

The Guilt Phase Saga
Eric Pepke 5 March 2019

This is the saga of the guilt phase, approximately the time from my arrest to my guilty plea. For reasons that may become apparent later, it might also be called "The Guilt Trip Saga." As Gilbert and Sullivan wrote, things are not as they seem; skim milk masquerades as cream!

It does not even come close to scratching the surface, and I have had to leave out an enormous amount. The full story will require a book, one I cannot write yet. Still, some understanding of these events is necessary for the sagas that come after.

I was served with a search warrant some time in April 2015 at the apartment in Garner, NC I shared with my girlfriend. (I do not remember the exact date, and I have not been able to obtain the documents.) They knocked on the door and announced that they were the police.

As usual when I was programming at home, I was in my underwear. So I said, "Just a minute" and went in the kitchen, which is out of line of sight from the door, to put on my pants and a T-shirt. Just as I had finished and walked back into the living room, they entered using a key.

They served me a search warrant, which I was only briefly able to look through before they started interrogating me. They said they were from the Garner and Cary police departments. The Cary cops were clearly in charge, with the Garner cops in tow. I thought this very strange, as while I lived in Garner, Cary was somewhat distant, much closer to the La Petite Academy in Morrisville where my girlfriend worked.

While several cops searched the apartment, a couple interrogated me. They accused me of having child pornography. I asked what constituted child pornography. They said that it was such that, if I had it, I would know it. This answer that seemed to me evasive and probably a set-up for a verbal trap. Even now, I think my perception was accurate.

One of them admitted to remotely watching a directory on my computer fill up with files and then empty, a clearly illegal search (if it happened). He seemed to think better of what he had said and then said that I "must have" allowed him to access my computer. I said I had not knowingly done so.

The cops took pretty much everything electronic I had, including a solar battery charger. This included my laptop and my girlfriend's laptop and many items from the kitchen, which had the only drawers in the apartment, which was pretty much empty of furniture. We did not have a lot of money, and even the air mattress had a hole in it.

Later, my girlfriend came home. We had a conversation the contents of which I will never reveal to anybody; after my trust has been betrayed so blatantly, I will not do it to others at any cost. I went in to the police station. They arrested me, and I have not been at liberty since.

I was never read my rights as per Miranda. I had known other people who had been arrested without having been read their rights either, so this did not surprise me.

I was put in Wake County North Carolina (NC) jail. Within 48 hours of being admitted, there was a news report on the television

in the cell block about my arrest and charges, with my face, claiming that I had some thousands of images of child pornography. This did not make me very popular with some of the other inmates, who of course did not have the concept of the presumption of innocence and thought I had done worse than the mere rapes and murders they had done. However, unlike all the later jails under federal contract that were almost entirely unsupervised, the Wake jail was fairly secure, so I was only subject to verbal abuse.

I got a couple of indictments with lists of file names, none of which I recognized. There were maybe 11 or 12 on the former, and 5 or 6 on the latter. Like the search warrant, I have not been able to get these back; they were taken away from me later upon my federal indictment.

For the former indictment, bail was set to \$2 million. For the latter, it was increased by \$1 million to \$3 million total. It was only after I was in prison that I learned (NC jails provide no access to law libraries) that typical bail in such cases is maybe \$50,000, so the bail was clearly excessive.

Although the judge had said I would get a public defender, none showed up. So, I asked my girlfriend to find out who he was and give me his number. She did, and I called him over one of the monitored jail telephones. He said that he had not bothered to make contact with me because he was pretty sure the case would "go federal." He acted as if this always happened, but much later, I learned this is not true.

I was in the Wake jail for about seven months, during which time I could not really do anything. At first, I planned my defense as well as I could without knowing what my ultimate charge would be. I then realized that if I went to trial, my girlfriend would have to testify. Regardless of the fact that I did not believe I had done anything wrong, her career in child care would be ruined.

She told me that she could get another career but not another me. She also said that she would stick with me no matter what and wrote of the time we would again be together.

She also, on my request, made contact with the Electronic Frontier Foundation. She said they were willing to talk to my public defender. I pointed out that my state charges would be dropped. She said the EFF said they could only help me with a federal case anyway. She promised to put the EFF in touch with my federal public defender when I was assigned one.

I became ambivalent about whether I should fight the charges or plead guilty to protect her. Jails record all conversations, and there is a record of a conversation where she said I should fight. I said I could not fight, as I needed to protect her. She made no response.

In November, 2015, I was taken by surprise to court, and all my papers were taken away. I was indicted. I could only look at the indictment for a few minutes before the temporary public defender took it from me, saying he would keep it for me. I did not get to see it again until well after my sentencing.

As with the state indictment, it listed file names, none of which I recognized. Some were monumentally unhelpful, like 10.jpg. Some were what looked like coded dates, as if they had come from a digital camera. I did not have a digital camera, but I think my girlfriend did. Some had lurid file names, which I have later

found out the courts even acknowledge as irrelevant.

The indictment only listed two seized electronic items: (1) my girlfriend's laptop and (2) what I think was a spare drive from a laptop I had bought for parts and never examined. My laptop was not on the list, nor was the "SIM card or SD drive" the prosecutor later claimed had the alleged child pornography.

At least the federal judge did tell me my rights as per Miranda, but I still had no idea of what I was being accused of, nor what exactly "child pornography" was supposed to mean.

I was shipped to Franklin NC jail. It was much worse than Wake. There was no fresh air, and non-medical staff gave me insulin.

I saw my federal public defender for the first time. He told me that I would be required to sign a plea agreement. He said that it would be for one image, and that it did not matter what the image was. This made me think that just as in Kafka (though unlike in Kafka I did not have a trial) I would never be confronted with any of the evidence against me.

The idea of pleading guilty in any event just to protect my girlfriend was wearing off. My conscience had been bothering me, and I have always had great difficulty not telling the truth, in contrast to my girlfriend, who expressed pride in her ability to lie. Still, I felt a pull because I said I would.

However, it also seemed more and more that she had abandoned me or at least was in the process. Our only communication was by an email kiosk that only allowed a couple of paragraphs out. Her responses were late and perfunctory. I told her I needed to hear from her once a week to maintain my sanity, as I was terrified that the feds would do something to her. I eventually decided not to consider her in my decision.

I decided only to plead guilty if I had done something. I needed the information. So I told my public defender I wanted to know.

He asked me why I wanted to know. This flabbergasted me. He was with a federal public defender. I thought he was supposed to know what "guilty" meant. I could not figure out how to explain to him why I needed to know, and I was already in a weakened state. So I said, "I'm curious."

He then mocked me, saying, "oh, he's curious, is he?" There was no point in expecting useful information from him, and I felt I had no choice but to trust him.

Then I was physically tortured by extended, continuous sleep deprivation and issued what my paralegal later agreed was a written death threat by jail staff. I describe this better in "The Dead Man Saga" and will not repeat it here. Let it suffice to say that my head was pretty messed up.

At beginning of 2016, I was shipped to Pamlico NC jail to await my sentencing. This was a much rougher jail; I saw two actual fist-fights in my first week. No staff seemed to monitor the jail at all. Still, I was able to get some sleep, though not nearly enough to recover. I only started to feel like myself again much later in prison, after my direct appeal was denied but before my petition for certiorari with the Supreme Court was due.

At some point before the arraignment, my public defender showed me my discovery. It was a large folder full of papers. I was surprised that there was almost nothing about any criminal charges,

and what there was was full of false statements. There were quotes of me saying things I knew I did not say and would never have said. They even used grammar I never use, not even in speech. It was extremely sloppy.

There were also some photographs taken from the parking lot of the apartment complex. They would have easily been able to see me when I went out the back for my long walks around the three or four nearby shopping centers. It was my custom to stop at benches to work on cognitive science on my laptop. I had even interacted cordially with some of the cops who patrolled the shopping centers.

By far the bulk of the discovery, a stack of pages at least 3/4" thick, consisted of my writings downloaded from the internet. I had been a political writer, mainly criticizing tactics of the government such as the events in Ferguson and the time police killed Eric Gardner for selling onesies. The discovery had a lot of these writings and others about safer topics like science.

I was puzzled by this. It seemed strange that my criminal discovery should consist mostly of writings that were not crimes. Like everything else so far, it did not make the slightest sense.

About a week after I was shipped to Pamlico jail, my public defender brought the plea agreement for me to sign. It still did not tell me what I was supposed to have done. It only said that I was pleading guilty to Count 6, referring to an indictment I did not even have, specifying in any event a file name I did not recognize.

I signed it, based on the belief that what really mattered was what I said at the arraignment. I was well aware I was running on about a half a cylinder, and I would not be capable of feats of great mental acuity at the arraignment.

Over the next week or so, using the same self-hypnosis techniques I used to get some rest without sleep, I tried to prepare my brain to function at the arraignment. I told myself I would plead guilty if and only if two conditions were met: (1) I was able to obtain a description of the image, and (2) I recognized it and had in fact received it.

I knew I would be incapable of including any other criteria, and in any event, I did not know the massive legal implications of pleading guilty that are so different from the common meaning of the word. With no law library access, I could only understand "guilt" in the ordinary sense of having done something.

Thus prepared, I went to the arraignment. Before the magistrate, I brought up the fact that I had not been able to sleep, hoping that he would send me to Butner for evaluation and recuperation as he had an earlier detainee. The magistrate cut me off, asking only about the previous 24 hours.

I then questioned my own competence. While I was doing this, my public defender was looking at me with agitation and an expression that led me to believe that he was furious with me for interfering with the plan. I told the magistrate that with the way I felt, I could not accurately say whether I was competent or not. He asked how he was "supposed to" know if I was competent or not. As with my public defender's question of why I wanted to know what I was pleading guilty to, I could not figure out how to explain it.

I still did not know what I was supposed to have done. I snatched a sheaf of papers from my public defender's hands. Reading through it, I finally found a description of the image. I did recognize it. On that basis and that basis alone, I pleaded

guilty, as I had prepared myself to do.

I also knew that no reasonable or even sane person would consider it child pornography. I still expected some sort of opportunity to show that it was not illegal. I did not know that I was waiving that right.

Then things got really bizarre. The prosecutor got up and told what they would have alleged at a trial if I had not pleaded guilty. She said many things that were just plain false, but I will limited what I say here to two statements that are provably impossible just from the court and public record. That is, you do not need to believe me at all to be able to know they were false.

1. She claimed that when I was at the cop shop, I told them where to find a "SIM card or SD drive" with the child pornography, specifically in the kitchen and away from the computer area. This seemed to me over-legalistic phraseology, but even worse, it is physically impossible. The search was over by the time I went in. The cops never re-entered to retrieve this "Mystery Disk." Furthermore, if there was supposed to have evidence in the kitchen, why would I not simply have put it in my pocket, which they did not search? It seemed terribly contrived.

2. She said that most or all (one thing at the arraignment and another at sentencing) were unknown. That contradicted reality. The numbers she gave were comparable to the numbers in the television report less than 48 hours after my arrest. The only way such a count could have honestly been obtained would have been by automated comparison by computer to a database of known images. She said they were unknown, so such a count could not possibly have been real.

After the arraignment I was returned to the same jail. In late January, I felt particularly lonely. I wrote a letter to my girlfriend asking her to send me a Valentine's day card. I never received one. On 12 February, I received a letter from her with a footnote saying she just discovered she was eight weeks pregnant. So I knew what she was doing instead of putting the EFF in touch with my public defender back in December 2015, which might have saved me from prison.

I worked on cognitive science to distract myself.

This all distressed me. What had happened was bad enough personally. More importantly, even if I was ever able to be free, what had already happened to me showed a serious threat to every American. When a country cannot provide justice to its citizens, which is what seemed to have happened, how can it even be said to exist?

All of what I experienced went against everything I, and probably every other American, was led to believe about the United States. Nothing from my activism against the police state or even fiction, such as 1984, Brazil, or The Prisoner even slightly prepared me for any of this.

I felt the need to write about this, to tell Americans what their government does to people. However, any piece of writing needs some sort of coherent narrative to put it together. Nothing that had happened made the slightest sense. I could not even think about it, let alone write.

I continued working on cognitive linguistics in the jail, waiting for the meeting with my public defender to discuss sentencing. The day before that was to happen, the FBI paid me a visit, but that's another saga.