

The Dead Man Saga  
Eric Pepke 6 February 2019

I was arrested in April 2015 and was held on state charges that were later dismissed. I now believe the state charges formed a pretense to keep me isolated until a federal indictment for political reasons, but that is another saga. In any event, until my federal indictment, I was held in Wake NC county jail.

While this was in no way pleasant, at least this jail was competently run. It was clean and well supervised. There was no physical danger from other inmates, though there was plenty of verbal abuse, especially after a news story about my later-dismissed charges was broadcast over television to all the inmates. (In my experience, most inmates do not acknowledge the concept of the presumption of innocence. Neither do most judges, but that's another saga.)

My insulin was administered by medical professionals, and I was provided with a diabetic snack in addition to the regular diet to forestall blood glucose crashes. Each snack consisted of a sandwich and a piece of fruit.

Still, my health suffered. I precipitously dropped 35 pounds. My ability to sleep also suffered. For a couple of weeks, I did not get more than 45 minutes of sleep in any 24-hour period.

This experience was extraordinary. I would be lying down trying to get to sleep when, without losing consciousness, I would experience a dream or hallucination. After a few minutes, the dream would end, and I would still be conscious. I would then peer through the cell door window at the clock and note how little time had passed.

I presented to the well run medical center. The physician told me that, while they were forbidden from prescribing medication to induce sleep per se, they could evade the regulations by providing psychotropic medication with soporific side effects.

I told the physician I had a high tolerance for medication and also some paradoxical drug reactions. I was once married to a psychiatric nurse, and she had told me that Haldol knocked people out. I asked for and was prescribed Haldol.

It had no effect on me, as far as I could tell. I presented again, and the physician told me that I was in the 2% already, as almost anybody with such a dose would be on the floor. This did not surprise me. I decided to crank it all the way up and asked for Thorazine.

It also had no effect. I then asked for an increase in dosage. It did not improve my sleeping, but it did dangerously lower my blood pressure.

The physician then suggested Trazodone. I had no previous knowledge of this medication, but by that time, I felt I had little to lose. It worked, and I was able to sleep more or less normally.

After I was federally indicted in the middle of November 2015, I was immediately transferred to Franklin NC county jail. My Trazodone was continued, which was fortunate, as this jail was far worse.

Unlike Wake, Franklin was clearly under federal contract. Federal and state detainees and prisoners were all mixed together

in one of two large rooms with stacked bunk beds. Federal detainees wore crisp new garnet jump suits. State felony detainees and prisoners wore dingy white-and-gray jump suits. State misdemeanor detainees and prisoners wore even dingier orange-and-black jump suits, most stenciled with the names of other jails.

There was no opportunity for exercise in fresh air from the outside, which I much later learned was a constitutional violation. The dorm was almost always completely empty of staff. Half the time the insulin was delivered by staff who said they had no medical training, and we were expected to measure and administer it ourselves. There was much less food in general and no diabetic snacks, so I did not have sufficient food properly to maintain my blood glucose level.

One day I awoke in the filthy and cluttered storage room that doubled for what passed as medical purposes. I was told I had been found unresponsive in my bunk. It felt to me that I had had a blood glucose crash. I said so, but instead they falsely and ludicrously insisted that I had been "hoarding" my Trazodone.

They abruptly discontinued the Trazodone and put me in what they called a "medical observation" cell, alone. It was oddly named, as they never seemed to observe me. I was fed through a slot in the door. The same slot provided a way to give me my insulin, which I was expected to draw and inject by myself.

I remained in that room, alone, for more than three weeks until I was shipped to the Pamlico NC jail for my arraignment. What with the abrupt cessation of a powerful psychotropic and the fact that the bright lights were on 24 hours a day, I was not able to sleep at all for the entire period. I did hypnotize myself using a technique I had learned from my mother when I was a child. So I had some rest, but that is not at all the same thing as sleep.

I am not quite sure how I survived. I am pretty sure that parts of me did not. I remember from before that humans start experiencing irreversible brain damage after two weeks of solid sleep deprivation, and I exceeded that.

It is quite possible that my brain is damaged. There are certain faculties and abilities I can remember once having that do not appear to exist any more. I cannot be sure this is due to brain damage or emotional trauma. It was just bad luck for the government that they were not able to damage the part of my brain that wants to criticize them in print, as I do not doubt they intended.

The process certainly did wreak havoc with my memory, cognition, and what philosophers might call "will." It was not until about eight months later, after my direct appeal but before my motion under 28 U.S.C. §2255, that I was able to regain significant wits.

It was only then I learned, from the prison law library (NC jails do not provide access to a law library), that this is legally torture. "It has been known since 1500 at least that deprivation of sleep is the most effective torture and certain to produce any confession desired." Ashcraft v. Tennessee, 320 US 143, 150 n. 6 (1944). Ashcraft was only kept continuously awake for 36 hours. Being a software developer, I doubt I would even have noticed such a short period of time, but the Supreme Court called it torture. I

can tell you that over 500 hours works a lot better and definitely performs as advertised.

A bit more than a week after the start of the torture, an officer brought me a meal. Meals at that jail were usually served in scratched and septic brick-red plastic trays, except for the last meal, which was always wrapped in plastic wrap. Unusually, this meal came in a clam shell styrofoam box like a take-out.

On the top was written "Dead Man 12-15" in Majik Marker. As there was no way for inmates to obtain markers, and as there were no inmates involved in food preparation or distribution, it must have been written by staff. I asked the officer, "Dead man?" but as usual he completely ignored me.

I did not know whether the intended message was that I was already dead or that I would be dead after eating the meal.

I recalled a news story about the man who took the video of the police killing of Eric Garner in New York. It said that the videographer had been hounded by the police, whereupon he began carrying a firearm to protect himself. He was promptly jailed under the Sullivan law. I remembered from history that this law originally enabled Sullivan's police to drop pistols into the pockets of the greatcoats Sullivan's political opponents wore in order to arrest and silence them. It was so common that politicians took to sewing their pockets shut for public appearances.

While in jail, the report continued, he found rat poison in his food. So he went on a hunger strike. The last I heard, the warden admitted there was rat poison in some of the food. I never heard more, but from my experience I predict that nothing at all happened as a result of this revelation. There is complete public apathy about, well, just about everything.

I was already emaciated and at risk of another glucose crash, so I could not risk a hunger strike. I decided to eat the meal. I figured that the worst it could do would be to kill me quickly rather than slowly. This did not seem such a bad deal at the time.

I knew of two common rat poisons. One is a haemotoxin with a characteristic dark blue color. I checked carefully for any hints of blue but did not find any. I realized that the blue might be a dye not present in that sample, but I hoped that the jail would not be sophisticated enough to obtain the poison without the dye.

The other common rat poison is strychnine. This is a colorless crystalline substance that could easily be dissolved, and I would not be able to detect it. I had also read that at sub-lethal doses strychnine caused hallucinations. As I was only a bit more than a week into the sleep deprivation, the resulting hallucinations were not too bad, and I hoped I would be able to notice any new ones before I died.

I ate the meal slowly. I did not die.

I carefully removed the top of the box with the writing using my thumbnails. I then shredded the rest of the box in the hopes that it would not be immediately obvious that I had kept the top.

I was able to smuggle the box top to the Pamlico NC jail where I was shipped for my arraignment. (The arraignment is described in another saga. For now, it should suffice to say that I pleaded guilty to doing something I had done but which could not be

illegal. I did not realize that a guilty plea would bar me forever from showing that it was not illegal. The addling from the torture contributed to my failure to realize this, but it was not the only reason. I did bring up the sleeping problems, but the magistrate was uninterested and rubber-stamped me as competent.)

After my arraignment, I met my paralegal for the first time. She was supposed to help with my pre-sentencing report.

I showed her the box top. She made a "tsk" noise, and I could see from her facial reaction that she was distressed. I opined that it was a death threat, and she agreed.

I gave her the box top and asked her to make two photocopies for me. She agreed. On a subsequent visit, she gave me the photocopies.

I strongly suspected that I would not be able to take any papers with me to prison. (I turned out to be right.) I realized that I needed these photocopies, not only for subsequent legal work, but because people needed to know.

Fortunately, the Pamlico jail had the unusual policy of allowing indigents to send three domestic letters per week. The question was where to send the photocopies.

I could not send them to my by-then-very-ex-girlfriend. During my detention at Wake, she had seemed supportive. She promised that as soon as I was assigned a federal attorney, she would put the Electronic Frontier Foundation (EFF) in touch with the attorney, as she said the EFF had already agreed to do. This could very well have prevented me from going to prison. In any event, it would have given me a chance.

However, she did not do so. Instead, she abandoned me almost immediately. After I was eventually shipped to Pamlico for my arraignment, I received mail from her stating she was trying to raise the EFF, but it was too little too late. Much later, I was able to make contact with the EFF, who told me that they could not help anyone after conviction, so she had deprived me of ever receiving help from the EFF.

I did not find out what had happened until February 2016. I had previously asked her to send me a Valentine to cheer me up. Instead, on 12 February, I received a letter from her with a footnote saying she had just discovered she was eight weeks pregnant. This would have put her Blessed Event<sup>®</sup> approximately between the time the torture started and the "Dead Man" lunch box. She can probably date it more accurately than that, though I have no desire to investigate further.

At least that explained why she could not make a phone call to save my life: she was busy doing other things. She was out.

The only other option at the time was a friend (now also ex) in India. He was in contact with my paralegal to write a letter for the judge on my behalf for sentencing.

There was no way that, as an indigent, I would be able to afford a global stamp. So I asked my paralegal to ask him to find someone inside the US to whom I could send letters. She did and gave me an address for the friend-of-an-ex-friend (FOAXF). I sent letters for a couple of weeks, including the two photocopies, which I sent in separate letters to increase the probability that one would survive.

On a subsequent remote communication (I do not remember if it was by telephone or by a horrible botched abortion of a system called JurisLink) my paralegal told me that the FOAXF had balked and refused to accept any more mail. The good news, she said, was that what I had sent had all been sent to India.

This alarmed me. I told her that was not what I wanted, that I needed to preserve the photocopies. She then said she had no interest in being further involved in the matter. I guess she meant it, as she has not responded to any of my subsequent letters requesting fresh photocopies. Nor did anyone else at the public defenders' office consider any of this worth bringing up on direct appeal.

I thought I would never see the photocopies again.

I was sentenced and sent to prison. Sure enough, I was not allowed to keep any papers, not even legal ones.

After my direct appeal was denied, one day in prison, I unexpectedly received a packet of papers in the mail. It was from the brother of my ex-friend in India.

It included the two "Dead Man" photocopies.

I was ecstatic.

I showed them to the jailhouse lawyer I most respected. He expressed amazement that the prison had let me receive such evidence. He suggested the only reason they did not simply confiscate them was that I had already, due to other problems, sent many letters to outside organizations. Of course, my attempts to make contact outside agencies had never been successful, but perhaps the prison did not know that. Perhaps they had decided not to mess too much with me.

I showed the "Dead Man" photocopies to others. I noticed something. I could tell other prisoners about the torture, the political motivations, the prosecutorial lies, etc., and they would just nod their heads. It did not surprise them in any way, as that happens to everybody.

However, the "Dead Man" photocopies elicited a reaction. About half the time, their eyes got wide when I showed them. Apparently, written death threats are still rare enough to shock.

One of those photocopies is now Exhibit D of my motion for vacation of conviction under 28 U.S.C. §2255. It and the torture form the basis of Ground Two. (Ground One is even more serious, involving actual innocence, misapplication of law, and/or unconstitutionality of statute. In the mean time, I have been trying every way I can to make this information public, with no success. I believe that the American people need to know what their government does. Their seeming apathy only makes me feel more strongly the need to tell them.

If the APWA puts this up, it will be the first publication of this information ever, after 2½ excruciating years of trying.