Good call, County Attorney Gaertner; your turn, Legislature

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By Peter Erlinder

Ramsey County Attorney Susan Gaertner's dismissal of pending state "terrorism" charges against the defendants known as the "RNC 8" last week was a welcome and reasonable response to a prosecution that was taking on an overtly political dimension. This was the first prosecution brought under the 2002 statutes passed after the Sept. 11 tragedy, and one hopes it will be the last.

But the question remains, how did these young, American-citizen political activist defendants come to be facing the kind of criminal charges most people probably associate with extreme violence like the bombing of the World Trade Center? The answer requires reviewing a bit of recent Minnesota history.

Within weeks after the Sept. 11 attacks, Congress rushed to pass an agglomeration of previously rejected proposals to increase and extend presidential and executive branch power, some of which had languished in storage since Dick Cheney's stint in the Nixon administration. The USA "Patriot Act" passed into law without debate and before most lawmakers could even read the bill.

During the "anti-terrorism" hysteria that followed, Guantanamo became a legal "black hole," torture became official national policy, places of worship became suspect, warrantless wiretapping was expanded and nearly limitless presidential power was claimed by members of the Bush administration, all in the name of protecting the nation.

Well-intended, but ill-conceived new laws after Sept. 11 were not limited to the federal government. In early 2002, the Minnesota Legislature was presented with a "Minnesota Patriot Act" by House member (and now Hennepin County Sheriff) Rich Stanek. It mirrored the federal model and actually went beyond it some ways. A less drastic version was proposed by then-assistant Hennepin County prosecutor, and senator, Jane Ranum.

However, unlike Congress, the Minnesota Legislature carried out extensive hearings and debated the issues during the 2002 session. Legislators received the input of thousands of Minnesotans (I was one of them) concerned about the broad new powers the Minnesota Patriot Act granted to government agencies.

The original version proposed by Stanek, which would have permitted greatly broadened electronic eavesdropping authority and would have required "special" state-identification documents for noncitizens, was defeated with bipartisan support. However, a few provisions of the original act were passed into law.

Among them, some $16 million in additional funding to eliminate communications bottlenecks between state and local "first responders" during emergencies was supported by most legislators and the Ventura administration. But one important change in the criminal laws was the creation of greatly increased sentences for defendants convicted of crimes that could be characterized as "terrorism," under a definition the act supplied. These are the "terrorist enhancement" provisions that Gaertner wisely rejected last week.

Along with others who opposed the creation of "terrorism-specific" state laws, I pointed out in legislative hearings that by imposing particularly harsh sentences for crimes that police and prosecutors considered to be "politically motivated," the Minnesota Patriot Act actually transformed regular crimes into "thought crimes." And so it does.
In terms of protecting Minnesotans from World Trade Center scale crimes, Gaertner also apparently recognized that there is nothing to be gained by specially prosecuting or sentencing defendants because they had alleged "political motives."

And to the extent the law permits additional penalties because of what someone thinks, as opposed to what they have done — it is likely that enhanced "terrorism" sentences will be struck down by the Minnesota Supreme Court, if they ever are used. This reasoning would apply, of course, to anti-abortion activists as well as demonstrators at the Republican Convention.

Now that "war on terrorism" hysteria seems to be subsiding, it seems a good time for the Minnesota Legislature to re-examine the wisdom of its own post-Sept. 11 actions, too.

Gaertner made the right decision, but no Minnesota prosecutor should have the power to prosecute or punish because of what someone thinks, as opposed to what they did. It is time to repeal the "terrorism" provisions of Minnesota Patriot Act.

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