

Life in Jail on the Installment Plan

No Justice in East Fork Township -- Just Former Deputy Jim EnEarl

by Steve Miller

An *Electric Nevada* Exclusive

When Douglas County Sheriff's Captain Jim EnEarl ran for East Fork Township Justice of the Peace in 1994, he knew many county voters wondered if he had the right temperament for the job.

Would he dispense justice even-handedly? Or, after spending his whole professional life as a cop --- 11 years in Orange County, California, then 17 in Douglas County --- would he be biased in favor of fellow sheriff's department officers and the district attorney's office he'd worked with so long?

EnEarl hastened to assure county voters there would be no problem. He asserted he had conducted internal investigations in Douglas County for the last 15 years, had even once or twice recommended officer termination, and so had "insight."

But most significantly, EnEarl repeatedly assured Douglas County voters he was deeply concerned about their constitutional rights as Americans.

"Strong Belief in Individual Rights"

It's "because of my strong belief in individual rights and the experience I have gained in both the public and private sector, [that] I am seeking this office," he told the Gardnerville Record-Courier.

And to the Nevada Appeal, EnEarl boasted, "I first took an oath to defend the Constitution 31 years ago.... I have an impeccable record of defending the Constitution of the United States."

Today, however, Tom Hillman might dispute that last statement. He might even laugh out loud --- from his Douglas County jail cell.

Hillman is a 44-year-old Gardnerville roofing carpenter. He believes that Nevada and other states' laws, over the years, have unconstitutionally restricted what the U.S. Supreme Court --- in *Shapiro v. Thompson*, 1969 --- called your "unconditional right to travel."

Citizens have no true freedom of travel, as Hillman sees it, if their right to use their own automobiles is conditioned upon governmental permission in the form of licenses, car registration and proof of insurance.

Part of a nationwide "right to travel" movement dedicated to that view, Hillman wanted to challenge Nevada motor vehicle laws in the state courts. So about the middle of last year, rather than renewing his old vehicle registration and driver's license, he replaced the state-issued license plates on his van with a new, lovingly made, light-reflecting aluminum plate.

"Citizen of Nevada," it said across the top. "In exercise of his rights to travel, private property, St. & HWY."

Cited as authority was: “NV. Const. Art.I.Sec. 1,2,3,4,5,7,8,17,18, & 20, U.S. Const. Art.IV Sec.2. CL.1..., Amend. V, IX, XIV.” Next it said, “Public Notice: Non-Commercial, private property automobile, privately owned by;” --- and then the big letters: “T.E.HILLMAN” followed by his mailing address, phone number, and a reference, “NRS 706.281, 1 & 2”.

That statute, in Hillman’s view, is a trace still visible in Nevada law of the earlier era when the state still fully acknowledged every Nevadan’s unconditional right to operate a private auto on gas-tax-supported state roads.

Hillman knew he’d be stopped, and that he’d probably have to take the fight all the way up the ladder to the Nevada Supreme Court, or even higher. Still, he believed *somebody* should make the effort.

A Douglas County Sheriff’s Deputy stopped Hillman in his van on September 24. As Hillman had expected, he was cited for no driver’s license, no registration, and no insurance.

What he didn’t count on, though, was that East Fork JP Jim EnEarl would apparently take Hillman’s ‘constitutionalist’ point of view, and resulting challenge to the system, as a personal affront.

Nor did Hillman expect that EnEarl would make it his personal mission --- utilizing threats of ever-expanding jail sentences --- to try to raise the threshold of pain until Hillman would completely abandon the effort to challenge Nevada motor vehicle statutes.

For example, initially late last October, when asking Hillman if he

wanted a public defender, EnEarl assured the roofing carpenter that no jail sentence was going to be imposed.

In a statement Hillman later cited, in a legal motion, as clear evidence of prejudice, EnEarl had said to Hillman, before witnesses, “Don’t worry. When the court finds you guilty, it does not plan to impose a jail sentence.”

By early March, however, when he ordered Hillman to jail, EnEarl was reinterpreting the activist’s behavior differently --- in ways that would permit four consecutive six-month jail sentences.

“Right --- life on the installment plan,” comments Brant Honkanen, one of four other candidates who sought the East Fork Justice Court job in the 1994 election.

“There’s no due process” in EnEarl’s court, says Honkanen. “It’s a police court --- an administrative court” where defendants are considered guilty until proven innocent.

Because Nevada attorney Terri Keyser-Cooper takes a well-known active interest in due process and defendants’ rights, she was consulted on the Hillman case by *Electric Nevada*.

“What I find personally appalling,” she said, after reviewing information sent her, “is that it is quite obvious that the judge did not agree with the personal philosophy of this constitutionalist. And he felt he could slam the guy because he didn’t agree with him. And that’s flat wrong; he can’t.

“And anyone in a position of judicial authority who takes that kind of position, ought to be horsewhipped. I mean, I think that’s horrendous.

“You can’t use your personal bias as an excuse to ramrod and disregard the justice process. There’s a reason we have these safeguards. All the various rights that people have, have been put in there for very important reasons. And if the judge, in charge of overseeing those rights, says ‘It doesn’t matter because the guy’s a scumbag, and I can disregard it because he doesn’t have a case anyway,’ I mean, that just throws the whole system out the window. I mean, we can’t do that; it’s crazy.”

JP Broke ‘No Jail Time’ Commitment

One of the justice court actions that Keyser-Cooper said she found most objectionable was the judge’s role in first telling Hillman he would not be entitled to a public defender, “as the court would not be seeking incarceration,” and then later, going ahead and imposing jail time.

“It really upsets me when I read a JP tells somebody he’s not going to incarcerate them and then he incarcerates them,” she said.

“If there is going to be the potential of incarceration, the guy has got to know that, and has to have a lawyer.”

Keyser-Cooper pointed out she won suits on exactly that point against the cities of both Reno and Sparks.

“I sued Janet Berry, and another Reno judge, because they were discouraging -- - when they were Reno city judges --- they were discouraging indigents from exercising their right to counsel. They were saying things like, ‘Well, most people who appear don’t really need a lawyer.’ And that’s absolutely false, because the other side is a lawyer; ... a prosecutor!

“It is their job to slam you, and if you don’t know what you’re doing, you’re going to be slammed. And the law requires that you have to have a lawyer, unless you give up that right, if there’s a chance you’re going to go to jail.

“What [Hillman] needs to do,” she told *Electric Nevada*, “is file a writ, and what you need to do is publicize this to make sure this asshole is not re-elected.”

Other specific instances in which the East Fork Justice Court showed gross bias, in the view of Keyser-Cooper and other legal observers apprised of the case, were by:

- 1) effectively denying Hillman his right to call witnesses,
- 2) 2) denying him adequate time to prepare his defense,
- 3) 3) effectively sabotaging his hoped-for subsequent appeals, and
- 4) 4) repeatedly ruling against Hillman motions that were never even opposed or answered by the Douglas County District Attorney’s Office.

The Lost Right to Call Witnesses

Hillman was effectively denied his right to call witnesses, said Keyser-Cooper, when the East Fork justice court refused to follow Nevada Revised Statutes 174.305 and 4.320 and issue blank subpoenas to Hillman. Instead, EnEarl’s constable conditioned issuance of the documents on a demand that Hillman first fill them out, listing all his expected witnesses.

NRS 174.305 (1) says that “The clerk shall issue a subpoena, signed and sealed but otherwise left in blank, to a party

requesting it, who shall fill in the blanks before it is served.” And NRS 4.320 says “Blanks must be filled in all papers issued by a justice, except subpoenas. The summons, execution, and every other paper made or issued by a justice, except a subpoena, must be issued without a blank left to be filled by another; otherwise it is void.”

According to Hillman, he believed not following the statute exactly could immediately void the subpoenas even before they were issued..

Subsequently, as a consequence of never being issued the subpoenas, Hillman was never able to call witnesses when his quick trial was conducted by EnEarl on November 25.

Too Little Time to Prepare a Defense

A second way that the East Fork justice court demonstrated gross unfairness, said Keyser-Cooper, was by denying Hillman adequate time to prepare his defense. EnEarl, on October 29, had scheduled Hillman’s trial for November 25, and when Hillman asked for a 60-day continuance, EnEarl denied it, saying he had given the defendant 30 days and that was enough. In actual fact, EnEarl’s own Notice of Setting --- specifying trial for 9 a.m. November 25 -- had been issued (and dated) the 29th day of October.

“How serious is it,” said Keyser-Cooper, “that he said he gave him 30 days, when he didn’t? Well, let me put it in context.

“When a prosecutor asks for a continuance, it is a hundred-percent granted every single time. In federal court, anybody who asks for a continuance the first time: [it’s] a hundred percent granted. The second

time, almost always granted, unless there’s a serious reason why they shouldn’t be. Continuances are routinely granted all the time to lawyers, because the courts understand that things come up.

“Here, it was very, very inappropriate not to grant a continuance to someone representing himself, who is struggling to get witnesses, get subpoenas issued --- all this sort of thing. It was clearly an abuse of discretion. Abuse of discretion means, ‘it’s grossly unfair.’”

JP Court Ignores State Law on Docket

Keyser-Cooper was also astonished to learn that a recent check of the East Fork Justice Court’s docket for the Hillman case showed the court had failed to follow Nevada law --- NRS 4.230 --- and keep the docket at all current. Although there had been court appearances, hearings, motions, rulings and other case activity from September, 1996 through early March, 1997, only one entry, at the start of that period, had been made.

Keyser-Cooper noted the court’s failure to keep the docket could essentially sabotage any appeal to a higher court.

“That’s impossible,” she said. “I can’t understand how they can possibly do that. The guy has a right to appeal --- to the district court --- bad decisions. And how is he going to appeal that if the judge doesn’t even say what he’s doing?”

EnEarl was Prosecutor also

Finally, said Keyser-Cooper, EnEarl’s practice --- demonstrated throughout the case --- of routinely ruling against all Hillman motions, even though the

District Attorney's Office virtually never bothered to file a response, "shows tremendous bias."

A Nevada district court rule says judges may consider the failure of one side to respond to a motion as acquiescence, but EnEarl never did interpret any of the D.A.'s failures to respond in that fashion.

"I don't understand, said Keyser-Cooper. "This shows tremendous bias, and it's such an obvious abuse if the other side doesn't have to do anything. You have the judge being the prosecutor as well. And this is fundamentally unfair.

"It really sickens me, because I know that for every Hillman out there that you hear about, there's fifty that you don't hear about."

Hillman was very well-informed, she said, for a non-lawyer representing himself in court.

"This guy was on top of it, as far as most pro per, or people who represent themselves, are. And he was slammed. He was totally slammed. So think about what happens with all these other people, that you and I don't hear about, who are treated in a very similar fashion."