

Surveillance Lies and Compromised Justice

The Kristina Berster Case

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Bill Kunstler charged that most Vermonters in the US District Court where Kristina Berster was scheduled for trial had been “irreparably prejudiced by publicity identifying her as a suspected West German terrorist,” announced a UPI report on Sept. 19, 1978.

As a result Kunstler had asked federal Judge Albert Coffrin to dismiss the case against the 28-year-old defendant, who was facing eight counts for attempting to enter the United States illegally in July. And to buttress his claim of prejudicial pretrial publicity, added UPI, “Kunstler put Burlington journalist Greg Guma on the stand to testify that newspapers, television and radio stations in Chittenden County consistently have identified Miss Berster as a member of a terrorist gang.”

By the time the trial officially began I could also report — when not on the stand as a defense motion witness — that the security force at the federal building was ready for a siege. US Marshals, security specialists and assorted agents roamed the five floors of the downtown building with walkie-talkies. Packages and handbags weren’t permitted into the courtroom, and no one except the lawyers could speak with the now-famous defendant.

After a week of jury selection the air was thick with intrigue. US Attorney William Gray insisted that he was merely prosecuting a simple border case, but one in which the bail was set at \$500,000. Kunstler shot back that the issues were far from simple and the FBI was very much involved.

The legendary lawyer had taken the case pro bono within a few weeks of Berster’s arrest. Known for defending political dissidents, he saw it as a significant battle: a defendant seeking political asylum from a country that had been indicting even “radical” lawyers. “This case goes far beyond Kristina Berster,” Kunstler said. “I am very concerned with West Germany’s treatment of so-called terrorists and the so-called left wing lawyers who defend them.”

By late September he and other attorneys, along with headquarters for the Berster Defense Committee, were installed in the Maple Street home I shared with friends. There we underwent a quick course in courtroom dynamics and Kunstler’s blend of legal jujitsu and theatrics. So compelling were the issues, and so high the stakes, that I began to devote most of my time to the case.

In response I was laid off. Rather than welcoming “insider” coverage of the state’s hottest story, Vanguard Press Editor Jim Martin rejected it. Fortunately, I was able to file daily for a national radio audience via WBAI and the Pacifica network.

Perhaps it was a case of late-blooming naivete, but I wasn't much focused at first on the possible consequences. Thus, I didn't fully consider how the Justice Department and intelligence community might react to growing support for the defendant. In fact, when the US attorney claimed that no local surveillance had been initiated, I actually leaned toward believing him.

Three years later we found out that he had been less than candid.

From Berster's first appearance in court, it turns out, the FBI conducted an intensive covert investigation of her allies and supporters. The operation's code name was TERCROSS; the tactics included stake outs and surreptitious photography (at the very least), along with follow up long after the trial ended. FBI documents subsequently obtained by members of the Defense Committee showed that the case provided a pretext to continue and extend surveillance of the local left, which had begun years before. After exposure just the official line changed: TERCROSS had been launched, revised the Bureau, to trace links between Vermont activists and "foreign terrorists."

Among other things, those Freedom of Information Act (FOIA) documents revealed that the US Attorney personally approved surveillance during the trial, as long as it was handled discreetly "and without detection." According to the FBI's analysts, it was necessary because some of Kristina's supporters may have known her prior to her arrival from Europe. One memo indicated that the FBI told the US Marshall and local police about a possible link between the Defense Committee and "terrorist activity in the United States."

TERCROSS was later merged with another project, GILROB, the label for a years old bank robbery investigation. Gray was advised "that special agents from Boston division would be traveling to Burlington for the purpose of observing and possibly photographing Kristina Berster supporters present at the trial." Maybe he was under pressure. In any case, he voiced no reservations and merely urged secrecy.

During the trial we had no proof that surveillance was underway. All Kunstler could do was ask to subpoena FBI Director Webster, a maneuver that didn't impress the judge. After eight days in court just to reach the point of the opening statements, Judge Coffrin was impatient. He looked not at the lawyers but at the clock.

"Something happened before July 20," Kunstler blustered. He was talking about the media campaign launched with Webster's press conference. "The FBI was up to something," he charged. "If the jury found out that the FBI pursued this case on the basis of an agreement with a foreign government, they could acquit the defendant."

The normally calm prosecutor was equally adamant. Gray reminded the judge that Kunstler often used the FBI as a "whipping boy." He had successfully made a similar argument to prevent West German experts and US lawyers from testifying about conditions in Germany. "If selective prosecution is tried before this jury, then Assistant US Attorney O'Neill and I would have to testify," Gray argued. "Really, the FBI has no significance on the issues involved."

Kunstler took another tack. "Mr. Gray says this is like all other cases," he reminded. "He made this a jury issue in his opening statement. We have the right to rebut, and we need to determine what went on. Who did Webster talk to, and what did the Germans want?"

“It was my decision to prosecute,” Gray protested.

Kunster shot back, “Your honor, this may have been beyond Mr. Gray’s control.”

But Coffrin wasn’t swayed. After a lunch break he denied Kunstler’s subpoena request without explanation.

Greg Guma’s new book, [Dons of Time](#), will be published in October by Fomite Press. Coming up in this story, the “terrorist” tells her tale, the government strikes back.

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