

Monday, September 10, 2007

Unnecessarily intimidating cops: Get off your high horse.

Â This posting follows up on my August 31 posting about America's overly repressive criminal justice system and August 22 postingÂ about huge civil fines being levied by the D.C. government against the ANSWER CoalitionÂ for the wheatpasting of anti-war demonstration posters, rather than merely finingÂ the individual wheatpasters. Â The federal cops -- at whose direction? -- turned the wheatpasting issue up a notch on September 6, 2007,Â as follows: Some anti-war wheatpasters called a news conference in theÂ Lafayette Park blockÂ (the park facingÂ Bush II's presidential palace) to talk about their professed right to paste up the anti-war posters, and to wheatpaste on camera. A cop seizedÂ a wheatpaste bucket from one of the activists, who continued wheatpasting anyway. The cops arrested three people; at least two were wheatpasting, and I am trying to figure out if the third was doing the same. Â The case is being prosecuted in the District of Columbia Superior Court, which has an archaic computerized criminal docketing system that only can be accessed at the Superior Court, when one can find a working computer terminal; I am not scheduled to be in Superior Court this week. In any event, the September 7 Washington Post reports that arrestees Tina Richards and Adam Kokesh originally were arrested for allegedly defacing public property. Â However, the D.C. Code's property defacement statute, D.C. Code Â§ 22-3312.01Â seems inapplicable, in that it provides as follows: "It shall be unlawful for any person or persons willfully and wantonly to disfigure, cut, chip, or cover, rub with, or otherwise place filth or excrement of any kind; to write, mark, or print obscene or indecent figures representing obscene or objects upon; to write, mark, draw, or paint, without the consent of the owner or proprietor thereof, or, in the case of public property, of the person having charge, custody, or control thereof, any word, sign, or figure upon" public property. D.C. Code Â§ 22-3312.01. In this instance, the posters were affixed with wheatpaste, which I understand is fully removable (although with effort) with soap and water. Â I understand that the third arrestee isÂ Ian Thompson, and that he was originally charged with impeding an officer. D.C. Code Â§ 22-22-405(b), which provides: "Whoever without justifiable and excusable cause, assaults, resists, opposes, impedes, intimidates, or interferes with a law enforcement officer on account of, or while that law enforcement officer is engaged in the performance of his or her official duties shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned not more than 180 days or fined not more than \$ 1,000, or both." I do not think you will see any impeding on the above-displayed YouTube videoÂ Not having heard an update about any further charges against theÂ three demonstrator defendants, I wonder whetherÂ the prosecution has added allegations ofÂ congregating "with others on a public street and refus[ing] to move on when ordered by the police." D.C. Code Â§ 22-1321. I have already blogged against police overuse and abuse of this and all kinds of disorderly conduct laws. Â Near the end of the above-displayed YouTube video of this incident is a horse-mounted cop repeatedly ordering "Back up!" His actions amount to unnecessary intimidation and over-enforcement, and should be removed from their high horse. If cops are willing to act this way on video, imagine what so many of them do under the cover of darknessÂ with suspects and "crowd control."Â Â Underlining how police often alter their behavior when news cameras are rolling (when they cannot seize reporters' cameras and tape players in the first place), the Washington Post reports: "When an officer went to speak to [the thirteen-year-old daughter of one of the arrestees], a member of the Park Service's SWAT team advised him to stay away from her. 'Don't feed into that, the cameras are rolling. Let her go,' the officer said." Now remaining to be seen is if the cops and prosecutors will let such arrests go, to leave the matter to non-criminal court actions for wheatpasting, rather than the more intimidating approach of arresting and prosecuting wheatpasters. Jon Katz.Â ADDENDUM I: Thanks to a fellow listserv member for informing me about this September 6 situation, including the YouTube video.Â ADDENDUM II (September 11, 2007):Â To the extent that the police claim that any of the arrestees criminally violated any police order to remove the table being used during the news conference that the police broke up, it appears that limitations on possessing tables at Lafayette Park are governed by 36 CFRÂ Â§ 7.96(g)(5)(x). The foregoing federal regulation allows tables when they are carried, but disallows non-carried tables without a permit. Considering that the table was reasonably needed to conduct the First Amendment-protected news conference, law enforcement would have been without legal basis to interfere with the presence of the table during the news conference. Thanks to a fellow civil libertarian for alerting me to 36 CFRÂ Â§ 7.96.

Posted by Jon Katz in Criminal Defense at 01:00