

# If an Agent Knocks

## Federal Investigators and Your Rights

*Center for Constitutional Rights*

People opposing U.S. policies in Central America, giving sanctuary to refugees from Guatemala and El Salvador, struggling for Black liberation, and against nuclear weapons, are today more than ever likely to receive visits from FBI agents or other federal investigators. Increasingly, agents are also visiting the families, friends, and employers of these activists. This pamphlet is designed to answer the most frequent questions asked by people and groups experiencing government scrutiny, and to help them develop practical responses.

### **What is Political Intelligence?**

Political intelligence is information collected by the government about individuals and groups. Files secure under the Freedom of Information Act disclose that government officials have long been interested in all forms of data. Information gathered by government agents ranges from the most personal data about sexual liaisons and preferences to estimates of the strength of groups opposing U.S. policies. Over the years, groups and individuals have developed various ways of limiting the collection of information and preventing such intelligence gathering from harming their work.

### **Do I have to talk to the FBI?**

No. The FBI does not have the authority to make anyone answer questions (other than name and address), to permit a search without a warrant, or to otherwise cooperate with an investigation. Agents are usually lawyers, and they are always trained as investigators; they have learned the power of persuasion, the ability to make a person feel scared, guilty, or impolite for refusing their requests for information. So remember, they have no legal authority to force people to do anything -- unless they have obtained an arrest or search warrant. Even when agents do have warrants, you still don't have to answer their question.

### **Under what laws do the agents operate?**

In 1976, FBI guidelines regulating the investigation of political activities were issued by Attorney General Edward H. Levi. Criticized by liberals and conservatives alike, the guidelines were issued in the wake of a Congressional committee's report of highly questionable activities by the FBI: monitoring the activities of domestic political groups seeking to effect change. The report exposed the FBI's counter-intelligence program (COINTELPRO) under which the agency infiltrated groups, compiled dossiers on, and directly interfered with individuals engaged in activities protected by the First Amendment rights to freedom of expression and association.

The FBI COINTELPRO program was initiated in 1956. Its purpose, as described later by FBI Director J. Edgar Hoover, was "to expose, disrupt, misdirect, discredit, or otherwise neutralize activities" of those individuals and organizations whose ideas or goals he opposed. Tactics included: falsely labelling individuals as informants; infiltrating groups with persons instructed to disrupt the group; sending anonymous or forged letters designed to promote strife between groups; initiating politically motivated IRS investigations; carrying out burglaries of offices and unlawful wiretaps; and disseminating to other government agencies and to the media unlawfully obtained derogatory information on individuals and groups.

In 1983, Attorney General William French Smith issued superseding guidelines that authorized "domestic security/ terrorism" investigations against political organizations whenever the FBI had a reasonable belief that these groups might violate a law. The new guidelines permitted the same intrusive techniques the FBI used against organized crime.

The Smith guidelines were justified by the Attorney General's observation that "our citizens are no less threatened by groups which engage in criminal violence for political... purposes than by those which operate lawlessly for financial gain." He concluded: "we must ensure that criminal intelligence resources that have been brought to bear so effectively in organized crime and racketeering investigations are effectively employed in domestic security/ terrorism cases." The guidelines provide, therefore, no safeguards to protect against infringements of First Amendment rights.

Worst, they ignore the history of COINTELPRO abuses, and abolish the distinction between regular criminal investigations and investigations of groups and individuals seeking political change. They fail to limit the investigative techniques used to obtain data on political groups, so that now the FBI may use any technique, including electronic surveillance and informers, against political organizations.

Today, the FBI may begin a full investigation whenever there is a reasonable indication that "two or more persons are engaged in an enterprise for the purpose of furthering political or social goals wholly or in part through activities that involve force or violence and a violation of the criminal laws of the United States." The FBI has interpreted "force or violence" to include the destruction of property as a symbolic act, and the mere advocacy of such property destruction would trigger an investigation. Even without any reasonable indication, under a separate guideline on "Civil Disorders and Demonstrations Involving a Federal Interest," the FBI may investigate an organization that plans only legal and peaceful demonstrations.

Another set of rules governing federal intelligence gathering is Executive Order 12333, in force since 1981. It authorizes the FBI and CIA to infiltrate, manipulate and destroy U.S. political organizations, as well as to use electronic surveillance -- under the pretext of an international intelligence investigation. What federal agencies are likely to be interested in a citizen's political activities and affiliations?

The FBI is still the major national intelligence-gathering agency. There are also many other federal, state, local and private investigative agencies. At least 26 federal agencies may gather intelligence, including the Immigration & Naturalization Service, Internal Revenue Service, and the Treasury Department's Bureau of Alcohol, Tobacco and Firearms. Local police agencies sometimes contain "special services" units and narcotics or other "strike forces" in which federal, state, and local agencies cooperate. The Central Intelligence Agency and National Security Agency are particularly active when a political organization has or is suspected to have international contacts. Military security agencies and increasingly significant "private" research institutes and security agencies also gather intelligence.

A recent Freedom of Information Act request on behalf of the Livermore Action Group, an anti-nuclear organization, revealed that the Navy, the U.S. Marshal's Service, and the Marine Corps all sent agents to the Group's public meetings and kept newspaper reports of such meetings. Most chilling was the revelation that the Federal Emergency Management Agency (FEMA) -- the federal agency charged with implementing martial law in the event of a nuclear war -- was also watching the Livermore group.

Federal and state, local and private agencies, all tend to share information in a variety of ways.

## **How does the FBI learn about citizens and organizations?**

Political intelligence is gathered from public sources, such as newspapers and leaflets. It is also collected by informers who may be government employees or people recruited by them. Political intelligence is also collected through FBI visits to your home or office. We are here most concerned with this aspect of intelligence gathering.

Agents may be sent to interview people after FBI officials decide there is a "reasonable indication" that an organization or person meets the guidelines for a "domestic security" investigation. Such interviews are a primary source of information, for most people are not aware of their right not to talk to federal agents.

Most people are also unaware of the limits to the power of FBI and other investigative agents. Many people visited by agents are also afraid of being rude or uncooperative. Agents may be friendly and courteous, as if they are attempting to protect you or your organization, or express admiration for your organization and its goals. Occasionally, the FBI may persuade a disaffected member of an organization to give them information about other members, including their personal lives, character and vulnerabilities.

A major job of FBI agents is to convince people to give up their rights to silence and privacy. For example, after a Quaker pacifist spoke in Anchorage, Alaska, at a memorial Service for El Salvador's Archbishop Romero, FBI agents visited a local priest and interrogated him about the speaker. The agents asked about the speaker's organizational affiliations and expressed fears about "terrorist connections." The agents informed the priest that they would do a "computer check" on the speaker and his wife, and asked the priest if the two might do violence to the U.S. President, scheduled to visit the area. These interrogations were repeated in the community by agents who later admitted there was no basis for their questions about "terrorist connections" and the danger to the President.

## **What if I suspect surveillance?**

Prudence is the best course, no matter who you suspect, or what the basis of your suspicion. When possible, confront the suspected person in public, with at least one other person present. If the suspect declines to answer, he or she at least now knows that you are aware of the surveillance. Recently, religious supporters of a nation-wide call to resist possible U.S. intervention in Central America noticed unfamiliar people lurking around their offices at 6 a.m., but failed to ask what they wanted and who they were. If you suspect surveillance, you should not hesitate to ask the suspected agents names and inquire about their business.

The events giving rise to suspicions of surveillance vary widely, but a general principle remains constant: confront the suspected agents politely and in public (never alone) and inquire of their business. If the answer does not dispel your suspicion, share it with others who may be affected and discuss a collective response. Do not let fears generated by "conspicuous" surveillance create unspoken tensions that undermine your work and organization. Creating fear is often the purpose of obvious surveillance. When in doubt, call a trusted lawyer familiar with political surveillance. Please do not call the number that was printed here as the Movement Support Network Hotline, because it is no longer active, and is now the private residence of an unrelated person.

## **How should I respond to threatening letters or calls?**

If your home or office is broken into, or threats have been made against you, your organization, or someone you work with, share this information with everyone affected. Take immediate steps to increase personal and office security. You should discuss with your organization's officials and with a lawyer

whether and how to report such incidents to the police. If you decide to make a report, do not do so without the presence of counsel.

### **What rights do I have?**

**1. The Right to Work for Change.** The First Amendment to the U.S. Constitution protects the rights of groups and individuals who advocate, petition, and assemble to accomplish changes in laws, government practices, and even the form of government. Political intelligence gathering is not supposed to interfere with these rights.

**2. The Right to Remain Silent.** The Fifth Amendment of the Constitution provides that every person has the right to remain silent in the face of questions (other than name and address) posed by any police officer or government agent.

Since 1970, however, federal prosecutors may request judges to order a subpoenaed witness to testify, after a grant of immunity, at a grand jury hearing or at a criminal trial. This grant of immunity means that your Fifth Amendment right to refuse to testify is taken away. What is given to you is only the promise not to use your testimony against you in a subsequent criminal prosecution. But you can still be charged with a crime. Failure to testify after a grant of immunity is discussed on page 12 below.

**3. The Right to be Free from "Unreasonable Searches and Seizures."** Without a warrant, no government agent is allowed to search your home or office (or any other place that is yours and private). You may refuse to let FBI agents come into your house or into your workplace, unless they have a search warrant. Politeness aside, the wisest policy is never to let agents inside. They are trained investigators and will make it difficult for you to refuse to talk. Once inside your home or office, just by looking around, they can easily gather information about your lifestyle, organization, and reading habits.

The right to be free from "unreasonable searches and seizures" is based on the Fourth Amendment to the Constitution. This Amendment is supposed to protect against government access to your mail and other written communications, telephone and other conversations. Unfortunately, it is difficult to detect government interference with writings and conversations. Modern technology makes it difficult to detect electronic surveillance on a telephone line, other listening devices, or cameras that record whatever occurs in a room. Also common are physical surveillance (such as agents following in car or on foot), mail covers, and informers carrying tape recorders.

### **What should I do if police, FBI, or other agents appear with an arrest or search warrant?**

Agents who have an arrest or search warrant are the only ones you are legally required to let into your home or office. You should ask to see the warrant before permitting access. And you should immediately ask to call a lawyer. For your own physical safety you should not resist, even if they do not show you the warrant, or if they refuse to let you call your lawyer. To the extent permitted by the agents conducting a search, you should observe the search carefully, following them and making mental or written notes of what the agents are doing. As soon as possible, write down what happened and discuss it with your lawyer.

### **What should I do if agents come to question me?**

Even when agents come with a warrant, you are under no legal obligation to tell them anything other than your name and address. It is important, if agents try to question you, not to answer or make any statements, at least not until after you have consulted a lawyer.

Announce your desire to consult a lawyer, and make every reasonable effort to contact one as quickly as possible. Your statement that you wish to speak to the FBI only in the presence of a lawyer, even if it accomplishes nothing else, should put an end to the agents' questions. Department of Justice policy requires agents to cease questioning, or refrain from questioning, anyone who informs them that he or she is represented by a lawyer. To reiterate: upon first being contacted by any government investigator the safest thing to say is, "Excuse me, but I'd like to talk to my lawyer before I say anything to you." Or, "I have nothing to say to you. I will talk to my lawyer and have her [or him] contact you." If agents ask for your lawyer's name, ask for their business card, and say you will have your lawyer contact them. Remember to get the name, agency, and telephone number of any investigator who visits you. If you do not have a lawyer, call Movement Support Network Hotline (212) 477-5652, or call the local office of the National Lawyers Guild.

As soon as possible after your first contact with an investigator, write a short memo about the visit, including the date, time, location, people present, any names mentioned by the investigators, and the reason they gave for their investigation. Also include descriptions of the agents and their car, if any. This may be useful to your lawyer and to others who may be contacted by the same agents.

After discussing the situation with your lawyer, you may want to alert your co-workers, friends, neighbors, or political associates about the visit. The purpose is not to alarm them, but to insure that they understand their rights. It might be a good idea to do this at a meeting at which the history of investigative abuse is presented.

### **If I don't cooperate, doesn't it look like I have something to hide?**

This is one of the most frequently asked questions. The answer involves the nature of political "intelligence" investigations and the job of the FBI. Agents will try to make you feel that it will "look bad" if you don't cooperate with them. Many people not familiar with how the FBI operates worry about being uncooperative. Though agents may say they are only interested in "terrorists" or protecting the President, they are intent on learning about the habits, opinions, and affiliations of people not suspected of wrongdoing. Such investigations, and the kind of controls they make possible, are completely incompatible with political freedom, and with the political and legal system envisaged by the Constitution.

While honesty may be the best policy in dealing with other people, FBI agents and other investigators are employed to ferret out information you would not freely share with strangers. Trying to answer agents' questions, or trying to "educate them" about your cause, can be very dangerous -- as dangerous as trying to outsmart them, or trying to find out their real purpose. By talking to federal investigators you may, unwittingly, lay the basis for your own prosecution -- for giving false or inconsistent information to the FBI. It is a federal crime to make a false statement to an FBI agent or other federal investigator. A violation could even be charged on the basis of two inconsistent statements spoken out of fear or forgetfulness.

### **Are there any circumstances under which it is advisable to cooperate with an FBI investigation?**

Never without a lawyer. There are situations, however, in which an investigation appears to be legitimate, narrowly focused, and not designed to gather political intelligence. Such an investigation might occur if you have been the victim of a crime, or are a witness to civil rights violations being prosecuted by the federal government. Under those circumstances, you should work closely with a lawyer to see that your rights are protected while you provide only necessary information relevant to a specific incident. Lawyers may be able to avoid a witness' appearance before a grand jury, or control the circumstances of the appearance so that no one's rights are jeopardized.

## **How can grand juries make people go to jail?**

After being granted immunity and ordered to testify by a judge, grand jury witnesses who persist in refusing to testify can be held in "civil contempt." Such contempt is not a crime, but it results in the witness being jailed for up to 18 months, or the duration of the grand jury, whichever is less. The purpose of the incarceration is to coerce the recalcitrant witness to testify. In most political cases, testifying before a grand jury means giving up basic political principles, and so the intended coercion has no effect -- witnesses continue to refuse to testify.

Witnesses who, upon the request of a grand jury, refuse to provide "physical exemplars" (samples of handwriting, hair, appearance in a lineup, or documents) may also be jailed for civil contempt, without having been granted immunity. The charge of "criminal contempt" is also available to the government as a weapon against uncooperative grand jury witnesses. For "criminal contempt" there is no maximum penalty -- the sentence depends entirely on what the judge thinks is appropriate. Charges of criminal contempt are still rare. They have been used, however, against Puerto Rican independentistas, especially those who have already served periods of incarceration for civil contempt.

## **Is there any way to prevent grand jury witnesses from going to jail?**

There is no sure-fire way to keep a grand jury witness from going to jail. Combined legal and community support often make a difference, however, in whether a witness goes to jail and, if so, for how long. Early awareness of people's rights to refuse to talk to the FBI may, in fact, prevent you from receiving a grand jury subpoena. If the FBI is only interested in getting information from you, but not in jailing you, you may not receive a grand jury subpoena. What can lawyers do?

A lawyer can help to ensure that government investigators only do what they are authorized to do. An attorney can see to it that you do not give up any of your rights. If you are subpoenaed to a grand jury your lawyer can challenge the subpoena in court, help to raise the political issues that underlie the investigation, and negotiate for time. Your lawyer can also explain to you the grand jury's procedures and the legal consequences of your acts, so that you can rationally decide on your response.

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*Additional copies of this publication can be ordered from the Center for Constitutional Rights at the address above. Your comments about this publication will be appreciated and will be useful in preparing future editions.*

*This pamphlet was prepared by The Movement Support Network with the help of Linda Backiel, Joan Gibbs, Jonathan Ned Katz, Margaret L. Ratner, Audrey Seniors, and Dorothy M. Zellner. Photographs: Maddy Miller Notes: 1. 1 See Final Report of the Senate Select Committee to Study Governmental Operations, 94th Congress, 2d Session, Report No. 94-755 2. 2 See e.g. United States v. Hensley, 83 L. Ed. 2d 604 (1985); Kolander v. Lawson, 461 U.S. 352 (1983); Brown v. Texas, 443 U.S. 47 (1979).*