The Road to Eco-Serfdom

Five years ago, Diana Luppi was a successful novelist and screenwriter, and the owner of a beautiful home near Pagosa Springs, Colorado. Today she is homeless, debt-ridden, and saddled with a spurious criminal conviction. Tried by a federal district judge rather than a jury of her peers, Luppi was sentenced to six months in prison and hammered with a $5,000 fine — a sentence that was suspended in favor of two years of probation, on the condition that she sign away her property rights. Through a federal agency's creative application of an obscure provision of the 1996 counter-terrorism law, Luppi was effectively designated a "terrorist" in order for federal officials to slap two $5,000 liens on her home.

What heinous offense did Diana Luppi commit? Simply put, Luppi, an "inholder" (a landowner whose property is surrounded by federal lands), was seen going home, on several occasions, by multiple witnesses. In order to do so, she had to use the only route by which her home could be reached, a road to which she had clear and unambiguous right-of-way. In 1996, shortly after she had purchased the home, the Forest Service demanded that Luppi — like all of her neighbors — sign an "easement" agreement through which she would pay for the privilege of using that road. Luppi's refusal to cooperate precipitated the legal nightmare she now endures.

"The federal government has essentially ruined my life," Luppi told *The New American*. "My home is gone, my credit is ruined, my career has been disrupted, I've got no place to live except when I'm house-sitting for someone. I just can't bear any more in my life, but I've got to fight this battle — someone has to."

According to David Engdahl, a former assistant attorney general for the state of Colorado who currently teaches at Seattle University School of Law, Diana Luppi's predicament is a microcosm of the ongoing battle over the fate of property rights in the western United States — and across the country. "Diana Luppi's case is a good example of the methods being used by the Forest Service and the Department of the Interior to shut down public access to federally controlled lands throughout the West," Engdahl told *The New American*. "The Forest Service, the Bureau of Land Management [BLM], and the Interior Department have been looking for a way to minimize public access to these lands, and they will take advantage of anything they can toward that end. They have repeatedly displayed their willingness to ignore anything that stands in their way — including the basic rights of citizens, the existing federal statutes, and the clearly expressed will of Congress."

Road Wars

The tract of land purchased by Luppi in June 1995 was originally owned by J.D. Lister, a settler who obtained the property under the Homestead Act of 1862. That property is now within the boundaries of the San Juan National Forest Reserve, which was created by a presidential proclamation in 1905. However, because Teddy Roosevelt's decree excluded "all lands which may have been, prior to the date hereof, embraced in any legal entry covered by any lawful filing duly of record in the proper United States Land Office," it became what is now known as an "inholding" — an island of private property surrounded by federal lands. Lister obtained a patent to the land in 1919.

Luppi's sole means of reaching her property were two short road segments — "Forest Development Road 629" and a short access road that was connected directly to her property. These are the same roads that Lister had used almost a century and a half ago. They appear as wagon roads in a map that

was produced by the Army in 1881. This fact is crucial to Luppi's right-of-way claim. During the summer months, Forest Road 629 is open to the public. But during the winter, U.S. Forest Service officials close and lock the gate below the access road that was used by Luppi and several other property owners. Property owners were allowed to pass through the gate and use Forest Road 629 to gain access to their homes — but only after they signed easement agreements with the Forest Service and paid an annual fee.

All of the area homeowners, including the previous owner of the property Luppi purchased, signed the easement agreements. When Luppi was informed by the Forest Service in April 1996 that she needed to transfer the easement agreement to her name and pay a small fee, she was puzzled by the idea. "I had gone through the closing on the property without the Title company telling me that there would be a problem of this sort," Luppi explained to *The New American*. "Besides, it seemed strange to me that I would have to pay for the privilege of having access to my own home. In spite of that, I did inform the Forest Service that I would be willing to cooperate, if that's what the law requires." However, as Luppi investigated the issue further she came to the conclusion that "I was being asked to pay a fee to sign my property rights away to the Forest Service." Because she balked at this proposition, Luppi soon found herself in court, facing criminal charges without the benefit of counsel or a jury trial.

Legal Labyrinth

In early 1998, the Forest Service filed a "criminal information" document charging Luppi with using the access road without authorization on three occasions between February 1997 and February 1998. These supposed offenses were classified as "petty misdemeanors" punishable with a maximum sentence of six months imprisonment and a fine of up to $5,000. She had not been accused of committing acts of violence or vandalism, or of injuring persons or property. She was charged as a criminal for simply going home.

The convoluted nature of the statutes involved in this case gave Forest Service officials both a psychological and tactical advantage. They were able to use the *threat* of a prison term and an extortionate fine as leverage to induce Luppi to sign an easement agreement. However, by seeking a sentence involving prison time, the Forest Service would be required to make their case to a jury — something they did not want to do. "I'm pretty sure that a jury would have found it as bizarre as I did that I was being treated as a criminal for driving home," Luppi commented to *The New American*. Accordingly, the prosecution announced that it would decline to seek a prison term — thereby allowing the case to be heard before a federal magistrate judge, rather than by a jury of Luppi's peers.

With no legal training and only a vague understanding of the legal issues involved, Luppi mounted a defense based upon the argument that the lands in question were not owned by the Forest Service, but rather by the state of Colorado. However, Luppi's case turns on a much narrower issue — namely, the question of right-of-way on the ancient access roads.

In January 2000, under the threat of prison time and a $5,000 fine, and with two $5,000 liens placed upon her property by the feds, Luppi signed an easement agreement and made a token payment of $50.00 toward the balance of $650.96 in fees demanded by the Forest Service. As she did so she stipulated that she was acting "under duress." Satisfied that Luppi had made the necessary concessions, the feds filed notice with both the federal District Court and the Tenth Circuit Court of Appeals that the criminal case against Luppi was being terminated. As far as the feds were concerned, the issue was now moot, and the point had been made.

By the time she signed the easement, Luppi had lost her home. Her legal battle against a foe with limitless resources had depleted her savings, and exhausted her access to credit. “I was trying to fight this battle from cheap motel rooms, and conducting my legal business by pay phones,” she pointed out to *The New American*. “Under the terms of my probation I was locked out of my home, but under the terms of my mortgage I was still required to make payments on it. But the legal bills I ran up meant that the payments didn’t get made, and the bank foreclosed on my home.”

The two $5,000 liens on her home further compounded Luppi’s problems. The liens were filed pursuant to section 901 of the “Antiterrorism and Effective Death Penalty Act of 1996,” a measure that was passed in the aftermath of the Oklahoma City bombing. While the measure was being debated in Congress, some of its proponents admitted that they could not anticipate its impact upon innocent Americans. “It is disturbing to me when the Congress is faced with a decision to increase protection for the people by chipping away at the edges of freedom,” allowed Senator Patty Murray (D-Wash.), a supporter of the act. “We have no idea what kind of mistakes will be made, or whose rights will be infringed, when this bill is implemented.”

How did it happen that a measure supposedly intended to freeze the assets of terrorists in the employ of Hamas, Hezbollah, and the IRA was used against Diana Luppi? The U.S. attorney’s office devised a remarkably inventive — if not patently dishonest — legal rationale: The “criminal information” filed against Luppi charged her with three counts of committing crimes “within the special maritime and territorial jurisdiction of the United States” — that is, within the San Juan National Forest. Section 901 of the 1996 antiterrorism act applies the provisions of that law to areas within the “Special Maritime and Territorial Jurisdiction” — but only with reference to crimes committed upon the “Extended Territorial Sea.” Nothing in Section 901 of the antiterrorism act applies to crimes committed on national forest lands. Nonetheless, the feds — displaying the depraved creativity that is the hallmark of the totalitarian mind — invoked that provision to justify placing liens upon Luppi’s home.

In recent years, various “sovereign citizen” activists have urged their followers to place bogus liens upon the property of judges, sheriffs, and other public officials. The use of such liens has been denounced by the Anti-Defamation League and other leftist “watchdog” groups as “paper terrorism.” The use of clearly spurious liens against Diana Luppi must be considered an act of “paper terrorism” perpetrated by the U.S. attorney’s office — and once again, the purpose of this terror campaign was to bully Luppi into surrendering her property rights.

“I would have to describe the tactics of the federal government in my case as a form of racketeering,” Luppi stated to *The New American*. “They’re just like gangsters, but even worse, because they are supposed to be upholding the law and defending our rights.”

Federal Scofflaws

Although federal officials had an obvious advantage in terms of money and legal firepower, Luppi had the written law on her side. As Engdahl explained to *The New American*, “Diana Luppi has a sound and compelling case, despite the very flawed legal strategy she initially pursued.” Engdahl outlined the salient points of that case in a memo prepared for a federal public defender assigned to represent Luppi. “It is evident … that Ms. Luppi *does* own a right-of-way over the National Forest land in question to access the inholding containing her home,” wrote Engdahl. “That right-of-way was granted by Congress, and federal statutes protect it from Forest Service or other federal officer interference or constraint. If (as it appears) she does own this right-of-way, no ‘special-use authorization’ can lawfully be required of her.”

In 1866, seeking to encourage settlement of the West, Congress passed a measure declaring: "The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." (The term "highways," in this context, includes wagon roads, footpaths, and other such avenues; "construction" is defined not as a public works undertaking, but rather any effort that results in the creation of such a road.) This grant was re-enacted in 1878 as section 2477 of the "Revised Statutes of the United States" (RS 2477). This provision, observed Engdahl, was "the legal foundation for the infrastructure of transportation and civilization in the American West. Tens of thousands of access roads for farms, mines, and other private developments, as well as very many of the public highways in Colorado and other so-called 'public land states,' are RS 2477 roads."

RS 2477 remained in effect until the passage of the Federal Land Policy Management Act (FLPMA) in 1976. Section 509 of FLPMA stipulated that the measure did not terminate "any right-of-way or right-of-use heretofore issued, granted, or permitted" under RS 2477. This "grandfather clause" protected all existing rights-of-way — including that which had been given to J.D. Lister who settled in what is now Pagosa Springs, Colorado, more than a century ago.

J.D. Lister, the original owner of the property bought by Luppi, "accessed his homestead by the roadway here at issue (which was the only road), and continued using it pursuant to RS 2477" until he obtained a land patent in 1919, Engdahl explained. Under the terms of Lister's 1919 land patent, the United States conveyed to the settler the parcel of land "with all appurtenances thereof, unto the said claimant, and to the heirs and assigns of the said claimant." Because Luppi's property "is a part of the old Lister homestead, and her title and rights are derived from his patent," she acquired "the RS 2477 right-of-way over the only route of access to the property," Engdahl observed.

"Even if that road (already two generations old) had not yet become a public highway, its use was (in legal jargon) an 'easement appurtenant' to the Lister Homestead," Engdahl pointed out. "Ms. Luppi does not need to buy an easement [from the Forest Service]; she already owns an ample legal easement.… Indeed, ironically, the new easement she is being coerced to buy recites expressly that it is 'subject to existing easements and valid rights'; her new easement would therefore be subject to the greater easement she already has, and thus by its terms superfluous."

But the easement Luppi was forced to sign was not merely "superfluous." The "reservations" clause of the document specified that the easement is "subject to periodic unilateral change of terms and conditions by the Government," that Luppi would be liable "to pay for road maintenance as determined solely by the Government," and that the Government would have the option of relocating the road at whim. The actions of the Forest Service in coercing Luppi to sign the easement agreement, Engdahl concluded, represented "a lawless affront to the rights vested in her by explicit grants from the United States."

Operation ROAD-RIP

Of course, the lawlessness described by Engdahl was typical of the Clinton administration in general, and of Bruce Babbitt's Interior Department in particular. In 1991, while acting as head of the League of Conservation Voters, an environmental lobby, Babbitt stated in a fund-raising letter: "We must identify our enemies and drive them into oblivion." It was in pursuit of that malign design that Babbitt acted as one of the primary architects of the Clinton-era land lock-up — including tens of millions of acres set aside as new or expanded "national monuments," and the designation of nearly 60 million acres of "roadless" areas in national forests.

Behind this immense landgrab was an even more grandiose vision: The Wildlands Project, a UN-approved plan to convert at least half the surface area of North America into one seamless wilderness preserve. As the January 22nd *Tucson Citizen* pointed out, each time "President Clinton banned road building and logging in parts of national forests … he helped propel The Wildlands Project's dream closer to reality." The UN's Convention on Biological Diversity, which was signed by Bill Clinton in 1993 but has yet to be ratified by the Senate, effectively mandated the implementation of the Wildlands Project.

Writing in *Science* magazine, Charles C. Mann and Mark L. Plummer observed that in the initial phase of the Wildlands Project, "most roads would be closed; some would be ripped out of the landscape." Toward that end the Wildlands Project created an affiliate called ROAD-RIP — the "Road Removal Implementation Project" — headquartered in Missoula, Montana. ROAD-RIP describes itself as "a coalition of concerned individuals and grassroots wilderness groups from across the country, led by the Wildlands Project and Biodiversity Legal Foundation, [which] seeks the protection and recovery of large-scale wilderness and biodiversity by closing and removing roads and by preventing new road construction on U.S. public lands." ROAD-RIP has employed its "visionary strategy that integrates conservation biology with law" to shut down roads in Redwood National Park, the Lolo National Forest, the Flathead National Forest, and the Gifford Pinchot National Forest. However, ROAD-RIP also seeks to shut down roads that have historically been beyond federal government control — and, as was invariably the case, Bruce Babbitt's Interior Department was on the same page as the radical environmentalists.

In August 1994, Interior Secretary Babbitt announced that the department would conduct an "inventory" of RS 2477 roads in order to assess the validity of right-of-way claims. The timing of that announcement is significant, due to the fact that the UN's Biodiversity Convention was before the Senate and ratification seemed likely. However, as previously recounted in these pages, the ratification effort stalled on September 30 after its "implementing protocols" — which used the Wildlands Project as a model for preserving "biodiversity" — were made available for the Senate's inspection. But at the time Babbitt announced his "inventory" of RS 2477 roads, he had every reason to believe that the first phase of "Operation Road Rip" would proceed without a hitch.

Once again, the eco-lobbyists ran into a significant obstacle. Babbitt's announcement was immediately met with widespread criticism from state and local officials in the western states, who understood that the only purpose to be served by such an "inventory" would be to abolish the existing right-of-way claims. "No matter how big or how clearly valid a right-of-way is," commented land-use attorneys Barbara Hjelle and Steve Urqhardt, "Interior's regulators would require the owner to either meet a series of rigorous requirements or lose the right-of-way."

In 1995, reacting to the outcry from the West against Babbitt's proposed "inventory," Congress passed an amendment to the federal highway construction bill that forbade the Interior Department to impose new regulations on RS 2477 roads. However, that moratorium expired on September 30, 1996, and Congress failed to renew it. So in a January 1997 memorandum, Babbitt reinstituted his August 1994 policy asserting federal control over RS 2477 roads throughout the West. Only those who had "a demonstrated, compelling and immediate need" for a determination of right-of-way would be granted a review by the Interior Department, decreed Babbitt. Other claims would have to wait for formulation of "final rules" governing right-of-way for state, county, and private roads on federally controlled lands. "Those making claims of the existence of valid RS 2477 rights-of-way … [also] have the option of

seeking to establish the validity of their claims in court," contended the January 1997 Babbitt memorandum.

In other words, Babbitt's Interior Department simply ignored the law, defied the obvious intent of Congress, and re-assigned the burden of proof. Now it was incumbent upon private inholders, counties, and states to prove that they had a "compelling" need for right-of-way. Absent such a dispensation from the Interior Department, claimants had the unappetizing option of suing the federal government in federal court to vindicate their claims.

As David Engdahl asserted to *The New American*, "the Forest Service and Interior Department have been shutting down roads all across the West, and locking up millions of acres of land with a complete disdain for the law and for basic rights.… Diana Luppi's case is a good example of what's going on, but it's not an isolated one. It has ramifications that extend across the West, and if she were to succeed in her effort to vindicate her rights, the effect would have an impact far beyond her own situation." Diana Luppi's frustration over the injustice she has suffered is compounded by the ignorance and timidity of some elected officials. "Where has Congress been while this is going on?" declared Luppi to *The New American*. "Why are they allowing these abuses to occur? Why are so many Sheriffs and County Commissioners unwilling to fight for their rights and those of their constituents?"

"When I went into this mess I was anything but a so-called 'anti-government extremist'," continued Luppi. "I honestly believed that I was dealing with a misunderstanding, and that the government would eventually admit it was wrong. Now I know better, after losing my home, going through what must be called a Star Chamber-style court, and being left belly-up. I'm pretty sure that my case was intended to set a precedent to be used against other landowners here in the West. What has been done to me can be done to any other property owner in this country."

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