

UNPROTECTED SPEECH

USING A BOGUS GREEN SCARE TO SUBVERT FREEDOM

endless tirades against impurity, with ourselves or with others—"Ourselves?" we prepubescents would whisper speculatively to ourselves—and those anathemas flung from the pulpit at girls who wore skirts that were too short and at boys whose ambition was to get something under those skirts, if only a trembling hand. What was it all about? What was being protected? The family? In sinful England, where, if those sportive and ad-less imported newspapers were to be believed, fellows had a high success rate in getting their hands under girls' skirts, the fabric of society had not unwoven. Were we Irish somehow more culpable than other nationalities? It seemed unfair to be constantly threatened with damnation while having so little fun.

So I gave it up. I moved to the city, and although I was living under the invigilation of a sharp-eyed aunt, I did the unthinkable and began to miss Sunday mass. Did I feel suddenly free? Not really. The biggest benefit was that Sunday mornings were marginally less boring than they had been. God's hand did not smite me; the bottomless pit did not open under my feet. The guilt remained, of course, and still does. I admit I would not be without it. Guilt is good for writers. It keeps us in touch with our real self, that irredeemable wrongdoer who crouches within us, waiting to leap out at the faintest hint of an occasion of sin.

In the early 1990s the priests were at last driven back into the catacombs when the story broke in *The Irish Times* that Bishop Eamon Casey, a popular and powerful Irish churchman, had for decades been conducting an affair with an American woman and that the couple had a 17-year-old son. It was revealed too, almost incidentally, that the bishop had paid his lover 70,000 Irish pounds borrowed from funds that were not his to borrow from. It was a lovely scandal, and we enjoyed it hugely. At that time there was talk of building a pillar in the center of Dublin to replace Nelson's Pillar, which the IRA had blown up in the 1960s, and a national debate was conducted as to whose statue should adorn the new erection. I worked at *The Irish Times* then, and at a news conference the topic came up. I offered that surely there was no question but that Bishop Casey was the man who should be honored, for who else had done as much for the cause of freedom in Ireland since the time of Nelson himself? The suggestion was not entertained. I still think it was a good idea.

As the jury filed into a San Diego courtroom on September 19, 2007, Rodney Coronado had every reason to believe he was on his way to prison. Again. The man *The New York Times* had called a "celebrity ex-convict in the underground world of environmental and animal rights radicals" served nearly five years in the early 1990s for firebombing an animal-research lab. But back then nobody had branded him a terrorist. Times have changed.

This time all he'd done was make a public speech about his radical past, and the feds were trying to put him away for 20 years on terror charges. It didn't matter that the speech was almost certainly protected under the First Amendment. They smelled blood. Only weeks earlier, in Oregon, 10 activists the media had dubbed "the Family" were convicted in connection with various instances of eco-arson—one of them a much publicized blaze at a Vail ski resort—and had their prison sentences more than doubled through the use of federal terrorism-sentencing enhancements. It was the first time domestic activists had been sentenced as "terrorists." Elsewhere, six people from a group called Stop Huntingdon Animal Cruelty, or SHAC, were given long sentences in New Jersey for running a website not connected to any material crime. Three other young

folks, from Auburn, California, who identified with the Animal Liberation Front and the Earth Liberation Front awaited trial after being set up by a sexy, young FBI informant. All of them—and others—had been threatened with terrorism charges.

One thing is clear: The age of *The Monkey Wrench Gang* is over. The red-blooded American practice of property damage—blowing up railroad tracks, burning offensive billboards—made famous by Edward Abbey's 1975 book is now treated on a par with the murderous acts of Al Qaeda.

Both sides are at fault. When L.A. animal activist Jerry Vlasak went on *60 Minutes* and implied it was okay to kill animal-research execs and when shadowy figures began leaving firebombs at the homes of UCLA lab directors, it was a no-brainer for Congress to pass new legislation like 2006's Animal Enterprise Terrorism Act. On the other side, huge corporations saw an opening and lobbied hard for the word *terrorism* to be included so harsh post-Patriot Act sentences would apply.

Of all the new prosecutions, however, those involving pure speech have the most ominous overtones. At least the Oregon ecoteurs admitted they had actually done something illegal. Coronado—as well as the SHAC 6—was simply being silenced.

By Dean Kuipers

Playoff
February '08

On August 1, 2003 Coronado flew to San Diego and gave a speech attended by about 70 people. He says it was his standard speech at the time about his extreme efforts to protect wildlife, which included smashing up fur shops, sinking two (unmanned) Icelandic whaling ships and a 1991 to 1992 arson campaign against fur farms, for which he served 57 months in prison. When he finished, someone asked him how he had made his incendiary devices a dozen years earlier, and in the space of about a minute he told them.

"I had answered this question many times before," said Coronado in a 2006 interview in Tucson. (He had been advised not to talk during his 2007 trial.) "I just naively believed speech was protected. Otherwise, I would have told people to go online or go to a gun show, where you can buy manuals," he added.

Two and a half years later, in February 2006, the FBI arrested Coronado for responding to that question. The U.S. attorney's office in San Diego contended he had broken a seldom used 1997 law—18 USC § 842(p)(2)(A), sponsored by Senator Dianne Feinstein (D-Cal.)—that makes it illegal to teach others how to build a "destructive device" with the intent that they use it to commit "federal crimes of violence."

The key word in that law, however, is *intent*. Federal Judge Jeffrey Miller sidestepped the issue of whether the 1997 law itself was unconstitutional (the argument is that bomb-building instructions, without any link to a crime, are protected speech) by reminding the court that incitement requires (1) intent and (2) imminent action.

"This is really asking the court to outlaw a type of speech that has never been outlawed before," says Gerald Singleton, Coronado's attorney in San Diego. "All the case law talks about an individual having criminal liability for aiding and abetting in the commission of another substantive crime. Or if you are inciting violence to such a degree—crying 'Fire' in a crowded theater—that harm is imminent. That's the Brandenburg test."

The 1969 Supreme Court case *Brandenburg v. Ohio* established that inflammatory speech by a Ku Klux Klansman against blacks, Jews and others, no matter how disgusting, was protected unless it was likely to incite "imminent lawless action" (in other words, a lynch mob). In Coronado's case, the government waited two and a half years to see if someone would build a bomb based on his words, but no one did.

For three days in court Coronado heard the U.S. attorneys and a star witness, a long-time San Diego Police Department undercover cop, imply intent by stating under oath that the question from the audience was "How do I make a bomb for an action?"

The woman who asked the question took the stand to deny that this was her wording, but things were looking grim for Coronado until late in the trial, when an audio recording of the speech surfaced and proved the cop's "verbatim notes" were grossly distorted. The words *bomb* and *action* weren't said.

"THIS WOULD OUTLAW SPEECH THAT'S NEVER BEEN OUTLAWED."

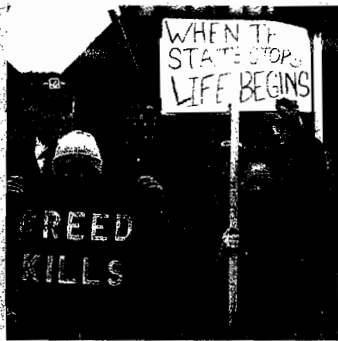
San Francisco civil rights attorney Ben Rosenfeld wrote a widely published essay on Coronado's case, which states, "This is a pure free-speech case. Measured against any historic test of free speech, Coronado's behavior—that is to say, his speech—was alarmingly innocuous and uncriminal."

Lauren Regan, an attorney with the Civil Liberties Defense Center in Eugene, Oregon who represented some of the Family, points out that no terrorism enhancements were used against the Oklahoma City bombers, who killed 169 people; one co-conspirator in that case is already out of jail.

"The government is choosing which subject matter it's going to punish and which it's going to turn a blind eye to," Regan says, noting that a right-wing website called Target of Opportunity has given detailed information about Coronado and some of the Oregon defendants, clearly advocating their murder by calling them "enemy targets" and including such lines as "One shot is all it takes" (since removed), but the feds have never gone after that site.

It turned out that the jury in Coronado's case was also skittish about the case's implications. On September 19 they came back with a split decision, a hung jury. They agreed he had taught people how to build an incendiary but were stacked against the idea that its use was imminent. Clear intent to commit crime still mattered. Coronado left the courtroom a free man—but not forever. The government is deciding whether to retry him.

San Francisco attorney Tony Serra, part of Coronado's defense team and a veteran of civil rights cases, including those of Black Panthers and Hells Angels, said during the trial, "Those of us who've been involved for many years in civil rights—movement cases, we are incensed at this litigation. This is a case, like a canary in a miner's cave, that seeks to measure how much free oxygen we still have in this country."



Are these people terrorists?

MARGINALIA

FROM A PRESS

release by Ozzy Osbourne after a Fargo, North Dakota sheriff set up a sting operation in which he lured more than 40 people with outstanding warrants to a preconcert party with promises of perks identical to Ozzy's official VIP packages and then, after arresting them, touted his success at a televised press event. "Instead of holding a press conference to pat himself on the back, Sheriff Laney should be apologizing to me for using my name in connection with these arrests. It's insulting to me and to my audience, and it shows how lazy this particular sheriff is when it comes to doing his job. Sheriff Laney went out of his way to tarnish my reputation by implying that I somehow attract a criminal element, which is not true. My audiences are good, hard-working people who have been hugely supportive of my music for nearly four decades. They have also been very supportive of my wife Sharon's colon-cancer charity by raising over a million dollars—partly through VIP ticket sales—at my shows."



FROM SOUTH DAKOTA'S 2007

Fishing Handbook, issued by the state's Department of Game, Fish and Parks. If you encounter a meth 'cook' or user while on your outing, remember they may be hallucinating, paranoid or violent because of the drug. Take precautions to keep you and your party safe. Keep in mind these six safety tips for approaching a meth 'tweaker' (user). (1) Keep your distance. (2) No bright lights. (3) Slow your speech; lower your voice. (4) Slow your movements. (5) Keep your hands visible or they may feel threatened and become unpredictable and violent. (6) Keep the tweaker talking. A tweaker who falls silent can be extremely dangerous. Silence often means that his/her paranoid thoughts have taken over reality, and anyone present can become part of the tweaker's paranoid delusions."



FROM A DIARY by Nick Turse,

describing how he entered a New York City court this past summer with a digital audio recorder in his bag: "I walked into the Daniel Patrick Moynihan United States Courthouse in lower Manhattan. Nearly three years before, I had been locked up about two blocks away, in the Tombs—the infamous jail then named the Bernard B. Kerik Complex for the now disgraced New York City police commissioner. You see, I am one of the demonstrators who was illegally arrested by the New York City Police Department during the protests against the 2004

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