

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS  
KANSAS CITY DOCKET

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 10-20029-CM-JPO
	)	
KENNETH G. LAIN, JR.,	)	
	)	
Defendant.	)	

**PETITIONER’S REPLY TO THE GOVERNMENT’S  
ANSWER IN OPPOSITION  
TO HIS REQUEST FOR AWARD OF ATTORNEY  
FEES AND SUGGESTIONS IN SUPPORT**

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The government’s thirty-four-page answer harkens back again and again to two consistent points. First the government makes the simple argument that Mr. Lain, cannot prevail because he has admitted that he committed the volitional act of transport. Secondly, the government repeatedly attempts to point to various alleged bad acts and strange behavior by Mr. Lain that the government suggests somehow support an argument that he knew his act of transport violated federal law.

Again, as at trial, the prosecutors are badly confused and clearly wrong as to how to construe the element of intent to violate the federal statute versus other

unrelated states-of-mind defendant might have had with respect to other collateral matters clearly irrelevant to trial of this case. It amounts to a comparison of apples and oranges.

First, the government would have this court hold that irrespective of any collateral acts of bad faith, error in judgment, gross negligence, or other missteps by the prosecution, no Petitioner should ever be awarded attorney fees in cases where the only issue is the element of criminal intent. The position of the prosecutors in the District of Kansas appears to be one that supports the proposition that if the volitional act is committed, then the case should be prosecuted without regard to any other considerations.

This position is of course contrary to the recent memorandum from the Department of Justice which now mandates a review process that was already in place in the Western District of Missouri and other districts prior to the return of the indictment and superseding indictment in this case. See Gov's answer, Exhibit "B". These procedural steps of formal indictment review are designed to ensure there is peer and supervisory review of the basis for criminal charges before an indictment is publicly sought against a defendant with its damaging, permanent and lasting consequences which attach irrespective of the ultimate outcome of the

proceedings.<sup>1</sup> And of course this cavalier attitude shamefully ignores the often debilitating financial drain and strain that litigation can place on a litigant and his immediate family.

Applying this type of distorted logic that the volitional act is always sufficient standing alone to file an indictment, then an ATF Agent and a federal prosecutor apparently committed perjury, subornation of perjury and conspiracy to commit perjury, inasmuch as they both appeared before the grand jury and agreed together and with each other to willfully inform the grand jury that Mr. Lain was under indictment in Missouri when the superseding indictment was sought. This was clearly not the case and therefore all the elements of the aforesaid crimes are squarely established. In light of the government's answer and argument in opposition to Petitioner's claim, we have to wonder when we can expect the return of an indictment against the responsible AUSA and ATF agent?

The only missing element to sustain a conviction would of course be whether the alleged criminal acts of the AUSA and the ATF agent were done with

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<sup>1</sup> This very procedure was in place in the Western District of Missouri when Ms. Marietta Parker was an AUSA in the Missouri prior to her assuming her duties as head of the Kansas City, Kansas office of the United States Attorney. Whether similar procedures were already in place in the Kansas office and simply violated in this case is unknown to Petitioner.

the requisite intent to violate the law. The absurdity of this type of logic is self evident and Petitioner has from the beginning characterized these acts as grossly negligent, albeit, done with bad motive and ill purpose designed to harass Mr. Lain, delay the proceedings, and coerce a guilty plea.

Ironically, the government's answer in totality makes Mr. Lain's argument that much stronger. In apparent desperation to deflect the clear misconduct, bad judgment, harassment, and gross negligence, the government again attempts to rehash the irrelevant chain of events that ultimately brought Mr. Lain to their attention and convinced government officials that he was a loose cannon who, according to Ms. Morehead, "might go postal." At the bond hearing Ms. Morehead made it clear she was concerned about Mr. Lain's life style, hobbies, interests, military career, and misdemeanor misconduct far more than she was about whether he had in fact committed a criminal act. This misguided attitude and self-anointed belief by her that she was apparently serving the greater good if she could remove Mr. Lain from the military and prevent his future possession of firearms, regardless of whether a real crime had been committed, was again confirmed during her pretrial interview with Mr. Hill, the benefactor of the gift firearm from Mr. Lain.

Petitioner obtained a sworn affidavit from Mr. Hill on May 27, 2010. That

affidavit, attached hereto as Exhibit "A" states in part:

Several days prior to appearing in court I met with the prosecutor, Terra Morehead, at the office of the United States Attorney, 500 State Avenue, Suite 360, Kansas City, Kansas 66101. In route to the meeting, I believed the purpose of the meeting was to go over my expected testimony and prepare me as a prosecution witness.

In addition to preparing me, during the meeting she told me she realized that "a lot of people transfer guns across State lines but that was not the real issue." She made it clear to me I had done nothing wrong and did not violate the law because I did not know what I was doing was illegal. She told me she was "concerned about Lain going all postal"<sup>2</sup>and that was really her concern and "why she filed the case." She said she was more concerned "about the way Lain acted." She also did not seem to believe he acquired the 38 he gave me the way that Mr. Hart explained it happened. I surmised this had something to do with Lain's original problems in Missouri.

Id. Emphasis added.

Mr. Hill's affidavit once again confirms in no uncertain terms that Ms. Morehead lacked proper objectivity in this case and had determined on her own that she was going to turn Mr. Lain into a felon and deprive him of significant

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<sup>2</sup> **Going postal**, in [American English slang](#), means becoming extremely and uncontrollably angry, often to the point of violence, and usually in a workplace environment. Going Postal derives from a series of incidents from 1983 onward in which [United States Postal Service](#) (USPS) workers shot and killed managers, fellow workers, and members of the police or general public in acts of [mass murder](#). Between 1986 and 1997, more than 40 people were gunned down by [spree killers](#) in at least 20 incidents of workplace rage. *Wikipedia, Going Postal*, [http://en.wikipedia.org/wiki/Going\\_postal](http://en.wikipedia.org/wiki/Going_postal) (2010).

constitutional rights simply because she had determined in her mind that he was unstable and subject to “going postal” even though she had no clinical evidence to support such a belief. And obviously, alleged mental instability, even if true does not justify bring charges absent other evidence to support one.

After it became apparent that Mr. Lain was going to exercise his fundamental constitutional right to trial by jury, she then obtained a specious superseding indictment without performing even the minimal due diligence that someone would expect even from a rookie prosecutor in a blatant attempt to put more pressure on Mr. Lain to convince him to abort his trial plans. This tactic was also done with the clear intent to strengthen the case by making admissible much of the evidence of his pretrial diversion that was otherwise inadmissible.

This Court should approve Mr. Lain’s claim because it is fair and just, it is well founded in fact and law, and it will serve as a prophylactic measure to ensure that similar conduct does not occur in the future.

WHEREFORE, Petitioner moves the Court to award him reasonable attorney fees.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been caused to be served on the Assistant United States Christopher Allman for the District of Kansas and other ECF listed counsel through use of the Electronic Court Document Filing System on Tuesday, July 13, 2010.

/s/

JOHN R. OSGOOD

STATE OF MISSOURI )  
 )  
 ) SS.  
COUNTY OF JACKON )

I, Carroll Douglas Hill, reside at 12010 W. 68<sup>th</sup> Street, Shawnee, Kansas 66216. I am over the age of 21, am of sound mind, and competent to provide this affidavit. I testified in the case of United States v. Kenneth Lain, Jr., case number 2:10-cr-20029-CM.

Several days prior to appearing in court I met with the prosecutor, Terra Morehead, at the office of the United States Attorney, 500 State Avenue, Suite 360, Kansas City, Kansas 66101. In route to the meeting, I believed the purpose of the meeting was to go over my expected testimony and prepare me as a prosecution witness.

In addition to preparing me, during the meeting she told me she realized that "a lot of people transfer guns across State lines but that was not the real issue." She made it clear to me I had done nothing wrong and did not violate the law because I did not know what I was doing was illegal. She told me she was "concerned about Lain going all postal" and that was really her concern and "why she filed the case." She said she was more concerned "about the way Lain acted." She also did not seem to believe he acquired the .38 he gave me the way that Mr. Hart explained it happened. I surmised this had something to do with Lain's original problems in Missouri.

Subscribed and sworn to before me this 27<sup>th</sup> Day of May 2010

*Carroll Douglas Hill*, Dated: 5-27-10  
Carroll Douglas Hill

*Howard C. Hoyt*  
Notary Public  
My Comm Expires 4/7/2012



HOWARD C. HOYT  
My Commission Expires  
April 7, 2012  
Jackson County  
Commission #08463181

EXHIBIT "A"