

Talkin' to America

Interview with Doug Friesen - Part 1 August 5th 2009

INTRODUCTION

Aaron Zelman: This is **Talkin' to America**. Our special guest today is attorney **Doug Friesen** - who will be talking about his experience with the BATFE. I'm your host Aaron Zelman and Doug, welcome aboard. Good to have you here.

Doug Friesen: Well thank you so much, it's a privilege to be here.

Aaron Zelman: Why don't we start by you explaining how this case started.

Doug Friesen: There's actually a couple of different starting points. The actual case started when a criminal investigator for the BATFE sent a message, sent a written memo rather, to the compliance inspectors for the BATFE that essentially said "this guy has been representing some people we don't like, he hasn't had an annual audit of his books" - at the time I was an ATF dealer and - "we want you to go over there and find something wrong" - is essentially what it said. It arose from my having represented some members of a motor cycle club that I think would be normally termed by the public to be one of the 'One Percenters'.

The case actually started some time before that, once again as a result of me representing some different motor cycle enthusiasts, but a person that was on the local - a police officer that was on the local gang task squad, got transferred from the local gang task squad to assist the DEA and he and I had had some run-ins over my representation of them and from that point on he was able to get some other people caught up in his own hysteria, if you will. So, the entire thing started with a memo from the criminal division - "go look at this guy and figure out whatever you can find we can charge him with" - because they didn't like who I was representing.

Aaron Zelman: Well, so much for justice for all. I guess there was a search warrant involved here?

Doug Friesen: There was. They did the urh, did the inspection in February of 03 and about fifteen months later they issued a search warrant for both my office and my house alleging that they couldn't find a number of items they had in fact found. We brought a motion to suppress, specifically listing a number of items - I mean literally matching up page for page with the application for the search warrant which was some thirty pages long. And, in every paragraph it was either 'fluff' put in there to make it look good or there was just outright misrepresentations. But based upon that they got a search warrant for my house and my business and hit both simultaneously and did a complete search of everything. And, from that they took a machine gun that I had legally registered to me as well as a number of other little items.

Aaron Zelman: So after they do this search, how long does it take before they file charges?

Doug Friesen: Nothing happened on the case until February of 08 - it just sat there, and I think the reason it sat there has to do a little bit to do with their theory of the case, but in February of 08 they

had to make a decision about what was to be going on because the statute of limitations was going to run. And so they ended up convening the grand jury and filing charges against me, some ten or eleven days before the statute of limitations would run. So everything just sat there essentially for the next four years, nothing happened.

Aaron Zelman: Well what was their theory, and the reason they were trying to hound you, aside from they don't like motor cyclists?

Doug Friesen: They don't like motor cycle enthusiasts and they don't like the people that represent them! Their theory of the case was this - it was undisputed that I had bought a legally registered Sten II machine gun - had the paperwork, the ATF had transferred it to me, in fact at one time I was a Class III dealer. Their theory of the case was as follows That I got rid of my legally registered Sten machine gun and made another Sten machine gun that couldn't have - if I made it it could of course never be legal, and so instead of having one legal machine gun which was all that was ever involved, their theory was that I sold my legal one, made an illegal one and that's the one I had in my possession although they couldn't explain to anybody where my legal one had gone.

There were no witnesses that I had ever sold it and there was nothing in my place of business or house that even lent itself to me even beginning to be able to make a machine gun. But this was their theory - now why, even if I had made a machine gun which I hadn't, why I wouldn't get rid of the illegal one and keep the legal one for myself is beyond me. But - that was their theory of the case.

Aaron Zelman: Well, if you thought like a bureaucrat you'd understand the theory! (laughs from both) but, OK

Doug Friesen: It's almost like "this guy is so stupid he can't breathe and so that's why we are doing this".

Aaron Zelman: (Laughs again) - So what were the charges ultimately then?

Doug Friesen: The charges were one count of having an illegal machine gun and four counts of lying to the officers, lying to the federal officers, three of which - three of those four charges of lying were statements by me to the various officers that "this is the machine gun that I had bought and I had legally registered. The fourth had to do with a storage place here in the office where I keep, kept, items at the time for clients and I had some client's firearms in there that had been entrusted to me for various reasons. But, there were five felony charges - four lying to officers and then one, having an illegal machine gun.

Aaron Zelman: So, I understand there were some problems with discovery upon entering the trial?

Doug Friesen: Well, it was kind of interesting, and Aaron, I've really got to thank you for putting together the video "The Gang" because when the charges were initially filed, I mean, I was of course lost. I've represented a lot of other people in some fairly serious criminal matters, including murder defenses but, it's a little bit different when you are sitting on that side. And I had - I was just fumbling around because from the beginning it was hard for me to find an attorney that is really used to dealing with and fighting the ATF and knowing what the er, how important the database, the NFRTR - National Firearms Registry - it was going to be an integral part of this case.

As I was doing some research, and luckily enough because I was an attorney I at least knew where to start looking for some some of these things, I ran across your video "The Gang" and from that point I was able to obtain some of the experts that were so very very instrumental in guiding this case and

helping it to a successful conclusion. I mean, I just can't tell you how grateful I am to you for having produced that because it was just a tremendous benefit to me, both in terms of helping me tie into some experts but also looking at how to challenge the fact that every statement that the ATF makes needs to be looked at and challenged because almost all of them have a double meaning.

From the start, we've had just huge problems with discovery and I have since come to understand that this is a fairly normal way of doing business for them, but the day before the trial we were just inundated with like five thousand pages of new discovery that they had had all along. They just didn't want to give it to us, and the judge ended up giving us a continuance at the beginning of the trial, took a break in the middle of the trial because of discovery that they didn't give to us, and the first case got held up in a mistrial and then we had the same set of discovery problems up to and in preparation for, the second trial. But, all along the way what was so fascinating about this is that not until the eleventh hour and fifty-ninth minute would they actually turn over documents that they were ordered to turn over. It was constantly the idea of a trial by ambush and it was institutional thinking on their part - it was fascinating to watch that work.

Aaron Zelman: In your experiences as an attorney have you run into the same situation dealing with other government bureaucracies?

Doug Friesen: The majority of my experiences with county and state charges - in Oklahoma we, the counties bring the state charges - I think that's fairly normal, at least throughout the mid west. I have never seen the kind of discovery abuses in the state arraignment that I saw in the federal arena. The judge was very fair, I mean I was very fortunate in the judge I got, he was extremely fair and could see what was going on, but it is so institutionalized - this waiting 'till the last moment - that there was a limited amount that he could do.

The stuff that was pulled in federal court would NEVER have been tolerated in state courts. I have seen many times that judged just saying in the state court to the prosecutors - well you just don't get it in and we have, as a general rule a total open file policy with the defense bar and the prosecutors on the state level. You just don't see this kind of institutionalized, hiding things under a barrel, that I saw in the Federal court system.

Aaron Zelman: Sounds to me like, if people believe they are going to receive justice in the federal court system, they'd better think again about their assumption.

Doug Friesen: I think that there are four things that are absolutely necessary if you are going to be on trial, with an agency like the BATFE. I think you have got to have the means to be able to fight them. Most important you've got to have the will to be able to fight them. I think you've got to have a good attorney that knows what he's doing and I think you have to have the right expert witnesses. Without that combination, I think it's going to be extremely difficult to ever be successful in defending yourself against an institution like the BATFE. And the reason that I say that, is because literally every statement that they make has to be evaluated and has to be independently tested, and I can give you a really good example I think, in the case one of their experts supposedly, as from California, supposedly tested the machine gun that I had and said that they could find no trace of solvent that had been used on it.

Part of my testimony was that I had used a solvent on this machine gun, at one point to clean off some dirt that was on it. So they have one expert that says that they could find, that they've done all these scientific testing, and that they could find absolutely no basis that any solvent has been used. Later on in that same trial it became necessary for them to reverse that position, and so what they said later on is that any solvent that has been used would evaporate within a very short period of time, twenty

to thirty minutes at the latest and would leave no trace that it had ever been there. While technically those two statements are not contradictory to each other, for the average juror listening to them - when the first one says "we can't find any trace that the solvent was ever there", it sounds like "this guy is lying, he didn't use solvent". Then they turn around later on - I don't think they even realized that they were contradicting themselves - I think it just got lost in the shuffle, but then they say "but by the way..." and of course this is a totally different time in the trial, "you couldn't find it if it had been used because there is no test to show it ever had been used, because it evaporates completely". Well, that statement was left out of the first statement, and so that's why I say, unless you are prepared to test each and every statement they make, you're likely to find yourself on the downhill slope because they don't mind just throwing out those statements without worrying about the context that they are in.

Aaron Zelman: That's fascinating. I understand there were some witnesses - there was some false reports for testimony?

Doug Friesen: Absolutely. There were reports that were just absolutely lies. I mean, and there was no other word for them than just absolutely lies. And it was even more fascinating, between the time of the first trial and coming up to the second trial, how they would go over to some of the witnesses that they had used and, I'm sure that to say it as nice as I could, massaged the testimony. Quite frankly it was doing nothing in my opinion, but just supporting out and out perjury where they would go and have them work their testimony around so it kind of came out to something different.

A classic example of that - in the safe that I have in my office, that at the time when I was a dealer, a gun dealer, and I used my office as my dealer location. Also, I had a separate safe that the only purpose of which was to keep clients property in. Two guns from one of my clients ended up in there. Now, when the ATF was talking to me they asked me where I kept my guns and I told them. And they asked me if I had my guns in any other place and I told them "no". I did not disclose to the ATF inspectors about the safe where I just kept client property because it wasn't a question that they asked me. That was the other charge about lying to an officer. They didn't ever say "do you have guns anywhere else here", they said "do you have (you personally) have any of your guns anywhere else" and I answered "no" because I didn't. That person that I got the guns from testified at the first trial.

Then we began, in anticipation of the second trial, we'd get a statement where the federal investigators have gone and reworked this person's testimony, and the historical basis on that was that this lady had come to me for a divorce - I've got a private investigator that works in my office. He had gone - it was in a little sub division city, next to, adjacent to a homer city - he'd gone to the police office there, police department there - picked up an office, gone over to her house and picked up a couple of guns because she was afraid of her husband having them. She gave the investigator the guns and he brought them back.

That testimony was totally changed around by the time we're coming back for the second trial. Now, interestingly enough, my investigator was able to go out to the police department of this little town and find that report, the incident report that all police departments make up, and we never had to turn that over, they never knew we had that but just across the board, and it totally disproved what they were attempting to make this lady's testimony prove. But, they didn't know that we had that, and, there were probably five to six witnesses that as things went on, things got rougher and rougher.

Another witness, probably one of the worst examples of what happened - another witness early on, right after the search warrant was issued was talked to, and this was a lady I had some social dealings with, probably ten-twelve years before, and they interviewed her - she gives a statement - then they interview her three more times. And of course whenever you are being interviewed in a situation like that, if you don't have an attorney, they always have two people there and so they write down

whatever they want to, and in the last three reports that they wrote from her statements, they were diametrically opposed to the first statement they had given, and of course they had to turn them over to me.

When I took these reports and gave them to this lady she said “hey - that’s not what I said - those are wrong”. But now what they’ve done is they have got her in a ‘Catch 22’ because no matter what she says they’ve got it on paper with two witnesses to testify that she lied to a federal officer. And, I am sure they intended to use that to be able to say “OK, now if you testify to this the way we want you to then we won’t press these charges. Now what happened is, we were able to show her the reports - she retained an attorney - and got immunity to testify before she’d say anything else and then she was able to testify to the truth of what happened. But, they deliberately wrote down these reports that were just absolutely false in terms of what she said

Aaron Zelman: That’s fascinating. Before we talk about how to combat the ATF, let’s talk about some of the imported witnesses one of which was a convict they had involved?

Doug Friesen: (Laughs) - This is really funny. If it wasn’t so sad it’d be funny I guess. I had represented a gentleman on some criminal charges back in 1991. When the case was filed against me, he was doing time on some cases I didn’t have anything to do with him on, but on some bank robbery charges. And so what he does, he sends a letter to the US attorney’s office here in the western district of Oklahoma saying “Hey, I know this guy, he’s a real ...”, he’s talking about me, “I know this guy, he’s a real bad guy and I can give you whatever you need on him”. And so they go out and they interview him.

Now, the history on this guy is that he and I had a little bit of history because I had made him put up some collateral for his fee when I was representing him, and he didn’t want to pay and so I was going to sell the collateral - he eventually paid - he filed a bar complaint which was dismissed. And we, I hadn’t seen him since 1991. When they bring him down we start to do some research on him and he had, he was in the federal penitentiary system on charges that came from the western district of Oklahoma. He had been used twice before by this same prosecutor to roll on his co-defendants on two other separate and unrelated cases. Both for a reduction of time and he just freely admitted that he was there to try and get some time off a fairly long sentence, and he was making up these wild allegations - including the fact that he was placing me at a residence that I hadn’t lived in for over eight years. But he was alleging these things happened in the year 2004, and I hadn’t seen him since 1991.

Everybody it seemed to me on the jury, and I didn’t get a chance to talk to them but there were a number of people that were sitting in the gallery, and I don’t think anybody believed him. I mean, he was talking about this really outlandish stuff, and like I say, if it wasn’t so serious and if there hadn’t been the relationship of this guy with this prosecutor, twice before to help this prosecutor make charges, it probably would have been a little bit funny, but it just shows the length they are willing to go when they are focused on trying to hurt somebody.

Aaron Zelman: Would you like to give people some contact information?

Doug Friesen: Absolutely. My name is Doug Friesen - F-R-I-E-S-E-N - and you can reach me at doug@dougfriesen.com and my telephone number is (405) 239 - 2722. And, anybody who has any questions if they’ve got a case or wants any of the documents I have, I’ll be more than happy to furnish them.

Aaron Zelman: Well, this will conclude the first portion of our interview. We’ll be back for part two with Doug Friesen and we’ve got a lot of things to cover. It’s actually fascinating so please stay with

us for part two and this has been **Talkin' to America**, our guest has been **Doug Friesen**, I've been your host **Aaron Zelman** and please remember, if you don't defend your rights, don't complain when you lose them.

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