

The FBI: Going Rogue

Written by John W. Whitehead
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“The minute the FBI begins making recommendations on what should be done with its information, it becomes a Gestapo.” – J. Edgar Hoover

The history of the FBI is the history of how America – once a nation that abided by the rule of law and held the government accountable for its actions – has steadily devolved into a police state where laws are unidirectional, intended as a tool for government to control the people and rarely the other way around.

The FBI was established in 1908 (as the Bureau of Investigation) by President Theodore Roosevelt and Attorney General Charles Bonaparte as a small task force assigned to deal with specific domestic crimes, its first being to survey houses of prostitution in anticipation of enforcing the White Slave Traffic Act. Initially quite limited in its abilities to investigate so-called domestic crimes, the FBI slowly expanded in size, scope, and authority over the course of the 20th Century.

During World War I, the FBI was tasked with investigating “enemy aliens,” which included anarchists and communists. During World War II, the FBI investigated various radical elements in society, as well as draft evaders and foreign nationals from belligerent nations. The agency also helped enforce the government’s nefarious policy of Japanese internment following the Pearl Harbor attack. In both 1939 and 1943, the FBI received presidential directives to investigate threats to national security. To that end, during the infamous McCarthy era, the FBI became heavily involved in the government’s efforts to expose Americans with ties to communism – conducting surveillance, pressuring employers to hire or fire particular individuals, and feeding information to the media to influence public opinion. By the end of the

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Korean War, what had once been a small task force of a few dozen agents became an investigative force of 6,200 agents.

Yet it was during the social and political upheaval of the 1960s that the FBI's transformation into a federal policing and surveillance agency really began, one aimed not so much at the criminal element but at those who challenged the status quo – namely, those expressing anti-government sentiments. According to J. Edgar Hoover, the FBI's first and most infamous director, "the United States was confronted with 'a new style in conspiracy – conspiracy that is extremely subtle and devious and hence difficult to understand ... a conspiracy reflected by questionable moods and attitudes, by unrestrained individualism, by nonconformism in dress and speech, even by obscene language, rather than by formal membership in specific organizations.'"

Among those most closely watched by the FBI during that time period was Martin Luther King Jr., a man labeled by the agency as the "most dangerous and effective Negro leader in the country." With wiretaps and electronic bugs planted in his home and office, King was kept under constant surveillance by the FBI from 1958 until his death in 1968, all with the aim of "neutralizing King as an effective Negro leader." King even received letters written by government agents suggesting that either he commit suicide or the details of his private life would be revealed to the public. The FBI file on King, whom the agency suspected of communism but failed to prove, is estimated to contain 17,000 pages of materials documenting his day-to-day activities. Incredibly, even 40 years later, the FBI maintains a stranglehold on information relating to this "covert" operation: Per a court order, information relating to the FBI wiretaps on King will not be released until 2027.

John Lennon was another activist targeted for surveillance by the FBI. Fearing Lennon might incite anti-war violence, the Nixon administration directed the FBI to keep close tabs on the ex-Beatle, resulting in close to 400 pages of files on his activities during the early '70s. But the government's actions didn't stop with mere surveillance. The agency went so far as to attempt to have Lennon deported on drug charges. As professor Jon Wiener, a historian who sued the federal government to have the files on Lennon made public, observed, "This is really the story of FBI misconduct, of the president using the FBI to get his enemies, to use federal agencies to suppress dissent and to silence critics."

Unfortunately, not even the creation of the Intelligence Oversight Board (IOB) by President Gerald Ford in 1976 could keep the FBI's surveillance activities within the bounds of the law. Whether or not those boundaries were respected in the ensuing years, they all but disappeared in the wake of the September 11, 2001, attacks. This was true especially with the passage of

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the USA PATRIOT Act, which gave the FBI and other intelligence agencies *carte blanche* authority in investigating Americans suspected of being anti-government. While the FBI's powers were being strengthened, President George W. Bush dismantled the oversight capabilities of the IOB, which was entrusted with keeping the FBI in check.

Even the Obama administration, a vocal critic of the Bush policies, has failed to restore these checks and balances on the FBI. Indeed, the Obama administration has gone so far as to insist that the FBI can obtain telephone records of international calls made from the U.S. without any formal legal process or court oversight. This rationale obviously applies to e-mails, as well.

Little wonder, then, that FBI abuses keep mounting. Most recently, a [report by the Electronic Frontier Foundation \(EFF\)](#) reveals that since 9/11, the FBI has been responsible for at least 40,000 violations of the law. Most of the violations are of "internal oversight guidelines," while close to one-third are "abuse of National Security Letters," and almost one-fifth are "violations of the Constitution, FISA [Foreign Intelligence Surveillance Act], and other legal authorities." Specific violations include "failure to submit notification of the investigation of a U.S. person to FBI headquarters for three years, ... failure to report a violation within 14 days of its discovery, [and] continuing to investigate a U.S. person when the authority to do so had expired."

The FBI's abuse of National Security Letters (NSL) has been brought to light by both the EFF and Justice Department investigations. NSLs were created in the 1970s for espionage and terrorism investigations. In effect, NSLs allow the FBI to bypass the Fourth Amendment's requirement of a court-sanctioned search warrant in seeking information by allowing an agent to demand information on his or her mere say-so. They were originally intended as narrow exceptions in consumer-privacy law, enabling the FBI to review in secret the customer records of suspected foreign agents. However, they have since been used for clandestine scrutiny of American citizens, U.S. residents, and visitors who are not alleged to be terrorists or spies. As Barton Gellman noted in [a 2005 piece in *The Washington Post*](#), "The FBI now issues more than 30,000 national security letters a year, a hundredfold increase over historic norms. The letters – one of which can be used to sweep up the records of many people – are extending the bureau's reach as never before into the telephone calls, correspondence, and financial lives of ordinary Americans." It has since been revealed that the FBI issued more than 140,000 National Security Letters between 2003 and 2005, many involving people with no obvious connections to terrorism.

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In many cases, those now under surveillance by the FBI are ordinary American citizens doing nothing more than exercising their First Amendment right to free speech by criticizing the government. Moreover, according to a previously classified document, the FBI conducted clandestine surveillance on some U.S. residents for as long as 18 months at a time without a search warrant, proper paperwork, or oversight. The FBI has also continued to carry out surveillance on groups involved in various protest activities – mainly peace activities. For example, a case of mass raids by FBI agents against peace activists occurred in late 2010. On September 24, the homes of five peace activists in the Minneapolis area were raided by FBI agents at around seven in the morning. The agents filtered through all of the possessions in the activists' homes and seized electronic devices such as computers and cell phones as well as other documents. Ostensibly, the mission was undertaken to investigate possible ties to foreign terrorist groups, but immediate evidence of such a connection was lacking. The activists targeted have been members in the antiwar and labor communities for many years.

Today, the FBI employs more than 35,000 individuals and operates more than 56 field offices in major cities across the U.S., as well as 400 resident agencies in smaller towns and more than 50 international offices. In addition to its "data campus," which houses more than 96 million sets of fingerprints from across the United States and elsewhere, the FBI is also, [according to *The Washington Post*](#)

, "building a vast repository controlled by people who work in a top-secret vault on the fourth floor of the J. Edgar Hoover FBI Building in Washington. This one stores the profiles of tens of thousands of Americans and legal residents who are not accused of any crime. What they have done is appear to be acting suspiciously to a town sheriff, a traffic cop, or even a neighbor."

The agency's reach is more invasive than ever, thanks to nearly unlimited resources (its *minimum* budget alone in Fiscal Year 2010 was \$7.9 billion), the government's vast arsenal of technology, the interconnectedness of government intelligence agencies, and information sharing through fusion centers – data-collecting intelligence agencies spread throughout the country that constantly monitor communications (including those of American citizens), everything from Internet activity and Web searches to text messages, phone calls, and e-mails. What's more, you can be sure that the reauthorization of the PATRIOT Act by Congress will only further legitimize the FBI's efforts to spy on American citizens, thereby destroying whatever shred of privacy remains.

So where does this leave us?

Martin Luther King Jr. was one of the first to recognize that as a nation we seem to have

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significantly passed from a nation of laws to a nation of men. Whereas the United States Constitution was once the rule of law, guarding our freedoms and shielding us from government abuses, we have entered a phase in our nation's life in which the government largely operates above the law. The activities of the FBI are a perfect illustration of this.

Yet we would do well to remember that governments primarily exist to secure rights. This idea is central to *constitutionalism*, which serves to limit governmental power and ensure that the government performs its basic function: preserve and protect our rights, especially our unalienable rights to life, liberty, and the pursuit of happiness, and our civil liberties. Otherwise, we are destined to live in a police state.

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The Freedom Wars

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