

Commentary

It Shouldn't Be a Federal Offense to Offend

By Marc A. Levin
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Americans have recently learned that wearing the wrong clothes in the U.S. Capitol can get you arrested.

During President Bush's State of the Union Address, anti-war protestor Cindy Sheehan was handcuffed and removed for her shirt stating, "2245 Dead. How many more?" Meanwhile, Beverly Young, wife of Congressman Bill Young (R-Fla.), was similarly ejected for her shirt that read "Support the Troops -- Defending Our Freedom."

While members of Congress are now criticizing the arrests, they are emperors with no clothes when it comes to such madness. After all, it is Congress that is responsible for the proliferation of over 4,000 federal criminal laws that put all Americans in danger of arrest.

Young will not be charged and the U.S. Attorney is reportedly dropping the misdemeanor charge against Sheehan for "disruptive conduct." However, the rest of us must live knowing there are thousands of similarly vague federal crimes lending themselves to arbitrary enforcement.

For example, annoying someone on the Internet is now a federal crime punishable by up to two years in federal prison. The provision is buried in the Violence Against Women and Department of Justice Reauthorization Act signed into law by President Bush on January 5, 2006. A provision entitled "Preventing Cyberstalking" was added to the bill by Senator Arlen Specter (R-Pa.).

The provision, which appears in Section 113 of the legislation, states: "Whoever...utilizes any device or software that can be used to originate telecommunications or other types of communications that are transmitted, in whole or in part, by the Internet... without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person...who receives the communications...shall be fined under Title 18 or imprisoned not more than two years, or both."

This new law could be used to prosecute anonymous blogs that ridicule politicians or even anonymous messages sent through dating websites. What the sender considers to be a romantic greeting could be found annoying by the recipient.

The provision almost certainly violates the First Amendment in light of the U.S. Supreme Court's 1995 decision in *McIntyre v. Ohio Elections Commission*, which struck down state restrictions on anonymous

political pamphlets. Surely, constitutionally protected speech in print is also protected online.

Another example of federal overcriminalization is the National Animal Identification System (NAIS), which began on a voluntary basis in 2004 and becomes mandatory this year for 25 percent of premises where animals are kept.

The sweeping U.S. Department of Agriculture program is in response to hyped fears about mad cow disease. All premises must register their animals with the government by 2009 or face criminal penalties, including a fine of \$1,000 per day.

Each state can determine the definition of a "premise." Most states are likely to follow Texas in excluding private pets, but persons who raise or transfer animals will be covered. Thus, if a litter of kittens is born and the owner wishes to sell or give them away, the owner must register his premises and tag the kittens with a 15-digit electronic identification device.

While large agribusiness operations may have the wherewithal to implement this scheme, small farmers throughout the nation are bracing for an unbearable regulatory burden. And certainly not high school 4-H or FFA programs, which are included.

Finally, while immigration reform is needed, it also raises the specter of overcriminalization. Legislation passed by the House is pending in the Senate that imposes a three-year mandatory minimum prison sentence on anyone who, with an expectation of financial gain, "assists, encourages, directs, or induces" two or more foreigners to illegally reside in the U.S.

While this provision is likely intended to apply to large businesses that employ illegal immigrants, it could also imprison ordinary Americans who unwittingly hire an illegal immigrant as a housekeeper, nanny, or gardener.

As the arrests of Cindy Sheehan and Beverly Young demonstrate, criminal law is a blunt instrument. It should be reserved for conduct that is blameworthy and threatens public safety, not wielded to enlarge the power of government at the expense of ordinary Americans.

While the intentions of many proposals to expand the scope of criminal law may be noble, unintended consequences are inevitable. Civil laws and free market incentives can be used to achieve the same goals with a scalpel rather than anvil.

Ultimately, if the government is empowered to arrest us for annoying messages on t-shirts, all of our freedoms are in danger of being stripped away.

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