

# Keeping America a Free Speech Zone (or what to do when George Bush comes to town)

## A primer on working with police when protesting the president

This primer is the result of hands-on experience the South Carolina Progressive Network had with local police and the Secret Service (SS) at five protests at visits to our state by President George Bush. The Network is a state coalition of 54 organizations that cover the range of progressive concerns.

Network Director Brett Bursey was arrested by local police, at the direction of the SS, in October 2002 during a Bush visit. In April 2003 Bursey was again arrested on federal charges stemming from the same event. The ensuing legal cases, which were concluded on Jan 6, 2004 with a guilty verdict, allowed us to gain insight and inside information to the way the SS works.

While there are differences between every presidential visit, (site logistics, public or private property, local police attitude, etc.) the SS is a national franchise that does business basically the same way in every town. Local police, without SS direction, can put reasonable time, place and manner restrictions on protests. These constraints (like not allowing a pro-Klan and anti-Klan rally at the same time and place, or loud music at midnight), should be negotiated with the local police in a way that does not place protesters in an out of the way area.

A week to three days before the president comes to town, the SS, as part of a Presidential Advance Team, has a meeting with the local police. White House political staff are in the advance team to make sure the event reflects their boss in the best possible light.

The site and motorcade route are studied and a "restricted" area is established. Tickets are routinely issued to the public for presidential visits to comply with the statute and regulations that specify how the SS to sets up the restricted area. There are currently no limitations on the size of the restricted area.

The SS suggests that a "free speech" or "protest" zone be set up for anti-Bush protesters. The SS has officially denied having anything to do with establishing the zones, however, SS representatives have acknowledged they do. Police officers in several states have testified or made public statements, that the Secret Service ordered them to keep protesters out of sight of the president.

During Bush's first two visits in March and October 2002, free speech zones were established that were out of sight of the venue - behind the coliseums and by the dumpsters. At both locations there were more than 25 protesters on hand before we were told to go to the zone. We refused and the police chose to ignore us.

On the third visit, October 24, 2002, Bush spoke at a free public event to 4,000 people. Circumstances prevented us from gathering our crowd before the police moved in to tell Bursey, who was initially alone, to go to the free speech zone or be arrested. In this instance, the free speech zone was a half a mile away from the venue.

Bursey was told that his "No War for Oil" sign made him a "protester" and he had to put down the sign, leave, or be arrested. Bursey refused to leave, noting that there were many people in the crowd who were carrying signs supportive of the president and Republican candidates. Bursey said, "I'm in a free speech zone. It's called the United States of America", and was arrested for trespassing by local police. Five months later the Secret Service had Bursey arrested under a federal statute that empowers the agency to establish secure zones for the protection of the president (USC Title 18, Section 1752(a)(1)(ii)). These criminal charges allowed Bursey to obtain, through discovery, the pages from the Secret Service manual that regulate their actions during protests (Attached are two pages from the 1986 manual and one page with revisions written in 2000. The major revision is that the SS no longer has to act in "concurrence" with local police).

Three days prior to Bush's fourth visit (May 2003), the local police told the Network that the free speech zone was three blocks away from the venue and out of sight of the media. The day before the protest, we took the Secret Service to federal court seeking a court order to prevent protesters from being segregated and kept at greater distances from the president than the general public (non-ticket holders for the event). The Secret Service told the judge that they had no plans to keep us from where, the day before, they said we couldn't be. We protested directly across the street from the venue.

By Bush's fifth visit in November 2004, we had obtained the Secret Service manual that states that without "specific facts or observable actions which would indicate that a demonstration ...pose(s) a threat to (the president), such demonstrators are to be treated as members of the general public. Secret Service personnel shall not initiate any action to segregate demonstration activity from public areas (paragraph 3/2000 revision)."

In a letter to the local police four days before the president's visit (see attached), we cited the manual's prohibition against segregating protesters, and implied that the legal liabilities of unconstitutional behavior would fall on the police if they follow bad advice from the Secret Service. The day before protest, the local police told us "there will be no free speech zone." We were allowed to protest at the front door of the venue.

During the fourteen months between the initial arrest and the federal trial we did extensive research into the statutes and regulations that govern the SS. It is important to note (as Bursey's guilty verdict confirms) that the SS does have the authority to establish secure or restricted areas around the president. While the statute requires the restricted areas to be

clearly "posted or cordoned", they were not in the Bursey case. There is also no limitation to the size of the restricted area. In the Bursey case, the restricted area was approximately 70 acres and stretched for mile.

The SS can control access to the restricted area, preventing anyone other than ticket holders to have access. In the Bursey case, the restricted zone was turned on and off, allowing the general public access except during the arrival and departure of the president.

The restricted area is different than the free speech zone. The SS manual only allows protesters to be segregated from the general public (put in a zone) if they pose a risk to the president. Absent the threat, protesters can go anywhere the general public (non-ticket holders) is allowed.

The Bush administration's zealous use of free speech zones to segregate protesters is arguably unconstitutional. This is no guarantee that you won't get arrested, lose your case and end up in jail.

However, we have found that if you do your homework, challenge the local police in advance and be prepared to take the SS to federal court prior to your demonstration, you can prevent being sent to the free speech zone.

## Lessons learned:

- The Secret Service meets with the local police three to five days before the president's visit, takes control of the security for the event and instructs the local police to establish a free speech or protest zone.

- Under the Bush administration, the Secret Service has adopted a rigorous policy of segregating protesters from the public into "zones" that are out of media camera range.

- We believe that somebody in the White House told the Presidential Detail of the Secret Service to include "sanitizing" areas of protesters as part of their routine. (Subpoenas for presidential political advisor Karl Rove and White House Secret Service Liaison Mike McLain in the Bursey trial were denied.)

- Police officers in several states have testified or made public statements, that the Secret Service told them to keep protesters out of sight of the president.

- The Secret Service will attempt to intimidate local police.

- There is an historical animosity between local police and federal agents that can be taken advantage of.

- Cops like The War on Terrorism and want to be a part of it — enhanced security sounds good.

- Free speech zones that segregate some citizens from the general public because of the content of their message are unconstitutional and create a legal liability for local police.

- Local cops can be convinced to disregard the Secret Service's illegal orders.

- There are good lawyers willing to work for free.

- The Secret Service DOES have the power to create secure zones around presidential venues and allow only invited or "ticketed" individuals to enter. These secure zones begin where the tickets or invitations are checked and should not extend beyond a "clearly posted or cordoned" area (which can be pretty large).

- The rest of America is a free speech zone.

- You can fight Bush Inc. and WIN (especially if they are breaking the law).

- You should try this at home the next time

Bush comes to visit.

*This is in no way intended to replace the advice of lots of competent lawyers. Discussions and negotiations can be handled by activists, but when reason fails, it's good to already have some legal help on board. Questions?:*

*email us at [freespeech@scpronet.com](mailto:freespeech@scpronet.com).*

A. Philip Randolph Institute  
Alliance for Full Acceptance  
Amalgamated Transit Union Local 610  
Association of Progressive Campaigners  
Beaufort County Coalition for Choice  
Carolina Peace Resource Center  
CASA/Family Systems  
Charleston NOW/52%  
Charleston Peace  
Coalition of Black Trade Unionists  
Collaborative for Community Trust  
Comm. of Correspondence  
Common Cause of SC  
Delta Sigma Theta Sorority Alumnae  
Chapter-Columbia  
Eastern Carolina CDC  
Eastern Cherokee, Southern Iroquois &  
United Tribes of SC  
Environmentalists, Inc.  
Food Not Bombs-Charleston  
Grassroots Leadership  
Greater Columbia Central Labor Council  
Greater Piedmont Central Labor Union  
Grimke Sisters  
GROW Food Coop  
Hilton Head for Peace  
Hispanic Outreach  
IFF ONLYS  
Intn'l Longshoreman's Assn, Local 1422  
League of Women Voters-Georgetown  
Malcolm X Grassroots Movement  
Methodist Fed. for Social Action  
Metropolitan Community Church  
NAACP-Lower Richland  
National Writers Union  
Natural Guard Fund  
Palmetto Aids Life Support Services  
P-FLAG-Columbia  
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Riverside CDC  
SC Advocates for Pregnant Women  
SC AFL-CIO  
SC Association of Community Development  
Corporations  
SC Association Against Domestic Violence  
and Sexual Assault  
SC Coalition to Abolish the Death Penalty  
SC Environmental Watch  
SC Fair Share  
SC ForestWatch  
SC Gay & Lesbian Pride Movement  
SC Legislative Black Caucus  
SC NOW  
Secular Humanists of the Low Country  
South Carolinians for Drug Law Reform  
Thinking People  
UNITE  
Upstate Secular Humanists



## South Carolina Progressive Network

P.O. Box 8325  
Columbia, SC 29202

November 6, 2003  
Chief Johnson  
Greenville City Police

Dear Chief Johnson,

This is to follow up on your conversation with Kris Kuykendall, our Upstate representative, in regards to our plans to picket the president November 10.

It is our intention to gather, as we did during the last presidential visit to the Expo Center last spring, in the grassy area adjacent to the parking lot across Eisenhower Dr. from the Center. We need a stationary location to accommodate our seniors and to host a press conference at 4:30pm. We will also be walking a picket line on the sidewalk on Eisenhower, across the drive from the Center. We will observe the state laws regarding access and egress in regards to peaceful pickets.

We anticipate that the Secret Service will visit you several days prior to the president's visit and tell you that "protesters" will need to be confined to a "protest", or "free speech zone". We are sure that you can prevail on the Secret Service that their concerns about the president's physical security can be met without selectively segregating people opposed to the president's policies from the general public. We have attached a page from the Secret Service manual that make reference to their policy against segregating peaceful demonstrators.

We understand your important responsibility to assist in the physical protection of the president, and will work with you to facilitate this mission. We also anticipate that your commitment to protect our constitutional rights to peacefully protest will not fall victim to the political concerns of keeping protesters out of sight.

Our experience at the last Bush visit to Greenville was positive and we are looking forward to working with your department to insure mutual satisfaction on November 10.

Thank you for your cooperation,

Brett Bursey, Executive Director  
SC Progressive Network

cc: Attorney Jay Bender

enclosure:

Page one: US Secret Service Intelligence Division Manual: Demonstrations

*(This is a 2000 revision of the 1986 Secret Service Intelligence Division Advance Manual. The following two pages include the unrevised manual on demonstrations. The section that has been updated is the last four paragraphs on page two)*

United States Secret Service  
Directives System

Manual : Intelligence Division Advance Manual  
RO : INT

Section : IOAM-25  
Date : 04/14/2000

# DEMONSTRATIONS

B.L.

The Intelligence Division is interested in groups or organizations that, because of their continuing actions and the appearance of a charter or direction of purpose, may be a threat or potential threat to the safety of a Secret Service protectee, protected facility, or foreign diplomatic mission.

It is incumbent upon the intelligence advance agent to be familiar with Secret Service policy concerning demonstration activities. Secret Service guidelines regarding the investigations of public demonstrations, including the type of information that may be collected, the methods of acquisition, under what circumstances contacts with demonstration groups may be made, and what information may be retained, are described in the Investigative Manual, INT-10.

The following is a summary of the Secret Service policy concerning demonstrations:

"In the absence of specific fact or observable actions which would indicate a demonstration may pose a risk to a USSS protectee, protected facility, foreign mission or to public safety, demonstrators are to be treated as members of the general public. USSS personnel should not initiate any action to segregate demonstration activity from public areas.

"Only in cases when the USSS has information that a demonstration poses a potential risk to a USSS protectee, protected facility, foreign missions or to the public safety, should USSS personnel initiate and participate in discussions with the demonstration group, or suggest that the group be segregated from the general public area. Any meeting or contact with the demonstration organizers should include local law enforcement authorities.

"Any agreement reached with demonstration organizers should comply with local, state, and federal laws. In the event the organizers agree to a segregated site, it will be the responsibility of the organizers and local law enforcement authorities to enforce the terms of the agreement.

"Personnel should continue to be diligent in identifying demonstration activity that may pose a risk to the USSS protective mission and its facilities."

Manual : Investigative  
RO : INT

Section : INT-10  
Date : 10/15/88

## Public Demonstrations

The Attorney General of the United States has issued guidelines to the FBI pertaining to the investigation of public demonstrations. The Department of the Treasury has authorized modifications to these guidelines which permit the Secret Service to initiate investigations of public demonstrations targeting protectees without prior departmental approval, to use certain investigative techniques not otherwise authorized, and to develop information outside the original scope of the guidelines. SAICs are authorized to initiate investigations of public demonstrations targeting protectees. These investigations, however are limited to the scope and techniques described below.

Field offices receiving information concerning demonstrations not targeting a protectee but possibly falling within the Attorney General's or Treasury Department guidelines should forward the information to the Intelligence Division for referral to the Department of the Treasury.

The following are the Secret Service guidelines regarding the investigation of public demonstrations:

1. Information a) relating to demonstration activities likely to require public health and safety measures from the Federal Government or b) acquired incidentally by the U.S. Secret Service in the course of carrying out its responsibilities, shall be reported to the Assistant Secretary of the Treasury for Enforcement through the Intelligence Division.
2. The U.S. Secret Service may undertake such investigations at the specific request of the Assistant Secretary (Enforcement).
3. The U.S. Secret Service may conduct investigations of public demonstrations that either target or occur in the vicinity of a Secret Service protectee, protected facility, or foreign mission without prior authorization from the Assistant Secretary (Enforcement) or consultation with the Department of Justice.

Information collected shall be limited to the following:

1. The date, time, place, and type of activities planned;
2. The number of persons expected to participate;
3. The intended mode of transportation to the intended site or sites and the intended routes of travel;
4. The date of arrival in the vicinity of the intended site and housing plans, if pertinent;
5. Similar information necessary to provide an adequate Federal response to ensure public health and safety and the protection of First Amendment rights. (This is intended to include such facts affecting the Federal responsibility as unusual health needs of the participants, counterdemonstrations planned which may increase safety needs, or possible inability of participants to arrange return transportation.)
6. Only in the case of investigations undertaken pursuant to the provisions of paragraph 3 in the previously listed guidelines is the U.S. Secret Service also authorized to determine the purpose and tenor of the public demonstration (to the extent necessary to assess its impact on the Service's protective responsibilities).

Investigations undertaken to collect information regarding public demonstrations shall be limited to the following methods of acquisition:

1. Review of Federal, State, and local records and contact with Federal, State, and local officials;
2. Review of public records and other public sources of information;
3. Contact with persons involved in the planning of demonstrations, provided that those contacted are advised of our authority to make the inquiry and the purpose for which it is being made;



Manual : Investigative  
NO : INT

Section : INT-10  
Date : 10/15/86

4. Only in the case of investigations undertaken pursuant to the provisions of paragraph 3 of the previously listed guidelines is the U.S. Secret Service also authorized to:
  - a. Physically monitor and observe, as necessary, public demonstrations in progress so as to constantly update the assessment of danger;
  - b. Passively receive information from voluntary informants;
  - c. Contact other sources from which information, as defined under types of information, may be lawfully obtained.
5. No photographs of any demonstration or the preparation thereof should be taken in the course of any such investigation.

In addition to the above policies, this Service has set forth the following specific guidelines concerning contacts with demonstration groups. Any questions regarding the guidelines should be directed to the Intelligence Division.

1. In the absence of knowledge of specific facts or observable actions which would indicate that a demonstration group or individuals participating in a demonstration pose a security threat to a protectee, such demonstrators are to be treated as members of the general public. Secret Service personnel shall not initiate any action to segregate such demonstration groups or demonstrators from public areas.
2. Only in cases where personnel of the Service can identify and articulate specific facts that would lead a prudent person to conclude that a demonstration group poses a potential security threat or a threat to the public safety, should Secret Service personnel initiate and participate in discussions with the demonstration group or suggest that the demonstration group be segregated from the general public area.
3. Any meeting with demonstration leaders initiated pursuant to the aforementioned paragraph shall be with the concurrence and participation of local law enforcement authorities.
4. Any agreement reached with demonstration organizers shall comply with acceptable State and Federal laws. In the event that the demonstration organizers agree to a segregated site, such agreement shall not be enforceable by agents of the Secret Service. Enforcement of the terms of any such agreement shall be the responsibility of the leaders of the demonstration group and, when applicable, the local law enforcement authorities.

### **Retention of Information**

Information acquired or collected regarding public demonstrations may not be indexed in a manner that permits identification of an individual with a particular demonstration, or retrieval of information by reference to a specific individual, unless the individual is the subject of an authorized law enforcement investigation. Investigations will be conducted for protective purposes only. No investigation will be undertaken to determine, for nonprotective purposes, the political, religious, or personal beliefs of any individual, group, or organization.

The foregoing in no way restricts any otherwise authorized investigation of an alleged violation of the U.S. criminal code wherein an individual or organization under investigation is incidentally involved in either a public disorder or public demonstration. For example, surveillance reports covering the activities of a suspected counterfeiter may include observations of his participation in a picket line.