

Informant Games

The Disturbing Green Scare Case of Briana Waters

By BEN ROSENFELD
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Tacoma, Washington.

On February 11, trial begins in the federal government's case against Briana Waters. Ms. Waters is accused of conspiring to set fire to the University of Washington's Center for Urban Horticulture in 2001. Specifically, the government accuses Ms. Waters of acting as a lookout. The Earth Liberation Front claimed responsibility for the fire, along with another one the same day, at the Jefferson Poplar Farms in Clatskanie, Oregon, saying that the poplar research posed "an ecological nightmare" for the diversity of native forests. Ms. Waters, a violin teacher and 32-year-old mother of a little girl, steadfastly maintains her innocence. Federal sentences for arson, including those motivated by greed, insurance fraud, and even racial hatred, typically fall within the 5-7 year range. But if convicted of both counts, Ms. Waters faces a mandatory minimum 35 years behind bars (five on the arson charge, and 30 for allegedly conspiring to use a destructive device).

The government has no physical or even direct evidence against Ms. Waters. Its "case" rests entirely on the testimony of two informants, Jennifer Kolar and Lacey Phillabaum, who confessed to participating in the University of Washington arson, and who will receive leniency (most likely, 3-7 year sentences) in exchange for their testimony.

On December 26th, 2007, attorneys for Ms. Waters filed a motion arguing that the government concealed important exculpatory information from the defense and created at least one fraudulent FBI report. According to the motion, when informant Jennifer Kolar initially identified her accomplices in the arson, she pointedly did not name Ms. Waters. An FBI agent's handwritten notes of the interview confirm this. Moreover, in another interview some months later, Ms. Kolar affirmed her earlier account. She also told her handlers that she never saw Ms. Waters with the second informant, Lacey Phillabaum.

It is well known in the informant game that informants must trade new names for favors, not names the government already has. Inevitably, this leads to the risk that informants will implicate innocent people. In addition, police can easily mold the information they receive from informants into what they want to hear. According to former FBI agent Jack Ryan, who was fired for refusing to go along with the FBI's counterintelligence program against

the Plowshares Movement in the 1980s, the FBI would simply make up the information it wanted to hear and put it in the mouths of informants, real or fictitious.

According to Ms. Waters' attorneys, the feds have refused to provide the defense with the original "302" form - the FBI's report memorializing the interview with informant Kolar, in which she identified her actual accomplices, not Ms. Waters. Rather, the defense says, the government passed off a doctored 302 as the original. According to the motion, it is apparent that the government falsified this document because (a) it alters the information contained in the handwritten notes, and (b) the government refused to provide it to the defense for many months after it was requested. The defense contends that it was during this period that the government falsified the 302. The government has refused to allow the defense attorneys supervised access to the FBI's filing system, which would likely expose this egregious misconduct.

According to the filed motion, the federal agents' and prosecutors' misconduct not only violates Ms. Waters' constitutional rights and undermines her defense, it constitutes the crimes of perjury and obstruction of justice. However, the federal judge, Franklin Burgess, has shown no interest in disciplining the government or repairing the damage to Ms. Waters' defense. In his January 7, 2008 order denying the motion, the Judge wrote, without substantiating his findings: "Nothing in Defendant Waters' assertions about the timing and content of the FBI agents' 302s convinces the Court to conclude that there has been misconduct, intentional failure to disclose, production of a fraudulent 302, or untimely production of discovery."

Then, on January 29, Judge Burgess held yet another closed hearing (Judge Burgess closes all of his hearings in this case to the public, in violation of the fundamental principle that court proceedings should be open and transparent), in which he ruled that the defense may not present its own expert to rebut the government agents' expert testimony that the delayed incendiary device used in the arson was a bomb. In so doing, the Judge has deprived Ms. Waters of a crucial part of her defense to the destructive device charge, which carries the draconian 30 year mandatory minimum sentence, in violation of her fundamental constitutional rights. The defense has filed a motion for reconsideration, but Judge Burgess, who has shown extreme partiality to the government throughout the case, is not expected to reverse his ruling.

According to one of Ms. Waters' attorneys, Bob Bloom, "The government hand-picked this Judge by manipulating court procedures. This is a classic case of a corrupt prosecution, and a Judge who apparently chooses to look the other way."

Briana Waters is a victim of the "Green Scare" -- the federal government's hysterical, post-911 witch-hunt against environmental activists, and its overzealous charging tendencies. Shortly after the government revealed the

indictment, former U.S. Attorney General Alberto Gonzales proclaimed Ms. Waters guilty in the media, prejudging the case for the jury, and demonstrating that the government is more concerned with public relations and declaring victory than with truth or fairness.

If Ms. Waters is convicted, then the government, which pretends to want to prevent violence, will have inflicted the only human casualties in the crime which it purports to be investigating, by doing immeasurable harm to this gentle woman, and her three-year old daughter.

People can show support for Briana Waters by attending her trial in Tacoma, Washington, which is expected to last several weeks.

For more information, or to make donations to her defense, visit www.supportbriana.org.

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Notes

(1) Former Agent Ryan provided this information to attorneys, including this author, for use in environmental organizer Judi Bari and Darryl Cherney's historic lawsuit against the FBI and Oakland Police, for attempting to frame them for transporting a car bomb which the evidence plainly showed a would-be assassin had planted under Bari's car seat in an attempt to kill her while she drove through Oakland in 1990. (For more information, visit www.judibar.org.)