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## The Reaction to Convention Militarization

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## The Reaction to Convention Militarization

Posted By [Timothy Zick](#) On September 8, 2008 @ 4:30 pm In [First Amendment](#) | [15 Comments](#)

Brian Leiter [wonders](#) <sup>[1]</sup> why more legal bloggers, especially those of a libertarian persuasion, have not commented on the happenings outside the political conventions. In particular, Leiter highlights the arrest of Amy Goodman and other journalists. This silence is in stark contrast to the abundance of commentary regarding what transpired *within* the convention halls. To be fair to the blawgosphere, there has been [some](#) <sup>[2]</sup> limited commentary on these matters. But not, as Leiter correctly notes, nearly as much as one might expect given the serious nature of the First Amendment contests that occurred outside both conventions.

As in 2004, the 2008 convention protesters confronted what I refer to in my book as the "militarization" of public space. At these critical democratic moments, officials again engaged in pre-event surveillance (overt and covert), "preemptive" raids, designation of national conventions as "National Special Security Events" (among other things, this places the Secret Service in charge of convention security), substantial shows — and in some cases uses — of force, mass arrests, and spatial restrictions on protest activity. Militarization at political conventions has historical roots in the 1960s; but it has become a unique form of repression since September 11, 2001. We shall see how the [mass arrests](#) <sup>[3]</sup> are resolved in the courts. As for the physical restrictions on expressive activity, courts in Denver and St. Paul upheld limits on the location of protest activity as content-neutral time, place, and manner regulations. In both cases, the courts made a point of observing that the restrictions in 2008 were not as bad as those imposed on protesters in 2004 — in particular the protest cage erected in Boston. That is, of course, an extraordinarily low bar.

I plan to compare the conventions of 2004 and 2008 in terms of the exercise of First Amendment liberties in a subsequent post. I want here, however, to respond to Brian Leiter's comment regarding the paucity of commentary on some of the "police state" tactics in Denver and St. Paul.

It may simply be the case that many people — members of the general public, public officials, and academic libertarians — have come to view militarization as inevitable and in some sense justified. Perhaps many have simply accepted the government's claim that in order to preserve "security" for the general public at mass events like political conventions, protest activities must be curtailed (sometimes substantially so). One cannot, of course, completely discount the possibility of violence or terrorism at such events. Thus, officials must prepare for the worst case. Insofar as seemingly innocent persons like Amy Goodman are swept into the broad security net, this may be viewed by some as "collateral damage." It is unfortunate, to be sure, but in the eyes of many probably not malicious or abusive under the circumstances (at worst, a few bad apples . . .). So long as no attack or other violence occurs, officials in this context, as in others, seem to receive substantial credit from the public for "keeping us safe." This is, on a much smaller scale, something like crediting the Bush Administration for keeping the general public safe from terrorist attacks — again, irrespective of the loss of liberty for some persons. In sum, it may be the case that many simply believe that the government has properly balanced liberty and security in this context.

But there is a less rational and, I fear, equally plausible reason that many people are not especially bothered or exercised by the events in Denver and St. Paul. There is a palpable sense, at least from the comments the public has posted in response to certain news accounts and videos, that the protesters essentially got what they "deserved." Many may believe that these "troublemakers," some small number of whom are self-professed "anarchists," should not be publicly dissenting and trying to disrupt political conventions in the first place. Public protest, on this view, is a socially and politically useless exercise. More than this, some may well view it as "unpatriotic." I don't know, of course, whether it is fair to go so far as to say that the (mostly) silent masses simply do not *like* protesters — and thus cannot be bothered to defend their right to protest peacefully and to be free from police

state tactics and violence. But there does seem to be very little, and decreasing, tolerance for their activities. Perhaps this intolerance even extends to journalists, who can highlight protesters' messages and instances of abuse. This generally negative attitude holds not only at high-profile conventions but across a range of places and contexts. In the book, I discuss many instances of police misconduct and denial of fundamental expressive rights that received little or no attention from the media, law professors, or other commentators. These are instances in which our high First Amendment rhetoric fails to match the reality on the ground.

Perhaps to highlight an egregious case like Goodman's may, for some, come too close to acknowledging that officials in Denver and St. Paul (as in Boston and New York in 2004) over-reacted or abused their authority in some circumstances. It may come uncomfortably close to acknowledging that *none* of the peaceful protesters arrested or subject to abuse at the conventions actually "had it coming."

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URLs in this post:

[1] wonders: <http://leiterlawschool.typepad.com/leiter/2008/09/police-state--1.html>

[2] some: <http://www.thefacultylounge.org/2008/09/amy-goodman-arr.html#comments>

[3] mass arrests: <http://www.firstamendmentcenter.org/news.aspx?id=20495>

[4] : [http://en.wikipedia.org/wiki/2008\\_Republican\\_National\\_Convention](http://en.wikipedia.org/wiki/2008_Republican_National_Convention)

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