

How the Government Spies on and Prosecutes Peace Activists

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Madison, WI — I was involved in a jury trial in Washington, DC October 20-24 for an action in the Senate gallery on March 12. In summary, five individuals, including me, were acquitted, and five people were found guilty. But what made this trial so unique was that the government attempted to hide illegally obtained and falsified evidence from us.

On March 12, 2008 at about 1:00 pm, ten activists went to the Senate gallery to again plead with our Senators to stop funding the war in Iraq. This action was organized by the National Campaign for Nonviolent Resistance (www.iraqpledge.org) The activists were Maria Allwine, Linda LeTendre, Max Obuszewski, Manijeh Saba, Tim Chadwick, Ellen Barfield, Judith Kelly, Eve Tetaz, Art Landis, and myself. We each wore a t-shirt that said, "WE WILL NOT BE SILENT" covered by a jacket or shirt and carried a small 12 inch square of cheesecloth. One-by-one, eight of us stood opened our jacket, put the cloth on head and proclaimed, "I am a ghost of the Iraq war. Innocent people have suffered and died as a result of the war. Stop funding the war." We were immediately arrested, but the Senators did hear our message. Judith and Art were not able to speak. They were arrested, for no cause, as soon as they stood up because the police believed they were part of our group. We were taken to jail and processed. Eight of the activists were held until about 1:00 am. Four of us were held for more than 30 hours, with no food or water and with painful shackles around our ankles for the last 13 hours. All ten of us were arraigned at around 7:30 pm on March 13 and we were all released at that time.

We were charged with disrupting Congress which carries a maximum of 6 months in jail. When there is the possibility of 6 months in jail, the court is required to give us a jury trial. We had a trial date set for September 29 with Judge Robert Morin. Judge Morin has a reputation for being fair and a champion of human rights. When I arrived in DC for the September 29 trial I was told that it was postponed because of scheduling problems on the part of the judge and the prosecuting attorney. So I made an unnecessary trip to Washington, DC. I believe that this type of thing is one of the many things the government does to try to make it difficult and dissuade us from continuing our dissent.

The trial was rescheduled for October 20. So, again, I flew to DC. As usual, nine out of the ten defendants made the decision to defend ourselves, pro se, with an attorney advisor working with us. We would divide up the roles of the trial among ourselves. By going pro se, we can say more about what we were doing and why than an attorney is allowed to say in the courtroom. Ann Wilcox was helping us as our attorney advisor, and Jack Barringer helped us all, though he was there primarily as attorney for Eve Tetaz. We had been corresponding by email to plan for the trial, and on the evening before the trial was to begin, October 19, we came together to continue our planning - a process that continued

throughout the five days of the trial.

Our defense was that we did not have the intention (having intent is a part of the statute that we were being charged with) of disrupting Congress. We went there to practice our First Amendment right to petition our government for a redress of grievances and to fulfill our Nuremberg obligation of speaking out when our government is acting illegally.

On Monday morning, October 20, we took care of some pre-trial matters with Judge Morin and Mr. Warren, the government prosecutor. A few months before the trial began, we received "discovery" from the government. Discovery is information that the government has and will be using as evidence during the trial. They are required by law to provide this to the defendants before the trial. It can include police reports, statements from witnesses, videos of the action etc. In the discovery packet was a report from Capitol Police officers stating that they knew we were coming to the Senate gallery on March 12. For several weeks we had been trying to get additional discovery so we could find out how the police knew we were coming, but the government denied they had any more information for us. So on Monday morning, Max again filed a motion asking for additional discovery so we could understand how the Capitol Police received the information that we were coming.

There has been a recent national news story revolving around the Maryland State Police (MSP) spy scandal, with the MSP illegally spying on peace, death penalty, and environmental groups. A few of the defendants in this trial have also been involved in this incident, being illegally spied on by the MSP. Because of this, we were suspicious about how the Capitol Police were expecting us in the gallery on March 12.

As we filed motions for additional discovery weeks before the trial, the government denied they had any more information. When we filed the motion again on Monday morning, the government again denied that they had any additional discovery to give us.

We waited in the halls of the courthouse most of Monday for a murder trial to conclude, but at 3:00 pm we began jury selection for our trial. After questioning the jury on everything from whether they knew any of the parties involved in the trial to whether they felt so strongly about the war that they could not render a fair verdict, we had a jury selected by 5:00 pm. Each side was able to strike three people from the pool with no questions asked. We were fairly satisfied with the final jury.

We were set to begin the trial on Tuesday morning. Before the jury was brought in, Mr. Warren, the prosecutor, said that he had just received a 26-page intelligence report from the Capitol Police for March 12, the day of our arrest. He said that he had not had time to look at it, but that he was told that there were three pages relevant to our case that he could give us. He said the rest of document contained sensitive security information and we could not have access to it. He provided us with the table of contents for the document and two pages with information on possible protesters in the Capitol area that was completely irrelevant to our action.

The trial then proceeded with the government's case after the opening statements by both sides. Linda LeTendre gave a powerful opening statement on behalf of the defendants, asking the jury how far we would allow the door of democracy to open. It was surprising that Mr. Warren raised no objections to any part of her moving statement.

The prosecutor called four witnesses. The first two witnesses were gatekeepers in the

Senate gallery. The first witness, in particular, was not a credible witness at all. He didn't clearly answer questions, went off on tangents for the prosecutor and during the cross exam by the defense, and was extremely nervous on the stand. He talked about how dangerous he thought we were.

The third witness was a Capitol Police officer who was able to identify two of the defendants, Eve and Tim. He was the arresting officer of Eve and Tim and he was able to describe what they were doing in the gallery on March 12. The next witness was also a Capitol Police officer and the arresting officer of the other 8 defendants. He was not at all a credible witness. He claimed he remembered arresting all of us and remembered exactly what we were doing, but he did not tell the truth on the stand. It would have been physically impossible for one man to arrest each one of us as he stated. He said all of us stood up and shouted, but two of the defendants, Judith and Art, stood up and begin taking out their gauze and were arrested before they even said anything.

After the four witnesses, the government rested its case and the jury was dismissed. It was almost the end of the day and Max renewed the motion for additional discovery. In looking at the table of contents from the security report, Max thought there might be additional information in the report that would help us to understand how the Capitol Police knew we were coming. Max asked for three specific pages from the report. Judge Morin said he would quickly look through the report and determine whether we should have access to any other pages.

Judge Morin decided that we should have two additional pages and when we saw the content of the pages we were stunned and called for a short break. What we realized is that a personal email that Max sent to a small group of people on the National Campaign for Nonviolent Resistance (NCNR) organizing list proposing the action on March 12 was in the hands of the Capitol Police. Not only that, but the document was falsified by adding a false url to make it look like it came from a public domain source.

We suspected that the Capitol Police could have received this information from the Maryland State Police. Because this was a personal email, the only way it could have been obtained was through an infiltrator being on the NCNR organizing list or through hacking into someone's computer to gain access to personal email - both illegal activities. We held a brief meeting to discuss where to go with this, talking about asking for a dismissal, sanctions against the government, and our lack of opportunity to cross-examine government witnesses on the newly obtained documents because the government had rested its case. If we would have had the information while government witnesses were on the stand, we would have been able to question them about the documents.

We went back into the courtroom and Maria made a moving motion for judgment of acquittal noting that the government had not proved its case. The motion was denied. Court broke for the day and we had the evening to determine where to go with the surprising and chilling discovery of the illegally obtained documents.

On Wednesday morning both Jack Barringer, an attorney to Eve and advisor to the rest of us, and Max introduced a motion for dismissal based on the illegal and falsified evidence that we had received from the government the day before. The judge said that he would rule on this motion post-verdict and we would continue with the trial. It is extremely uncommon to wait until after the jury delivers a verdict to rule on a motion for dismissal. Judge Morin also gave us the option of recalling the government witnesses to cross-examine

them about the document in question. After much discussion and some disagreement among defendants, we decided that we would not recall the government witnesses.

We proceeded with our case. Judith gave a beautiful opening statement, introducing our case to the jury. Under the advice of one of our attorney advisors, most of us took the stand to explain to the jury why we did what we did. The statements made by the defendants on the stand were incredibly powerful and moving and for me, helped to deepen my resolve to continue this work.

Max was our third witness and he clearly laid out the case for the jury. Under cross-examination, Mr. Warren, the prosecutor, introduced the illegally obtained document into evidence. He then questioned Max about a statement in the email where Max was discussing what “arrestees” would do after the action. Mr. Warren used this statement to try to show the jury that we knew we were breaking the law and we knew all along that we would be arrested.

Max was able to turn this around and explain that we never go to be arrested. Of course we know that we are risking arrest in our actions, but we do not believe that we are doing anything wrong and we never participate in our actions in order to be arrested. After the prosecutor brought this document to the jury, Max was able to explain to the jury exactly where this document came from and how it fell into the government’s hands in a surreptitious manner. I’m not sure if the jury totally understood the importance of this document.

Two of the defendants, Art and Judith, took the stand and testified that they did not say anything in spite of the government witness claiming they did. They both stood up in the gallery on March 12 and before they could take any action, they were arrested. Maria testified that she was not arrested by the officer who said on the stand that he arrested her.

I testified that I am a grandmother of five children, and that when you are a grandmother you think of all the children of the world. I think of how the children of Iraq are suffering and I have no choice but to do what I do. I also said that Bush is a war criminal, a statement I try to get into the court record every time I am on trial. Others made powerful statements about why they were in the Senate gallery and doing what they did. Several of us stated that it is our First Amendment right to petition our government for a redress of grievances and that it is also our Nuremberg obligation to speak out when our government is committing war crimes. Our intention was not to disrupt Congress, but to call attention to the suffering and death of so many innocent people and call on our Senators to stop funding this horrific war.

We rested our case. I gave a closing statement on behalf of the defendants and Mr. Warren gave a closing statement for the government. The judge gave instructions to the jury and they were dismissed. Maria made another motion for judgment of acquittal. Surprisingly, Judge Morin said he would also rule on this motion post-verdict. It was the end of a long day on Wednesday.

Thursday morning we gathered at the courthouse around 9:30 to wait for a verdict. The jury had a few questions throughout the day that we had to hash out between us, Mr. Warren, and Judge Morrin, but most of the day we sat and waited in the courthouse hallway.

I had been staying by myself at the Hotel Harrington. On Thursday night I woke up at 3:00

am and couldn't sleep. I couldn't stop thinking about the trial and why I was there in DC, so far away from my family for such a long period of time. The war and occupation continue and so many people continue to suffer and to die. Sometimes it seems so hopeless, but we must continue to do everything we can to try to stop the war. I called my husband Steve at 2:00 am Wisconsin time and told him I was feeling very sad and lonely thinking about all the suffering that was happening in Iraq that brought me to be where I was. He lovingly listened to me, even though I woke him from a sound sleep. He let me know that he supported me in what I was doing, but I didn't sleep much more that night.

We returned again to the courthouse on Friday morning. At 11:00 am we found out that the jury had reached a verdict. There is a lot of tension waiting for the jury to come in and announce the verdict. I remind myself that this is not about us. It is about the almost 4200 US soldiers and the million Iraqis that have died, and the uncountable, unbelievable numbers of people that are suffering extremely as a result of the war and occupation.

The jury came in and announced the verdict. We were surprised and dismayed when they read the verdict that five of us were acquitted and five were found guilty. We didn't understand because we all did the same thing, except for Judith and Art.

A few of us who were not found guilty went into the hallway to see if any of the jurors would be willing to talk to us about the verdict. Four of the jurors gave us information. They said that we should not have taken the stand because some of us incriminated ourselves on the stand. Judith and Art were found not guilty because they testified that they did not do anything. Maria was found not guilty because she testified that she was not arrested by the police officer who said he arrested her. Linda was found not guilty because she did not testify and so did not incriminate herself. I was found not guilty because I talked about my grandchildren and why I do this work, but did not specifically say I was in the Senate gallery on March 12 and took part in the action. I did not do this intentionally and I would have liked to remain in solidarity and have been found guilty with the others. It did not feel like a victory to be acquitted when our friends were found guilty.

The jury knew that we were all in the Senate gallery on March 12 and that we acted or tried to act. In fact, in my closing statement I talked about being in the gallery and described what we did. But the closing statement is not evidence. The jury looked only at the facts of the case presented as evidence during testimony in reaching a final verdict.

After the jury left the courtroom, Max renewed his motion for dismissal based on the fact that the government had illegally obtained and falsified evidence that was withheld from us until the government rested its case. Judge Morin set a date for a hearing on this matter for November 7. He ordered the government to produce witnesses that can testify as to where this document was obtained.

We are guessing that the Maryland State Police illegally obtained this document either through an infiltrator or through hacking into someone's computer. Again, this document was a personal email that Max sent to a limited group of people as a proposal for our action on March 12 in the Senate gallery. It was not posted publicly. However at the end of document was a source, a false url, to make it look like it was in the public domain.

We all know and kind of joke about the government spying on us. But it is very chilling and unnerving when you discover actual proof that it is happening. We shall see what happens at the November 7 hearing. The charges against the five who were found guilty may be

dismissed that day.

As I go through an experience like this trial, as difficult as it is, my commitment to doing this work deepens and I know I can do nothing else. As difficult as this is for me, I know that what I am going through is nothing compared to what the people of Iraq are suffering because of the occupation of their land by US soldiers. I know that what I am doing is nothing compared to what the family members of dead US soldiers are dealing with. We must continue to speak out and resist the illegal actions of our government. In a few days we will be electing a new president, but no matter what happens our work will not be over. Both Obama and McCain are committed to continuing the occupation of Iraq and increasing the fighting in Afghanistan. If Obama wins, we may be able to sway him, but we must take to the streets and let the new administration know that we will tolerate nothing less than working towards peace in the world.

The t-shirt I wore on March 12, the day I was arrested stated "WE WILL NOT BE SILENT". That has become my mantra as I continue the struggle against our imperialistic government. We cannot and will not be silent as our government is engaged in illegal actions.

I will return to DC on March 9. On March 10, there will be an action at the Department of Justice organized by the National Campaign for Nonviolent Resistance. In September we sent a letter to Attorney General Mukasey asking him to meet with us to talk about indicting Bush and Cheney for war crimes. He has not replied to us and so on November 10 we will go to the Department of Justice and demand a meeting with Mukasey. If we are refused, some of us will be moved by conscience to take action in a peaceful manner that could lead to arrest.

PLEASE JOIN US IN THIS ACTION AS WE CONTINUE TO SPEAK TRUTH TO POWER.

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