

Guest Column — on the occasion of Bill of Rights Day, December 15
Criminalizing Dissent
by Lynne A. Williams, Esq.

This is not the article I started out to write. What I wanted to write about was the Patriot Act and the way this Federal statute was giving license to federal, state and local law enforcement to curtail our due process protections, by blurring the line, which is more fluid than ever, between what law enforcement can do in the name of foreign intelligence and what it can do in the name of a domestic criminal investigation.

However, reality intruded. The last month was a very bad one for civil liberties and the First Amendment. So my rather abstract cautionary narrative about what might happen if we do not pressure Congress to repeal the Patriot Act morphed into a chronicle of actual events that should send chills up the spine of all of us who believe in the U.S. Constitution. It is no longer what might happen, but what is happening.

Oct. 15, 2003: Although widely reported in the November 23, 2003, edition of the New York Times, the F.B.I. Intelligence Bulletin entitled "Tactics Used During Protests and Demonstrations" was dated October 15, 2003. After making the statement that "Most protests are peaceful events," the memo goes on to note that some demonstrations, like International Monetary Fund and World Bank protests "are more likely to be violent and disruptive and to require enhanced law enforcement security." The memo then describes what the F.B.I. considers to be tactics traditionally used by demonstrators, including coordination of activities, fundraising, training, surveillance of locations prior to a demonstration, use of banners, use of cell phones for communication and videotaping of arrests. Even though none of these activities are illegal, the memo closes with the following directive: "Law enforcement agencies should be alert to these possible indicators of protest activity and report any potentially illegal acts to the F.B.I. Joint Terrorism Task Force."

Week of November 17, 2003, Miami, Florida: Tens of thousands come to Miami, Florida, to protest the Free Trade Area of the Americas (FTAA). They are met with brutal repression, a display of militaristic force by local law enforcement and an apparent suspension of the Bill of Rights. Protesters were subjected to illegal arrests, random searches, destruction of personal property, physical intimidation and physical and sexual abuse while in jail. Among those arrested are members of the independent media as well as the producer of "Democracy Now," along with legal observers and lawyers.

November 21, 2003: An interview with Gen. Tommy Franks, appearing in the December issue of "Cigar Aficionado," receives media attention. In this interview, Franks offers his thoughts about what might happen in a "practical sense" if a Western country, not necessarily the U.S., were hit with a massive casualty producing event. Franks suggests that if that were to happen, it would cause Americans to "question our own Constitution and to begin to militarize our country..."

November 23, 2003: Protests at Fort Benning, Georgia, location of the U.S. Army's School of the Americas. Protests have occurred here annually for the last 13 years, but this year the situation was particularly troubling. An Associated Press report on Nov. 23, 2003, includes the following statement made by an army officer: "We're on our side, just keeping an eye on them. We would like to see this get over with as peacefully as possible. We don't have any reason to think it won't." Yet, the experience of Kathy Kelly, activist with Voices in the Wilderness, tells us otherwise. Kelly was arrested, aggressively body searched, had her wrists and ankles cuffed, was hogtied, was untied and then had wrists and ankles shackled, received a black eye and was threatened with pepper spray. Of her ordeal, Kelly says the soldiers "must have been ordered not to tolerate the slightest dissent. They were practicing intimidation tactics far beyond what would be needed to control an avowedly nonviolent group of protesters" who had never before caused any disruption when being arrested.

November 2003: In April 2002, Greenpeace activists board a ship thought to be carrying illegally harvested mahogany. They are arrested and plead guilty to a misdemeanor charge. The Department of Justice then charges Greenpeace, the organization, with operating a criminal enterprise, under an obscure 1872 criminal statute. In November 2003, the D.O.J. amends the original indictment and hauls Greenpeace into Federal court to once again be arraigned, according to John Passacantando, Executive Director of Greenpeace USA.

November 2003: The California Attorney General's office releases new surveillance guidelines and advises local law enforcement to observe California's stricter standards when it comes to spying on the public. The new

guidelines were developed when it became public that for six months a Fresno sheriff's deputy posed as a peace activist with Peace Fresno so that he could attend meetings and spy on the group. The November 30, 2003, Boston Sunday Globe reports that when the Fresno Sheriff's department was asked about the new guidelines they indicated that they had no plans to change their methods and were unapologetic over the Peace Fresno spying incident. This is not about terrorism or locating terrorists or containing terrorists. Rather, it is about a dangerous push on the part of the United States Department of Justice to redefine certain free speech activities. No longer is non-violent dissent protected by the First Amendment. Quite the opposite, it is non-violent dissent that is the primary target of a law enforcement community that is flexing its newly developed muscles.

Why are we seeing increased repression of First Amendment activities?

Activists who care about peace, economic justice, the environment, gender equality, human rights and the other pressing issues of our day have not become more criminal. Rather, the semantics have changed. Behavior that used to be considered non-violent dissent is being redefined so as to place it squarely into the category of domestic terrorism, as defined in the Patriot Act.

Section 802 of the Patriot Act, passed in October 2001, soon after the horrific events of September 11, 2001, defines domestic terrorism as activities that "involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State and appear to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion."

Many Americans are complacent about these developments. I have heard it said that if you are not committing a crime, you have nothing to worry about. I would ask those folks to consider what organizations they belong to, what groups they associate with and what activities they engage in. Then, read closely the definition of domestic terrorism and see if your complacency is shaken, even just a bit.

The effect of this increased repression will ultimately be a chilling of dissent. Dissent, however, is not only valuable to our society, but absolutely necessary. Dissent has inherent value in and of itself. Only by tolerating, even supporting, dissent can we show that we value democracy achieved through an unfettered dialogue between opposing perspectives.

However, that dialogue cannot be confined to the halls of Congress, the state houses, city halls, town halls and the media, because not all perspectives have access to those channels. For example, if you rely on traditional mass media for your news, you probably would not have heard much about the incidents cited above. And, if we relied only on our elected officials to engage in this dialogue, the status quo would never be challenged.

The dialogue, therefore, must be taken to the streets, as it was by those participating in the Boston Tea Party, the women's suffrage movement, the civil rights movement, the anti-war movement, the anti-apartheid movement and all of the great, and ultimately successful, movements in this country.

Yet, for the first time in decades, I see a concerted effort on the part of the U.S. government to not only curtail dissent, but to criminalize it. This was brought home to me most recently when I was speaking with a client on the phone and she asked me if I was scared that my phone might be bugged. I replied that I was uncomfortable about it but not scared, since I was not doing anything illegal. However, somewhere inside of me I knew that legality would be no defense if the government really wanted to circumvent the Constitution.

Dissent is never neat or calm. Dissenters mess things up, stir us out of our complacency, makes us think, make us take sides. In a recent civil disobedience sentencing hearing in Bangor, Maine, Superior Court Justice Alan Hunter spoke eloquently about how civil disobedience makes us uncomfortable, and ended his remarks by saying "I'm not so sure that's a bad thing."

We are now at a critical juncture. We can accept our government's gradual whittling away of our constitutional rights, accept a burgeoning police state in the pursuit of national security. Or we can take the less comfortable road and register our dissent. The choice is ours. We do not all need to be in the streets. We can be in the courts, we can be in the schools, we can try to catch the attention of the media, all the while supporting our independent media. And we must be vigilant and never forget that these rights were not given to us but were taken by us. From the Bill

of Rights, through the 13th, 14th and 15th Reconstruction Amendments, through the 19th Amendment, giving women the right to vote, Americans have expanded rights, not given them up. We must not start now.

Postscript: December 3, 2003: The 9th Circuit Court of Appeals strikes down part of a 1996 federal statute that was a precursor to the Patriot Act. At issue was the government's definition of what constituted "material support" to terrorist groups and the court held that the statute's definition was impermissibly overbroad and therefore void for vagueness under the First and Fifth Amendments. The Department of Justice will likely appeal this setback.

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