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Public Protest, Militarization, and Critical Democratic Moments

Posted By [Timothy Zick](#) On September 4, 2007 @ 9:02 am In [Civil Rights, Constitutional Law](#) | [1 Comment](#)

Thanks to Dan and the others here at CO for having me as a guest this month. The 2008 presidential contest is under way, which means we can start looking forward to the national party conventions. I want to take a look back at the policing of public expression at the 2004 Republican National Convention in New York City. Familiar on-the-ground tactics such as protest zones, barriers, mass arrests, and permit denials were effectively used to control dissent and channel public protest. As some readers may recall, many RNC protesters were effectively relegated to a remote site on the West Side Highway, some distance from the convention. This was not as troubling as the cage built for protesters at the 2004 Democratic National Convention (pictured), but it was hardly facilitative of public protest and expression. If history is any guide, we can expect similar tactics to be used in 2008.



I want to focus, however, on a different aspect of public policing at the RNC. As [reported](#) ^[1] in the New York Times, the New York City Police Department engaged in widespread surveillance of activists and protest groups prior to and during the RNC. Some of the details of that surveillance were first made public this summer, as a result of discovery in a lawsuit filed by protesters and others arrested at the RNC. In connection with my research for a book about public expression, I recently reviewed hundreds of [pages](#) ^[2] of the almost-daily "RNC Intelligence Updates" and "Situation Reports" compiled and distributed by law enforcement. Among many other events, officers and undercover detectives reported the following potential threats to public safety:

- A planned "Bands Against Bush" music show. NYPD officials observed that "the mixing of music and political rhetoric indicates sophisticated organizing skills with a specific agenda." The intelligence item notes that police departments in several cities where similar events were scheduled had been notified.
- Plans by a group known as "Axis of Eve" to use partial nudity as a "protest tactic." Without apparent irony, the intelligence report states: "The event is said to include the participation of roughly 100 women in thong type underwear and will be advertised heavily amongst the media for maximum exposure."
- The possible presence at the RNC of graffiti artists riding "magic bikes" – customized bicycles equipped with spray paint dispensers and videotaping equipment.
- Performances by "The Living Theater" entourage, whose purpose according to one intelligence report "is to raise community awareness on political or social issues," and the "Surveillance Camera Players," who engage in street theatre protests concerning the use of public surveillance cameras.
- The (frequently) reported whereabouts and apparent intentions of Aron "Pieman" Kay, whose signature form of activism apparently consists of throwing pies at people.
- Plans by a New York City-based group to use art murals and street theater to spread a "peace message."
- An Iowa group's plans to hold a film festival as a prelude to the RNC.

- The erection of a "Bushville" tent city on private property in Jersey City, New Jersey.
- A protest rally organized in part by the Hip Hop Action Network," featuring Sean "Puffy" Combs (a.k.a. P. Diddy), Russell Simmons, LL Cool J, Jay Z, and Alicia Keys.
- Plans by the anti-war group "Not in Our Name" to conduct a poetry read in Central Park.
- Planned leafleting activity by a group called "United for Peace and Justice."
- A mock "Iraq War Crimes Tribunal" by the International Action Center featuring, among other participants, Ramsey Clark.
- A weekly vigil by "Grandmothers Against the War."
- A march across the Brooklyn Bridge by "Mothers Opposing Bush."
- A demonstration by devotees of the late country singer Johnny Cash, who were reportedly planning to dress in black and play Cash music.
- A "wet anti-Bush" T-shirt contest.
- A day-long Buddhist meditation.
- An indoor "anti-Bush" lecture at St. John the Divine church.

The fact that the NYPD prepared for a mass public event like the RNC is hardly surprising – particularly post-September 11, 2001 and in New York City. We obviously want and expect law enforcement to be vigilant during large-scale public events. What is chilling, to use a somewhat elusive First Amendment term, is the breadth and extent of the NYPD surveillance. The eighteen-month surveillance operation extended not only to several U.S. cities, but to other countries as well. Police also monitored activists' discussions on various websites and included a daily "Web intelligence" item in their reports. They frequently flagged protesters' organizational and fundraising events. The examples above are representative of most of the intelligence gathered, which focused on peaceful and lawful political activities and dissent.

The NYPD's surveillance of public protest activity probably did not violate the Constitution (although some may have run afoul of a longstanding consent decree). But the manner in which public dissent was treated at the RNC signifies an important turn in the policing of public protest. In the United States (as in other Western democracies), protest and public contention more generally have been largely institutionalized for some time. But owing to a number of causes, including the 1999 WTO protests in Seattle and the events of September 11, 2001, public protest and dissent at critical democratic moments (national party conventions, presidential inaugurations, political campaigns, and world summits) now take place in a "militarized" environment. Militarization includes not only the physical transformation of public places but, as the recently released documents show, widespread "intelligence-gathering" activity. In the developing [surveillance state](#) ^[3], nearly every instance of planned public contention and every protest utterance appear to be "of interest" to law enforcement. In the daily intelligence reports, NYPD officers and detectives frequently referred to protesters in terms generally applied to suspected terrorists – as "extremists" with "anti-Bush agendas."

The NYPD documents, in particular, leave the distinct impression that public dissent itself was regarded as a threat to public order and safety. Would-be dissenters are now on notice that their activities, however peaceful and lawful, will draw close official scrutiny. Whether this and other aspects of militarization will chill public dissent at future critical democratic moments remains to be seen.

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[1] reported: <http://select.nytimes.com/search/restricted/article?res=F10B14FA3B550C748DDDAC0894DF404482>
[2] pages: http://www.nytimes.com/ref/nyregion/RNC_intel_digests.html
[3] surveillance state: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=930514

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