# PRISONERS' STRUGGLES

## In Self-Defense: Constitutional Rights for *Pro Se* Criminal Defendants in North Carolina

*Eddie Hatcher*

*[Editor's Introduction:*
*As an aboriginal activist, Eddie Hatcher has long struggled for political accountability and an end to corruption in Robeson County, North Carolina, where the drug trade has flourished and violence has become commonplace. His pursuits have brought him to the attention of authorities, not as an ally but as an enemy. In 1988 Hatcher and Timothy Jacobs staged a takeover of a local newspaper to draw attention to local corruption. He was sentenced to five years for kidnapping in that case. He is currently charged with murder; the trial date is set for April 9, 2001. For more information on Eddie Hatcher, his struggle and supporters, visit http://www.eddiehatcher.org. For anyone considering defending themselves in court, this article raises important issues and precedents.]*

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On June 1, 1999, I was charged by the State of North Carolina with one count each of first-degree murder, assault with a deadly weapon inflicting serious injury, and shooting into an occupied dwelling. It was alleged that I, and I alone, had committed a drive-by shooting at a rural home deep in the swampy countryside of Robeson County, North Carolina.

Until recently, drive-by shootings were largely urban phenomena, especially in those cities where rival gangs favored this method for retaliation and fear-mongering; to protect turf and settle scores. But somewhere, in the scheme of all drug-infested areas, drive-by shootings eventually found their way into the quiet, secluded Indian community of Robeson County.

Drugs have long been in the Indian community of Robeson County, despite (or because of) widespread poverty. Drugs arrived here long before their popularity in many metropolitan areas. In the mid-1980s, the assistant U.S. Attorney for the Eastern District of North Carolina, Bill Webb, described

Robeson County as being "awash in cocaine" with cocaine being "ninety-five percent pure and cheaper than in Miami, Florida."

Wrapped in burlap and marked "Republica de Columbia," cocaine arrived in Robeson County by the truckload. By 1988, cocaine was just an everyday part of Robeson County. Elementary school children could present "show-and-tell" on how to cut up kilos of the white powder, and weigh and bag it into $20 bags, eightballs, half-ouncers, and ounces. A local grandmother became alarmed when her fifth-grade granddaughter came home from school one day to ask, "Grandma, what's that white stuff them young'uns be sucking up their nose?"

Cocaine was so prevalent in the area that drug dealers set up drive-through establishments resembling Burger King restaurants. Some became so brazen and well protected by local and state law enforcement that you could find pre-bagged and pre-priced powder on store counters next to the cigarette lighters. With the influx of cocaine came a fast-moving cloud of unsolved murders, nearly all execution style and, ten to fifteen years later, still unsolved.[1] At the same time came the luxury cars—BMW's and Jaguars—and the quarter-million-dollar homes of government officials on annual salaries of $22,000.

Such luxuries may go unnoticed in metropolitan areas like Charlotte or what the "drug cartel" called the Ivory Palace, Atlanta; however, these expensive lifestyles in Robeson County, North Carolina stood out like grits at a Beverly Hills luncheon. The extravagance further contrasted with one of the highest unemployment rates in the state and a fifty percent illiteracy rate. Traditionally, Robeson County's economy has been based on tobacco farming.

Given this backdrop, perhaps drive-by shootings were inevitable. And with the drive-bys I became a target and now a defendant in the most publicized drive-by shooting to strike Robeson County. However, I was not involved in the drug trade, I did not associate with the big wheels, and Brian McMillan—who was killed in this drive-by shooting—was no enemy of

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[1] July 1981, Jerry Eugene Rozier is found in his bed with one shot to the head — the case goes unsolved; February 1984, in three separate incidents, three men are killed execution style; January 1985, Kenneth Shod Bullard is found floating in the Lumber river with a shot through the head; October 1985, Joyce Sinclair is found dead where the Ku Klux Klan had held a rally—she had been sexually assaulted and stabbed four times. (From the website www.eddiehatcher.org)

mine. The day after my arrest, the first statement made to the press by law enforcement and the prosecutor was, "Well, we don't have a motive." And they have no motive still. But in corrupt, good-ole-boy southern politics, that is no big deal. Who needs a motive in Robeson County?

Within hours of my arrest I was transported to the death row unit at North Carolina's Central Prison. This is where the State holds its most infamous and outspoken pre-trial detainees; a place to silence activists and hold them incommunicado. The purpose of housing me on the death row unit was to keep me quiet, to shut down all means of questioning the acts of the state, and to get a jump-start on their campaign to break me down and eventually convict me. Throughout my first week on the death row unit I was denied writing paper and pen to write my family or anyone else. Telephone calls are prohibited on the row, except for the few hours prior to execution.

Nine days after my arrest I was taken abruptly to Robeson County District Court, supposedly to be heard on bond motion. As I sat there with two lawyers appointed by the court on the day of my arrest, Prosecutor Johnson Britt announced he would seek the death penalty. I listened to the judge order a $100,000 secure bond for the three lesser charges and then deny bond altogether on the capital murder charge, stating "we don't give bonds on capital murder." The state-sponsored defense attorneys attempted to be heard on my imprisonment on death row. Before they could begin, however, the prosecutor politely informed the court that he had just been made aware of an *ex-parte* order signed earlier in the day by Superior Court Judge Dexter Brooks, denying me all bond and ordering me transferred back to the death row unit. It did not matter that the District Court Hearing had been held and therefore the Superior Court had no jurisdiction to issue such an order. As the District Judge laid his head in his hand and asked, "Well, why are we even having the hearing?" I politely informed him they should take me out back of the courthouse, give me a Lucky Strike, and judiciously blow my brains out. I was immediately taken back to the death row unit.

Death row is not a bad place if you do not mind the aura of gloom and despair that hangs overhead like a permanent light fixture. It is not bad if you do not mind watching the guards lead the next victim down to the death house to await his impending execution.

It was after that June 9th, 1999, hearing that I lay on my steel bunk one night and realized I had to represent myself. I had to fight for myself; no one else could speak for me. No one else felt what I was feeling and no one else

would take my place for that final walk to the death chamber, to be murdered by the government. I had to fight harder than I had fought in the 1988 hostage-taking case where I was the first person ever charged under Ronald Reagan's 1984 *Anti-Terrorist Act*.[2] I represented myself in that case, after the Judge had removed my attorney William Kunstler, and the jury found me not guilty on all counts. But this was different, they were—and are— trying to kill me this time. I had to develop my own strategies and speak for myself. I, and I alone, had the passion that stems from the threat of death; no state-sponsored attorney had that passion.

As soon as I had decided to act *pro se* (to represent myself in court), I was hit hard in the face with the fact that the prosecution was going to come fast and hard at convicting me. On June 10, 1999, a local newspaper ran a lengthy editorial calling me a terrorist and a murderer, among other things. The Senior Resident Superior Court Judge for Robeson County, Dexter Brooks, who had just days before signed the *ex parte* order denying me bail and sending me back to the death row unit, began a campaign to taint the minds of potential jurors. Judge Brooks made numerous copies of this derogatory editorial and proceeded to mail copies to individuals and organizations. The purpose was to discredit me and turn as many of my supporters away from my camp as he could. It was when I learned of the judge's activities that I filed a motion to act *pro se* and a motion to *recuse* (remove) Judge Brooks from the case.

For reasons unknown, Prosecutor Johnson Britt wasted no time scheduling a hearing on the *pro se* motion. The date was set for July 8, 1999. Two days before the hearing I received an order from Judge Brooks, announcing that he had excused himself from all matters relating to *State vs. Eddie Hatcher*. I knew what action I would take with regard to Judge Brooks' actions, but that would come at a later date.

On July 8, 1999, I appeared before Judge Frank Floyd on my motion to act *pro se*. For at least one hour, the judge questioned me regarding my desire to represent myself. At one point it seemed as though he was willing to do anything if I would just let the attorneys represent me. I informed the judge that I was being held on North Carolina's death row where I was allowed no contact with court-appointed attorneys. I was allowed no telephone access with my attorneys and I felt I could best represent myself.

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[2] For more on this and other events, see http://www.eddiehatcher.org.

At one point, Judge Floyd even asked, "Is there any private attorney you want to represent you?" I was adamant, stating that I could and would represent myself. At the public show urging of Prosecutor Johnson Britt, Judge Floyd appointed stand-by counsel. I advised the court to inform everyone of the exact meaning of stand-by counsel. At that point I moved the court to order that the state allow an examination for discovery, yet this was denied.

Over the next few weeks I analyzed the situation. I asked my mother to order several law books for me that I needed to help prepare motions. Even though I felt I could perform better litigation in this case than most of the local attorneys, I knew that stand-by counsel were limited as to what they could do. Since one of the assault with deadly weapons charges was actually a separate set of circumstances from the charges stemming from the drive-by shooting, I made long-range plans and moved to sever the two cases. On August 9, 1999, I appeared before Judge William Gore for a Rule 24 hearing, which allows the prosecutor to formally advise the court that the state will seek the death penalty. Prosecutor Johnson Britt informed the court that pursuant to the statute (15A-2000), aggravating factors did exist, and therefore the death penalty did apply. Those aggravating factors were the previous charges against me for second degree kidnapping resulting from the takeover of the Robeson Newspaper in 1988.[3] The state had re-indicted me after my federal acquittal for the same actions; on my motion to sever the charges, the state had no objections and the motion was granted.

Had the prosecutor known my eventual intentions, I am sure he would have objected. At this hearing I also motioned the court to have me transported to the alleged crime scene to view the house and area. This motion was granted and the judge ordered the sheriff to transport me to the scene and there be uncuffed so I could take notes. The sheriff never obeyed this order. The judge also gave the prosecutor sixty days to turn over all discovery[4] as well as *Brady* material, as I had motioned under *Brady*.[5] The judge also ordered that I would be allowed to have private, contact visits with my private investigator at Central Prison.

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3 For more on this and other events, see http://www.eddiehatcher.org.

4 Discovery is the process whereby the state discloses evidence to be used against the accused so they may prepare an adequate and relevant defense.

5 From precedent first established in *Brady vs. Maryland* (1963), regarding the disclosure of evidence in possession of the state, especially evidence that may be exculpatory.

As before, I was immediately returned to the death row unit at Central Prison. I began to face the fact that I was at a severe handicap in attempting to represent myself from the lockdown control unit known as death row. But I also knew the appellate courts and the North Carolina Supreme Court would not overturn the Superior Court order that had sent me to Central Prison. The high courts do not like to interfere in judgments of inferior courts, especially in pretrial matters. So, for me to have the materials and access I needed to prepare a proper defense, I knew I would have to be housed at the Robeson County Detention Center and not at Central Prison.

I began to study the Georgetown Law Journal and other case law I had collected. Also, prisoners on death row began to smuggle case law to me, all knowing what I was up against and struggling to help me any way they could. But the determination to seek a higher court review did not take hold until about three weeks after Judge Gore had issued the order for private interviews with my private investigators. The PI came to Central Prison to interview me but Warden R. C. Lee, a hard-nosed conservative, refused to honor the order and denied the court-ordered visit. I then felt I had to come up with a theory the appeals courts would at least listen to. In early September 1999, I drafted and filed a petition for writ of *habeas corpus* before the North Carolina Court of Appeals asking the court to determine four basic issues.

I asked the court, under *Faretta vs. California, 422 US 804* to determine if I did in fact have a constitutional right to act *pro se* even in a capital case and if I did, whether I also had the right to have: (1) access to a law library; (2) private telephone access with expert and defense witnesses; (3) private contact visits with expert and defense witnesses; and (4) uncensored mail from expert and defense witnesses. I argued that a petition for writ of *habeas corpus* was not only a mechanism to call for the release of someone physically detained illegally, but also a viable remedy to challenge the legality of any restraint of one's liberty. Herein, I contended that my being denied these basic constitutionally guaranteed liberties was indeed a restraint on my liberty and thus the petition for writ of *habeas corpus* was the appropriate method to correct such restraint.

Only three days after filing the petition before the Court of Appeals, my petition was denied on its face. Already knowing this would more than likely happen, I had already prepared another similar petition to be filed with the Supreme Court of North Carolina. I immediately filed my revised petition

for writ of *habeas corpus* with the North Carolina Supreme Court and waited. However, in the meantime I searched for additional case law supporting my contentions that a *pro se* defendant was in fact entitled to the same necessary amenities as any defense attorney would be afforded. However, there was no North Carolina case law on *pro se* defenses. After almost three weeks I received a notice stating that the North Carolina Supreme Court had in fact met in conference and my petition had been denied.

The fact that the highest court in the state was allowing me to be housed on North Carolina's death row with no means whatsoever to prepare my defense in a capital murder case was extremely frustrating and depressing. For days I analyzed the situation and tried to figure out how the court could completely and without comment, allow this travesty. After more than a week of feeling totally helpless and abandoned by the law and the courts, I began to debate whether I should bother to take my claim to Federal Court. Knowing that all of the Federal District Court Judges in the Eastern District of North Carolina are white and very Republican, I surmised my chances of any legal relief were further than remote. Moreover, with the Fourth Circuit Court of Appeals in Richmond, Virginia, being likewise white and Republican, I quickly decided I would be wasting time, effort, and paper approaching the federal courts with constitutional issues.

Eventually I decided to go back to the State appeals courts but to use a different approach. First, I redrafted my pleas into a petition for writ of *mandamus*, asking the North Carolina Court of Appeals to mandate that I did have a constitutional right to those four basic privileges. However, at the same time I drafted a petition for writ of *certiorari*, citing not only *Faretta*, but also a North Carolina Supreme Court case, *State vs. McDowell, 301 ATC279*, wherein the court held, "It is the manifest responsibility that the state provide an indigent defendant with the effective assistance of counsel and the other necessary resources which are incident to presenting a defense." I then filed the petition for writ of *mandamus* with the North Carolina Court of Appeals and simultaneously filed the petition for writ of *certiorari* with the North Carolina Supreme Court, citing that there were questions of constitutional significance therein. I further asked the court to review whatever decision the North Carolina Court of Appeals reached with respect to the writ of *mandamus*.

In November 1999, I realized I had finally taken the correct approach as the North Carolina Supreme Court notified me they had granted *CERT* on

my petition for writ of *mandamus*, which the North Carolina Court of Appeals had just denied. On December 2, 1999, the Supreme Court of North Carolina held that it was remanding the issue to the Superior Court of Robeson County to determine if I did in fact have a constitutional right to access a law library; have private telephone access with expert and defense witnesses; have private contact visits with expert and defense witnesses; and access to uncensored mail from expert and defense witnesses. Moreover, on the high court's own motion, the court held *ex mero motu* that the Superior Court should re-determine if it would not be more appropriate to house me at the Robeson County Jail where I would be better able to prepare a proper defense.

When word spread through the legal community of Robeson County that I had won a pretrial order from the North Carolina Supreme Court, lawyers and judges questioned how this could have happened. It took one month to finally schedule a hearing in the Superior Court, and on January 3, 2000, I appeared before Judge Frank Floyd. The state produced two witnesses—the jail administrator and the jail doctor—in an attempt to show that the jail was not equipped to house me, presumably because of my HIV status. However, after a four-hour hearing the judge ruled there was no reason that I should not be housed at the Robeson County Jail, and ordered that I be detained there instead of the Death Row Unit. The judge also ordered that my incoming mail would not be subject to censorship.

On February 16, 2000, I appeared before Judge Greg Weeks on the issue of private contact visits with expert and defense witnesses. He held that I did in fact have a constitutional right to interview my witnesses in a private contact setting. While issuing this order, he paused and ordered the bailiff to summon the sheriff of Robeson County to the courtroom so there would be no misunderstanding. With the sheriff seated in the courtroom, Judge Weeks ordered that I did in fact have a constitutional right as a *pro se* defendant to interview my witnesses in private. He also ordered that any interference by jail staff would be dealt with swiftly.

It was soon after the February 16, 2000, hearing that I felt the time was right to move on the strategy I had began with the motion to sever the assault with a deadly weapon charges. On April 3, 2000, I informed Judge Weeks that I was overwhelmed because of the amount of work the capital murder case entailed. I asked for the appointment of counsel in the assault with a deadly weapon charges. Judge Weeks then appointed Ms. Sue Berry, my stand-by counsel in the capital case, to represent me in the assault case.

With the jail already having a small law library, the only remand not yet addressed was the telephone access issue. On April 10, 2000, Judge Greg Weeks stated, "Let me take the bull by the horns," and proceeded to order and direct the sheriff of Robeson County to install, completely separate from the jail telephone system, a private telephone line in one of the private attorneys' rooms for my use only. He further ordered the telephone to be installed in my name with the bill to be delivered to the law office of my stand-by counsel. Moreover, he ordered that I would be allowed to use this phone every day, seven days a week and I presently use it approximately one hour during the day and two hours after 7:00 P.M.

In drafting and litigating these issues before the North Carolina Court of Appeals and the North Carolina Supreme Court, I was unable to raise any precedent law on the subject of *pro se* defendants because to my knowledge there was none. I do not know how much case law exists in other states regarding the constitutional rights of *pro se* defendants in criminal cases, especially pertaining to the four basic issues covered in this article. However, I think the law is now well enough established in *North Carolina vs. Hatcher, 99 CRS 11219-11221* that it can be used by future *pro se* defendants in North Carolina, where these four basic necessities are held to be constitutional rights.

**Eddie Hatcher** is currently defending himself from jail in Robeson County, North Carolina. His case is covered in more detail on www.eddiehatcher.org and he can be reached at 122 Legend Rd., Lumberton, North Carolina 28358, U.S.A. The Eddie Hatcher Defense Committee can be contacted at P.O. Box 2702, Pembroke, North Carolina 28372, U.S.A., telephone (910) 582-2764.