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Protester=Criminal?

by Matthew Rothschild

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In many places across George Bush's America, you may be losing your ability to exercise your lawful First Amendment rights of speech and assembly. Increasingly, some police departments, the FBI, and the Secret Service are engaging in the criminalization -- or, at the very least, the marginalization -- of dissent.

"We have not seen such a crackdown on First Amendment activities since the Vietnam War," says Anthony Romero, executive director of the American Civil Liberties Union (ACLU).

This crackdown took a violent turn in late November at the Miami protests against the Free Trade Area of the Americas and at an anti-war protest at the Port of Oakland last April. In both cases, the police used astonishing force to break up protests. But even when the police do not engage in violence, they sometimes blatantly interfere with the right to dissent by preemptively arresting people on specious grounds.

Sarah Bantz is a member of the Missouri Resistance Against Genetic Engineering. Last May, she and several hundred others were gathering in St. Louis to protest against Monsanto and the World Agricultural Forum, which was meeting there.

On May 16, the first day of the protest weekend, Bantz and a small group of other activists went to the Regional Chamber and Growth Association to give their pitch on how biotech was hurting local farmers. After that meeting, she and her fellow activists piled into her van, but they were able to get only about a mile down the road when something unusual happened.

"All of a sudden there was one police car and then another, and I was pulled over," she recalls. "One officer came around and asked me to get out of the vehicle, which I did. The cop started to look through the van without permission. I had some Vitamin C pills sitting out, so they decided that was a drug and they were going to arrest me. They put me in cuffs and put me in the back of the car. They really had no grounds for arresting me, but I spent ten hours in jail." One reason they cited, along with the vitamins, was her failure to wear a seatbelt.

Bantz was scheduled to deliver three speeches at what organizers called their Biodevastation 7 Conference. "I gave none of them," she says. "For one, I was in jail, and for another I was talking to the police about why they detained me. And I was too frazzled to give the third. It was all unbelievable."

That same day, the Flying Rutabaga Bicycle Circus expected to take part in the protests. "We are a group of concerned bicyclists, puppeteers, musicians, farmhands, clowns, cheerleaders, activists, eaters of food, and drinkers of water," the circus says on its web page. "We are united in a quest to seek out food (that's our fuel) that is not tampered with by biotechnology companies. We ride for diversity, organic farming, and biojustice everywhere."

But they weren't allowed to ride in St. Louis.

"We set off on our bicycles for our first performance, a small skit, to let the protesters know about our Caravan Across the Corn Belt tour," says Erik Gillard, one of the Flying Rutabagas, who was riding with eight others. "We were following traffic rules when a big police paddy wagon pulled up with its light on. Gradually, more police officers arrived, and they told us we had to leave our bicycles. We were all arrested for operating our bicycles without a license."

There is no such offense in St. Louis, the ACLU of Eastern Missouri says. Afterward, Police Chief Joe Mokwa said the arresting officer was "overenthusiastic," according to the *St. Louis Post-Dispatch*.

After a while, the police changed the charge to "impeding the flow of traffic on a bicycle," Gillard says. "It was written up for some intersection ten blocks from where we were all picked up." He says the police detained the group for six or seven hours. "All of our journals that contained phone directories or e-mail lists or information about where we were going to stay were taken and never returned," he says.

Also on the same day, the police raided the Bolozone, an activist group home where many of the cyclists were staying. Reminiscent of police raids in Washington, D.C., during the 2000 World Bank-IMF protests, this one succeeded in detaining people prior to the demonstration.

One of the residents of the Bolozone, Kelley Meister, a political activist and artist who identifies herself as an anarchist, was there the morning of that raid.

"I was out in the alley painting a sign," says Meister, "and one cop car drove up and then four more. Two officers came toward me, and I said, 'Hi, can I help you? I live here.'"

"And they said, 'This building is condemned.' And they started to walk past me.

"I said, 'Do you have a warrant? I don't give you permission to enter my house.'"

"The reply was, 'We don't need a warrant. This building is condemned.' " The St. Louis housing inspector, who came with the police, brought a condemnation notice with him, she says.

The owner of the building, Dan Green, had been working cooperatively with the city for months while rehabbing it, according to Denise Lieberman, legal director of the ACLU of Eastern Missouri. The timing of the raid makes it clear that the police used a "bogus housing inspection to conduct a criminal search without a warrant," she says.

"They arrested me and two of the cyclists, and charged us with occupying a condemned building," Meister says. "They put us in handcuffs, and placed us in a police van. I could see them carrying things out of the house, such as art from my room and bags of stuff. I was taken to the station and held for fifteen hours. Some of the others were held for twenty hours."

The police did not let Meister back in her home for five days. "When we finally got inside, we realized that they had ransacked the house from top to bottom," she says. The police also confiscated the bikes, puppets, props, posters, and banners of the Rutabaga Circus cyclists who had been staying at the Bolozone. When they got their bikes back after the weekend was over, many of their tires were slashed, Gillard says.

Meister says she's considering suing the police. And so is the ACLU of Eastern Missouri.

Richard Wilkes, public relations officer for the St. Louis Police Department, says "the department really doesn't have a response" to the allegations about raiding the house or detaining protesters or cyclists. "None of those things had anything to do with preventing people from protesting," he says.

It's not every day that a sitting judge will allege he saw the police commit felonies. But that's what Judge Richard Margolius said on December 11 in regard to police misconduct in Miami during the protests against the Free Trade Area of the Americas (FTAA) in late November.

Judge Margolius was presiding over a case that the protesters brought against the city. In court, he said he saw the police commit at least twenty felonies, Amy Driscoll of the *Miami Herald* reported. "Pretty disgraceful what I saw with my own eyes," he said, according to the paper. "This was a real eye-opener. A disgrace for the community."

Police used tasers, shock batons, rubber bullets, beanbags filled with chemicals, large sticks, and concussion grenades against lawful protesters. (Just prior to the FTAA protests, the city of Miami passed an ordinance requiring a permit for any gathering of more than six people for longer than twenty-nine minutes.) They took the offensive, wading into crowds and driving after the demonstrators. Police arrested more than 250 protesters. Almost all of them were simply exercising their First Amendment rights. Police also seized protest material and destroyed it, and they confiscated personal property, demonstrators say.

"How many police officers have been charged by the state attorney so far for what happened out there during the FTAA?" the judge asked in court, according to the *Herald*. The prosecutor said none. "Pretty sad commentary, at least from what I saw," the judge retorted.

Even for veterans of protests, the police actions in Miami were unlike any they had encountered before. "I've been to a number of the anti-globalization protests -- Seattle,

Cancún, D.C. -- and this was different," says Norm Stockwell, operations coordinator for WORT, the community radio station in Madison, Wisconsin. "At previous events, the police force was defensive, with heavy armor hoping to hold back protests. In Miami, police were in light armor and were poised to go after the protesters, and that's what they did. They actually went into the crowds to divide the protesters, then chased them into different neighborhoods."

Stockwell says some reporters were mistreated, especially if they were not "embedded" with the Miami police.

"I got shot twice [with rubber projectiles], once in the back, another time in the leg," reported Jeremy Scahill of *Democracy Now!* "John Hamilton from the Workers Independent News Service was shot in the neck by a pepper-spray pellet." Ana Nogueira, Scahill's colleague from *Democracy Now!*, was videotaping some of the police mayhem when she was arrested, Scahill said. "In police custody, the authorities made Ana remove her clothes because they were pepper sprayed. The police forced her to strip naked in front of male officers."

John Heckenlively, former head of the Racine County Democratic Party in Wisconsin, says he was cornered by the police late in the afternoon of November 20. Heckenlively and a few companions were trying to move away from the protest area when "a large cordon of police, filling the entire block edge to edge, was moving up the street," he says. "As they approached, an officer told us that we should leave the area. We informed him that was precisely what we were attempting to do, and seconds later, he placed us under arrest."

Police kept Heckenlively in tight handcuffs behind his back for more than six hours, he says, adding that he was held for a total of sixty hours.

Trade unionists were particularly outraged at the treatment they received in Miami. John Sweeney, head of the AFL-CIO, wrote Attorney General John Ashcroft on December 3 to urge the Justice Department to investigate "the massive and unwarranted repression of constitutional rights and civil liberties that took place in Miami."

Sweeney wrote that on November 20, police interfered with the federation's demonstration "by denying access to buses, blocking access to the amphitheater where the rally was occurring, and deploying armored personnel carriers, water cannons, and scores of police in riot gear with clubs in front of the amphitheater entrance. Some union retirees had their buses turned away from Miami altogether by the police, and were sent back home."

Blocking access to the rally was the least of it. After the march, "police advanced on groups of peaceful protesters without provocation," Sweeney wrote. "The police failed to provide those in the crowd with a safe route to disperse, and then deployed pepper spray and rubber bullets against protesters as they tried to leave the scene. Along with the other peaceful protesters, AFL-CIO staff, union peacekeepers, and retirees were trapped in the police advance. One retiree sitting on a chair was sprayed directly in the face with pepper spray. An AFL-CIO staff member was hit by a rubber bullet while trying to leave the scene. When the wife of a retired Steelworker verbally protested police tactics, she was thrown to the ground on her face and a gun was pointed to her head."

The ACLU of Greater Miami is planning on filing several suits against the Miami Police Department, says Lida Rodriguez-Taseff, president of the group. "This was a clear abuse of power by the police, and an indiscriminate use of force," she says. "People who were retreating were being shot in the back with rubber bullets. One photojournalist, Carl Kesser, was filming the police, and he was hit in the head with a beanbag above his eye socket. If it had hit him a little bit lower, he could have lost his eye. The police were using tasers on people who were down, who were already restrained. These police officers were using these weapons as if they were Pez dispensers. They acted like as long as it wasn't a firearm, they could use the weapons to their hearts' content."

"We did what we had to do based on the situation at the time," says Miami Police Officer Herminia Salas-Jacobson. "If anyone has any concerns or questions, we've asked them to come forward, and we will address each one on an individual basis."

The police used \$8.5 million of the \$87 billion Congress appropriated for the Iraq War to patrol the streets of Miami. Police Chief John Timoney thanked his officers for their "remarkable restraint." And he won praise in some law enforcement quarters for what is being called the Miami Model.

By the way, Timoney was the police commissioner in Philadelphia during the 2000 Republican Convention, and his tactics then raised questions about the violation of protesters' civil liberties. Nonetheless, Timoney has consulted with the Democratic National Committee on security issues for the Democratic Convention in Boston this summer.

Seven months before the FTAA in Miami, police used brutal force on the West Coast. At the Port of Oakland on the morning of April 7, more than 500 anti-war demonstrators gathered to protest against two shipping companies that were involved in George Bush's Iraq War.

The police responded by firing rubber bullets, wooden pellets, and tear gas into the crowd. Nine members of Local 10 of the International Longshore and Warehouse Union were injured, as were at least thirty-one demonstrators. These forty individuals have filed a class action lawsuit against the city of Oakland and several Oakland police officers.

"I was hit on the back of the right calf as I attempted to run away from the police fire," wrote Willow Rosenthal, one of the plaintiffs, in her statement. "The entire back of my calf was blood red and swollen with a circular mark of broken skin about three quarters of an inch across in the center. The calf was numb about three inches around the point of impact, and I wasn't able to walk without assistance."

Another plaintiff, Scott Fleming, was "shot five times in the back, shoulder, and under his arms with wooden dowels fired directly at him as he fled," the suit says. The police also allegedly attacked at least two legal observers and two people videotaping the event.

"This was the most outrageous incident of unprovoked mass police violence the National Lawyers Guild has seen in our twenty years of providing legal support to Bay Area demonstrations," said National Lawyers Guild attorney Rachel Lederman, one of the lawyers for the plaintiffs, in a press release.

This case hopes "to reestablish the constitutional principle that the police cannot choose to impose the price of serious physical injury on persons engaging in nonviolent protest activities," said Alan Schlosser, legal director of the ACLU of Northern California, which is part of the case, as well.

"Overall, it was peaceful, but a small element began throwing things at the officers, and that's when the command officers decided to deploy less lethal munitions," says Officer Danielle Ashford of the Oakland Police Department. "Our chief has launched an internal review and has reassessed our crowd control policy to minimize injuries to all involved parties."

What happened in St. Louis, Miami, and Oakland "comes on the heels of more than two years of federal actions and policies that are antagonistic to free speech," says the ACLU's Romero.

One of these was Attorney General John Ashcroft's May 30, 2002, lifting of the Justice Department's strict guidelines curtailing domestic spying. Those guidelines dated back to the Ford Administration, but now the FBI is free once again to spy on protesters and to infiltrate their meetings in public places. This has raised fears of a return to the days of COINTELPRO, the FBI's counterintelligence program that spied on Martin Luther King and Malcolm X and infiltrated the Black Panthers and the American Indian Movement.

One of the most disturbing developments, says Romero, is "the easy conflation of dissenters with criminal suspects or even potential terrorists." He points to the FBI Intelligence Bulletin of October 15, 2003. This bulletin, which *The New York Times* exposed, refers to "extremist elements" who engage in "aggressive tactics." But it doesn't limit its attention to lawbreakers. "Even the more peaceful techniques can create a climate of disorder, block access to a site, draw large numbers of police officers to a specific location in order to weaken security at other locations, obstruct traffic, and possibly intimidate people from attending the events being protested," it says. And it does not distinguish between "extremists" and "activists." It says that "activists often communicate with one another using cell phones" -- a dazzling insight. They also may use recording equipment "for documenting potential cases of police brutality and for distribution of information over the Internet," it says.

Using cell phones or filming police brutality or disseminating information over the Internet can hardly be construed as illegal activity. But the FBI memo says, "Law enforcement agencies should be alert to these possible indicators of protest activity and report any potentially illegal acts to the nearest FBI Joint Terrorism Task Force."

Equating protesters with terrorists is not confined to FBI headquarters. Mike Van Winkle, spokesman for the California Anti-Terrorism Information Center, told the *Oakland Tribune* last year: "You can make an easy kind of link that, if you have a protest group protesting a war where the cause that's being fought against is international terrorism, you might have terrorism at that protest. You can almost argue that a protest against that is a terrorist act."

On February 8, 2002, Vice President Dick Cheney was visiting Evansville, Indiana, to campaign for Representative John Hostettler at the local civic center.

Environmentalist John Blair was walking on a public sidewalk nearby and was carrying a sign that read: "Cheney: 19th C. Energy Man."

Police ordered him to move to a "protest zone" more than a block away, and Blair refused, so they arrested him.

"I was arrested for nothing more than exercising my rights as a citizen in what I thought was a free country," Blair wrote in an article for *Counterpunch*, which broke the story.

Blair was at first charged with disorderly conduct. Then the prosecutor increased the charge to a Class A misdemeanor of resisting law enforcement, which could have cost him a year in jail.

But the case against Blair was quickly dropped. "I didn't think the evidence established a case that would be successful in court," says Stan Levco, prosecuting attorney for Vanderburgh County, Indiana. But he adds: "I don't think they were wrong to arrest him under the circumstances. They thought it was a safety issue, and I wouldn't second-guess them."

Blair is suing for \$50,000 in damages. "They shouldn't even have approached me in the first place," he says. "Carrying a sign isn't an illegal act in America. At least it wasn't before Bush-Cheney."

Blair's experience was hardly unique. Local police, on orders of the Secret Service, have literally been marginalizing critics of the President or Vice President into so-called protest zones far out of earshot and eyesight, the ACLU says.

On September 23, 2003, the ACLU sued the Secret Service for engaging in a "pattern and practice" of discriminating against those who disagree with government policies.

On September 2, 2002, in Neville Island, Pennsylvania, "protesters were sent to a 'designated free speech zone' located on a large baseball field one-third of a mile away from where President Bush was speaking," an ACLU fact sheet notes. "Only people carrying signs critical of the President were required to enter and remain. Many people carrying signs supporting the President and his policies were allowed to stand alongside the motorcade route. . . . When retired Steelworker Bill Neel refused to enter the protest zone and insisted on being allowed to stand where the President's supporters were standing, he was arrested for disorderly conduct and detained until the President had departed."

Similarly, when President Bush came to St. Louis on January 22, 2003, to tout his economic plan, one woman with a "We Love You President Bush" sign was allowed to stand near the building where the President was speaking. But Andrew Wimmer, who was standing next to her, was arrested for holding a sign saying "Instead of war invest in people."

Ann Roman, spokeswoman for the Secret Service, says, "We don't comment on pending litigation, but we don't make any distinction on the basis of purpose, message, or intent of any particular group or individual."

Eleanor Eisenberg is the executive director of the Arizona ACLU, but that did not stop police from arresting her on September 27, 2002. That day, Bush came to the Civic Center in Phoenix to raise money for two Republican candidates. A crowd of 1,500 protesters gathered across the street. But all of a sudden and for no discernible reason, the police, both on horseback and on foot, charged into the crowd, says Eisenberg.

"Shortly after the police started their charge, I saw them dragging a young man into the street and grinding his face into the pavement and being very abusive," she says. When Eisenberg, in her official capacity, went over to see what was going on, "a police officer whacked me with his horse's flank and sent me flying. And the next thing I know, I was being arrested."

Randy Force of the Phoenix Police Department says, "We stand by the facts in the police report on this case." That report states that the Secret Service ordered the area cleared and that police told Eisenberg "she was standing in a restricted area." It claims "she started taking photographs of other citizens being involved in disorderly conduct." After giving Eisenberg three orders to move, one police officer gave her "a small shove with his horse to move her," the report states.

"When you connect the dots -- the FBI bulletin treating protesters as terrorists, the pattern and practice of the Secret Service of corralling protesters in zones far away, the actions in Miami and San Francisco and elsewhere -- you see an increasingly hostile environment for groups that are expressing views that are divergent from the Bush Administration's," says ACLU Executive Director Romero. "Clearly, the government has put in place key policies and practices that try to shut down those that disagree with it."

Lieberman of the ACLU of Eastern Missouri puts it this way: "Law enforcement officers are telling people, if you have dissenting views you should think twice about expressing them. And if you don't agree to be invisible, you're going to be liable for criminal prosecution under whatever guise we can think of."

Looking back on her experience with the police in St. Louis at the World Agricultural Forum, Sarah Bantz strikes a philosophical note. "I guess I learned my lesson," she says.

And what is that lesson? "That these issues I keep hearing about -- of the increased use of police and military force in this country -- are real. They're not happening in the future; they're happening today."

Matthew Rothschild is Editor of *The Progressive*.

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