

CONSTITUTIONAL CURFEW

You have the right ...
to speak your mind

By Camilla Mortensen

'BRAVE BEATRICE' FIGHTS FOR FREE SPEECH

"Brave Beatrice" was the first to go down in Lane County's current battle over free speech. "If we can't protest in the land of the free and the brave then how can other countries protest?" Beatrice, aka Florence Emily Semple, asks. "I think we take our First Amendment and all our amendment rights for granted. They are so entrenched in our culture that in our complacency we don't realize what our life would be like if they were not only taken away but curtailed."

Semple, Alley Valkyrie, Terry Purvis and some 20 other activists — some associated with Occupy Eugene (OE), some with SLEEPS (Safe Legally Entitled Emergency Places to Sleep) and still others simply interested in their constitutional rights — have been arrested over the last few months in the battle for free speech without a curfew both in the Wayne Morse Free Speech Plaza and in the Eugene Federal Building plaza.

They are taking their cases to court. The plazas are "traditional public forums," Civil Liberties Defense Center attorney Lauren Regan says, and that means, according to Supreme Court rulings, the right of the government to limit expressive activity, such as protests, is sharply restricted.

Purvis, a wildland firefighter and medic, points out the free speech and right-to-protest issue goes further than the ban on camping as protest in the plazas. "If they take away my First Amendment rights, then they can take away my Second Amendment rights and those guys in big trucks shouting 'get a job' in a couple months will be out here protesting, too."

"We can't let fear hinder us from doing what's right," he says. Standing at a SLEEPS pop-up protest camp at the city-owned Trude Kaufman Senior Center on a freezing January day, he gestures at Conrad Barney, a young homeless man on a hunger strike, and at other homeless people sitting at the camp, some holding signs. "I was that guy two years ago, driving by saying 'get a job.' Then I met them."

Purvis, like Semple, came to be arrested for his free speech protest through his involvement with Occupy Eugene. Purvis works with Occupy Medical and is hoping to set up a 24-hour medical response team. Semple, an "old" Eugene SLUG Queen (Queen Marigold Gastropodia the Magnificent) designed and made the red flannel bandanas stenciled with the word OCCUPY seen in Eugene's OE camps and across the country.

Early in May 2012, Occupy Eugene began to use the plaza of the old Eugene Federal Building as a protest site. The plaza, centrally located and near other public buildings downtown, is a familiar site for protests and sign waving by anyone from anti-abortion protesters to anti-drone activists. Regan points out that the federal General Services Administration (GSA)'s own website discusses that the historical usage of the site for protest dates back to the Vietnam War, and she writes in legal documents in *OE v. GSA* that "the U.S. Attorneys Office has stipulated that the plaza is a traditional public forum for purposes of constitutional analysis."

Regan says that historically, the federal government had always intended the plaza to be a public, free speech venue without limiting speech to particular subjects or time periods, and without requiring permits, except in rare instances.

Occupy in Eugene has been associated, almost since it began, with the plight of the homeless in Lane County, so it was no surprise when OE set up an Occupation in the federal plaza in May. When they did, Regan says that Officer Thomas Keedy of Federal Protective Services (FPS) and told them they could not sleep there and set up a protest tent, but that they could protest. Keedy asked if someone would be a point of contact and fill out a permit. Purvis agreed to do so and the group was given a 60-day permit to be at the federal plaza.

At the end of June, when the group filed to extend and renew their permit, OE was informed that due to "problems with other Occupy movements," not OE itself, and because "GSA has an interest in preserving the plaza for use by the general public, maintaining an aesthetically pleasing area and keeping the public safe," 24-hour assemblies would not be allowed. The agency told the group that they could protest from 8 am to 5 pm. The GSA agreed to extend the hours to 7 am until 10 pm after OE pointed out that ending protests at the plaza at 5 pm prevents those with day jobs from exercising their free speech rights.

OE instead chose to apply for a second permit under the same 24-hour conditions of the first permit and told the GSA that Occupy would remain without a permit if the agency was going to force them to accept "unconstitutional conditions" in terms of the times they would be allowed to assemble and protest.

The new permit was denied and OE members were informed on July 10 they had 24 hours to leave the plaza or law enforcement would be called in. Occupy stayed, and when FPS came to arrest, Semple stayed behind, sitting in a lawn chair, holding a sign and challenging what she saw was a violation of her right to free speech.

"I thought about what this arrest was about; it wasn't about robbing someone or something bad," Semple says. "We are modeling for other countries, and if we can all get to where we are talking, communication is going to get to world peace."

She adds, "By standing up at the federal building I'm standing up for world peace."

The criminal case against her was later dismissed. Regan says she thinks this is because an earlier hearing on the case "did not go well" for the prosecutors.

A lot of the basis for this case has been ruled on time and time again, Regan says. "I guess the feds thought that Occupy wouldn't challenge it, or didn't have the means to address this blatant unconstitutionality."

In December protesters went back to the plaza, thinking the issue was resolved. But without a written ruling it was left unclear when protest in that public forum was allowed.

Hoping to set a legal precedent for Eugene and across the country, Semple and Purvis filed a complaint in U.S. District Court that said their First Amendment right to free speech and assembly was being violated as well as their Fifth Amendment right because the change in GSA policies for protest times was a federal response to the Occupy movement and only enforced on alleged members of OE.

The GSA says it is unable to comment for this story due to pending litigation.

"The Occupy political movement, based on speech and protest actions, is being treated differently," Regan says. Using tents for protest has been ruled constitutional, she says, and "There is no compelling reason that government curtails First Amendment rights after 11 pm."

On Dec. 29 Semple and Purvis were arrested protesting in the federal plaza. The criminal charges against them mean that in the same federal courthouse two different judges will be ruling on the civil case Semple and Purvis filed, as well as the criminal case for their recent arrests.

These cases are the "heart and soul" of constitutional law, Regan says. ■

Next week: Lane County's ban on free speech in the Wayne Morse Free Speech Plaza.