

Nancy

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FREE TO PROTEST

**Dissent, Prophetic Ministry,
and the Bill of Rights**



From Miami to Boise, from Chicago to Washington, from Tucson, Arizona to Cambridge, Massachusetts and points in between, the evidence accumulates. The right to protest and to dissent, protected by the Bill of Rights of the U.S. Constitution, is under attack. Opinions which question official government policy are subject to suppression and repression, to overt and covert harassment. Across a wide range of issues—Central American policy, treatment of refugees, nuclear weapons and nuclear war, Black nationalism, Puerto Rican independence, use of the grand jury, voting rights—it is becoming clear that the government is willing to suppress legitimate dissent to its policies by means legal and illegal. In the name of anti-terrorism it is resorting to new executive and judicial orders and new police methods, and it is using its vast information networks through the press and otherwise, to oblige conformity.

These, admittedly, are serious charges. They signal a rapid return to the disgraceful days of the McCarthy era of anti-communist “witch hunts,” to the “dirty tricks” years of the Nixon White House, and to J. Edgar Hoover’s discredited FBI Counterintelligence Program (COINTELPRO) of the late 1960’s and 1970’s.

Persons of religious faith today in the United States are working on the aforementioned issues and more. Many are under scrutiny and attack by the government. We of the community of faith who share the Judeo-Christian heritage bring both a special perspective and a particular responsibility to the issue of our freedom to protest. The God of history, according to our heritage, is a God who looks with special favor upon the poor and the outcast, those at the margins of human existence. In ancient biblical times the prophets were the voice of God calling to account a wayward Israel for its massive injustices against the impoverished and

powerless. This God of history speaks through the prophetic voices of many today to proclaim justice and compassion for *all* the people of the human family.

Thus, even though we may differ on specific public issues, it is a religious duty to *safeguard the prophetic voice and the prophetic action*. If “Eternal vigilance is the price of liberty” (Thomas Jefferson), for those in the Judeo-Christian tradition, the safeguarding of the prophetic voice is the foundation of justice.

I. The Hand of Repression

The Kansas City radio engineer whose papers were seized by the FBI following his return from Nicaragua was but one of about 100 Americans travelling to and from Nicaragua who have been questioned during the last two years. Defending the practice at a hearing, FBI director William Webster said, “I suppose anyone can take offense at the FBI making contact with them. But I have never grown up in an atmosphere where a visit by an FBI agent in and of itself was some kind of threat.”

Congressman John Conyers, Jr. of Michigan responded: “An FBI agent’s visit to a job, sir, can destroy a person’s career with no intention to harass or anything. . . . Friendly visits by the FBI are no good. They’re not welcome in our society.”

Friendly or unfriendly as these visits may be, a wide diversity of persons and organizations protesting U.S. government actions in Central America are being visited by government agents in ways covert and overt. For example, last November and December in Cambridge, Massachusetts three churches were broken into. The intruders broke down doors but left items of value undisturbed. File cabinets and desk drawers were opened and apparently examined, but no valuables were

taken. Last April, a coordinator of sanctuary activities in Michigan took a cab in Chicago after a meeting at the offices of the American Friends Service Committee. The cab driver, unknown to Sara Murray, began to reveal a knowledge of her activities and by the end of the ride had described how she might be assassinated, called her a traitor to the state, and warned her to stop her activities.

There is no proof that government agents are behind these particular activities, but they bear some resemblance to FBI "COINTEL-PRO" activities—often called "dirty tricks"—widely carried out during the Nixon administration.

Bolder and more widely known was the use of Federal Immigration agents as infiltrators of church meetings discussing sanctuary in Arizona. The use of clandestine recording devices in churches was openly admitted by the government as part of its indictment of 16 persons last January.

Early this year a Federal Grand Jury sitting in Perry County in Southern Alabama returned multiple indictments against 3 Blacks, charging fraud in connection with the use of absentee ballots. The three are former aides to Martin Luther King, Jr. In a welcome setback to government efforts to harass and intimidate minorities, a federal court jury on July 5 found the three innocent of all charges. Their voter registration efforts had been directed to registering elderly and disabled Blacks for possible absentee ballot voting. According to a spokesperson for the Center for Constitutional Rights, the grand jury had subpoenaed about 200 elderly Blacks to testify. FBI agents interrogated them in their homes prior to their appearances in court.

The government is active against anti-nuclear protesters, too. In Oakland, California, it was learned (through the Freedom of Information Act) that the Livermore Action Group had been carefully and extensively

monitored during a number of non-violent demonstrations. Surveillance was coordinated among a wide network of agencies both federal and state, the Federal Department of Energy's intelligence division playing a major role.

II. Political Repression Has a History

The effort by government to suppress dissent is not new. The House Un-American Activities Committee (HUAC), established under President Harry Truman, became, in the words of Supreme Court Justice William O. Douglas, "the most un-American agency in our history, for it made a specialty out of probing people's beliefs, conscience and thoughts—matters put beyond the reach of government by reason of the First Amendment." "The unpopular person, the offbeat, the non-conformist was the victim," says Douglas in his autobiography *The Court Years*.

But if HUAC ruined the lives of thousands of people merely by exposing their thoughts or associations as suspect, the COINTEL-PRO program set in motion in the 1960's under FBI Director J. Edgar Hoover sought actively to disrupt and subvert legitimate political activity. Extensive Congressional hearings held by the Senate Intelligence Committee in 1975 under Senator Frank Church documented widespread and serious abuses of authority. The testimony and documentation on the FBI alone ran to 1,000 pages. It was this FBI program which attempted to discredit Martin Luther King, the Black Panthers and many others, including anti-war protesters, church groups and political groups. Political informers and disrupters were extensively used. According to ACLU official Richard L. Criley, sworn testimony in a

recent Chicago lawsuit revealed that in Chicago alone, the FBI has admitted to the employment of 5,145 paid political informers from 1966 to 1976, at a cost of \$2.5 million. "The operation failed to produce a single prosecution," said Criley.

COINTELPRO was abolished, as was HUAC, after the Church committee's disclosures. But a replacement has appeared, in the guise of the U.S. Senate Judiciary Subcommittee on Security and Terrorism, chaired by Senator Jeremiah Denton of Alabama. Activities which in former years would have received the label "Communist," now are labelled "terrorist." Our national security is seen to be at risk by certain activities which may then be called "terrorist." In an exchange with fellow senators and reporters at a hearing in 1984, Denton expressed concern about the wives of senators engaging in peace activities, labelled the magazine *Mother Jones* as subversive in intent, and intimated that clergymen who engage in promoting ideas and "disinformation" about certain subjects may be more dangerous than those who actually plant bombs. Even more ominous than these allegations of the senator's is the movement in Congress towards legislation that establishes cause for prosecution against persons or groups who may have friendly or collaborative relationships with legitimate foreign governments such as Nicaragua, Cuba, or the Soviet Union.

It is this "climate of intolerance" that extends a chill over legitimate discussion and activity protected by the Constitution.

III. The New Repression

"If it's legal, it must be OK."

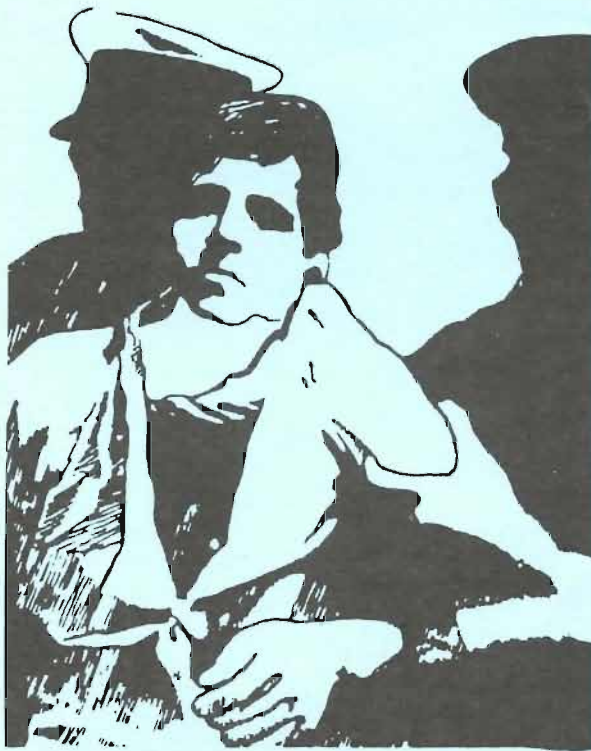
In a nation where the rule of law has held sway, Americans instinctively subscribe to the belief that if a court or a legislature establishes a law, particularly one pertaining

to national security, it must be right. Yet the repression against the Jews in Nazi Germany was legitimated step by step over a period of several years, within the framework of the law. In South Africa today, "the law" is the foundation of the apartheid system. In our own country, a presidential executive order in 1941 set in motion the mass detention of hundreds of thousands of Japanese in a dark stain of repression that, in the words of one observer, is the most serious violation of Constitutional guarantees since the Constitution was ratified. It should not surprise, therefore, that the governmental response to rising voices of dissidence in the America of the 1980's is also made in legal terms.

Legislative and Executive Acts

Last year legislation proposed by the Reagan Administration (S 2625/HR 5612) established a broad new definition of terrorism. Signed into law, it labels as terrorist an "act of violence" (including violence against *property* as well as persons) which violates criminal law and "appears to be intended . . . to influence the policy of a government by intimidation or coercion." This would mean, for example, that plans to push down a fence to hold a "sit-in" could be an "act of terrorism," with appropriate penalties. Likewise under this law, if a person attended a meeting at which the breaking of the law were discussed, as for example the offering of sanctuary to a war refugee fleeing Central America, he or she could be indicted for conspiracy. The bill also provides for exceptionally high rewards for informers.

In 1983 the U.S. Attorney General issued new guidelines on domestic security and terrorism. It is now possible for FBI agents to initiate a "preliminary inquiry" on the mere allegation of possible criminal violation, *and to use informers and other intrusive methods.* Thus, some of the visits and detentions re-



ferred to earlier in this pamphlet are now *perfectly legal*—even though the subjects under “inquiry” are acting totally within the guarantees of the First Amendment.

Other recent court or legislative decisions and executive orders have restored secrecy or information-withholding practices to the CIA and other government agencies. Congress passed a new anti-crime package in October 1984 which makes it possible for a person to be detained for up to 5 days in “preventive detention” merely on the judge’s opinion that he/she is dangerous.

The Grand Jury

The Grand Jury, traditionally understood as a judicial bulwark against the inquisitorial power of the state (its English origins

intended to protect citizens from the arbitrary power of the crown), has in practice increasingly come to be the reverse: a tool of unwarranted investigation, coercion and intimidation into the lives of citizens by the government. In the Nixon presidency more than 100 grand juries subpoenaed over 1,000 activists. Now, after a decade of disuse, they are on the rise again. Close to 20 persons are in prison for refusal to testify before a grand jury, most of them supporters of Puerto Rican independence.

In a grand jury procedure, a subpoenaed witness, upon being granted (unilaterally) immunity, loses Fifth Amendment rights to silence. A witness may be declared in contempt if he or she refuses to answer *any* question put by the prosecutor. The witness cannot have a lawyer in the jury room, and is not allowed to cross-examine either the jury or the prosecutor. Grand jury proceedings are secret; thus a subpoenaed witness need not be told whether there are charges against her or him. In the hands of a zealous prosecutor and/or a government seeking to quell political dissent, the grand jury can be a horrendous inquisitorial instrument.

Thus, several “grand jury resisters” have twice been imprisoned, the second time on criminal contempt charges, even though they have no criminal records of any kind. Attorneys in these cases point out that the grand jury is a perfect instrument to “get activists off the street” with no need to file charges, and in the bargain to frighten into conformity other potential “troublemakers.” *Persons involved in the sanctuary movement may well become primary targets for grand jury investigations.*

The “Catch-22” nature of this becomes obvious. If they agree to talk to a Grand Jury and are offered immunity from prosecution, subpoenaed persons may be asked at some point to reveal the names, beliefs, conversations, and actions of acquaintances, friends

and relatives in connection with what may be only ostensibly an investigation of serious criminal activity. If they refuse to talk, they face jail. In this circumstance, one's right under the Fifth Amendment to remain silent (a right whose origins are likewise in English law), is of no avail.

The Conduct of Prosecutors and Agents

In our system of justice, are persons innocent until proven guilty? Increasingly, use of the event of an indictment by prosecutors as an opportunity to gain publicity for their case before the public is becoming more and more a "trial by press," amounting to a de facto verdict of guilty. Thus, when the five "grand jury resisters" were arrested, the FBI announced it had found the "remaining incarcerated leadership of the FALN," an alleged terrorist group supporting independence for Puerto Rico. (No charge against them was ever brought to that effect.) According to Gerald Stern, an administrator of the New York Commission on Judicial Conduct, one prominent District Attorney has violated specific, mandatory ethical standards and has distorted and corrupted the administration of justice. Flamboyant and sensational press conferences bypass the fact that wrongdoing is only *alleged* in an indictment, and frequently appear to proclaim in sweeping terms not only the guilt of the defendant but also the significance of the case. Obviously, careers may be in the making by such talk. Mr. Stern points out that the American Bar Association's Code of Professional Responsibility provides that a lawyer may not make a statement out of court pertaining to the character, reputation or prior criminal record of a defendant, the guilt or innocence of the accused, the merits of the case or whether the defendant had confessed. Yet, says Stern, disciplinary committees are not enforcing this rule.

IV. The Bill of Rights

The Bill of Rights stands as the bulwark of individual liberties in the American system of justice. Regarding the First Amendment, for example, Supreme Court Justice William O. Douglas has written,

The philosophy of the First Amendment marks a bold venture. . . . It is bold because ideas are dangerous—more dangerous than guns. Ideas unite people; they pass over borders in spite of the battalions that guard those borders.

The Court Years. 1939-1975

Douglas says this amendment sets us apart from most other nations. It "... Allows the ability of the mind to roam at will over the entire spectrum of ideas, and the sanctity of one's beliefs. It, not our bombs or air force or missiles or... GNP, sets us apart. A symbol of our health is the respect we show to First Amendment values." (ibid.)

V. If the FBI Visits

Unless an FBI or other police official has a warrant, there is no requirement that he or she be let into your office or home. There is an absolute right not to talk with an FBI or police agent. The National Council of Churches in 1977 adopted for itself the following points, among others, and urges adoption of the same by member communions:

That if and when you are approached as a church or church agency employee, refer the agent to the senior church official for further enquiry;

That church officials, with legal counsel, then ask investigators to state specifically in writing what information they want, and their authority for seeking it. . . .

That no names of church or church agency members, contributors, constituents, or other persons or groups with whom work in a re-

lationship of trust has been done, be divulged;

That no personnel files, correspondence, internal documents or information such as travel or expense records be divulged without benefit of legal counsel and consent of persons concerned;

That churches and ecumenical agencies give moral and material support for those members and employees who for reasons of principle refuse to testify before a grand jury and risk jail rather than submit others to harassment—even if some consider their refusal unwise or unnecessary. . . .

Lawyers also recommend no further conversation with the FBI or other agent beyond that of referring them to your superior, or your lawyer. *But they warn that lying to any police officer is a felony.*

VI. Taking Action

Awareness of our Constitutional rights in this climate of political repression is the indispensable precondition for our protection. The feeling of isolation frequently felt by the victims of repression and harassment

lessens when others' circumstances become known. Thus, educational efforts via shared newsletters, articles, videotapes and films on the subject are primary strategies for groups which may be susceptible to harassment. The Episcopal Church Publishing Company, for instance, has sponsored two day-long consultations on Dissent and Human Rights in America, at which lawyers and Constitutional authorities, church representatives, and activists came together for information and strategies. And, as the resource list at the end of this pamphlet indicates, a number of organizations are involved in educational efforts.

Secondly, in the case of groups or individuals under investigation, harassment or judicial proceedings, specific support measures can be effective. It is clear, for example, that the concerted response of the U.S. religious community to the arrests and indictments of 16 persons in Arizona last January for sanctuary activities has had a significant deterrent effect upon further actions by the government against the sanctuary movement. Resolutions, letters, protest demonstrations,

The Bill of Rights

FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

FOURTH AMENDMENT

The right of the people to be secure in their persons, houses papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons

or things to be seized.

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

and conferences had a cumulative effect. In the case of the five "grand jury resisters" the appearance on the witness stand of several Episcopal bishops, plus many letters, very probably contributed to a much lighter sentence than the government was asking. The Attorney General, the United States Attorney, key Congressional leaders such as the chairs of criminal justice and judiciary committees; the Director of the U.S. Bureau of Prisons, prison wardens, and parole commissioners: these and other officials do respond if sufficient pressure is applied. But correspondence and visits must be carefully planned.

Finally, legislation to guarantee our Constitutional rights must be actively supported,

and repressive executive orders and legislation fought. An important bill for reform of the Grand Jury process, HR 1407, has been introduced by Congressperson John Conyers, Jr. (Michigan). It moves significantly toward protection of persons subpoenaed by a grand jury. Hearings have been scheduled. Write Conyers c/o House Sub-committee on Criminal Justice, House Annex 2, Room 362, Washington, D.C. 20515. Another House Sub-committee concerned with abuses of governmental investigative authority, including FBI abuses, is the House Sub-committee on Civil and Constitutional Rights, chaired by Congressperson Don Edwards (CA), c/o U.S. House of Representatives, Washington, D.C. 20515.

VII. Resources

VideoTape (VHS) of Consultation on Dissent and Human Rights in America, held 1/12/85 in Los Angeles. An excellent video introduction to the issue. 30 minutes. \$15 including mailing.

Until She Talks, a film about a young woman caught up in the Grand Jury Process (Based on the 1977 experience of Maria Cueto). In color, 16mm, 45 min. Order from First Run Features, 144 Bleecker Street, New York City. Rental \$65.

JSAC Update - Criminal Justice, a newsletter by the National Interreligious Task Force on Criminal Justice, Rm. 450, 475 Riverside Drive, New York, NY 10115.

Movement Network Support News, a new newsletter on political repression inaugurated by the Center for Constitutional Rights in cooperation with the National Lawyer's Guild. There is also a speakers' bureau. Write the CCR at 853 Broadway, 4th Floor, New York, NY 10003.

"Actions on the Grand Jury Issue," a definitive statement by the Governing Board of the National Council of Churches. Issued in May, 1977 and more pertinent than ever.

"Jailing Grand Jury Resisters," by Richard W. Gillett, *Christian Century*, 9/28/84.

Havens of Refuge: The Sanctuary Movement and the Law, a comprehensive pamphlet detailing the legal, moral and political background of the sanctuary movement. Write Center for Constitutional Rights at 853 Broadway, 4th Floor, New York, NY 10003.

If an Agent Knocks: Federal Investigators and Your Rights, by the Center for Constitutional Rights, above address.

National Committee Against Repressive Legislation, a lobbying organization in defense of civil and constitutional rights. 201 Massachusetts Ave., NE, Suite 310, Washington, D.C. 20002.

The New State Repression, a pamphlet assessing the origins and theory of government repression and its application today. \$1.50. Write Ken Lawrence, International Network Against New State Repression, 220 S. State St., Suite 232, Chicago, Illinois 60604.

THE CENTER FOR CONSTITUTIONAL RIGHTS ALSO HAS A "A HOTLINE" — (212) 477-5652, FOR USE BY PERSONS WHO SUSPECT SURVEILLANCE, HARASSMENT, OR GRAND JURY SUBPOENAS, OR WHO MAY BE THE SUBJECTS OF AN INVESTIGATION.