



AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO

KATHERINE PEASE, INTERIM EXECUTIVE DIRECTOR. MARK SILVERSTEIN, LEGAL DIRECTOR

October 1, 2003

Lorne Kramer, City Manager
City of Colorado Springs
107 North Nevada Avenue
Colorado Springs, CO 80903
By facsimile to 719-385-5488 and United States Mail

Luis Velez, Chief of Police
City of Colorado Springs
705 South Nevada Avenue
Colorado Springs, CO 80903
By facsimile to 719-578-6169 and United States Mail

Lori Miskel
City Attorney's Office
City of Colorado Springs
30 South Nevada, #501
Colorado Springs, CO 80903
By facsimile to 719-578-6209 and United States Mail

Dear Mr. Kramer, Chief Velez, and Ms. Miskel:

I write to you on behalf of Citizens for Peace in Space (CPIS) and several of its members.

During the NATO conference that is scheduled to take place next week at the Broadmoor Hotel in Colorado Springs, a small group of CPIS members wish to exercise their constitutionally-protected right to hold signs and otherwise express their views about issues of peace and military policy. They wish to do so while standing on the public right of way in a location where they will be visible and where their message can reach their intended audience, which includes participants in the NATO conference and the media representatives who will be covering it.

I am confident that you can accommodate this exercise of constitutionally-protected rights without compromising any of your legitimate concerns about the security of the NATO conference.

Citizens for Peace in Space would like to schedule a brief demonstration for a specific time, such as 4 to 5 p.m. on Wednesday October 8. They would confine their activities to a specific location, such as the public sidewalk across from the Broadmoor Hotel and outside the International Center, the same spot where members of the group have peacefully held signs in the past without incident. The size of the group would be limited to six, and each of the participants is willing to submit to the same security checks as the numerous members of the media whom you are already planning to admit to the "security zone." Indeed, CPIS will provide you in advance with the names of the specific individuals who would participate. They are Mary Sheetz, Donna Johnson, Gerald Jacobitz, April Pergl, Barbara Huber, and Bill Sulzman. It is my

understanding that all of these individuals are well-known to the Colorado Springs Police Department as individuals who are dedicated to the principles of peace and non-violence. Considering the number of Colorado Springs police officers who are expected to be on the scene, I am sure that you have the personnel to ensure that this brief peaceful expression of views can take place without compromising the security of the NATO convention.

Unfortunately, however, I have encountered considerable resistance to this proposal in my preliminary conversations with Colorado Springs officials.

When I began making inquiries, I was referred to Commander Liebowitz of the Colorado Springs Police Department. He told me the only locations where individuals would be permitted to hold signs expressing their views would be outside the very large "security zone" that includes all territory within two blocks of the Broadmoor Hotel. He suggested that there might be a spot acceptable to the City somewhere near the planned checkpoint at the intersection of Second and Lake Streets. That checkpoint, however, is more than two full blocks from CPIS's preferred location on the sidewalk at Second and Lake Circle. Since there are no sidewalks on the portion of Lake Avenue to which Commander Liebowitz referred, his suggestion would likely result in demonstrators being located even farther away, perhaps around the corner along the length of Second Street between Lake and Broadmoor. Such a location would dramatically reduce or eliminate entirely the ability of the members of Citizens for Peace in Space to reach their intended audience. They would not even be visible to the media or the attendees at the conference.

At the suggestion of Commander Liebowitz, I spoke with Ms. Miskel on Monday September 29. She was not able to provide me with any case law that supported the decision to exclude protest from such a large area of the city. I provided Ms. Miskel with a copy of the court's decision in Service Employee International Union v. City of Los Angeles, 114 F. Supp. 2d 966 (C.D. Cal. 2000), in which the court held that the First Amendment prohibited the Los Angeles police from establishing a similarly overbroad "security zone" designed to insulate the Democratic Convention from protesters. Although I have not had a chance to speak with Ms. Miskel since then, she sent me a brief email indicating that she believed that courts in Colorado would not be required to follow the result of a case from the federal courts in California. While it is true that the decision from California would not be a binding precedent, I believe its reasoning would be persuasive to Colorado courts. This is especially true in the absence of any case law that permits police to ban the public expression of views from such a broad swath of territory that is ordinarily considered a public forum.

While the Colorado Springs Police Department quite properly is concerned about providing adequate security for the NATO conference, the current plans for what has been called a "security zone" prohibit far more expression than is necessary. According to Ms. Miskel, even residents of the "security zone," who will be permitted to enter the zone because they live there, will nevertheless be forbidden to stand on the public sidewalk in front of their houses and hold up a sign calling for the abolition of nuclear weapons. Such a draconian suppression of the constitutional right of expression simply cannot be justified in the name of security.

When I spoke with Commander Liebowitz, he told me that believed there was precedent for a similar type of "security zone" around the United Nations building. I did find a case in which a federal court upheld the decision of the New York Police Department to deny a parade permit to an organization that wanted to conduct a march with a hundred thousand participants past the United Nations Building. The case turned on the heightened crowd control problems and threat to security posed by a parade of that size as opposed to a rally of the same size that remained in one stationary location. See United for Peace and Justice v. City of New York, 243 F. Supp. 2d 19 (S.D.N.Y.), aff'd 323 F.3d 175 (2d Cir. 2003). In that case, the New York Police Department believed that it could provide adequate security for the United Nations Building if the parade organizers would agree to a fixed-location rally at Dag Hammarsjold Plaza, which is located at the edge of the UN complex and, as the court explained, is "highly visible" from the UN building. If the New York City Police believed that they could provide adequate security for a crowd of

100,000 that close to the UN building, surely Colorado Springs can accommodate the presence of six members of Citizens for Peace in Space who want to stand for an hour on the public sidewalk holding signs outside the International Center.

Because time is short, I ask that you respond quickly to my request to permit the named members of Citizens for Peace in Space to carry out the constitutionally-protected expressive activity that is specifically outlined above. If for some reason those particular arrangements would pose particular security problems, I am willing to work with you to discuss alternatives, as long as those alternatives do not require CPIS members to be excluded entirely from the territory of the announced "security zone."

I look forward to your prompt response. You can call me on my direct line at 303-777-2740.

Sincerely,

Mark Silverstein,
Legal Director, ACLU of Colorado