

Eric McDavid is a 32 year-old environmental activist who is currently serving a 19 year and 7 month sentence in a "federal correctional institution" in Victorville, CA. Eric was arrested in January 2006 as part of the government's ongoing "Green Scare" - a campaign by the federal (and, in some cases, more localized) government to target animal and environmental rights activists and label them as "terrorists." The Green Scare has alarming similarities to COINTELPRO. In fact, congressional testimony from FBI Deputy Assistant Director John Lewis in 2005 painted a very clear picture of the FBI's intentions. Lewis claimed that the "number one domestic terrorism threat" was the "eco-terrorism, animal rights movement." He went on to state, "The FBI has developed a strong response to domestic terrorism threats. Together with our partners, we are working to detect, disrupt, and dismantle the animal rights and environmental extremist movements that are involved in criminal activity." When compared to similar statements made by the Feds during COINTELPRO (which is not to say that it ever really ended...), these kind of comments have the kind of "chilling effect" so commonly talked about in civil liberties debates. For example, the following statement was taken from a 1967 memo about "black nationalist hate groups": "The purpose of this new counterintelligence endeavor is to expose, disrupt, misdirect, discredit, or otherwise neutralize the activities of black nationalist, hate-type organizations and groupings, their leadership, spokesmen, membership, and supporters..." This is exactly what is happening within the environmental and animal rights movements today. The FBI is using the same tactics - planting informants (which then plan and direct "illegal" behavior), targeting aboveground activists, and terrorizing supporters.

Eric was a target of this program.

In August of 2004, Eric met a young woman named "Anna" at a gathering in Des Moines, IA. He was instantly taken with her and, over the course of the next year and a half, he would maintain contact with her, travel with her, send her love letters, and eventually move into a cabin with her in Dutch Flat, California. "Anna" was young, energetic, and seemingly full of knowledge. She claimed to be a street medic and to have experience with protest and direct action. Throughout 2004 and 2005 she appeared at many anarchist and environmental gatherings and protests - but ultimately she began seeking out Eric. But "Anna" was not who she seemed to be. She was, in fact, an FBI informant. Her career with them had it's genesis at the FTAA protests in Miami in 2003, when she went "undercover" to do an extra-credit report for her class at a community college. When a classmate - who also happened to be employed by the local police - heard her report, he alerted his supervisors. Anna was soon working, in an official capacity, for the FBI.

When Eric was arrested (along with two others, who would eventually plead guilty and cooperate with the government against him), he was charged with a single count of conspiracy to destroy by arson or explosives public and private property. No "crime" had ever actually been committed. Eric was basically accused of talking about the wrong things (to the wrong people). Eric was denied bail twice. The judge claimed he was a flight risk and a danger to the community, despite the fact that he had no criminal record and no history of violence. Part of the judge's "rationale" for this was that Eric had a support team which the prosecution was outlandishly claiming was a part of the ELF. It took over two and a half years to bring Eric's case to trial, which meant that he was held for 2 ½ years before ever being convicted of any crime. It took another 8 months for Eric to be sentenced. During this entire time, he was held in Total Separation (or solitary) at the Sacramento County Main Jail. He rarely got to go outside, or even leave his cell. He had no cell mate and was not supposed to leave his cell while others were out. Because visits at Sacramento County are behind a wall of glass, he had no real human contact during this entire time.

Throughout Eric's ordeal it has been abundantly clear that Eric has been the target of government

repression. A quick look at the criminal complaint against Eric is revealing. The 15 page document uses the words anarchy, anarchist, or anarchism approximately 25 times. It focuses not on any criminal history or nefarious criminal connections (because there were none), but on lifestyle and legal protest activity. Trainhopping, hitchhiking, dumpsterdiving, and traveling are all discussed as if they were evidence of a criminal mind. It talks about Crimethinc (an anarchist collective) - mentioning the books *Evasion* and *Days of War, Nights of Love* repeatedly. It specifies that Eric does “not use a cellular phone” - which, absurdly enough, became a sticking point during his bail hearings. The criminal complaint made it clear from the very beginning that this case was not about a crime being committed (clearly, as there was no crime), but about the government's rabid pursuit of people who lead lifestyles that they find threatening or unacceptable – specifically, anarchists.

The complaint doesn't even talk about who Eric is until the bottom of the third page – the first two pages are spent discussing the ELF and anarchists. For the government to focus so exclusively on the ELF was completely inappropriate – there was no evidence that Eric was connected to the ELF, or that he was claiming to be a “member.” To this day, that evidence does not exist. When the complaint finally gets around to talking about Eric, it starts with this sentence: “Eric McDavid, age 28, is an anarchist....” Clearly, this was paramount in the government's perception of Eric and their subsequent targeting of him. To target someone based on their perceived political ideology is anathema to many citizens' ideas of “justice,” yet this is clearly what happened in Eric's case. The complaint goes on to recount the details of an arson that an acquaintance of Eric's had already been arrested and charged with in a weak effort to implicate Eric in illegal activity. The complaint states, “Based upon the apparent connection of the above-described arson/attempted arsons to the anarchist movement and Eric McDavid's participation in the anarchist movement, the JTTF attempted to interview McDavid on February 24, 2005...” By this line of reasoning, literally thousands of people within the United States could be subject to questioning by the FBI any time they decide that an “anarchist” has perpetrated a crime.

What the complaint does not make clear is “Anna”'s role in the alleged conspiracy. This would all become strikingly clear through the government's own discovery and the testimony of their own witnesses during trial. “Anna” was, in fact, the driving force in the group. She pushed, cajoled, manipulated and pressured the others whenever she felt like they weren't “moving fast enough.” She got angry and upset when they couldn't “stick to a damned plan.” She demanded goals and action every step of the way. She funded the entire endeavor – paying for the computers they used, the car they traveled in, the gas money, the food they ate, even the house they lived in. And she was instructed by the FBI to string Eric along romantically to keep him involved.

All of this made for a strong case of entrapment, and this is what Eric and his attorney claimed throughout Eric's trial. Even the testimony from Eric's former co-defendant's - even testimony from Anna herself – contained strong evidence of entrapment. Unfortunately, the judge in Eric's case went against all legal precedent and redefined the terms of entrapment law. The judge told the jury that Eric's “predisposition” began when he and Anna first talked about the alleged conspiracy. Normally predisposition is defined as the time at which the defendant has “first contact” with a government agent. This would have been when Eric met Anna in August of 2004. With the judge's new, false definition, the jury had to evaluate Eric's predisposition from the time that the government claimed he and Anna first spoke about the alleged conspiracy – July 2005. This was almost a full year after Eric met Anna, traveled with her, and formed a relationship with her (everyone assumed they were partners). When the judge gave the jury this directive during their deliberations, they decided they had to convict. Before the judge issued this instruction, the jury was split about whether or not to convict. Immediately after Eric's trial – even as they were leaving the courthouse – jurors commented to the media about the abhorrent behavior of Anna and the FBI. They claimed that the FBI was an

“embarrassment” and that Anna was pushy and untrained. An article in the Sacramento Bee reported that, “The jurors agreed that if the judge's instructions had allowed them to place the relevant time period from August 2004 forward, they would have acquitted McDavid.” Two jurors eventually submitted affidavits to the court prior to Eric's sentencing detailing numerous problems that occurred during Eric's trial. Both concluded that Eric should receive a sentence similar to that of his former co-defendants (both received time served), and both also concluded that Eric deserved a new trial.

Unfortunately, the judge ignored the juror's pleas and sentenced Eric to an outrageous 19 years and 7 months in prison. One of his co-defendants spent less than a month in jail before she was released on bail. Clearly, Eric is being punished for the crime of standing up for himself and fighting the charges against him. The government is attempting to turn him into an example for the rest of the animal and environmental rights movements. Here is what happens if you even *think* about what they deem as inappropriate behavior.

Eric's sentence is far out of proportion with others who are charged with similar crimes. According to the sentencing statistics for the 2<sup>nd</sup> quarter of 2008, the average sentence for someone convicted of arson is about 7 years. Someone convicted of murder can expect, on average, a sentence of about 16 years. Eric carried out no actions, yet he was sentenced to more time than most people convicted of murder. And he was labeled a terrorist.

And the government's obsession with “anarchists” continued even into the sentencing phase of Eric's ordeal. Eric's pre-sentencing report contained a “mental health treatment” condition. The report reads, “The mental health treatment condition is recommended to determine the source of the defendant's anti-government beliefs.” This is a shocking admission on the part of the government. Apparently, holding “anti-government beliefs” is a mental illness that requires treatment. Or, rather, not treatment, just evaluation. They don't claim to be attempting to “cure” Eric of anything – only determining the source of the beliefs. This seems almost laughable (were it not so alarming) given the fact that they just entrapped him, threw him in jail without bail for over two years, held him in solitary, then sentenced him to almost 20 years in prison. And they wonder about the source of his anti-government beliefs...

Eric is currently appealing both his conviction and his sentencing. The court granted Eric's lawyer permission to file an over-sized opening appeal brief because of the sheer volume of issues that needed to be raised in the appeal. In the meantime, Eric is serving his sentence in a federal prison. Because of the nature of the charges against him – and because the “terrorism enhancement” was applied during the sentencing phase – Eric has been subject to various restrictions. Media has been denied access to interviews. When he tried to talk on the phone with a representative of the media, he had his phone calls cut off for a month. All of his communications are heavily monitored, and he often has materials that are sent to him by supporters denied. He has to be careful about what he says to friends and loved ones on the phone and in letters for fear of ruining his chances on appeal. That is why I am responding to this request and not him.

As for a proposed solution... how do you fix a broken system? So many things went wrong with Eric's case. From improper jury instructions, to outrageous government misconduct – even before Eric was arrested. Clearly the FBI's use of informants is completely out of control. Anna was paid between \$65,000 and \$75,000 dollars to formulate a crime and entrap Eric and others in it. Unfortunately, Anna is the norm rather than the exception. One is almost tempted to say that the government is creating crime where none existed before...

Sentencing disparities need to be addressed. COINTELPRO needs to be addressed (meaning, it needs

to be stopped). The targeting of dissidents needs to be addressed. The targeting of specific political ideologies needs to be addressed.

There are also a series of new(ish) laws – and laws waiting to be passed – that further compound these already existing problems. Laws like the AETA – which target a particular kind of activism and specific groups of people – are so broad that they criminalize basic first amendment activities. These laws are appearing with increasing frequency in both the federal and state legislatures. Laws like the AETA are not only unconstitutional, they directly undermine the ideals of free speech and “democracy” the courts and the “justice” system are supposed to uphold (or, so the story goes...).

If Eric's appeal is not successful, he will spend almost 20 years of his life in a cage for a “crime” that was never committed – for an idea that was created and pushed along by a government agent. Even with the best possible outcome on appeal (a highly unlikely possibility, but a possibility nonetheless) – Eric will already have spent at least 5 years in prison. This is completely unacceptable. For a country which claims to hold “freedom” and “democracy” as the highest values, Eric's case is a shocking example of just how far off the mark those values really are.