeri Gray—he calls her "Sis." Jeri continued to send free WaterOz products to Ted Gunderson until she left WaterOz, after David's imprisonment.

Bobbie hired her sister, Jeri, to become part of WaterOz. Jeri moved from Las Vegas to Grangeville (about 12 miles from the WaterOz factory). Over time, David grew close to Jeri and considered her as a trusted second-mother. Many insiders now believe that Jeri was the "spy in the enemy camp," that she helped to orchestrate his downfall and that she only pretended to be David's oldest and best friend in his business.

Total strangers to David, Anne Bates and J. C. Harding first approached David in early December 2002 at the Granada Forum in Los Angeles (where Jeri Gray pressed David to attend); the Forum is a loose-knit, public interest group that holds open meetings once a month and draws speakers (such as David) concerning public affairs and alternative-health-care issues. The promoters invited then treated David like a celebrity, wine and dined him.

It appears that Gunderson was the man behind the scenes writing the music and pulling the strings. Hilder was the conductor of that orchestration. David explains how they inveigled their way into his life. He said:

Annie Bates and James Harding showed up at my factory . . . [January, 2003] and spent the night at my home and left the next day, in the morning. Bates came back on the bus because she claimed that she needed to earn some money and wanted to work part time. I gave her a job. She didn't have a car; I loaned her a car to use.

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She shared an apartment with a man in Boise much of the time during January, February and March 2003. She told the roommate she was moving from Arizona and was working at WaterOz. She left owing \$1000 for her share of the room the owner rented to her, and she filched some items of personal property he had loaned to her.

What do you do when there's a leak in the cesspool?

EIGHTEEN *gunderson plot revealed*

Wes Hoyt received an unexpected phone call from Arlene Janette Olsen and her husband, Will. Wes arranged to meet her in Boise, Idaho, at the motel where we were staying. We both talked with her for some length of time at that meeting, April 8, 2004. What she told us was shocking. She had been in the employ of Ted Gunderson and overheard a RICO crime in progress. Her affidavit would shatter the prosecution's case and could expose some of the perpetrators.

She talked, not only about her and her husband's employment and their live-in situation with Gunderson, but she told us about a group picture in Ted's home of which she recognized herself as a child. "Ted Gunderson," she said, "was party to a Satan worship ring that her parents had belonged to."

In her Affidavit she said:

"Based upon knowledge, information and belief, Affiant [Arlene] states: The formation of this criminal enterprise can be verified by securing the telephone records of Gunderson, Cook and Harding and by comparing the times and dates of phone conversations between them.

Also, important questions to be answered: Why would Cook call Gunderson? Why would Harding call Gunderson? What is Gunderson's involvement in the David Hinkson case? Why is Gunderson involved in the Hinkson case? Why is Gunderson talking to a witness in that case and coaching him on what to say?"

Arlene and her husband were both fearful but agreed to testify at David's Solicitation Trial. Because of Arlene's knowledge in legal research, Wes hired them, and we housed them for several months. But in the middle of the night before they were to testify, they vanished. Since

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surveillance on every move we made during David's trial was so tight surely they knew where the Olsens were hibernating. They had told us before that they were afraid of government retaliation. Fortunately, we have their Affidavit. The Affidavit was notarized on March 29, 2004, but was sent to us on April 15, 2004.

Arlene Olsen testified as follows:

Having first-hand knowledge of the following facts regarding Theodore Lee Gunderson aka Ted L. Gunderson (hereinafter 'Gunderson') . . . I state the facts as I know and understand them to exist, and I do so to the best of my knowledge, information and belief affirm that the facts contained herein are true, correct and certain to the best of my knowledge. And I do affirm [this] by telling the truth, under penalty of perjury pursuant to Title 28 U.S.C. §1746(1), in the matter regarding the events described herein relative to Ted L. Gunderson, located at 750 Royal Crest Circle, Apt 258, Las Vegas, Nevada, 89109, and Nancy Cook of Idaho and J.C. Harding.

Affiant [Janette Olsen] is making this Affidavit of Affiant's own free will, and in a timely manner and in good faith, acme pro tune, for the reason that to delay would repudiate Affiant's good cause.

Facts: Affiant to the best of her knowledge, information and belief states the following:

(1) On or about October 17, 2003 Affiant and her husband (hereinafter 'Husband') entered into a business agreement with Gunderson wherein Gunderson agreed to provide certain services during an interim business development phase. One of the services Gunderson was to provide was a dwelling space for Affiant and husband during this interim time. Affiant and husband stayed with Gunderson for about 17.6 weeks—at the end of that time Gunderson breached the agreement, and Affiant and husband departed.

The nature of the agreement is confidential; however, an interim part of the agreement was that Affiant would in the meantime voluntarily provide administrative and secretarial

services specifically regarding Gunderson's verbal and written attacks on the corruption of the U.S. Government and their agencies.

(2) On or about November 20, 2003, Affiant was eating breakfast on a TV tray in the living room of Gunderson's condo in Las Vegas, watching television with Gunderson's roommate, a semi-invalid woman named Anna May Newman [hereinafter 'May'] when Gunderson's telephone rang. As is the custom at the Gunderson's household, May answered the telephone for Gunderson. May picked up the cordless phone receiver that had been placed especially on a fold-out secretary beside the chair where May normally then said the name of the caller out loud: "Nancy!"

Gunderson picked up his receiver located on his desk in his work area, located where the dining room would normally be located. The dining room is a three solid walled nook that opens into the living room area, and it serves as Gunderson's primary work area in the condo.

Gunderson began immediately talking to Nancy. Affiant inadvertently overheard the Gunderson side of a telephone conversation between Nancy and Gunderson.

(a) After a few moments had passed, Affiant heard Gunderson tell the caller, "Please excuse me. I thought you were another Nancy, but you're a Nancy I haven't heard from in years."

(b) Gunderson spoke to this Nancy for about five minutes. After Gunderson hung up the telephone, he was annoyed and upset at what had happened, and he scolded May for not telling him Nancy's last name, and in the strongest way possible chastised her and then told her that in future to give him the first and the last name of each caller.

He further explained to May that he was awaiting a very important telephone call from "Nancy Cook" and stated that he'd been embarrassed when he'd discovered that he had told this other Nancy confidential things that he was supposed to tell only to Nancy Cook.

(3) On or about November 22, 2003, Affiant, Affiant's Husband and May were seated in the living room watching TV

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while Gunderson was working at his desk. The telephone rang and May answered. She carefully called out loud the name, "Nancy Cook," and Affiant could hear in her voice the fact that she was proud of her achievement in giving both first and last names of this caller to Gunderson. Affiant did not pay attention to this conversation since she did not know who Nancy Cook was, and the conversation did not seem to be relevant to any work Affiant was currently doing for Gunderson.

(4) On or about November 23, 2003, Affiant was working in Gunderson's back office at Affiant's computer. This office is a converted bedroom located down a 15-foot corridor leading away from the combined living/dining room.

(a) Affiant heard May laboriously walking with her walking cane down the hall way, and then Affiant stepped into the corridor in order to see what was going on.

(b) When May saw Affiant, May handed Affiant the cordless telephone she was carrying and breathlessly asked Affiant to see that Gunderson took the call immediately, as Gunderson was in the bathroom. May explained that the call was from "Nancy Cook" and that Gunderson was waiting for it.

(c) Affiant took the cordless receiver and knocked on the bathroom door, then called out to Gunderson, "Nancy Cook is on the phone."

(d) Gunderson immediately came out of the bathroom and grabbed the telephone receiver from Affiant, then returned to his work area in the dining room.

(e) Affiant was intrigued at this event because Affiant was acting as Gunderson's administrative assistant. And as such Affiant felt it her duty to know who Gunderson's important callers were so she could keep track of the things Gunderson was working on. And thereby help Gunderson in a more efficient manner to get caught-up on his six week backlog of correspondence, calls and projects as well as to help Gunderson establish a sound office operation for the future.

Affiant now recognized that in some way Nancy Cook was relevant to Gunderson's work, and as a result of this realization, Affiant began to pay attention to anything related to Nancy Cook. In furtherance of Affiant's goal to assist Gunderson, Affiant paid

attention to the conversation as May completed typing letters for Gunderson in the back office and listened attentively for the next fifteen or twenty minutes as Gunderson spoke to "Nancy Cook."

What do you do when someone spills your milk all over the floor?
Better get a mop.

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NINETEEN *the plot thickens*

The office door was wide open and Affiant could clearly hear Gunderson speaking to Nancy Cook. Affiant heard the approximate statements listed below made by Gunderson in the course of this phone call:

(i) "So you're saying he has to come in. But he has a problem with that."

(ii) "I know. I understand, but he obviously does not understand how things work,"

(iii) "I'll have to explain to him that his effort will be unsupported and will not be considered evidence without his corroboration."

(iv) "What will be needed?" Pause. "No. no, I mean, what exactly are they going to need him to verify?"

(v) Gunderson then apparently wrote down on a yellow legal pad the information given to him by "Nancy Cook" (See Item 5).

(vi) Shortly thereafter the conversation ended.

(5) Later that same day, Affiant was placing several letters on Gunderson's desk in the dining room alcove for his signature, and Affiant saw numerous phrases written in Gunderson's handwriting on a yellow legal pad on Gunderson's desk.

(a) At the top of the page was written the names J.C. Harding on the left side of the page and Nancy Cook on the right side of the page. Below these names was a list of statements.

(i) "Keep it simple."

(ii) "Don't be elaborate" (The word "elaborate" was misspelled).

(iii) "Be consistent."

(iv) "Be confident."

(v) "Corroborate every statement". The word "corroborate" was misspelled.

(6) Affiant later became aware that there were other items written on the page behind this front page, but Affiant did not

see the items. Affiant is aware of further written material on the second and third pages, because at the time Gunderson was speaking to J.C. Harding about his interview/testimony. Gunderson used the legal pad and turned several pages as he read the items to Harding (See Items-(10) and (11) (c).) Affiant noticed that the name "Nancy Cook" was written on a yellow POST-IT placed by the telephone handset on the desk, and below the name was written a telephone number with the "208" Area Code. Affiant was familiar with this Area Code and knew that it was an Idaho Area Code.

This POST-IT drew Affiant's attention because Gunderson was not in the habit of writing telephone numbers on POST-ITS. Normally Gunderson wrote telephone numbers on a yellow legal pad or in his personal telephone directory.

On or about the morning of November 25, 2003, Affiant and Husband were preparing breakfast in the kitchen when the telephone rang, and May answered it. May called out Nancy Cook's name so Gunderson could hear it, and he quickly picked up the telephone handset on his desk. Affiant inadvertently overheard the Gunderson side of a telephone conversation between Nancy Cook and Gunderson.

(a) Gunderson made a statement the gist of which is—"I've had no luck with him. He is afraid of repercussions."

(b) After a few minutes, Gunderson said—"keep trying."

(c) "Don't worry, we'll get him."

(d) By the time the conversation ended, May was seated in the living room eating her breakfast. Gunderson hung up the telephone and asked Affiant—"Do you know Nancy Cook?"

Affiant stated that she did not and wondered at the motivation behind the question since it originated "out-of-the-blue" without any foundation.

(7) On or about December 1, 2003, Affiant inadvertently overheard the Gunderson side of a telephone conversation between Gunderson and someone he called "J.C." Affiant was sitting in the living room with Husband along with May watching TV. Throughout this conversation, Gunderson repeatedly said

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the initials "J.C." to identify the caller on the other end of the phone.

During much of the conversation, Gunderson deliberately turned his chair away from the living room area in an attempt to muffle his voice to prevent the people sitting in the living room from hearing the content of his conversation. Gunderson kept looking over his shoulder to see if Affiant or Husband were listening. His mannerisms were like those of someone who is attempting to engage in a covert conversation; e.g., he spoke quietly; he turned away from the location where people were sitting, [and] he looked over his shoulder repeatedly.

Nevertheless, Affiant overheard some of the conversation and made a note of it because the content of this call revealed that Gunderson was urging someone to cooperate with the FBI. Gunderson's standard advice is to discourage this practice. During this telephone call, Gunderson made many comments and suggestions, which are stated below (not necessarily in the same order as delivered over the phone),

(a) "J.C., it is my considered opinion you need to cooperate with the FBI all you can. I can help you with that."

(b) "He won't know that it was you."

(c) "They protect those who assist them."

(d) "You may not have to do anything more!"

(e) "Listen, the truth is the truth; what do you have to be afraid of?"

(f) Sometime during this conversation, Affiant went into the back office to work; and Gunderson came to the back office door and stated that because he was going to be smoking his cigar, and that his closing of the door was so that the smoke would not irritate Affiant.

(8) On or about December 2 or 8, 2003, Affiant inadvertently overheard another telephone conversation between Gunderson and J.C. while Affiant was working in Gunderson's back office with the door wide open. Since Affiant was working in the office earlier in this morning than was usual, Affiant does not believe that Gunderson knew that Affiant was in the back office working. Affiant's usual practice was not to begin working until a little later in the day (around noon). This

conversation took place around 9:10 a.m. Gunderson made comments and suggestions to "J.C." listed below.

(a) "I was in the FBI for 27 years, so I know how they operate."

(b) "We've been through this before, but I'll answer any concerns you may have."

(c) Affiant's attention became focused on her work, but then she heard Gunderson speak for a few minutes on the subject of Mike Riconosciuto, who is currently in a federal prison in Massachusetts. Affiant became very interested, and her attention shifted to the phone call.

(i) Gunderson specifically told "J.C." how Riconosciuto and he had assisted the FBI in the capture of a known "hit man" in Indio, California, and how the FBI had protected this hit man (John P. Nichols, an FBI informant) who went to prison for only two or three years.

(ii) Affiant immediately noticed the discrepancy in this story that Gunderson usually tells to anyone who will listen.

Gunderson usually tells this story of how the FBI attempted to thwart Riconosciuto's and Gunderson's capture of this murderer-for-hire assassin. And in fact Gunderson usually states that the FBI inappropriately protects their informants—as in the case of Nichols, who should have been sent to prison for 25 or more years for the murder of two people but instead only went to prison for two counts of solicitation-for murder. [She said that the Indio Police Department went undercover by having a deputy wear a body mic to record the offer to hire Nichols for a hit].

(iii) Gunderson also stated to J.C. that Gunderson and Riconosciuto were responsible for assisting the FBI in protecting "their own" in 1988 when a "black ops" plan went awry. Those individuals received reduced sentences like Nichols. Again, the discrepancy in this story is that Gunderson usually states that he and Riconosciuto thwarted the FBI by "bringing down" several of the FBI's hit men in 1988.

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(iv) Gunderson said—"The body mic was the only way to go. It's damaging enough to be useful. All we need now is for you to finish your part."

(v) Gunderson then stated: "I'm only giving you an example of the extent that the boys will go when protecting their own. You have nothing to worry about."

(vi) "All you need to do is your civic duty, and they'll do the rest."

(vii) "You agreed to do this. You can't back out on us now."

(viii) Gunderson then received another telephone call on the "call waiting" service and told J.C. that he had to take that call and asked J.C. to call him tomorrow, stating that he would give J.C. some tips for when you go in.

(9) On or about December 4, 2003, Affiant again inadvertently overheard another telephone conversation between Gunderson and J.C.

At this time, Affiant was in the kitchen making lunch. May was sick and stayed in her bedroom that day and consequently was unavailable to answer the telephone for Gunderson as is the usual custom. Affiant had gone into the living room to retrieve her water drinking glass, when the telephone rang. Affiant answered the phone and asked for the caller's name, whereupon he replied "J.C. Harding."

J.C. then asked—"How are you doing, May?"

Affidavit, did not answer this question. Affiant called out to Gunderson, who was sitting a few feet away at his desk.

"It's J.C. Harding," and [she] waited until Gunderson picked up the telephone handset on his desk, then Affiant left the living room and returned to the kitchen, where the phone conversation could be heard very clearly while Affiant was getting herself a glass of water and proceeded to finish making lunch for herself and husband. Gunderson made comments and suggestions to J.C. listed below:

(a) "Well, J.C, it's up to you, but you need to do the right thing."

(b) "If you don't see it through, they may wonder about you and why you agreed to do the body mic in the first place."

(c) "The recording is not valid unless it is verified in a statement to the FBI." Pause. "That's what she said."

(d) "He's not going to find out about the body mic or who made the recording." Pause. "Even if he did find out, he won't be able to do anything about it."

(e) "Do you believe in this country or don't you?"

(f) "Now if you believe in this country, then you believe that we're the good guys, and we're just trying to keep the Country from going to the dogs. My buddies are good guys like me, not like some of the others that you hear me talk about from time to time."

"He obviously thinks that being a freedom fighter gives him the authority to trample on the laws of Idaho and of this Country, without any regard for the repercussions (Affiant believes that Gunderson was referring to David Hinkson.)

(g) "I promise that they'll keep you out of it, but your statement has to be secured."

(h) "Don't worry about it. I'm doing what I can to make sure the judge doesn't bring you in,"

(i) "I know people. I'll take care of it."

(j) Gunderson received a telephone call from his daughter, Lorie, on his call waiting service and asked J.C. to call him back later.

(10) A little later that same day, December 4, 2003, Affiant completed a document that needed Gunderson's review and brought it from the back office to Gunderson, who was seated at his desk in the dining room work area. As she handed Gunderson the document, Affiant saw that Gunderson was holding a yellow legal pad, studying what was written in it.

When Gunderson saw Affiant approaching him, he quickly flipped two pages forward and placed the yellow legal pad face down on his desk. This was very unusual behavior on the part of Gunderson. Affiant believes this yellow pad was the same yellow pad on which Gunderson had taken notes and written the advice that he had received from Nancy Cook in their phone

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conversation of November 23, 2003. Gunderson was in the habit of using only one legal pad at a time, and this was the only legal pad in use at this time.

(11) Approximately three hours later on that same day, December 4, 2003, Affiant was alone in the kitchen making dinner. May was still bedridden. The telephone rang, and since Gunderson was in the bathroom, Affiant answered the telephone. Again, the caller identified himself as "J.C. Harding" and asked to speak to Gunderson. At this moment, Gunderson exited the bathroom and asked who was on the phone, and Affiant said it was J.C. and then waited for Gunderson to pick up the phone handset at his desk in the dining room. Affiant then hung up the telephone in the living room and returned to the kitchen.

The gist of this conversation was a script that Gunderson was giving to J.C. Harding seemingly regarding the impending interview Gunderson was urging Harding to undergo with the FBI. The script was like a TV or movie script, supplying J.C. with specifics as to what to say to each question he would be asked. This script acted as a coaching session on what Harding was to say when giving information to the FBI.

(a) Affiant does not remember the exact wording of the entire script, but overheard Gunderson speak or make statements like or similar to: "You would say it naturally," for example, "He seemed to need to confide in someone, and I just happened to be there. He said he didn't trust anyone and would have to take care of the matter himself. Use your own words."

Affiant did not specifically hear any of the other phrases used as the script, but could ascertain from the nature of the phrases and advice given by Gunderson that he was giving J.C. a script to follow similar to the type of script or coaching that attorneys give their clients before the client takes the witness stand. Affiant believes those phrases to be used for this script were written on the second and third pages of Gunderson's legal pad—those pages Affiant had not seen but had observed Gunderson studying.

(b) Gunderson then said: "I have it on good authority, straight from the D.A.'s office, that after you make this statement your involvement will be over."

(c) "All you have to do is verify each statement that was made by Dave and you on the body mic."

(d) "Don't offer any more information than what is applicable to the tape."

(e) "Let's do a rundown of your interview. After they ask you for your personal information they'll ask you the date this conversation occurred—you tell them; then they'll ask you the time it happened, and you tell them. Then they'll ask you why you brought up the subject to Dave. And you tell them it was from a previous conversation and that you were instructed to get it recorded using a body mic."

(f) "They'll ask you who instructed you, and you tell them. Keep it simple."

Affiant walked out of the kitchen and stood in front of Gunderson's desk, because Gunderson was coughing. Affiant was in the habit of filling Gunderson's water glass when it was empty, as it was at that time. Gunderson was startled when he looked up and saw Affiant standing there. Affiant pointed silently to Gunderson's empty glass, and Gunderson handed the empty glass to her. Affiant then took it to the kitchen to refill it with water while the conversation continued.

(g) "They'll ask you what Dave said and what you replied, so you have to learn that tape. Be specific, but don't elaborate. And be consistent. They have to verify everything that's on the tape. It's as simple as that."

(h) Gunderson's chair squeaked and Affiant leaned slightly out of the kitchen doorway so that she was able to see Gunderson at his desk. Affiant noticed that Gunderson was reading from the yellow legal pad where his handwritten notes were, and that Gunderson was turning several pages as he read out loud to J.C. all that was written on the pad. Gunderson was turned away from Affiant, so the specific words he used in this script were unintelligible.

(i) Gunderson then turned back around and laid the legal pad down on his desk, then said: "When you're answering each question they ask, you must be confident. Don't show any uncertainty."

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(j) Affiant returned to Gunderson's desk and handed him his glass now filled with water. He took it from her and mouthed the words "thank you", then drank deeply from the glass and set it aside. Affiant returned to the kitchen.

(k) "Don't tell them that you talked to me" [emphasis added].

(l) "Anything that's unclear will become clear after your statement. I know you'll do a good job."

(m) "Dave's arrogant and thinks he can get by with murder."

(n) "Yes, we were friends, but that's another story. I don't want to go into that. You concentrate on your duty, and we'll put Dave where he belongs—he and everyone else like him who are trying to destroy the fabric of this great Country. One by one."

(o) "Remember, don't tell them that you talked to me."

(p) "It's just better if it comes from you and no one else."

(q) Gunderson quickly ended the conversation by reassuring the caller: "You know what you have to do, and I feel sure you will do the right thing."

He then hung up.

(r) Affiant walked over to Gunderson's desk, and when he looked up at her inquiringly, she asked: "How is Dave Hinkson doing?" Gunderson replied: "Oh, that wasn't about Dave Hinkson; that was about Dave Pisel."

NOTE: Affiant was familiar with Dave Pisel's case (which involved real estate that Pisel purchased in the desert and the U.S. Government had confiscated, and Affiant knew that Gunderson and Dave Pisel were still friends; so Affiant realized that Gunderson's statement was untrue.

Affiant also knew that Gunderson was not working with the D.A.'s office in the Pisel case. Another fact of Pienel's case is that it is located in California—not Idaho. The only other "Dave" that Affiant was aware of who was located in Idaho and who was associated with Gunderson was David Hinkson.

These statements above did not correspond with the Pisel case. As a result, Affiant stored this conversation away for future reference and placed a mental "red flag" on it. At the time of Affiant's question to Gunderson, Affiant said nothing and returned to the kitchen to complete the preparation of dinner."

Following the above statements of fact, Jeanette Olsen presented her opinion. Her Affidavit continued:

Based upon knowledge, information and belief . . . Affiant estimates that the time spent by Gunderson on the various conversations with J.C. Harding referred to herein equaled approximately eight (8) hours total. Affiant is aware that Gunderson spends this amount of time only in unusual cases of urgency or importance. Affiant also believes that Affiant did not hear every conversation between Gunderson and J.C. Harding.

Based upon knowledge, information and belief, Affiant states:

These conversations inadvertently overheard in the course of Affiant's duties as Gunderson's assistant are the overt acts necessary for conviction showing that Gunderson with the assistance of Nancy Cook and J.C. Harding did, in fact, plan, fabricate and implement a false and fraudulent scheme or artifice to defraud David Hinkson of his Constitutional due process rights. [This was done] so that the perpetrators could wrongfully convict him of crimes he did not commit.

Affiant believes that Nancy Cook was using "vindictive prosecution" as the method to effectuate the enterprise's goal and may be the Architect of this scheme or artifice. Gunderson, Cook and Harding acting in concert established the conspiracy agreement in which their objective as to obstruct justice, suborn perjured testimony, manufacture evidence, commit fraud and the intent to defraud, commit Fraud on the Court and Misprision of a Felony by their silence, using wire fraud as essential elements of this criminal enterprise to falsely convict David Hinkson.

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Due to Affiant's clear observation as a witness of these crimes, Affiant believes that Ted Gunderson, Nancy Cook and J.C. Harding by their acts and actions did in fact form a criminal enterprise in order to fulfill their objective to vindictively prosecute David Hinkson for crimes that he did not commit.

Two reasons can explain these acts by the perpetrators. They are

(1) to have David Hinkson drop his civil law suit against Cook and others for their long train of wrongful acts and actions against him; and

(2) there exists the possibility of great financial enrichment for each of the participants when they achieve their goal of convicting Hinkson and dividing up his assets. Affiant believes that as a direct and proximate result of the perpetrators' unlawful acts and actions David Hinkson is now incarcerated awaiting trial on trumped up charges that he did not commit."

Which part of the plan worked and for how long? But the landscape is changing.

TWENTY *implementation of the gunderson plan*

The Gunderson Plan apparently was for Hilder's girlfriend, "Annie" Bates, and J.C. Harding to go meet with David and set him up (as someone who was actively soliciting people to murder three federal officers in a murder-for-hire scheme).

David drew large audiences and held people somewhat spellbound—WaterOz sales skyrocketed every time he lectured. So it's no surprise that he couldn't recall having ever seen or met James Harding while at the Granada Forum in Los Angeles when Anne Bates first approach him in December 2002. Anne told David she had skills and that she wanted to move to Idaho to work at WaterOz.

She and J.C. Harding showed up at WaterOz the first week of January; David put them up. They spent the night and left the next morning. Anne came back to Grangeville on a bus claiming that she needed to earn some money and wanted to work part time. Jeri Gray hired her (David agreed). Peter Zaehring, David's former brother-in-law and employee—who held a degree in Computer Science, said Annie Bates was a "computer genius."

David loaned Annie a car. She announced to everyone that she was moving to Grangeville to take a job at WaterOz, where she intended to "spend the rest of her life." Later, she claimed she moved her belongings to Boise and placed them in a Republic Storage 12 x 20 unit (big enough for an automobile). After she was hired by Jeri (who was a direct link to Ted Gunderson), Anne refused to associate with other female employees, especially during lunch time. The company computer-server and David's private computers were located in the basement of his house (adjacent to the factory). David allowed her to enter into his house and into his computers to do WaterOz work.

Harding came to Idaho shortly after Anne was hired (also in Jan. 2003) alleging he was just passing through on his way to Coeur d' Alene.

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Harding arrived on David's doorstep late one afternoon in January 2003 in a 1923 Bugatti (vintage open car) without a top, doors, side windows or heater—in the middle of winter. He had Anne Bates at his side. Both he and Annie were covered with frost from driving without a top. Harding was dressed in a WWI hood and goggles complete with Red Baron type scarf with frost on the stubble of his whiskers.

He ran around Grangeville evidently trying to establish an identity as J.C. Steel. He did get newspaper coverage in Grangeville. One of the small town papers photographed them in the car and wrote a short story about how he was going to set up a radio station in the Grangeville area.

His cover story was that he was a radio talk-show host, that he had this in common with David Hinkson. He said that on the air people knew him as J.C. Steel. Anthony Hilder claims Harding had his own radio talk show and used the name J.C. Steel as his radio name, but we failed to find any evidence that he ever hosted a radio show under the title J.C. Steel or otherwise. Possibly, he may have called in to a talk-show.

Anne Bates' grandfather ran a talk radio show in Sandusky, Ohio; Harding may have learned something about radio-talk-shows from Anne. Regardless, he established his presence in Grangeville so that no one could deny that he was there. He had made sure people noticed him.

Since Anne Bates had no money or place to live when she first came to WaterOz, David allowed her to camp in his basement apartment (where the computers were located) until she could set up in her own place. WaterOz' thirty computers all networked to the master server located in his basement.

However, during the two-week period she lived in David's home, she was clandestinely at night and over the noon hour on his computer when David was not aware. Greg Towerton, who later became the general manager of WaterOz, could see that she was constantly ("like in the middle of the night") on David's computer hacking into something. We believe

that she installed keystroke software in his personal computer and that she stole information that was later used against David (such as copies of David's emails) which FDA Agent Blenkinsop later used. He claimed he obtained all his information from the factory computers. Although nothing on David's computer was incriminating. Yet, all his documents and attacks on the federal government were there. They had enough personal information that hackers could twist and use in any way that a twisted mind could conceive.

JoAnn Houger (an employee, whose husband was the Grangeville jailer) felt that David must be somewhat smitten with Anne Bates, because he would say things like, "that poor girl's in trouble, and she really needs my help."

Harding, using the name, "J.C. Steel," came into the office one day in late January or early February, 2003, was confronted by JoAnn Houger who asked J.C., "What are you doing here?"

Harding replied: "I've come to get rid of David and take over this place."

On another occasion Kathy (independent foodservice person) asked J.C., "Oh, are you new here?" Harding replied—"I'm a friend of David."

J.C. regularly was in phone contact with Anne; phone records of all calls made from Anne Bates (from David's downstairs bedroom) showed that Annie called J.C. constantly—her FBI 302 Statement confirmed this. Had she any fear of David wanting to get romantically involved with her, she could have suggested that Harding move into David's basement apartment to protect her or find other lodging, unless this scenario was a part of a plan to spend time in David's basement accessing his computers. David thought that she and J.C. had a relationship. It wasn't long before they moved into an apartment in Grangeville. They had gotten all they needed.

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Another employee (who prefers that I don't mention her name) told me that she knew Anne Bates well, that she went to bars with Anne. Anne claimed she did not drink and didn't go out with other guys because she was J.C. Harding's girl friend. Yet, although Anne contended she didn't drink, witnesses avowed that she was out drinking till 2:00 a.m. and drunk.

She borrowed David's car regularly to go to Boise or Lewiston. We now believe that she was meeting with her handler, Hilder, and turning over hacked-in-to information. Later we learned that the Feds paid over \$1,000 to J.C. in payment and gave him a late model Isuzu Trooper for trying to entrap David. The Trooper was purchased in Iowa in the name of Anthony Hilder and J.C. Harding but not registered until March, 2003, when Harding used the WaterOz address to register the vehicle in Idaho. The feds were confident that David had millions stashed worldwide, so this type of expenditure was merely a good investment. They'll get back many fold later.

Although David had no personal interest in J.C., no one seems to know where he went, but witnesses reported that he returned to the Grangeville area later on several occasions. Annie and J.C. rented an apartment in Grangeville in February. Annie said she didn't need to put Harding on the lease because he wasn't going to live there.

J.C. brought Anthony Hilder twice to visit David. David talked about what happened when Hilder came:

In the middle of March, Hilder showed up with J.C. Harding. Hilder still claimed that he was moving to Idaho, and had a trailer behind his truck. He wanted to park this trailer inside our Factory, and Jerry Gray told him he could not. Later, he parked his trailer at Matthew's house [where David's son was living] in Grangeville in the garage.

While he was there, there were four other people at this meeting in my home, in my kitchen. He said that he wanted to

make a video about my case. I told him about the rumors and about the lies that Cook had orchestrated to present in front of the Grand Jury. At this meeting, Harding was present, as were Jerry Gray, Rich Bellon and Charlie Philips. He wanted \$10,000 cash to make a documentary film, for me called *Prosecutorial Misconduct*.

He offered me a sample of his work. It was a video of him accusing the Federal Government of bombing the Twin Towers. I declined his offer and told him that I did not want to make a video because my case was not a big enough story to warrant such a video. I also, told him that I didn't have \$10,000 to my name anyway.

At this point Hilder got very angry. I think that if I had paid him the \$10,000, he and Harding were there to accuse me of hiring them to be hit men. I am sure of this. Hilder was working with Gunderson and Agent Long to set me up. He was mad because he did not get the money. I had witnesses at this meeting. He was escorted off the property by Rich Bellon after he got angry, and he would not take no for an answer.

Harding came back a week later [with the FBI body wire] to try to set me up again and failed when I was not even paying attention to what he was saying.

It is interesting to note that all of these different people seem to come up with the same \$10,000 offers. Where do they get this figure from? Is it just a coincidence? David continues:

Shortly after, Bates showed up in a nearly new Isuzu pick-up truck. She got her last check and left. I asked her where she got this lovely truck; she said she paid \$400 for it from a college student in Moscow yesterday. The truck looked like it had a value of \$9,000 to me. Later I checked my phone records in the factory and noticed that she was calling the DMV the first few days after she had arrived.

Hilder admitted that all the people he talked to in the Grangeville area said David never wanted to hire any hit-man. But J.C. said that a couple

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Mexicans came to him in confidence and said, "Dave was going to have somebody killed." Hilder suggested that J.C. call Ted Gunderson. No mention was ever again made of the Mexicans, however. Thereafter, FBI Agent Long comes on the scene.

J.C. Harding testified that he had a conversation with David while in the presence of Patrick Johnson (a local 62 year old man who did body and fender work). Patrick says he remembers a guy being present at a conversation he was having with David about a Ford Mustang (that he had finished painting for David and was returning to him for inspection). Harding said that during that conversation in front of Patrick "David offered him money to kill three feds."

Patrick remembers that they talked about miscellaneous things, and knows that David did not ask Harding to kill federal officials or anyone. Patrick said that they didn't discuss any such thing, that Harding is just lying. This was probably the same day that J.C. loaded \$1,200 of product into his Isuzu Rodeo (March 17th or 18th, 2003) for which he never paid David. He just stole the products (obviously with tacit approval by the government agents)

Agent Long alleged that Johnson was a militia-member, but Patrick denies being associated with any such organizations. He said, though, that he often carries his handgun on his hip, mainly for protection from wolves and mountain lions (which are plentiful in the area where he lives).

Now what happens with the full weight of the government descends up a lonely victim?

TWENTY-ONE *the setup-j.c. harding wired*

David had no idea all this intrigue was in progress. It was on Saturday, March 29, 2003, that J.C. show up at David's house. Harding, according to Arlene Olsen, had his marching orders from Gunderson. And his handler, Hilder, backed him up. This was the final visit by Bates and Harding. This was the fourth time that David encountered J.C. Harding. David was cordial and talkative.

At the request of the FBI, in an attempt to obtain evidence against David, Harding wore the body wire. FBI Agent Will Long was on the grass hiding near David's house where he would remain undetected. FBI Agent Long fitted J.C. with the body wire. They designed the whole exercise to entrap David by baiting him to, potentially, make incriminating statements.

After various attempts, J.C. interrupted the taping session by saying he needed to relieve himself. While in the bathroom, he whispered into his cell-phone to Agent Long that he needed instructions to be more specific. But their attempts throughout the conversation failed miserably.

FBI Agent Long had wasted over three hours laying on the cold wet ground in hiding. J.C. tried his best to follow orders to entrap David. He was trying hard but without looking too obvious, he repeatedly asked David during the recorded conversation if he wanted to "blow" (kill) federal officials. David said they were talking "BS" while David was preparing food at the kitchen island. He wasn't listening to much of what J.C. was saying. This was not a serious conversation—David was just being friendly to a departing acquaintance.

When David caught J.C.'s meaning, he instantly responded by saying that he doesn't want to hurt anyone—"I'm going to sue them."

Here is an excerpt of the body wire—Harding said: "So you're going to murder them. What are you going to do? What can you do?"

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David—"I'm going to sue them."

Harding—"Right." [This is not what Harding was fishing for.]

David: "That's what I have been doing. That's the frustrating part is (sic) the only thing we got is the court system—which is so crooked."

Harding—"Got ya. Hum, so you think you can beat them at their own system?"

David—"Yeah."

Harding: "I want to know something for sure. This is dead serious what I'm asking you this. (sic) You talked to me about this on a couple of occasions. Do you want to do it? Do you not want to do it?"

David—"What?"

Harding: "Your problem with three wise men."

David: "I'm just suing them." He [David] also said, "You know I haven't offered anyone money to harm anyone."

Harding said—"right."

During the trial the government position was David cleverly detected that Harding was wired and wouldn't repeat the fictitious "previous offers" on the tape. The government wanted to depict David as a cunning, clever and nefarious man on one hand and a total idiot on the other. What sort of legally trained and astute idiot would make an offer to a nearly total stranger to kill three federal officers, including a judge?

David wanted to "use Babylon to fight Babylon," as presented as part of the Detention Hearing of April 7, 2003. His answer to Harding's question, "So you think you can you beat them?"

David made it perfectly clear that he'll fight these government thugs in their own courts by using their own court system to fight them. Does this sound like the wild ravings of an imbecile?

We believe that Harding and Agent Long later cooked up the story that David made a \$10,000 offer to J.C. on the first occasion they had met because the body wire caper flunked. When questioned under oath at

David's Trial, Bates and Harding couldn't get straight their stories of how he offered the \$10,000. The jurors didn't buy their testimonies. J.C. didn't hold David to the scenario of hiring him as a hit man earlier when wired because it never happened. The alleged \$10,000 "Kitchen Counter Offer" to kill Judge Lodge, AUSA Cook and IRS Agent Hines mentioned in the FBI 302 was never mentioned in the conversation recorded on the body wire. Isn't that strange?

Based solely on hearsay conversations with unknown individuals the government indicted David. They did no meaningful investigation of witnesses' credibility, reliability or motivation. Government agents, without even a modicum of skepticism simply took anyone's word as fact. The parade of government witnesses were liars, felons and opportunists. Most defense witnesses were merely responsive to their recollections, with nothing to lose or gain.

Why would the government place so much weight on J.C. Harding's testimony when so consistently under oath he perjured himself? By simply checking his phone and travel records, they could easily have verified his claims. He claimed that he had met with David some fifty times over a long course of time. He testified when questioned by AUSA Agent Michael P. Sullivan, chief prosecutor (Counterterrorism Unit of the U. S. Attorney's Office) against David:

"We talked about my knowledge of guns and that I grew up around guns and shotguns. He [David] wanted to know how extensive my background was, the basics of how I got into it and why I was into it."

[Harding testified that he had worked as a bodyguard and that David knew him through a friend who was also a bodyguard].

How do you know he know you through another bodyguard?

"They were good friends. They were close friends."

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Who is that?

"Mark Glover. Him and David—I don't know how—are very close friends. And I know Mark through doing security work, body guarding."

Mark Glover (in his 40s—a tall, good looking black male) teaches at *California University* (an online college) and runs a limo service. He brags about being the driver for Anthony Hilder and Barbara Streisand. David had never before even heard of Glover.

Hilder was the one who sent Glover to pick up David in his "limo" at the Airport. Glover called David before the Granada Forum Meeting in Los Angeles (December 2002) and advised him that the Forum was paying for all of his expenses. He had arranged for a hotel and picked up David at the Airport. Mark drove David to lunch and then to the Orange County Freedom Forum meeting. At the Forum Meeting Hilder's complements went way overboard (sycophant) trying to make a good impression on David.

Hilder went so far as to have Glover bring to David's room an exotic dancer, bare to her G-String. She performed her dance. There was no sexual encounter. David gave her a \$20 tip and then she left. He had no idea why these people were so engaging. David said, "I was getting the Royal treatment."

He has no memory of Harding from the Granada Forum or the dinner. However, Bates made contact with David at the Forum, and David remembers her. Next day David returned to Idaho.

Sullivan then asked Harding: "Have you worked as a bodyguard?"

"Yes."

"Have you worked with Mr. Glover?"

"Yes."

Harding testified that he became very friendly with David and frequently stayed at his house in Grangeville on the weekends.

Sullivan asked, "During those visits, did Hinkson repeatedly discuss killing Cook, Hines and Lodge. On the occasions that you go back up to Grangeville, would you see Mr. Hinkson?"

"Yes."

"Would you talk to him on the same subject matters of the three federal officers?"

"Extensively."

"Did he mention these things about killing federal officers more than once?"

"Every time we spoke, yes."

"How many times?"

"Fifty."

One would think that the FBI would have wanted to check out J.C.'s testimony for reliability, unless, of course, they participated in a fraud. When would this all have happened? Were there any corroborating witnesses at WaterOz that ever saw or heard of Harding before the December 2002 Granada Forum Meeting in L.A.? How clandestine can we get—no phone calls, no records just Harding's statements. As we'll see later, even John Harding, J.C.'s father, said on the witness stand under oath that his son is a liar.

Although the times of the various events are somewhat confusing, the chronology displays a pattern. Without an indictment, on August 21, 2001, the Feds presented David's case before the Grand Jury.

Then Nancy Cook, in April of 2002, went to the Grand Jury to try to indict David but failed. David sued Cook, Hines and others for \$50,000,000 on April 16, 2002. He alleged that Cook and IRS Agent Hines had violated a number of U.S. laws and committed Grand Jury tampering.

He said, "Nancy Cook forged a fraudulent grand jury indictment." David claims that there's was no legal way Nancy Cook could have gotten an indictment, because the Grand Jury's term had ended, and the members

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were scattered over a large area of Idaho. David suggests that we do an audit of their travel receipts etc. If this is true, Nancy Cook committed a felony, and others suborned her felony. The grand jury adjourned permanently in April signing a "No Bill." After David sued Cook (and Hines), Cook galvanized into action and supposedly brought together the same grand jury on July 17, 2002, for one final session (at which time she got her indictment).

David remembers that attorney Mahaffey told him that Cook had offered to dismiss the criminal indictment if he would drop the civil suit against her and Hines. Later, Cook told Attorney Mahaffey that before the Raid, she did not have enough information to prosecute David, but after the Raid on November 21st, she did.

Just a couple of weeks later, the Granada Forum episode began. The Gunderson/Hilder plan, using Annie Bates and J.C. Harding to entrap David, was set into action. But there was plenty of time to prepare Harding's testimony for David's trial and be sure he got it right.

Does it help or hurt to get angry? Whom the gods would destroy, they first make angry.

TWENTY-TWO *let's try to mitigate our anger*

On May 24, 2006, a couple of months after we hired Attorney Dennis Riordan as David's appellate counsel, he filed a motion for a new trial, I sent a letter to David:

Dear David, If I had to endure what you have undergone, I'm sure I couldn't have done as well as you have. Again, you amaze everyone with your focus. Relapses are normal. I let everyone know how upbeat you remain in spite of the foul, evil treatment you suffer on an hourly basis. But, little-by-little we reveal the truth, and we move closer to justice. No one can be part of the scam perpetrated by the wicked villains currently in control of this and many other governments without forfeiting part of their humanity. For some, only God will punish. Those who are amoral know no honor; they only slither and strike when it's opportune. For you to endure until the ranks of the valiant begin to increase is your great challenge. On the radio, you have been likened to "David and Goliath." With a slingshot, you slew the giant. But before we talk about developments let me share with you this bit of observation on anger.

Anger is "an emotional state that varies in intensity from mild irritation to intense fury and rage," according to Charles Spielberger, PhD, a psychologist who specializes in the study of anger. Like other emotions, it is accompanied by physiological and biological changes; when you get angry, your heart rate and blood pressure go up, as do the levels of your energy hormones and adrenaline.

"Anger can be caused by both external and internal events. You could be angry at a specific person (such as a coworker or supervisor) or event (a traffic jam, a canceled flight), or your anger could be caused by worrying or brooding about your personal problems. Memories of traumatic or enraging events can also trigger angry feelings.

"The instinctive, natural way to express anger is to respond aggressively. Anger is a natural, adaptive response to threats; it

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inspires powerful, often aggressive, feelings and behaviors, which allow us to fight and to defend ourselves when we are attacked. A certain amount of anger, therefore, is necessary to our survival. On the other hand, we can't physically lash out at every person or object that irritates or annoys us; laws, social norms, and common sense place limits on how far our anger can take us.

"People use a variety of both conscious and unconscious processes to deal with their angry feelings. The three main approaches are expressing, suppressing, and calming. Expressing your angry feelings in an assertive—not aggressive—manner is the healthiest way to express anger. To do this, you have to learn how to make clear what your needs are, and how to get them met, without hurting others. Being assertive doesn't mean being pushy or demanding; it means being respectful of yourself and others.

"Anger can be suppressed, and then converted or redirected. This happens when you hold in your anger, stop thinking about it, and focus on something positive. The aim is to inhibit or suppress your anger and convert it into a more constructive behavior. The danger in this type of response is that if it isn't allowed outward expression, your anger can turn inward—on yourself. Anger turned inward may cause hypertension, high blood pressure, or depression.

"Unexpressed anger can create other problems. It can lead to pathological expressions of anger, such as passive-aggressive behavior (getting back at people indirectly, without telling them why, rather than confronting them head-on) or a personality that seems perpetually cynical and hostile. People who are constantly putting others down, criticizing everything, and making cynical comments haven't learned how to constructively express their anger. Not surprisingly, they aren't likely to have many successful relationships.

"Finally, you can calm down inside. This means not just controlling your outward behavior, but also controlling your internal responses, steps to lower your heart rate, calm yourself down, and let the feelings subside."

Turning to the IRS issue with fines and penalties based on lies, treachery, incompetence and debauchery (in the amount of \$1,700,000) and for an income tax based on guesswork and floating straws (in the amount of \$2,000,000) it shows the precision and exactness of their "fair, voluntary" tax code.

My, Oh my! Isn't this a system to honor and defend? In addition, you and many others know that not a red cent goes to services as believed by the vast majority of Americans. It all goes to paying interest to the International Banking Cartel—every last-cent. Don't worry, Dave, we'll take care of this. No guarantees, but I wouldn't put all my money on the IRS winning.

Now as I told you on the phone, I have been on the air and am reaching thousands of people. If they're so "dumbed down" by the media and politicians that they can't tell light from darkness is another issue. Also, a growing number of people share our concerns—you are a celebrity among many people. Act the part, David. Don't let the guards or others think of you as anything other than a righteous victim of an unjust conspiracy.

As you know, Swisher is in the sewer. We are piling on more and more—no, heaping more—truth on him than he can bear. More organizations are throwing him out. We're involved with a Congressional movement of which he's becoming a "Star." Also, his buddy, Walt Lindsey, the former Regional Commandant for the Western Division of the *Marine Corps League* is now in jail. We're investigating him now, and he may have committed felonies too. Apparently, he is also a fraud like Swisher. I'll keep you posted as we expose the criminals one by one. This takes time, but we are relentless and growing stronger.

Do as I say, Dave! Remember, Mom and I love you deeply and are so proud of you. I know you won't let us down by letting this captured [overthrown, socialist] government destroy you. Our prayers, along with now thousands of others, are constant. Uncle Kenny, Aunt Betty, Douglas, Rod, McLamb, Wes, Lou and so many others remember you in their prayers every single day.

I'll be going on radio Thursday afternoon. The topic is Stolen Valor and pinning the tail on Jackass Swisher. Love,
Mom and Dad.

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Exposure may be our only weapon to right a wrong. The haunting question is, "Are there enough people concerned who will help."

TWENTY-THREE MEMORANDUM TO THE NATIONAL MARINE CORPS LEAGUE

Once Joe Volk (the legitimate combat marine) learned of Swisher's fraud (in June 2005), he was incensed. The evidence about Swisher was overwhelming. Volk confirmed the hoax and went after Swisher unrelentingly. In response, Swisher waged an offensive campaign against Joe Volk and others who were awakening.

Swisher (as the Sgt Lanahan League Commandant) managed to throw Volk and a couple others out of the local Detachment because they challenged his credentials.

An appeal went to National Headquarters in Washington D.C. I worked with Joe Volk participating in Swisher's exposure. I sent a memorandum (2006) to the National Judge Advocate, Vic Voltaggio, of the Marine Corps League about PFC Elven Joe Swisher:

I. FACTS: In 1954 Elvin Joe Swisher joined the United States Marine Corps and was discharged in 1957. His tour of Foreign Service occurred at Camp Fuji, Japan, from March 4, 1955 till May 6, 1956. During his service he rose to the rank of corporal; however, due to disciplinary action he was demoted to PFC.

In the 1980s Mr. Swisher was charged with raping, over a prolonged period of time, his three daughters. He was not acquitted of the charges, but the local district attorney, Dennis Albers, during the trial spoke with one of the jurors. Albers was sanctioned by the Idaho Supreme Court and barred from ever seeking public office as a district attorney again. No charges were ever again filed against Swisher.

After the death of his father (a decorated combat veteran), Joe Swisher began for the first time wearing Medals of Honor and seeking recognition as a war hero. His former wife of some 20 years (mother of the girls for which he had been charged with rape) stated to a former assistant prosecuting attorney, Wesley

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Hoyt, that she had never seen or heard in their entire marriage anything about any decoration he had earned or received.

Recently, a friend of former combat Marine Joseph Volk told him that he saw Swisher parading around in uniform with decorations—as recent as October 2005.

Swisher testified under oath at various hearings and/or trials that in 1953 he "was disabled by a hand grenade at the end of the Korean War." Later he revised his testimony stating that he received the injuries not at the end of the Korean War but as a member of secret Special Forces, a classified mission, whose job it was to free POWs. Upon cross-examination, he was asked how he could have been selected as a participant in this Special Forces mission at age 15 or 16 (he would have had to have joined the Corps at age 13). He changed his testimony admitting his true term of service. But then he said he had received multiple gunshot wounds in September 1955 in Korea. His ears, he said, were blown out in military action. However, his DD214 showed no VA claim when he was discharged on Feb 10, 1957.

In a Grand Jury hearing (April 16, 2002) he testified that he was merely four hours away from getting a doctorate, PhD in special education at the University of Idaho (Also he testified he received a BA from Central Missouri University and a master's from the University of Missouri). At another grand jury hearing, a couple years later (Feb 10, 2004), he now stated he was six hours away from his PhD dissertation.

Mr. Swisher testified that he had worked for his father's Company, Idaho Mining and Development (in Cottonwood, Idaho). Throughout all his various testimonies under oath, he said he had charged WaterOz Supplement Company (a local manufacturing company owned by David Hinkson) for "his services." He stated that there were several employees (varying up to 5) that worked for a company called Northwest Analytical. He denied at a grand jury hearing that he owned the company—said it was owned for the past three or four years by a man by the name of Doug Sellers. There has been no evidence or even an indication that Mr. Sellers owns the Company. In a GJ Hearing Attorney Nolan asked, "You brought a friend of yours, Doug Sellers? Swisher answered, "Probably." The person who he had

been attributing ownership to was "probably" merely a friend or associate.

In mid 2000 Swisher claims that Joe Volk introduced him to WaterOz. He mused that he had a friend by the name Arthur (arthritis) who went everywhere with him. The WOZ (WaterOz) products, he said were effective. He testified that his "pain diminished after WOZ treatment by 60-70 percent. He was enthusiastic about the effect the products had on him. He said that David Hinkson invited him for a tour of the plant, but that it was Jeri Gray (WOZ plant manager) who asked him to work for WOZ and to run assaying tests for the Company (to assure full compliance with FDA Regs).

In July of 2000 Swisher claimed he met David Hinkson for the first time, and until April of 2002 he had spoken to David about a dozen times. He said he initially did testing a couple of times a month to almost daily. He claims to have been paid about \$50,000 in 2002 for his tests (tests for which he charged \$10 each and at max did 3-4 per week, [but he testified that David owed him \$50,000 for the work he claimed to have done])."

Prior to this initial introduction to Swisher, Annette Hasalone involved David in a lawsuit.

This woman was being sought by the California police on felony charges. This Hasalone claimed David promised her half of the WOZ business for working as a sales rep (She had an 8th grade education—now calls herself Dr. Hasalone), and she sued David for some \$800,000. The jurors concluded that she should get \$95,000. David's father & mother loaned him, at the insistence of Brit Groom (David's lawyer), \$157,000 to cover the trial expenses. July 5, 2000, was the first time David's parent, Roland and Faye Hinkson, met Brit Groom.

Another employee, "Goose," stole fencing materials from David, was fired and then filed a whistle-blowing complaint with the IRS for apparent underpayment of income taxes (the reward sought was \$74,000). In February of 2000 IRS agent Vernon (alias Morgan) filed a civil lawsuit against David on behalf of the IRS. David in return sued him, other agents and the US

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Government individually for \$50,000,000. Thereupon, Vernon turned the case over to IRS' Criminal Investigation Division. Subsequently, the government agents called for a grand jury. It found no evidence sustaining charges against David, but certain agents of the IRS and Justice Department were adamant and relentless in pursuit of David. They continued calling grand juries until they got one that would indict. So they got a false indictment without a grand jury. This was the situation when Swisher became involved.

On July 6, 2000, David brought his family to his parent's home in Ouray Colorado; he towed his new boat behind his motor home. He met with Mr. Lane Mills (publisher of the Freedom Bee Newspaper of Montrose Colorado) to discuss David's purchasing a "4-sale" newspaper in Idaho. David said his intent was to expose government corruption.

Swisher started his assaying procedures during this time as evidenced by a Certificate of Assay dated August 13, 2000. On January 7, 2001 (about 2:30 pm), Roland met Joe Swisher and his wife, Barbara for the first time at Gilinda's Restaurant in Grangeville. David, along with his wife, Marie, and a friend (Rod Remelin), invited them all to dinner to meet Roland. Later that day Swisher and Roland had an amiable visit with David in his WOZ office.

On April 3, 2001, Brit Groom and his family came to Ouray as the guests of Roland and Faye Hinkson. Ten days later David flew to Moscow, Russia, on a business venture. Then Joe Swisher with Barbara came to Ouray as guests of Roland and Faye. Swisher had volunteered to assist in an investigation of a fraud occurring in Ouray. Since he claimed to be a friend of David's and since Roland offered to pay for his gasoline costs to come help, he would put them up in one of their townhouses. Swisher was on his way to New Mexico on a business trip. The following month David told Roland that Jeri Gray had given Swisher \$2,500 for expenses to stop in Ouray as we had agreed. Roland was furious. He called Brit Groom on July 19, 2001, telling him "that Swisher is a liar and a thief," that he is totally dishonest and deceptive.

It was after these incidents and communications that Swisher claimed that David trusted him totally and because of that trustworthiness wanted him to kill the people David was suing. Joe Swisher testified under oath that he had killed many people—too many; he said that such conversations with David occurred throughout the year 2001. Also, Swisher testified in the 2001 GJ Hearing that he had been paid in full and had had no problems with David from 2000 to 2002.

In March of 2002, Swisher said he increased testing "Because they want to be very sure that they have constant quality control." He testified that "Everything tested has been correct on the label," and that "David has superior products." But David swears that Swisher did the tests wrong after IRS Special Agent Steven Hines went to his home and talked with Swisher.

In Swisher's GJ testimony (April 2002 he couldn't remember if David made any threats against government agents. Yet a SWAT team surrounded David's house, cuffed him and took him to Coeur D' Alene before Judge Williams. The Judge released David on his own recognizance. Swisher testified that the last time he had contact with David was April 6, 2002. Mr. Swisher testified on February 10, 2004, that after the time David was arrested (from November 2002 to January 2003) that David considered him his "best friend." During this period of time David and several of his employees claimed that Swisher put cyanide in the potassium in an effort to sabotage the products. Employees stated the cyanide is odorless, but Swisher sniffed a sample of the contaminated product and declared it was cyanide. In fact, David dumped out 1,500 gallons of the product. In order for a mistake to have been made, one would have to have put in [55] gallons of cyanide. Swisher offered to provide Bromine for WOZ to cover up traces of the Cyanide. Also, other strange things began happening when Swisher gained access to the factory. Yet everything stopped once he was barred from the premises.

November is when Swisher's blackmailing began. It wasn't until January 4th that David announced to everyone at the Factory that Swisher was blackmailing him. Swisher was

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demanding 50% of WOZ (wanted to be a half partner) or else he promised to tell about the cyanide in the product. No cyanide is ever used at WOZ, but it is used in mining operations and assaying tests such as Swisher conducts. Swisher let the word out in September 2003 that if paid his fee, he would testify for David in his favor in a related, pending tax case.

Proceeding before the Grand Jury on February 10, 2004, Assistant United States Attorney Tom Bradley asked Swisher if there were any discussions with David about threats. Swisher said that on one occasion, prior to January 2003, David said to him:

"You are one of my best friends, if not my best friend." He said, "I want you to have that 'Complex' [the recreational, office building-worth over a million dollars] because I'm never going to do anything with it." He said, "You will have to finish it, but it's yours."

I said, "Yeah, that's nice of you, David."

And then it was about maybe two weeks later that he approached me again. He said:

"Look, you know, I trust you, and I depend on you," and so on and so forth, and he said, "I have given you all this property every day," and he said, "I will give you \$10,000 a head if you will kill the following people for me," and he said, "Everything will be taken care of."

The "Complex" referred to was a portion of David's 104 acres site with an attractive home and an \$850,000 three story building located in Grangeville, Idaho. Swisher had [thus] claimed a recreation center and 40 acres. He went on to testify that David "wanted me to try to make the concentrates for him...All this took place while Mr. Hinkson was out, while he was at home. He was not in jail at that time?

I have Diary with a notation that David as of March 19, 2002, would not even take a call from Swisher. After April 2002, Swisher claimed that David not only promised but, in fact, gave

him 10 acres behind the WOZ factory building. There is a canyon behind the factory owned by others, and there's only one acre-before crossing the canyon.

Later (January 14, 2005) under oath when cross examined about the now 20 acres he claimed David had given him and a "Patrol Road Grader," he said, "David broke off contact with me in January of 2003."

David has never owned a Patrol Road Grader but did own a Hulser Road Grader.

The next question asked was, "When he [David] gave you the twenty acres and road grader, it didn't have anything to do with soliciting anybody, did it?"

Answer-"No."

When asked if his prior testimony [April 2002] was true when he testified favorably for David, he said it was true "as I believed it to be at that time." He said that the first time David had approached him on the subject of threats "was right after he lost the jury trial, and the Jury had awarded moneys to the lady [Annette Hasalone]." In his sworn testimony under oath on January 14, 2005, he said it was after April 2002 ~~for~~ [that was] the first time that Swisher claimed David offered him money to kill people.

As evidenced on David's passport and other documents and affidavits, David was not in Idaho or even the United States for most of the time from June to November 3, 2002. In June, he was in Russia. On July 2nd, he brought his family and two Russian girls to visit Roland and Faye in Ouray Colorado. On July 4th, he took the Russian girls and family to Las Vegas. In July he went to Venezuela and then to New York. He was gone from Idaho for about five months in 2002. However, he invited a friend, Roman Ponomarenko, to come to the U.S. to tour his factory on October 10th, 2002. Then on October 19, 2002, David flew to Ukraine meeting with Roman to discuss purchase of a factory there. Also on October 12, David was introduced in Ukraine to his future wife, Tetyana. He wrote a check as an earnest money deposit for an abandoned water factory.

But shortly thereafter upon returning to the United States, he was arrested and ultimately convicted solely on the testimony

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of Elven Joseph Swisher's copious fabrications. Throughout November, David was in contact with Mr. Ponomarenko, who signed an affidavit saying that Swisher had been blackmailing David for some time.

During the time David would have nothing to do with Swisher and refusing to accept any calls. Jeri Gray, who was still the general manager, insisted that Swisher be kept on to test products. Her stated reason was that he needed him to testify on FDA issues (as he had done in the Grand Jury Hearing of April 16, 2002).

Brit Groom in 2001 introduced Richard Bellon to David. Bellon was a paralegal of whom David had accepted as a phenomenal legal expert. Bellon claimed he had a Harvard law professor who would be helping him.

He supposedly had written three books on IRS fraud, and according to David's testimony to Roland he was "the most knowledgeable legal mind in America." Of course, later all concerned parties, including nearly all employees, came to recognize that he was a charlatan, had plagiarized the books he claimed to have written, was an ex-convict and a big disappointment to David and his father, mother and wife. To a limited extent, Groom participated in an attempt to have David turn over half of his Company to Bellon. He had endeavored to get David to do whatever he asked. While in Jail in Boise Idaho, Groom and Bellon tried to get David to acknowledge a fraudulent contract. Bellon insisted that Swisher be allowed to get access to the Factory.

David announced over the loud speaker at WOZ that Swisher was blackmailing him or would testify that David wanted to hire him to kill the agents etc. Thereafter, no one, except for Jeri, would even speak to Swisher.

But at David's Trial, Swisher testified that in September or October of 2003:

David called me and said that he had a partnership with Rich Bellon, that he had talked to Mr. Bellon, and they wanted to hire me as a consultant to go out to WaterOz and look the facility over, make things safer for employees, and make things safer in

the product for the general public. . . . And in my discussion with David, I said, "Are you sure that Mr. Bellon is your partner?"

And he said, "Absolutely."

Roland Hinkson following the wishes of David, who had wanted Bellon and Swisher off the property, sent an official Notice of Termination to Bellon. Bellon was fired from WaterOz in November [This is incorrect. Bellon was not fired from WaterOz—he never worked for WaterOz. His job was to perform legal services for David's defense]. The following month, December 4th, Bellon, Swisher and others descended on the Factory armed with a TRO [temporary restraining order] from a local Judge, who later apologized for his indiscretion—he reversed his order prior to trial (which was later sustained). The culprits, Bellon, Swisher and others had lost and were barred from entering the WOZ facilities—but at tremendous cost to David.

David swore that during his Sentencing Hearing "Swisher gave me this affidavit [saying he had never gone to the WaterOz factory]. He knew he had to say that he came in July because this affidavit swears that he never came out to the factory at all between August and November. Because if he had come to the factory, it would prove he is the one that made the testing wrong and this affidavit proves it, and he was trying to get a lot of money."

Additionally, Swisher testified he has top secret documents to prove he was a genuine war hero. The facts prove that Swisher had open heart surgery immediately before the alleged time that David was supposed to have been such a close confidant and trusting a man who was incontinent, in a wheelchair, unable to perform lab functions, who he said he spoken to David a dozen times before the first Grand Jury.

He claims to have been awarded the Marine Commendation Medal before Congress created it. He claims he was awarded the Purple Heart even though the only injuries he sustained were in an automobile accident in the State of Washington. The National Personnel Records Center verified that he is a fraud. Their thorough investigation revealed that Mr. Swisher forged and

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falsified his records and involved various government agencies in an attempt to legitimize his fraud.

Swisher defrauded the Veterans Administration by doctoring documents, making claims for moneys that he was not entitled to receive and medical benefits (reserved for members of the armed forces who suffered injuries while in defense of their Nation). There is no record of his having ever been involved in any classified operations. His claim to having been awarded a second DD214 was recorded after David was jailed—only a DD215 can substitute a DD214. After Swisher's fraud was exposed, he was promoted by superior officials to the Regional Board of the Marine Corps League. Thereafter he ran for the position of Judge Advocate—but lost.

The Federal Court, 9th Circuit of Appeals (January 24, 2005) under the auspices of Judge Richard C. Tallman, advised the Defense that it "would take considerable time to check Swisher's documents and it would 'confuse' the Jury." He admitted that the government's case rested on Swisher being a combat veteran; regardless, he denied the Defense from introducing Swisher's fraud to the Jurors. He said, "Swisher's lies under oath didn't render the Trial unfair." The government didn't dispute Swisher's fraud of the VA, and they deliberately failed to correct false impressions about Swisher.

Former Marine Joseph Volk, who was once a friend of Swisher's, had personally delivered a year ago to the VA Hospital in Spokane Washington the same document showing Swisher's fraud; then again, he had delivered the same information. Yet no action has been taken.

Instead the government informed the Jury that Swisher was a Combat Veteran who fought in Korea and had learned there "how to kill." The Court denied the Defendant's motion for a mistrial after the Defense learned that the government knew of and had hidden from the Defense the evidence of fraud.

Judge Tallman concluded that Swisher's "powerful testimony about killing was impressive." Besides, he said the documents were merely "rank hearsay." Even though the Defense asked for and Defendant Hinkson insisted on a mistrial (due to falsified documents), a mistrial was denied. In

determining how to handle the request for mistrial, Judge Tallman ordered the Jurors out of the Court Room. Therefore, from the evidence it appears the government was as guilty as Mr. Swisher.

II. QUESTION:

In addition to the evidence gathered by the Marine Corps League and the Purple Heart Organization for fraudulent claims, was Elven Joseph Swisher involved in any other misdeeds or treachery?

DISCUSSION

1. Obviously, if the testimony and facts presented above are accurate and truthful, there is no question that Mr. Swisher has committed numerous felonies. Falsely testifying under oath is destructive to any judicial determination.

2. To defraud the governments of the State of Idaho and United States carries serious consequences. To parade as a war hero stealing the honor and credibility of those who have legitimately served their nation is despicable.

3. To take money and services under false pretenses is criminal.

4. However, to lie for financial gain with evil intent only to destroy another fellow human being is indefensible and unpardonable.

"III. CONCLUSION:

Although Elven Joseph Swisher is an elderly man, the grief, heartache the loss of years with the threat of a lifetime in solitary confinement for his victim does not engender pity for such a person. From his past behavior, it appears that there is no rehabilitation that can make society safe from him. He continues to parade as an honorable man and has become somewhat as a master of deception. This man is either a sociopath or just plain evil. Certainly to have him parading as the product of the Marine Corps and for it to be condoned is shameful."

On December 1, 2005, Joe Volk called me to let me know that there will be a National Board of Inquiry held on the Swisher Case. After all the

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calls made and disappointments we suffered, finally they will do something.

Faye and I knew that David's entire Case hinged on overcoming the lying testimony of just one person, Elven Joe Swisher. We knew that on appeal we would likely get about 20 minutes to argue our case. Of all the violations of David's rights under the *Constitution* we had to choose the most egregious to argue. David's life was worth only twenty minutes or so of the Appellate Court's time. However, we did observe that at least one judge and probably two at the appellate court level, were rational, thorough and honorable. No shoddy or cursory glossing over the facts in an attempt to sustain the Ruling of Trial Court Judge Tallman.

A lot of people were outraged, but was there, in fact, justice?

TWENTY-FOUR *daughter describes swisher as a sociopath*

On December 7, 2008, I received a letter from Joe Swisher's daughter, Cheryl; she had seen my article on my website:

Mr. Hinkson, Thank you for your insightful article regarding the numerous criminal activities of Joe Swisher. As one of the daughters molested and abused by him, and in fact, his only daughter by blood, I applaud you.

It is unthinkable that he may be allowed to escape justice yet again, and let me assure you that he is held in the worst regard by his immediate family with the exception of his current wife with whom I attended high school. It is my belief and the belief of mental health professionals with which I have had contact that Joe Swisher is a sociopath, in modern terms, "antisocial personality", which would support your assertions that he takes no responsibility for his wrongdoings and, in fact, always blames others if, and when he is accused. I fervently hope his sentencing includes the maximums allowable by law although even this would fail to provide justice for his lifetime of unrelenting criminal activity and numerous wrongs to individuals and society. He is a blight upon this earth. . . . I'm very sorry about your son. Cheryl.

I responded:

Dear Cheryl, Thank you so much for your honor and strength as displayed in your letter. . . . I would like to share your letter with others, but I certainly can understand any reluctance. Your statement could help add credibility to all the evidence we've worked to acquire. I have enough material to write an entire book about Joe. . . . The government still wants to reward Joe if possible. I would like to send your letter to the sentencing judge before December 12th, if you'll permit me. Regardless, thanks so much. Roland

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I got an immediate reply:

Hi Roland, Of course, I will help you in any way I can. As you can imagine, I also could easily write a book about Joe Swisher's exploits and depravities. I only lived with him for a few years but we children lived in terror of his violent temper and never knew when we would be visited in the middle of the night to provide him with sexual services.

The first time Cheryl and her sisters told their stepmother about Swisher's behavior, they and her stepmother were punished brutally. She said: "The first time we told her about the night visits, word got back to him and she was beaten severely while we huddled downstairs terrified that he would turn on us and afraid for my stepmother's life. So much fear."

She said that "Prior to forcing the issue for the second time with my stepmother—in an attempt to make the incest stop—my stepmother, four girls, a boy and two cats all fled to California in the middle of the school year immediately after the sheriff took our statements—to try to avoid his wrath. I don't believe any of us wanted anything bad to happen to him—we were children. We just wanted it to stop.

I naively thought that he would surely apologize [and] promise never to do it again, and we would all become a happy family. I still loved him, and it never occurred to me that instead he would turn on us and accuse us of lying. He actually asserted that this was an attempt on our part to gain control of his mine.

At one point in my life in my mid-twenties, when I realized how deeply he had scarred me and did not have the means to afford counseling, I looked into filing a civil suit against him, to help defray these costs. But in Idaho (although not in many other states) the statute of limitations for this had passed.

He's an intelligent and highly manipulative man, and I wonder if he also knew that at the time he was charged with incest crimes against his daughters, Idaho was one of only two states in the country in which the burden of proof was upon us. We each had to pick one day when we believed we were molested, and the jury was instructed repeatedly that they were

not deciding whether, or not, he had actually committed the crimes but rather whether or not we could prove it occurred on the one day each of us had to provide.

Naturally, my father secured several hapless acquaintances to provide him with alibis, and as you are aware, had letters written to the local paper and thousands of flyers delivered to people in the jurisdiction proclaiming his innocence. Hence, that travesty. Yet, I was informed that a few years later the law was changed in Idaho and perhaps we were able to do some good for others.

Most of Joe's children adopted or otherwise have changed their surnames in an attempt to distance ourselves as far from him as possible. My older brother not only changed his name but that of his entire family. None of us has contact with him with the exception perhaps of my younger half-brother. The strain of the emotional havoc we all went through and subsequent attempts to heal have distanced us siblings from each other, but I know that my younger brother also was deeply hurt and betrayed by our father and is also not close to him. I have been told that my brother's wife has forbidden any potential children from ever being alone with Joe—a wise move.

I know also that at one point my father, who has a background in social work of some kind, was acting in a counseling type capacity at one of the churches in Cottonwood, Idaho. . . . My stepmother was approached by a young girl, and her mother stated that Joe had molested her and [was] looking for some help in getting through it. My stepmother told me that she tried to get them to press charges, but the girl's mother felt strongly that she could not press charges in any capacity related to the church.

I know that when I was in my teen's my father's mining associates with the help of my older brother tried to bring charges against him for, I believe embezzlement and fraud. My sketchy understanding of this suit is that all charges were dropped when a key witness, Speed Seaman from Nevada, was in an auto accident on his way to Idaho to testify. His wife was killed, and in his grief, I believe he no longer had the strength for the trial. He was my father's chemist at the goldmine, and I was

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told that he had proof that my father was falsifying ore samples from the mines under his control to make them appear richer in precious metals and thereby attract investors.

I do not know you or your son; and again, I am so sorry for your pain and loss. I have no idea what the truth is in your case, but I do know that my father has a long pattern, a lifetime, of destroying others to get what he wants as well as classic "delusions of grandeur;" so I have absolutely no doubt that he is at work in your life as well.

Once again, I am happy to help you in any way I can. He will never stop hurting others; he doesn't even acknowledge that he ever has. I am now in the medical profession, and as I've expressed before, I believe there is clear, irrefutable evidence that he has antisocial personality disorder. Antisocial, by definition, means he should not be allowed to be in society for the good of everyone. He can and will continue to manipulate from prison if justice is ever served, but at least that harm will be mitigated.

I have had to stop several times while writing this—it always brings pain. However, I try to never shy away from it either; silence won't help anyone. My past has given me insight into helping others that I encounter that have been raped, beaten, molested or tortured. This helps me to be a more compassionate healthcare provider and to connect with people in need. It will never be as if these things never happened. I will never get my innocence or childhood back. Yet I have succeeded despite my father. I live and love and contribute to the betterment of society. And that's enough.

You are welcome to send out and publish my correspondence. My father can still hurt me; but I'm not afraid of him anymore, and I will do anything in my power to help prevent him hurting others. He has caused more than enough suffering for a lifetime.

I wish you and your son and family the best, and please let me know if I can help further.

Cheryl

TWENTY-FIVE *swisher gets convicted*

Joe Volk called me with news he had just heard. The news was worth making the two thousand mile roundtrip. A hearing was to take place by the National Hearing Board of the Marine Corps League at the Red Lion Hotel in Lewiston, Idaho, on April 1, 2006. This was the first hearing in twelve years by the National Marine Corps League.

Former marines in full dress packed the Red Lion lobby. Faye and I milled around observing and eavesdropping where ever we could. No unauthorized personnel were allowed in the meeting room—we weren't authorized. However, we got periodic reports throughout the day. The hearing lasted over eleven hours.

Members conducting the hearing flew in from eastern cities (Washington D.C. Florida and Pennsylvania). The National MCL had gathered over two-hundred pages of documents prior to the Hearing. Numerous other former United States Marines from various locations attended—possibly as many as one hundred.

Late in the hearing, Swisher heading for the men's room walking past me and Faye. When he walked past us, he conspicuously displayed on his black leather jacket a Purple Heart pin. But when he came out of the men's room, there was no pin attached. He could see that the NMCL directors were not buying his lies.

On April 8, 2006, National Judge Advocate Vic Voltaggio sent an official letter to Mr. Swisher affirming the findings of the Board:

"(1) You have submitted for the record documents (DD214) found ... to be a fraudulent ... per the National Personnel Records Section St. Louis Missouri: Verdict—Guilty;

"(2) You did adorn Department of Defense Ribbons and Medals of which you were not awarded ... Verdict—Guilty."

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"Pending an opportunity to appeal, the National MCL would notify Swisher of the verdict at a later date. The verdict: By a unanimous vote of the Hearing Board according to the MCL Administrative Procedures [declared that Mr. Swisher be] "EXPELLED from the Marine Corps League for Life."

Subsequently the Purple Heart Organization, VFW etc. threw him out of their flocks. He had dishonored all service personnel past and present in America.

However, having America know that he is a cheat and fraud didn't set well with Swisher. He clung to the story he'd been telling for so long. Now he'll show not only Faye and me, Wes Hoyt, Joe Volk, Greg Towerton and Don Harkins (now deceased) of the *Idaho Observer*, but everyone involved in his exposure.

In the April, 2006 edition of *The Idaho Observer*, Don Harkins ran my story of Swisher's banishment with a lead in by Don Harkins. Don, the editor, published the following:

After the article was published, Swisher sued [for \$5,000,000] a large class of people [including the U.S. Marine Corps—a total of 26 entities—alleging libel, slander and defamation; included in that class was Roland Hinkson, Harkins, David's attorney, Wesley Hoyt, and members of the Marine Corps League.

Last year, Judge Edward Lodge dismissed most of the allegations and most of the defendants. But, he allowed Swisher to proceed with the defamation suit against Roland Hinkson, Hoyt and Harkins [That decision cost us additional thousands of dollars—the system does protect their participants].

Swisher's claim against Harkins was his comment in the lead wherein he refers to Swisher as "a pathological liar." It would appear that a federal prosecutor, a federal jury and a federal judge have entered a verdict

supporting Harkins' contention by finding Swisher guilty on all counts of living a lie, accepting benefits and wearing false honors for decades.

The Federal Department of Justice ignored our persistent pleas until Wes Hoyt enlisted the aid of a friend working in a strategic level of the Bush Administration. Only then, without ado, was there action; and Swisher was indicted for four of his many crimes.

The Marine Corps News (on September 16, 2007) published an article about "Five Fakers." The fifth was E. Joe Swisher from Cottonwood, Idaho: "The lie," the *News* reported, was that "Swisher claimed he was a Korean War hero who took part in highly classified, secret missions to free U.S. prisoners of war. He claimed to have earned the Silver Star, Purple Heart, Navy and Marine Corps Medal with Gold Star, and Navy and Marine Corps Commendation Medal with Bronze 'V.'"

Two years and two day later, on April 8, 2008, *The Idaho Observer* published the following article:

The two-day trial of Elvin Joe Swisher concluded today with the jury's guilty verdict on all counts of defrauding the Veterans Administration of hundreds of thousands of dollars and Theft of Valor, claiming Swisher had no right to wear US military awards and medals.

The unanimous verdict in Judge Lynn Winmill's Idaho District Federal Court also proves that Swisher perjured himself in the 2005 murder-for-hire case of David R. Hinkson, of Grangeville. As the government's chief witness against Hinkson, whom Swisher claimed attempted to hire him to kill two federal agents and a federal judge in 2004, Swisher presented the court with documents proving he was a combat veteran from the Korean War Era—the same documents that are now known forgeries.

It was Judge Winmill who initially signed the arrest warrant without an attached affidavit and ordered David held for over a year in jail. He later recused himself and got a promotion up the ladder.

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Swisher, who in the 2005 Hinkson case, testified of his own courage and that he was entitled to wear the Purple Heart and a double award of the Bronze Star for exceptional bravery, testified yesterday of his own cowardice and that it was the affair with the "old lady" of his commanding officer which caused him to be court-martialed.

The trial that concluded in Boise today showed overwhelming evidence that Swisher was never involved in combat, never went to Korea and that his claims of valor were completely false and fraudulent.

In the earlier case, Swisher testified Hinkson wanted Swisher to murder three federal officials because Swisher was supposedly experienced in killing people from his military career, and because, as Swisher said, he had killed so many people in combat. "As it turns out, all of this was a lie," said Wesley W. Hoyt, attorney for Hinkson. "Worse than the lying was the U.S. government's complicity in Swisher's perjury in the 2005 Hinkson case," commented Hoyt.

In January 2005, Swisher fooled Federal Judge Richard Tallman and a jury of 12 Idaho citizens with his false and sometimes salacious accusations against Hinkson. At issue was a charge that Hinkson supposedly solicited Swisher as a hit man to murder selected government officials. Instead of solicitation, Swisher used his imagination to create a murder-for-hire fiction that never occurred in order to put Hinkson in prison.

Swisher had previously demanded that Hinkson sign over one-half of his WaterOz business to Swisher or he promised he would testify against Hinkson and see him "rot in jail for the rest of his life" explained Hoyt. "In the Hinkson case, the Judge would not allow the jury to hear about Swisher's forged documents or Swisher's plot to put Hinkson in prison for the rest of his life."

In June 2005, at Hinkson's sentencing hearing, because Judge Tallman was incensed that anyone might threaten the lives of federal workers, he made an example out of Hinkson by giving him the maximum sentence. Hinkson has been in jail/prison since 2004, facing a total of 43 years in solitary confinement in maximum security at Florence, Colorado, branded as a terrorist. "The fact of the matter is that Hinkson never threatened or

solicited anyone," said Hoyt, "It never happened. But, because of the pride of the government officials, another innocent man has been rotting in jail for years."

The U.S. Attorney's office allowed itself to become embroiled in Swisher's lies, and used Swisher as their confidential informant against Hinkson—they knew Swisher's heroism awards were fraudulent and his government documents were forged.

"As an example of the arrogance of the U.S. attorneys," Hoyt pointed out when asked why he did not disclose the nature of the forged documents, for David's defense, to counsel in advance of the 2005 Swisher testimony, as required by law, U.S. Attorney Michael Sullivan, of the Anti-Terrorism Unit of the U.S. Attorney's Office in Washington DC, said:

"Why should I?"

"The reason why is because that was his job; and that was the law, and U.S. attorneys are not above the law. The U.S. attorneys in the Hinkson case need to be investigated for vindictive prosecution," said Hoyt.

Hoyt, an attorney of Clearwater, Idaho, said of his client "he never had a chance. The deck was stacked against him from the beginning. Everyone on the government side hated Hinkson because he was branded a tax protestor. At the time, Swisher alleged Hinkson was soliciting him to murder three feds [but] Hinkson was suing.

Swisher is scheduled for sentencing June 26, 2008. He faces up to 20 years in prison.

Note: For those who have been concerned about Dave Hinkson, he has been in maximum security and in solitary confinement most of the last four years. At first doing time under those circumstances had been extremely difficult for him, as it would be for anyone. But, he has had nonstop support from his family and a close circle of friends. That, combined with his cases moving forward with a hopeful glimmer here and there, he has been doing much better of late, according to his father. He kept his brilliant mind occupied, he has been productive and his outlook is positive. The Swisher's conviction has brought on a

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new wave of hope that his release is inevitable—it's only a matter of time now.

In summary, Swisher's conviction resulted on all charges against him from: (1) wearing unauthorized medals, (2) perjury by making false statements, (3) forgery by falsifying his discharge documents and (4) theft by receiving veterans' benefits without entitlement. He was represented by two lawyers—M. Lynn Dunlap and Brit Groom. Yes, the same Groom who represented David and with his assistant, Rich Bellon.

Swisher had another lawsuit already prepared against me before the government convicted him. He was so confident he would win that he mailed it an hour before the Jury returned with his guilty verdict.

But since the government convicted Swisher, he got a new attorney, Chris Bugbee of Spokane Washington, to execute an innovative strategy: he accused Britt Groom and M. Lynn Dunlap, his former trial attorneys, of negligence or conspiracy.

Swisher testified in an affidavit, "I was enormously dismayed to learn only a few weeks before my criminal trial that both documents [the phony DD-214 and the Woodring letter—with the forged signature] had disappeared from the safe in Mr. Gloom's office with no explanation." He said that he and Groom agreed for Groom to keep possession of documents." Again grabbing at straws, Swisher just couldn't admit his fraud. But how could he? He would be denouncing his entire being. His entire life was a fraud.

He then claimed that Groom held the original DD-214 in safekeeping. "Nevertheless," he said, "I was assured by my lead attorney, M. Lynn Dunlap, that Mr. Groom would be called as a witness in my criminal trial to testify [to] the authenticity and existence of both."

Finally, after a long time-consuming and expensive road, Elven Joe Swisher was arrested (July 2007) and was convicted on all four counts on April 9, 2008. But still, after postponement, he awaited sentencing

(originally scheduled for March 31, 2008, but was postponed until September 29, 2008).

The Marine Corps Times listed Swisher as one of the "Five newly exposed fakers ... He could face up to 20 years and 6 months in prison along with a \$755,000 fine....." Yet, what he actually got was a slap on the wrist and a few hundred dollars fine.

In spite of Judge Winmill receiving Cheryl's plea for justice, we ourselves were shocked and dismayed to learn that he only slapped Swisher's wrists. Compare how, based solely on Swisher's lies and perjury, David went to solitary confinement in the most severe prison in the United States.

On January 6, 2009, *The Lewiston Tribune Online* published the following article:

BOISE - Cottonwood resident Elven Joe Swisher was sentenced to a year and a day in prison Monday on four federal felony charges related to making false claims about his military service.

Swisher, 72, was convicted in April of wearing several unauthorized military medals, two counts of making false statements about military service that were intended to increase the amount of veterans benefits he was eligible for, and theft of government funds for using false testimony and a forged discharge form to obtain disability benefits.

Swisher was known in recent years in the area as a spokesman for the Marine Corps League, Sergeant Major Linehan Detachment. He served two terms as commandant.

U.S. District Judge B. Lynn Winmill sentenced Swisher to six months in prison on the charge of wearing unauthorized medals and a year and a day on each of the other three counts. All will run concurrently, meaning the longest he would serve would be a year and a day.

He also was given credit for time served. He has spent some time in jail awaiting trial.

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Swisher was ordered to report to the Bureau of Prisons on March 4, and Winmill recommended he be placed in a facility that can accommodate his medical needs, in the federal prison at Sheridan, Wyo., or at the state prison at Cottonwood.

Winmill waived fines because he said Swisher didn't have the ability to pay them, and said restitution will be ordered at a later date. A special assessment of \$25 on the first count and \$100 on each of the other three was ordered paid immediately.

Swisher also was ordered to serve three years on supervised probation after his release and not to possess firearms or other weapons. His benefits are to be turned over to the court to pay all assessments and restitution. He also was ordered to provide financial information to his probation officer, to submit himself and his residence and vehicle to searches and to undergo mental health treatment.

Swisher went to Terminal Island federal prison on March 4, 2009, and sought within three weeks an "Emergency Motion for Proper Medical Care." He wants a hospital bed. He thanks the Court (Judge Winmill) for trying to insure his well being (to make him comfortable).

However, Swisher complains that he needs to sleep in a semi-upright position, and that he suffers from sleep apnea and a deviated septum. Also suffers from acid reflux disease when lying in a prone position. He complains that his throat burns, inflammation of the throat, causing him to gasp for air. He wants shoulder surgery and claims to have severe back problems. He complains that he's not getting the same prescribed meds that he's used to getting. He also complains that the guards took him to the dentist at the time he had an appointment with his lawyer. He complains further that if not given a prescribed hospital bed or recliner, he fears he will suffer permanent damages which could include stroke, physical and/or brain damage or worse. He complains that it was wrong to send him the Terminal Island, California, prison facility because they can't handle his medical needs.

The staff put Swisher in a cell for suicide watch on March 25, 2009, and he remained there under watch for 21 hours. He put his mattress on the floor against the wall so he could rest. A supervisor told him that he could not put mattress on the floor but could roll up the mattress on the "cold, solid-metal bunk bed and lean against it." At home, Swisher says he has a hospital bed and recliner to assist him to sleep in a semi-upright position; he would like to bring it to the prison.

He didn't mind propelling David into a dungeon to sleep on an inch thick mattress on concrete in solitude for 15,600 days, but he pleaded for mercy when he spent 21 days in an even nicer environment. Yet, I learned that he went to a halfway house in Coeur d' Alene, Idaho, after two months at Terminal Island.

Don't underestimate Swishers' creativity. His biggest failure is that he thinks everybody is stupid. A glib tongue and wild fantasies may fool many but not everyone.

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TWENTY-SIX *swisher's tall tales of his heroism*

In his booklet, *A Marine Remembers*, Swisher explains why he was distinguished with so many coveted honors. His nauseating tale of heroism reads almost like a TV episode:

I believe in late Feb of 1955. I was transferred to Japan. I was assigned to George Company, Middle Camp Fuji, Japan. I received high proficiency ratings including a special incident which occurred in September or October of 1955. In Sept 1955, approximately 130 Marines were called together for a closed auditorium type meeting at Middle Camp Fuji, Japan. The criteria for selection was (1) we were all expert riflemen or sharpshooters, (2) we each had received advanced hand to hand and house to house combat training and (3) most were combat veterans.

We had been selected as volunteers for an important combat mission, but if any chose to leave, we should leave immediately (there were armed guards at every exit). My reasoning at this point, was it was probably some type of training exercise, and to leave would be impossible or appear cowardly.

My concerns did grow somewhat when we were segregated from all other military personnel. We were issued new weapons with expert riflemen being given a choice of weapons (something no one had ever heard of in the Corps). I striped the Browning of the tripod legs and other nonessentials and threw them away. No one even blinked.

Late one afternoon, we were all subjected to a continuing shot line. Everyone received five inoculations in each arm. At this point, we knew it was serious as we were headed for a different more contaminated environment. A few days later, at night fall, we were trucked to an airfield, boarded a troop transport aircraft (a C-something or other). About an hour later, while in transport, we were told the mission was aborted and we returned to our temporary quarters. Then about twenty four

(24) hours later, we were once again airborne and this time did not abort. Several hours later we landed at an airstrip which some thought might be Formosa (Tai Wan). Other Marines thought we were near Seoul in Korea. We were immediately ordered to board Marine helicopters. I had previously been assigned as First (1st) Squad Leader, First (1st) Platoon. The helicopter had a pilot, co-pilot and limited room for transport. In our helicopter, I can't seem to remember if we were limited to six or eight Marine personnel. We were quickly airborne and remained in the air in excess of one and a half hours. There was low cloud cover and we flew close to the ground.

We were put down and assembled on what appeared to be a rather large plateau with a prominent hill approximately 3,000 to 4,000 yards in a southerly direction. We came under no hostile fire at this time.

The highest ranking Marine with us was a Captain (the Bird Colonel didn't come). The Captain quickly informed us that we were the first Marine assault group via helicopters. Our mission was simple. We would move forward to the prominent hill where Third Platoon would take up a supportive position on the hill and hold two heavy (water jacketed) machine guns in reserve.

The remainder of the Company would move southerly beyond the hill to a small town, take it and set up and barricade for a siege. He said we would be creating an "incident". The Captain also commented that he anticipated minor, if any, resistance at the town. Once taken, Third (3rd) Platoon would join us.

Following this briefing (no question or answer permitted), we began our approach to the prominent hill. When we were approximately 150 yards from the hill, it came alive and we received heavy machine gun mortar and small arms fire. Cover was near impossible and I believe our officers were killed or gravely wounded within the first few minutes.

I noticed a small ditch parallel to the main hill about 20 yards in front and left of my squad. I ordered the First (1st) Squad to follow me and ran to the ditch cover. Our first sergeant was already there. I believe his name was Sergeant Lenin. I told

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him I would take what was left of my squad and try to flank the enemy hill position, coming up on them from the rear. He gave me the thumbs up and my squad and I began crawling as fast as we could down the small ditch. After approximately 200 yards, I observed a small depression that appeared to give some cover against an easterly flanking fire from the hill. We continued to crawl. Paralleling the enemies east flank, which I observed was a very steep side of the emplacements and probably had few (except spotters), if any, defenders thereon.

We finally reached the rear or southerly end of the hill. From our position, we could see a town perhaps 5,000 to 6,000 yards in a southerly direction. There appeared to be no roads connecting the hill position with the town. The terrain, although a bit hilly, appeared to be open. We moved closer to the southerly hill. We could hear heavy machine gun and small arms fire continuing.

We located a rear gun position with a mortar and at least two dark green clad persons manning it. I rolled over to give directions to my squad and discovered we had shrunk to four. I motioned the others to follow me and crawled closer to the rear gun position. The other Squad members took positions to my left and right. When I reached a position directly under the gun position and within 20 yards, I rolled over on my back, took a Mark IV hand grenade, removed the pin, let the handle flip off, counted to three and heaved it uphill. It exploded in the gun position.

Then, with the wind mostly to our backs, I threw as far as I could, a smoke grenade. The four of us moved up the hill and began shooting any target of opportunity. We would move a few yards, kneel and continue fire. Many of the enemy didn't see us, as mostly were offered side and back shots.

The enemy fire was mostly directed at our pinned down Company members. I felt the ground heave and the Marine on my right just below the brow of the hill and myself were thrown back by what I assume was a concussion grenade.

I noticed that things had gotten a whole lot quieter (due to ear damage) and my knees, right leg, right shoulder and face hurt like blazes. I got back on my knees and continued to fire. I could

hardly hear the Browning and a four round burst felt like they were tearing my right shoulder off, but there were lots of targets to put down. I could see small puffs of smoke from the weapons of the enemy fired towards us. I fired at them first before moving on to other targets. Finally I could see, perhaps 100 yards ahead, one of the main frontal machine guns firing on what was left of our Company as tired, bloody, deaf and my vision was somewhat blurry, but I knelt down, cradled the Browning and went to work. With the help of the two Marines on my left, the remaining enemy positions went quiet. Four other enemy came over the brow of the hill moving from east to west. They were quickly downed by our group.

I looked around at the other members of my squad, we exchanged glances and moved forward perhaps another 50 yards. We could see Marines from below the hill headed our way. I sat down in an enemy position and checked my ammo. I had two empty magazines left that somehow made it back in my belt pouch. I pulled the magazine from my BAR and found three rounds left. During the action, I had fired 137 rounds of 30/06 at enemy targets of opportunity.

One of the first Marines from below to reach me, saw me holding empty magazines, saluted and handed me a bandolier of 30/06 ammo. I reloaded the magazines, moved the port on the Browning to a new hole and lost consciousness.

I awoke some time later with a corpsman cleaning me up and saying something I couldn't make out (because I couldn't hear). He was the only corpsman to survive. I pointed him back down the ridge (southerly) where the Marine on my right had been hit. Another armed Marine went with him and that squad member miraculously survived.

I vacillated back and forth from conscious to unconscious. I was aware of a misty cold rain and sleet and someone, I think a Squad member, putting a poncho over me and then sitting close for warmth all night. I don't know for sure when the choppers came back for us, but I know it was heavily overcast, raining and a low ceiling. I couldn't hear them at first and my ears were beginning to ring, but I spotted them coming in low. They landed

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as close as possible to the northerly extension of that damned hill.

Wounded and walking wounded were loaded as quickly as possible and then airborne. With some help, I carried my BAR in my left hand and got down to the choppers. As I was leaving the hill, I looked back towards the town we were supposed to have walked into and barricaded and saw what appeared to be a convoy of trucks of some kind far off but approaching the town from the west.

The enemy targets of opportunity appeared to be Chinese or Korean. I don't know which. Their weapons were unfamiliar at that time to me, but kind of resembled some SK's I've seen along with perhaps a version somewhat similar to the AK-47.

We were helicoptered back to the troop plane and eventually I counted 39 survivors including the one corpsman. I never found out what happened to the bodies of the other 89 Marines and two (2) Navy personnel. We were flown back to Japan and our wounded ended up at Third (3rd) Battalion Medical Center, Third Marines.

My right shoulder was bound, my right leg was placed in a cast and shrapnel was removed from various parts of my body. When I began to hear a little better, I learned I had sustained, among other things, a concussion, broken nose, broken foot, broken teeth, collar bone separation, cracked ribs and grenade fragments in both arms, both legs and torso...

After a few days in Third (3rd) Battalion Medical, a Captain none of us knew came in and talked with us. He presented the wounded, myself included, with Purple Hearts. He then told us that because of the participation in combat, all the survivors were entitled to and should wear the National Defense Medal, Korean War Service Medal and the Korean War U.N. Service Medal and Ribbons. He said each of us would receive Navy Commendation Ribbons with a Bronze V and the four of us who outflanked the enemy would be recommended for much higher awards. Later, upon leaving the hospital in mid-October, I received a Navy Commendation Medal and Ribbon with Bronze V and a Silver Star medal.

The Captain also cautioned us about talking about the "incident" to anyone at any time stating that "anyone who talks will wind up in federal prison". He also told us that upon receiving awards, we should not discuss them with any one until given permission to do so. "Wearing them later on is okay, just don't talk about them for now". I inquired as to exactly where we had been and what happened to the others and he left abruptly without answering.

On October 26, 1955, I was readmitted to Third (3rd) Battalion Medical Center to do something about my broken and missing teeth. A few day later, on October 29, 1955, I was offered a position in the Marine Corps Honor Guard in Tokyo, Japan with continuing service in Naples and Paris, France. Because of continuing physical problems, I turned the Honor Guard position down in November of 1955.

On December 21, 1955, I was recommended for meritorious promotion to Sergeant. On that same date, I was on my way to the Naval Hospital in Yokosuka, Japan for continuing work on my busted nose, ear drums, etc. Swisher had, in fact, received a "meritorious demotion."

He was court-martialed and busted back from the rank of corporal to PFC. Swisher tells the story of his "daring service," that he was recognized with honors from his Country so that everyone could know how courageous and unflinching he had been under fire. Mr. Swisher then shares with us the other episodes of his "remarkable courage and talents." In his Booklet, he continues:

On January 2, 1956, I was back from the hospital and at Camp Fuji, Japan. On January 4, 1956, a situation occurred in the grenade pits near Gotemba, Japan. Several of us were picked as grenade instructors for new arrivals at Middle Camp, Fuji. If memory serves me correctly, there were eight pits or bunkers . . . with earth piled around them (front and sides) for protection from shrapnel. We were using the newly initiated smooth sedated grenades (I think M-26s, not the Mark IVs). Each of the

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smooth lemons had dozens of serrations about 22 caliber size on the grenade body. . . I had instructed about 15 Marines in the procedure [how to throw a grenade], and they had successfully thrown [them] when another Marine entered my pit. I handed him a grenade; and then all down the line, with the other instructors, [I] gave the order to "pull pin, prepare to throw and throw grenade."

The young Marine threw the grenade too low. . . . The grenade bounced back between us and between the observation post (the Captain and runner were standing outside their [protected area]). I quickly ran to the grenade, picked it up, made several steps back toward the pits and threw it in front of our pit. It barely cleared. I pulled the young Marine down and fell on top of him as the grenade exploded.

I lost consciousness and when I woke, I was bleeding from my nose, ears and mouth. I could hardly hear; and my neck, shoulders, back and right leg hurt considerably. Several grenade pieces were removed from my back and legs. My right shoulder separated again and was taped into position, and my right foot and ankle to knee was placed in a cast.

The Captain in charge of the pits told me I would receive the Navy Marine Corps medal for bravery. I received the award several weeks later, just before going to Iwo Jima.

During World War II at the American invasion of Iwo Jima, the United States suffered 24,000 casualties and killed 21,000 Japanese. It took 74 days of continual shelling from our American armada to soften up the Island. Only 1000 Japanese survived. It was the most bloody campaign of the entire War.

PFC Swisher explains how twelve years later he and others attacked the island. Now with no enemies on the Island (except for an imaginary mock Marine invasion), Swisher showed the kind of stuff of which he was made. He along with others in his squad under his command secured the Island against an aging cache of Saki booze. Could it be that he captured some booze before the Iwo Jima caper? Joe Swisher goes on with his tale:

On February 13, 1956, I was sitting in a six man tent on the island atoll of Iwo Jima. A special detachment of Marines, myself included, were sent to Iwo Jima to deactivate explosive devices and clear the island so it could be used for future training purposes.

I recall on one occasion, we had discovered a spider hole (hole in the ground with a cover). It was my turn to go in first, and I dropped down about six feet into the hole which was connected to a tunnel. Before moving, I felt around with my hands a bit and discovered I was straddling a trip wire. The trip wire was attached to a still active explosive charge. Luckily for me, I dropped into the hole like the Japanese occupants before. After disarming the explosive device, I crawled through the tunnel and entered a large room which contained a number of bottles of well preserved Saki. Needless to say, my Squad and I spend considerable time making sure those quarters were secure and the Saki disposed of.

Following several weeks of work, the island was deemed safe enough for troops to utilize in training maneuvers. Our Marine group had been promised a week's leave in Tokyo, but at the last moment, we were ordered to defend the island against a mock Marine invasion. Our officer in charge, a Captain, picked me to do a night "recon" of the beaches prior to the mock invasion. I choose a couple other Marines to join me in this task.

At approximately 3:00 a.m., we noticed dim figures on Green Beach near the base of Mount Suribachi. Much to our amusement, we caught two Navy frogmen who were recording the surf for the anticipated landing. We took them to main camp and after some time were told to discontinue all night patrols because our capture of the frogmen had delayed the invasion by at least 48 hours which would cost the Navy several hundred thousands of dollars in additional ship expenditures. I recall this was not particularly humorous to the Marines in my Squad.

During this mock invasion, an umpire Marine, a Lieutenant with a white armband, would jump up on a sand dune and cry out over a loud speaker for the defending force (my Squad) to

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fall back because we had supposedly been overwhelmed by their fire power. Understand, we were lugging machine guns with blank adapters and hundreds of rounds of blank ammo, and in falling back [we] were running uphill. Eventually we drew short leaves [went on pass].

Now that the "mock invasion" had concluded, Swisher was homebound.

On June 29, 1956, I arrived at "I" Company, Third (3rd) Battalion, Fifth Marines, First Marine Division, Pendleton [California]. While there I was instructed to wear a Presidential Unit Citation. I never saw any certification for this Citation but, as ordered, wore it anyway.

Here's a historical note of interest: In 1968, well before Swisher wrote this narrative, Richard Hooker wrote a novel about three army doctors. A feature film of the story, produced in 1970, was a sensation. The series premiered on September 17, 1972, and ended February 28, 1983, with the finale becoming the most-watched television episode in U.S. television history. Major Morgan was one of the main characters.

Now back to Swisher story:

In May or June of 1957, something occurred . . . I was walking by our guard officers' quarters . . . when I overheard the Lieutenant loading his 45 auto and speaking with the Sergeant of the Guard. The Lieutenant stated that he was going to "shoot that son of a bitch on the roof." I walked into the Navy corpsmen quarters, across from the guard officers' quarters, and learned there was a highly disturbed Marine private armed with a bayonet and loaded M-1 rifle on the roof of our guard quarters, threatening to kill anyone who came close to him.

The Navy corpsman was talking to Major Morgan and bringing him up to date on the situation. I heard the corpsman say, "Swisher just walked in sir," and then he handed the phone

to me. [It's amazing how this 18 (or 19) year old recently court-martialed Marine PFC would have such clout with the officers in command.]

Major Morgan quickly asked for an update, and I relayed the action taking place with the guard officer and Sergeant of the Guard. Major Morgan swore and said we didn't need any stateside incidents or deaths. He then asked if I thought I could get the young Marine off the roof without bloodshed. I told him I would be willing to try.

He then had the corpsman run out, stop the guard officer from going outside to shoot the roof top Marine and escort him back where I handed him the phone and Major Morgan. Following a brief conversation with the "Old Man," the Lieutenant turned to me and said, "Do what you can." He then offered me his handgun, which I refused.

Roof top access of the three (3) story brick building with a concrete poured foundation was restricted to an outside steel emplaced ladder. I began the long climb to the roof. When I was within five or six feet of the roof, the Marine on top leaned out a bit and stuck the M-1 in my face. He looked at me and I looked back. He finally broke the silence by asking,

"Are you for me or against me?"

I told him, "Hell, I'm with you! Now take that damned M-1 out of my face."

Fortunately, he did. The next hour or so involved a lot of talk and finally, I was able to distract the young Marine long enough to unload the weapon. I was able to convince him he would be safe with the Navy and managed to get him down the ladder and into the corpsman quarters. I believe we talked him into taking a shot (tranquilizer) and then I accompanied him to the psychiatric unit at the Bremerton Naval Hospital.

Major Morgan commended me and said I would receive a Marine Corps medal (this was the second such honor I received in the Marine Corps). I also received a recommendation to Officers Candidacy School (OCS) at the college of my choice. After receiving and taking the entrance exams, I failed to pass my physical. Seems like the old injuries to my right shoulder at the time had resurfaced in the formation of a tumor.

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Many things are coming back to me now, [indeed they are] and the closed door of 45 years ago is reopening. Recently, I've become acquainted with several combat Veterans of the Vietnam era [Such as Joe Volk and Mike Clausen]. The association with those who have been there and know is helping this old, tired, crippled jarhead.

Swisher's humility and veiled past glory must have been hard to keep secret from his wife and family for so many years. Necessity, of course, forced him to come forward to reveal what a true hero he is.

However, this greedy fraud isn't the only villain to slither into David's life.

TWENTY-SEVEN *be careful whom you trust*

The government and its conspirators got their facts mixed up. When they falsely accused David of wanting to kill Federal District Judge Lodge, Lodge hadn't even ruled adversely on David's Case, and certainly David wasn't about to publicly advertise or pay to have someone kill a judge just because the Judge, years before, let a killer FBI agent off scot-free for killing someone that David didn't even know. The Feds screwed up on the timing of this accusation, but with their kangaroo court, it made no difference.

Britt Groom (a man in his early 50s) was David's attorney (over a period of four years) handling business, civil litigation and criminal defense matters (he lived in Cottonwood, Idaho). The first time David met Swisher was in Groom's office in Grangeville, Idaho (November 10, 2000). At the time, Swisher had a severe case of MSM poisoning. Groom told Swisher about David's WaterOz products which prompted Swisher to seek David's advice.

As David's story unfolded, Groom and his paralegal, Rich Bellon, insisted on ultimately using Swisher in David's defense. Idaho County Detective Skott Mealer reported that he heard Bellon over the phone telling David he had to have Swisher as an expert to "save his [David's] bacon." Greg Towerton was present in Groom's office when Bellon said Swisher would be David's expert witness on the FDA charges "to save Dave's bacon at that trial." Kaye Walsingham (Groom's legal Sec.) and Bellon testified that they were with Groom when Swisher went into a tirade against Bellon. Swisher said that he would go to Boise and make sure that David would stay there [in jail] forever.

As it turned out, both Groom and Bellon sold out David. It appears that they were in an evolving conspiracy from the beginning.

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Richard Bellon, a man in his forties that David had trusted implicitly as a talented lawyer, lived lavishly on David's money. He claimed to be a paralegal and a lawyer. He speaks well. But in my opinion he's a liar, a disloyal opportunist, a schemer and an amoral, contentious fraud. Over time David learned that Bellon was a felon and plagiarizer. In addition he practiced law without a license, nor had he any formal training in law. Although we have no proof, we believe that IRS Agent Steven Hines was a co-conspirator in an attempt to takeover David's *WaterOz* company.

David had hired Bellon and retained him from June 2001 to November 2003 as his legal counsel. David believed in Bellon and felt that he was a godsend. Bellon also served as legal assistant to Britt Groom. Later we learned that Bellon had been previously convicted and sent to prison for assaulting a 60-year-old, female IRS agent who attempted to serve papers on him and for the theft of confiscated property.

Tracy Adams, a female *WaterOz* employee, called me on October 22, 2003 (2:00 pm) to alert me that Richard Bellon had offered her a \$10,000 bonus and a pay raise after he fires everyone at *WaterOz*. "Scooter," Jerry Smith (who worked in *WaterOz* shipping), also heard the offer. Later Tracy said that, "Rich apologized for his behavior." He told her that he wants Jeri Gray, Greg Towerton and Charlie Phillips fired. Tracy said "Rich is causing havoc at *WaterOz*—maybe greed is motivating him." He went to another female employee's house to bribe her, but she also refused. Tracy told me where I could find out about Bellon's history. "Call Robert Hogue in Redding, California," she said.

I called, the next day (4:30 pm), but only reached his daughter, Natalie Hogue (age 27). She told me that her father, Robert (age 65—now deceased), was a former logger in Redding but learned IRS law and now helps people with tax problems. She, unhesitant, told me that Rich Bellon is a liar, thief and plagiarizer. "He uses people." Her Dad had known him since 1996.

She said, "Bellon is totally untrustworthy." She related how he left Redding with other peoples' money, that he's a con-artist. "Advanced Labs and about fifty others have been hurt by him. She gave me the name of Bruce Hendricks, author of the books that Bellon plagiarized.

When David called me a few days later, I told him about the conversation with Natalie. David wanted me to hire Robert Hogue. In the meantime, Bellon continued to play the game of trying to file motions and get support for David's release.

At this point, I had insufficient evidence to know how reliable Natalie was. Once I reached Robert by phone, he agreed to meet me halfway from Redding, California, to our home in Ouray, Colorado. He suggested we meet him and his wife in Wendover, Utah. We met both Robert and Karen on November 3rd (2003 about 9:00 am). Once in Wendover, we spent approximately eight hours in our Road Trek RV in a parking lot of a Casino. The details he relayed were overwhelming and left me with no doubt about Bellon's true nature. Bottom line of how Hogue summed up Mr. Richard Bellon: "He's a snake without a conscience."

While Bellon was stroking me, and David—he was securing his plot to takeover *WaterOz*. He mentioned to me that he was David's partner. Of course, I set him straight—"David has no partners." The *WaterOz Club* idea was just that—an idea. David may have agreed to let Bellon create such an entity, and then help Bellon by funding and/or supporting it in the future. At that time, David still thought Bellon was magnificent. David had no idea that this Bellon was party to those who would send him away to prison for life.

After they incarcerated David, Bellon attempted to steal the business by using a Temporary Restraining Order—(TRO) granted by Idaho District Court Judge John Bradbury. This was a fraud on the Court. Judge Bradbury had been duped by the not too clever team (Bellon, Groom—and by using Attorney Todd Richardson—who was anxious to win the case).

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Judge Bradbury issued the TRO on December 4, 2003, and later rescinded it. He restored *WaterOz* to David's management, including me. However, Bellon did a lot of damage to the Company.

The Judge said, "I am restoring the management of the corporation to Mr. David Hinkson or his designee, and I am asking Mr., -I'm ordering Mr. Bellon to account to *WaterOz* for the \$3,400 [Although Bellon had taken \$30,000]. And I'm doing that because I want to tell you, Counsel-both of you-it's my error that I didn't require a bond to be posted. It was an oversight." Rich Bellon was furious.

David had often mentioned to me how various people claimed part or half of *WaterOz* ownership or just wanted to be partners with him. He told me, "I don't want any partners." David was not stupid. He understood the law, was a real estate broker etc. Greedy people saw how successful he was and obviously wanted to cash in. If there were any truth to their claims, David would have, in fact, given away more of the Company than he would have retained (leaving him no ownership or assets what-so-ever). Many of his truly loyal employees were appalled by the fictitious claims they heard from the conspirators.

Bellon had originally used the credibility of respected Grangeville citizens Peter Glindeman and Bruce Leseman as bait to get Judge Bradbury to allow Bellon to have the TRO-ostensibly to protect *WaterOz* from David's Management Team who were allegedly running the business into the ground. In order to obtain the TRO, Bellon told Judge Bradbury that the 30-person labor force was in jeopardy of losing their jobs, that there was no quality control of the *WaterOz* products (which put the public in danger), that management employees were stealing money from the business, and that poor financial management was ruining the Company. Bellon insisted that David had signed a Partnership Agreement which gave him control over the *WaterOz* Company and all of David's assets.

The testimony of Peter Glindeman and Bruce Leseman confirmed that Bellon deceived them into participating in his takeover scheme. Glindeman, a man in his mid 50's, worked briefly as a consultant to *WaterOz* six months before the "Bellon Takeover." Bellon hired him as an industrial risk management consultant during the December Takeover. While using their credibility Bellon attempted to sell the business to a cash buyer. Ultimately, Glindeman said if he had known that David had fired Bellon in November 2003, he never would have allowed Bellon to use his credentials to help convince Judge Bradbury to issue the TRO (on December 4, 2003).

By Wednesday, December 10, 2003, Glindeman independently concluded that Bellon's takeover (or "management change"-as Glindeman calls it) of *WaterOz* was a scam. When he learned that Bellon was not interested in "saving *WaterOz*" as a business, he aborted. What tipped off Glindeman was that Bellon would not authorize the renewal of the liability insurance which had expired on Sunday, December 7, 2003. Bellon admitted to Glindeman that all he was interested in was "the money." Nor had Bellon told Glindeman that one of the first things he did after the takeover was to call mortgage broker Dan Vaughn requesting that he find Bellon an immediate cash buyer for *WaterOz* (David had acquired property in the past through Vaughn).

In a deposition, Bruce Leseman also testified that Bellon's takeover plan was a scam. Had he known at the time that Bellon planned to sell *WaterOz* or that the whole thing was a scam, he too never would have become involved by lending his credibility to the TRO.

Bellon was cozying up to Tracy Adams. She told Wes Hoyt during the TRO takeover period that Rich Bellon said, "Don't allow your children to use *WaterOz* products." Later we suspected that Joe Swisher may have contaminated certain products, and that Bellon was privy to the action.

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Also, Tracy knew that David refused to accept telephone calls from Joe Swisher at that time.

Cindy Susan Acheson, a *WaterOz* employee loyal to David (formerly a licensed Chiropractic Doctor), was kicked out of the Factory the day of the takeover (December 4th).

During the TRO hearing when Judge Bradbury overturned the TRO against David's Management Team (December 11, 2003), Bellon was seen talking during a recess in the hall outside the courtroom to IRS Special Agent Steven Hines. This is what made us suspicious of IRS Agent Hines' involvement in the TRO. In retrospect, David suspects that Bellon was working undercover for the government and that Hines was coaching Bellon at the TRO hearing. Also, these circumstances lead us to believe that Bellon was paid by ENIVA Corporation or the government to participate in a set up of David. ENIVA Corp, as you may recall hired Annette Hasalone with full knowledge that she had stolen David's formulas and promotion tapes. They directed Dr. Joel Swisher (again, no relation to Elven Joe Swisher) to plagiarized David's tapes. But Hasalone ultimately sued ENIVA for firing her once they learned of her incompetence. She admitted in their trial that she stole David's trade secrets to promote ENIVA products.

David's product marketing information helped ENIVA immediately grow from marginal sales to a million dollars per month. Only because of the suit, did Annette admit her theft.

Britt Groom, who had been the licensed attorney working with Richard Bellon, was the other person David relied on to prove his innocence. David had generously paid these Two, thousands of dollars—gave them privileges and gave almost everything they asked for. In return, they stabbed him in the back and conspired to steal his company.

While David's new wife, Tetyana (aka Tonya) and I were driving from Boise, Idaho, to Grangeville, Groom and Bellon were trying to quickly—

before we arrived—get David (while he was locked up in solitary confinement) to confirm that Bellon was a partner and half owner of *WaterOz*. Groom claimed that David orally agreed to such an agreement. Groom's secretary, Kay Walsingham, typed up the Contract. Of course, David never signed it.

I had recently spoken with David. He told me he really wanted no partners, but that he agreed, since he was in jail, to have Bellon as a partner in *WaterOz Club*. Also, he was trying to promote another entity called *HARPP* (Help Americans Release Political Prisoners). To my knowledge, they never funded or filed to create *WaterOz Club*.

On Wednesday, October 1st, 2003 (6:05 p.m.), David called me from Ada County Jail in Boise. I had just returned from a meeting in Colorado Springs (with the *Council for National Policy* as a guest of former Colorado Senator "Arch" Decker). While I was there, David said he had been talking to Rich Bellon about the conditions at *WaterOz*. Because of the things Bellon told him, David fired the Beans (a family who performed various jobs for *WaterOz*).

David believed Rich Bellon, thought he was OK but believed that Greg Towerton had violated specific instructions that I had given to Greg. I had previously ordered Greg not to start any construction without the approval of the "to-be-created Board of Directors" (which was my brainchild). David was the sole owner of *WaterOz*, and I was the only person he totally trusted to carry out his will.

Thirty minutes after David had called me, Rich Bellon called me saying that the "Beans are rumor mongers," and that they had accused Bellon of sleeping with Tracy Adams and that their mechanic work on equipment was poor. Bellon also accused "Scooter," (who was a trusted employee) of stealing and must be fired. He said that Rod Remelin (an independent, electronics contractor) needs to set up a conference call for

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tomorrow at 9:00 a.m. Pacific time; and if he doesn't, he should be fired. Anyway, I approved the scheduled conference.

At 11:11 a.m. Bellon called me telling me that the Beans have gone ballistic after being fired. Bellon said David wants Greg to function only as a troubleshooter and that Scooter is supposed to accompany Beans to their home and pickup David's tools. I discussed with Bellon my plan to create a board of directors composed of David, Tetyana, me, Bellon and Bruce Leseman. I dropped Leseman from the list because Rich told me he wanted \$400 to sit at each meeting.

At 11:47 a.m. Rod called and told me he couldn't get me on the scheduled call because he had only ten minutes advanced notice. Then at 3:30 p.m. Bellon called back telling me that Rod said he couldn't reach me—in spite of the fact I had been patiently waiting for him to connect me to the conference. Bellon then called again at 8:04 p.m. without mentioning anything about the conference. What he did talk about was that we need to bring pressure on the Court to get Judge Winmill's attention about the outrageous delays in getting David's case heard (over a year). His suggestion is that on the following Monday we strategize.

But the strategy turned out to be "all for me, none for you."

TWENTY-EIGHT *bellon takes wateroz to court*

Excerpts from the transcript of the TRO hearing (on December 11th and 12th) shed light on Swisher's view of that meeting. Mr. Richardson asked Swisher about his involvement at the Conference:

[Swisher said,] In about October the 1st, 2003, I was invited to attend the board meeting of WaterOz or all the d/b/a subsidiaries or whatever we're talking about there. But in any event, at that board meeting I was present. A friend of mine, Doug Sellers, who is an analytical technician at Northwest Analytical was present. Mr. Bellon was present. Mr. Townsend [Greg Towerton] was present. Mr. Varell Jackson was present. Mr. Lonnie Birmingham stood near the back of the room. There was also a young lady present [Tracy Adams], and I believe Jeri Gray was present also. And also on speaker phone was Roland Hinkson [I was not connected, as explained above] and David Hinkson from the Ada County Jail.

"And what happened at that meeting?" [Richardson asked].

Well, David indicated at that meeting that he wanted me to become involved again at WaterOz. There had been a short period of time when I really was not going out there at all and had discontinued analytical services for them. He wanted me to go out and look the business over in its entirety and try to bring it up to proper standard. . . . he said he would talk with Mr. Bellon and that they both wished me to do this. And he wanted me to know that my old bill would be paid up [There was no unpaid bill—just more of his scam]. And I don't know, maybe I'm volunteering too much.

Todd Richardson then asked Swisher if he recalled the date.

Yes. That was October 1st of 2003.

"And was there any discussion at that time about who owned WaterOz?"

Yes.

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Wes Hoyt objected to the questioning, but Judge Bradbury overruled him and went on to say:

I'm going to accept it, but not for the truth of the matter but for the conversation that occurred. I may later decide your objection is well taken, and if it is being offered for the truth of the matter asserted. I'm taking it that the conversation occurred, and I will accept it in that light.

Richardson then asked Swisher if David had made Bellon an equal partner in WaterOz. Swisher answered, "Yes."

Next question—"When?" Swisher answered:

On October 3rd [about two days later] I went to WaterOz to begin my inspective tour and to make suggestions [and] recommendations, on how the product could be improved and also the working conditions; some of which were quite deplorable. I announced myself when I arrived. I did not know the secretary (Cindy Acheson). I announced who I was and that I was there to see the manager, Mr. Townsend [Towerton]. And I was met rather abruptly. I was told, "I know who you are—wait here!" And so I did. And presently after some period of time Mr. Townsend accompanied by Mr. Jackson came down, took me into a separate room.

And at some point in that meeting, Richardson asked, "did you have a discussion with David Hinkson?"

[Swisher said.] At the close of that meeting in the room with the shut doors and all that, and after the—what I would call interrogation—David Hinkson called on the phone, and Mr. Townsend answered the phone or was called to the phone and was talking to him. And, of course, I was right there; and I immediately asked if that was David on the phone, and he replied, "Yes."

I said, well, I want to talk to him. And so he talked to David a few more minutes. The phone was handed to me then, and I asked David at that point—because something was wrong here—I asked him again if I was to follow through on as he and Mr. Bellon had suggested. He said, "Yes."

And I said, Now there seems to be a problem here because Mr. Townsend and Mr. Jackson don't seem to think that you're partners. Are you really partners, David, with Richard Bellon?

And he said, "Yes, I am, Joe."

And I said, would you repeat that, please, to Mr. Townsend.

And he said, "Yes, I will."

And he said, "You're not to have any interference out there" [All parties agree, except for Swisher, that no such conversation took place].

So I handed the phone back to Mr. Townsend. They talked for a few minutes, and then Mr. Townsend got on one side of me and Mr. Jackson on the other, and they proceeded to walk through the plant with me. I did not have free reign by any means, and we got into an area that was—had horrible—very bad employee conditions, and I'm surprised some employee hadn't been sent to the hospital before now. And I suggested changes and modifications....

Richardson then asked Swisher, "Did you discuss this partnership issue in the later conversation?"

"Three times I've heard him say that; yes, that is correct."

"And so Mr. Hinkson said he was partners with Mr. Bellon?"

"Yes, he did. On three occasions."

"Did you discuss which entity they were partners in?"

"Yes."

"Did you discuss WaterOz Club?"

"We discussed WaterOz and WaterOz Club."

"And you understand there's a difference between the two?"

Richardson asked.

"Yes."

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Although Swisher denied that he had any financial interest in working with Bellon in the Takeover, he joined the parties at WaterOz who were there to seize command. He had testified in earlier grand jury hearings and could now jeopardize his VA claims. Besides, he was determined to see that David goes to prison for not giving in to his extortion demands.

Mr. Hoyt then asked Swisher: "Are you aware of anything about the company known as Compania Norteno DeToreno?"

"I'm sorry," Swisher responded.

Judge Bradbury interjected a clarifying question: "Do you know anything about the Belize Company? [Legal ownership of WaterOz was vested in an International Business Corporation (IBC) called WaterOz]"

"Very little. I just heard David remark on it, on occasion."

Judge Bradbury asked Swisher to explain the difference between WaterOz and WaterOz Club?

"Well," Swisher said:

"My understanding from David—Your Honor—was that he wanted Mr. Bellon to be a full partner in not just WaterOz but in a new WaterOz Club that they were going to form. He was talking about international involvements—at least that's what he told me when I talked to him directly on the phone following the October 3rd meeting."

At the subsequent December 11th Hearing of the TRO Judge Bradbury said:

I understood Mr. Groom was writing a draft for my review. And there was no evidence that he [David] reviewed that draft and expressed an intention that satisfies me that he meant for it to be a final contract. There were a couple of ways that that

could have been done. If he had it, he could have signed it and sent it on—sent it back. He didn't do that.

And I read that contract, and—you know, I had a terrible cold when I made my findings, but I want to make sure you understand where I was coming from. I read that contract; as it is final, and assume for the moment that it is final, I read that contract as saying that he is going to put Mr. Bellon on the board of directors. That's much different than a partnership—part of management. But that the agreement—the partnership has to do with the WaterOz Club, which is going to do marketing.

There were two things in which Mr. Bellon was involved—three things actually which Mr. Bellon—two things in which he was involved, and a third which he was to become involved. The first was his legal research for Mr. Hinkson for which he got paid \$157,000. The second was Harp [HARPP]. Harp, as I understood it, was holding seminars about how people should deal with the Internal Revenue Service. And what I understand this agreement was for was to set up the WaterOz Club. And I understand that, and it—the meaning is at least apparent to me that what that meant was that any water that Mr. Bellon sold through the WaterOz Club he would get half of it. That is a far different thing than being a partner in WaterOz itself when there was no capital contribution, no assumption of liability and no discernible basis for Mr. Hinkson to give away half of his assets. But it also shows that there was a specific allegation that Mr. Bellon was going to be a fifty percent owner in the physical assets of WaterOz, and he didn't agree.

Even if it does—I am assuming that it's a legal contract. Even if it's a legal contract I think that the only way you can read it and have it make sense is to read it that he was going to get 0 percent in the WaterOz Club, which meant that he would get fifty percent of the income from the water that was sold through that Club.

Judge Bradbury continued:

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I know, and it contradicts the earlier part. And I—frankly, that's why I think it was a draft. I don't think it could be a final document and have those inconsistencies in it, and that's the reason that I think it was a draft instead of a final agreement. It can't be that inherently contradictory and have been intended to be a final document. Not when you have one person in a lawyer's office, another guy in jail with the three-minute increments and a fifteen minute maximum. That is not an operative bargaining power [The fact is that David was allowed to call in fifteen minute increments].

Judge Bradbury explained to Bellon's attorney, Mr. Todd Richardson:

It is for the Court to consider if there's a question of whether or not there was a contract in the first instance. For there to be a contract, Mr. Richardson, there—I'm going back to first year contracts. There has to be a meeting of the minds for "consideration," and I found there was not a meeting of the minds that Mr. Bellon and Mr. Hinkson would be partners in the WaterOz Company itself. I think it's problematic. I mean, I'm talking in terms of just in the context of a preliminary injunction hearing.

And I—when I look at all the facts—let me just tell you, because I was not feeling well that Friday, and let me—so you will know where I'm coming from, and it's important that you know, and it's important that you have a record to take up if you want to. Mr. Bellon had been paid \$157,000 for legal research. If I believe Mr. Hinkson—which I tend to do—Mr. Bellon was threatening to testify against him in the criminal proceeding, and had gotten his pay up from \$1,500 to \$1,800 and then from \$1,800 up to \$2,500 [while] Mr. Hinkson was in jail.

Mr. Bellon was in the lawyer's office, and you had a company that was making between \$15,000 and \$30,000 a week. You have—Mr. Bellon has some business experience. He ran a body-paint and body shop. But the evidence was, and he didn't contradict it, that he appropriated two books that were written by somebody else and printed them under his own name. Mr.

Hinkson testified that he did not know that Mr. Bellon was not a lawyer or that he had a record as a felon. And I look at the relative positions of these two parties at that time, and I look at the Company that was generating the amount of income that this Company is generating, and I see absolutely no consideration for the deal. And I see a contract that only provides for a partnership in WaterOz Club. I do not think that by the preponderance of the evidence you indicated that it was more likely than not to prevail at trial. And you're entitled to put on all that evidence at trial. You're entitled to do that.

Mr. Richardson, Judge Bradbury said, The testimony from the people at WaterOz was that they only saw him [Bellon] once or twice there, and it was a walk through—and I believe it. . . there was no reason for me not to believe that.

Mr. Richardson, . . . You're a passionate advocate, and I admire that. But frankly, I do not believe from all the evidence, that Mr. Bellon was made a partner in the WaterOz Company.

I think he contemplated if the contract were complete and final that he would be a partner in WaterOz Club. . . . Mr. Hinkson to be talking about his dictation of a partnership agreement, he was identifying the document. I don't think he was describing it to be a final document. I mean, if I dictate a partnership agreement and I tell my secretary to go get the partnership agreement, that doesn't mean that it's a partnership agreement. It means, that's the document I want. And that's the context in which I interpreted Mr. Hinkson.

I have—I have to decide when there's conflicting evidence who to believe, and it just—given the disparity and bargaining power—lacks of any consideration, and the amount of money that was generated. I cannot believe that there was a mutual assent based on the evidence before me that Mr. Bellon with no consideration would obtain fifty percent of a company that generates \$15,000 to \$35,000 a week. I just don't believe it.

Bellon stretched again for the golden ring. This time he sued Judge Bradbury, me (Roland Hinkson) and Wes Hoyt. The following article,

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written by Jodi Walker of the Lewiston Morning Tribune appeared on November 05, 2004; it said:

A federal judge [Judge E. Lynn Winmill] has dismissed a civil suit against Judge John Bradbury, ruling the federal court doesn't have jurisdiction in cases challenging state court decisions and that Bradbury has judicial immunity.

The suit, filed by Richard Bellon of Kooskia, accused Bradbury, the district judge based at Grangeville, of acting blatantly in favor of Bellon's former business partner, David Hinkson, in a civil suit in Idaho County.

Bellon claims to have been Hinkson's business partner in WaterOz, a mineral water bottling company in Idaho County. Bellon claims Bradbury may have received campaign contributions or other monetary compensation for ruling in Hinkson's favor.

He claims Bradbury permitted irrelevant testimony, erroneously overruled objections, allowed witnesses without proper notice, asked Bellon questions outside the scope of the case and, in general, acted prejudicially. Bellon also disagrees with Bradbury's refusal to recuse himself in the case. Bellon was seeking \$500,000 in damages.

The case against Bradbury was filed earlier this year along with another civil case against Hinkson's father, Roland Hinkson, as well as Hinkson's attorney, Wesley Hoyt, and several employees of WaterOz.

Bellon claims those named in the suit collaborated to keep him from his [claimed] interest in the company. He is asking for \$17 million in that suit.... [David] Hinkson remains in jail awaiting a January trial date on 11 charges related to his alleged attempt to hire hit men to kill people involved in investigating and prosecuting him.

Now, how do you think Richard Bellon will testify at David's Trial?

TWENTY-NINE
witness

why feds dumped raff, their first star

Jodi Walker of the *Lewiston Tribune Online* wrote an article entitled, "Wanted Pair Stopped at Mexican Border." Tuesday January 25, 2005, GRANGEVILLE:

Two Orofino residents wanted for several months on felony charges in Idaho County were arrested trying to cross into Mexico Friday. Mariana Raff (age 31) and Brett Melwing (age 23) are being extradited from San Diego to Grangeville to face charges according to Idaho County sheriff's Chief Deputy, John Nida. They along with their infant and Melwing's mother were caught by the Department of Homeland Security's immigration officers at the Mexican border. Raff used her real name to pass through the border, and the warrant for her surfaced. Melwing, who was using an alias, according to Nida was not immediately recognized, but the warrant against him was later found.

Warrants were issued for each of them after they failed to appear on earlier charges. Both were arrested in early 2004 after police said a search of Raff's Kooskia home found the two were involved in an identity and bank fraud scam.

They were allegedly stealing paychecks from mail boxes and using computer equipment to replicate the checks. They also were arrested after allegedly making fake identification cards. Melwing was also arrested at that time for failure to appear on another charge in Clearwater County. Melwing was charged in Idaho County with possession of forged documents and possession of counterfeiting equipment.

While in jail on those charges Melwing allegedly tried to escape a charge that was later dismissed. Raff who paid her bond using a bad check failed to appear on those original charges. She was later arrested in Lewiston on the "Failure to Appear Warrant" and charged with possession of cocaine. She was released in time to give birth to the couple's child, according to the Idaho County Sheriff's Office. They were both charged

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with grand-theft after police said they stole a car from Lee Dinges Auto Center in Lewiston.

When Melwing is returned to Idaho County, he will face sentencing on the felony charges of possession of forged checks and possession of counterfeiting equipment. The grand theft charge also still stands as do three misdemeanor charges of driving without privileges, resisting and obstructing an officer and malicious injury. Raff will face felony charges of possession of cocaine grand theft and a misdemeanor resisting and obstructing an officer charge.

Raff was set to testify in the federal case against Grangeville businessman David Hinkson. Hinkson is currently standing trial in Boise for allegedly trying to hire a hit man to kill a U.S. attorney, an agent of the Internal Revenue Service and harm others. According to earlier court documents it was Raff's two brothers Hinkson tried to hire. Raff did not testify in the Hinkson case according to court documents because of her "credibility."

Proof of the obstruction of justice came when David's defense attorney, Hoyt, conducted his own investigation. He contacted Raff's two brothers in Mexico and learned that they were not hit men, but were responsible business men. After repeated demands that the FBI look into the matter, it took 17 months for Agent Long to contact these men and verify that Raff's allegations were false.

David had, in truth, trusted Mariana. She could translate for him, and David didn't know of Lonnie Birmingham's close involvement with Mariana. She had been a housekeeper for David. But when they went to Puebla, Mexico, Mariana substituted David's bank account number with her Uncle's. Eighty-thousand dollars of David's money was, thus, misappropriated. After returning home Mariana burglarized David's house (in March 2003). In that burglary she stole \$6,000 cash and a credit card from David and drove to Lewiston (a town of 40,000, an hour and half

from Grangeville), and withdrew another \$600 (using David's credit card) from an ATM machine—she had his pin number.

When David discovered her theft, he fired her and announced over the company loudspeakers what she had done. However, as mentioned earlier, David reported the theft, went to the Sheriff's office but was himself arrested by Skott Mealer and FBI Agent Long instead of Mariana. They locked him up and threw away the key.

Of course, the authorities never returned the money to him. We later learned that Marianna needed \$6,600 for a down payment on a house she wanted. Yet, the authorities did nothing to her for her crimes against David. This was the third time she went to jail over a crime spree that started in January, and it ended in July 2004.

As to how cold-blooded Marianna Raff is, when her former husband, Quinn Raff (now deceased), was deathly sick with a brain tumor, she said she was glad he had life insurance and hoped he would die. She stayed with Quinn until she met the ten year moratorium for immigrant-brides then immediately split.

She wound up in jail in Clearwater County and again in Nez Perce County for various charges (forgery, burglary of a postal facility and a drug store, for counterfeiting money and green cards etc.). The Feds dropped all charges against her while she was yet on her crime spree.

Wes Hoyt called Lonnie Birmingham, another disloyal employee-opportunist, and questioned him on July 16, 2004.

Lonnie told Mr. Hoyt, "She [Mariana] was glad to say bad things against Hinkson—like he hired her brothers as hit men because it kept the FBI happy and also because she enjoys getting even with Hinkson. She feels he really screwed her."

Birmingham also said that it had been a big mistake for Hinkson to get mad at Mariana, and it was a bigger mistake to fire her "because she really knows how to get even with Hinkson; and she is doing so by telling lies

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about him to the FBI." Lonnie felt it was all Hinkson's fault for firing her anyway. Yet Lonnie admitted that Mariana was a clever liar.

Both Idaho County Detective Skott Mealer and FBI Agent Will Long wanted her cooperation, since they caught her with cocaine in her jail cell, and they had traded leniency on her criminal drug charges for her testimony against Hinkson. Mariana told Lonnie that she and Mealer "are real close" and that she had traded sexual favors to him to have criminal charges dismissed (from an Affidavit of Wesley W. Hoyt regarding a telephone call with Lonnie Birmingham of July 16, 2004.)."

We have no testimony by Marianna regarding David; although we know that AUSA Wendy Olson used a Writ of Habeas Corpus to get her out of the Idaho County Jail on March 4, 2004, to testify before a grand jury in Boise regarding David. Lonnie quoted Mariana saying: "David is so stupid—he trusted me. I've got enough on him, and I'll bring him down."

Lonnie and Mariana shacked up for several years. Lonnie left his wife and children to live with Mariana, and together they were reportedly heavy users of drugs. We believe that Lonnie may have been charged with "Possession of a Controlled Substance" and that federal officials may have had those charges dropped or exercised their influence to prevent charges from even being filed [against him]—as they did with Mariana—as leverage to get Lonnie also to make up false stories about David.

Another employee, Debbie Morley, said, "Mariana is an excellent liar."

Mariana Claimed in her FBI 302 Report on April 1, 2003, that when she, Lonnie and David were in Mexico on a business trip looking for property for a WaterOz facility, David solicited her Mexican brothers to kill AUSA Nancy Cook and IRS Agent Steve Hines but that she would not give out the name of her brothers. Quinn Raff called her brothers (in January 2004) and confirmed that David never discussed homicide or hit men with them when David was there in Mexico. Her brothers were active church members and stressed by her lying.

Mariana, supposedly, told Dennis Albers (the former Grangeville District Attorney) that David tried to hire her Mexican brothers to kill him. This was useful ammunition for Albers.

After the Hasalone v. Hinkson case was over, David and Albers had a conversation.

David said, "Albers, you're nothing but a piece of shit."

Albers said to David, "You belong in prison."

"Why, I've haven't done anything wrong."

"You're going to jail and I'm gonna put you there."

"How can you do that?"

"We have our ways." Albers said.

That conversation took place in mid-September 2000, at the time when Albers still had a 30% favorable margin in Idaho County Prosecutor Campaign. David's letter writing campaign followed and Albers lost his election bid in November by a minus 30%. The last we heard, Marianna Raff was living free in Northern Idaho—again released by the Feds.

David's attorney, Former Assistant Prosecuting Attorney Wesley Hoyt, did something that none of David's other paid attorneys, and certainly not any in the judiciary did, and that is to seek the full story and truth. The government seeks money and convictions—not truth. Our adversarial system of law rewards the attorneys who can muster acquittals; so the most successful ones make the most money. Seldom do we encounter champions of justice for the sake of justice. Like an iceberg, most is unobserved and hidden beneath the surface. Wes dug, questioned and dug relentlessly. Here is what he observed:

Had the jurors known all the withheld facts there is little doubt that they would have convicted David of anything. He was simply minding his own lawful business, but he stepped on the toes of some government agents. To bring David down those

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agents conspired, with paid informants, to entrap him with their fabricated stories of murder-for-hire.

Much of the case on trial in January 2005 involved the issue of freedom of speech. Questions arose about his intense statements, such as "God should smite, them" [referring to government agents who abuse their authority and the law]. In taking advantage of his unrestrained, vocal statements, certain government agents relentlessly sought to destroy him.

David has always used the legal system as the means of addressing perceived corruption in the system. Routinely, David made sharp and cutting statements about the corruption in the U.S. Government. This behavior did not win him any friends within the System.

His career as a radio host involved bringing many guests to the talk show who also criticized corruption by government officials. Publicly and openly, he stated his views on issues such as the legality or illegality of the federal income tax, of unlawful BLM schemes to seize property from western private property owners and on generalized corruption in our federal, state and local governments.

David learned the art of affecting the political process with expository pamphlets and he takes credit, in part, for un-electing various corrupt politicians. He became a lightning-rod of controversy and used his position as a gadfly; or whistleblower to challenge the government to clean up its act.

By exercising his right to free speech, David certainly gave the government cause to put him out of circulation. However, since they supposedly couldn't arrest him for the exercise of free speech, the government chose to arrest him for made-up and falsified stories of murder-for-hire of federal officials-based purely on hearsay.

To support their fabrication, the government conspirators substituted accuser-Swisher for the former accuser-Marianna Raff. Raff was their first choice informant, but they finally dumped her due to the many felonies she persisted in committing while they were using her.

Now that we had the evidence on the government's fraud, it was time to go to the honorable courts. But we needed a choice spokesman with clout.

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THIRTY *our hope to enlist a top appellate attorney*

On July 8, 2005, Faye and I drove to San Francisco to meet with Attorney Dennis Riordan. Wes Hoyt flew from Denver Colorado to our meeting. Wes had tried to get Mr. Riordan on David's case earlier, but Riordan was involved in another time consuming case that he had just won. So Dennis was willing to, at least, listen to our plea for his expertise in handling David's appeal.

Emmy award-winning-journalist Charlie Rose praised Dennis Riordan as one of California's leading criminal appellate lawyers.

On his Website he praises Riordan's accomplishments:

He has been listed among the Best Lawyers in America, and is a member of the California State Bar, the New York State Bar, and the Bar of the United States Supreme Court—First, Second, Fifth, Ninth, and Tenth Circuit Court of Appeals.

Riordan received the Skip Glenn Award for Outstanding Advocacy from the California Attorneys for Criminal Justice and the Merit Award from the Bar Association of San Francisco. He taught at the University of San Francisco Law School, and served as Deputy State Public Defender at the State Public Defender's Office in San Francisco.

His writings appear in books and newspapers including: "Criminal Defense Techniques" (1979); "Jury work: Systematic Techniques" (1983); "Political and Civil Rights in the United States" (1976) to name a few."

Mr. Riordan is well known in the Ninth Circuit, and he didn't just jump in to take David's case. He said he'll review the Case and let us know.

"What questions do you have," he asked, "about me and the process? Why did you come to me, Roland?"

I said that we've been ripped off by all the attorneys to the tune of over \$2,000,000 [at that time]. Tiger [an acquaintance of his] calls you,

Dennis, "the best." I told Riordan that I no longer believe in the system—based on personal experience and of testimony from those whom I trust. We're looking at you to help David and help save the Country. "Tallman is a criminal," I said, "and should be charged." I also told him about Swisher's lying and deceit.

Steve Anderson (another high powered tax attorney) joined the conference on the telephone. Riordan asked Steve if he had read the tax case etc. He said he only read the items for the sentencing issues. Steve talked about the structuring and guidelines for upward departure.

"The Appeal," Riordan said, "may not address all the things we are concerned about. This may be a disappointment to you."

Anderson mentioned that the scheduling dates are the same in both cases: "We should order the two sets of briefs on the date of the secret hearings and that we want the hearing transcripts that were in camera [judge's chambers]. Steve Anderson said there is something called a 'willfulness requirement.'"

Wes talked to Dennis about appealable issues and reversible error and that we may have dozens of appellate issues. Wes said, "We're looking for some novel approach. We need a hook (suppression, liability, Brady/Giglio, 'ineffective assistance of counsel' etc.)." I learned that a 2255 proceeding is equivalent to a habeas corpus.

Wes said, "Roland and Faye are steeped in the legal aspects of this case." He said he is only a civil attorney. Wes explained the tax case and threats case to Riordan. On the tax case, David was pro se. Wes couldn't get anyone to take the threats case because of the "icky factor." He said, "Under the old system David could have appealed by saying, "Hey, you're holding me improperly." The courts now ruled that as long as there is a remedy, that's what you'll have to talk about. Congress passed a law Title 18 2265, which says if you're going to challenge something, for example—

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"the attorney did a bad job—that's what you talk about (e.g. government misconduct). It's kind of like as a second appeal."

Wes said that not one attorney in Idaho would take David's case. Wes shopped the state for a criminal attorney that would take the case but without success. It was the "icky factor" again. Wes told David's story about his arrest, the Lodge–Lon Hilarushi murder and Winmill recusal [the judge who postponed sentencing until they tried both cases]. He said that they convicted David on "404 B evidence."

He went on and talked about Swisher's testimony, about Lodge, Hines and Olson and about Sean Connelly's ineffectiveness of counsel. Sean had told Wes, "This [IRS case] could cause the government to collapse." Sean had recently become a judge.

Without disparaging Tom Nolan [as lead counsel], Wes explained why we hired him. Riordan knows him through a murder case that Dennis tried. Our complaint was that Nolan wouldn't learn the case. He was great at cross examination. Wes did all the preparation. Nolan just wouldn't ask necessary questions or learn the background of the case. Nolan admitted he botched the "cross" on Swisher's testimony. Riordan even suggested that a proper tactic would be to attack him as ineffective counsel.

Riordan confided, "I don't doubt David's innocence, but I've won cases where I have no opinion of guilt or innocence. I [hate] government abuses, and I want to burn them. If the appeal were a Parcheesi game you'd want the best Parcheesi player in the game. We're [talking about] going after a judge of this same court. We don't know who we'll get. It could be somebody who agrees with Tallman's ideology or someone who disagrees. So it's going to be a very difficult and complex case. I have never gone to trial where one of the judges I was going against for a client sits on the appellate court."

Wes said, "I've filed a motion for a new trial in the solicitation case." He also said, "I know David was ineffectively represented in both cases.

Looking back, I can see my part in the ineffective representation. It was scrambling representation. Trying to do what I could. David might not have owed any taxes."

This raises the issue of sentencing on the tax case. Wes said, "I'm willing to say I screwed up."

Riordan said it is unlikely that we can raise any of that until the appellate proceeding is completed. "If you win the appeal you can get a new trial—the exception is by claiming insufficient evidence as your defense."

Wes said Riordan told him there are a number of appealable issues—This is the second case Tallman ever tried. WaterOz has been compliant in paying all taxes for over a year now [although David has signed over a power-of-attorney to the IRS to take any tax they claimed]. Wes mentioned the 7202 and sixteen structuring counts. Wes said the IRS thinks David owes a million dollars or more in taxes. He said, "We're looking at a possible 2255 and retrial. Also there is a Title 7 discrimination case and minor civil issues."

Wes told Riordan the details of the rest of David's story. He talked about Tallman's denials of motions, that David was outside of the U.S. when all these accusations were supposed to have happened and that Tallman had admitted to error in the record.

Wes said that there was failure by the government to prove any taxes were even owed. Nicky Farrell [IRS investigator], he said, talked to two or three people and concluded that David owed taxes on 100 or so people who she claimed worked for WOZ. Truth is that David had no reporting requirement.

"There is a willfulness requirement," Wes said, and that "David is a national treasure. The whole thing was a setup by the conspirators including former FBI agent Ted Gunderson (404 B witness), FBI Agent Long and Elven Joe Swisher."

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Wes continued telling him about the body wire and the whole story after the arrest. He said, "They even accused me of conspiring with David to kill judge Tallman. I withdrew [from David's case] after the verdict."

Riordan said if you do a 2255 you become a witness-not counsel. However, Wes can cooperate and assist in the appeal. Then we discussed money issues.

He said if you raise a motion for a new trial before conviction, it will be timely; fortunately, we did raise it. Swisher's fraud was brought out during the trial. Therefore, we can raise it on appeal.

But we couldn't bring in more issues. For example, Dennis explained that we couldn't mention Swisher's rapes or other crimes. You can't use it on appeal. A "2255 statute" now replaces "Habeas corpus." But you can't bring the 2255 unless you lose your appeal (at least in the 9th circuit). "You may want to put it all together but you can't," he said.

Riordan won a case where the president of the Bar Association was involved in the Web Text Scandal (1970-1980). "We discovered that the witness was lying," he said, "and information was not in the record."

Mr. Riordan explained:

Issues of "ineffectiveness of counsel" are always reserved for later. I'm extremely familiar with the doctrine of "ineffectiveness of counsel." I raise it continuously. Be cautious! The legal standards are much higher than that if the prosecutor made an error. You want to, if you can, show that the court wouldn't allow the attorney to put on evidence rather than that he didn't put it on. If ineffectiveness of counsel is raised the government gets every piece of paper you have (All privileged newspapers files etc.).

Riordan said he'll look at everything and then let us know if he'll take the case. Riordan said it is unlikely that we can raise any of the issues until

the appeal proceeding is completed. If you win the appeal, you can get a new trial. If the trial was unfair, you win on appeal. They'll have a harder time getting a conviction. And now we're down to only three charges.

But will Riordan take the Case? We couldn't get any support in Idaho at the district court level, now David's life and hope of justice hangs in the balance.

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THIRTY-ONE *riordan says, "I'll take the case"*

Several days later, Riordan called Wes and said this Case is "BS"—"I'll take the Case."

On March 11, 2006, Riordan filed an Appeal. Much of the Appeal was merely a reiteration of the facts in the Trial Transcript. He knew he had to concentrate on the most pertinent issues—considering the time restraints (20 minutes, more or less). David's conviction rested solely on the testimony of Elven Joe Swisher, but Swisher's corroborating accusers also need discussion. In addition to Swisher's testimony, he discussed Bates', Harding's and Bellon's testimony because, even though acquitted of the charges, the judges considered the accusations, and merging them carried more weight; "So," he said, "The summary of the evidence as to those counts can be brief."

Riordan started by clarifying a few things. He argued that Harding's and Bates' testimony, whatever the content may have been, "did not rise to the level of criminal conduct since Hinkson was acquitted of the first three soliciting charges related to Harding's testimony and of the two counts of threatening federal officials (to which Bates testified). And the Jury was unable to reach a verdict on the other Harding charges. It convicted Hinkson of the Swisher solicitation charges [only]."

He quoted from the Trial Transcript—questions and answers, but mostly he concentrated on Swisher's statements. He mentioned Chad Croner, who was incarcerated in the Ada County Jail with David.

Government agents AUSA Sullivan and FBI Mary Martin worked out a plea bargain with Croner that if Croner would testify that David had wanted to hire him for \$10,000 to kill the Trio, Croner would get a reduction in his sentence and the charges against his mother for another crime dropped. The following is from Riordan's brief:

Croner received a favorable sentencing recommendation in exchange for his cooperation. According to Croner, Hinkson told him that he had offered Swisher and Harding \$10,000 to get rid of Lodge, Cook, and Hines.

Shortly thereafter, Croner met with the FBI and agreed to work as an informant on Hinkson's case. Hinkson presented several witnesses also in jail with Croner and Hinkson, who testified that they never heard discussions of illegal activities and that Croner was generally dishonest [Chad had lain on his bunk for a couple of days hardly speaking to anyone].

The defense argued that it was entitled to a mistrial because Swisher had produced a falsified document to support his claims regarding his military background.

"Your Honor, we have a document given to us by the government which is false;" and the government knows it's false. The AUSA [Sullivan] responded: "I have no evidence or reason to believe that the document is false."

The court [Tallman] denied the mistrial motion. . . . also stated that the document produced by Swisher "appears to be genuine," and that it was consistent with Swisher's testimony about his combat service. . . and ruled that the government "had no reason to believe that [Swisher's document] was discloseable under Brady or Giglio because it was not impeaching."

The court suggested that it could not evaluate the matter unless the defense could produce a "qualified person" such as a "records custodian from the National Personnel Records Center" to explain the meaning of the documents.

He suggested that the documents were "rank hearsay," and also extrinsic evidence under Rule 608(b). , , , The court suggested that the credibility of Swisher's claims was still disputed, and that the government would be able to submit conflicting documents and experts showing that Swisher was indeed telling the truth. The court said such an inquiry would "require considerable time," and that it would only serve to confuse the jury, since it would have no way to determine which documents to credit." Lacking the ability to submit any evidence contradicting Swisher's claims, the defense decided not to recall him to the stand.

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In his closing argument, AUSA Sullivan argued that the jury should consider Swisher an entirely credible witness because, rather than being an enemy of Hinkson's making false accusations, Swisher was a person who liked Hinkson.... Mr. Swisher's testimony is powerful. He talked about how Mr. Hinkson understood that Mr. Swisher had been in the military and had killed a lot of people. He [David] was very impressed by that.

The defense argued that new evidence conclusively proved that Swisher had been lying, that Swisher had committed a fraud on the court by producing the bogus document on the stand, and that the government had committed misconduct by failing to disclose material that would have undermined Swisher's credibility.

First, in mid-trial the lower court deprived Hinkson of a fair trial when it ruled inadmissible documentary evidence which would conclusively have demonstrated that, contrary to assertions in the government's opening statement, Swisher had never served in Korea, and had lied to Hinkson, law enforcement officials, and the jury when he claimed to have killed many times in combat....

Second, the government deprived Hinkson of due process when it sought his conviction on the basis of Swisher's testimony while deliberately failing to correct the false impression created by that testimony--i.e., that Swisher was a battle-hardened killer.

Finally, the court plainly erred in denying Hinkson's new trial motion which rested on additional and un-controvertible evidence that the defendant's convictions had been obtained through the knowing use of perjured testimony....

Reasonable jurors would not likely have taken seriously these purported conversations if they had learned that Swisher's tales of killing on the battlefield were "wannabe" fantasies, that, in fact, he never had come anywhere near combat.

Hinkson's documentary proof would have been devastating to Swisher's credibility, marking him a pathological liar [Swisher sued Don Harkins of the *Idaho Observer* for \$5,000,000, and me, Wes and Greg, for calling him a "pathological liar"--I guess we should have called him a "sociopathic liar" instead].

This Court [the Ninth Circuit] has repeatedly held that evidence that a government witness told lies during the investigation of the case on trial is relevant and admissible.... He [Swisher] thus had a huge personal and financial incentive to testify in accordance with the supposed facts contained in that document [an earlier grand jury hearing]. If he admitted his lack of combat experience, he would not only stand to lose his disability payments, but would expose himself to prosecution for defrauding the government.

Proof that the replacement DD-214 was a forgery could have led the jury to reasonably conclude that the informant had a motive other than altruism for testifying on behalf of the government. Such a finding could have substantially impeached the informant's credibility as a witness.... Hinkson's right to introduce the evidence of Swisher's perjury was of constitutional dimension.

Defense Attorney Riordan then went into detail how "Rule 608 (b) and Rule 403" (on evidence) had been misapplied by Tallman and then continued:

A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district [prosecuting] attorney has the responsibility and duty to correct what he knows to be false and elicit the truth [Dennis cited a couple of current holdings].... If the government was to pursue a conviction in this case after learning of Swisher's perjury and proffering of forged documents, it had to inform the jury of the truth. The government of a strong and free nation does not need convictions based on [false] testimony.

While David continued to mark time for over two years in his solitary dungeon at ADX Federal Penitentiary, the Ninth Circuit finally rendered their decision, but for David the wait was painful.

However, he used his time to best advantage. He asked for Spanish and Russian primers, dictionaries and books to read. Although he never

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heard the pronunciations, he learned over 5,000 words in both languages. He struggled with his personal regimen to exercise in his tiny cell trying to stay fit. Occasionally, guards would raid his cell and remove many of his personal possessions. When he boiled over with disillusionment and anger he would call us, using one of his 15 minute telephone calls (that they allowed four times per month), and he would vent.

Is there something wrong with the methods of the government today? Former Assistant Prosecutor Wesley Hoyt unequivocally accuses the Federal Government of prosecutorial misconduct, outrageous governmental conduct and vindictive prosecution.

He asked for dismissal of the phony charges against David in a Motion for New Trial, to which the Ninth Circuit Court of Appeals agreed, but then in a later decision took back the first opinion of reversal and affirmed the trial court's decision of conviction. Hoyt asserts that, "David was falsely accused by multiple government informants and there is ample evidence of corruption to prove it."

THIRTY-TWO punishment

government's crimes and recommended

David's attorney, Wesley Hoyt, in his early career had served in Idaho County for four years as an assistant prosecuting attorney about the time Richard Tallman was a law student. In his exhibit to the court, he presented to Judge Tallman, who should have learned the basics of law, a "Statement of Facts to Dismiss [the] Entire Case" based on PROSECUTORIAL MISCONDUCT, OUTRAGEOUS GOVERNMENTAL CONDUCT AND VINDICTIVE PROSECUTION. He wrote:

A prosecutor's job is first to see that justice is done. The prosecutors in this case have been focused solely on obtaining convictions at any cost, even at the expense of compromising their own integrity and participating in violation of the very laws they are sworn to enforce.

Swisher, a government informant, who declared he was just repeating what Mr. Hinkson had said to him, out of court (i.e., hearsay), was allowed to recite the details of a request for a torture-murder that he claimed was Mr. Hinkson's plan for the deaths of three federal officials. These were "hearsay" statements that were supposedly made by Mr. Hinkson and were admissible because of a technicality in the rules of evidence. Generally, a person is not allowed to repeat what another person said out-of-court or "hearsay, "which is excluded from the evidence at trial.

However, because of an accepted deviation from the general rule (known as the *Admission by Party-opponent* rule—Federal Rules of Evidence, Rule 801(d)(2))—Swisher, was allowed to spew forth a litany of false and fraudulent statements about Mr. Hinkson. They were unchecked—made up by him—concerning the supposed "solicitations for murder" of these federal officials purportedly requested by Mr. Hinkson. There are no rules of evidence that prevent a liar from making such

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wild claims, especially a liar who has the skill and finesse of Swisher.

Ironically, Swisher was able to present these lies to the jury with impunity. Only a proper investigation by prosecutors, motivated to do justice, could possibly have prevented this kind of travesty. Here, in spite of strong indications that Swisher was lying, rather than looking into the military record of Swisher to be certain that it was correct and not a forgery, the prosecutors, whose only motivation was obtaining a conviction, ignored their duty to investigate. Yet a prosecutor has a special duty to prevent and disclose frauds upon the court and to guard against due process violations caused by false testimony.

Former Congressman Robert E. Bauman JD (from Maryland), explained in a publication that there is a rule (Rule IV) known by insiders; it is, "Almost all police lie about whether they violated the *Constitution* in order to convict "guilty defendants." Perjury is the most widespread form of police wrongdoing. He noted that it even has a well-known nickname among the court house "cognoscenti-TESTILYING."

Recognition of the widespread corruption prompted a bill (HR 4276, August 31, 1998) to be considered in the 105th Congress, 2d Session. Part of it was to establish ethical standards for Federal prosecutors. This Bill never made it into law, unless I have just failed to discover it. However, it would have corrected serious abuses by law enforcement officials.

It provided under SEC. 821 (a) VIOLATIONS:

The Attorney General shall establish, by plain rule, that it shall be punishable conduct for any Department of Justice employee to violate any of these provisions:

(1) in the absence of probable cause [to] seek the indictment of any person;

(2) fail promptly to release information that would exonerate a person under indictment;

(3) intentionally mislead a court as to the guilt of any person;

(4) intentionally or knowingly misstate evidence;

(5) intentionally or knowingly alter evidence;

(6) attempt to influence or color a witness' testimony;

(7) act to frustrate or impede a defendant's right to discovery;

(8) offer or provide sexual activities to any government witness or potential witness;

(9) leak or otherwise improperly disseminate information to any person during an investigation or

(10) engage in conduct that discredits the Department.

The Attorney General shall establish penalties for engaging in conduct described in subsection (a) that shall include—

(1) probation; (2) demotion; (3) dismissal; (4) referral of ethical charges to the Bar; (5) loss of pension or other retirement benefits; (6) suspension from employment; and (7) referral of the allegations, if appropriate, to a grand jury for possible criminal prosecution.

The problem is that the "Good Ol' Boy" syndrome is at work here. No one who attacks the "System" will prevail. The corruption within the "out-of-control government" is well entrenched. It is no longer a question of whether you live an honorable life; rather it's a question of how well you are connected.

Whether all the Federal participants in this case believed that they were doing right does not mitigate the ultimate damage to my son, David Hinkson. Regardless, at the hands of United States Deputy Marshal David Meyer, he cast our son back into his dungeon-like cell at Ada County jail awaiting transport to the ultimate dungeon: SUPERMAX (ADX) in Florence, Colorado.

We got to talk to David—on June 7th, 2005, but the next day he boarded a prisoner plane bound for Oklahoma. As far as we knew he was

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off the Planet—until we got a call from him on June 23rd; he was allow one 15 minute call.

In spite of all the depressing events, I wrote to David letting him know that I'm proud of him for his strength and honor, that he is truly a man of conviction and stature. I wrote to him while he was in solitary confinement:

As you know, David, there's no doubt in our minds that you are a victim of a ruthless, uncaring bunch of criminals. These criminals come in many forms—sometimes as FBI agents, sometimes as IRS agents and sometimes as judges.... Swisher is an incorrigible rogue. His crimes include forgery, fraud, theft and blackmail.

Hopefully we can bring the conspirators before the bar of justice for prosecution. But since some of the culprits are in government, we may get only justice in the court of public opinion. Humiliation and dishonor may be their only punishment—time will tell.

Attorney Wes Hoyt sums up the case in his own words and tells why each of us must now watch our backs—not as much from ordinary crooks, but from government.

THIRTY-THREE *wes hoyt views the panorama*

Wesley Hoyt's continues his chronicle:

Swisher appeared to have credibility, and he attributed radical statements to Mr. Hinkson. The government agents brought in others on the same bandwagon who made exaggerated statements as well. All of the participants had a financial or revengeful interest in the outcome of this case.

Swisher in participation with Richard Bellon and others attempted to take over the *WaterOz* business and properties. Bellon, Swisher and others obtained a Temporary Restraining Order (TRO) under false pretenses from the Idaho County Court. Although vacated, the TRO permitted Swisher, Bellon and others to take control of the business for eight days. During the takeover, much damage was done to the business. Even customer files were removed and not returned. However, Swisher and his cohorts were ousted by Court decree, and Mr. Hinkson's Management Team was restored to the *WaterOz* business.

Swisher attempted on several occasions to obtain a foothold in Mr. Hinkson's lucrative *WaterOz* business. He erroneously reported his analytical readings as if they were consistent with the label when in fact the product's PPM mineral content actually fell short. Those readings created FDA product labeling violations for Mr. Hinkson—he was not aware of the deficiency. Hinkson had relied upon Swisher as an expert in the analytical testing field to provide true and accurate information. The product-labeling violations were then used as a pretext by the government under a claim for immediate protection of the "public health" to obtain the July 2002 indictment.

Hinkson is a pioneer in the field of dietary mineral supplements whose North Central Idaho home and water bottling facility, *WaterOz*, was raided by a combined 50-man federal swat team in November 2002. At that time Mr. Hinkson expressed concern that 25-masked, machinegun toting

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government agents dragged him out of his bed at 5:45 a.m. just to enforce alleged FDA labeling and IRS tax-filing laws.

Hinkson was immediately released on his own recognizance. Charges ranged from failure to file income tax forms, product labeling errors and bank reporting violations. Subsequently, in May 2004 he was convicted (not for tax evasion as incorrectly reported but for failing to file income and employment tax returns). Absurdly, he was convicted as well for withdrawing on two occasions within 24 hours his weekly cash payroll—nothing illegal.

In April 2004, just prior to trial in the Tax Case, Hinkson pleaded guilty to two vicarious offenses (as the party responsible for a business). The FDA charges were misdemeanors and involve highly technical labeling violations for dietary supplements.

Once the government handed down their indictment (July 17, 2002) they held it for four months without doing anything—they claimed it was to provide for the immediate protection of the "public health." Instead, during the four months the government positioned itself for a preemptive strike against Hinkson's home and factory. The strike was orchestrated by the very same government agents who had maligned Mr. Hinkson for years, whom he had sued for \$50 million because of alleged governmental misconduct. These same agents were suddenly, by the issuance of the FDA search warrant to protect the "public health," empowered to attack Mr. Hinkson with impunity—applying the level of force they deemed appropriate.

In his testimony before a federal grand jury in April 2002 Swisher presented a glowing report of *WaterOz* and its owner, David Hinkson (at that time he was being paid by *WaterOz* for product analysis, and his erroneous reports had not been discovered). Nor was Mr. Swisher forthcoming with his allegations. For a year he remained silent—itsself a crime (misprision of a felony) while he planned his takeover of the *WaterOz* business.

Contrary to Swisher's claim that he was a decorated war hero, the public records confirmed that he was a liar and forger. In addition, Swisher's claim of being an injured war veteran

enabled him to fraudulently, obtain medical benefits from the Veteran's Administration to which he was not entitled.

Hinkson asserts that Swisher made up the claim of solicitation of murder to put him in jail so that Swisher could grab Hinkson's property, which he coveted. Mr. Hinkson was not permitted to present the evidence of Swisher's fraud so that the jury was, in essence, hoodwinked into believing that Mr. Swisher's testimony was credible.

Hinkson was initially imprisoned April 4, 2003, and has been held ever since on preposterous stories that made absolutely no sense except to the government fiction writers who concoct their fables to justify the arrest of an innocent man. In an effort to bolster an otherwise preposterous fabrication, it became necessary for the government, after the initial arrest, to find other implausible witnesses, such as Mr. Swisher.

In addition, Hinkson was arrested for allegedly violating conditions of his pretrial release. Purportedly he solicited the murder of three federal officials while on bond. The charge of solicitation for the murder of federal officials is commonly used in Idaho by the federal government against innocent people. By accusing people of solicitation for murder, the government is required to use one or more of its 15,000+ paid informants. These informants are trained to lie under oath with court authorized use of stealth and deception. The informants will lie against any person who has been designated as the target of a government investigation because it's their job.

The FBI in Idaho has become emboldened by the fact that the courts will not regulate the use of "stealth and deception." They have now accused Mr. Hinkson's legal team of being co-conspirators in a plot to murder federal officials. The implausibility of this new murder-for-hire plot has become the government's latest and greatest fiction in the saga of David Roland Hinkson and surpasses all comprehension.

However, this latest incident of accusing Mr. Hinkson attorneys, points to the real source of the problem. Let's be clear: the government is becoming desperate. It attempts to implicate innocent people for crimes that did not occur simply to justify the forfeiture of property to pay for more informants.

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The government having been empowered by the courts to engage in a broad range of techniques and methods to disclose criminal activity, through stealth and deception, have now stooped to an all time low. They now accuse any innocent person who dares to oppose them of murder-for-hire of federal officials [and we are learning that mostly the money figure is \$10,000].

In this case, all informants for the government were either disgruntled former employees of *WaterOz* with a grudge against David Hinkson, or they were persons with an economic interest in seeing Mr. Hinkson jailed. Unfortunately, our court system does not require a second accuser to corroborate the statements of a person such as an Elven Joe Swisher.

After the verdict in the Tax Case in late June 2004 and after Mr. Hinkson had been held in jail for one year and three months an indictment was finally issued against him. The indictment issued for eleven counts relating to alleged statements of threatening harm to the federal officials. It is upon this indictment that the jury returned its mixed verdict on January 27, 2005.

The root of the problem is that in its last revision of the money laundering law in 1996, Congress failed to tie the use of the money obtained in a structured transaction to criminal conduct. By removing criminality as an element of any offense, Congress has opened a Pandora's Box. By allowing the government prosecutors to prey upon the American people for innocent conduct where no criminal intent exists, it is turning ordinary banking transactions into criminal law violations.

Hinkson says, "If they can do it to me, they can do it to anyone." Mr. Hinkson, as a former national talk-radio host says, that "no American is safe from indictment under the new structuring law. You may not intend to do so, but if you bought a used car with \$9,000 cash down that was drawn out of your bank account on day-one and day-two you paid off the balance with \$5,000 (also cash from your bank account), congratulations, you've just structured a currency transaction. You've now committed a federal felony, and you are now subject to

government prosecution with asset forfeiture and five years in prison.

Beware! Those of you who simply withdraw cash, cashier checks, traveler's checks or money orders in an amount greater than \$10,000 which is split over more than one day, you are in violation of this structuring law.

David Hinkson then became a political prisoner of the United States. That means he was in jail for one year, before he went to trial, on the counts of failure to file income tax. It was Mr. Hinkson's analysis of the federal tax code that led him to a determination that he was not a person required to file tax forms during 1994.

In 2000 when the tax investigation began against him, Hinkson endeavored to engage the IRS in a civil law. He sought to have a jury resolve the question whether he was a person required to file tax returns. When, in March 2000, he demanded trial by a civil jury, the IRS, who had previously advised him in writing that the investigation was civil, immediately turned the case into a criminal prosecution. This precluded Mr. Hinkson from litigating the applicability of the tax law as it applied to him.

Is David's Case one that just slipped through the cracks of the Justice Department? Maybe some people are seeing here a glimmer of foul play.

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THIRTY-FOUR *are the cowards the ones quick to judge?*

I received a letter in June of 2007 from another federal inmate and then sent him the following letter:

Daily, we learn about how so many more Americans are losing their freedoms. Over seven million Americans are either in prisons, jails, or they are on parole or under the control of the System and over two million behind bars. Each year 10 million people are arrested. I suspect that 40 percent or more are either innocent or over-punished for violations of the 60 million laws of this Nation.

As you may know, it cost David and us over \$3,000,000 [now over \$4,000,000] to fight the criminal conspiracy perpetrated by IRS, FDA and Justice Department with the help of a black-robed prosecutor (Ninth Circuit Court Judge Richard C. Tallman). They pulled every string to achieve their goal—not to get the truth, but to convict [David] at any cost. Fortunately, David was acquitted of/or the charges dropped of all but the testimony of one forger, perjurer and despicable liar, Elven Joseph Swisher. Now he has been exposed, but the government is hesitant or may never willingly prosecute him [However, after we involved the right powers, they finally acted].

Your story smacks of the same sick disregard for law and order by the untouchable villains within government. Amoral judges and politicians without backbone or integrity protect rogue government agents and their informers.

However, I admonish you—as I did my son, David—to treat the guards with respect. They, in fact, aren't responsible. They merely carry out the dictates of their superiors who mostly recruit from the ex-military who just want to earn a living. My job is to expose those who don't treat you with respect and dignity.

About four months before they arrested David, one reader of the *Lewiston Tribune* (in the "Opinion Letters" on December 11, 2002) wrote about David saying:

Here is another thought on the David Hinkson issue. Along with these alleged charges, he is quite a person. I would like to see Adam Wilson do an article on the other side of the guy. There is so much that should be said. Also, I think it would be interesting.

Our company contracted some work for him and found him to be honest in his dealings. That alone says a lot. During the course of our work we had a very enlightening experience of seeing his Water Oz plant, also his equipment, shop and the building on U.S. Highway 95. [It] is most amazing.

As a major employer in the area, he could eventually rival the Grangeville hospital or Forest Service in contributing to our economy and well-being. I would rather hope all works out for the man [and] his employees, and we need him. J. Carroll Atkinson, Grangeville [Idaho]."

The *Lewiston Tribune* published this only because of its policy to publish letters to the editor [which they sometimes refuse]. However, governmental abuse applies not only to ordinary citizens, but also to any in government who blow the whistle on in-house corruption. Consider the case of a Congressman who dared to speak out.

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THIRTY-FIVE idaho congressman george hansen- chained and thrown into prison

What has happened during the intervening years with our "system of justice?" We watch, with dismay, the transformation of our system of justice. All the truthful lawyers with whom I've conferred admit to me that our legal system is "broken." Our rights as Americans are disappearing while we sleep.

The Idaho Observer published a story of "crime, abuse and tyranny" by the Federal Government-It is the story of Former Congressman George V. Hansen. I had the good fortune to visit with Mr. Hansen after his ordeal. But the story was almost unbelievable.

While I was visiting with David near Grangeville Idaho one of David's female employees told me that she had been Congressman Hansen's secretary. The story she and others told sounded too implausible; there must be a mistake of sorts; something was missing in the story, I thought.

I looked up the name "George Hansen" on the Internet and found four listings by that name. David walked into the room where I was searching on his computer, so I told him my plight-"How can I reach Mr. Hansen?" I needed to talk directly to the Congressman in order to satisfy my demand for authentication and reliability.

David knew Congressman Hansen and put me in contact with a friend of Hansen, Bill Call of Pocatello, Idaho. Bill contacted Congressman Hansen, arranged a breakfast meeting, and we met and talked. I came directly to the point asking Hansen for verification of what I had heard. He clarified some misconceptions then shocked me and Faye with the intimate reality of what he endured.

Even President Reagan and Attorney General Ed Meese were not able to help George. This was the turning point in my comprehension of justice in America.

Don Harkins (now deceased), publisher of *The Idaho Observer*, and Edward Snook, of *The Oregon Observer*, covered the story as follows:

After four years of imprisonment, after ten years of persecution, after being ruined professionally and financially and after being permanently damaged physically, in December, 1995, the Ninth Circuit Court of Appeals vacated Hansen's sentence for bank fraud because the U.S. Supreme Court had ruled (May 15, 1995) that Hansen's previous conviction as a member of Congress had been overturned.

[They handed him] a prison term which describes the most inhumane, degrading and painful of punishment, [that is] normally reserved for the most violent and uncontrollable of prisoners.

A prisoner is shackled at the feet and handcuffed at the wrists, reinforced with a box-like structure which stiffens the chains and locks the wrists at a 90-degree angle. The handcuffs are connected to a waist chain that is connected to another chain which connects the shackles. Once this shackling is complete, a prisoner can barely move. The tightened manacles pinch the nerves and restrict the flow of blood causing severe pain and swelling. Legs swelling with blood are particularly damaging to the feet, as toenails under pressure from blood-blisters press up against shoes for long periods of time and soon become infected and deformed, causing such excruciating pain that they require surgery or the pulling of the nails out by the roots.

Diesel therapy gets its name-not from the "cruel and unusual" bondage. But [it gets its name from a person] being forced into a bus and on plane after plane, shackled as described, and being shuttled from one prison to another, for weeks on end, 20 hours per day in chains, for no other reason than to cause pain and suffering and give the prisoner a "message."

Welcome to diesel therapy and the world of seven-term Congressman George Hansen. He was found guilty in the courtroom of the infamous Federal Judge Edward Lodge on bogus charges of bank fraud which were manipulated into an issue by

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the Idaho Department of Finance which illegally used the same agents previously employed by the IRS in their failed attempt to get Hansen....

After Ed Snook of *The Oregon Observer* and I met with Hansen and he told me in a six-hour meeting what had happened to him, I was more shaken than I have ever been in my life.... What could an esteemed member of the U.S. Congress have done to deserve such treatment?

A series of events were triggered to allow crimes to be manufactured which led to the imprisonment and torture of Congressman George Hansen. Idaho District Federal Judge Edward Lodge, who has been used by bankers and government officials for a decade to "legalize" their unethical and criminal activities, was given the job of putting Hansen away and seeing to it that he learned a lesson.

Judge Lodge saw to it that Hansen received "diesel therapy" coming and going to prison from the judge's court at great cost to the government, even though Hansen should have been allowed to make such trips at his own expense.

On the way from his hometown of Pocatello to federal prison in Petersburg Virginia Hansen was bussed and flown [while] nearly immovably shackled, at taxpayer expense, to jails all over the country. Not Hansen's lawyer, his wife, nor his allies in Congress were able to locate him. Hansen had simply disappeared for a month into the custody of the Federal Marshal's Service. Hansen's wife didn't know whether he was dead or alive. And even when the Supreme Court overturned Hansen's original case and the Appeals Court vacated his current sentence Hansen still got the Judge Lodge treatment of another dose of diesel therapy from Virginia back to Idaho. What had Hansen, who was a model prisoner, done to deserve the most brutal, torturous and barbaric type of treatment this country's penal system is capable of inflicting on a prisoner?

Retired Congressman Tom Kindness (R-Ohio) stated, "I believe that George's recent trial and conviction on charges of 'bank fraud' was the direct result of a campaign by various members of the bureaucracy to stop the CAP. CAP (the Congressional Accountability Project) was being launched by

Hansen and a group of investors interested in good government. CAP was going to utilize nation-wide television and a national 900 number to make congress persons instantaneously accountable to the American people for their votes on the House and Senate floors."

"This was a project which would, in my opinion, have had a major impact on the votes of congressmen since it would have made them instantaneously responsible to the people by making their votes known immediately after being cast," commented journalist John Voss.

Hansen and his associates were on the verge of making CAP fully operational and accessible to the American public when the government, through the Idaho Department of Finance with the illegal help of former IRS agents, a revenge-minded Justice Department and the corrupt Judge Lodge, manufactured bank fraud charges against him.

Judge Lodge's provably compromised court ultimately found Hansen guilty and prescribed diesel therapy to teach him a lesson. Why did the "Honorable" Judge Lodge treat Hansen like Public Enemy #1?

George Hansen was the only member of Congress able to pull the strings necessary to visit the hostages in Iran in 1979 and expose the big-bank scam behind the crises.

George Hansen was the author of the book *To Harass Our People*, an indictment of the IRS, where he demanded its dismantling. George Hansen was the congressman who was so outraged by what he discovered about the IRS while researching his book that he wrote and helped to pass the Taxpayers' Bill of Rights.

George Hansen was the first man to propose the flat tax as a damage control alternative to protect the people from IRS abuses. George Hansen was the man who took on OSHA, WPPSS, and the INS, and George Hansen was the man who fearlessly and repeatedly made public his findings when investigations turned up government corruption and citizen abuse.

The "system" decided it had to teach Congressman Hansen a lesson because had he been allowed to continue serving on Capitol Hill, he would soon likely be the chairman of the

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powerful House Banking Committee. So why did Judge Lodge, whose personal reasons for needing to keep the well-documented criminal nature of the banking industry below public scrutiny, with the help of the Idaho Department of Finance, trump up a bank fraud conviction? (They did it) by denying the admission of exonerating evidence in court in order to throw Hansen in prison and make sure that he was punished severely with diesel therapy?

Was it because Congressman Hansen was getting close to the truth and accumulating the political power it would take to finally and totally expose the banking industry and government for its criminal abuses of the American people? Judge Lodge's Court of Kangaroos. CAP was apparently the final straw and the abusive criminal government had to shut Hansen down.

On the eve of CAP becoming fully operational, powerful special interests and political enemies derailed the project and forced a domino effect of financial repercussions upon Hansen and his associates. The government then took the situation it had created and indicted, prosecuted and convicted Hansen of bank fraud. Though the treachery of Judge Lodge and government disdain, the patriotic financial sacrifices made by Hansen's supporters for good government . . . did not prevent Hansen from publicly pledging that these law breaking government bullies could ever seal his lips, nor stop him from somehow paying back the people he owed and thereby keep his word.

Every attorney who has read the court transcripts is concerned and confounded as to how George could have been convicted on bank fraud charges when the supervising bank officers were not only acutely aware of his financial operation and transactions, but were actively assisting him in his efforts for over ten years!

George defrauded no one and we can prove it," stated Congressman Kindness. Hansen was not really imprisoned and tortured by our government for bank fraud. Although that was the government's excuse to lock him up and shut him down. Hansen was actually a political prisoner who was guilty of attempting to provide the American people with the ammunition

of knowledge so they could successfully fight back against the senseless encroachment of government oppression which more and more is ruining the lives of all of us. . . .

While in Iran, Hansen saw firsthand what happens to political prisoners, who were beaten mercilessly, who had finger and toe nails ripped out by the roots and who had been shackled until they were permanently disabled physically. Hansen has also experienced firsthand the same inhumane torture, and it happened to him in the most "civilized" nation on earth the only difference being that Hansen was denied treatment and pain-killers and had to rip his own deformed and infected toenails out.

With renewed vigor, Hansen is back and is calling on all concerned Americans, including members of Congress and other elected officials, to join him in the fight to restore accountability and decency to our stricken Nation.

Has our government repented and stopped such tactics? Let's look at what has happened in the intervening years.

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THIRTY-SIX *traficant survives the judicial cesspool*

You may recall the name of former Congressman James Traficant, how the FBI hounded, prosecuted and then tossed him into prison. Yet he vowed never to let the corruptors rest. They convicted James Traficant in 2002 on trumped-up corruption charges—about the time government agents went after David—and sentenced him to prison, ultimately serving seven long years for crimes he did not commit.

James A. "Jim" Traficant, Jr. was born in Youngstown, Ohio on May 8, 1941. He received BS and MS degrees from the University of Pittsburgh. He also received a MS from Youngstown State University in 1976. From 1981-1985 he served as sheriff of Mahoning County, prior to his election to the U.S. Congress in 1984. He was re-elected by overwhelming margins every year up until 2002 when, following his conviction on trumped up corruption charges, the House of Representatives expelled him. He was "set up" by the FBI and the Justice Department, according to Merrill Freeman, a freelance writer/investigator:

[It was] a totally fraudulent case against Traficant, based upon coerced and perjured testimony, fabricated "evidence" and a wide variety of other non-evidence used to convict Traficant with the collaboration of a federal judge, Lesley Wells.

Ironically, Wells should have never heard the Traficant case: her husband was partner in a law firm that represented the interests of one of the key figures in the case against Traficant. The FBI and the Justice Department had between 60 and 90 lawyers and agents—or more—working to "get" Traficant.

What these Justice Department lawyers and FBI agents were doing during the four-year period that led up to Traficant's trial in the spring of 2002 was scouring all over Traficant's district trying to find anything they could to put Traficant in jail. What they did was find people in the district whom they believed

were guilty of other crimes (tax evasion, corruption charges, whatever). Then the FBI and the Justice Department would take those people in and say,

"We've got ya. What can you tell us about Jim Traficant? Did you ever give him a bribe? Did he ever ask you for a bribe? Did he ever do you a favor in return for a campaign contribution?"

So there was this gigantic, taxpayer-financed army of FBI agents and justice lawyers trying to find out everything they could about Traficant.

Youngstown had a reputation for being a center of organized crime. Traficant himself alleged on the floor of Congress and in interviews that a faction of organized crime actually controlled the local office of the FBI as well as judges (local and federal) in the region.

Thus, it was—considering all of this effort by the federal law enforcement apparatus—that they would inevitably be able to find somebody somewhere who would be willing to make an allegation about Traficant in return for getting off the hook, for getting a reduced sentence or some other form of favorable treatment. [They did this] in order to escape punishment for their own crimes that had absolutely nothing to do with their association with Traficant. Someone accused of income tax evasion, for instance, might plead guilty to the crime in return for probation, rather than a jail term, for having said that they had offered a bribe to Traficant and that he accepted it.

During this time, the media in Cleveland and in Traficant's home town played up the idea that Traficant was corrupt, working in concert with "the Mafia," constantly reiterating that Traficant was under investigation. As a result of the media onslaught, everybody in the region knew about the investigation: businessmen, political figures, mobsters. Everybody was looking over their shoulders and saying, "I wonder if the FBI is going to come after me?" And that is exactly what did happen.

The FBI was approaching many, many people and what did happen—as could be expected—is that many people concocted lies (often under FBI and Justice Department tutelage) implicating Traficant. And this is what subsequently emerged during

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Traficant's own investigation of the intrigues of the FBI and the Justice Department.

When his case finally came to trial, the judge, Lesley Wells, frequently frustrated Traficant's efforts to bring this into the court before the hearing of the jury. In some instances, the judge actually barred defense witnesses that Traficant hoped to call. In other cases, the judge limited Traficant's questioning of witnesses called by the federal prosecutors in order to prevent all of the exculpatory facts from being brought to the jury [Does any of this sound familiar as in David's case.]

In short, people were being told: "If you don't testify against Traficant, you'll be prosecuted for fake crimes and sent to jail." In some cases, these people—who were under the gun—simply made up things to satisfy the federal authorities. In other instances, there were those who had innocent dealings with Traficant that the Justice Department and the FBI twisted as to make those dealings appear to be criminal in nature.

The old saying, of course, is that a prosecutor can get a grand jury to indict a ham sandwich. But there is no defense mechanism in a grand jury proceeding. A grand jury is conducted entirely by the prosecutors who bring forth evidence against a targeted individual who does not have the right to a defense. An individual who has been targeted can be called in and questioned by the prosecutors, but his attorney cannot come in and present a defensive cross-examination. So after several years of work and thousands of man hours spent, not to mention millions of dollars, the Justice Department cobbled together a multi-count indictment of Traficant.

There were headlines all over the country: "Controversial Congressman Indicted." "Racketeering." "Bribery." "Corruption." "Income Tax Evasion." It sounded very sensational and most people's reaction was: "Oh, here's another crooked congressman."

These people have the technique down pat. At the time they were vilifying David, others were getting the same treatment in various places. I

think an investigation into the Department of Justice would confirm the same pattern. Merrill continues:

Even people who liked Traficant started to think that "He is a good guy who did a lot of good things, but he must be guilty of something. Where there's smoke, there must be fire." And that's precisely what the Justice Department and the FBI and their allies in the mass media (not to mention the Israeli lobby) wanted people to think.

However, for those who actually read the federal indictment and who were familiar with standard political corruption cases, any honest observer could only conclude that many of the charges were trumped up, if only in the sense that the charges were penny ante in nature—hardly the major crimes that the Justice Department and the media were attempting to portray.

Yet, even some Traficant supporters, in reviewing the indictment, believed—without having heard Traficant's defense, as of that point—that perhaps there may have been elements in the indictment that could result in a conviction. But that was before Traficant began responding publicly to the specific charges and outlining his defense.

Now that Former Congressman Traficant is out of prison, he is pursuing the same course: Expose the criminals in government. He is fearless. The cowards that hide under rocks and steal the rights and freedoms of our citizens may yet pay a price.

A recent article written by Jim Traficant gives even more insight into how far these cowards are willing to go as they try to scratch their way up the ladder of corruption to power. He declares:

Recent national stories have highlighted U.S. attorneys and their abuse of power. The criticism is beginning to grow from all areas of America. The Department of Justice (DOJ) has countered that they've only had 201 identified cases of

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prosecutorial misconduct in the last 10 years. These bureaucrats in Washington D.C., maintain that an average of 20 per year is an insignificant number when you consider the number of cases they handle. The DOJ claims to have prosecuted over 60,000 cases per year, arguing that, in most cases, attorney's "error" is most likely the culprit, not "misconduct."

Here are two cases to digest; decide for yourself. The first is that of John Demjanjuk, the retired auto worker from Cleveland, Ohio, who the DOJ charged with mass murder, claiming he operated the gas chambers at the Treblinka Concentration Camp in Poland during World War II.

DOJ prosecutors claimed that Demjanjuk was, in fact, the infamous "Ivan the Terrible;" Demjanjuk's citizenship was stripped away. He was then extradited to Israel to stand trial for his crimes. The family came to me for help, reluctantly, knowing that I was not a DOJ favorite. They had been to every congressional office and every senator's office. Nobody would talk to them. The son, John Demjanjuk Jr., and son-in-law, Ed Nishnic, claimed to have favorable evidence that supported John Sr.'s innocence. So, I investigated.

An area newspaper wrote: "Traficant supports Nazi mass murderer." Other politicians, at all levels, said I was crazy. Demjanjuk was tried, convicted and sentenced to death. But my investigation proved that Demjanjuk was innocent. To boot, I even proved the true identity of "Ivan the Terrible," a man named Ivan Marchenko. So his first name was Ivan. Go figure.

The DOJ denied my evidence. The 6th Circuit Court refused my evidence. The evidence was delivered to the Israeli Supreme Court. After reviewing the evidence, the Israeli Supreme Court phoned me at my hotel in Jerusalem and said,

"Demjanjuk will be delivered to you tomorrow night; take him home."

All my evidence came from the DOJ. They knew he wasn't "Ivan," but they would have let him be executed.

When we landed in America, the 6th Circuit of Cincinnati, Ohio, issued a statement:

"A tragic, but, honest mistake [was made] by the government.

Tragic, yes. Honest, no. [Damage control, not truth is their game.]

Office of Special Investigations prosecutors should've been prosecuted for their serious crimes: subornation of perjury, obstruction of justice, violation of Demjanjuk's civil rights, conspiracy and complicity in attempted murder. Ah, but Demjanjuk was just a Ukrainian guy from Cleveland. Well, when you violate the rights of one American, you endanger the rights of all.

The second case I know in and out—because it was mine. The DOJ spent more than \$15 million and assigned 250 agents to investigate me over six years—and our country was attacked, and more than 3,500 people were killed on Sept. 11, 2001, during that time.

At trial, the DOJ admitted they "had no physical evidence." They even testified that they didn't even have a tape recording of my voice because they "didn't tape" it. If you believe that, you're either naive or uneducated.

Former Secret Service Agent Mike Robertson said, "The government made tapes. They probably had boxes of tapes. They said they had no tapes because they had no evidence of crimes by Traficant, and Traficant could've used their own tapes to prove his innocence. Traficant was railroaded."

Seven witnesses said they bribed me. Two men, Richard Detore and Namdi Okolo stated the government "pressured" them to lie. Four other witnesses testified that government witnesses confided in them that they "lied to avoid prison."

The judge made those four witnesses testify in open court, subject to perjury charges, but "excused" the jury and never let it hear their evidence. Not one was charged with perjury. They could snatch me tomorrow and send me back to prison for saying this, but the judge and the government knowingly broke the law to convict me.

One last thing: The former clerk for Chief Judge Lambros, Attorney Percy Squires, testified that John Cafaro lied. The judge made his testimony look "controversial." Now that Americans are recognizing the "crimes" committed by government attorneys, the DOJ is harping. Do I hear violins? Get back at me!

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When a person knows what may be in store for him/her by telling the truth, it becomes a hard choice. Too few people have the courage to stand up to be counted. It might be like giving birth or having gallstones, how can you truly commiserate unless you have been there? So let's peek inside the dungeon.

THIRTY-SEVEN *dungeons in america*

Let's review the findings from a book entitled, *Criminal Injustice* (edited by Elihu Rosenblatt-1996), and excerpts taken later from an article by Erica Thompson and Jan Susler entitled, *Supermax Prisons, High-Tech Dungeons and Modern-Day Torture*:

The SuperMax Control Unit or lockdown concept beginning at Marion, Illinois in 1963 has been continually criticized by human rights organizations. These concerned individuals argue that it has never been demonstrated that repression brings desired results. SuperMax lockdowns seem to be designed to break the defiant spirit and behavior through psychological deprivation—in which prisoners are stripped of their individual identities.

In a 1987 report of Amnesty International it stated that the Marion method violates the United Nation's Standard of Minimum Rules for Treatment of Prisoners, that there is hardly a rule in the Standard Minimum Rules that is not infringed in some way or other. Security measures override the individual need for human contact, spiritual fulfillment, and fellowship, and this is the excuse for a constant show of sheer force. Such conditions constitute psychological pain and agony tantamount to torture.

In a 1990 report by a subcommittee of the House of Representatives on courts' intellectual property and the administration of justice, it expressed concern about the amount of time they cooped up inmates in their cells in relative isolation. They had limited opportunity for production and recreational activities in their cells due to the highly controlled environment, that there is a need to develop a more humane approach to the incarceration of the maximum security prison population.

Since 1983 the Merion model—physical and psychological control—was replaced by the new federal control unit, Colorado ADX. Human rights

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watch in 1991 found that the single most disturbing aspect of their management was "the trolling for rations of control units prisons." The Report continues:

Inmates are essentially sentenced twice, once by the court to a certain period of imprisonment; and the second time, by the prison administration to confinement in "maxi"- Max is under extreme harsh conditions and without independent supervision. This second sentence is open ended and limited only by the overall length of an inmate sentence and is meted out without the benefit of counsel. The increasing use of prisons within prisons leads to numerous human rights abuses and frequent violation of the U.N. standard minimum rules for treatment of prisoners.

Super prison control-units differ from lesser security institutions in three principles respects. First other prisoners are out of their cells for an average of 13 hours per day, but Super Prisons are permanent lockdown facilities. In other words, prisoners are caged in their single cell approximately 23 hours per day. Prisoners are not allowed to communicate with other prisoners. Complete isolation is assured. Prisoners must eat, sleep, and live their entire lives alone in the cell. No religious service. Censorship of reading materials [are] strict. A person needs human contact....

On the rare occasions when a prisoner has an opportunity to leave his cell, he is fully Shackled (hands, feet and waist), and he is flanked by several guards. "Minor rule infractions result in severe punishment ranging from a prisoner being fully strapped down to his bed to a visit from the cell extracting team."

The legal effect of an administrative transfer is that the prisoner has no legal recourse to challenge the designation. A prisoner can be held indefinitely in Supermax because of that designation. What is going on in United States in the name of law and order is obscene and unprecedented in history. We must educate ourselves, speak out, and take action immediately. We must make a concerted effort to intensify the debate on all fronts. We must be relentless. There are no [valid] excuses."

We ask if ADX complies with *The Legal Resource Guide* with regards to inmate rights and disciplinary procedures. A thorough investigation may reveal that they don't give inmates reasonable access to legal materials. Federal prisons don't always maintain inmate law libraries, with meaningful books where an inmate may purchase legal materials outside the prison. Even so, the officials may not allow inmates to retain them. They may not allow a reasonable amount of time to conduct their own legal research, to prepare legal documents or retain publications they receive. Violations of prohibited acts do not appear to carry sanctions that correspond to the severity of the events (as relates to segregation, loss of good time, credits, loss of privileges and verbal warnings). Yet, it appears that they will allow retaliatory and capricious disciplinary actions.

On July 21, 2008, I wrote a second letter to Warden Ron Wiley of ADX:

Dear Warden Wiley:

Unfortunately, certain members of your staff have failed to comprehend the significance of their role as agents under your supervision. My last letter to you, dated February 7, 2008 (attached herewith) I asked for your support in making corrections for abuses. Apparently, you did instruct your staff to address the abuses by some guards as mentioned in the attached letter of February 7th. I didn't make an issue about the abusers. Now I want to tell you what has happened. Again, this is not a formal complaint by asking for a hearing within the system. I'm now publishing a story for all peoples inside and outside the U.S. It may be that only a few people care about what happens to the poor souls that ADX puts in solitary confinement where a few cowardly guards treat inmates with contempt. The abused have no spokesmen.

In the past I have chosen to withhold publishing negatives about ADX because of my believe that most of the guards are decent, honorable employees who want only to do their jobs by following the Regulations as published in the *LEGAL RESOURCE*

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GUIDE TO THE FEDERAL BUREAU OF PRISONS (2008). My intent is to identify and expose those who misunderstand their stewardship. What I did not anticipate was guards or authorities being outright liars. To lie reveals lack of character. A person placed in charge of others needs to be up front and honest, and there is no justification for lying.

On Friday at 1:10 p.m. July 18, 2009, David Hinkson's attorney, Wes Hoyt, called me saying he had been waiting for 40 minutes to see his client, David (08795-023). He had spoken to CO Quintina (sp) and was told that all the bays were full. Mr. Hoyt called me suggesting I call Officer Sprawl to see if there was any way he could come into an attorney booth [as provided by law], or in the alternative, to one of the eight social booths. I had told Mr. Hoyt about an earlier complaint [I registered] when I was informed by the supervising lieutenant, on duty, "There is no justification for any staff member to delay a visitor for over 30 minutes unless there's an emergency." In the past, I have myself reminded staff of this declaration, and have gotten hasty results.

At 1:17 p.m., I called asking to speak to Officer Sprawl or Warden Wiley. Mr. Sprawl was cordial and cooperative; he said he'll try to get Mr. Hoyt in and that he was working on it even as we spoke. So I said, "Thanks for your efforts."

Shortly after, Mr. Hoyt, who was a former assistant prosecuting attorney, was taken into the cell area. His first observation was that Attorney Booth #12 had no one in it during the remaining hour he was there, and after consulting with other attorneys, he learned that it never had been occupied. No one had left, and no one came in. Attorney Hoyt had emailed and faxed a request to visit David on Tuesday, July 15th [three days earlier]. Officer Sprawl told me that an attorney needs to notify ADX 3 or 4 days before coming. So I told Mr. Sprawl that he could then take one of our family social visits. Officer Sprawl then told me that all eight of the social booths were full. They did, in fact, get him in for an hour visit. At 3:10 p.m. Mr. Hoyt called me telling me that all eight of the social bays had been empty [all along].

At 3:25 p.m., I called ADX and asked to speak to Officer Sprawl. Why did you lie to me," I asked. He told me that he had been informed that all the bays/booths were full.

Who told you that?

"Officer Haygood," he said.

"I'll accept that. But then you were being lied to by Haygood." I tend to believe that Officer Sprawl was telling the truth; I was angry--yet he remained quite cool. Haygood in the past has demonstrated inappropriate behavior toward both David and his attorney, Mr. Hoyt. Possibly he needs to be reminded of the *LEGAL RESOURCE GUIDE*.

Another issue that raised my ire was the fact that David had notified the ADX authorities two and a half months previously about a tooth hurting him. When his face swelled up and he was agonizing in pain, "Medical" at the Facility gave him a limited amount of penicillin. They did not examine the tooth. I asked Officer Sprawl to put me through to the Medical Department. He started to give me a post office box number. I asked him if someone were hit by a car, "would you send a letter for assistance?" I said I don't want help in three months or even three hours but now! So he gave me the ADX telephone number (719) 784-9464. I let it ring for 30 times before it shut off [automatically] and for another 20 rings before I hung up.

I attached [to the letter] the Appellate Court Decision of May 30, 2008, (Trial held on May 7, 2007) remanding back for retrial David's conviction from Tallman's court.

I said, "Although it is highly unlikely that David Hinkson will remain in the custody of ADX for much longer, all prisoners under your custody should be treated under the guidelines of the stated objective of the Bureau of Prisons. The following is what the BOP wants the public to believe:

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The Bureau of Prisons provides services and programs to address inmate needs, structured use of leisure and facilitate the successful reintegration of inmates into society. Each Bureau facility offers a set of programs and services that vary based on the characteristics and needs of its specific inmate population.

Upon arrival at a new institution, an inmate is interviewed and screened by staff from the case management, medical, and mental health units. Later, an inmate is assigned to the Admission and Orientation (A&O) Program, where he or she receives a formal orientation to the programs, services, policies, and procedures of that facility. This program provides an introduction to all aspects of the institution.

Research has conclusively demonstrated that participation in a variety of programs that teach marketable skills helps to reduce recidivism. Additionally, institution misconduct can be significantly reduced through programs that emphasize personal responsibility, respect, and tolerance of others.

Accordingly, the BOP offers a wide variety of program opportunities for inmates that teach pro-social values and life skills. These programs include vocational training, the Life Connections Program, parenting programs, and mock job fairs. With regard to the attached MEMORANDUM (dated July 21, 2008), I question if ADX intends to comply with the Guidelines and unequivocal demands as stated. Sincerely, Roland Hinkson

I followed up by calling our Colorado Senator's Office. Senator Allard was by then a lame-duck; he was leaving the Senate. Regardless, I had hoped he could help with David's plight. So I sent the following letter:

Senator Wayne Allard, c/o Brian McCain, August 8, 2008.

Dear Senator Allard: Recently, I spoke to your assistants, Mr. McCain and Mr. Merritt, regarding law violations amounting to abuse of inmates by federal employees at ADMAX, Florence, CO, USBOP. I contacted Warden Wiley, of the U.S. Penitentiary, but he has been unable to correct the abuse of inmate rights which has now proven to be an ongoing stream of misconduct that needs investigation and correction.

I am an investigative reporter for the *American's Bulletin* and other publications as well as being a guest on talk shows regarding individual rights. My son, David R. Hinkson, was fraudulently convicted of solicitation of murder of three federal officials (which solicitation never occurred); all the so called evidence was manufactured by a man that has since been convicted of defrauding the V.A. of over \$100,000 in benefits using the same false evidence. This man's fraud was so pathetically flawed that the forged DD-214 he used to claim awards from the Korean War era showed medals that were not created until the 1990s. The 9th Circuit Court of Appeals has reversed David's 2005 conviction; however, because of a petition by the Justice Department for en banc review, he continues to sit in ADMAX solitary confinement.

The merits of David's case are not the issue here, but only magnify the injustice of the abuse at ADMAX. I am seeking your aid in correcting the willful violation of USBOP rules and regulations by the guards at ADMAX—which include the denial of right to legal counsel regarding pending proceedings and denial of right to reasonable dental care (David has had an abscessed tooth for nearly three months which has been disregarded). A summary of these matters is attached; however, the extension of your good offices in addressing these problems, heretofore swept under the rug, is truly necessary and will affect other constituents as well.

Sincerely, Roland Hinkson.

It was no surprise that Senator Allard was unable to do anything. I believe it was mainly because of his short timeframe left in office.

By turning the spotlight on abusive behavior by government agents (police, prosecutors and judges) charged with carrying out the proper procedures that Americans believe in and expect, can only strengthen our Nation. Regardless of how tough the job is for the overseers, we citizens must always keep the light shining on them. For law enforcers to make deals with criminals to get convictions leads to corruption.

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Elitists in power in America today intimidate those we choose to serve us. To blow the whistle or deviate from their instructions can be fatal to careers. But we must again become a nation where law and order rule, not powerful men. Otherwise, we will not be citizens—we'll become nothing but slaves.

If police use informants and they, the police, in fact violate any law in so doing, they must be charged and punished the same as any lay citizen. But how does this "Informant System" work?

THIRTY-EIGHT *the rewards of "testilying"*

It's hard to tell how long it'll take the Supreme Court to take David's case. But the issue is now of major magnitude because the Ninth Circuit has changed the standard, and it will reflect on future decisions in other cases.

One informant lies with impunity. One judge, appointed politically, with the power to destroy anyone who comes into his/her courtroom where no reasonable way to appeal the decision, can only lead to tyranny. By allowing a rule that a trial judge's discernment is final is fatal to justice.

In David's case, we watched a process unfold that makes the term "kangaroo court" seem mild and innocuous. With millions of dollars spent by David and his family and by the taxpayers, with loss of WaterOz's potential income and shattered family members' lives, how can we feel that there is justice in this Land of our heritage?

About the time the "parade" against David was in its infancy Former Ohio Congressman Robert E. Bauman, JD, wrote an article called "Personal Privacy, The United States: An Informer's Paradise" (December 1997).

He stated: "Most Americans know little or nothing about the widespread domestic use of police informants, and few government and police officials are willing to talk openly about this big, dirty secret. It could be you being investigated or charged with crimes you didn't commit because an informant pointed the finger at you."

The Congressman explained: "Money laundering is one of the favorite charges pursued. Shrouded in secrecy, informers don't want publicity about their nasty work. They want lenient treatment for past crimes, money rewards and sometimes revenge. Despite constant government efforts to keep the public in the dark, the bright sunlight of publicity has exposed the squirming mass under the rock."

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Further, Congressman Bauman gives details:

In the wake of the 1995 Oklahoma City bombing, President Clinton quickly demanded that Congress pass legislation greatly increasing police wiretapping, FBI surveillance and the expanded use and protection of government informants. Many of Clinton's dubious proposals found their way into law under the guise of "anti-terrorism" controls.

[He revealed that even 15 years ago] Michael Levine, a retired 25-year veteran of both U.S. Customs and the Drug Enforcement Agency (DEA), estimates there are currently at least 15,000 informers on federal payrolls, not counting many thousands more paid by state and local police. His estimate does not include more than 10,000 informants who claim money rewards each year for reporting fellow taxpayers to the IRS, or the nearly 1,000 so-called controlled informants the IRS pays to inform on others, some of them tax accountants. For example, for the fiscal year ending September 30, 1996, the IRS paid informants US\$3.5 million—nearly double what it paid for the previous year." How much is that in today's value?

Levine (retired in 1990) complained that informants earn three or four times more money than their bosses. He said, "Our rights as citizens and the *U.S. Constitution* are now in the hands of 15,000 wild, out-of-control informants."

Former Congressman Henry J. Hyde of the House Judiciary Committee talked about government use of "an army of well paid secret informers" whom he described as "a motley crew of drug pushers, ex-cons, convicts, prisoners and other social misfits. . . . They have a strong incentive to lie, and they often do. Informants, by their very nature, are not normal, gainfully employed, honest, upright citizens. Rather they are, or have been, involved in drug or other serious criminal activity, and their motivation is to save their own skins."

Congressman Bauman gives some examples of how the system works:

Typical is the 1996 New York federal district court case in which Emad A. Salem, the unsavory main government witness in New York's World Trade Center terrorist bombing conspiracy trial, admitted he lied, testifying he was promised more than \$1 million by the government for his assistance as the principal informer in the case....

Informers are sometimes paid on a contingency fee; the total value of property they finger for successful forfeiture determines how much money the government pays into their personal bank accounts . . . cooperating witnesses receive 25 percent of the value of property seized by the government in any one case, with a maximum cap of \$250,000.00.

A report of the U.S. House Committee on Government Operations showed how well informers are being paid: Even back in 1990-91, for example, the Justice Department paid 65 informants more than \$100,000 each, 24 were paid between \$100,000 and \$250,000, and eight got over \$250,000 each. With the declining value of the dollar, you can estimate how much money that is in today's economy. But be aware—secrecy is the rule!

Bauman shares other insights about how they are polluting our system:

Although the Sixth Amendment, part of the U.S. Constitution's Bill of Rights, guarantees an accused person the right "to be confronted with the witnesses against him," courts have held this is not absolute and usually applies at trial but not always in preliminary stages of investigation and indictment.

These rulings Bauman says, "supporting the so-called informant's privilege," allow secret accusers to avoid risk of exposure by having to testify in public. Instead, a police officer seeking a search warrant simply repeats before a magistrate, or testifies before a grand jury about what he was told by "a reliable informant." The highly unfair result: most criminal defendants

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never find out who accused them of wrong doing, unless prosecutors decide an informant's testimony at trial is essential to convict.

Prosecutors, police and federal agents defend this system, arguing informants are indispensable in organized crime, terrorism and white-collar crime cases.

Harvard law professor Alan Dershowitz wrote in his book, *The Best Defense*, about little-known rules that govern the justice game in America today. "Rule IV is—Almost all police lie about whether they violated the *Constitution* in order to convict "guilty defendants."

"That is certainly accurate," Bauman said, "when it comes to the use and/or manufacture of police informers. It is now commonplace for police lacking a "reliable informant" on which to base a request for a search or arrest warrant, to invent them."

"Lying by police to support questionable criminal charges against suspects has gone on for years in New York City," according to a report of the Mayor's commission investigating police corruption. After 1993-94 hearings the Mollen Commission concluded: "New York police routinely made false arrests, invented informers, tampered with evidence and committed perjury on the witness stand. "Perjury is the most widespread form of police wrongdoing," the report stated—noting it even has a well-known nickname among the court house cognoscenti—"testilying."

Mr. Bauman sums up his Article with thought provoking observations. He wrote:

Congressman Hyde believes, "Most Americans don't realize the extent to which our Constitutional protections have been violated and diminished in recent years."

Neutral observers, libertarians like the Cato Institute, political conservatives like Hyde and Judge Trott, have joined with liberals and others on the left like Professor Dershowitz and

Philip S. Gutis, media relations director of the American Civil Liberties Union (ACLU).

They believe unchecked police informant use constitutes a serious danger to individual liberty. While the public only learns about major informant cases that go wrong, there are thousands of accused persons fingered by a "friend" for a crime they did not commit.

Carefully controlled use of informants has a place in proper law enforcement, but what kind of justice is it when prosecutors boast of charges against a businessman whose employee or associate settles a score with an anonymous accusation of criminal conduct? [This technique was rampant in Germany under the Nazi's Gestapo and SS control]

Betrayal is an essential element in the government police-informant game, but the repeated betrayal of basic Constitutional principles guaranteeing our freedom is the real menace to society. . . .

Late Supreme Court Justice Louis D. Brandeis warned:

The greatest dangers to liberty lurk in the insidious encroachment by men of zeal, well-meaning but without understanding. U.S. government agents may boast of cleverly turning criminals into instruments of law enforcement, but in this crude process, law officers have become willing co-conspirators in crime and too often, criminals themselves.

What if prosecutors, judges and government agents get bonuses for arrests and convictions. Would these people be chasing dollars rather than serving justice?

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THIRTY-NINE *do prosecutors and judges get paid?*

Is there something wrong with this scenario? I downloaded a promo from the Internet about a book written by Phyllis Schlafly, BA, MA, JD. She wrote a book called *PROTECT AMERICA FROM JUDICIAL TYRANNY-The Supremacists: The Tyranny of Judges and How to Stop It*.

In her book, she refutes the two colossal myths propagated by the legal community for the last fifty years: (1) "the *Constitution* is whatever the Supreme Court says it is" and (2) "court rulings are the law of the land."

Her publishers describe Mrs. Schlafly book, *The Supremacists*, as "a dramatic, page-turning account of what the judges have done to America in areas of religion, patriotism, marriage, schools, pornography, law enforcement, history, national identity, and even our right to self-government.

"This is a book about the fundamentals of American constitutional government and how we can shake loose the arrogant, arbitrary rule of judges before it is too late." She explains in her book:

Why judges should be like baseball umpires. How the Supreme Court invented new rights without any *constitutional* basis. It is scary evidence, judges use wildcards to create new law. Evolution doesn't just refer to the origin of species—it means that the supremacists evolve the *Constitution* into approving their own social policies.

The judicial supremacists are so carried away with their importance that one judge declared a federal law unconstitutional because it called on judges to give information to Congress that might cause judges to be criticized. The Supreme Court plunged into a "political thicket" that courts are not supposed to enter. One judicial supremacist proclaimed that the Supreme Court is "the ultimate interpreter of the

Constitution," but the American people have never approved this concept. Congress has the constitutional right to tell the federal courts what cases to hear and not hear. You'll observe later in this book where I place the real emphasis on judicial calendars—It has less to do with justice and more to do with money.

Pat Shannon, *American Free Press* writer, wrote about payoffs to select government personnel—including judges:

Anyone who has ever attended an Internal Revenue Service [IRS] court case likely noticed the biased attitude of the presiding judge in favor of the prosecution. Perhaps, though, only those of us who have sat in courtrooms, in every section of the country, can attest to this unwavering pattern of unfairness. Whatever happened to the judge's impartial role of "referee"?

Federal statutes show how and why U.S. law encourages prosecutorial and judicial conflicts of interest, non-neutrality, non-impartiality and corruption of justice in the federal courts. How can the federal judiciary be independent and impartial when the law permits the federal government to secretly award judges up to \$25,000 in undisclosed secret "cash awards," and to privately, secretly and "erroneously" overpay them up to \$10,000, and "waive" these erroneous overpayments?¹

¹ TITLE 5 > PART III > Subpart C > CHAPTER 45 > SUBCHAPTER I > § 4502 to § 4502. General provisions. (a) Except as provided by subsection (b) of this section, a cash award under this subchapter may not exceed \$10,000.

(b) When the head of an agency certifies to the Office of Personnel Management that the suggestion, invention, superior accomplishment, or other meritorious effort for which the award is proposed is highly exceptional and unusually outstanding, a cash award in excess of \$10,000 but not in excess of \$25,000 may be granted with the approval of the Office.

(c) A cash award under this subchapter is in addition to the regular pay of the recipient. Acceptance of a cash award under this subchapter constitutes an agreement that the use by the government of an idea, method, or device for which the award is made does not form the basis of a further claim of any nature against the government by the employee, his heirs, or assigns.

(d) A cash award to, and expense for the honorary recognition of, an employee may be paid from the fund or appropriation available to the activity primarily benefiting or the various activities benefiting. The head of the agency concerned determines the amount to be paid by each activity for an agency award under section 4503 of this title. The President determines the amount to be paid by each activity for a Presidential award under section 4504 of this title.

(e) The Office of Personnel Management may by regulation permit agencies to grant employees time off from duty, without loss of pay or charge to leave, as an award in recognition of superior accomplishment or other personal effort that contributes to the quality, efficiency, or economy of government operations.

(f) The Secretary of Defense may grant a cash award under subsection (b) of this section without regard to the requirements for certification and approval provided in that subsection.

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How can any defendant be found innocent or guilty beyond a reasonable doubt when such statutory cash award provisions on their face create an irrefutable, behind-the-scenes incentive for the prosecution?... This would include U.S. District Court judges and U.S. attorneys.

The Mungovan suit, composed by Utah lawyer Dr. Dale Livingston, explains: "These awards include secret cash awards. They are not limited as to the number of awards that may be awarded to any one person or group. There is no limitation placed upon any award. Any person or group of persons can be awarded this money, including: U.S. attorneys, federal judges, president of the United States or anyone else for that matter. Cash incentives paid for convictions help us understand not only what has happened in the past, but also what we can expect to see in the future."

I don't know if the government "paid off" Judge Tallman or whether any of the prosecutors fell under this legal scam, but I do know that Tallman awarded Steven Hines and Nancy Cook rewards. That much is in the Record.

No one I've spoken with has ever heard of any of these general immunities pertaining to prosecutors, judges and government agents—passed by the courts in America. Many in our government now considered the *Constitution* as an obsolete, historical document useful to make people believe they have rights. Yet, Prosecutors may violate civil-rights in initiating prosecution and presenting a case: See—United States Supreme Court in *Imbler v. Pachtman* 434 U.S. 409 (1976).

Immunity of certain government agents extends to all activities closely associated with legation or potential litigation: See—Second Circuit Federal Court of Appeal in *Davis v. Grusemeyer*, 996 F.2d 617 (1993).

As we observe in David's case, prosecutors may knowingly use false testimony and oppress evidence—See: United States Supreme court in *Imbler v. Pachtman*, 434 U.S. 409 (1976). Prosecutor may file charges

without any investigation as they consistently did in David's case (For example, Marianna Raff said David hired her brothers to kill the trio, but FBI Agent Long never for seventeen month even so much as made a phone call, until pressure mounted; he already knew it was phony)—Also see: Eighth Circuit Federal Court of Appeal In *Myers v. Morris*. 810 F.2d 1337 (1986).

A prosecutor may file charges outside of his jurisdiction—See: Eighth Circuits Federal Court of appeal in *Myers v Morris* 840 F.2d 1337 (1986), yet it is constitutionally unlawful. A prosecutor may knowingly offer perjured testimony, as Michael Sullivan did in David's case: See—Ninth Circuit General Court of Appeal in *Jones v. Shankland*, 800 F.2d 1310 (1987). A prosecutor (and apparently also a judge, as with Tallman) can oppress exculpatory evidence: See—Fifth Circuit Federal Court of Appeal in *Henzel V. Gertstein*, 608 F.2d 654 (1979).

And finally we learn something that even most attorneys don't know—they certainly aren't taught this is law-school: prosecutors are immune from lawsuit for conspiring with judges to determine the outcome of judicial proceedings: See—Ninth Circuit Federal Court of Appeal in *Ashelman v. Pope*, 793 F.2d. What they are doing in the courtroom is all commercial, and is in conformity to 27 CFR 72.11 where it confirms that all Crimes are commercial.

What the judge and prosecutor are doing in the courtroom is making a commercial presentment. This is a highly complex concept to comprehend.

Regardless of the provisions in 42 U.S.C. 1983, there are only two procedures available if the judge and prosecutor decide to steal your assets or throw you in prison:

- (1) Impeach the Judge—very expensive and unlikely to happen; and
- (2) Appeal to a higher court. What happens if the upper court refuses to take the case? You can spend a fortune to overturn the decision based on a

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potpourri of judge-made laws. Judges profess the right to interpret the law and the meaning behind the words. Justice in America is not cheap. The insane laws enacted by a corrupt society always lead to tyranny for the people.

On the Internet I came across an article by Llewellyn H. Rockwell, Jr. that I found enlightening:

Americans perhaps like all people, have a remarkable capacity for tuning out un-pleasantries that do not directly affect them. It's an astonishing fact that the United States has become the world's most jail-loving country, with well over 1 in 100 adults live as slaves in a prison.... Building and managing prisons, and locking people up, have become major facets of government power in our time; and it is long past time for those who love liberty to start to care. Before we get to the reasons why, look at the facts as reported by the New York Times.

The U.S. leads the world in prisoner production. There are 2.3 million people behind bars. China, with four times as many people, has 1.6 million in prison. In terms of population, the US has 751 people in prison for every 100,000, while the closest competitor in this regard is Russia with 627. The median global rate is 125.

What's amazing is that most of this imprisoning trend is recent dating really from the 1980s, and most of the change is due to drug laws.

He discloses other alarming data:

From 1925 to 1975, the rate of imprisonment was stable at 110, but then it suddenly shot up in the 1980s. There were 30,000 people in jail for drugs in 1980 while today there are half a million. Other factors include the criminalization of nearly everything these days, even passing bad checks or the pettiest of thefts [On TV news, I heard that President Obama pardoned a

convict who had been imprisoned for defacing a coin. WOW! That was nice]

And the judges are under all sorts of minimum sentencing requirements.

Now, before we move to causes and answers, please consider what jail means. The people inside are slaves of the state. They are captured, held and regarded by their captors as nothing other than biological beings that take up space. The delivery of all services to them is contingent on the whims of their masters, who have no stake in the outcome at all.

Now, you might say that this is necessary for some people, but be aware that it is the ultimate assault on human dignity. They are paying the price for their actions, but no one is in a position to benefit from the price paid. They aren't working off debts, compensating victims or struggling to overcome anything. They are just doing time, costing taxpayers almost \$25,000 a year per person, and they become socialized into this mentality that is utterly contrary to every notion of civilization.

Then there is the relentless threat and reality of violence, the unspeakable noise, the pervasiveness of every moral perversity. In short, prisons are Hell. It can be no wonder that they rehabilitate no one.

It is expensive (states alone spend \$44 billion on prisons every year), inefficient, brutal and irrational. It is also manipulated by political passions rather than a genuine concern for justice. The drug war itself costs taxpayers \$19 billion, even as the costs of running the justice system are skyrocketing (up 418% percent in 25 years).

People say that crime is down, so this must be working. Well, that depends on what you mean by crime. They are crimes because the state says they are crimes, but they do not fit within the usual definition we find in the history of political philosophy, which centers on the violation of person or property.

A more telling point comes to us from political analysts, who observe the politicization of judicial appointments in the United States. Judges run on their "tough on crime" records, or are appointed for them, and so have every incentive to lock people up more than justice truly demands.

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One factor that hasn't been mentioned so far in the discussion is the lobbying power of the prison industry itself. The old rule is that if you subsidize something, you get more of it [Currently they are asking Congress for a 50% hike over last year]. And so it is with prisons and the prison-industrial complex. I've yet to find any viable figures on how large this industry is, but consider that it includes construction firms, managers of private prisons, wardens, food service providers, counselors, security services, and a hundred other kinds of companies.

What kind of political influence do they have? Speculation here, but it must be substantial. As for public concern, remember that every law on the books, every regulation and every line in the government codebook is ultimately enforced by prison.

But won't crime go up if we abandon our prison system? Let Robert Ingersoll answer: "The world has been filled with prisons and dungeons, with chains and whips, with crosses and gibbets, with thumb-screws and racks, with hangmen and headsman—yet these frightful means and instrumentalities and crimes have accomplished little.... It is safe to say that governments have committed far more crimes than they have prevented."

In David's Case, did the government agents commit a crime, or did they carry out their duties lawfully?

FORTY *the u.s. constitution vs targeted individuals*

Our *Constitution* is the foundation of all laws of the United States of America. "Article VI" of the *Bill of Rights* clearly states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed. Which district shall have been previously ascertained by law, and [the accused shall] be informed of the nature and cause of the accusation. [And the accused shall] be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

How did David's experience relate to this doctrine? The Government incarcerated David for going on two years without charging him in the "Threats Case." They moved him from Northern Idaho where he lived and where the accusations had emanated (Moscow Idaho) to Boise, Idaho, where the media had published so much hate propaganda that the Feds handed to them. They did not inform David during that period of the nature of his "crimes." The second lying accuser, Swisher, replaced the first thieving accuser, Raff, while David remained many months in custody.

Judge Tallman denied testimony by some of David's witnesses before the Jury—even though we, David and family, paid for the witnesses to fly long distances. The fact that he wasn't in the United States when the second accuser (Swisher) testified that David plotted to kill government agents made no difference; the Judge would not allow jurors to see his Passport—even though David was in Russia and Ukraine at the time.

Certainly, this story sounds excessive. But the truth can be very disturbing. This book proposes to reveal the events as they occurred. I did not write this book for the average audience where entertainment is

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the goal. Hopefully, the reality of David's ordeal will open the eyes of those who yet feel comfortable with our current system of justice.

The reader should understand that the conspiracy pervades our government at every level. Certain techniques have been employed to circumvent the *U.S. Constitution*, and new laws are selectively enforced against "targeted individuals." It does not matter if the "targeted individual" is innocent and never broke any law. What counts is that the government can always find someone desperate enough to tell a few lies and fabricate a story so that they can receive a reward. Often times it will be the reduction of the cooperating witnesses sentence by a few months, but it is always enough to get the person to lie about the "target."

The true role of government is to protect the rights of the citizens. Misunderstanding by prosecutors and judges of our adversarial system [contest-trials] leads to abuse. Currently there is little that an accused can do to save himself/herself unless there are strong political connections or abundant money.

In America today you get as much justice as you can afford. But even then, if the System wants you, no amount of money will save you. However if you give up, you are embarking on a hopeless life in slavery or imprisonment.

I'm a realist. But I'm sure that there are at least of few insightful persons in the public who will join in David's struggle to regain his freedom. For the righteous and honorable to prevail doesn't depend as much on one's ideas or abilities, but on the courage one has to take risks and to act.

Mark Twain wrote, "In the beginning of a change, the patriot is a scarce man, and brave and hated and scorned. When his cause succeeds, the timid join him, for then it costs nothing to be a patriot."

We could not help but to wonder if there were any judges in the Ninth Circuit concerned more about justice than their political careers or if any

stood on principle rather than on camaraderie with fellow judges. However, after a considerable wait, we got the news.

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FORTY-ONE *3 judge panel of the ninth circuit court of appeals*

To save a little money, Faye and I drove our Road Trek Camper from Ouray Colorado, to Seattle Washington, round trip over 2,000 miles. We arrived May 7, 2007. Joining us were Dennis Riordan, who flew in from San Francisco, California, and Curtis Smith from Idaho Falls, Idaho.

We came expecting to hear Attorney Riordan plead David's Case before three judges for about 20 minutes. Fortunate, the judges gave him a little longer. For us costs were sizable considering we had to pay for attorney flights, food and hotel costs—all for a few minutes to answer questions.

The Justice Department, flew in from Washington D.C.: Michael D. Taxay, Counter-Terrorism Section, and Alan Hechtkopf and Elissa Hart from the Tax Division, United States Department of Justice. Costs to the taxpayers means nothing to the government. It's only taxpayers' money anyway.

All that the Appellate Court could consider was the "Record." They permit no other related input. The lies told by Harding and Bates, the Gunderson plot and participants never came to light. The only issue was: Did David get a fair trial?

Ninth Circuit Court of Appeals Judge William A. Fletcher wrote the "Majority Opinion" of the three-judge panel, which also included Judges Procter Hug, Jr. and dissenting Judge M. Margaret McKeown for the Hearing. He said:

Following a two-week trial in Federal District Court in Boise, Idaho, a jury convicted David Roland Hinkson of soliciting the murder of three federal officials. The government's star witness supporting the conviction was Elven Joe Swisher. Wearing a Purple Heart lapel pin on the witness stand. Swisher

testified that he had told Hinkson that he was a Korean War combat veteran and that Hinkson, [was] impressed by Swisher's military exploits, solicited him to kill the officials. [David never said this, nor was there any corroboration by any other witness—the source was strictly Joe Swisher].

On appeal, Hinkson makes three arguments. First, he argues that the district court wrongly precluded him from introducing evidence showing that Swisher presented a forged document and lied on the stand. Second, he argues that the prosecutor engaged in misconduct when he invoked Swisher's military service in his closing argument. Third, he argues that he is entitled to a new trial based upon his discovery after trial of evidence that conclusively establishes Swisher's fabrications.

We hold that the district court abused its discretion in denying Hinkson's motion for a new trial. . . . In response to our queries during oral argument, the government's attorney sent us a post-argument letter stating that he had been informed that investigating agents on the prosecution team first saw and learned of the Dowling letter on January 18 or 19, at the Boise, Idaho, office of the Department of Veterans' Affairs (Emphasis added). There is no indication in the record that defense counsel had any idea of the existence of the Dowling letter until the government provided it to the court on January 21.

Later that same day, the court received Swisher's official military file—"a half-inch-thick stack of materials"—from the National Personnel Records Center in response to its subpoena. .

Outside the presence of the jury, the court stated that a "quick review of the file indicates that Mr. Swisher was, in fact, involved in top secret activities; and it appears that he was awarded the medals that he claims that he was awarded."

The court [Tallman] told counsel that it would conduct a more thorough review of the file over the weekend. When the trial reconvened on Monday, January 24, the court went through Swisher's official military file with counsel—off the record. Then, on the record and without the jury present, the court stated its conclusions.

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The file had been sent to the court by the National Personnel Records Center in response to the court's subpoena; the Dowling Letter in the file matched the letter provided to the court by the prosecution on Friday; and the Dowling letter concluded that the "replacement DD-214" and the "supporting letter" purportedly signed by Woodring were "not authentic."

But the court found the file "very difficult to decipher." The court stated: "It is not at all clear to me what the truth of the matter is; and I suspect it has something to do with the fact that we are dealing with events that occurred fifty years ago."

The court stated that the problem the court had in reviewing the documents in camera is that "the documents we have, themselves, are neither self-authenticating nor self-explanatory." The court concluded: "And I do not want to turn this issue into a peripheral mini-trial under Rule 608(b) of the Rules of Evidence." . . .

Defense counsel told the court that he was "concerned about when the government got the Dowling Letter, which the prosecutor had provided to the court on Friday morning, January 21."

The court agreed that it "was not at all convinced yet" that "the document that Mr. Swisher pulled out of his pocket [was] false or not" because Swisher's military record was not "self explanatory." The court stated, "I have no idea, if somebody is involved in secret military operations, whether or not their personnel file . . . would ever reflect those missions."

The court stated that it needed to hear from a records custodian from the National Personnel Records Center or someone else who is more familiar with military records and decorations than any of us. The court ruled that the defense would be permitted to recall Swisher for further cross examination but would not be permitted to introduce any of the documents bearing on his military experience....

As Judge Fletcher pointed out:

Only one witness corroborated Swisher's testimony that Hinkson had been interested in and impressed by Swisher's military background—that witness was Richard Bellon....

Bellon testified that Hinkson "wanted to hire Joe Swisher as a bodyguard." He felt like he needed to hire Swisher "because he was trained." Indeed, Bellon testified that Hinkson's interest in Swisher's military background and skill in firearms stemmed from his interest in using Swisher as a bodyguard [Who wouldn't want a man in a wheelchair recovering from open-heart surgery to be his bodyguard?].

Let's not forget that Richard Bellon was absolutely furious when Judge Bradbury ruled against him in the attempted takeover of WaterOz. Bellon brought Swisher into the coup d'état along with the others during the WaterOz takeover.

However, Judge Fletcher said, "there is evidence from both Swisher and Bellon that Hinkson believed the story.... [But] the evidence specific to these counts differed in some respects."

What utter non-sense! To believe now what Bellon had to say about David wanting to hire a man who was wheelchair bound, sickly with a dangling catheter and recovering from heart surgery to become his bodyguard—all because Bellon said so, is beyond ludicrous. Why would David even want a body-guard?

Tallman had paid no attention to the fact that the Jurors acquitted David of all the charges based on the testimony of Harding, Bates, Birmingham, Bellon, Raff and the other money grubbers. Certainly, David was outspoken and called things as he saw them. The thefts, lies and attacks were unrelenting. Remember, Judge Fletcher could only deal with statements in the Record. He didn't know any of the events surrounding the testimonies.

Judge Fletcher restated the testimonies of the above accusers:

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Witness after witness, testified to Hinkson's express, intense desire that Hines, Cook, and Lodge be tortured and killed. Lonnie Birmingham, a WaterOz employee and close friend of Hinkson, [interesting how all these people claimed to be close friends to David] testified that Hinkson had told him that he wanted Cook, Hines, and Lodge killed because he felt like they were conspiring to come after him to destroy him [David had it right all along].

Bellon [testified that he] talked with Hinkson for hours on end about Hinkson's belief of a government conspiracy against him [Also, of interest is that Rich Bellon declared, under oath, that he had a large box loaded with tape-recordings of every telephone conversation he had with David—but no mention of wanting to hire anybody to kill anyone]. Bellon described Hinkson's anger towards the officials prosecuting him as the "central focus of his life."

In as much as the FBI made no authentic investigation, no information surfaced about what was really going on. The government brought in to testify anyone who had something negative to say about David. During the FBI and IRS investigations any potential witness who refused to badmouth David was summarily dismissed. The whole intent was to get a conviction, not learn the truth. The federal government threw at David anything they thought could conceivably stick.

Appellate Court Judge Fletcher concluded: "We review a district court's denial of a motion for a new trial based upon newly discovered evidence for abuse of discretion. A district court abuses its discretion when it makes an error of law, when it rests its decision on clearly erroneous findings of fact, or when we are left with 'a definite and firm conviction that the District Court committed a clear error of judgment.'"

Judge Fletcher discussed a five part Harrington Test the Appellate Court used to determine if they should grant a new trial. Judge Fletcher said:

After [Tallman's] reading the half-inch-thick file received on January 21 from the National Personnel Records Center, Tallman concluded, "It is not at all clear to me what the truth of the matter is."

He said that the file was "very difficult to decipher" and not "self-explanatory." Yet, "the Miller and Woodring affidavits were precisely the evidence that the District Court and the prosecutor on January 21 had described as fatally lacking. The Miller affidavit provided precisely the explanation the District Court had said it needed to "decipher" the documents in Swisher's file. . .

Under the second part of the Harrington test, we ask whether the failure to discover the evidence sooner resulted from a "lack of diligence on the defendant's part."

A court cannot conclude that a defendant lacks diligence merely because a defense team with unlimited time and resources might have managed to discover the evidence sooner. Instead, mindful of the constraints and competing pressures on the defense before and during trial, a court asks whether it was unreasonable for the defense to have failed to discover the evidence more promptly. The District Court concluded that Hinkson had not been sufficiently diligent in discovering the new evidence.

It [Tallman] wrote: "The Court finds that Defendant is unable to establish that the failure to discover this evidence was not due to his counsel's lack of diligence. The Court finds that defense counsel had ample time to investigate Swisher's record prior to trial, but was not diligent in pursuing the issue."

It is true, as the District Court wrote, that Swisher gave grand jury testimony in 2002 and early 2004. But the District Court was wrong to rely on the dates of the grand jury testimony. The government knew about Swisher's grand jury testimony, and thus the government was put on notice in 2002 and 2004 of his claimed "battlefield injuries...."

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Judge Fletcher said that Tallman agreed to subpoena Swisher's military file and review it over the weekend (it arrived two days later, on Friday, January 21) and disclosed it to counsel on Monday—the last full day of testimony before closing arguments.

Fletcher further said:

The District Court's ruling precluded the defense from introducing into evidence any of the documents received by the court in response to its subpoena.... Having already been embarrassed once by Swisher, defense counsel was understandably reluctant to attempt another cross examination under the conditions imposed by the court.

The District Court made it quite clear that, in its view, the dispute over Swisher's military record concerned a collateral impeaching matter, and that Hinkson would not be permitted to introduce anything into evidence that would show that Swisher had lied about his military record, including documents from Swisher's official personnel file.

It also stated clearly, that it did not want government experts testifying about Swisher's records. If the District Court would not allow into evidence documents from Swisher's personnel file because they addressed a collateral issue, and if it did not want testimony from government experts, it is obvious that it would not have permitted live testimony of defense experts on that same issue.

Although the District Court's evidentiary ruling under Rule 403 was almost certainly not an abuse of discretion, its ruling under Rule 608(b) was almost certainly legal error. The court [Tallman] concluded that it was "not at all convinced" that it had enough evidence to "resolve the question of whether or not the document that Mr. Swisher pulled out of his pocket is false or not." The court remained uncertain at trial about the truthfulness of Swisher's testimony and the authenticity of the "replacement DD-214," despite the fact that Swisher's military file was a government record that the court itself had

subpoenaed, and despite the fact that the file contained the Dowling letter.

In sum, the court stated at trial that the evidence before it was insufficient to allow it to determine the truth or falsity of Swisher's evidence.

In its order denying Hinkson's new trial motion, the District Court wrote that "the proffered evidence [i.e., the Miller and Woodring affidavits] is impeachment evidence and so is not a valid basis for a new trial."

Now comes the dissenting Judge, Margaret McKeown. She said:

I object to the majority's effort to override the District Court record. The District Court [Tallman] was open-minded as to how to address the military commendation issue.

Recognizing that defense counsel opened the door and that "ordinarily, under the rules, you are stuck with the witness' answer and the court has the discretion to restrict further collateral proof of that impeachment," the court nonetheless suggested that counsel could continue cross-examination. The court also stated that another option would be to instruct the jury to disregard the testimony relating to the Purple Heart.

Even during trial, once more facts came to light, counsel could have subpoenaed witnesses on this subject. But it chose not to, a strategic decision [which means that an innocent person must remain in prison for life because if he made a poor choice of counsel] that cannot now be the basis of the grant of a new trial motion. The District Court [Tallman] had first-hand experience with the discovery chronology and the diligence of defense counsel [Regardless of his prosecutors, we mustn't question Tallman's motive—after all, he's a judge]. Nothing supports the majority's rejection of the District Court's explicit findings regarding lack of diligence."

The Appellate Court published its verdict on May 30, 2008.

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Hurray! Now David gets a fair trial. And everyone knows that they won't retry him because they have no case without Swisher.

But the Justice Department had an option if not satisfied with the verdict of the Appellate Court; under the rules, they are permitted to appeal to an even higher court—called an "en banc" court (with all the judges for the Circuit). An "en banc court," in the Ninth Circuit, is composed of eleven judges [The Ninth Circuit is the largest in the U.S. with 48 judges, but they don't involve all the judges].

Why, I theorized, would the Justice Department want to expose themselves to charges of corruption and bias and to be held up to ridicule, if the public should get wind of their fraud? I believed that the Justice Department would not fight the appellate decision because to do so would be stupid. David's main concern when we told him the outcome of the hearing: "How soon can I get back to my work?"

Associated Press Writer Todd Dvorak reported the decision:

Boise, Idaho (AP) – A federal appeals court has overturned the conviction of a north Idaho businessman accused of plotting to kill a federal judge, prosecutor and tax agent who were involved in a tax case against him.

A three-judge panel of the 9th U.S. Circuit Court of Appeals found that a key witness in the 2005 trial lied under oath. . . .

In a ruling filed Friday, the appellate panel ordered that Hinkson deserves a new trial because the government's star witness, Elven Joe Swisher, 71, forged documents used at trial and lied under oath about his military background. . . .

"It's the most extraordinary case I've seen, because the government has since then prosecuted and convicted its main witness for doing what he did on the witness stand," Dennis Riordan, the San Francisco-based attorney who represented Hinkson before the appeals court, told The Associated Press.

"He was the only witness who testified that Hinkson had asked Swisher to murder these federal officials." He said

Hinkson "asked him because he was a military hero and a real killer. But he was a fraud."

A lower court denied Hinkson's initial appeal, but 9th Circuit Judges William Fletcher and Proctor Hug Jr., found the lower court ruling flawed. "Because Hinkson's conviction substantially rests upon the testimony of a witness who had been conclusively shown ... to be a forger and a liar, we hold that the District Court abused its discretion in denying Hinkson's motion for a new trial," the majority opinion said.

Judge M. Margaret McKeown disagreed, saying "exposing a witness as a liar on collateral issues is not grounds to overturn a murder-for-hire scheme corroborated by other witnesses [witnesses such as Bates, Harding, Birminham, Bellon etc.—where the jurors didn't believe their testimony and acquitted David].

"The question in this case is whether David Hinkson solicited Swisher to murder a federal judge and other public officers, not whether Swisher lied about his military service," she wrote.

A spokesman for the U.S. attorney's office in Boise expressed disappointment in the ruling. Assistant U.S. Attorney Rafael Gonzalez said government lawyers must decide whether to ask a full panel of appeals court judges to review the decision. Spooky, isn't it, to know that a judge like McKeown with her impeccable logic could determine your fate?

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FORTY-TWO 11 judge en banc appeal

Of course, we knew that there was a lot at stake in this trial. The Justice Department got their hair cut. With the huge expenditure of taxpayers' money—of no significance to them—but stymieing their ability to sustain a conviction with only one cooperating judge, without allowing the Convict a reasonable chance for appeal, was paramount. If only they could grind us down, deplete all our resources they win. Maybe you aren't aware, but the prison industry is huge. Unbelievable money is at stake; so it was worth the Department of Justice's time and resources to go again for the brass ring.

With the same tenacity they applied originally in getting a conviction, the U.S. Attorney's Office decided to exercise their option for an en banc hearing. No question in our minds—obviously, this was a political decision from on high. So be it. Now we would have to wait another year or so to get confirmation that David would be free. In the meantime, David languishes in a solitary dungeon. I often wonder how these people can sleep at night or face a mirror. But I understand that many amoral opportunists gravitate toward power and will trample on anyone's rights to get there.

A year and a half later (December 15, 2008) after the appeal victory in Seattle, Faye and I drove to Pasadena California, for the eleven judge En Banc Hearing. We met Wes and Sandy Hoyt, Dennis Riordan and Curtis Smith at 6:00 p.m. for dinner. We discussed Dennis' strategy.

Next day at 1:00 p.m., we arrived at Court Chambers in Pasadena. John F. De Pue and Michael D. Taxay from the Department of Justice (Washington D.C.) came shortly after we took our seats on a bench. There were a few other observers, mostly students, who sat down on rear benches. At 2:00 p.m., a curtained stage opened, and all eleven judges filed in taking seats in two rows—all clad in black robes. The following

judges took their seats: Alex Kozinski, Chief Judge, Harry Pregerson, Diarmuid F. O'Scannlain, Andrew J. Kleinfeld, Kim McLane Wardlaw, William A. Fletcher, Richard A. Paez, Consuelo M. Callahan, Carlos T. Bea, Sandra S. Ikuta and N. Randy Smith.

There were more judges than observers. We had been patiently waiting while squirming on the hard bench. Off at the far right end of the room Mr. De Pue sat un-engaging. Our erstwhile adversary, Mr. Taxay, came into the room just before the command: "All arise!"

Dennis Riordan gave an excellent and compelling summation of the Case. Several of the judges asked questions but demonstrated that they weren't of one opinion. Others were silent throughout the hour. By contrast, De Pue and Taxay argued pathetically from a rehash of all the same old judge-made laws. We felt confident that the judges would unanimously sustain the Three-judge Appellate Decision. Months passed before we heard the verdict.

Judge Carlos Bea wrote the Majority Opinion:

Today we consider the familiar "abuse of discretion" standard and how it limits our power as an appellate court to substitute our view of the facts and the application of those facts to law for that of the District Court.

David Hinkson refused to pay income tax on his business profits [false statement—David challenged the authenticity of the tax code but gave full authority, via power-of-attorney, to take any amount due].

He asserted the *United States Constitution* forbade the federal government from taxing a person's income [David's assertion was a correct statement—government can Not tax income lawfully, only corporate income].

He was investigated by Internal Revenue Service Agent Steven Hines, prosecuted to a conviction for income tax evasion by United States Attorney Nancy Cook, and sentenced by United

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States District Judge Edward Lodge [False—he was sentenced by Judge Richard C. Tallman].

While awaiting trial on his tax evasion case, Hinkson solicited his friend and employee Elven Joe Swisher at the time Swisher alleged that David solicited him to torture and kill Hines, Cook, and Lodge for \$10,000 per head [Swisher was not a friend and was never an employee of WaterOz. At the time, David would have nothing to do with Swisher].

Swisher reported Hinkson's solicitations to federal authorities [only after we refused to pay him \$5,000 or comply with his blackmail].

Hinkson was indicted, tried, and convicted by a jury for solicitation of the murder of the three federal officials.

Swisher testified on behalf of the government [The government had full knowledge that Swisher was a fraud].

Hinkson then moved for a new trial principally on grounds that Swisher had fraudulently presented himself to Hinkson, and later to the judge and jury, as a Korean War veteran with experience in killing people, but he had no such war service nor experience.

In brief, Swisher had falsely held himself out to be a war hero.

The trial court denied the new trial motion.

Hinkson appealed this denial of his new trial motion and several evidentiary rulings made by the trial court. We granted en banc review of the panel's decision to reverse the District Court's denial of Hinkson's new trial motion; and for the reasons explained below we conclude that our "abuse of discretion" standard is in need of clarification.

The standard, as it is currently described, grants a court of appeals power to reverse a district court's determination of facts tried before it, and the application of those facts to law, if the court of appeals forms a "definite and firm conviction that a mistake has been committed."

At the same time, the standard denies a court of appeals the power to reverse such a determination if the district court's finding is "permissible" [How do they define "permissible?"].

It has previously been left to us to decide, without further objective guidance, whether we have a definite and firm conviction that [a] mistake has been committed or whether a district court's finding is "permissible. There has been no effective limit on our power to substitute our judgment for that of the district court [In other words, "they have the authority and power to choose any interpretation of words or meanings of words they want—even if illogical non-sense!"].

Today, after review of our cases and relevant Supreme Court precedent, we re-state the "abuse of discretion" standard of review of a trial court's factual findings as an objective two-part test.

As discussed below, our newly stated "abuse of discretion" test requires us first to consider whether the district court identified the correct legal standard for decision of the issue before it.

Second, the test then requires us to determine whether the district court's findings of fact, and its application of those findings of fact to the correct legal standard, were illogical, implausible or without support in inferences that may be drawn from facts in the record [emphases added]."

The key phrase here is "facts in the record." If a trial judge denies the jurors from hearing the facts, and exculpatory "facts" are withheld, they will never become part of the record. No appellate court will consider them. Under such a process, a trial judge can determine the outcome of a trial with impunity.

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FORTY-THREE *the en banc court overturns the appellate court*

The decision of the eleven-judge Panel was to overturn the three-judge Panel and to support Judge Tallman's trial-court decision. The vote was seven to four. The Opinion, written by Judge Bea, was filed November 5, 2009, and Dissent was by Judge Fletcher.

The judges who disagreed with the conclusion of Judge Bea were Fletcher, Pregerson, Wardlaw, and Paez.

In his Dissent, Judge Fletcher restated the entire case (just as had Judge Bea in the Majority Opinion):

The government maintained in its opening statement to the jury that Swisher was a Korean War combat veteran, and it maintained throughout the trial that Hinkson's understanding of Swisher's military exploits showed that he was serious in his solicitations of Swisher.

The government now concedes that Swisher neither served in combat nor earned any personal military commendations, and that Swisher presented a forged military document in court and repeatedly lied under oath at trial about his military record. Hinkson makes three arguments on appeal—

First, he argues that the District Court wrongly excluded documentary evidence showing that Swisher presented a forged document and lied on the stand.

Second, he argues that the prosecutor engaged in misconduct when he invoked Swisher's military service in his closing argument despite having substantial reason to suspect that Swisher had lied about that service.

Third, he argues that the District Court abused its discretion in denying his motion for a new trial based upon his discovery after trial of new evidence conclusively establishing that Swisher had lied on the stand.

I would reverse the District Court [Tallman] based on Hinkson's first and third arguments. I would hold that the District Court abused its discretion when it excluded documentary evidence that would have contradicted Swisher's claim on the stand that he was a decorated combat veteran, [and] I would also hold that the District Court abused its discretion when it denied Hinkson's motion for a new trial. . . .

We review for abuse of discretion a district court's evidentiary rulings, including decisions to admit or exclude impeachment evidence. We must then apply the harmless error standard.

We will reverse an evidentiary ruling for abuse of discretion "only if such non-constitutional error more likely than not affected the verdict." *United States v. Edwards*, 235F.3d 1173, 1178-79 (9th Cir. 2000); see also Fed. R. Crim. P.52(a) ("Harmless Error. Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.").

Hinkson sought to introduce the Tolbert letter, the Dowling letter, and the rest of Swisher's official military file in order to show that Swisher lied about receiving the Purple Heart and his other claimed military decorations, and to show that he had forged his so-called "replacement DD-214" that he had brandished before the jury.

The District Court excluded this evidence based on Federal Rules of Evidence 608(b) and 403. Rule 608(b) provides: Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' character for truthfulness, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence.

They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The District Court deemed the documents bearing on Swisher's military experience extrinsic evidence probative of a

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specific incident of untruthfulness and therefore inadmissible under Rule 608(b).

The District Court erred as a matter of law in holding that the Tolbert letter, the Dowling letter, and the other documents in Swisher's file could be excluded under Rule 608(b).

The 2003 Advisory Committee Notes to Rule 608 make clear that the absolute prohibition on extrinsic evidence applies only when the sole reason for proffering that evidence "is to attack or support the witness' character for truthfulness." Fed. R.Evid. 608(b), advisory comm. notes (2003).

Hinkson did not seek to introduce those documents for the sole purpose of attacking the witness' character for truthfulness. Rather, Hinkson sought to introduce the documents for the specific purpose of contradicting in-court testimony by Swisher. Such evidence is governed by Rule 607, which "permits courts to admit extrinsic evidence that specific testimony is false because contradicted by other evidence." *United States v. Castillo*, 181 F.3d 1129, 1132 (9th Cir. 1999).

Swisher took the witness stand wearing a Purple Heart lapel pin thereby affirmatively stating that he had been wounded in combat while serving in the United States forces. Rule 801(a) provides A "statement" is . . . nonverbal conduct of a person, if it is intended by the person as an assertion.

Recall that in his opening statement to the jury, three days before the prosecutor had described Swisher as "a Combat Veteran from Korea during the Korean conflict, [who] was not adverse to . . . violent, dangerous activity."

Particularly given the prosecutor's statement, the jury could hardly avoid understanding Swisher's wearing of the Purple Heart as "nonverbal conduct . . . intended . . . as an assertion" that he had been wounded in military combat.

"The documents Hinkson sought to introduce would have directly contradicted that statement, and would have shown Swisher to be a liar.

"The District Court also erred by refusing to allow Hinkson to introduce this extrinsic evidence to impeach Swisher based on Rule 403. Rule 403 provides: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by

the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

The District Court abused its discretion by concluding that it would be unduly time-consuming and confusing to the jury to admit the official military documents showing that Swisher lied about receiving a Purple Heart, and that, when challenged, he lied about having a so-called "replacement DD214."

Although some parts of Swisher's military record may have been difficult for a lay jury to understand, other parts were easy to comprehend. For example, the Dowling letter was clearly written and unambiguous. It stated simply and directly that Swisher had not been in combat and had not been awarded any medals. Other documents in Swisher's official military file—which had been sent to the court pursuant to its subpoena and whose authenticity was not in doubt—unambiguously showed that Swisher's "replacement DD-214" was a forgery.

Given Swisher's crucial role in the government's case against Hinkson, the time it would have taken to admit this evidence could hardly have outweighed its probative value. The District Court's refusal to allow Hinkson to admit this documentary evidence was not a harmless error. Swisher was the government's principal witness on the only counts on which Hinkson was convicted. The jury would have formed a significantly different impression of Swisher's credibility if Hinkson had been permitted to introduce evidence that Swisher lied about his military record on the stand. . . .

Hinkson's motion for a new trial asserted that the Miller and Woodring affidavits, newly obtained after trial, proved conclusively that Swisher had presented false testimony and had presented a forged document during trial. The government no longer disputes that Swisher lied about his military experience and presented a forged "replacement DD-214."

It contends, however, that the newly obtained Miller and Woodring affidavits do not warrant a new trial. We review for abuse of discretion a district court's denial of a motion for a new trial based upon newly discovered evidence (See e.g. *United States v. Sarno*, 73 F.3d 1470, 1507–9th Cir. 1995).

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A district court abuses its discretion when it makes an error of law, when it rests its decision on clearly erroneous findings of fact, or when we are left with "a definite and firm conviction that the district court committed a clear error of judgment."

Under *United States v. Harrington*, 410 F.3d 598 (9th Cir.2005), a criminal defendant must satisfy a five-part test in order to prevail on a motion for a new trial:

- (1) evidence must be newly discovered;
- (2) failure to discover the evidence sooner must not be the result of a lack of diligence on the defendant's part;
- (3) evidence must be material to the issues at trial;
- (4) evidence must be neither cumulative nor merely impeaching; and
- (5) evidence must indicate that a new trial would probably result in acquittal. . . .

The district court applied this *Harrington* test, citing *Waggoner*, 339 F.3d at 919.

What we today call the *Harrington* test is sometimes referred to as the "Berry rule," named for the nineteenth century case from which it derives. See 3 Charles Alan Wright et al., *Federal Practice and Procedure* § 557, at 541(3d ed. 2004) (citing *Berry v. State*, 10 Ga. 511, 527 (1851)).

Although we ordinarily state the test as comprising five requirements, we have recognized that requirements (3), (4), and (5) are duplicative. That is, newly discovered evidence is "material" when the result of the newly discovered evidence is that "a new trial would probably result in acquittal," a condition that is not usually met when the newly discovered evidence is "cumulative or merely 'impeaching.'" See, e.g., *United States v. Krasny*, 607 F.2d 840, 845 n.3 (9th Cir. 1979—noting that the materiality and probability requirements "are really two means of measuring the same thing"); *United States v. Davila*, 428 F.2d 465, 466 (9th Cir. 1970) (*per curiam*) (noting that newly discovered impeachment evidence supports a new trial if "it is likely that the jury would have reached a different result" in light of the evidence); see also Wright et al., *supra*, § 557, at 552.

The character of the defendant's newly discovered evidence determines how strictly we apply the *Harrington* probability

requirement. Our usual rule is that newly discovered evidence does not entitle a defendant to a new trial unless the evidence indicates that it is more probable than not that the new trial will result in acquittal.

This rule applies to most newly discovered evidence, including newly discovered evidence tending to show that evidence presented at the defendant's trial was false (See *Krasny*, 607 F.2d at 842.1).

I would conclude that Hinkson has satisfied all five parts of the *Harrington* test.

To my surprise, the majority concludes that Hinkson has satisfied none of them.

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FORTY-FOUR *legal reporter levine on en banc decision*

Recorder Staff Writer Dan Levine wrote the following article after the decision of the Eleven Judge En Banc Hearing:

Conservatives on the Ninth Circuit U.S. Court of Appeals rode to the rescue of one of their own on Thursday, finding that Judge Richard Tallman didn't botch a bizarre murder-for-hire case in Idaho. The en banc decision from Judge Carlos Bea reverses an earlier opinion that blasted Tallman for refusing to grant defendant David Hinkson a new trial. The author of that panel opinion, Judge William Fletcher, now writes in dissent.

Bea and Fletcher largely talk past each other. Bea, a former state trial court judge, used the case to give district court judges more cover on abuse-of-discretion calls. Fletcher, a former UC-Berkeley School of Law professor, essentially accused Bea of cherry-picking the facts, saying his version of events was too "truncated."

A Justice Department spokesman declined to comment on the ruling. "Not so," [said] Hinkson's defense attorney, Dennis Riordan of Riordan & Horgan in San Francisco. "Any legal rationale that prevents a jury from learning that the only witness the government has on the charge came before the jury with the express purpose of lying to them, and showing them forged documents, can't possibly be an appropriate or correct standard for a fair trial," he said.

Federal prosecutors charged Hinkson with attempting to hire his onetime friend, Elven Joe Swisher, to kill an IRS agent, a prosecutor and an Idaho district judge. A tax protester who made his living running WaterOz—a company that sold water with small bits of dissolved gold and platinum over the Internet.

Hinkson hated federal authorities. He spoke of building a "fed-a-pult," which "was a device to catapult federal agents into a canyon or into an oncoming train," according to the opinion.

At trial, Swisher appeared on the stand bedecked with a Purple Heart, which he claimed was a product of service in the Korean War. When the defense tried to challenge the medal,

Swisher produced a military document which purported to prove its authenticity.

Faced with conflicting evidence in Swisher's personnel file, Tallman let the testimony in, and Swisher [Hinkson] was convicted. After trial, when the defense supplied an affidavit from an officer calling Swisher's document a forgery—and proving that he never served in Korea or won a medal—Tallman didn't order a new trial. Instead, he sentenced Hinkson to 33 years, which he is serving in a Supermax prison for terrorist suspects [Tallman sentenced David to thirty years plus upward departure of three years on Swisher's testimony and another ten years for the phony structuring charges].

In his opinion, joined by six others, Bea tightened the abuse-of-discretion standard. "We invoke that standard of review as we have hundreds of times before, but this case forces us to step back and consider precisely what "abuse of discretion" means," Bea wrote. "From now on, a district judge's factual findings can only be reversed if they are found to be illogical, implausible or not supported by inferences drawn from the facts, he wrote [This decision gives trial judges unbelievable power but is Constitutionally unlawful].

If any of these three apply, only then are we able to have a "definite and firm conviction" that the District Court reached a conclusion that was a "mistake," Bea wrote. "Tallman's decisions passed this test," he concluded.

Joining Bea were Chief Judge Alex Kozinski and Judges Diarmuid Scannlain, Andrew Kleinfeld, Consuelo Callahan, Sandra Ikuta and N. Randy Smith.

Fletcher didn't take on Bea's new standard, but instead ticked through a list of mistakes he says Tallman made. For example, Tallman said Hinkson's lawyers waited too long to investigate Swisher's war records, when in fact, Fletcher wrote, they had been waiting for a response from the military for months.

"It is almost incomprehensible to me that the government would make that argument. It is entirely incomprehensible that the majority would accept it," Fletcher wrote. He was joined by Kim McLane Wardlaw, Richard Paez and Harry Pregerson.

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Riordan plans to ask the entire Ninth Circuit to hear the case and, failing that, the U.S. Supreme Court.

Maybe we shouldn't be surprised that a former trial judge would want to change the law in order to give trial judges decisive power. As Tallman said at David's Trial, "You can always appeal my decision"—yes, if you can afford it. However, with this interpretation of the law there is no effective way to appeal even the most corrupt judges.

FORTY-FIVE *judge fletcher on the en banc decision*

Judge Fletcher's Opinion is a perceptive analysis of David's Trial under the District Court [Tallman]:

As the District Court knew or should have known, precisely because it was grand jury testimony, that testimony was kept secret from Hinkson. The government finally turned Swisher's grand jury testimony over to Hinkson pursuant to the Jencks Act on January 4, 2005, only one week before trial. Thus, the first time Hinkson was put on notice of Swisher's claimed battlefield injuries was on October 11, 2004.

On January 14, 2005, when Hinkson's counsel sought to reopen his cross examination of Swisher in order to question him about the Tolbert letter, counsel stated to the Court, "For quite some time, we have been trying to dig into his military history because we don't believe it's accurate."

Then, after Swisher pulled the "replacement DD-214" out of his pocket, Hinkson's counsel stated at the sidebar that the defense had "been trying to get Mr. Swisher's military records for about ninety days; and we have very little control over when that happens." January 14 is ninety-five days after October 11. Thus, we know from the un-contradicted trial transcript that Hinkson's counsel tried to obtain Swisher's military record immediately after his October 11 deposition.

We also know that government authorities, over whom defense counsel had very little control, were slow to respond. The government did not provide anything to Hinkson until it provided the Tolbert letter on the very day of Swisher's testimony. The government can hardly claim that Hinkson was not diligent when his counsel sought the information immediately after Swisher's October 11 deposition. It was the government that took ninety days to respond.

In my view, Hinkson's counsel were diligent in looking for evidence that could be used to impeach Swisher. Indeed, they were successful in finding such evidence. As a result of their

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efforts, defense counsel received the Tolbert letter from the National Personnel Records Center while Swisher was still on the stand.

The letter recounted that Swisher did not enter active duty until 1954. It stated that Swisher's Marine Corps record has been carefully examined by the Military Awards Branch . . . , and that office has stated that his record fails to show that he was ever recommended for or awarded any personal decorations. Hinkson's counsel reasonably viewed the Tolbert letter as exactly the sort of impeaching evidence it had been seeking.

Counsel hoped that Swisher, when confronted with the letter, would be forced to admit that he was not the decorated combat veteran he purported to be. Counsel could hardly have anticipated that Swisher, after being shown the letter, would pull from his pocket a forged document purporting to provide a superseding account of his military service. Until that moment, there was little reason for the defense to suspect the existence of Swisher's "replacement DD-214," let alone to suspect that the document was a forgery. After learning of the "replacement DD-214" on Friday, January 14, the defense was quick to investigate its authenticity.

On Wednesday, January 19, following a long holiday weekend, defense counsel informed the Court that they had learned that Swisher had recorded two different DD-214 forms with Idaho County, and that the earlier-recorded DD214 was "devoid of any . . . honors and medals."

Counsel also stated that they had spoken to staff at the National Personnel Records Center who stated that the Center stood by the conclusions of the Tolbert letter but would not release additional documents about Swisher without a subpoena from a judge. The Court agreed to subpoena Swisher's military file, which arrived two days later, on Friday, January 21. The Court kept Swisher's military file to review over the weekend, and then disclosed it to counsel on Monday, January 24, the last full day of testimony before closing arguments.

The Court ruled that it would allow the defense to recall Swisher for further cross examination, but would not allow the defense to introduce into evidence any of the military documents

obtained. The Court stated further that it did not want to conduct a mini-trial during which the government would put experts on the stand to explain the documents. Once Hinkson's trial concluded, the defense was diligent in obtaining the evidence from Woodring and Miller. It filed its motion for a new trial just over one month after the conclusion of trial.

The government had its own duty to investigate Swisher's military record, having been alerted to "the real possibility of false testimony." Because the government had participated in the grand jury proceedings, it knew long before Hinkson's counsel that Swisher had given potentially false testimony about his military experience.

Swisher's first grand jury testimony was in April 2002. This was two years and three months before Swisher's deposition, and two years and sixth months before Hinkson's trial. During this period, if it had wished to do so, the government could easily have obtained Swisher's official military file to determine whether its star witness was telling the truth. But so far as the record shows, the government made no effort to do so. The government now argues that Hinkson was not diligent in investigating Swisher's military record. But for two and a half years it was the government that made virtually no effort to investigate the trustworthiness of its star witness.

Further, it was the government that took ninety days to respond to Hinkson's request immediately after Swisher's October 11 deposition for information about his military record. Yet the government now has the nerve to argue that it was Hinkson who was not diligent.

"It is almost incomprehensible to me that the government would make that argument. It is entirely incomprehensible that the majority would accept it.

The third part of the Harrington test requires that the newly discovered evidence be "material to the issues at trial." In the context of a new trial motion under Harrington, materiality has a special meaning. Materiality under Harrington does not require that the evidence in question would have been material at the original trial. Rather, materiality under Harrington requires that the evidence in question will materially alter the result on retrial.

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In many cases, there will be little or no practical difference. But the Harrington test is clearly framed in terms of what will happen on retrial rather than what happened at the original trial.

As I discuss below, in addressing Harrington's fifth requirement, I conclude that the newly discovered evidence of Swisher's fabrications makes it probable that a new trial will result in acquittal. Thus, I also conclude that the new evidence is material under Harrington.

The majority relies on evidentiary rulings made by the District Court. It notes that the District Court held that documents showing that Swisher lied about his military record were inadmissible under Federal Rule of Evidence 608(b).

The majority further notes that the District Court excluded the evidence under Rule 403. As discussed above, the District Court's evidentiary ruling under Rule 608(b) was wrong as a matter of law, and its ruling under Rule 403 was an abuse of discretion.

The majority does not merely hold (erroneously) that the evidence was correctly excluded by the District Court. It goes further, suggesting that because the District Court properly excluded the impeaching documents from evidence under Rules 608(b) and 403, these documents could have no material effect on retrial. Even if this were true, this is irrelevant under Harrington. The materiality test under Harrington is not whether the newly discovered evidence—the Miller and Woodring affidavits—would have been admissible during Hinkson's first trial. The test is whether the newly discovered evidence would probably result in acquittal on retrial. As I discuss in detail in part five of the Harrington test, I conclude that the Miller and Woodring affidavits would probably result in acquittal on retrial. The affidavits would not have to be admitted into evidence to have this effect. . . . If Swisher takes the stand and is asked about his military record, and if he is asked whether he lied under oath about that record at the first trial, the truth will necessarily come out.

There are two alternatives. If Swisher tells the truth, the truth will come out through his testimony. If Swisher lies, the

government will have a professional obligation to correct the record and to disown the testimony of its star witness.

The fourth part of the Harrington test requires that the new evidence be "neither cumulative nor merely impeaching": The District Court concluded that [t]he substance of both proffered documents is not new and is generally cumulative of previously available information. The "previously available information," to which the Court referred, consists of the documents that came to light at three different points during the trial:

First, the Tolbert letter (used by defense counsel to cross examine Swisher on January 14);

Second, the Dowling letter, which the prosecution gave to the Court on the morning of January 21 and which the Court also received later that day as part of Swisher's official military file;

And third, the remainder of Swisher's official military file, which the Court received on the afternoon of January 21.

During trial, the District Court concluded that these documents established neither that Swisher's testimony was false nor that the "replacement DD-214" was fraudulent. On Monday, January 24, after reviewing Swisher's military file, including the Dowling letter, over the weekend, the Court told counsel outside the presence of the jury that it found the file "very difficult to decipher," and stated that the truth of the matter "was not at all clear." The Court told counsel that the documents in the file were "neither self-authenticating nor self-explanatory" and did "not conclusively decide the issue." . . .

The Dowling letter, written by an officer in the Headquarters of the U.S. Marine Corps, stated in plain language that Swisher had not earned any personal military commendations and that the "replacement DD-214" was a forgery. Another fact finder may have found this evidence sufficient to show that Swisher was a forger and a liar. But the District Court was explicit in saying that it found that the evidence then before it was inconclusive.

The District Court stated that "the only way" to resolve the uncertainty surrounding the "silent file" would be to hear from "a records custodian from the National Personnel Records

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Center or someone who is more familiar with military records and decorations than any of us."

The prosecutor agreed with the Court's assessment and added: "What [the defense] would really have to prove, if this were to be resolved, is that . . . the substitute DD-214 signed by Captain Woodring, in, I believe, October 1957—that . . . the signature of Captain Woodring was forged; and I would suggest that probably would resolve whether it's correct or not. How you would prove that something that was signed in 1957—I doubt very much Mr. Woodring is still with us, but I don't know."

Precisely the additional evidence the Court said was lacking was supplied by Hinkson in his motion for a new trial in the form of an affidavit from Chief Warrant Officer Miller. Miller is the U.S. Marine Corps Liaison Officer to the National Personnel Records Center. His job is to "evaluate the authenticity of information, records and documents affecting individual Defense Department transfer documents including DD Forms 214." Miller concluded, after a thorough investigation, that the replacement DD-214 was a forgery and that Swisher had not earned a Purple Heart or any other personal commendation.

Similarly, precisely the additional evidence the prosecutor said was lacking was supplied in the form of an affidavit from the now-retired Colonel Woodring. As it turned out, Colonel Woodring is (to use the prosecutor's words) "still with us." Colonel Woodring stated unequivocally in his affidavit that his signatures on both the purported 1957 letter to Swisher and the replacement DD-214 were forgeries.

In sum, the Court stated at trial that the evidence before it was insufficient to allow it to determine the truth or falsity of Swisher's evidence. Defense counsel then presented to the Court, in support of the motion for a new trial, precisely the additional evidence the Court and the prosecutor said was needed to resolve the uncertainty. In this circumstance, this new evidence cannot possibly be considered cumulative. . . .

Impeaching evidence may properly support a motion for a new trial under Rule 33. Indeed, we have expressly rejected the proposition that "impeachment evidence . . . is never sufficient to warrant a new trial...." If the witness' testimony were

uncorroborated and provided the only evidence of an essential element of the government's case, the impeachment evidence would be "material" under [the Harrington test . . . if it were discovered after trial that the government's star witness was "utterly unworthy of being believed because he had lied consistently in a string of previous cases."...

In denying Hinkson's motion for a new trial, the District Court wrote that the proffered evidence (i.e., the Miller and Woodring affidavits) is impeachment evidence and so is not a valid basis for a new trial. It is apparent from this statement that the District Court believed mistakenly that, as a matter of law, impeachment evidence may never provide the basis for a new trial. As just discussed, our cases do not so hold.

The majority concludes that the Miller and Woodring affidavits are impeaching and therefore cannot satisfy the fourth requirement of Harrington. It writes, "[E]videntiary admission of the extrinsic Miller and Woodring affidavits would serve no purpose other than to impeach Swisher's testimony as to his military record rather than his testimony as to Hinkson's solicitations." The majority mistakes the nature of the Miller and Woodring affidavits. They are powerful enough to permit a jury to conclude that Swisher's testimony inculcating Hinkson—the only uncorroborated testimony implicating Hinkson on the three counts for which the jury convicted him—was "totally incredible."

The fifth Harrington requirement is that "the new evidence must indicate that a new trial probably would result in acquittal."

I conclude that this new evidence would probably result in acquittal at retrial. I so conclude after comparing the evidence presented at trial on the three solicitation counts on which Hinkson was acquitted, and the three counts on which he was convicted. . . .

A judge ruling on a new trial motion may choose not to describe that evidence in detail, but he or she must necessarily consider it. Given the nature and importance of this case, I describe it in detail so that the reader may understand the basis for my conclusion.

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Three solicitations to murder were charged in Counts 1 through 3 of the indictment. In these counts, the government charged that Hinkson had solicited James Harding "in or about January 2003" to murder Cook (Count 1), Hines (Count 2), and Lodge (Count 3). The jury acquitted Hinkson on all three of these counts.

Three more solicitations were charged in Counts 4 through 6. In these counts, the government charged that Hinkson had solicited James Harding on or about March 17, 2003 to murder Cook (Count 4), Hines (Count 5), and Lodge (Count 6). The jury deadlocked on these three counts.

Three more solicitations were charged in Counts 7 through 9. In these counts, the government charged that Hinkson had solicited Swisher "between about December 2002 and February 2003" to murder Cook (Count 7), Hines (Count 8), and Lodge (Count 9). The jury returned a verdict of guilty on these counts.

Finally, two threats to commit murder were charged in Counts 10 and 11. In these counts, the government charged that Hinkson made statements to Anne Bates in which he threatened to murder the children of Cook (Count 10) and the children of Hines (Count 11). The jury acquitted Hinkson on these counts.

The issue at trial was not whether Hinkson asked Harding and Swisher to kill Cook, Hines, and Lodge. The evidence was persuasive that he had done so [Again we have only the testimony of the gang who had a vendetta against David or wanted to steal his company; to do that, the best way was to have him locked up for life].

The issue was whether Hinkson had been serious in his requests. That is, the issue was whether he had an actual "intent" that Cook, Hines, and Lodge be killed, which was required under 18 U.S.C. § 373(a) [The persuasive evidence was from those testifiers who's lied to the jury, but whose testimony was rejected]. Only if Hinkson was serious in soliciting the murder of Cook, Hines, and Lodge—that is, only if he had an actual intent that they be killed—did he commit a criminal offense. The jury acquitted Hinkson outright on three of the nine counts charging solicitation in violation of § 373(a).

On these three counts, the jury concluded that the government had not shown that Hinkson had been serious in soliciting murder on that occasion. The jury could not make up its mind on three more of the counts, [were] unable to conclude unanimously that Hinkson had been serious in soliciting murder on that occasion.

The jury was able to conclude unanimously only on three counts—Counts 7-9, the counts involving Swisher—that Hinkson had been serious in soliciting murder. To assess the likelihood of an acquittal on retrial on the three Swisher related counts (Counts 7-9), I compare the evidence on the three Harding-related counts (Counts 1-3) on which Hinkson was granted an outright acquittal.

Judge Fletcher quoted much of the testimony of Swisher, Harding and Bates. But he concluded that on the fifth Harrington Test, the jury would acquit David. He said:

On retrial, impeachment of Swisher would not be so limited. The parties now know conclusively, based on the Miller and Woodring affidavits, that Swisher forged his "replacement DD-214" and his purported "supporting letter" from Colonel Woodring, and that he used these forged documents in an effort to obtain veterans' benefits. The parties also now know conclusively that Swisher never served in combat or earned any personal military commendations, and that he was not injured in battle overseas but in a private automobile accident near Port Townsend, Washington.

And they now know conclusively that Swisher lied under oath during the first trial about participating in secret combat missions in North Korea, about being wounded in action, and about receiving a Purple Heart.

At a new trial, the government could put Swisher on the stand to testify, as he did at the original trial, that he told Hinkson that he was a decorated Korean War veteran who had killed "too many" people. The government could then argue that Hinkson, believing these things, seriously solicited Swisher to kill

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three government officials. But this time, on retrial, defense counsel and the government would know the truth.

Defense counsel would impeach Swisher by asking if it were true that he was not in fact a Korean War veteran, that he had in fact not won a Purple Heart or other awards, that he had not in fact been injured in combat in Korea but rather in a private automobile accident. And, in fact, he had lied to the Idaho Division of Veterans Services about his injuries and non-existent medals in an attempt to get military benefits to which he was not entitled.

That would already be bad enough, but it would get worse. Defense counsel would also ask Swisher whether, the last time he appeared in Court to testify under oath against Hinkson, he wore a Purple Heart lapel pin to which he was not entitled, presented a forged "replacement DD-214," and lied about his military record.

This time, defense counsel would not be left defenseless if Swisher were to choose to lie in response to these questions because this time the government would also know the truth. If Swisher were to lie in response to any of the questions, the government would be obligated to correct the record. See *Napue*, 360 U.S. at 269; *Hayes v. Brown*, 399 F.3d 972, 978 (9th Cir. 2005). In short, a new trial would be a disaster for the government.

A new jury would not only learn, as the first jury did, that Swisher and Hinkson, once friends, had become bitter enemies by the time Swisher testified. It would also learn, as the first jury did not, that Swisher had no compunction about lying under oath to serve his ends, and that he had lied under oath and produced forged documents at Hinkson's first trial.

Therefore conclude, under the fifth part of the Harrington test, that a new trial would probably result in acquittal.

Summary: Because Hinkson's motion met all five requirements of the Harrington test, I would hold that he is entitled to a new trial on the Swisher-related counts of soliciting murder.

Conclusion: The District Court committed two errors, either of which was sufficient to reverse its decision and grant Hinkson

a new trial. I would reverse the District Court's denial of Hinkson's motion for a new trial because (1) the District Court erroneously precluded Hinkson from introducing documents into evidence to show that Swisher lied about his military record and forged his "replacement DD-214." I would also reverse the District Court's denial of the motion for a new trial because (2) the newly discovered evidence produced in support of the motion satisfies the five-part Harrington test.

Not everyone went along with the Bea Majority Opinion and Decision. Let's consider what our fighting men had to say.

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FORTY-SIX *seventeen-thousand korean war vets speak out*

While all this was going on, Swisher was paddling upstream. From prison, he was begging for mercy because of his discomfort while spending only a couple weeks in jail for just a few of his crimes.

One must give him credit for his persuasive, golden tongue. He has been able to con his way out of trouble almost without exception. Even with all his phony lawsuits, his rapes, his perjury and his stolen valor, he hopes society will honor him as a great American. But he is nothing but a craven coward. His audacity, impudence and disrespect for humanity make him very dangerous to moral people. In my opinion, he is totally "amoral." He's just the kind of person who fits in with the corrupt government conspirators.

John Roemer of the *Daily Journal Staff Writer* wrote about an amicus brief filed with the Ninth Circuit Court of Appeals by Attorney John W. Kecker on behalf of the president of the 17,000-member *Korean War Veterans Association*, William Mac Swain:

SAN FRANCISCO - Prominent attorney John W. Kecker of San Francisco's Kecker & Van Nest is a Marine veteran with a combat record that Elven Joe Swisher could only dream of.

Swisher, the star government witness at a federal murder-for-hire trial, lied on the witness stand and claimed bogus military credentials. Offended and resentful at what veteran groups call stolen valor claims such as Swisher's, Kecker filed a passionate friend-of-the-court brief in favor of defendant David Roland Hinkson. Kecker argued it was fundamentally unfair that jurors convicted Hinkson without ever learning of Swisher's deceptions.

Swisher's testimony was key as he told jurors how defendant Hinkson asked him to torture and kill an IRS agent, an assistant U.S. attorney and U.S. District Judge Edward J. Lodge of Idaho in retaliation for a tax prosecution.

But Swisher lied a lot. He produced a forged document that falsely said he'd won the *Silver Star*, the *Navy and Marine Corps Medal*, the *Purple Heart* and the *Navy and Marine Corps Commendation Medal with Combat 'V*. He testified wearing a sham Purple Heart replica pinned to his lapel as he wrongly declared himself a Korean War combat veteran.

Kecker has a real Purple Heart, earned as an infantry platoon leader wounded during Operation Hastings, a major 1966 encounter with the North Vietnamese Army in Quang Tri Province.

Hinkson cited with admiration Swisher's claims of combat service in offering him \$10,000 per victim, Swisher testified, in a plot that derailed when Swisher went to authorities. But jurors never learned they were listening to a fraud.

Following a three-week trial, Hinkson was sentenced to 43 years in prison for attempting to hire Swisher to kill the officials.

Now, a fierce battle rages at the 9th U.S. Circuit Court of Appeals over a controversial decision to deny Hinkson relief based on evidence of Swisher's fakery. Much of the definitive evidence that Swisher lied arrived from the National Personnel Records Center only near the end of the trial, and the trial judge - Circuit Judge Richard C. Tallman of Seattle, sitting by assignment, excluded it and later ruled against a new trial. Tallman held that it was Hinkson's belief in Swisher's tall tales that counted, not whether they were actually true.

Hinkson's appellate lawyer, Dennis P. Riordan of San Francisco's Riordan & Horgan, is an old friend of Kecker's who asked him to look at the case. Kecker read the record with mounting disbelief at the idea "that a judge would trivialize as collateral impeachment a guy who gets up and falsely says, 'I'm a war hero.'"

Kecker proudly displays on an office wall an AK-47 assault rifle sculpted of animal bone. A North Vietnamese soldier may have used an actual weapon of that type during a firefight to shatter Kecker's left elbow and riddle his left leg with bullets. He retired from the Marine Corps as a first lieutenant in 1967 to attend Yale Law School. He founded Kecker & Van Nest in 1978.

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His damaged left arm and other wounds are an ever-present reminder of his combat service, and he remains angry at blowhards with war stories. "You hear about it all the time," he said in an interview on Tuesday. "Football coaches. Tough guys in town hall meetings. When I hear some guy brag about his military service, I'm always suspicious."

Since around 1980, Keke said, the country has turned "pretty solidly pro-soldier, even as we debate wars. People who served are recognized and applauded. And so many charlatans try to glom onto that."

Keker in his Hinkson brief represents William F. Mac Swain, a Texan and former Army master sergeant who is president of the 17,000-member Korean War Veterans Association. The veterans are as upset as Keke at the spectacle of a fake war hero on the witness stand. But Keke's brief is also an unusual plea on his own behalf.

Mr. Mac Swain is represented here by John W. Keke, who served as an infantry platoon leader in Vietnam while a first lieutenant in the United States Marine Corps, until he was wounded and retired from the Marine Corps in 1967, Keke wrote. Mr. Keke received the Purple Heart.

Mr. Keke has an impressive background as a member of President Reagan's National Security Council in the 1990s. Law professionals recognize him as one of the very top attorneys in the U.S. He entered into this fray pro bono because he was so incensed by what Swisher had done to undermine the credibility of true warriors and had gotten away with.

In the Hinkson case, Keke wants a new jury to hear about Swisher's record of dishonesty before they decide to trust his accusations against the defendant. The appeal seeks an en banc rehearing or a full court en banc review.

But, Keke said he is disturbed by the fact that 9th Circuit judges are in effect judging one of their own colleagues, Tallman, who heard the case in Boise, Idaho, in 2005. In a 7-4 en banc decision in November, the circuit affirmed Tallman's decision making at trial (U.S. v. Hinkson, 585 F.3d 1247–Nov. 5, 2009). The majority redefined upward the degree of deference an appellate panel owes a trial judge, holding that only "illogical" or

"implausible" trial court rulings amount to an abuse of discretion warranting reversal. Tallman's rulings did not meet that new standard, the majority held.

Does Keke think Tallman's involvement swayed his fellow circuit judges? "Judges always tell you they are immune from any human frailties when they put on their robes, and we have to believe them. If we get up and say we don't believe them, we get thrown in jail," Keke said.

Keker took particular offense at Tallman rulings that evidence proving Swisher lied about his service record was "not 'material' to the issues at trial" and was "merely impeaching" because it did nothing more than attack Swisher's credibility regarding his military service rather than his testimony regarding the solicitations [to murder] charged, according to language Keke cited from the appellate record.

As he put it in his brief: "What amicus is asking this court to understand is that its reasoning and language are a slap in the face to veterans and jurors alike," Keke wrote to the circuit. "For they imply at a time when this nation is fighting two wars and losing more soldiers every month that the average American no longer attaches any significance to a veteran's wartime service."

If the jury had known about Swisher's lies, contended Hinkson's lead appellate lawyer Riordan, echoing the en banc dissenters, at least some of the jurors might well have considered "fabricating military commendations to be an act of deceit powerful enough to render everything that person says totally incredible."

Government lawyers opposed Keke's entry into the case as a friend of the court. "First, let me assure you that we take very seriously the significance and honor of military service," U.S. Department of Justice appellate lawyer Michael Taxay wrote to the Keke firm. However, Taxay went on, "The primary legal question before the 9th Circuit concerned the deference that ought to be given to certain district court rulings. Relevant here was the government's theory at trial that defendant Hinkson had solicited Swisher to commit murder because of Hinkson's subjective belief [If Swisher said so, it must be true] that Swisher

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had killed in combat. Swisher's actual military experience was irrelevant to the government's case."

A Department of Justice spokesman declined to comment further. Said Kecker: "This shows that the government is perfectly happy to have fake combat veterans testify before criminal juries, but objects to letting real combat veterans, like Mr. Mac Swain, be heard in the Court of Appeals."

Civil service employees, career politicians and life-time tenure judges must justify their behavior in the eyes of the public. To be exposed for incompetence or fraud can have serious consequences. Don't search for the truth. Understand your role: get a conviction and sustain it. So appoint damage control specialists to spin the facts.

FORTY-SEVEN *better to destroy one man than to retry subsequent cases*

Faye and I had been under the opinion that eventually, if all else failed, twenty-four judges (called a Super En-banc) could be empanelled to hear the entire Case. In other words, it would be like a district court trial, but instead of a judge like Tallman listening to all the witnesses and running the show, the entire panel of judges would hear the case. Was it naïve of me to believe that this could occur? There was a certain amount of comfort knowing or believing that if the truth were presented to a larger body of judges, commonsense and honor would prevail.

Needless to say further, but the Federal Department of Justice was upset with the conclusions drawn by the Minority Judges as expressed by Judge Fletcher in the Dissent Opinion.

Acting United States Attorney District of Idaho Michael J. Mullaney of the Counterterrorism Section National Security Division Department of Justice wrote on May 7, 2010, the following in his brief to the Ninth Circuit Court of Appeals:

Judge Tallman's decision was predicated upon detailed findings of fact . . . an appellate court is not at liberty to substitute its judgment of the facts for that of the trial judge. Instead, factual determinations are reversible only if they are "illogical," "implausible" or "without support in inferences that may be drawn from the record...." [As we observe, the courts can draw any conclusion from the evidence that suits their goal].

The holding that Hinkson challenges, does not satisfy the criteria for en banc review and warrant the unprecedented step of granting further review by the entire Court. . . . There is consequently no reason for this case to become the first in this Court's history to receive plenary [This would be the first Super En Banc in the Ninth Circuit]. Hinkson was convicted of

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soliciting Elvin Swisher to murder Judge Edward J. Lodge, AUSA Nancy Cook, and IRS Agent Steven Hines, who had all been involved in his tax investigation and prosecution.

At trial, Swisher, James Harding, and Rich Bellon all testified concerning Hinkson's solicitations to murder the officials [Don't forget about jailbird Chad Croner]. According to Harding, Hinkson offered him \$10,000 apiece to torture and kill the three officials. Bellon, who had worked for Hinkson, testified that, after Hinkson's arrest, his animus toward the officials became the focus of his life. Hinkson told Bellon that he "would pay to see them dead [No corroboration—just the word of the honorable Richard Bellon]"

Relying upon the multi-factor test in *United States v. Harrington*, he [Tallman] explained that the defense had not been diligent in seeking the evidence it now possessed. [The Court by] having acknowledge before trial that it was suspicious of Swisher's claims concerning his military record that Woodring's statement [and] that his signature had been forged was cumulative of previously available information concerning Swisher's military record. And that the "newly-discovered" evidence was not "material" because whether Swisher was actually a combat veteran and seasoned killer was not relevant to whether Hinkson believed [that] he was [Don't forget, if Swisher said it it must be true].

With their crystal ball, the prosecutors were able to get into David's head—they knew what he was thinking, or were they just taking Swisher's word without any corroboration?

Dissenting, Judge McKeown observed that "In granting a new trial, the majority has assumed the role of a super trial court rather than a reviewing court." This is an interesting play on words. What is a super trial court? What is the purpose of a "reviewing court?" He argues that Judge Fletcher et al failed to give deference [to take Tallman's word unchallenged] to any of the District Court's [Tallman's] detailed findings [We have seen how detailed were the Courts' findings]. The inquiry is not

whether the trial court made findings the appellate court might not have made but whether the trial court's resolution of the motion resulted from a factual finding that was illogical, implausible, or without support in inferences that may be drawn from the facts in the record." [In this context the words illogical, implausible or unfactual are totally meaningless].

Here Mullaney quotes Judge McKeown (who sat on the bench in the first appeal in Seattle) and uses her argument as something brilliant and persuasive. She had ruled that the Harrington Test totally discredited David's appeal for a new trial. Tallman's detailed findings were composed of Swisher's lies and the testimony of Harding/Bates etc. for which the Jury acquitted David or could not reach a verdict.

Mullaney argues, "We cannot conclude that the District Court's decision was so unreasonable, illogical or arbitrary, as to constitute an abuse of discretion; Where there are two plausible views of the evidence we should not reverse a 'factual' finding unless we believe the finding is so illogical or implausible that a clear mistake has resulted. Clear error review permits only limited reexamination of factual findings where 'the District Court's account of the evidence is plausible in light of the record viewed in its entirety..... Mullaney argued:

Here, Judge Tallman not only identified the correct legal standard, he also made "extensive and careful factual findings in applying that standard to the circumstances of the case. . . ." Judge Tallman afforded Hinkson an unfettered opportunity to cross-examine Swisher concerning his military record by reference to the 'impeaching documents.' Hinkson, however, declined to avail himself of that opportunity [David, he claims, just didn't play the game correctly; thus, you go directly to jail].

Finally, since issuance of the Hinkson decision, a significant number of cases within the Circuit have relied on it in resolving

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abuse of discretion claim. Judge Tallman's Evidentiary Rulings were correct.

Here, Mullaney buried in his brief the main reason for the government's opposition to David getting a new—and fair—trial:

A significant number of cases within the Circuit have relied on it.... Granting yet further review could call into question the validity of those decisions and generate uncertainty as to the correct standard for deciding similar claims."

Now the Ninth Circuit may have to reconsider other cases if a single judge's opinion becomes Gospel. One Judge, Richard C. Tallman, accepted as truth all of the false testimony of the blackmailer, thieves and conspirators—a judge who was caught meeting with Swisher in his chambers during the trial.

Again, I draw attention to the fact that Swisher was in a wheelchair, sporting a catheter and barely recuperating from heart surgery, that he was not even welcome to call David. In addition, I had warned David that Swisher is a liar and a crook. But Mullaney goes on:

What did matter to the government's theory of the case was that Swisher told Hinkson that he had killed people in combat and Hinkson believed him, which explains why he chose to solicit Swisher as a contract murderer....

In sum, Hinkson's attempt to involve the entire Court in what Judge McKeown aptly described as "a classic sideshow" should be rejected. For the foregoing reasons, the Petition for Limited Rehearing On Banc or Rehearing by the Full En Banc Court should be denied. Respectfully submitted [Mullaney].

The appeal for a Super En Banc went to the Ninth Circuit for consideration. There was no further involvement of the Defense except for the Amicus Brief from Mac Swain, Keker and Riordan et al. The same

group of judges reviewed the same arguments and clung to their same, prior opinions.

They concluded: "Appellant's Petition for Rehearing by the Limited En Banc Court and for Rehearing by the Full Court is denied." The Decision, filed July 14, 2010, was rendered except for with one change however. To his credit, Chief Judge Kozinski joined with the four dissenting judges (Pregerson, Wardlaw, Wm. Fletcher, and Paez).

"The original en banc opinion filed on November 5, 2009 remains unchanged, except that Chief Judge Kozinski concurs only in the portion of the opinion that clarifies this Court's abuse of discretion standard of review, but dissents from the application of that standard to the facts of this case....

Chief Judge Kozinski, in his dissent, said:

I continue to agree with, and join, that portion of the opinion explaining how we review for abuse of discretion, but now disagree with the application of this standard to the case before us. I had underestimated the trust some jurors would have placed in Swisher if they thought he was a decorated combat veteran, and the likely backlash if they had learned he was a fraud.

My change of heart came about after I read the Supreme Court's summary reversal in *Porter v. McCollum*, 130 S. Ct. 447 (2009), and the amicus brief of William MacSwain filed in our case. Without Swisher, the government had no case. I'm now persuaded that Judge Fletcher has the better of the argument for the reasons articulated in his dissent, which I join in full.

Now that the En Banc Hearing failed to free David, where do we go from here? The United States Supreme Court will have to decide if we must give "deference" to all trial judges in lieu of granting the convicted the opportunity to be heard in full.

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This is a significant case because it takes rights away from all U.S. citizens. In summary, let's take a "fly by" peek at what had happened to David Hinkson.

FORTY-EIGHT *a panoramic review*

Granted! This is a complex case. We understand how it began, but we don't know how it'll end.

Former Idaho County Prosecutor Dennis Albers was almost right when he swore to David: "I'll put you in jail and get your business." He didn't get David's business, and hopefully he'll wear the medallion of dishonor for the rest of his life for his unrelenting, vicious attacks on David. He and Annette Hasalone share in the guilt. The lawsuit against David that Annette brought with Albers' involvement (July 1999) mounted to outright theft. Any violations of rules or regulations for which David was ultimately responsible, pale in the light of the crimes these two committed.

The record shows that Hasalone and her cadre of co-conspirators made false reports against David. I don't know if David's attorney, Britt Groom, was part of the scam, but he called me, sometimes more than twice a day, pleading for me to send him \$95,000 to put in his trust account for David's defense against Hasalone. He had assured me, "You'll get your money back as soon as the trial is concluded." I wired the money but permanently lost it—it all went to Annette and Dennis.

Then in 2000, when the tax investigation began against him, David endeavored to engage the IRS in a civil law contest. David had faxed a notice to IRS Agent Vernon saying that he intended to file a civil suit against him. This suit would establish his Seventh Amendment right to impanel a common law jury to decide whether he was required to file tax returns—even though he didn't owe any individual federal income tax. When, in March 2000, he demanded a jury trial in an IRS civil damages case the IRS advised him in writing that the investigation was civil. David "ticked off" IRS Boss Agent Vernon by suing agents Cook and Hines and

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him for \$50,000,000. Thus, it became personal when David sued him. In retaliation, Agent Vernon vindictively referred the matter for criminal handling.

Then came the Raid (November 21, 2002) which was spawned by false allegations to the FDA from Annette Hasalone and those at ENIVA Corporation who conspired with her to steal David's trade secreted formulas.

Assistant U.S. Attorney Nancy Cook offered to dismiss the criminal indictment against David, if he would pay \$5,000 and dismiss the civil suit against her and Steve Hines.

David went to the Sheriff's Office to file charges for theft against Marianna Raff, but, instead, FBI Agent Long arrested David and threw him into solitary confinement where he remained for years.

Agent Vernon fabricated a phony accusation that David threatened to harm Steve Bernard, an ex-employee at David's company, WaterOz. But Steve testified at Trial that IRS Agent Vernon was lying, that he never said anything of the sort.

David concluded that he was not required to file a tax return for 1994. He sought to have a jury resolve the question. But rather than deal with the issue, the government spread rumors to destroy David's reputation and pollute any potential jury pool.

They winnowed the useful parties from all of David's acquaintances to make statements leading to David's conviction for not only tax issues but murder-for-hire.

They worked the field assembling disgruntled employees who were willing to participate profitably in testifying to anything (that David had machineguns, crates of ammo and was the leader of the Mountain Man Militia).

The government agents held David in solitary while they spent the following year and three months trying to build a case.

Marianna Raff kicked off their first attempt to bury David. But she was using the Feds as much as they were trying to use her. Because of her string of unceasing felonies, they needed a substitute. So bring on Swisher.

The IRS and Department of Justice worked with the Judge in the case. They all received a cash bonus from the US Government (under Title 5) for participating in the conviction of any person accused of a crime. Then during the trial, which was a mockery of justice and simply a dramatization, the judge admitted only the evidence offered by the government and excluded any evidence offered by the defendant, so as not to confuse the jury.

They decided to use their tried and tested method of convicting an innocent person of crimes that never occurred. The tactic is to accuse the innocent person of murder-for-hire because no corpus delicti is required; lies or hearsay from one individual is all they needed.

As John Pugsley states: "History proves that governments inevitably grow corrupt, and that corruption leads to an increasing use of police and military force, both against foreign enemies and against its own citizens."

Agents of the Government reluctantly admitted that David was convicted of murder-for-hire based on the testimony of one person, who was fraudulently claiming he was a combat hero. Joe Swisher paraded before the jury in David's trial with a Purple Heart medallion on the lapel of his black leather jacket, which stood out to some like a neon sign. The prosecutors lauded Witness Swisher as a combat hero. They gave Swisher unimpeachable credibility in the eyes of the Jury. Then when it came time to show that Swisher was a liar, Judge Tallman refused to allow any contrary evidence, even though the proof lay before the Judge's eyes in Swisher's official military file.

The government manipulated the media; by publishing all the hate propaganda provided by the Feds. And the media was willing to allow

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themselves to be manipulated. The media never conducted any independent investigation which is supposed to be the "Fourth Estate" that keeps government honest. In fact, there was never any real investigation conducted, even by the government—the only search was for those willing to accept bribes for participation in their conspiracy.

While David remained many months in solitary confinement, Judge Tallman denied some of David's exculpatory witnesses the opportunity to testify before the Jury—even though they traveled great distances to attend the Trial. When Swisher testified that David plotted to kill these agents the fact that David wasn't in the United States made no difference; the Judge would not allow jurors to see his Passport—even though David was in Ukraine at the time.

Swisher had the blessing of the Court; he was allowed, unchecked and with impunity, to spew forth a litany of false and fraudulent statements. When a court will not enforce evidentiary rules to prevent a liar from making wild, false claims, the liar can be very convincing to a jury—especially a liar who has the skill and finesse of Swisher. Few jurors would suspect that a judge would lie and participated in fraud, so they accept his lead as gospel.

Rather than looking into Swisher's military record to be certain that it was correct and not a forgery and in spite of strong indications that Swisher was lying, the prosecutors—whose only motivation was obtaining a conviction—ignored their duty to investigate and do justice. One would think that if they were sincere in trying to learn the truth, they would have checked into Swisher's military claims and reputation for honesty.

As Judge Fletcher pointed out, "They had two years to check out his past history." And they failed to do so.

Swisher deceived his comrades in the Marine Corps League into believing he was a legitimate war hero. He took great pains to write up his booklet, *A Marine Remembers*, and to create his numerous forgeries.

He, unabashedly, decorated himself with honors due only to genuine war heroes. The stories he told made the listeners believe that they owe him an immense debt of gratitude for his personal sacrifice.

In 1985, David was broke. But by November of 1993, he had researched how to manufacture Ozone generators and then created a company called "WaterOz."

He took to the airwaves and became a popular guest on the *Lou Epton Show*. Former FBI agent Ted Gunderson, who had his own radio show, listened to David's shows then invited David via telephone to broadcast with him over short-wave radio from a station in Nashville, Tennessee. While together on the air, David or Ted had said that Art Bell, a popular night-radio talk-show host, had abused an under-aged person. David admitted he had been misinformed, and he publically apologized. However, Art Bell filed a suit against Gunderson, David and the Station.

Stew Webb reported that in Gunderson's presidential campaign Gunderson had borrowed Bobbie Eve's money and couldn't repay it, that he saw a chance to make good his debt with David's new company. Thus, was a conspiracy then born to infiltrate and takeover WaterOz.? Yet we do know that the conspirators hatch an elaborate scheme to commandeer David's assets. Because of Albers know-how and mission to destroy David, all parties were set to gain something.

By July of 1996, WaterOz moved from Las Vegas, Nevada, to Grangeville, Idaho. Jeri Gray approached David to work for him then moved from Las Vegas to Grangeville. Jeri came with baggage: her twin sister Bobbie Eve. Bobbie's son and daughter-in-law (Annette Hasalone)—the same person who sued David with the help of attorney Albers—were wanted by the police in Las Vegas and Southern California.

Jeri Gray pressed David to attend the Granada Forum in Las Vegas. The conspirators treated David like Royalty then descended on WaterOz. Anthony Hilder, a close personal friend of Gunderson's, said he wanted to

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make a video about David's case. He demanded that David pay him \$10,000 cash to make a documentary film called "Prosecutorial Misconduct." David told him that he did not have \$10,000 to his name. David thinks Hilder and his cohort, J.C. Harding, came to ensnare him the the murder-for-hire plot.

Arlene Olsen called Wes Hoyt to reveal Gunderson's Plot. She testified that Ted Gunderson, Nancy Cook and J.C. Harding (by their acts and actions) formed a criminal enterprise in order to fulfill their objective: "to vindictively prosecute David Hinkson for crimes that he did not commit." She mentioned two reason for their motivation: (1) to have David Hinkson drop his civil suit against Cook and (2) there was a possibility of great financial enrichment.

The "Star Witness" that the Feds planned to use was Marianna Raff. Her spurious statements to FBI Agent Long in April 2003 convinced the Court that David should be detained in jail until his trial because he was too great a public safety risk; and Agent Long waited 17 months to check out the Raff story but found that there was no truth in what she claimed.

Using Raff as a witness would have spelled disaster for the government's case, so they came up with a different accuser—Elven Joe Swisher. He now became the new "Star Witness."

Deputy U.S. Marshal David Meyer took the witness-stand and testified under oath that it was too risky to hold the trial in Moscow—where David's peers would try him. At Trial, Meyer admitted, upon cross-examination, that he "had no personal knowledge that David was a threat to anyone.

I asked the Ada County jailers, "Did you deny David the use of his own computer?" They told me they had the capacity to make a reasonable accommodation for David, and he could do his legal research. "That decision," they said, "was made my Deputy Marshal David Meyer."

Pat Shannon, writer for the American Free Press asks in his article, "How can the federal judiciary be independent and impartial when the law

permits the federal government to secretly award [to] judges—secret 'cash awards?' This is legalized bribery."

Phyllis Schlafly refutes the "two colossal myths propagated by the legal community for the last fifty years: (1) The *Constitution* is whatever the Supreme Court says it is and (2) court rulings are the law of the land."

Judge Tallman openly lied about the evidence in front of him, which is Judicial Misconduct; but there is no forum except for impeachment to correct this great injustice.

Slothful investigations by the Department of Justice result in unreliable findings.

Congressman Bauman said, "Far too much reliance is placed on information supplied by informants.... Most Americans know little or nothing about the widespread domestic use of police informants."

Congressman Hyde affirmed the government's use of "an army of well paid secret informers" whom he described as "a motley crew of drug pushers, ex-cons, convicts, prisoners and other social misfits."

Richard Bellon before he testified against David, tried to takeover WaterOz with the help of Swisher and others. He sued me and others for millions but was defeated.

Judge Bradbury responded to Bellon's attorney, "I cannot believe that there was a mutual assent based on the evidence before me that Mr. Bellon with no consideration would obtain fifty percent of a company that generates \$15,000 to \$35,000 a week. I just don't believe it."

Bellon then sued Judge Bradbury, me and Wes Hoyt for \$5,000,000 in damages and \$17 million in punitive damages.

We watch the same pattern of abuse, fraud and deception by the Department of Justice and our courts in the cases of Congressman George Hansen and Congressman James Traficant.

Hansen, was in line to be the chairman of the powerful "House Banking Committee." Congressman Kindness stated, "I believe that

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George Hansen's recent trial and conviction on charges of bank fraud was the direct result of a campaign by various members of the bureaucracy to stop the Congressional Accountability Project"

Congressman James Traficant's Case also was based on coerced and perjured testimony and fabricated evidence. Just like in David's Case.

Amnesty International concludes that in our SuperMax prisons, like ADX, conditions exist that constitute psychological pain and agony tantamount to torture.... What we are doing is barbaric and inhuman. A person needs human contact."

How can I come to any conclusion other than the obvious? The government of the United States is sick, broken and corrupt.

FORTY-NINE *roland's opinion*

I am categorically accusing agents within the United States Government of criminal conspiracy! This conspiracy has been ongoing for many years in the name of "justice"—which is a pretext because it involves the denial of justice to the American people by depriving U.S. citizens their civil rights. Unbelievable, radical? You be the judge because the conspiracy is provable. Most people would rather hug the illusion that the "American System of justice" is fair and honorable—yes, it was when it started out over two hundred years ago. But, what if there were proof that rogue elements within the System have now taken over and are operating outside the law? What if our *Constitution* is being or has already been overthrown and we are slowly becoming a police state? What if these rogue elements are conspiring to overthrow freedom in America.

These are serious charges and one must not take them lightly. Certainly, the culprits will make every attempt to destroy my credibility. I am the father of an innocent man who was falsely accused and wrongfully convicted of crimes that he did not commit and, in fact, crimes that never occurred. My son, David Roland Hinkson, is sitting in prison—as I write this book—a victim wrongfully imprisoned.

David is a charismatic person, who became one of the many "Targeted Individuals" in the U.S. who, because of his political speech, has been singled out to be eliminated by the conspirators. The conspirators fear that individuals such as David who are willing to speak out against corruption will foment an opposition against them and their dirty deeds that will foil their plans to turn America into a socialist nation.

As David's father, I am aware that some will automatically consider me both biased and non-objective. Regardless I can't close my eyes to the truth that I have seen. But nothing will silence me. Therefore I have

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presented the cold, hard facts and will let you judge whether the system is broken.

This story of treachery, deception and crime by officials shows how our government manipulated the conviction of my son, David Roland Hinkson. I welcome any credible evidence that disproves the allegations I make here. I have researched diligently and believe the statements made here are accurate, but I have tried not to overstate the enormity of my discovery of this conspiracy. I ask the reader to consider this: Is there a crime more cowardly than one orchestrated (or conspired) by agents of an all powerful government against helpless victims?

Not only did David's Government set him up for a ruin, but it denied him a fair trial. With arms and legs chained, stuffed into a dungeon he had to try to overcome the assumption of guilt.

The named people identified in this book entered into a conspiracy and did falsely accuse David while he stood before the so-called bar of justice. He had believed that the rule of law prevailed in America. He believed that there was truly a "Presumption of Innocence" that worked for him; and he would prevail if he could show that those who made salacious allegations against him were liars and should be prosecuted or impeached.

Now he has learned that the "Presumption of Governmental Regularity and Correctness" has replaced the Presumption of Innocence. He now understands that he is the victim of the corrupt, broken legal system which now operates in the Country of his birth. He is learning first hand a hard lesson as to how the system really works but has paid an extremely high price to gain that knowledge.

If only we had the benefit of 20-20 hindsight while we were facing the future, we could have made many adjustments in the way his case was presented which could have at least showcased the corruption and would have proven there was no truth in the allegations against him.

We learned that during the middle of his trial, Judge Tallman willfully lied from the bench about the content of the official file that the government gave him. Then based on that lie the Judge made a finding of fact which was false and issued a ruling denying the admission of a critical piece of evidence that would have set David free. His excuse for was that it would "confuse the jury." The record is clear that the judge lied, but there seems to be no forum to overcome his deception, so David's is destined to spend 43 years in prison at SuperMax (U.S.P., Florence, Colorado).

David, founder and sole owner of WaterOz, employed over 40 people between the years 2000-2003. He had every right to sue the government agents of the IRS and Justice Department for racketeering because they were conspiring to bring false criminal charges against him through a baseless grand jury indictment. His reward was to begin his journey through hell.

Assistant U.S. Attorney Nancy Cook actually encouraged a witness to lie to the grand jury—which is the crime of subordination of perjury. But the government has never charged her with a crime.

Not only was it disruptive to David's life, his work and his employees to be constantly scrutinized, but it was disconcerting that a federal prosecutor was actively advocating for and encouraging witnesses to tell lies against him under oath.

The grand jury disbanded without bringing a True Bill against David, but, the US Attorney used fraud and a rubber stamp with the grand jury foreman's signature to create a fraudulent, "superseding indictment" to give the appearance of legitimate charges against him. With this fraudulent document, began an odyssey of epic proportions.

Central to the issue of vindictive prosecution is the government's continued pursuit of claims that agents in the government knew or had reason to know they were not true. If they had reason to know the stories were not true, they had a duty to investigate and determine the truth. It's

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prosecutorial misconduct for a prosecutor to use perjured testimony. A prosecutor who does so acts arbitrarily and capriciously and violates the due process rights of the accused.

The Court also must be condemned for its failure to exercise its supervisory powers to demand that the prosecutor correct the record. A prosecutor who discovers perjury by a grand jury witness after indictment is required to inform the defendant, the trial court and the grand jury of the perjury so that the grand jury may reconsider its decision to indict the accused. Justice and law require that they tell the jurors when they know a witness is lying.

The widespread pattern of such misconduct in a case, especially the consideration of perjured testimony, requires the trial court to use its supervisory authority to declare a mistrial whenever discovered. However, in David's Case the Judge refused.

Prosecutors, of course, want to get a conviction. Few even care if the accused is innocent even though prosecutors have a dual role and swore to uphold the Constitutional rights of the individual while prosecuting. But prosecutors have developed the attitude that if defendants are wrongfully convicted, "it's not my problem; they can always appeal."

By law, prosecutors may not speak to jurors outside the presence of the grand jury. Nor can they withhold exculpatory evidence which would show that the accused is not guilty.

Cases of abuse have come before the courts where prosecutors presented perjured testimony, and questioned a witness outside the presence of the grand jury and then failed to inform the grand jury that the testimony was exculpatory. Other cases include failing to inform the grand jury of its authority to subpoena witnesses, operating under a conflict of interest, misstating the law and misstating the facts on cross-examination of a witness.

But remember, Title 5 of the United States Code allows judges, prosecutors and even investigators to receive payments for getting convictions. That is legalized bribery!

Let me remind you of what Justice Sutherland of the Court of Appeals for the Third Circuit said:

The prosecutor's duty is to protect the fundamental fairness of judicial proceedings. That assumes special importance when he [the prosecutor] is presenting evidence to a grand jury . . . and that the costs of continued unchecked prosecutorial misconduct before the grand jury are particularly substantial because there the prosecutor operates without the check of a judge or a trained legal adversary, and is virtually immune from public scrutiny.

The prosecutor's abuse of his special relationship to the grand jury poses an enormous risk to defendants as well. For while in theory a trial provides the defendant with a full opportunity to contest and disprove the charges against him, in practice, the handing up of an indictment will often have a devastating personal and professional impact that a later dismissal or acquittal can never undo.

Where the potential for abuse is so great and the consequences of a mistaken indictment so serious, the ethical responsibilities of the prosecutor, and the obligation of the judiciary to protect against even the appearance of unfairness, are correspondingly heightened.

David's case is a good example of such abuse. It has cost David and his family in excess of four million dollars paid, so far, for his defense. It was likely that the trend of David's growing company, which was only grossing three million dollars a year, could now be astronomical. Worst of all—an inventor, who truly is a creative man, innocent of the charges against him, has spent seven years in the most harsh conditions of incarceration in the United State and is facing a virtual life sentence.

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David was detained by federal agents under a fraudulently obtained detention order based on the perjured testimony of an FBI agent who repeated as hearsay, what Marianna Raff supposedly told him was true because she said her two brothers in Mexico had done “this” before. The use of such perjured testimony from a former disgruntled employees who had a vendetta against David, when the FBI agent did not bother to conduct an independent investigation to verify what had been said, was obstruction of justice, a separate crime committed by the FBI agent.

Not only did they imprison David falsely for seventeen months on this testimony alone, but the entire United States of America was at risk from a potential terrorist attack by these two men until the FBI finally checked them out.

During this 17 month period there were two unsolved murders of Assistant U.S. Attorneys, one in Baltimore, Maryland, and one in Seattle, Washington. If these two brothers of Raff had done this before, Agent Long, who was on the Northwest Task Force for Anti-Terrorism, had an absolute duty to his country to investigate these two as persons of interest.

The fact that FBI Agent Long did not do so for seventeen months, and then only after repeated demands by David’s attorney, is proof that Agent Long knew all along that these two individuals did not pose a threat to the U.S. Nor would they have been people that David had contacted as potential hit men. This means that the government’s story of why they held David in detention from April 9, 2003, was bogus and fraudulent.

They never should have held David in jail before his trial. Yet, one of the government’s objectives in destroying their “targeted individual” was to isolate him and prevent him from participating in his own defense. Thus, the FBI had to invent an excuse to make it appear that David was the equivalent of a terrorist who was likely to order the murder of other federal officials if they didn’t lock him up.

The government has consistently interfered with David’s housing while in jail by directing the Ada County Jail to periodically move him to solitary confinement, and to reassign him to higher levels of security and to restrict his living privileges. The obvious intent of his captors was to increase his level of stress, cause greater isolation and induce a psychological breakdown. These people threatened David’s physical safety when they put him in cell with a dangerous individual who strangled another inmate to unconsciousness, in David’s presence (after the strangler had demanded money from David).

David, who is gentle and nonviolent, was incredibly stressed. In custody, they denied him nearly all privileges or rights under the *Constitution*. They denied him any opportunity to assist in his own defense. The official spin by the authorities was that they were protecting him from others.

"In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the *Constitution*" - Thomas Jefferson

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FIFTY *conclusion*

Listed in the Foreword to this book are a few of the many corrupt techniques used by the New World Order proponents to steer us away from our God given *Constitutional* rights that ultimately will lead to slavery.

First, they influence Congress and state legislatures to adopt new laws which subvert personal freedom; second, they manipulate government workers to implement socialism; and third, they bribe judges to interpret and apply laws contrary to our *Constitution*.

Wesley W. Hoyt, former prosecutor and author of the Foreword to this book, implores us to circulate this book to those who comprehend our precarious plight and ban together to expose the corruption and reverse the fast moving demise of our legacy, *the Constitution of United States of America*.

I recall the insight of my former boss, Dr. Fred Schwarz from Australia, founder and director of the *Christian Anti-Communism Crusade*. Back in the early 1960s, I had the good fortune to accompany Dr. Schwarz and to participate with him in various events. His book entitled *You Can Trust the Communists (to be Communists)* was a powerful eye opener at the time, and it had a vigorous impact in delaying the Progressive Movement proponents from obtaining their objectives. He was the mentor and a close associate to Ronald Reagan before President Reagan became Governor of California.

I believe that Dr. Schwarz's technique is as sound today as it was a half century ago. He professed that "for any program to be effective, there are three essential elements: namely, motivation, knowledge and organization." He argued: "Without adequate motivation, knowledge, and organization any program must fail."

As a former medical doctor, psychiatrist, professor of mathematics, and professor of science he understood people. He observed, most people are moved by selfish interests, that personal advantage will triumph over the long range, distant motivation of danger."

I have listened to his spellbinding lectures to mass audiences composed of well educated professionals, people who had the firsthand experience of Communist treachery as well as throngs of overwhelmed listeners.

He said, "If I were to speak to a thousand people every night and could convince the thousand, it would take me five-hundred years to speak to everybody now living in the United States, and would go behind at the rate of two and a half million a year due to the continuing population increases."

"On the other hand," he said, "If I were to speak to one person, and if we each convinced, informed and instructed another person the following week, and the four of us each enlisted another the following week, by this process everyone in the world could be reached in less than twelve months.... People will never be enlisted on a mass basis. They must be enlisted and trained one by one."

Maybe our greatest danger lies in ignorance. Palmer Hoyt, one of the greatest 20th Century American journalists and the Publisher of the Portland Oregonian and Denver Post, said that the ultimate mission of the mass media was to inform "so the people may know."

Dr. Schwarz said: "People the world over spread Communism because they don't know what they're doing. To ingest Communist propaganda as fact can be fatal to one's freedom."

I submit that being informed about the techniques used by the government against innocent people, such as in the case against my son, David Hinkson, will give people the ability to defend themselves. Otherwise, to believe our Justice system is beyond reproach and thoroughly honorable is equally fatal to our freedom.

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The job of political writers today is to get the message to the people in a manner appealing to their own enlightened self interest. Once the people know, they can and must thoroughly study the mind, motives and techniques of those who abuse the system to detect their tactics and devise a program to defeat their plans.

Finally, organization is vital. As Dr. Schwarz proclaims, "Organization will prevail over disorganization." But contrary to the beliefs of many organization founders, Dr. Schwarz maintains that there is a "great need for multiplicity, not unity. The unity of a free society resides in its diversity. Movements must be formed which conserve the motivating forces within each group and channel them into the struggle for freedom and survival."

The myriad of facts, perspectives, viewpoints, opinions, analyses, and information in the chapters, stories and commentaries contained in this book range from cutting edge hard news and comment to extreme and unusual perspectives.

I have not swept under the rug uncomfortable materials. Neither my colleagues nor I have skewed the truth nor censored logic with contorted rhetoric. These things reflect the world as it now is—for better and worse. I present multiple facts and label my opinion to help you see the overall plan to destroy political dissidents, who are the politically incorrect in America. As with all controversies I stand ready to post any rebuttals and responses from people mentioned in this book.

Journalism is (or used to be) the profession of gathering and presenting a broad panorama of news about the events of our times so the people may know for themselves and make their own conclusions. My colleagues and I believe that the intelligence, judgment and wisdom of our readers will help them discern for themselves what is valid and worthy—or otherwise.

As attorney Hoyt states:

The idea of a free press in America is one that we hold in the highest regard. The goal is to bring the readers the widest possible array of information that comes to our attention. With great trust and respect for the American people, we believe they are capable of making their own decisions and conclusions about reality.

Among the vast information included in this work for consideration of our readers will doubtlessly be some who find useless and possibly offensive portions of this work; but, we believe that each will be perceptive enough to realize that even the parts of the story you disagree with have some value in terms of promoting your own understanding.

The information herein presented is not censored. That is for the reader to do. It is strongly recommend that no one "assume" anything. Read, carefully consider, and make informed decisions.

Throughout history people assume that what is presented by those in authority is true. As an example, the American people "assumed" the Warren Commission report was accurate. It was not as shown by the very fact that it came from a corrupt source. Chief Justice Earl Warren should not have allowed himself to be associated in any way with the investigation of the Kennedy assassination because he was the one person who needed to be free of preconceived notions in the event that the commission determined that there was a perpetrator to prosecute.

This is true, unless the result was pre-determined and it was known from the beginning that the one-man, one-bullet theory would prevail. Under this theory, with Lee Harvey Oswald dead, there was no one left to prosecute for President Kennedy's murder so Earl Warren could feel secure that he would never sit as a member of the Supreme Court in order to the review the conviction of a perpetrator.

One should consider that if the Warren Commission was objective, it would be looking for anyone it could find who was responsible for President Kennedy's death who would be

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prosecuted. Because it was the foregone conclusion of the Commission that Oswald was the shooter. There was no likelihood that Justice Warren would ever have to sit in judgment. Thus, he was free to head up the investigative commission—which became merely theater for the masses.

In much the same way, the attacks upon the politically incorrect are theatre for the masses and help keep them in line. The problem is that the human spirit loves true justice and cries out when an injustice has occurred. Because of the tendency to protest the grievous miscarriages of justice, more and more Americans will be attacked, subdued and silenced by the New World Order dictators unless we all ban together now and, with one voice, protest the abuse of the *U.S. Constitution*.

The destroyers of the America *Constitution* openly do not believe in God, and they attack our traditional values. They demonize our founding fathers and are destroying our way of life. The assault on the "Presumption of Innocence," a long cherished tradition in the American Justice System and the heart of our system, is changing. In fact, hundreds of cases in America follow the new protocol, which is a page out of a KGB-hand book of oppression. Part of the theory behind their conspiracy is that the individual is now considered expendable. Every day the conspirators are stripping us of our God-given rights by new laws and the misinterpretation of existing laws.

They, the conspirators in the U.S. Government, simply fictionalize a crime that never happened. They target such person to be silenced for speaking out against them because they deem such speech as politically incorrect. They will setup a targeted individual and hire criminals to lie about them and will say the politically incorrect person committed a crime. What this means, in an Orwellian sense, is that the guilty often go free while they imprison the innocent. Only those who are a part of the "crony system" can expect to avoid the ravages of this out-of-control prosecutorial system. Then the public and private interests demand the blood of the targeted person and the victim becomes a fallen gladiator in a Roman style Circus.

Not just money but raw political power is the driving force behind the universe of this conspiracy. However, in the financial area, the supposed crime of money-structuring is used to imprison people for handling cash money that was lawfully earned, as in David's case. They accuse a victim of a crime because he/she dares to use cash rather than payroll checks, which supposedly is a lawful practice. But, when it is understood that the government is hungry for maximum numbers of convictions to feed the American Prison Industry, tax dollars are used to repay the revenue bonds that built the facilities.

They took David Hinkson as a political prisoner of the USA on November 21, 2002, and Edgar Steele (an Idaho based, First Amendment attorney) on June 11, 2010.

For those who want to do more than shake their head in dismay, they can become educated in the techniques used by the government to attack the politically incorrect. As a proactive member of the public, this book, *A Cesspool of Judicial Corruption-The David Hinkson Story*, by Roland C. Hinkson offers an understanding of just how far America has deviated from the individual freedoms guaranteed by the founding fathers in the *U.S. Constitution* and gives insight into what to expect and how to conduct oneself when under attack.

Lest we forget, we should demand of our Congressional representatives the repeal of certain laws that empower those who seek to enslave us.

There are specific things we can do. Join with others within your circle of friends and spheres of influence. Demand that David Hinkson be released and that he gets a fair trial and that Edgar Steele receives all his Constitutional Rights immediately.

We should promote the provisions of HR 4276 (August 31, 1998) to be re-considered. Repeal Title 5 > PART III > Subpart C > CHAPTER 45 > SUBCHAPTER I > § 4502. Eliminate reliance of the paid informant concept of rewarding informants for their testimonies. Do not allow appellate court judges to step down to a trial court level. Thus, we help prevent the "good ol'" boy decisions that help their errant colleagues to

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save face rather than seek justice. Also, we must hold FBI, IRS, DOJ agents and judges to the same standards to which we, the citizens must adhere. We should investigate and charge, according to law and our *Constitution*, all felonies and law violations perpetrated by government agents and perjurers as identified in this book.

David's story uncovers a nest of cockroaches swarming all over him and his creation, WaterOz. Now that we have turned on the light, I suspect that most of the cockroaches will scamper to any dark crack or corner then seek ultimate refuge in the cesspool of judicial corruption. One thing of which we can be certain, a cockroach will always remain a cockroach.

What started out as the "Great Experiment in Democracy" is now in serious jeopardy. The train we rode, called *The Republic*, has been overtaken by reckless profligates and grubbing opportunists who appear to be wallowing in a drunken stupor. The gravy train is out of control hurtling itself at a furious speed toward disaster. Conspirators have thrown the switch diverting us from freedom to slavery.

We must encourage all honorable law enforcement persons to stand tall and help expose the traitors within their ranks. We must plead with our judges to be willing to give up their perks, honor their oath to defend and to uphold the *Constitution*. We all must help fumigate the treacherous termites infesting our dying republic.

The question now is, can We-The-People seize control before impending, certain doom embraces us? Only you can answer that question.