

Victory in Pepper Spray Torture Trial

Terri Compost

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On April 28, a California jury unanimously found the direct application of pepper spray to protesters' eyes with Q-tips to be excessive force in violation of their constitutional rights (see EF!J November-December 2004). One juror said that the jury helped to set a precedent that "nonviolent people should not have violence used against them."

When asked if Humboldt County deputies would resume using pepper spray on non-violent protesters, Sheriff Gary Philp acknowledged the defeat, saying, "We're not going to do a practice that is just going to put us back in court."

As one of the Pepper Spray 8, the plaintiffs in this case, I am grateful for this positive outcome. It was a long, hard haul. We went through three federal jury trials and appeals to the Ninth Circuit and Supreme Courts. In the end, each of us was awarded one dollar for the violation of our rights. The county and city insurance companies will hopefully compensate our *pro bono* lawyers for their costs and fees (see page 40). —

This case was an important challenge to a dangerous new practice, invented by the Humboldt County Sheriffs' Department in 1997. For many years, the police had been using grinders to cut protesters out of lock boxes. Then they decided to use torture to force us to unlock. In three incidents where people protesting the logging of old-growth redwoods refused to unlock—the third being my action in the office of former US Representative Frank Riggs—the police swabbed pepper spray directly into our eyes with Q-tips. When that wasn't successful, they fired full blasts into our eyes from only three inches away. The police even videotaped themselves doing this.

A line had been crossed. Pepper spray was not being used for self-defense as designed, but in a controlled, non-threatening situation. It was being used to punish protesters, so that they would remain in pain whether or not they complied with the officers.

I knew that it would be hard to convince eight average US people that the police had done something wrong. The plaintiffs twice offered to settle for no money, instead focusing on discontinuing the use of chemical weapons on nonviolent protesters. The county stonewalled, however, rejected our proposals and continued to waste taxpayer money by defending police brutality. Perhaps this had something to do with the fact that the county lawyer also represents Maxxam/Pacific Lumber (PL) in its ongoing Strategic Lawsuit Against Public Participation directed toward forest activists. Tire collusion between government and big business has remained quite clear in Humboldt.

Throughout the litigation struggle, we continued to bring the dialogue back to the real travesty: the looting of Humboldt County's resources by PL. As we faced off in court, PL continued its destruction, ripping apart forests and families. It is a tragic loss, and most people know it. How can this injustice continue?

I feel joy and relief when I remember that we have won a small part of our struggle. I have such warmth in my heart for the hard work of all the good people who brought this success. Our legal team—the same folks who won Judi Bari's case against the FBI—was truly a group of righteous, amazing people who put their souls into this struggle. I thank them all profusely. My co-plaintiffs were also a fine collection of beautiful people, and it was an honor and pleasure to stick it out with them. The



The Pepper Spray 8 plaintiffs during their second trial, in September 2004

support of people who came to the trial and filled the seats day after day really made a big difference, both to the outcome and in the sense of support and community that I felt throughout. Humboldt County was well represented! And thank you to all of the people who wrote letters or contributed money and whose taxes paid for this case. At least we still have the jury trial system to fall back on for some justice. Sometimes it even works.

It is good to celebrate our successes, and this is certainly one. May we live for a better world. May hope and wildness thrive.

For more information, visit www.nopepperspray.org or contact the Bay Area Coalition for Headwaters, 2530 San Pablo Ave, Berkeley, CA 94702; (510) 835-6303; bach@headwaterspreserve.org; www.headwaterspreserve.org.

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