

You Only Think You've Got Rights

No Attorney-Client Privilege (Part VI)

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So far in this chapter, I have shown *four* instances of prosecutorial misconduct by the Feds *secretly and illegally* invading my confidential communications with lawyers, twice by listening in to phone calls and twice opening my "Legal Mail" to lawyers.

You also have seen how the US Marshals Service (USMS) believes it has the right to invade communications between any federal inmate and *all* lawyers who are not "Attorney of Record" for that inmate. I also told you of the *secret* court hearing in which Federal Judge Winmill sanctioned that grotesquely-illegal and un-Constitutional position.

No Private Attorney Conferences

So - no phone calls to lawyers are private and no letters, either. "What's left?" you might ask. *Plenty*. Let me show you two *documented* instances of the USMS listening in on my supposed "private and confidential" in-person conferences with Attorney Bob McAllister - once just before he replaced Roger Peven as my "Attorney of Record" and again, afterward, *during my trial* in the Boise Federal District Courthouse.

Just before Bob "Mac" McAllister first came to see me in person at Spokane County Jail, the glass window in the attorney visiting booth mysteriously was broken in the middle of the night. It was the *only* visiting booth *not* set up to record all conversations. I had to meet with Mac in one of the regular visiting booths, wired for recording, as a result of this "coincidental" mishap with the glass.

As was Mac's practice with our phone calls, he always prefaced our personal discussions with a verbal warning, demanding that any eavesdropping be stopped right then and the recording, if any, be filed with Federal Judge Winmill. I hired Mac as my new "Attorney of Record" during our first meeting in that regular conference booth. It was during that, our first in-person conference, that Mac disclosed his intention to me to wait a couple of months, until a pretrial conference set for February 7, 2011, to enter his formal appearance, then move for a

continuance to get time to finish the pretrial investigation and preparation that had not yet been begun by my then - Public Defender, Roger Peven.

A month later, Peven was to tell me (among others) of his extreme dissatisfaction about the Federal Prosecutor (Traci Whelan) knowing about all my pre-trial strategies and tactics. Said Peven, huffily: "You might as well call Traci Whelan first and tell her everything, because she hears about it before I do." Peven was annoyed that I was interviewing lawyers to take over the case from him. Peven cited to me some defense strategies I never discussed on the phone with *anybody*, as well as Mac's late entry of appearance and intent to ask for a continuance. Mac had discussed his strategy with me *only* in our personal meetings in the Spokane County Jail Visiting Booths, which proved that *the Feds were listening in to my meetings with Mac just before he filed to formally represent me!*

In fact, Mac's privately-stated intent was used against him at the February 7 hearing by the prosecutor, who quoted Mac verbatim, to oppose the motion Mac then made for a continuance - further proof of the government's *secret and illegal* eavesdropping on my personal conferences with my soon-to-be "Attorney of Record."

But, wait - it gets worse... *much worse.*

Yes - Even the Judge Listened In!

In one of the *many* secret hearings and conferences from which I was excluded by Judge Winmill on May 3, 2011 (*during my trial!*), a blockbuster emerged from the court's own transcript. Mac never told me a thing about it, either (and, yes, in weeks to come, I will have a great deal to say about Mac's incredible misrepresentation of me, both prior to and during that trial).

I stumbled upon this secret hearing's remarkable colloquy several months *after* the trial, while reviewing late-released transcripts for which we paid much earlier, in preparation for the appeal. You see, we had been challenging the court reporter over some clearly-altered on-the-record talk by Judge Winmill during the trial (also to be the subject of a future article) and, while I am only speculating now, I suspect that she decided she better break loose with portions of transcripts that had been (illegally) held back from us at first.

I wish I could enclose a copy of the transcript from that 5/3/11 *secret* hearing held by the judge in the afternoon. Problem is, it still is sealed by Judge Winmill's order and, thus, still is being kept secret from the public.

Earlier that same day, the judge had flip-flop-*flipped* in ruling that my key witness, forensic sound expert Dr. George Papcun, would not be allowed to testify *unless* he could be in court absolutely no later than 8:30 the very next morning, an impossibility, as Judge Winmill well knew, because Dr. Papcun was, at the moment, on the other side of the earth, in Tahiti. Dr. Papcun was preparing for his satellite video uplink testimony the next day just as the judge previously had said he could testify.

My Rights Yield to (Nonexistent) Government Rights

In excluding my key defense witness, the judge said that the government had a Constitutional right to confront witnesses *in person* during the trial. (Not true - that is a right guaranteed only to *criminal defendants* by the 6th Amendment.) Never mind that *I had been denied that very right* during the trial by the judge when he allowed the government to play a videotaped satellite-uplink deposition given by an absent "witness" who *also* happened to be on the other side of the world, in Ukraine.

In response to the judge's ruling denying me my key witness, Mac moved for a continuance of the trial while we flew Dr. Papcun to Boise. Just one day is all that would have been required. "No," said the judge, while continuing to pressure us to wrap up even earlier than the end-of-week deadline he previously had set (he had a "meeting" the following week, you see).

During that same day's trial proceedings, I met with Mac, my "Attorney-of-Record," in the Boise Federal District courthouse Attorney-Client conference room. This was a separate room with concrete walls and a locked metal door, in which Mac and I were supposed to have complete privacy. It was *impossible* for anyone accidentally to hear discussions in that room while on the outside.

Just Another Illegal Secret Hearing - (ho hum)

Even so, the judge was to confront Mac in the afternoon *secret* hearing, *from which I was excluded*, with the news that I had been overheard by the US Marshall's Service while in private conference with Mac. The judge quoted me as

having said to Mac: "Well, if we need a continuance, I can guarantee us three days by just having a medical emergency." How odd that, of all the talks I had with Mac, *that* was the only conversation that the USMS claims to have overheard (plus the one before he entered his appearance, of course, in which Mac arguably discussed with me some alleged misconduct of his own).

Mac never told me about this little secret hearing, but now I understand why he then stopped even pretending to present a defense on my behalf. Why he laid down. Why my "defense" took less than one court day. He had been cowed by the judge a *second* time with the spectre of being charged with criminal misconduct, based upon things said between us in *confidence*. This time, though, the government couldn't rely upon their old (*wrong*) standby argument of "He's not the Attorney-of-Record." The Judge was betting that, having denied me my key witness, I would create my own continuance. *The Judge was wrong.*

Even The Judge Steps In It, This Time

Nor could Judge Winmill this time provide *himself*, cover, because he *willingly listened* to what the USMS claimed I said, then used it in a not-very-subtle way *to intimidate my lawyer into standing down before even starting to present my "defense."*

Ironically, the "medical emergency" easily could have been justified, because I was barely aware of what was going on in court, due to my ongoing nosebleeds and incredibly intense headaches. I almost called for a time-out before the trial even started, but decided not to do so, only because I figured that the doctors would drug me so badly that I *really* wouldn't understand what was happening. My headaches and nosebleeds were well-documented in the records of every jail in which I had been held since my arrest, a result of no follow-up care for the emergency cranial-aneurysm surgery I underwent just prior to my arrest. *It would have been a legitimate call*, as Mac well knew at the time. I never did make that call, of course. Note that *nothing* was illegal or wrong about this whole incident, *except* the Judge and the USMS eavesdropping on my "confidential" attorney conference.

Judge Winmill himself crossed the line when he agreed to hear what the USMS heard while *secretly and illegally* listening to my "confidential" conversations with my "Attorney-of-Record," *even during the trial*. Then, Judge Winmill *himself* used that invasive eavesdropping in an attempt to intimidate my lawyer.

Just another day in the Amerikan Just-Us System, folks. Your tax dollars at work.

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