

# Chapter 8

## Counterterrorism Measures Used to Limit Dissent and Public Debate on Issues

In addition to providing aid and services to people in need, charitable and religious organizations help to facilitate a free exchange of information, fostering debate about public policy issues. This dialogue is necessary to keep the public informed and our democracy healthy. However, when the government interprets it as a terrorism threat, the strength of American civic engagement diminishes.

This kind of nonprofit civic participation blends three essential elements of First Amendment rights: the rights of free speech, of association, and to petition the government for redress of grievances. These rights are threatened when government uses its police and security powers to intimidate or silence dissent and public discussion of issues. Since 9/11, there have been disturbing revelations about the use of counterterrorism resources to track and sometimes interfere with groups that publicly and vocally dissent from administration policies. In addition, federal agencies have taken action that limits public debate in nonprofit venues by denying visas to foreign scholars and experts. All this suggests a troubling trend toward use of national security powers for political purposes.

Professor Mark Sidel of the University of Iowa School of Law noted:

The fallacy of assuming that government actions would be directed solely against a few Muslim charities, and that the remainder of the nonprofit sector would be left alone, has been further challenged by the emergence of new evidence indicating that the government has, in fact, targeted a much broader swath of the American nonprofit sector for surveillance and observation. It is now clear that literally hundreds or perhaps thousands of American nonprofits have had events observed, telephone calls sorted, or financial transactions examined by government agencies. (MSNBC, 2005, *Washington Post*, 2006) It is also clear that the U.S. government continues to view the nonprofit sector as a source of insecurity well beyond the initial prosecutions of a few Muslim charities for channeling funds to terrorism.<sup>252</sup>

These actions illustrate an unfortunate historical tendency by the U.S. government to use overbroad police and national security powers for political purposes. This result almost inevitably flows when the law lacks clear standards, transparency, due process,

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<sup>252</sup>Mark Sidel, Professor of Law and International Affairs and Faculty Scholar, University of Iowa, "The Third Sector, Human Security, and Anti-Terrorism: The United States and Beyond" (Sept. 27, 2006).

## Collateral Damage

and independent review. Beginning with the Alien and Sedition Acts of 1798, the U.S. government's response to national emergencies has included suppression of political dissent and opposition. This includes the Palmer Raids during World War I, the internment of Japanese-Americans during World War II, the civil liberties abuses of the McCarthy era, and the FBI's COINTELPRO program during the 1960s that interfered with civil rights and peace groups.<sup>253</sup> As columnist Anthony Lewis put it:

This is not the first time in American history that civil liberties have suffered during war or national alarm; it has happened again and again. Each time the country later regretted what had happened... To recall past episodes of repression and regret is to realize that there is something different about incursions on liberty today. The war on terrorism is being waged against a hidden enemy who is not going to surrender in a ceremony aboard the U.S.S. *Missouri*. There is indeed no way to foresee how or when this war will end. The fear of terrorism may well go on for the rest of our lives. We may not have breathing space to understand and regret punitive excess. If we are to preserve constitutional values – the values of freedom – understanding and resistance must come now.<sup>254</sup>

### Domestic Surveillance and the ACLU's Spy Files Project

In 2005, the American Civil Liberties Union (ACLU) uncovered disturbing evidence of counterterrorism resources being used by the Federal Bureau of Investigation (FBI) for surveillance of nonprofits. In April 2005, citing evidence of FBI and police surveillance of “environmental, anti-war, political, and faith-based groups,” the ACLU launched its Spy Files Project. Its purpose is “to expose and limit FBI spying on people and groups simply for speaking out or practicing their faith” and to discover more information on the structure and policies of the “so-called Joint Terrorism Task Forces.”<sup>255</sup> Originally initiated with Freedom of Information Act (FOIA) requests in ten states and the District of Columbia, the project has since expanded to additional states<sup>256</sup> and government agencies, including the Department of Defense (DOD), the FBI, and the Department of Homeland Security. The Project has uncovered an intricate system of domestic spying largely condoned by expansive counterterrorism powers within the Patriot Act.



Logo courtesy of the American Civil Liberties Union

### *Defense Department's TALON Database Tracks Protesters*

In December 2005, NBC News<sup>257</sup> and the Early Warning Blog on [washingtonpost.com](http://www.washingtonpost.com)<sup>258</sup> disclosed a DOD Counterintelligence Field Activity Agency (CIFA). The DOD cre-

<sup>253</sup> See <http://www.trackedinamerica.org/>.

<sup>254</sup> Anthony Lewis, *Security and Liberty*, a Century Foundation Report (2003).

<sup>255</sup> American Civil Liberties Union “FBI Spy Files,” April 25, 2005. Available at <http://www.aclu.org/safefree/resources/18734res20050425.html>.

<sup>256</sup> For lists of states, see [http://www.aclu.org/spyfiles/index\\_old.html](http://www.aclu.org/spyfiles/index_old.html).

<sup>257</sup> Lisa Myers, Douglas Pasternak, Rich Gardella, and the NBC Investigative Unit, “Is the Pentagon Spying on Americans?” NBC News, MSNBC. Available at <http://www.msnbc.msn.com/id/10454316/>.

<sup>258</sup> [http://blog.washingtonpost.com/earlywarning/2005/12/pentagon\\_domestic\\_spying.html](http://blog.washingtonpost.com/earlywarning/2005/12/pentagon_domestic_spying.html)

ated CIFA in 2003 to track suspicious occurrences or potential terrorist threats against military installations through Threat and Local Observation Notices (TALON).<sup>259</sup> Although intended to be an anti-terrorist database, TALON became “a catch-all for leads on possible disruptions and threats against military installations in the United States, including protests against the military presence in Iraq.”<sup>260</sup> All TALON reports were meant to be assessed by CIFA as “credible” or “not credible” national security threats, but NBC News revealed that even threats deemed “not credible” or peaceful in nature remained in the database<sup>261</sup> despite DOD regulations<sup>262</sup> prohibiting retention of non-threatening information about United States persons for more than 90 days.<sup>263</sup> In addition, content in the database was shared across federal, state, and local jurisdictions, spreading the error in multiple directions.<sup>264</sup> The ACLU and its affiliates responded to these revelations by filing FOIA requests on behalf of dozens of anti-war and social justice groups. The results revealed “186 TALON reports on anti-military protests or demonstrations in the U.S.”<sup>265</sup> organized by nonprofit advocacy groups.

It is clear that the Pentagon was aware of the problems with the TALON program. In a preliminary review, the Pentagon found the database was not properly maintained,<sup>266</sup> and in January 2006, Deputy Secretary of Defense Gordon England ordered intelligence personnel to get “refresher training” on collection and use of information on U.S. citizens.<sup>267</sup> In November 2006, the ACLU released additional documentation of nonviolent groups targeted by TALON and called for a congressional investigation into the program. By April 2007, the TALON program was terminated. Undersecretary of Defense for Intelligence James Clapper said the Department “has assessed the results of the Talon program and does not believe they merit continuing the program as currently constituted, particularly in light of its image in Congress and the media.”<sup>268</sup>

The government has continued to pursue surveillance and data mining programs. For example, at the same time the Pentagon was including peace groups in the TALON database, the Justice Department was opposing bipartisan Senate legislation that would require federal agencies to disclose to Congress information about data-mining programs used to find possible patterns of criminal or terrorist activity.<sup>269</sup>

<sup>259</sup> *Ibid.*

<sup>260</sup> Eric Lichtblau and Mark Mazzetti, “Military Documents Hold Tips on Antiwar Activities,” *The New York Times* (Nov. 21, 2006) Available at <http://www.nytimes.com/2006/11/21/washington/21protests.html>.

<sup>261</sup> American Civil Liberties Union, *No Real Threat: The Pentagon’s Secret Database on Peaceful Protest*. New York: American Civil Liberties Union. (2007) Available at [http://www.aclu.org/pdfs/safefree/spyfiles\\_norealthreat\\_20070117.pdf](http://www.aclu.org/pdfs/safefree/spyfiles_norealthreat_20070117.pdf).

<sup>262</sup> <http://msnbcmedia.msn.com/i/msnbc/sections/news/DOD.1982.IntelligenceCollectionOnU.S.Persons.pdf>

<sup>263</sup> *Ibid.*

<sup>264</sup> *Ibid.*

<sup>265</sup> *No Real Threat: The Pentagon’s Secret Database on Peaceful Protest*.

<sup>266</sup> Walter Pincus, “Pentagon Will Review Database on U.S. Citizens,” *Washington Post* (Dec. 15, 2005).

<sup>267</sup> “The Pentagon’s Counterspies Counterintelligence Field Activity (CIFA),” States News Service (Sept. 17, 2007).

<sup>268</sup> Walter Pincus, “Pentagon to End Talon Data-Gathering Program,” *Washington Post*, p. A10 (April 25, 2007).

<sup>269</sup> Ellen Nakashima, “Senate Bill Would Mandate Disclosure of Data Mining,” *Washington Post*, p. D03 (March 21, 2007). Available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/03/20/AR2007032001604.html>.

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Although the surveillance itself can be documented, measuring the long-term impact to civil society is difficult. Linda Fisher, Associate Professor of Law and Director of the Center for Social Justice at Seton Hall Law School, eloquently described the likely effects in her article “Guilt by Expressive Association: Political Profiling, Surveillance and the Privacy of Groups”:

The costs of unjustified political surveillance are not always direct or immediately evident. Fear spreads slowly and insidiously. The long-term effect is to undermine the general level of trust and social bonds, as well as to increase alienation. A phenomena that begins as the chilling of speech leads to an erosion of the quality of free association, which in turn leads to a breakdown of civil society, undermining the foundation of democracy.

Source: Linda Fisher, “Guilt by Expressive Association: Political Profiling, Surveillance and the Privacy of Groups,” *Arizona Law Review*, Vol. 46, p. 621 (2004).

Examples of nonprofits that have been under surveillance as part of the TALON program and disclosed through the ACLU’s Spy Files Project include:

- *American Friends Service Committee*  
In 2005, DOD added the American Friends Service Committee (AFSC), a 90-year-old pacifist Quaker organization and 1947 Nobel Peace Prize winner, to the TALON database<sup>270</sup> after AFSC invited the public to join a protest against the Iraq war. In addition to labeling the organization’s call to action “suspicious,” the TALON database also “identified a 79-year-old grandmother attending an anti-war meeting at a Quaker meeting house in Florida as ‘potential terrorist activity.’”<sup>271</sup>
- *War Resisters League*  
A February 2005 TALON report focused on protests planned by the War Resisters League (WRL) near New York City military recruiting stations. The document describes WRL as advocating “Ghandian nonviolence.” The protests, TALON states, were to include “a church service for peace,” “lively signs and loud chants,” a vigil, and a procession with coffins. Protesters agreed that they “will not use physical violence or verbal abuse towards any person,” that they “will not damage any property,” and that they “will not carry weapons.” Nonetheless, the report warns that WRL members may fa-

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<sup>270</sup> *Ibid.*

<sup>271</sup> *Ibid.*

vor “civil disobedience and vandalism.”<sup>272</sup>

### **FBI and Joint Terrorism Task Force Surveillance**

The ACLU Spy Files project also used FOIA to obtain FBI files on itself, peace groups Code Pink and United for Peace and Justice, Greenpeace, People for the Ethical Treatment of Animals, the American-Arab Anti-Discrimination Committee, the Muslim Public Affairs Council, and over 100 other groups from around the country. It learned that the FBI conducted surveillance through its Joint Terrorism Task Force (JTTF).<sup>273</sup> Examples of JTTF files that the ACLU obtained:<sup>274</sup>

- *United for Peace and Justice*  
A memo was sent from counterterrorism personnel in the FBI’s Los Angeles office to similar offices in New York, Boston, and Washington about United for Peace and Justice’s plans for demonstrations during the political conventions in 2004. The memo notes alleged anarchist connections of some individuals in the group and quotes extensively from the organization’s website.
- *Rocky Mountain Peace and Justice Center*  
The FBI used the JTTF program to investigate the Rocky Mountain Peace and Justice Center and the Colorado American Indian Movement after the groups announced plans for anti-war demonstrations.
- *Thomas Merton Center*  
The Thomas Merton Center for Peace and Justice in Pittsburgh, PA, was investigated because the group “has been determined to be an organization which is opposed to the United States’ war with Iraq.”<sup>275</sup> The documents indicate that the FBI began investigating the Center in November 2002, noting that the group was distributing leaflets in Pittsburgh<sup>276</sup> and identifying the Center as a “left wing organization advocating, among many political causes, pacifism.” A February 2003 memo titled “International Terrorism Matters” describes how the Pittsburgh JTTF reviewed the Merton Center’s website to gain information about anti-war demonstrations and rallies the group had planned. The Center’s Executive Director, Jim Kleissler, said the organization’s “members were simply offering leaflets to passersby, legally and peacefully, and now they’re being investigated by a counter-terrorism unit. Something is seriously wrong in how our government determines who and what constitutes terrorism when peace activists find themselves targeted.”<sup>277</sup>

<sup>272</sup> American Civil Liberties Union, “ACLU Calls for Investigation In Response to New Details of Pentagon Spy Files” (Nov. 21, 2006) Available at <http://www.aclu.org/safefree/spyfiles/27468prs20061121.html>.

<sup>273</sup> PROTECTING AMERICA AGAINST TERRORIST ATTACK: A Closer Look at the FBI’s Joint Terrorism Task Forces (Dec. 1, 2004). Available at <http://www.fbi.gov/page2/dec04/jtff120114.htm>.

<sup>274</sup> FBI Spy Files Project: ACLU Client List (Dec. 2, 2004). Available at <http://www.aclu.org/safefree/resources/18706res20041202.html>.

<sup>275</sup> OMB Watch, “FBI Used Anti-Terrorism Powers to Target Peace Group,” (March 21, 2006). Available at <http://www.ombwatch.org/article/articleview/3348/1/84?TopicID=2>.

<sup>276</sup> *Ibid.*

<sup>277</sup> *Ibid.*

### Limiting Dialogue on the Issues of the Day

Nonprofits, including universities and advocacy groups, educate the public on policy issues. The government has created barriers and disincentives for organizations engaged in scholarship and public education, particularly when the issues being discussed address national security, the Middle East, or the Iraq war. While it is impossible to quantify the extent or the impact these actions have, a few examples illustrate the efforts to limit public access to information and suppress debate on important issues.

- *Attempts to intimidate sponsors of public forums*

In March 2006, the Michigan League of Women Voters sponsored a forum on freedom of information and open government that provoked a complaint from the FBI about a speech given by Chellie Pingree, then President of Common Cause, that expressed concern about whether the Patriot Act is justified. Pingree said that freedoms are being eroded in the name of national security and “government wants to act in secrecy to invade your privacy.”<sup>278</sup> A few days later, FBI agent Al DiBrito called Susan Gilbert, president of the local League, after he saw Pingree quoted in the local paper. DiBrito told Gilbert that Pingree’s comments were “way off base” and that someone from the federal government should have sat on the panel.<sup>279</sup> He went on to say that someone from the U.S. Attorney’s office in Grand Rapids would be contacting her to set the record straight on the Patriot Act.<sup>280</sup> Gilbert believed this to be a threat and told the *Herald-Palladium* newspaper that the FBI “should not go around intimidating the League of Women Voters and Common Cause because they don’t like the Patriot Act. There are many people who don’t like the Patriot Act, including members of Congress. I’m just stupefied.”<sup>281</sup>

Pingree and Gilbert then sent a letter to FBI Chief Robert Mueller describing what had transpired, explaining that “[w]hen the country has far more pressing security and terror concerns, we question the FBI using precious resources hounding leaders of two of the most distinguished citizen advocacy organizations in the country. Is this the kind of behavior citizen activists can expect from the FBI? To us, it smacks of intimidation.”<sup>282</sup>

- *Denying visas to scholars*

Some foreign scholars, human rights activists, and writers who have been critical of U.S. policies are now barred from entering the U.S. This exclusion restricts U.S. citizens from hearing diverse viewpoints and associating with

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<sup>278</sup> OMB Watch, “Groups Complain of FBI Intimidation” (April 4, 2006). Available at <http://www.ombwatch.org/article/articleview/3364/1/41?TopicID=1>.

<sup>279</sup> *Ibid.*

<sup>280</sup> *Ibid.*

<sup>281</sup> William F. Ast III, “2 Groups Complain About FBI Phone Call,” *The Herald-Palladium* (March 23, 2006). Reprinted by Common Cause. Available at <http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=1504947>.

<sup>282</sup> *Ibid.*



people of their choosing, both rights protected by the First Amendment.

In January 2004, Tariq Ramadan, a leading Muslim scholar and a fellow at the University of Oxford, was offered a position at the University of Notre Dame.<sup>283</sup> To enter the United States, he was granted a specialized nonimmigrant visa but was then informed by the U.S. Embassy in Bern, Switzerland, that his visa had been revoked. The Department of Homeland Security told the press<sup>284</sup> that the revocation was consistent with federal law that permits the exclusion of someone who “has used the alien’s position of prominence within any country to endorse or espouse terrorist activity.”<sup>285</sup> Ramadan applied for another visa, and in September 2006, the government denied the application because he had donated to a French-based charity, the Committee for Charity and Aid to Palestinians (CBSP). The CBSP is listed as a terrorist organization in the U.S. but not in France, its home country. Ramadan said that he had sent the funds to the French-based charity in 2000 before it was declared a terrorist organization by the U.S. He also noted that the CBSP was legal in France and that the French city of Lille had cooperated with it for several years in charity projects for Palestinians. As of 2008, the U.S. government had cleared Mr. Ramadan of being a supporter of terrorism but still will not grant him a visa.<sup>286</sup>

Adam Habib, director of the Human Sciences Research Council’s (HSRC) Democracy and Governance research program in South Africa, is a world-renowned researcher, scholar, human rights activist, and political commentator. Professor Habib is also a vocal critic of U.S. foreign policy, including the war in Iraq. On arrival at John F. Kennedy Airport in New York in October 2006, Professor Habib’s 10-year visa was revoked without explanation. Consequently, he was unable to attend scheduled meetings with U.S. scholars and representatives from U.S. and international agencies, universities, and foundations.<sup>287</sup> The American Association of University Professors wrote a letter to the Department of State<sup>288</sup> noting that Habib has been to the U.S. several times to give speeches, and the case “raises troubling implications for academic freedom.”

In May 2007, Habib applied for a new visa that would allow him to travel to

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<sup>283</sup> Adam Liptak, “Say What You Like, Just Don’t Say it Here,” *The New York Times* (Oct. 22, 2007). Available at <http://www.nytimes.com/2007/10/22/us/22bar.html>.

<sup>284</sup> “Muslim Scheduled to Teach at Notre Dame Has Visa Revoked,” *Los Angeles Times*, (August 25, 2004).

<sup>285</sup> Sec. 411 of Public Law 107-56 (PATRIOT Act) amended the Immigration and Nationality Act to allow the exclusion of someone who “has used the alien’s position of prominence within any country to endorse or espouse terrorist activity.”

<sup>286</sup> *American Academy of Religion v. Chertoff*, U.S. District Court for the Southern District of New York.

<sup>287</sup> IOL “US embassy probing SA academic’s deportation,” Oct. 25, 2006 at [http://www.int.iol.co.za/index.php?set\\_id=1&click\\_id=13&art\\_id=qw1161766982976B224](http://www.int.iol.co.za/index.php?set_id=1&click_id=13&art_id=qw1161766982976B224).

<sup>288</sup> Letter to Ms. Julie Furuta-Toy, Director, Office of Diplomatic and Public Liaison Visa Services and Mr. Paul M. Morris, Executive Director, Admissibility Requirements and Migration Control, Office of Field Operations, U.S. Customs and Border Protection, Dept. of State, from Roger W. Bowen, General Secretary, American Association of University Professors, Oct. 27, 2006. Available at <http://www.aaup.org/AAUP/issues/int/Letters/South+Africa/Habib.htm>.

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the U.S. to attend speaking engagements, including the annual meeting of the American Sociological Association in August 2007. The government did not process his application in time for him to attend. As a result, the ACLU and a number of other U.S. associations filed a lawsuit against the Secretary of the Department of Homeland Security, Michael Chertoff, and the Secretary of State, Condoleezza Rice. The case, *American Sociological Association v. Chertoff*, was filed with the United States District Court for the District of Massachusetts in September 2007<sup>289</sup> and amended in November 2007.<sup>290</sup> As of April 30, 2008, the case was still pending.

### **Study Commission or Thought Police?**

A bill pending in the U.S. Senate<sup>291</sup> that would create a commission and research center on “violent radicalization” and “extremist belief systems” that can lead to homegrown terrorism is a good example of the challenges ahead for free speech.

The Violent Radicalization and Homegrown Terrorism Act, H.R. 1955, passed the House in October 2007,<sup>292</sup> and an identical bill was introduced in the Senate. It would create a 10-member commission charged with examining the “facts and causes of violent radicalization, homegrown terrorism, and ideologically based violence in the United States” and report its findings and legislative recommendations to Congress within 18 months of its creation. The commission would have the power to conduct hearings and receive evidence but would not have authority to subpoena persons or records.

The proposed “Center of Excellence for the Study of Violent Radicalization and Homegrown Terrorism in the United States” would be established at a university designated by the Secretary of Homeland Security. Its purpose would be to “study the social, criminal, political, psychological, and economic roots of violent radicalism” and methods for federal, state, local, and tribal homeland security officials to address them.

OMB Watch, the Equal Justice Alliance, ACLU, Center for Constitutional Rights, and other groups are raising concerns that the legislation’s vague definitions could be interpreted to include rallies, sit-ins, protest marches, and other traditional forms of dissent. For example, one of the greatest challenges to countering terrorism is drawing the line between advocacy of ideas, including violence, and taking concrete steps toward carrying out a violent act. The bill fails to make the distinction between violence and civil disobedience.

The bill’s findings in Section 899B point out that the “Internet has aided in facilitating violent radicalization, ideologically based violence, and the homegrown terrorism process in the United States by providing access to broad and constant streams of terror-

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<sup>289</sup> *American Sociological Association v. Chertoff*, U.S. District Court for the District of Massachusetts, at <http://www.aclu.org/safefree/exclusion/32758prs20071114.html>.

<sup>290</sup> American Civil Liberties Union, “ACLU Rebukes U.S. Government for Denying South African Scholar’s Visa” (Nov. 14, 2007). Available at <http://www.aclu.org/safefree/exclusion/32758prs20071114.html>.

<sup>291</sup> S. 1959 (110th Congress).

<sup>292</sup> U.S. House, Prevention of Violent Radicalization and Homegrown Terrorism Act, H.R. 1955 (110th Congress). Available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_bills&docid=f:h1955rfs.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h1955rfs.txt.pdf).



ist-related propaganda to United States citizens.” The ACLU raised further objections in a Nov. 28, 2007, press release,<sup>293</sup> which said, “Law enforcement should focus on action, not thought.” It said, “The focus on the Internet is problematic” and could lead to censorship.

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<sup>293</sup> American Civil Liberties Union, “ACLU Statement on the Violent Radicalization and Homegrown Terrorism Prevention Act of 2007” (Nov. 28, 2007). Available at <http://www.aclu.org/safefree/general/32886prs20071128.html>.