

**REPORT ON GOVERNMENTAL INTERFERENCE WITH  
ACTIVITIES OF CORAL GABLES CONGREGATIONAL CHURCH  
DURING FREE TRADE OF AMERICAS SUMMIT CONFERENCE  
OCTOBER-NOVEMBER, 2003, MIAMI-DADE COUNTY, FLORIDA**

by

**Rev. Donna Schaper**

**Roy D. Wasson**

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**A. Introduction and Overview:**

This paper reports on some of the events and effects of governmental interference with the activities of Coral Gables Congregational Church, involving the Free Trade Agreement of the Americas ("FTAA") Conference held in Miami during November, 2003. In overview, before and during the FTAA Conference municipal officials and agencies in Miami-Dade County, Florida engaged in improper suppression of free speech and ideas, engaged in unwarranted police surveillance of the Church, and unlawfully chilled members' free exercise of religion. Local officials interfered with the Church's programs and activities by expressing personal and official disdain for, and by conducting visual and electronic monitoring of, our lawful and constitutionally-protected activities.

**B. The FTAA Conference:**

The Free Trade Agreement of the Americas is a controversial compact between member nations which its proponents offer as a means to promote

commerce and the development of manufacturing. The FTAA is an outgrowth of the North American Free Trade Agreement (“NAFTA”), which critics have denounced as hurtful to the working class and the environment.<sup>1</sup>

Backers of the FTAA touted the November Conference as an opportunity to showcase Miami, which is a candidate site city for the permanent headquarters of the FTAA, called its Secretariat. Labor unions and human rights organizations planned protest demonstrations and parades during the Conference to present their views opposing the FTAA.

Local police agencies used the specter of violence by protestors to purchase huge arsenals of riot weapons and gear. Those items were too freely used during the Conference, with many injuries inflicted on peaceful protestors, members of the media covering the events, and bystanders. “Police trampled civil rights and left the city living ‘under martial law’ for a brief period during the Free Trade Area of the Americas Conference,” and the County investigatory panel after several hearings criticized police agencies’ “unrestrained and disproportionate use of force.”<sup>2</sup>

### **C. Gables Congregational’s Planned FTAA Activities:**

Coral Gables Congregational Church is a large congregation affiliated with the United Church of Christ (“UCC”), known nationally for its involvement in community outreach, justice issues, and the arts. Housed in

a picturesque (but too small) national historic landmark, Gables Congregational has for eighty years (eons in Miami's history) been a venue for those seeking to freely exchange ideas on matters of social and religious significance.

In a letter dated August 26, 2003 to then Senior Minister Donna Schaper, Wally Ryan Kuroiwa, Minister and Team Leader of the Justice and Witness Ministries of the UCC, inquired whether the Church would agree to host two busloads of visitors from the northern tier of states who would be coming to Miami to attend public events during the FTAA Conference. The pastoral staff, in collaboration with the Church's Justice and Peace Committee, considered the request and the Church agreed to host those visitors.

Contemporaneous with the decision to welcome those 80-100 visitors, the Church developed a plan to sponsor lecture presentations and dialogue sessions during the FTAA Conference week, inviting speakers and panel members to present balanced views of all sides of the facts, issues, and concerns which would be implicated by the adoption of the FTAA. One of the Church's aims was to provide a "safe space" for those interested in hearing or expressing any point of view related to the FTAA, including the expected bus loads of visitors, in order to minimize the risk of threats to their

safety which might be experienced during street-corner encounters with those on the opposite side of an issue. Another goal of the program series was to educate the congregation and the community about the important issues in an objective manner which would allow informed decision making.

**D. Governmental Interference with Church Programs:**

Well before the time period in which the FTAA-related events would be held, the Church received a visit from City of Coral Gables<sup>3</sup> Assistant Chief of Police Charles Faidley,<sup>4</sup> second-ranking officer in the department. Chief Faidley explained that his department was aware of the Church's offer to host visitors during the FTAA, and he asked to see the facility where they would be housed.

During that visit, Chief Faidley expressed his personal disapproval for our plan to host the visitors, stating things to the effect that churches should limit their activities to matters of religious doctrine and not become involved in issues of social concern. He also expressed his official opinion that such an activity would violate local zoning codes, and urged the church to reconsider its offer of hospitality.

On October 20, 2003, Coral Gables City Manager David Brown wrote to Rev. Schaper, expressing the City's position that hosting of visitors to the FTAA would violate local building and zoning laws. Mr. Brown implied

that official action would be taken unless the Church rescinded its invitation to those visitors.

The City's position must have been taken without legal research, because research by a lawyer-member of the Church's Justice and Peace Committee immediately yielded a long line of authorities which established that a religious institution may provide temporary housing to visitors of its choosing, without interference from local government under color of zoning codes and similar laws.<sup>5</sup>

The potentially-adversarial role of the City quickly became a matter of concern for many of the Church's members. Instead of formally disagreeing with the City's position, the plan to host visitors was revised to house the visitors in members' homes instead of in the Fellowship Hall. By this point in time the size of the visiting contingent had decreased to a single bus load.

**E. Miami Becomes a Police State During FTAA Week:**

History will document the many examples<sup>6</sup> of governmental interference with free speech and other basic rights during the FTAA Conference. The City of Miami quickly moved to preempt protest against the FTAA. To support arrests of almost anyone the police wanted silenced, the City hurriedly enacted a revised "parade" ordinance which rendered it unlawful for anyone found in or near a group of people to carry "hard and throwable" objects, an

overbroad law which would include every common object which law-abiding citizens would be expected to carry, including car keys and pocket change. The police became advocates for the FTAA wearing body armor and carrying riot gear.

One of the findings of the county's Independent Review Panel was as follows: "3. The overwhelming riot-clad police presence, when there was no civil disturbance, chilled citizen participation in permitted and lawful demonstrations and events." That official body reported that "[s]ome described Miami as a 'police state.'" And noted that "Rev. Dr. Donna Schaper testified that police in riot gear blocked access to an ecumenical worship service at the First United Methodist Church on November 18, a time when no demonstrations were occurring."<sup>7</sup>

Against this oppressive backdrop, the Church went ahead with its schedule of programs, which were attended by smaller audiences than were expected. The bus load of visitors came and went without incident, using the Church as a pick-up and drop-off point. Unknown to the Church at the time, those activities were the subject of several internal governmental communiqués and the police were conducting monitoring of the Church during the FTAA Conference.

## **F. Governmental Monitoring of Church Activities:**

At the conclusion of those events, the Church was provided with evidence<sup>8</sup> of potential police surveillance of its activities during the FTAA Conference. Three members of the Church's Justice and Peace Committee made Public Records Requests which sought copies of official records further documenting such intrusion from several governmental agencies.

**"Tracker Report"**– The direct impetus for its action in seeking public records was the receipt a one-page record of the County Emergency Operations Center ("EOC") dated November 17, 2003 reflecting apparent police monitoring of the Church's activities, called a "Tracker Report." That report characterized "the pastor" as being "very anti-FTAA," referred to the Church's "open forum" on the FTAA, and recited that "fliers have been distributed for this event and numerous speakers are expected."

### **First Response by County OEM:**

The County Office of Emergency Management ("OEM") initially responded to the record requests on January 7, 2004. The letter from agency head William Johnson asserts that the county has no documents "that mention the pastors, staff or involved members of the Church." That statement is, of course, at odds with the reference in the Tracker Report,

which refers to “the pastor at Coral Gables Congregational Church . . . , who is very anti-FTAA.”

A reporter for the Miami Herald asked Mr. Johnson why he did not provide the Tracker Report, and the explanation was that he “forgot” to look for “Tracker” documents. He then supplemented his response with a letter of January 20 providing that document.

**–Incident Briefing Report #1–** Documents provided by the OEM in response to the requests for public records included an “Incident Briefing Report,” dated November 17 authored by Lt. Paris, of the Coral Gables Police Department. That report reflects as its subject the “FTAA Conference,” and notes that the writer has “forwarded information regarding upcoming open forum at Coral Gables Congregational Church on November 20-21.”

**–Incident Briefing Report #2–** The next item provided by the OEM is another Incident Briefing Report, also dated November 17, prepared by Public Safety Coordinator Curt Sommerhoff which notes that “Coral Gables Congregational Church has offered 100 protestors a place to stay.”

**–List of “Anti-FTAA” Events–** The fourth item provided by the OEM was described as follows in Mr. Johnson’s letter: “A List of Events for Friday, November 21, 2003, stating that an Open Forum—*Anti-FTAA* was

scheduled for 10:00 am-noon and 3:00pm-5:00pm at the Church.” That List of Events had only ten countywide events on it, including the Church’s forum. Three of those are listed as “Official FTAA events.” Two more are unrelated to the FTAA. Of the five activities identified as “Demonstrations, Marches and Rallies,” the forum at the Church was one.

**–“Incident Action Plan, Briefing #10”–** Item five in the OEM’s response was entitled Incident Action Plan, Briefing #10. Page two of that document is another List of Events planned for Nov. 21. That list has nine items: two “official FTAA,” two unrelated events, and five “Demonstrations, marches and rallies.” Coral Gables Congregational Church was listed there with two events, or 40% of the countywide unofficial FTAA-related activities, under the heading: “Open Forum—Anti-FTAA.”

**Second Response By County OEM--**

After being reminded by the *Miami Herald* reporter about the Tracker Report, Mr. Johnson of the OEM supplemented his response with that document. That report characterizes (but does not identify by name) “the pastor at Coral Gables Congregational Church” as being “very anti-FTAA,” It discusses the plan to host visitors, scheduled forums, distribution of fliers, and “numerous speakers” scheduled for the event.

**Interfaith Activities Schedule**– The Coral Gables Police Department file eventually produced includes a schedule entitled “Interfaith Activities During FTAA Week of Nov. 17-21.” That schedule lists the “NCCJ clergy meeting at Coral Gables Congregational Church to discuss Church/State Relations.” It also shows CGCC as a sponsor of the Interfaith Service on Nov. 18.

**–Justice & Peace Committee Position Paper**– The Coral Gables Police Department has disclosed that it kept on file a copy of the Justice and Peace Committee’s Position Paper on the need for more democratic involvement in the FTAA process.

**Meeting with Coral Gables Officials:**

After six months of effort, two members of the Church’s Justice and Peace Committee were finally able to meet with officials from the City of Coral Gables regarding lingering questions about the existence additional public records pertaining to the church. On June 3, 2004, Jim Howe<sup>9</sup> and Roy Wasson met in the office of the Chief of Police with Chief Hammerschmidt, assistant Chief Charles Faidley, City Attorney Elizabeth Hernandez, and other city personnel.

At that meeting was Chief Hammerschmidt conceded that the references to the pastor and Church as being “anti-FTAA” were incorrect.

Chief Faidley surmised that the mischaracterizations were attributable to lower-level personnel seeing references to Church programs and activities on web-sites maintained by other groups characterized by police as anti-FTAA. Chief Hammerschmidt on at least two occasions during that meeting expressed his personal view that Rev. Schaper was likely “pro-FTAA.”

On the subject of the scope of any monitoring of Church activities during the FTAA, Chief Faidley admitted that he had directed police patrols to periodically monitor the situation at and around the Church during the week in question, to make sure that nothing we were doing inside “spilled out” onto the surrounding areas and became a source of concern.

**Response By Miami-Dade Police Department:**

The County Police Department responded on February 2 with a handful of documents which mention our Church only tangentially, in connection with reporting events at the Biltmore Hotel during the FTAA. However, curiously, there is an aerial photograph of our Church taken by personnel in a county helicopter, which the county reports was “accidentally” taken during a photo session of the Biltmore, to plan police procedures should the need arise there.

**Response by City of Miami Police Department:**

The City of Miami has failed to comply with the public records requests. Two individuals from the Justice and Peace Committee have filed a civil lawsuit against the City and Chief John Timoney asking the court to compel production of responsive records.

## **POTENTIAL CIVIL RIGHTS VIOLATIONS**

### **A. Introduction:**

The authors of this paper remain concerned that there were actual and potential violations by local governmental officials of the Church's and its members' constitutional rights to religious freedom, free speech, and freedom of assembly under the First Amendment to the United States Constitution. Local police officers and other officials, before and during the FTAA Conference, impermissibly used their powers to intrude upon protected religious activities, in ways such as:

—Unlawfully invoking inapplicable municipal zoning codes to force cancellation of planned hosting of out-of-state travelers visiting to attend the FTAA events;

—Surveillance and/or monitoring by law enforcement personnel of lawful programs and activities, such as sponsoring open fora for dialogue, and distributing factual literature;

—Interfering with pastoral/congregant relationships and member-to-member relationships by unfairly and incorrectly characterizing in official documents one of our pastors as “very anti-FTAA” and some of our open discussion fora as “anti-FTAA” activities.

**B. Potential Constitutional Violations:**

Official actions of local police departments and other agencies (city managers' offices, zoning boards, etc.) snooping into church activities and sharing the information gathered thereby, can harm an entire institution of worship. Hence, such conduct may violate the "Establishment of Religion" clause of the First Amendment. Second, fallout from such State action might well make some church members and potential visitors less likely to attend (or at least less comfortable participating in) services and programs, thereby interfering with their "Free Exercise" rights, and with the rights of existing members to associate with those who would have attended, but did not.

While labeling a pastor as "anti-FTAA" is not an allegation that the person is dishonest or of loathsome character in the defamatory sense, the local authorities in this case did more than that. First, the police painted all of the Church with the broad brush of suspicion by making it the target of some attention. Law enforcement agencies investigate criminals. The police were (or may be seen to have been) investigating the Church and its leaders.

Those associated with the Church could be perceived as unsavory and avoided by others.

In addition to the misleading and shallow labeling of the socio-political attitude of one of the Church's spiritual leaders as "anti-FTAA," the authorities positioned the Church as suspicious in the criminal context. It is not inconceivable that, somewhere in the large Miami area, there was a person of faith looking for a church home who has read or heard about the police monitoring, and who is just a little less likely to visit on Sunday morning, because the Church "must be up to something no good, or the police would not be keeping an eye out." And maybe a member or two stayed home for awhile, rather than run the guilt-by-association risk.

Second, apart from the suggestion of criminality from the fact of the investigation, the label of "very anti-FTAA" surely drove (or drove more deeply) a wedge between some attendees of the Church (members and visitors alike), just based on the politics of such things. The Church has members who were troubled by having a pastor who is branded as an anti-establishment sort of person. Members stayed home some Sundays and others quit over the perceived "political" position of the pastor. Similarly, at least some non-members in search of a church home might be less likely to

visit because the local authorities have branded the church as “bad for business.”

### Conclusion

In moral, political, and legal terms the human rights of a congregation were violated during the FTAA events in Miami. Morally, people were accused of doing things they were not doing. This is understood as falsifying and exaggerating information. Politically, this remains a free country where free speech is the foundation of our community together. Free speech was violated by harassment. Legally, the matter is less clear – and the resistance of local officials and people within and outside the congregation made it hard to get sufficient attention gathered. Nevertheless, silence is also political. We are using our voices to say that we side with free speech and not against it. We don’t want to be a part of the silenced crowd.

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<sup>1</sup>In an article by the Miami Herald during preparations for the FTAA Conference, the writer asserted that the promises made by NAFTA supporters had not been kept:

But real wages in Mexico are lower today than when NAFTA was approved and have not kept pace with productivity gains, a study by the Carnegie Endowment for International Peace found. The rural sector has lost some 1.3 million jobs, causing farm families to depend more heavily on the \$12 billion in remittances sent annually from the United States. Neither poverty nor the flow of undocumented workers has abated.

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Mexico's high hopes were matched by American dreams. But even today, after innumerable studies, it's still debatable what U.S. workers lost or gained from NAFTA.

Former President Bill Clinton predicted that NAFTA would create 200,000 jobs in its first two years. The Economic Policy Institute estimated 766,000 jobs had been lost in the first seven years of NAFTA. The Office of the U.S. Trade Representative countered with claims that 914,000 jobs had been gained. Jobs unquestionably went to Mexico in the 1990s, but this exodus was masked by a booming domestic economy that sent U.S. unemployment to record lows.

Despite the different numbers, the U.S. government has certified under the Trade Adjustment Assistance program that **as of September of this year 525,094 workers have lost their jobs because of NAFTA.**

Jane Bussey, "Ten Years After NAFTA, Both Sides Are Still Divided," *Miami Herald* (Nov. 10, 2003)(Emphasis added). Whatever the true numbers, the foregoing article is offered merely to show that there are genuine grounds for peaceful differences of opinion on the wisdom of NAFTA and FTAA

<sup>2</sup> Associated Press, June 30, 2004.

<sup>3</sup> Coral Gables is a city (population 42,000-plus) which one of more than thirty incorporated municipalities in Miami-Dade County which together comprise Greater Miami.

<sup>4</sup> This visit was during the time that Senior Minister Schaper was in New England on a retreat.

<sup>5</sup> "It is generally undisputed that a city **must allow** churches to engage in activities that supplement the building's primary purpose of religious assembly." Laurie Reynolds, *Zoning the Church: The Police Power Versus the First Amendment*, 64 Boston Univ. Law Rev. 767, 810 (1984)(emphasis added). Providing lodging to those serving—or being served by—a given church is certainly one of those activities which must be permitted. "Several courts have specifically permitted residential accommodations in church buildings as accessory uses" allowed under local zoning ordinances. See *Henley v. City of Youngstown Board of Zoning Appeals*, 735 N.E.2d 433, 439 (Ohio 2000)(nuns' operation of home for homeless women and children); *Havurah v. Zoning Board of Appeals*, 418 A.2d 82 (Ct. 1979)(reversing Zoning Board's denial of synagogue's request to provide sleeping accommodations to those wishing to use them); *St. John's Evangelical Lutheran Church v. Hoboken*, 479 A.2d 935 (N.J. Super. 1983)(homeless shelter); *Solid Rock Ministries Int'l v. Monroe Board of Zoning Appeals*, 740 N.E.2d 320(Ohio App. 2000)(shelter for unwed teenage mothers).

<sup>6</sup> The few examples mentioned here are merely the tip of the iceberg.

<sup>7</sup> Independent Review Panel Final Report (June, 2004)

<sup>8</sup> An employee of one of the police agencies involved provided documentary proof of governmental monitoring of the Church's FTAA activities to the local ACLU office, which in turn provided the document to the Church.

<sup>9</sup> Mr. Howe is a highly regarded community leader who serves as Executive Director of the Miami office of the National Conference of Community and Justice.