Germany is NOT a democracy!

German Chancellor Angela Merkel has come under intense international scrutiny over authoritizing state attorneys to prosecute a TV comedian over a vulgar, satirical poem he performed lampooming Turkey's brutal dictator Tayyip Recep Erdogan. But the issue goes far beyond Merkel's cozying up to the tyrant in Ankara; Germany's libel and anti-insult laws have long been a weapon of choice for those seeking to suppress the marketplace of ideas. Hitler himself, prior to assuming power, was also a vicious libel plaintiff. In Germany, you can even get into free speech trouble for "libeling" the dead!

The Boehmerman case and the wrong debate about free speech law

Whenever he is not busy having Kurds killed, imprisoning journalists, or denying the Armenian Genocide, Turkish strongman Erdogan is a sensitive, fragile snowflake, easily offended by the many people who laugh at his ridiculous and scary regime. Having Turkish citizens who purportedly compare him to Gollum from Lord of the Rings prosecuted apparently doesn't satisfy his urges; Recently, Erdogan's regime has attempted to muzzle the laughter in Germany to. It started off with calling in Germany's Embassador to Turkey in late March after satire show Extra 3 on Germany's state-owned TV channel NDR had run a song mocking Erdogan's human rights record, saying "a journalist who writes anything that Erdogan doesn't like, he'll be in jail by tomorrow". They had also suggested Erdogan's vision of equal rights for women consisted of cops beating up female anti-government protesters as well as the men.

It was in the context of this row that another state TV comedian, Jan Boehmermann, dedicated his show to discussing the extent of the free speech rights guaranteed on paper by

Article 5 of the German Basic Law. He highlighted that laws draw the limit of the permissible at a legal concept known as *Smäh-Kritik,* vilifying criticism. He said he would perform a poem named after the concept to exemplify that, and introduced it saying "what comes next would be forbidden in Germany". Then he went on to read out a vulgar text hyperbolically accusing Erdogan, among many other things, of fellating with a "hundred sheep", having a small penis, smelling worse than the fart of a pig and watching child porn as well as beating women. He concluded his poem saying, "this is what you can't say in Germany".

The rest is history. Erdogan complained about the poem under two separate German anti-insult laws, firstly the arcane Article 103 of the criminal code, banning "the insulting of foreign heads or institutions of state" (which requires authorization by the government for prosecution to occur) and then secondly filed a legal request for prosecution under the regular law banning insults against persons, Article 185 of the criminal code (which any person can use, without any special authorization). Merkel's embattled government then issued the authorization for prosecution under Article 103, much to the surprise of press commentators. They had argued the second complaint was a "bridge" over politically hot waters that Erdogan had built for Merkel, allowing her to refuse to issue the controversial authorization under the arcane and unpopular Article 103, which even she herself has said she intends to repeal soon, but still ensuring criminal charges against comedian Boehmerman could proceed under a different law

The attack on Boehmerman's speech rights is not the first time Article 103 has been used to suppress democratic speech at the behest of the powerful. In
the 1960s it has used so frequently to persecute pro-democracy movement refugees from Iran that itbecame known as the "Shah-article". In the 1980s it was used tolegitimize police action

against protests who held up a banner describing Pinochet's murderous regime in Chile as a "gang of murderers", a historically accurate statement. The court's chilling justification: if police had not intervened to confiscate the banner, "the correct bilateral relations between Germany and Chile would have suffered to a not insignificant degree". In 2003, the president of police in Potsdam, a suburb of Berlin, wanted to use to law to prosecute an Iraq Waropponent who installed a "Bush Fuck You" placard at his home in an upscale neighborhood close to the German capital. Bush hadn't complained (so no prosecution went ahead), but well-to-do neighbors had not taken to the sign favorably. The threat of prosecution no doubt sent a chill down the war opponent's spine, and put a smile on their face

Despite this, Boehmerman's case also shows how Germany's conversation about free speech is broken. Much of the critical public reaction has not been to defend Boehmerman's right, per se, to engage in such satire, but rather has become an exercise in not-so productive group outrage against Article 103. Politicians have described the law as a "pre-democratic" remnant of an age where insulting kings was still seen as a major crime, highlighting that the law establishes much higher maximum penalties (5 years in jail) than the regular law against insults (one year in jail). The popular Focus Magazine prominently featured a bow-tie wearing constitutional law expert arguing that this violates the principle of equality before the law, making it incompatible with Germany's Basic Law. The problem with this line of reasoning is that every moment spent discussing this redundant law is one not spent discussing the wider host of censorious, unnecessary libel laws that stifle free thought in Germany, including the very same Article 185 that could yet be used to prosecute Boehmermann. The Boehmerman case has already had a knock on effect, with a Berlin administrative court banning the reprinting of his poem for a planned demonstrationagainst "insulting goats" that free speech activists had intended to

hold outside of the Turkish embassy, although the judges did not rule on the legality of his poem more widely.

Germany Anti-Insult and Libel Laws – Anti-Democratic and Stupid

Germany has a plethora of highly restrictive libel and anti-insult laws of the sort one would more expect to find in Hitler's Nazi-Germany than Merkel's supposedly tolerant Germany. Aside from the laws already mentioned, the rarely used Article 189 bans the "disparagement of the memory of the dead", Article 188 establishes particularly high penalties for "smearing and defaming" a "person involved in political life" if the speech in question is connected to the person's political activities and "makes their public work significantly harder". Article 192 explicitly says that the truth of a statement does not preclude it from constituting an illegal, punishable form of expression if it is insulting in the context of the way the statement was made. Underlying these laws is the idea that people have "personality rights" (Persönlichkeitsrechte) that a democratic state is obliged to protect from being compromised by demeaning speech.

Much of this can be traced down to the haste and post-war compromise with which the Basic Law, (then Western-) Germany's quasi-constitution was developed in the late 1940s after the fall of Hitler's Nazi dictatorship. Article 5, its' provision on free speech, reflects this perfectly. It states that everyone shall have a right to freedom of expression, information and art, without the existence of censorship, but then goes on to qualify this, making clear: "These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons, and in the right to personal honour". Theodor Heuss, a deputy to the 1948 parliamentary council that drafted the Basic Law, later said Article 5's limiting provisions were consciously vague and implied that the "right to personal honour" arose out of an egalitarian desire to ensure that the same protections against

smears would not just be available to officials of the state (as had de facto been the case in Nazi Germany, where the dignity of dissidents and democrats had not been respected by the state), but to all people.

This ties in with the Basic Law's wider rhetoric of the "inviolability of the dignity of man", a vague and unspecific platitude that would no doubt have been acceptable to both socialists and conservatives in post-Hitler West Germany. The Basic Law was originally, as it itself stated, intended to be only a compromise placeholder until such a time as a reunified Germany could pass a new constitution. But, given that the Basic Law gradually became a powerful emotive symbol of a new, post-totalitarian sense of Germanness, there little chance of this happening, and Germans will remain stuck with its inadequate free speech protections.

But the historical lack of emphasis on true free speech still does not explain the reluctance of Germany's current political, social and literary elites to demand a long-overdue expansion of speech rights. An understanding of this must be found elsewhere. An opinion piece penned by the editor-in-chief of Berlin's well-regarded, intellectual Berliner Zeitung exemplifies what many in Germany's cultural elites think about the Boehmerman case. Peter Huth wrote "Merkel did everything right… Even if there is a guilty verdict, Boehmermann will easily be able to live with the fine". It is unquestionably true that with a good (expensive) lawyer, waves of public support and a well-regarded professional background, no German TV presenter or big-league newspaper editor is likely to face jail or financially crippling fines for any insults he/she may throw at anyone. The almost certain knowledge that they themselves will never face such a predicament is exactly why many in Germany's powerful cultural and political elites find it so difficult grasp the chilling, censoring effect Germany's anti-insult laws can have on those less privileged financially, socially or professionally; Local bloggers, small

town newspapers, court case defendants, dissident refugees and historical researchers who already live on the economic margins of society but are the lifeblood of public debate. To many of these people, even the threat of a time-consuming police investigation or state prosecution can be the determining factor in not pursuing a news story, not expressing their opinion or even not exercising their fundamental due process rights.

Far from the egalitarian impulse that supposedly led to the constitutional "right to personal honour", in practice, Germany's anti-insult laws give immense power to officials to threaten small-time critics and trouble-makers who hold inconvenient opinions with legal repercussions. In 2014, a local court in the Rhineland region of Germany imposed a 6 month jail sentence for "insults" on an elderly man who had spent years writing letters to officials complaining, allegedly in crude and sometimes sexist terms, of inefficiency, ineptitude and of alleged corruption. Meanwhile, In the Schwarzwald region, an unemployed man who was dependent on social assistance received a 3 month jail sentence for using an insulting word in a telephone conversation with a local government official by whom he was told that more paperwork was needed before a permit he had requested could be issued. Last year, Germany's Constitutional Court overturned a guilty verdictissued by a local court under the anti-insults laws against a woman who encountered police while wearing a "fuck cps" sticker. The local court had characterized this as an expression impacting the "social worth of the affected persons in their official capacity and reducing it". In the 1990s, the Constitutional Court famously overturned a similar conviction against someone who had displayed a banner saying in (bad) English " a soldier is a murder [sic]", although the decision appears to be partially based on the reasoning that 'a soldier' did not specify troops from any specific national army or regiment in particular. Nonetheless, a regional higher court found that shouting "ACAB" while pointing at an

individual police officer is an illegal and specific insult.

In 2008, a small-time hotel operator who had been detained on charges of unlicensed commerce, was visited by a police inspector in jail who informed him that prosecutors had just obtained and fulfilled a search warrant for his private apartment. The hotel operator protested vigorously to the police inspector. He said that his lawyer should have been present during the search, and called the state prosecutor who had requested the search warrant a "breaker of the law whose days in the judicial system are counted". He was later investigated, prosecuted and convicted by a county court of "disparaging criticism" and "defamation" towards the state prosecutor for saying this, as well as of other charges unrelated to those comments, but an appeals court eventually overturned the verdict in 2011. Criminal charges of "smearing" (*Verleumdung*) were also used by the state to prosecute a victim of child sexual abuse who has forced to work in an illegal child brothel in the 1990s. Mandy K. had claimed in an interview with prosecutors investigating the case and publically, that that a senior judge had been among those visiting the brothel as a client. Her case sparked a national debate about allegations of judicial corruption as well as police attitudes to victims of sexual assault, and there is no record of her being convicted of the charges. But even being investigated by police and taken to court is a time-consuming, costly experience that discourages critical expression in the face of officialdom.

Germany's libel laws also have an unfortunate history of stifling the discussion of vital political topics. One of contemporary Germany's most prominent far-left politicians, Gregor Gysi, has, since the 1990s, faced allegations of having collaborated with communist Eastern Germany's feared Stasi 'state security' agency to inform on his clients, some of whom were dissidents, while he was a solicitor in Eastern Germany prior to re-unification. He vehemently denies the allegations,

which have never been proven, and became known as the "red law-suit monger" in 1990s over his successful efforts to sue those making such allegations for defamation. Despite the fact that a parliamentary committee of inquiry had deemed the allegations of informal collaboration with state security to be credible and had accused Gysi of being included in an effort to bring about the
"as-effective-as-possible suppression of the democratic opposition in the GDR [Eastern Germany]", Gysi was able to use to the judicial system to obtain an
injunction under libel law banning former Eastern German dissident Freya Klier from repeating comments suggesting that Gysi had 'not represented his clients but had instead spied on them and sought to control them together with his comrades'. Prestigious news-magazine Der Spiegel characterized the efforts to silence (in effect, if not necessarily intent) the debate using the judicial system as ultimately unsuccessful. But it also described the consequences of Gysi's lawsuits for free expression at the time in no uncertain terms; "regional newspapers reacted in a scared manner, in some editors offices one preferred to think twice about whether one should report about Gysi and the Stasi- and then didn't".

Even something as removed from day-to-day politics as historical research has come under attack under the absurd Article 188. In 2000, a Bavarian court issued an injunction banning a newspaper from making claims in a local history article that a deceased World-War-Two-era local figure had been "War-criminal who was sentenced to death". Reviewing the historical record, the court said that the deceased man had only been an "alleged war criminal", not a "Nazi-criminal", and that the death-sentence-carrying war crime conviction had been "only by Czech Courts in 1945", whichaccording to the court hadn't settled the matter of whether he was actually one. Penalties for contravention of the injunction were set at up to one month imprisonment or a not insubstantial 100000 German Marks fine. Other historical researchers have also

found their work scrutinized by Article 188 complaints submitted by angry relatives of the long-dead, although usually with less success. In 2013, a Northern German court ruled that a historical case study calling the notorious First World War German colonial military commander Lettow-Vorbeck a war criminal in regards to his activities in South-West Africa at the time did not constitute a crime, because the historical study was constitutionally protected pursuant to freedom of science. Similarly, in the 1960s, a German appeals court over-turned a five month prison sentence that had been imposed under Article 188 on a journalist who had written a historical piece questioning whether Nazi diplomat Ernst Von Rath, famously assassinated in 1938 in Paris, had been engaged in homosexual activities and had been killed in a sexual dispute. Such pointless legal action not only wastes court time, but is also a clear deterrent to research on important historical issues. If you are on a tight budget or timeline, and receive a legal threat from an incensed relative, wouldn't it seem much easier to avoid all the legal time-wasting by leaving out that sentence about the war-crimes committed by their deceased ancestor?

Of course, when vague laws exist, is there nothing to stop them from being used counter to the way lawmakers intended. Modern German Neo-Nazis have developed considerable expertise in attempting to use anti-insult laws and libel complaints to hassle journalists and anti-racist campaigners, href="http://www.spiegel.de/spiegel/print/d-13683058.html">a strategy they themselves called "penetrant legalism". Even Hitler, prior to taking power in 1933, himself filed a vexatious libel lawsuit in 1930 against Karl Rabe, the editor of the pro-democratic Munich Telegram newspaper. Rabe had been responsible for an article suggesting that Hitler had attempted to bully and threaten Crown-Prince Rupert of Bavaria in case he publically expressed criticism of a ballot measure Hitler has advocating for. Yes, that's correct, a soon-to-be dictator commanding an army of thuggish, Sturm-Abteilung death

squads had his thin skin offended by an editor who documented how he had acted like school-ground bully towards an ageing aristocrat. And the very democratic, judicial institutions he was trying to destroy humoured him by allowing him to bring his vexatious and censorious suit.

Meanwhile, Germany's cultural and political elites love pointing the finger at supposed violations of free speech and press freedom elsewhere in the world, particularly in neighboring Poland. There, their criticisms of the current Law & Justice Party government were perceived to be so out-of-touch that they attracted furious condemnation even from one of the country's main opposition leaders, the maverick Pawel Kukiz. He urged them to look "more closely at democracy in your own country". Perhaps they should take his wise words to heart and start by throwing out Germany's useless, repressive anti-insult laws. All of them.

The GDR was not a rogue state – Die DDR war kein Unrechtsstaat

It is Sunday. I am sitting on my couch and read German newspapers online. In the online edition of DIE ZEIT I am reading an article about coalition negotiations between the Green Party, the SPD and The Left Party. There was a state election last weekend in Thueringen/Germany. Because the people in Germany have no direct vote, the political parties in Germany are trying to figure out what they want to do with the peoples vote. Germany is an indirect democracy, which

means that the peoples vote has no meaning at all. The separation of powers, which is the criterion of a rule of law and therefore democracy – has long become a farce in Germany, an illusion. All three branches of government – legislative, executive and judicial – are determined by the ruling parties. The respective coalition determines the laws, the executive branch is dominated by the ruling parties, the highest judicial positions are negotiated between the parties.

Now two of these parties, The Green and the SPD, are trying to force the Left Party to admit the GDR was a rogue state. In Germany there is no First Amendment Right of Freedom of Speech. Voicing your opinion for example about historical truths can be punishable by fines or prison, you have to agree with the main stream opinion or you will be **ostracized** and or **criminally prosecuted**.

Well, going back to the Left Party which must first agree that the GDR was a rogue state before the other two parties continue coalition talks with them. What is it about that everyone in Germany must bow to the main stream opinion that the GDR was a rogue state? Todays Germany is trying to present itself as the country in which political and personal freedom is flourishing. This of course is non-sense. In order to do that it is the official mantra that all other "Germany's" are bad. So, was the former GDR a rogue state?

I will answer this question first in German, later I will translate it. If you want a short answer: No, the GDR was not a rogue state (See saved you from learning German).

Gäbe es ein Unwort des Jahres in der Auseinandersetzung um die DDR, müsste es der Begriff „Unrechtsstaat" sein. Bekanntlich sind Unwörter „Wörter und Formulierungen aus der öffentlichen Sprache, die sachlich grob unangemessen sind und möglicherweise sogar die Menschenwürde verletzen".

Wenn Biografien von Millionen Menschen bis zur Unkenntlichkeit

verfälscht werden, dann hat das natürlich mit Menschenwürde zu tun. Das alles ist nicht neu. Sofort mit der Vereinnahmung der DDR wurde dieser Begriff als zentraler Bestandteil der Delegitimierung der DDR angewandt. Bereits im Einigungsvertrag war die DDR im Artikel 17 – wenig abgewandelt – als „Urechts-Regime“ bezeichnet worden. Und der Alt-Bundespräsident und Jurist Roman Herzog erklärte 1996 vor der Enquete-Kommission: „Sie (die DDR) war ein Unrechtsstaat“. Im Auftrag der Herrschenden sollen Ministerien, Museen, Archive, Stiftungen, Zentralen für politische Bildung und die Birthler- und sonstige Behörden des Kalten Krieges, flankiert und potenziert von den angeblich unabhängigen Medien, mit Hilfe dieses Begriffs die politische, mehr noch, die persönliche Erinnerung an die DDR bis zur Unkenntlichkeit verzerren und positive Erinnerungen nach Möglichkeit tilgen.

Nun könnte man zu Recht erwidern, wissenschaftlich, insbesondere auch rechtswissenschaftlich, gibt es den Begriff „Unrechtsstaat“ nicht. Bekanntlich hat sogar der wissenschaftliche Dienst des Bundestages auf Anfrage der LINKEN-Politikerin Gesine Lötzsch erklärt: „Den Begriff Unrechtsstaat gibt es im Völkerrecht nicht“. Und weiter: „Eine wissenschaftlich haltbare Definition des Begriffs Unrechtsstaat gibt es weder in der Rechtswissenschaft noch in den Sozial- und Geisteswissenschaften. … es geht zumeist darum, die politische Ordnung eines Staates, der als Unrechtsstaat gebrandmarkt wird, von einem rechtsstaatlich strukturierten System abzugrenzen und moralisch zu diskreditieren“. Selbst hier wird also bestätigt, was wir schon lange sagen: der Begriff ist ein Kampfbegriff, mit dem nachträglich die Abrechnung mit der DDR betrieben wird. Letztlich wird er als antikommunistisches Schlagwort im fortgesetzten Kalten Krieg innerhalb Deutschlands verwendet. Es soll der Eindruck erweckt werden, das Leben in der DDR habe sich gesamtgesellschaftlich und -staatlich gesehen nicht nach Regeln vollzogen, sondern es habe die reine Willkür, also Unrecht, geherrscht. Entweder es habe kein Recht bestanden,

gesetztes Recht sei Unrecht gewesen oder die Rechtsanwendung sei willkürlich erfolgt. Mit dem Begriff „Unrechtsstaat“ soll vermittelt werden, dass die DDR von Anfang an und bis zu ihrem Ende „Unrecht“ war. Und weil diese Behauptung systematisch, permanent und flächendeckend verbreitet wird, können wir es nicht bei der fehlenden Definition bewenden lassen, sondern wir müssen uns damit offensiv auseinandersetzen.

Das Recht der DDR basierte auf der grundlegenden wissenschaftlichen Erkenntnis, dass es Mittel der Politik ist, die jeweils herrschende Klasse sich ihr dienende Gesetze gibt und sie dementsprechend anwendet (Das ist übrigens heute in der BRD nicht anders, nur – die Herrschenden sind andere, und die Tatsache des politischen Wesens des Rechts wird, im Gegensatz zur DDR, verschwiegen bzw. geleugnet).

Daraus allerdings den Schluss zu ziehen, der Bürger sei der Willkür des Staates, seiner Behörden ausgeliefert gewesen, ist falsch; es ist eine böswillige Behauptung. Immerhin gab es eine Reihe von Rechtsinstituten, die bekanntlich Verantwortung und weit reichende Vollmachten zur Wahrung der Gesetzlichkeit hatten: staatliche, gesellschaftliche und gewerkschaftliche Kontrollorgane und -mechanismen, u.a. das Eingabengesetz, die Arbeiter- und Bauerninspektion, die Gesetzlichkeitsaufsicht der Staatsanwaltschaft. Soweit das politische Strafrecht die These vom Unrechtsstaat DDR stützen soll, so trifft dies weder vom Inhalt und vom Umfang das Wesen sozialistischer Rechtspflege noch berücksichtigt es, dass tatsächlich der Schutzcharakter des Rechts gegen feindliche Tätigkeit erforderlich war. An der Zahl von Verurteilungen von DDR-Bürgern und von Rehabilitierungen nach 1990 den Unrechtscharakter nachweisen zu wollen, geht schon deshalb fehl, weil diese Rechtshandlungen von der herrschenden Politik gefordert und von der Justiz der BRD willfährig – gegen Recht und Gesetz – umgesetzt wurden.
Und im Übrigen: Jeder Staat verfügt über politisches Strafrecht, das besonderen Regeln unterliegt. Das war und ist

in der BRD nicht anders.

Die Gewaltenteilung, die immer wieder als herausragendes Kriterium eines Rechtsstaates ins Feld geführt wird – oft auch von linken Politikern -, ist in den westlichen Staaten, auch in der BRD, schon lange zu einer Farce, zu einer Illusion geworden. Alle drei Gewalten – Gesetzgebung, Exekutive und Jurisdiktion – werden von den herrschenden Parteien bestimmt. Die jeweilige Koalition bestimmt die Gesetze, die Exekutive wird von den herrschenden Parteien dominiert, die höchsten Richterämter werden unter den Parteien ausgehandelt.

Beim »Streit um die DDR« geht es nicht um die »Aufbereitung« historischer Fehler eines Gesellschaftssystems oder Staates geht, sondern um Revanche (für das »Unrecht«, die Macht des Kapitals für einige Jahrzehnte beschränkt zu haben) und Prävention (die Eindämmung des Risikos, dass die Erinnerung an die tatsächliche DDR als befreiender Impuls bei kommenden Kämpfen wirken könnte). Wer sich auch nur ansatzweise gegen die Verdammung der DDR als Unrechtsstaat stellt, wird sofort nieder geschrien,

Natürlich kann schon aus praktischen Gründen nicht alles als Unrecht bezeichnet werden, wie Frau Merkel jüngst in ihrer DDR-Amnesie weise demonstrierte. Die DDR sei Unrechtsstaat gewesen. Dennoch, so Frau Merkel, seien Dinge wie der Ehevertrag legal gewesen. Deshalb habe auch nicht jeder neu heiraten müssen, als die Wiedervereinigung stattfand. Primitiver geht es nicht; Eheschließung und Ehevertrag waren auch in der DDR völlig verschiedene Sachen. Aber, so genau kommt es ja, was die DDR betrifft, sowieso nicht an.

Die Perversion dieser These vom Unrechtsstaat erleben wir in der mehrfach erhobenen Forderung, geleugnetes DDR-Unrecht, d.h. Aufklärung über historische Wahrheiten, unter Strafe zu stellen. Offenbar erweist sich die Diffamierung der DDR als unwirksam, wie bekanntlich Umfragen im Osten immer wieder zeigen. Da bleibt weiter nichts übrig, als mit den Geschützen

des Strafrechts zu drohen.

Comments or questions are welcome.

* indicates required field

Name:*

Email:*

Subject:*

Message:*

Submit

Petition Askes For White House To Declare Copblock And Others ‘Domestic Terrorists’

In what I’m sure is a huge coincidence, a petition at We the People was submitted Sept. 19th asking for the government to label “Copblock.org” (and any variation) members as “domestic terrorists.” [h/t Police State USA] This seems to follow news of Austin police officer Justin Berry’s designation of these organizations as “domestic extremists” far too closely to be just some sort of random happening – more or less within five days of the information first being exposed.

Here's the stupidity in full:

> *CopBlock.Org and its affiliates on social media are often applauding and encouraging violence towards law enforcement officers and their families. At times, they are even directly causing said violence in their communities, and then supporting each other online or in person for their illegal activities. I believe that many people who are active in this organization are committing terroristic acts by inspiring, inciting, or taking parts in acts that are designed to take human lives in cold blood for political gain. The statements made by this organization and its affiliates should be taken very seriously by local, state, and federal law enforcement agencies, and proper action should be taken to combat this. I believe the US DHS and FBI should monitor and investigate this Organization.*

Last things first, the DHS/FBI probably *already* monitor groups like this to a certain extent. Both work closely with local law enforcement and if local officers are complaining about being filmed or otherwise "harassed" by civilians, chances are certain reports have been kicked up the ladder to agencies with bigger budgets, more manpower and (especially in the case of the DHS) plenty of spare time to collect and collate information on Constitutionally-protected activities.

Next, there's the unfounded accusations that these organizations are "directly causing violence." As I've noted earlier, police accountability organizations draw more than their share of people who can't articulate their objections to law enforcement tactics beyond vague threats and misspelled swear words, but those running these organizations (along with a majority of their members) do *not* encourage violence towards law enforcement members. Holding someone accountable for their actions does not mean acting as judge, jury and executioner.

"…take human lives in cold blood for political gain." I can't

even. Pushing for accountability through activism isn't a political sport. Law enforcement agencies aren't partisan entities. They don't check voter registrations before ordering people to stop filming or restraining someone into a coma/morgue. That's not how this works. At all.

The petition stills needs ~95,000 signatures before it can be officially ignored, but at the rate it's going, it will never get there, despite pushes from law enforcement advocacy groups. About all that can be done with this information is a bit of data mining to determine which state harbors the most resentment towards police accountability.

What this does definitely show is that there's a subset of law enforcement (and their supporters) that find the activities of these groups threatening, and are looking for any route at all to shut them down. The percentage of those seeking this is probably no larger than the subset of Copblock members who actively wish injury and death on law enforcement members. Just as Copblock shouldn't be judged by a vocal minority, neither should law enforcement advocates. To most, these groups are just another part of the job. Some handle the extra attention better than others but there's no concerted effort being made to shut them down.

Cops in hot water after videos catch them shooting, beating people

One officer shot an innocent motorist during traffic stop; another beat a homeless woman.

The South Carolina incident.

A South Carolina highway trooper was charged Wednesday over accusations of assault and battery in connection to the unprovoked shooting of a motorist pulled over for a seatbelt violation—an incident that was videotaped by the officer's dashcam.

And on the same day South Carolina patrolman Sean Groubert, 31, was charged with wrongful shooting, California officials agreed to pay a woman $1.5 million after a motorist captured video with a mobile phone of a California highway patrolman repeatedly punching a woman on the side of a Los Angeles freeway.

That officer, Daniel Andrew, agreed to resign and could still be charged in connection to the July pummeling of a homeless woman. The video of Andrew repeatedly punching Marlene Pinnock in the face invoked images of the Rodney King beating while garnering millions of hits on YouTube and elsewhere. An off-duty policeman helped subdue the officer.

"When this incident occurred, I promised that I would look into it and vowed a swift resolution," California Highway Patrol Commissioner Joe Farrow said in a statement. "Today, we have worked constructively to reach a settlement agreement that is satisfactory to all parties involved."

The California incident.

Pinnock was taped walking barefoot alongside the 10 Freeway by the La Brea exit. The CHP said its officer followed the woman to prevent her from walking into traffic.

The CHP has provided Los Angeles prosecutors with its investigation. No charges have been filed yet.

Back in South Carolina…

In the South Carolina case, the officer was fired from duty Friday, and bond was set at $75,000. At a Wednesday bond hearing, the authorities played the video of Groubert's stop September 4 of motorist Levar Jones, 35.

The tape shows the trooper asking the motorist for his driver's license. The driver, who is at the gas station and had just exited his vehicle, reaches inside the car for his license. The officer yells for him to "get out of the car. Get out of the car." He fires a handful of rounds at the unarmed Jones, who is holding his hands above his head.

The victim is struck once in the hip. "I can't feel my leg," the victim is heard saying.

After the shooting, the officer yells: "Put your hands behind your back. Put your hands behind your back."

"What did I do, sir?" the victim asks. "Why did you shoot me?"

"Well, you dove head first back into your car."

The victim was hospitalized and is now recuperating. The officer faces 20 years if convicted.

The officer's case file shows that Groubert was handed the Medal of Valor Award last year following a shooting he was involved in outside a bank. The officer's case file, obtained by local media, shows the trooper has been the subject of at least five citizen complaints.

The man's attorney, Barney Geise, said his client is not guilty.

Comments or questions are welcome.

* indicates required field

Name:*

Email:*

Subject:*

Message:*

Submit

ACLU releases Android app that secretly videos police

Police Tape prevents officers from deleting video shot during police stops.

The New Jersey chapter of the American Civil Liberties Union has released an Android app that surreptitiously records police stops and sends the videos to legal watchdogs for

review.

The advent of Police Tape is designed to counter a practice an increasing number of civilians have encountered over the past few years: those who videotape or photograph police officers performing routine stops and other official acts are frequently arrested or disciplined. Evidently, many officers are all in favor of increased surveillance as long as it isn't turned on them. Earlier this year, for instance, a Miami journalist covering a police effort to evict Occupy Miami protestors recovered video of officers arresting him after it was deleted from his camera.

Police Tape provides basic advice for people who are stopped by police officers. It also claims to provide controls for discreetly recording the video or audio of such stops. After it is activated, it disappears from the screen. The app will also upload the recording to ACLU-NJ so monitors there can review it for any civil liberties violations. "Once it has been uploaded, it's saved on an external server, so police cannot permanently delete the file," an accompanying video states. An app for Apple iOS devices is in the works, the ACLU says.

Depending on local laws and other specifics, recording video or audio without the knowledge or consent of people in the immediate vicinity may run afoul of the law. That means end users may want to seek legal advice before routinely using Police Tape. Then again, having the app installed and ready to go in an emergency may not be a bad idea, either.

Police beating of woman goes viral

https://www.youtube.com/watch?v=1Ke6z9a5QOQ

“This is not just jabs, they are hooks. Those are lights-out punches. Those aren’t like taps. You see it, you heard it. It was like ‘thump, thump, thump’ and then you see her head bouncing ‘bam, bam’ on the concrete. Then you hear her screaming, ‘No, don’t, stop.’ Then you even—at the end where she has her hands up like this—when it’s clear there is no more resistance, he takes another four or five shots.”

That’s how motorist David Diaz described the incident he recorded with his phone of a homeless African American woman being beaten by a white California Highway Patrol (CHP) officer alongside a Southern California highway.

The assault—which has generated millions of hits on YouTube and elsewhere—has prompted protests seeking justice, politicians demanding a federal inquiry, threats of lawsuits, and outrage against the CHP. The reaction virtually aligns with what happened in the immediate aftermath of the taped beating of Rodney King in 1991, when King’s attack by Los Angeles Police Department officers went viral via a different means: the television.

Judge affirms probationer has a right to tape police officer in her home

Judge: When police search a home, recording their actions is even more important.

In a statement of findings and recommendations filed last week, a US Magistrate Judge for the Eastern District of California affirmed that a woman on searchable probation had the right to videotape three officers who came to her home to search it.

In February 2011, plaintiff Mary Crago was visited by three police officers, including defendant Officer Kenneth Leonard. Leonard was working on the Sacramento Police Department's Metal Theft Task Force, and he was tipped off that Crago may have been involved in a theft involving a vehicle battery. Since Crago was on searchable probation, the officers entered her home—the door was open—and they found Crago "sitting on a mattress, digging furiously through a purse."

According to court documents, "Inside the purse, defendant found a four-inch glass pipe and a small baggie with white residue. The white residue subsequently tested positive for methamphetamine." Crago did not resist the officers' search, but she allegedly told Leonard that she was recording the search on her laptop. Leonard then took her laptop and deleted her recording, telling her that recording was forbidden.

Crago then sued, saying her right to record the police in her home was protected by the First Amendment.

The magistrate who looked at the case this month denied Leonard's request for summary judgment, which would have

prevented the case from going to trial. He argued that recording a police officer while conducting official business is not yet "a clearly established right under the First Amendment."

In recent years, many courts in the US have seen cases that dispute whether the public is allowed to video tape cops in the course of their official business. In 2012, the Supreme Court declined to review a ruling saying that the First Amendment encompasses a right to record the actions of police who are on duty. In May 2014, a federal appeals court said that the public does have a right to film police in public.

Leonard argued that no cases that *do* assert that taping a police officer is a right involve a probationer. Further, those cases usually say that recording an officer is a right when the recording is made in public, but Crago allegedly recorded the officer in her private home. Because of this, Leonard argued, he should benefit from "qualified immunity," which prevents government officials from facing civil damages if they don't "violate clearly established statutory or constitutional rights of which a reasonable person would have known."

The magistrate judge came down in favor of Crago, however:

> *The location of where the video recording was being made was plaintiff's place of residence. If a plaintiff has a clearly established constitutional right to record from a public place where the plaintiff has the lawful right to be, a plaintiff surely has such a right in his or her home. There simply is no principled basis upon which to find that although the right to record officers conducting their official duties only extends to duties performed in public, the right does not extend to those performed in a private residence. The public's interest in ensuring that police officers properly carry out their duties and do not abuse the authority bestowed on them by society does not cease once*

> *they enter the private residence of a citizen. To the contrary, there appears to be an even greater interest for such recordings when a police officer's actions are shielded from the public's view. Further, there is no reason to believe that plaintiff's status as a probationer would diminish the public's interest in how police exercise their authority in a private citizen's home.*

The magistrate judge's ruling must be approved by a US District Judge, and all parties were given until August 19 to file objections to the magistrate's recommendations.

Court upholds "First Amendment" right to film police

This ruling is one of many nationwide supporting right to record police.

A federal appeals court has ruled that the public has the right to film cops in public and has reinstated a lawsuit against a local New Hampshire police department brought by a woman arrested for filming a traffic stop.

The plaintiff in the case, Carla Gericke, was arrested on wiretapping allegations in 2010 for filming her friend being pulled over by the Weare Police Department during a late-night traffic stop. Although Gericke was never brought to trial, she sued, alleging that her arrest constituted retaliatory prosecution in breach of her constitutional rights.

The decision is but one in a string of decisions that are slowly sticking the needle into laws nationwide barring the recording of police as they perform their duties. But some states, like Massachusetts, outlaw the secret audio recording of police. A woman accused of secretly turning on the audio recording feature of her mobile phone while she was being arrested was charged with wiretapping two weeks ago in Massachusetts.

In the latest decision, the First US Circuit Court of Appeals ruled that Gericke "was exercising a clearly established First Amendment right when she attempted to film the traffic stop in the absence of a police order to stop filming or leave the area." The decision allows her lawsuit against the department to proceed.

The woman was following a friend to his house when an officer pulled him over. From about 30 feet away, after getting out of her car, she announced she was going to audio-record the stop, according to the record. Ironically, her video camera malfunctioned, and she was unable to capture anything. She returned to her car, according to the opinion.

In a footnote, the court noted Friday that the malfunction was irrelevant: "We agree that Gericke's First Amendment right does not depend on whether her attempt to videotape was frustrated by a technical malfunction. There is no dispute that she took out the camera in order to record the traffic stop."

Another officer arrived at the scene and demanded to know where her camera was, and the woman refused to say. She also declined to provide her license and registration. She was arrested for disobeying a police officer, obstructing a government official, and "unlawful interception of oral communications," the court said.

Local prosecutors declined to charge her on any of the counts.

She sued, and a lower-court judge sided against the police, who argued they should be immune from a lawsuit. The police appealed.

“It is clearly established in this circuit that police officers cannot, consistently with the Constitution, prosecute citizens for violating wiretapping laws when they peacefully record a police officer performing his or her official duties in a public area,” the appeals court said. [PDF]

The First Circuit covers Massachusetts, New Hampshire, Maine, and Rhode Island and sent the case back to a lower court for trial.

One aspect of the law that bars the recording of police is whether authorities order people to disperse for legitimate safety reasons. In this context, a trial could determine whether the woman was being disruptive and whether police feared for their safety because the driver of the vehicle that was pulled over said he had a firearm, the appeals court wrote.