

Veteran Falsely Convicted By Lying Judge

By: Pat Shannan-Investigative Reporter-December 1, 2014

David Hinkson discovered and manufactured mineral replacement health products that combine with vitamins to rebuild the body's own natural disease fighting immune system. His God-gifted instincts and talents, not unlike those of Nikola Tesla a century earlier, have allowed him to see the world through a scientific lens as few humans can. So why would the Department of Justice target and jail a man so valuable to his generation? Did Big Pharma fear his success? It wouldn't be the first time.

Hinkson enlisted in the U.S. Navy at age seventeen during the Viet Nam conflict and served honorably as a helicopter mechanic. After his discharge, his pursuit of truth took him on two separate missions at once. In addition to developing natural preventives for the human body, he also took on the dangerous task of exposing the deception of the Internal Revenue Service to the American people via his Las Vegas radio show. Both such pursuits have proven to be fatal to other truth-seekers preceding him.

A mineral is not a drug; and, since David kept the minerals in their pure form, the FDA and "Big Pharma" could not stop him from selling them. But it was within their power to falsely accuse him of mislabeling his products – a felony. Whether he mislabeled or not wasn't their real motivation. He became a force they could not control. David, like many veterans today, has been persecuted by his own government – a government that he, like other veterans supported unconditionally when they were in the service. (So what happened to reciprocal support for veterans today?)

Shocked to learn that he was the target of false accusations in 2002, David could not overcome the stampede of government agencies that worked in tandem with the FDA to ambush and take him down. With the help of a lying judge, a deceiving prosecutor and a perjuring government witness, the U.S. government (through fraud and deception) managed to stop David's contribution to health. "You lie, and I'll swear to it," is the federal government's mantra. Now in his eleventh year in prison on a 43-year sentence, David awaits ultimate justice – his release — because he has again asked the Ninth Circuit Court of Appeals to review his case, but this time for *Actual Innocence* rather than some minor technical trial defect like in his direct appeal years ago. He languishes in jail, convicted of a crime that he did not commit and, in fact, never happened.

Judge Richard C. Tallman, who conducted David's sham trial in 2005 on murder solicitation charges, sentenced the then 49-year-old Hinkson to what amounts to a life sentence – or death by time. This appellate court judge was designated by the Ninth Circuit to handle the trial when district judges withdrew from the case. According to former prosecuting attorney Wesley W. Hoyt, Judge Tallman **"Proceeded with disregard for the Constitution and his sworn oath to uphold the law. He lied from the bench on the record, then converted his own courtroom into a crime scene by suborning perjury and conducted a secret, illegal and judicially unethical "ex parte" meeting with the government's star witness, Elven Joe Swisher; a known pathological liar."**

Hoyt added: "The trial record shows that this meeting was held to refine the government's plot to convict David of a "thought crime" that Swisher made up and attributed to Hinkson. The crime was a total figment of Swisher's imagination, who lied to two Grand Juries in 2002 and 2004 and then to the Hinkson jury in 2005. It was not until 2008 that Swisher was convicted and sent to prison for telling these exact same lies to the VA while stealing veteran's benefits. Both Judge Tallman and the prosecutor were aware of Swisher's Grand Jury perjury, but, it is evident that part of the payoff for putting Dave Hinkson in prison for life was a free-pass letting Swisher get away with his Grand Jury lies." (I.e. Swisher should have been charged with perjury for lying to the Grand Juries but wasn't.)

The government's lying 'star witness,' Swisher, fictionalized that David offered to hire him to kill federal officials based on Swisher's so-called reputation as a "Korean combat hero." The prosecuting attorney presented Swisher to the Hinkson jury as the real-deal, a "Korean veteran," even though Swisher never even set foot in Korea. Swisher's 2008 conviction for perjury, forgery, theft of government property and stolen valor (the crime of wearing medals he had not earned) came after Hinkson's trial and was based on Swisher's lies to the VA in 2004 as he fraudulently sought medical and disability benefits for war-wounds he never sustained.

But what about this judge? A federal judge is supposed to be neutral and is required to help the jury find the truth. Instead, Judge Tallman led the jury to believe in Swisher's fantasy of a secret mission to North Korea. In supporting Swisher, Judge Tallman actually became the perpetrator of several crimes committed in his own courtroom, all aimed at silencing David – who dared to challenge the authority of government agencies. In this hoax of a prosecution, the IRS and FBI joined in falsely accusing David of soliciting Swisher to commit unthinkable torture-murder of federal officials and their families; a ruse to shock the jury into convicting David — and was a typical form of conflating horror, a technique often used by the government when prosecuting the innocent in similar phony murder-for-hire cases.ⁱ

David Hinkson has recently petitioned the Ninth Circuit Court of Appeals for another review of his case based on his "actual innocence" (as is now clearly shown in Appendix C, the Affidavit of Wesley W. Hoyt filed in the public record of Ninth Circuit Case No. 14-16507, see Documents Nos. 6 & 7). Proof of his innocence begins with the fact that Swisher was hospitalized from a massive heart attack in June of that year and was physically incapacitated, nonetheless, he testified in July or August of 2002 he was being solicited for murder by Hinkson in Grangeville Idaho when Hinkson's Passport with (official stamps) shows he was actually in Ukraine negotiating the purchase of a factory building to produce his mineral dietary-supplements for world-wide distribution.

Judge Tallman personally controlled 'Pretrial Services' which had confiscated David's Passport, upon his arrest. Thus, Judge Tallman had control of the Passport and he only had to say the word and it would have been delivered to the courtroom. A truly neutral judicial official would have done so; but when asked to produce the Passport, Judge Tallman denied saying: "It will only confuse the jury." Although subsequently requested from the government under the Freedom of Information Act (FOIA) neither the Passport nor a copy thereof was returned, according to Roland C. Hinkson, David's father.

Judge Tallman could have presented the Passport to the jury, or allowed David to submit it as a part of the exculpatory evidence showing innocence, but he refused – causing the jury to be *deceived* rather than just confused.

What motivated Judge Tallman to prohibit the jury from considering David's Passport? Could it have been his desire to placate the Justice Department and thus win its support when eventually seeking higher office? These and other questions are being asked at the 9th Circuit, which has already broken the law by assigning only a two-judge panel (instead of three)ⁱⁱ to summarily deny David's request for review under the *Actual Innocence* standard. On direct appeal the Ninth Circuit could, and did, 'pot-shot' David's case overruling the reversal in the Fletcher-Hug decision;ⁱⁱⁱ but, now, under the *Actual Innocence* doctrine, the court has no choice, it must consider the "cumulative effect of all the evidence" not just one detail, as in the previous appeal. This doctrine will allow David to finally have his day in court, if the Ninth Circuit follows the law.

Anyone railroaded by the government – as David was – who can demonstrate he is truly innocent of a crime – as David now has – is entitled to his day in court at an evidentiary hearing to prove his case. So, we are all waiting, when will David have his hearing?

David now seeks review by an *en banc* panel (probably by another eleven judges) of the Ninth Circuit to see if the judiciary will: 1) hold Judge Tallman accountable for his crimes and remove him from David's case, 2) allow David an evidentiary hearing, 3) look at the totality of all the evidence, 4) acknowledge David's claims of innocence, and 5) eventually permit David to go back to his family. The issue has been that each time David has applied for review, the case was sent back to the "sentencing judge" – who is Judge Tallman – the one with a vested interest in covering up his own crimes committed from the bench in David's trial. The only solution is to remove Judge Tallman from David's case if fairness is to prevail.

All that is left in this veteran's "David vs. Goliath" struggle for freedom is the truth. However, federal judges today often make arbitrary rulings, excluding evidence of innocence (as Judge Tallman did) because proving innocence does not support the government's program of repressing the outspoken. When a judge will not allow the accused to present his/her evidence of innocence, a wrongful conviction is a certainty.

David has begged and pleaded with the Ninth Circuit to look honestly at his full situation. At first, on his direct appeal, he won. The three-judge Ninth Circuit panel composed of Judges Fletcher,

Hug, and McKown ruled that David had not had a fair trial, and they reversed his conviction (see endnote iii). However, over time, the influence of Judge Tallman with many other Ninth Circuit judges was so persuasive it caused the Fletcher-Hug decision to be overruled in a very close six-to-five vote by the first eleven-member *en banc* panel,^{iv} with Chief Judge Kozinski changing his vote to favor Hinkson recognizing that revealing to the jurors all of Swisher's lies about being a decorated veteran would have had a very strong impact on their decision.^v The first *en banc* opinion was nothing less than a slap-in-the-face to veterans and meant that the official stance of the Ninth Circuit Court is that military valor is of no significance; an insulting message to Veterans as a whole.

The above confabulation against David has now changed because Judge Tallman has been exposed as a liar, lying for Swisher, as if he was in league with him.^{vi} In Judge Tallman's August 2012 Order refusing to withdraw as the judge of David's case,^{vii} he brashly confessed that he did conduct the unethical *ex parte* meeting with Swisher during the 2005 trial and stated that the meeting was of no consequence. Yet, over time, the significance of that illegal meeting had a profound effect on the outcome of the case consistent with the ancient Greek maxim: 'Truth is the daughter of time.' As the truth has leaked out, even the government had to admit Swisher was lying which means the prosecutor also lied to the jury. In a country that claims justice under the law, how can a conviction predicated on lies from the judge, prosecutor and star witness stand?

Now, the following truths are known about Judge Tallman: 1) that he lied on the trial court record (perjury); 2) enabled Swisher to lie (subornation of perjury); 3) protected Swisher from cross examination about lying to the 2002 and 2004 Grand Juries (judicial bias); and 4) conducted an *ex parte* meeting with Swisher immediately before he took the stand (showing extreme judicial bias because he obviously helped prepare Swisher for his testimony) the question is who can hold this out-of-control judge accountable?

The U.S. Supreme Court has ruled that no man or woman should ever be convicted based on lies. Sooo, is it now time to follow the law and release David Hinkson? In 1993, the U.S. Supreme Court ruled that it is the job of federal courts "... to see that federal constitutional errors do not result in the incarceration of innocent person."^{viii} Instead, Judge Tallman created errors to imprison the innocent.

The problem is that Judge Tallman, with a personal "axe to grind," started telling "tall-tales" about Swisher's fake secret-Korean mission; by doing so he gave authenticity to that fiction by stating Swisher landed in North Korea by "amphibious" craft, which is a detail not known previously and was new information introduced exclusively by Judge Tallman.^{ix} Despite Judge Tallman's knowledge that Swisher never set foot in Korea, he lied to enhance Swisher's credibility and the veracity of his story that he had killed "many" in combat (an essential piece of the government's theory of the case).

Neither Judge Tallman nor the prosecution informed the jury of the falsehoods before deliberations despite the fact that the U.S. Supreme Court requires government lies to be revealed to the jury in order to prevent a fundamental miscarriage of justice; because people can't be convicted based on lies in a free society. By vouching for Swisher as a Korean combat soldier, Judge Tallman suborned Swisher's perjury – which itself is a crime. The association of Korean War Veterans has already indicated its disgust of Swisher for his crimes and stolen valor which cheapens the sacrifice of all veterans, especially those who gave their lives in conflict. Anyone who has ever sat on a jury knows it makes a huge difference if the government witness is considered a pathological liar or a reliable truth-teller. If the jury could not believe Swisher because his Korean secret mission was faked, how could they believe that Dave Hinkson solicited him to commit murder? But, with the Judge and prosecutor certifying that Swisher was authentic and no contrary evidence permitted, what else was the jury to believe? That's how David Hinkson was convicted and that's how the government convicts so many other innocent people – they never get their day in court to tell their side of the story!

The Chairman of the House Judiciary Committee, Bob Goodlatte (R-Va), needs to know that all of us who love liberty will stand up and be counted because we still believe judges must have integrity. We who deplore the kind of false accusations made by Swisher, along with crimes committed by a federal judge and the Justice Department, must stand together or the alternative is a police state. None of us has any hope of maintaining our liberty when there is no judicial accountability for misconduct. If not called to responsibility by the House Judiciary Committee, then who will hold Judge Tallman

accountable? Remember, Ninth Circuit Judges are a part of a “crony system,” scratching each other’s backs and they cannot be expected to hold him accountable!

A card, letter, fax, phone call or email from each person who reads this article demanding an investigation into the illegal and unethical behavior of Judge Richard C. Tallman for lying in open court and for suborning perjury, with an eye toward his impeachment, is the only thing that will stop these evil practices which have now reached epidemic proportions and are a fast growing cancer in America.

Tell Congressman Goodlatte that you believe no judge should be allowed to lie and get away with it. Remind him that the Constitution requires him, as the Chairman of the Judiciary Committee in the U.S. House of Representatives that it is his job, to impeach federal judges, like Richard C. Tallman who commit “high crimes and misdemeanors.”

Contact information for Congressman Bob Goodlatte Chairman, House Judiciary Committee at <http://www.goodlatte.house.gov/contacts/new> or <http://goodlatte.house.gov/contacts/new> then call or fax him at one of his offices, and register your concern and ask him “What will it take for you Congressman Goodlatte to start an investigation?” as follows:

Washington DC Office: 2309 Rayburn HOB Washington, DC 20515	Harrisonburg Office: 70 No. Mason St. Harrisonburg, VA 22802	Lynchburg Office: 916 Main St., Suite 300 Lynchburg, VA 24504	Roanoke Office: 10 Franklin Rd. SE, #540 Roanoke, VA 24011	Staunton Office: 117 So. Lewis St., #215 Staunton, VA 24401
Ph: 202-225-5431	Ph: 540-432-2391	Ph: 434-845-8306	Ph: 540-857-2672	Ph: 540-885-3861
Fax: 202-225-9681	Fax: 540-432-6593	Fax: 434-845-8245	Fax: 540-857-2675	Fax: 540-885-3930
Committee Phone: 202-255-3951				

P.S. Remember, Congressman Goodlatte is not just a representative for the people of Virginia, Oh, No, he is the Chairman of the House Judiciary Committee that that job is National in scope, so, don’t allow his staffer’s to tell you if you are not from Virginia your input does not count because, he is not simply a Congressman from one district from one state, he represents the entire nation when he became the Chairman of this extremely powerful and prestigious committee.

For more information see: www.rolandhinksonfiles.com or www.davidhinkson.info

ⁱ For proof that outspoken innocents who demand justice have been wrongfully convicted, google Edgar Steele, Matt Hale, and Schaeffer Cox, for crimes that never occurred, with the accused prevented from presenting their case of innocence by activist judges. See USA Today Article: Locked Up But Innocent, Aug. 2012, Brad Heath, finding 60 who were not guilty but held in federal prison anyway and other similar articles.

ⁱⁱ 28 USC §2244(b)(3)(A)

ⁱⁱⁱ *U.S. v. Hinkson*, 526 F.3d 1262 (9th Cir. 2008) (the Fletcher-Hug opinion).

^{iv} *U.S. v. Hinkson*, 585 F.3d 1247 (9th Cir. 2009) (the Bea opinion).

^v *U.S. v. Hinkson* v. 611 F.3d 1098 (9th Cir. 2010) (Chief Judge Kozinski dissent).

^{vi} In that August 2012 opinion, Judge Tallman adopted another Swisher fake story of attempted murder claiming Hinkson sent a shooter to the back woods of Idaho to gun-him-down. Actually, Deputy Sheriff Herbert Lindsey, who investigated Swisher’s false report, proved that the whole story was made up by him. Instead of Judge Tallman consulting the local authorities to determine if this report was valid, he swallowed this Swisher fabrication “hook, line and sinker” making it appear Judge Tallman had formed a strong bond with Swisher after the illegal *ex parte* meeting. (See Appendix C, in Ninth Circuit Case No. 14-16507, Herbert Lindsey Affidavit, Exhibit B-4, found in documents 6, on pgs. 234-236-Also review Document 7 for more information).

^{vii} In Ninth Circuit Case No. 14-16507, see Judge Tallman’s Order Denying Recusal dated August 28, 2012, also found in Appendix C, Exhibit B-2, filed in Ninth Circuit Case No. 14-16507, at pages 151 to 162.

^{viii} *Herrera v Collins*, 506 U.S. 390, 404.

^{ix} Tallman’s statement about Swisher’s “amphibious” landing is found in the Transcript of the Hinkson 2005 trial (Appendix C, Exhibit B-3, at page 216) located on the trial transcript at Page 2309, lines 6 – 10 and his concern that he did not want to turn the case into a mini trial on whether “Mr. Swisher is lying or not” (line 16-19) which is exactly what he should have been doing with the evidence from the Commandant’s Office of the U.S. Marine Corps which had just been presented to him (Report of Col. Dowling). That is, if Swisher was lying (and his 2008 conviction proves that he was lying) the December 30, 2004 report of Col. Dowling (then in front of Judge Tallman) gave him an absolute duty to make a determination whether Swisher was lying, and if so, Judge Tallman had an absolute duty to inform the jury so that they would not be deceived, before allowing the jury to deliberate. The U.S. Supreme Court requires that the judge had a duty to inform the jury of the falsehoods presented by the government. In fact, if Judge Tallman says he did not know Swisher was lying, then he knowingly and intentionally turned a blind eye to Col. Dowling’s report which stated that Swisher did not serve in Korea nor did he have the training, experience or rank to participate as a member of an expeditionary force in a secret mission; and according to the U.S. Navy and Marine Corps there were absolutely no secret missions to North Korea after the Armistice was signed in 1953.