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## **Free Speech on the Ropes** **by James Bovard**

The First Amendment states that “Congress shall make no law ... abridging the freedom of speech.” The Founding Fathers could have done nothing to make it clearer that the government has no right to gag the American people. However, in recent years, the Constitution is proving little or no barrier to systematic repression.

Nothing illustrates the new reality better than the Bush administration’s hounding of one South Carolina veteran protester.

On October 24, 2002, President Bush flew to Columbia, South Carolina, for an airport speech for Republican congressional candidates. He told an adoring crowd,

There’s an enemy out there that hates America because of what we love. We love freedom. We love the fact that people can worship freely in America. We love our free press. We love every aspect of our freedom, and we’re not changing.

The Secret Service made the airport area safe for freedom-loving rhetoric by vigorously suppressing dissent before Bush arrived. Brett Bursey, 54 years old, was arrested for holding a “No War for Oil” sign too near the hangar where Bush would be speaking. Local police, acting under Secret Service orders, supposedly established a “free speech zone” far from the airport hangar. Bursey was standing amidst hundreds of people carrying signs praising the president or his policies. Police told Bursey to remove himself to the “free speech zone.”

After moving twice, Bursey refused to move again and was arrested. He said that he asked the policeman if “it was the content of my sign, and he said, ‘Yes, sir, it’s the content of your sign that’s the problem.’” Bursey stated that he had already moved 200 yards from where Bush was supposed to speak. He complained, “The problem was, the restricted area kept moving. It was wherever I happened to be standing.” Bursey later commented,

They put the cuffs on me. Behind my back. In a paddy wagon. And they moved me behind the hangar where I could see Air Force One. That was really bizarre. Bush gets off the plane. And I can see the whole tableau through the bars in the paddy wagon. He goes inside the hangar and gives this speech where he says they hate us because we're so free, and here I am handcuffed in the back of a paddy wagon, thinking, "No, Mr. Bush, they don't hate us because we're free. They hate us because we're hypocrites."

Bursey was charged with trespassing. Five months later, the charge was dropped because South Carolina law prohibits arresting people for trespassing on public property (as a result of a state supreme court decision involving a 1969 Bursey arrest). But the Justice Department — in the person of U.S. Attorney Strom Thurmond Jr. — quickly jumped in, charging Bursey with violating a rarely enforced federal law regarding "entering a restricted area around the president of the United States."

Federal magistrate Bristow Marchant denied Bursey's request for a jury trial because his violation was categorized as a "petty offense" — even though the issue is at the heart of American freedom. Some observers believed that the feds aimed to set a precedent in a conservative state such as South Carolina that could be used against protesters nationwide. During his trial before the magistrate, Bursey's lawyers sought the Secret Service documents that they believed would lay out the official policies on restricting critical speech at presidential visits. The Bush administration sought to block all access, but Marchant ruled in September that the lawyers could have limited access to some documents. Bursey sought to subpoena Attorney General John Ashcroft and Bush political advisor Karl Rove to testify. Bursey's lawyer, Lewis Pitts, declared, "We intend to find out from Mr. Ashcroft why and how the decision to prosecute Mr. Bursey was reached." The magistrate refused to issue the subpoenas.

Secret Service agents testified that because Bursey's sign was attached to a wooden stick, it could be used as a weapon. But testimony showed that the area where Bursey stood had plenty of "signs backing GOP candidates staked in the ground."

Secret Service agent Holly Abel testified at the trial that Bursey was told to move to the demonstration area but refused to cooperate. Bursey and other protesters testified that, though they were directed to go to the "protest zone," no such zone had been designated. Instead, the protest zone was simply "go farther away."

Gerald Rudolph, a protester who was next to Bursey that day, testified that a policeman "actually didn't tell me to leave; he told me I couldn't be there with a sign.... They said, 'Arrest them.' We were both holding signs. I gave up my sign at that point, and they left me alone and they arrested Bursey." In an earlier sworn statement to the court, Rudolph attested, "The Secret Service agent directed the police to arrest me unless I put down my sign. Once I discarded my sign, I was allowed to remain in the area." Rudolph commented that the Secret Service's

suppression was especially important because “citizens have very few occasions to be in a position to directly communicate their views to the president or an audience he has gathered.”

Burse testified that it was the reaction of a third protester that made him determined to stand his ground: “Virginia Sanders, who was standing with me at the time of the arrest, was crying. The fact that she was scared of her own government was the tipping point in my decision to take a stand for free speech.”

The Justice Department asserted in a formal brief that no court should have the power to “second-guess the Secret Service and law enforcement on security decisions” — thus potentially entitling the feds to shut down all future protests in the president’s vicinity. Marchant did not buy that argument. Assistant U.S. Attorney John Barton explained the government’s view:

I don’t think there can be any debate or any — it really cannot be contested that [Burse] was told by a United States Secret Service agent, “I’m from the United States Secret Service; you are in a restricted area.” What more does he need to know?

Burse retorted, “I didn’t feel that I should acquiesce to what I took to be an unlawful order.”

### **Marchant’s ruling**

Magistrate Marchant issued an opinion that should qualify him for Bush’s short list of nominees for the next opening on the Supreme Court. The decision largely turned on the absence of a ticket. Marchant stressed,

The event was restricted to ticket holders only.... The evidence clearly establishes that the Defendant was not a ticket holder for the event, nor was he there to attend the event. Hence, it was a violation of the regulations governing ingress or egress thereto for the Defendant to have remained in the restricted area.

Marchant’s decision did not specify the ticket price for free speech. He denied that there was “no free speech zone.” His ruling noted,

The site agent for the President’s visit testified that the restricted area consisted of an area about 100 yards up from the hangar to the parking lot, to the right of the hangar down Airport Boulevard to the intersection of Airport Boulevard with the main highway (Hwy. 302), and to the left of the hangar down Airport Boulevard for about 100 yards to the next intersection.

Apparently, since the “free speech zone” was still in the state of South Carolina, the government did not violate anyone’s rights. The allegedly designated protest zone would have made the protesters invisible — which apparently meshed with Marchant’s understanding of the First Amendment.

The Secret Service had raised a new issue at the trial — asserting that Bursey was standing by the road where Bush’s limousine would need to slow down to make a U-turn. Marchant wrote that “in this age of suicide bombers, the Secret Service’s concerns about allowing someone to stand near where the president’s vehicle is expected to drive by slowly is manifestly understandable.”

Though this could be a legitimate concern, Bursey was presumably not standing in the Designated Suicide Bomber Spot until cops shooshed him away from his original location. Marchant declared that he saw no evidence of selective prosecution — and yet he had impeded Bursey’s lawyers from presenting evidence showing the nationwide pattern of Secret Service–spawned crackdowns on demonstrators. Marchant also pointedly questioned why the Justice Department bothered to prosecute Bursey and said that he felt that Bursey was taking a “principled stand” for freedom of speech and meant no harm to the president. Instead of hitting Bursey with the maximum of six months in jail and a \$5,000 fine, Marchant fined him only \$500.

Bursey asserted after the verdict that his case “will help determine if free speech in America can be zoned to protect the political interests of whoever is in charge of our government.” He also declared that the Secret Service “sanitized” zones “concerns me because people watching television all around the world think that all Americans love George Bush and his policies. And what concerns me more is that George Bush may think the American people love him.”

The Bursey prosecution spurred a dozen members of Congress, including Rep. Ron Paul (R-Tex.) and Rep. Barney Frank (D-Mass.), to write to President Bush to protest the administration’s crackdown on demonstrators:

As we read the First Amendment to the Constitution, the United States is a “free speech zone.” In the United States, free speech is the rule, not the exception, and citizens’ rights to express it do not depend on their doing it in a way that the president finds politically amenable.... We ask that you make it clear that we have no interest as a government in “zoning” constitutional freedoms, and that being politically annoying to the president of the United States is not a criminal offense. This [Bursey] prosecution smacks of the use of the Sedition Acts two hundred years ago to protect the president from political discomfort. It was wrong then and it is wrong now.

The feds offer some bizarre rationales for hog-tying protesters. Secret Service agent Brian Marr explained to National Public Radio,

These individuals may be so involved with trying to shout their support or nonsupport that inadvertently they may walk out into the motorcade route and be injured. And that is really the reason why we set these places up, so we can make sure that they have the right of free speech, but, too, we want to be sure that they are able to go home at the end of the evening and not be injured in any way.

Except for having their rights shredded. Somehow, after George Bush became president, people became so stupid that federal agents have to cage them to prevent them from walking out in front of speeding vehicles. Or perhaps the Secret Service assumes that becoming a political protester automatically turns a person into an imbecile who must be protected against himself.

The Secret Service is duty-bound to protect the president. But it is ludicrous to presume that would-be terrorists are lunk-headed enough to carry an anti-Bush sign, when carrying a pro-Bush sign provides closer access to the president. And even a policy of removing all people carrying signs — as has happened in some demonstrations — is pointless, since potential attackers would simply avoid carrying signs. Rather than protecting the president's safety, the Secret Service aims to suppress *lèse majesté* — any affront to the dignity of the supreme ruler.

If Americans tolerate such official repression, then their docility will earn them whatever chains the government chooses to impose.

*James Bovard is the author of [Attention Deficit Democracy](#) [2006] as well as [The Bush Betrayal](#) [2004], [Lost Rights](#) [1994] and [Terrorism and Tyranny: Trampling Freedom, Justice and Peace to Rid the World of Evil](#) (Palgrave-Macmillan, September 2003) and serves as a policy advisor for The Future of Freedom Foundation.*

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