THE UNRAVELING OF THE HAMMOND CASE: A DISHONEST COURT AND A CORRUPTED SYSTEM OF LAWS VICTIMIZES THE HAMMOND FAMILY OF HARNEY COUNTY, OREGON---by Fred Kelly Grant1

"**To the Union, next to our liberty most dear**." A toast by Vice President John C. Calhoun, of South Carolina, in response to a toast by his President Andrew Jackson "our Federal Union, It Must Be Preserved." [This confrontation between an enthusiast for a limited federal government (Calhoun) and one for a strongly overpowering federal government (Jackson) occurred as the sentiment for states rights grew stronger, approaching secession.]

The Hammond family, in its entirety, are victims of a corrupted system of laws. All of them, not just the two sentenced to prison sentences in violation of the Sixth and Fourteenth Amendments to the United States Constitution. To the wives, children, and other members of the combined families, we all owe an apology. We all should be ashamed for allowing our God blessed rights to be so dissipated that an arrogant United States Attorney, a cavalierly perverse Appellate Court, and a compliant district judge could so humiliate and punish a God fearing family. A family with a history of honestly and earnestly working the land, in the tradition of the west which was settled as a great expansion of American independence.2

Patrick Wood made similar statements during a recent gathering of patriots in Yuba City, California in support of the "State of Jefferson".3 Two decades ago, Wood courageously endured attacks claiming that he was a conspiratorial "nut" as he forecast the dangers of Agenda 21 and world government---forecasts that have all proven accurate. He told the small gathering that he was "ashamed" of those not in attendance, those who sit idly by while our rights are disintegrating in the face of an "invasion" of ideals of world, not United States, sovereignty.4

Many more people should have attended to hear Patrick's message that demonstrated that terrorist attacks around the world, as well as federal over-regulations, are aimed at destruction of our sovereignty and construction of a multi-national world government. Also missed was a brilliant, detailed presentation by the always excited and exciting Debbie Bacigalupi,5 and a

---

1

2

3

4

5

heartening presentation by a home schooling family that teaches about God's presence with the Constitution drafters.6

The Hammonds are the victims of our society which shrugs its collective shoulders in an expression of "**ehhhh. So what? It doesn't involve me."** Reminds me of any of many Seinfeld episodes in which Elaine Benes shrugged in response to word of a tragedy that befell Kramer or George.

The Hammonds no doubt believed that they were protected by the United States Constitution, including the plain words of the Fifth Amendment which guarantee that no "person [shall] be subject for the same offense to be twice put in jeopardy of life or limb." Please note that the language is not that of the commonly referred to "double jeopardy", it is "twice put in jeopardy of life or limb." Those words were carefully selected by those that wrote them.

The Hammond father and son were ONCE put in jeopardy when they were tried and convicted by a jury, sentenced to jail terms by the trial judge, and committed to serve their sentences. When they completed those sentences, they completed their ONCE put in jeopardy.

At that point the federal prosecutorial and judicial systems should have moved, free to pursue some REAL TERRORISTS such as the national forest employees who allowed forest fires to burn out of control in Oregon destroying over 300 homes just months ago, the BLM employees who responded to a small fire in Owyhee County, Idaho and decided to leave and return to fight it the next day---only to have it spread to burn hundreds of thousands of acres, the EPA employees who negligently allowed discharge of toxic materials which destroyed the quality of the Animus River in Colorado for years to come, and members of groups intent on destroying the western culture and productivity dependent on resource development in the name of the environment.7

But no, United States Attorney Frank Papagni decided to TWICE subject the Hammonds to jeopardy of life and limb. He appealed the sentences. A makeshift panel of the Ninth Circuit Court of Appeals supported the unconstitutionality of TWICE subjecting the Hammonds to jeopardy. In one of the most casual corruptions of the Fifth Amendment that I have seen in Fifty years at the Bar, the Court ordered the trial judge to re-sentence the Hammonds by imposing a new 5 year mandatory prison sentence on each of them. The Court ignored the fact that both had already completed their previously imposed sentences.

Then, the district judge complied without even a whimper of despair at violating the Fifth Amendment, and completed the act of TWICE subjecting the Hammonds to jeopardy. He imposed the mandatory 5 year sentences on each of them for the same offense for which they had already completed their prior sentences. Thus, the Hammonds stand twice sentenced for the same offense; Twice subjected to jeopardy. What could the district judge have done differently? He could have taken his oath

---

6

7

seriously and refused to violate the Constitution. Instead, he yielded to the **"ehhhh so what**?" escape from responsibility.

I can imagine the following conversation taking place in offices around the country, including judge's offices:

> First law clerk: "Did you hear about the ranchers that got five years for a fire that got away and burned a few acres o f rangeland?"
>
> Second law clerk: "Yeh. Hadn't they already served the first sentences imposed on them?"
>
> First law clerk: "Yeh, damned scary isn't it?"
>
> Second law clerk: "Isn't that double jeopardy?"
>
> First law Clerk: "Sure is. Hard to believe that it happened here in America."
>
> law clerk: "Wouldn't have happened before the environmentalists got the government by the throat."
>
> First law clerk: "Damn straight. Hey, where shall we do lunch? How about Dixies, they've got breakfast all day now?"
>
> Second law clerk: "Straight on. See you at 12."

Life goes on. Shrug and **"ehhhh so what**?"

The opinion of the Ninth Circuit Court of Appeals was actually written by United States District Judge Stephen J. Murphy III from the Eastern District of **Michigan** specially chosen to sit in this case A well known journalist who follows Islamic terrorist circles has targeted Judge Murphy as at the least a friend of Islamic terrorists who was soft on such persons when he was United States Attorney in Detroit.8

The opinion was supported by Appellate judges Richard C. Tallman and Carlos T. Bea.

Tallman was appointed by Bill Clinton, and has a background including service in the Criminal Division of the U.S.Department of Justice and then in a United States Attorney's office. He is not without some prominence in press coverage claiming that he has been dishonest from the bench.9

Bea was appointed by Bush II, and is said to be one of the most conservative judges on the Ninth Circuit Court. He wrote an opinion on "double jeopardy" that should have made him cognizant of his wrong doing in this case.10

The first reason the opinion is carelessly written is that significant appellate jurisdictional issues were ignored. For example, there is no discussion of the Fifth Amendment and the issue of putting the Hammonds twice in jeopardy. Is that a

---

8

9

10

result of inept lawyering? I don't have that answer. The answer I do have is that Judges are obligated to take up issues that fundamentally affect the fairness of the criminal process ***sua sponte***, or on their own whether or not counsel raise them.

Neither did the Court consider, or even concern themselves with, the question of whether Congress intended the Domestic Terrorist Act to include a range fire that has no connection with the nature of "terrorism" being discussed in the legislative history. Thus, they ignored the question of whether the statute was unconstitutional "as applied".

Neither did the Court review or consider the history of malice on the part of the agencies toward the Hammonds. Judge Bea has played a major role in a case in which it was made clear that prosecutorial misconduct can be so acute as to cause dismissal of a criminal case. 11 The issue was not even discussed here.

Finally, the Court did not even consider the staleness of a charge not filed for a decade and longer after the incidents that led to the charges.12

All these issues play a fundamental role in appellate decisions, but not here.

The issues that controlled the decision were perverted by the Court as though they intended to frame the issues in a manner to make it impossible to rule for the Hammonds.

> First, the Court transforms an agreement between the parties into a plea agreement, even though there was no guilty plea entered.13 The Hammonds orally agreed to give up their appeal rights and to accept the guilty verdicts that the jury had already returned on one charge and the not guilty verdicts returned on other charges---in return for a promise by the government to recommend concurrent sentences and a continuation of bail pending imposition of sentences. Simply put, this was not a "plea agreement" as described and regulated by Rule 11 of the Federal Rules of Criminal Procedure; There simply was no plea of guilty fundamental to the nature of a "plea agreement". So, it was not a "plea agreement" governed by Rule 11.

Had the Court applied the rules pertaining to common law agreements that were not plea agreements, it would have been required to deal with the Hammonds argument that the Government impliedly promised to be bound by the sentences imposed by the trial judge---in other words, that the case would be completed with imposition of the jeopardy as to life and limb, e.g. incarceration and fines. It would have had to consider the rule that the Hammonds' promise to withhold their appeal had to be matched by a reasonably mutual promise by the government. The Court would have had to consider reasonable interpretation of the agreement as to whether it included implied terms. The Court evaded all these entangling rules that would have benefitted the Hammonds, by waving a magic

---

11

12

13

judicial wand, and sprinkling the agreement with fairy dust that mystically converted a common law agreement into a plea agreement. The Court justified its position with the following circuitous reasoning, found separated from the main content into a footnote:

> "***Although the Hammonds did not enter guilty pleas***, the Hammonds agreed not to contest the jury verdicts in exchange for the government moving to dismiss other charges. ***The resulting posture is the same as that following a plea agreement. We thus will refer to the oral agreement here as a plea agreement and apply to it the law governing plea agreements."***

Voila!!! By stroke of the Murphy pen, the Hammonds saw their agreement transformed into a plea agreement governed by "Federal Rule of Criminal Procedure 11, not the common law of contracts" that would have accommodated the Hammonds arguments.

By so fairy dusting the common law agreement into a "plea agreement" the Court was able to say that in fact the Government had retained its right to appeal from the sentences imposed. Had the law of contracts been applied, a reasonable contract interpretation would have imposed on the Government the implied promise to match the Hammonds agreement to refrain from appeal. The mystical conversion of the nature of the agreement allowed the government to bring the appeal that allowed the Court to expose or subject the Hammonds to twice being put in jeopardy.

Second, the Court refused to consider the constitutionality of a five year mandatory minimum sentence. The Court had an obligation to consider on its own the constitutionality of the statute, whether or not counsel raised the issue.

Instead this makeshift panel evaded their duty by concluding that counsel "rather than categorically challenging five-year sentences for arson…argu[ed] that the sentences would be constitutionally disproportionate 'under the unique facts and circumstances of this case..'" That is the hardest test of constitutionality for a defendant to meet. Under this analysis, the Court must first compare the "gravity of the offense to the severity of the sentence." In laymen's terms, that means it must compare how serious the crime is with how harsh the sentence is.

This allows the Court to simply conclude that "arson" as a general matter is a serious crime as it truly is. Once making that conclusion, the Court then would turn to deciding whether the match-up of crime to sentence shows a "gross disproportionality". Note how the Court has manipulated itself into determining not a "disproportionate" sentence as argued by Hammonds counsel but a **"gross** disproportionality" position. Since the term "gross" is defined as "very obvious or noticeable; rude or offensive; extreme or obvious; offensive; very disgusting", it is obviously harder to find "gross" disproportionality than it is simple disproportionality. Having again magically transforming the Hammonds' argument, the Court states that only in "a rare case" can grossness be found. And only in such a "rare" finding of gross disproportionality does the Court ever compare the sentence to other

sentences imposed on other similar offenders in the same jurisdiction (here in eastern Oregon) or to sentences imposed for the same crime in other jurisdictions (other ranchers charged with arson of rangelands in other parts of Oregon or other states). In such case, the Court would be left to decide whether 5 years is disproportionate to a charge of burning a small parcel of rangelands.

Laymen might think that the challenge mounted by Hammonds counsel would involve the Court's comparison of the 5 year sentence with the sentences imposed on others charged with allowing a wildfire to spread. That would give a good sense of whether the sentence is in balance, is fair. But the Court's transformation of counsel's challenge eliminated such evaluation.

Rather, the Court held that the first question involved was whether "arson" is a serious offense. Well, of course it is---but "arson" comes in many forms, some more serious than others---- and that factor the Court did not consider. Would a reasonable person rank arson of an acre of federally managed rangeland as being as dangerous as arson of a residence or facility in which people were working? Hardly, at least in the circles in which most westerners communicate.

But, once the Court reaches the obvious conclusion that "arson" is serious, then it says it is limited to answer the question of whether the five year sentence is "grossly disproportionate" with other cases in which the Court says "tougher sentences [were imposed] for less serious..or comparable offenses."

Applying this rigidly pro-Government test, the Court considered the following cases as "comparable":

> A fifty year sentence where the defendant stole only 9 videotapes; but what the Court doesn't say is that the defendant, being sentenced under the 3 strike California sentencing statute in **Lockyer v. Andrade,** 538 U.S. 63 had three prior convictions of serious felonies of the same type of thefts and three home burglaries. Hardly comparable to the Hammonds who had no criminal record at all.
>
> A 25 year sentence imposed for the theft of 3 golf clubs.. Again, the Court does not say that the defendant being sentenced under the third strike statute in California stole the $1,000 of golf clubs while on parole and had a prior record of three burglaries, an armed robbery, a battery, possession of marijuana and assorted other offenses. See **Ewing v. California**, 538 US 11. Hardly comparable to the previously uncharged and unconvicted Hammonds.
>
> A 40 year sentence for possession of 9 ounces of marijuana for sale. The Court does not say that the accused in **Hutto v. Davis,** 454 U.S 370, being sentenced by the jury under Virginia law was proven to be selling marijuana and two types of pill narcotics for distribution to inmates in a state penitentiary, and to have previously

delivered drugs to an inmate's wife who had an infant child, and to have previously served time for drug related offenses. Hardly comparable to the record free Hammonds.

A life sentence for a defendant who obtained $120.75 by false pretenses. The defendant here was sentenced under the Texas recividist statute, had been twice before convicted of theft by false pretenses. In **Rummel v. Estelle**, 445 U.S. 263 the Court pointed out that the Texas recividist statute required an indeterminate sentence on the third felony conviction. The case is completely distinguishable from the Hammonds' case. defendant had been twice before convicted of two felonies of false pretense theft, and under Texas law the third felony called for an indeterminate life sentence.

A 430 month sentence for arson in commission of a felony. In **United States v. Tolliver**, 730 F.3d 1216 the defendant was a real estate investor who bought or otherwise secured homes and renovated them; he was charged with deliberately burning four buildings and then submitting insurance claims for them. So he was convicted of four arsons and the underlying false insurance claims. Hardly comparable.

A 15 year sentence for advertising child pornography. In **United States v. Meiners**, 485 F.3d 1211 the defendant was in possession of 10,000 to 20,000 images of child pornography including some sado-masochistic images. How could any reasonable, or even unreasonable person believe that advertising oneself in child pornography is comparable or even of passing interest to analysis of the Hammonds' case?

A 5 year sentence for arson of a building in **United States v. Uphoff**, 232 F.3d 624. The defendant was convicted of pouring gasoline on the front door of a health reproduction (abortion) clinic and setting it afire. The defendant had previously been convicted of trying to burn the same facility. The sentence is the same as that the Court orders for the Hammonds, but the facts show a significantly more serious arson of a human facility than the type arson charged against the Hammonds. While the Court lists the case as an example of its wisdom and correctness, the case demonstrates the exact opposite. Perhaps Judge Murphy III did not anticipate that anyone would read this case, or for that matter any of the others cited.

By using the selected cases, the Court was fundamentally dishonest in its evaluation. None of the cases were comparable to the Hammonds case. They involved far more serious offenses and lengthy and serious criminal records of the defendants. Faced with such blatant dishonesty, and with the "magical" transformation and distortion of the Hammonds' theories of argument, who can be surprised to read and hear that some persons advocate resistance when the United States Marshals come for the Hammonds. Were the "Minute Men" who resisted---nay, attacked---the Redcoats at

Lexington-Concord any less justified? Understand that as an officer of all courts, I do not recommend such resistance; but I certainly understand the motivation when faced with such a corrupted system. Historians tell us that only a small percentage of colonial Americans supported armed rebellion against the British, and only a small percentage even cared about independence. Thank God that Washington, Franklin, Jefferson, Madison, the Adams cousins, and other patriots cared enough to provide us with the Constitution. They didn't join the majority of colonials who shrugged the **"ehhh so what**" shrug.

Today many of us believe that we have reached a similar status as that faced by the colonies in 1776. The crimes of Britain focused on over-regulation that strangled the economy of the Colonies and the liberty rights of the Colonists. Over-regulation by a government that refused to allow adequate representation to its subjects in the legislature, e.g. Parliament at the time, brought on the Revolution.

Compare that setting to today: 1. the people of eastern Oregon, eastern Washington, northern California, rural Montana, rural Colorado, and other rural regions of the nation are not adequately represented by members of Congress who are elected by the masses of voters in the urban centers----those who shrug ("ehhhhh so what?"} off the economic, cultural, and political problems of rural citizens; 2. Government regulations today are strangling the economy and culture of rural Americans; 3. Local governments today, as in 1776, have abdicated their authority to represent their citizens and protect their rights and privileges.

In 1776, British customs and naval officials set a goal of destroying through regulation the commercial interests of the Colonials; today the Government is set on eliminating over the road truck transportation through overly stringent air quality regulations that have no scientific support (as in California where anti-diesel regulations are driving independent truckers out of business, regulations that the EPA plans to extend to all states), and on closing down industries dependent on natural resources, e.g. ranching, farming, mining, logging, water usage, drilling and recreational through over regulating and attempting to cancel property rights.14

Some of our wisest presidents have warned against allowing over-regulation by a national government: Washington, Adams, Jefferson, Lincoln, Truman, Eisenhower, Kennedy, Reagan---even Franklin Roosevelt in his first and second terms before World War II. As the federal government grows stronger at the expense of the states and local governments, our system of Republic guaranteed by the Tenth Amendment is endangered. It is that true federalism admired by brilliant political figures such as Sir Winston Churchill, and early political scientists such as John Locke. The same presidents who warned against over-regulation warned that we must protect the federal system in which governments closest to the people maintain their authority.

Those of us who have for too long shrugged **"ehhhh so what**?" must do a quick turn around if this Republic is to be saved. If we want to avoid the taking up of arms in rebellion, we have to take action to protect our rights and the rights of others. Local governing bodies must be pressured to invoke the "coordination" process by which federal regulatory agencies can be slowed to comply with a local policy of protecting the economic, cultural, property and personal rights of citizens. In spite of the clarity of statutes granting the coordination authority, only a few local governments have invoked that authority. In fact, the County in which the Hammonds ranched has never exercised its coordination authority. Had it been so engaged, there would have been a process by which the Hammonds could have been protected. Baker County, Oregon has finally initiated coordination, thanks to a forward thinking Board of Commissioners chaired by Bill Harvey.15

The Hammonds must have us step up to help NOW. If they go down under a corrupted system of laws, the men and women who have through the years fought, bled and died in the defense of liberty will have done their duty in vain.16

Enough of the Elaine Benes syndrome; enough **"ehhhhh so what**?"; its time to rise to the occasion, just as patriots have at so many times of danger from abroad. Today, the threat is from within. As Pogo found, "we has found the enemy and he is us." As a great American hero, Todd Beamer, said on United 93, as the passengers rose to prevent the plane from being crashed into the Pentagon on September 11, 2001 "Let's Roll". And, as the immortal Yoda said:

"Do or Do Not; there is no try"

15

16