Still Spying on Dissent

The Enduring Problem of FBI First Amendment Abuse

A Special Report

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DEFENDING RIGHTS & DISSENT

About

Chip GIbbons is the policy & legislative counsel for Defending Rights & Dissent. Chip has advised both state and federal lawmakers on the First Amendment implications of pending legislation and has appeared as an expert on US Constitutional Law on Al-Jazeera. Chip is also a journalist and researcher whose writings on the FBI have appeared in Jacobin, The Nation, In These Times, and The Washington Post. He brings all these skill sets to this interdisciplinary report.

Defending Rights & Dissent strengthens our participatory democracy by protecting the right to political expression. We monitor and expose patterns and practices of government repression of dissent, and work closely with grassroots activists to defend First Amendment rights. DRAD was formed by the merger of two organizations, the Bill of Rights Defense Committee, founded in 2003 by grassroots opponents of the Patriot Act, and Defending Dissent Foundation, formed in 1960 by activists targeted by the House Un-American Activities Committee. Our predecessor organization was the victim of decades of FBI surveillance and was targeted under COINTELPRO. In addition to being mentioned by the Church Committee, it was later discovered that the FBI had maintained a 132,000 page file on our founder, Frank Wilkinson.

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Executive Summary

Throughout its history, the Federal Bureau of Investigation (FBI) has used its expansive powers to investigate, monitor, and surveil First Amendment-protected activity. As early as 1924, public concern about the FBI's violation of First Amendment rights and other civil liberties spurred official attempts to check the FBI's power. The most recent official review of the FBI and the First Amendment was a 2010 Department of Justice Office of Inspector General (OIG) review of the Bureau's counterterrorism investigations into six domestic advocacy groups. This report covers FBI surveillance of political activity since the OIG's review was published in 2010.

In the nine years since then, the FBI has repeatedly monitored civil society groups, including racial justice movements, Occupy Wall Street, environmentalists, Palestinian solidarity activists, Abolish ICE protesters, and Cuba and Iran normalization proponents. Additionally, FBI agents conducted interviews that critics have argued were designed to chill protests at the Republican National Convention or intimidate Muslim-American voters.

These incidents are mostly known because of Freedom of Information Act (FOIA) requests filed by journalists, advocates, and activists, and because of reports from individuals questioned by the FBI. This information is by no means the complete picture of FBI First Amendment abuse. Many of these revelations suggest they are only the tip of the iceberg. FBI questioning of activists is part of unknown investigations. FOIA documents proving surveillance of specific activist groups suggest these actions are part of larger investigations. Documents obtained through FOIA are heavily redacted or clearly incomplete. The FBI gives inconsistent or contradictory responses to FOIA requestors.

What is known is that there is a persistent pattern of monitoring civil society activity. The FBI frequently cites its counterterrorism authorities to justify this monitoring. In many of these cases, the FBI concedes civil society groups and social movements singled out for counterterrorism investigations are nonviolent and peaceful. The FBI sometimes uses justifications about the possibility of future violence by unknown actors or lone wolfs to justify monitoring these peaceful groups. No indication is given as to why these groups in particular warrant such concerns, however, the FBI continuously singles out peace, racial justice, environmental, and economic justice groups for scrutiny. This is consistent with a decades-long pattern of FBI First Amendment abuses and suggests deeply seated political bias within the FBI.

Infiltration, especially by informants, is a main vector of FBI surveillance. Since 9/11, informants have increasingly not just supplied the FBI with information, but acted as agents provocateurs. While their behavior may shock the conscience of an ordinary person, the courts have been unwilling to find that their actions meet the legal definition of entrapment. By far, the Muslim community has been a disproportionate victim of agents provocateurs. Coupled with FBI racial, religious, and ethnic mapping, this creates real concerns that the FBI views the Muslim community as inherently suspicious.

In addition to informants, local police and other federal agencies join the FBI in surveilling First Amendment protected activity. Under the Joint Terrorism Task Forces (JTTFs), non-FBI agents, especially local police, operate under FBI leadership. JTTF agents are frequently implicated in First Amendment surveillance.

The FBI has no statutory charter. It is an executive branch agency regulated largely by the executive branch. The main regulations are the Attorney General's Guidelines. Since their creation in 1976, they have been repeatedly revised to be less protective of civil liberties. While the FBI has always been engaged in First Amendment abuses, the current Attorney General's Guidelines, created in 2008, facilitate these abuses. Under these guidelines, the FBI is allowed to conduct investigations called "assessments" of U.S. persons without factual predicate of criminal conduct or a threat to national security. The guidelines also allow FBI agents to use race, ethnicity, religion, or First Amendment-protected speech as a factor to open an investigation, or to attend public meetings without disclosing their identities.

The evidence marshaled in this report creates a powerful case that greater oversight of the FBI is urgently needed. Congress must exercise its oversight powers to investigate FBI First Amendment abuses. It is imperative for Congress to determine the full extent of this surveillance and take steps to address it. Congress also needs to impose a statutory charter limiting the FBI's powers. Under this charter, all investigations must require a factual predicate justifying the investigation. Investigations involving First Amendment activity must require specific and articulable facts reasonably indicating criminal conduct.

Introduction

J. Edgar Hoover's FBI was notorious for its attacks on political expression. Spying on anti-Vietnam War protesters and harassing Dr. Martin Luther King Jr. remains seared into public consciousness. Programs such as COINTELPRO, which sought to neutralize disfavored political organizing, or the Palmer Raids, which saw thousands of radicals rounded up and arrested without warrants, are considered quintessential examples of government abuse. Even the FBI has publicly disavowed some of these actions.[1] But in the 100 years since the Palmer Raids, how much has changed? Any review of the available evidence definitively proves that, from its founding as the Bureau of Investigation in 1908 until the publication of this report, the FBI has continuously monitored First Amendment-protected activity.

Contemporary discussions of FBI political surveillance oftentimes obscure its nature. Political surveillance is frequently treated as being part of a particular historical epoch. Political surveillance was a peculiarity of the Hoover era or an overzealous response to the September 11, 2001 attacks.[2] When contemporary accounts of political surveillance are discussed, they are treated as isolated incidents. A report of a Palestinian solidarity activist receiving door knocks from FBI agents is treated as an entirely separate and unrelated event to FOIA revelations about an investigation into environmental activists. Finally, in the last two years, this discussion has been overshadowed by extremely partisan discussions about investigations into Donald Trump and his associates. While Trump and his supporters claim he is the victim of the greatest witch hunt in history, those concerned with potential abuses of power praise the FBI as a neutral, professional crime-fighting force. Constituencies on the left who traditionally have been skeptical of the FBI as a threat to civil liberties now find themselves as the Bureau's defenders. Constituencies on the right who have advocated expansive police authority to maintain order, thwart subversion, and counter terrorism now find themselves speaking of the FBI's potential to be a political police.[3]

This is not a report about Donald Trump and the investigations into him and his associates. Defending Rights & Dissent has for decades monitored and documented FBI spying on social movements, activists, political organizations, and civil society. This report is the result of our findings from roughly the last decade. While it is very much focused on current and ongoing First Amendment abuses, this report will situate the current problem within the larger historical context.

When most people hear "FBI," they think of a law enforcement agency. But the FBI isn't only a law enforcement agency. It's also an intelligence agency. During the Hoover era, it was under the guise of conducting "domestic intelligence" that the FBI spied on and even attempted to disrupt groups not engaged in criminal conduct. Many activists and scholars concerned about police brutality have started raising questions about the very institution of the police.[4] Regardless of these questions about the police, domestic intelligence, which seeks to gather information on so-called subversive elements absent any criminal infractions, is different than investigations into violations of the federal code. At times during the Hoover era, the FBI actually claimed that safeguards on privacy and civil rights, such as prohibitions on wiretaps, did not apply in national security investigations. [5]

The FBI's First Amendment abuses continue to be facilitated by the FBI's non-law enforcement authorities, such as its intelligence, national security, or counterterrorism authorities. Our findings show that the vast majority of contemporary First Amendment abuses take place under the guise of counterterrorism investigations. Since 9/11, the FBI has shifted "from a law enforcement agency concerned with criminal investigations, to an intelligence agency primarily concerned with counterterrorism."[6]

While terrorism evokes images of violence, the FBI has carried out counterterrorism investigations against entirely nonviolent movements. In some cases, such as with the FBI's counterterrorism investigation into Occupy Wall Street, the FBI fully acknowledges the protest movements it is monitoring are nonviolent.[7] It is the remote possibility of future violence by unknown actors that tends to justify this sort of surveillance.

But why are the groups in question singled out for scrutiny in the first place? Why does the FBI continue to insist on monitoring groups it knows to be nonviolent? Our research shows that, since 2010, the FBI has monitored peace and solidarity, racial justice, economic justice, environmental and similar movements. The pattern is clear that these types of political expression garner the attention of the FBI, indicating the FBI regards these political views as inherently suspicious. This is where historical context is important. Historically, these are the precise views that have been the targets of the FBI for a century. Our study of the past decade reveals that this targeting continues to this day.

This report outlines known FBI abuses since 2010. We pick this date as our starting point because 2010 was the last time there was a significant review of FBI surveillance of First Amendment-protected activity.[8] The information compiled here stems from publicly available information. While this information creates a powerful case that systemic First Amendment abuses have occurred, at times it raises more questions than answers. What we know about First Amendment surveillance suggests the existence of more extensive monitoring.

We examine two particular means for FBI surveillance—infiltration and Joint Terrorism Task Forces. The FBI has long relied on infiltrators, especially confidential informants, to gather information on social movements. Since 9/11, these informants have increasingly moved beyond merely acting as eyes and ears for the FBI to act as agents provocateurs. The Muslim community has been hit particularly hard by infiltrators and agents provocateurs. JTTFs are run by the FBI but involve over 500 state and local police agencies, on which the FBI frequently relies to carry out its actions.

After examining the present-day problems of the FBI, this report takes a deep dive into the historical background of FBI political surveillance. This section covers the period from the FBI's founding until the release of the 2010 OIG report. It examines how, as part of the creation of the Security and Reserve Indexes, the FBI developed an apparatus for mass political surveillance. It also discusses COINTELPRO, which the Church Committee called a "domestic covert operation." We cover the attempts to reform the FBI in the 1970s, before highlighting how they were followed by yet another major FBI spying scandal—the FBI's massive investigation of the Committee in Solidarity with the People of El Salvador. Throughout the next two decades, the FBI continuously conflated dissent with terrorism, thus allowing it to use its counterterrorism authorities to spy on nonviolent social movements.

The report analyzes the current guidelines that govern FBI conduct and makes recommendations about how to rein in FBI political surveillance. Following the public outrages at the abuses of the Hoover era, multiple reviews of the FBI found that it lacked clearly defined authorities and suggested Congress enact a legislative charter. That never happened. Instead, Congress allowed the attorney general to set guidelines for the FBI in lieu of a charter. This meant any attorney general could change the guidelines at will. The current guidelines are disturbingly lax and permit the investigations of U.S. persons without any factual predicate. Defending Rights & Dissent has a number of recommendations, many of which could be part of a legislative charter, which would make it more difficult for the FBI to continue its history of First Amendment abuse.

There is also a timeline of attempts to reform the FBI.

Historically, civil society reports such as this one have played an important role in FBI reform. Reports on the FBI's attacks on dissent by the early American Civil Liberties Union (ACLU) caught the attention of then-Attorney General Harlan Fiske Stone. In 1924, he forced J. Edgar Hoover to meet with ACLU head Roger Baldwin, whom, unbeknownst to both Stone and Baldwin, Hoover was spying on.[9] Stone responded by putting the first limits on the FBI's power to conduct political surveillance.

During the espionage trial of Judith Coplon, illegal FBI wiretaps and other forms of surveillance were exposed. The National Lawyers Guild (NLG) sought to compile a report on FBI political surveillance. As the NLG itself was a target of illegal FBI surveillance, the FBI became aware of its plans. The FBI preempted the NLG by working with then-U.S. Rep. Richard Nixon and the House Un-American Activities Committee to discredit the NLG.[10]

While this is not a report about Donald Trump, it is important to point out that it has special resonance for the Trump era. While some opponents of Trump have championed the FBI as his foil, the FBI and Trump have quite a bit in common. Trump has often demonized protesters and spoken of besieged law enforcement. The FBI has issued an intelligence assessment on the threat of "Black Identity Extremism," which claims growing concerns about police racism cause violence against police, and former FBI Director James Comey endorsed the "Ferguson effect," an entirely discredited theory that claimed protests against police racism had caused an uptick in crime. Trump has rightfully been criticized for demonizing Muslims and calling for the surveillance of mosques. The FBI was already treating the Muslim community as a fifth column and infiltrating mosques long before Trump. The Bureau's use of agents provocateurs reinforces demonization of the Muslim community. Fake terror plots concocted by FBI agents provocateurs were cited by Trump in defense of his Muslim ban. Far from being Trump's antithesis, they FBI shares his worst instincts.[11]

J. Edgar Hoover may have left the building, but his name is still on it.

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FBI First Amendment Abuse Since 2010

The FBI's surveillance of First Amendment activity is hardly a relic of the Hoover era. Even after the reforms of the 1970s, the FBI has continued to monitor political activity, often conflating dissent with terrorism to justify the surveillance. Yet, since the 2010 Department of Justice Office of Inspector General (OIG) report, there has been no major attempt by an official body to take on the issue of FBI First Amendment abuses.[12] In the last decade, we've seen a steady stream of media reports regarding the FBI and its Joint Terrorism Task Forces (JTTFs) monitoring nonviolent social movements. When these stories break, they are often treated as isolated incidents.

By compiling these incidents in one place, a different picture emerges—that of widespread and systemic political surveillance. When analyzed in totality, two conclusions emerge: First, the FBI frequently cites its counterterrorism authorities when spying on protest groups. Second, the groups targeted by the FBI are frequently peace, racial justice, environmental, and economic justice advocates. In other words, the same political bias the FBI has displayed for decades seems fully intact.

Midwest Peace and Solidarity Activists

On September 24, 2010, a mere four days after the OIG published its report on Bush-era FBI political spying, the FBI raided the offices of the Minneapolis-based Anti-War Committee and the homes of eight antiwar activists in Minneapolis, Minnesota, Chicago, Illinois, and Grand Rapids, Michigan. Search warrants cited as justification a federal statute prohibiting material support for State Department-designated Foreign Terrorist Organizations, specifically the Popular Front for the Liberation of Palestine (PFLP) and the Revolutionary Armed Forces of Colombia (FARC).[13] A list of questions mistakenly left behind by FBI agents showed they had special questions for suspected members of the Freedom Road Socialist Organization (FRSO), a small, self-described Marxist-Leninist organization. These questions included, "Are you a member?" "Who are the other members in Minneapolis (or Chicago)?" "Are there regular FRSO chapter meetings?" "Do you or anyone else at the meeting, or with the FRSO, take notes?"[14]

No one had been charged with a crime, but 14 individuals were summoned to appear before a grand jury. Rejecting what they viewed as a fishing expedition, all 14 refused to testify before the grand jury. Over time, the FBI would subpoena additional antiwar and Palestinian solidarity activists to testify before the grand jury. Eventually, 23 people in total would be subpoenaed.[15] No one ever testified. To this date, no one has been charged with material support for terrorism in connection with the FBI raids.

What led to these raids in the first place? After a lengthy fight, in February 2014, the application for the search warrants, including a probable cause affidavit, was unsealed. This affidavit revealed the basis for the search rested entirely on an undercover FBI agent who used the fake name Karen Sullivan. Activists had previously outed Sullivan as an infiltrator in 2011.[16] In April 2008, Sullivan began infiltrating activist groups in the run-up to the Republican National Convention, which was being held in St. Paul, Minnesota. Sullivan set her sights on the Anti-War Committee, which was organizing an antiwar protest at the convention. In 2009, a full year after her infiltration had begun, Sullivan joined the FRSO.[17] Sullivan appears to have recorded many of her conversations with FRSO members. She claimed she uncovered the FRSO had a secret purpose, plotting to overthrow the U.S. government in a socialist revolution. However, Sullivan does not allege the FRSO had any means or actual plans to do so, and the mere advocacy of revolution is protected by the First Amendment.[18]

Later into her infiltration, Sullivan purportedly discovered the group was providing material support for State Department-designated Foreign Terrorism Organizations. Conduct listed in the affidavit as material support includes broad statements of political agreement with FARC and the PFLP—positions that are on FRSO's publicly facing website—and statements such as "Commies fighting for liberation in other countries? We love those guys," and "one person's terrorist is another's freedom fighter." Repeatedly throughout the affidavit, FRSO members are quoted as mentioning they neither give military aid nor any other aid to organizations classified as terrorists by the U.S. government, as doing so would put them in legal jeopardy. The affidavit goes on to speculate that support for legal trade unions in Colombia or a women's group in Palestine could be a way to get money to members of the prohibited organizations.

Clearly, the FBI did not believe these speculative ties were sufficient to constitute material support for terrorism. Well into her infiltration, Sullivan turned it into a sting operation and began telling FRSO members that her father had bequeathed her $1,000 to give to the PFLP. She approached numerous members, asking them to accept the money in cash to get it to the PFLP. One member allegedly finally took the cash, four months before the raids. Journalist Kevin Gosztola has pointed out numerous problems with the way these statements are interpreted or portrayed in the affidavit.[19] The "conspiracy" was entirely crafted by the undercover FBI agent.

Sullivan's actions raise a number of questions. She purports to have discovered the FRSO's secret mission, which was constitutionally protected teaching of standard Marxist-Leninist doctrine, and eventually its alleged material support for terrorism well over a year into her infiltration. Why then was she infiltrating progressive groups in Minnesota in the first place? Why was her infiltration allowed continue for a full year before she "discovered" the supposed FRSO material support? Much of the information that Sullivan supposedly uncovered through spycraft can be found by searching the FRSO's website. If Sullivan and the FBI really believed the FRSO had ways to get money to the PFLP, they were surprisingly nonchalant about handing over $1,000 cash to give to the PLFP.

The FBI's fishing expedition still claimed victims. On May 17, 2011, a Los Angeles Police Department SWAT team raided longtime Chicano rights activist Carlos Montes' home. Montes had a registered firearm. As he was convicted of throwing a Coke can at a police officer during a protest in the 1960s, police argued he was illegally in possession of a firearm and seized Montes' computer, cell phone, and computer discs. FBI agents were present for the raid. But state-level charges are not in the purview of the FBI, nor were the seized computers likely to reveal much about his registered firearm. An FBI agent present told Montes, "I want to talk to you about Freedom Road Socialist Organization."[20] Prosecutors brought additional charges, carrying lengthy prison time, against Montes, who eventually pleaded no contest to perjury in exchange for the dropping of all other charges. Montes was sentenced to three years' probation and community service.[21]

The 'conspiracy' was entirely crafted by the undercover FBI agent.

Rasmea Odeh was also ensnared by the FBI's raid. While Odeh was not a target of the original raids, her co-worker at the Arab American Action Network, Hatem Abudayyeh, was. It is believed that this is how Odeh came to be targeted by the FBI.[22] Odeh had lived in the U.S. since 1994 and had been a U.S. citizen since 2004. Odeh, who had previously lived in the occupied West Bank, was found guilty by an Israeli military court of a supermarket bombing that killed two people. Israeli military courts in the occupied West Bank have a 99.74% conviction rate.[23] For decades, Odeh has maintained that her conviction was the result of a confession coerced through torture.[24] Even though Odeh had been outspoken about being a torture survivor, in 2013 she was indicted for immigration fraud on the grounds that she had omitted her conviction by an occupying power's military court to U.S. immigration officials.[25] Odeh rejected an initial plea deal that would have allowed her to avoid prison time, but lose her citizenship.[26] During her trial, the defense was not allowed to enter evidence of Odeh's torture or post-traumatic stress disorder, but the prosecution was allowed to mention the bombing she was accused of.[27] She was convicted of immigration fraud and sentenced to 18 months in prison and loss of citizenship, meaning she would be deported at the end of her sentence. This conviction was vacated. Odeh eventually accepted a plea agreement. She served no jail time, but lost her citizenship and was deported.[28]

Continued Surveillance of Muslim Americans and Countering Violent Extremism

As mentioned below in the report, the FBI continues to engage in widespread surveillance of the Muslim community, including Muslims it suspects of no crimes. The targeting of Muslim communities in which no one is suspected of any crime means that the FBI treats these communities as inherently suspicious. It means that the FBI views religion as a proxy for criminal activity. To this extent, the FBI has engaged in mapping of communities based on religious, ethnic, or national origin demographics. Under its Domain Management program, the FBI says it's seeking to merely "allocate resources according to threats," but the FBI has used data mining to determine where Muslims live. And using this information, the FBI has developed its network of informants and is able to subject the Muslim community to suspicionless surveillance.[29]

The chapter on informants will discuss the problem of informants within the Muslim community in greater detail. It is worth noting, however, that while much of this surveillance began before 2010, it has, nonetheless, not only continued throughout the last decade but, in many cases, has escalated. While the surveillance of the Muslim community is discussed in greater detail in other parts of this report, mainly the chapter on informants, no review of FBI First Amendment abuse since 2010 would be complete without mentioning it.

Several noteworthy developments occurred during the decade since 2010. A 2013 lawsuit alleges the FBI used the lack of due process surrounding the No Fly List to coerce Muslim Americans into becoming informants. According to the five plaintiffs, after they refused to act as informants, they were added to the No Fly List. The FBI made clear that only by changing their mind could they get off the No Fly List.[30] In 2014, thanks to the Snowden revelations, we know that the National Security Agency and the FBI had covertly monitored the email accounts of five prominent Muslim-American leaders. They included Nihad Awad, the executive director of the Council on American-Islamic Relations (CAIR); Faisal Gill, a Republican operative who served

in Bush's Department of Homeland Security; and Asim Ghafoor, a defense attorney who represents clients in terrorism-related cases. None of these individuals have ever been suspected of any crime; they are merely high-profile Muslim-American leaders and civil rights advocates.[31]

This time period also saw the emergence of the federal Countering Violent Extremism (CVE) program. CVE is touted as both a less punitive and a preventive approach to terrorism. Unfortunately, CVE is based on discredited theories of radicalization, which treat First Amendment-protected beliefs as a precursor to criminal activity.[32] It singles out and profiles Muslims. Far from being less punitive, it serves as a pipeline to law enforcement agencies. It seeks to enlist social workers, teachers, and community leaders and turn them into spies.

A number of agencies are involved in CVE, and the CVE framework is spreading. But the FBI has played a particularly troubling role in the program. The FBI proposed the creation of "shared responsibility committees." These committees were supposed "to enlist counselors, social workers, religious figures, and other community members to intervene with people the FBI thinks are in danger of radicalizing." While the FBI claimed it was not an intelligence-gathering operation, as mentioned in the chapter below, "A Brief History of FBI Political Surveillance," the FBI has used community engagement to surveil the Muslim community before. The information gathered by these committees could have been shared with the FBI and members could have been subpoenaed or even called to testify in court. The committee members themselves were made to sign confidentiality agreements.[33] Given that the signs of radicalization touted in CVE are oftentimes broad, involve First Amendment political expression, or are rooted in the profiling of Muslims, such committees could easily serve as a conveyor built to put individuals into the FBI's sights. After a pilot program, this program was ended. However, questions remain about whether many elements of it continue on an informal basis.[34]

Even more disturbingly, the FBI has used CVE programs to make inroads into schools. The FBI produced a highly bizarre online game called "Don't Be a Puppet." It's designed to be used by teachers in public schools. At one point during the game, "users navigate a goat around virtual obstacles, and are rewarded with a sample text of the 'distorted logic' foreign terrorists use to lure youth."[35] The problems with Don't Be a Puppet, however, are more than just lackluster game design. Civil rights groups, including Defending Rights & Dissent and the American Federation of Teachers, objected to it. As a letter signed by a number of civil rights groups explained, "the website perpetuates profiling and negative stereotypes that Arabs, Sikhs, South Asians, Muslims and those perceived to be Muslim are prone to engage in extremist violence and encourages the policing of thoughts, ideas, and beliefs."[36]

As the FBI cast its net wider, it continued to promote the idea that First Amendment-protected political expression should be monitored as a way to fight terrorism.

Don't Be a Puppet teaches students and teachers they can prevent terrorism by looking for supposedly suspicious behavior and reporting it. But much of that supposedly suspicious behavior is profiling of Muslims. Muslim and Arab advocacy groups were invited to see the original version of the game, which included an exercise in which a youth with a "stereotypically Muslim-sounding name" posts on social media that "he's going overseas on a mission [and] does anyone want to chat" as an example of activity that may be of interest to the FBI.[37]

The original release was delayed to respond to criticisms that the game exclusively focused on Muslim-Americans as sources of violent extremism. But the steps the FBI took to alleviate that concern are just as disconcerting. The FBI included other "extremists," such as animal rights activists, anarchists, environmentalists, militias, white supremacists, and people on "both sides" of the abortion issue. The aforementioned example of a suspicious Facebook post was replaced with a student asking others to join him at the "awful animal testing lab" to "send a powerful message" and "shut them down." As the FBI cast its net wider, it continued to promote the idea that First Amendment-protected political expression should be monitored as a way to fight terrorism. This highlights the inherent problem of trying to reform CVE. Additionally, civil rights groups raised concerns that the FBI could be using the Don't Be a Puppet website to collect user data, which is not an implausible concern given how the FBI has used community outreach programs as a means of surveillance.

Racial Justice Movements

When social movements gain steam, the FBI's interest is piqued, and racial justice and civil rights movements, as well as movements led by people of color, have always attracted particularly severe repression.

The past decade has seen an outpouring of mobilizations against state violence and racism. In 2011 and 2012, there were street protests in response to the execution of Troy Davis, who supporters believed to be factually innocent, and the killing of Trayvon Martin.[38] After Martin's killer was acquitted, Alicia Garza wrote a Facebook post stating that "Black Lives Matter." Patrisse Cullors turned the phrase into a hashtag and, with help from Opal Tometi, the trio began to promote the movement.[39]

The sentiment resonated widely. The high-profile police killings of Michael Brown, Eric Garner, Tamir Rice, Freddie Gray, and others sparked massive protests throughout 2014 and into 2015, often referred to in the media as Black Lives Matter protests. While many of these protests came out of long-term organizing efforts against state violence and racism, it was clear that a powerful new national social movement was building.

Enough information is in the public record to know that the FBI tracked Black Lives Matter. The catalyst for that surveillance and its extent are still unknown.

Enter the FBI. The first revelation that the FBI was tracking Black Lives Matter protesters came in 2015. Emails obtained by *The Intercept* showed that an FBI JTTF had tracked a December 2014 protest at the Mall of America using a confidential informant. When asked, an FBI spokesperson told *The Intercept* that the informant was a "tipster" known to law enforcement officials who had "discovered some information while on Facebook" indicating that vandalism may occur during the protest.[40]

Shortly after the FBI's monitoring of the Mall of America protest was exposed, documents obtained through FOIA revealed that the Department of Homeland Security (DHS) was also tracking Black Lives Matter. Throughout 2014 and 2015, DHS was gathering information from public social media pages such as Facebook and Twitter. DHS's online surveillance also included gathering information on activities unrelated to BLM, but involving black communities, such as the DC Funk Music Parade. DHS described its action as merely gathering "situational awareness."[41]

In 2016, Defending Rights & Dissent led an effort of 131 civil society groups calling on Congress to investigate these incidents. No investigation was forthcoming. But two civil rights groups, the Center for Constitutional Rights and Color of Change, responded to the growing revelations about surveillance of Black Lives Matter by filing FOIA requests with both the FBI and DHS, "seeking records related to federal government surveillance and monitoring of protest activities related to the Movement for Black Lives."[42] While the documents were heavily redacted and released only after litigation, they contain important evidence of surveillance of the Black Lives Matter movement. One of the most shocking revelations was a series of DHS internal emails about something called the "Race Paper." The attached document, presumably the Race Paper, was completely redacted. Even the document's title was blacked out.[43] In spite of litigation, to this day, the Race Paper remains completely redacted. The Race Paper is believed to be "a framework for evaluating the alleged radicalization of black activists."[44]

In addition to the DHS Race Paper, a number of documents from the FBI were made public. These documents are also heavily redacted. According to *The Intercept*, "[t]hough cleansed of much substance by redactions, the released surveillance documents give rough sketches of the sort of activities the FBI engaged in surrounding the Black Lives Matter movement." In 2014, as protests in Ferguson, Missouri were underway the FBI was gathering intelligence on the movement. The FBI tracked the travels of a particular protester, drew up a dossier on an activist, conducted stakeouts at cars and residences of activists, and deployed a confidential human source.[45]

Enough information is in the public record to know that the FBI tracked Black Lives Matter. The catalyst for that surveillance and its extent are still unknown. Coupled with the secrecy surrounding the DHS's Race Paper, it's clear that greater transparency is needed.

In October of 2017, *Foreign Affairs* reported on a leaked FBI threat assessment entitled, "Black Identity Extremists Likely Motivated to Target Law Enforcement Officers."[46] The term "Black Identity Extremists" is an invention of the FBI. The intelligence assessment documents six unrelated incidents of violence against police carried out by African-American suspects over the course of three years. From this, the report extrapolates that anger over police brutality and racism leads to violence against police. The report makes the FBI's belief in a connection between opposing racism and violence clear:

The FBI assesses it is very likely Black Identity Extremist (BIE) perceptions of police brutality against African Americans spurred an increase in premeditated, retaliatory lethal violence against law enforcement and will very likely serve as justification for such violence […]

The FBI further assesses it is very likely additional controversial police shootings of African Americans and the associated legal proceedings will continue to serve as drivers for violence against law enforcement.[47]

Civil rights groups, civil liberties groups, and members of Congress condemned the report and called on the FBI to retract it. By equating concern about police racism with violence against law enforcement officers, the threat assessment laid the groundwork for surveillance and aggressive policing of racial justice activists and protests. The BIE designation "drew widespread comparisons to the notorious COINTELPRO."[48] To this date, the FBI has refused to retract the report.

Rakem Balogun, an opponent of police brutality and advocate for black gun ownership, is believed to be the first person prosecuted as a Black Identity Extremist. His outspokenness during a demonstration against police brutality in Austin, Texas, in 2015, during which he was armed—Texas is an open carry state—garnered him media attention. This included the attention of *InfoWars*, a far right website noted for conspiracy theories, such as that the government is engaging in chemical warfare to turn people (and frogs) gay or that the Sandy Hook school shooting was staged with actors.[49]

Someone at the FBI, however, considers *InfoWars* a reliable news site. After seeing Balogun on the site, the FBI began monitoring him. For two years, it monitored his Facebook posts as part of a domestic terrorism investigation. Finally, FBI agents raided his house, seizing two guns and a copy of the well-known book *Negroes with Guns*, which was written by civil rights leader Robert F. Williams. Balogun wasn't charged with terrorism, though. He was charged with illegal possession of a firearm. The FBI argued that due to a misdemeanor domestic assault conviction in Tennessee, Balogun was barred from possessing a firearm. The FBI further argued that Balogun was too dangerous to be released on bail and needed to be held in pretrial detention. Its only argument for holding him was his Facebook posts, all of which constituted First Amendment-protected activity. A judge dismissed the only charge against Balogun, ruling that the Tennessee charge did not bar him from owning a gun. In spite of having never been convicted of a crime or even having been properly charged, Balogun spent five months in jail. As a result of his pretrial detention, Balogun lost his home and his job.

During a May 8, 2019, House Homeland Security Committee hearing on domestic terrorism, Michael McGarrity, assistant director for counterterrorism at the Federal Bureau of Investigation, claimed the FBI is no longer using the designation Black Identity Extremism. Instead, the agency has created a new category, Racially Motivated Violent Extremism, that includes both BIE and white supremacists. Democratic members of Congress expressed concern that this is an attempt to obfuscate the number of white supremacist attacks and conflate white supremacist violence with Black Identity Extremism.[50]

FBI documents leaked in August, 2019 complicate the picture. The FBI Consolidated Strategy Guides for FY2018, FY2019, and FY2020 indicate the FBI did adopt a broad new category of Racially Motivated Violent Extremism, but maintains the BIE designation as a crime problem indicator (CPI) in its case management system. The documents show that no matter what name the FBI uses, the Bureau still believes that African-American concerns about police brutality could lead to violence. More disturbingly, the documents reveal that in 2018 the FBI had a program called Iron Fist to mitigate the threat of Black Identity Extremism. The current status of this program or the full extent of it is unclear.[51]

In February 2019, it was uncovered that the FBI had begun to monitor the civil rights group By Any Means Necessary (BAMN) in 2016 after BAMN organized a counterprotest of the Traditionalist Worker Party, a white supremacist group. During the competing protests in Sacramento, California, white supremacists stabbed BAMN counterprotesters. The FBI responded by opening up an investigation into BAMN. The investigation was partially a counterterrorism investigation. The FBI also, however, misidentified the Traditionalist Worker Party as the Ku Klux Klan. The FBI investigated the possibility that BAMN had conspired to violate the civil rights of the Ku Klux Klan. In records released via FOIA, the FBI says, "The KKK consisted of members that some perceived to be supportive of a white supremacist agenda."[52]

Given the FBI's long history of spying on civil rights movements, this contemporary monitoring of racial justice organizing is not surprising. Much of what is known has come through FOIA and has been heavily redacted. The full extent of law enforcement surveillance of racial justice activism is not known.

Occupy

Occupy Wall Street was one of the most iconic protests of the last decade. While the encampments may be long gone, new protest and social movements frequently invoke Occupy Wall Street's imagery by using the title "Occupy" (i.e. Occupy ICE, Occupy Lafayette Park). The protest's signature chant "We Are the 99%" is still echoed in politics today. Before the first Occupy protester made their way to Zuccotti Park, the FBI was already gathering information on the protests. According to FBI files obtained by the Partnership For Civil Justice Fund (PCJF), in August 2011, one month before the protests, the FBI was meeting with the New York Stock Exchange and private businesses to discuss, "the planned Anarchist protest titled 'Occupy

Wall Street,' scheduled for September 17, 2011."[53]

Evidence of FBI collusion with private entities and surveillance of Occupy is contained in documents obtained through FOIA by PCJF. Although the documents were heavily redacted, they "indicate the FBI was at least using private entities or local police departments as proxy forces for infiltration, for undercover operations, to monitor, surveil, collect information."[54] For example,

There is—there are documents that show the Federal Reserve in Richmond was reporting to the FBI, working with the Capitol Police in Virginia, and reporting and giving updates on planning meetings and discussions within the Occupy movement. That would appear, minimally, that they were sending undercovers, if not infiltrators, into those meetings.

There is another document that shows the FBI meeting with private port security officers in Anchorage, Alaska, in advance of the West Coast port actions. And that document has that private port security person saying that they are going to go attend a planning meeting of the demonstrators, and they're reporting back to the FBI. They coordinate with the FBI. The FBI says that they will put them in touch with someone from the Anchorage Police Department, that that person should take the police department officer with him, as well.[55]

Before the first Occupy protester made their way to Zuccotti Park, the FBI was already gathering information on the protests.

A document titled "Domain Program Management Domestic Terrorism" singled out Central Florida as an area of concern, because of its high unemployment rates.[56]

These FBI documents show two things: First, that the FBI used its counterterrorism authority to monitor the Occupy movement.[57] Second, they prove the FBI unquestionably knew the Occupy movement was nonviolent. What then justified a counterterrorism investigation? The FBI expressed concern that hypothetical individuals with "violent tendencies" could join the movement. Additionally, the FBI claimed it was concerned that the social movement against economic inequality could be an "an outlet for a lone offender exploiting the movement for reasons associated with general government dissatisfaction."

It's important to note how insidious this logic is. Hypothetical individuals with violent tendencies could attend any public event or link up with any group. If that is all it takes to justify a counterterrorism investigation, then it can be used as a pretext to surveil any and all groups. Of course, the FBI routinely uses this justification to single out groups of a particular political bent, indicating a systematic problem of political bias within the Bureau.

Journalist Yana Kunichoff obtained additional documents[58] in response to a FOIA request about anarchists, Occupy Chicago, and anarchists in Chicago for NATO/G8 summit.[59]

In 2011, it was announced that both the Group of 8 (G8) and NATO would meet in Chicago during the same week. It was the first time both summits were to take place in the same city since 1977.[60] Given the symbolism of the presence of the architects of the world economic and military order, protests were expected. Adbusters Magazine, which put out the initial call to Occupy Wall Street, issued a call to stage the "biggest multinational occupation" in Chicago during the summits.[61] Faced with potentially large protests against what activists called the "G8/NATO War and Poverty Agenda," the White House announced that the G8 summit would be moved from metropolitan Chicago to secluded, rural Camp David.[62]

It is therefore entirely unsurprising that the FBI would be on the case. As the documents obtained by Kunichoff show, the FBI worked with local police to gather information about Occupy Chicago, as well as information about anarchists traveling to the NATO protests.[63] Like so many of the Occupy files, the documents reveal that the FBI often treats anarchist ideology, which is protected by the First Amendment, as proxy for suspicion of criminal wrongdoing.

Another revelation about potential FBI spying on Occupy came in late 2015. The Organization United for Respect at Walmart (OUR Walmart) sought to win better working conditions for employees at the notoriously anti-union Walmart. In June 2013, Walmart fired 16 employees for taking part in what the company considered protests. OUR Walmart argued these actions were protected strikes and filed a complaint against Walmart with the National Labor Relations Board (NLRB). The NLRB sided with OUR Walmart and ruled that Walmart had to reinstate the employees.[64]

As part of the NLRB hearing, Walmart had to turn over thousands of pages in discovery detailing its campaign against the pro-worker group. According to *Bloomberg Business Week*, when Walmart learned "members of the Occupy movement might join the protests at corporate headquarters, they began working with the FBI Joint Terrorism Task Forces."[65]

Occupy Cleveland was also infiltrated by an FBI informant. True to trends discussed in the chapter on infiltration, the informant acted as an agent provocateur. Five anarchists agreed to blow up a bridge the evening before May Day, 2012. The plot was entirely the product of the provocateur. According to journalist and Defending Rights & Dissent board member Arun Gupta, the FBI informant "played father figure to the lost men, providing them with jobs, housing, beer and drugs. Every time the scheme threatened to collapse into gutterpunk chaos, he kept it on track."[66] The plot served to delegitimize the Occupy movement. Occupy Cleveland "hoped to recapture the public's attention with a peaceful weekend festival leading up to a May Day demonstration." As the phony plot coincided with May Day, news of the arrest cast a shadow over the movement. Occupy Cleveland, which had affirmed nonviolent principles, canceled its planned May Day march.[67]

To this day, the public does not know the full extent of FBI surveillance of the Occupy movement. The FBI has hardly been forthcoming in responding to FOIA requests. When prominent journalist Jason Leopold requested the FBI's files on Occupy, he was initially told no such files existed.[68] This was clearly not true, because the FBI released hundreds of pages of documents (albeit heavily redacted) to PCJF. PCJF stated it believed the document set was incomplete. Years later, the FBI released to Kunichoff files about Occupy Chicago that should have been covered by PCJF's request. While the FBI's collusion with Walmart happened after these FOIA requests were filed, it further highlights that the full extent of Occupy surveillance is unknown.

The Republican National Convention 2016

In 2016, the FBI's obsession with both the Black Lives Matter movement and the Occupy movement converged. With it becoming increasingly likely that Donald Trump would be the Republican nominee, many predicted widespread protests at the Cleveland Republican National Convention. The FBI apparently shared this view. Multiple activists affiliated with Black Lives Matter and Occupy reported being visited by FBI agents. The agents questioned them about their plans to protest the RNC.[69] One activist reported that the FBI advised him not to protest the RNC.[70] While the FBI did not confirm the specifics of these conversations, it did confirm that such visits took place. According to the FBI, it was "reaching out to individuals known in the community who may have information that could help ensure a safe and secure environment during the RNC."[71]

Protests against the RNC were significantly smaller than many anticipated, leading to speculation that the FBI tactics had scared people away from protesting.[72] Whether the lower than expected number of protests can be solely attributed to the FBI, it is not difficult to understand how having an FBI agent show up to dissuade one from engaging in lawful political activity has a chilling effect on speech. During the convention itself, the FBI, joined by local police and the Department of Homeland Security, carried out a warrantless raid on a house where protesters were staying.[73]

Alleged FBI Election Intimidation

The weekend before the 2016 election, the FBI visited people in at least eight states to ask them about a vague terror plot. All of those questioned were American Muslims of Pakistani or Afghan descent. Individuals were asked if they knew al-Qaeda leaders killed in a U.S. air strike and if they knew about a potential al-Qaeda pre-election terror plot. Given the timing of the visits, CAIR alleged that they amounted to voter intimidation.[74]

Standing Rock

In the second half of 2016, Water Protectors on the Standing Rock Sioux Reservation fought the Dakota Access Pipeline (DAPL). The pipeline was rerouted to cross the Missouri River near the reservation because a previously proposed route was found to potentially threaten the water supply of Bismarck, North Dakota. The Missouri River is the source of the reservation's water. Even though the pipeline was considered too much of a risk for Bismarck, as a testament to the enduring legacies of racism and colonialism, the risk to the reservation's water was deemed acceptable. Members of the Sioux tribe objected to the route of DAPL, not only because of the threat it posed to their water supply, but because it threatened to destroy areas of cultural and historical significance to the tribe.

While the tribe pursued legal action to block the pipeline, a group of Sioux activists called Water Protectors set up an encampment where they prayed, engaged in nonviolent civil disobedience, and held marches and rallies to block construction of DAPL. Individuals from over 300 federally recognized native tribes joined the encampment, making it the largest gathering of indigenous people in the U.S. in a century.[75] Environmentalists and other non-indigenous protesters in solidarity with their cause also joined the encampment. While their ranks started in the hundreds, they swelled to thousands.

The Standing Rock Water Protectors were met with heavy state repression. Mass arrests, such as the arrest of 141 protesters on October 28, 2016, were common. Police showed up in militarized gear and set up checkpoints around Standing Rock. Private security forces used dogs against the Water Protectors. Law enforcement frequently used pepper spray and rubber bullets against Water Protectors. On November

20, 2016, police indiscriminately fired a water cannon on people in subfreezing temperatures. Prosecutors also targeted journalists. After *Democracy Now*'s Amy Goodman captured footage of private security officers using dogs against protesters, a warrant was issued for her arrest for felony rioting. Prosecutors argued that since her broadcasts were sympathetic to the protesters, she was not engaged in First Amendment-protected journalism. All charges against Goodman were thrown out.

One of the protesters, Sophia Wilansky, was injured by an explosion on November 20, 2017. Her left arm was severely injured and doctors almost had to amputate it. As Wilansky was about to be wheeled into surgery, an FBI JTTF agent showed up at her room.[76] Wilansky, along with eyewitnesses on the scene, claimed that Wilansky suffered her injury after being hit with a police concussion grenade. Her injuries, including shrapnel removed from her arm by doctors, are entirely consistent with this claim. Law enforcement officers denied firing a concussion grenade and instead alleged Wilansky was injured after protesters deliberately exploded a propane tank. The FBI JTTF agent who visited Wilansky took her clothes and the shrapnel. Wilansky's family agreed to let the FBI take the shrapnel and clothing for analysis on the condition the FBI return them in a timely manner. The FBI did not do so. Wilansky filed a lawsuit to recover the items because she needed them in order to prove her injuries were caused by police and bring a suit against them.[77] A judge rejected her request.[78]

Wilansky was not the only Water Protector visited by FBI JTTF agents. In February 2017, *The Guardian* reported at least three Water Protectors had been contacted for "knock and talks." This is when agents show up without a warrant at someone's door in hopes of getting them to talk voluntarily. All three Water Protectors declined to speak to the FBI.[79] Following a public campaign by Defending Rights & Dissent calling on Congress to ask the FBI why it was visiting Water Protectors, then-Sen. Al Franken, D-Minn., requested an explanation.[80] At the time of his resignation, it was unknown what, if any, information the FBI had provided him.

During the protests, the FBI deployed a confidential informant, Heath Harmon, who spent at least several months living in the encampment. He purportedly was there to gather evidence of bomb making and other weapons. While he found no such evidence, he did have with him a .38-caliber revolver.[81] Harmon also began a romantic relationship with one of the Water Protectors, Red Fawn Fallis. Fallis was unaware that he was on the FBI payroll. On October 27, 2016, Fallis was tackled and arrested by police while, in the words of one the arresting officers, shouting, "Water is life and you're killing Mother Earth and stuff of that nature."[82] Police and Fallis dispute what happened next, but as Fallis was tackled, three shots were allegedly fired. The gun they were fired from was the revolver owned by FBI informant Harmon. Fallis was initially charged with civil disorder, possession of a firearm by a convicted felon, and discharge of a firearm in relation to a felony crime of violence. Unable to get more information from the FBI about informant Harmon and concerned about the bias against Water Protectors, Fallis pleaded guilty to two of the charges. As a result, the prosecution agreed to drop the charge of discharge of a firearm in relation to a felony crime of violence, which carried a minimum sentence of 10 years in prison and a maximum of life in prison. Fallis was sentenced to four years and nine months in prison.[83]

A number of intertwined groups conducted surveillance of the Standing Rock Water Protectors. The company building DAPL, Energy Transfer Partners, hired a private intelligence firm, TigerSwan, a military contractor for the U.S. government. It brought counterinsurgency tactics from Iraq and Afghanistan to North Dakota. TigerSwan's own documents show it viewed the protesters as an "ideologically driven insurgency with a strong religious component" similar to jihadist groups. It engaged in extensive and intrusive surveillance against the protesters. TigerSwan singled out one activist due to her Palestinian heritage. As part of its role as the paid protectors of Energy Transfer Partners' interests, TigerSwan not only sought to thwart the protesters, but to create a perception of the protesters as a security threat. This makes it all the more disturbing that it shared intelligence with a number of government agencies, including the FBI.[84] Given the biased nature of the "intelligence," it would be shocking for the FBI to treat it as fact. Since TigerSwan is a private corporation not bound by the same legal constraints as the FBI, it's possible that it acted as a loophole allowing the FBI to get information it would not otherwise be allowed to collect.

The full extent of FBI infiltration, surveillance, and investigation of Standing Rock is not fully known, but the Bureau seems to have treated the nonviolent protest as a domestic terrorism problem.

Other Environmental Protesters

The FBI has a decades-long history of spying on environmental groups, and Standing Rock is not the only time the FBI has targeted anti-pipeline activists. Since 2010, several incidents have become public knowledge. Each of these incidents indicates that only the tip of the iceberg has been revealed.

Joint reporting by *The Guardian* and *Earth Island Journal* uncovered via FOIA that the Houston office of the FBI had monitored the Tar Sands Brigade, an anti-Keystone pipeline protest group. As *The Guardian* wrote:

Between November 2012 and June 2014, the documents

show, the FBI collated inside knowledge about forthcoming protests, documented the identities of individuals photographing oil-related infrastructure, scrutinised police intelligence and cultivated at least one informant.[85]

During the investigation, the FBI violated its own internal rules. As explained further below, under the Domestic Investigation and Operations Guide, investigations involving a political organization require approval by the chief division counsel and the special agent in charge. Agents investigating the anti-Keystone protesters initially failed to get this approval and, midway through the investigation, this mistake was noticed. The required supervisory officials gave their retroactive approval and the investigation continued.[86]

Equally disturbingly, this investigation was only an assessment-level investigation. As explained below, assessments are a relatively recent creation of the FBI. An assessment does not require the individuals or groups being investigated to be suspected of a crime or national security threat, only an "authorized purpose." Mike German, former FBI agent and fellow at the Brennan Center for Justice, said after reading the documents, "It is clearly troubling that these documents suggest the FBI interprets its national security mandate as protecting private industry from political criticism."[87] While there is no time limit on assessments, they are supposed to be relatively short and must be renewed every 30 days.[88] The FBI continued its assessment for 11 months before finally closing it due to an inability to find "extremist" activity.[89]

In 2015, Defending Rights & Dissent's *Dissent NewsWire* broke the story of FBI agents questioning activists associated with Rising Tide.[90] Over a dozen activists were questioned in Idaho, Washington, and Oregon. The activists were asked about Deep Green Resistance, a group none of them were involved with. The activists declined to speak with the FBI. Civil rights attorney Larry Hildes said he confirmed with the agents that none of the individuals contacted were the subjects of a criminal investigation.[91] Shockingly, Hildes became the target of government harassment himself.[92]

Further revelations via FOIA have shined light on both of these aforementioned matters. According to *The Guardian*, from 2013-2014, the FBI opened investigations into a "a broad cross-section of the environmental movement."[93] These investigations targeted some "individual activists and some environmental organizations." It turned out that Helena Yost, one of the activists previously known to have been questioned by the FBI, was at the time being investigated by the FBI as a national security threat.[94] The basis for this investigation was a belief that Yost may engage in nonviolent civil disobedience against trains that transport coal or oil. No such actions ever occurred and the FBI closed its investigation, concluding Yost was not a national security threat. Nonetheless, it placed Yost on a terror watchlist. During this same, the FBI opened a broad investigation into Deep Green Resistance. Learning of an event at Western Washington University, where Deep Green Resistance members spoke, the FBI met with campus police and tried to determine if any professors were involved in the group. The investigation into Deep Green Resistance was also closed.[95]

In 2016, the FBI also tracked protests that were part of the Break Free from Fossil Fuels campaign. According to documents obtained by *The Guardian*, the FBI gathered information on a planned protest in Los Angeles and logged the arrests of three activists for civil disobedience during a protest in Whiting, Indiana.[96] The files indicated that the investigation was considered a "sensitive investigative matter." While it does not appear that the environmental group 350.org was being investigated, the group is referenced throughout the documents. One released document reads, "350.org are referenced in multiple investigations and assessments for their planned protests and disruptions."[97]

As with so many instances of FBI political spying, what we know raises as many questions as answers. The FBI identified a total of 25 documents related to *The Guardian*'s FOIA request, but only released seven pages.

It is clear if the FBI has continuously engaged in surveillance of environmental groups and anti-pipeline protesters. Although we are learning more and more through FOIA, the full extent is still unknown.

Palestinian Solidarity Activists

Activists for Palestinian rights have also increasingly come under scrutiny from the FBI. When Holocaust survivor and longtime social justice activist Hedy Epstein died, journalists obtained her FBI file. The bulk of her file deals with speculation that Epstein may have been associated with European Communists before immigrating to the U.S. in 1948.[98] The files also revealed that the FBI had monitored a 2006 delegation from St. Louis, Missouri, to the Middle East that Epstein had participated in. The International Solidarity Movement, a Palestine solidarity organization, organized the delegation.[99]

In 2014, FBI agents approached the International Solidarity Movement's co-founder Huwaida Arraf. According to *The Intercept*, the agents wanted to talk about claims by the right-wing website StopTheISM.org that the International Solidarity Movement supported terrorism.[100]

Ahmad Aburas was a law student at Seton Hall when

FBI JTTF agents questioned him about his social media postings. According to *The Intercept*, Canary Mission, a right-wing website that gathers dossiers on supporters of Palestinian human rights, contacted the law school about Aburas' social media posts. The law school then contacted the FBI. Aburas was taken out of a civil procedure class by a school security officer and then interrogated by two FBI JTTF agents. The agents referenced information about him found on the Canary Mission website.[101]

On at least two other occasions, FBI agents have questioned student Palestinian solidarity activists. In 2018, FBI agents visited students at the University of Chicago and the University of California Los Angeles.

In at least two of the known incidents, the FBI agents referenced a Canary Mission profile.[102]

The full extent of FBI surveillance of Palestinian rights supporters is unknown. As we go to press, the author of this report is suing the FBI over the status of a FOIA request pertaining to surveillance of Palestinian solidarity activists. Other FOIA requests filed by the author of this report about known instances of FBI questioning of Palestinian solidarity groups have been met with blanket denials that any such records exist. As in so many other cases, the FBI appears to be deliberately withholding information about its political surveillance.

Occupy/Abolish ICE

In August 2018, U.S. Immigration and Customs Enforcement (ICE) arrested Sergio Salazar. The 18-year-old aspiring filmmaker had lived in the U.S. since he was 2 and had been a recipient of Deferred Action for Childhood Arrivals. ICE agents grabbed the longtime U.S. resident as he left an Occupy ICE encampment in San Antonio, Texas. Salazar's supporters believe ICE targeted him for his outspoken activism. ICE claims Salazar made threats against law enforcement on social media. When ICE agents detained Salazar, FBI agents interrogated him. They told him he had immigration troubles because he was a "bad person." They also urged him to inform on fellow Occupy ICE members, suggesting it might help his case.[103]

The FBI's interrogation of Salazar suggests that the Bureau is interested in anti-ICE protests and the Abolish/Occupy ICE movement.

In 2019, *Yahoo News* obtained an external intelligence note from the Phoenix FBI, which also raised further questions about FBI monitoring of immigrants' rights groups.[104] According to the note, "anarchist extremists" were "very likely" to target government facilities in Arizona, "increasing the risk of armed conflict." The note argued that such actions were likely due to individuals' opposition to "perceived border atrocities." Much like with the Black Identity Extremist assessment, the FBI is treating outrage at social injustice (racism or the mistreatment of migrants) as a potential precursor to violence. The note directly referenced a "human source with direct access" raising questions about infiltration.[105]

Cuba and Iran Normalization Proponents

The Trump administration has rolled back attempts to normalize relations between the U.S. and Cuba and has pulled the U.S. of out the Joint Comprehensive Plan of Action, or the Iran nuclear deal. Disturbingly, the FBI has questioned opponents of these policies.

In September 2018, the FBI visited at least five Cuban-Americans who advocate normalized relations between Cuba and the U.S. According to *The New York Times*, "The law enforcement representatives were vague about their intentions, gave only their first names, and asked questions that seemed intended to learn about contacts with Cuban diplomats."[106] FBI agents also left behind pamphlets about techniques spies use to gather information from the unwitting. According to anonymous sources who spoke to the *Miami Herald*, the target of these visits was not the Cuban-Americans themselves, but the Cuban government. The source said that the publicity from the visits was designed to send a message to the Cuban government that the FBI was still watching out for Cuban spies.[107] It is obviously chilling for the FBI to make such visits to U.S. persons, however. Many of those visited believe they are being targeted for their politics as part of Trump's turn in Cuban policy.[108]

In early 2019, a delegation of peace activists led by Code Pink visited Iran. Upon their return to the U.S., FBI agents greeted two members of the delegation at the airport. Those members were Code Pink co-founder Medea Benjamin and Ann Wright, a U.S. diplomat who resigned her post in protest of the U.S. invasion of Iraq. According to Benjamin,

We were greeted by FBI agents who had a whole dossier on us of what we did, which mostly they got from our own website, our blogs. But they also had a packet of information for us about the sanctions on Iran, the U.S. government policies towards Iran, the issue about registering as a foreign agent, indictment of Iranian groups to scare us away from talking to them.[109]

Fragments and Pieces

The aforementioned incidents paint a picture of widespread FBI political surveillance. But the picture is incomplete. In many cases, the incidents suggest further surveillance and wider investigations. Visits and "knock and talks" are parts of unknown investigations.

Document sets are incomplete or heavily redacted. Even when information is made public, there is often further information withheld. For example, during the Bush years, the ACLU obtained through FOIA files about the FBI's monitoring of School of the Americas Watch, a peace organization founded by a Maryknoll priest, which opposes U.S.-Latin American policy.[110] In 2015, Partnership for Civil Justice obtained new files detailing FBI surveillance of School of the Americas Watch from 2000 to 2009, a time period that overlaps the previously released files.[111] Even when files are made public, it is clear much remains unknown.

Confidential Informants, Agents Provocateurs, and the FBI's Terror "Stings"

Infiltration has long been one of the FBI's preferred methods of surveillance. And in spite of new high-tech surveillance technologies, the FBI continues to rely on infiltration. After all, no amount of secure communications can prevent surveillance if one side of those communications is an infiltrator.[112] Since 9/11, infiltrators have increasingly moved beyond mere spying and frequently act as agents provocateurs.

When infiltrating groups engaged in First Amendment activity, the FBI has relied on both undercover agents and confidential informants. These confidential informants aren't employees, but they are often paid, sometimes "as much as $100,000 per assignment." As of 2011, the FBI had a total of more than 15,000 registered informants.[113]

Infiltrators—be they undercover agents or confidential informants—have been involved in a number of the FBI First Amendment abuses mentioned above. Infiltrators aided the FBI in its surveillance of Occupy, Black Lives Matter, Standing Rock Water Protectors, and Houston-based environmentalists. The FBI's raids on Midwest peace and solidarity activists were the result of an undercover agent's claims.

While the FBI's deployment of informants and agents provocateurs raises troubling ethical questions, the use of these tactics in the Muslim community is particularly insidious.

Infiltration is insidious in its own right, but informants are increasingly acting as agents provocateurs. The FBI uses its informants to carry out terrorism-related "sting" operations. The FBI, along with its informants, concocts fictitious terror plots. The informants propose to people targeted by the FBI that they participate in the fictitious plot. Oftentimes, they exceed mere suggestion and go to great lengths to entice people to participate. Once people agree to take part in the nonexistent FBI-concocted terror scheme, they are arrested. A 2014 Human Rights Watch report reviewing post-9/11 terrorism convictions estimated that "almost 30 percent of those cases were sting operations in which the informant played an active role in the underlying plot."[114]

To many people, such a scheme may sound like entrapment. Entrapment is an affirmative defense to criminal charges. The entrapment defense is designed so that "[g]overnment agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute."[115]

It does not, however, serve as a barrier to conviction of people who were merely solicited by the government to commit a crime. The government must induce the crime and the defendant must lack a predisposition to have committed the crime. In reality, the line between solicitation and inducement is far from clear-cut. Since entrapment is an affirmative defense, the defendant bears the evidentiary burden of proof. And proving someone lacked a predisposition to commit a crime is not easy. The courts have long been overly deferential to the executive branch whenever national security is invoked. And since the backlash to the due process revolution of the 1960s, the courts have grown increasingly conservative and have continuously eroded the procedural rights of criminal defendants.

While the actions of the FBI and its informants may shock the conscience of an average person, courts have been largely unwilling to find those actions reach the threshold of entrapment. And the FBI's terror stings have won a bipartisan seal of approval. While they began under the Bush administration, they accelerated dramatically under Obama.[116] Obama's attorney general, Eric Holder, publicly praised them.[117]

While the FBI's deployment of informants and agents provocateurs raises troubling ethical questions, the use of these tactics in the Muslim community is particularly

insidious. As these tactics aim at preventing "lone wolf" terrorists before they strike, they almost exclusively target people not suspected of any crime. As journalist Trevor Aaronson wrote:

FBI agents and informants target not just active jihadists, but tens of thousands of law-abiding people, seeking to identify those disgruntled few who might participate in a plot given the means and the opportunity. And then, in case after case, the government provides the plot, the means, and the opportunity.[118]

It's bad enough that the FBI baselessly treats the American Muslim community as a fifth column. But these stings further perpetuate the same ugly state-sponsored bigotry that underlies them. Upon arrests, the FBI touts how it foiled a terror plot, calling press conferences and making headlines.[119] It cites these arrests and convictions in statistics about terrorism threats. The media unquestioningly reiterates the FBI's narrative about foiled terror plots. Many Americans will not read beyond the headlines, or between the lines, to realize the so-called terror plot existed only because the FBI created it. Terrorism in the Muslim community appears as a bigger threat. And such promotion of stereotypes and threat exaggeration only serves to further justify the need for more "counterterrorism" measures aimed at the Muslim community.

A perfect example of this phenomenon is Donald Trump's Muslim Ban. Trump campaigned on surveilling mosques—which, thanks to FBI informants, was already happening—and a Muslim ban. In spite of his insistence to the contrary, he enacted such a ban with his executive order barring individuals from several predominantly Muslim countries from entering the U.S. The original ban was struck down by district courts for lacking a rational relationship between barring the entry of individuals from the countries listed and any national security purpose. Trump rescinded that ban and issued a new one in a second executive order. This time Trump gave a stated national security purpose. He cited two "terror" plots involving refugees. But both plots were the products of FBI stings in which confidential informants acted as agents provocateurs. In one case, a judge found the sting to be an instance of "imperfect entrapment."[120]

According to *The Intercept*, of the 891 international terrorism cases prosecuted by the Justice Department, 322 were the results of sting operations. International terrorism does not actually mean the plot was international in scope. As *The Intercept* notes, "many of the people charged never left the United States or communicated with anyone outside the country." The FBI classifies nearly all terrorism allegedly carried out by Muslim suspects as "international," even when their actions have no overseas connections, on the basis that the Muslims are "global-jihad-inspired individuals."[121]

The Newburgh Four case encapsulates the appalling nature of FBI stings. In 2007, the FBI, for unknown reasons, sent Shaheed Hussain to Newburgh, New York. Journalist Trevor Aaronson has dubbed Hussain "the super informant."[122] Prior to his work in Newburgh, Hussain had been involved in a controversial sting operation involving a pizzeria owner in Albany, New York. He had also worked for the FBI overseas.[123]

" I believe beyond a shadow of a doubt that there would have been no crime here except the government instigated it, planned it and brought it to fruition."

- Judge McMahon

Newburgh is an extremely impoverished city, so Hussain, who was pretending to be an importer named Maqsood, called attention to himself by driving around in BMWs, Mercedes, and other expensive cars.[124] Hussain also, by all accounts, made extremist comments. He eventually honed in on James Cromitie, approaching him in a mosque parking lot. Cromitie, who worked as a stocker at Walmart, had converted to Islam while serving a two-year prison sentence for selling crack cocaine.[125] He was prone to paranoid, anti-Semitic rants.

Hussain worked to groom Cromitie into a terrorist. Cromitie was eager to impress Hussain. He told him tales of entirely fictitious criminal exploits. While full of bravado and bluster, Cromitie was not a terribly great candidate for international terrorism. The FBI's plot was to ensnare Cromitie into acting on behalf of Jaish-e-Mohammed, a State Department-designated foreign terrorist organization based in Pakistan. When Hussain claimed to be a member of the group, Cromitie had no clue what it was. He had to ask Hussain if it was a Muslim group.[126]

Hussain didn't resort to mere ideological persuasion; he also offered Cromitie financial incentives. According to *The Guardian,* Hussain offered "$250,000: a staggering sum. Hussain also offered to buy him a new BMW, a holiday in Puerto Rico, and a barber shop to set him up in his own business."[127] At one point Cromitie actually tried to ditch Hussain, but after he lost his job at Walmart, he reached out again. Hussain reminded Cromitie of his offer of $250,000.[128]

Cromitie recruited into the plot three other men—David Williams, Onta Williams, and Laguerre Payen. Like Cromitie, they were poor, black, and had low-level criminal convictions. Payen also suffered from possible mental illness. According to the three men, they joined up with the hopes not of carrying out the terror plot, but of ripping off Hussain. Either way, it was clear they were financially motivated. One of the men, David Williams, had a brother with liver disease and desperately needed money for his treatment. In one recorded conversation, they can be heard telling Hussain they did not want to harm people.

Hussain got the four men to agree to bomb synagogues and attack U.S. military planes with Stinger missiles. As part of the nonexistent plot, they were given fake bombs and fake Stinger missiles. One of the men planted the fake bomb while the other three stood as lookouts. The FBI then swooped in and arrested them.

All four men were sentenced to 25 years in prison. The presiding judge said, "Only the government could have made a terrorist out of Mr. Cromitie, a man whose buffoonery is positively Shakespearean in its scope. [...] I believe beyond a shadow of a doubt that there would have been no crime here except the government instigated it, planned it and brought it to fruition."[129]

The FBI is using confidential informants to manufacture terror plots. It is preying on vulnerable people. It is providing incentives to individuals to agree to participate in actions they would never have taken part in without the FBI. All of this is sinister enough. But the overwhelming majority of these stings involve Muslim communities. The FBI sends agents provocateurs into these communities to fish for potential victims. This shows that the Bureau views the Muslim community with suspicion and is willing to shred that community's basic civil rights.

Joint Terrorism Task Forces

Many of the above mentioned incidents of political surveillance deal with agents of the FBI's Joint Terrorism Task Forces. What is the JTTF? And who are JTTF agents?

The first JTTF was founded in 1980 as a collaboration between the FBI and the New York Police Department. According to the FBI, there are now "more than 175 task forces in cities around the country, including at least one in each of our 56 field offices."[130] FBI agents aren't the only members of JTTF. As the FBI says,

In addition to FBI personnel, the JTTFs include members from over 500 state and local agencies and 55 federal agencies, such as the Department of Homeland Security, the U.S. military, Immigration and Customs Enforcement, and the Transportation Security Administration.[131]

JTTFs are run by the FBI and operate under FBI guidelines. But, since FBI agents do not exclusively staff JTTFs, this creates unique problems. In many cases, local police who staff JTTFs are subject to stricter rules protecting privacy and civil liberties than the FBI. Yet, when cities sign memorandums of understanding, they allow their police, who are paid from local funds, to follow the laxer FBI guidelines.[132]

Municipalities, pressured by activists, have taken steps to combat this. In 2012, San Francisco passed the Safe San Francisco Civil Rights Ordinance, which mandated local police follow more stringent local protections for civil rights when acting as JTTF agents.[133] Following the election of Donald Trump, in February 2017, San Francisco left the JTTF altogether.[134] Portland, Oregon also voted to leave the JTTF—twice. Portland left in 2005 and rejoined partially in 2011 and completely in 2015. In 2019, it left a second time.[135]

JTTF agents, including non-FBI agents assigned to the JTTF, have continuously been involved in monitoring political movements. On the FBI's own website, it boasts of the role of the JTTF in foiling a terror attack against the Fort Dix, New Jersey, military base. But like so many other victories in the war on terror that the FBI brags about, the Fort Dix case was an example of an FBI sting operation that relied on a confidential informant acting as an agent provocateur.[136]

Given what we know about the FBI, it is not surprising that JTTFs engage in these types of behavior. But with JTTFs, the FBI uses local police officers and other federal agents to carry out these abuses.

A Brief History of FBI Political Surveillance

From its very inception, the Federal Bureau of Investigation has viewed political surveillance as one of its primary functions. The FBI was created in 1908 as the Bureau of Investigation.[137] President Theodore Roosevelt had asked his attorney general, Charles Bonaparte, to create an investigatory body within the Department of Justice (DOJ). Bonaparte asked Congress, which turned down his request. When Congress adjourned for recess, however, Bonaparte created what would become the FBI.[138] As a result, the FBI to this day has no statutory charter. Its powers and jurisdiction are largely self-defined by the executive branch. [139]

The Origins of Political Surveillance

While the Bureau of Investigation engaged in politically motivated investigations from the beginning, the practice came to a head in 1919 with the establishment of the "Radical" or "General Intelligence Division" (GID).[140] The GID, headed by a young J. Edgar Hoover, was responsible for conducting domestic intelligence gathering against "subversives." Political spying was not unique to the federal government. Beginning in the late 19th century and continuing throughout the 20th century, many police departments—including those in Chicago, New York, and Los Angeles—developed "Red Squads." As the name suggests, these intelligence units focused on left-wing radicalism and labor organizing.

With Hoover at the helm, the GID led one of the most notorious civil liberties abuses in U.S. history—the Palmer Raids. In 1919, on the second anniversary of Russia's Bolshevik Revolution, Hoover's men raided the offices of radical groups. Individuals were rounded up and detained, and many were deported. Many searches, arrests, and detentions were conducted without warrants. Hoover had been an employee of the Library of Congress and, for tracking radicals, he employed a system of indexing that was remarkably similar to the card catalogue.[141] Ten thousand people were arrested, 3,500 were held in detention, and over 500 individuals were deported.[142]

In 1924, Hoover became the Bureau's director. In response to the Palmer Raids, the attorney general attempted to check the power of the FBI and limit its activity strictly to enforcement of criminal law—i.e., to strip it of its intelligence authorities, which served as the main vehicle for its political surveillance.[143] In spite of these efforts, and Hoover's increased sensitivity to public perceptions of the FBI as a political police, the FBI continued to find ways to spy on dissent.[144]

By the mid to late 1930s, Hoover had not only managed to restore the FBI's former powers, but also expanded and permanently entrenched them. In 1934, President Franklin Delano Roosevelt ordered the FBI to keep tabs on Nazi sympathizers, and in 1936, expanded the order to also monitor Communists.[145] Roosevelt issued executive orders in 1939 and 1941 that the FBI would rely on for decades as the source of its national security powers unrelated to enforcement of the criminal code. Later presidents, misled by Hoover, would issue their own executive orders meant to reiterate Roosevelt's, that instead expanded the Bureau's authorities.[146] In 1939, Hoover announced the reconstitution of the General Intelligence Division, which had been closed in 1924.[147]

Hoover, in fact, went much further than bringing back the old GID. He revived the practice of keeping an index of subversives, but did so as part of the Custodial Detention List,[148] a secret list of people to be detained in the event of a national emergency. When Attorney General Frances Biddle learned of the list in 1941, he ordered Hoover to destroy it, arguing that the FBI lacked the legal authority to compile such an index. Instead of complying, Hoover changed the name of the Custodial Detention List to the Security Index and ordered his agents to keep it secret.[149] It does not appear the FBI made any attorney general aware of the existence of the index until 1946.[150] In 1950, Congress passed the Emergency Detention Act to allow the federal government to detain U.S. persons in the event of a national emergency. While many associate this legislation with the FBI's secret detention lists, the FBI actually was not pleased with its passage. The Bureau viewed it not as a statutory justification for its list, but as a constriction of its power. The qualifications for including a U.S. person on the detention list were more restrictive, and individuals had access to courts to challenge their detention, something Hoover adamantly opposed. As a result, the FBI chose to disregard the law.[151]

In addition to the Security Index, the FBI kept a second index, the Reserve Index, meant for individuals deemed not threatening enough to national security to warrant placement on the Security Index, but still threatening enough to require monitoring. At its height in 1955, the Security Index included 26,174 people.[152] Taking into account the much more expansive Reserve Index, by 1960 the FBI "had opened over 430,000 files on allegedly subversive groups and individuals."[153] In 1950, twelve days after the outbreak of the Korean War, Hoover asked President Truman to detain 12,000 people listed on the Security Index and hold them in military prisons. Truman rejected Hoover's plan for mass detentions.[154]

Keeping lists of individuals to be detained without trial is odious, but these lists served another important

purpose. The FBI "was able to parlay its list of people slated for detention into a program of widespread political surveillance."[155] Security Index and Reserve Index files required regular updating, and individuals on the indexes were subjected to continuous surveillance as part of internal security investigations.[156] The nexus was clear when, after Congress passed the Non-Detention Act of 1970, the FBI internally discussed how to respond if the "extreme left" would claim "that the repeal of the Detention Act eliminated FBI authority for domestic intelligence activity."[157] These intelligence activities often included illegal wiretaps, confidential informants, and burglaries known as "black bag jobs."

The capacity for widespread political surveillance is illustrated by the intrusive surveillance the FBI engaged in just to determine if individuals should be included on indexes. The FBI opened an investigation into a 15-year-old high school student after she tried to mail a letter to the Socialist Labor Party as part of a class assignment, but accidentally sent it to the Socialist Workers Party instead.[158] When Defending Rights & Dissent requested the FBI files of Abraham Lincoln Brigade veteran Delmer Berg, we also received the FBI file of Robert Wells. The FBI had noted that an article titled "The Agricultural Workers in California" had appeared in the Communist Party publication *Political Affairs* under the byline Robert Wells. The FBI opened an investigation to determine if Robert Wells should be included on the Security Index. The FBI closed the file when agents determined that Wells was a pseudonym of Delmer Berg and Bob Lindsey.[159] As shown by the hundreds of pages of Delmer Berg's FBI files released to Defending Rights & Dissent, Berg was already on the Security Index.

COINTELPRO: A Domestic Covert Operation

By 1956, the FBI was no longer satisfied to merely conduct surveillance of dissent. They also wanted to neutralize and disrupt political organizations. As part of its Counter Intelligence Program or COINTELPRO, the FBI escalated from surveillance to full blown harassment.[160] COINTELPRO targeted completely lawful political organizing. In fact, it was predicated on a belief that an increasingly liberal Supreme Court was making it more difficult to convict Communists of crimes, leading "Hoover and his men to use dirty tricks instead of criminal prosecutions to neutralize the party."[161]

In 1950, twelve days after the outbreak of the Korean War, Hoover asked President Truman to detain 12,000 people listed on the Security Index and hold them in military prisons. Truman rejected Hoover's plan for mass detentions.

Initially, COINTELPRO targeted the Communist Party, but it soon grew to encompass attacks on the Socialist Workers Party, the Civil Rights and Black Liberation Movements, the Puerto Rican independence movement, the antiwar movement, and the New Left.[162] Among some of its most notorious victims were Martin Luther King Jr. and the Southern Christian Leadership Conference. Designating civil rights activists as "black hate" groups, the FBI tried to blackmail King into killing itself.[163] The FBI was also deeply concerned about the unification of racial justice movements after King's death and directly wanted to prevent it.[164] They devoted particular attention to the Black Panther Party.

The FBI orchestrated a 1969 Chicago Police raid on the Illinois chapter of the Black Panther Party after an FBI informant provided the FBI with a map of the party headquarters. During the raid, the police fired nearly a 100 times, killing the party's charismatic young leader Fred Hampton as he lay sleeping in bed. Fellow Black Panther Mark Clark was also killed. While the police claimed self-defense, "a federal grand jury determined that the police had fired between eighty-three and ninety shots–the Panthers a *maximum* of one."[165] A toxicology report showed a large amount of secobarbital in Hampton's system, leading to allegations that the FBI informant drugged Hampton.[166] Many view Hampton's death as an execution, murder, or assassination.[167]

The bulk of COINTELPRO targeted the left and racial justice groups. With mounting pressure to do something about the murder of civil rights workers and concerns that local law enforcement were complicit in Ku Klux Klan violence, however, the FBI, initiated a COINTELPRO operation against the Ku Klux Klan and other white nationalists.[168] The operation against the Klan engaged in some of the same disruptive tactics as the other COINTELPRO operations, such as instructing an informant to "break up marriages by sleeping with wives of members of the Klan."[169] According to a Congressional inquiry however, the FBI's anti-Klan efforts paled in comparison to the intensity with which the FBI sought to destroy black-led groups. The COINTELPRO operations directed at the Klan targeted individuals suspected of violent acts.[170] A Klan informant testified before Congress that he both alerted the FBI in advance of Klan violence and participated in that violence.[171] Despite having a large number of informants

in the Ku Klux Klan, the FBI claimed it was powerless to stop Klan violence.[172]

In 1971, a group of antiwar activists calling themselves the Citizens' Commission to Investigate the FBI, broke into the Bureau's office in Media, Pennsylvania. The Citizens' Commission seized over 1,000 pages of FBI documents, and sent them to the media for public release.[173] As a result, COINTELPRO was made public for the first time.

The ensuing controversy from the revelations came around the same time that Seymour Hersh was exposing the CIA's domestic spying programs and covert actions abroad. This led to calls for reform, and the establishment, in 1975, of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, known as the Church Committee. While the Church Committee is best known for uncovering assassinations and covert actions, it also studied intelligence activities and the rights of Americans.[174] The committee documented how the FBI's intelligence operations, such as the Security Index and COINTELPRO, infringed upon the rights of U.S. persons. Of COINTELPRO, the committee found that the FBI had conducted "a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association, on the theory that preventing the growth of dangerous groups and the propagation of dangerous ideas would protect the national security and deter violence."[175]

Of COINTELPRO, the committee found that the FBI had conducted 'a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association'

The Church Committee recommended a legislative charter for the FBI. In 1976, Attorney General Edward H. Levi agreed to impose guidelines on the FBI. In light of those guidelines, Congress declined to impose a charter.[176] The problem with this, though, is that any attorney general can change the guidelines. As discussed below, the guidelines have been systematically weakened over the years.

In addition to congressional challenges, the FBI and its agents also faced key challenges in the courts. Victims of FBI harassment, such as the National Lawyers Guild and the Socialist Workers Party, sued the FBI. Two FBI agents, Mark Felt and Edward Miller, became the first, and only, FBI agents criminally convicted of violating the rights of U.S. persons.

Felt and Miller received light sentences—fines without any prison time—but it still angered the FBI's supporters. When Ronald Reagan became president, one of his first acts was to pardon the two men. Former President Richard Nixon sent them champagne and a note reading, "Justice ultimately prevails."[177]

Post-Church Committee – the CISPES Investigation

Just a few years after the Church Committee concluded its work, the FBI conducted a massive surveillance operation into opponents of President Reagan's foreign policy.[178] The Bureau investigated the Committee in Solidarity with the People of El Salvador (CISPES), conducting 178 spinoff investigations, including investigations into labor unions and church groups.[179] The FBI gathered information on 2,376 individuals and 1,330 groups and took photos of protests, dug through trash, infiltrated meetings, attended a Mass, and collected license plate numbers.[180]

The FBI initially investigated whether CISPES was an unregistered foreign agent of the Farabundo Martí National Liberation Front (FMLN), but quickly concluded it was not. The FBI continued to pursue CISPES as part of an international terrorism investigation, once again by trying link it to the FMLN.[181] At the time, the FMLN was a guerrilla group. Since the conclusion of El Salvador's civil war, however, it has been one of the main political parties in the country. Because the investigation was a foreign terrorism investigation, not a domestic terrorism investigation, it was conducted pursuant to the FBI's then-Foreign Counter Intelligence guidelines. Those guidelines were much looser than the guidelines for domestic security operations and were partially classified.[182]

When the spying was revealed, people were outraged. Six FBI agents were disciplined for the CISPES investigation.[183] The Senate Intelligence Committee conducted an investigation of the FBI's activity and, in 1988, released a report that found the investigation was based on "allegations that should not have been considered credible; it was broadened beyond the scope justified even by those allegations; and it continued after the available information had clearly fallen below the standards required by the applicable guidelines."[184] What the CISPES investigation shows is that while the FBI may have faced some limitations on its ability to conduct non-criminal investigations into "subversives," the FBI demonstrated that it was still able to use remaining powers to achieve many of the same ends.

Following revelations about the CISPES spying, U.S. Rep. Don Edwards, D-Calif., introduced the FBI First Amendment Protection Act. The bill prohibited the FBI from conducting investigations into First Amendment activity, unless "specific and articulable facts reasonably indicate that the subject of the investigation has engaged, is engaging, or is about to engage in a Federal criminal offense."[185] While the bill never passed, Edwards was able to amend the Violent Crime Act of 1994 to prohibit the FBI from initiating or continuing investigations based on First Amendment-protected activity.[186] This, however, was short-lived, as, 16 months later, President Bill Clinton repealed the amendment as part of the Antiterrorism and Effective Death Penalty Act of 1996.[187]

Transforming Dissent into Terrorism

In the run-up to the Gulf War in 1991, the FBI began visiting Arab-Americans, questioning them about their political views. These interviews were met with condemnation from civil society groups and lawmakers.[188] As a representative of the ACLU at the time said, "One of the questions that we don't know the answers to is, where did they get the list of people they are interviewing? Did they already have a list of people to be talked to in the event of war with Iraq? That's the first thing you need to repeat the World War II experience [of Japanese-Americans]. That also began with interviews, and then it accelerated."[189] A number of the questions concerned Palestine-Israel, about which an ACLU representative said, "The F.B.I. has long considered political support of the P.L.O. position in the Middle East to be the equivalent of terrorist activities, and thinks that gives them the right to treat people who hold those views as terrorists."[190] There is other evidence of FBI mass surveillance of Arab- or Muslim-American communities during the 1990s. Filmmaker Assia Boundaoui recalled the ubiquitous presence of FBI surveillance in her neighborhood in Bridgeview, Illinois, home to a large Muslim- and Arab-American population. As part of her film *The Feeling of Being Watched*, Boundaoui filed FOIA requests about the surveillance. These requests revealed that the FBI had compiled 30,000 pages on the town as part of a counterterrorism operation called Operation Vulgar Betrayal. While the origins of Operation Vulgar Betrayal remain murky, they appear to have been based on unproven allegations that a local mosque supported the Palestinian group Hamas.[191]

Throughout the 1990s and into the early 2000s, the FBI continued its post-Church Committee practice of equating domestic dissent with terrorism. The FBI fearmongered that one of the biggest threats was so-called ecological and animal rights terrorism.[192] The FBI pursued animal rights and environmental activists as terrorists.

Also during the 1990s, the FBI's role in law enforcement sieges at Ruby Ridge, Idaho and Waco, Texas, which resulted in deaths, was deeply controversial and prompted calls for greater oversight.

In testimony to Congress in 2002 on "The Terrorist Threat Confronting the United States," Dale Watson, the FBI's executive assistant director for the Counterterrorism/Counterintelligence Division, included "Anarchists and extremist socialist groups . . . such as the Workers' World Party, Reclaim the Streets, and Carnival Against Capitalism" as a threat.[193] As an example of the "threat" these groups posed, Watson cited vandalism caused by "anarchists" during protests against the World Trade Organization in Seattle in 1999.[194]

After the terrorist attacks of September 11, 2001, the FBI's powers were expanded. The Attorney General's Guidelines were repeatedly rewritten to be even more permissive. A month after the attack, Congress passed the U.S.A. Patriot Act, dramatically increasing the FBI's powers. The act expanded the use of National Security Letters, which are like subpoenas, only they don't require a judge's approval and they allow the FBI to gather personal information such as phone records and banking history, and impose a gag order on the provider of the information. It allowed the FBI to search individuals' homes and notify them later.[195] The Patriot Act also contained a provision, §215, that garnered significant controversy at the time, as it would have allowed the government to obtain individuals' library records. Librarians would be subject to gag orders, prohibiting them from even letting patrons know about the request. Years later, thanks to Edward Snowden's revelations, it would be uncovered that this same provision was at the heart of the National Security Agency's bulk surveillance programs.[196]

The FBI participated in the roundup of 750 Muslim immigrants that took place in the days immediately after 9/11,[197] and increased its scrutiny of the Muslim community overall. This included the placement of confidential informants in mosques and other community spaces where the FBI had no reason to suspect criminal activity was afoot.[198] As discussed above, these informants oftentimes acted as agents provocateurs.

Operation Flex, a particularly egregious case of FBI infiltration of the Muslim community, embodies the suspicionless nature of this surveillance. Craig Monteilh, an FBI informant, was paid to infiltrate Southern California mosques and gather personal information, such as email addresses, cell phone numbers, and political and religious views. He was even encouraged to enter into sexual relations with Muslim women in order to gather intelligence.[199] Who was the target of this surveillance? According to Monteilh, the FBI had no identified targets, and said that the targets would come to Monteilh. In short, it was a broad dragnet surveillance of Muslim-Americans.[200] Ironically, Monteilh's cover was blown when the people he

A Brief History of FBI First Amendment Abuses

1908

The Bureau of Investigation is formed.

1919

In what is known as the "Palmer Raid." J. Edgar Hoover, heading up the "General Intelligence Division," rounds up and arrests leftwing activists across the nation.

1924

AG Stone, in response to concerns raised about spying on lawful political activity, limits the FBI to only investigating violations of the criminal code.

1934-1941

President Roosevelt gives the FBI national security powers, tasking them with countering subversives.

1939

Hoover reopens the General Intelligence Division. Leftist Rep. Vito Marcantonio calls it "terror by index cards."

1941

AG Biddle demands FBI destroy the list of people to be detained without trial in the event of national emergency. They don't.

1949

During an espionage trial, FBI illegal wiretaps and political surveillance are uncovered.

1949-1950

The National Lawyers Guild (NLG) documents FBI political spying. But the FBI is illegally spying on the NLG and works with to discredit them.

1950

2 days after the outbreak of the Korean War, Hoover asks President Truman to arrest 12,000 people on the Security Index and detain them in military prisons. Truman declines.

1956

The FBI begins the Counter Intelligence Program (COINTELPRO) in order to disrupt and neutralize lawful political activity it deems subversive.

1971

A group of peace activists breaks into an FBI office and uncovers the existence of COINTELPRO.

1975-1976

The Church Committee investigates FBI domestic intelligence operations, declares FBI violated the rights of US persons.

1976

AG Levi issues strong guidelines for domestic security investigations (AG Guidelines).

1979

A legislative charter for the FBI is proposed in Congress. It never passes.

1981-1985

The FBI investigates the Committee in Solidarity with the People of El Salvador (CISPES), a U.S. peace group.

1988

The Senate Intelligence Committee investigates the FBI's probe of CISPES.

1988

Rep. Don Edwards (D-CA) introduces the FBI First Amendment Protection Act as a response to the CISPES investigation.

1991

In lead up to Persian Gulf War, FBI interviews Arab Americans.

1994

Rep. Don Edwards inserts an amendment into the Violent Crime Act of 1994 to prohibit the FBI from initiating or continuing investigations based on First Amendment-protected activity.

1996

The Anti-Terrorism and Effective Death Penalty Act is passed, which repeals the Edwards Amendment. It has been on the books for only 16 months.

2001

Congress passes the U.S.A. Patriot Act.

2001

FBI participates in in the roundup of 750 Muslim after 9/11.

2001-2006

Using counterterrorism authorities, the FBI spies on Greenpeace, PETA, Thomas Merton Center and other non-violent groups. Congress asks the Department of Justice Inspector General to investigate.

2002

Citing the 9/11 attacks, AG John Ashcroft significantly weakens the AG Guidelines.

2008

Lame-duck AG Mukasey further weakens AG Guidelines. Now the FBI can investigate individuals without any reason to suspect them of criminal wrongdoing or of posing a national security threat.

2010

The Department of Justice Inspector General releases "A Review of the FBI's Investigation of Certain Domestic Advocacy Groups."

2010-present

FBI undertakes political surveillance of Occupy Wall Street, Black Lives Matter, School of the Americas Watch, anti-pipeline protesters, Palestine solidarity activists, and immigration rights groups.

2016

Defending Rights & Dissent initiates a letter signed by 131 civil society groups and 88,000 people asking Congress to investigate FBI and DHS political surveillance. No investigation is forthcoming.

2017

FBI conjures up the threat of Black Identity Extremists, distributing "Black Identity Extremists Likely Motivated to Target Law Enforcement Officers Threat Assessment" to 18,000 tribal, state and local police agencies, and launches Iron Fist operation to neutralize the supposed threat.

infiltrated reported him to the FBI due to his incendiary comments.[201] Litigation against the FBI for Operation Flex is ongoing, but the FBI tried, and failed, to have the case dismissed using the "state secrets doctrine."[202] It is not only informants who contributed to this mass surveillance of mosques. The FBI has used its community outreach programs, sending agents to mosques, supposedly to foster trust between the Muslim community and the FBI, but actually to gather intelligence on law-abiding Muslims.[203]

The FBI also came down hard on dissent. An FBI intelligence unit was involved in an incident in which, after an antiwar march, law enforcement officers detained protesters in a parking garage. The protesters were videotaped while they were questioned about their political beliefs.[204] The FBI also used its counterterrorism authorities to spy on a number of domestic advocacy groups, including Greenpeace, PETA, the Catholic Workers, and Thomas Merton Peace Center.[205]

The FBI's surveillance of domestic advocacy groups during the Bush era elicited concern from the public and decision makers alike. Congress asked the Department of Justice Inspector General to conduct an investigation into the matter. The OIG criticized the investigations as having little or no basis.[206]

That OIG report represents the last major attempt at oversight of the FBI. As extensively documented above, the problem of FBI First Amendment abuse has continued.

The FBI's Current Guidelines

The Church Committee, after reviewing the FBI's abuse of civil liberties, recommended the creation of a legislative charter to prohibit further abuses, but Congress failed to act. Instead, Attorney General Edward H. Levi issued guidelines for FBI domestic security operations and the use of informants. There have been other calls for legislative checks on the FBI, such as statutory constraints on the FBI's use of undercover investigations or investigations into First Amendment beliefs, but these have either failed to pass or been short-lived.[207] As mentioned above, an amendment was inserted into the Violent Crime Control and Law Enforcement Act of 1994 to prohibit FBI investigations of First Amendment activity, but it was repealed after just 16 months.

As a result, many of the FBI's powers and limitations remain regulated by the executive branch. The Attorney General's Guidelines for Domestic FBI Operations (AG Guidelines) are the main check on FBI power. By their very nature, even the best guidelines suffer from a number of flaws. They are neither judicially enforceable nor do they carry the weight of law, and they are the sole province of the attorney general. As they are created by the attorney general, they can be changed by the attorney general any time. Many of the core civil liberties protections in the Levi guidelines have been whittled away by subsequent attorneys general, especially in the Ronald Reagan and George W. Bush administrations.[208]

The current AG Guidelines were created by Michael Mukasey in 2008. In addition to the AG Guidelines, there is the Domestic Investigations and Operations Guideline (DIOG). The DIOG is an "internal FBI guide to implementing the 2008 Attorney General's Guidelines."[209] For purposes of this section, we will address the AG Guidelines and the implementing DIOG, as together they serve as the rules for the FBI.

Under current FBI rules, there are two main categories of investigation—predicated investigations and assessments.[210] Predicated investigations, as the name would suggest, are predicated on a factual basis. That is, the FBI has some allegation or information to indicate criminal wrongdoing or a threat to national security. Assessments, however, do not require any such factual predicate. They merely must be based on an authorized purpose. One such purpose is to find new informants. Additionally, when choosing targets for an assessment, under these guidelines, "agents are allowed to use ethnicity, religion or speech protected by the First Amendment as a factor — as long as it is not the only one."[211]

Even though the standards for opening an assessment are extraordinarily low, the FBI is allowed to use extremely intrusive investigative techniques in performing them. These include physical surveillance, use of informants, and pretextual interviews. During a pretextual interview, the FBI can misstate the purpose of the interview in order to elicit incriminating statements from the parties. An FBI agent can even conceal their status as a federal official. An agent can open an assessment for 30 days without supervisory approval. After that, a supervisor must sign off on continuing the assessment every 30 days. While assessments are supposed to be short-lived, there is no hard limit on how many times they can be renewed.

Predicated investigations consist of preliminary investigations and full investigations. A preliminary investigation requires information or allegation about criminal conduct or a threat to national security. Unlike an assessment, an FBI agent can start a preliminary investigation only with supervisory approval. After six months, the special agent in charge must approve continuing the investigation. This renewal is required every six months. During a preliminary investigation, nearly every intrusive investigatory technique can be used, except for the most extreme such as wiretaps, mail covers, and tracking devices. These can only be used during a full investigation. Nonetheless, under a preliminary investigation, the FBI can acquire phone and bank records. The FBI can even deploy

technology to eavesdrop on private conversations, so long as those conversations are happening in a public place. Similarly, an informant can be tasked with wearing a wire.

A full investigation requires an articulable factual basis that reasonably indicates a potential national security threat or criminal activity exists or may occur in the future. Full investigations can only be opened with supervisory approval. They have no time limits.

There exists another way for the FBI to open investigations. A foreign agency, such as a foreign law enforcement or intelligence service, can ask the FBI to do so. In response to such a request, an FBI agent, without supervisory approval, can then open an investigation akin to an assessment. Unlike an assessment, there is no time limit or requirement for renewal. With supervisory authority, an FBI agent can use the more intrusive investigatory techniques associated with predicate investigations. Nonetheless, the agent is not required to abide by the information or allegation or articulable factual basis evidentiary thresholds. This essentially means that, at the request of a foreign government, the FBI can override some of its most important safeguards and investigate a U.S. person.

Investigations involving political organizations, religious organizations, candidates for office, public officials, the media, or an academic institution are considered sensitive investigative matters. According to the DIOG, these subjects are not sensitive because they deal with core fundamental civil liberties, but because they have the potential to bring notoriety to the FBI. Before pursuing a sensitive investigative matter, an agent must seek the approval of the chief division counsel and special agent in charge.

Under existing guidelines, FBI agents may visit public places and events that are open to the public. When doing so, FBI agents are not required to disclose their identities. Mosques, political demonstrations, and organizing meetings are all places that are generally open to the public. These guidelines open the door for FBI infiltration of civil society.

The FBI, from its inception to the present, has continuously engaged in political surveillance. Nonetheless, the current guidelines only exacerbate this problem.

Recommendations

The FBI is an agency in need of strict oversight and reform. Congress, the DOJ inspector general, and state and local governments all have a role to play.

The FBI acts as both a law enforcement and a domestic intelligence agency. Yet, Congress gave neither of these powers to the FBI. Executive orders have granted and defined the FBI's intelligence powers. The AG Guidelines are the primary limit on the FBI's authority, but something as important as the full scope of the FBI's domestic intelligence powers or what restrictions are placed on its investigative powers should not be subject to the whims of the executive branch.

Congress must finally enact a statutory charter defining the FBI as a federal law enforcement agency tasked with investigating violations of the federal code. Any domestic or foreign counterintelligence authorities given to the FBI must be clearly defined and strictly limited. There must be uniform standards of protection for the rights of U.S. persons, whether the investigation is a domestic security investigation or a foreign counterintelligence investigation. History has shown that the FBI has been able to make logical leaps in order to apply the least restrictive guidelines possible.

A statutory charter should mandate strict standards for opening an investigation, contain clear First Amendment protections, regulate undercover investigations, and be judicially enforceable.

Falling short of a charter, these reforms could be enacted legislatively through separate legislation or a comprehensive legislative package. As a last resort, these reforms can be achieved by revising the Attorney General's Guidelines. Defending Rights & Dissent, however, maintains that the FBI needs a comprehensive statutory charter, not piecemeal reform.

Statutory Charter

The following reforms should be incorporated into a Statutory Charter:

All Investigations Must Require a Factual Predicate
Remove the category of assessments. A factual predicate of criminal wrongdoing or a threat to national security must be required to launch an investigation.

First Amendment Protections
The FBI First Amendment Protection Act, which was repeatedly introduced into Congress in the late 1980s and early 1990s, offers guidance. Much of the language is similar to civil libertarians' previous proposals for an ideal FBI charter.[212] Specific provisions include:

The FBI must not "initiate or conduct any investigation that may involve the collection of information about the exercise by a United States person of first amendment rights" unless "specific and articulable facts reasonably indicate that the subject of the investigation has engaged, is engaging, or is about to engage in a Federal criminal offense."[213]

Before opening such an investigation, the FBI director must

determine if the investigation is warranted, "taking into consideration the magnitude of the suspected criminal offense, the likelihood it would occur, and the danger to privacy and the exercise of first amendment rights."[214] This determination must include a citation to a specific statute that is being violated or likely to be violated.

When investigating a political organization, the FBI must be required to have "specific and articulable facts reasonably indicating that all or most of the members of the organization have engaged, are engaging, or are about to engage in a Federal criminal offense."[215]

Checks on Undercover Investigations

The FBI or its informants must be prohibited from attending public meetings of political and religious organizations to gather information, unless such a visit is part of an authorized investigation.

FBI undercover investigations involving First Amendment-protected activity must require a judicial warrant supported by probable cause.

Undercover infiltrators, including informants, must be prohibited from acting as agents provocateurs.

Civil Remedies for Surveillance of Political Activity

Reforms must be judicially enforceable and victims of political surveillance must have civil remedies. Currently, it is extremely difficult to challenge surveillance of First Amendment activity in court. In *Laird v. Tatum*, anti-Vietnam War protesters spied on by the U.S. military sued, alleging violations of First Amendment rights. In a 5-4 ruling, the Court refused to hear the case on the merits. The Court reasoned that the plaintiffs could not show a harm and that any unwillingness to partake in political activity due to government monitoring was an entirely subjective chill. While some litigants have succeeded in showing a harm was done to them, this 1972 ruling has created a major barrier to pursuing judicial relief from political surveillance.

Any legislation passed by Congress to limit the power of the FBI, including a legislative charter, must include a private right of action empowering individuals to bring civil actions against the FBI if the charter is violated. This is especially important for prohibitions against investigations into First Amendment activities. Not only should individuals be able to receive declaratory and injunctive relief—i.e., a finding that FBI spying violated statutory First Amendment protections and an order that the violations cease, but compensatory and punitive damages.

Limitations on Information Sharing with Private Intelligence and Foreign Governments

Private intelligence firms are not bound by the U.S. Constitution. They are not bound by federal statutory limitations on law enforcement. They are not bound by internal guidelines or limitations, either. Private intelligence firms are responsible only to their clients—the powerful corporations who pay them. They engage in conduct the FBI is or should be prohibited from engaging in, and their actions and intelligence are aimed at furthering the clients' agendas and protecting the clients' interests.

The FBI must be prohibited from obtaining information from private intelligence firms that it would have been forbidden to collect itself. If Congress imposes strict limits on the FBI's monitoring or infiltration of political activity, such restrictions would become a mockery if information sharing with private intelligence allowed the FBI to get around them.

The FBI should not be allowed to open an investigation it would otherwise not be allowed to open merely because a foreign government requests it. Similar to the situation with private intelligence agencies, the FBI should not be allowed to receive information about U.S. persons from foreign governments or intelligence agencies that it would have been forbidden to collect itself.

Greater Transparency and Congressional Oversight

Congress has significant oversight powers over the FBI. In addition to the Church Committee, which reviewed the abuses of U.S. intelligence agencies broadly, Congress has in response to high profile controversies investigated specific aspects of the FBI. For example, in 1984 the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee issued a report on FBI undercover investigations that was the result of 21 hearings that took place over four years.[216] During this same time period, the Senate also formed a Select Committee to Study Undercover Activities.[217] After the FBI was caught investigating CISPES, the Senate Intelligence Committee conducted its own investigation of the FBI's conduct.[218]

Investigation and Hearings

Congress must exercise its oversight responsibility. Congress must investigate these known incidents of FBI monitoring of First Amendment-protected activity. An investigation should seek to understand how these groups came to be targeted by the FBI, why these investigations continued even though the FBI frequently acknowledged its targets were nonviolent, what other agencies were involved in the surveillance, and the full extent of FBI surveillance of First Amendment activity.

Members of Congress have recently started asking questions of government officials about the FBI's Black Identity Extremism threat assessment and the secret DHS Race Paper. While Defending Right & Dissent strongly encourages members of Congress to use oversight hearings to question officials about recent revelations of FBI spying, such questions are no substitute for the extensive inquiry needed. The evidence shows repeated patterns of politically biased surveillance. It also is clear that the FBI has not made the full record available to the general public. Congress, unlike FOIA requestors, has the power to obtain information that is otherwise being withheld.

Greater Congressional Reporting Requirements

In order to better facilitate congressional oversight, the FBI should be mandated to turn over, at regular and reasonable intervals, key data to the relevant congressional committees—e.g., the Judiciary, Intelligence, Homeland Security, and Oversight committees. Barring no other changes to the FBI's rules and regulations, the FBI should be reporting to Congress:

- The total number of assessments
- The total number of predicate investigations
- The total number of informants and total cost of compensation for informants
- The amount of compensation received by the highest paid informant
- The total number of investigations submitted for sensitive investigative matter review
- The total number of sensitive investigative matters approved

This information is significant, because it could reveal the need for dramatic reform of the FBI. The total number of investigations dealing with sensitive investigative matters would give Congress a sense of just how often the FBI conducts investigations with a nexus to political or religious activity. The number of such investigations submitted for approval when compared to the total number of such investigations approved is also important. These figures could potentially illuminate whether the FBI's own internal controls were working or whether the review process was merely a rubber-stamping process.

Similarly, the number of assessments when compared to predicated investigations would also be revealing. A large number of assessments that fail to produce enough evidence to justify a predicated investigation, much less a criminal conviction, would indicate that, at best, the FBI was devoting significant resources to utterly frivolous endeavors. At worst, it would mean the FBI was subjecting thousands[219] of innocent Americans to wrongful investigations, violating their fundamental civil liberties.

Obviously, if all of the recommendations proposed by Defending Rights & Dissent are enacted, that would change what the FBI should report to Congress. Assessments would be entirely eliminated and the sensitive investigative matter review process would be superseded by the First Amendment protections outlined above. Even with these new statutory protections, however, there would still be a need for mandatory reporting to Congress. As part of a statutory charter or legislation, the relevant Congressional committees should receive regular reports of the number of investigations with a First Amendment nexus. Congress should receive copies of the documentation that the investigation was warranted, including the weighing of the consideration of the magnitude of the suspected criminal offense, the likelihood it would occur, and the danger to privacy and the exercise of First Amendment rights it would create. The FBI should cite the specific criminal statute that served as the basis of its investigation.

Inspector General Review of Handling of FOIA Requests

The Department of Justice Office of the Inspector General must investigate and report publicly on the FBI's handling of FOIA requests. The FBI has given inconsistent responses to FOIA requesters, indicating that it has withheld documents. Whether this is purposeful or accidental is unknown. FOIA is an important tool for uncovering FBI First Amendment abuses. FOIA requests have helped lead to congressional, Government Accountability Office, and Inspector General reviews of FBI surveillance. It is vitally important to make sure the FBI is not willfully withholding important information from the public.

Recommendations for State and Local Governments

Leave Joint Terrorism Task Forces or Apply Local Rules

The FBI's Joint Terrorism Task Forces have carried out a number of FBI First Amendment abuses. While the FBI runs these task forces, local police often staff them. Many municipalities sign memorandums of understanding with the FBI dictating that, when acting as JTTF agents, local police officers will follow FBI standards. In some cases, the FBI's standards are less protective of civil liberties than local standards or conflict with local laws.

Defending Rights & Dissent recommends local governments leave JTTFs.

If a municipality does not wish to withdraw from the JTTF, then it should, at the very least, pass legislation mandating that local police officers follow local protections for civil rights when serving as JTTF agents.

Appendix: A Century of Attempts to Reform the FBI

1908—The Bureau of Investigation is formed.

1924—Attorney General Harold Fiske Stone, in response to concerns raised by the ACLU about the Bureau's conduct during the Palmer Raids and spying on lawful political activity, limits the FBI to only investigating violations of the criminal code. Hoover is made to meet with the ACLU's Roger Baldwin, who, unbeknownst to both Stone and Baldwin, is being spied on by Hoover.[220] The General Intelligence Division is disbanded.

1934-1941—A series of executive orders and requests by President Franklin Delano Roosevelt gives the FBI national security powers and gradually expands them.[221]

1939—Hoover announces he is reopening the General Intelligence Division. Leftist U.S. Rep. Vito Marcantonio—who at times during his congressional career, won the nomination of the Republican, American Labor, and Democratic parties—denounces the move. He calls it "terror by index cards."[222] The FBI is at the time spying on Marcantonio. At one point, it asks the attorney general for permission to add Marcantonio to the Custodial Detention List, which the attorney general vehemently rejects.[223]

1941—Attorney General Francis Biddle learns of the Custodial Detention List, he orders Hoover to destroy it, arguing that the FBI lacks the legal authority to compile such an index. Instead of complying, Hoover changes the name of the Custodial Detention List to the Security Index and orders his agents to keep it secret.[224]

1949—During the espionage trial of DOJ employee Judith Coplon, a judge orders the production of FBI documents in her possession at the time of her arrest. Hoover urges the attorney general to drop the case. The Justice Department refuses and the documents are produced in court. The files show the FBI is investigating private citizens' political beliefs and resorting to illegal wiretaps. During a second trial of Coplon, FBI agents admit to wiretapping her, possibly violating attorney-client privilege by eavesdropping on her conversations with her defense attorneys. As a result of this misconduct, Coplon's conviction is overturned on appeal.[225]

1949-1950—In response to revelations about FBI misconduct made public by the Coplon trial, the National Lawyers Guild (NLG) asks President Truman to investigate the FBI. When the government fails to act, the NLG prepares its own report, meticulously documenting FBI abuses of civil liberties. The FBI, however, is at this same time conducting surveillance against the progressive lawyers association, including illegal wiretaps, burglaries, and the use of informants. The FBI, working with the House Un-American Activities Committee (HUAC), smears the NLG to preempt the report. Richard Nixon, then a member of HUAC, calls for an investigation into the NLG one day before it was set to release its findings about the FBI. Historian Ellen Schrecker dubs the NLG's investigation the last major attempt at FBI reform effort until Watergate.[226]

1971—The Citizens' Commission to Investigate the FBI, a group of antiwar activists who realize the existential threat political surveillance poses to their movement, breaks into the FBI's office in Media, Pennsylvania, and seizes documents. These documents unveil the existence of COINTELPRO for the first time.

1975-1976—The United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, known as the Church Committee, is formed to investigate abuses by the intelligence agencies. As part of this investigation, the Church Committee criticizes the FBI's domestic intelligence activities and recommends the creation of a legislative charter for the FBI.

1976—The comptroller general of the United States issues a report to the House Judiciary Committee, "FBI Domestic Intelligence Operations—Their Purpose and Scope—Issues that Need to be Revised." The report states that domestic intelligence investigations are "too broad in terms of the number of people investigated and the scope of investigations." It states that neither the DOJ nor Congress has exercised adequate oversight over these investigations. It also concludes that the "FBI's authority to carry out domestic intelligence operations is unclear." The comptroller general recommends legislation addressing all of these issues.[227]

1976—Attorney General Edward H. Levi issues guidelines for domestic security investigations. These guidelines are meant to limit the FBI's authority to surveil First Amendment-protected activity. Later in 1976, Levi issues a second set of guidelines, this time for "Use of Informants in Domestic Security, Organized Crime, and Other Criminal Investigations."

1979—A legislative charter for the FBI is proposed in Congress. Although the White House and even the FBI itself support the charter, it garners opposition from right-wing groups. It never passes.

1982—In response to a controversial sting operation, Attorney General Benjamin Civiletti issues the Attorney General Guidelines on FBI Undercover Operations.

1982-1984—The House Subcommittee on Civil and Constitutional Rights and the Senate Select Committee to Study Undercover Investigations both raise concerns about the insufficient nature of the Attorney General's Guidelines on FBI Undercover Investigations and push for federal legislation regulating them and mandating congressional oversight. The House Subcommittee wants to go so far as to require a judicial warrant for undercover investigations. The Senate Select Committee rejects the idea of requiring a warrant. The Senate Select Committee pushes for legislation mandating probable cause for undercover investigations involving First Amendment-protected activity and reasonable suspicion for such investigations into all other activity. No such reforms are ever enacted by Congress.[228]

1983—Attorney General William French Smith issues the Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations, which replace the Levi guidelines for domestic security investigations. These revisions were based on the premise that the previous guidelines were unduly protective of civil liberties. The new guidelines allow the FBI to investigate advocacy of crime, lower the standard for opening a full investigation, and create a new category of preliminary investigations requiring an even lower evidentiary burden. They also create a category of investigations called "criminal intelligence investigations" and ban preliminary investigations in domestic security operations.[229]

1985—The National Committee Against Repressive Legislation, predecessor to Defending Rights & Dissent, works with leading legal scholars to demand that Congress enact legislation to prevent the FBI from investigating First Amendment-protected activity. The petition is signed by 590 law professors.

1985-1989—The FBI's investigation of the Committee in Solidarity with People of El Salvador (CISPES) is revealed. The attorney general conducts an investigation into the matter, as does the Senate Intelligence Committee. The Senate Intelligence Committee concludes the investigation was based on "allegations that should not have been considered credible; it was broadened beyond the scope justified even by those allegations; and it continued after the available information had clearly fallen below the standards required by the applicable guidelines."[230]

1988—U.S. Rep. Don Edwards, D-Calif., introduces the FBI First Amendment Protection Act as a response to the CISPES investigation. If passed, it would prohibit the FBI from undertaking investigations involving First Amendment activity unless "specific and articulable facts reasonably indicate that the subject of the investigation has engaged, is engaging, or is about to engage in a Federal criminal offense."[231]

1989—Attorney General Dick Thornburgh makes minor revisions to the Attorney General's Guidelines in response to concerns about the FBI's monitoring of CISPES.[232]

1990—At the request of Congress, and in response to the CISPES investigation, the Government Accountability Office conducts a review of the FBI's international terrorism investigations. One of the questions the GAO is tasked with answering is whether the FBI has abused individuals' First Amendment rights. The GAO is unable to make a determination.[233]

1994—Rep. Edwards, unable to pass the First Amendment Protection Act, inserts an amendment into the Violent Crime Act of 1994 to prohibit the FBI from initiating or continuing investigations based on First Amendment-protected activity. It becomes the law of the land.[234]

1996—The Anti-Terrorism and Effective Death Penalty Act is passed, which repeals the Edwards Amendment, which had been on the books for only 16 months.

2002—Citing the 9/11 attacks, Attorney General John Ashcroft makes major revisions of the Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations. Ashcroft's guidelines increase the length and number of techniques that can be used during a preliminary investigation. The guidelines also permit FBI agents to attend any place open to the public, such as mosques or political demonstrations, without disclosing their identities as FBI agents. Civil libertarians warned that this and other changes would make it more likely the FBI would spy on First Amendment activity.

2006—FOIA requests filed by the ACLU reveal widespread FBI spying on political activity. As these incidents are uncovered, Congress asks the Department of Justice inspector general to investigate.[235]

2008—Lame-duck Attorney General Michael Mukasey puts into place shockingly permissive new guidelines. These guidelines create a new category of investigation called assessments, which do not require any factual predicate. U.S. persons can be investigated absent any evidence they are involved in criminal activity or are threatening national security. All that is required is a "law enforcement purpose." Assessments can even be opened to recruit informants. These guidelines remain in place today.

2010—The Department of Justice Office of the Inspector General releases its report "A Review of the FBI's Investigation of Certain Domestic Advocacy Groups."[236]

2016—Defending Rights & Dissent initiates a letter signed by 131 civil society groups and 88,000 people asking Congress to investigate FBI and DHS surveillance of Occupy Wall Street, Black Lives Matter, School of the Americas Watch, and anti-pipeline protesters. No investigation happens.

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