

The Saga of Telling It To the Judge
Eric Pepke 23 January 2018, rev. 20 February 2019

When my pre-sentencing report was in preparation, my paralegal asked me to write what I "want to tell the judge." The wording confused me. I was still dazed from the government's physical torture of me (see "The Dead Man Saga"), and I still mistakenly expected due process and guidance.

I wrote something, but she just gave it back with a look of disapproval. To be fair, it probably wasn't written very well. It took a year for me to recover enough to write better.

I have now figured out what I want to tell the judge.

Throughout history, I count eight accusations so inflammatory, virulent, and vitriolic that they transcend mere evidence and reality. They cause an automatic feeding frenzy. One need only breathe or even think them to drive out reason itself:

1. Witchcraft
2. Slaughtering Gentile babies for blood to make matzohs
3. Sex offenses
4. Terrorism
5. Fascism/Naziism
6. Communism
7. Misogyny
8. Islamism

Now that even the Bureau of Prisons recognizes Wicca, perhaps (1) has fallen out of fashion. The rest are perennial favorites to incite mob hate and are as inflammatory as ever. The government had to trim the list a wee tad for my indictment, but they accused me directly of four (3, 4, 7, and 8) and at least strongly implied a fifth (6).

Had they known earlier that I was an Ashkenazi Jew, they might have rounded the list out with (2) and (5) as well. But then maybe they would have had to leave off (8). Oh well, nobody's perfect, and there's always next time.

There have been plenty of incentives the government can use to persuade local police to do their dirty work for them: billions in federal grants (DHS, COPS, LEA, 1033, MCLA, etc.), free military hardware and personnel, work-arounds to pesky state limitations on forfeiture, and so on.

Perhaps in my case the incentives were not good enough to persuade the Cary and Garner, North Carolina police to do a proper job. Amongst other problems, they neglected to read me Miranda rights, admitted to an illegal search, and set ridiculously excessive bail (\$3MM). The federal government claimed to have evidence by means that are not only implausible but impossible. I haven't even seen any evidence other than a description of one image I was asked to plead guilty to receiving. This image was not even pornographic and could not be illegal under a constitutional law.

Still, who needs evidence when they're torture?

The government didn't just inflict on me plain old everyday recreational torture like the high spirits of the fun folks at Abu Ghraib, Al Shimari v. CACI International, 658 F.3d 413 (4th Cir.

174 2010). No, they used "the most effective torture and certain to produce any confession desired." Ashcraft v. Tennessee, 322 US 143, 74 n. 6 (1944). I know it works.

I'd love to investigate it, but the plea agreement they tortured me into signing waived my right to do so. Every judge in the process so far has rubber-stamped the plea as voluntary.

With no risk at all of interference or consequences, it is not at all surprising the government behaves this way. A fellow prisoner, "Coop," put it best: the government is an alcoholic father who drunkenly beats and rapes his children. The court is his long-suffering wife who rarely stands up to him. Usually she excuses and facilitates his behavior sympathetically, saying he is really a good man underneath it all.

Rumor has it that my prosecutor was fired for prosecutorial misconduct, but in prison I have no way to verify this. It does seem from the materials in the law library that she has not appeared in court for the government since a couple of months after my sentencing. In any event, this is no disincentive for the government.

There is only one flaw in this well oiled machine of justice, only one fly in the government's ointment. "The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." Harris v. Nelson, 394 USA 286, 291 (1968). Habeas corpus, however, was gutted by the AEDPA under Bill Clinton, and it also has a mine-field of procedural barriers even judges find difficult to understand. "What a marvelous Catch-22 the law of federal habeas corpus now is!" Gonzalez v. Sullivan, 932 F.2d 419, 424 (2d Cir. 1991) (dissent).

"We still have habeas corpus," wrote Radley Balko. "No, America isn't a police state. Far from it." Balko, Radley, Rise of the Warrior Cop, New York: Public Affairs, 2014.

I am not persuaded we are all that far.

Despite my attorney's vanishing after sentencing, I had a gut feeling I should appeal. Fortunately, I had been moved to a jail that gave a free phone call. I used it to leave a message on his voice mail.

Neither the appeal nor my petition for certiorari worked, but they did give me eleven extra months to file my motion under §2255. I needed that time to get my brain working again. But for bloody-mindedness and sheer luck, I might have missed my one chance.

Almost none of my discovery was about any charges. Almost all consisted of my public writings, many of which criticized the government. Not only does this provide strong evidence that the government's real objection to me was political, but it clearly shows they had reason to believe I would not easily be intimidated by words.

The government almost always gets detainees to plead guilty using tactics such as I describe. "The vast majority of felony convictions are now the result of plea bargains, some 94 percent at the state level, and some 97 percent at the federal level." Yoffe, Emily, "Innocence Is Irrelevant," The Atlantic, September 2017.

Torture usually isn't necessary. For almost every prisoner, words are enough. Prisoners just give up. The government only has to intimidate them long enough so that they miss the one-year

deadline and lose any future right even to try. Even if they recover enough to fight, they are procedurally defaulted.

They just want to wait for release and put the experience behind them. They want to go back to their friends and families and try for some sort of life. They fear that if they even speak out, the government will retaliate against them.

I cannot say I blame them, but every single person I ever knew has abandoned or betrayed me or both. This has destroyed me as a person. On the other hand, I do not have much to lose.

What the government did to me, they can do to anybody, and they do, all the time. It's just that hardly anybody ever carries the message to the courts. For every one of me, there are hundreds or thousands deserving of relief that the courts will never see.

Habeas corpus law specifies that the court "dispose of the matter as law and justice require." 28 U.S.C. §2243. It is hard to see how this can happen, even given the best outcome. Will the court just turn the clock back before the torture, thus giving the government a do-over? Maybe they will get it right this time and destroy my willingness to write as well as my humanity. At most, habeas corpus just gets the government to stop, if only for now.

I have no friends and nowhere to go. I have no money. My teeth have gotten worse and fewer, and I cannot see how I can show up at an interview they way they are, even if I had not suffered an irreparable break in keeping up my skills. I do have some ways I might be able to make a living in the long term, but they will take too long to keep me from dying on the streets as an insulin-dependent diabetic.

I might be able to survive for a time on charity, but it looks grim. One re-entry organization I wrote, which was recommended by the prison chapel, could only tell me that my situation sounded "dire."

This is what I want to tell not only the judge but all American people.

I ask you, is this justice?