

OPERATION N BACKFIRE:

**A Survival Guide
for
Environmental and
Animal Rights Activists**

— national lawyers guild —

THE BACKDROP

In 2004, several separate FBI investigations into the animal rights and environmental movements were combined into Major Case #220, also called Operation Backfire. Shortly after, the FBI's top official in charge of domestic terrorism announced that "The No. 1 domestic terrorism threat is the eco-terrorism, animal-rights movement." As a result, members of these movements face heightened levels of law enforcement surveillance, infiltration and harassment. Activists, their families and friends are contacted at their homes and workplaces, and are often intimidated and pressured by both local police and FBI agents to share information.

Laws such as the Animal Enterprise Protection Act (AEPA) and the Animal Enterprise Terrorism Act (AETA) impose more serious sanctions for certain crimes if committed by animal rights activists. In some cases, the laws criminalize traditionally protected First Amendment activities. Prosecutors often request "terrorism enhancements" to extend prison sentences in cases involving animal rights and environmental activists. In addition to longer prison terms, those sentenced under terrorism laws or enhancements face harsher treatment in prison, including possible placement in highly restrictive Communication Management Units.

Federal laws: AEPA and AETA

Both the AEPA (1992), and its successor, the AETA (2006), create the federal crime of “animal enterprise terrorism” as a means of prosecuting individuals for politically-motivated advocacy on behalf of animals. Such legislation creates enhanced penalties in prison sentences and restitution payments for activists.

In both laws, interstate travel or mail is necessary to make the actions federal offenses. Under the AEPA, an activist may be guilty of violating the law if he or she engages in interstate or foreign commerce and intentionally damages the property or causes loss of profits of an animal enterprise, or conspires to do so.

The AETA expands the scope of the AEPA to apply to the targeting of secondary and tertiary businesses affiliated with those involving animals. Under the new law, individuals must have the “purpose of damaging or interfering with the operations of an animal enterprise” and in connection with that purpose:

1. intentionally damage or cause the loss of any real or personal property;
2. intentionally place a person in reasonable fear of the death of, or serious bodily injury to that person, a member of the immediate family of that person, or a spouse or intimate partner of that person by a course of conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation; or
3. conspire or attempt to do so

To be charged under the AETA, an animal rights activist arguably needs only to join in a course of conduct to protest or boycott an animal-related business. Use of the internet and traditionally-protected speech like leafleting, sidewalk chalking, and home protests can become the basis for an indictment.

The first prosecutions

As of July 2009, the AEPA has been used twice: once against two activists for releasing animals from fur farms in Wisconsin and once against a group called the SHAC7. However, in the SHAC7 case, the charge was not that they committed acts in violation of the AEPA, but that they conspired with others through their web site and words.

At the time of this publication, there have been two indictments under the AETA. In early 2009, four activists were arrested on terrorism charges as a result of their participation in protests against the University of California's animal research programs. In the second case, two activists were arrested in connection with the release of hundreds of minks from Utah fur farms. The alleged criminal activity in both situations was non-violent and did not meet commonly accepted notions of "terrorism;" this shows that the AETA is already being used to restrict free speech and the animal rights movement.

Terrorism enhancements

Federal prosecutors who bring these cases to court have frequently argued for “terrorism enhancements.” Created in 1995, the terrorism enhancement allows judges to increase sentences by up to 20 years if a crime is (a) targeted at influencing the government and (b) found on a list 55 specific terrorist acts provided by Congress. The enhancement can be applied more broadly, however, because the sentencing guidelines used by judges allow its application even in the case of a planned act that was not carried out, as long as it “involved, or was intended to promote, a federal crime of terrorism.” The government recently sought a terrorism enhancement in the case of Briana Waters, who was accused of serving as a lookout for a group that set fire to a University of Washington research facility despite evidence that she was in a different city at the time.

Treatment in prison

If convicted, animal rights and environmental activists should be prepared to be treated differently in prison. Environmental activist Daniel McGowan and SHAC7 member Andrew Stepanian were unexpectedly transferred to highly restrictive and isolated Communication Management Units (CMU). CMU facilities block most forms of contact with the outside world, such as regular visitation and telephone privileges, and, until now, have been reserved for inmates who are considered highly dangerous.

HOW TO ASSERT YOUR RIGHTS

If an FBI agent or police officer knocks at your door

Do not open the door. State that you are going to remain silent. Do not answer any questions, or even give your name. Anything you say, no matter how seemingly harmless or insignificant, can be used against you or others. Ask the agents to slide their business cards under the door and tell them that your lawyer will contact them. If the agent or officer gives a reason for contacting you, take notes and give the information to your lawyer. Lying to an agent or officer is a crime. Do not pretend you are someone else or in any way misrepresent the truth.

If an agent or officer asks to search your home or office

You can refuse a search unless the agent or officer has a warrant. State, “I do not consent to a search,” but do not interfere if they begin to search anyway. If you live with your parents, they can consent to a search of the home, including your space. If you live with roommates, they can only consent to the search of common spaces. Your employer can consent to a search of your workspace without your permission.

If an agent or officer has a warrant

Ask him or her to slide the warrant under the door so you can read it. Search warrants should include the correct address, date, places to be searched, and items to be taken. Arrest warrants should include the date issued and correct name of the

person to be arrested. In either case, if any of this information is missing or incorrect, the warrant is void. Not complying with or interfering with a search warrant will probably result in your arrest. If they have a warrant, ask if you can observe the search; if they allow it, consider taking notes including identifying information of the agent (e.g. name, badge number, gender, height). When he or she is done with the search, ask for the receipt page of the warrant and a list of all items seized.

If an agent or officer stops you on the street

Ask, “Am I free to go?” If the answer is yes, consider just walking away. If the answer is no, state, “I have nothing to say. I want to talk to a lawyer. I do not consent to a search.” If the police say you are not under arrest, but are not free to go, then you are being detained. You do not have to answer any questions. You do not have to open bags or any closed container. The police can, however, pat down the outside of your clothing if they have reason to suspect you might be armed and dangerous. If they search more than this, state clearly, “I do not consent to a search.” They may keep searching; if this happens, do not resist because you can be charged with assault or resisting arrest.

If you are asked to show identification

While you have more protections and do not need to reveal this information if contacted at home, if you are away from home the laws vary from state to state. Some require you to give your name and/or identification if asked, while others

do not. You should familiarize yourself with the requirements for your state. If you are approached by an agent or officer and are unsure of your state's policy, make a decision based on your comfort level and your particular situation.

If you are stopped in a car

Keep your hands where the police can see them. If you are the driver you must show your license, registration and proof of insurance. You do not have to consent to a search but the police may have legal grounds to search your car anyway. State clearly that you do not consent to the search. If officers separate passengers and drivers in order to question them, no one has to answer questions.

If an agent or officer asks for a sample of your DNA

You may be asked for permission to do a cheek swab to collect DNA. In this situation you can, and should, refuse the request. While the police and FBI can ask for a DNA sample, this falls into the same category as a search of your home—unless they present a warrant, you have the right to say no.

If you are arrested by federal agents, even before being charged with a crime, they can take a DNA sample and send it to the CODIS (Combined DNA Index System) database. The authority of local police, however, varies from state to state. The following states give police the power to collect a DNA sample if you are under arrest: Alaska, Arizona, California, Kansas, Louisiana, Minnesota, New Mexico, North Dakota, Tennessee, Texas and Virginia.

If a DNA sample is taken when you are charged with a crime but you are never convicted, you may be able to have your record removed from the CODIS database. Laws vary from state to state—some states allow for the removal of your DNA profile upon presentation of a court order confirming the dismissal of charges against you. You should familiarize yourself with your state’s laws.

If you have already spoken to an agent

You can choose to remain silent at any time, even if you have already spoken to police and answered some questions. You should state, “I have nothing to say. I want to talk to a lawyer.”

If an agent approaches you about becoming an informant

The NLG has received calls about agents pressuring activists to become informants. If you have been approached, you should call the NLG Green Scare Hotline at 888-NLG-ECOL (888-654-3265) immediately. Agents may intimidate or pressure you into acting as an informant. They may promise that doing so will reduce your own sentence, should you be connected to an illegal action. They may even offer you money and other incentives. If you succumb to their pressure tactics and say yes, know that you have the right to change your mind at any time. It is extremely important that you contact a lawyer for assistance and advice if you find yourself in this situation.

If you receive a grand jury subpoena

A grand jury subpoena is a written order for you to go to court and testify about information you may have. You are not allowed to have a lawyer present and can be required to answer questions about your activities and associations. Because of the witness's limited rights in this situation, the government has frequently used grand jury subpoenas to gather information about activists and political organizations. It is common for the FBI to threaten activists with a subpoena in order to elicit information about their political views and activities and those of their associates. There are legal grounds for stopping subpoenas, and receiving one does not necessarily mean that you are suspected of a crime. If you do receive a subpoena, call the NLG Green Scare Hotline at 888-NLG-ECOL (888-654-3265) or a criminal defense attorney immediately.

The federal government regularly uses grand jury subpoena power to investigate and seek evidence related to politically-active individuals and social movements. This practice is aimed at prosecuting activists and, through intimidation, discouraging continued activism.

Federal grand jury subpoenas are served in person. If you receive one, it is important that you retain the services of a progressive attorney, preferably one who understands your goal of defending the political movement and friends. Most lawyers are trained to provide the best legal defense, often at the expense of others. Beware lawyers who advise you to cooperate with grand juries, testify against friends, or cut off

contact with your friends and political activists. Cooperation usually leads to others being subpoenaed and investigated. You also run the risk of being charged with perjury, a felony, should you omit any pertinent information or should there be inconsistencies in your testimony. Frequently prosecutors will offer “use immunity,” meaning that the prosecutor is prohibited from using your testimony or any leads from it to bring charges against you. If a subsequent prosecution is brought, the prosecutor bears the burden of proving that all of its evidence was obtained independent of the immunized testimony. You should be aware, however, that they will use anything you say to manipulate friends into sharing more information about you by suggesting that you have betrayed confidences.

If you appear before the grand jury you do not have the same protections as in a trial: you have no 5th Amendment right to remain silent (if you invoke your right to remain silent you may be held in contempt) and no 6th Amendment right to counsel although you can consult with one outside of the grand jury room.

Grand jury non-cooperation

If you receive a grand jury subpoena and elect to not cooperate, you may be charged with civil contempt. There is a possibility that you may be jailed or imprisoned for the length of the grand jury, in an effort to convince you to cooperate. (Regular grand juries sit for a basic term of 18 months, which can be extended up to a total of 24 months.) It is lawful to hold you in order to coerce your cooperation, but unlawful to hold you as a means of punishment. In rare instances you may face criminal contempt charges.

After contact with an agent

Immediately call your attorney. If you don't have one, contact your local National Lawyers Guild chapter (listed on www.nlg.org). After an agent or officer contacts you, alert your relatives, friends, co-workers and others so that they will be prepared if they are contacted as well.

STANDING UP FOR FREE SPEECH

Operation Backfire, the passage of domestic anti-terrorism legislation and the use of terrorism sentencing enhancements all hinge on the exploitation of fear. Some activists, along with prosecutors, judges and juries have bought into the FBI's new rubric of fear:

1. some activists have turned informants or provided false information about other activists to avoid government reprisal
2. many jurors—fearful, gullible or uninformed—simply disregard the law by convicting defendants regardless of the lack of evidence against them

The largest casualty of this misinformation campaign is the First Amendment's fundamental right to free speech and association. The government's crusade against politically-active individuals discourages the exercise of time-honored free speech activities, such as boycotts, protests and grassroots organizing. In creating unnecessary and often unconstitutional

al legislation that punishes statutory offenses more seriously if committed by animal rights and environmental activists, individuals are being branded terrorists and free speech is chilled for all.

Remember that you have the right (some movement lawyers and activists would say that you have a moral imperative) to stand up to FBI agents and other law enforcement officials. In case after case, informed resistance to intimidation tactics has brought positive results—sometimes just saying that your lawyer will contact them is enough to stop future visits or inquiries. Grand jury non-cooperation has often resulted in no additional subpoenas being issued. Every activist who takes a courageous stand makes future resistance easier for all.

DISCLAIMER

This booklet is intended as an introduction to new laws and practices specifically created to target animal rights and environmental activists. It is not a substitute for legal advice. You should contact an attorney if you have been visited by the FBI or other law enforcement officials.

NLG Green Scare Hotline
(888) NLG - ECOL
(888) 654-3265



national lawyers guild

132 Nassau Street, Rm. 922

New York, NY 10038

www.nlg.org

ISBN-13: 978-0-615-30785-5