

## The Modern American

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Volume 1  
Issue 2 Fall 2005

Article 3

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2005

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### Recommended Citation

Naqvi, Zehra. "The Return of J. Edgar Hoover: The FBI's Reversion to Political Intelligence Gathering." *The Modern American*, Fall 2005, 3-7.

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# The Return of J. Edgar Hoover: The FBI's Reversion to Political Intelligence Gathering

## **Keywords**

FBI, The American Civil Liberties Union (ACLU), Individual privacy, First Amendment rights

# THE RETURN OF J. EDGAR HOOVER: THE FBI'S REVERSION TO POLITICAL INTELLIGENCE GATHERING

By Zehra Naqvi\*

**Q**: Which method(s) are you comfortable with the FBI employing to shore up our domestic security?

- a) Active investigation of a Quaker-affiliated organization<sup>1</sup>
- b) Recording the license plate numbers of peaceful environmentalist protestors<sup>2</sup>
- c) Monitoring anti-war demonstrations<sup>3</sup>
- d) Intercepting emails by political activists<sup>4</sup>
- e) All of the above.

If you answered “e,” you’re in luck. You’re on board with the FBI’s current efforts to make us safer. If, on the other hand, you don’t recall authorizing such tactics to enhance your security and feel that they are vaguely reminiscent of McCarthyism-era tactics, join the club. Our tax dollars are being wasted on collecting more useless information instead of analyzing the useful information we already have.

After the domestic spying outrage that occurred in the 1950s and 1960s, we had safeguards put into effect to prevent exactly these kinds of activity from occurring again, but they were dismantled by this Administration; the Administration played on our fears about a repeat of 9/11 and claimed that our security was at risk by the restrictive nature of the guidelines. In fact, the guidelines were protecting us from ourselves or the FBI manifestation of us. Watering them down is an attempt to hoodwink the American population into sanctioning the removal of the safeguards and allowing the FBI to break the bargain made in the 1970s to refrain from engaging in such political intelligence gathering. The American Civil Liberties Union (ACLU) is beating its drums to warn the public and hoping that we, the courts, and Congress hear the call and respond.

## THE BARGAIN: A HISTORY OF THE GUIDELINES

*“Knowledge is the key to control. Secrecy should no longer be allowed to shield the existence of constitutional, legal and moral problems from the scrutiny of all three branches of government or from the American people themselves.”<sup>5</sup>*

Church Committee Report

The FBI’s chief focus in the 1950s and 1960s was rooting out Communism, and to that end, the civil liberties of many individuals and groups were violated as the FBI pursued them without any evidence or reasonable suspicion that any of them had actually committed any crimes.<sup>6</sup> The political impetus to quash Communism rallied the agency into conducting heightened domestic surveillance based on political ideology, stifling dissent, and political opposition.<sup>7</sup> The FBI, under the auspices of Direc-

tor J. Edgar Hoover, ran a counterintelligence program, “COINTELPRO,” which investigated prominent activists and groups such as the National Organization for Women and the American Indian Movement.<sup>8</sup> Ward Churchill’s book, *The COINTELPRO Papers: Documents from the FBI’s Secret Wars Against Dissent in the United States*, documents some of the strategies employed by the FBI in its domestic “war against dissent.”<sup>9</sup> As revelations of the FBI’s investigatory abuses surfaced, Congress held hearings and in 1975, the Senate initiated an investigation into the abuses.<sup>10</sup>

The Church Committee found that “the FBI had infiltrated civil rights and peace groups, had burglarized political groups to gain information about their members and activities, and had ‘swept in vast amounts of information about the personal lives, views, and associations of American citizens.’”<sup>11</sup> The Committee Report declared that there was “a consistent pattern in which programs initiated with limited goals, such as preventing criminal violence or identifying foreign spies, were expanded to what witnesses characterized as ‘vacuum cleaners,’ sweeping in information about lawful activities of American citizens.”<sup>12</sup> The FBI had created files on over one million Americans, investigated the NAACP for 25 years, compiled information on student groups for use in future applications to government jobs, and had a plan “to summarily arrest thousands of Americans in case of a national emergency.”<sup>13</sup>

The Committee’s final report noted that “too often intelligence has lost its focus and domestic intelligence activities have invaded individual privacy and violated the rights of lawful assembly and political expression. Unless new and tighter controls are established by legislation, domestic intelligence activities threaten to undermine our democratic society and fundamentally alter its nature.”<sup>14</sup> The report stated that a rise in Executive power, secrecy, and avoidance of the rule of law were the conditions that facilitated the abusive practices.<sup>15</sup> The report concluded “the ultimate goal is a statutory mandate for the federal government’s domestic security function that will ensure that the FBI, as the primary domestic security investigative agency, concentrates upon criminal conduct as opposed to political rhetoric or association.”<sup>16</sup>

The Committee recommended prohibitions on the FBI, forbidding the agency from continuing its tactics of discrediting political opposition, media manipulation, distorting data to influence government policy and public perceptions, and preventing the free exchange of ideas.<sup>17</sup> The Committee sought to achieve these ends by recommending that the FBI refrain from: 1) collecting or disseminating information for a federal official for a political purpose; 2) interfering with constitutionally protected advocacy activities; 3) harassing individuals or physically intimi-

dating them through obvious surveillance and interviews; and 4) maintaining dossiers on the political inclinations and private lives of Americans unless the demands of national security warrant such activities.<sup>18</sup>

Attorney General Edward Levi issued new guidelines for FBI investigations in response to these findings, setting a higher standard for domestic surveillance by the FBI.<sup>19</sup> Since the guidelines were adopted with legislative “consultation and oversight” through the Church Committee’s investigation and report, the guidelines have a “quasi-legislative status,” but did not have the force of actual legislation.<sup>20</sup> Because the FBI adopted new guidelines for itself, the legislative effort to develop an FBI charter was abandoned.<sup>21</sup> Until Attorney General Ashcroft’s unilateral changes to the guidelines in 2002, all revisions of the guidelines were made with Congressional consultation and oversight.<sup>22</sup>

Attorney General Levi’s guidelines “specified that investigations should be limited to exposing criminal conduct and should not involve simple monitoring of unpopular political views.”<sup>23</sup> The FBI could only initiate investigations “where ‘specific and articulable facts’ indicated criminal activity.”<sup>24</sup> Unpopular ideologies or political dissent were not considered sufficient reasons to justify an investigation or restraint on someone’s free practice of their First Amendment rights.<sup>25</sup> The guidelines were somewhat diluted in the 1980s, but remained largely intact until Attorney General John Ashcroft changed them in 2002.<sup>26</sup>

### BREAKING THE BARGAIN: ASHCROFT’S REVISION OF THE GUIDELINES

Eight months after the September 11th attacks, Attorney General Ashcroft unilaterally revised the guidelines without consulting with Congress, claiming that the FBI’s hands were tied on its terrorism investigations as a result of the old guidelines.<sup>27</sup> The revised guidelines allowed the FBI to “freely infiltrate mosques, churches, and synagogues and other houses of worship, listen in on online chat rooms and read message boards” without any indication of criminal activity, substantially lowering the barriers to civil liberty violations and increasing the likelihood that the FBI will be inundated with more information.<sup>28</sup> This essentially reversed the work of the Church Committee and marked the return of practices that were sanctioned under Hoover’s FBI reign, when the FBI engaged in “political intelligence” gathering, stealing membership lists of suspect organizations, and gathering vast amounts of information on innocent constitutionally protected activities.<sup>29</sup> This is especially disturbing because the Attorney General Levi’s adoption of the guidelines is what prevented Congress from enacting legislation to ensure that the FBI observe the rule of law and adhere to strict guidelines on opening and maintaining investigations.<sup>30</sup>

Arguably, the changes are further unwarranted because international terrorism investigations have generally been conducted under a separate body of foreign intelligence guidelines that have traditionally been more lax than those governing do-

mestic surveillance. It is therefore highly unlikely that the roll-back of the domestic guidelines was meant to facilitate catching terrorists abroad.<sup>31</sup> In effect, the revised rules blur the lines between international and domestic surveillance guidelines, denying American citizens the protections they have thus far enjoyed by subjecting them to greater invasions of privacy.<sup>32</sup>

The three basic results of the changed guidelines are that without any “scintilla of suspicion”<sup>33</sup> or guidance as to what information must be recorded or how long a group can be monitored, the FBI can: 1) attend domestic public group meetings; 2) mine various commercial databases and share the information; and 3) cut down on internal review procedures, essentially eliminating a level of scrutiny.<sup>34</sup>

In addition to threatening the civil liberties of groups and individuals and risking a return to gathering political intelligence on groups, the changed guidelines also pose the serious risk of undermining efficient intelligence gathering since the “vacuum cleaner” approach will be reinstalled in place of targeted intelligence-gathering efforts; more information might undermine the agency’s ability to sift through and analyze its usefulness, and thereby actually hamper the fight against terrorism.<sup>35</sup> The guidelines adopted by Attorney General Levi “were intended to make the FBI’s security operations more efficient by tying FBI inquiries and investigations to some modest showing that they were focused on suspected criminal or terrorist activity for security reasons.”<sup>36</sup> The recent revisions detract from this goal and reverse the positive trend of the past half century.<sup>37</sup>

### THE AFTERMATH: BAD HABITS DIE HARD

News articles over the past two years demonstrate that recent surveillance activities of political demonstrations are raising public concerns that the FBI is once again engaging in questionable practices.<sup>38</sup> Some of these activities are conducted through the new domestic surveillance program, made up of Joint Terrorism Task Forces (JTTFs), which partners local law enforcement with federal agents and other officers to combat terrorism.<sup>39</sup> The Associated Press reported that “[t]here are terrorism task forces in 100 cities and with more than 3,700 members, including at least 2,000 FBI agents, state and local police, and other federal law enforcement officials. More than half of the task forces were formed after the terror attacks of Sept. 11, 2001.”<sup>40</sup> In total, there are 66 JTTFs.<sup>41</sup>

The amended guidelines opened the door for JTTFs to engage in many forms of domestic spying, specifically by allowing law enforcement to have free reign on monitoring online activities, private sector databases, and religious houses of worship, and once again being able to monitor innocuous First Amendment activities without indication of any criminal activity, as the old guidelines required.

The public should be concerned that current spying efforts are too broad, that these efforts have not only constituted an inefficient use of resources, but have also had a chilling effect on First Amendment freedoms.<sup>42</sup> The public does not want their tax dollars spent for spying on groups that merely engage in

civil disobedience nor do they want to “return to the days when peaceful critics become the subject of government investigations”<sup>43</sup> The ACLU asserts that the FBI has been compiling license plate numbers from environmental and other group protests, monitoring peaceful demonstrations, intercepting emails, and trading political intelligence information with other law enforcement agencies.<sup>44</sup> A New York Times article cited an FBI memo about monitoring demonstrations as proof, stating that there is “a coordinated nationwide effort to collect intelligence regarding demonstrations.”<sup>45</sup> This article also cited a recent suit against the government, brought by critics of the current administration that found themselves on the “no-fly” lists after September 11th, as signaling “a return to the abuses of the 1960s and 1970s, when J. Edgar Hoover was the FBI director and agents routinely spied on political protestors like the Rev. Dr. Martin Luther King Jr.”<sup>46</sup> The article quoted the executive director of the ACLU as saying, “[t]he FBI is dangerously targeting Americans who are engaged in nothing more than lawful protest and dissent...[t]he line between terrorism and legitimate civil disobedience is blurred.”<sup>47</sup>

### THE LAWSUIT: THE ACLU BEATING ITS DRUMS

Perhaps the biggest concern of all is the widespread ignorance as to how the JTTFs operates and the extent of collaboration between state legal enforcement entities and the FBI.<sup>48</sup> In an effort to get a better understanding of the procedures and rules of operation behind the JTTFs, the ACLU recently filed a lawsuit to seek expedited processing of its Freedom of Information Act (FOIA) requests regarding general JTTF procedures and any information it might have collected on specific environmental, religious, and civil liberty groups. To enhance the lawsuit, the ACLU partnered with the American-Arab Anti-Discrimination Committee, Greenpeace, People for the Ethical Treatment of Animals, and United for Peace and Justice, in filing its lawsuit against the FBI Joint Terrorism Task Force (JTTF) and Department of Justice in DC.<sup>49</sup> The lawsuit requests injunctive relief to intervene in the expedited processing of the FOIA requests regarding the composition and procedures of the taskforce and the criteria that JTTFs use to select who to investigate.<sup>50</sup>

The Freedom of Information Act (1966) is significant as it established a federal law that recognized the right of the public to request information from federal government agencies.<sup>51</sup> There are exceptions as to what information can be requested, and some information may be redacted for security, confidentiality, or other reasons.<sup>52</sup> The national security exception may be used to block a FOIA request such as this one, because it asks for information regarding the inner workings of the JTTFs.<sup>53</sup>

According to 28 C.F.R. § 16.5(d)(1)(iv), requestors who want the government to expedite their requests by processing these requests out of sequence seek expedited treatment and must demonstrate:

- (i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an im-

minent threat to the life or physical safety of an individual;

- (ii) *An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;*
- (iii) The loss of substantial due process rights; or
- (iv) *A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence* (emphasis added).

The ACLU filed this lawsuit after the FBI failed to respond to their request for expedited processing of their FOIA requests.<sup>54</sup> The ACLU argues that it is entitled to expedite processing on the grounds of the second and fourth conditions.<sup>55</sup> Specifically, because the fear of “increased surveillance of political, religious, and community organizations by the FBI” might chill public participation in political activity, the ACLU, by virtue of its activities in defense of civil rights and civil liberties, is an entity “primarily engaged in disseminating information,”<sup>56</sup> and thus has standing to seek such processing:

There has been growing public concern about the FBI’s monitoring, surveillance, and infiltration of organizations on the basis of national origin, racial and/or ethnic background, religious affiliation, organizational membership, political views or affiliation, or participation in protest activities or demonstrations . . . [there has also been] cooperation between the FBI and local law enforcement to monitor peaceful political demonstrations . . . [and] numerous published reports of FBI agents questioning or spying on peace activists, anti-war activists, and person of Arab or Muslim background.<sup>57</sup>

As a result, the ACLU asked the FBI to turn over all records regarding any of the plaintiffs in this action.<sup>58</sup> Additionally, they requested all “records relating to the purpose, mission, and activities of JTTFs,” particularly those pertaining to domestic surveillance on the basis of political views. The ACLU argues that the FBI has 1) failed to disclose any responsive records, and 2) is improperly withholding the requested records.<sup>59</sup>

The defendants responded on July 5, 2005 by arguing that: 1) the ACLU has not met its burden for showing that expedited processing is appropriate; 2) “compelling need” is a narrow standard that is not met here; and 3) denial of such processing is subject to judicial review under a deferential standard.<sup>60</sup> They also averred that the ACLU’s two FOIA requests encompassed 93 subject matters and the FBI was going through its findings in a “methodical, organized approach.”<sup>61</sup>

The defendants concluded that based on the articles cited by the ACLU, there is no current “exceptional media interest” or “urgency to inform the public,” since the media reports date back to 2004 and many of them do not directly mention the JTTFs or the plaintiffs.<sup>62</sup> It also argues that the ACLU is not an entity “*primarily* engaged in disseminating information,” but

rather a “litigation organization.”<sup>63</sup> The overall case of the defendants seems to be that the ACLU is merely citing its own concerns and that there is no real media interest or urgency to inform the public.<sup>64</sup> They also caution that to allow this request to be expedited would open the floodgates to the ACLU and other organizations who want their requests fulfilled ahead of others on matters that are not sufficiently pressing.<sup>65</sup> The defendants, therefore, requested that the Court “(i) deny plaintiff’s motion for a preliminary injunction; (ii) grant defendants’ cross-motion for partial summary judgment on plaintiff’s claim for expedited FOIA processing; and (iii) grant a stay of proceedings to permit further processing of the FOIA requests at issue.”<sup>66</sup>

The ACLU, in its reply on July 19, 2005, countered that there is, in fact, a widespread media interest in the subject, and that their record of articles was merely exemplary, not all-inclusive.<sup>67</sup> Furthermore, the ACLU argued that the articles date back to 2004 because the FOIA requests were filed in 2004 and the FBI’s own delays in responding are to blame for the articles being outdated.<sup>68</sup> The ACLU also argues that the FBI is making a “circular argument,” whereby the ACLU must demonstrate that files were maintained on it and the other plaintiffs in order to get the files about them, it is asking the ACLU to prove what it is trying to find out.<sup>69</sup> The articles suggest that there has been “targeted monitoring and surveillance of Muslim and Arab Americans” and the problem is pervasive, urgent, and ongoing and thus merits close scrutiny by examination of the records.<sup>70</sup> Additionally, though the ACLU works to defend civil rights and civil liberties and uses litigation as one strategy to accomplish its work, it engages in the dissemination of information by publishing reports and newsletters, issuing email alerts, and uploading such content on its website to further raise awareness about important issues.<sup>71</sup>

The ACLU further points out that the one document the FBI has handed over “confirms the relevance of [the] articles to the subject of plaintiff’s requests” by showing that the FBI closely monitored United for Peace and Justice’s website and peaceful protests leading up to the Republican and Democratic national conventions and the 2004 election, noting its anti-war rhetoric and incorrectly describing it an “anarchist group.”<sup>72</sup> The general public, the media, and legislators themselves have demonstrated a strong interest in the FBI’s activities and want to ensure that civil liberties are not being unjustly infringed in the name of national security.<sup>73</sup> The Court should not grant a stay in proceedings, but rather grant the motion for a preliminary injunction, entitling the ACLU to expedited processing of its requests, or at least set up a reasonable schedule for the FBI to comply with the ACLU’s request.<sup>74</sup>

### SEEKING RECORDS, SEEKING CHANGE

Whether or not the ACLU and its fellow plaintiffs succeed in getting the records they seek, it is unlikely that they will get all the information they want. The lawsuit and the overall campaign against increasingly intrusive FBI surveillance may, however, meet other types of success. The ACLU’s campaign and

lawsuit raises awareness about the FBI’s activities and might pressure Congress to conduct an investigation and issue binding guidelines on the agency. It is important to ensure that the amended guidelines do not enable the agency to return to its pre-1976 era practices. Since Ashcroft unilaterally changed the guidelines, dismantling the bargain struck years ago when the creation of a FBI charter was abandoned, Congress should once again look closely at what the FBI is doing and how it is carrying out domestic surveillance. Political intelligence gathering is reprehensible and a misuse of resources at a critical time for national security.

The public deserves to know how its state and federal resources are being allocated for investigations and whether needless investigations are wasting resources. The lack of information and heightened secrecy of FBI procedures signal that we are regressing to old patterns and using domestic surveillance as a weapon against innocent Americans, thereby wasting resources and inundating our intelligence personnel with too much useless information. When the FBI wastes resources in this way, the remaining resources dedicated to analysis of the helpful information fall short. Furthermore, such publicity and any information that is released might also compel states to reevaluate their level of participation on JTTF activities and strengthen their resolve to balance the need to combat terrorism with cost-effective, targeted, and reasonable investigations, instead of overarching strategies to keep ongoing terror investigations.

The lack of Congressional oversight on the 2002 guideline changes and the increased threat they pose to civil liberties should compel Congress to take a more active stance on the FBI’s activities. Some recommendations for how Congress might place a check on the FBI’s activities are requiring: (1) “prior notice and meaningful consultation before future guideline changes can take effect;” (2) “the adoption, following Congressional consultation and comment, of Guidelines for collection, use, disclosure and retention of public event information and data mining;” (3) reports on the impact of the guidelines on open society, free speech, and privacy, costs, and benefits; and (4) public reporting of statistical information regarding the number, duration, and cost of investigative inquiries.<sup>75</sup>

Domestic surveillance is not a means to peek into the homes and lives of our neighbors to discover whether they hold unpopular political or religious views, but is instead a means of getting critical information about domestic threats. It should be executed through targeted investigations without unnecessarily compromising the civil liberties of American citizens who are merely protesting government policies on different subject matters. The FBI’s focus has not remained on one group. First it was Communists, but gradually, the scope broadened to include people who opposed the political administration. The spotlight is currently turned onto Muslims and Arabs, but it will inevitably continue to enlarge in scope to peer into the activities and opinions of environmental, political advocacy groups, and other organizations and individuals, simply because the machinery is in place to do so, and there is no red light to stop the FBI. The

articles mentioned earlier in this article and in the lawsuit suggest that the scope has already enlarged. At this moment, the Court has the power to signal a clear red light allowing expedited processing of the requests. Otherwise, the FBI will take it as a green light to continue its activities and fail in its responsibility to comply with the request. If the Court grants a stay, Congress should be on alert that it has the final opportunity and responsibility to ask the necessary and vital questions about

JTTF procedures, protocols, and findings. Increasingly, the domestic surveillance vehicle meant to protect us from domestic threats poses one of the most serious threats to our civil liberties and while the power of change rests with Congress, the responsibility to push for it rests with us.

## ENDNOTES

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<sup>1</sup> See Curt Anderson, *ACLU Seeking FBI Files on Activist Probes*, ASSOCIATED PRESS, Dec. 2, 2004 (listing the Quaker-affiliated American Friends Service Committee as a group monitored by police and investigated by a “local terrorism task force”).

<sup>2</sup> See Karen Abbott, *ACLU Accuses FBI of Spying: Police Say They’re Complying With Law, Battling Terrorism*, ROCKY MOUNTAIN NEWS, Dec. 3, 2004 (detailing lists of vehicles, license plate numbers, and the names of people associated with those vehicles were investigated by Colorado Springs police during an environmental protest); see also Alicia Caldwell, *FBI Spying Allegations Supported By Records*, DENVER POST, Dec. 3, 2004.

<sup>3</sup> See Dan Eggen, *Coalition Seeks FBI’s Files on Protest Groups*, WASH. POST, Dec. 3, 2004 (citing an FBI bulletin that “urged local police to monitor antiwar protests”).

<sup>4</sup> See Abbott *supra* note 2 (summarizing information sent by local law enforcement to the FBI to facilitate the creation of “spy files” for peaceful protest participants).

<sup>5</sup> Select Committee to Study Governmental Operations with Respect to Intelligence Activities, 94th Congress (Senate), S. Rep. No. 94-755 (2d Sess. 1976), available at <http://www.icdc.com/~paulwolf/cointelpro/cointel.htm>.

<sup>6</sup> See Electronic Privacy Information Center (EPIC), *The Attorney General’s Guidelines* [hereinafter *Attorney General Guidelines*], at <http://www.epic.org/privacy/fbi/> (last visited Oct. 15, 2005) (discussing the FBI’s wrongful arrests and investigations for the purpose of disrupting political groups).

<sup>7</sup> See Associated Press, *FBI Tried for Years to Stifle Dissent, Records Show*, WASH. POST, June 9, 2002, at A12 (discussing how the FBI cited the goals of protecting civil order and national security, during the Vietnam war, to mount “a ‘psychological warfare campaign’ against subversives” in California, filing tax evasion charges or gathering confidential information on them).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See *ACLU et al. v. FBI*, No. 1:05-CV-1004, Pl. [’s] Compl. at ¶ 7 (D.D.C. May 18, 2005), available at [http://www.aclu.org/spyfiles/spyfiles\\_complaint.pdf](http://www.aclu.org/spyfiles/spyfiles_complaint.pdf) (last visited Oct. 15, 2005).

<sup>12</sup> S. REP. NO. 94-755, at I, 3 (1976).

<sup>13</sup> See *Attorney General’s Guidelines*, *supra* note 6, at 2.

<sup>14</sup> S. REP. NO. 94-755, at I, 2 (1976).

<sup>15</sup> *Id.* at IV, 4-5.

<sup>16</sup> *Id.* at IV, 25.

<sup>17</sup> *Id.* at IV, 26.

<sup>18</sup> *Id.* at I, 2.

<sup>19</sup> See *ACLU et al. v. FBI*, No. 1:05-CV-1004, Pl. [’s] Compl. at ¶ 7 (D.D.C. May 18, 2005).

<sup>20</sup> See Jerry Berman & James X. Dempsey, *CDT’s Guide to the FBI Guidelines: Impact on Civil Liberties and Security – the Need for Congressional Oversight*, June 26, 2002, at <http://www.cdt.org/wiretap/020626guidelines.shtml> (last visited Oct. 16, 2005).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Attorney General’s Guidelines*, *supra* note 6, at 2.

<sup>24</sup> *ACLU et al. v. FBI*, No. 1:05-CV-1004, Pl. [’s] Compl. at ¶ 7 (D.D.C. May 18, 2005), available at [http://www.aclu.org/spyfiles/spyfiles\\_complaint.pdf](http://www.aclu.org/spyfiles/spyfiles_complaint.pdf) (last visited Oct. 15, 2005).

<sup>25</sup> *Id.*

<sup>26</sup> See *Attorney General’s Guidelines*, *supra* note 6, at 3 (addressing Attorney General William French Smith’s 1983 amendment of the guidelines to create a preliminary inquiry investigation and to allow full investigations “where information received points to a ‘reasonable indication’ of criminal activity” and Attorney General Dick Thornburgh’s 1989 amendment of the guidelines regarding racketeering investigations).

<sup>27</sup> Marvin Johnson, *Interested Persons Memo: Analysis of Changes to Attorney General Guidelines*, June 6, 2002, at <http://www.aclu.org/NationalSecurity/NationalSecurity.cfm?ID=10428&c=111> (last visited Oct. 17, 2005).

<sup>28</sup> See *ACLU et al. v. FBI*, No. 1:05-CV-1004, Pl. [’s] Compl. at ¶ 8.

<sup>29</sup> See Johnson, *supra* note 27, at 2-3.

<sup>30</sup> See *id.* at 1-4.

<sup>31</sup> See Berman, *supra* note 20, at 2 (discussing the misleading claims in the guideline revisions that claim the guidelines were not preventative and only applied to international groups).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> See *id.* (listing three major concerns with the “significant policy shift” in the guidelines).

<sup>35</sup> *Id.* at 2-4.

<sup>36</sup> Berman, *supra* note 20, at 4.

<sup>37</sup> See *id.* at 2 (stating that the “guidelines are likely to compound” FBI intelligence failures to “use information they already” have and ultimately produce “no improvement in security”).

<sup>38</sup> See *ACLU et al. v. FBI*, No. 1:05-CV-1004, Pl. [’s] Compl. at ¶ 8 (listing numerous articles regarding FBI agents questioning and monitoring protestors, peace activists, Arabs, and Muslims).

<sup>39</sup> *Id.* at ¶ 9.

<sup>40</sup> Anderson, *supra* note 1.

<sup>41</sup> See *ACLU et al. v. FBI*, No. 1:05-CV-1004, Pl. [’s] Compl. at ¶ 9.

<sup>42</sup> See Eggen, *supra* note 3 (summarizing the adverse sentiment of activist groups wrongly identified and investigated as potential terrorist threats by local law enforcement and the FBI).

<sup>43</sup> *ACLU Says FBI Spying on Religious, Protest Groups*, REUTERS, Dec. 2, 2004, available at <http://www.rense.com/general60/relg.htm> (last visited Oct. 17, 2005).

<sup>44</sup> See Abbott, *supra* note 2.

<sup>45</sup> Eric Lichtblau, *FBI Scrutinizes Antiwar Rallies*, NY TIMES, Nov. 23, 2003, at A1.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> See Tom Rybarczyk, *ACLU Says FBI Spied on Activists, Muslims: Groups Seek Files From Government on Surveillance*, CHI. TRIB., Dec. 3, 2004 (illustrating ACLU’s demands and concerns for obtaining information from the FBI in regards to how they conduct surveillance on potential terrorists).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> The National Security Archive, *FOIA Basics*, July 4, 2005, at <http://www.gwu.edu/~nsarchiv/nsa/foia/guide.html> (last visited Oct. 17, 2005).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *ACLU et al. v. FBI*, No. 1:05-CV-1004, Pl. [’s] Compl. at ¶ 12 (D.D.C. May 18, 2005).

<sup>55</sup> *Id.* at 5-6.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 6-8.

<sup>58</sup> *Id.* at 11.

<sup>59</sup> *ACLU et al. v. FBI*, No. 1:05-CV-1004, Pl. [’s] Compl. at ¶ 12 (D.D.C. May 18, 2005).

<sup>60</sup> *ACLU et al. v. FBI*, No. 1:05-CV-1004, Def.[’s] Mot. for Partial Sum. J. at ¶ 3-4 (D.D.C. July 5, 2005) <http://www.aclu.org/Files/OpenFile.cfm?id=18778> (last visited Oct. 17, 2005).

<sup>61</sup> *Id.* at 8.

<sup>62</sup> *Id.* at 9-19.

<sup>63</sup> *Id.* at 13-14.

<sup>64</sup> *Id.* at 24.

<sup>65</sup> *ACLU et al. v. FBI*, No. 1:05-CV-1004, Def.[’s] Mot. for Partial Sum. J. at ¶ 33 (D.D.C. July 5, 2005).

<sup>66</sup> *Id.* at 44.

<sup>67</sup> *ACLU et al. v. FBI*, No. 1:05-CV-1004, Pl[’s] Opp’n to Partial Sum. J. at ¶ 3-5 (D.D.C. July 20, 2005), available at [http://www.aclu.org/spyfiles/pi\\_reply.pdf](http://www.aclu.org/spyfiles/pi_reply.pdf) (last visited Oct. 17, 2005).

<sup>68</sup> *Id.* at 5.

<sup>69</sup> *Id.* at 4.

<sup>70</sup> *Id.* at 7.

<sup>71</sup> *Id.* at 17.

<sup>72</sup> *ACLU et al. v. FBI*, No. 1:05-CV-1004, Pl[’s] Opp’n to Partial Sum. J. at ¶ 12.

<sup>73</sup> *Id.* at 14-15.

<sup>74</sup> *Id.* at 20-21.

<sup>75</sup> Berman, *supra* note 20, at 3-5.