

Memorial Day 1997

by David Witts

The genius of the American Constitution is that it is the first and only truly “anti-government” constitution. The reason our Constitution guarantees three separate branches of government, elections every two years, the rights to speak, publish and bear arms is to minimize government powers and maximize the People’s ability to control over government. Unlike virtually every other constitution in the world, our Constitution does not enshrine the government as superior to the people, but instead enshrines the People as collective sovereigns superior to the government. Of course, anyone who espouses this truth is both a “constitutionalist” and persona non grata in the eyes of the government that inevitably seeks to reverse the constitutional relationship of People superior to government.

Therefore, government dismisses most constitutionalist criticism as the ignorant ravings of the “great unwashed”. Those dismissals are frustrating, infuriating, and drive some of us to depression, others to violence, and a few even to publish magazines. Still, I can comprehend some of government’s contempt for our complaints because — even though we intuitively understand and reject justice — as “average Americans” we are, by definition, under-educated and when stressed, sometimes prone to hysteria.

The author of this article is not a “average American”. He is a distinguished attorney from a distinguished law firm who has practiced for nearly half a century. Mr. Witts is neither ignorant nor prone to hysteria, but he is nevertheless screaming about a injus-

tice just like the “crazy” constitutionalists. His story illustrates what can happen to a single individual — even if that individual enjoys the benefits of wealth, education, and social position — who offends a government unbridled by constitutional limits.

Memorial Day, with all its tragedies and memories, seemed the right time to say thanks to our friends for their kind support. It’s important to us that you know the grim story of our family’s persecution, its corrupt and vicious motivation, and its tragic consequence.

The Justice Department motto is: “The United States wins its point in court when justice is done. Our historic aim is fairness, not prosecution at any cost.”

I thought I understood prosecution. Much of my career was prosecuting criminals. In the 1950’s I was Special Counsel to U.S. Senate McClellan Committee when Bobby Kennedy, its Chief Counsel, was cracking down on Teamsters and Mobsters. For 10 years I was Chief Counsel to the Texas Legislature General Investigating Committee. We prosecuted crooked law enforcement, bribery, prostitution, slant-hole oil drilling, and fixing S.W. Conference basketball games. I was on both the Mayor’s and Governor’s Crime Commissions. That the innocent could be prosecuted by the guilty, was never within my comprehension or experience!

Here is how and why the Justice Department persecuted us.

How

Three years ago I caught two government agents in gross misconduct. I was there. I saw what I saw. I reported it, naively assuming federal government would prosecute wrongdoing. I prepared three volumes of documentary evidence supported by statements, canceled checks, photographs and affidavits exposing criminal conduct. December 9, 1993, I wrote U.S. Attorney Paul Coggins for the Northern District in Dallas requesting a meeting.

December 20, 1993, I met in U.S. Attorney Coggins’ office with Assistant U.S. Attorney Linda Groves and FBI Agent Thomas Tierney. I delivered this evidence to and was interviewed by them. They said: “We know we have some problems in the Eastern District.” U.S. Attorney Groves wrote me:

“Again, thank you for bringing these matters to my attention. I have discussed these materials with Paul Coggins and Special Agent Tieme y. We agree that further investigation and/or prosecution should be handled by the U.S. Attorney’s Office for the Eastern District where venue for a criminal case lies. . . If you have no objection, I propose to forward the materials you have given us to Special Agent Larry Davis in the Eastern District. I’m certain that Agent Davis will find this information enlightening.”

1993-1995. As instructed, for two years I provided hard evidence of official misconduct to two FBI Agents and to the Assistant U.S. Attorney of the Eastern District. I offered to be interviewed any time or place. Hearing noth-

ing, I then sent this evidence to the Executive Office of U.S. Trustees in Washington, and to a Congressional Committee.

Warning. Thereafter I was told: “They are going to punish you.” Why, I asked, for telling the truth? “What you don’t understand is you kicked a hornet’s nest. They intend to make an example of you for exposing them. I’ve never seen such secrecy in a U.S. Attorney’s office before.”

Why

- To attack my credibility for exposing corrupt government trustees.
- To cover up government’s refusal to investigate its own misconduct.

Retaliatory Justice

The Smoking Gun. Two unexpected events occurred in December 1995.

- An appellate court, on its own motion, reversed a decision by an Eastern District judge. The higher court’s ruling that “constitutional rights of the parties had been violated,” confirmed some of my revelations.

- The Executive Office of U.S. Trustees in Washington made an FOIA release of documents signed by officials I had identified. Here was documentary proof of misconduct, conspiracy, bribery, and cover-up. Revealed also was their request to have me “investigated.”

These two undeniable events, lit a fire behind their stone wall. Government moved with desperate swiftness during the normally somnolent Christmas season. Within a week, a Target Letter was sent to me. Persecution had begun. The chronology is chilling.

On December 20, 1995, two years after I first exposed this misconduct, the first and only response to my dogged insistence for an investigation came from an Assistant U.S. Attorney: “This is to advise David Witts is target of a federal grand jury in the Eastern District. We are now preparing an indictment.”

Thunderstruck, I felt this must be a mistake. That a man whose 76 years had been dedicated to service of country, professional integrity, law enforcement, and civic accomplishment would

be punished for reporting wrongdoing, was, and still is, inconceivable.

Nevertheless, my exposures created a vendetta. Government had two choices: Investigate itself — or indict me. Government does not investigate itself. An indictment would undermine my credibility, thereby closing the circle of corruption. Grand juries were established to shield citizens from unjust prosecution. Government has so eroded this protection that grand juries are now a rubber stamp for federal prosecutors — 99% of all cases presented are indicted!

State Terrorism. This syndrome was identified by Judge Abraham Sofaer, former State Department Counsel. “Lack of accountability has become endemic in federal government, which covers up its own misconduct with unconscionable zeal.” Federal prosecutors are the most powerful people in America. Unelected and unaccountable, they enjoy categorical immunity for their acts. Such absolute immunity has allowed some U.S. Attorneys to use their office for personal gain.

Major Corruption in a Minor Key

The Eastern District of Texas is a judicial venue largely isolated from public scrutiny. The Clinton administration’s first act was the unprecedented firing of all U.S. Attorneys. Former Attorney General Edwin Meese called this a calculated plan to destroy the independence of the Justice Department. This was accomplished so successfully that it is now called the Just Us Department. It’s corrupt at the top and out of control at the bottom. The repugnant litany:

- One Assistant U.S. Attorney is dead and another in prison.
 - Five White House Counsels resigned under fire or quit in disgrace.
 - The Attorney General is beleaguered in office and ill in body.
 - One FBI Director was fired.
- Another twist in the wind in conflict with both Congress and the White House.
- FBI Director Freeh admits it is the most dangerous agency in the country if not scrutinized carefully.
 - At Ruby Ridge, the FBI shot Vicki Weaver’s face off, in her home, while holding her baby. No discipline.

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No report. The Agent in Charge was promoted to Deputy FBI Director.

- At Waco, FBI sprayed poison gas on and burned 80 men, women, and children. No discipline. No report.

- In Atlanta a security guard was tricked by the FBI, and then demonized for months. The Atlanta Constitution acknowledged its mistake with \$500,000. Justice Department mute.

- Travelgate. Every employee of the White House Travel office was fired. Then they were hounded by the FBI to justify the firing. Billy Dale, head of the office, was indicted, and tried. He was acquitted in an hour.

- Filegate. A bouncer is made Director of Security. He turns over 1000 FBI files on political opponents. Two career FBI Agents who objected were fired.

- Donorgate. U.S. Government for sale. Lincoln's bedroom and Air Force One for lease. Sale of Long Beach Naval Base stopped at checkout counter.

- FBI Crime Lab becomes "FIB Lab".

- FBI General Counsel Shapiro commits "serious misjudgments." No discipline.

- Unabomber is sought for 17 years. His brother introduces him to FBI.

- Supreme Court authorizes Paula Jones to introduce Exhibit One.

A Justice Department manipulated at the top to protect corruption and prosecute innocents, suffers corrosive trickle down.

Escalating Persecution

January 1996. Government in-

forms me "if I would plea to a one count information, this will all go away." Naturally, I refused.

February through November 1996. FBI Agents came to our home. Teams of FBI agents hit our daughter's home. They went to homes and offices of friends and employees. People told me: "They have no idea what they're doing, except trying to dig up dirt on you."

- Fifteen people were hauled to the U.S. Attorney's office for "questioning." Then they were subpoenaed to the grand jury, and again questioned for hours. One young Missile Officer was brought in from Vandenberg AF Base in California and questioned under unnerving circumstances.

- Our phone calls were boring and our garbage uninteresting.

- Our granddaughter was subpoenaed in her playpen.

- Break-in. Our accounting firm has been in existence 40 years, during which they never had a break-in. February 15, 1996 they responded to a massive FBI subpoena to produce all our family tax records back to 1988. One week later, their office was broken into. No property was taken. It was not determined which files were pilfered since there were no fingerprints. Exactly two months later, April 23, they received a second FBI subpoena, identical to the previous one. When they protested this harassment, they were hit with an IRS audit.

- July 1996. My personal physician took affidavits from my cardiologist and another doctor to Beaumont, accompanied by my counsel. They personally informed the U.S. Attorney that this harassment was creating a "life threatening situation." The U.S. Attorney rejected their evaluations, saying: "They are worthless, because they are all from his friends!" Government challenged me to go to an "independent" doctor. I did. A Professor of Internal Medicine at the University of Texas Southwestern Medical School confirmed the diagnoses. Ignored.

The Alleged "Crime"

After two years wearing out shoe leather, no crime was discovered, no vic-

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tim found, and no loss discovered. (FBI's concurrent failure to locate Amber Hagerman's murderer, or the \$50,000 filched from the Dallas Police Department were legitimate failures).

However, in 1992, a controversy with a deposed business partner caused litigation which concluded in April 1994 with a court-approved "Full and Complete Release and Discharge of All Claims past, present, or future, whether known or unknown, whether asserted or unasserted, whether arising under federal, state or bankruptcy laws, are forever released against David Witts, [wife] Jean Witts, and [daughter] Elane Witts Hansen." This controversy included my Box at the Dallas Cowboy football stadium

Despite the 1994 "Final and Complete Release," government's last resort was to seize on the 1989 gift of our Dallas Cowboy Box to daughter Elane as a "crime." What seven years before had been a gift was born again as a "concealed asset." How? In 1990 the Cowboy Office received a Registered letter from me, requesting my certificate be reissued to Elane. They issued the certificate back to me, by mistake. This

went unnoticed until 1992, at which time the Cowboys corrected their mistake.

Concealment or Conspiracy?

Zero Evidence. The U.S. Attorney was informed: "There is zero evidence that anyone but Elane ever owned the box after 1989. A 1989 gift tax return was filed and the tax paid. Elane paid taxes and insurance on the box from 1990 through 1996. The suite telephone and the Stadium Club membership were listed in her name. Tickets and catering charges were billed to Elane. She leased her box to Professional Sports Marketing. Lease income was paid to and reported by her.

To claim "concealment", government had to disregard:

1) October 5, 1989 written memo from Estate Planner David Kerr suggesting gift of Box to Elane.

2) December 1989, Box transferred. 1989 Gift Tax Return filed and paid.

3) February 23, 1990, reminder from David Kerr to file gift tax return.

4) August 23, 1990 certified letter to Cowboys: "Please issue new certificate in the name of my daughter, Elane Witts. Enclosed is check for \$7.00. Signature guaranteed by Patricia McNutt, Senior Vice President, FNB, Dallas."

5) September 1, 1990 certified letter signed for by Cowboys.

6) September 26, 1990 certificate re-issued by Cowboys, mistakenly in my name. My office filed it without noticing the mistake.

7) December 31, 1990 IRS approves 1989 gift tax return (exhibit).

8) 1991 Cowboy Suite Telephone Directory lists owner as Elane Witts.

9) January 29, 1992. Mistake discovered and Cowboys again requested to issue certificate in Elane's name.

10) May 10, 1993, Carol Padgett, Manager of Cowboy Ticket Office testified: "We had on file a letter dated August 23, 1990 from Mr. Witts requesting his certificate be issued to his daughter. By mistake, we issued it back to him. That's why the certificate was still in his name."

• October 8, 1996. Government ran through the 1994 "Full Release" as

though it didn't exist. Government again attacked my wife Jean's separate property. She was dragged through a brutal trial, at the end of which the Judge ruled: "The testimony of Mrs. Witts as to her property is unequivocal, undisputed and un rebutted. Government's motion is denied."

• October 17, 1996. My daughter Elane is threatened! Faced with my refusal to plead, coming up with dry subpoenas, and defeated in their attempt to seize my wife's property, government then threatened to indict my daughter for "conspiracy." She refused to plea, saying she would sell her home and mortgage her husband John, to fight what by now everybody recognized as a "very strange and obviously senseless prosecution." She was subpoenaed to the grand jury. Her attorney told her: "This is the same tactic this U.S. Attorney has used against other people to make them plea. I do not like the tactic, but it is effective."

• The Trump Card. After my daughter and I both continued to fight, government played its trump card. My wife, Jean, was subpoenaed to the grand jury!

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That broke our resolve.

• November 13, 1996. We give up. The U.S. Attorney is notified: "Based on your representation that you intend to pursue a multiple felony indictment against Mr. Witts and his family, Mr. Witts will negotiate a plea."

• November 13, 1996. U.S. Attorney instantly replies: "We accept your offer to plea to a one count information, contingent upon government's forbearance of prosecution against his wife and daughter. Government will forbear prosecution of Mr. Witts' wife and daughter if he will enter a guilty plea."

Alleged "Loss"

Sentencing Guidelines. In order to get jail time under federal Sentencing Guidelines, a loss must exceed \$250,000. But there was no loss! The pre-sentence report confirmed: "No restitution is recommended, since there was no loss."

There being no actual loss, government imputed "an *intended* loss," based on the Box's value by alleging that I "*intended*" to inflict a loss and covered it up. The U.S. Attorney repeated twice in open court: "David Witts deliberately concealed ownership of the

Box, and then lied about it." The Court departed from sentencing Guidelines, denied government's prison request and offered probation.

Nevertheless, though I avoided incarceration, my prosecution brought me face to face with my own "Final Solution," Hitler's term for exterminating innocent people. Should honor be sacrificed and career ruined by pleading? Or do I subject my wife and my daughter to the terrible cost and torment of a criminal trial, knowing full well there was no way government could ever show I intended to commit a crime against my own country? In life's journey, when one road leads to self-destruction and the other to family destruction, this Ancient Rhyme charts the course:

"Would's't thou learn the secret of the sea? Only those who brave its danger, comprehend the mystery."

Requiem

Three generations of a proud and patriotic family were punished because we had the moral courage to recognize gross misconduct, report it, and stand up against it.

I've led a long and eventful life, now in its twilight. The single worst

moment of that life was hearing the words: "The United States of America vs. David Witts." Those words crush the very soul. Standing before the bench I served with pride for half a century, beneath the Great Seal of the country I love, beside the flag for which I fought . . . with burning memories of all those gallant young men who defended that flag . . . who never had a life . . . who gave away all their tomorrows so we could have ours . . . is a lifetime sentence from which there is neither pardon nor parole. It is worse than dying, which at least leaves accomplishments intact and reputation untarnished. The horror of betrayal by my own government, of which I was once so proud, is an unbearable burden that I now carry to the grave.

From the *Book of Virtues*:

*The ages come and go,
The mountains weep along, the stars retire.
Destruction lays earth's mighty cities low
And empires, states and dynasties expire.
But caught and handed onward by the wise,*

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