

## **EXHIBIT K**

# An Investigation of NYPD's Compliance with Rules Governing Investigations of Political Activity

**New York City Department of Investigation  
Office of the Inspector General for the NYPD (OIG-NYPD)**



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## Overview

New York City Police Department (NYPD) investigations of political activity in New York City are regulated by a set of court-mandated rules, also known as the *Handschr* Guidelines. The Department of Investigation's (DOI) Office of the Inspector General for the NYPD (OIG-NYPD) has completed an investigation into NYPD's compliance with these rules. Specifically, OIG-NYPD sought to examine whether NYPD's Intelligence Bureau was conforming to rules concerning the informational threshold required to open an investigation, deadlines for closing or extending an investigation, restrictions on the use of human sources (confidential informants and undercover officers), and requisite approvals from senior management for other investigative activities. This investigation included a review of a randomly selected set of highly confidential intelligence files not available to non-police entities, and thus never before subjected to a review of this type.

The investigation of political activity, like all police activity that can impact constitutional rights, is carefully regulated to balance the need for law enforcement to investigate and maintain public safety with the right of citizens to be free of government intrusion upon their private lives.<sup>1</sup> The rules governing this balance are set forth not only by a federal court order but by NYPD's own regulations. Thus, before NYPD can begin investigating political activity – which could include surveillance within a mosque, church, or synagogue – it must articulate, in writing, the objective basis of need for the investigation and must secure approvals from senior NYPD officials. Further, permission is not open-ended; rather, it runs for a certain period of time, at the end of which NYPD must apply for (and justify) an extension or otherwise end the investigation. The thresholds for obtaining and extending permission in this area are not particularly high. The rules were amended after September 11, 2001, to accommodate the increased threat to the City.

OIG-NYPD's investigation found that NYPD, while able to articulate a valid basis for commencing investigations, was often non-compliant with a number of the rules governing the conduct of these investigations. For example, when applying for permission to use an undercover officer or confidential informant, the application must state the particular role of the undercover in that specific investigation, so that the need for this intrusive technique can be evaluated. NYPD almost never included such a fact-specific discussion in its applications, but instead repeatedly used generic, boilerplate text to seek such permission. Tellingly, this boilerplate text was so routine that the same typographical error had been cut and pasted into virtually every application OIG-NYPD reviewed, going back over a decade. Further, among all cases reviewed, NYPD continued its investigations even after legal authorization expired more than half of the time. Often more than a month of unauthorized investigation occurred before NYPD belatedly sought to renew the authorization. While NYPD has provided assurances that

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<sup>1</sup> Based on its review, OIG-NYPD determined that the individuals under investigation were predominantly associated with Muslims and/or engaged in political activity that those individuals associated with Islam – more than 95% of all files reviewed for this investigation – although NYPD does not use such categorizations in its approval documents. However, in the past, investigations have focused on others, including Black and Latino activists, student groups, socialists, and political protesters. This Report addresses only NYPD's compliance with specific investigative rules and makes no conclusions about NYPD's strategic decisions regarding investigations. As noted below, in all files reviewed, NYPD articulated facts sufficient to meet the informational threshold required to open an investigation.

these investigations were always supervised (even if they ran past the authorized expiration date), the fact that deadlines were missed and rules were violated is troubling and must be rectified.

These failures cannot be dismissed or minimized as paperwork or administrative errors. The very reason these rules were established was to mandate rigorous internal controls to ensure that investigations of political activity – which allow NYPD to intrude into the public and private aspects of people's lives – were limited in time and scope and to ensure that constitutional rights were not threatened. Unlike other constitutionally regulated law enforcement techniques, such as searching homes or tapping phones, investigating political activity – including surveillance of such activity – does not require approval from an independent third-party (usually a judge), but rather, is monitored by an internal police committee. As a result, until OIG-NYPD conducted this review, there had never been any routine, independent third-party review to ensure compliance with these rules. NYPD's compliance failures demonstrate the need for ongoing oversight, which OIG-NYPD will now provide.

Finally, protecting New York City residents from terrorism is a prime responsibility of NYPD – one it has done with remarkable and commendable success. Terrorism is a real threat that requires constant vigilance; it does not require, however, that NYPD fall short of adhering to well-accepted rules for protecting the rights of the citizens it is sworn to protect. Indeed, there was nothing in the documents that OIG-NYPD reviewed to suggest that adherence to the rules would have harmed the investigations at issue or hindered vigorous anti-terrorism enforcement.

## Executive Summary

All New York City Police Department (NYPD) investigations involving political activity are governed by section 212-72 of the NYPD Patrol Guide (the “Guidelines”) and are within the sole jurisdiction of NYPD’s Intelligence Bureau. The Guidelines, sometimes referred to as *Handschr* Guidelines, are rooted in a 1971 federal lawsuit brought against the City, the Police Commissioner, and NYPD, where plaintiffs alleged that NYPD’s surveillance and related activities had violated the constitutional rights of various political, ideological, and religious groups and individuals.<sup>2</sup> The lawsuit resulted in a consent decree that established the Guidelines. In September 2002, just over a year after the attacks of September 11, 2001, NYPD moved to modify the restrictions placed upon it by the *Handschr* Guidelines to accommodate the new realities of a post-9/11 world. These modified guidelines are currently codified in the NYPD Patrol Guide and are binding on all NYPD members of service who are engaged in the investigation of political activity.

The Guidelines define several levels of investigation and contain requirements for how, and under what circumstances, NYPD’s Intelligence Bureau may commence an investigation involving political activity, the investigative tools available to NYPD in such investigations, the duration and extension of investigations, and the types of information NYPD’s Intelligence Bureau can retain on individuals and organizations. Under the Guidelines, “political activity” can cover a wide range of activities, encompassing events people choose to participate in, organizations they belong to, where and with whom they choose to pray, and political statements made in public, private, or on social media.<sup>3</sup> The Guidelines contain the following Statement of Policy:

It is the policy of the New York City Police Department that investigations involving political activity conform to the guarantees of the Constitution, that care be exercised in the conduct of those investigations so as to protect constitutional rights, and that matters investigated be confined to those supported by a legitimate law enforcement purpose.<sup>4</sup>

Central to the Guidelines is the balance that must be struck between ensuring the safety of New York City and protecting the constitutional rights of individuals whose political activity has drawn the attention of NYPD. The Guidelines were established for the very purpose of ensuring that investigations involving political activity are subject to necessary controls and ongoing review. The Guidelines grant NYPD significant power to investigate matters involving such activity so that potential unlawful acts can be detected *before* they happen. Under the Guidelines, NYPD’s Intelligence Bureau may deploy formidable investigative tools when there is information indicating the mere *possibility* of unlawful conduct, including long-term surveillance

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<sup>2</sup> *Handschr v. Special Services Div.*, 605 F. Supp. 1384, 1388 (S.D.N.Y. 1985).

<sup>3</sup> Political activity is defined as “[t]he exercise of a right of expression or association for the purpose of maintaining or changing governmental policies or social conditions.” 2014 NYPD PATROL GUIDE, GUIDELINES FOR UNIFORMED MEMBERS OF THE SERVICE CONDUCTING INVESTIGATIONS INVOLVING POLITICAL ACTIVITIES [PROC. NO.] 212-72, Definitions. (Effective Aug. 1, 2013) (hereinafter “Guidelines”).

<sup>4</sup> Guidelines, Appx B, § I.

and undercover operations. The Guidelines are designed to allow NYPD to prevent such unlawful activity while protecting individuals and groups from the potential for unending investigation of constitutionally-protected activity in cases where such investigation is not necessary or merited.

Mindful of the importance of NYPD's compliance with the Guidelines, OIG-NYPD began investigating whether NYPD was in compliance with the Guidelines, as enumerated in Patrol Guide § 212-72. Specifically, OIG-NYPD sought to determine whether NYPD's Intelligence Bureau was conforming to the Guidelines' rules concerning the informational threshold required to open an investigation, deadlines for closing or extending investigations, restrictions on the use of human sources (confidential informants and undercover officers), and requisite approvals from senior management for other investigative activities.<sup>5</sup> The review focused largely on three categories of investigations: (1) Preliminary Inquiries; (2) Full Investigations; and (3) Terrorism Enterprise Investigations.

In conducting this particular review, OIG-NYPD did not seek to re-investigate NYPD's cases, to replace the investigative judgment of NYPD's Intelligence Bureau, or to assess the appropriateness of NYPD's decision to use confidential informants and undercover officers when investigating political activity. Likewise, this Report does not investigate the activities of NYPD's Zone Assessment Unit (formerly known as the Demographics Unit), which NYPD disbanded in 2014. Instead, this investigation assesses whether NYPD is adhering to the well-established and long-standing safeguards and rules that must be followed when conducting investigations of political activity.

To conduct this review, OIG-NYPD reviewed relevant documents in a random sample of NYPD Intelligence Bureau cases closed between 2010 and 2015. The review included examination of the following categories of documents:

- **Investigative Statements**, also referred to as *Handschr* Statements, which NYPD's Intelligence Bureau uses to summarize case facts, note procedural history, secure requisite approvals, and memorialize relevant dates.
- **Human Source Authorization Memoranda**, which are used to request authorization for use of undercover officers or confidential informants (collectively referred to as "human sources" by NYPD's Intelligence Bureau, with no differentiation between the two).
- **Discontinuance Memoranda**, which memorialize the closure of an investigation.

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<sup>5</sup> See sections V(B), V(C), V(D), and VI(3)(a) of the Guidelines. This Report does not assess NYPD's compliance with other aspects of the Guidelines, which may be subjects of later reports.

OIG-NYPD's investigation found the following:

- **More than half the time, investigations continued even after approval of the operation expired.** Investigations of political activity are subject to strict time limitations which can be renewed. Preliminary Inquiries are initially authorized for a period of 180 days and may be extended for additional 90-day periods. Full Investigations and Terrorism Enterprise Investigations are initially authorized for a period of one year and may be extended for additional one year increments. Even when calculating deadlines in a light favorable to NYPD, OIG-NYPD found that the Department failed to renew investigations before the authorization expired more than 53.5% of the time, resulting in investigations of political activity that continued without the requisite authorization. NYPD confirmed that, in general practice, if a deadline passes before the requisite extension authorization is obtained, the investigation will continue and will be subject to supervision. From its review, OIG-NYPD found that when investigative activity ran past the deadline, the unauthorized investigation continued for an average of 22 days before reauthorization was obtained. OIG-NYPD found that 25.6% of extensions exceeded their deadlines by more than 31 days. Delays longer than a month are significant because the NYPD Intelligence Bureau committee that reviews these cases meets on a monthly basis.<sup>6</sup>

The failure to adhere to time limitations cannot be discounted as merely technical or administrative. The Guidelines were designed to establish certain baseline controls on NYPD's considerable investigative power. When NYPD does not follow these rules, an investigation is proceeding without the required authorization and the Guidelines have been violated. Because there has historically been no third-party review and NYPD is self-monitoring, careful compliance is particularly important.

- **The use of human sources (confidential informants and undercover officers) continued after approval expired more than half of the time.** The Guidelines permit the use of confidential informants and undercover officers when investigating political activity, but such usage is also subject to strict but renewable 120-day time limitations. NYPD failed to timely reauthorize the use of human sources 57.3% of the time, resulting in undercover officers and confidential informants who were potentially working investigations without the requisite authorization. NYPD confirmed that if a deadline has passed and the requisite extension authorization has not been obtained, the use of human sources will generally continue and will be supervised. When human source activity ran past the deadline, the unauthorized use continued for an average of 31 days before

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<sup>6</sup> NYPD provided OIG-NYPD with its own date list for tracking approvals of investigation extensions. As discussed in this Report, OIG-NYPD has concerns about NYPD's method of tracking approvals. Even applying NYPD's own approval dates, however, NYPD's Intelligence Bureau missed deadlines for reauthorizing investigations to a degree similar to OIG-NYPD's findings. NYPD's own dates reflect that 55.8% of extensions occurred after the prescribed deadlines had passed. The average number of days of unauthorized investigation was 18, and 16.3% of deadlines were exceeded by more than 31 days.

reauthorization was obtained. OIG-NYPD found that 16% of human source extension documents were unauthorized for over a month before reauthorization was obtained.<sup>7</sup>

- **NYPD routinely fails to describe the role of undercover officers or confidential informants in any Human Source Authorization Memoranda.** Section 212-72 of the NYPD Patrol Guide requires that the request to use undercover officers or confidential informants include: (1) a description of the facts on which the investigation is based; and (2) the role of the undercover. Without this information, a reviewer cannot determine whether the use of this intrusive technique is necessary. However, all Human Source Authorization Memoranda reviewed simply cited to the corresponding Investigative Statement for the facts of the investigation and included no information on the role of the undercover in the investigation. These applications were approved despite the failure to include a case-specific particularized need.
- **When Preliminary Inquiries were extended, the extensions did not include articulable reasons why further investigative steps were warranted.** The Guidelines require that when extending Preliminary Inquiries, NYPD articulate the reasons why the investigation is continuing despite the absence of a reasonable indication of unlawful activity. (Where a reasonable indication of unlawful activity does exist, the Preliminary Inquiry should be converted to a Full Investigation.) One hundred percent of Preliminary Inquiry extensions reviewed failed to include this articulation of reasons. Some contained generic language about the need to extend the case, but no fact-specific reasons about the need to investigate further. Other applications did not even contain this generic language. While OIG-NYPD was satisfied with NYPD's subsequent verbal rationale for why extensions were required in specific cases, the rules nevertheless require that NYPD document those reasons in writing.
- **Authorization and extension documents for investigations and the use of human sources often contained signature errors, date errors, and related errors.** The Guidelines do not specifically require NYPD to memorialize the dates of when investigations are opened or extended, nor do they specifically require signatures or check-boxes. The Guidelines do, however, require authorizations and adherence to time limitations. To meet these requirements, basic principles of record-keeping and compliance would call for a robust, consistent, and auditable system for registering and tracking such approvals and their dates. While NYPD has voluntarily set up processes to facilitate such compliance, the Department has not consistently followed these processes. Recently, NYPD's Intelligence Bureau has informed OIG-NYPD of the implementation of a new case tracking system that may address some of these issues.

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<sup>7</sup> NYPD provided OIG-NYPD with its own date list for tracking approvals of human source extensions. As discussed in this Report, OIG-NYPD found the data to be unreliable for analytical purposes because 13.2% of these "dates" did not identify a specific approval date but simply noted the month and year. As a result, NYPD's own tracking data could not be used to calculate the levels of unauthorized human source activity.

➤ **Investigative Statements for Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations sufficiently articulated facts to satisfy the thresholds required by the Guidelines.** NYPD may open a Preliminary Inquiry when it receives an allegation or information “indicating the possibility of unlawful activity.”<sup>8</sup> A Full Investigation may be launched if the “facts or circumstances reasonably indicate that an unlawful act has been, is being, or will be committed.”<sup>9</sup> A Terrorism Enterprise Investigation may be initiated when the “facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of (i) furthering political or social goals wholly or in part through activities that involve force, violence or other unlawful acts; (ii) engaging in terrorism as defined in N.Y. Penal Law § 490.05, or (iii) committing any offense described in [specific sections of the penal code].”<sup>10</sup> When reviewing Investigative Statements through the perspective of the “prudent investigator” – as indicated by the Guidelines – OIG-NYPD determined that the Investigative Statements for Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations articulated facts sufficient to meet the required thresholds. This finding is important because it demonstrates that NYPD has been articulating valid reasons for its general decisions to open particular cases. OIG-NYPD found nothing to suggest improper motives in these documents.

In light of these findings, OIG-NYPD submits the recommendations below.

**Tracking Deadlines and Securing Timely Renewals**

1. **For investigations of political activity, NYPD should use a formal mechanism for tracking investigative deadlines and should ensure that, where needed, extensions are approved prior to required deadlines.** Given the percentage of Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations that continued without the appropriate documented authorization, NYPD should take greater steps to ensure that investigations are either renewed in a timely manner or closed once the investigative period has expired. Such steps include establishing and using a more robust system to track and alert the Intelligence Bureau of upcoming deadlines, as well as better coordination to secure the appropriate authorizations before the scheduled expiration of an investigation.
2. **NYPD should use a formal case tracking mechanism that identifies when investigations advance to the next investigative level.** While the level of investigation can change over time (e.g., Preliminary Inquiries can advance into Full Investigations, Terrorism Enterprise Investigations can change into Full Investigations, etc.), NYPD’s system for assigning and tracking case numbers did not effectively trace the full history of the investigation. For example, a Preliminary Inquiry may escalate to a Full Investigation, but separate case

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<sup>8</sup> Guidelines, Appx B, § V(B)(1). It is important to note that the threshold standard in such matters is relatively low.

<sup>9</sup> Guidelines, Appx B, § V(C).

<sup>10</sup> Guidelines, Appx B, § V(D)(1)(a).

numbers are assigned such that a review of the Preliminary Inquiry may not identify the subsequent Full Investigation. Case tracking terminology should more clearly capture all investigations related to the same core set of facts.

3. **For the use of confidential informants and undercover officers in investigations of political activity, NYPD should use a formal mechanism for tracking expiration deadlines and ensure that extensions are approved prior to the expiration of an authorization.** Given the percentage of instances where confidential informants and undercover officers may have been utilized on investigations without appropriate authorization, NYPD should take greater steps to ensure that the use of a human source in an investigation is either renewed in a timely manner or closed once the authorization expires. Such steps include establishing and using a more robust system to track and alert the Intelligence Bureau of upcoming deadlines, as well as better coordination to secure appropriate authorizations before the scheduled expiration of an authorization.

With respect to Recommendations 1 and 3, NYPD's Intelligence Bureau has recently informed OIG-NYPD that in July 2016, it began using a new case tracking system that apparently allows NYPD to more efficiently and effectively track cases. This is a promising development, and OIG-NYPD looks forward to evaluating whether the new system effectively addresses the deficiencies outlined in this Report.

#### **Memorializing Requisite Approvals for Investigations**

4. **For requests to extend a Preliminary Inquiry, NYPD should ensure that Investigative Statements capture fact-specific reasons why further investigative steps are warranted.** In consideration of the justification requirement attached to extensions of Preliminary Inquiries, requests for extending Preliminary Inquiries should include specific, fact-based reasons why further investigative steps are necessary and should not be limited to boilerplate statements.
5. **For authorizations and renewals of investigations, NYPD should create controls to ensure that authorizations to renew or extend investigations properly capture the date, signature, and approval of the authorizing officials.** To avoid errors and facilitate compliance with all applicable rules and internal practices, NYPD should create controls so that all written authorizations and renewals properly capture the date and the name, signature, and authorizing action of the requisite supervisor.

**Requests to Use or Extend the Use of Confidential Informants or Undercover Officers**

- 6. NYPD's Human Source Authorization Form should require members of NYPD's Intelligence Bureau to specify the role of the undercover officer or confidential informant.** Consistent with the applicable rules, requests to use undercover officers and confidential informants should not be limited to boilerplate language but instead should include a specific discussion of the role of the human source in the investigation.<sup>11</sup>
- 7. NYPD should specify, when extending use of an undercover or confidential informant, the reason for the extension.** In consideration of the justification requirement attached to extending the use of an undercover, requests for extensions should include specific, fact-based reasons for the extension.
- 8. NYPD should create controls to ensure that authorizations to use or extend the use of human sources properly capture the date, signature, and approval of the appropriate supervisor.** To avoid errors and facilitate compliance with all applicable rules, NYPD should create controls so that all written authorizations and renewals properly capture the date and the name, signature, and authorizing action of the requisite supervisor.
- 9. NYPD's Human Source Authorization Form should include the number of the extension request and the date of the last extension.** Although NYPD maintains a record of each date that NYPD believes a human source extension request was approved, these records are difficult to reconcile with documentation because Human Source Authorization Forms for any given investigation are not numbered in any sequential order and do not list the previous extension date. Including this information, as it is contained in Investigative Statements, would simplify independent verification of extension dates.

**Codification of Policies and Procedures**

- 10. NYPD should consolidate its policies and procedures for investigations involving political activity into a unified handbook.** Although NYPD's Intelligence Bureau has made important strides with documenting policies and procedures for investigations – including initial steps towards consolidating its operational policies – more work is needed to codify these practices and guidelines into a single handbook that provides investigators, attorneys, analysts, and supervisors with a baseline for what is required and recommended in such investigations. Without official policies, there is a risk that necessary safeguards surrounding investigations of political activity will not be observed in a thorough and consistent manner throughout the Intelligence Bureau.

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<sup>11</sup> "Undercover" includes all undercover personnel, including confidential informants, based on the definition established in *Handschr v. Special Services Div.*, 605 F. Supp. at 1391 (S.D.N.Y. 1985) ("An employee or agent of the New York City Police Department who joins or participates in a political organization for the purpose of investigation without disclosing police affiliation.").

**11. NYPD should develop written guidelines concerning informational standards for Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations.** Appreciating that each investigation is unique and that the nature of threats and criminal activity changes over time, NYPD's Intelligence Bureau should develop written guidelines concerning the informational thresholds for each level of investigation. Having such guidelines would help ensure consistency across investigations and provide NYPD's Intelligence Bureau with a baseline for assessing facts and making determinations. Such guidelines would not be static, but would instead require updates as the nature of the threat evolves.

## Introduction

### I. NYPD Investigations of Political Activity: *Handschr* and Patrol Guide § 212-72

All NYPD investigations involving political activity are governed by a unique set of rules codified in section 212-72 of the NYPD Patrol Guide.<sup>12</sup> The Guidelines, sometimes referred to as the *Handschr* Guidelines, are rooted in the following Statement of Policy:

It is the policy of the New York City Police Department that investigations involving political activity conform to the guarantees of the Constitution, that care be exercised in the conduct of those investigations so as to protect constitutional rights, and that matters investigated be confined to those supported by a legitimate law enforcement purpose.<sup>13</sup>

The Guidelines contain regulations for how and under what circumstances NYPD can commence an investigation involving political activity, the different levels of investigation, the investigative tools available to NYPD in such investigations, the duration and extension of investigations, and the type of information NYPD's Intelligence Bureau can retain on individuals and organizations.

These rules stem from a 1971 class-action lawsuit brought by civil rights and civil liberties activists against the City, the Police Commissioner, and NYPD's Intelligence Bureau (then called the Special Services Division).<sup>14</sup> The suit alleged that the Special Services Division had surveilled, infiltrated, and compiled dossiers on various political, ideological, and religious groups and individuals, thereby suppressing plaintiffs' constitutionally protected political activity. Following a 1985 court ruling, the City entered into a consent decree which vested NYPD's Intelligence Bureau with the sole authority within NYPD to investigate political activity and which established rules – the *Handschr* Guidelines – to govern these investigations.

In September 2002, a year after the attacks of September 11, 2001, NYPD successfully moved to modify the restrictions of the *Handschr* Guidelines to be more consistent with the United States Department of Justice Guidelines issued in 2002.<sup>15</sup> These modified guidelines are currently codified in Patrol Guide § 212-72 and are binding on all NYPD members of service who

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\* NYC Department of Investigation Commissioner Mark G. Peters and Inspector General for the NYPD Philip K. Eure thank the staff of OIG-NYPD and DOI for their efforts, persistence, and insight in helping to produce this Report. Gratitude is also extended to the New York City Police Department for its cooperation during the preparation of this Report.

<sup>12</sup> A copy of the Guidelines is attached at Appendix A.

<sup>13</sup> Guidelines, Appx B, § I.

<sup>14</sup> *Handschr v. Special Services Div.*, 605 F. Supp. at 1388 (S.D.N.Y. 1985).

<sup>15</sup> The U.S. Department of Justice has since repealed the 2002 DOJ Guidelines.

See <https://www.justice.gov/archive/opa/docs/guidelines.pdf> (current guidelines),

<https://www.justice.gov/ag/attorney-generals-guidelines-general-crimes-racketeering-enterprise-and-domestic#preliminary> (2002 Guidelines)

are engaged in the investigation of political activity.<sup>16</sup> The Guidelines define “political activity” as “[t]he exercise of a right of expression or association for the purpose of maintaining or changing governmental policies or social conditions.”<sup>17</sup>

## II. OIG-NYPD Investigation

Recognizing the serious threat that the City faces from potential terrorist attacks, the Guidelines give NYPD significant power to investigate matters involving political activity so that potential unlawful conduct can be detected *before* it happens. NYPD’s Intelligence Bureau may deploy formidable investigative tools when there is evidence of the mere *possibility* of unlawful conduct. While such powers enable NYPD to protect the City and promote public safety, they also implicate the constitutional rights of those being investigated. Indeed, the Guidelines acknowledge the importance of safeguarding constitutional protections while investigating political activity.<sup>18</sup>

Considering the broad powers NYPD has in investigations involving political activity, the importance of compliance with these requirements cannot be overstated. As noted, documents reviewed by OIG-NYPD revealed a particular focus at this time by the Intelligence Bureau on political activity by individuals with religious affiliations. The confluence of two forms of constitutionally protected activity – free speech and the free exercise of religion – underscores the necessity for strict compliance with the Guidelines so that the rights of groups and individuals are protected. Because the files in question are, quite legitimately, not available to non-police reviewers, no systemic analysis of NYPD’s compliance had been possible prior to OIG-NYPD’s creation.

Mindful of these concerns, in 2015 DOI’s OIG-NYPD began investigating NYPD’s compliance with the Guidelines, as enumerated in Patrol Guide § 212-72. Specifically, OIG-NYPD sought to examine whether NYPD’s Intelligence Bureau was conforming to certain standards, rules, and parameters established by the Guidelines. These standards and rules include the informational threshold required to open an investigation, authorizations and deadlines for closing or extending investigations, restrictions on the use of human sources, and requisite approvals from senior management for various investigative activities.

OIG-NYPD’s investigation focused primarily on section five of the Guidelines – “Levels of Investigation” – which governs the types of investigations that can be commenced and the requirements for opening, extending, and closing these investigations, as well as rules on using confidential informants and undercover officers. Future reports may review other aspects of the Guidelines and the work of NYPD’s Intelligence Bureau.

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<sup>16</sup> As of the release of this Report, the federal court in *Handschr v. Special Services Div.* is considering new changes to the Guidelines. OIG-NYPD’s Report is limited to the current version of the Guidelines and does not opine on the changes under consideration by the court.

<sup>17</sup> Guidelines, Definitions.

<sup>18</sup> See, e.g., Guidelines, Appx A, § 3(l); Appx B, Preamble; Appx B § I; Appx B § II.

## Methodology and Access

### I. Treatment of Sensitive Information

OIG-NYPD's investigation required establishing review criteria, determining the appropriate sampling approach, consulting with NYPD's Intelligence and Legal Bureaus, and identifying, reviewing, and assessing the relevant NYPD Intelligence Bureau records. Given the highly sensitive nature of the Intelligence Bureau's investigations, steps to protect the security of information were necessary and agreed upon with NYPD. These steps included inspection of certain documents on site and only by security-vetted OIG-NYPD staff. Further, certain sensitive information has been redacted from the public version of this Report and no case-specific information has been included.

### II. Compliance Criteria

Based on the language of the Guidelines and their requirements, as well as a preliminary review of NYPD Intelligence Bureau documents, OIG-NYPD developed criteria to assess and quantify NYPD's compliance with the Guidelines. For this Report, OIG-NYPD developed criteria by focusing primarily on the requirements established in the "Levels of Investigation" section (§ V) and the "Undercover Operations" section (§ VI.a) of the Guidelines. The compliance criteria fall broadly into the following categories:

- **Authorizations of Investigations:** The Guidelines require written authorization by specific supervisory titles before an investigation can be opened and renewed. OIG-NYPD assessed whether such authorizations were obtained.
- **Time Limitations:** Each level of investigation is subject to strict time limitations, both for the initial investigation and for any extensions. OIG-NYPD assessed NYPD's compliance with these time limitations.
- **Informational Threshold for Opening an Investigation:** For each level of investigation, the evidence must satisfy a particular informational standard before the investigation can proceed. OIG-NYPD assessed whether those thresholds were met.
- **Extensions:** For Preliminary Inquiries, the Guidelines require that NYPD articulate reasons why further extensions of the investigation are required. OIG-NYPD determined whether NYPD was providing proper written justification for continuing these investigations. (This is not required for Full Investigations and Terrorism Enterprise Investigations).
- **Use of Undercover Members of NYPD or Confidential Informants:** The use of human sources requires separate written authorizations that are also subject to time limitations. OIG-NYPD assessed NYPD's compliance with these requirements.<sup>19</sup>

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<sup>19</sup> For a detailed breakdown of the Guidelines' language supporting these criteria, please see Appendix B.

OIG-NYPD opted to apply these criteria to three levels of investigation identified in the Guidelines: (1) Preliminary Inquiries; (2) Full Investigations; and (3) Terrorism Enterprise Investigations. OIG-NYPD's investigation did not include "Checking of Leads," the lowest level of investigation, because the Guidelines provide only limited criteria by which to measure compliance.

### III. Scope and Sampling

OIG-NYPD's investigation involved reviewing documents associated with a sample of closed investigations to assess compliance with the Guidelines. To obtain a sample of cases for review that both best approximates the characteristics of all closed cases and would result in a document set that could be reviewed in a reasonable period of time, OIG-NYPD asked NYPD to produce a list of case numbers for all cases investigated under the Guidelines that were discontinued or closed in the 2010-2015 time frame, separated by year and level of investigation.

From this complete list of investigations, OIG-NYPD created a review sample by randomly selecting approximately 20% of discontinued cases in each case type, separated by individual year.<sup>20</sup> The sampling protocol is depicted in Table A. The total resulting number of cases for review was [REDACTED]. [REDACTED] of the cases were Preliminary Inquiries, [REDACTED] were Full Investigations, and [REDACTED] were Terrorism Enterprise Investigations. OIG-NYPD's sample included investigations opened between 2004 through 2014.

TABLE A – CASE SAMPLE						
	Preliminary Inquiry		Full Investigation		Terrorism Enterprise Investigation	
	Cases Closed	Number Selected	Cases Closed	Number Selected	Cases Closed	Number Selected
2010	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2011	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2012	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2013	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2014	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

20 [REDACTED]

#### IV. Documents Reviewed

For each of the [REDACTED] investigations, OIG-NYPD requested and conducted on-site reviews of the following categories of documents:

- **Investigative Statements**, also referred to as *Handschu* Statements, which NYPD's Intelligence Bureau uses to summarize case facts, note the procedural history, secure the requisite approvals, and memorialize relevant dates. A new Investigative Statement is generated each time an investigation is extended, so a single investigation may consist of multiple Investigative Statements.
- **Human Source Authorization Memoranda**, which are used to request authorization for use of undercover officers or confidential informants (collectively referred to as "human sources" by NYPD's Intelligence Bureau, with no differentiation between the two). Because human source authorizations are subject to time limitations and can be renewed, a single investigation may include multiple memoranda.
- **Discontinuance Memoranda**, which memorialize the closure of an investigation.

In total, OIG-NYPD reviewed [REDACTED] documents associated with [REDACTED] cases. To ensure accuracy, all information recorded in OIG-NYPD's review was subjected to quality control measures.

For context and background, OIG-NYPD also reviewed NYPD Intelligence Bureau training material, organizational charts, and documents which outline the Bureau's policies, practices, procedures, and standards regarding the handling of investigations under the Guidelines.

## Investigations Under the Guidelines

The following section provides an overview of the levels of investigations under the Guidelines, the process by which NYPD's Intelligence Bureau manages those investigations, the use of human sources, and the Intelligence Bureau's policies and practices for investigations of political activity.

### I. Levels of Investigations

This Report focuses on three of the four levels of investigations involving political activity: Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations. This Report does not cover the first level of investigation, "Checking of Leads."

#### a. Preliminary Inquiry

Preliminary Inquiries are matters where allegations or information require further scrutiny because there is a "possibility"— but not yet a "reasonable indication" – of unlawful activity.<sup>21</sup> According to NYPD's application of the Guidelines, Preliminary Inquiries can be triggered by what a person (such as a vetted source of information, an undercover officer, or a confidential informant) witnesses or hears.

#### b. Full Investigation

Full Investigations are subject to a stricter threshold standard and "may be initiated when facts or circumstances reasonably indicate that an unlawful act has been, is being, or will be committed."<sup>22</sup> While the Guidelines note that the standard is substantially lower than probable cause, "[t]here must be an objective, factual basis for initiating the investigation; a mere hunch is insufficient."<sup>23</sup> As compared to Preliminary Inquiries, NYPD investigators in a Full Investigation have a wider array of investigative techniques available to them.

#### c. Terrorism Enterprise Investigation

Terrorism Enterprise Investigations are similar to Full Investigations but involve more than one subject engaged in an enterprise. The threshold standard is more detailed than Preliminary Inquiries and Full Investigations, though it also turns on a "reasonable indication" of unlawful activity.

NYPD has explained that, while not required by the Guidelines, it has set a higher internal threshold standard for targeting a *location* as the subject of a Terrorism Enterprise Investigation. According to NYPD, for a location or institution – such as a mosque – to be the subject of a Terrorism Enterprise Investigation, there must be a reasonable indication that the leadership or staff members are involved in unlawful activity. If an individual is observed engaging in suspicious behavior during a Terrorism Enterprise Investigation, but is not part of the enterprise under

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<sup>21</sup> Guidelines, Appx B, § V(B)(1).

<sup>22</sup> Guidelines, Appx B, § V(C).

<sup>23</sup> Guidelines, Appx B, § V(C)(1).

investigation, the individual could be subject to a separate NYPD Intelligence Bureau investigation.

## II. Undercover Officers and Confidential Informants

The Guidelines permit NYPD's Intelligence Bureau to use undercover officers and confidential informants (collectively "human sources") in investigations of political activity.<sup>24</sup> NYPD's Intelligence Bureau stated that human sources are only used if, based on all circumstances surrounding a case, they are the "most effective means" of obtaining information.<sup>25</sup> According to NYPD, human sources are prohibited from disrupting lawful political activity and cannot, as a source, attend religious services unless in connection with a subject of an investigation under the Guidelines.

## III. NYPD Intelligence Bureau Meetings

In order to authorize or extend Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations, members of NYPD's Intelligence Bureau's Legal Matters Unit (LMU), alongside analysts, detectives, and their various supervisors, must first draft Investigative Statements.<sup>26</sup> Investigative Statements are reviewed at monthly "*Handscho* Committee" meetings and are approved in writing by both the Commanding Officer and the Deputy Commissioner of the Intelligence Bureau. The *Handscho* Committee currently includes the Deputy Commissioner, Commanding Officer, and Executive Officer of the Intelligence Bureau, the Deputy Commissioner and Assistant Deputy Commissioner for Legal Matters, the senior leadership of the Intelligence Operations and Analysis Section, the Commanding Officer of the Criminal Intelligence Section, and Department attorneys, among others. The Committee discusses cases and asks questions so that the Deputy Commissioner can make determinations about investigations.

At *Handscho* Policy Meetings, held every four to six weeks, members of NYPD's Intelligence Bureau attempt to determine the best way to create policies to guide the operations of the Bureau. During these meetings, participants formulate workable rules and practices in order to improve the Intelligence Bureau's functionality and compliance with the Guidelines.

At weekly Collections meetings, Intelligence Bureau professionals discuss, review, and critique specific investigations that are currently underway. In these meetings, participants analyze investigations from an operational perspective and attempt to determine the best way to proceed. All Intelligence Bureau investigations undergo this process.

NYPD's Intelligence Bureau also holds regular "DD5" review meetings in which all field intelligence reports (known as "DD5s") are reviewed. LMU attorneys review all DD5s to spot issues and potential violations of internal practices, and provide guidance to investigators on what content should be included in these field intelligence reports.

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<sup>24</sup> Guidelines, Appx B, § VI(3)(a).

<sup>25</sup> Guidelines, Appx B, § VI(3)(a)(i).

<sup>26</sup> LMU is comprised of five non-uniformed attorneys and one uniformed attorney who report to a Deputy Commissioner. Members of LMU attend all Intelligence Bureau meetings.

**IV. Intelligence Bureau Policies Governing Investigations Under the Guidelines**

NYPD's Intelligence Bureau does not currently have a unified policy manual to govern all investigations falling under the Guidelines. Instead, the Intelligence Bureau's policies, procedures, and guidelines are spread across a range of meeting minutes, handbooks, emails, and related records. According to NYPD, beginning in early 2011, the Intelligence Bureau's analysts, investigators, and lawyers increased their collaboration on the drafting of Investigative Statements. This collaboration led to a more systemized documentation of the process. NYPD's Intelligence Bureau has, for several years, also discussed the development of a single policy manual, but the project remains ongoing.

## Findings

### I. Time Limitations

Investigations, the use of human sources, and the respective extensions of both, are subject to strict time limitations under the Guidelines. These time limitations help ensure that investigations are completed in an efficient manner and do not continue indefinitely when they are not productive. OIG-NYPD's review found a material level of non-compliance by NYPD with the applicable time limitations under the Guidelines.

#### a. Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations

##### i. Methodology for Calculating Dates

Preliminary Inquiries are initially authorized for a period of 180 days and may be extended for additional 90-day periods. Both Full Investigations and Terrorism Enterprise Investigations may be initially authorized for one year (365 days) and can be renewed in additional one-year (365-day) increments.<sup>27</sup> Because the Guidelines do not require initial investigation authorizations to be documented in writing, OIG-NYPD used the opening dates provided by NYPD as the opening date of each investigation reviewed. NYPD's Intelligence Bureau confirmed that this is the appropriate date for the initial approval. For extensions, OIG-NYPD used the date that the Deputy Commissioner of Intelligence signed and approved the authorization forms.<sup>28</sup> Each time an extension was approved, OIG-NYPD would reset the 90-day or 365-day extension clock to identify the next anticipated extension date.<sup>29</sup> This approach takes into account possible delays in extensions earlier in the investigation and adjusts for them, so that these delays do not accumulate across the length of the investigation. In other words, OIG-NYPD's date calculations avoid double-counting a particular delay. Such calculations are therefore favorable to NYPD when assessing compliance. A summary of the formulas used in OIG-NYPD's date calculations can be found in Table B.

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<sup>27</sup> Guidelines, Appx B, § V(C)(4)(b), V(D)(4)(b).

<sup>28</sup> If the authorization form was lacking a date for the signature of the Deputy Commissioner of Intelligence, OIG-NYPD relied instead on the signature date of the Commanding Officer or, if none, the applicable deadline as identified in subsequent Investigative Statements or, if none, the date of the Investigative Statement itself.

<sup>29</sup> Under OIG-NYPD's calculations, if a document was expected for a final extension date but none was filed, OIG-NYPD calculated the number of days between the expected extension date and the discontinuance date to determine whether the missing extension should be marked "late." OIG-NYPD found that [REDACTED] such discontinuances occurred later than the extension deadline. In addition, [REDACTED] extension requests — all occurring at the end of investigations — were disapproved. For these, OIG-NYPD also calculated the number of days between the expected extension date and the discontinuance date to determine whether the disapproval should be marked "late." [REDACTED] of those disapprovals occurred prior to the extension deadline, while [REDACTED] occurred after the extension deadline.

TABLE B – DATE CALCULATIONS FOR INVESTIGATION EXTENSIONS		
	Anticipated First Extension Date (following Initial Authorization)	Extensions
<b>Preliminary Inquiry</b>	Opening Date + 180 Days	Last Recorded Extension Date + 90 Days
<b>Full Investigation</b>	Opening Date + 365 Days	Last Recorded Extension Date + 365 Days
<b>Terrorism Enterprise Investigation</b>	Opening Date + 365 Days	Last Recorded Extension Date + 365 Days

In order to test this methodology, OIG-NYPD asked NYPD to produce its own tracking data for the opening and extension dates both on Investigative Statements and on authorizations and extensions for the use of human sources (discussed further below). With respect to Investigative Statements, the data provided by NYPD resulted in outcomes not significantly different from OIG-NYPD's findings (see below and footnote 6 above). However, OIG-NYPD could not make full use of NYPD's data because the Department has considered numerous different types of events (signature pages, meeting minutes, emails) to constitute approvals by the Deputy Commissioner of Intelligence. Such variation in tracking does not lend itself to appropriate oversight and increases the risk of tracking failures. This issue arose most prominently with respect to human source authorizations. OIG-NYPD could not even compare its findings to NYPD's own tracking sheet because 13.2% of NYPD's entries recorded only the month and year but not the specific day of the approval (see footnote 7 above).

The weaknesses in NYPD's current case tracking and monitoring process – which make it difficult to reliably assess NYPD's compliance with the Guidelines – highlight the need for NYPD to use a more thorough, consistent, and auditable system for registering and tracking dates and deadlines for the authorization and extension of investigations and the use of human sources. While the findings below identify the degree to which NYPD was non-compliant with the prescribed deadlines under the Guidelines, the broader concern is that NYPD does not have an adequate system in place to ensure compliance with these deadlines. Recently, NYPD's Intelligence Bureau has informed OIG-NYPD of the implementation of a new case tracking system that may address some of these issues. This is a promising development, and OIG-NYPD looks forward to evaluating whether the new system effectively addresses the deficiencies outlined in this Report.

**ii. Findings**

OIG-NYPD's analysis found that [REDACTED] of the [REDACTED] extensions reviewed (53.5%) failed to meet the renewal deadline and were dated after the required deadlines. When investigations exceeded their extension deadlines, the average number of days that investigations continued past their extension deadlines was 22 per extension. One-quarter ([REDACTED] extensions, or 25.6%) of extensions exceeded their deadlines by more than 31 days. The average number of days per extension that investigations continued past their deadlines differed by investigation type (see Table C). For Preliminary Inquiries, the average number of days that each extension exceeded its deadline was 20, while Full Investigations and Terrorism Enterprise Investigations averaged 30 days and 18 days, respectively.

TABLE C – INVESTIGATIONS: DAYS OF UNAUTHORIZED ACTIVITY PER EXTENSION	
	Average
Preliminary Inquiry	20 Days
Full Investigation	30 Days
Terrorism Enterprise Investigation	18 Days

Although the average coverage for each individual extension was 22 days, when an investigation has multiple extensions and several of these extensions miss the deadline, the cumulative impact on that particular investigation may be more than 22 days. For example, for Preliminary Inquiries examined, the accumulated number of days of unauthorized investigative activity on a single Preliminary Inquiry ranged from zero days (no missed deadlines within one investigation) to 117 days (multiple missed deadlines within one investigation), with an average of 33 accumulated days of unauthorized investigative activity per Preliminary Inquiry. For Full Investigations, the accumulated days of unauthorized activity on a single Full Investigation ranged from 25 days to 104 days, with an average of 42 days. For Terrorism Enterprise Investigations, the cumulative range was between zero and 124 days, with an average of 55 days. Across all investigative types, the average number of accumulated days of unauthorized activity on a single investigation was 38.

NYPD's Intelligence Bureau reported that NYPD attorneys use spreadsheets to track and monitor authorization and expiration dates. However, NYPD's Intelligence Bureau confirmed that if the Department intends to continue an investigation but the authorization expires prior to the renewal deadline, the investigation does not close; the investigation may instead continue in an unauthorized state pending documented renewal. NYPD noted that in such scenarios where formal authorization has not been obtained, the ongoing investigative work is still subject to supervision.

Even when calculated in a manner favorable to NYPD, the Department is still non-compliant with the Guidelines' time limitations more than half of the time. As noted, the Guidelines impose time limitations for a reason, and if NYPD wants to continue an investigation it must present the case for renewal discussion in a timely manner. Notably, the *Handschu* Committee meets once a month to discuss and approve the extensions of investigations, and

there is a weekly NYPD Intelligence Bureau meeting to review the general status of each open investigation. In other words, there is active ongoing review of these investigations. Accordingly, the fact that one-quarter of extensions that exceeded their deadlines did so by more than one month raises serious concerns about the importance that NYPD places on these time limitations or the constitutional safeguards they represent.

This degree of error illustrates, at a minimum, that the Intelligence Bureau's current tracking and monitoring mechanism is not effective. The failure to adhere to time limitations cannot be discounted as merely technical or administrative. The Guidelines were designed so that NYPD could conduct investigations that it believes promote public safety, while also safeguarding the constitutional rights of the citizens they serve. One of those safeguards is that investigations cannot continue indefinitely without renewed approval and oversight. When NYPD does not follow those restrictions, the investigative activity is unauthorized and the Guidelines designed to prohibit open-ended and un-reviewed surveillance have been violated.

## **b. Human Source Use**

### **i. Methodology for Calculating Dates**

The use of an undercover officer or confidential informant may be initially authorized only by the Deputy Commissioner of the Intelligence Division for 120 days, and may be extended for additional periods of 120 days, also only with the approval of the Deputy Commissioner of the Intelligence Division.<sup>30</sup> These requests and authorizations must be in writing.<sup>31</sup> Given these requirements, OIG-NYPD used the date that the Deputy Commissioner signed the investigation's human source authorization form as the date that the use of a human source was officially authorized or extended.<sup>32</sup> To identify extension dates, OIG-NYPD added the required number of days following the initial authorization and then to each subsequent recorded extension date (120 days).<sup>33</sup>

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<sup>30</sup> The NYPD Intelligence Division referred to in the Guidelines is now called NYPD's Intelligence Bureau.

<sup>31</sup> Guidelines, Appx B, § VI(3)(a)(ii).

<sup>32</sup> Because NYPD does not number human source extensions nor list the date of the last extension in its Human Source Authorization memoranda, OIG-NYPD was unable to determine whether large gaps between extensions of the use of human sources were due to missing documents or failures to extend on time. Accordingly, OIG-NYPD only used documented human source extensions for its calculations.

<sup>33</sup> Unlike investigations, which have discontinuance memos to identify an investigation's end, NYPD does not use a discontinuance memo for human source authorizations. Accordingly, while OIG-NYPD can identify unauthorized periods of potential human source use between human source extension memos (i.e., identify recorded extension dates in excess of 120 days), OIG-NYPD could not calculate the timeliness of human source reauthorizations following the last known human source extension memo. For example, if the last human source extension was authorized on day 240 (such that the next extension would be on day 360), but the investigation closed on day 370, OIG-NYPD has no documentation to verify whether human source activity closed on day 360 or continued for ten more days unauthorized. As a result, OIG-NYPD's analysis only accounts for days in between existing human source extension memos.

**ii. Findings**

OIG-NYPD reviewed [REDACTED] human source extension memos. Just over half of these human source extensions ([REDACTED] documents, or 57.3%) failed to meet the renewal deadline and were dated after the required deadlines. When authorizations to use human sources exceeded their extension deadlines, the average number of days that human source use continued past each extension deadline was 31. Furthermore, 16% ([REDACTED]) of the human source extensions exceeded their deadlines by more than 31 days. The average number of days per extension that human source use continued past prescribed deadlines differed by investigation type (see Table D). For Preliminary Inquiries, the average number of days that each extension exceeded its deadline was 18, while Full Investigations averaged 27 days, and Terrorism Enterprise Investigations 43 days.

<b>TABLE D – DAYS OF UNAUTHORIZED HUMAN SOURCE ACTIVITY PER EXTENSION</b>	
	<b>Average</b>
<b>Preliminary Inquiry</b>	18 Days
<b>Full Investigation</b>	27 Days
<b>Terrorism Enterprise Investigation</b>	43 Days

Although the average coverage for each individual extension was 31 days, when an investigation has multiple extensions and several of these extensions miss the deadline, the cumulative impact on that particular investigation may be more than 31 days. For example, for Preliminary Inquiries examined, the accumulated number of days of unauthorized human source activity on a single Preliminary Inquiry ranged from zero days (no missed deadlines within one investigation) to 108 days (multiple missed deadlines within one investigation), with an average of 20 accumulated days of unauthorized human source activity per Preliminary Inquiry. For Full Investigations, the accumulated days of unauthorized activity on a single Full Investigation ranged from 10 days to 380 days, with an average of 102 days. For Terrorism Enterprise Investigations, the cumulative range was between 60 and 576 days, with an average of 296 days. Across all investigative types, the average number of accumulated days of unauthorized activity on a single investigation was 79.

As with the investigation authorizations, the degree of error here illustrates, at a minimum, that the Intelligence Bureau's current tracking and monitoring mechanism is not effective. NYPD's Intelligence Bureau has confirmed that when it intends to extend a human source authorization but does not do so before the deadline, the human source may remain active and under supervision until the extension is approved. In short, when deadlines are missed, confidential informants and undercover officers are operating without authorization. Even if such human sources are being actively managed by NYPD's Intelligence Bureau, the failure to secure the appropriate authorizations is an avoidable violation of the Guidelines. Again, this is not simply a technical issue. The Guidelines are designed to prevent open-ended

investigations. By failing to obtain renewal authorizations, sometimes for months at a time, NYPD is violating substantive protections now in place.

Notably, with respect to Collection Leads – a lower level investigation – NYPD's Intelligence Bureau's written policy states that the use of human sources shall not continue past the authorization expiration date and that legal counsel must notify senior staff when an expiration date is reached. This policy makes sense, yet OIG-NYPD uncovered no such corresponding policy for the use of human sources on Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations.

## **II. Authorizations and Approvals**

As noted, the Guidelines require that the opening and extension of investigations, as well as the use and renewal of human sources, be memorialized in writing by specific individuals. OIG-NYPD's review found several deficiencies in how NYPD's Intelligence Bureau secures and records the requisite authorizations.

### **a. Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations**

Under the Guidelines, requests to commence an investigation may be authorized by one of several designated "Authorizing Officials." This authorization is then subject to final approval by the Deputy Commissioner of Intelligence. As noted, investigations approaching expiration can be renewed. Renewal authorization for Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations are granted by the Deputy Commissioner of Intelligence and must be in writing.

In practice, the Intelligence Bureau records authorizations by executives on authorization forms that are attached to Investigative Statements and memos. When fully completed, these forms contain:

- **Signatures** by an "Authorizing Official" (defined in Patrol Guide § 212-72 as the Commanding Officer or Executive Officer of the Intelligence Division (now Bureau), or the Commanding Officer of the Criminal Intelligence Section) and the Deputy Commissioner of Intelligence;
- **Dates** accompanying the signatures; and
- **Checkmarks** indicating approval or disapproval of the request.

OIG-NYPD used data on these authorization forms and related documents to assess whether NYPD's Intelligence Bureau was in compliance with the requirements for authorizations, extensions, and time limitations. For a detailed list of the review criteria derived from the Guidelines, see Appendix C.

**i. Findings**

OIG-NYPD's review found a series of deficiencies in the documentation of authorizations and extensions of the [REDACTED] investigations. As demonstrated in Table E, the forms documenting the authorization of the investigations had a number of missing items, making it impossible for OIG-NYPD to verify that authorization by an Authorizing Official properly occurred. Notably, only 57% ([REDACTED]) of the authorizations to open investigations had dates that were consistent and well-documented.

TABLE E - DEFICIENCIES IN AUTHORIZATIONS OF INVESTIGATIONS	
No signature from any Authorizing Official	[REDACTED] cases (6.5%)
No date accompanying the signature of any Authorizing Official	[REDACTED] cases (6.5%)
No checkmarks indicating whether at least one Authorizing Official had either approved or disapproved the investigation	[REDACTED] cases (6.5%)
Forms missing at least one item (a signature, date, or checkmark)	[REDACTED] cases <sup>34</sup> (47.8%)
Date provided by NYPD as the official opening date of investigation did not match the signature dates of either Authorizing Official <sup>35</sup>	[REDACTED] cases (34.8%)

Many of the above issues were also discovered during OIG-NYPD's review of the [REDACTED] investigation extension documents, as can be seen in Table F.

<sup>34</sup> The [REDACTED] cases includes the [REDACTED] aforementioned cases as well as other examples where there is at least one type of error.

<sup>35</sup> [REDACTED] investigations' opening dates as per NYPD was exactly one year off from the authorizing signature dates, which appears to be a typo in NYPD's recorded opening date list.

TABLE F - DEFICIENCIES IN EXTENSIONS OF INVESTIGATIONS	
No signature from the Deputy Commissioner of Intelligence	████████ documents (4.5%) <sup>36</sup>
No date accompanying Deputy Commissioner of Intelligence signature	████████ documents (12.4%)
No checkmarks indicating whether Deputy Commissioner of Intelligence had either approved or disapproved the investigation	████████ documents (9.0%)
Forms missing at least one item (a signature, date, or checkmark) in regards to the Deputy Commissioner of Intelligence's authorization	████████ documents (47.8%)

The Guidelines do not specifically require NYPD to memorialize the dates when investigations are opened or extended, nor do they specifically require signatures or checkboxes. The Guidelines do, however, require authorizations and adherence to time limitations (which cannot be properly calculated without accurately registering when an investigation was opened). To meet these requirements, basic principles of record-keeping and compliance require a robust, consistent, and auditable system for registering and tracking such approvals and their dates.

OIG-NYPD also found a number of deficiencies in the █████ Discontinuance Memos reviewed for Preliminary Inquiries. The Guidelines do not specifically require NYPD to document signatures, dates, and checkmarks of Authorizing Officials when Preliminary Inquiries are discontinued. The Guidelines *do*, however, require that NYPD "make a record of the closing" of inquiries when they "fail to disclose sufficient information to justify an investigation."<sup>37</sup> In practice, NYPD uses Discontinuance Memos to make a record every time a Preliminary Inquiry, Full Investigation, or Terrorism Enterprise Investigation is closed. Table G summarizes the deficiencies in documentation of the closing records of Preliminary Inquiries.

<sup>36</sup> While OIG-NYPD's metrics on extensions only consider the Deputy Commissioner's authorization, it should be noted that all of these documents were missing the signature of *any* Authorizing Official.

<sup>37</sup> Guidelines, Appx B, § V (B)(7).

TABLE G - DEFICIENCIES IN PRELIMINARY INQUIRY DISCONTINUANCE MEMOS	
No signature from any Authorizing Official	████████ documents (20.7%)
No date accompanying the signature of any Authorizing Official	████████ documents (6.9%)
No checkmarks indicating whether at least one Authorizing Official had either approved or disapproved the investigation	████████ documents (17.2%)
Forms missing at least one item (a signature, date, or checkmark)	████████ documents (34.5%)

#### b. Human Source Use

The use of undercover officers and confidential informants can only be authorized by the Deputy Commissioner of the Intelligence Bureau prior to commencement of the undercover operation, and both the request to use human sources and action taken on this request must be in writing. Under the Guidelines, the request to use undercover officers or confidential informants also “must include a description of the facts on which the investigation is based and the role of the undercover.”<sup>38</sup> The use of human sources may be extended with the approval of the Deputy Commissioner of Intelligence. These requests and any action therein must be in writing. NYPD uses a standard form for all human source authorizations and extensions.

Given the requirement for authorizations and extensions of the use of these human sources to be approved in writing by the Deputy Commissioner of Intelligence, OIG-NYPD used the date that the Deputy Commissioner signed the investigation’s human source authorization form as the date that the use of a human source was officially authorized or extended.<sup>39</sup>

#### i. Findings

OIG-NYPD’s review found several deficiencies in the authorizations for the use of human sources. First, while the Guidelines require that “The request to use undercovers...must include a description of the facts on which the investigation is based *and the role of the undercover*,” (emphasis added) none of the human source memos that OIG-NYPD reviewed contained any information whatsoever on the specific anticipated role of the undercover. The documents instead referred back to the associated Investigative Statement (which, as a retrospective document, could have facts about the human source but not prospective operational information about the human source’s role). Second, all human source memos reviewed were comprised primarily of boilerplate language, devoid of case-specific facts, and were generally issued at the outset of all investigations as a blanket practice. All cases that OIG-NYPD reviewed had human

<sup>38</sup> Guidelines, Appx B, § VI(3)(a)(i).

<sup>39</sup> NYPD also uses the signature of the Deputy Commissioner of Intelligence on the human source authorization form to track authorizations and extensions.

source authorizations, and nearly all dates of authorization for the human sources occurred on the same day or within a few days of the start of the investigation.<sup>40</sup> (The average number of days separating the two dates was three.)

Moreover, not only did the human source authorization forms, in violation of the Guidelines, contain boilerplate language to populate the form rather than case-specific facts, but the entries made on every authorization document analyzed contained the same identical typographical error going back to at least 2003. Specifically, the substantive entry on every such document reviewed contained the following typographical error: "... the undersigned has concluded *that that* the use of undercover officers and/or confidential informant ..." (emphasis added). In addition, OIG-NYPD noted a second typographical error present in the subject lines of numerous authorization or renewal documents ("EXTENSION OF THE USE OF THE USE OF UNDERCOVER OPERATIVES AND/OR CONFIDENTIAL INFORMANTS ..." (emphasis added)).

The chronic appearance of the same typographical errors supports the notion that NYPD personnel are preparing and signing the authorizations without sufficiently reviewing the document. Such errors further suggest that the same text was copied repeatedly into every human source authorization for over a decade, without regard to the specific facts of each case or the expected role of each source. Despite these applications' facial deficiencies, however, they are routinely approved by the NYPD.

Further, [REDACTED] of the [REDACTED] investigations (4.3%) reviewed by OIG-NYPD lacked any initial authorizing document for use of a human source at all. The remaining [REDACTED] human source documents contained a number of issues that are detailed in Table H.

TABLE H – DEFICIENCIES IN HUMAN SOURCE AUTHORIZATIONS

No signature from the Deputy Commissioner of Intelligence	[REDACTED] documents (2.3%)
No date accompanying Deputy Commissioner of Intelligence signature	[REDACTED] documents (11.4%)
No checkmarks indicating whether the Deputy Commissioner of Intelligence had either approved or disapproved the investigation	[REDACTED] documents (27.3%)
Forms missing at least one item (a signature, date, or checkmark) regarding the Deputy Commissioner of Intelligence's authorization	[REDACTED] documents (34.1%)

<sup>40</sup> NYPD has informed OIG-NYPD that while all cases reviewed by OIG-NYPD received authorization to use human sources for the investigation, not every investigation actually involved a human source.

Similar concerns were also found in OIG-NYPD's review of the [REDACTED] human source extension documents, which are depicted in Table I.

TABLE I – DEFICIENCIES IN HUMAN SOURCE EXTENSIONS	
No signature from the Deputy Commissioner of Intelligence	[REDACTED] documents (4.8%)
No date accompanying Deputy Commissioner of Intelligence signature	[REDACTED] documents (10.6%)
No checkmarks indicating whether the Deputy Commissioner of Intelligence had either approved or disapproved the investigation	[REDACTED] documents (10.1%)
Forms missing at least one item (a signature, date, or checkmark) regarding the Deputy Commissioner of Intelligence's authorization	[REDACTED] documents (17.9%)

Furthermore, under the Guidelines “[t]he request to extend the use of undercovers and action taken on the request must be in writing and must include the reason for the extension.”<sup>41</sup> As with the initial authorization forms, the extension forms contained boilerplate language that lacked a specific, fact-based reason for the extension.

The various deficiencies in the Intelligence Bureau's authorization documents reflect a troubling lack of rigor in ensuring that authorizations are completed correctly, on time, and based upon a demonstrated need for the investigation or source requested. Failing to include this required information in the authorization document undermines the accountability integral to NYPD's most sensitive investigations and makes difficult any legally sufficient review of the need for this investigative tool.

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<sup>41</sup> Guidelines, Appx B, § VI(3)(a)(ii).

### III. Extensions of Preliminary Inquiries

Preliminary Inquiries have a unique requirement that does not exist for Full Investigations and Terrorism Enterprise Investigations. Under the Guidelines:

Inquiries shall be completed within 180 days after initiation of the first investigative step. The date of the first investigative step is not necessarily the same date on which the first incoming information or allegation was received. An extension of time in an inquiry for succeeding 90 day periods may be granted by the Deputy Commissioner of Intelligence. **Any such request for extension shall be in writing and shall include a statement of the reasons why further investigative steps are warranted when there is no reasonable indication of unlawful activity.** The action taken on any such request for extension shall also be recorded in writing.<sup>42</sup>

The highlighted sentence makes clear that if there is no demonstrable reason to continue the Preliminary Inquiry, the investigation should be closed. This provision is understandable in light of the Guidelines' framework. By design, a Preliminary Inquiry is a short-term investigation that allows NYPD to assess whether a Full Investigation should be opened. A Preliminary Inquiry has a very low informational threshold – “a possibility of unlawful activity” – while allowing for broad and sometimes invasive investigative powers, including the use of confidential informants and undercover officers.<sup>43</sup> By requiring NYPD to include a “statement of reasons” why a Preliminary Inquiry must continue, the Guidelines create an important safeguard against perpetual investigations where there is scant evidence of actual unlawful conduct.

OIG-NYPD found that in all of the Investigative Statements reviewed to extend Preliminary Inquiries, NYPD's Intelligence Bureau failed to document reasons, supported by specific facts, as to why further investigative steps were warranted when there was no reasonable indication of unlawful activity. In some cases (8.7%), NYPD's Intelligence Bureau included the following generic statement when seeking to extend a Preliminary Inquiry:

Although this request for extension contains no new information, the undersigned conclude that the prior statements and activities of [subject] raise the possibility that [subject] plans to engage in unlawful conduct at some time in the future.

OIG-NYPD finds that the quoted language amounts to boilerplate and, on its face, fails to satisfy the requirements imposed by the Guidelines. By citing to non-specific evidence and using conclusory language, the boilerplate text offers no guidance as to the actual reasons to continue the investigation. Instead, the text invites speculative, after-the-fact rationalizations which may

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<sup>42</sup> Guidelines, Appx B, § V(B)(4) (emphasis added).

<sup>43</sup> Guidelines, Appx B, § V(B)(1). Investigative techniques such as mail openings, eavesdropping, and video surveillance that would otherwise require a warrant are prohibited. See Guidelines, Appx B, § V(B)(5).

or may not reflect the reasons why the Deputy Commissioner of Intelligence authorized the extension.<sup>44</sup>

NYPD's Intelligence Bureau informed OIG-NYPD that the reasons for extending Preliminary Inquiries are discussed during the monthly *Handscho* Committee meetings, but that these discussions are not captured by the *Handscho* Committee meeting minutes or any other document. This further underscores the necessity for citing specific, non-ambiguous information in writing when extending a Preliminary Inquiry. NYPD's Intelligence Bureau also noted that delays caused by subpoenas or other logistical actions are often the cause for seeking an extension of a Preliminary Inquiry, and such operational detail would not be appropriate to include in an Investigative Statement. While NYPD's Intelligence Bureau is free to determine what content should and should not appear in an Investigative Statement, the Guidelines still require NYPD to memorialize the reasons for the extension, and that currently is not being done in any form. This failure is not merely procedural. It makes review by oversight bodies such as OIG-NYPD extremely difficult and thus prevents verification that constitutional violations are not occurring.

#### **IV. Informational Thresholds Under the Guidelines**

In order for NYPD to launch an investigation under the Guidelines, a certain threshold must be met. As detailed in the Methodology section, NYPD may open a Preliminary Inquiry when it receives an allegation or information "indicating the possibility of unlawful activity."<sup>45</sup> A Full Investigation may be launched if "facts or circumstances reasonably indicate that an unlawful act has been, is being, or will be committed."<sup>46</sup> Lastly, a Terrorism Enterprise Investigation may be initiated when "facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of (i) furthering political or social goals wholly or in part through activities that involve force, violence or other unlawful acts; (ii) engaging in terrorism as defined in N.Y. Penal Law § 490.05, or (iii) committing any offense described in [specific sections of the penal code]."<sup>47</sup>

Compliance with the threshold standard is a bedrock principle of the Guidelines. As noted, the Guidelines permit NYPD to deploy significant resources and use powerful investigative tools when investigating political activity, including the use of confidential informants and undercover operatives. Consistent with the Guidelines' "Statement of Policy," the thresholds

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<sup>44</sup> It is important to note that OIG-NYPD is not making any findings regarding the merits of particular extension requests. OIG-NYPD accepts that the narrative section of the Investigative Statement may already suggest reasons why further investigative work is needed (e.g., if the Investigative Statement quotes a subject saying that he/she intends to do something in the near future). Instead, OIG-NYPD is determining whether the language provided in the required authorization satisfies the requirements to set forth in writing "the reasons why further investigative steps are warranted when there is no reasonable indication of unlawful activity."

<sup>45</sup> Guidelines, Appx B, § V(B)(1).

<sup>46</sup> Guidelines, Appx B, § V(C).

<sup>47</sup> Guidelines, Appx B, § V(D)(1)(a).

serve as a check to ensure that these tools are only used when there is a “legitimate law enforcement purpose.”<sup>48</sup>

When reviewing the Investigative Statements through the perspective of the “prudent investigator” – as indicated by the Guidelines – OIG-NYPD determined that the Investigative Statements for all Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations articulated facts sufficient to meet the applicable threshold.<sup>49</sup> Compliance with this basic requirement is important, and OIG-NYPD notes that it found nothing to suggest improper motives in these documents.

## **V. Other Observations**

OIG-NYPD’s review revealed other issues which are not governed by the Guidelines but which nonetheless merit comment.

### **a. Case Tracking**

NYPD’s Intelligence Bureau tracks investigations with case numbers [REDACTED]

[REDACTED]

When a case is upgraded or downgraded to a different level of investigation, the prior investigation and case number are discontinued, and a new investigation is begun and assigned a unique number, despite the fact that the information and subjects of that case may not have changed. As a result, for investigations that change level, NYPD’s Intelligence Bureau does not maintain a single case number that survives the life of the investigation.

When a case receives a new number following a change in level, the first Investigative Statement under the new case number contains language noting the prior case number and the discontinuance of that investigation. In this way, by viewing such an Investigative Statement, it is possible to identify the prior case from which the new investigation was generated. However, the reverse is not possible. In other words, the final Investigative Statement and discontinuance memo for a case that has been upgraded or downgraded provide no information by which to track the case forward into the new investigation. From the file, a reader cannot tell if the closure of a Preliminary Inquiry means that the investigation has ended or if the Preliminary Inquiry has graduated into a Full Investigation.

Rigorous oversight demands the ability to determine whether, instead of being discontinued entirely, an investigation was upgraded or downgraded, and, if so, which new case number was assigned to it. The absence of this information significantly complicates the task of auditing the number of cases that are upgraded or downgraded and, subsequently, whether the circumstances of each case merited such an action. To remedy this, NYPD should include new

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<sup>48</sup> Guidelines, Appx B, § I.

<sup>49</sup> Guidelines, Appx B, § V(C)(1).

case numbers, once assigned, in the discontinuance memos for investigations which have been upgraded and downgraded. NYPD's new case tracking system may assist in this regard.

**b. Policies and Procedures**

Some of the policies and procedures that OIG-NYPD reviewed revealed an organized, detailed, and thoughtful approach to how various operational aspects of NYPD Intelligence Bureau investigations should be handled. The documents provided definitions and explanations of key terms, guidelines on how to complete field reports, best practices for investigators, specific guidance regarding religious institutions and political gatherings, information about training, outlines of various operational steps that must be followed, and related rules.

While these documents are encouraging, much of this written guidance is relatively new and is piecemeal. NYPD's Intelligence Bureau acknowledged that while it has, for many years, engaged in rigorous discussion regarding how investigations involving political activity should be handled, it did not reduce these findings to written guidance until recently. With the exception of a few stray emails and memos, there were few documented policies in NYPD's Intelligence Bureau before 2011.

For example, beyond the text of the Guidelines, NYPD does not have any internal written guidelines on how to assess whether particular cases meet the informational thresholds for Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations. Although such guidelines would be challenging to draft in light of the dynamic and evolving nature of terrorist and related threats, law enforcement has succeeded in providing written guidance to police professionals on other standards. To ensure ongoing compliance, NYPD should establish such written guidelines. Although *Handschr* does not require NYPD's Intelligence Bureau to adopt any particular policies, there are institutional advantages to doing so. Without more comprehensive official policies, there is a risk that necessary safeguards surrounding investigations involving political activity will not be observed in a thorough and consistent manner throughout NYPD's Intelligence Bureau.

## Recommendations

OIG-NYPD's recommendations are designed to strengthen NYPD's compliance with the Guidelines.

### Tracking Deadlines and Securing Timely Renewals

- 1. For investigations of political activity, NYPD should use a formal mechanism for tracking investigative deadlines and should ensure that, where needed, extensions are approved prior to required deadlines.** Given the percentage of Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations that continued without the appropriate documented authorization, NYPD should take greater steps to ensure that investigations are either renewed in a timely manner or closed once the investigative period has expired. Such steps include establishing and using a more robust system to track and alert the Intelligence Bureau of upcoming deadlines, as well as better coordination to secure the appropriate authorizations before the scheduled expiration of an investigation.
- 2. NYPD should use a formal case tracking mechanism that identifies when investigations advance to the next investigative level.** While the level of investigation can change over time (e.g., Preliminary Inquiries can advance into Full Investigations, Terrorism Enterprise Investigations can change into Full Investigations, etc.), NYPD's system for assigning and tracking case numbers did not effectively trace the full history of the investigation. For example, a Preliminary Inquiry may escalate to a Full Investigation, but separate case numbers are assigned such that a review of the Preliminary Inquiry may not identify the subsequent Full Investigation. Case tracking terminology should more clearly capture all investigations related to the same core set of facts.
- 3. For the use of confidential informants and undercover officers in investigations of political activity, NYPD should use a formal mechanism for tracking expiration deadlines and ensure that extensions are approved prior to the expiration of an authorization.** Given the percentage of instances where confidential informants and undercover officers may have been utilized on investigations without appropriate authorization, NYPD should take greater steps to ensure that the use of a human source in an investigation is either renewed in a timely manner or closed once the authorization expires. Such steps include establishing and using a more robust system to track and alert the Intelligence Bureau of upcoming deadlines, as well as better coordination to secure appropriate authorizations before the scheduled expiration of an authorization.

With respect to Recommendations 1 and 3, NYPD's Intelligence Bureau has recently informed OIG-NYPD that in July 2016, it began using a new case tracking system that apparently allows NYPD to more efficiently and effectively track cases. This is a promising development, and OIG-NYPD looks forward to evaluating whether the new system effectively addresses the deficiencies outlined in this Report.

### **Memorializing Requisite Approvals for Investigations**

- 4. For requests to extend a Preliminary Inquiry, NYPD should ensure that Investigative Statements capture fact-specific reasons why further investigative steps are warranted.** In consideration of the justification requirement attached to extensions of Preliminary Inquiries, requests for extending Preliminary Inquiries should include specific, fact-based reasons why further investigative steps are necessary and should not be limited to boilerplate statements.
- 5. For authorizations and renewals of investigations, NYPD should create controls to ensure that authorizations to renew or extend investigations properly capture the date, signature, and approval of the authorizing officials.** To avoid errors and facilitate compliance with all applicable rules and internal practices, NYPD should create controls so that all written authorizations and renewals properly capture the date and the name, signature, and authorizing action of the requisite supervisor.

### **Requests to Use or Extend the Use of Confidential Informants or Undercover Officers**

- 6. NYPD's Human Source Authorization Form should require members of NYPD's Intelligence Bureau to specify the role of the undercover officer or confidential informant.** Consistent with the applicable rules, requests to use undercover officers and confidential informants should not be limited to boilerplate language but instead should include a specific discussion of the role of the human source in the investigation.
- 7. NYPD should specify, when extending use of an undercover or confidential informant, the reason for the extension.** In consideration of the justification requirement attached to extending the use of an undercover, requests for extensions should include specific, fact-based reasons for the extension.
- 8. NYPD should create controls to ensure that authorizations to use or extend the use of human sources properly capture the date, signature, and approval of the appropriate supervisor.** To avoid errors and facilitate compliance with all applicable rules, NYPD should create controls so that all written authorizations and renewals properly capture the date and the name, signature, and authorizing action of the requisite supervisor.
- 9. NYPD's Human Source Authorization Form should include the number of the extension request and the date of the last extension.** Although NYPD maintains a record of each date that NYPD believes a human source extension request was approved, these records are difficult to reconcile with documentation because Human Source Authorization Forms for any given investigation are not numbered in any sequential order and do not list the previous extension date. Including this information, as it is contained in Investigative Statements, would simplify independent verification of extension dates.

### **Codification of Policies and Procedures**

**10. NYPD should consolidate its policies and procedures for investigations involving political activity into a unified handbook.** Although NYPD's Intelligence Bureau has made important strides with documenting policies and procedures for investigations, more work is needed to codify these practices and guidelines into a single handbook that provides investigators, attorneys, analysts, and supervisors with a baseline for what is required and recommended in such investigations. Without official policies, there is a risk that necessary safeguards surrounding investigations of political activity will not be observed in a thorough and consistent manner throughout the Intelligence Bureau.

**11. NYPD should develop written guidelines concerning informational standards for Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations.** Appreciating that each investigation is unique and that the nature of threats and criminal activity changes over time, NYPD's Intelligence Bureau should develop written guidelines concerning the informational thresholds for each level of investigation. Having such guidelines would help ensure consistency across investigations and provide NYPD's Intelligence Bureau with a baseline for assessing facts and making determinations. Such guidelines would not be static, but would instead require updates as the nature of the threat evolves.

***Please contact us at:***

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## APPENDIX A

### **Patrol Guide Procedure No. 212-72**



## PATROL GUIDE

Section: Command Operations

Procedure No: 212-72

### GUIDELINES FOR UNIFORMED MEMBERS OF THE SERVICE CONDUCTING INVESTIGATIONS INVOLVING POLITICAL ACTIVITIES

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#### PURPOSE

To provide guidelines for investigations of possible unlawful or terrorist related activity that involve political activity, including the collection, analysis, processing, retention, and dissemination of information concerning persons, groups, or organizations involved in political activity.

#### DEFINITIONS

**POLITICAL ACTIVITY** - The exercise of a right of expression or association for the purpose of maintaining or changing governmental policies or social conditions.

**INVESTIGATION** – A police activity undertaken to obtain information or evidence.

**LEAD** – Information submitted to or obtained or developed by the Intelligence Division concerning an ongoing investigation, or, that may be used to initiate a new investigation.

**INVESTIGATIVE STATEMENT** – A detailed written request submitted under this procedure to obtain approval for the initiation of a Preliminary Inquiry, Full Investigation, or Terrorism Enterprise Investigation.

**AUTHORIZING OFFICIAL** – The Intelligence Division official (specifically, the Commanding Officer and the Executive Officer, Intelligence Division, and the Commanding Officer, Criminal Intelligence Section) authorized to approve requests to initiate or extend a Preliminary Inquiry, Full Investigation, or Terrorism Enterprise Investigation.

#### PROCEDURE

When a Lead involving possible unlawful or terrorist related activity is received from any source involving an individual, group, or organization that is engaged in political activity which requires some follow up or further investigation:

#### NOTE

*The Handschu Consent Decree (Appendix A) and the Guidelines for Investigations Involving Political Activity (Appendix B) (together, “the Modified Handschu Guidelines,” or, “the Guidelines”) require that any investigation by the New York City Police Department involving political activity shall be initiated by and conducted only under the supervision of the Intelligence Division. Accordingly, members of the service shall not conduct investigations involving political activity without the express written approval of the Deputy Commissioner, Intelligence.*

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**MOS RECEIVING INFORMATION SUGGESTING NEED FOR INVESTIGATION INVOLVING POLITICAL ACTIVITY**

1. Report information or observations concerning possible unlawful or terrorist activity involving political activity to the Intelligence Division, Criminal Intelligence Section (24 hours, 7 days a week).
  - a. Include details of Lead, including information suggesting need for investigation of individual, group, or organization involved in political activity.
  - b. Comply with directions of Criminal Intelligence Section, including preparation of more detailed report, if necessary.

**INTELLIGENCE DIVISION CRIMINAL INTELLIGENCE SECTION**

2. Accept and record Leads received.
  - a. Contact reporter and conduct telephone interview to obtain additional details, if necessary.
3. Confer with Criminal Intelligence Section supervisor concerning assignment and disposition of Lead; if appropriate, refer for review as required by Lead processing procedures.

**CRIMINAL INTELLIGENCE SECTION SUPERVISOR**

4. Assign Lead requiring follow up by Intelligence Division to appropriate unit for Checking of Lead or other investigation.

**SUPERVISOR, INTELLIGENCE DIVISION UNIT ASSIGNED**

5. Supervise performance of Checking of Lead, if appropriate.
6. Submit Investigative Statement to Authorizing Official requesting approval to conduct either a Preliminary Inquiry, Full Investigation, or Terrorism Enterprise Investigation, if the original Lead, the results of a Checking of Lead, or other information suggests the need for further investigation that involves political activity.
  - a. Specify request and justification for use of undercover or confidential informant, (or other investigative technique requiring approval) as appropriate.

**NOTE**

*The Investigative Statement will be clear and precise. The subject group, organization, or individual whose political activity is to be investigated will be clearly identified. The Investigative Statement will specify the information that forms the basis for the request for a Preliminary Inquiry, Full Investigation, or Terrorism Enterprise Investigation. In exigent circumstances, an investigation may be undertaken before an Investigative Statement has been submitted and approved. In such case, the Investigative Statement must be submitted as soon as practicable.*

**AUTHORIZING OFFICIAL**

7. Review request; determine whether requested investigation is warranted and in compliance with the Modified *Handschi* Guidelines.
  - a. Indicate approval or disapproval of investigation and investigative technique(s) in written endorsement.
  - b. Forward endorsement to Deputy Commissioner, Intelligence for final approval, if approved.

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**DEPUTY  
COMMISSIONER,  
INTELLIGENCE** 8. Review request, determine whether requested investigation is warranted and in compliance with these Guidelines.  
a. Indicate approval or disapproval of investigation and investigative technique(s) in written endorsement.

**INVESTIGATIVE  
UNIT ASSIGNED** 9. Conduct approved investigation involving political activity according to the Constitution, the *Handscha* Consent Decree, the *Guidelines for Investigations Involving Political Activity*, and other applicable law and Department procedures.

**ASSIGNED  
INVESTIGATOR** 10. Confer with supervisor and prepare report of investigative activity.  
11. Submit completed report to supervisor.

**SUPERVISOR,  
INVESTIGATIVE  
UNIT ASSIGNED** 12. Review report to verify that only approved investigative activity has been undertaken.  
13. Forward completed investigator's report to Commanding Officer of Investigative Unit assigned.

**COMMANDING  
OFFICER,  
INVESTIGATIVE  
UNIT ASSIGNED** 14. Review all reports prepared by assigned investigator and verify that the investigation was conducted in compliance with the *Guidelines*.

**DEPUTY  
COMMISSIONER,  
INTELLIGENCE** 15. Periodically review the progress of approved investigations to ensure that investigations are conducted in compliance with the *Guidelines*.  
16. Periodically advise the Police Commissioner concerning the status and outcome of investigations conducted under the *Guidelines*.

**ADDITIONAL  
DATA** *See attached Appendix A, Handscha Consent Decree, and Appendix B, Guidelines for Investigations Involving Political Activity.*

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**ADDITIONAL  
DATA**  
*(continued)*

## APPENDIX A

### HANDSCHU CONSENT DECREE; DECISION AND GUIDELINES

#### 1. PURPOSE

*Pursuant to the settlement entered into by the Police Department in the case of Handschi, et al. v. Special Services Division, et al., the Department is required to comply with certain guidelines in investigative matters as set forth herein.*

#### 2. BACKGROUND OF HANDSCHU, et al. v. SPECIAL SERVICES DIVISION, et al.

*Handschi* was commenced in 1971. The complaint alleged that certain intelligence gathering practice and conduct of the Department infringed upon the plaintiffs' constitutional rights. Such conduct included infiltration, electronic surveillance, dossier collection, and improper dissemination of collected information. In order to resolve the issues raised in *Handschi*, the parties agreed to the implementation of certain guidelines which were commonly referred to as the *Handschi Guidelines* and which have been incorporated in the Patrol Guide since that time. Pursuant to a recent court order granting the Department's request to modify those guidelines, the following "Modified Handschi Guidelines" (including the following "Guidelines for Investigations Involving Political Activity") hereby replace the old guidelines, and are now in effect.

#### 3. GUIDELINES

##### I. GENERAL STATEMENT OF POLICY

*Activities of the New York City Police Department in the investigation of political activity will conform to constitutionally guaranteed rights and privileges.*

##### II. DEFINITIONS

- A. *Political Activity - The exercise of a right of expression or association for the purpose of maintaining or changing governmental policies or social conditions.*
- B. *Authority - A board established pursuant to Section III of these guidelines.*
- C. *Investigation - A police activity undertaken to obtain information or evidence.*

##### III. AUTHORITY ESTABLISHED

*There is hereby established an Authority to conduct the review of records described in paragraph IV. It shall consist of three members who shall act as a body, to wit, the Deputy Commissioner - Legal Matters of the Police Department, the Chief of Internal Affairs of the Police Department, and a civilian member appointed by the Mayor upon consultation with the Police Commissioner for a term revocable at will. The decisions of the Authority as set forth herein shall be by majority vote.*

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## **ADDITIONAL DATA**

*(continued)*

### **IV. REVIEW OF RECORDS TO DETERMINE COMPLIANCE**

A. *At any time a person or member of a group or organization, having reason to believe that such person, group, or organization has been the subject of investigation of political activity which violates constitutionally guaranteed rights and privileges, may request in writing which sufficiently identifies the requesting party that the Authority make inquiry of the appropriate investigative officer of the NYPD. If the Authority's inquiry reflects that the investigation was conducted in conformity with the Constitution, the Authority shall notify the requesting party that if an investigation was made, it was made in accordance with the Constitution.*

B. *If the inquiry reveals or if the Authority otherwise becomes aware that an investigation was not conducted in conformity with the Constitution with respect to the requesting party, the Authority shall proceed as follows:*

- (1) *The Authority shall obtain all information and documents pertaining to the requesting party developed in the course of such investigation.*
- (2) *The Authority shall conduct or cause to be conducted an inquiry into the circumstances of such investigation with respect to the requesting party.*
- (3) *In the event the inquiry determines that such investigation with respect to the requesting party was not conducted in accordance with the Constitution, the Authority shall so notify the requesting party and submit a report to the Police Commissioner.*

### **4. DATE OF EFFECT**

*Effective immediately, no members of the service shall engage in an investigation of political activity except through the Intelligence Division. Requests for such investigations should be on Typed Letterhead addressed to the Commanding Officer, Intelligence Division. Where time is of the essence the request may be by telephone (646) 805-6400 to the Criminal Intelligence Section of the Intelligence Division. In all cases, members of the service concerned shall abide by the direction of the Intelligence Division. Such investigations shall be conducted pursuant to the "Guidelines for Investigations Involving Political Activity" set forth below.*

### **5. INTERPRETATION**

*Any member of the service who is uncertain whether a particular investigation constitutes an "investigation involving political activity" shall consult with the Legal Bureau.*

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**ADDITIONAL  
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(continued)**

## ***APPENDIX B GUIDELINES FOR INVESTIGATIONS INVOLVING POLITICAL ACTIVITY***

### **PREAMBLE**

*Subsequent to the terrorist attacks on the City of New York on September 11, 2001 which resulted in the loss of thousands of lives and the total destruction of the World Trade Center complex, it became apparent that the City faces unprecedented threats to its continued safety and security. In the view of federal, state and local law enforcement agencies, the prevention of future attacks requires the development of intelligence and the investigation of potential terrorist activity before an unlawful act occurs.*

*As a result of a federal court order entered in 1985, the New York City Police Department was bound by guidelines, known as the Handschu Guidelines, which governed the investigation of political activity. The Handschu Guidelines (i) limited the investigation of political activity to those circumstances when there was specific information of criminal activity and (ii) established the Handschu Authority to oversee compliance.*

*After evaluating the impact of the Handschu Guidelines on the need to investigate terrorism in a changed world, the City made an application to modify the order so as to eliminate the restrictions contained in the Handschu Guidelines and the oversight of the Handschu Authority with respect to those restrictions. The City did not seek to eliminate the Handschu Authority's role to investigate an individual's complaint that the NYPD had engaged in unconstitutional conduct in the investigation of political activity.*

*The Court granted the City's application to modify the decree provided the City adopt the internal guidelines set forth below and distribute the guidelines to supervisory personnel who, in turn, were to make them known to those under their command. These guidelines shall remain in effect unless otherwise ordered by the Court.*

*These guidelines are binding on all members of the service who are engaged in the investigation of political activity. It is the purpose of these guidelines to enable officers to perform their duties with greater certainty, confidence and effectiveness while at the same time protecting the guarantees of the Constitution.*

### **I. STATEMENT OF POLICY**

*It is the policy of the New York City Police Department that investigations involving political activity conform to the guarantees of the Constitution, that care be exercised in the conduct of those investigations so as to protect constitutional rights, and that matters investigated be confined to those supported by a legitimate law enforcement purpose.*

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## **ADDITIONAL DATA**

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## **II. GENERAL PRINCIPLES**

(1) *In its effort to anticipate or prevent unlawful activity, including terrorist acts, the NYPD must, at times, initiate investigations in advance of unlawful conduct. It is important that such investigations not be based solely on activities protected by the First Amendment. When, however, statements advocate unlawful activity, or indicate an apparent intent to engage in unlawful conduct, particularly acts of violence, an investigation under these guidelines may be warranted, unless it is apparent, from the circumstances or the context in which the statements are made, that there is no prospect of harm.*

(2) *Based upon the circumstances of a given case, investigative action may be required under exigent circumstances. Exigent circumstances are circumstances requiring action before authorization otherwise necessary under these guidelines can reasonably be obtained, in order to protect life or substantial property interests; to apprehend or identify a fleeing offender; to prevent the hiding, destruction or alteration of evidence; or to avoid other serious impairment or hindrance of an investigation. When any investigative action, taken under exigent circumstances, would require an approval under ordinary conditions, such approval shall be obtained as soon as practicable in accordance with the provisions of these guidelines. Where a regular approval or request is required to be in writing, the approval or request following exigent circumstances shall also be in writing.*

(3) *Investigations shall be terminated when all logical leads have been exhausted and no legitimate law enforcement purpose justifies their continuance.*

## **III. APPLICABILITY**

*These guidelines apply only to investigations which involve political activity. They do not apply to, or limit, other activities of the NYPD in the investigation or detection of unlawful conduct, the preservation of the peace and public safety or other legitimate law enforcement activities which do not involve political activity.*

## **IV. ROLE OF THE INTELLIGENCE DIVISION**

(1) *Investigation of political activity shall be initiated by, and conducted under the supervision of the Intelligence Division. Nothing in this paragraph, however, is intended to prevent any member of the service from reporting his or her observations of suspicious conduct which involves political activity to his or her commanding officer or to the Intelligence Division.*

(2) *The Deputy Commissioner of Intelligence shall periodically inform and advise the Police Commissioner concerning the status of any investigations conducted pursuant to these guidelines.*

## **V. LEVELS OF INVESTIGATION**

*These guidelines provide for three levels of investigative activity. They are intended to provide the NYPD with the necessary flexibility to act well in advance of the commission of planned terrorist acts or other unlawful activity. However, if the*

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**ADDITIONAL DATA (continued)** *available information shows at the outset that the threshold standard for a Preliminary Inquiry or Full Investigation is satisfied, then the appropriate investigative activity may be initiated immediately, without progressing through more limited investigative stages.*

## A. CHECKING OF LEADS

*The lowest level of investigative activity is the “prompt and extremely limited checking out of initial leads,” which should be undertaken whenever information is received of such a nature that some follow-up as to the possibility of unlawful activity is warranted. This limited activity should be conducted with an eye toward promptly determining whether further investigation (either a Preliminary Inquiry or a Full Investigation) should be conducted.*

## B. PRELIMINARY INQUIRIES

(1) *In cases where the NYPD receives information or an allegation not warranting an investigation - because there is not yet a “reasonable indication” of unlawful activity - but whose responsible handling requires some further scrutiny beyond the prompt and extremely limited checking out of initial leads, the NYPD may initiate an “inquiry” in response to the allegation or information indicating the possibility of unlawful activity. Whether it is appropriate to open a Preliminary Inquiry immediately, or instead to engage first in a limited Checking of Leads, depends on the circumstances presented.*

*Example : If the NYPD receives an allegation that an individual or group has advocated the commission of violence, and no other facts are available, an appropriate first step would be Checking of Leads to determine whether the individual, group, or members of the audience have the apparent ability or intent to carry out the advocated unlawful act.*

(2) *The authority to conduct inquiries short of a Full Investigation allows the NYPD to respond in a measured way to ambiguous or incomplete information, with as little intrusion as the needs of the situation permit. This is especially important in such areas as where there is no complainant involved or when an allegation or information is received from a source of unknown reliability. Such inquiries are subject to the limitations on duration under paragraph (4) below and are carried out to obtain the information necessary to make an informed judgment as to whether a Full Investigation is warranted.*

*Example: Officers are not required to possess information relating to an individual’s intended unlawful use of dangerous biological agents or toxins prior to initiating investigative activity. If an individual or group has attempted to obtain such materials, or has indicated a desire to acquire them, and the reason is not apparent, investigative action, such as conducting a Checking of Leads or initiating a Preliminary Inquiry, may be appropriate to determine whether there is a legitimate purpose for the possession of the materials by the individual or group.*

*A Preliminary Inquiry is not a required step when facts or circumstances reasonably indicating unlawful activity are already available. In such cases, a Full Investigation can be immediately opened.*

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(3) A Preliminary Inquiry may be authorized by the Commanding Officer or Executive Officer of the Intelligence Division, or the Commanding Officer of the Criminal Intelligence Section ("the Authorizing Officials"). The Authorizing Official must assure that the allegation or other information which warranted the inquiry has been recorded in writing. Upon such authorization a notification must be made for final approval by the Deputy Commissioner of Intelligence.

(4) Inquiries shall be completed within 180 days after initiation of the first investigative step. The date of the first investigative step is not necessarily the same date on which the first incoming information or allegation was received. An extension of time in an inquiry for succeeding 90 day periods may be granted by the Deputy Commissioner of Intelligence. Any such request for extension shall be in writing and shall include a statement of the reasons why further investigative steps are warranted when there is no reasonable indication of unlawful activity. The action taken on any such request for extension shall also be recorded in writing.

(5) All lawful investigative techniques, including the use of undercover operations and the development of sources and informants may be used in an inquiry except:

- (a) Mail openings; and,
- (b) Eavesdropping and Video Surveillance as those terms are defined in Article 700 of the New York State Criminal Procedure Law.

(6) The following investigative techniques may be used in a Preliminary Inquiry without any prior authorization from a supervisor:

- (a) Examination of NYPD indices and files;
- (b) Examination of records available to the public and other public sources of information;
- (c) Examination of available federal, state and local government records;
- (d) Interview of complainant, previously established informants, and other sources of information;
- (e) Interview of the potential subject;
- (f) Interview of persons who should readily be able to corroborate or deny the truth of the allegation, except this does not include pretext interviews or interviews of a potential subject's employer or coworkers unless the interviewee was the complainant; and
- (g) Physical, photographic or video surveillance of any person, provided that such surveillance does not require a warrant.

The use of any other lawful investigative technique that is permitted in a Preliminary Inquiry shall meet the requirements and limitations of Part VI and, except in exigent circumstances, requires prior approval by a supervisor.

(7) Where a Preliminary Inquiry fails to disclose sufficient information to justify an investigation, the NYPD shall terminate the inquiry and make a record of the closing.

(8) All requirements regarding inquiries shall apply to reopened inquiries.

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### C. FULL INVESTIGATION

*A Full Investigation may be initiated when facts or circumstances reasonably indicate that an unlawful act has been, is being, or will be committed. A Full Investigation may be conducted to prevent, solve or prosecute such unlawful activity.*

*(1) The standard of "reasonable indication" is substantially lower than probable cause. In determining whether there is reasonable indication of an unlawful act an investigator may take into account any facts or circumstances that a prudent investigator would consider. However, the standard does require specific facts or circumstances indicating a past, current, or future violation. There must be an objective, factual basis for initiating the investigation; a mere hunch is insufficient.*

*(2) Where an unlawful act may be committed in the future, preparation for that act can be a current violation of the conspiracy or attempt provisions of state law. The standard for opening an investigation is satisfied where there is not yet a current substantive or preparatory unlawful act, but facts or circumstances reasonably indicate that such unlawful conduct will occur in the future.*

*(3) Any lawful investigative technique may be used in a Full Investigation, subject to the requirements and limitations of Part VI hereof.*

#### (4) Authorization and Renewal

*a. A Full Investigation may be authorized by the Commanding Officer or Executive Officer of the Intelligence Division or the Commanding Officer of the Criminal Intelligence Section ("the Authorizing Officials") upon a written recommendation setting forth the facts or circumstances reasonably indicating that an unlawful act has been, is being or will be committed. Upon such authorization a notification must be made for final approval by the Deputy Commissioner of Intelligence.*

*b. A Full Investigation may be initially authorized for a period of up to a year. An investigation may be continued upon renewed authorization for additional periods each not to exceed a year. Renewal authorization shall be obtained from the Deputy Commissioner of Intelligence. All requests for renewal authorization, and action thereon, shall be in writing.*

*c. Authorizations shall be reviewed by an Authorizing Official before the expiration of the period for which the investigation and each renewal thereof is authorized.*

*(5) An investigation which has been terminated may be reopened upon a showing of the same standard and pursuant to the same procedures as required for initiation of an investigation. All requirements regarding investigations shall apply to reopened investigations.*

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### D. TERRORISM ENTERPRISE INVESTIGATION

A Terrorism Enterprise Investigation is a Full Investigation but differs from a general investigation of unlawful conduct in several important respects. As a general rule, an investigation of a completed unlawful act is normally confined to determining who committed that act and securing evidence to establish the elements of the particular offense. It is, in this respect, self-defining. A Terrorism Enterprise Investigation must determine the identity and nature of the individual, group, or organization involved, its geographic dimensions, its past acts and intended goals, including unlawful goals, and its capacity for harm, among other factors. While a standard investigation of unlawful conduct terminates with the decision to prosecute or not to prosecute, a Terrorism Enterprise Investigation does not necessarily end, even though one or more of the participants may have been prosecuted.

In addition, groups and organizations provide a life and continuity of operation not normally found in other types of unlawful activity. As a consequence, these investigations may continue for several years. Furthermore, the focus of such investigations may be less precise than that directed against more conventional types of unlawful conduct. Unlike the usual case involving unlawful conduct, there may be no completed offense to provide a framework for the investigation. It often requires the fitting together of bits and pieces of information, many meaningless by themselves, to determine whether a pattern of unlawful activity exists. For this reason, such investigations are broader and less discriminate than usual, involving the interrelation of various sources and types of information.

This section focuses on investigations of enterprises that seek to further political or social goals through activities that involve force or violence, or that otherwise aim to engage in terrorism or terrorism-related crimes. It authorizes investigations to determine the structure and scope of the enterprise as well as the relationship of the members.

#### 1. General Authority

a. A Terrorism Enterprise Investigation may be initiated when facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of (i) furthering political or social goals wholly or in part through activities that involve force, violence or other unlawful acts; (ii) engaging in terrorism as defined in N.Y. Penal Law § 490.05, or (iii) committing any offense described in N.Y. Penal Law §§ 490.10, 490.15, 490.20, 490.25, 490.30, or 490.35, or other related statutes currently in effect or subsequently enacted. The standard of "reasonable indication" is identical to that governing Full Investigations generally. In determining whether an investigation should be conducted, the NYPD shall consider all of the circumstances including: (i) the magnitude of the threatened harm; (ii) the likelihood that it will occur; (iii) the immediacy of the threat; and (iv) any danger to privacy or free expression posed by an investigation. In practical terms, the "reasonable indication" standard for opening a Terrorism Enterprise Investigation could be satisfied in a number of ways.

Example: Direct information about statements made in furtherance of an enterprise's objectives which show a purpose of committing crimes described in N.Y. Penal Law §§ 490.10, 490.15, 490.20, 490.25, 490.30, 490.35 or other related statutes currently in effect or subsequently enacted, would satisfy the threshold.

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*Example: Activities such as attempting to obtain dangerous biological agents, toxic chemicals, or nuclear materials, or stockpiling explosives or weapons, with no discernible lawful purpose, may be sufficient to reasonably indicate that an enterprise aims to engage in terrorism.*

*b. While no particular factor or combination of factors is required, considerations that will generally be relevant to the determination whether the threshold standard for a Terrorism Enterprise Investigation is satisfied include, as noted, a group's statements, its activities, and the nature of potential unlawful acts suggested by the statements or activities. Thus, where there are grounds for inquiry concerning a group, it may be helpful to gather information about these matters, and then to consider whether these factors, either individually or in combination, reasonably indicate that the group is pursuing terrorist activities or objectives as defined in the threshold standard. Findings that would weigh in favor of such a conclusion include, for example, the following:*

*(1) Threats or advocacy of violence or other covered unlawful acts. Statements are made in relation to or in furtherance of an enterprise's political or social objectives that threaten or advocate the use of force or violence, or statements are made in furtherance of an enterprise that otherwise threaten or advocate unlawful conduct within the scope of N.Y. Penal Law §§ 490.10, 490.15, 490.20, 490.25, 490.30, 490.35, or other related statutes currently in effect or subsequently enacted which may concern such matters as (e.g.):*

- (i) engaging in attacks involving or threatening massive loss of life or injury, mass destruction, or endangerment of the national security;*
- (ii) killing or injuring public officials, or destroying public facilities, or defying lawful authority;*
- (iii) killing, injuring or intimidating individuals because of their status as United States nationals or persons, or because of their national origin, race, color, religion or sex; or*
- (iv) depriving individuals of any rights secured by the Constitution or laws of the United States or the State of New York.*

*(2) Apparent ability or intent to carry out violence or other covered activities. The enterprise manifests an apparent ability or intent to carry out violence or other activities within the scope of N.Y. Penal Law §§ 490.10, 490.15, 490.20, 490.25, 490.30, 490.35 or other related statutes currently in effect or subsequently enacted, e.g.:*

- (i) by acquiring or taking steps towards acquiring, biological agents or toxins, toxic chemicals or their precursors, radiological or nuclear materials, explosives or other destructive or dangerous material (or plans or formulas for such materials), or weapons, under circumstances where, by reason of the quantity or character of the items, the lawful purpose of the acquisition is not apparent;*
- (ii) by the creation, maintenance, or support of an armed paramilitary organization;*
- (iii) by paramilitary training; or*

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(iv) by other conduct demonstrating an apparent ability or intent to injure or intimidate individuals, or to interfere with the exercise of their constitutional or statutory rights.

(3) Potential Unlawful Act. The group's statements or activities suggest potential unlawful acts that may be relevant in applying the standard for initiating a Terrorism Enterprise Investigation - such as crimes under the provisions of the N.Y. Penal Law that set forth specially defined terrorism or support of terrorism offenses, or that relate to such matters as aircraft hijacking or destruction, attacks on transportation, communications, or energy facilities or systems, biological or chemical weapons, nuclear or radiological materials, assassinations or other violence against public officials or facilities, or explosives.

c. Mere speculation that force or violence might occur during the course of an otherwise peaceable demonstration is not sufficient grounds for initiation of an investigation under this Subpart. But where facts or circumstances reasonably indicate that an individual or group has engaged or aims to engage in conduct described in paragraph 1.a. above in a demonstration, an investigation may be initiated in conformity with the standards of that paragraph. This does not limit the collection of information about public demonstrations by individuals or groups that are under active investigation pursuant to paragraph 1.a. above or any other provisions of these guidelines.

## **2. Purpose**

The immediate purpose of a Terrorism Enterprise Investigation is to obtain information concerning the nature and structure of the enterprise as specifically delineated in paragraph (3) below, with a view to the longer range objectives of detection, prevention, and prosecution of the unlawful activities of the enterprise.

## **3. Scope**

a. A Terrorism Enterprise Investigation initiated under these guidelines may collect such information as:

- (i) the identity and nature of an individual or group and its members, their associates, and other persons likely to be acting in furtherance of its unlawful objectives, provided that the information concerns such persons' activities on behalf of or in furtherance of the suspected unlawful activity of the individual, group, or organization;
- (ii) the finances of the individual, group, or organization;
- (iii) the geographical dimensions of the individual, group, or organization; and
- (iv) past and future activities and goals of the individual, group, or organization.

b. In obtaining the foregoing information, any lawful investigative technique may be used in accordance with the requirements of these guidelines.

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### 4. Authorization and Renewal

a. A Terrorism Enterprise Investigation may be authorized by the Commanding Officer or Executive Officer of the Intelligence Division or the Commanding Officer of the Criminal Intelligence Section ("the Authorizing Officials"), upon a written recommendation setting forth the facts or circumstances reasonably indicating the existence of an enterprise as described in paragraph 1.a. above. Upon such authorization a notification must be made for final approval by the Deputy Commissioner of Intelligence. When exigent circumstances exist, as described in these guidelines, a Terrorism Enterprise Investigation may be commenced upon the verbal authorization of an Authorizing Official. However, in such cases, the required written recommendation must be submitted as soon as practicable.

b. A Terrorism Enterprise Investigation may be initially authorized for a period of up to a year. An investigation may be continued upon renewed authorization for additional periods each not to exceed a year. Renewal authorization shall be obtained from the Deputy Commissioner of Intelligence. The request for renewal and action thereon shall be in writing.

c. Authorizations shall be reviewed by an Authorizing Official before the expiration of the period for which the investigation and each renewal thereof is authorized. In some cases, the enterprise may meet the threshold standard but be temporarily inactive in the sense that it has not engaged in recent acts of violence or other unlawful activities as described in 1.a., nor is there any immediate threat of harm - yet the composition, goals and prior history of the group suggest the need for continuing law enforcement interest. The investigation may be continued in such cases with whatever scope is warranted in light of these considerations.

d. An investigation which has been terminated may be reopened upon a showing of the same standard and pursuant to the same procedures as required for initiation of an investigation.

## VI. INVESTIGATIVE TECHNIQUES

(1) When conducting investigations under these guidelines, the NYPD may use any lawful investigative technique permitted by these guidelines. The choice of investigative techniques is a matter of judgment, which should take account of:

- (i) the objectives of the investigation and available investigative resources;
- (ii) the intrusiveness of a technique, considering such factors as the effect on the privacy of individuals and potential damage to reputation;
- (iii) the seriousness of the unlawful act; and
- (iv) the strength of the information indicating its existence or future commission of the unlawful act.

(2) Where the conduct of an investigation presents a choice between the use of more or less intrusive methods, the NYPD should consider whether the information could be obtained in a timely and effective way by the less intrusive means. The NYPD should not hesitate to use any lawful techniques consistent with these guidelines in an investigation, even if intrusive, where the intrusiveness is warranted in light of the

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*seriousness of the crime or the strength of the information indicating its existence or future commission. This point is to be particularly observed in investigations relating to terrorist activities.*

(3) *Authorized methods in investigations include, among others, use of confidential informants, undercover activities and operations, eavesdropping and video surveillance (as defined in Article 700 of the NY Criminal Procedure Law), pen registers and trap and trace devices, consensual electronic monitoring, and searches and seizures.*

a. *Undercover Operations*

(i) *Undercover operations, including confidential informants, may be used when such operations are the most effective means of obtaining information, taking into account all the circumstances of the investigation, including the need for the information and the seriousness of the threat. The use of undercovers and confidential informants must be authorized by the Deputy Commissioner of the Intelligence Division prior to commencement of the undercover operation. The request to use undercovers or confidential informants and action taken on the request must be in writing and must include a description of the facts on which the investigation is based and the role of the undercover.*

(ii) *The use of an undercover or confidential informant will be approved for a period of 120 days and may be extended for additional periods of 120 days with the approval of the Deputy Commissioner of the Intelligence Division. Such extensions may be approved for as long as the investigation continues and the use of the undercover is the most effective means of obtaining information. The request to extend the use of undercovers and action taken on the request must be in writing and must include the reason for the extension.*

(iii) *Undercovers are strictly prohibited from engaging in any conduct the sole purpose of which is to disrupt the lawful exercise of political activity, from instigating unlawful acts or engaging in unlawful or unauthorized investigative activities.*

b. *Eavesdropping and Video Surveillance (as defined in Article 700 of the NY Criminal Procedure Law), Pen Registers and Trap and Trace Devices, and Consensual Electronic Monitoring*

(i) *All requirements for the use of such methods under the Constitution, applicable statutes, and NYPD regulations or policies must be observed.*

(4) *Whenever an individual is known to be represented by counsel in a particular matter, the NYPD shall follow applicable law and Department procedure concerning contact with represented individuals in the absence of prior notice to their counsel.*

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## **VII. DISSEMINATION AND MAINTENANCE OF INFORMATION**

### **A. Dissemination**

*The NYPD may disseminate information obtained during the Checking of Leads, Preliminary Inquiries and investigations conducted pursuant to these guidelines to federal, state or local law enforcement agencies, or local criminal justice agencies when such information:*

- (i) falls within the investigative or protective jurisdiction or litigative responsibility of the agency;*
- (ii) may assist in preventing an unlawful act or the use of violence or any other conduct dangerous to human life;*
- (iii) is required to be disseminated by interagency agreement, statute, or other law.*

### **B. Maintenance**

*All documentation required under these Guidelines shall be maintained by the Intelligence Division in accordance with general police department practice and applicable municipal record retention and destruction rules, regulations and procedures. Under these rules and practices documents are retained for no less than five years.*

## **VIII. COUNTERTERRORISM ACTIVITIES AND OTHER AUTHORIZATIONS**

*In order to carry out its mission of preventing the commission of terrorist acts in or affecting the City of New York and the United States and its people, the NYPD must proactively draw on available sources of information to identify terrorist threats and activities. It cannot be content to wait for leads to come in through the actions of others, but rather must be vigilant in detecting terrorist activities to the full extent permitted by law, with an eye towards early intervention and prevention of acts of terrorism before they occur. This Part accordingly identifies a number of authorized activities which further this end, and which can be carried out even in the absence of a checking of leads, Preliminary Inquiry, or Full Investigation as described in these guidelines. The authorizations include both activities that are specifically focused on terrorism and activities that are useful for law enforcement purposes in both terrorism and non-terrorism contexts. The authorized law enforcement activities of the NYPD include carrying out and retaining information resulting from the following activities.*

### **A. COUNTERTERRORISM ACTIVITIES**

#### **1. Information Systems**

*The NYPD is authorized to operate and participate in identification, tracking, and information systems for the purpose of identifying and locating potential terrorists and supporters of terrorist activity, assessing and responding to terrorist risks and threats, or otherwise detecting, prosecuting, or preventing terrorist activities. Systems within the scope of this paragraph may draw on and retain pertinent information from any source permitted by law, including information derived from past or ongoing*

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*investigative activities; other information collected or provided by governmental entities, such as foreign intelligence information and lookout list information; publicly available information, whether obtained directly or through services or resources (whether nonprofit or commercial) that compile or analyze such information; and information voluntarily provided by private entities. Any such system operated by the NYPD shall be reviewed periodically for compliance with all applicable statutory provisions and Department regulations and policies.*

### **2. Visiting Public Places and Events**

*For the purpose of detecting or preventing terrorist activities, the NYPD is authorized to visit any place and attend any event that is open to the public, on the same terms and conditions as members of the public generally. No information obtained from such visits shall be retained unless it relates to potential unlawful or terrorist activity.*

## **B. OTHER AUTHORIZATIONS**

### **1. General Topical Research**

*The NYPD is authorized to carry out general topical research, including conducting online searches and accessing online sites and forums as part of such research on the same terms and conditions as members of the public generally. "General topical research" under this paragraph means research concerning subject areas that are relevant for the purpose of facilitating or supporting the discharge of investigative responsibilities. It does not include online searches for information by individuals' names or other individual identifiers, except where such searches are incidental to topical research, such as searching to locate writings on a topic by searching under the names of authors who write on the topic, or searching by the name of a party to a case in conducting legal research.*

### **2. Use of Online Resources Generally**

*For the purpose of developing intelligence information to detect or prevent terrorism or other unlawful activities, the NYPD is authorized to conduct online search activity and to access online sites and forums on the same terms and conditions as members of the public generally.*

### **3. Reports and Assessments**

*The NYPD is authorized to prepare general reports and assessments concerning terrorism or other unlawful activities for purposes of strategic or operational planning or in support of other legitimate law enforcement activities.*

## **IX. PROTECTION OF PRIVACY AND OTHER LIMITATIONS**

### **A. General Limitations**

*The law enforcement activities authorized by this Part do not include maintaining files on individuals solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of any other rights secured by the Constitution or laws of the United States. Rather, all such law enforcement activities*

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*must have a valid law enforcement purpose and must be carried out in conformity with all applicable statutes and Department regulations and policies.*

**B. Construction of Part**

*This Part does not limit any activities authorized by or carried out under other Parts of these guidelines. The specification of authorized law enforcement activities under this Part is not exhaustive, and does not limit other authorized law enforcement activities of the NYPD.*

**X. RESERVATION**

*Nothing in these guidelines shall limit the general reviews or audits of papers, files, contracts, or other records in the possession of the NYPD or City of New York, or the performance of similar services at the specific request of another government agency. Such reviews, audits, or similar services must be for the purpose of detecting or preventing violations of law which are within the investigative responsibility of the NYPD.*

*Nothing in these guidelines is intended to limit the NYPD's responsibilities to investigate certain applicants and employees, or to pursue efforts to satisfy any other of its legal rights, privileges, or obligations.*

*These guidelines are set forth solely for the purpose of internal NYPD guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitation on otherwise lawful investigative and litigative prerogatives of the NYPD or City of New York.*

**RELATED  
PROCEDURES**

*Citywide Intelligence Reporting System (P.G 212-12)*

*Communications Between the Intelligence Division and Units in the Field Regarding Suspected Terrorist Activity (P.G. 212-110)*

*Guidelines for the Use of Video/Photographic Equipment by Operational Personnel at Demonstrations (P.G. 212-71)*

## APPENDIX B

### Review Criteria and Patrol Guide Procedures

**Review Criteria and Patrol Guide Procedures**

<b>Criteria</b>	<b>Level of Investigation</b>	<b>Patrol Guide Section</b>	<b>Patrol Guide Language</b>
Authorization to Open Investigation	Preliminary Inquiry	PG §212-72 Appx. V.B.(3)	A Preliminary Inquiry may be authorized by the Commanding Officer or Executive Officer of the Intelligence Division, or the Commanding Officer of the Criminal Intelligence Section ("the Authorizing Officials"). The Authorizing Official must assure that the allegation or other information which warranted the inquiry has been recorded in writing. Upon such authorization a notification must be made for final approval by the Deputy Commissioner of Intelligence.
Authorization to Open Investigation	Full Investigation	PG §212-72 Appx.B V.C.(4).a	A Full Investigation may be authorized by the Commanding Officer or Executive Officer of the Intelligence Division or the Commanding Officer of the Criminal Intelligence Section ("the Authorizing Officials") upon a written recommendation setting forth the facts or circumstances reasonably indicating that an unlawful act has been, is being or will be committed. Upon such authorization a notification must be made for final approval by the Deputy Commissioner of Intelligence.
Authorization to Open Investigation	Terrorism Enterprise Investigation	PG §212-72 Appx.B V.D.4.a	A Terrorism Enterprise Investigation may be authorized by the Commanding Officer or Executive Officer of the Intelligence Division or the Commanding Officer of the Criminal Intelligence Section ("the Authorizing Officials"), upon a written recommendation setting forth the facts or circumstances reasonably indicating the existence of an enterprise ... Upon such authorization a notification must be made for final approval by the Deputy Commissioner of Intelligence. When exigent circumstances exist, as described in these guidelines, a Terrorism Enterprise Investigation may be commenced upon the verbal authorization of an Authorizing Official. However, in such cases, the required written recommendation must be submitted as soon as practicable.
Informational Threshold	Preliminary Inquiry	PG §212-72 Appx.B V.B.(1)	In cases where the NYPD receives information or an allegation not warranting an investigation - because there is not yet a "reasonable indication" of unlawful activity - but whose responsible handling requires some further scrutiny beyond the prompt and extremely limited checking out of initial leads, the NYPD may initiate an "inquiry" in response to the allegation or information indicating the possibility of unlawful activity.
Informational Threshold	Full Investigation	PG §212-72 Appx.B V.C.	A Full Investigation may be initiated when facts or circumstances reasonably indicate that an unlawful act has been, is being, or will be committed.

AN INVESTIGATION OF NYPD'S COMPLIANCE WITH RULES GOVERNING  
INVESTIGATIONS OF POLITICAL ACTIVITY

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Informational Threshold	Terrorism Enterprise Investigation	PG §212-72 Appx.B V.D.(1)a.	A Terrorism Enterprise Investigation may be initiated when facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of (i) furthering political or social goals wholly or in part through activities that involve force, violence or other unlawful acts; (ii) engaging in terrorism as defined in N.Y. Penal Law § 490.05, or (iii) committing any offense described in [specific sections of the penal code]
Extension / Renewal of Investigation	Preliminary Inquiry	PG §212-72 Appx.B V.B.(4)	Inquiries shall be completed within 180 days after initiation of the first investigative step. The date of the first investigative step is not necessarily the same date on which the first incoming information or allegation was received. An extension of time in an inquiry for succeeding 90 day periods may be granted by the Deputy Commissioner of Intelligence. Any such request for extension shall be in writing and shall include a statement of the reasons why further investigative steps are warranted when there is no reasonable indication of unlawful activity. The action taken on any such request for extension shall also be recorded in writing.
Extension / Renewal of Investigation	Full Investigation	PG §212-72 Appx.B V.C.(4).b, c	A Full Investigation may be initially authorized for a period of up to a year. An investigation may be continued upon renewed authorization for additional periods each not to exceed a year. Renewal authorization shall be obtained from the Deputy Commissioner of Intelligence. All requests for renewal authorization, and action thereon, shall be in writing.  Authorizations shall be reviewed by an Authorizing Official before the expiration of the period for which the investigation and each renewal thereof is authorized.
Extension / Renewal of Investigation	Terrorism Enterprise Investigation	PG §212-72 Appx.B V.D.(4).b, c	A Terrorism Enterprise Investigation may be initially authorized for a period of up to a year. An investigation may be continued upon renewed authorization for additional periods each not to exceed a year. Renewal authorization shall be obtained from the Deputy Commissioner of Intelligence. The request for renewal and action thereon shall be in writing.  Authorizations shall be reviewed by an Authorizing Official before the expiration of the period for which the investigation and each renewal thereof is authorized.

AN INVESTIGATION OF NYPD'S COMPLIANCE WITH RULES GOVERNING  
INVESTIGATIONS OF POLITICAL ACTIVITY

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Discontinuance	Preliminary Inquiry	PG §212-72 Appx.B V.B.(7)	Where a Preliminary Inquiry fails to disclose sufficient information to justify an investigation, the NYPD shall terminate the inquiry and make a record of the closing.*
Use of Undercover Members of NYPD or Confidential Informants - Authorization	All Investigations	PG §212-72 Appx.B VI.(3).a.(i)	The use of undercovers and confidential informants must be authorized by the Deputy Commissioner of the Intelligence Division prior to commencement of the undercover operation. The request to use undercovers or confidential informants and action taken on the request must be in writing and must include a description of the facts on which the investigation is based and the role of the undercover.
Use of Undercover Members of NYPD or Confidential Informants - Extension	All Investigations	PG §212-72 Appx. VI.(3).a.(ii)	The use of an undercover or confidential informant will be approved for a period of 120 days and may be extended for additional periods of 120 days with the approval of the Deputy Commissioner of the Intelligence Division. Such extensions may be approved for as long as the investigation continues and the use of the undercover is the most effective means of obtaining information. The request to extend the use of undercovers and action taken on the request must be in writing and must include the reason for the extension.

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\* There are no Patrol Guide provisions that pertain to the discontinuance of Full Investigations or Terrorism Enterprise Investigations, though NYPD's Intelligence Bureau, in practice, files a Discontinuance Memo at the conclusion of all investigations.

## APPENDIX C

### **Review Criteria for Authorizations and Dates**

**Authorizations and Extensions – Time Limits and Approvals**

Question under Consideration	Document(s) Reviewed	Metrics	Associated Patrol Guide Section(s)
Was the authorization of the investigation properly documented?	Investigative Statements; Authorization Forms	<ul style="list-style-type: none"> <li>Presence of allegation or other information warranting the inquiry in the Investigative Statement;</li> <li>Presence of Authorization Form;</li> <li>Presence of Authorizing Official signature;</li> <li>Presence of Deputy Commissioner of Intelligence signature;</li> <li>Recorded date of Authorizing Official signature;</li> <li>Recorded date of Deputy Commissioner of Intelligence signature;</li> <li>Presence of checkmark indicating approval or disapproval of Authorizing Official;</li> <li>Presence of checkmark indicating approval or disapproval of Deputy Commissioner of Intelligence.</li> </ul>	PG §212-72 V.B.(3); PG212-72 V.C.(4).a; PG212-72 V.D.4.a
Was the authorization of the extension of the investigation properly documented?	Investigative Statements; Authorization Forms	<ul style="list-style-type: none"> <li>Presence of Authorization Form;</li> <li>Presence of Deputy Commissioner of Intelligence signature;</li> <li>Date of Deputy Commissioner of Intelligence signature within designated time frame;</li> <li>Presence of checkmark indicating approval or disapproval of Deputy Commissioner of Intelligence.</li> </ul>	PG §212-72 V.B.(4); PG212-72 V.C.(4).b; PG212-72 V.C.(4).c; PG212-72 V.D.4.b; PG212-72 V.D.4.c
Was the authorization of the use of a human source properly documented?	Human Source Memos; Authorization Forms	<ul style="list-style-type: none"> <li>Presence of Human Source Authorization Memo;</li> <li>Presence of Authorization Form;</li> <li>Presence of Deputy Commissioner of Intelligence signature;</li> <li>Recorded date of Deputy Commissioner of Intelligence signature;</li> <li>Presence of checkmark indicating approval or disapproval of Deputy Commissioner of Intelligence.</li> </ul>	PG §212-72 VI.(3).a.(i)

AN INVESTIGATION OF NYPD'S COMPLIANCE WITH RULES GOVERNING  
INVESTIGATIONS OF POLITICAL ACTIVITY

AUGUST 2016

Was the authorization of the extension of the use of a human source properly documented?	Human Source Authorization Memos; Authorization Forms	<ul style="list-style-type: none"><li>• Presence of Authorization form;</li><li>• Presence of Deputy Commissioner of Intelligence signature;</li><li>• Date of Deputy Commissioner of Intelligence signature within designated time frame;</li><li>• Presence of checkmark indicating approval or disapproval of Deputy Commissioner of Intelligence.</li></ul>	PG §212-72 VI.(3).a.(ii)
Was the discontinuance of the Preliminary Inquiry properly documented?	Discontinuance Memos; Authorization Forms	<ul style="list-style-type: none"><li>• Presence of Discontinuance Memo;</li><li>• Presence of Authorization Form;</li><li>• Presence of Authorizing Official signature;</li><li>• Presence of Deputy Commissioner of Intelligence signature;</li><li>• Recorded date of Authorizing Official signature;</li><li>• Recorded date of Deputy Commissioner of Intelligence signature;</li><li>• Presence of checkmark indicating approval or disapproval of Authorizing Official;</li><li>• Presence of checkmark indicating approval or disapproval of Deputy Commissioner of Intelligence.</li></ul>	PG §212-72 V.B.(7)

# **EXHIBIT L**



# NYPD's Muslim surveillance violated regulations as recently as 2015: report

NYPD inspector general finds investigators consistently failed to get proper authorization for surveillance, and that 95% of reviewed cases targeted Muslims

**Mazin Sidahmed**

Wednesday 24 August 2016 08.47 EDT

The New York City police department has violated several regulations in its surveillance of predominantly Muslim communities as recently as 2015, a report released on Thursday found.

The 67-page report was completed by the NYPD's inspector general, and examined the police department's intelligence unit.

ADVERTISING

The report found that, when examining political groups, investigators consistently failed to get

proper authorization or timely extensions for investigations or the use of informants and undercover cops.

“This investigation demonstrates a failure by NYPD to follow rules governing the timing and authorizations of surveillance of political activity,” said Mark G Peters, commissioner of the department of investigations (DOI), a city-wide watchdog. NYPD’s inspector general office is a part of the DOI and was only created two years ago following a law passed in the city council.

NYPD’s guidelines for investigating are dictated by the Handschu agreement, established 32 years ago following a class-action lawsuit filed by several political organizations that accused the NYPD of unconstitutional surveillance.

“The Guidelines were designed to establish certain baseline controls on NYPD’s considerable investigative power,” the report explained.

The office of the inspector general examined investigations that were closed between 2011 and 2015, some of which started as early as 2004.

The number of reports the inspector general examined was redacted but in a footnote on the first page, the authors note that more than 95% of the individuals under investigation were Muslim and/or engaged in activity associated with Islam.

“I am deeply disturbed to learn that 95% of the sample investigative statements reviewed by the IG were Muslims or entities associated with Islam,” said Linda Sarsour, executive director of the Arab American Association of New York. “Is this a confirmation of a Muslim surveillance program?”

The findings troubled many activists in New York’s Muslim community due to the NYPD’s tumultuous history with Muslim American New Yorkers. In 2011, the department was revealed to have unconstitutionally infiltrated Muslim student groups, mosques, religious bookstores, hookah bars and other predominantly Muslim areas to spy on people.

The demographics unit, which was responsible for the program, was dismantled in 2014.

The original surveillance program sparked a series of lawsuits, one of which concluded earlier this year. In the settlement of the case of *Raza v The City of New York* - which is still subject to court approval - the NYPD agreed to several reforms including: requiring facts before an investigation is launched, limiting the use of informants and undercovers, and prohibiting investigations in which race, religion or ethnicity is a substantial motivating factor.

Naz Ahmad, a staff attorney for Creating Law Enforcement Accountability & Responsibility (Clear) Project, which represented the plaintiffs in the case, welcomed the inspector general’s findings.

“We welcome the inspector general’s report confirming what our clients have long known: that

the NYPD's surveillance of American Muslims operated without oversight and often in violation of the rules," Ahmad said.

The use of informants and undercover police, known as human sources, came under scrutiny in the report. Of the requests for human sources reviewed, none contained any details about the anticipated role of that source. It also criticized the use of "boilerplate" language when providing reasons for extending the use of informants.

Preliminary inquiries, which allow the police to gather information even when no law has been broken, were allowed to continue indefinitely, and 100% of the extensions reviewed by the office of the inspector general contained no reason for the extension.

The report found the NYPD's intelligence unit would also routinely continue investigations even after legal authority had expired, which amounted to months of time over the course of investigations.

The NYPD did not have any qualms with the findings of the report.

"I am very pleased the inspector general's audit has independently confirmed this to be true, and I thank the IG's office for its work on this audit and report," said outgoing police commissioner William J Bratton.

Fahd Ahmed, the executive director of Desis Rising Up & Moving (Drum), said the report confirms their suspicions and evidence. Drum conducted a survey of the Muslim community between 2011 and 2015 and found that surveillance by the NYPD was ongoing.

"They might as well rename it the Muslim Investigations Department," Ahmed said.

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# **NYPD spied on city's Muslim anti-terror partners**

**EILEEN SULLIVAN**

Oct. 6, 2011

Associated Press

NEW YORK (AP) — Egyptian sheik Reda Shata considered himself a partner in New York's fight against terrorism. He cooperated with the police and FBI, invited officers to his mosque for breakfast, even dined with Mayor Michael Bloomberg.

Despite the handshakes and photo ops, however, the New York Police Department was all the while watching him. Even as Shata's story was splashed across the front page of The New York Times in a Pulitzer Prize-winning series about Muslims in America, an undercover officer and an informant were assigned to monitor him, and two others kept tabs on his mosque that same year.

An Associated Press investigation has found that the NYPD dispatched undercover officers into ethnic communities to monitor daily life and scrutinized more than 250 mosques and Muslim student groups in the years after the Sept. 11 terrorist attacks. Some of its programs were developed with the help of seasoned CIA officers.

"What did they find?" Shata asked through an interpreter at his current mosque in Monmouth County, N.J., after learning about the secret surveillance. "It's a waste of time and a waste of money."

Shata welcomed FBI agents to his mosque to speak to Muslims, invited NYPD officers for breakfast and threw parties for officers who were leaving the precinct during his time at the Islamic Center of Bay Ridge. As police secretly watched him in 2006, he had breakfast and dinner with Bloomberg at Gracie Mansion and was invited to meet with Police Commissioner Raymond Kelly, Shata recalls.

"This is very sad," he said after seeing his name in the NYPD file. "What is your feeling if you see this about people you trusted?"

This was life in America for Shata: a government partner in the fight against terrorism and a suspect at the same time.

The dichotomy between simultaneously being partner and suspect is common among some of New York's Muslims. Some of the same mosques that city leaders visited to hail their strong

alliances with the Muslim community have also been placed under NYPD surveillance — in some cases infiltrated by undercover police officers and informants.

In April, more than 100 area imams publicly supported a rally to "oppose wars, condemn terrorism and fight Islamophobia." Of those, more than 30 were either identified by name or work in mosques included in the NYPD's 2006 listing of suspicious people and places.

"The way things are playing out in New York does not paint a picture of partnership and of a conversation among equals," said Ramzi Kassem, a professor at the City University of New York School of Law. "It seems that city officials prefer hosting Ramadan banquets to engaging with citizens who wish to hold them to account. Spying on almost every aspect of community life certainly does not signal a desire to engage constructively."

On Wednesday, seven New York Democratic state senators called for the state attorney general to investigate the NYPD's spying on Muslim neighborhoods. And last month, the CIA announced an inspector general investigation into the agency's partnership with the NYPD.

A small number of Capitol Hill and New York lawmakers have called for greater oversight and controls over the police department's intelligence unit. But most in politics, including President Barack Obama, have shown no interest in even talking about what the NYPD is doing, much less saying whether they support it.

NYPD spokesman Paul Browne did not return messages over two days. Bloomberg's office, which has repeatedly referred questions to the NYPD, also did not respond.

Liberal members of New York City Council and Muslim and civil rights groups plan to publicly raise questions Thursday about the police department's tactics in the years since 9/11.

The spying has not been limited to Shata.

In May, Bloomberg and Kelly organized a news conference to discuss two suspected terrorists. Appearing with the officials was Mohammad Shamsi Ali, an imam regularly at the mayor's side for public appearances that touch on Muslim issues. Shamsi Ali said he and the mayor have maintained good communication over the years. In July, he was invited to a pre-Ramadan conference hosted by the NYPD, and for the past three years he said he has been invited to speak at the police academy about Islam and Muslims.

Yet in 2006, the NYPD infiltrated two mosques where Shamsi Ali holds leadership roles — the Islamic Cultural Center of New York and the Jamaica Muslim Center. The NYPD cited radical rhetoric and possible money laundering in the Islamic Cultural Center of New York and said the Jamaica Muslim Center was a hub of radicalization that offered martial arts training. Shamsi Ali said he was unaware of the police assessments and denied the underlying accusations.

"How do you define rhetoric?" Shamsi Ali asked. He said some imams sound harsh when they're preaching. And, if the NYPD suspected money laundering, it should ask the Internal Revenue Service to audit the mosque, he said.

"It's wrong to view Muslims as radicals simply because of the outfit," Shamsi Ali said.

Last year, after a Pakistani-American man was accused of attempting to detonate a car bomb in Times Square, Kelly, the police commissioner, visited the Al-Iman mosque in Astoria, Queens, where he praised a Muslim street vendor for reporting the suspicious vehicle to local police. Kelly assured members of the mosque that racial profiling is prohibited by the police, though he acknowledged in response to a question that officers will conduct random checks of people who fit a particular description.

Yet in 2006, the NYPD recorded in its files that members of the same mosque belonged to extremist organizations that harbored anti-American sentiments and terrorist sympathies. That mosque was placed under surveillance by an undercover NYPD officer and a confidential informant, according to the police files.

In October 2006, the president of the Brooklyn borough attended an event on the final day of Ramadan at Brooklyn's Makki Masjid. The borough president, Marty Markowitz, described his Muslim neighbors as "like every other group in our fabric — successful, community-minded contributors who improve our quality of life." Meanwhile, the NYPD recorded in its files that Makki Masjid was a "Tier One" mosque because of its members' radical Islamic views.

Two Queens mosques that the NYPD was monitoring in 2006 — one because it was suspected of funding the Taliban and another that the department described as the national headquarters of an extremist organization — are listed as "destination options" in a 2009 official city planning brochure for a bike tour of Queens intended to promote the community's diversity.

Shamsi Ali said he was not surprised to learn that police were secretly listening inside his mosques.

"Everywhere that I go, I feel someone must be listening to me," Shamsi Ali said. "As long as I do things according to law, I don't have to worry at all."

The New York Times story about Shata, which won the 2007 Pulitzer Prize for feature writing, described his efforts to reconcile Muslim traditions with American life. Police documents from the same year the story was published described Shata, who emigrated from Egypt in 2002, as a "Tier One" person of interest. According to the police files, a person of interest is "an individual with threat potential based on their position at a particular location, links to an organization, overseas links and/or criminal history."

Mark Mershon, the FBI's senior agent in New York in 2006, said he has no recollection of Shata ever being under FBI investigation. A search of commonly used court and public record files show no evidence of any criminal record for Shata.

Shata said he still considers Bloomberg his friend, but he was hurt by what he saw in the police files.

"You were loving people very much, and then all of a sudden you get shocked," Shata said. "It's a bitter feeling."

Associated Press writers Matt Apuzzo and Adam Goldman contributed to this report.

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Contact the Washington investigative team at DCInvestigations(at)ap.org

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## **EXHIBIT M**



Vol. 80/No. 32 August 29, 2016

(Socialist Workers Party campaign statement)

## Stop the attacks on Muslims, mosques!

*The following statement by Jacob Perasso, Socialist Workers Party candidate for U.S. Senate from New York, was released Aug. 14.*

The Socialist Workers Party condemns the cold-blooded assassination of Imam Maulama Akonjee and his friend Thara Uddin as they left a mosque in Ozone Park, Queens, Aug. 13. We call on workers, farmers and defenders of democratic rights to condemn this vicious attack. We call for the arrest and prosecution of whoever is responsible.

This attack and others on Muslims and mosques are the inevitable consequence of the climate created by the U.S. capitalist rulers and their government. They promote anti-Muslim hysteria to serve their war aims and to justify spying on mosques and Muslims by the FBI, New York City cops and other government agencies. The fact is that most victims of Islamist terrorism are Muslims. We oppose police spying. History has shown it is aimed above all at the working class and our unions.

Washington talks about peace while escalating endless wars in Afghanistan, Iraq, Libya and Syria. The Pentagon — with President Barack Obama's personal supervision — uses drones to assassinate anyone it decides to, acting as judge, jury and executioner and killing hundreds of civilians along the way. And this doesn't include those killed in other U.S. airstrikes and bombings. Both Hillary Clinton and Donald Trump and their parties endorse this.

While Obama has criticized Trump for his demagogic remarks slandering Muslims, his administration has put thousands of Muslims on the no-fly list and denied many of them visas to enter the United States because of their faith.

As the worldwide capitalist economic crisis deepens with no end in sight, there will be more attacks on democratic and political rights and on workers and our unions at home, as the U.S. propertied rulers accelerate trade wars and shooting wars abroad.

To defend its interests, the working class must vigorously oppose the U.S. war drive and attacks on democratic rights. An injury to one is an injury to all.

Stop the attacks on mosques and Muslims! U.S. troops out of Iraq, Afghanistan, Libya and Syria!

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Vol. 80/No. 25   July 11, 2016

## Oppose attacks on Muslims after Orlando terror assault

**BY ANTHONY DUTROW**

MIAMI — U.S. Muslim groups are on guard against attacks in the wake of the June 12 terrorist assault at a gay nightclub in Orlando. The assailant, Omar Mateen, called police to pledge allegiance to Islamic State shortly after he opened fire at the club Pulse, leaving 49 dead and 53 wounded.

In later phone calls with police negotiators, Mateen, who was born in New York to parents from Afghanistan, called for an end to U.S. bombing strikes in Syria and Iraq and threatened to detonate a car bomb. Police shot him dead when they stormed the club three hours after the assault began.

Since the attack, many mosques around Florida report threats. The Husseini Islamic Center in Sanford was vandalized June 13 by someone who spray-painted "#stopthehate" on the building. At the Islamic Foundation of South Florida in Sunrise, Irina Bihary was arrested June 19 on charges of entering a prayer room and threatening to blow it up with what turned out to be a hoax bomb.

Numerous Islamic groups have issued statements condemning the Orlando slaughter. The Islamic Society of North America "sends its condolences and prayers to the families of the victims," said ISNA President Azhar Azeez in a June 12 statement. "We urge the community to stand united against all acts of violence. We encourage our members to donate to help with the immediate, short-term needs of the grieving families and our members in Florida to visit a blood center today to donate blood to help the victims of the shooting."

Media coverage of the Orlando massacre initially focused on the reactionary character of the attack on gay people, while downplaying the obvious Islamic State connection. The FBI initially deleted all references to the reactionary group in transcripts they released of Mateen's calls to the cops. After protests they reluctantly released more complete versions.

Republican presidential contender Donald Trump called for suspending immigration to the U.S. from countries with "a proven history of terrorism."

Democratic presidential hopeful Hillary Clinton called for stepping up Washington's military drive against Islamic State in Iraq and Syria, an "intelligence surge" to give police more powers, and stiffer gun control laws.

"The Socialist Workers Party calls on working people to oppose all attempts to widen government spying, tighten immigration laws, or infringe on the right to worship," said Cynthia Jaquith, SWP candidate for U.S. Senate in Florida. "We condemn any and all attacks on Muslims. We call for the withdrawal of all U.S. troops from Afghanistan, Iraq, Syria and the rest of the Middle East."

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Vol. 80/No. 3 January 25, 2016

## Socialist Workers Party backs defense of Somali meatpackers

BY NAOMI CRAINE

“We met with workers in their homes, outside the giant Cargill meatpacking plant where more than 150 Somali workers were fired in December in a dispute over their right to pray, and in small stores affected by the firings,” reported Jacquie Henderson from Minneapolis. She was part of a team of members and supporters of the Socialist Workers Party from Colorado, California and Minnesota who visited Fort Morgan, Colorado, Jan. 9-11 to learn more about the workers’ fight and be able to build support for it.

“Many wanted to learn more about a party like ours,” she said, especially after seeing the *Militant*’s coverage of party leader Joel Britton joining Imam Musa Baldé in speaking at a meeting protesting an attack on a mosque in Alameda, California.

“Dozens of workers stopped to talk at Cargill’s afternoon shift change Jan. 11,” Henderson said. “Twenty-four bought copies of the *Militant* and one Spanish-speaking worker with 20 years at the plant subscribed. He disagreed with some of his co-workers who said that perhaps the Muslims were just trying to get more breaks. ‘I do think the Somali workers have a problem with the company denying them time to pray,’ he said. ‘The company has been trying to push all of us back on our break.’

“One Caucasian worker who was picking up his brother and got a copy of the paper said he wasn’t for companies and governments interfering in people’s lives, ‘like in Oregon, where the two guys were put in jail for taking care of their land,’” Henderson wrote.

“We have been taking initiatives in defense of Mohamed Harkat, who the Canadian government is trying to deport,” wrote Katy LeRougetel from Calgary, Alberta. Originally from Algeria, Harkat is one of the “Secret Trial 5” — Muslim Arab men subjected to arbitrary detention and threat of deportation using “security certificates.” The certificates allow the government to use secret evidence that neither the defendants nor their lawyers can see.

“Members of the Communist League here have spoken with co-workers about this attack on all workers’ rights,” said LeRougetel. “Several have signed letters opposing Harkat’s deportation. I spoke about the case at a candlelight vigil in front of City Hall Jan. 6, organized by the Hussaini Association of Calgary to protest the execution of Sheik Nimr al-Nimr in Saudi Arabia. There were lots of nods when I said that attacks on Muslims and mosques were encouraged by the government’s ‘war on terror.’”

In Miami, SWP member Amanda Ulman and Munawar Chaudhry of Muslims for Peace and the Al Ahmadiyya Muslim Community shared the platform at a Militant Labor Forum Jan. 8. In December the SWP participated in a public meeting that Al Ahmadiyya organized in Hallandale Beach as a memorial for those killed in the attack by Islamic State supporters in San Bernardino, California, and in response to attacks on several Florida mosques.

“We will continue to join with others in protesting these attacks,” said Ulman. “Washington uses the violent massacres in San Bernardino and Paris to justify its military policy in the Mideast. This is what encourages those who attack Muslims and mosques. Defense comes from public mobilizations.”

Chaudhry said that statements of solidarity “give strength to Muslims in times like this.”

### Related articles:

# THE MILITANT

Vol. 80/No. 34    September 12, 2016

(front page)

## Hundreds debate gov't moves to keep mosque out of Ga. county

BY JOHN BENSON

AND RACHELE FRUIT

COVINGTON, Ga. — “The Socialist Workers Party condemns the attempt to prevent the congregation of Masjid Attaqwa in Doraville from building a mosque and establishing a cemetery in Newton County,” said Sam Manuel, SWP candidate for U.S. Senate from Georgia, at an Aug. 22 town hall meeting here. It was organized by the Newton County Commission to provide a platform for people to ask questions or comment on the proposed project.

The county recently adopted a five-week moratorium on permits for places of worship that would prevent the mosque from being constructed.

Three hundred people packed each of two back-to-back meetings. The majority of the 70 people who spoke opposed the mosque. Some said they thought Islam was a “death cult,” others expressed concern that the congregation would impose Sharia law on the county, or that the land could be used for an Islamic State training camp. Several people said they were worried they could be poisoned by the drinking water because Muslims don’t embalm their dead. Speakers were asked not to identify themselves.

“Decades of war in the Middle East in Afghanistan, Iraq and Syria — that have killed tens of thousands of toilers, most of them Muslims — have been overseen by Democratic and Republican administrations alike, from Bush to Clinton to Bush and Obama,” said Manuel, who did identify himself. “The crisis unfolding in that part of the world is a result of the unraveling of



Johnny Kauffman/WABE

Meeting in Covington, Georgia, Aug. 22 debated Newton County Commission moves to block building mosque and cemetery. Edmond Hall, above, speaks against Muslim center. Others, including Sam Manuel, Socialist Workers Party candidate for U.S. Senate, condemned moves to keep mosque out. Anti-Muslim rhetoric divides and weakens working class, Manuel said.

the U.S.-imposed imperialist world order.

“We also face the consequences of the world economic crisis, from continued high unemployment to lack of health care,” Manuel said. “We need a movement independent of both capitalist parties that fights for all workers, including those who are Muslims.”

Half a dozen people joined Manuel in standing up in defense of the right of Muslims to build in the community. “If this discussion was happening 100 years ago, there’s a good chance it would be about my people,” commented Kendra Miller, who said she was of Jewish descent.

“I don’t think many of you really know how they are as a people,” said a 17-year-old African-American woman who didn’t identify herself. “I would like to say that not long ago people like me, Black people, were treated the same way.”

Mohammad Islam is the Imam of Masjid Attaqwa mosque in Doraville, a suburb of Atlanta, who organized to purchase the Newton County land. He came to the United States from Bangladesh 24 years ago and now leads a congregation of some 200 members, mostly Bangladeshis. In an Aug. 24 meeting with SWP leaders, he explained that they have no place to bury their dead and to pray before the burial.

“Land is very expensive, especially in Atlanta. We found this 135-acre site for sale in Newton County near another cemetery and at a price we thought we could raise,” Islam said. “Our plan was approved by the Newton County Commission, and we closed the deal last August.”

Islam said that they were not invited to the Aug. 22 evening meetings and that they learned about the moratorium on the religious buildings from the news.

“We are not in a hurry. It is more important for us to have good relations with those who will be our neighbors and to answer any questions or concerns that they have,” Islam said. “Yesterday a group of Newton County residents accepted our invitation to visit our mosque and get to know one another.”

Over the past five years, officials in Lilburn, Kennesaw and Snellville, all cities across metro Atlanta, have used zoning laws to deter Muslim projects from being built.

Between 2009 and 2015, the Georgia Council on American-Islamic Relations has documented more than 40 incidents in which mosques faced interference, local building moratoriums, vandalism and harassment.

The NAACP, CAIR and more than a dozen Muslim groups have asked the Department of Justice to investigate the Newton County moratorium.

Ronnie Johnston, mayor of Covington, and the other four town mayors in Newton County, wrote to the county commission Aug. 26 urging them to remove the moratorium on places of worship and that a meeting be set up with leaders of the proposed mosque. “We will all have to work to

undo some of the ill will you created by your actions," they said.

On Aug. 27, supporters of SWP candidates Manuel and Alyson Kennedy and Osborne Hart for president and vice president campaigned door to door in Covington, introducing the party and its program. They discussed how to fight against the effects on working people of Washington's imperialist wars abroad and capitalist depression conditions at home. They took the opportunity to discuss what workers thought about the proposed mosque and cemetery.

Steve Shope, an electrician, told SWP member Susan LaMont he was concerned that building a mosque in Newton County might attract terrorists to the area, even though he thought the people with the mosque are not terrorists themselves.

"I don't want to label anybody," Shope said. "I don't see how what the terrorists are doing accomplishes anything for the Muslim people."

"It's important for us as workers to be conscious that anti-Muslim rhetoric and actions cut across working people coming together to fight in our common interests," LaMont said. "And the seemingly endless U.S.-led wars in the Mideast are what have created the conditions in which reactionary terror groups like Islamic State recruit and grow. And they are responsible for hostility and discrimination against Muslims."

After the discussion, Shope said he'd like to try a subscription to the *Militant*.

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[Miami forum: 'Oppose attacks on Muslims, mosques'](#)

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# **EXHIBIT N**



Vol. 79/No. 29 August 17, 2015

(front page)

## Socialist Workers Party in Philadelphia files for ballot

BY JOHN STUDER

PHILADELPHIA — “Our campaign is a voice for working people, here in Philadelphia, the United States and for that matter around the world,” viewers of CBS Channel 3 News saw Osborne Hart, Socialist Workers Party candidate for mayor, tell the press as he filed for ballot status alongside running mate John Staggs, SWP candidate for City Council at-large Aug. 3. The *Philadelphia Inquirer* and WHYY radio also covered the City Hall filing.

As they turned in 2,950 signatures, the candidates were joined by a group of campaign supporters; Glova Scott, who ran as SWP candidate for City Council in Washington, D.C., earlier this year; and the campaign’s lawyer, Larry Otter.

“The signatures, more than two times the required 1,325, were gathered going door to door in neighborhoods throughout the city,” petitioning director Janet Post said, “where working people welcomed the opportunity to hear about a working-class alternative.”

“There is a deep worldwide crisis of the capitalist system. Working people face a ruinous assault on our standard of living and social conditions,” Hart told the press. “Depressed wages, joblessness, speedup on the job, increasingly dangerous working conditions — this is what the employers put on us as they drive to push their profit rates up.

“There is growing working-class resistance to these attacks,” said Hart, who works as an overnight stocker at Walmart. He pointed to the importance of the fight by Steelworkers at ATI and workers at Verizon fighting against concession demands. “The growing social movement for a \$15 minimum wage and a union, which John and I are part of, is part of this resistance,” Hart said.

“Our campaign is part of these struggles. We call for workers to break from the two parties of the bosses, the Democrats and Republicans, and build their own party, a labor party based on the unions,” he said.

“Workers struggles — from the fight for \$15 to the ongoing struggle against police brutality and cop killings of African-Americans and others across the country — and independent working-class political action,” Hart said, “open the road to taking power out of the hands of the propertied rulers and reorganizing society in the interests of the majority of humanity.”

“We can learn from the example of the Cuban Revolution,” he said. “Cuban workers and farmers took power there 56 years ago and have built and continue to defend their socialist revolution, based on human solidarity.”

During the three-week ballot drive, Socialist Workers Party campaigners participated in protests against the beating of Tyree Carroll in Germantown by 26 Philadelphia cops, petitioned outside the International Longshoremen’s Association hiring hall, joined a rally to celebrate 15 years of gains for equal rights won through struggles buoyed by the Americans with Disabilities Act and talked to workers on their porches from one end of the city to the other.

“After college I worked for a program for kids with autism,” Julia DeFalco, 26, told Staggs Aug. 1 on her doorstep in Northeast Philadelphia. “But then they told me I couldn’t remain their employee, I had to become an ‘independent contractor.’ I would have no guaranteed hours and have to pay my own taxes and liability insurance. I said no thanks.”

“Then I got a job in a day care center that promised \$10 an hour, but when I got my first check it was for \$7.25,” she said, signing the petition. “I had to quit that too.”

“More and more workers are pushed to be temporary workers or ‘independent contractors,’ like they tried to force on you, or to take lower wages,” Staggs said. “The bosses want to put all the uncertainty and burden on the worker, to boost profits. On the West Coast port truckers have organized to fight to be recognized as workers and for a union. And they are having success.”

### Join fight against police brutality

“The accumulated public accounts of cops killing and brutalizing working people, building on the profound transformation in peoples’ social outlook produced by the victory of the mass Black-led movement that overthrew Jim Crow segregation, has put increasing pressure on the cops and the politicians,” Hart told a Militant Labor Forum here July 31. “When University of Cincinnati cop Ray Tensing shot Samuel DuBose dead during a traffic stop July 19, he was promptly arrested and charged with murder.”

This reflects progress forced by historic changes in popular consciousness and the growing Black Lives Matter protests that have drawn thousands into action, pushing the cops back, Hart said. The weekend before Hart participated in the Movement for Black Lives national conference in Cleveland.

“I want to thank Osborne, John and Janet for helping to do the battle to demand justice from the cops who killed my son Frank McQueen,” Delphine Matthews told forum-goers. Cops shot McQueen more than 20 times in June 2014 in Chester, south of

AOR388

Philadelphia. "I still haven't received anything from the cops and city officials there, no coroner's report, not even his personal belongings."

"I'm a fighter and I'll fight to the end," she said. "Not just for my son, but for everyone — African-American, Caucasian, everyone." She invited the socialist campaign to join her the next day for a street corner speakout against police brutality.

Hart and other socialist campaigners joined Matthews and others near the Frankford Transportation Center in northeast Philadelphia the next day.

Before the protest, Hart took the campaign door to door in the surrounding neighborhood, telling people about the speakout. "I'm going," Ikea Coney told Hart, saying her son Darring Manning was beaten by Philadelphia cops last year.

"The Philadelphia campaign is really the beginning of the Socialist Workers Party's 2016 campaign for president and state offices across the country," Staggs told supporters at City Hall. "We'll be campaigning across the city and beyond. We'll join in the fights against attacks by the bosses and their government."

"We're campaigning to win people to the Socialist Workers Party," he said.

*Róger Calero contributed to this article.*

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Vol. 79/No. 41 November 16, 2015

(lead article)

## 'Our victory is that workers get a voice' in 2015 election

BY CHRIS HOEPPNER

PHILADELPHIA — "This is great! I've never had socialists knock on my door," Michelle Thompson told John Staggs, Socialist Workers Party candidate for City Council at-large, in the Port Richmond neighborhood here Nov. 1. Staggs and Osborne Hart, SWP candidate for mayor, are on the ballot in the Nov. 3 election.

The SWP candidates have gotten widespread media coverage, appeared in numerous candidates' debates, joined union picket lines and protests against cop brutality and talked to workers on their doorsteps. They've sought to put every political question in a class framework, and promote working-class solutions.

Katie Colaneri, a reporter for WHYY public radio and its associated Newsworks website, accompanied the socialist candidates as they knocked on workers' doors in the Mayfair area in Northeast Philadelphia. "The working class neighborhood is home to just the kind of voters they're targeting," Colaneri wrote Oct. 26.

She asked Hart what the SWP would accomplish through the campaign. "Our victory is that working people get a voice in the elections," Hart answered.

The party has been asking workers to join a Nov. 10 rally at 3:30 p.m. at City Hall organized by fast-food workers, Walmart workers and many others demanding \$15 an hour, regular full-time schedules and a union. Hart works as an overnight stocker at Walmart and Staggs works a cash register at a different store.

"Yes, I support the fight for \$15 an hour — but the minimum wage should be at least \$20 an hour," Sean Wright, a construction worker, told campaign supporter Janet Post on his doorstep in Port Richmond Nov. 1.

"The hardest thing about working at McDonald's was the terrible pay," Elizabeth Wilcox, who worked there 30 years, told Post. She said that she will try to go to the Nov. 10 demonstration because to win \$15 an hour "will take a fight."

"A lifelong supporter of black people's rights, he [Hart] was a participant in the July 24-26 Black Lives Matter national conference in Cleveland," said a Newsworks 2015 Philadelphia Voters Guide. "He also supports a woman's right to have an abortion, has marched and spoken out in support of undocumented workers in Philadelphia, Norristown and southern New Jersey, and has joined protests and rallies against public school funding cuts."

"Staggs has been using his Council campaign to support Verizon workers and ATI steelworkers in their contract fights," the voting guide said. "Staggs is also an opponent of U.S. wars he calls imperialist — in Korea, Vietnam, Afghanistan, Iraq and elsewhere — and he supports the revolutionary government in Cuba as an example for all working people."

"Working people need to organize a movement to form our own political party, a labor party based on the unions that can take the reins of power out of the hands of big business," Staggs told those attending an Oct. 27 candidates' meeting sponsored by the Committee of 70, Young Involved Philadelphia and the *Philadelphia Citizen*.

Grandille Crothers, who has worked at ArcelorMittal's steel mill in Coatesville since 1966, told campaign supporter Mitchel Rosenberg Nov. 2 that he backs the SWP's efforts to promote the fight for a labor party. "I'm all for it. Sooner or later somebody has to stand up for the working man," Crothers said.

ArcelorMittal and U.S. Steel are demanding deep concession contracts in negotiations with the Steelworkers union. The SWP candidates have joined Steelworkers' actions in defense of the union at ArcelorMittal plants in both Coatesville and Conshohocken.

When the topic at an "All Candidates Night" Oct. 28 sponsored by The Chew and Belfield Neighbors Club turned to police brutality quite a discussion broke out on how to end police killings.

Rev. Chester Williams, club president and the moderator, said that the cops should be trained to shoot so that they don't kill.

Jim Foster, an independent candidate for mayor, said he thought cops should be trained to take someone down without shooting at all.

Hart said he joined family members in public protests against the killings of Frank McQueen and Brandon Tate-Brown and the brutal beating of Tyree Carroll by the cops.

"It isn't a question of training the police better," he said. "The police defend the interests of the employers, the ruling class. Working people, the majority in society, need to mobilize to take power out of the hands of the capitalists and put it in our hands — that is the

solution."

The SWP candidates are inviting workers to hear Kenia Serrano and Leima Martínez, leaders of the Cuban Institute for Friendship with the Peoples, Nov. 7 in Washington, D.C., to learn about what workers and farmers in Cuba have been able to accomplish with their own government. And they're building the Nov. 10 rally for \$15 and a union.

"Unity is what it's all about, sticking together. You got my vote," Kevin Foreman, a 39-year-old forklift operator and member of the Teamsters, told Hart at his front door in Port Richmond. "I support the \$15 minimum wage. I'll read the *Militant*, but I want you to come back and talk after the Tuesday election."

"I'll be here," Hart said. "The SWP doesn't just run in elections, we're a 365-day-a-year political party."

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# THE MILITANT

Vol. 79/No. 31 September 7, 2015

(front page)

## SWP campaign finds interest, support at Sanders rally in S.C.



Militant/Glova Scott

Socialist Workers Party candidate Osborne Hart, center, talks with Machinist union member James Morrison outside meeting for Bernie Sanders Aug. 22.

BY ARLENE RUBINSTEIN

NORTH CHARLESTON, S.C. — Osborne Hart, Socialist Workers Party candidate for mayor of Philadelphia, and supporters of the party from around the Southeast traveled here Aug. 22 to talk with those attracted to a campaign meeting for U.S. Sen. Bernie Sanders, who is running for president in the Democratic Party primary.

Hart and the SWP got a serious hearing among those attending the rally of 3,000. Many stopped to talk at book tables hung with big signs saying, "Read About Socialism" and "Socialist Workers Party." Eight people subscribed to the *Militant*, 130 got single copies and five books from Pathfinder Press were purchased.

Sanders and iconoclastic Republican candidate Donald Trump are drawing big crowds because people see them as different from the other bourgeois candidates, disdainful of politics as usual, at a time of acute crisis.

The first person Hart shook hands with was Paul Garbarini, a county worker distributing fliers for the Sept. 5 "Days of Grace" march and rally called by the International Longshoremen's Association Local 1422 in honor of Walter Scott, Clementa Pinckney and other victims of racist and police violence (see calendar on page 4).

"I'll put some of those fliers on my campaign table so we can work with you to build it," Hart told Garbarini. "The SWP campaign is a voice for working people. My running mate, John Staggs, and I are workers at Walmart fighting for \$15 an hour, a union and full-time work. Workers need a labor party based on the unions."

"If only labor knew," replied Garbarini. "They keep voting for the Republicans."

"We have to make a class break from the capitalist parties, whether Democrats or Republicans," said Hart. "I'm talking about taking political power, building a revolutionary movement, independent of the ballot box."

"The mass, dignified response here in Charleston to the racist massacre of Pinckney and other churchgoers in June is an example of what we see when working people lead," he added. "The removal of the Confederate battle flag from the state Capitol came after battles led by African-Americans that transformed the consciousness of millions across the board and strengthened the working class."

Tony Reyes, a construction worker who is Cuban-American, got an introductory subscription to the *Militant* and *Cuba and Angola: Fighting for Africa's Freedom and Our Own*. "We need change," he said. "I'd get a few more books, but I got a \$300 speeding ticket because of some racial profiling the other night," Reyes said. "The cops were egging me on, giving me the Sandra Bland treatment." Bland, 28, was pulled over and arrested by a Texas cop for a minor traffic violation. She died in police custody July 13.

"I know what you are talking about," said Hart. "I'm active in the Black Lives Matter movement. Our protests across the country against police killings have pushed the cops back."

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Some people wanted to know how Hart differed from Sanders, who sometimes describes himself as a “democratic socialist.”

“Capitalism is the problem workers face. Sanders’ platform is for reforming capitalism,” Hart told a student reporter. “The SWP points to the example of the Cuban Revolution, where working people overturned capitalism.”

The press took note of the response to the Socialist Workers Party. A reporter for the *Atlanta Journal-Constitution* did an article about the SWP effort, with a prominent photo of the literature table.

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# **EXHIBIT O**

# Can FBI be held liable for targeting Irvine Muslims for surveillance?



Orange County Muslims gather in prayer in the parking lot of Angel Stadium in Anaheim for Eid al-Adha to mark the end of the annual pilgrimage to Mecca known as Hajj on Sept. 23. (Mark Boster / Los Angeles Times)



By **Maura Dolan**

DECEMBER 21, 2015, 4:00 AM

**C**raig Monteilh told the imam that he wanted to embrace his French and Syrian heritage and convert to Islam.

Monteilh adopted an Islamic name, donned Muslim robes and a skull cap, and attended prayers vigilantly. The Islamic Center of Irvine embraced him — until he began talking of violent jihad.

Congregants reported him to the **FBI** and Irvine police, and then obtained a restraining order against him. Only later did they discover Monteilh was working for the **FBI**.

A federal appeals court is now considering whether the **FBI** can be held liable for allegedly indiscriminately targeting Muslims for surveillance. If the court decides the **FBI** cannot defend itself without revealing state secrets, the court likely would uphold the dismissal of a class-action lawsuit brought by Southern California Muslims.

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The review by the U.S. 9th Circuit Court of Appeals comes at a time of heightened fear of terrorism and incidents of backlash against innocent Muslims.

Judge Marsha Berzon, in a hearing this month, acknowledged the sensitivity of the matter as she struggled to understand what constituted a state secret. The state secrets doctrine bars litigation of a case if it would expose or threaten to expose matters of national security.

"I just am having real trouble seeing where the line is drawn in this very difficult situation we are in now," Berzon, a Clinton appointee, told a government lawyer.

The government argued it could not defend itself without disclosing state secrets. U.S. District Judge Cormac J. Carney agreed with the government in 2012, dismissing the bulk of the lawsuit on the grounds it would require disclosure of matters vital to national security. Carney reviewed classified information before his decision.

The Southern California Muslim community, represented by the ACLU of Southern California, believes the **FBI** targeted people solely because of their religion and should be held accountable.

Muslim leaders complained that the spying mission eroded trust in law enforcement at a time when the government needs help from the Muslim community to fight terror.

"The fundamental question is will we be viewed as partners or suspects?" said Edina Likovic, speaking for the Los Angeles-based Muslim Public Affairs Council. "The fear here is that we are being treated publicly as partners and privately as suspects."

About 500,000 Muslims live in Southern California, with more than 120,000 in Orange County, the second-largest population of Muslims in the United States.

Monteilh, who had a falling out with the FBI, has been working with the ACLU.

"I am the principal witness," said the Irvine resident, 53. "All the information they got came from me."

Monteilh said the FBI paid him \$177,000 to infiltrate about 12 mosques in Orange, Los Angeles and San Bernardino counties over the course of 14 months, starting in June 2006. He said his job was to gather as many cellphone numbers and email addresses as possible and to find Muslims who could be compromised because of immigration, sexual or business issues.

Posing as a fitness consultant, Monteilh frequently worked out with Muslims at the gym and secretly recorded them, he said.

"This surveillance was so fruitful that Monteilh's handlers eventually told him they were seeking approval to have him open a Muslim gym," the suit said.

When he agreed to attend prayers at dawn four days a week, he received a pay increase, the suit said. His handlers told him to write down the license plate numbers of the cars in the parking lot, he said.

But at times his devotion raised eyebrows. He attended lessons in Arabic — a language he didn't speak.

He also appeared to be extremely absent-minded. Congregants remembered that he was forever leaving his keys or his cellphone behind. Monteilh later said his phone and a fob on his keys contained recording devices.

During the hearing, a lawyer for the FBI agents said Monteilh had signed a contract saying he would not leave listening devices unattended. Monteilh said he signed no such contract, and the agents knew what he was doing.

Monteilh said he secretly videotaped Muslims through a camera hidden in a button in the front of his shirt.

His identity was revealed during a court hearing. He had a criminal record, and the FBI helped him get off probation early, according to a court transcript.

Monteilh later accused the FBI of breaking promises to him. The FBI has said it does not target people because of their religion and that Monteilh signed a confidentiality agreement.

Monteilh, who unsuccessfully sued the FBI, said he has no regrets about his undercover work. He learned about FBI techniques and methods and policies and now works as a consultant on counterterrorism, he said.

His mission unveiled the government's scrutiny of Muslims, he said.

"If I didn't work that case, they would never know they were being spied on 24 hours a day," Monteilh said.

He said his work identified terrorists overseas, although it did not lead to convictions of local Muslims. Monteilh also said he understands why the FBI conducted the surveillance.

"Let's face it, they have to," he said. "That is the only method they can use to be preemptive."

It could take several months before the 9th Circuit rules.

Berzon was the only judge on the panel who asked questions during the hearing. The other two reviewing the case are 9th Circuit Judge Ronald M. Gould and Judge George Caram Steeh III, a district judge from Michigan, both Clinton appointees.

Although she was skeptical of both sides, Berzon told attorneys for the government that their arguments were "circular."

She also observed that another circuit court had found that the government could not invoke the state secret privilege in a lawsuit unless the secrets were an integral part of the government's "meritorious defense," not just a possible defense, an issue a court would have to determine.

"We certainly can't do that if you can't tell us your defense," she said.

Monteilh said he has remained a Muslim, though his conversion initially was a ruse. He said he prays five times a day, studies the Koran and fasts.

But he does not attend a mosque.

"People would freak out if they saw me," he said. "I am a former FBI informant, and that will always be with me."

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A version of this article appeared in print on December 21, 2015, in the News section of the Los Angeles Times with the headline "Is FBI liable in Muslim spying? - An appellate panel questions the agency's tactic in mosque surveillance lawsuit." — Today's paper | Subscribe

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# NYPD's Muslim surveillance violated regulations as recently as 2015: report

NYPD inspector general finds investigators consistently failed to get proper authorization for surveillance, and that 95% of reviewed cases targeted Muslims

**Mazin Sidahmed**

Wednesday 24 August 2016 08.47 EDT

The New York City police department has violated several regulations in its surveillance of predominantly Muslim communities as recently as 2015, a report released on Thursday found.

The 67-page report was completed by the NYPD's inspector general, and examined the police department's intelligence unit.

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The report found that, when examining political groups, investigators consistently failed to get

proper authorization or timely extensions for investigations or the use of informants and undercover cops.

“This investigation demonstrates a failure by NYPD to follow rules governing the timing and authorizations of surveillance of political activity,” said Mark G Peters, commissioner of the department of investigations (DOI), a city-wide watchdog. NYPD’s inspector general office is a part of the DOI and was only created two years ago following a law passed in the city council.

NYPD’s guidelines for investigating are dictated by the Handschu agreement, established 32 years ago following a class-action lawsuit filed by several political organizations that accused the NYPD of unconstitutional surveillance.

“The Guidelines were designed to establish certain baseline controls on NYPD’s considerable investigative power,” the report explained.

The office of the inspector general examined investigations that were closed between 2011 and 2015, some of which started as early as 2004.

The number of reports the inspector general examined was redacted but in a footnote on the first page, the authors note that more than 95% of the individuals under investigation were Muslim and/or engaged in activity associated with Islam.

“I am deeply disturbed to learn that 95% of the sample investigative statements reviewed by the IG were Muslims or entities associated with Islam,” said Linda Sarsour, executive director of the Arab American Association of New York. “Is this a confirmation of a Muslim surveillance program?”

The findings troubled many activists in New York’s Muslim community due to the NYPD’s tumultuous history with Muslim American New Yorkers. In 2011, the department was revealed to have unconstitutionally infiltrated Muslim student groups, mosques, religious bookstores, hookah bars and other predominantly Muslim areas to spy on people.

The demographics unit, which was responsible for the program, was dismantled in 2014.

The original surveillance program sparked a series of lawsuits, one of which concluded earlier this year. In the settlement of the case of *Raza v The City of New York* - which is still subject to court approval - the NYPD agreed to several reforms including: requiring facts before an investigation is launched, limiting the use of informants and undercovers, and prohibiting investigations in which race, religion or ethnicity is a substantial motivating factor.

Naz Ahmad, a staff attorney for Creating Law Enforcement Accountability & Responsibility (Clear) Project, which represented the plaintiffs in the case, welcomed the inspector general’s findings.

“We welcome the inspector general’s report confirming what our clients have long known: that

the NYPD's surveillance of American Muslims operated without oversight and often in violation of the rules," Ahmad said.

The use of informants and undercover police, known as human sources, came under scrutiny in the report. Of the requests for human sources reviewed, none contained any details about the anticipated role of that source. It also criticized the use of "boilerplate" language when providing reasons for extending the use of informants.

Preliminary inquiries, which allow the police to gather information even when no law has been broken, were allowed to continue indefinitely, and 100% of the extensions reviewed by the office of the inspector general contained no reason for the extension.

The report found the NYPD's intelligence unit would also routinely continue investigations even after legal authority had expired, which amounted to months of time over the course of investigations.

The NYPD did not have any qualms with the findings of the report.

"I am very pleased the inspector general's audit has independently confirmed this to be true, and I thank the IG's office for its work on this audit and report," said outgoing police commissioner William J Bratton.

Fahd Ahmed, the executive director of Desis Rising Up & Moving (Drum), said the report confirms their suspicions and evidence. Drum conducted a survey of the Muslim community between 2011 and 2015 and found that surveillance by the NYPD was ongoing.

"They might as well rename it the Muslim Investigations Department," Ahmed said.

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## FACTSHEET: THE NYPD MUSLIM SURVEILLANCE PROGRAM

### **WHO is spying on whom?**

- Since at least 2002, the New York City Police Department's Intelligence Division has engaged in the religious profiling and suspicionless surveillance of Muslims in New York City and beyond.
- The NYPD's Intelligence Division has singled out Muslim religious and community leaders, mosques, student associations, organizations, businesses, and individuals for pervasive surveillance that is discriminatory and not conducted against institutions or individuals belonging to any other religious faith, or the public at large.
- The Intelligence Division units engaged in the NYPD's Muslim surveillance program include its Demographics Unit, renamed the Zone Assessment Unit; the Intelligence Analysis Unit; the Cyber Intelligence Unit; and the Terrorist Interdiction Unit.

### **WHERE has the surveillance taken place?**

- The NYPD's suspicionless surveillance program has swept up Muslim communities throughout New York City, as well as every mosque within 100 miles of New York, and extended to Pennsylvania, Connecticut, New Jersey, and more.

### **WHY is the NYPD spying on Muslim communities?**

- The NYPD's surveillance program is based on a false and unconstitutional premise: that Muslim religious belief and practices are a basis for law enforcement scrutiny.
- The purported rationale for this unconstitutional surveillance is captured in a 2007 NYPD Intelligence Division report titled "Radicalization in the West: The Homegrown Threat." The report claims to identify a "radicalization process" by which individuals turn into terrorists – a "process" so broad that it seems to treat with suspicion anyone who identifies as Muslim, harbors Islamic beliefs, or engages in Islamic religious practices. For example, its purported radicalization "indicators"

include First Amendment-protected activities including “wearing traditional Islamic clothing [and] growing a beard,” abstaining from alcohol, and “becoming involved in social activism.”

## HOW is the NYPD spying on Muslim communities?

The NYPD’s Intelligence Division uses a variety of methods to spy on and monitor Muslim communities without any suspicion of wrongdoing. They include:

- **Mapping of Muslim Communities:** The NYPD’s Demographics Unit (now the Zone Assessment Unit) has mapped neighborhoods predominantly occupied by 28 so-called “ancestries of interest”—i.e., national origin associated with Muslim populations—as well as “American Black Muslims.” The NYPD expressly excluded from its surveillance and mapping activities non-Muslims such as Coptic Christian Egyptians or Iranian Jews.
- **Photo and Video Surveillance:** NYPD officers, stationed in cars outside of mosques, have taken pictures and video of those leaving and entering places of worship, and recorded the license plate numbers of worshippers attending services. Remotely controlled NYPD cameras have also been placed on light poles, aimed at mosques.
- **Police Informants:** The NYPD has recruited so-called “mosque crawlers,” to act as inside observers in mosques. They report on sermons, provide names of attendees, and take pictures inside of the mosques. Employing a method called “create and capture,” the NYPD has instructed informants to “create” conversations about jihad or terrorism and “capture” and report the responses to the police. Informants are often selected from a pool of arrestees, prisoners, or suspects who are pressured into becoming informants.
- **Police “Rakers”:** Teams of NYPD plainclothes officers—called “rakers”—have been deployed to Muslim communities where they can blend in “consistent with their ethnicity and or language.” They aim to compile information on the community, listen in on conversations at Muslim restaurants and businesses, and identify Muslim “hotspots.”
- **Tracking Individuals:** The NYPD tracks people who changed their names, investigating those who could be Muslim converts or who were “Americanizing” their names.
- **Intelligence Databases:** The Intelligence Division has generated daily reports on innocent Muslims’ lives. The names of thousands of innocent New Yorkers have been placed in secret police files. Information is kept both in an intelligence database and on a standalone computer used to generate intelligence reports.

## WHAT are the consequences of the NYPD's spying on Muslim communities?

- **Stigma:** Through its religious profiling and surveillance, the NYPD has imposed an unwarranted badge of suspicion and stigma on law-abiding Muslim New Yorkers.
- **Interference with Religious Practice:** The NYPD's suspicionless surveillance has forced religious leaders to censor what they say to their congregants, for fear anything they say could be taken out of context by police officers or informants. Some religious leaders feel they must regularly record their sermons to defend themselves against potential NYPD mischaracterizations. Disruptions resulting from unlawful NYPD surveillance have also diverted time and resources away from religious education and counseling. Muslims have reported feeling pressure to avoid appearing overtly religious, for example, by changing their dress or the length of their beards.
- **Community Fear:** The NYPD's discriminatory surveillance has produced an atmosphere of fear and mistrust within mosques and the Muslim community at large. At mosques, congregants often regard newcomers with anxiety, unsure if they are sent to spy by the NYPD. As a result, these houses of worship cannot serve as the places of spiritual refuge and comfort that they are intended to be.
- **Chilling Free Speech:** The NYPD's discriminatory surveillance has chilled religious speech and political activism—from engagement in public debates and protests, to friendly coffee-house banter.
- **Damaging Law Enforcement Relationships:** The NYPD's unlawful profiling of Muslims has damaged its relationship with American Muslims, breaching communities' trust in a police department that is tasked with protecting them.

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## THE NYPD'S DISCRIMINATORY SURVEILLANCE OF MUSLIM COMMUNITIES

### WHO is spying on whom?

- Since at least 2002, the New York City Police Department's Intelligence Division has conducted a discriminatory and suspicionless surveillance of Muslims in New York City and beyond.
- The NYPD's Intelligence Division has singled out Muslim religious and community leaders, student associations, organizations, businesses, and individuals for pervasive surveillance. This surveillance is discriminatory and not conducted against institutions or individuals belonging to a particular faith, or the public at large.
- The Intelligence Division units engaged in the NYPD's Muslim surveillance program were originally known as the Demographics Unit, renamed the Zone Assessment Unit; the Intelligence Analysis Unit; the Intelligence Unit; and the Terrorist Interdiction Unit.

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# **EXHIBIT Q**

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# Officials Cast Wide Net in Monitoring Occupy Protests

By COLIN MOYNIHAN MAY 22, 2014

When the Occupy protests spread across the country three years ago, state and local law enforcement officials went on alert. In Milwaukee, officials reported that a group intended to sing holiday carols at “an undisclosed location of ‘high visibility.’” In Tennessee, an intelligence analyst sought information about whether groups concerned with animals, war, abortion or the Earth had been involved in protests.

And in Washington, as officials braced for a tent encampment on the National Mall, their counterparts elsewhere sent along warnings: a link to a video of Kansas City activists who talked of occupying congressional offices and a tip that 15 to 20 protesters from Boston were en route. “None of the people are known to be troublemakers,” one official wrote in an email.

The communications, distributed by people working with counterterrorism and intelligence-sharing offices known as fusion centers, were among about 4,000 pages of unclassified emails and reports obtained through freedom of information requests by lawyers who represented Occupy participants and provided the documents to The New York Times. They offer details of the scrutiny in 2011 and 2012 by law enforcement officers, federal officials, security contractors, military employees and even people at a retail trade association. The monitoring appears

similar to that conducted by F.B.I. counterterrorism officials, which was previously reported.

In many cases, law enforcement officials appeared to simply assemble or copy lists of protests or related activities, sometimes maintaining tallies of how many people might show up. They also noted appearances by prominent Occupy supporters and advised other officials about what — or whom — to watch for, according to the newly disclosed documents.

The files did not show any evidence of phone or email surveillance; instead, much of the material was acquired from social media, publicly disseminated information and reports by police officers or others. While a Homeland Security bulletin in October 2011 warned that protests could be disruptive or violent, some civil liberties advocates are concerned about the monitoring of lawful political activities tied to the Occupy movement. Homeland Security officials acknowledged that the movement, which criticized the financial system as undemocratic, was “mostly peaceful.”

“People must have the ability to speak out freely to express a dissenting view without the fear that the government will treat them as enemies of the state,” said Mara Verheyden-Hilliard of the Partnership for Civil Justice Fund, which obtained the documents.

The nation’s 78 fusion centers — which have received hundreds of millions of dollars from the Department of Homeland Security and other federal agencies, as well as money from state governments — are run by state and local authorities. They were created after the 2001 Qaeda attacks to share information about terrorism or other national security threats, but have provided little of value related to that mission, a Senate subcommittee report concluded in 2012. Many centers, which can involve dozens of officials from police and fire departments, federal agencies and private companies, now focus on more routine criminal activity.

Peter Swire, a law and ethics professor at Georgia Tech who recently served on President Obama’s Review Group on Intelligence and Communications Technologies, said that as the government concentrated on fighting terrorism, guidelines that had restricted the monitoring of political activity were relaxed. As a result, he said, even minor offenses like trespassing “can be enough to trigger surveillance of political groups.”

Marsha Catron, a spokeswoman for Homeland Security, said that the fusion centers play an important role in helping law enforcement and emergency responders understand how to protect people during large public events. She added that the centers are required to protect privacy and civil liberties. Agencies receiving Homeland Security grants must follow guidelines similar to those adopted by that department, which forbid the collection of information “solely for the purpose of monitoring activities protected by the U.S. Constitution, such as the First Amendment-protected freedoms of religion, speech, press, and peaceful assembly and protest.”

The documents show that people connected to the centers shared information about individual activists or supporters, and kept track of those who speculated in social media postings that the centers had been involved when police departments used force to clear Occupy camps.

They also make clear that the centers appeared to take varying approaches to the protests. An intelligence officer at the Delaware center responded to an inquiry about Occupy with an email that said, “Our fusion center has distanced itself from the movement because of 1st Amendment rights and because we have not seen any criminal activity to date.”

Other centers distributed information about the protests, sometimes describing arrests or disruptive tactics, but often listing apparently lawful, even routine activities.

A center in Nevada regularly sent out reports from more than a dozen cities that included descriptions of uneventful demonstrations and a “rally for jobs and justice” with the Rev. Al Sharpton. Officials circulated descriptions of plans in Seattle for an anti-consumerist flash mob to dance to the rock anthem “Invincible.” Others monitored Facebook pages, noting events like a meditation led by Buddhist monks or a student march with participants dressed as “zombie bankers.”

The Boston Regional Intelligence Center, one of the most active centers, issued scores of bulletins listing hundreds of events including a protest of “irresponsible lending practices,” a food drive and multiple “yoga, faith & spirituality” classes.

The reports also listed appearances by people including a professor at the Harvard Divinity School, the linguist Noam Chomsky and an official at the

American Civil Liberties Union of Massachusetts, who was to discuss the Patriot Act. Some reports noted that a man scheduled to join in a teach-in at Dewey Square had written a film about Sacco and Vanzetti and wondered whether he was “a known/respected figure within the anarchist movement.” Others described Bill McKibben, an environmentalist and scholar at Middlebury College, stating, “McKibben organized a sit-in near the White House in August of this year to protest construction of a pipeline,” and was arrested but not charged.

At times, fusion center officials shared information produced by what Homeland Security calls “private sector partners.” For instance, the head of the Washington police department’s intelligence fusion division sent an email to colleagues before Thanksgiving 2011 with an order to develop a “one-page product” to acquaint commanders with “the potential threat” described in a 31-page report prepared by the International Council of Shopping Centers.

The report examined protesters’ “attitude towards retail,” suggested that business could be disrupted on the day after Thanksgiving and listed several “specific known threats.” They included credit card detractors equipped with scissors at malls and posters offering “help for people who want to put an end to mounting debt and extortionate interest rates with one simple cut” and a group of people who had declared on a website that they would “intentionally forgo the shopping frenzy.”

Cathy L. Lanier, chief of the Metropolitan Police Department in Washington, said that officials who shared the report might have done so simply to prepare for all eventualities. “I wouldn’t consider anything in there as a threat,” she said. “But I can see the implications for planning purposes.”

Military employees also shared Occupy material. Two Defense Department employees, for example, regularly sent information to the fusion center in Washington or to a federal official connected to the center. One of them, an intelligence research specialist working in the threat analysis center of the Pentagon Force Protection Agency, circulated an email describing Google searches as “a very handy intel gathering tool” to keep tabs on Occupy protests. The other employee, assigned to the Defense Threat Reduction Agency, which addresses weapons threats, forwarded an email that included a link to an essay titled “What Police Should Be Learning From the Occupy Protests.”

Before distributing the message, the employee asked the sender whether it

was “safe” to visit the site without hiding his computer’s identity.

**Correction: May 24, 2014**

*A picture caption on Friday with an article about the scrutiny Occupy protesters have faced from enforcement officials misidentified, in some copies, the college where the linguist Noam Chomsky, who appeared at an Occupy Boston event, is a professor. It is the Massachusetts Institute of Technology, not Harvard Divinity School.*

A version of this article appears in print on May 23, 2014, on page A12 of the New York edition with the headline: Officials Cast Wide Net in Monitoring Occupy Protests.

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## FBI Documents Reveal Secret Nationwide Occupy Monitoring

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FBI documents just obtained by the Partnership for Civil Justice Fund (PCJF) pursuant to the PCJF's Freedom of Information Act demands reveal that from its inception, the FBI treated the Occupy movement as a potential criminal and terrorist threat even though the agency acknowledges in documents that organizers explicitly called for peaceful protest and did "not condone the use of violence" at occupy protests.

The PCJF has obtained heavily redacted documents showing that FBI offices and agents around the country were in high gear conducting surveillance against the movement even as early as August 2011, a month prior to the establishment of the OWS encampment in Zuccotti Park and other Occupy actions around the country.

"This production, which we believe is just the tip of the iceberg, is a window into the nationwide scope of the FBI's surveillance, monitoring, and reporting on peaceful protestors organizing with the Occupy movement," stated Mara Verheyden-Hilliard, Executive Director of the Partnership for Civil Justice Fund (PCJF). "These documents show that the FBI and the Department of Homeland Security are treating protests against the corporate and banking structure of America as potential criminal and terrorist activity. These documents also show these federal agencies functioning as a de facto intelligence arm of Wall Street and Corporate America."

"The documents are heavily redacted, and it is clear from the production that the FBI is withholding far more material. We are filing an appeal challenging this response and demanding full disclosure to the public of the records of this operation," stated Heather Benno, staff attorney with the PCJF.

- As early as August 19, 2011, the FBI in New York was meeting with the New York Stock Exchange to discuss the Occupy Wall Street protests that wouldn't start for another month. By September, prior to the start of the OWS, the FBI was notifying businesses that they might be the focus of an OWS protest.
- The FBI's Indianapolis division released a "Potential Criminal Activity Alert" on September 15, 2011, even though they acknowledged that no specific protest date had been scheduled in Indiana. The documents show that the Indianapolis division of the FBI was coordinating with "All Indiana State and Local Law Enforcement Agencies," as well as the "Indiana Intelligence Fusion Center," the FBI "Directorate of Intelligence" and other national FBI coordinating mechanisms.
- Documents show the spying abuses of the FBI's "Campus Liaison Program" in which the FBI in Albany and the Syracuse Joint Terrorism Task Force disseminated information to "sixteen (16) different campus police officials," and then "six (6) additional campus police officials." Campus officials were in contact with the FBI for information on OWS. A representative of the State University of New York at Oswego contacted the FBI for information on the OWS protests and reported to the FBI on the SUNY-Oswego Occupy encampment made up of students and professors.
- Documents released show coordination between the FBI, Department of Homeland Security and corporate America. They include a report by the Domestic Security Alliance Council (DSAC), described by the federal government as "a strategic partnership between the FBI, the Department of Homeland Security and the private sector," discussing the OWS protests at the West Coast ports to "raise awareness concerning this type of criminal activity." The DSAC report shows the nature of secret collaboration between American intelligence agencies and their corporate clients - the document contains a "handling notice" that the information is "meant for use primarily within the corporate security community. Such messages shall not be released in either written or oral form to the media, the general public or other personnel..." (The DSAC document was also obtained by the Northern California ACLU which has sought local FBI surveillance files.)
- Naval Criminal Investigative Services (NCIS) reported to the DSAC on the relationship between OWS and organized labor for the port actions. The NCIS describes itself as "an elite worldwide federal law enforcement organization" whose "mission is to investigate and defeat criminal, terrorist, and foreign intelligence threats to the United States Navy and Marine Corps ashore, afloat and in cyberspace." The NCIS also assists with the transport of Guantanamo prisoners.
- DSAC issued several tips to its corporate clients on "civil unrest" which it defines as ranging



Issue: [Free Speech, Gov't Transparency](#)

Case: [The Crackdown on the Occupy Movement](#)

from "small, organized rallies to large-scale demonstrations." It advised to dress conservatively, avoid political discussions and "avoid all language related to civil issues. Even seemingly peaceful rallies can spur violent activity or be met with resistance by security forces. Bystanders may be arrested or harmed by security forces using water cannons, tear gas or other measures to control crowds."

- The FBI in Anchorage reported from a Joint Terrorism Task Force meeting of November 3, 2011, about Occupy activities in Anchorage.
- A port Facility Security Officer in Anchorage coordinated with the FBI to attend the meeting of protestors and gain intelligence on the planning of the port actions. He was advised to request the presence of an Anchorage Police Department official to also attend the event. The FBI Special Agent told the undercover private operative that he would notify the Joint Terrorism Task Force and that he would provide a point of contact at the Anchorage Police Department.
- The Jacksonville, Florida FBI prepared a Domestic Terrorism briefing on the "spread of the Occupy Wall Street Movement" in October 2011. The intelligence meeting discussed Occupy venues identifying "Daytona, Gainesville and Ocala Resident Agency territories as portions ...where some of the highest unemployment rates in Florida continue to exist."
- The Tampa, Florida FBI "Domestic Terrorism" liaison participated with the Tampa Police Department's monthly intelligence meeting in which Occupy Lakeland, Occupy Polk County and Occupy St. Petersburg were discussed. They reported on an individual "leading the Occupy Tampa" and plans for travel to Gainesville for a protest planning meeting, as well as on Veterans for Peace plans to protest at MacDill Air Force Base.
- The Federal Reserve in Richmond appears to have had personnel surveilling OWS planning. They were in contact with the FBI in Richmond to "pass on information regarding the movement known as occupy Wall Street." There were repeated communications "to pass on updates of the events and decisions made during the small rallies and the following information received from the Capitol Police Intelligence Unit through JTTF (Joint Terrorism Task Force)."
- The Virginia FBI was collecting intelligence on the OWS movement for dissemination to the Virginia Fusion Center and other Intelligence divisions.
- The Milwaukee division of the FBI was coordinating with the Ashwaubenon Public Safety division in Green Bay Wisconsin regarding Occupy.
- The Memphis FBI's Joint Terrorism Task Force met to discuss "domestic terrorism" threats, including, "Aryan Nations, Occupy Wall Street, and Anonymous."
- The Birmingham, AL division of the FBI sent communications to HAZMAT teams regarding the Occupy Wall Street movement.
- The Jackson, Mississippi division of the FBI attended a meeting of the Bank Security Group in Biloxi, MS with multiple private banks and the Biloxi Police Department, in which they discussed an announced protest for "National Bad Bank Sit-In-Day" on December 7, 2011.
- The Denver, CO FBI and its Bank Fraud Working Group met and were briefed on Occupy Wall Street in November 2011. Members of the Working Group include private financial institutions and local area law enforcement.
- Jackson, MS Joint Terrorism Task Force issued a "Counterterrorism Preparedness" alert. This heavily redacted document includes the description, "To document...the Occupy Wall Street Movement."

You can read the FBI – OWS documents below where we have uploaded them in searchable format for public viewing.

The PCJF filed Freedom of Information Act demands with multiple federal law enforcement agencies in the fall of 2011 as the Occupy crackdown began. The FBI initially attempted to limit its search to only one limited record keeping index. Recognizing this as a common tactic used by the FBI to conduct an inadequate search, the PCJF pressed forward demanding searches be performed of the FBI headquarters as well as FBI field offices nationwide.

The PCJF will continue to push for public disclosure of the government's spy files and will release documents as they are obtained.

[Click here to see the FBI documents obtained by the PCJF.](#)

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Government Surveillance X Surveillance of Occupy X

www.nytimes.com/interactive/2014/05/23/us/23occupy-docs.html

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U.S. | Government Surveillance of the Occupy Protests

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p. 74 **Other Causes**

An analyst working with a fusion center in Tennessee, seeking to create a nationwide overview of the Occupy movement, distributed the following sample worksheets to an official with the Washington Regional Threat and Analysis Center. It asks whether groups involved in the Occupy movement were also concerned with issues like the environment, animals, abortion or war.

OCCUPY MOVEMENT			This information is needed for the purpose of developing a structure to allow an overview to analyze to the future as to what may have already developed in other areas and to provide for the safety and rights. The working product will generate a more accurate threat assessment, provide for the safety, and in the preparation of contingency plans, and be utilized to best ensure the safety of everyone and protection of the environment.					
GROUP NAME	Phone	City	COUNTY / CITY / STATE					
TYPE OF PARTICIPANT	Phone	City	County					
DOCUMENT DATE	4/17	Phone	Other					
THREATNAME	Analyst	Product Description	Date of Detection					
ACTIVITY	Occupation	Significance	Rating	Phone / Email	Other	Other		
OCCUPYING ISSUES	Main Issue						Other	
OTHER GROUPS	Birth / Name	Armed	Abortion	War	Other	Other	Other	Other
CONCERNED ABOUT	Birth / Name	Armed	Abortion	War	Other	Other	Other	Other
OTH. THREATS	INTERNAL	EXTERNAL	INTERNAL	EXTERNAL	INTERNAL	EXTERNAL	INTERNAL	EXTERNAL
NEGOTIATION / LEGAL ACTIVITIES								
LAW ENFORCEMENT	State	Local	Other	Other	Other	Other	Other	Other
ASPECT NAME	Intercept	Surveillance	Surveillance	Surveillance	Surveillance	Surveillance	Surveillance	Surveillance
Intercept	property damage	assault	drug	fire	theft / robbery	extortion	prostitution / sex	other
Surveillance	other	other	other	other	other	other	other	other
LE PRESENCE	100%	100%	100%	100%	100%	100%	100%	100%
LE ACTIONS								

▼ Email Distributing Information p. 40

- One Email's Journey
- Occupation: A Do-it-Yourself Guide

▼ Email: Occupy the Capital p. 44

- Military Employee and Intelligence Analyst

▼ Email: Call from Boston p. 46

- No Known "Troublemakers"

▼ Email: Tweets p. 47

- Fusion on Occupy on Fusion

▼ Email: More Tweets p. 50

- Fusion Center Involvement

▼ Occupy and Black Friday p. 60

- "Develop a one page product"
- Risk Briefing for Malls and Retail Sector

▼ Email: Chicago p. 67

- Anonymizer

▼ Email: Distancing From Occupy p. 69

- First Amendment Rights

▼ Email and Attachment: Information Gathering p. 72

- Request From Tennessee

▼ Occupy Movement Spreadsheet p. 74

- Other Causes

Original Document (PDF) ▾

# **EXHIBIT R**



Vol. 75/No. 39 October 31, 2011

## NY mayor backs off move to evict 'Occupy Wall St.'

BY DAN FEIN

NEW YORK—More one month after it began, Occupy Wall Street and similar actions worldwide continue to be a magnet for young people, workers, and hard-hit layers of the middle class, all of whose lives and plans are deeply affected by the unfolding economic and social crisis of capitalism.

In an effort to quash the protests, Republican Mayor Michael Bloomberg announced cops would remove protesters from Zuccotti Park here starting at 7 a.m., October 13 for "cleaning," after which there would be a ban on tents, sleeping bags and other paraphernalia.

In response, hundreds came down to defend the right to free speech. Protesters brought mops and brooms, declaring they would clean the park themselves.

"Students get bogged down by debt. They shouldn't have to be ruined to get an education," Rebecca Bannasch, 16, told the *Militant*. She and Josia DeChiara came to New York from Shutesbury, Mass., to "be part of something big, something for social change."

"There is a whole generation of teenagers who can't get any work experience," Bannasch added.

"I sent out 977 resumés since graduation, 60 for overseas jobs. No interviews," said Nathan Tumazi, 25, a graduate of University of California, Irvine. He's been unemployed since June 2010.

Those who come to Zuccotti Park find a wide variety of views on the source and solution to the economic crisis. Anarchist groups that helped initiate the actions put forward the idea that the protest is an end in itself.

Some groups promote conspiracy theories and reactionary claims that the source of the problem is the Federal Reserve and Jewish bankers.

Many are attracted to working-class struggles. Several marches by union workers in various fights with the bosses have joined with Occupy Wall Street demonstrators, where they find solidarity that inspires both groups.

The Bloomberg administration faces some obstacles in the effort to evict the Occupy Wall Street camp.

Most people sympathize with the protests, which have tapped into rising discontent. According to a Quinnipiac University survey, 67 percent of people in New York agree with the protesters and 72 percent say they have a right to stay as long as they want.

And the protests have backing from prominent figures in the Democratic Party, who see them as an opportunity to garner support against their Republican Party rivals as the twin capitalist parties prepare to vie for the 2012 elections.

Central Democratic Party figures, including Manhattan Borough President Scott Stringer, City Council Speaker Christine Quinn, state Senator Daniel Squadron, and Congressman Jerry Nadler, called Bloomberg and Brookfield Properties, which owns the park, and demanded the eviction be halted. The park owners, and Bloomberg, backed down.

As politicians from both parties lead the assault on working people, Democratic figures are stepping up their demagogic against "corporate greed" and the Republican Party. However, according to a recent Gallup poll, more than twice as many people in the U.S. blame the federal government than the banking and financial system for the crisis.

"Protesters are assembling in New York and around the country to let billionaires, big oil and big bankers know that we're not going to let the richest 1% force draconian economic policies and massive cuts to crucial programs on Main Street Americans," says a recent email sent out by the Democratic Congressional Campaign Committee.

Conservative Republicans are also taking note. "If you put aside the political rants," wrote Rich Lowry, in the *National Review*, "the stories [of economic hardship by protest participants] are a stark pointillist portrayal of the grinding misery of the Great Recession."

Lowry notes that while the Democrats have no program to create jobs or do anything to ameliorate the crisis, the Republican presidential candidates don't either. "Republicans often don't even bother to try to connect their program to the troubles of workers down the income scale," he admits.

Socialist Workers Party members have joined the discussions at Zuccotti Park and nationwide, stressing the importance of solidarity with working-class struggles today and the need for working people to organize independently of the two capitalist parties in order to mount a revolutionary struggle to wrest power from the propertied rulers.

On October 15 coordinated days of protest held around the same themes as Occupy Wall Street took place around the world, including AOR420

300,000 in Madrid, as well as actions in Greece, Switzerland, South Africa, Australia, Japan, Germany and the Philippines.

*Candace Wagner contributed to this article.*

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Vol. 75/No. 43 November 28, 2011

## Cops move to evict Oakland, other 'Occupy' encampments

(front page)

BY BETSEY STONE

OAKLAND, Calif.—In the early morning of November 14, hundreds of cops in riot gear descended on the Occupy Oakland campers, destroying their tents and removing them from the park in front of City Hall where many have been for over a month. Unlike an earlier raid on October 25, no injuries were reported.

Cops have moved to shut down Occupy encampments in a number of cities, including New York; Portland, Ore.; Salt Lake City and Denver. Similar moves are being pursued in more than a dozen other cities, including London.

In all of these places, city officials have used issues like crime, cleanliness and safety as a pretext for the removals. In Los Angeles, police spokespeople warned they will shut down the camp on City Hall grounds because "they've destroyed the lawn" and are "becoming detrimental to the trees."

Over the past few weeks, mayors and other officials from dozens of cities have conferred on how to move against Occupy encampments in national conference calls organized by the U.S. Conference of Mayors and the Police Executive Research Forum.

Three days before the Oakland raid, the city's Police Officers Association issued an open letter to participants in Occupy Oakland, urging them to leave the camp for their own health and safety, citing a fatal shooting near the camp that the occupiers have explained they had nothing to do with.

After the predawn raid on the camp October 25, when protesters attempted to reoccupy the area, police fired tear gas, bean bag rounds and flash-bang grenades, critically wounding Scott Olsen, a Marine veteran of the Iraq war and member of Iraq Veterans Against the War. Outrage spread when video footage was released showing the cops tossing a projectile directly at those who came to the aid of Olsen.

Under pressure of the widespread opposition to the attack, Oakland Mayor Jean Quan withdrew the heavy police presence from the immediate area of the camp and the tents were allowed to return.

Then on November 9 cops at the University of California, Berkeley campus attacked students with clubs as they tried to defend the tents they had set up as part of "Occupy Cal."

Videos showing the cops advancing on a peaceful line of students with arms linked led to condemnation of the cops, including by the student government.

"A lot of the students had never seen anything like that before," Jessica Vott, a Latin American studies major who witnessed the beatings, told the *Militant*. "They saw what can happen if you question society."

The cop attack came the same day as a demonstration of hundreds on campus protesting a threatened increase in tuition. A "Strike and Day of Action" has been called for college and university students on November 15 to continue the fight against the rising cost of education and cutbacks, as well as to protest police brutality.

In Oakland, in response to the October 25 attack, many thousands turned out for a day of protest November 2. Dubbed a "general strike" by the organizers, the protest attracted youth, workers and middle class people hard hit by the economic crisis from throughout the Bay Area and beyond.

Rallies were organized throughout the day, as well as marches on downtown banks. More than 10,000 marched at nightfall on the Port of Oakland, shutting it down.

Among the largely young crowd that marched to the port was Jacob Davis, 24, a veteran of the Iraq war. He told the *Militant* he opposed the war and was marching "because of what happened to Scott Olsen."

Many longshore workers did not show up for work. Others left when they saw the marchers. The *Militant* spoke with port drivers whose trucks were surrounded by the demonstration. Most of the drivers supported the action.

After nightfall on November 2, a small grouping of individuals built fires in the street, broke windows and spray painted stores in the downtown area near the Occupy Oakland camp. The next day participants in Occupy Oakland decided to dissociate their movement from the vandalism, with some pitching in to help in the cleanup. During one of the protests, demonstrators physically forced other marchers to stop trashing a Whole Foods store.

AOR422

Andrina Huxey, who was present October 25 when the cops attacked, told the *Militant* that before seeing the police brutality she had been thinking of using her eight years in the Navy as experience to help her get a job as a cop. "Now I know I don't want to be part of that," she said.

Socialist Workers Party members and supporters joined the discussions during the day of protest, stressing the need for working people to organize independently of the two parties that represent the propertied rulers, whose government is organizing assaults on working people to make them pay for the crisis of the capitalist system.

Articles in the *Militant* sparked discussion of how the cops are used by the bosses against workers in union struggles, as has been the case with longshore workers fighting union-busting in the port of Longview, Washington.

Annie, an unemployed construction worker who did not want to give her last name, was one of those who turned out November 13, the night before the raid, to show support for the camp. When learning that the *Militant* builds solidarity with union struggles, she bought a copy and said, "Union busting has to stop! That's a quote to put in the paper."

The November 15 move by New York police to clear our Zuccotti Park, the site of Occupy Wall Street, was described by the *New York Times* as a "minutely planned, almost military-style operation." Practice runs were conducted, based on "disorder training" and counterterrorism plans, and honed over weeks.

The raid began at 1 a.m., when the fewest people were present. Arrests were made with a minimum of violence, unlike earlier assaults on protests with pepper spray and physical attacks, showing cop violence can be turned on and off when needed.

Complaints of abuse came from reporters, who were systematically barred from the park. "I'm press," Rosie Gray, a writer for the *Village Voice*, told a cop who blocked her from covering the operation. He responded, "not tonight," she said.

*Adbusters*, the Canadian anarchist magazine that originally proposed the encampments, said November 14 that protesters should "declare victory" and head indoors. Others said they were considering supporting "like-minded" political candidates. *Eric Simpson contributed to this article.*

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Vol. 75/No. 38 October 24, 2011

## 'Occupy Wall St.' actions spread to cities across US

Draw thousands affected by capitalist crisis  
(feature article)

**BY SETH GALINSKY  
AND RUTH ROBINETT**

NEW YORK—Thousands of young people, students, middle-class layers, and workers—both employed and jobless—have joined Occupy Wall Street protests here over the last several weeks. Zuccotti Park, a few blocks from the Wall Street financial district, has become a magnet for those who are being battered by the capitalist economic crisis and are looking to do something about it.

Some come just for a few hours, others have been camped out in the square for days or weeks. One university student from Virginia skipped classes and hitchhiked to New York to take part. Forty students from the University of Kentucky raised thousands of dollars to join the action for a few days.

United in opposition to Wall Street as a symbol of capitalist greed, participants represent a wide spectrum of political views. Handmade signs abound, often colorfully reflecting its wielder's personal experience: "College degree=Unemployment. Thanks Wall Street," "I am a social worker student who owes \$60,000 in loans. I am the 99%," and "F\*\*\* your unpaid internship." A smattering of conspiracy theorists and a fringe of rightists are also present promoting their nostrums.

Inspired by the protest, similar actions have spread to cities and towns throughout the United States, tapping into a growing sentiment that something is wrong and needs to change. Under the Occupy Wall Street banner, many have joined in labor protests: from demonstrations in support of laid-off school aides, postal workers, and building workers in New York to rallies backing locked-out sugar workers in the Upper Midwest.

"I used to think the government had my best interests in mind, but now I know that's not true," Fashion Institute of Technology student Steven Robinson told the *Militant*.

"We need more jobs, cheaper tuition for college, higher wages," said Marcio Martinez, a recent high school graduate.

Stacey Taylor and her husband are truck drivers who came from southern Indiana to join the protests. "We pay our share of taxes and the top 1 percent doesn't," she said.

Occupy Wall Street began September 17 as an open-ended protest in response to a call by Adbusters, an anarchist collective in Canada. Adbusters states it is a "global network of artists, activists, writers, pranksters, students, educators and entrepreneurs" whose aim is to "topple existing power structures and forge a major shift in the way" we live.

The first day of protest attracted about 2,000 people. When New York police wouldn't allow the demonstrators to protest on Wall Street, they set up camp instead a few blocks away at Zuccotti Park, where hundreds slept overnight.

The protest gained momentum after cops arrested 80 demonstrators during a September 24 march and were videotaped attacking several women with pepper spray.

The arrests and police brutality, instead of intimidating the protesters, gave them a boost and won broad sympathy. More started streaming in from all over the country.

In the largest action so far, some 10,000 people joined an October 5 march organized by unions in solidarity with Occupy Wall Street. Among others, the protest was actively built by groups forming part of the Democratic Party's left wing, including the Working Families Party and MoveOn.org.

The second issue of *The Occupied Wall Street Journal*, a four-color broadsheet, responded to criticism that the organizers had raised what they are against, but not any clear demands of what they are for. "No list of demands" was the headline of the editorial note. Arguing that the occupation itself is the goal, the paper said, "We are speaking to each other, and listening. This occupation is first about participation."

### 'Millionaires March'

On October 11, Occupy Wall Street organized a "Millionaires March" up 5th and Park avenues outside the homes of the owners and CEOs of several banks and large corporations.

Referring to a 2 percent New York tax on millionaires that will expire in December, Occupy Wall Street organizer Doug Forand told the press, "This is fiscally, economically, and morally wrong."

"The American people understand that not everybody has been following the rules; that Wall Street is an example of that," President Barack Obama said of the protests. Obama and other Democratic Party figures have been demagogically arguing that the problem is Republican opposition to "sharing" the burdens of the economic crisis.

"So far the Wall Street Occupiers have helped the Democratic Party," said Robert Reich, former labor secretary in the William Clinton administration. "Their inchoate demand that the rich pay their fair share is tailor-made for the Democrats' new plan for a 5.6 percent tax on millionaires." To get the Democrats to fight for the plan "pressure from the left is critically important," he said.

Some conservative politicians and papers have attacked the protests, others have taken a more careful, muted stance.

According to the *Wall Street Journal*, Republican presidential candidates Ron Paul and Rick Santorum "empathize with the protesters' frustration but they don't agree with all of their goals." But not Republican candidate Herman Cain. "If you don't have a job and you're not rich, blame yourself," he said.

Many of those participating in Occupy Wall Street actions around the country are open to working-class politics and are attracted to unfolding struggles by workers.

Socialist Workers Party members have sold dozens of subscriptions to the *Militant*, hundreds of single copies of the paper, as well as literature from Pathfinder Press, at rallies and encampments in New York and around the country.

These activities have become fertile ground for discussing the need for working people to resist the mounting attacks by the bosses and their government, and to organize a movement that can wrest political power from the exploiters and reconstruct society on foundations of human solidarity, not profit for a few.

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# **EXHIBIT S**



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Vol. 80/No. 14    April 11, 2016

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(editorial)

## **U.S. imperialism out of Mideast!**

Today's refugee crisis — the displacement by war of millions in Syria and Iraq as well as working people fleeing depression conditions wreaking havoc in North Africa — is a symptom of the world crisis of capitalism and the result of years of imperialist military assaults in the Mideast.

In their quest to impose a new imperialist order — as the one put together by the victors of two World Wars unravels — the U.S. rulers have forged an alliance with Moscow and Tehran that has resulted in shoring up Syrian dictator Bashar al-Assad.

Washington, which invaded Iraq twice in the last quarter-century and has troops in Afghanistan, is stepping up bombing of areas in Iraq and Syria where Islamic State took advantage of the coming apart of those countries to establish its repressive, anti-working-class rule.

The road forward in that region, as in the imperialist countries, is to unite workers and farmers regardless of nationality or religious belief, and gain the confidence and experience to be able to replace the capitalist rulers, including forces like Islamic State. This can only be done by forging communist parties rooted in the working class that draw on the continuity of the international revolutionary movement since the time of Karl Marx and Frederick Engels.

Workers in the U.S. and around the world need to demand that Washington and its allies get their troops and warplanes out of the Mideast. They are an obstacle to working people in the region building the leadership they need to fight against the Syrian regime, Islamic State and other oppressors and exploiters.

There is no easy road forward there or here, but there is no other road. The example set by workers and farmers in Cuba shows it is possible. With a proletarian leadership of the highest caliber, they made a socialist revolution nearly 60 years ago and have defended it ever since, while giving solidarity to workers from Algeria and Angola to Vietnam and Venezuela.

The labor movement in the U.S. and other imperialist centers needs to reject attempts by the bosses and their political parties to pit us against each other based on where we were born, our religion or the color of our skin. We need to see each other as fellow workers — not refugees, immigrants, native born — and fight together to organize unions, demand public works jobs

programs, fight government scapegoating attacks on Muslims and mosques and oppose imperialist war. It is on this path that we can build the kind of internationalist proletarian movement of new men and women capable of replacing dog-eat-dog capitalism with a society based on values of human solidarity.

**Related articles:**

[Washington backs deal to keep Assad in power in Syria](#)

[More cops, surveillance of Muslims after Belgium attack](#)

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Vol. 80/No. 4      February 1, 2016

(editorial)

## Defend women's right to choose!

The labor movement and all working people should join in the fight against the growing number of state laws restricting women's access to abortion, and against the attacks on Planned Parenthood.

Defending the right to choose abortion is a working-class question: the right to decide when or if to bear children is fundamental to a woman's control of her own life and to winning full social, economic and political equality, a prerequisite to uniting the working class. The attacks on the right to choose — from waiting periods to excessive regulations designed to force clinics to close to denial of Medicaid and insurance coverage for abortion — land hardest on working-class women and the rural poor.

The 14th Amendment to the U.S. Constitution registered the conquests of the Second American Revolution, which put an end to chattel slavery. It says, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The fight for abortion to be the decision of a woman — not the government, a doctor, a relative or anyone else — is part of the fight to extend this constitutional protection fully to women.

In the context of today's capitalist depression and growing attacks on working people, the rulers' efforts to relentlessly cut women's access to abortion is part of a broader campaign against working-class women to undermine their confidence, drive down the value of their labor power and divide the working class.

Women and the working class are paying a big price today for the refusal of the established women's rights organizations to mobilize spirited public actions in support of women's right to abortion, and campaign vigorously for it as a fundamental question of women's equality. Like most liberals today, they believe workers are moving to the right, evidenced by the support for Donald Trump. They argue supporters of abortion should focus on "stopping the right" and not to rock the boat. Trust in the courts, they say, and work to elect "pro-choice" politicians.

The Socialist Workers Party points to the young people who mobilized in Chicago Jan. 17

against restrictions on women's right to choose abortion as a good example that can and should be emulated.

**Related articles:**

[Protest hits restrictions on abortion rights, cuts to Planned Parenthood](#)

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Vol. 80/No. 10    March 14, 2016

(front page)

## **Socialist Workers Party campaign statement: Defend abortion rights!**

*The following statement was released March 1 by Alyson Kennedy, Socialist Workers Party candidate for U.S. president, and Osborne Hart, SWP candidate for vice president.*

We join with those marching March 2 in Washington, Chicago and elsewhere to defend women's right to choose abortion. This fight is in the interests of all working people.

The right to decide whether or when to bear children is fundamental to a woman's right to control her own life and win full social, economic and political equality. It is critical to break down divisions fostered by the employers and their government and to unite the working class.

The case before the Supreme Court March 2 — Whole Woman's Health v. Hellerstedt — challenges a reactionary Texas law that imposes unnecessary and onerous restrictions on abortion providers that have forced many clinics throughout the state to close. If the high court upholds these restrictions only 10 abortion providers will remain open there.

Whether and when to have an abortion must be the decision of *women* — not the government, a doctor, a relative or anyone else. It's a question of equal rights for women, building on the conquests won through the Second American Revolution and codified in the "equal protection of the laws" guaranteed by the 14th Amendment to the U.S. Constitution.

This fight is being taken up by women and the working class worldwide. Capitalist rulers from Germany to Ireland to much of the semicolonial world either restrict or outright bar women's right to abortion.

Ever since the new rise of the fight for women's rights in the 1970s and the U.S. Supreme Court decision decriminalizing abortion in 1973, state and federal government officials have imposed increasingly onerous restrictions on its availability — denial of Medicaid and insurance coverage, shortening the time to seek an abortion, requiring parental consent, mandatory counseling and waiting periods, invasive and demanding ultrasound requirements, and, like in Texas, demands that clinics meet hospital-like building standards — all of which hit working-

class women and those in rural areas the hardest.

Working people are paying the price for the refusal of labor officials and the most prominent women's rights organizations over many years to mobilize a nationwide campaign of public action to bring to bear the broad support that exists for women's right to choose abortion. Instead, they say raising the issue stirs things up and tell people to elect and rely on "pro-choice" capitalist politicians.

More workers today are looking for ways to fight to defend their jobs, lives and living conditions. Fast-food workers are protesting for \$15 and a union. Street actions against police brutality — from Salt Lake City to Council, Idaho — have forced the propertied rulers to begin to rein in their cops. Women fighting to defend the right to an abortion will find many allies willing to stand and march with them.

Join us in this fight!

**Related articles:**

[Socialist Workers Party: Defend right to abortion!](#)

SWP candidates join March 2 protests

[No miner has to die, in Russia or US!](#)

[SWP candidate Eleanor García joins warehouse workers' fight](#)

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# THE MILITANT

Vol. 78/No. 35    October 6, 2014

(lead article)

## Climate march poses need to defend nature and labor

300,000 take to streets in New York City



AP Photo/Jason DeCrow

**Largest ever protest against environmental destruction heads  
down Sixth Avenue in New York.**

**BY MAGGIE TROWE**

NEW YORK — Three hundred thousand people from across the U.S., Canada and other countries around the world joined the People's Climate March here Sept. 21.

Participants drawn to the sizable social protest rallied against the increasing devastation of land and labor rooted in the natural workings of the capitalist system, the profit-driven course of bosses worldwide, lashed by competition, to produce more and faster, regardless of the impact on workers and nature.

The march comes at a time of increased resistance and union organizing by workers frustrated with low wages, speedup and deteriorating safety on the job. The march reinforces this working-class resistance, as the labor fightback reinforces social protest.

The march comes on the heels of a rebellion of Burlington Northern rail workers who voted down the bosses' move to reduce train crews to one person, increasing the likelihood of derailments and toxic spills like the one in Lac-Mégantic, Quebec, last year.

It takes place on the heels of large protests against police killings of Michael Brown in Ferguson, Missouri, and Eric Garner in Staten Island, New York.

It comes as an Ebola virus epidemic ravages the most underdeveloped countries in Africa, where large sections of the working class lack electricity and sanitation. At the same time, millions are being drawn into the working class — in China, India, Africa and throughout the semicolonial world — and are reaching for allies as they fight for modern conditions and confront the destructive functioning of capitalist production.

Unlike in many previous environmental actions, sizable union contingents joined the march.

"The nurses' union stands for patients' safety and adequate staffing. We want to save lives," said Lilia Marquez, 55, a nurse at Bellevue Hospital marching with the New York State Nurses Association. Their banner read, "Caring for our patients and our planet."

Other labor organizations participating included United Food and Commercial Workers; Communications Workers of America; Service Employees International Union locals 32BJ and 1199, representing building maintenance and health care workers; and the Canadian Labour Congress.

Climate marches took place in Oakland, California; Los Angeles; Seattle; Miami; Omaha and Lincoln, Nebraska; and other cities in the U.S. and worldwide.

## **What road forward?**

Proposals on what to do ranged widely. Some saw the problem as a social question and advanced a working-class course toward defending wages, fighting for workers control of conditions on the job, and championing the struggles of workers against exploitation and environmental destruction. Others expressed unscientific, catastrophist, anti-labor perspectives, condemning industrialization and blaming workers in industries like nuclear power, rail transport of crude oil and coal mining for the way the bosses' productive process disregards safety and fouls things up.

An international delegation organized by the Global Coalition on Migration marched in New York. "Those displaced by climate catastrophes are disproportionately farmers/rural populations, the working class, indigenous peoples, and communities of color," a statement by the group said.

Many demonstrators came from high schools and college campuses. Mac Lubold, 17, came with 50 students from Concord High School in Concord, New Hampshire. "A friend of ours heard about the march and organized a bus," he told the *Militant*.

A contingent from Far Rockaway, Queens, and other neighborhoods ravaged by

Hurricane Sandy in 2012, marched, as did contingents from Louisiana and Mississippi, states hit hard by Hurricane Katrina in 2005, where effects of the storm are still being felt.

The destruction caused by those storms was a social disaster, arising from the U.S. rulers' rents system, condemning those able to pay the least to the most vulnerable areas, their refusal to evacuate residents and their paltry aid to victims of the disasters.

Some marchers blamed methods of energy extraction and transport, such as fracking and pipelines, or technology itself, for damage to the environment.

Some of their signs read, "Keep the Oil in the Soil" and "Don't Frack with U.S." Some called for a return to an imagined idyllic primitive past.

Many participants were drawn to the idea that capitalism's despoliation of land and labor is a social and class question, and the road forward lies along the revolutionary line of march of the working class. Participants in the marches in New York, San Francisco, and Lincoln, Nebraska, bought 116 subscriptions to the *Militant*, and 48 copies of *New International* no. 13 and 14, featuring the articles "Our Politics Start with the World" and "The Stewardship of Nature Also Falls to the Working Class: In Defense of Land and Labor."

**Related articles:**

[Defense of land, labor falls to working class](#)

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# **EXHIBIT T**

**From:** [BRIC](#)  
**To:** [BRIC;](#)  
**Subject:** (U//FOUO) BRIC HLS Bulletin: Occupy Boston; Update 45  
**Date:** Wednesday, November 02, 2011 5:11:11 PM  
**Attachments:** [HLS Bulletin 11-31; Occupy Boston Protest Event; FOUO version - UPDATE 45.pdf](#)

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**Please review the attached (U//FOUO) UPDATED Bulletin regarding “Occupy Boston”.**

The BRIC would like any feedback, comments and/or suggestions relative to this bulletin and its content. Your suggestions and feedback will be instrumental in shaping the way this bulletin is produced and disseminated in the future.

Questions, feedback, comments and/or suggestions should be directed to Lt. Harry Cataldo or Director David Carabin.

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## Situational Awareness

### “Occupy Boston” Action—**UPDATE 45**

### 2 November 2011

**(U//FOUO)** It should be noted that some of this information describes first amendment protected activities. The BRIC recognizes that Americans have constitutionally protected rights to assemble, speak, and petition the government. The BRIC safeguards these rights and only reports on first amendment protected activities for operational planning in the interest of assuring the safety and security of the demonstrators and the public.

The Occupy Boston (OB) action has been in place since Friday, 30 September 2011 at approximately 6:00 PM. Since that time the BRIC has learned the following from publicly available open sources as well as uniformed Boston Police Personnel in the area:

The following information is being provided for awareness due to the potential for these events to result in increased crowds or traffic conditions.

*Please note that due to the volume of significant events occurring in the city and with Occupy Boston, this list of events has been limited to items of significance only. It is not a comprehensive list of Occupy Boston-related events. For a listing of Occupy Boston meetings and events please visit <http://www.occupyboston.org/>.*

#### Events Scheduled for Today, Wednesday, 2 November 2011

- **UPDATE:** According to permits requested, this protest will occur 9 November 2011, 10:00 AM to 12:00 PM. The BRIC will provide information and updates on this event as necessary as it approaches. On Wednesday, 2 November 2011 the New England Carpenters Union will be protesting with the “rat”, (an oversized balloon rat), outside the Copley Marriot. Time for this protest is unknown.

*Analyst Notes: This union has been protesting since mid October due to a major construction project at the Marriot Hotel in which union workers were not hired for. The Union has also gone to the MA Attorney General to petition to enter the Copley Mall to leaflet. At this time this event is not listed on OB's calendar, and there has been no open source chatter indicating OB's plan to participate in this protest. However, the possibility of OB's participation cannot be ruled out due to past participation in labor themed demonstrations.*

- 5:00 PM – 7:00 PM, 2 November 2011: National Day of Action: Rally and March in Solidarity with Occupy Oakland General Strike. <sup>i</sup> (Occupy Boston) **As of 2:30 PM on 2 November 2011 115 are listed as attending on the Facebook event page.** <sup>ii</sup>

*Analyst Notes: The location for this event is Dewey Square; there is no further information at this time as to where this march will take place. Ongoing communications by known anarchist / socialist groups indicate that these groups have discussed participation in the National Day of Action and may be present at this event.*

- 6:30 PM, 2 November 2011: FSU: Big Pharma, Another Big Player on Wall Street. <sup>iii</sup> (Occupy Boston)
- 8:00 PM – 9:00 PM, 2 November 2011: Move Your Money Planning Meeting in the area of the GA's. <sup>iv</sup> (Occupy Boston)

*Analyst Notes: The Move Your Money project is a nonprofit campaign that encourages individuals and institutions to divest from the nation's largest Wall Street banks and move to local financial institutions and credit unions. <sup>v</sup> Bank transfer day is scheduled to take place on 5 November 2011. <sup>vi</sup>*

### Events Scheduled for Thursday, 3 November 2011 <sup>vii</sup>

- 3-4 November 2011: BankAnalysts Association of Boston 2011 Meeting – Scheduled to occur at the Langham Hotel at 250 Franklin St. According to open sources, Christopher M. Gorman, President of Key Corporate Bank and Chairman of KeyBank NA will be present at this event. <sup>viii ix x</sup>
- *Analyst Notes: This event has received significant online media coverage to include the Wall Street Journal. It is currently unknown whether Occupy Boston is aware of this event; however, the potential exists for OB to stage a demonstration (First Amendment protected activity) in response to this meeting as they have for similar past events.*
- 9:30 AM, 3 November 2011: FSU Workshop: My Red Carpet Moment, How Do I Best Express What I Do? (Occupy Boston)
- 2:00 PM – 5:00 PM, 3 November 2011: Historical March Campaign. OB and guest speaker Dave Tree will be holding the first event of their historical march campaign; they will be meeting in Dewey Square at 2:00 PM for a 2:30 rally. <sup>xi</sup> (Occupy Boston) **As of 2:30 PM on 2 November 2011, 17 people are listed as attending on the Facebook event page.** <sup>xii</sup>
- 4:00 PM – 5:00 PM, 3 November 2011: FSU: The Howard Zinn Memorial Lecture Series, The Perils of American Democracy (Occupy Boston)
- *Analyst Notes: This FSU lecture features Professor Luis Jimenez from UMass Boston.*
- 7:00 PM, 3 November 2011: General Assembly (Occupy Boston)
- 9:00 PM, 3 November 2011: Winterizing Meeting (Occupy Boston)
- 9:30 PM – 11:30 PM, 3 November 2011: Ideas Working Group Meeting. (Occupy Boston)

### Events Scheduled for Friday, 4 November 2011 <sup>xiii</sup>

- 12:00 PM – 1:00 PM, 4 November 2011: FSU – Lessons from the Wisconsin Uprising (Occupy Boston)
- 2:00 PM – 4:00 PM, 4 November 2011: Toxic Tour of Dudley Square. Participants will be meeting at Alternatives for Community and Environment (ACE) at 2181 Washington St. Suite 301 Roxbury. ACE is giving the tour that is scheduled to take place in and around Dudley Square to show “environmental injustices and stories of residents organizing for safer, healthier, and greener communities”. (Occupy Boston).

*Analyst Notes: The event information page on OB's calendar notes that this event is limited to 25 people and they must sign up.*

- 5:00 PM – 6:00 PM, 4 November 2011: Musical concert: “Quill” occurring at the “main stage” at Dewey Sq. (Occupy Boston)

### Events Scheduled for Saturday, 5 November 2011<sup>xiv</sup>

- 11:00 AM, 5 November 2011: MoveOn.org Foreclose on BOA. Move Your Money, a Make Wall Street Pay Action: MoveOn.org they are requesting a permit for this event that will consist of a march from the Bank of America building at 161 Cambridge St. through the Financial District and then back to Dewey Square (exact route is enclosed in email that was sent). 100 participants are expected at this event according to MoveOn.org.

*Analyst Notes: This event has not been specifically listed on the Occupy Boston calendar; however, the OB calendar does list an event titled “Move Your Money / Bank Transfer Day” for 5 November, which provides links to a similar nationwide movement. <sup>xv</sup> It is possible that Occupy Boston will participate in the 5 November MoveOn.org march and rallies despite it not being listed on OB’s calendar at this time; the march is ending at Dewey Square and MoveOn.org states on their website this march is in solidarity with OB. It should also be noted that 5 November 2011 is “Guy Fawkes Day”, the anniversary of Fawkes’ attempt to destroy the British Parliament with explosives in 1605. <sup>xvi</sup> Fawkes’ likeness has been replicated in plastic masks which are frequently worn by members of the “hactivist” group Anonymous and have been seen at past OB events and marches. It should also be noted that Anonymous has stated its intention to dismantle the Fox News website on 5 November in response to the network’s supposed opposition to the Occupy Wall Street protests. <sup>xvii</sup> At this time it is unknown if OB and / or Anonymous will participate in the above event.*

- 1:00 PM – 2:00 PM, 5 November 2011: Musical concert: “The J Kirks” occurring at the “plaza stage” at Dewey Sq. (Occupy Boston)
- Move Your Money / Bank Transfer Day. Individuals are encouraged to close their accounts at large banks such as Chase and Bank of America and transfer their money to credit unions or small local banks. (Occupy Boston)
- 7:00 PM, 5 November 2011: General Assembly (Occupy Boston)
- Many other FSU classes, working group meetings, and musical concerts are scheduled to take place on Saturday, 5 November 2011.

### Occupy Boston Recent Actions

- Participants in the 2 November 2011, Student Debt Street Action organized by Students Occupy Boston staged a march from the Federal Reserve Bank to the State House in protest of student debt. The march proceeded without incident.
- On 1 November 2011 around 8:00 PM approximately 25 individuals marched to district A-1. They went the wrong way on Tremont St. and blocked one lane of traffic; group then proceeded back to Dewey Square via the sidewalk and broke up at 15 Quincy Market.
- On November 1 35-40 protestors showed up to UMass Boston to protest the inauguration of a new president; amongst them were some OB participants. No incidents.

## ***General Notes Regarding the Occupy Movement:***

- According to media reports, thousands of Occupy Oakland participants staged a march and rally in downtown Oakland 2 November 2011. Protesters additionally called for a general citywide strike<sup>xviii</sup> to “help shutdown the city” in which all workers were asked to “go on strike, call in sick, take a vacation day or simply walk off the job.”<sup>xix</sup> A large volume of conflicting Twitter comments claimed that either protesters had shut down the Oakland port or that it remains only partially operational at this time.

<sup>i</sup> <http://www.occupyboston.org/calendar/>

<sup>ii</sup> <http://www.facebook.com/event.php?eid=268348013208747>

<sup>iii</sup> <http://www.occupyboston.org/calendar/>

<sup>iv</sup> <http://www.occupyboston.org/calendar/>

<sup>v</sup> <http://moveyourmoneyproject.org/>

<sup>vi</sup> <http://www.facebook.com/OccupyBoston?ref=ts#!/Nov.Fifth?sk=wall>

<sup>vii</sup> <http://www.occupyboston.org/calendar/>

<sup>viii</sup> <http://online.wsj.com/article/PR-CO-20111006-908892.html>

<sup>ix</sup> <http://www.snl.com/irweblinkx/Mobile/file.aspx?IID=100334&FID=11841103>

<sup>x</sup> <http://boston.langhamhotels.com/bancaanalysts-2011-annual-meeting.htm>

<sup>xi</sup> <http://www.occupyboston.org/calendar/>

<sup>xii</sup> <http://www.facebook.com/event.php?eid=134101226694469>

<sup>xiii</sup> <http://www.occupyboston.org/calendar/>

<sup>xiv</sup> <http://www.occupyboston.org/calendar/>

<sup>xv</sup> <http://moveyourmoneyproject.org/>

<sup>xvi</sup> <http://www.time.com/time/world/article/0,8599,1856603,00.html>

<sup>xvii</sup> [http://www.youtube.com/watch?v=fa\\_FzQV5fpE](http://www.youtube.com/watch?v=fa_FzQV5fpE)

<sup>xviii</sup> [http://www.occupyoakland.org/ai1ec\\_event/general-strike-mass-day-of-action/](http://www.occupyoakland.org/ai1ec_event/general-strike-mass-day-of-action/)

<sup>xix</sup> <http://www.myfoxtampabay.com/dpps/news/occupy-oakland-pushes-for-citywide-strike-dpgonc-20111102-to-15764837>

**From:** [BRIC](#)  
**To:** [BRIC;](#)  
**Subject:** BRIC HLS Bulletin: Occupy Boston; Update 60  
**Date:** Thursday, November 17, 2011 12:14:18 PM  
**Attachments:** [HLS Bulletin 11-](#)  
[31; Occupy Boston Protest Event; FOUO version - UPDATE 60.pdf](#)

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11-31

## Situational Awareness “Occupy Boston” Action—**UPDATE 60** 17 November 2011

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The following information is being provided for awareness due to the potential for these events to result in increased crowds or traffic conditions.

*Please note that due to the volume of significant events occurring in the city and with Occupy Boston, this list of events has been limited to items of significance only. It is not a comprehensive list of Occupy Boston-related events. For a listing of Occupy Boston meetings and events please visit <http://www.occupyboston.org/>.*

**Please be aware that the BRIC is reporting on events and marches listed on Occupy Boston’s calendar and other publicly available sources; however, it does not necessarily indicate OB’s plans to participate in these marches.**

### Events Scheduled for Today, Thursday, 17 November 2011<sup>i</sup>

- 4:00 PM, 17 November 2011: Jobs Not Cuts March.
  - This event is being organized by Mass Uniting in collaboration with Jobs for Justice, Occupy Boston, and Occupy the Hood, Greater Boston Labor Council and several other unions.
  - This event is being sponsored by Mass Uniting, who has secured a permit for the march. Organizers are permitted for and expect to get as many as 1,500 participants.
  - Mass Uniting is providing bus transportation to Dewey Square from several sections of Boston as well as various parts of the state.
    - **Dorchester Area:** New England United for Justice at 196 Adams St. 2:30 PM; Codman Academy Charter School at Washington & Talbot St. 3:00 PM; Old KFC Parking Lot at Blue Hill Ave & Morton St. 3:00 PM; Grove Hall Stop & Shop at 460 Blue Hill Ave. 3:00 PM; and Floyd St. & Blue Hill Ave. 3:20 PM.
    - **North of Boston:** Malden Community Center at 7 Washington St. 3:00 PM; Everett High School at 100 Elm St. 3:00 PM; Lawrence McDonald’s at 50 Broadway St. 3:00 PM; IUE-CWA Local 201 in Lynn at 112 Exchange St. 3:00 PM

- **South of Boston:** Brockton Stop & Shop at 683 Belmont St. 2:30 PM
- **Roxbury & Jamaica Plain Area:** New Academy Estates at 2908 Washington St. 3:00 PM; Tobin Community Center at 1481 Tremont St. 3:20 PM; Jamaica Plain Stop & Shop at 301 Centre St. 3:00 PM; Whitter Health Clinic at Whitter & Tremont St. 3:30 PM; Harold & Seaver St. 3:20 PM.
- **West of Boston:** Northampton Wal-Mart at 180 North King St. 1:00 PM; Plantation Inn – Chicopee at 295 Burnett Rd. 1:20 PM; UMass Amherst at 390 Whitmore Admin Building 1:00 PM.
- **East of Boston:** Chelsea Collaborative at 683 Belmont St. 2:30 PM.
  - This march will go from Dewey Square to the North Washington Street Bridge.
  - BU Occupies has indicated intent to participate and participation from local universities is likely as we have seen in the past.
  - United for Justice with Peace, Mass Nurses and Mass Green Rainbow Party have also indicated possible plans to participate, all of which have shown the ability to attract significant numbers at past demonstrations.
  - While the Boston event is being sponsored and largely organized by Mass Uniting as a labor rally, OB chatter on publically available open sources has indicated that their participation in today's march will be largely to show solidarity with OWS, in addition to the labor cause.

*Analyst Note: This day is also the 2 month anniversary of the Occupy Wall Street movement and has received significant attention on Twitter, especially in light of the events involving OWS this week. Further, Occupy Wall Street is engaging in a "Mass non-violent DIRECT ACTION" throughout the day today with the intentions of "shutting down" Wall Street, Subway stations and other areas of New York. As of 9:00 AM this morning, several intersections near the stock exchange have been blocked and arrests have been made. The unfolding situation in New York City with the OWS actions today are likely to influence the nature and tone of OB's actions in Boston during the march today. As such, acts of civil disobedience and other criminal activity cannot be ruled out as we have seen at similar past actions.*

- 6:00 PM – 7:00 PM, 17 November 2011: Houseless Community Meeting. Meeting with members of OB houseless community and others to discuss onsite issues; in the South Station Mezzanine. (Occupy Boston)  
*Analyst Notes: This appears to be a re-occurring event daily at 6:00 PM.*
- 7:00 PM – 10:00 PM, 17 November 2011: Day of Action After Party at Encuentro Five, 33 Harrison Ave. (Occupy Boston)

## Events Scheduled for Friday, 18 November 2011 <sup>ii</sup>

- 5:00 PM – 6:30 PM, 18 November 2011: Rape Crisis Response Training. Courtesy of BARCC. (Occupy Boston)
- 5:00 PM, 18 November 2011: According to Harvard University PD, Newt Gingrich will be at the JFK School of Government for an event at 5:00 PM. Harvard University PD has noted that the Occupy Harvard group has called for a protest at this event. The BRIC will continue to monitor.

- 5:00 PM, 18 November 2011: Occupy Harvard General Assembly at Johnston Gate.
- 6:00 PM – 8:30 PM, 18 November 2011: Occupemos el Barrio (OEB) Meeting at 28 Paris St. East Boston, the Lamb's of Christ Baptist Church.

### Events Scheduled for Saturday, 19 November 2011<sup>iii</sup>

- 10:00 AM – 8:00 PM, 19 November 2011: Student Service Day at Occupy Boston. This event is being sponsored by Students Occupy Boston; they are encouraging those who have questions regarding the Occupy movement or would like to get involved to stop by Dewey Square on Saturday to learn about the movement, volunteer and get to know members.<sup>iv</sup>  
*Analyst Notes: This event is not on OB's main calendar of events; it has been advertised through Students' group Facebook pages and websites.*
- 12:00 PM, 19 November 2011: Rally to Oppose Repression and Super Committee Cuts. This march will meet at Dewey Square and march to Senator Kerry's office. Some endorsers include: Mass Nurses Association, UAW Local 879, CWA Local 37083, Veterans for Peace, Chris Hedges, and Noam Chomsky.<sup>v</sup>  
*Analyst Notes: This march has been posted on justicewithpeace.org and jobsnotcuts.org and appears to be sponsored by act-ma – Activists Massachusetts. This event is not on OB's calendar, and their intent to participate is not known at this time.*<sup>vi vii</sup>
- 7:00 PM, 19 November 2011: General Assembly (Occupy Boston)

### Events Scheduled for Sunday, 20 November 2011<sup>viii</sup>

- 6:00 PM, 20 November 2011: An offshoot of Occupy Boston calling themselves Occupy JP will have a second GA meeting at Spontaneous Celebrations (45 Danforth St).  
*Analyst Notes: In an article in the Jamaica Plain Gazette, it states that the Occupy JP movement is being organized by at least four participants of the anti-Whole Foods Market protests, the founder of Occupy the Hood, and promoted by the socialist organized Socialist Alternative.*<sup>ix</sup>

### General Notes Regarding Occupy Boston

- A hearing was held at Suffolk Superior Court in front of Judge McIntyre. The judge ruled in favor of Occupy Boston for a temporary order prohibiting the BPD from dismantling the Dewey Square location unless there is a fire, medical emergency or outbreak of violence. A full hearing on this matter will be held on 1 December 2011.

<sup>i</sup> <http://www.occupyboston.org/calendar/>

<sup>ii</sup> <http://www.occupyboston.org/calendar/>

<sup>iii</sup> <http://www.occupyboston.org/calendar/>

<sup>iv</sup> <http://collegesoccupyboston.com/>

<sup>v</sup> <http://jobsnotcutsprotest.org/>

<sup>vi</sup> <http://jobsnotcutsprotest.org/>

<sup>vii</sup> <http://www.justicewithpeace.org/>

viii <http://www.occupyboston.org/calendar/>

ix <http://jamaicaplaigngazette.com/2011/11/14/occupy-jp-movement-begins/>



# **EXHIBIT U**

# The Washington Post

The Switch

# Facebook, Twitter and Instagram sent feeds that helped police track minorities in Ferguson and Baltimore, report says

UP TO 1.00% APY

By [Craig Timberg](#) and [Elizabeth Dwoskin](#) October 11 at 11:18 AM

A powerful surveillance program that police used for tracking racially charged protests in Baltimore and Ferguson, Mo., relied on special feeds of user data provided by Twitter, Facebook and Instagram, according to an [ACLU report](#) Tuesday.

The companies provided the data — often including the locations, photos and other information posted publicly by users — to Geofeedia, a Chicago-based company that says it analyzes social media posts to deliver real-time surveillance information to help 500 law enforcement agencies track and respond to crime. The social media companies cut off Geofeedia's access to the streams of user data in recent weeks after the ACLU discovered them and alerted the companies about looming public exposure.

The popularity of Geofeedia and similar programs highlights how the rise of social media has given governments worldwide powerful new ways to monitor crime and civil unrest. Authorities often target such surveillance at minority groups or others seeking to publicly air political grievances, potentially chilling free speech, said the ACLU's California affiliate, which unearthed Geofeedia's relationship with social media companies through a public records request of dozens of law enforcement agencies.

"These platforms need to be doing more to protect the free speech rights of activists of color and stop facilitating their surveillance by police," said Nicole Ozer, technology and civil liberties policy director for the ACLU of California. "The ACLU shouldn't have to tell Facebook or Twitter what their own developers are doing. The companies need to enact strong public policies and robust auditing procedures to ensure their platforms aren't being used for discriminatory surveillance."

In a statement, Geofeedia chief executive Phil Harris said the company "is committed to the principles of personal privacy, transparency and both the letter and the spirit of the law when it comes to individual rights."

He added that the firm works to ensure "end-users do not seek to inappropriately identify individuals based on race, ethnicity, religious, sexual orientation or political beliefs, among other factors. That said, we understand... that we must continue to work to build on these critical protections of civil rights."

Twitter tweeted in a statement, "Based on information in the @ACLU's report, we are immediately suspending @Geofeedia's commercial access to Twitter data."

Facebook, which owns Instagram, said in a statement that Geofeedia was accessing its data improperly: "This developer only had access to data that people chose to make public.... If a developer uses our [user data] in a way that has not been authorized, we will take swift action to stop them and we will end our relationship altogether if necessary."

Most users of Twitter, Facebook and Instagram know the social media services as platforms for sharing thoughts or images with friends. But companies such as Geofeedia and others collect and analyze social media data to help their own customers track emerging online trends. Specialized data streams from social media companies can provide access to faster, more exhaustive collections of posts than otherwise are publicly available.

Civil libertarians have grown increasingly concerned that the rising power of government surveillance technology is prompting a spike in the monitoring of African Americans and other minority groups through video surveillance, social media and the tracking of cellphone calls.

"Police spying on social media has a disproportionate impact on black people," said Malkia Cyril, the executive director of the Center for Media Justice, an Oakland-based activist group. "There's a movement afoot to ensure that black lives matter. That is being spied upon. That is being surveilled."

Before the social media companies began blocking access in recent weeks, Geofeedia was using specialized data streams for police surveillance. In one email recovered by the ACLU,

a company employee boasted that it had a “confidential legally binding agreement with Facebook” for data. Another email said users of Geofeedia could “pull private information for Instagram and Twitter.”

Neither claim could be independently verified.

Because social media posts increasingly provide location information from users’ smartphones, surveillance systems can map out areas of looming unrest or political activism. Geofeedia documents made public by the ACLU made references to tracking protests in Baltimore in 2015 after the death of a black man, Freddie Gray, while in police custody and also to protests in Ferguson, Mo., in 2014 after the police shooting of Michael Brown, an unarmed black man.

Facebook, Twitter, and Instagram make most of their money selling advertising, but all have side businesses selling outsiders access to their rich data streams about users. For example, through software known as an API, developers have been able to use Facebook to get access to a person’s friend list, birthday, profile picture, education history, relationship status, and political affiliation – if a person’s Facebook profile and location are public. \

Twitter also sells its own so-called data firehose, which includes the contents of tweets, and demographic information like gender and interests, the cellular network users and geolocation, by latitude and longitude coordinates, if the user tags it. Customers include financial firms that monitor business trends, retailers looking for product mentions, organizations like the Red Cross, which use the data to monitor crises, and law enforcement.

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According to the documents obtained by the ACLU, Facebook provided Geofeedia with access to a data feed that enabled the surveillance startup to monitor topics trending from public posts about events, such as riots or protests. Twitter did not provide access to the full firehose, but offered Geofeedia a database to search public tweets. Instagram provided access to the Instagram API, which included photos posted publicly as well as location information if the users tagged their pictures.

News stories about Geofeedia, which was founded in 2011, first emerged last month, when the Daily Dot website reported that local police in Denver had spent \$30,000 on online surveillance tools. Shortly after, the ACLU of California published public records showing that police departments across the state were rapidly acquiring social media monitoring software to monitor activists.

The ACLU said the social media companies had sought to close Geofeedia’s access to the special data feeds. Facebook and Instagram closed off Geofeedia’s access on Sept. 19. Twitter imposed contractual limits in an attempt to block Geofeedia from using posts for surveillance. Twitter also sent a cease and desist letter on Monday to Geofeedia, the ACLU said. On Tuesday, Twitter announced it would block the feed to Geofeedia altogether.

The civil liberties group said that social media companies should go farther in implementing public policies and other restrictions to keep their posts from being used for government surveillance. Without specialized data feeds, outside companies could still implement programs to “scrape” social media data as it becomes publicly available, but that approach would be less effective and also would violate the terms of service for some companies.

In addition to Twitter, Facebook and Instagram, the Geofeedia documents found by the ACLU show that the company also analyzes data from Vine and Periscope, as well as VK and Weibo, popular social media services in Russia and China, respectively. It is not clear whether any of those companies provide special data feeds to Geofeedia.

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#### The Post Recommends

#### This virus may have stolen deadly DNA from black widow spiders

This bizarre virus infects bacteria that infect spiders. It makes a spider-bacteria-virus-spider turducken.

#### Donald Trump just tweeted about Juanita Broaddrick calling Bill Clinton a rapist. All bets are now off.

A desperate candidate may have just been (even more) unleashed.

#### Juanita Broaddrick’s other debate-night claim could be trouble for Breitbart News

AOR449

She says Donald Trump's favorite news site paid for her travel, an arrangement that could violate campaign finance laws.

AOR450

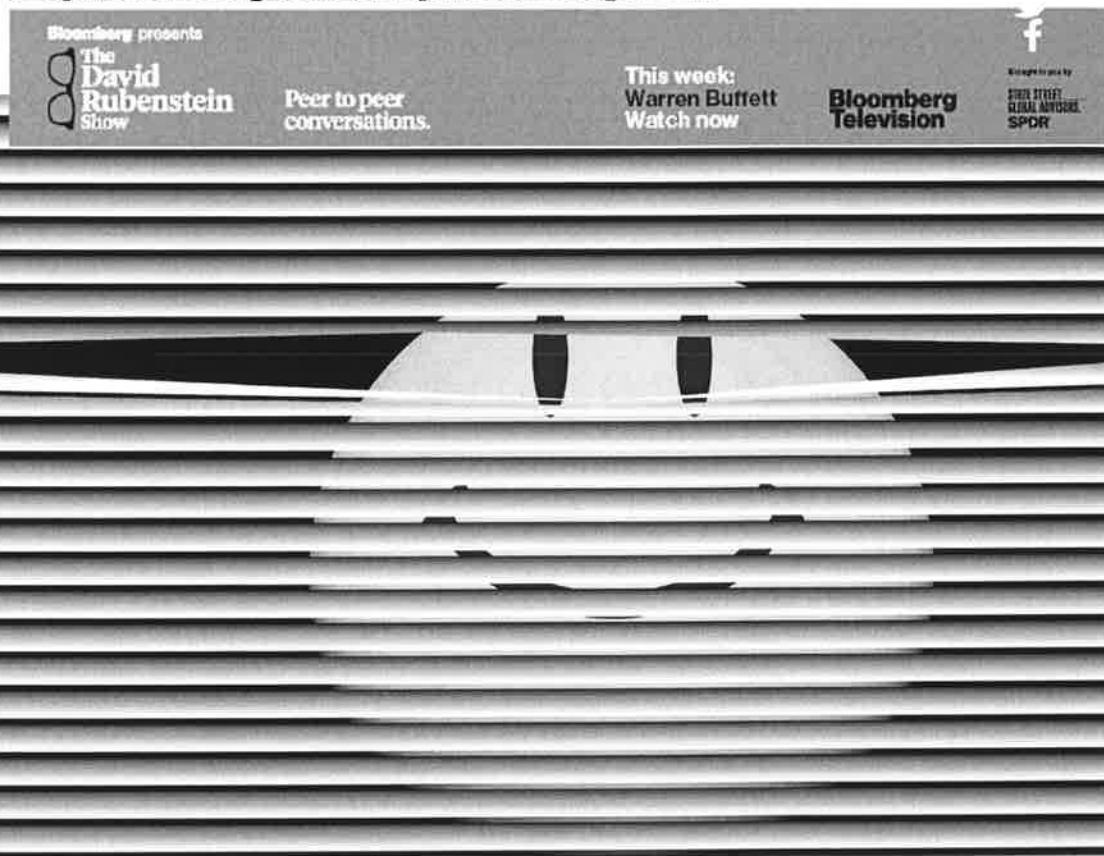
# **EXHIBIT V**

Bloomberg the Company & its Products (<http://www.bloomberg.com/company/?tophat=open>)

Bloomberg Anywhere Remote Login (<https://bba.bloomberg.net/>)

Bloomberg Terminal Request a Demo ([http://www.bloomberg.com/professional/request-demo/?utm\\_source=bbgmenu-demo&bbgsum=DG-WS-CORE-bbgmen](http://www.bloomberg.com/professional/request-demo/?utm_source=bbgmenu-demo&bbgsum=DG-WS-CORE-bbgmen))

(<http://bloomberg.com/>) (<http://bloomberg.com/>)



# How Walmart Keeps an Eye on Its Massive Workforce

The retail giant is *Always* watching.

By Susan Berfield | November 24, 2015

From **Bloomberg Businessweek** (<http://www.bloomberg.com/businessweek>)

**In the autumn of 2012, when Walmart first heard about the possibility of a strike on Black Friday, executives mobilized with the efficiency that had built a retail empire. Walmart has a system for almost everything: When there's an emergency or a big event, it creates a Delta team. The one formed that**

AOR452

September included representatives from global security, labor relations, and media relations. For Walmart, the stakes were enormous. The billions in sales typical of a Walmart Black Friday were threatened. The company's public image, especially in big cities where its power and size were controversial, could be harmed. But more than all that: Any attempt to organize its 1 million hourly workers at its more than 4,000 stores in the U.S. was an existential danger. Operating free of unions was as essential to Walmart's business as its rock-bottom prices.

OUR Walmart, a group of employees backed and funded by a union, was asking for more full-time jobs with higher wages and predictable schedules. Officially they called themselves the Organization United for Respect at Walmart (<http://www.bloomberg.com/bw/articles/2012-12-13/walmart-vs-dot-union-backed-our-walmart>). Walmart publicly dismissed OUR Walmart as the insignificant creation of the United Food and Commercial Workers International (UFCW) union. "This is just another union publicity stunt, and the numbers they are talking about are grossly exaggerated," David Tovar, a spokesman, said on *CBS Evening News* that November.

Internally, however, Walmart considered the group enough of a threat that it hired an intelligence-gathering service from Lockheed Martin, contacted the FBI, staffed up its labor hotline, ranked stores by labor activity, and kept eyes on employees (and activists) prominent in the group. During that time, about 100 workers were actively involved in recruiting for OUR Walmart, but employees (or associates, as they're called at Walmart) across the company were watched; the briefest conversations were reported to the "home office," as Walmart calls its headquarters in Bentonville, Ark.

The details of Walmart's efforts during the first year it confronted OUR Walmart are described in more than 1,000 pages of e-mails, reports, playbooks, charts, and graphs, as well as testimony from its head of labor relations at the time. The documents were produced in discovery ahead of a National Labor Relations Board hearing into OUR Walmart's allegations of retaliation against employees who joined protests in June 2013. The testimony was given in January 2015, during the hearing. OUR Walmart, which split from the UFCW in September, provided the documents to *Bloomberg Businessweek* after the judge concluded the case in mid-October. A decision may come in early 2016.

Walmart declined to comment on the specifics of the documents, citing the ongoing case. It did send a statement via e-mail: "We are firmly committed to the safety and security of our 2.2 million associates as well as the 260 million customers we serve each week. It's important to remember that Walmart is the largest company in the world with 11,500 stores in 28 countries. Unfortunately, there are occasions when outside groups attempt to deliberately disrupt our business and on behalf of our customers and associates we take action accordingly."

Karen Casey was in charge of Walmart's U.S. labor relations as OUR Walmart emerged. Casey, an attorney, held a similar position at Albertsons for a decade before, with one important difference: Some workers there were represented by the UFCW. In 2003 they joined other grocery employees in Southern California in a four-month strike to resist cutbacks brought on by competition from Walmart. The strike was estimated to have cost \$2 billion.

Casey, along with other executives in Bentonville, first learned about OUR Walmart from managers' calls to the company's labor hotline in the fall of 2010. "Associates were being visited at home by people dressed in khakis and blue shirts, which is the Walmart uniform," she told the NLRB judge. They were, she said, "claiming to be current and former associates asking people to join this group." When asked about Walmart's emphasis on "mitigating labor risks," she replied: "Our real concern is about the safety of our stores and making sure our managers also respond lawfully to any labor activity that may be going on."

### **OUR Walmart made its claims**

public in June 2011, when 97 employees and their supporters arrived in Bentonville with a 12-point declaration that

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asked for wages and benefits sufficient to ensure that no worker would have to rely on government assistance. They also called for dependable schedules, expanded health-care coverage, and the freedom to speak up without facing retaliation. In the parking lot, they presented the document to Casey and asked to speak with her inside.

Walmart's "open door" policy allows, and almost always requires, employees who want to talk about workplace conditions with managers to do so

individually. Casey didn't let the group in the building en masse. "We had offered to have one-on-ones with our associates to understand their questions and concerns," she said at the hearing. The associates declined. "I think the executives were just as shocked as we were" that workers had come to Bentonville on their own, Cynthia Murray, one of the founders of OUR Walmart, told this magazine in 2012.

During October 2012, OUR Walmart members and supporters began a series of walkouts and protests across the country to increase pressure on the retailer before the holiday shopping season. The group called a National Day of Action for Oct. 10 and sent a few people to Bentonville, where Walmart executives were meeting with Wall Street analysts. Two hundred calls to the labor hotline from almost as many stores were logged around that time.

Some calls betrayed the paranoia of beleaguered managers.

2:30 p.m., Store 5880 in Fairfax, Va.: "A customer began talking to a cashier about the strikes at Walmart this week, and the cashier responded that maybe she should go on strike. AM [assistant manager] feels the cashier was joking when she made the comment."

4:19 p.m., Store 3893 in Zion, Ill.: "Three associates made comments

surrounding the 'strikes' in other stores to Grocery ZMS [zone merchandising supervisor]. Grocery ZMS shared his opinion but didn't state our philosophy. He will do so the next time the associates are at work."

The last call in the log, on Oct. 15, came from Yuma, Ariz.: "An associate asked what would happen to associates if they walked out on Black Friday."

**Walmart was watching Colby Harris. He was a full-time employee in the** produce department in Store 471 in Lancaster, Texas. He joined protests in California, picketed stores in Dallas, and showed up in Bentonville for the analysts' meeting. In November 2012, he said he had given more than 45 interviews to journalists. "People want to hear from us," he said.

On Oct. 17, Casey, the labor relations executive, sent an e-mail to one of her senior staff: "Colby Harris, what's his story?" Casey said in her testimony that she asked about Harris because he had appeared in press accounts of the walkouts, and Walmart's media relations group asked her for information about him. She also said that Walmart tracked associates "who may be engaged in the demonstrations and strikes to figure out who was working and who wasn't."

As momentum for the Black Friday protests was building, the Delta team raced to respond. The Black Friday Labor Relations Team Daily Meeting had its own acronym: the BFLRTDM. An e-mail on Oct. 24 from a member of the labor relations team to four executives had the subject line: "Blitz Planning (Re-visited due to new information)." The document they updated—the Labor Relations Blitz/Black Friday 2012 Plan—noted some of the latest tactics they

expected from OUR Walmart: “work stoppages, mic checks, 1 post of a human chain, social media calls for boycotts and Sponsor a Striker for Black Friday food card program.” It also included this request to Walmart’s Analytical Research Center: “When does Lockheed provide more analysts?”

The Analytical Research Center, or ARC, is part of Walmart’s global security division. Ken Senser, a former FBI officer, oversees the entire group. The executive responsible for ARC was Steve Dozier, according to Casey’s testimony. He was director of the Arkansas State Police before he joined Walmart in 2007. “When we received word of potential strikes and disruptive activity on Black Friday 2012, that’s when we started to ask the ARC to work with us,” Casey said during her testimony. “ARC had contracted with Lockheed leading up to Black Friday to help source open social media sites.”

Lockheed Martin is one of the biggest defense contractors in the world. Although it’s best known for making fighter jets and missile systems, it also has an information technology division that offers cybersecurity and data analytics services. Tucked into that is a little-known operation called LM Wisdom, which has been around since 2011. LM Wisdom is described on Lockheed’s website as a tool “that monitors and analyzes rapidly changing open source intelligence data ... [that] has the power to incite organized movements, riots and sway political outcomes.” A brochure depicts yellow tape with “crime scene” on it, an armored SWAT truck, and a word cloud with “MAFIA” in huge type.

Neither Walmart nor Lockheed would comment on their contract in 2012 and 2013, or talk specifically about Wisdom. The only mention of Wisdom in the documents *Bloomberg Businessweek* reviewed comes in a question during the NLRB hearing to Casey, who was asked if she had heard of Wisdom. She said she hadn’t.

Christian Blandford, a Lockheed analyst, was monitoring the social media of activists in Bentonville for Walmart's 2013 shareholder meeting. He sent his updates to Walmart and copied Mike Baylor, who's named as a project manager on Lockheed's Wisdom website. On June 4, at 6:30 p.m., Blandford sent this update about the artist and activist Favianna Rodriguez to seven Walmart and five Lockheed managers: "Favianna tweeted that OUR Walmart is preparing for action 'walmart headquarters.' Tweet is 9 minutes old as of this e-mail."

Two hours later, Blandford wrote that Angela Williamson, who was fired by Walmart in 2012 and subsequently hired by OUR Walmart, "tweeted a rhetorical question towards Walmart in which she asks, 'Whats on my agenda tomorrow?'"

**Companies have always kept an eye on their workers. "Everybody from General Motors to the Pacific Railroad had clippings files,"** says Nelson Lichtenstein, a labor historian. "It's more sophisticated and efficient now, but it's the same thing." Companies can't legally put in place rules—or surveillance—that apply only to labor activists. But they can restrict solicitation during work hours or in customer areas and keep security cameras throughout. And they can set up systems for managers to report concerns of any kind to headquarters. Employers can send people to open meetings or rallies or demonstrations. But there's little labor law regarding companies' monitoring of their employees' own social media accounts. "It's a tricky issue when you are doing something so openly," says Wilma Liebman, who was head of the NLRB from 2009 to 2011. Casey said in her testimony that to her knowledge, Walmart doesn't monitor individual workers' Twitter accounts. While most of the OUR Walmart activists being watched expected to be, none thought it would be by a company like Lockheed Martin. "We're artists, not ISIS," Rodriguez says.

Walmart has been opposed to unions since Sam Walton opened his first store in Rogers, Ark., in 1962. As he put it in his autobiography, *Sam Walton: Made in America*: "Theoretically I understand the argument that unions try to make, that the associates need someone to represent them and so on. But historically, as unions have developed in this country, they have mostly just been divisive." When the Retail Clerks International Union tried to organize employees at two

stores in Missouri in 1970, Walton hired John Tate, a union-busting lawyer, to oversee labor relations. Tate often called unions “bloodsucking parasites,” according to ABC News.

The UFCW has started several campaigns aimed at Walmart. In 1999 it focused on the meat departments at 300 Walmart supercenters. Butchers in a store in Jacksonville, Texas, voted—a mere 7 to 3—to join the union in 2000. Two weeks later, Walmart closed its 180 meat counters and switched to prepackaged cuts, saying it would offer meat cutters other jobs in its stores. “Our decision to expand case-ready meat has nothing to do with what went on in Jacksonville,” Jessica Moser, a spokeswoman, told the Associated Press.

Training videos, executive memos, and various other anti-union materials have been leaked over the years by groups hoping to embarrass Walmart. A 49-page document from 1997, *A Manager’s Toolbox to Remaining Union-Free*, begins: “As a member of Walmart’s management team, you are our first line of defense against unionization.” Based on the documents from the ongoing case, many of the tools in the toolbox remain in use. The 1997 guide instructs managers to remain alert for signs of low morale or organizing among their employees. They’re supposed to address the causes of low morale and report the organizing to the Bentonville hotline.

The labor relations team uses information from the hotline and social media monitoring to determine which stores are most at risk of labor unrest. These are dubbed Priority 1 stores, in need of extra training for managers and extra information sessions for employees. Several OUR Walmart members have described Bentonville executives arriving suddenly in their stores with scripts in hand. In one video that was shown to new employees until last year, an actress playing an associate says: “The truth is unions are businesses, multimillion-dollar businesses that make their money by convincing people like you and me to give them a part of our paychecks.”

Walmart's aim isn't only to watch 100 or so active members of OUR Walmart, says Kate Bronfenbrenner, a lecturer at Cornell's School of Industrial and Labor Relations. "They are looking for the thousands who are supportive so they can intimidate them." Walmart declined to comment on her statement. Casey, in her testimony, repeatedly stated that Walmart doesn't retaliate against protesting workers. She described training managers in what Walmart calls TIPS and FOES: Managers cannot Threaten, Interrogate, Promise, or Spy. They can talk about Facts, Opinions, and Experiences.

People take part in a protest for better wages outside a Walmart in Los Angeles on Nov. 7, 2013.

Photographer: Lucy Nicholson/Reuters

**“This is significant,” Casey wrote in an e-mail to her field managers on** Sunday morning, Nov. 18, 2012, five days before Black Friday. Casey was referring to intelligence that a manager at Store 5434 in San Leandro, Calif., had turned up. “They [the protesters] will be going to my store at 8 p.m., Friday, Nov. 23,” the manager wrote. “They will be in Walmart dress code and wearing yellow vests directing traffic in the parking lot.”

A human resources manager for the San Francisco East Bay area offered a suggestion: Have the workers at all the “priority” stores in the area wear vests in a color other than yellow. That would allow management to identify OUR Walmart activists.

A few days later, an executive summary of the expected OUR Walmart activity reported 42 stores with “a high likelihood of activity” and 132 with “potential activity.” The number of workers projected to walk out or call in sick ranged from 376 to 492.

By Friday, Nov. 23, OUR Walmart strikers had been identified, members of the Bentonville labor relations team had been sent to Priority 1 stores, all managers had instructions on how to report protests, the hotline was fully staffed, and lawyers were standing by. As workers, activists, journalists, and shoppers arrived at Walmarts around the country early Friday morning, the labor hotline lit up with reports such as:

Store 2596 in Mount Vernon, Wash.: “100 demonstrators on the parking lot and on entrances, have asked them to leave. Police will not ask to leave without a court order, 10 at each of the 3 doors, Sergeant [sic] is to call back when he arrives on site.”

Store 2479, in San Diego, had 35 protesters blocking front doors. At 4383, in Dearborn, Mich., 100 protesters mobbed the electronics department. At 3589, in Salt Lake City, balloons with slogans were released in the store. At 2357, in Germantown, Md., an individual was reported yelling out, “This is just Day One. We’re never leaving.”

Walmart's first public statement went out as the day was getting under way, proclaiming "the best Black Friday ever." Later, spokesman Tovar, who has since left the company, issued another statement: "We had our best Black Friday ever and OUR Walmart was unable to recruit more than a small number of associates to participate in these made for TV events."

The company never did quantify what it meant by "best," though it did announce that since that Thanksgiving evening, Walmart had sold 1.8 million towels and 1.3 million televisions. Internally, Walmart tallied the labor unrest during the 10 days around Black Friday. The labor relations team reported "a record-breaking" 1,600 hotline calls from 977 stores; 250 locations reported protests of some kind. On Black Friday itself, there were 372 hotline calls from stores with "activity."

In testimony, Casey said Walmart counted about 100 workers who had gone on strike on Black Friday. OUR Walmart maintains that about 400 Walmart employees went on strike and that they or their supporters took action at almost 1,200 stores around the country.

Walmart filed an unfair labor practice allegation against the UFCW in November 2012, contending that the one-day walkouts weren't legally protected. In January 2013, the UFCW and OUR Walmart agreed to refrain from picketing or similar "confrontational conduct" for 60 days. Afterward, the NLRB closed the case. Walmart also won seven statewide court injunctions preventing the UFCW and anyone else who wasn't an employee from protesting on Walmart property. In a Maryland case, the judge wrote of the protesters, "the bullying tactics and the lawlessness ... that the evidence clearly established in this case, is not okay under the law no matter what their cause is."

**In mid-April 2013, Walmart executives began hearing about plans for "Ride for Respect,"** a bus caravan that would arrive in Bentonville during the weeklong annual shareholder meeting in June. About 14,000 people—hand-picked associates, managers, shareholders, investors, the Walton family—would be in town. Elton John was performing. It was a time of particularly uncomfortable scrutiny for Walmart. A Bangladesh factory, where Walmart garments were produced, had collapsed, killing more than 1,100 workers. Walmart denied knowing its work had been subcontracted there. An investigation by the U.S. Department of Justice into potential bribery in Mexico

was under way; Walmart said it was cooperating fully.

A Delta team began operations. When global security heard that members of the Occupy movement might join the protests at corporate headquarters, they began working with the FBI Joint Terrorism Task Forces. The documents from the NLRB hearing don't provide any details about the collaboration or indicate whether it was unusual for Walmart to bring in the FBI. The bureau had worked with local police forces across the country as they dealt with Occupy protesters.

"With some assistance from LM [Lockheed Martin] we have created the attached map to track the caravan movements and approximate participants," Kris Russell, a risk program senior manager, wrote to colleagues on May 30. The map showed the predicted routes for five buses. By then, 96 associates had announced their intent to strike. Another 115 "uninvited guests" were expected in Bentonville. Forty-five or so probable demonstrations around the country had been identified.

One of the uninvited guests was Patrick Foote, an activist from Florida. He chronicled the trip to Bentonville on his blog; Walmart and Lockheed social media analysts were avid readers. He and others tried to get into the original Walton 5 & 10, now a museum in the old town square. When protesters arrived there, associates brought in for the shareholder meeting were enjoying a company party. Foote wrote that the associates were quickly ushered into buses and driven away. Then staff closed down the museum. Foote wrote of Walmart's preparations: "As an organizer, I have to give them props. It was impressive."

Williamson, the former Walmart associate who became an OUR Walmart

organizer, knew she was being monitored in Bentonville. “I sent a couple of fake tweets about where we would be or what we were doing. I don’t know if it worked,” she says. “I wonder how people feel about Walmart wasting money by hiring Lockheed Martin to read my tweets. I wouldn’t be happy about that if I was a shareholder.”

In the weeks after the Ride for Respect, Walmart disciplined about 70 associates who had been part of the caravan or protests, including almost 20 whom it fired, according to OUR Walmart. The company said it was enforcing its attendance policy and not illegally targeting strikers. OUR Walmart alleged retaliation. This case, for which these documents were collected, was taken up by the NLRB in January 2014.

The Black Friday Delta team had become more efficient by the autumn of 2013. Its alerts were more frequent; its training and coaching began earlier. Executives were given a summary of all the protests since 2011, store by store, with some associates’ names included. Store managers and others received a Black Friday guide called the playbook, which had included information about everything from Walmart’s “one-hour guarantee” to “incident procedures.” It noted that the global security team and labor relations were monitoring open source social media to alert and prepare stores where demonstrations were expected, and instructed employees “to report any suspected and/or actual activity.”

On Oct. 4, Casey sent out a request for “Home Office First Responders.” She asked that managers from human resources volunteer for hotline shifts during

the week leading up to Black Friday. Three days later, an alert from a risk manager in the Global Security Analytic Service (what used to be ARC) noted a Facebook post from a student group in Kentucky that mentioned Black Friday protests. "Could this be the first confirmed BF action?" he asks. In an e-mail on Nov. 4, Casey wrote, "While we're excited. ... So are our opponents. We expect similar activity to last year."

Black Friday, Nov. 29, 2013, was a day of strikes and counterstrikes (<http://www.bloomberg.com/bw/articles/2014-11-24/why-walmart-workers-keep-using-one-day-strikes>). Bill Simon, then president of Walmart U.S., sent out a statement just after 6 a.m.: "Our Black Friday events were bigger, better, faster, cheaper, and safer than ever." At noon, OUR Walmart held a conference call. "These protests are a powerful escalation by workers and community supporters who refuse to live in fear, who are sick and tired of Walmart's empty promises and PR lies," said Martha Sellers, an employee in California. Later that afternoon, Walmart released a graphic about its employee wages and benefits.

A two-page Walmart executive summary prepared after that Black Friday noted that picketing occurred at 203 stores, compared with 214 the previous year; flash mobs were down from 76 to 10; instances of people distributing literature declined from 131 to 96. The document highlighted its conclusion that only 20 associates participated in strikes, compared with 118 in 2012.

OUR Walmart said it had carried out nine civil disobedience demonstrations across the country, with about 100 people arrested, and some 1,500 protests.

**Since the first strikes in 2012, unfair labor practice allegations have been** filed against Walmart on behalf of some 200 workers connected to OUR Walmart, according to the group. The company denies wrongdoing. The labor board prosecutor dismissed some of the allegations and is pursuing others, including the retaliation case from which these documents were obtained.

Among those disciplined was the outspoken Harris, who was fired in September 2013 and now works for the UFCW. Murray, one of the group's founders, remains employed at Walmart, making \$13.59 an hour. Casey is now the senior vice president for human resources at Walmart's logistics division. And Lockheed Martin has announced that its commercial cyber unit, which includes Wisdom, is "under strategic review."

OUR Walmart takes credit for some successes. After Doug McMillon took over

AOR465

as the company's chief executive officer in February 2014, he raised the starting wage to \$9 an hour (<http://www.bloomberg.com/news/articles/2015-02-19/walmart-just-announced-that-it-s-giving-500-000-workers-a-raise>); it increases to \$10 an hour in 2016. Walmart has introduced a scheduling policy designed to allow employees to work more hours and have more predictable schedules. The changes come amid a nationwide push for higher wages and better working conditions for hourly employees. Fast-food workers have been demonstrating in favor of minimum pay of \$15 an hour, and several cities have raised the minimum wage on their own. OUR Walmart helped spark, and in turn was fed by, the movement.

Walmart doesn't acknowledge OUR Walmart's influence. "The unions who spend a lot of time attacking Walmart make a lot of false claims, but the reality is that Walmart makes decisions based on the best interests of our company, our associates and our customers," Brian Nick, a spokesman, said via e-mail. "We're proud of the wages and benefits package we offer. Our average full-time hourly associate earns more than \$13 an hour in addition to the opportunity for quarterly cash bonuses, matching 401(k) as well as health-care benefits. Walmart is investing \$2.7 billion over this year and next in wages, education, and training for our associates because we know they make the difference."

This year, instead of striking, OUR Walmart is staging a 15-day fast leading up to Black Friday. Workers want to wait until the NLRB ruling before walking off the job again, Murray says. The hunger strike is in support of a \$15-an-hour minimum wage and to highlight the problems some Walmart workers have feeding their families, she says, adding that some 1,400 people are participating in the fast as they see fit and about 200 of those are former and

current employees. Murray is one of them.

On Black Friday there will be demonstrations around the country, organized by groups connected to OUR Walmart and joined by employees who had already taken the day off or aren't scheduled to work. Murray will be at a protest in Washington, D.C. "I do believe that since we've been speaking up, Walmart has had to take a hard look at themselves," she says. "We're not going away."

*—With Josh Eidelson*

Editor: Bryant Urstadt

Producer: Laura Ratliff

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Monday, Mar. 09, 2009

TIME

## Fusion Centers: Giving Cops Too Much Information?

By Hilary Hylton / Austin

At the time, it seemed one of the unanimous lessons of the tragedy of Sept. 11 — law enforcement agencies at all levels of government have to do a better job of sharing information with each other in order to prevent terror plots. Making that actually happen, of course, is easier said than done, which is why newfangled, multi-organizational agencies were set up to promote cooperation and overcome turf battles. But now critics claim that these so-called fusion centers are making it all too easy for government to collect and share data from numerous public databases.

Organizations like the American Civil Liberties Union are pushing bills to restrict fusion centers' access to data, most notably in New Mexico, where opponents hope to make government snooping a costly offense. Legislation has been introduced in Santa Fe that would prohibit any New Mexico law enforcement agency from collecting information about the religious, political and social associations of law-abiding New Mexicans. And in what would be a first for the nation, the bill would allow private citizens to sue law enforcement agencies for damages over the unauthorized collection of such data.

Privacy advocates point to a scandal in the state of Maryland, where last summer it was revealed that in 2005 and 2006 undercover members of the Maryland State Police had carried out surveillance of war protesters and death penalty opponents. Some of the intelligence gathered on the subjects, according to logs obtained by the ACLU last summer, may have found its way into databases shared with local, national and federal agencies through the state's fusion center. An investigation found the data collection represented a serious lapse in judgment, but the victims had little recourse, except public outrage.

"The lack of proper legal limits on the new fusion centers not only threatens to undermine

fundamental American values, but also threatens to turn them into wasteful and misdirected bureaucracies that, like our federal security agencies before 9/11, won't succeed in their ultimate mission of stopping terrorism and other crime," the national ACLU notes in its report on the centers. There are federal and state privacy laws governing the centers, but a recent report by the Department of Homeland Security's own Privacy Office suggested that the multi-governmental nature of the centers allows the staffers to pick and choose a policy that suits their needs. The report, issued in late December, echoed some of the concerns laid out in earlier congressional and Government Accountability Office reports that warned of the potential for "mission creep" by the fusion centers.

There are approximately 60 "fusion centers" nationwide, with some focusing exclusively on criminal activity, others on both criminal and terrorist threats, and some on very specific acts, such as human smuggling, gang activity, online predators or drug trafficking. Much of the funding for the large state centers comes from the federal government, including a new infusion of \$250 million courtesy of the stimulus package to be spent by 2010 on "upgrading, modifying, or constructing" state and local fusion centers. The latest fusion center, the \$21 million Port of Long Beach facility, opened last month. Staffed by local, state and federal officials, it sits on a small swath of land inside the nation's second largest port and utilizes state of the art surveillance technology, including cameras that can read a badge from two miles away. Every state but Idaho and Pennsylvania has at least one fusion center; Texas, for instance, has its Texas Intelligence Center within the Texas Department of Public Safety "to collect, analyze, and disseminate intelligence information related to terrorist activities" covering the entire state. The state also has the North Central Texas Fusion System, covering a 16 county-area around the Dallas metro area that includes "regional homeland security, law enforcement, public health, fire, medical providers, emergency management, and private security".  
(See pictures of SWAT teams around the world.)

Different missions and different mixes of manpower make each center unique. "If you've seen one fusion center — you've seen one fusion center," says Jack Tomarchio, former deputy director of intelligence for the Department of Homeland Security, who oversaw the development of most of the country's state fusion centers during the Bush Administration. Tomarchio says the centers have proved their value in fighting both crime and terrorism — sometimes exposing the link between the two, as in the case of cigarette smuggling in the Carolinas which funded terrorist groups abroad. They also have provided valuable information in preventing further attacks, he claims, adding that while he is not at liberty to disclose the kind of information mined, fusion center intelligence did reach the level of the daily presidential briefing in the Bush Administration.

The model for the centers grew out of "intelligence-led policing" — a British initiative with its roots in the early 1990s. It has evolved into "a management philosophy that places greater emphasis on

information-sharing and collaborative, strategic solutions to crime problems," according to Dr. Jerry Ratcliffe, a former British police officer and currently a Temple University professor who has lectured and written extensively on the subject. "It facilitates holistic crime prevention," Ratcliffe says. Rather than each department, or even squad, having its own databases, fusion centers allow access to multiple databases and sources of intelligence; the drug squad in one community can share information with the anti-gang task force in another, picking up on patterns that may indicate an emerging threat as gangs set up to move into a new market, or distribute new contraband, for example.

But that sharing of information troubles critics. New Mexico's All Source Intelligence Center, housed in an old National Guard building, has access to 240 state, regional and federal agencies and their databases, including agricultural and parks agencies, according to Peter Simonson, executive director of the state's ACLU chapter. Establishing what kinds of information is being processed by fusion centers can be difficult, Simonson says, since they do not store the records, or even collect them, but simply mine them through digital gateways. Records are accessed, not retained as they would be in specific case or investigative files. Simonson says the New Mexico chapter of the ACLU has filed several open records requests seeking to find out what kind of information is being reviewed, but has been stymied by the lack of a "material product." Other state ACLU chapters are pressing open records requests aimed at casting light on fusion center activities.

Groups like the ACLU have sued law enforcement agencies in the past aimed at exposing domestic spying, but individuals whose privacy has been violated have little recourse — "suing is a shot in the dark," Simonson says, given current state and federal laws. "There aren't any legal remedies and we are trying to create one," Simonson says, acknowledging that it may take more than one legislative session to pass the bill in New Mexico.

One of the most well regarded fusion centers was created under the leadership of former Arizona Governor Janet Napolitano, now Secretary of Homeland Security. During her confirmation hearings Napolitano highlighted her leadership in creating one of the first state anti-terrorism law enforcement fusion centers in the country, and her first directive at DHS ordered a thorough review of intelligence-sharing programs and methods aimed improving the flow of information to states, local and tribal governments. But in her testimony to Congress, she also cited her commitment to privacy: "As Governor, I created the Statewide Information Security and Privacy Office to ensure adequate controls and safeguards are in place for all State of Arizona government technology systems and business practices." However, Napolitano's appointment gives Simonson pause. "I think the Obama Administration has a much greater sensitivity to these issues than the previous Administration, but the track record from Arizona would suggest that we still have good reason to be

concerned."

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December 17, 2009

## Intelligence Improperly Collected on U.S. Citizens

By CHARLIE SAVAGE and SCOTT SHANE

WASHINGTON — In February, a Department of Homeland Security intelligence official wrote a “threat assessment” for the police in Wisconsin about a demonstration involving local pro- and anti-abortion rights groups.

That report soon drew internal criticism because the groups “posed no threat to homeland security,” according to a department memorandum released on Wednesday in connection with a Freedom of Information Act lawsuit. The agency destroyed all its copies of the report and gave the author remedial training.

That was just one of several cases in the last several years in which the department’s intelligence office improperly collected information about American citizens or lawful United States residents, the documents show.

In March 2008, the office produced a “terrorism watch list” report about a Muslim conference in Georgia at which several Americans were scheduled to speak, even though it “did not have any evidence the conference or the speakers promoted radical extremism or terrorist activity,” and such speech is constitutionally protected, an internal report said.

And in October 2007, the office sent a report, “Nation of Islam: Uncertain Leadership Succession Poses Risks,” to hundreds of federal officials. Department guidelines had called for the files to be destroyed because the assessment of the group had lasted more than 180 days without uncovering evidence of potential terrorism.

In all three cases, after other Homeland Security Department officials raised concerns, copies of the reports were destroyed. The agency also held a workshop on intelligence-gathering “while ensuring the protection of civil rights and civil liberties” after the Nation of Islam incident.

The documents were released by the Justice Department in connection with a lawsuit filed by the nonprofit Electronic Frontier Foundation. It had sought reports to the Intelligence Oversight Board, a watchdog panel appointed by the president, by various agencies documenting violations of law, executive orders or presidential directives.

Marcia Hofmann, a staff lawyer with the foundation, praised agency officials for destroying the reports but said the public needed to know about such incidents.

“I think it’s a positive sign that these agencies responded to this and took steps to correct the situation,” Ms. Hofmann said, adding, “We would never have known that this happened had we not seen these internal reports.”

Matt Chandler, a spokesman for the Homeland Security Department, said, "We take very seriously our responsibility to protect the civil rights and liberties of the American people while" protecting the country.

Other documents released Wednesday were heavily censored because they involved classified information.

A February 2008 report from the National Security Agency, for example, has four pages almost entirely redacted, under the heading of intelligence activities "that violate law, regulation, or policy substantiated during the quarter, as well as actions taken as a result of the violations."

In a 2007 report, top security agency officials said "intelligence oversight training is not managed effectively" at the N.S.A. and called procedures regarding training "confusing."

A spokeswoman for the N.S.A., Judith A. Emmel, said that since 2007 the agency had "improved its oversight training program and continues to refine it."

"Ensuring our work force is thoroughly and properly trained is something we take very seriously," Ms. Emmel said.

Another memorandum disclosed that a Defense Intelligence Agency employee said that in May 2002, in response to a Congressional inquiry, the Joint Forces Intelligence Command provided false information about its activities related to Al Qaeda and the Sept. 11 attacks. The document offered few details.

The Justice Department also released other documents Wednesday from other Freedom of Information Act lawsuits related to national security policies during the Bush administration.

Among them was a letter written in 2002 by George J. Tenet, who was the director of the Central Intelligence Agency at the time, suggesting that a C.I.A. ban on using journalists as spies was not airtight.

After Islamic militants killed Daniel Pearl, a Wall Street Journal reporter whom they had falsely accused of working for the C.I.A., leaders of the American Society of Newspaper Editors asked Mr. Tenet to "declare unequivocally" that the agency's spies never posed as journalists.

Mr. Tenet replied that for 25 years, the agency's policy had been "that we do not use American journalists as agents or American news organizations for cover." But he refused to make what he described as "a blanket statement that we would never use journalistic cover."

Instead, he wrote, "the circumstances under which I would even consider any exception to this policy would have to be truly extraordinary."

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September 24, 2010

# F.B.I. Searches Antiwar Activists' Homes

By COLIN MOYNIHAN

F.B.I. agents executed search warrants Friday in Minneapolis and Chicago in connection to an investigation of support of terror organizations.

The searches in Minneapolis took place early in the morning at the homes of people who have helped organize demonstrations against the war in Iraq and protests held two years ago during the Republican National Convention in St. Paul.

"It is rather patently political," said Ted Dooley, a lawyer who represents Mick Kelly, a food service worker at the University of Minnesota and one of those whose homes was searched. "My client denies any wrongdoing."

Steve Warfield, a spokesman for the Federal Bureau of Investigation in Minneapolis, said the agents executed six warrants in Minneapolis and two in Chicago.

"They were seeking evidence related to an ongoing Joint Terrorism Task Force investigation," Mr. Warfield said. "They are looking at activities connected to the material support of terrorism."

He said no one in Minneapolis had been arrested while the warrants were executed. He added that agents in Michigan and North Carolina had also questioned people in connection with the investigation.

Mr. Dooley said the F.B.I. broke down Mr. Kelly's door around 7 a.m. and gave a search warrant to his companion. The warrant said agents were gathering evidence related to people "providing, attempting and conspiring to provide material support" to terrorist organizations, and listed Hezbollah, the Popular Front for Liberation of Palestine and the Revolutionary Armed Forces of Colombia.

The warrant also authorized the agents to look for information connected to the Freedom Road Socialist Organization and to unnamed "co-conspirators" and allowed them to seize items including electronics, photographs, address books and letters.

Mr. Kelly is known in Minnesota as a prominent organizer of the Anti-War Committee, a group that has protested United States military aid to Colombia and called for the removal of American soldiers from Afghanistan.

During the Republican gathering in 2008 he was a primary organizer of a march that drew thousands of participants.

Mr. Kelly was also served with a summons to appear before a grand jury on Oct. 19 in Chicago. The order directed him to bring along pictures or videos related to any trip to Colombia, Jordan, Syria, the Palestinian territories or Israel, as well as correspondence with anyone in those places.

Jess Sundin, another member of the Anti-War Committee whose home was searched, said a warrant also was executed at the group's office. She said she had not done anything to help terror groups.

"I've protested the government's policies and spoken out and tried to educate people in my community," Ms. Sundin said. "That is the extent of what I've done."

# The Washington Post

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## Activists cry foul over FBI probe

By Peter Wallsten, Published: June 13

CHICAGO — FBI agents took box after box of address books, family calendars, artwork and personal letters in their 10-hour raid in September of the century-old house shared by Stephanie Weiner and her husband.

The agents seemed keenly interested in Weiner's home-based business, the Revolutionary Lemonade Stand, which sells silkscreened baby outfits and other clothes with socialist slogans, phrases like "Help Wanted: Revolutionaries."

The search was part of a mysterious, ongoing nationwide terrorism investigation with an unusual target: prominent peace activists and politically active labor organizers.

The probe — involving subpoenas to 23 people and raids of seven homes last fall — has triggered a high-powered protest against the Department of Justice and, in the process, could create some political discomfort for President Obama with his union supporters as he gears up for his reelection campaign.

The apparent targets are concentrated in the Midwest, including Chicagoans who crossed paths with Obama when he was a young state senator and some who have been active in labor unions that supported his political rise.

Investigators, according to search warrants, documents and interviews, are examining possible "material support" for Colombian and Palestinian groups designated by the U.S. government as terrorists.

The apparent targets, all vocal and visible critics of U.S. foreign policy in the Middle East and South America, deny any ties to terrorism. They say the government, using its post-9/11 focus on terrorism as a pretext, is targeting them for their political views.

They are "public non-violent activists with long, distinguished careers in public service, including teachers, union organizers and antiwar and community leaders," said Michael Deutsch, a Chicago lawyer and part of a legal team defending those who believe they are being targeted by the investigation.

Several activists and their lawyers said they believe indictments could come anytime, so they have turned their organizing skills toward a counteroffensive, decrying the inquiry as a threat to their First Amendment rights.

Those who have been subpoenaed, most of them non-Muslim, include clerical workers, educators and in one case a stay-at-home dad. Some are lesbian couples with young children — a point apparently noted by investigators, who infiltrated the activists' circle with an undercover officer presenting herself as a lesbian mother.

All 23 of the activists invoked their right not to testify before a grand jury, defying U.S. Attorney Patrick Fitzgerald, whose office is spearheading the investigation.

A spokesman for Fitzgerald, the Chicago prosecutor whose past work has sometimes riled both political parties, declined to comment.

It is uncertain whether Obama is aware of the investigation. A White House official referred questions to the Justice Department, where spokesman Matthew Miller said the agency will not comment on an investigation, but he disputed any assertion that people would be targeted for political activities.

"Whenever we open an investigation, it is solely because we have a reason to do so based on the facts, evidence and the law," Miller said.

The activists have formed the Committee to Stop FBI Repression, organized phone banks to flood Attorney General Eric H. Holder Jr.'s office and the White House with protest calls, solicited letters from labor unions and faith-based groups and sent delegations to Capitol Hill to gin up support from lawmakers.

Labor backers include local and statewide affiliates representing the Service Employees International Union and the American Federation of State, County and Municipal Employees, two of the most influential unions in the liberal movement. So far, nine members of Congress have written letters to the administration asking questions.

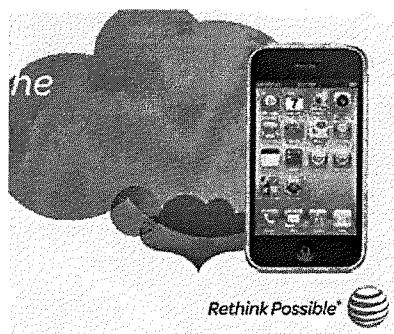
The major national labor organizations have not gotten involved in the case and are considered likely to support Obama's reelection next year.

But some state and local union organizations are expressing alarm about the case, saying that the government appears to be scrutinizing efforts by workers to build ties with trade unionists in other countries.

"I am so disgusted when I see that so many union people have been targeted in this," said Phyllis Walker, president of AFSCME Local 3800, which represents clerical workers at the University of Minnesota, including four members who are possible targets.

The union's statewide group, which says it represents 46,000 workers, called on Obama to investigate and passed a resolution expressing "grave concern" about the raids. Similar resolutions have been approved by statewide AFSCME and SEIU affiliates in Illinois.

If there are indictments, the case could test a 2010 Supreme Court ruling that found the ban on material support for designated foreign terrorist groups does not necessarily violate the First Amendment — even if the aid was intended for peaceful or humanitarian uses. The ruling held that any type of support could ultimately help a terrorist group's pursuit of violence.



The probe appears to date from 2008, as a number of activists began planning for massive antiwar demonstrations at the Republican National Convention in St. Paul.

After the convention, the FBI's interest continued, apparently focused on the international work pursued by many of the participants. Several activists said they had traveled to Colombia or the Palestinian territories on "fact-finding" trips designed to bolster their case back home against U.S. military support for the Israeli and Colombian governments.

In 2009, a group raised money to travel and deliver about \$1,000 to a Palestinian women's group, but the delegation was turned back by officials at the airport in Israel, organizers said.

Search warrants, subpoenas and documents show that the FBI has been interested in links between the activists and the Revolutionary Armed Forces of Colombia (FARC), the Popular Front for the Liberation of Palestine and Hezbollah.

In the early morning of Sept. 24, 2010, agents raided homes in Chicago and Minneapolis, issued subpoenas to 14 activists, and tried to question others around the country, including prominent antiwar organizers in North Carolina and California.

At 7 a.m., according to documents and interviews, about a dozen armed federal agents used a battering ram to force their way into Mick Kelly's second-floor apartment, which sits over an all-night coffee shop in a working-class neighborhood of Minneapolis.

Kelly, 53, a cook in a University of Minnesota dormitory and a member of the Teamsters, said he was at work and his nightgown-clad wife, Linden Gawboy, was slow to answer the door.

Apparently by accident, the agents left something behind: a packet of secret documents headlined "Operation Order," laying out detailed instructions for the FBI SWAT team to find clues of Kelly's activism, including personal finances or those of the Freedom Road Socialist Organization, a far-left group he works with. The documents point to the FBI's interest in Kelly's foreign travel.

"We've done absolutely nothing wrong," Kelly said. "We don't know what this is about, but we know that our rights to organize and speak out are being violated."

In Chicago, the raid at the home of Weiner, 49, also targeted her husband, Joe Iosbaker, 52, a University of Illinois-Chicago office worker and a union steward for his SEIU local. The couple are among the grassroots activists close to the world once inhabited by Barack Obama who have been caught up in the investigation.

Like others, Weiner and Iosbaker have been fixtures on the local liberal political scene, protesting police actions, attending antiwar rallies, leading pay equity fights and even doing some volunteer work for Obama's past campaigns.

Tom Burke, who received a subpoena Sept. 24, had in 2004 discussed the plight of murdered Colombian trade unionists with then-state senator Obama.

"He was a sympathetic ear," Burke said, recalling that Obama told him the murders were a "human rights problem."

Hatem Abudayyeh, one of seven Palestinians to be subpoenaed in the investigation, recalls encountering Obama in the community during his years as a state legislator. Abudayyeh, 40, is executive director of the Arab American Action Network, a Chicago advocacy group that hosted then-state senator Obama for at least two events.

The role of the undercover officer, which defense lawyers said was confirmed in their talks with prosecutors, became clear in the weeks following the raids. She had joined a Minneapolis antiwar group, then joined demonstrations at the School of the Americas military training site in Fort Benning, Georgia, and at one point flying with a group to Israel on the trip that was thwarted at the airport.

"They were smart sending a 40-year-old lesbian," said Meredith Aby, 38, a high school civics teacher and longtime organizer. "A good match," added Jess Sundin, a university clerical worker.

Aby and Sundin, whose homes were raided and who received subpoenas, had helped lead a group called the Anti-War Committee that had coordinated with antiwar activists across the country to plan the demonstrations at the Republican convention.

Civil libertarians and other critics say the investigation fits a pattern for the FBI, pointing to a Justice Department [inspector general's report](#) — issued three days before the raids — chiding the agency for monitoring the domestic political activities of Greenpeace, People for the Ethical Treatment of Animals and other groups in the name of combating terrorism.

Rep. Jan Schakowsky (D-Ill.), a member of the House Intelligence Committee and a close Obama ally, wrote Holder in April conveying the activists' concerns that the probe was infringing on their rights.

"Clearly we need to have a bright line where people can exercise their civil rights, their civil liberties, to peacefully protest," Schakowsky said in an interview.

Holder experienced the activists' anger first hand last month, when Tracy Molm, 30, an AFSCME organizer whose apartment was raided, stood to interrupt a speech he was giving at the University of Minnesota. Holder, unaware that she was a possible investigation target, agreed to meet with her after the speech.

In a small room off the auditorium, with the attorney general flanked by aides and security, Molm demanded to know why the administration was pursuing the inquiry, she recalled later in an interview.

"He said they had a predicate for the investigation," Molm said. "I said, 'The predicates after 9/11 are nothing.'"

"We're going to have to agree to disagree," Holder replied, according to Molm.

At that point, Molm revealed that her apartment had been raided as part of the investigation. Holder and Justice Department officials abruptly ended the discussion.

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Protest News

## Secret government informer "Karen Sullivan" infiltrated Minnesota activist groups

By Nick Pinto Wed., Jan. 12 2011 at 12:59 PM Categories: Protest News

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The Twin Cities activists who had their homes raided by the FBI last September are starting to learn more about why they're being investigated by a Chicago grand jury in relation to material support of terrorism.

Lawyers for the activists have learned from prosecutors that the feds sent an undercover law enforcement agent to infiltrate the Twin Cities Anti-War Committee in April 2008, just as the group was planning its licensed protests at the Republican National Convention.

Going by the name "Karen Sullivan," the agent blended in with the many new faces the Committee was seeing at meetings in the lead-up to the RNC. But she stayed active afterward, attending virtually every meeting.

"She presented herself as a lesbian with a teenage daughter, and said she had a difficult relationship with her former partner, which is one of the reasons she gave us for not being more transparent about her story," says Jess Sundin, a member of the Anti-War Committee and one of the activists who has received a subpoena from the Chicago grand jury. "It was a sympathetic story for a lot of us."

Sullivan told the group she was originally from Boston but that she had had a rough childhood and was estranged from her family. She said she had spent some time in Northern Ireland working with Republican solidarity groups.

Sullivan at first said that she didn't have any permanent address in the area, but she eventually got an apartment in the Seward neighborhood. She claimed to be employed by a friend's small business, checking out foreclosed properties that he might buy. The cover story of a flexible job schedule let her attend all the meetings she wanted to, and to have individual lunches with other activists.

"She really took an interest," Sundin said. "It raised



Committee to Stop FBI Repression  
"Karen Sullivan," an undercover agent who spied on Twin Cities activists.



Twin Cities Indymedia  
Jess Sundin speaking at a press conference this morning.

some suspicions among other members at first, but after the other undercover agents from the RNC Welcoming Committee came out, and no in our organization did, we figured we didn't have any. Besides, we didn't think we had anything we needed to be secretive about."

Sullivan began to take on more responsibilities with the organization, chairing meetings, handling the group's bookkeeping, and networking with dozens of other organizations.

In the summer of 2009, Sullivan joined two other Twin Cities activists in a trip to visit Palestine. Somehow, when they landed in Tel Aviv, Israeli security forces knew they were coming, and that they were headed to Palestine.

The three women were told they could get on the next plane back home or they could face detention. Sullivan took the flight. The other two women chose detention and were ultimately deported.

Attorneys for the activists have also learned that prosecutors are especially interested in a small donation the women intended to give to their host organization in Palestine, the Union of Palestinian Women's Committees. The group is registered as an NGO with the Palestinian Authority and not listed as a terrorist group by the United States.

Last fall, Sullivan disappeared from the Twin Cities, telling her fellow activists that she had some family business to take care of. She never came back. On September 24, the FBI launched a series of early morning raids on the homes of members of the Anti-War Committee and the Freedom Road Socialist Organization.

The FBI would not confirm or deny Sullivan's identity as a government agent or comment on this story by the time of publication. The U.S. Attorney's office in Chicago has said it will not comment on anything related to the grand jury investigation.

Last fall the Justice Department's Inspector General released a scathing report that criticized the FBI for invoking anti-terrorist laws to justify their investigations and harassment of groups including Greenpeace, People for the Ethical Treatment of Animals, and the Catholic Worker.

"This is exactly what the Inspector General's report was talking about," Sundin told *City Pages* this morning. "The FBI doesn't have the right to spy on us. It's an abuse of our democratic rights. We're supposed to have freedom of association, not, 'You can associate but we're going to spy on you.'"



Department of Justice  
U.S. Attorney Patrick Fitzgerald is relying on an undercover informant in his investigation of Twin Cities activists.

January 12, 2011  
Categories: Terrorism

## Anti-war group active at 2008 GOP convention claims FBI infiltration

Antiwar activists who organized demonstrations in connection with the 2008 Republican National Convention in St. Paul, Minn. are claiming that their group was infiltrated for years by an FBI-directed undercover law enforcement officer who took part in meetings, gave public speeches with the group and even traveled to Israel with fellow activists who wanted to visit with Palestinians.

Leaders of the Twin Cities-based Anti-war Committee called a press conference Wednesday where they displayed a poster-sized photo of the alleged agent, who they said used the name Karen Sullivan and joined the group in April 2008. (The photo has been posted online, but I'm going to hold off posting it myself for now.)

"We are here today to express outrage that our democratic rights have been violated by a government operation of spying, infiltration and disruption of our antiwar movement which was carried out over at least two-and-a-half years," said Jess Sundin, a leader of the group.

Beginning in September, about two dozen activists in the Minneapolis and Chicago area received grand jury subpoenas and also saw their homes or meeting places searched pursuant to search warrants issued in connection with a federal investigation that appears to center on allegations that members of so-called peace groups gave support to organizations in the Middle East and Colombia that the U.S. government has designated as terrorists.

Sundin said "Sullivan"'s FBI affiliation became clear in recent days as a result of discussions lawyers for the activists had with prosecutors handling the investigation for Chicago-based U.S. Attorney Patrick Fitzgerald.

"We now have it confirmed that in this same period [in 2008] we....became the subject of a government investigation," Sundin said. "Our spy made herself comfortable and decided to stay a while, posing as a fellow anti-war activist and pretending to befriend us. For two-and-a-half years, Officer Sullivan participated, sometimes serving as chairperson, in weekly Antiwar Committee meetings here in this very room....Officer Sullivan had a key to this office which was used by FBI on September 24 to enter this office, search it, seize our computers and financial records and other materials."

Sundin and other speakers suggested that the government's actions harkened back to the heyday of FBI surveillance and infiltration of left-leaning and self-described peace groups decades ago. "The government has no right to spy on the Antiwar Committee or the many organizations we've worked with," she said. "These actions make a mockery of our democratic rights."

A spokesman for the FBI in Minneapolis, Kyle Loven, declined to comment Wednesday on the group's claims. However, he said he stood by earlier statements that the search warrants carried out in September were part of an investigation being conducted by the area's Joint Terrorism Task Force. Spokesmen for the FBI's Chicago office and for the U.S. Attorney's office there had no comment.

No criminal charges are known to have been filed in connection with the probe.

"Sullivan" traveled with the group to Israel in 2009 and was among three activists who were denied entry by Israel. Sundin said she believes the federal investigation is focusing on a group the activists have supported: the **Union of Palestinian Women's Committees** (<http://www.upwc.org.ps/>) . It is not listed as a terrorist group by the U.S. Government.

Many law enforcement informants or undercover operatives involved in similar investigations take a passive role in the groups they infiltrate, but that doesn't seem to have been what "Sullivan" did. Sundin noted that some of the alleged agent's speeches, on issues like "don't ask, don't tell" and "Plan Colombia" are still posted on the antiwar group's website (<http://antiwarcommittee.org/?s=%22Karen+Sullivan%22>) . Sundin said "Sullivan" also joined in activities organized by the Freedom Road Socialist Organization, which also appears to be a focus of federal prosecutors.

Several grand jury subpoenas related to the investigation have called activists to testify in Chicago on January 25. Most if not all of the activists are vowing to defy the subpoenas by refusing to testify.

One of the Palestinian activists whose home was searched in September, Hatem Abudayeh, attended a White House outreach briefing for Arab-American leaders last year ([http://www.politico.com/blogs/joshgerstein/1010/Target\\_of\\_FBI\\_terrorsupport\\_raid\\_visited\\_WH.html](http://www.politico.com/blogs/joshgerstein/1010/Target_of_FBI_terrorsupport_raid_visited_WH.html)) .

Another woman who was subpoenaed serves as managing editor of a pro-Palestinian website that published a controversial article ([http://www.politico.com/blogs/joshgerstein/0111/Editor\\_of\\_site\\_that\\_claimed\\_Obama\\_changed\\_Mideast\\_views\\_gets\\_i](http://www.politico.com/blogs/joshgerstein/0111/Editor_of_site_that_claimed_Obama_changed_Mideast_views_gets_i)) alleging President Barack Obama publicly abandoned his support for the Palestinian community as he pursued federal office, but privately suggested he would resume his prior positions once in office. Obama aides have adamantly denied the account.

FBI-led investigations of domestic political groups are supposed to be conducted pursuant to a set of guidelines that establish various thresholds and approvals ([http://www.politico.com/blogs/joshgerstein/0909/FBI\\_airs\\_surveillance\\_rules.html](http://www.politico.com/blogs/joshgerstein/0909/FBI_airs_surveillance_rules.html)) for the use of undercover informants and similar techniques.

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Posted by Josh Gerstein 01:05 PM

Tags: 2008 Republican National Convention, Chicago, Civil Liberties, Colombia, FBI, First Amendment, Israel, Israeli-Palestinian Conflict, Minneapolis, Palestine, Terrorism, Undercover Operations

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May 7, 2009

# Justice Dept. Finds Many Flaws in F.B.I. Terror Watch List

By ERIC LICHTBLAU

WASHINGTON — The Federal Bureau of Investigation has improperly kept nearly 24,000 people on a terrorist watch list based on outdated or sometimes irrelevant information, while it missed others with legitimate terror ties who should have been on the list, according to a Justice Department report released Wednesday.

The report said the mistakes posed a risk to national security, because of the failure to flag actual suspected terrorists, as well as an unnecessary nuisance for non-suspects who may be questioned at a traffic stops or stopped from boarding an airplane.

By the beginning of 2009, the report said, the government's terrorist watch lists included about 400,000 people, listed as 1.1 million names and aliases, an exponential growth from the days before the attacks of Sept. 11, 2001, when it included fewer than two dozen people.

Intelligence officials say the watch lists have allowed different agencies to work together in an effort to prevent the type of breakdown that allowed two of the Sept. 11 hijackers to enter the United States even though they were known to the Central Intelligence Agencies for their terrorist ties.

The new Justice Department report provided the most authoritative statistical account to date of the problems connected with the watch lists and confirmed some assertions made by critics of the process. An earlier report by the inspector general, released in March 2008, looked mainly at flaws in the system.

The list has long been a target of public criticism, particularly after well-publicized incidents in which politicians including Senator Edward M. Kennedy of Massachusetts and Representative John Lewis of Georgia accidentally showed up on the lists. People with names similar to actual terrorists have complained that it can take months to remove their names from the list, and civil rights advocates charge that anti-war protesters, Muslim activists and others have been put on the lists and stopped at airports for political reasons.

The report, by the Justice Department inspector general's office, looked mainly at the F.B.I., which took the lead in 2004 for maintaining a consolidated terrorist watch list for all agencies throughout the federal government.

One of the biggest problems identified in the report was the use of outdated information, or material unconnected to terrorism, to keep people on the F.B.I.'s own terror watch list. The report examined nearly 69,000 watch lists referrals brought or processed by the F.B.I. and found that 35 percent of the people, both Americans and foreigners, remained on the list despite inadequate justification.

“Many of these watch-listed records were associated with outdated terrorism case classifications or case classifications unrelated to terrorism,” the report said. In some cases, the people on the watch lists were the subjects of F.B.I. investigations that had been closed years earlier without action, yet their names had either never been removed, or not in a timely fashion.

Potentially even more problematic were the cases of people who were not on the watch lists despite evidence of terrorist ties.

The inspector general looked at a sampling of 216 F.B.I. terrorism investigations, and found that in 15 percent of those cases, a total of 35 subjects were not referred to the terror watch list even though they should have been.

In one case, for instance, a United States Army Special Forces soldier was investigated and ultimately convicted for stealing some 16,500 round of ammunition, C-4 explosives and other material from Afghanistan and shipping them to the United States in what investigators suspected might be the makings of a domestic terror plot. Yet the suspect was not placed on the watch list for nearly five months after the investigation was opened against him.

“We believe that the FBI’s failure to consistently nominate subjects of international and domestic terrorism investigations to the terrorist watch list could pose a risk to national security,” the inspector general said. The director of the Washington office of the American Civil Liberties Union, Caroline Fredrickson, said her group’s monitoring of the watch lists indicates that the problems identified at the F.B.I. are endemic to entire system.

“What this report really shows is that on both ends, the lists are really over-inclusive and under-inclusive,” she said in an interview. “With 1.1 million names, there’s all sorts of problems that have larded it up, and the whole thing just really needs to be torn down and start a new system.”

The F.B.I. adopted all 16 of the inspector general’s recommendations for improving watch list operations, including better training and faster processing of referrals. The agency said in a statement that “we remain committed to improving our watch list policy and practices to ensure the proper balance between national security protection and the need for accurate, efficient and streamlined watch-listing processes.”

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May 28, 2011

# For Anarchist, Details of Life as F.B.I. Target

By COLIN MOYNIHAN and SCOTT SHANE

AUSTIN, Tex. — A fat sheaf of F.B.I. reports meticulously details the surveillance that counterterrorism agents directed at the one-story house in East Austin. For at least three years, they traced the license plates of cars parked out front, recorded the comings and goings of residents and guests and, in one case, speculated about a suspicious flat object spread out across the driveway.

"The content could not be determined from the street," an agent observing from his car reported one day in 2005. "It had a large number of multi-colored blocks, with figures and/or lettering," the report said, and "may be a sign that is to be used in an upcoming protest."

Actually, the item in question was more mundane.

"It was a quilt," said Scott Crow, marveling over the papers at the dining table of his ramshackle home, where he lives with his wife, a housemate and a backyard menagerie that includes two goats, a dozen chickens and a turkey. "For a kids' after-school program."

Mr. Crow, 44, a self-described anarchist and veteran organizer of anticorporate demonstrations, is among dozens of political activists across the country known to have come under scrutiny from the F.B.I.'s increased counterterrorism operations since the attacks of Sept. 11, 2001.

Other targets of bureau surveillance, which has been criticized by civil liberties groups and mildly faulted by the Justice Department's inspector general, have included antiwar activists in Pittsburgh, animal rights advocates in Virginia and liberal Roman Catholics in Nebraska. When such investigations produce no criminal charges, their methods rarely come to light publicly.

But Mr. Crow, a lanky Texas native who works at a recycling center, is one of several Austin activists who asked the F.B.I. for their files, citing the Freedom of Information Act. The 440 heavily-redacted pages he received, many bearing the rubric "Domestic Terrorism," provide a revealing window on the efforts of the bureau, backed by other federal, state and local police agencies, to keep an eye on people it deems dangerous.

In the case of Mr. Crow, who has been arrested a dozen times during demonstrations but has never

been convicted of anything more serious than trespassing, the bureau wielded an impressive array of tools, the documents show.

The agents watched from their cars for hours at a time — Mr. Crow recalls one regular as “a fat guy in an S.U.V. with the engine running and the air-conditioning on” — and watched gatherings at a bookstore and cafe. For round-the-clock coverage, they attached a video camera to the phone pole across from his house on New York Avenue.

They tracked Mr. Crow’s phone calls and e-mails and combed through his trash, identifying his bank and mortgage companies, which appear to have been served with subpoenas. They visited gun stores where he shopped for a rifle, noting dryly in one document that a vegan animal rights advocate like Mr. Crow made an unlikely hunter. (He says the weapon was for self-defense in a marginal neighborhood.)

They asked the Internal Revenue Service to examine his tax returns, but backed off after an I.R.S. employee suggested that Mr. Crow’s modest earnings would not impress a jury even if his returns were flawed. (He earns \$32,000 a year at Ecology Action of Texas, he said.)

They infiltrated political meetings with undercover police officers and informers. Mr. Crow counts five supposed fellow activists who were reporting to the F.B.I.

Mr. Crow seems alternately astonished, angered and flattered by the government’s attention. “I’ve had times of intense paranoia,” he said, especially when he discovered that some trusted allies were actually spies.

“But first, it makes me laugh,” he said. “It’s just a big farce that the government’s created such paper tigers. Al Qaeda and real terrorists are hard to find. We’re easy to find. It’s outrageous that they would spend so much money surveilling civil activists, and anarchists in particular, and equating our actions with Al Qaeda.”

The investigation of political activists is an old story for the F.B.I., most infamously in the Cointel program, which scrutinized and sometimes harassed civil rights and antiwar advocates from the 1950s to the 1970s. Such activities were reined in after they were exposed by the Senate’s Church Committee, and F.B.I. surveillance has been governed by an evolving set of guidelines set by attorneys general since 1976.

But the Oklahoma City bombing in 1995 demonstrated the lethal danger of domestic terrorism, and after the Sept. 11 attacks, the F.B.I. vowed never again to overlook terrorists hiding in plain sight. The Qaeda sleeper cells many Americans feared, though, turned out to be rare or nonexistent.

The result, said Michael German, a former F.B.I. agent now at the American Civil Liberties Union,

has been a zeal to investigate political activists who pose no realistic threat of terrorism.

“You have a bunch of guys and women all over the country sent out to find terrorism. Fortunately, there isn’t a lot of terrorism in many communities,” Mr. German said. “So they end up pursuing people who are critical of the government.”

Complaints from the A.C.L.U. prompted the Justice Department’s inspector general to assess the F.B.I.’s forays into domestic surveillance. The resulting report last September absolved the bureau of investigating dissenters based purely on their expression of political views. But the inspector general also found skimpy justification for some investigations, uncertainty about whether any federal crime was even plausible in others and a mislabeling of nonviolent civil disobedience as “terrorism.”

Asked about the surveillance of Mr. Crow, an F.B.I. spokesman, Paul E. Bresson, said it would be “inappropriate” to discuss an individual case. But he said that investigations are conducted only after the bureau receives information about possible crimes.

“We do not open investigations based on individuals who exercise the rights afforded to them under the First Amendment,” Mr. Bresson said. “In fact, the Department of Justice and the bureau’s own guidelines for conducting domestic operations strictly forbid such actions.”

It is not hard to understand why Mr. Crow attracted the bureau’s attention. He has deliberately confronted skinheads and Ku Klux Klan members at their gatherings, relishing the resulting scuffles. He claims to have forced corporate executives to move with noisy nighttime protests.

He says he took particular pleasure in a 2003 demonstration for Greenpeace in which activists stormed the headquarters of ExxonMobil in Irving, Tex., to protest its environmental record. Dressed in tiger outfits, protesters carried banners to the roof of the company’s offices, while others wearing business suits arrived in chauffeured Jaguars, forcing frustrated police officers to sort real executives from faux ones.

“It was super fun,” said Mr. Crow, one of the suits, who escaped while 36 other protesters were arrested. “They had ignored us and ignored us. But that one got their attention.”

It got the attention of the F.B.I. as well, evidently, leading to the three-year investigation that focused specifically on Mr. Crow. The surveillance documents show that he also turned up in several other investigations of activism in Texas and beyond, from 2001 to at least 2008.

For an aficionado of civil disobedience, Mr. Crow comes across as more amiable than combative. He dropped out of college, toured with an electronic-rock band and ran a successful Dallas antiques business while dabbling in animal rights advocacy. In 2001, captivated by the philosophy of anarchism, he sold his share of the business and decided to become a full-time activist.

Since then, he has led a half-dozen groups and run an annual training camp for protesters. (The camps invariably attracted police infiltrators who were often not hard to spot. "We had a rule," he said. "If you were burly, you didn't belong.") He also helped to found Common Ground Relief, a network of nonprofit organizations created in New Orleans after Hurricane Katrina.

Anarchism was the catchword for an international terrorist movement at the turn of the 20th century. But Mr. Crow, whose e-mail address contains the phrase "quixotic dreaming," describes anarchism as a kind of locally oriented self-help movement, a variety of "social libertarianism."

"I don't like the state," he said. "I don't want to overthrow it, but I want to create alternatives to it."

This kind of talk appears to have baffled some of the agents assigned to watch him, whose reports to F.B.I. bosses occasionally seem petulant. One agent calls "nonviolent direct action," a phrase in activists' materials, "an oxymoron." Another agent comments, oddly, on Mr. Crow and his wife, Ann Harkness, who have been together for 24 years, writing that "outwardly they did not appear to look right for each other." At a training session, "most attendees dressed like hippies."

Such comments stand out amid detailed accounts of the banal: mail in the recycling bin included "a number of catalogs from retail outlets such as Neiman Marcus, Ann Taylor and Pottery Barn."

Mr. Crow said he hoped the airing of such F.B.I. busywork might deter further efforts to keep watch over him. The last documents he has seen mentioning him date from 2008. But the Freedom of Information Act exempts from disclosure any investigations that are still open.

"I still occasionally see people sitting in cars across the street," he said. "I don't think they've given up."

# The Washington Post

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## With CIA help, NYPD built secret effort to monitor mosques, daily life of Muslim neighborhoods

By Associated Press, Published: August 24

NEW YORK — Since the Sept. 11 terrorist attacks, the New York Police Department has become one of the nation's most aggressive domestic intelligence agencies, targeting ethnic communities in ways that would run afoul of civil liberties rules if practiced by the federal government, an Associated Press investigation has found.

These operations have benefited from unprecedented help from the CIA, a partnership that has blurred the line between foreign and domestic spying.

The department has dispatched undercover officers, known as "rakers," into minority neighborhoods as part of a human mapping program, according to officials directly involved in the program. They've monitored daily life in bookstores, bars, cafes and nightclubs. Police have also used informants, known as "mosque crawlers," to monitor sermons, even when there's no evidence of wrongdoing.

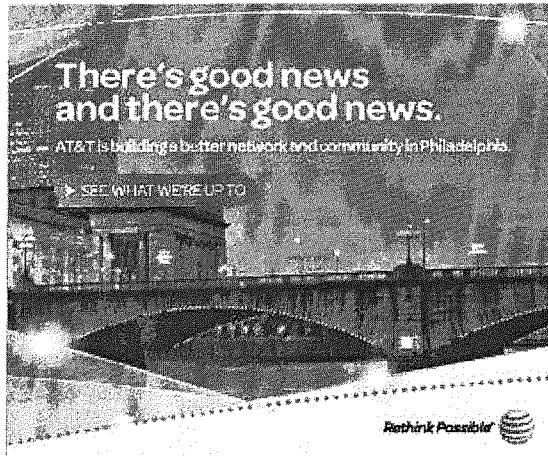
Neither the city council, which finances the department, nor the federal government, which has given NYPD more than \$1.6 billion since 9/11, is told exactly what's going on.

Many of these operations were built with help from the CIA, which is prohibited from spying on Americans but was instrumental in transforming the NYPD's intelligence unit.

A veteran CIA officer, while still on the agency's payroll, was the architect of the NYPD's intelligence programs. The CIA trained a police detective at the Farm, the agency's spy school in Virginia, then returned him to New York, where he put his new espionage skills to work inside the United States.

And just last month, the CIA sent a senior officer to work as a clandestine operative inside police headquarters.

In response to the story, the Council on American-Islamic Relations, a leading Muslim civil rights organization, called on the Justice Department to investigate. The Justice Department said Wednesday night it would review the request.



“This is potentially illegal what they’re doing,” said Gadeir Abbas, a staff attorney with the organization.

The NYPD denied that it trolls ethnic neighborhoods and said it only follows leads. Police operations have disrupted terrorist plots and put several would-be killers in prison.

“The New York Police Department is doing everything it can to make sure there’s not another 9/11 here and that more innocent New Yorkers are not killed by terrorists,” NYPD spokesman Paul Browne said. “And we have nothing to apologize for in that regard.”

AP’s investigation is based on documents and interviews with more than 40 current and former New York Police Department and federal officials. Many were directly involved in planning and carrying out these secret operations for the department. Though most said the tactics were appropriate and made the city safer, many insisted on anonymity, because they were not authorized to speak with reporters about security matters.

In just two episodes showing how widely the NYPD cast its net, the department sought a rundown from the taxi commission of every Pakistani cab driver in the city, and produced an analytical report on every mosque within 100 miles, officials said.

One of the enduring questions of the past decade is whether being safe requires giving up some liberty and privacy. The focus of that debate has primarily been federal programs like wiretapping and indefinite detention. The question has received less attention in New York, where residents do not know for sure what, if anything, they have given up.

The story of how the NYPD Intelligence Division developed such aggressive programs begins with one man.

---

David Cohen arrived at the New York Police Department in January 2002, just weeks after the last fires had been extinguished at the debris field that had been the twin towers. A retired 35-year veteran of the CIA, Cohen became the police department’s first civilian intelligence chief.

Cohen had an exceptional career at the CIA, rising to lead both the agency’s analytical and operational divisions. He also was an extraordinarily divisive figure, a man whose sharp tongue and supreme confidence in his own abilities gave him a reputation as arrogant. Cohen’s tenure as head of CIA operations, the nation’s top spy, was so contentious that in 1997, The New York Times editorial page took the unusual step of calling for his ouster.

He had no police experience. He had never defended a city from an attack. But New York wasn’t looking for a cop.

“Post-9/11, we needed someone in there who knew how to really gather intelligence,” said John Cutter, a retired NYPD official who served as one of Cohen’s top uniformed officers.

At the time, the intelligence division was best known for driving dignitaries around the city. Cohen envisioned a unit that would analyze intelligence, run undercover operations and cultivate a network of informants. In short, he wanted New York to have its own version of the CIA.

Cohen shared Commissioner Ray Kelly’s belief that 9/11 had proved that the police department could not simply rely on the federal government to prevent terrorism in New York.

"If anything goes on in New York," one former officer recalls Cohen telling his staff in the early days, "it's your fault."

Among Cohen's earliest moves at the NYPD was making a request of his old colleagues at CIA headquarters in Langley, Va. He needed someone to help build this new operation, someone with experience and clout and, most important, someone who had access to the latest intelligence so the NYPD wouldn't have to rely on the FBI to dole out information.

CIA Director George Tenet responded by tapping Larry Sanchez, a respected veteran who had served as a CIA official inside the United Nations. Often, when the CIA places someone on temporary assignment, the other agency picks up the tab. In this case, three former intelligence officials said, Tenet kept Sanchez on the CIA payroll.

When he arrived in New York in March 2002, Sanchez had offices at both the NYPD and the CIA's station in New York, one former official said. Sanchez interviewed police officers for newly defined intelligence jobs. He guided and mentored officers, schooling them in the art of gathering information. He also directed their efforts, another said.

There had never been an arrangement like it, and some senior CIA officials soon began questioning whether Tenet was allowing Sanchez to operate on both sides of the wall that's supposed to keep the CIA out of the domestic intelligence business.

"It should not be a surprise to anyone that, after 9/11, the Central Intelligence Agency stepped up its cooperation with law enforcement on counterterrorism issues or that some of that increased cooperation was in New York, the site of ground zero," CIA spokeswoman Jennifer Youngblood said.

Just as at the CIA, Cohen and Sanchez knew that informants would have to become the backbone of their operation. But with threats coming in from around the globe, they couldn't wait months for the perfect plan.

They came up with a makeshift solution. They dispatched more officers to Pakistani neighborhoods and, according to one former police official directly involved in the effort, instructed them to look for reasons to stop cars: speeding, broken tail lights, running stop signs, whatever. The traffic stop gave police an opportunity to search for outstanding warrants or look for suspicious behavior. An arrest could be the leverage the police needed to persuade someone to become an informant.

For Cohen, the transition from spying to policing didn't come naturally, former colleagues said. When faced with a decision, especially early in his tenure, he'd fall back on his CIA background. Cutter said he and other uniformed officers had to tell Cohen, no, we can't just slip into someone's apartment without a warrant. No, we can't just conduct a search. The rules for policing are different.

While Cohen was being shaped by the police department, his CIA background was remaking the department. But one significant barrier stood in the way of Cohen's vision.

Since 1985, the NYPD had operated under a federal court order limiting the tactics it could use to gather intelligence. During the 1960s and 1970s, the department had used informants and undercover officers to infiltrate anti-war protest groups and other activists without any reason to suspect criminal behavior.

To settle a lawsuit, the department agreed to follow guidelines that required "specific information" of criminal

activity before police could monitor political activity.

In September 2002, Cohen told a federal judge that those guidelines made it “virtually impossible” to detect terrorist plots. The FBI was changing its rules to respond to 9/11, and Cohen argued that the NYPD must do so, too.

“In the case of terrorism, to wait for an indication of crime before investigating is to wait far too long,” Cohen wrote.

U.S. District Judge Charles S. Haight Jr. agreed, saying the old guidelines “addressed different perils in a different time.” He scrapped the old rules and replaced them with more lenient ones.

It was a turning point for the NYPD.

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With his newfound authority, Cohen created a secret squad that would soon infiltrate Muslim neighborhoods, according to several current and former officials directly involved in the program.

The NYPD carved up the city into more than a dozen zones and assigned undercover officers to monitor them, looking for potential trouble.

At the CIA, one of the biggest obstacles has always been that U.S. intelligence officials are overwhelmingly white, their mannerisms clearly American. The NYPD didn’t have that problem, thanks to its diverse pool of officers.

Using census data, the department matched undercover officers to ethnic communities and instructed them to blend in, the officials said. Pakistani-American officers infiltrated Pakistani neighborhoods, Palestinians focused on Palestinian neighborhoods. They hung out in hookah bars and cafes, quietly observing the community around them.

The unit, which has been undisclosed until now, became known inside the department as the Demographic Unit, former police officials said.

“It’s not a question of profiling. It’s a question of going where the problem could arise,” said Mordechai Dzikansky, a retired NYPD intelligence officer who said he was aware of the Demographic Unit. “And thank God we have the capability. We have the language capability and the ethnic officers. That’s our hidden weapon.”

The officers did not work out of headquarters, officials said. Instead, they passed their intelligence to police handlers who knew their identities.

Cohen said he wanted the squad to “rake the coals, looking for hot spots,” former officials recalled. The undercover officers soon became known inside the department as rakers.

A hot spot might be a beauty supply store selling chemicals used for making bombs. Or it might be a hawala, a broker that transfers money around the world with little documentation. Undercover officers might visit an Internet cafe and look at the browsing history on a computer, a former police official involved in the program said. If it revealed visits to radical websites, the cafe might be deemed a hot spot.

Ethnic bookstores, too, were on the list. If a raker noticed a customer looking at radical literature, he might chat up the store owner and see what he could learn. The bookstore, or even the customer, might get further scrutiny. If a restaurant patron applauds a news report about the death of U.S. troops, the patron or the restaurant could be labeled a hot spot.

The goal was to “map the city’s human terrain,” one law enforcement official said. The program was modeled in part on how Israeli authorities operate in the West Bank, a former police official said.

Mapping crimes has been a successful police strategy nationwide. But mapping robberies and shootings is one thing. Mapping ethnic neighborhoods is different, something that at least brushes against what the federal government considers racial profiling.

Browne, the NYPD spokesman, said the Demographic Unit does not exist. He said the department has a Zone Assessment Unit that looks for locations that could attract terrorists. But he said undercover officers only followed leads, disputing the account of several current and former police and federal officials. They do not just hang out in neighborhoods, he said.

“We will go into a location, whether it’s a mosque or a bookstore, if the lead warrants it, and at least establish whether there’s something that requires more attention,” Browne said.

That conflicts with testimony from an undercover officer in the 2006 trial of Shahawar Matin Siraj, who was convicted of planning an attack on New York’s subway system. The officer said he was instructed to live in Brooklyn and act as a “walking camera” for police.

“I was told to act like a civilian — hang out in the neighborhood, gather information,” the Bangladeshi officer testified, under a false name, in what offered the first narrow glimpse at the NYPD’s infiltration of ethnic neighborhoods.

Officials said such operations just made sense. Islamic terrorists had attacked the city on 9/11, so police needed people inside the city’s Muslim neighborhoods. Officials say it does not conflict with a 2004 city law prohibiting the NYPD from using religion or ethnicity “as the determinative factor for initiating law enforcement action.”

“It’s not profiling,” Cutter said. “It’s like, after a shooting, do you go 20 blocks away and interview guys or do you go to the neighborhood where it happened?”

In 2007, the Los Angeles Police Department was criticized for even considering a similar program. The police announced plans to map Islamic neighborhoods to look for pockets of radicalization among the region’s roughly 500,000 Muslims. Criticism was swift, and chief William Bratton scrapped the plan.

“A lot of these people came from countries where the police were the terrorists,” Bratton said at a news conference, according to the Los Angeles Daily News. “We don’t do that here. We do not want to spread fear.”

In New York, current and former officials said, the lesson of that controversy was that such programs should be kept secret.

Some in the department, including lawyers, have privately expressed concerns about the raking program and how police use the information, current and former officials said. Part of the concern was that it might appear that police were building dossiers on innocent people, officials said. Another concern was that, if a case went to

court, the department could be forced to reveal details about the program, putting the entire operation in jeopardy.

That's why, former officials said, police regularly shredded documents discussing rakers.

When Cohen made his case in court that he needed broader authority to investigate terrorism, he had promised to abide by the FBI's investigative guidelines. But the FBI is prohibited from using undercover agents unless there's specific evidence of criminal activity, meaning a federal raking program like the one officials described to the AP would violate FBI guidelines.

The NYPD declined to make Cohen available for comment. In an earlier interview with the AP on a variety of topics, Police Commissioner Kelly said the intelligence unit does not infringe on civil rights.

"We're doing what we believe we have to do to protect the city," he said. "We have many, many lawyers in our employ. We see ourselves as very conscious and aware of civil liberties. And we know there's always going to be some tension between the police department and so-called civil liberties groups because of the nature of what we do."

The department clashed with civil rights groups most publicly after Cohen's undercover officers infiltrated anti-war groups before the 2004 Republican National Convention in New York. A lawsuit over that program continues today.

During the convention, when protesters were arrested, police asked a list of questions which, according to court documents, included: "What are your political affiliations?" "Do you do any kind of political work?" and "Do you hate George W. Bush?"

"At the end of the day, it's pure and simple a rogue domestic surveillance operation," said Christopher Dunn, a New York Civil Liberties Union lawyer involved in the convention lawsuit.

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Undercover agents like the rakers were valuable, but what Cohen and Sanchez wanted most were informants.

The NYPD dedicated an entire squad, the Terrorist Interdiction Unit, to developing and handling informants. Current and former officials said Sanchez was instrumental in teaching them how to develop sources.

For years, detectives used informants known as mosque crawlers to monitor weekly sermons and report what was said, several current and former officials directly involved in the informant program said. If FBI agents were to do that, they would be in violation of the Privacy Act, which prohibits the federal government from collecting intelligence on purely First Amendment activities.

The FBI has generated its own share of controversy for putting informants inside mosques, but unlike the program described to the AP, the FBI requires evidence of a crime before an informant can be used inside a mosque.

Valerie Caproni, the FBI's general counsel, would not discuss the NYPD's programs but said FBI informants can't troll mosques looking for leads. Such operations are reviewed for civil liberties concerns, she said.

“If you’re sending an informant into a mosque when there is no evidence of wrongdoing, that’s a very high-risk thing to do,” Caproni said. “You’re running right up against core constitutional rights. You’re talking about freedom of religion.”

That’s why senior FBI officials in New York ordered their own agents not to accept any reports from the NYPD’s mosque crawlers, two retired agents said.

It’s unclear whether the police department still uses mosque crawlers. Officials said that, as Muslims figured out what was going on, the mosque crawlers became cafe crawlers, fanning out into the city’s ethnic hangouts.

“Someone has a great imagination,” Browne, the NYPD spokesman, said. “There is no such thing as mosque crawlers.”

Following the foiled subway plot, however, the key informant in the case, Osama Eldawoody, said he attended hundreds of prayer services and collected information even on people who showed no signs of radicalization.

NYPD detectives have recruited shopkeepers and nosy neighbors to become “seeded” informants who keep police up to date on the latest happenings in ethnic neighborhoods, one official directly involved in the informant program said.

The department also has a roster of “directed” informants it can tap for assignments. For instance, if a raker identifies a bookstore as a hot spot, police might assign an informant to gather information, long before there’s concrete evidence of anything criminal.

To identify possible informants, the department created what became known as the “debriefing program.” When someone is arrested who might be useful to the intelligence unit — whether because he said something suspicious or because he is simply a young Middle Eastern man — he is singled out for extra questioning. Intelligence officials don’t care about the underlying charges; they want to know more about his community and, ideally, they want to put him to work.

Police are in prisons, too, promising better living conditions and help or money on the outside for Muslim prisoners who will work with them.

Early in the intelligence division’s transformation, police asked the taxi commission to run a report on all the city’s Pakistani cab drivers, looking for those who got licenses fraudulently and might be susceptible to pressure to cooperate, according to former officials who were involved in or briefed on the effort.

That strategy has been rejected in other cities.

Boston police once asked neighboring Cambridge for a list of Somali cab drivers, Cambridge Police Chief Robert Haas said. Haas refused, saying that without a specific reason, the search was inappropriate.

“It really has a chilling effect in terms of the relationship between the local police department and those cultural groups, if they think that’s going to take place,” Haas said.

The informant division was so important to the NYPD that Cohen persuaded his former colleagues to train a detective, Steve Pinkall, at the CIA’s training center at the Farm. Pinkall, who had an intelligence background as a Marine, was given an unusual temporary assignment at CIA headquarters, officials said. He took the field

tradecraft course alongside future CIA spies then returned to New York to run investigations.

“We found that helpful, for NYPD personnel to be exposed to the tradecraft,” Browne said.

The idea troubled senior FBI officials, who saw it as the NYPD and CIA blurring the lines between police work and spying, in which undercover officers regularly break the laws of foreign governments. The arrangement even made its way to FBI Director Robert Mueller, two former senior FBI officials said, but the training was already under way and Mueller did not press the issue.

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NYPD’s intelligence operations do not stop at the city line.

In June 2009, a New Brunswick, N.J., building superintendent opened the door to apartment No. 1076 and discovered an alarming scene: terrorist literature strewn about the table and computer and surveillance equipment set up in the next room.

The panicked superintendent dialed 911, sending police and the FBI rushing to the building near Rutgers University. What they found in that first-floor apartment, however, was not a terrorist hideout but a command center set up by a secret team of New York Police Department intelligence officers.

From that apartment, about an hour outside the department’s jurisdiction, the NYPD had been staging undercover operations and conducting surveillance throughout New Jersey. Neither the FBI nor the local police had any idea.

The NYPD has gotten some of its officers deputized as federal marshals, allowing them to work out of state. But often, there’s no specific jurisdiction at all.

Cohen’s undercover squad, the Special Services Unit, operates in places such as New Jersey, Pennsylvania and Massachusetts, officials said. They can’t make arrests and, if something goes wrong — a shooting or a car accident, for instance — the officers could be personally liable. But the NYPD has decided it’s worth the risk, a former police official said.

With Police Commissioner Kelly’s backing, Cohen’s policy is that any potential threat to New York City is the NYPD’s business, regardless of where it occurs, officials said.

That aggressiveness has sometimes put the NYPD at odds with local police departments and, more frequently, with the FBI. The FBI didn’t like the rules Cohen played by and said his operations encroached on its responsibilities.

Once, undercover officers were stopped by police in Massachusetts while conducting surveillance on a house, one former New York official recalled. In another instance, the NYPD sparked concern among federal officials by expanding its intelligence-gathering efforts related to the United Nations, where the FBI is in charge, current and former federal officials said.

The AP has agreed not to disclose details of either the FBI or NYPD operations because they involve foreign counterintelligence.

Both Mueller and Kelly have said their agencies have strong working relationships and said reports of rivalry and disagreements are overblown. And the NYPD's out-of-state operations have had success.

A young Egyptian NYPD officer living undercover in New Jersey, for example, was key to building a case against Mohamed Mahmood Alessa and Carlos Eduardo Almonte. The pair was arrested last year at John F. Kennedy Airport en route to Somalia to join the terrorist group al-Shabab. Both pleaded guilty to conspiracy.

Cohen has also sent officers abroad, stationing them in 11 foreign cities. If a bomber blows himself up in Jerusalem, the NYPD rushes to the scene, said Dzikansky, who served in Israel and is the co-author of the forthcoming book "Terrorist Suicide Bombings: Attack Interdiction, Mitigation, and Response."

"I was there to ask the New York question," Dzikansky said. "Why this location? Was there something unique that the bomber had done? Was there any pre-notification. Was there a security lapse?"

All of this intelligence — from the rakers, the undercovers, the overseas liaisons and the informants — is passed to a team of analysts hired from some of the nation's most prestigious universities. Analysts have spotted emerging trends and summarized topics such as Hezbollah's activities in New York and the threat of South Asian terrorist groups.

They also have tackled more contentious topics, including drafting a report on every mosque in the area, one former police official said. The report drew on information from mosque crawlers, undercover officers and public information. It mapped hundreds of mosques and discussed the likelihood of them being infiltrated by al-Qaida, Hezbollah and other terrorist groups.

For Cohen, there was only one way to measure success: "They haven't attacked us," he said in a 2005 deposition. He said anything that was bad for terrorists was good for NYPD.

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Though the CIA is prohibited from collecting intelligence domestically, the wall between domestic and foreign operations became more porous. Intelligence gathered by the NYPD, with CIA officer Sanchez overseeing collection, was often passed to the CIA in informal conversations and through unofficial channels, a former official involved in that process said.

By design, the NYPD was looking more and more like a domestic CIA.

"It's like starting the CIA over in the post-9/11 world," Cohen said in "Securing the City," a laudatory 2009 book about the NYPD. "What would you do if you could begin it all over again? Hah. This is what you would do."

Sanchez's assignment in New York ended in 2004, but he received permission to take a leave of absence from the agency and become Cohen's deputy, former officials said.

Though Sanchez's assignments were blessed by CIA management, some in the agency's New York station saw the presence of such a senior officer in the city as a turf encroachment. Finally, the New York station chief, Tom Higgins, called headquarters, one former senior intelligence official said. Higgins complained, the official said, that Sanchez was wearing both hats, sometimes acting as a CIA officer, sometimes as an NYPD official.

The CIA finally forced him to choose: Stay with the agency or stay with the NYPD.

Sanchez declined to comment to the AP about the arrangement, but he picked the NYPD. He retired last year and is now a consultant in the Middle East.

Last month, the CIA deepened its NYPD ties even further. It sent one of its most experienced operatives, a former station chief in two Middle Eastern countries, to work out of police headquarters as Cohen's special assistant while on the CIA payroll. Current and former U.S. officials acknowledge it's unusual but said it's the kind of collaboration Americans expect after 9/11.

Officials said revealing the CIA officer's name would jeopardize national security. The arrangement was described as a sabbatical. He is a member of the agency's senior management, but officials said he was sent to the municipal police department to get management experience.

At the NYPD, he works undercover in the senior ranks of the intelligence division. Officials are adamant that he is not involved in actual intelligence-gathering.

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The NYPD has faced little scrutiny over the past decade as it has taken on broad new intelligence missions, targeted ethnic neighborhoods and partnered with the CIA in extraordinary ways.

The department's primary watchdog, the New York City Council, has not held hearings on the intelligence division's operations and former NYPD officials said council members typically do not ask for details.

"Ray Kelly briefs me privately on certain subjects that should not be discussed in public," said City Councilman Peter Vallone. "We've discussed in person how they investigate certain groups they suspect have terrorist sympathizers or have terrorist suspects."

The city comptroller's office has audited several NYPD components since 9/11 but not the intelligence unit, which had a \$62 million budget last year.

The federal government, too, has done little to scrutinize the nation's largest police force, despite the massive federal aid. Homeland Security officials review NYPD grants but not its underlying programs.

A report in January by the Homeland Security inspector general, for instance, found that the NYPD violated state and federal contracting rules between 2006 and 2008 by buying more than \$4 million in equipment through a no-bid process. NYPD said public bidding would have revealed sensitive information to terrorists, but police never got approval from state or federal officials to adopt their own rules, the inspector general said.

On Capitol Hill, where FBI tactics have frequently been criticized for their effect on civil liberties, the NYPD faces no such opposition.

In 2007, Sanchez testified before the Senate Homeland Security Committee and was asked how the NYPD spots signs of radicalization. He said the key was viewing innocuous activity, including behavior that might be protected by the First Amendment, as a potential precursor to terrorism.

That triggered no questions from the committee, which Sanchez said had been "briefed in the past on how we do

business.”

The Justice Department has the authority to investigate civil rights violations. It issued detailed rules in 2003 against racial profiling, including prohibiting agencies from considering race when making traffic stops or assigning patrols.

But those rules apply only to the federal government and contain a murky exemption for terrorism investigations. The Justice Department has not investigated a police department for civil rights violations during a national security investigation.

“One of the hallmarks of the intelligence division over the last 10 years is that, not only has it gotten extremely aggressive and sophisticated, but it’s operating completely on its own,” said Dunn, the civil liberties lawyer. “There are no checks. There is no oversight.”

The NYPD has been mentioned as a model for policing in the post-9/11 era. But it’s a model that seems custom-made for New York. No other city has the Big Apple’s combination of a low crime rate, a \$4.5 billion police budget and a diverse 34,000-person police force. Certainly no other police department has such deep CIA ties.

Perhaps most important, nobody else had 9/11 the way New York did. No other city lost nearly 3,000 people in a single morning. A decade later, police say New Yorkers still expect the department to do whatever it can to prevent another attack. The NYPD has embraced that expectation.

As Sanchez testified on Capitol Hill: “We’ve been given the public tolerance and the luxury to be very aggressive on this topic.”

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Associated Press writers Tom Hays and Eileen Sullivan in Washington contributed to this report.

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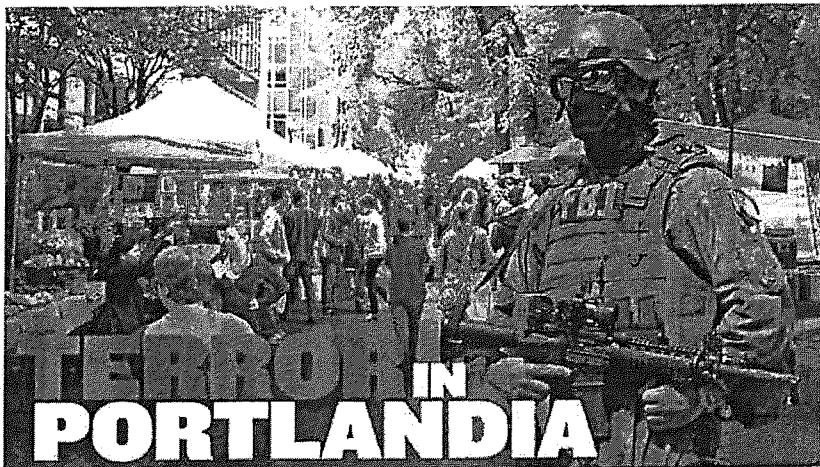
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FBI

## How the FBI Monitored Crusty Punks, 'Anarchist Hangouts,' and an Organic Farmers' Market Under the Guise of Combating Terrorism

The FBI conducted a three-year investigation, dubbed "Seizing Thunder," into animal-rights and environmental "terrorists" in the Pacific Northwest that devolved into widespread—and seemingly pointless—surveillance of activists for no apparent reason aside from the fact that they were anarchists, or protested the war in Iraq, or were "militant feminists." Here's the file.

I first came across the name "Seizing Thunder" several years ago while rifling through the FBI's investigative files on the Animal Liberation Front. The ALF records obliquely referenced the evocatively named investigation, which I requested via the Freedom of Information Act just for kicks. Last month—after three years—the FBI returned nearly 500 pages (it held back 784).

It turns out that Seizing Thunder, which was based out of the bureau's Portland field office, was one of several investigations into animal rights and environmental activists nationwide that the FBI eventually merged into Operation Backfire, a wide-ranging probe of ALF and the Earth Liberation Front. Backfire concluded in 2006 with the indictments of 11 activists for arson and other "acts of domestic terrorism," including a notorious 1998 destruction of a \$12 million ski

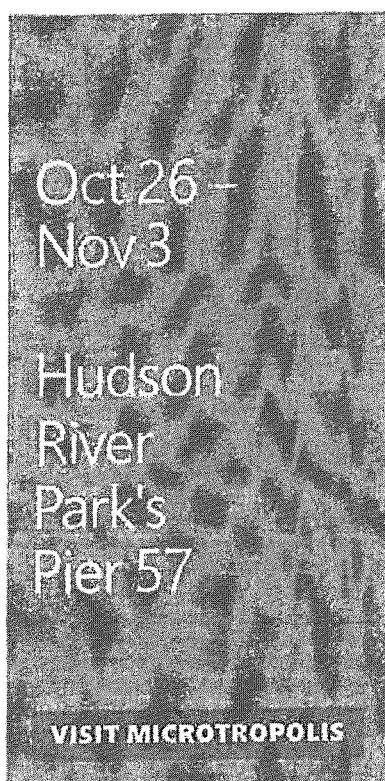
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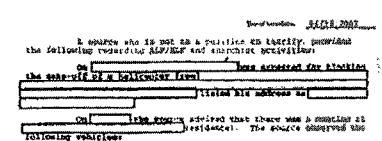


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lodge in Vail, Colo. The Portland portion seemed to focus primarily on gathering general intelligence on activists who used tree-sitting and other monkey-wrench tactics to fight old-growth logging in the Pacific Northwest.



What makes Seizing Thunder interesting, however, is how easily the agents slipped beyond investigating actual federal crimes and devoted considerable resources to tracking political activists with no apparent criminal intent.

Click to expand

Seizing Thunder was opened in 2002 to target members of the "Animal Liberation front (ALF), Earth Liberation Front (ELF) and an anarchist group called the Red Cloud Thunder, all whose members are inter-related and they openly claimed several major arsons," according to the files. The investigation involved physical and video surveillance, warrants for phone taps, and cooperation with local police departments in Portland and Eugene, Ore. But the feds quickly dropped the pretense of tracking organized groups and quickly began surveilling people simply for identifying themselves—or for being identified by informants—as anarchists. The memos read like artifacts from the Red Scare:

July 19, 2002: "On [redacted], the source observed a [redacted] Oregon license plate...parked at [redacted], a known anarchist hangout."

August 8, 2002: "The source observed the following vehicles in the vicinity of [redacted], a major hangout for the anarchist and [redacted]"

September 19, 2002: "On [redacted] the source observed [redacted] vehicle, Oregon license plate [redacted] parked at [redacted] one of the hangout for anarchist..."

October 18, 2002: "On [redacted] the source was questioned as to the [redacted] anarchist travelling to [redacted]."

### "The anarchists were dressed in black"

What sort of federal crimes were all these anarchists getting up to, aside from the thought variety? The records, which document the FBI's extensive cooperation and intelligence-sharing with local police departments in Eugene and Oregon, show that agents collected intelligence about an anarchist march that was being planned to protest U.S. policy in the Middle East:

On [redacted] at approximately 2:30 p.m., the source visited [redacted]. The source did not observe any anarchists. The source walked [redacted] to view their bulletin board. Most of the ads on the bulletin board were for individuals looking for roommates.

On [redacted] the source attended [redacted]. The source visited [redacted] where the source met two unknown anarchists at [redacted]. The anarchists were dressed in black and were in their early 20s.... The source stated the anarchists are planning a protest to "Reclaim the Streets" on April 20, 2002, in Portland, Ore.

Here's how the Associated Press covered that crucible of terror and violence:

About 700 people marched through downtown Saturday in a peaceful protest against U.S. support of Israel in the Middle East crisis. There were no arrests and no altercations, police said.

### The Pinky Swear Riot

Another FBI source passed along a warning of a similar anarchist plot to gather on the streets of Eugene just two days later to protest the International Monetary Fund. The feds quickly passed along the warning to the Eugene police department, thereby averting a bloody riot, by the FBI's lights:

[Redacted] identified [redacted] a mass protest/riot planned by the Eugene anarchist where on 4/22/02 they attempted to "take over the street" and cause havoc during the rush hour. The Eugene Police Department was immediately notified and they called in numerous officers for this unexpected protest/riot. EPD was prepared for this problem and prevented a major riot. EPD expressed their appreciation for this information as it may have resulted in major damages of businesses and property, similar to that of a riot in June 1999 where \$150,000 of property destruction occurred.



I can't find any record of any news organization covering this narrowly averted riot. A flier for the riot included in the file reads: "2 p.m.: Teach-in on the G8... 4 p.m.: RECLAIM-THE-STREETS! Come and party in the street! Live bands: Pinky Swear (Portland/Punk) and Elevated Elements (Seattle / Hip Hop)."

## Chasing Subarus

Another high point of the file shows agents conducting surveillance on the Grower's Market, a "not-for-profit food-buying club for buying organic and natural foods" in Eugene, and then literally tailing two random Subaru Legacys (naturally!) to a political rally. As the redacted memo recounting the excursion makes clear, *the agents had no idea who they were following, or why.*

The interviewing agents conducted a physical surveillance in the vicinity of The Grower's Market located at 454 Willamette Street in Eugene, Oregon. This surveillance was conducted as a result of [redacted]. During the surveillance the following observations were made:

**0930:** Surveillance instituted in the vicinity of The Grower's Market....

**1100:** A gray Subaru Legacy bearing Oregon license plate [redacted] with unknown individuals left the area of the Grower's Market followed by unknown passengers in a red Subaru Legacy bearing Ohio license plate [redacted], a purple Geo Metro bearing an Oregon special license plate [redacted]. These ve-

What caper were these Subaru-driving terrorists getting up to? Well, after meeting up with a "private bus," also with unknown individuals on board, they drove to Roseburg, Oregon:

**1406:** The bus and three vehicles were observed parked on the west side of Main Street, south of Oak Street, in a free parking area. The occupants of the vehicles were observed to be carrying protest signs and musical instruments and walking north on Main Street toward the South Umpqua National Bank.

**1409:** The occupants of the bus and three vehicles were observed protesting outside the South Umpqua National Bank located at Main and Washington streets in Roseburg,

Oregon. Officers from Roseburg Police Department and the Douglas County Sheriff's Office were observed monitoring/video taping the incident.  
1417: Surveillance discontinued.

### "The Anarchists and homeless groups have united"

The Seizing Thunder agents weren't just worried about enviro-anarchy—they also warned of a dreaded anarchist-homeless alliance that threatened to build a "homeless camp." From a November 2002 memo:

Source advised that the Anarchists and homeless groups have united in the effort to establish a "homeless camp." Source stated that the homeless community has accepted the assistance of the Anarchists in the area of publicity and community outreach.

And don't forget the menace posed by punk rock as performed by anarchists. This memo shows that the bureau's Los Angeles office kept tabs on an the Alternative Gathering Collective, "an anarchist group in Los Angeles that organizes anarchist punk music concerts, many of which are fundraisers for animal liberation and environmental extremist groups and causes."

Review of [redacted] found that the AGC sponsored a benefit show for the Long Beach Food Not Bombs (FNB) on 2/5/2005. The concert was held at the Homeland Cultural Center, 1321 Anaheim St., Long Beach CA with the bands Sin Remedio, Ciril, Degrading Humanity, Life in Exile, Lechuza, Civil Disgust, S.O.U.P., and One Side Society.

Finally, an October 2002 memo warns agents that Lady Anarchists can be a whole mess of trouble:

Source advised that the females of the anarchist's movement are in leadership positions in Eugene, Oregon. These females are described as being very feminist and militant.

Other hilarious moments involve agents snooping on nature hikes, investigating the serious federal crime of keying cars, and unwittingly letting a warrant for a phone tap expire.

### A History of Political Surveillance

Sadly, it shouldn't come as a surprise to anybody paying attention that the FBI spent much of the 2000s following people simply because they harbored forbidden political beliefs. Last year, Austin, Texas activist Scott Crow decided to see if the FBI was keeping tabs on him, so he FOIAed his file. He got back an astonishing 440 pages of surveillance records and other documents, according to the *New York Times*. Crow, an anarchist, has never been charged with a federal crime.

In 2010, the FBI's inspector general issued a report finding that the bureau had overstepped its bounds in investigating political and advocacy groups. The bureau's Pittsburgh office, the report said, had conducted surveillance on an anti-war rally as a "make-work" assignment for a bored agent and then "provided inaccurate and misleading information to Congress and the public" about the incident. It also found that "in several cases" of surveillance aimed at Greenpeace, People for the Ethical Treatment of Animals, and other groups, the FBI's stated bases for the investigations were "factually weak" and demonstrated "little indication of any possible federal crime as opposed to a local crime."

A 2003 inspector general audit of the bureau's intelligence gathering and sharing capabilities took note of the increasing emphasis on domestic counterterrorism investigations aimed at "criminal activities associated with animal rights, environmental, and anti-abortion extremists, as well as by certain social protestors" as opposed to, you know, al Qaeda. The report diplomatically suggested that the FBI's counterterror resources should be reserved for combating actual terrorism: "To the extent that the FBI seeks to maximize its counterterrorism resources to deal with radical Islamic fundamentalist terrorism, WMD, and domestic groups or

individuals that may seek mass casualties, we believe that FBI management should consider the benefit of transferring responsibility for criminal activity by social activists to the FBI's Criminal Investigative Division."

The bureau obviously didn't listen. It should be noted that the 11 people eventually indicted in Operation Backfire actually had committed serious crimes worthy of federal investigations. Though the documents are heavily redacted, it appears from context that at the very least one of them—Chelsca Dawn Gerlach, who participated in the Vail arson—was a target of Seizing Thunder.

I asked the FBI who, if anyone, was eventually charged based on information developed via Seizing Thunder, and what federal crimes the bureau suspected unidentified Subaru drivers, militant feminists, and frequenters of "anarchist hangouts" of committing. A spokeswoman did not immediately respond.

You can read the full file below.

To print the document, click the "Original Document" link to open the original PDF. At this time it is not possible to print the document with annotations.

[Image by Jim Cooke, source images via AP and roboppy/flickr]



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## Never Stop Fighting

The FBI has known about him since his days as a cage-rattling Chicano activist in 1960s L.A. A onetime fugitive and sometime company man, Carlos Montes has kept on confronting the system the only way he knows how. Now the system is closing in

By Ben Ehrenreich

3/1/2012

The first raid came at five o'clock in the morning last May 17. Carlos Montes awoke to a thud. It was the sound, he soon discovered, of his front door splintering open. The sun had not yet risen, and Montes's bedroom was dark, but in retrospect, he says, he's glad he didn't reach for a flashlight—or for a gun. Montes, a retired Xerox salesman, had kept a loaded shotgun behind the headboard and a 9mm pistol beneath a pile of towels on a chair beside the bed since the day he had walked in on an armed burglar a year and a half before. That time a cool head had kept him alive: He persuaded the thief to drive him to a 7-Eleven, where he withdrew as much cash as he could from the ATM and refused to take another step. This time, fortunately, he was half-asleep: He stumbled toward the hallway empty-handed.

Montes, 64, is a tall man, but his shoulders are rounded and slightly stooped, which along with his long, thin legs and the short fuzz of his gray hair, gives him something of the appearance of a bird. Maybe it's that he always seems to be in motion, as if there's a motor in him that keeps humming even when he's sitting still. He often seems to be on the verge of cracking a joke, or as if he's already laughing at the joke he could be telling. Once I showed up early for an interview and found him on the phone, reserving a space in a yoga class. "Gotta take my yoga, man," he said, laughing at himself, "or else I'll blow it!"

Standing in the bedroom of his Alhambra home, Montes saw lights dancing toward him. He hadn't thought to grab his glasses, but when the lights got close enough, he understood that they were flashlights. Green helmets bobbed behind them. Inches beneath each beam he could make out the black barrel of an automatic rifle.

"Who is it?" Montes shouted.



Montes by Willie Heron's 1972 mural *The Wall That Cracked Open in City Terrace*. Photograph by Bryce Duffy.

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Voices shouted back: "Police!"

Then they were behind him. They shoved him past the ruins of his front door and out onto the patio. Handcuffs clicked around his wrists. It was a cool, misty morning, but Montes could see that his narrow hillside street had been transformed, rendered unfamiliar and almost unreal by the two green armored vehicles parked in front of his house and by sheriff's black-and-whites blocking the road to the left and right.

A sheriff's deputy opened the door to one of the patrol cars and pushed Montes into the backseat. He sat there in the relative calm of the police car, the cuffs digging into his wrists, wondering, "What the hell are they going to arrest me for?"

An officer approached the car and told Montes he was under arrest, that he was a convicted felon and it was illegal for him to possess firearms.

"What?" said Montes. As far as he knew, he'd filed all the required papers for the weapons he owned. The police knew he had them. In 2005, after what Montes calls a "dispute" with a now ex-girlfriend, Alhambra police came to his house and took all his guns "for safekeeping." (He was arrested on a domestic violence charge, but the case was dismissed.) A year later, after his ex moved out, Montes dropped by the station, and the police returned the guns. "I thought everything was cool," Montes says.

It was at that point that the morning, already strange, took a stranger turn. Someone from the FBI was there, the deputy told him. An agent in a windbreaker appeared outside the squad car. He leaned in. "I want to talk to you about your political activities," said the man from the FBI. Montes was not just any retired Xerox salesman. In the late 1960s, he had been one of the most visible and militant leaders of the Chicano movement in L.A. Long after the media spotlight had flickered off, he had continued to agitate and organize against police brutality, inequities in the public schools, and U.S. wars abroad.

Early the next morning Montes stood alone on the sidewalk outside the Twin Towers jail downtown. The sheriff's department had released him as they had found him: in socks and pajamas, without his cell phone or wallet or change to make a call. Eventually he found a ride to Alhambra. His sister had come by his home and had a sheet of plywood nailed over his front door. But inside, he says, "the house was in shambles."

Montes was something of a pack rat. He'd saved flyers, clippings, and photos from decades as an organizer of demonstrations and campaigns. "Everything was on the floor," he says. In his bedroom the contents of his drawers and closet had been dumped out on the bed. Files, albums, and carousels of slides had been removed from his closets and stacked in piles on his kitchen counter and on the dining room and kitchen tables. Political documents were mixed with photo albums from his daughter's birthdays and his son's wedding. His guns were gone—the shotgun and the Beretta he'd kept beside the bed plus an old Russian bolt-action rifle, a World War II-era German automatic, and another rifle, a Marlin 30-30. (Montes's antiwar stance was not grounded in across-the-board pacifism.) His cell phone and computer were gone, too.

Now, months later, Montes stands in his kitchen. His home is tidy but cluttered—the kitchen and dining room tables and every available space covered with neat stacks of papers. Images of Che Guevara, Malcolm X, and Emiliano Zapata figure prominently in the decor. "Once they got the guns," Montes asks with eyebrows raised, "why did they go through the whole house?"

Forty-odd years earlier an unannounced visit from the FBI, even one fronted by a SWAT team with assault rifles drawn, would not have been surprising. Cold War paranoia had given J. Edgar Hoover's FBI license to stalk and smear everyone from John Lennon to Martin Luther King Jr. Members of the Black Panther Party were falling by the dozens to police bullets. Through the haze of kitsch that surrounds that era it is difficult to make out the urgency of the times, the until recently almost inconceivable sensation that *everything* could change and that everyone, even high school kids from the east side of the L.A. River, had a crucial role to play. For a little while East L.A. felt like an important node in a struggle that was being mirrored around the globe—in Oakland, Paris, Mexico City, and Saigon.

But what happened here has for the most part been bleached out of the country's collective memory of the '60s. The Chicago Seven made the textbooks, but who remembers the East L.A. Thirteen? Or the Biltmore Six? Those trials have been over for decades, the whole period effectively entombed. And we've come a long way, right? The mayor of Los Angeles is a former union organizer and, though he doesn't like to dwell on it, a onetime Chicano nationalist. The president of the United States is, famously, an ex-community organizer, and both he and his attorney general have much darker skin than Montes. So why is the FBI still interested in Carlos Montes?

**5**

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In photos taken in the late 1960s, Montes managed to look at once cocky and intensely serious. The character based on him in the 2006 HBO film *Walkout*—about the 1968 protests at four East L.A. high schools—is portrayed as both joker and firebrand, a militant trickster in a khaki bush jacket. (“*Ya estuovo con la blah blah blah*,” he says in one scene, shushing his hesitant comrades. “We go out tomorrow!”) A year before the journalist Ruben Salazar was killed by a tear gas canister fired by an L.A. County sheriff’s deputy, he described Montes in the *Los Angeles Times* as a “lean, intense young man who often sports a Zapata mustache,...noted for his articulateness on the Chicano movement and his wit.”

The son of an immigrant assembly line worker and a nurse’s aide, Montes was born in El Paso and moved with his parents to Los Angeles when he was seven. “I bought into the whole thing about America, the greatest country,” he says. He was majoring in business at East L.A. College when he began to make connections between the Vietnam War, the routine racism of his teachers and school administrators, and the police harassment he and his classmates had faced throughout their teens. With the zeal of a convert, Montes fell in with a group of students who called themselves Young Citizens for Community Action. They opened a coffeehouse named La Piranya just off Whittier Boulevard. It quickly became a social and organizing hub for politically engaged Chicanos, who included future L.A. school board member Vickie Castro, writer and artist Harry Gamboa, and the film producer Moctesuma Esparza. Montes and his peers soon learned an important lesson, one that other young people were learning around the country: You can talk all you want, but the moment you start to organize, the authorities regard you as a threat. Police officers sat in cars outside La Piranya, photographing and hassling people who came and went. More than once the police raided the coffeehouse, claiming they were searching for drugs, frisking everyone inside.

Nothing creates radicals more effectively than repression. The YCCA—by now the Young Chicanos for Community Action—henceforth focused its organizing energies on battling police abuses. In January 1968, says Montes, “somebody went down to the Salvation Army and found a stack of brown berets.” They began wearing them with belted khaki jackets and established a hierarchy modeled on the quasi-military structure of the Black Panthers. Montes, who had just turned 20, was endowed with the grandiose title “Minister of Information.” Salazar referred to him as “the organization’s visionary.”

On March 6 of that year thousands of students walked out of class at Lincoln, Garfield, and Roosevelt high schools, demanding opportunities equal to those taken for granted by Anglo students on the other side of town. Birmingham, Alabama, had arrived in East L.A. The Brown Berets volunteered to form a protective barrier between the students and the police. They found police waiting in the streets and on the football fields. At Garfield, according to one account, snipers were posted on the roof. Montes managed to snap the chain on the gate at Roosevelt. The students who poured past him into the street were met with police batons and fists.

If the newspapers blamed the violence on the students, white L.A. was nonetheless forced to take notice. The *Los Angeles Times* expanded its vocabulary: “Chichano,” a reporter explained later that year, “is a Spanish expression meaning ‘one of us.’” By the end of March FBI headquarters ordered that the Brown Berets be investigated “to determine if activities of the group pose a threat to [sic] internal security of United States.” Within a few months a grand jury indicted 13 of the walkouts’ organizers, including Montes, charging them with a slew of petty misdemeanors rendered serious by the addition of felony charges alleging that the defendants had conspired to commit those same petty misdemeanors. Montes and Ralph Ramirez, the Berets’ “Minister of Discipline,” were in Washington at the time, attending the Martin Luther King-organized Poor People’s Conference. Riots had followed King’s assassination two months earlier, and the D.C. police chief, FBI records show, refused to arrest Montes and Ramirez for fear of inciting more unrest. Instead they were arrested upon their return to L.A.

The East L.A. Thirteen, as they were dubbed, were ultimately acquitted, but 1968 would be a busy year, busier than any until perhaps this last one. The whole world seemed in revolt. Students and workers were fighting police in the streets of Paris—and Chicago. Uprisings were crushed by Soviet tanks in Prague and by snipers’ bullets in Mexico City. Urban guerrilla movements emerged in Brazil, Argentina, Uruguay, even Germany. To Montes, the synchronicity was life altering. So was the sense of solidarity, of being part of something larger: a world and a history that stretched far beyond the nest of freeways encoiling the Eastside. “It started becoming clear,” he says, sitting in an Alhambra Starbucks, hunched beneath a straw fedora. “This is not just about police harassment in East L.A. This is a global struggle.”

Brown Beret chapters sprang up around the country. The FBI responded, ordering all offices “having significant numbers of Mexican-Americans in their territories” to gather information on “militant” groups. They began infiltrating the Brown Berets and monitoring them in more than a dozen cities, from Riverside to Miami. Locally Montes’s visibility made him a constant target. Between February 1968 and July 1969, he was arrested seven times. He was convicted only once, of battery on a peace officer—for throwing a soda can at a deputy when police broke up a 1969 demonstration over the lack of a Chicano studies program at East L.A. College—and sentenced to probation.

Montes could not have known that conviction would return to haunt him. He had a more serious case to deal with. In the spring of that year, he and five others—the so-called Biltmore Six—were facing life in prison, accused of lighting fires at the Biltmore Hotel while Governor Ronald Reagan was speaking in the hotel's ballroom. The police had a witness, a young LAPD officer named Fernando Sumaya who had infiltrated the Brown Berets four months earlier. Moctesuma Esparza was Montes's codefendant once again. According to Esparza, their lawyer, Oscar Zeta Acosta (who would later gain fame as a novelist and as the model for Hunter S. Thompson's Dr. Gonzo) learned that Sumaya's testimony would directly implicate Montes. "Acosta let Carlos know that if he [Montes] was on the case, it would affect everybody. The next thing I knew," says Esparza, "Carlos was gone."

Montes likes to talk. His eyebrows leap and fall, punctuating his sentences. His head bobs, and his smile comes and goes. His stories tend to wander, detouring at one aside or another. That laugh of his often breaks out when he arrives at memories that must be painful, as if he's narrating a slapstick version of someone else's life. He laughs as he recounts deciding with his girlfriend at the time, Olivia Velasquez, to leave everything and everyone they knew: "Let's get married, have a big-ass party, and take off."

They held the wedding in a Boyle Heights backyard, celebrated into the night, and two days later caught a ride to Tijuana. Their plan was to fly from Mexico to Cuba, at the time the destination of choice for American radicals in exile. Except for one friend and Montes's brother, they told nobody. In February 1970, *La Causa*, the Brown Berets' newspaper, reported that Montes had disappeared, speculating that "he may have been kidnapped by the Central Intelligence Agency." For a little while he was remembered as a martyr. "Carlos Montes will be looked at as a real Chicano Hero," the article concluded. "In the new history of our people, he lives in the hearts of La Raza, and will never die."

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The second raid of this story would come almost precisely 34 years before the first, in May 1977. Montes and Velasquez had made it as far as Mérida, then headed back north to Ciudad Juárez. They had a son there and a year later moved to El Paso, where Velasquez gave birth to their daughter. Over the next five years Montes worked a series of blue-collar jobs under the name Manuel Gomez. He could not resist jumping back into the mix: He got involved in union activism and community organizing, even in electoral politics, though he did his best to dodge cameras and microphones. Montes knew the risks—"We were real paranoid," he says—and is not particularly self-reflective about his motivations for taking them. He searches for words when I ask him why he took so many chances. "It was something I wanted to do," he says, and apologizes, "I'm not verbalizing it well. We didn't discuss whether we should, we discussed *how* and *where*." Activism had become the only way he knew how to live, to situate himself on the planet in a posture that made sense.

In May 1977, Montes and Velasquez risked a trip home to California. Montes hadn't seen his mother for seven years. His brother had paid him one clandestine visit, but for the most part Montes had been cut off from friends and relatives. The young family spent a weekend with Montes's sister in Gardena, then dropped in on a family barbecue at Velasquez's cousin's house in Monterey Park. "Boom!" says Montes, laughing at the memory. "They raided the house. They had dogs and what looked like M16s." As police stormed through the front door, Montes bolted for the back. "They rushed in and put a gun in my belly." Someone had tipped the LAPD.

In Montes's absence his Biltmore codefendants had been exonerated, but Acosta's defense strategy had been to blame the fires on Sumaya—and on Montes. (Montes blames them on Sumaya. "I went to the bathroom, and Fernando [Sumaya] followed me," he recalls. "He pulled a bunch of napkins from the napkin dispenser, threw them in the trash, and just lit them. I said, 'What the fuck are you doing?' and I got out of there.")

After being escorted at gunpoint from his in-laws' barbecue, Montes spent several weeks in jail trying to raise bail on the Biltmore arson charges that he had fled seven years earlier. "We formed a defense committee, a Free Carlos Montes committee. We did demos, fund-raisers, pickets," he says. A few months before his trial began, an article appeared in the East L.A. College campus newspaper above a photo of a lanky, bushy-haired Montes wearing shades and pleated slacks. He had spoken on campus about police violence and racial inequities in the schools—"the same topics," the reporter observed, that "he spoke against back in 1969 as a leader of the Brown Berets."

But the movement Montes had helped found had begun to crumble while he was still in Mérida. Seven months after Montes went underground, more than 20,000 people marched down Whittier Boulevard to protest the war in Vietnam. The sheriff's department's attempts to break up the crowd left three dead—including Ruben Salazar and a 15-year-old Brown Beret—an untold number injured, and Whittier Boulevard in flames. In the aftermath police infiltration and harassment of Chicano activist groups

increased exponentially. Rifts opened between the Brown Berets and the National Chicano Moratorium Committee (which had organized the march) as well as within the Berets.

"By 1972," says Ernesto Chávez, who teaches history at the University of Texas, "it had all fallen apart." The Berets' central committee fired the group's prime minister, David Sánchez, who promptly called a press conference and declared the Brown Berets disbanded. Even the FBI knew it was over: In a classified memorandum filed that February, agents reported that "most [Brown Beret] chapters are either inactive, defunct, or have deteriorated into social clubs." Surveillance would continue until at least 1976.

Montes had emerged from underground like a revolutionary Rip van Winkle, eager to pick up where he'd left off. The Vietnam War was over, but, as Montes saw it, the old racist system was otherwise in place. His trial was another opportunity to bring attention to the cause, but when he reached out to old friends, he says, "people didn't want to touch me. I was like a crisis from the past." Few of his youthful colleagues seemed eager to help. Their youthful militancy had become a liability.

Ten years after the fact, Montes was found not guilty. There was also the matter of the battery-on-a-peac-officer conviction he had picked up in 1969, for which he was on probation when he skipped town, but the judge was convinced that "time has tempered Mr. Montes's exuberance for radical action," as he put it, and declined to punish him further for a crime already a decade old. (Thirty years later the judge's words still spur Montes to giggles.) But even with his legal troubles resolved, Montes says, "No one would hire me." Eventually an old comrade got him a job at Xerox, as a salesman, and for the next 20 years Montes would spend his weekdays in a suit and tie, hustling copiers in downtown office buildings. "I was kind of the oddball," he says.

Moctesuma Esparza remembers running into Montes for the first time in decades—fortuitously in the lobby of the Biltmore, where they had last been together as fire alarms went off upstairs. Montes doesn't recall the encounter, but it was likely less than comfortable. A few years earlier, he says, Esparza had asked Montes not to call him to testify in court. By the time they met, Montes was Xerox's main salesman downtown. The Biltmore had given him a discount membership to the hotel's health club. "He seemed to be doing very well," Esparza says.

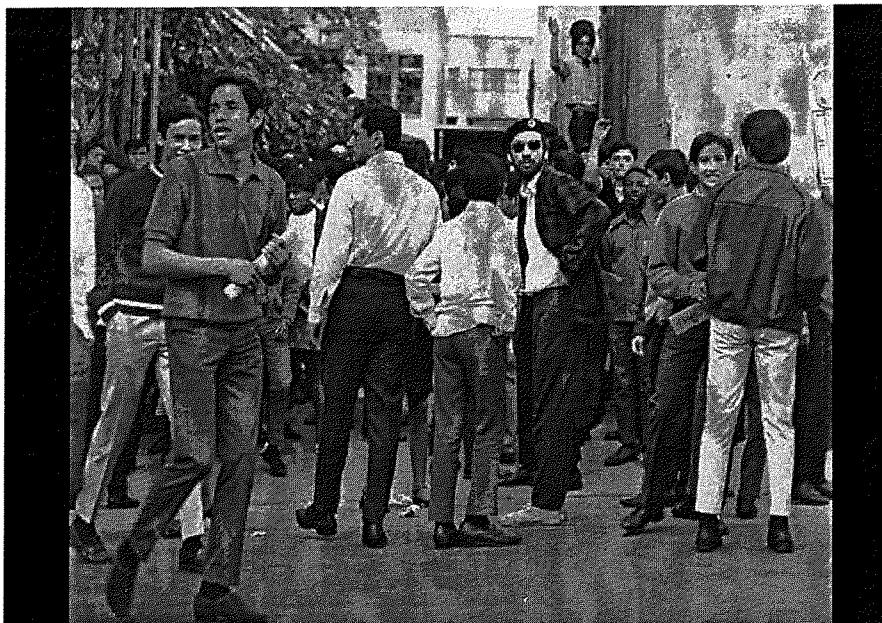
Perhaps it was because Montes was spared the disillusion of the bad days of the early '70s, but he never changed course. In his off-hours he worked on Jesse Jackson's presidential runs in 1984 and 1988, and on an antipolice brutality campaign following the killing of 19-year-old Arturo "Smokey" Jimenez by sheriff's deputies in 1991. He tried repeatedly to reawaken the movement. Toward the end of the '90s, Montes began writing for *Fight Back!*, a newspaper and Web site affiliated with a small sectarian leftist group called the Freedom Road Socialist Organization. The group—of which Montes says he is not a member—is a minuscule organization, a faction that in 1999 broke away from another group bearing the same name that was itself born of the combination of two other obscure groups with distant origins in the 1969 dissolution of Students for a Democratic Society. It is, in other words, an isolated and tattered remnant of the movement that won the FBI's attention a full half-century ago, when it was still referred to as the New Left.

Montes continued to show up at school board meetings to complain about creeping privatization and dirty bathrooms in Eastside schools. He turned out to march against the wars in Iraq and Afghanistan even as the crowds grew smaller with each passing year. He was in front of the LAPD's Rampart station in 2010, shouting into a bullhorn after police killed a Guatemalan day laborer on 6th Street, and there again in September to commemorate the anniversary of his death.

Montes fell in with the small quixotic tribe that had survived the sucking '70s with revolutionary faith intact, the tireless picketers most of the city glimpses in passing through raised windows. He didn't dwell much on the past. His daughter, Felicia, remembers accompanying her parents to constant rallies and community meetings—"That's been what I've known for a long, long time," she says—but she didn't learn about her father's role in the Chicano movement until she was an undergraduate at UC Berkeley, in an ethnic studies class.

I tried a few times to get Montes to talk about how lonely the years after his return must have been, how much disenchantment he must have had to overcome to keep struggling through the era of triumphant Reaganism. His answers rambled; the questions seemed to bounce off him. For him little had changed. None of the wrongs he fought in his youth ever went away—Americans were still killing and dying in faraway wars, young Latinos still contending with police harassment in the streets and with profound inequities in the classroom. The fight was what it always had been. I asked the historian Rodolfo Acuña, who teaches at Cal State Northridge and has known Montes since the 1960s, what he thought kept Montes going. Acuña answered obliquely: "He's the same today as he was 40 years ago."

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Montes (with beret and sunglasses) in an LAPD photo taken during the 1968 Roosevelt High School protest

*Photographs courtesy Carlos Montes*

The third raid came eight months before the first, early on the morning of September 24, 2010. Mick Kelly, 54, was in the cafeteria at the University of Minnesota, where he is a cook, when his cell phone rang. It was his wife, Linden Gawboy. She had been awakened by men with assault rifles. The FBI was at their apartment. "They used a battering ram to take off the front door," says Kelly, a slender, gray-mustached activist who also wrote frequently for *Fight Back!* and who had worked with Montes to organize the protests at the 2008 Republican National Convention in Minneapolis. "They smashed a fish tank," Kelly says. "They took her outside in her nightgown." He rushed home to find a dozen FBI agents emptying the couple's filing cabinets, packing their papers into banker's boxes.

Soon, Kelly says, "calls started coming in from friends." The FBI had raided the Minneapolis office of the Anti-War Committee, the group that had taken the lead in organizing the RNC protests, as well as seven other homes belonging to peace activists in Minnesota, Michigan, and Illinois. Fourteen people had been subpoenaed to testify before a grand jury. All had either been involved in the RNC demonstrations or with *Fight Back!* and Freedom Road.

Montes got a call from Minneapolis. "Be ready," he was told. The search warrant for the Anti-War Committee office had listed the individuals in whom the FBI was interested: Agents were instructed to search for financial records connected to 22 named "members or affiliates of the FRSO." Montes was number 14. By the end of 2010, everyone else on the list had been subpoenaed. (They have refused to cooperate with the grand jury.) "I figured, 'OK, they're gonna come sooner or later,'" says Montes.

It's easy to blame law enforcement's renewed scrutiny of political dissent on the September 11 attacks, but activists had begun to feel the chill two years earlier, after demonstrators in Seattle nearly scuttled the World Trade Organization meetings there. In the mass protests that followed in Washington, Philadelphia, and in L.A. during the 2000 Democratic National Convention, federal and local police discovered a new threat or, better put, rediscovered an old one: the homegrown leftist subversive. They responded with tactics that would have felt familiar to veterans of the 1960s—eavesdropping, infiltration, mass arrests, preemptive raids on activist headquarters.

After the World Trade Center towers fell, the FBI's freedom to engage in domestic surveillance expanded almost without limit. COINTELPRO—J. Edgar Hoover's counterintelligence program of informants, secret wiretaps, and covert burglaries—was a distant memory, one that few bothered to recall so long as the government's new targets were foreigners, the 5,000 Middle Eastern noncitizens rounded up for questioning in the months after September 11. But the following year, Attorney General John Ashcroft revised the "Guidelines for Domestic FBI Operations," redefining the bureau's central mission as

"preventing the commission of terrorist acts against the United States and its people." The agency was no longer concerned exclusively with solving crimes but with the investigation of potential future criminals. This "proactive investigative authority" made it easier than ever to initiate investigations, demand information, obtain search warrants, and conduct surveillance—both through traditional methods and via electronic eavesdropping on a previously inconceivable scale.

Montes, who had retired from Xerox in 2001, saw the 2008 Republican National Convention as an opportunity to repudiate the political trends of the previous eight years, "to have a big, massive march so the whole world would see that the people condemn Bush." That June he traveled to Minneapolis to attend a conference of activists who'd gathered to plan the demonstrations. He knew some of them already: Several members of the Twin Cities Anti-War Committee were also members of the FRSO.

Among the new faces was a short-haired woman with a Boston accent; she introduced herself as Karen Sullivan, a lesbian single mother who had joined the Anti-War Committee two months earlier. Montes doesn't remember talking to her at any length until she initiated a conversation about Colombia at a conference in Chicago. He had long since been divorced from Velasquez and had twice visited the country with a Colombian ex-girlfriend (the one with whom he had fought in 2005). Sullivan told him her girlfriend was Colombian, too. "I said, 'Oh, they're beautiful women,' and she said, 'Yeah, they got big asses,'" Montes says. "I didn't know if she was trying to bond with me or what."

In the days leading up to the convention, local police—aided by the FBI and relying heavily on informants posing as activists—raided six homes used by protesters. Dozens were detained at gunpoint. Eight were arrested and charged under Minnesota's version of the Patriot Act with "conspiracy to riot...in furtherance of terrorism." (None were convicted. Local police and the FBI later paid out tens of thousands of dollars in settlements to activists.)

The protests were no less eventful. Thousands of demonstrators filled the streets. Montes spoke at the opening rally and, along with many others, was teargassed by police on the last day of the convention. He managed to evade arrest. Among the hundreds who did not was the woman who called herself Karen Sullivan. Montes saw the police take her away. For the next two years Sullivan would remain close with Montes's friends in Minnesota. She made herself sufficiently useful that her colleagues trusted her with a key to the office and with the group's bookkeeping. She joined Freedom Road and seemed particularly interested in fellow activists' travels to Colombia and Palestine.

In the hours that followed the September FBI raids, as activists around the Midwest were frantically calling to check up on one another, Sullivan did not answer her phone. None of the people she had worked with over the previous two years has seen or spoken to her since. The activists deduced that the woman calling herself Karen Sullivan had been an undercover agent, a fact later confirmed by the U.S. Attorney's office.

What wasn't obvious was *why* Sullivan had been assigned to infiltrate the Anti-War Committee, why Obama's justice department was so concerned with a handful of peace activists or with a group as obscure as the Freedom Road Socialist Organization. The wars in Iraq and Afghanistan may not have been popular, but they also have not provoked anything that could be called a movement. The Occupy Wall Street protests have only focused glancingly on the wars. Despite the rhetoric of Tea Party politicians, socialist revolution in the contemporary United States is about as likely as an attack by the Spanish Armada.

But neither obscurity nor apparent harmlessness have stopped the FBI from testing its new powers. An internal review conducted by the Justice Department's inspector general in 2010 criticized the bureau for subjecting four antiwar and environmental groups—the Thomas Merton Center, the Catholic Worker, Greenpeace, and People for the Ethical Treatment of Animals—to lengthy domestic terrorism investigations, despite the fact that agents had "little or no basis for suspecting a violation of any criminal statute." The raids in Minnesota and Illinois came four days after the release of the inspector general's review.

The FBI and the U.S. Attorney's office have refused to comment on the investigation—"We can neither confirm nor deny any investigative activity," says FBI spokesperson Ari Dekofsky—which leaves activists guessing at the government's motivations. "I think they really believe we're terrorists," says Montes with a pained smile. But whatever is behind the searches and subpoenas—whether it's bureaucratic inertia or a concerted ideological attack—their message is as clear as it was in 1969: Dissent can be dangerous.

The search warrant issued for the raid on the Anti-War Committee office threw a small degree of light on the government's intentions. Agents were looking for evidence that the subpoenaed activists had violated federal laws prohibiting "material support to designated foreign terrorist organizations"; specifically the Popular Front for the Liberation of Palestine, or PFLP (a leftist faction of the Palestinian Liberation Organization), and the Fuerzas Armadas Revolucionarias de Colombia, or FARC (one of the few surviving

leftist guerrilla forces in Latin America).

In April Kelly and Gawboy made a discovery that clarified things slightly more. Mixed in with their own files in Minneapolis they found papers the FBI had apparently misplaced: the FBI SWAT team's "Operation Order" for the raid on their home. The documents included a lengthy list of "FRSO Interview Questions," ranging from the innocuous ("Have you ever heard of the Anti-War Committee?") to the dramatic ("Have you ever taken steps to overthrow the United States government?") to the quaintly McCarthyite ("Do you have a 'red' name?") to the absurd ("What did you do with the proceeds from the Revolutionary Lemonade Stand?").

Many of the questions focused on contact with the FARC and the PFLP. Several of those subpoenaed had traveled to Colombia and Palestine on the kind of odd vacations that earnest activists tend to take: They interviewed organizers and political prisoners, Kelly says, and when they got home, wrote and lectured about their findings. "What we're talking about is extremely public activity," says Kelly. "The point of making the trips is to be able to come back and talk about what's happening." Montes had visited Colombia twice with his ex-girlfriend. He met labor and human rights organizers there, he says, and a lot of writers—his girlfriend was a poet—but no one from the FARC. He gave presentations on his travels at Pasadena City College and at UCLA. "I had PowerPoint slides," he says. "I denounced the assassination of labor leaders and indigenous leaders. I tried to get as much publicity as I could." But the public nature of the trips may be what gets the activists in trouble: In 2001, the Patriot Act broadened the definition of "material support" to include "expert advice or assistance"; another law passed in 2004 expanded it still more to include "service," a category the Supreme Court has since affirmed may include activities as basic as speech.

When the FBI finally arrived at Montes's home in May, the agent's first question would hew to a familiar script. He asked Montes if he would answer questions about the Freedom Road Socialist Organization. Montes remained silent. A sheriff's department spokesman would later confirm that the raid on Montes's house had been prompted by the FBI. Montes would be charged with four counts of perjury for neglecting to mention a 42-year-old conviction for assaulting a peace officer—the soda can thrown at police lines during the protest at East L.A. College—on the paperwork he filed when he purchased the weapons, along with one count of possession of a handgun and one count of possession of ammunition by an ex-felon. He is facing a possible prison sentence of 22 years. And like the 23 activists already subpoenaed, he is expecting to be indicted at any time for material support of a terrorist organization.

In the months since his arrest there have been fund-raisers in his honor at art galleries and in friends' living rooms, campaigns to barrage Attorney General Eric Holder with e-mails and letters, and rallies as far away as Philadelphia, Dallas, and Gainesville, Florida. Montes has once again become something of an activist cause célèbre, though that is a humbler role today than it was the last time he was charged.

On September 29, the date of Montes's preliminary hearing, the sidewalks outside the downtown courthouse are packed with camera crews. Montes paces the sidewalk in a blue pin-striped suit, grinning anxiously and chatting with his supporters, about 40 of whom have come out. A few wear red T-shirts silk-screened with the image of a young beret-clad Montes. They march in tight ellipses, waving picket signs and chanting "Hands Off Carlos Montes!" The reporters ignore them. They are here, it turns out, for the manslaughter trial of Dr. Conrad Murray, Michael Jackson's physician.

A few LAPD officers stand outside the courthouse, watching idly. Two heavyset women in floral dresses pause beside the picketers, puzzled. Montes hands them flyers. "Oh," says one woman to the other, "this is something else," and they hurry on toward the courthouse door.

Someone gives Montes a microphone. He taps it. His voice booms out through a portable amplifier, thanking his fellow activists for showing up. A gaggle of journalists and photographers hustles past. Montes hurries to address them through the mic. "We're here to support Carlos Montes," he says, winking, "to keep him out of jail. Take a flyer, take a flyer." None of them stops. The cars on Temple Street go honking by as they would on any other weekday morning. Reporters settle into folding chairs on the sidewalk across the street. Someone whispers that Janet Jackson has arrived. Holding the mic to his mouth, Montes looks briefly relaxed, almost at home. "I do want to say," he begins again, "that the struggle continues."

*Ben Ehrenreich's last piece for Los Angeles, "The End," won the 2011 National Magazine Award for feature writing. His novel Ether (City Lights Books) came out in October.*

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# latimes.com

## Anarchists targeted after Seattle's violent May Day protests

**Three activists are in federal custody because they won't talk. The secretive investigation has raised alarm among civil rights advocates.**

By Kim Murphy, Los Angeles Times

7:17 PM PDT, October 19, 2012

SEATTLE — Early on the morning of July 25, residents of a neighborhood in northeast Portland, Ore., were awoken by the sound of a battering ram plowing through the front door of a small house. Inside, the sleepy young occupants stumbled out of bed as FBI agents rushed in with assault rifles.

Leah-Lynn Plante, a thin, tattooed woman who volunteers at a bookstore that specializes in anarchist literature, shivered in her underwear in the backyard as a SWAT team hauled out computers, clothing, books and artwork — looking, the agents said, for evidence of who participated in this year's May Day demonstrations in Seattle that saw smashed windows at banks and clashes with the police.



What bothered Plante was that they weren't just looking for sticks and black masks. The FBI search warrant also listed "anarchist" and "anti-government" literature and material among items to be seized.

"It was like something out of George Orwell's '1984.' It was absolutely horrendous," Plante, 24, said shortly before she was taken into custody Oct. 10 for failing to testify before a federal grand jury in Seattle about her friends in the anarchist movement.

Plante is one of three activists being held at the Federal Detention Center near Seattle-Tacoma International Airport in an investigation of anarchists in the Pacific Northwest that has led to subpoenas in Seattle, Olympia and Portland. The secretive probe has raised alarm among civil rights advocates who say witnesses are being asked to answer questions not only about their own activities May 1 — Plante says she wasn't even in Seattle — but what they know about certain groups or organizations.

The investigation in Seattle is one of several across the U.S. targeting anarchists. Last month, three self-described anarchists pleaded guilty to plotting to blow up a bridge south of Cleveland. Three purported anarchists were arrested in Chicago in May and accused of conspiring to burn down buildings with Molotov cocktails during the NATO summit there.

One person, caught on camera, has pleaded guilty to bashing the door of the federal appeals courthouse in Seattle on May Day, an incident that elevated at least that part of the mayhem to a federal crime.

Authorities said they are investigating whether anyone crossed state lines to riot — also a violation of federal law.

The FBI, citing the secrecy of the grand jury process, has declined to discuss the Seattle investigation, though an affidavit mistakenly released to the Seattle Post-Intelligencer suggested that several Portland activists were monitored as they traveled to Olympia just before the May Day demonstrations. It said text messages monitored by federal authorities established that they were among the black-clad protesters who damaged a federal courthouse and clashed with police that day.

Anarchism as a political philosophy has deep roots in the Pacific Northwest, and that's one of the problems, civil rights advocates say: Many people who might never attack a courthouse may hand out pamphlets and attend meetings that call for upending the nation's system of money and power.

"Anytime the federal government is sending federal security officers into people's homes looking for anti-government literature, that raises all sorts of red flags," said Neil Fox, president of the Seattle chapter of the National Lawyers Guild, which has helped provide attorneys for those called in for questioning.

Authorities say they have long had trouble monitoring protest movements such as Occupy, which attract primarily peaceful demonstrators, but may include radical activists — the kind who don black clothing and cover their faces to attack banks, shops and other perceived symbols of capitalist excess.

"We can use the example in L.A. [The Occupy protest] started off being peaceful demonstrators exercising their 1st Amendment rights, and it was not a problem. But they stayed here [City Hall] 59 days, and over time, you could see the criminal element come into the movement, and it began to degrade very fast," said Michael Downing, head of the Los Angeles Police Department's counter-terrorism and criminal intelligence bureau.

"We saw anarchists, drug dealers, we saw weapons being moved in, rebar, bamboo pipes. It created an environment where people who really wanted to stay and exercise their rights weren't able to because it became unsafe," he said.

Back in Seattle, detained along with Plante are two activists from Olympia, Wash., who also refused to testify: Matthew Duran, 24, a computer technician, and his roommate, Katherine Olejnik, 23, a bartender.

Letters of support have flooded in to all three, and appeals urging their release have multiplied across the Internet. Duran, who grew up in Southern California advocating for the rights of migrant workers, said he had heard from people as far away as France and Italy since he went into custody Sept. 13.

Olejnik, arrested in 2007 and 2008 at the ports of Olympia and Tacoma for trying to blockade war equipment bound for Iraq, said federal prosecutors who questioned her seemed to be trying to identify networks, not crimes.

"They weren't trying to figure out from me who did a certain thing. They wanted to know who knew who, who was connected to who," said Olejnik, who has been held since Sept. 27. "They're asking us who believes in things."

Emily Langlie, a spokeswoman for the U.S. attorney's office in Seattle, which is coordinating the grand jury probe, said the order to incarcerate the three was merely an attempt, under civil contempt

proceedings, to compel them to answer questions they are required by law to answer.

"It's not punitive," she said. "It's coercive."

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Anarchist probe: Jailed activists say they won't talk to feds

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# latimes.com

## Anarchist probe: Jailed activists say they won't talk to feds

By Kim Murphy

10:15 PM PDT, October 19, 2012

SEATTLE—The federal detention center near Seattle-Tacoma International Airport is usually home to suspected bank robbers and drug dealers awaiting trial, or perhaps illegal immigrants fighting deportation. These days, though, it's taken on an air of political intrigue, as three activists who've refused to testify before a federal grand jury engage in an extended war of nerves with authorities.

The federal probe, detailed in an [examination of the case](#) in the [Los Angeles Times](#), is looking at the activities of anarchists in the Pacific Northwest and damage to a federal appeals courthouse during May Day protests in Seattle on May 1.



It has apparently become a hot topic of discussion at the detention center, where Matthew Duran, 24, a computer technician and self-described anarchist from Olympia, Wash., has been jailed since a federal judge found him in contempt for refusing to answer questions posed to him by a federal prosecutor.

"They took me down to...my unit, which is the general population area," Duran recalled in a recent interview at the detention center. "I get in there and people ran up to me and they're like, 'What's your race? Who do you roll with?' And I'm like, 'I'm not in a gang. I'm Chicano.' 'What are you here for?' I'm here for not snitching on people.' They're like, 'That's ... awesome.'

"In like five minutes they came back with this grocery bag full of food and toiletries, and they're like, 'Here, we take care of our own.'"

Duran, who grew up in Southern California, was an activist on migrant workers rights issues before moving to Olympia a few years ago. He said inmates watched the first presidential debate together. They then fell into conversation about why Duran considered himself an anarchist — what was an anarchist, they wanted to know? — and why he had elected to defy a federal judge's order to tell a grand jury what he knew?

"They asked me, 'Where do you stand on the spectrum?' I said, 'Very far left, without capitalism, without state or federal government. I think people ought to be able to organize on their own and still be accountable to their community, and to their society,'" Duran said.

"Well, there's not a lot of cool politics up there," he said, referring to his jail unit. "It definitely got

people riled up. The guy I was talking to was a libertarian who believes the fundamentals of capitalism are absolutely necessary to keep society going. Well, to maintain the status quo, I said, I guess that is technically true."

Duran and one of his fellow activist inmates, Olympia bartender Katherine Olejnik, wore jailhouse khakis and spoke separately in a small attorney interview room as a guard waited outside.

They seemed relaxed and cheerful, mindful that they had become celebrities in activist circles that have spread their photos across the Internet. Supporters have characterized the probe as a witch hunt aimed at quashing the radical fringes of the Occupy movement.

"I do want to protect my friends and comrades from whatever I may or may not know," Duran said. "But this is a tool from the McCarthy era, like the House Un-American Activities Committee. 'Are you or are you not an anarchist, did you ever subscribe to this publication, have you ever been to a political meeting?' That type of thing. It seems like it was taken right out of the '50s or '60s. But I guess it's more along the lines of, it never went away."

Duran's attorney, Kimberly Gordon, said a federal appeals court on Friday rejected her motion appealing Duran's detention, though she has argued that it amounts to an unconstitutional fishing expedition through citizens' political activities under the guise of probing crimes of vandalism.

Duran, Olejnik and Leah-Lynn Plante all have been offered immunity from prosecution — meaning they could not assert their Fifth Amendment right against self-incrimination in refusing to testify. Federal authorities have made it clear that no one has the right to hide evidence of a crime — and damage to the federal courthouse that day and to surrounding businesses such as Niketown ran into the tens of thousands of dollars, at least.

"Matt really had no idea what they were going to ask him when he walked in there, but he was pretty resolved at that point that he did not want to be used by the government as a tool to prosecute or punish other people without his permission," Gordon said. "He was more interested in making sure he was not used in that way than he was in keeping himself out of custody."

Olejnik, 23, Duran's roommate in Olympia, is studying for the law school admission test while waiting out her own indefinite period in custody. She said she is determined not to offer information about fellow activists and her own political associations, even if she has to sit at SeaTac through the end of the current grand jury's 18-month term.

"I think it's going to be fine," she said. "Me and Matt are probably going to have to give up our house. But our friends are amazing. They're going to pack up our house for us, people are raising money for a storage unit for us, they're taking care of our cat, calling our parents, calling our employers, making sure we get mail and books."

Duran is hoping his job at the computer company in Olympia will be waiting for him whenever he is released.

"I talked to my boss, the CEO, and they're like, 'Wow, we never had a case like this. But you're a good kid, you're smart, we invested like a year's training and we want you back, as long as you don't get criminal charges or anything.'"

So the wait goes on.

"I really don't see it ending any other way," Duran said. "I know I'm not going to talk."

**ALSO:**

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# The Seattle Times

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## Local News

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### Affidavit: Feds trailed Portland anarchists, link them to Seattle's May Day

A federal affidavit says members of the FBI's Joint Terrorism Task Force tracked Portland anarchists to Seattle where they joined the May Day protest and allegedly attacked the federal courthouse.

By Maureen O'Hagan and Mike Carter

Seattle Times staff reporters

A grand-jury investigation. Five search warrants. Surveillance in two states and a review of hundreds of hours of videotape and photos. Not to mention the three witnesses jailed for refusing to testify.

That's the running toll so far in law enforcement's efforts to bring the weight of the federal criminal-justice system — including possible prison terms — on a group of black-clad vandals suspected of damaging a federal building in May in Seattle, according to a search-warrant affidavit.

The Oct. 3 affidavit, signed by a member of the FBI's Joint Terrorism Task Force, reveals the federal government began tracking a small group of dedicated anarchists in Portland in April. Agents followed members of the group as they first drove to Olympia in a rental car on April 30.

The crimes they are suspected of committing include conspiracy, destruction of government property and interstate travel with intent to riot, according to the 34-page document.

Authorities believe the anarchists were among about a dozen black-clad protesters who attacked the William Kenzo Nakamura U.S. Courthouse during the May Day protest, surging at the building with sticks, spray paint and at least one burning object, according to law enforcement.

The search warrant, which was mistakenly unsealed in U.S. District Court in Seattle on Thursday then quickly resealed, identifies six suspects, but none has been charged.

To Neil Fox, a criminal-defense lawyer who is president of the Seattle chapter of the National Lawyers Guild, the investigation is about much more than catching six vandals. He believes the damage to the courthouse is merely a "jurisdictional hook" to allow the feds to go after anarchists.

"I think there's a lot of bad feelings between law enforcement and the anarchists and they're using this as a tool in this longstanding battle," Fox said.

Emily Langlie, a spokeswoman for the U.S. Attorney's Office, declined to characterize the investigation.

May Day began with peaceful demonstrations in downtown Seattle, but shortly before noon a swarm of protesters, dressed all in black, massed together and began striking out. They targeted

Nike and banks; they slashed tires and broke windows and sprayed anti-capitalist graffiti as some made their way to the Nakamura courthouse. Afterward, members of the so-called "black bloc" protesters shed their dark clothing and blended into the crowd.

The search warrant says the courthouse building, on Spring Street and Sixth Avenue, sustained tens of thousands of dollars in damage, but the U.S. Attorney's Office could not provide a specific dollar amount. Destruction of government property in excess of \$1,000 is punishable by up to 10 years imprisonment.

Seattle police focused their investigation into incidents unrelated to the courthouse damage and arrested eight people. Charges were dropped in all but three cases. Those three all pleaded guilty; two are serving suspended sentences and one spent about two months in jail.

Meanwhile, the FBI set out to find those responsible for the courthouse damage. Agents reported spending long hours reviewing surveillance-camera footage, news video and still photos of the crowd that day, trying to identify suspects based on clues: the white strip around one suspect's waist, the "fringe" of a shirt, the shape of a backpack.

What the warrant makes clear is that state and federal agents were watching some members of the small group of Portland anarchists even before May Day. The affidavit says they were tracking members as early as April 9, when they and others were "all observed by FBI surveillance at an event" in Portland that day changing out of black clothing.

Three weeks later, agents watched the anarchists as they headed up for the protest, spending the night in Olympia.

The investigation picked up speed after the Portland Police Bureau conducted a search May 3 of a known anarchist "squat" — crash pad — where they recovered "distinctive clothing" from some of the alleged conspirators that was observed being worn by members of the black bloc protesters in Seattle.

That led to a trio of FBI searches July 25 in Portland — two homes and a storage shed — where they recovered clothing, phones and laptop computers, according to the federal affidavit temporarily unsealed last week.

"Although many anarchists are law abiding, there is a history in the Pacific Northwest of some anarchists participating in property destruction and other criminal activity in support of their philosophy," the affidavit states.

An additional search warrant related to the May Day protests was executed in July targeting an address in South Seattle.

Among the items seized in the searches were clothing and backpacks that match some of the six suspects' May Day attire. Authorities also seized five cellphones, six digital storage devices, two iPods and one camera. The unsealed affidavit reveals the FBI obtained a warrant to search the contents of those devices.

They've had a chance to examine several cellphones, the affidavit reveals. The affidavit cites text messages sent among some suspects discussing plans for the protest, and recapping their days afterward.

"We are all OK," a May 1 text about the protest from one activist reads. "It was awesome."

While the warrants were being executed, prosecutors also were bringing witnesses before a federal grand jury. Three witnesses wound up being held in civil contempt for refusing to testify, though one, Leah Lynn Plante of Portland, was released on Wednesday after a week. Her lawyer declined to comment and she did not return a phone message.

Grand-jury proceedings are secret, and Langlie, the U.S. Attorney's Office spokeswoman, declined to comment on specifics.

Katherine Olejnik, a 23-year-old recent Evergreen College graduate living in Olympia, was among those jailed. Her father said his daughter has been an activist in social-justice causes since her youth. She is not suspected in the courthouse vandalism, court papers say. She was called in to testify Sept. 27 about someone she knows, according to her lawyer.

Even after Olejnik was given full immunity from prosecution by the judge, she declined to testify. U.S. District Court Judge Richard A. Jones said he had no choice but to send her to jail for up to 18 months, or until she changes her mind.

"What (prosecutors) decided to do is choose people and punish them for their association," said her attorney, Jenn Kaplan.

The U.S. Attorney's Office issued a general statement Sept. 13 about grand-jury proceedings, noting, "We do not investigate or seek to silence lawful free speech, or dissent. We do, however, investigate and enforce the law where speech crosses the line and becomes threats or acts of violence."

Matthew Duran, a roommate of Olejnik's who works in computer security, was jailed for civil contempt Sept. 13 after he, too, refused to testify before the grand jury. A longtime social-justice activist, he describes himself as an anarchist, according to his attorney, Kim Gordon. He is not suspected in the courthouse vandalism.

"One of our concerns was they were really targeting him because they perceived him to be associated with the anarchist community," Gordon said. "It's kind of a fishing expedition."

Appeals of Olejnik's and Duran's case are pending.

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*News researcher Miyoko Wolf contributed to this report.*

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September 27, 2011

## Even Those Cleared of Crimes Can Stay on F.B.I.'s Watch List

By CHARLIE SAVAGE

WASHINGTON — The Federal Bureau of Investigation is permitted to include people on the government's terrorist watch list even if they have been acquitted of terrorism-related offenses or the charges are dropped, according to newly released documents.

The files, released by the F.B.I. under the Freedom of Information Act, disclose how the police are instructed to react if they encounter a person on the list. They lay out, for the first time in public view, the legal standard that national security officials must meet in order to add a name to the list. And they shed new light on how names are vetted for possible removal from the list.

Inclusion on the watch list can keep terrorism suspects off planes, block noncitizens from entering the country and subject people to delays and greater scrutiny at airports, border crossings and traffic stops.

The database now has about 420,000 names, including about 8,000 Americans, according to the statistics released in connection with the 10th anniversary of the Sept. 11 attacks. About 16,000 people, including about 500 Americans, are barred from flying.

Timothy J. Healy, the director of the F.B.I.'s Terrorist Screening Center, which vets requests to add or remove names from the list, said the documents showed that the government was balancing civil liberties with a careful, multilayered process for vetting who goes on it — and for making sure that names that no longer need to be on it came off.

"There has been a lot of criticism about the watch list," claiming that it is "haphazard," he said. "But what this illustrates is that there is a very detailed process that the F.B.I. follows in terms of nominations of watch-listed people."

Still, some of the procedures drew fire from civil liberties advocates, including the Electronic Privacy Information Center, which made the original request and provided the documents to The New York Times.

The 91 pages of newly disclosed files include a December 2010 guidance memorandum to F.B.I. field offices showing that even a not-guilty verdict may not always be enough to get someone off the list, if agents maintain they still have "reasonable suspicion" that the person might have ties to terrorism.

"If an individual is acquitted or charges are dismissed for a crime related to terrorism, the individual must still meet the reasonable suspicion standard in order to remain on, or be subsequently nominated to, the terrorist watch list," the once-classified memorandum says.

Ginger McCall, a counsel at the Electronic Privacy Information Center, said: "In the United States, you are supposed to be assumed innocent. But on the watch list, you may be assumed guilty, even after the court dismisses your case."

But Stewart Baker, a former Homeland Security official in the Bush administration, argued that even if the intelligence about someone's possible terrorism ties fell short of the courtroom standard of "beyond a reasonable doubt," it could still be appropriate to keep the person on the watch list as having attracted suspicion.

Mr. Baker noted that being subjected to extra questioning — or even kept off flights — was different than going to prison.

The guidance memo to F.B.I. field offices says someone may be deemed a "known or suspected terrorist" if officials have "particularized derogatory information" to support their suspicions.

That standard may be met by an allegation that the suspect has terrorism ties if the claim is corroborated by at least one other source, it said, but "mere guesses or 'hunches' are not enough."

Normally, it says, if agents close the investigation without charges, they should remove the subject's name — as they should also normally do in the case of an acquittal. But for exceptions, the F.B.I. maintains a special file for people whose names it is keeping in the database because it has decided they pose a national security risk even they are not the subject of any active investigation.

The F.B.I.'s Terrorist Screening Center shares the data with other federal agencies for screening aircraft passengers, people who are crossing the border and people who apply for visas. The data is also used by local police officers to check names during traffic stops.

The December memorandum lays out procedures for police officers to follow when they encounter people who are listed. For example, officers are never to tell the suspects that they might be on the watch list, and they must immediately call the federal government for instructions.

In addition, it says, police officers and border agents are to treat suspects differently based on which "handling codes" are in the system.

Some people, with outstanding warrants, are to be arrested; others are to be questioned while officers check with the Department of Homeland Security to see whether it has or will issue a "detainer" request; and others should be allowed to proceed without delay.

The documents show that the F.B.I. is developing a system to automatically notify regional "fusion centers," where law enforcement agencies share information, if officers nearby have encountered someone on the list. The bureau also requires F.B.I. supervisors to sign off before an advisory would warn the police that a subject is "armed and dangerous" or has "violent tendencies."

The F.B.I. procedures encourage agents to renominate suspects for the watch list even if they were already put on it by another agency — meaning multiple agencies would have to be involved in any attempt to later remove that person.

The procedures offer no way for people who are on the watch list to be notified of that fact or given an opportunity to see and challenge the specific allegations against them.

Chris Calabrese, a counsel with the American Civil Liberties Union, called the watch list system a "Star Chamber" — "a secret determination, that you have no input into, that you are a terrorist. Once that determination is made, it can ripple through your entire life and you have no way to challenge it."

But Mr. Healy said the government could not reveal who was on the list, or why, because that would risk revealing intelligence sources. He also defended the idea of the watch list, saying the government would be blamed if, after a terrorist attack, it turned out the perpetrator had attracted the suspicions of one agency but it had not warned other agencies to scrutinize the person.

Mr. Healy also suggested that fears of the watch list were exaggerated, in part because there are many other reasons that people are subjected to extra screening at airports. He said more than 200,000 people have complained to the Department of Homeland Security about their belief that they were wrongly on the list, but fewer than 1 percent of them were actually on it.

# The New York Times

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August 2, 2009

## Army Looking Into Monitoring of Protest Groups

By **WILLIAM YARDLEY**

SEATTLE — The Army says it has opened an inquiry into a claim that one of its employees spent more than two years infiltrating antiwar groups active near one of the nation's largest military bases. The groups say the employee infiltrated their activities under an assumed name and gained access to their plans as well as names and e-mail addresses of some members.

The man, John J. Towery, a civilian employee at Fort Lewis, south of Tacoma, Wash., works as a criminal intelligence analyst for the post's Force Protection Division, say officials at Fort Lewis, the nation's third largest Army post.

The Army would not disclose the nature of the investigation or address the claim that Mr. Towery had shared information about civilians. It said Mr. Towery was not available for an interview.

"Mr. John Towery performs sensitive work within the installation law enforcement community, and it would not be appropriate for him to discuss his duties with the media," the Army said in written statement. "Fort Lewis is aware of the claim with regard to Mr. Towery. To ensure all regulatory guidelines were followed, the command has decided that an inquiry is prudent, and an officer is being appointed to conduct the inquiry."

Brendan Maslauskas Dunn said he met Mr. Towery in spring 2007, when Mr. Maslauskas Dunn became involved with Port Militarization Resistance, a group that has frequently tried to disrupt military shipments in Olympia, Tacoma and other ports nearby. Mr. Maslauskas Dunn, who was also active in at least one other group, Students for a Democratic Society, said Mr. Towery had identified himself as John Jacob, using his middle name as his last. He said he worked as a civilian at Fort Lewis doing computer support, Mr. Maslauskas Dunn said.

Mr. Towery, he said, frequently attended protests but had not been among those who agreed in advance that they would be willing to be arrested. He said Mr. Towery had often worked as a "watcher" who tracked law enforcement at the protests.

At one point early on, Mr. Maslauskas Dunn said, Mr. Towery brought at least one of his children to an event. He said Mr. Towery often spent time at a meeting place for anarchists in Tacoma.

Mr. Maslauskas Dunn and another member of the group, Drew Hendricks, said that Mr. Towery had been among a handful of people who ran e-mail lists for some of the groups and that this had given him access to names and e-mail addresses.

Mr. Maslauskas Dunn said Mr. Towery would sometimes call group members while he was at work at Fort

Lewis and provide information about the movements of some units and equipment.

"A lot of information he did give us was easily accessible online," Mr. Maslauskas Dunn said. "You just had to do a little research."

Mr. Hendricks said he and other group members did not accept classified information if it was offered by people in the military. Mr. Hendricks, who said he lived in Olympia and repaired printers for a living, said Mr. Towery had drawn his suspicion more than once in the past, including after he posted inaccurate information about a military movement on an activist Web site.

Yet he and Mr. Maslauskas Dunn, who said he worked as a janitor at a lumber mill in Shelton, Wash., said Mr. Towery's identity was inadvertently discovered after a public records request made with the City of Olympia. The request yielded an e-mail message Mr. Towery had sent to another person with a military address relating to the protesters' activities.

That led Mr. Hendricks and other group members to try to determine who Mr. Towery was. After they learned it was the man they had known as Mr. Jacob, they discussed it at City Council meeting in Olympia last week and posted the information on a Web site.

Mr. Maslauskas Dunn said that in a meeting last week, Mr. Towery told him and another group member that he was not reporting information to Fort Lewis and that he genuinely wanted to join "the peace movement" but was under pressure to share some information about protesters with local law enforcement authorities. "What he said is that the world isn't just in black and white, that there are areas of gray and that it's in those areas of gray that he lives his life," Mr. Maslauskas Dunn said.

He said Mr. Towery told them that the Army had reassigned him, at least temporarily, and that he was being investigated "for espionage." Mr. Maslauskas Dunn and Mr. Hendricks said they were skeptical of suggestions that Mr. Towery might have infiltrated the group purely on his own, as a so-called renegade without Army approval.

Stephen Dycus, a professor at Vermont Law School who focuses on national security issues, said the Army was prohibited from conducting law enforcement among civilians except in very rare circumstances, none of which immediately appeared to be relevant to the Fort Lewis case. Mr. Dycus said several statutes and rules also prohibited the Army from conducting covert surveillance of civilian groups for intelligence purposes.

"Infiltration is a really big deal," he said. He said it "raises fundamental questions about the role of the military in American society."

Catherine Caruso, a spokeswoman for Fort Lewis, said in a written statement that "the Fort Lewis Force Protection Division, under the Directorate of Emergency Services, consists of both military and civilian employees whose focus is on supporting law enforcement and security operations to ensure the safety and security of Fort Lewis, soldiers, family members, the work force and those personnel accessing the installation."



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March 26, 2011

# F.B.I. Casts Wide Net Under Relaxed Rules for Terror Inquiries, Data Show

By **CHARLIE SAVAGE**

WASHINGTON — Within months after the Bush administration **relaxed limits** on domestic-intelligence gathering in late 2008, the **F.B.I.** assessed thousands of people and groups in search of evidence that they might be criminals or terrorists, a **newly disclosed Justice Department document** shows.

In a vast majority of those cases, F.B.I. agents did not find suspicious information that could justify more intensive investigations. The New York Times obtained the data, which the F.B.I. had tried to keep secret, after filing a lawsuit under the Freedom of Information Act.

The document, which covers the four months from December 2008 to March 2009, says the F.B.I. initiated 11,667 "assessments" of people and groups. Of those, 8,605 were completed. And based on the information developed in those low-level inquiries, agents opened 427 more intensive investigations, it says.

The statistics shed new light on the F.B.I.'s activities in the post-Sept. 11 era, as the bureau's focus has shifted from investigating crimes to trying to detect and disrupt potential criminal and terrorist activity.

It is not clear, though, whether any charges resulted from the inquiries. And because the F.B.I. provided no comparable figures for a period before the rules change, it is impossible to determine whether the numbers represent an increase in investigations.

Still, privacy advocates contend that the large number of assessments that turned up no sign of wrongdoing show that the rules adopted by the Bush administration have created too low a threshold for starting an inquiry. Attorney General **Eric H. Holder Jr.** has left those rules in place.

Michael German, a former F.B.I. agent who is now a policy counsel for the **American Civil Liberties Union**, argued that the volume of fruitless assessments showed that the Obama administration should tighten the rules.

"These are investigations against completely innocent people that are now bound up within the F.B.I.'s intelligence system forever," Mr. German said. "Is that the best way for the F.B.I. to use its

resources?"

But Valerie E. Caproni, the bureau's general counsel, said the numbers showed that agents were running down any hint of a potential problem — including vigilantly checking out potential leads that might have been ignored before the Sept. 11 attacks.

"Recognize that the F.B.I.'s policy — that I think the American people would support — is that any terrorism lead has to be followed up," Ms. Caproni said. "That means, on a practical level, that things that 10 years ago might just have been ignored now have to be followed up."

F.B.I. investigations are controlled by guidelines first put in place by Attorney General Edward H. Levi during the Ford administration, after the disclosure that the bureau had engaged in illegal domestic spying for decades. After the Sept. 11 attacks, those rules were loosened by Attorney General **John Ashcroft** and then again by Attorney General **Michael B. Mukasey**.

Some Democrats and civil liberties groups **protested** the Mukasey guidelines, contending that the new rules could open the door to racial or religious profiling and to fishing expeditions against Americans.

In 2006, The New York Times **reported** that the **National Security Agency** had each month been flooding the bureau with thousands of names, phone numbers and e-mail addresses that its surveillance and data-mining programs had deemed suspicious. But frustrated agents found that virtually all of the tips led to dead ends or innocent Americans.

When the Mukasey guidelines went into effect in December 2008, they allowed the F.B.I. to use a new category of investigation called an "assessment." It permits an agent, "proactively or based on investigative leads," to scrutinize a person or a group for signs of a criminal or national security threat, according to the **F.B.I. manual**.

The manual also says agents need "no particular factual predication" about a target to open an assessment, although the basis "cannot be arbitrary or groundless speculation." And in selecting subjects for such scrutiny, 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.

An assessment is less intensive than a more traditional "preliminary" inquiry or a "full" investigation, which requires greater reason to suspect wrongdoing but also allows agents to use more intrusive information-gathering techniques, like wiretapping.

Still, in conducting an assessment, agents are allowed to use other techniques — searching databases, interviewing the subjects or people who know them, sending confidential informers to infiltrate an organization, attending a public meeting like a political rally or a religious service, and following and photographing people in public places.

In March 2009, **Russ Feingold**, then a Democratic senator from Wisconsin, asked the F.B.I. how many assessments it had initiated under the new guidelines and how many regular investigations had been opened based on information developed by those assessments.

In November 2010, the Justice Department sent a classified letter to the Senate Judiciary Committee answering Mr. Feingold's question. This month, it provided an uncensored copy of the same answer to The Times as a result of its Freedom of Information Act lawsuit.

F.B.I. officials said in an interview that the statistics represented a snapshot as of late March 2009, so the 11,667 assessment files were generated over a roughly four-month period. But they said they believed that agents had continued to open assessments at roughly the same pace since then.

Some aspects of the statistics are hazy, officials cautioned.

For example, even before the December 2008 changes, the bureau routinely followed up on low-grade tips and leads under different rules. But that activity was not formally tracked as an "assessment" that could be easily counted and compared.

F.B.I. officials also said about 30 percent of the 11,667 assessments were just vague tips — like a report of a suspicious car that included no license plate number. Such tips are entered into its computer system even if there is no way to follow up on them.

Finally, they said, it is impossible to know precisely how many assessments turned up suspicious facts. A single assessment may have spun off more than one higher investigation, and some agents may have neglected to record when such an investigation started as an assessment.

Ms. Caproni also said that even though the F.B.I. manual says agents can open assessments "proactively," they still must always have a valid reason — like a tip that is not solid enough to justify a more intensive level of investigation but should still be checked out.

But Mr. German, of the A.C.L.U., said that allowing agents to initiate investigations without a factual basis "seems ripe for abuse." He added, "What they should be doing is working within stricter guidelines that help them focus on real threats rather than spending time chasing shadows."



U.S. Department of Justice

Office of Legislative Affairs

DATE: 11-23-2010

FBI INFO.

CLASSIFIED BY 60324 UC BAU SAB/sab

REASON: 1.4 (c)

DECLASSIFY ON: 11-23-2035

Office of the Assistant Attorney General

Washington, D.C. 20530

~~SECRET~~

November 19, 2010

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Leahy:

Enclosed please find responses to questions number 15 and 52d from the questions for the record arising from the appearance of FBI Director Robert Mueller before the Committee on March 25, 2009 at an FBI oversight hearing. We are submitting this response separately from others because it is classified. We apologize for the delay and hope that this information is of assistance to the Committee.

Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

Ronald Weich  
Assistant Attorney General

Enclosure

cc: The Honorable Jeff Sessions  
Ranking Minority Member

~~SECRET~~

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~~SECRET~~

**Responses of the Federal Bureau of Investigation  
to Questions for the Record  
Arising from the March 25, 2009, Hearing Before the  
Senate Committee on the Judiciary  
Regarding Oversight of the FBI**

**Question Posed by Senator Feingold**

**15. How many assessments has the FBI conducted and completed using the new authorities provided by AG Guidelines that were put into effect in December 2008? How many preliminary or full investigations were initiated based upon information developed in those assessments? How many assessments are still ongoing?**

**Response**

(U) This supplements the unclassified response to this inquiry.

(FOUO) The FBI has initiated 11,667 Type 1 and Type 2 assessments, 3,062 of which are ongoing. 427 preliminary and full investigations have been opened based upon information developed in these Type 1 and Type 2 assessments. 480 Type 3, 4, 5, and 6 assessments have been initiated, of which 422 remain open.

**Question Posed by Senator Grassley**

**52. Last year, we learned that certain key counterterrorism units had unusually high vacancy rates. The FBI was reportedly having trouble attracting enough qualified people to those critical operational units at the core of its number one priority.**

**d. Are there any FBI units operating at 75% capacity or less?**

b1

(S)

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# **EXHIBIT Y**

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# 44



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Organizations

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# **EXHIBIT Z**

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June 12, 2011

# F.B.I. Agents Get Leeway to Push Privacy Bounds

By **CHARLIE SAVAGE**

WASHINGTON — The **Federal Bureau of Investigation** is giving significant new powers to its roughly 14,000 agents, allowing them more leeway to search databases, go through household trash or use surveillance teams to scrutinize the lives of people who have attracted their attention.

The F.B.I. soon plans to issue a new edition of its manual, called **the Domestic Investigations and Operations Guide**, according to an official who has worked on the draft document and several others who have been briefed on its contents. The new rules add to several measures taken over the past decade to give agents more latitude as they search for signs of criminal or terrorist activity.

The F.B.I. recently briefed several privacy advocates about the coming changes. Among them, Michael German, a former F.B.I. agent who is now a lawyer for the American Civil Liberties Union, argued that it was unwise to further ease restrictions on agents' power to use potentially intrusive techniques, especially if they lacked a firm reason to suspect someone of wrongdoing.

"Claiming additional authorities to investigate people only further raises the potential for abuse," Mr. German said, pointing to complaints about the bureau's surveillance of domestic political advocacy groups and mosques and to an inspector general's findings in 2007 that the F.B.I. had frequently misused "national security letters," which allow agents to obtain information like phone records without a court order.

Valerie E. Caproni, the F.B.I. general counsel, said the bureau had fixed the problems with the national security letters and had taken steps to make sure they would not recur. She also said the bureau, which does not need permission to alter its manual so long as the rules fit within broad guidelines issued by the attorney general, had carefully weighed the risks and the benefits of each change.

AOR540

“Every one of these has been carefully looked at and considered against the backdrop of why do the employees need to be able to do it, what are the possible risks and what are the controls,” she said, portraying the modifications to the rules as “more like fine-tuning than major changes.”

Some of the most notable changes apply to the lowest category of investigations, called an “assessment.” The category, created in December 2008, allows agents to look into people and organizations “proactively” and **without firm evidence** for suspecting criminal or terrorist activity.

Under current rules, agents must open such an inquiry before they can search for information about a person in a commercial or law enforcement database. Under the new rules, agents will be allowed to search such databases without making a record about their decision.

Mr. German said the change would make it harder to detect and deter inappropriate use of databases for personal purposes. But Ms. Caproni said it was too cumbersome to require agents to open formal inquiries before running quick checks. She also said agents could not put information uncovered from such searches into F.B.I. files unless they later opened an assessment.

The new rules will also relax a restriction on administering lie-detector tests and searching people’s trash. Under current rules, agents cannot use such techniques until they open a “preliminary investigation,” which — unlike an assessment — requires a factual basis for suspecting someone of wrongdoing. But soon agents will be allowed to use those techniques for one kind of assessment, too: when they are evaluating a target as a potential informant.

Agents have asked for that power in part because they want the ability to use information found in a subject’s trash to put pressure on that person to assist the government in the investigation of others. But Ms. Caproni said information gathered that way could also be useful for other reasons, like determining whether the subject might pose a threat to agents.

The new manual will also remove a limitation on the use of surveillance squads, which are trained to surreptitiously follow targets. Under current rules, the squads can be used only once during an assessment, but the new rules will allow agents to use them repeatedly. Ms. Caproni said restrictions on the duration of physical surveillance would still apply, and argued that because of limited resources, supervisors would use the squads only rarely during such a low-level investigation.

The revisions also clarify what constitutes “undisclosed participation” in an organization by an F.B.I. agent or informant, which is subject to special rules — most of which have not been made public. The new manual says an agent or an informant may surreptitiously attend up to five meetings of a group before those rules would apply — unless the goal is to join the group, in which case the rules apply immediately.

At least one change would tighten, rather than relax, the rules. Currently, a special agent in charge of a field office can delegate the authority to approve sending an informant to a religious service. The new manual will require such officials to handle those decisions personally.

In addition, the manual clarifies a description of what qualifies as a “sensitive investigative matter” — investigations, at any level, that require greater oversight from supervisors because they involve public officials, members of the news media or academic scholars.

The new rules make clear, for example, that if the person with such a role is a victim or a witness rather than a target of an investigation, extra supervision is not necessary. Also excluded from extra supervision will be investigations of low- and midlevel officials for activities unrelated to their position — like drug cases as opposed to corruption, for example.

The manual clarifies the definition of who qualifies for extra protection as a legitimate member of the news media in the Internet era: prominent bloggers would count, but not people who have low-profile blogs. And it will limit academic protections only to scholars who work for institutions based in the United States.

Since the release of the 2008 manual, the assessment category has drawn scrutiny because it sets a low bar to examine a person or a group. The F.B.I. has opened thousands of such low-level investigations each month, and a vast majority has not generated information that justified opening more intensive investigations.

Ms. Caproni said the new manual would adjust the definition of assessments to make clear that they must be based on leads. But she rejected arguments that the F.B.I. should focus only on investigations that begin with a firm reason for suspecting wrongdoing.

AOR543



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June 18, 2011

## Backward at the F.B.I.

The Obama administration has long been bumbling along in the footsteps of its predecessor when it comes to sacrificing Americans' basic rights and liberties under the false flag of fighting terrorism. Now the Obama team seems ready to lurch even farther down that dismal road than George W. Bush did.

Instead of tightening the relaxed rules for F.B.I. investigations — not just of terrorism suspects but of pretty much anyone — that were put in place in the Bush years, President Obama's Justice Department is getting ready to push the proper bounds of privacy even further.

Attorney General John Ashcroft began weakening rights protections after 9/11. Three years ago, his successor, Michael Mukasey, issued rules changes that permit agents of the Federal Bureau of Investigation to use highly intrusive methods — including lengthy physical surveillance and covert infiltration of lawful groups — even when there is no firm basis for suspecting any wrongdoing.

The Mukasey guidelines let the bureau go after people identified in part by race or religion, which only raises the danger of government spying on law-abiding Americans based on their political activity or ethnic background.

Incredibly, the Obama administration thinks Mr. Mukasey did not go far enough. Charlie Savage reported in The Times last week that the F.B.I. plans to issue a new edition of its operational manual that will give agents significant new powers to search law enforcement and private databases, go through household trash or deploy surveillance teams, with even fewer checks against abuse.

Take, for example, the lowest category of investigations, called an "assessment." The category was created as part of Mr. Mukasey's revisions to allow agents to look into people and groups "proactively" where there is no evidence tying them to possible criminal or terrorist activity. Under the new rules, agents will be allowed to search databases without making a record about it. Once an assessment has started, agents will be permitted to

AOR544

conduct lie detector tests and search people's trash as part of evaluating a potential informant. No factual basis for suspecting them of wrongdoing will be necessary.

The F.B.I. general counsel, Valerie Caproni, said agents want to be able to use the information found in a subject's trash to pressure that person to assist in a government investigation. Um, well, yes, that is the problem. It only heightens concern about privacy, improper squeezing of individuals, and the adequacy of supervision.

Currently, surveillance squads, which are trained to surreptitiously follow targets, may be used only once during an assessment. The new rules will allow repeated use.

They also expand the special rules covering "undisclosed participation" in an organization by an F.B.I. agent or informant. The current rules are not public, and, as things stand they still won't be. But we do know the changes allow an agent or informant to surreptitiously attend up to five meetings of a group before the rules for undisclosed participation — whatever they are — kick in.

The changes also remove the requirement of extra supervision when public officials, members of the news media or academic scholars are investigated for activities unrelated to their positions, like drug cases. That may sound like a reasonable distinction, but it ignores an inflated potential for politically motivated decision-making.

The F.B.I.'s recent history includes the abuse of national security letters to gather information about law-abiding citizens without court orders, and inappropriate investigations of antiwar and environmental activists. That is hardly a foundation for further loosening the rules for conducting investigations or watering down internal record-keeping and oversight.

Everyone wants to keep America safe. But under President Bush and now under President Obama, these changes have occurred without any real discussion about whether the supposed added security is worth the harm to civil liberties. The White House cares so little about providing meaningful oversight that Mr. Obama has yet to nominate a successor for Glenn Fine, the diligent Justice Department inspector general who left in January.

Finally, Congress is showing some small sign of interest. Senator Jon Tester, Democrat of Montana, has written to Robert Mueller III, the F.B.I. director, asking that the new policies be scuttled. On Friday afternoon, Senators Patrick Leahy of Vermont and Charles Grassley of Iowa, the chairman and the ranking Republican member of the Judiciary Committee, called on Mr. Mueller to provide an opportunity to review the changes before they are carried out,

and to release a public version of the final manual on the F.B.I.'s Web site. Mr. Obama and Attorney General Eric Holder Jr. need to listen.

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## **EXHIBIT AA**



Wonkblog

# New study: Snowden's disclosures about NSA spying had a scary effect on free speech



By **Jeff Guo** April 27

In June 2013, reporters at [The Washington Post](#) and [the Guardian](#) ran a series of stories about the U.S. government's surveillance programs. According to documents leaked by Edward Snowden, the National Security Agency was harvesting huge swaths of online traffic — far beyond what had been disclosed — and was working directly with top Internet companies to spy on certain people.

Glenn Greenwald, one of the [Guardian](#) journalists who reported the disclosures and a surveillance skeptic, argued in a [2014 TED talk](#) that privacy is a critical feature of open society. People act differently when they know they're being watched. "Essential to what it means to be a free and fulfilled human being is to have a place that we can go and be free of the judgmental eyes of other people," he said.

Privacy advocates have argued that widespread government surveillance has had a "chilling effect" — it encourages meekness and conformity. If we think that authorities are watching our online actions, we might stop visiting certain websites or not say certain things just to avoid seeming suspicious.

The problem, though, is that it's difficult to judge the effect of government-spying programs. How do you collect all the utterances that people stopped themselves from saying? How do you count all the conversations that weren't had?

AOR548

**A new study provides some insight into the repercussions of the Snowden revelations, arguing that they happened so swiftly and were so high-profile that they triggered a measurable shift in the way people used the Internet.**

Jonathon Penney, a PhD candidate at Oxford, analyzed Wikipedia traffic in the months before and after the NSA's spying became big news in 2013. Penney found a 20 percent decline in page views on Wikipedia articles related to terrorism, including those that mentioned "al-Qaeda," "car bomb" or "Taliban."

"You want to have informed citizens," Penney said. "If people are spooked or deterred from learning about important policy matters like terrorism and national security, this is a real threat to proper democratic debate."

Even though the NSA was supposed to target only foreigners, the immense scale of its operations caused many to worry that innocent Americans were getting caught in the dragnet. A Pew survey in 2015 showed that about 40 percent of Americans were "very" or "somewhat" concerned that the government was spying on their online activities.

The same survey showed that about 87 percent of American adults were aware of the Snowden news stories. Of those people, about a third said they had changed their Internet or phone habits as a result. For instance, 13 percent said they "avoided using certain terms" online; and 14 percent said they were having more conversations face to face instead of over the phone. The sudden, new knowledge about the surveillance programs had increased their concerns about their privacy.

Penney's research, which is forthcoming in the Berkeley Technology Law Journal, echoes the results of a similar study conducted last year on Google Search data. Alex Marthews, a privacy activist, and Catherine Tucker, a professor at MIT's business school, found that Google activity for certain keywords fell after the Snowden stories were splashed on every front page. Both in the United States and in other countries, people became reluctant to search for terrorism-related words such as "dirty bomb" or "pandemic."

Penney focused on Wikipedia pages related to sensitive topics specifically flagged by the Department of Homeland Security. In a document provided to its analysts in 2011, the DHS listed 48 terrorism terms that they should use when "monitoring social media sites." Penney collected traffic data on the English Wikipedia pages most closely related to those terms.

This chart from the paper shows how the number of views dropped after the June 2013 news articles. The amount of traffic immediately dropped and stayed low for the subsequent 14 months.

To be clear, this traffic drop could have come from anywhere — Penney did not track the country of origin — but the United States accounts for 43 percent of English Wikipedia traffic, more than any other country.

Penney narrowed the list to the most suspicious-sounding articles, as judged by an online survey he administered. The results became even more dramatic.

Here, in black, are the combined monthly traffic totals for the Wikipedia pages related to the 31 top words on the DHS list. In the year and a half before the Snowden revelations, traffic to these pages was rising. After June 2013, traffic not only fell

AOR549

immediately, but continued to decline over the next dozen months.

For comparison, the chart also shows the combined page views for 25 Wikipedia pages that are security-related but not terrorism-related. These are less provocative articles containing the words “Border patrol” or “Central Intelligence Agency.” There was a slight but statistically insignificant dip in traffic for these pages, which makes sense because people may not be as worried about visiting these kinds of pages.

The Wikipedia data suggest that the Snowden revelations had a noticeable impact on people’s Wikipedia behaviors, says Penney. “I expected to find an immediate drop-off in June, and then people would slowly realize that nobody is going to jail for viewing Wikipedia articles, and the traffic would go back up,” he said. “I was surprised to see what looks to be a longer-term impact from the revelations.”

Penney has provided evidence that spying programs, once the public knows about them, cause collateral damage. It’s unlikely, of course, that the patterns here were caused by actual terrorists changing their Internet habits.

Instead, the study suggests that the shift in Wikipedia traffic was the result of people who stifled their curious impulses because they didn’t want to seem like they were doing anything wrong. “This is measuring regular people who are being spooked by the idea of government surveillance online,” Penney said.

That’s one plausible conclusion we could draw from the data. There is, however, an alternative explanation for these results.

The Snowden revelations ignited a huge debate about the NSA. Stories about government surveillance dominated the news cycle for months. Perhaps people stopped looking at terrorism-related Wikipedia articles not because the Snowden leaks made them paranoid, but because the news distracted them from their previous curiosity about terrorism.

In other words, maybe it wasn’t a “chilling effect” that caused the dip in terrorism-related Wikipedia traffic — but rather the short attention spans of online audiences.

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It will require more research to fully understand what happened. But even if the evidence is still being examined, chilling effects continue to occupy a prominent position in privacy debates.

In March 2015, the American Civil Liberties United filed a lawsuit in federal district court challenging the NSA’s surveillance practices, with Wikipedia’s parent organization as one of the eight plaintiffs. Writing with his colleague Lila Tretikov in the New York Times, Wikipedia founder Jimmy Wales accused the NSA of tracking Wikipedia users:

*So imagine, now, a Wikipedia user in Egypt who wants to edit a page about government opposition or discuss it with fellow editors. If that user knows the N.S.A. is routinely combing through her contributions*

AOR550

*to Wikipedia, and possibly sharing information with her government, she will surely be less likely to add her knowledge or have that conversation, for fear of reprisal.*

The result, argued Wales and Tretikov, "represents a loss for everyone who uses Wikipedia and the Internet — not just fellow editors, but hundreds of millions of readers in the United States and around the world."

In October, a judge threw out the case, declaring that the plaintiffs "have not alleged facts that plausibly establish an injury attributable to the NSA's Upstream surveillance." In other words, there wasn't enough evidence that anyone was harmed. The decision has been appealed.

Jeff Guo is a reporter covering economics, domestic policy, and everything empirical. He's from Maryland, but outside the Beltway.  Follow @\_jeffguo

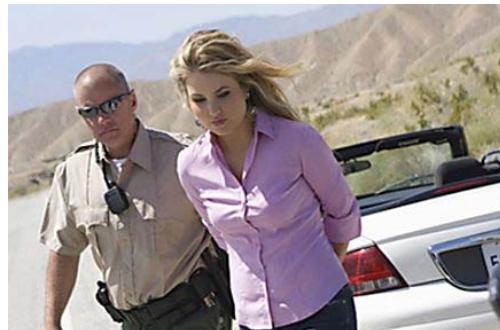
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## **EXHIBIT BB**

## DECLARATION

I, John Studer, make this declaration in support of the application to the Federal Election Commission for an advisory opinion that the SWP, the SWP's National Campaign Committee, and the committees supporting the candidates of the SWP are entitled to an exemption from certain disclosure provisions of the Federal Election Campaign Act.

I make this statement on the basis of my personal knowledge.

1. I am the 2016 Socialist Workers Party campaign director and am familiar with the party's efforts to get on the ballot in 2016 and the character of how its supporters campaign for the party today.
2. The Party sees a deep discussion taking place among working people today because of the effects of the deepening crisis of the capitalist economic system. Since the 1970s, and in an accelerating way since the capitalist financial meltdown in 2007, the employers have faced falling rates of profit and increasingly cut or stopped investment in plant, equipment and production. Under these conditions, millions of working people have seen their lives effected, losing jobs or hours, falling wages, attacks on health care and pensions, cuts in social programs, and other attacks on work, safety and quality of life.
3. These changes have created a very deep concern and discussion about what confronts working people today. There is an unprecedented interest in finding an alternative to "politics as usual." This political shift was reflected in the 2016 presidential campaign in the unexpected nomination of Donald Trump by the Republican Party and the unexpected support won by Bernie Sanders in his bid for the Democratic nomination.
4. In this context, over the last few years the SWP has found real interest in the ideas and activities of the party and its candidates. To take advantage of these openings, the party has shifted how it campaigns.
5. In the past, supporters of SWP campaigns have sought to get out the word and to gain ballot status by setting up tables on street corners across the country. This has on occasion led to confrontations with local police, who attempted to deny them their free speech right to campaign. It also led to confrontations with

individuals or groups who wanted to stop them because of the political content of the campaign.

6. This year, party supporters have focused on campaigning for the party by going door-to-door in working-class neighborhoods, engaging workers in more extensive discussions about the character of the crisis our class faces today and the need to build the SWP and join the effort to break from bourgeois politics and take political power.
7. For this reason, when we have run into opposition from police or other local authorities or on occasion into harassment and threats from right-wing individuals, it is mainly while campaigning in this way.

I declare under penalty of perjury that the foregoing is true and correct. Executed in New York City, New York, October 22, 2016.



John Studer  
New York  
October 22, 2016

# **EXHIBIT CC**

WATCH  
THE TEASER

September 20, 2010

# Report Says F.B.I. Gave Inaccurate Information on Surveillance at Rally

By THE ASSOCIATED PRESS

Filed at 1:59 p.m. ET

WASHINGTON (AP) -- The FBI gave inaccurate information to Congress and the public when it claimed a possible terrorism link to justify surveilling an anti-war rally in Pittsburgh, the Justice Department's inspector general said Monday in a report on the bureau's scrutiny of domestic activist groups.

Inspector General Glenn Fine said the FBI had no reason to expect that anyone of interest in a terrorism investigation would be present at the 2002 event sponsored by the Thomas Merton Center, a nonviolent anti-war and anti-discrimination group.

The surveillance was "an ill-conceived project on a slow work day," the IG stated in a study of several FBI domestic terrorism probes of people affiliated with organizations such as Greenpeace and the Catholic Worker.

Earlier, in statements to Congress and in a press release, the FBI had described the Pittsburgh rally surveillance by one agent as related to a terrorism investigation.

In a letter to the IG, FBI Deputy Director Timothy Murphy said the FBI regrets that inaccurate information was provided to the FBI director and Congress regarding the basis for the agent's presence at the rally.

Speaking generally of the FBI probes it studied, the IG said a domestic terrorism classification has far-reaching impact because people who are subjects of such investigations are normally placed on watchlists and their travels and interactions with law enforcement may be tracked.

The FBI has broad definitions that enable it to classify matters as domestic terrorism that actually are trespassing or vandalism, the inspector general said.

The IG said the evidence did not indicate that the FBI targeted individuals involved with the groups on the basis of their free-speech activities protected by the Constitution's First

Amendment, but rather due to concerns about potential criminal acts.

The IG also concluded that the factual basis for opening some investigations was factually weak and that in several instances there was little indication of any possible federal crime, as opposed to state crimes. In some cases, the IG found that the FBI extended the duration of probes without adequate basis and in a few cases the FBI improperly retained information about the groups in its files, classifying some probes relating to nonviolent civil disobedience under its "Acts of Terrorism" classification.

Regarding the Pittsburgh rally, controversy erupted in 2006 over whether the FBI had spied on protesters at the event several years earlier because of their anti-war views.

At the time, the FBI issued a news release saying the surveillance had been based on an ongoing investigation.

FBI Director Robert Mueller told a Senate hearing that the bureau had been trying to identify a particular individual believed to be in attendance.

The FBI's statements to Congress and the public were not true, said the IG, who found no evidence that the FBI had any information at the time of the event that any terrorism subject would be present.

According to the IG, the Office of the Chief Division Counsel in the FBI Pittsburgh Field Division created a document that said the surveillance was supposedly directed at an individual living in Pittsburgh who was of interest to the FBI based on evidence developed in a terrorism probe.

"We determined this version of events was not true," said the IG.

The inaccurate statements may have been inadvertent, but the IG said it is more likely that the document reflected an effort to state a stronger justification for the surveillance.

# The Washington Post

## FBI probes were improper, Justice says

By Jerry Markon  
Washington Post Staff Writer  
Monday, September 20, 2010; 10:51 PM

The FBI improperly investigated some left-leaning U.S. advocacy groups after the Sept. 11, 2001, attacks, the Justice Department said Monday, citing cases in which agents put activists on terrorist watch lists even though they were planning nonviolent civil disobedience.

A report by Inspector General Glenn A. Fine absolved the FBI of the most serious allegation: that domestic groups were targeted purely for their activism against the Iraq war and other political activity, which would have violated their First Amendment rights. Civil liberties groups and congressional Democrats had accused the FBI of employing such tactics during George W. Bush's administration.

But the report cited what it called "troubling" FBI practices in the Bush administration's monitoring of domestic groups between 2001 and 2006. In one instance, the report said, FBI officials falsely said an agent photographed antiwar demonstrators as part of a terrorism investigation, which led FBI Director Robert S. Mueller III to unintentionally give incorrect information about the incident to Congress.

In another, agents investigated members of the environmental advocacy group Greenpeace over their protest activities "with little or no basis," the report said. Agents kept the case open for more than three years, even though no charges were filed, and put the activists on a terrorist watch list, it said.

The groups that were monitored, which also include a Catholic organization that advocates for peace, compared the FBI's actions to questionable domestic spying tactics the bureau used against antiwar demonstrators and others in the 1960s under longtime director J. Edgar Hoover.

"The use of McCarthyite tactics against PETA and other groups that speak out against cruelty to animals and exploitative corporate and government practices is un-American, unconstitutional, and against the interests of a healthy democracy," said a statement from People for the Ethical Treatment of Animals, an animal rights group that was among those monitored.

Ken Wainstein, former head of the Justice Department's national security division, said the investigations of the groups reflect the FBI's post-Sept. 11 challenge of transforming into an intelligence organization able to detect and dismantle terrorist plots.

"This isn't McCarthyism or the excesses of the 1960s," he said. "This is the Bureau developing the programs to be a fully functioning intelligence agency and trying not to step over the First Amendment lines in the process."

FBI officials defended their tactics, saying they were trying to protect Americans. They noted that the express purpose of Fine's report was to determine whether agents targeted activists purely for their political beliefs.

"After more than four years of investigation and an exhaustive review of hundreds of investigative decisions the FBI made after the September 11 attacks," said FBI spokesman Michael P. Kortan, the report "did not uncover even a single instance where the FBI targeted any group or any individual based on the exercise of a First Amendment right."

He added that although Fine had "disagreed with a handful of the FBI's investigative determinations over the course of six years," the inspector general "has not recommended any significant modifications to the FBI's authority to investigate criminal conduct or national security threats."

The FBI's efforts to balance its fight against domestic terrorism with respect for the First Amendment have long been controversial. Under Hoover's COINTELPRO program, halted in 1971, the bureau sought to monitor and disrupt leftist antiwar and civil rights groups by such tactics as infiltrating them with informants.

Since Sept. 11, 2001, that balance has been tested further. Civil liberties groups have long accused the bureau of overreacting to the hijackings by improperly monitoring antiwar demonstrators and environmental groups.

Fine's investigation began in 2006 after the American Civil Liberties Union released documents, obtained through the Freedom of Information Act, that it said showed that the FBI was monitoring left-leaning groups.

Michael German, an ACLU senior policy counsel and former FBI agent, said Fine's report "clearly shows that the FBI was improperly spying on people's First Amendment-protected activity, and that the FBI didn't have enough internal controls to prevent abuse."

Fine's report says that in some cases, agents began investigations of people affiliated with activist groups for "factually weak" reasons. In others, the report said, the FBI extended probes "without adequate basis" and improperly kept information about activist groups in its files.

Much of the report is about a 2002 antiwar protest sponsored by the Thomas Merton Center, a Pittsburgh-based organization dedicated to promoting peace.

Mark Berry, a probationary FBI agent with little anti-terrorism experience, attended the rally and photographed demonstrators distributing leaflets. An internal FBI document said the bureau was investigating "Pittsburgh anti-war activity," the report said.

After the ACLU filed a Freedom of Information Act request, FBI officials seeking to respond produced an internal "routing slip" saying that Berry was monitoring a local Islamic leader and that his attendance was part of a terrorism probe.

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Berry told Fine's investigators that the routing slip was false, and Fine concluded that it was an "after-the-fact reconstruction that was not corroborated by any witnesses or contemporaneous documents." Berry could not be located Monday night.

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# OIG: FBI Inappropriately Tracked Domestic Advocacy Groups

By Andrew Cohen

FBI agents misled officials and the public, violated their own policy manual, used poor judgment, and engaged in sloppy police work when they investigated certain left-leaning, high-profile, domestic advocacy groups in the years immediately following 9/11, the Justice Department announced today following a four-year-long internal investigation by the Office of the Inspector General.

The official review of FBI conduct toward groups like PETA and Greenpeace and the Catholic Worker arose from revelations made public in 2005 that federal agents had used the threat of terrorism as a justification for tracking the legal, associative conduct of members of certain left-leaning groups. Concerned about the chilling impact of no-warrant domestic surveillance upon political advocacy groups whose members were exercising their constitutionally-protected free speech rights, Congressional Democrats and First Amendment activists had sought the probe. It began in 2006 and covered the years 2001-2006 during the administration of President George W. Bush.

The 209-page report, signed by Inspector General Glenn A. Fine, concluded that while none of the groups were targeted by the FBI for their views alone--one of the key allegations made by critics of the surveillance--the Bureau nevertheless engaged in tactics and strategies toward those groups and their members that were inappropriate, misleading, and in some cases counterproductive. Moreover, the OIG accused FBI witnesses of continuing to the present day to thwart a full and complete investigation into the matter by offering "incomplete and inconsistent accounts of events." An FBI spokesman said the Bureau "regrets that inaccurate information was provided."

The OIG report was sharply critical of what it considered 'troubling' work by the Bureau. It concluded, for example, that FBI Director Robert Mueller "unintentionally provided inaccurate testimony to Congress" in 2006 about an anti-war rally in Pittsburgh four years earlier. On that occasion, the report recapped, a probationary agent was sent to do some "make work" on a "slow work day" to look for "international terrorism subjects" at an anti-war rally in Pittsburgh sponsored by The Thomas Merton

Center, a group which says it seeks to promote "peace and social justice." On Capitol Hill, in 2006, Mueller told lawmakers that the surveillance of the Merton Center was "an outgrowth of an FBI investigation and that the agent was "attempting to identify an individual who happened to be, we believed, in attendance at the rally."

The OIG Report, however, "found no evidence that the FBI had any information at the time of the event that any terrorism suspect would be present at the event. Instead, FBI personnel subsequently created two inconsistent and erroneous explanations of the surveillance of the anti-war rally, stating inaccurately that the surveillance was a response to information that certain persons of interest in international terrorism matters would be present. In fact, the FBI had no basis at the time to expect any subject or other person of interest in a terrorism investigation would be present." Mueller, the report indicated, was unaware that the information provided to him by his subordinates was inaccurate.

Fine and his Justice Department colleagues also criticized the FBI for its surveillance of the animal rights group People for the Ethical Treatment of Animals (PETA). The OIG report "questioned whether the FBI had a sufficient factual basis to open several of the cases as full investigations rather than as preliminary inquiries, and we concluded with respect to one individual that the facts contained in the FBI communication initiating the case did not support opening any investigation at all." One investigation into PETA's activities that was opened was then improperly allowed to remain open for six years, the OIG concluded, long after it should have remained so.

In a case of domestic surveillance of individuals associated with The Catholic Worker, a group which states it is committed to "nonviolence, voluntary poverty, prayer and hospitality for the homeless, the OIG report concluded that the FBI inappropriately characterized" certain "nonviolent civil disobedience" as terrorism-related. "The information the FBI collected in one case," the OIG report indicates, "had no relationship to any 'violent activities' much less to terrorism." Similarly, in a case involving an investigation into the environmental activist group Greenpeace, the OIG also concluded that the FBI had inappropriately labeled planned protest activities (in Texas against Exxon and Kimberly-Clark) as an "act of terrorism" case. Subjects in that case were put on a federal "watchlist" despite what the OIG called "scant basis for the FBI to suspect" they were planning acts of terrorism.

The OIG Report contained six "recommendations" to the FBI, including the suggestion that the FBI conduct its own internal investigation into its Pittsburgh Field Division to "assess the Division's compliance" with federal law, Attorney General guidelines, and FBI policies involving First Amendment issue. The OIG also called for the Bureau and the Justice Department to consider reinstating a "prohibition on retaining information from public events that is not related to potential criminal or terrorist activity."

This article available online at:

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September 20, 2010

# F.B.I. Spying Not Fueled by Politics, Report Says

By CHARLIE SAVAGE

WASHINGTON — Despite an uproar in 2006 over the disclosure that federal agents had investigated dozens of domestic political advocacy groups, the Federal Bureau of Investigation was motivated by concerns that members of the groups might commit crimes and was not spying on them because of their political views, a Justice Department report said on Monday.

Still, the 209-page report, by the office of Inspector General Glenn A. Fine, criticized the F.B.I. for classifying certain nonviolent crimes related to protest activities as terrorism. And it sharply attacked the bureau for making a series of “false and misleading statements to the public and to Congress” about its surveillance of an antiwar protest on Nov. 29, 2002.

Despite such criticisms, an F.B.I. spokesman, Michael Kortan, said Monday evening that the report’s most important finding was that after “an exhaustive review of hundreds of investigative decisions the F.B.I. made after the Sept. 11 attacks,” Mr. Fine’s office “did not uncover even a single instance where the F.B.I. targeted any group based on the exercise of a First Amendment right.” Nor, Mr. Kortan said, did the report suggest “any significant modifications” of the bureau’s investigative powers.

The report involved investigations of antiwar, environmentalist and animal rights groups from the 2001 terrorist attacks through much of the administration of President George W. Bush.

In the case of the 2002 protest, an F.B.I. agent who attended the event filed a two-page account labeled “results of investigation of Pittsburgh antiwar activity” that was disclosed to the American Civil Liberties Union as part of a larger response to several Freedom of Information Act requests in 2006. It detailed leafleting by people associated with the Thomas Merton Center, which the agent described as a “left-wing organization” that advocated pacifism, to protest the coming Iraq war.

The account described the leaflets as making such claims as that Iraq had no weapons of mass destruction and raised questions about whether the center was linked to Muslims. The agent also photographed an activist who “appeared to be of Middle Eastern descent” and submitted her picture to terrorism analysts.

After the A.C.L.U. made the report public, the bureau’s press office told reporters that the agent attended the protest “as a direct result of information provided to the F.B.I. related to an ongoing investigation.” Later, the F.B.I. director, Robert S. Mueller III, told Congress that the agent was trying to “identify an individual who happened to be, we believed, in attendance at that rally.”

In fact, the inspector general found, this story was false: a supervisor had sent the agent to the protest as a “make-work” assignment to see if any subjects of Pittsburgh terrorism investigations “happened to show up without having any reason to think any of them would be there.”

The agent later told the inspector general’s office that he had gone overboard in carrying out that task because he was a recent hire, and he described the report as “atrocious” and a “horrible mistake,” saying he could “understand why people would become inflamed about it.”

In 2006, officials in the Pittsburgh office apparently came up with the story that the agent had attended the protest in search of a specific individual as part of a terrorism investigation — a false “after-the-fact justification” that made its way into the press statement and briefing materials for Mr. Mueller.

The investigators were also unable to determine who was responsible for the false account. But the report emphasized that there was no reason to believe that Mr. Mueller deliberately misled Congress.

The report also criticized several episodes in which it characterized F.B.I. agents as

opening or continuing investigations despite scant evidence of a federal crime, and it criticized classifying some nonviolent protest-related actions, like trespassing on a military base, as “terrorism” matters. As a result, it said, some people are being inappropriately put or kept on terrorism watch lists.

The inspector general report did note that rules limiting F.B.I. investigations were relaxed in 2002 and eased further in 2008. As a result, one problem documented in the report — keeping information in F.B.I. files related to political activities deemed irrelevant to potential criminal or terrorist activity — is no longer improper. The report suggested that the restriction be reinstated.

Michael German, a former F.B.I. agent who is now with the American Civil Liberties Union, which filed some of the Freedom of Information Act requests that led to the disclosure of the investigations, also said the guidelines were too lax.

Mr. German argued that the report showed that “the rules designed to limit the F.B.I. don’t protect wholly innocent people from being spied on for their political activities” because agents are authorized to take steps like sending informants to spy on groups based on very little reason for suspicion that they might commit a crime.

## NewsRoom

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Section: Editorial Opinion

FBI investigationsRed-baiting, circa 2002-2006

GREENPEACE, THE Catholic Worker, the Thomas Merton Center - none of these groups had the remotest connection to 9/11 or terrorism. And the **FBI** had no business investigating them - with no evidence other than a suspicion of left-wing organizations in wartime. This was shameful red-baiting at its worst. The best thing to say about it is that a Justice Department report cleared the **FBI** of investigating targeted groups to deliberately stifle their "First Amendment activities." But the net effect was the same.

The Justice Department's Inspector General report released this week pulled few punches in admonishing the **FBI** for targeting anti-war groups and advocacy organizations with no apparent justification, and for placing non-violent activists in those groups on terrorist watch lists. The report chastised the bureau for having a "weak" rationale for some of its investigations; investigating where there was "little indication of any possible federal crimes"; and extending "the duration of investigations involving advocacy groups or their members without adequate basis." The agency was also taken to task for improperly retaining information about the targeted groups in its files and for classifying investigations of peace groups "under its 'Acts of Terrorism' classification."

These are serious abuses. Using anti-terrorism laws to target domestic protest organizations is redolent of the actions of the Justice Department against law-abiding protesters during World War I and the Vietnam War - actions that are rightly remembered as disgraceful.

**FBI** Director Robert Mueller was misled by subordinates into telling Congress, falsely, that surveillance of a peaceful 2002 anti-war rally was "an outgrowth of an **FBI** investigation." In fact, it was the product of an agent receiving a "make-work" assignment on a "slow day." Whether a lack of common sense or political bias is to blame, the **FBI** cannot go on looking for terrorists in all the wrong places. Americans will be more secure and the bureau will be a more trustworthy institution if it corrects its flaws quickly.

--- Index References ---

Company: GREENPEACE CANADA; **FBI** SA; FRANCHISE BANCORP INC; JUSTICE DEPARTMENT

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Section: News

Hundreds protest raids tied to terrorism probe  
Federal search effort criticized as 'FBI overreach'

Serena Maria Daniels and Andy Grimm, Tribune reporters

About 350 anti-war activists, clergy members and trade union members demonstrated Monday outside the **FBI**'s Chicago headquarters and condemned federal authorities for their raids last week of the homes of activists in Chicago and Minneapolis.

Signs read "Freedom to Dissent" and "One Nation Under Surveillance." Others chanted into bullhorns, "Freedom of speech under attack/What do we do/Stand up, fight back!"

"It's not just our family. It's not just those that got the knock on Friday. It's not just the many, many movement activists that are here today," said Stephanie Weiner, whose home in Chicago's Logan Square neighborhood was the subject of a search warrant Friday.

Weiner and her husband, Joseph Iosbaker, were among several anti-war activists whose homes were searched in the two cities in an investigation into possible domestic links with alleged terrorist organizations.

Authorities also searched each of their sons' bedrooms, including the room of Tre Iosbaker, 17, who attended the rally in support of his parents.

The **FBI** also searched the Jefferson Park home of Hatem Abudayyeh, executive director of the Arab American Action Network.

Subpoenas issued to other activists sought records detailing their travel to countries in the Middle East and South America, as well as records of donations to Abudayyeh's group and two groups on the State Department's list of terrorist organizations.

Special Agent Ross Rice, a Chicago-based **FBI** spokesman, has declined to discuss details of the investigation. But he has noted that judges reviewed the warrants and found probable cause.

Jim Fennerty, an attorney representing Abudayyeh, who is an American of Palestinian descent, said Monday that lawyers from the National Lawyers Guild will represent those who are being investigated.

Ahmed Rehab, executive director of the Chicago chapter of the Council on American-Islamic Relations, said Monday that the investigation into Abudayyeh's organization was "a waste of taxpayer dollars."

"Hatem is a longtime, respected leader in the community. It is unthinkable that he would have any connections to terrorism," Rehab said.

"This is a new low. ... This is an example of **FBI** overreach when it comes to activism or commentary on the (Middle East) conflict."

The Arab American Action Network has received federal block grants for training programs offered at its 63rd Street headquarters, according to its Web site, and offers assistance with citizenship, English classes and after-school programs.

Several of the people whose homes were searched or who were issued subpoenas are members of the Chicago-based Freedom Road ~~Socialist~~ Organization.

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Photo (color): Demonstrators protest Monday outside the **FBI**'s Chicago headquarters. The group was objecting to last week's **FBI** raids on activists' homes. ALEX GARCIA/TRIBUNE PHOTO

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Company: BINCKBANK NV; **FBI** SA; TRIBUNE CO; FRANCHISE BANCORP INC; STATE DEPARTMENT; TRIBUNE

News Subject: (International Terrorism (1IN37); Labor Unions (1LA31); HR & Labor Management Regulatory (1HR55); Top World News (1WO62); HR & Labor Management (1HR87); Regulatory Affairs (1RE51); Business Management (1BU42))

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