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# "IF AN AGENT KNOCKS":

# FEDERAL INVESTIGATORS AND YOUR RIGHTS

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People who openly oppose United State government polices should be prepared to receive visits from FBI agents or other federal investigators. Those you oppose U.S. policy in Central America, visit Nicaraguan, Cuban or Soviet embassies here, or travel to those countries, and those who give sanctuary to refugees from Guatemala and El Salvador, or who struggle for Black liberation, for independence for Puerto Rico, or against nuclear weapons, are likely to receive visits from the FBI. Increasingly, agents are visiting the families, friends and employees of these persons.

For example, in a nationwide sweep in

1987, FBI agents visited 12 people in five cities during a three-day period. Most had visited Nicaragua to share their skills under the auspices of TecNica, a Berkeley-based group that recruits and places volunteers in development projects in Nicaragua. The majority of these FBI visits were to workplaces where agents sometimes made their presence known to employees and also spoke with co-workers. The agents incorrectly implied that the volunteers were violating the trade embargo against Nicaragua. While several of those targeted found the visits threatening, and did not want to appear 'uncooperative' in the presence of employers, most were aware of their

right **not** to talk to the FBI and to refer the agents to their lawyers. They understood that the purpose of these visits was to discourage people from travelling to Nicaragua and helping the people there overcome some of the economic hardships caused by U.S. support for the Contras and the U.S. trade embargo. This pamphlet is designed to answer the frequent questions asked by people experiencing government scrutiny. It can also help them develop practical responses.

# What is Political Intelligence?

Political intelligence is information collected by the government about individuals and groups. Files secured under the Freedom of Information Act disclosed 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 estimate 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, or otherwise force anyone to cooperate with an investigation. Thus, if an FBI agents knocks at your door, you do not have to identify yourself to him, you can simply say "I don't want to talk to you." or "You'll have to speak to my lawyer," then close the door.

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 say anything--unless they have obtained an arrest or search warrant. Even when agents do have warrants, you still don't have to answer their questions.

# Under What Laws Do The Agents Operate?

In the wake of congressional reports exposing the FBI's counterintelligence program (COINTELPRO), under which the agency infiltrated groups, compiled dossiers on, and directly interfered with individuals engaged in activities protected by the First Amendment right to freedom of expression and association, guidelines regulating the investigation of political activities were issued by the Justice Department.

The FBI COINTEL 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; initiating politically motivated IRS investigations; carrying out wiretaps; and disseminating to other government agencies and the media unlawfully obtained derogatory information on individuals and groups.

Subsequent and superseding guidelines,

authorizing "domestic security/terrorism" investigations against political organizations whenever the FBI had a reasonable belief that these groups might violate a law, were issued in 1983. These guidelines permitted the same intrusive techniques the FBI used against organized crime to be used in such investigations. The guidelines provide no safeguards on the use of informants to protect against infringements to First Amendment rights.

The guidelines 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 the FBI may use any technique against political organizations including electronic surveillance and informers.

Thus, the FBI may begin a full investigation whenever there is a reasonable indication that "two or more persons are engaged in an enterprize 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 and perhaps even more important document governing federal intelligence gathering is Executive Order 12333 on U.S. Intelligence Activities. In force since 1981, it authorizes the FBI and CIA to infiltrate, manipulate and destroy U.S. political organizations--under the pretext of a "foreign"

intelligence investigation. Investigative guidelines under this order are in large part classified secret and not publicly available. Government spying, infiltration and disruption of domestic advocacy groups can be carried out, practically without restraint, by merely alleging that political groups have some connection to foreign nations or liberation movements, or that they support positions similar to those of such movements. Such movements might include the African National Congress (ANC) or the FMLN-FDR in El Salvador. This executive order has been used to avoid the minor restrictions imposed on intelligence gathering on domestic groups. The FBI merely

alleges that a domestic group has a foreign connection, and even though no crime is suspected the group or individual can be investigated under the executive order.

The FBI's massive investigation of the Committee in Solidarity with the People of El Salvador (CISPES) was carried out under E.O. 12333. The CISPES investigation was used as a window to spy on other Central America groups including the Network in Solidarity with Guatemala, the Nicaraguan Network, the Thomas Merton Center, and the Central America Mobilization Coalition. While the FBI produced not a shred of evidence of wrongdoing on the part of

CISPES during its five-year investigation, it managed to amass 17 volumes of files on CISPES, most of which are being withheld under a national security exemption. Over 170 investigations were begun as spin-offs of the CISPES investigation.

Heavily deleted portions of these files, released under the Freedom of Information Act, show that the FBI, under the aegis of Executive Order 12333, regularly attended and photographed demonstrations and meetings, recorded the license plate numbers of participants, in addition to conducting surreptitious interviews and placing informants.

Names of people investigated were culled from this surveillance and from radio broadcasts and flyers. Agents also cavalierly invaded college campuses and visited employers and family members explaining that they were investigating terrorist threats. The files indicate that complaints to elected officials, and recourse to media and the public, were successful in curtailing the FBI.

# **Which 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 service' 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. Much of the information gathered by these agencies winds up in various government computer data banks including the FBI's Terrorist Information

System (TIS).

In 1987 it was revealed that the New York City Police Department had activated its 'Black Desk', sending undercover agents to meetings concerning the planning of demonstrations against racism, and monitoring a local Black radio station. Information was gathered about local Black leaders and disseminated at special police riot training sessions.

Surveillance carried out by private groups and individuals appears to be growing industry. Years ago, the Western Goals Foundation was given secret computer files stolen from the intelligence division of the Los Angeles

police department. Western Goals used the material to create files on as many as 6,000 people. Executive Order 12333, moreover, specifically allows the FBI to engage secret contracts with private intelligence groups. The secret investigation guidelines under that executive order not that no questions need be asked about how "any information, property or materials furnished by individuals' action on their own initiative" were obtained. After the offices of the Center for Development Policy were broken into in November 1986, and documents relating to Southern Air Transport contra supply flights were stolen, its director, ex- U.S. ambassador Robert White speculated

that the break-in at his office might have been the work of anti-communist vigilantes. He noted: "There's a whole network that's been building up...to reinforce what Oliver North has been doing."

# **How Does The FBI Learn About Individuals and Organizations?**

Political intelligence is gathered from public sources, such as newspapers, radio and leaflets. It is also collected by informers who may be government employees or people who are recruited by them. Political intelligence is also collected through FBI visits to your home or workplace. In this booklet, we are 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 meets the guidelines for a 'domestic security' investigation, or because a person has attended a meeting or a rally sponsored by a group allegedly suspected of foreign connections under Executive Order 12333. People who visit embassies of countries that the U.S. considers unfriendly are also likely to be visited by the FBI. Such interviews are a primary source of information because most people are not aware of their right **not** to talk to federal agents.

Many people visited by agents are 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 goal of FBI agents is to convince people to give up their rights to silence and privacy. Recently when FBI agents visited TecNica volunteers at their homes and workplaces, they said such intimidating things as: "You're being a dupe of the Russians and we're

giving you a chance to stop doing something you may regret later." The agents told another person that **she** was not the target of the investigation, but might be able to help them.

In San Antonio during a series of visits to affiliates of a Central America information group, the FBI gave a 20 minute presentation including a slide show on the 'evils of communism', to one of the persons they questioned.

In 1984, the FBI visited over 100 persons who had traveled to Nicaragua. The main purpose of the visits was to develop 'assets', people who would agree to supply the FBI with

information.

# What If I Suspect Surveillance?

Prudence is the best course, no matter what you suspect, or what the basis is for 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. A few years ago, 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 about their business. If the answer does not dispel your suspicion, share it with other 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, or call the Movement Support Network hotline: (212) 614-6422.

# How Should I Respond to Threatening Letters or Calls?

If your home 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 Should I Do If My Office Or Home Is Broken Into And I Suspect That The Motive Behind It Was Intelligence Gathering or Harassment?**

Obvious break-ins, in which nothing, or very little of value is taken, are a growing form of intimidation and intelligence gathering. If you discover a break-in, do not disturb the crime scene

and touch as little as possible until you can calmly analyze the situation and until you decide what approach you are going to take. Try to figure out what, if anything, is missing. If little of monetary value is taken, and important files have been obviously read, decide with your co-workers and a lawyer whether and how to report the break-in to the police. Take photographs of the crime scene. Photograph any damage that may have been done and any notes that may have been left by the intruders. Over 100 break-ins have been reported to the Movement Support Network. Call us. We can help you determine if the break-in was politically motivated and, if it was, get you in touch with other groups

and individuals who have had similar experience.

# **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 get into your home or office. If agents say they have a warrant 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 arrest, even if they do not show

you the warrant, or if they refuse to let you call a lawyer. To the extent permitted by the agents conducting a search, you should observe the search carefully, follow them and make 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 Appear With An Arrest or Search Warrant?**

Even when agents come with a warrant, you are under no legal obligation to tell them anything. If agents try to question you, it is important 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 accomplished 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 investigation, 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 federal, state, or local investigator who visits you. If you do not have a lawyer, call the Movement Support Hotline (212) 614-6422, or call the local office of the National Lawyers Guild (212) 966-5000.

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 name 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'

of protecting the President, they are intend 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 won prosecution--in 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 information. Such an investigation might occur if you have been the victim of a crime, or 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's 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 line-up, or documents) may also be jailed for civil contempt.

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 upon the judge's discretion. Charges of criminal contempt are still rare. They have been used,

however, against Puerto Rican  
independistas, 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 man, 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 Lawyer Do?

A lawyer can help to ensure that government investigators only do what they are authorized to do and 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, to help 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.

# 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 to the Constitution provides that every person has the right to remain silent in the face of questions posed by any police officer or government agent.

Federal prosecutors, however, 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 in return is only the promise not to use your testimony against you in a subsequent criminal prosecution. If you testify under subpoena you can still be charged with a crime. Failure to testify

after a grant of immunity is discussed 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 into your home or office. 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 on such things as 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

records whatever occurs in a room. Also common are forms of physical surveillance such as agents following in car or on foot, mail covers, and informers carrying tape recorders

# What Are The Rights Of Non-Citizens?

All non-citizens have the same rights as citizens with respect to the FBI: the right not to speak to the FBI and the right to have an attorney present at interviews with FBI agents. **JUST WITH CITIZENS, NON-CITIZENS SHOULD BE AWARE THAT LYING TO FEDERAL AGENTS IS A FEDERAL CRIME**

Foreigners should be aware that Immigration and Naturalization Service (INS) agents are federal agents--lying to them constitutes a federal crime.

Commission of such a crime may be sufficient reason for deportation or denial of immigrant status.

This section includes a general discussion of the political rights of non-citizens. However, this is a changing area of law and politics and we caution readers to call the Movement Support Network hotline or the National Lawyer Guild for updated information.

## **1. Non-citizens**

All aliens living in the United State are in theory protected by all provisions of the Bill of Rights that are not expressly limited to citizens. Thus, while aliens do

not have the right to vote, they do have rights of free speech and association, a right to a fair trial for criminal charges, the right to be free of unreasonable searches and seizures, the right to due process of law. However, in the immigration context the federal government has broad powers, and the courts have not fully developed the contours of aliens' constitutional rights where the Immigration and Naturalization Service is concerned. In December 1988, a federal district judge in Los Angeles held that the government cannot deport immigrant aliens for their political speech or associations, because to do so would violate their First Amendment rights. Congress has said

much the same thing for non-immigrant aliens. However, this area of law is still developing.

## **2. Undocumented individuals**

Undocumented individuals who engage in political activity should be aware that they risk FBI surveillance and resulting exposure of illegal status. **IT IS COMMON PRACTICE FOR THE FBI AND INS TO SHARE INFORMATION.**

A document received from the FBI CISPES files shows that a local FBI field office asked the Immigration and Naturalization Service to provide them a

list of Salvadorean citizens, U.S. permanent residents included, who had visited the area. Other CISPES documents indicate the FBI agents visited the administration offices for foreign students on college campuses and utilized foreign student directories for initial leads on investigations. In defending the actions of the FBI in the CISPES investigation, the U.S. government argued that the mere presence of Latin American nationals in solidarity groups justified surveillance by the FBI.

The bottom line is that foreigners, including permanent residents, can expect at least as much surveillance

agencies by domestic agencies as U.S. citizens, and should, in addition, be aware of possible surveillance by foreign intelligence agencies operating in this country.

### **3. Sharing of information with foreign intelligence agencies.**

There are many indicators that the U.S. shares information with intelligence agencies of governments it supports. We have received evidence of information sharing with MI5 (Britain); KCIA (Korea); Mossad (Israel); National Guard (El Salvador). Non-citizens should probably assume that U.S. intelligence will share information with

'friendly' governments.

#### **4. Change in immigration status**

Applicants for permanent residencies and for naturalization are asked to list the organizations they have worked with. Politically active foreigners are advised to consult an immigration lawyer before applying for a change in status.

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**World-Wide-Web *html* format by**

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