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That Time I Turned a Routine Traffic Ticket into the Constitutional Trial of the Century

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within [Constitutional Law](#)

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Laws that give municipal officials and their private contractors power to issue tickets via traffic cameras confer powers of both criminal and civil law while excusing them from the due process duties of both criminal and civil law.

The traffic-camera ticket: like a parking ticket, it looks lawful enough. When they receive one, most people simply write the check. It seems like the sensible and law-abiding thing to do.

But this is not a parking ticket. In legal terms, it is not a proceeding *in rem*—against your car. It is a legal action against you personally. And before you pay the fine, you might want to hear my story.

My story is not legal advice. I offer it only to show how our ruling elites have corrupted the rule of law and to suggest why this matters for the American experiment in self-governance.

The Ticket

My story begins with a confession: I got a traffic-camera ticket. An affidavit signed by a Montgomery City police officer, it averred that I had committed a particular traffic violation on a certain date, at a certain time and location. It showed a photograph of one of our family vehicles. It charged me with a “civil violation” of “criminal law.”

I wasn't driving the car. In fact, at the time I was in a faculty meeting at the law school where I teach. Thus, I decided to challenge this injustice on the principle of the thing.

Municipal Court

On the appointed day, I tromped over to municipal court and sat down among those accused of armed robbery, drug dealing, and other misdeeds. After an hour, a bailiff emerged to herd into a corner of the courtroom those of us who had appeared for the slightly more respectable offense of owning a speeding vehicle. We waited some more, first for the clerk, and then to be called individually to meet the clerk. Those of us who requested a hearing (evoking an exasperated, poor-idiot-thinks-he's-Perry-Mason expression) then waited for a magistrate to show up. Then we each waited our turn to appear before the magistrate.

After a summary hearing, the magistrate ruled against me. So I appealed to the county-level Circuit Court.

Actually, I tried to appeal. The clerk's office made me wait in the lobby. When they finally saw me, they insisted that I provide a criminal appeal bond. *But I wasn't convicted of a crime*, I protested. *No matter. No appeal bond; no appeal.*

No, we don't accept checks. Come back with the amount of your ticket in cash. I found an ATM and returned, only to be left waiting in the lobby again. When I was readmitted, I saw a different employee who insisted on *twice* the amount of the ticket in cash. I left and returned again.

More waiting.

The City Attorney

Next, I called the City Attorney to see if she really wanted to go through with this. She did.

One does not expect municipal officials to be paragons of lawfulness. But it is a bit jarring to encounter a *City Attorney* who evinces no interest in, much less knowledge of, her constitutional duties.

I asked her whether this was a criminal action or a civil action. She replied, "It's hard to explain it in those terms." I asked whether she intended to proceed under criminal procedural rules or in civil procedure. We would proceed under the "rules of criminal procedure," she answered because this is a criminal case. I asked when I could expect to be charged, indicted, or have a probable cause determination. She replied that none of those events would occur because this is "a civil action." So I could expect to be served with a complaint? No, no. As she had already explained, we would proceed under the criminal rules.

(For the record, the Montgomery City Attorney never studied law with me.)

She asserted that I had violated the "rules of the road" and explained, "You were caught on camera speeding." I asked her for any evidence. She replied that she did not need evidence. I was deemed liable because an automobile that I own "was caught speeding." But the complaint is against me, I noted, not my car. But I am liable, she insisted, because I loaned my vehicle to "someone who speeds."

I asked where in the laws it prohibits me from loaning my vehicle, and how I am to know in advance that any particular person is going to speed using my car. Agitated by my "semantics," she advised me to raise any due process issues with the trial court.

[*click*]

This was going to be fun.

The Trial

Before the trial, I moved to dismiss the case. I wanted the judge to pay attention, so I tried to make the motion interesting. Okay, maybe “interesting” isn’t the best word. It was over the top. I alluded to Hobbes and Locke. I quoted the Declaration of Independence. I suggested the success of the American experiment was at stake. I resorted to superlatives. You know: all the stuff I teach my law students never to do.

We proceeded to trial. The city produced one witness, the police officer who had signed the affidavit. On direct examination, he explained how the traffic camera system works. A corporation in another state called American Traffic Solutions operates the camera system, chooses the photographs on which to predicate enforcement, recommends the Montgomery police department initiate an action against a vehicle’s owner, and is paid for its work.

On cross-examination, I established that:

- He was not present at the time of the alleged violation.
- He has no photographic evidence of the driver.
- There were no witnesses.
- He does not know where Adam MacLeod was at the time of the alleged violation.

And so on. I then asked the question one is taught never to ask on cross—the last one. “So, you signed an affidavit under the pains and penalties of perjury alleging probable cause to believe that Adam MacLeod committed a violation of traffic laws without any evidence that was so?”

Without hesitating he answered, “Yes.” This surprised both of us. It also surprised the judge, who looked up from his desk for the first time. A police officer had just testified under oath that he perjured himself in service to a city government and a mysterious, far-away corporation whose officers probably earn many times his salary.

The city then rested its case. I renewed my motion to dismiss, which the judge immediately granted.

Vindication! Well, sort of. When I tried to recover my doubled appeal bond, I was told that the clerk was not authorized to give me my money. Naturally, the law contains no procedure for return of the bond and imposes on the court no duty to return it. I was advised to write a motion. Weeks later, when the court still had not ruled on my motion, I was told I could file a motion asking for a ruling on my earlier motion. Bowing to absurdity, I did so. Still nothing has happened now several months later.

Why This Matters

Traffic camera laws are popular in part because they appeal to a law-and-order impulse. If we are going to stop those nefarious evildoers who jeopardize the health of the republic by sliding through yellow lights when no one else is around and driving through empty streets at thirty miles per hour in twenty-five zones, then we need a way around such pesky impediments as a lack of eyewitnesses.

Yet traffic cameras do not always produce probable cause that a particular person has committed a crime. To get around this “problem” (as a certain law-and-order president-elect might call it), several states have created an entirely novel phylum of law: the civil violation of a criminal prohibition. Using this nifty device, a city can charge you of a crime without any witnesses, without any probable cause determination, and without any civil due process.

In short, municipal officials and their private contractors have at their disposal the powers of both criminal and civil law and are excused from the due process duties of both criminal and civil law. It’s a neat trick that would have made King George III blush.

Standing and the Fundamentals of Constitutionalism

Equally troubling is that the municipality is authorized to make the owner answer a civil suit without any standing. Standing is a requirement for a person who wishes to enlist a state’s judicial power against another person. No fellow citizen can haul you into court without first alleging that you wrongly caused some particular injury to that person.

A city cannot lawfully do to you what your fellow citizen cannot do to you. And it has no standing if it has suffered no particular injury. If a driver rolls through a yellow light at an empty intersection and fails to cross the line before the light turns red, no one is injured, least of all the city.

In my case, the City Attorney argued that my city has standing because someone exceeded the speed limit while driving my car and thereby breached his or her duty to obey the law. Certainly, all citizens have a duty not to break criminal laws with culpable intent. But we owe that duty neither to the city nor to the state but to *each other*. If we breach the duty, the city prosecutes on behalf of the people and must afford us criminal due process.

That is American Constitutionalism 101.

The Mayor

The story continues. Lovers of liberty in Alabama kept political pressure on the state legislature, and earlier this year the legislature repealed the traffic-camera law. Yet Montgomery’s defiant mayor announced that the city would continue to operate the program. Curiously, he asserted that to stop issuing tickets would breach the city’s contract with American Traffic Solutions. One wonders how many tickets the city is contractually obligated to issue.

Finally, after the Attorney General told him to knock off the foolishness, the mayor backed down. Sort of. The city will no longer use car-based cameras, though it will continue to use stationary cameras mounted at intersections. In a fit of petulance, and belying his insistence that the program is motivated by safety concerns rather than revenue, the mayor announced that the amounts of fines for ordinary traffic violations will now be tripled.

A Small Inconvenience, a Big Problem for Self-Government

Traffic-camera laws seem like such minor, insignificant intrusions on liberty that few grasp their constitutional significance. But they reflect a profoundly mistaken view of American constitutionalism. One might say that the traffic camera is a sign of our times. Its widespread use and acceptance reveals how far we have drifted from our fundamental commitment to self-government. When our governing officials dismiss due process as mere semantics, when they exercise powers they don't have and ignore duties they actually bear, and when we let them get away with it, we have ceased to be our own rulers.

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