

Does anybody care?

By Henry Lamb

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Through the narrow window of his cell in the federal penitentiary at Pensacola, Florida, Ocie stared, night after night, reliving the events that put him there. In another cell block in the same prison, his son struggled to understand why he was being punished. For 27 months, the father-son team sat in prison as partial payment for their crime.

The west-Florida sky was much brighter three years earlier when Ocie and his son decided to build a home on a 65-foot bay-front lot they had acquired. Ocie got his building permit from his county officials. He called the State Department of Environmental Protection (DEP), then headed by Carol Browner who is now the Administrator of the Environmental Protection Agency. The DEP visited the property and flagged an area near the shore that the state agency considered to be a wetland. Ocie was told he could build his home anywhere else he chose on the small lot. Ocie Mills was about to realize a long-held dream of helping his son build a home of his own.

Nearly 2000 miles away, Bob Brace was about to realize a long-held dream of consolidating his father's farm with his own. The Brace family had lived in the Waterford area of Pennsylvania for generations, farming the rich bottomland. After buying the old "homestead," Bob set out to convert what had been a beef and dairy operation into a row-crop operation. Fences came down, pastures were plowed, and mudholes eliminated, using what Bob had been taught by the Soil Conservation Service, as "Best Management Practices."

Both men, using their own private resources, their own initiative, their own effort, on their own private property, discovered they were criminals, when gun-toting officials of the federal government appeared on their private property to announce they had "polluted the waters of the United States." Bob's crime: installing drain tile under mudholes on his own property. Ocie's crime: dumping 19 loads of building sand on his own property.

In America, the accused are supposed to remain innocent until proven guilty in a court of law, except for those who are accused of environmental crimes. Ocie and Bob, and every other person whom a federal agency declares to be in violation of an environmental regulation, stand guilty upon declaration, and are subject to fines and imprisonment until they prove their innocence in a court of law. Does anybody care, that the rule of law has been turned on its head when it comes to environmental regulations?

Ocie couldn't believe he had done anything wrong. He re-read his Constitution, re-examined his building permit, and his permit from the state DEP, and decided to go to court. A team of federal attorneys painted Ocie as a dangerous criminal who ignored the government's cease and desist orders, and flagrantly polluted the waters of the United States.

Ocie smiled, and patiently waited his turn. He had his building permits. He had his DEP permits. He had letters from the DEP telling him to ignore the cease and desist orders, that they had been issued in error. Ocie knew he could beat this rap. Ocie didn't know that Judge Arnow would rule that his evidence was not admissible because neither the county nor the state could supercede the authority of the feds, even though in Florida, the state DEP issued joint permits for the Corps of Engineers in wetland matters. Ocie was not allowed to present his case, and spent 27 months in federal prison. Ocie's son had done nothing, but his name was on the deed. He too, spent 27 months in federal prison, as partial payment for his crime.

Bob Brace re-read his Constitution, that part about "...nor shall private property be taken without just compensation," and he took a different approach. Bob reasoned that if the federal government was going to prevent him from using his private property to earn a living, the federal government would surely compensate him for the loss. Wrong! The court battles began.

For nearly 12 years now, both Bob and Ocie have been victimized by the federal government's relentless effort to crush them. Each has spent nearly three-quarters of a million dollars in court costs and legal fees, trying to prove that they are innocent. But the deck is stacked against them. While there is no end to the tax-dollars available to the federal attorneys; there is a definite end to the hard-earned dollars available to Bob and Ocie. The battle must be fought in federal court, according to the rules and terms of the federal government. Bob could not even begin to sue the feds to recover his loss until he had first exhausted every other administrative and legal avenue — at his own expense. His "takings" case was just filed in federal claims court last November, almost 12 years after the alleged violation. He has no hope of a hearing for at least two more years. Then, should he win, he must anticipate that the federal agency will again appeal the decision, as they have done at every step along the way. Justice delayed is justice denied.

Ocie's 27-month sentence carried a 6-month probation period, and a requirement that he not only restore the land (which would have required the removal of 19 loads of sand), but to lower the elevation of the property 24-inches to insure that there could be no future use of Ocies's private property.

Ocie's case took a peculiar twist after a local television interview upon his release from prison. Two individuals who had served on Ocie's jury contacted him after the interview. The foreman of Ocie's jury had two sons who worked for the DEP. The jury was being fed daily reports through the foreman of his son's appraisal of what a terrible person Ocie was. Moreover, it has since been learned that the federal prosecutor knew that the foreman's sons worked for the DEP, but failed to reveal that information to the court. Armed with sworn affidavits from the two jurors, Ocie filed a motion to set the conviction aside, and petitioned for a new trial — seven years ago. There has been no ruling. Justice delayed is justice denied.

Both Bob and Ocie are exhausted. For nearly 12 years they have spent their retirement money, their efforts, and virtually every waking moment, seeking justice from the federal government. Their experiences are similar, but unique. Both are victims of excessive environmental regulations; both are victims of abuse of government power; both have been demonized as "criminals" by federal agencies; both have seen their neighbors grow indifferent.

"People just don't believe this kind of thing can happen in America," Bob says. "There must be more to the story than what Ocie says, the government just doesn't put people in jail for

dumping sand on their own property," is a frequent response to Ocie's case.

In Ocie's case, there is more to the story. Nearly ten years before Ocie's wetland crime, he had ordered two state officials off his property, when they had appeared without invitation, announcement or warrant, to conduct an inventory for environmental protection. The two officials took Ocie to court, and Ocie won. The state had to change its policy and ask permission to make such entry. When Ocie's wetland problems began, those same two officials worked for the federal agency that prosecuted Ocie, and were instrumental in bringing the charges against Ocie. That's the rest of Ocie's story.

Were it just Ocie and Bob, the country could survive. But it is not just these two. These are but two examples of thousands, perhaps of hundreds of thousands of cases that go unreported in the media, unnoticed by the public. And the number of victims is growing. Most victims have neither the money, nor the stomach to fight the feds. Consequently, the feds grow bolder and prosecute, not only wetland violations, but infringement of critical habitat, streambanks, scenic viewsheds, historic places, and other segments of private property which the federal government deems to be of public value. No private property is safe from a declaration of federal jurisdiction. So entrenched is the trend to "protect" whatever the government decides needs to be protected, that private property has lost much of its meaning.

The government already owns 40% of all the land in America, and currently proposed legislation supporting the President's Lands Legacy Initiative would dedicate \$1 billion a year to the acquisition of the remaining private land until it is all transferred to the government. Until that happens, the government is tightening its control over the use of the private property by imposing its regulations on people like Bob and Ocie. No private property is safe; no individual is immune. Does anybody care?