

The FBI's 'Civil Liberties Training' Is A Farce

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In the wake of former FBI lawyer Kevin Clinesmith pleading guilty to illegally altering a document submitted to the FISA court, it's natural to ask, "Don't they teach them not to break the law? Don't they teach them about past FBI abuses so they won't repeat the same mistakes and crimes?" According to documents obtained by the Cato Institute via the Freedom of information Act (FOIA), the short answer is: not really.

Indeed, since May 2019, the FBI and Department of Justice have tried to dodge those very questions despite multiple FOIA requests from Cato. Initially, the Bureau denied having any training materials about past FBI domestic surveillance or related abuses like the Palmer Raids or COINTELPRO. They certainly didn't admit to having material on even more recent Bureau constitutional rights violations or bogus investigations like those involving anti-Iraq war activists in Pennsylvania or the false accusation that Brandon Mayfield was part of the 2004 Madrid bombing plot. Finally, earlier this month, the FBI coughed up a 14-page "Basic Field Training Course Trainee Guide," centered on trips to the Holocaust Museum and the Martin Luther King, Jr. Memorial.

With respect to the Holocaust, the Bureau trainee guide says the museum visit "draws on lessons learned from the Holocaust to challenge law enforcement officers to examine their relationship with the public and explore issues related to the personal responsibility of officers to administer their authority in an ethical manner."

While it's true that Nazi police played a role in virtually destroying German Jews, the FBI has its own World War II-era abuses it should use for "don't do this again" training purposes.

The Custodial Detention Program was the brainchild of then-FBI director J. Edgar Hoover, who, in the years before the Pearl Harbor attack and in league with his counterparts in Army and Navy intelligence, developed lists of "subversives" and others deemed domestic security threats who would be rounded up in the event of a war with Germany, Italy, or Japan. By December 8, 1941, thousands of people—including American citizens—had been detained simply on the basis of their national origins, not because of any role in actual sabotage or espionage.

It was that Custodial Detention Program that served as the inspiration for the subsequent internment of more than 100,000 Japanese Americans by the Roosevelt administration. A basic textbook, one that new FBI agents and intelligence analysts should be required to read, is *Personal Justice Denied: Report of the Commission on Wartime Relocation and Internment of*

Civilians, still the most comprehensive one-volume account of one of the most ignominious episodes in FBI and American history.

Regarding Dr. King, the FBI trainees are to “explore the Martin Luther King, Jr. Memorial in relation to the complex nature of the FBI’s response to the non-violent political action of the Civil Rights Movement era.”

What they are not required to read and answer, but what should be on any final exam before they are given a gun and a badge, are questions drawn from historical FBI COINTELPRO documents about the legality and propriety of Bureau attempts to get King to kill himself and threats to expose his alleged extramarital affairs, among other efforts.

Indeed, the FBI is doing more than just cutting corners when it comes to training its agents as to the Bureau’s sordid, unconstitutional acts of the past. Its day-to-day policies give them license to repeat those abuses under the guise of “community engagement” or “community outreach.”

Other documents obtained via FOIA by Cato reveal that in November 2011, FBI agents in the Albany, New York field office approached the local League of Women Voters chapter looking for alleged corruption information on New York state assembly members. Nobody at the LWV had contacted the FBI Albany office with such allegations; the agents were simply looking to drum up business for a “public corruption” investigation that clearly had no actual predicate.

The FBI does this through a mechanism known as an “Assessment”—a form of proto-investigation that requires no evidence of wrongdoing at the outset. Even though the Albany-area LWV chapter had no corruption-related info for the FBI agents, the Bureau team wrote a multi-page report on the encounter detailing the First Amendment-protected political activities of various New York state political actors and passed the report on to the FBI “Field Intelligence Group” as an FYI.

Additional FBI FOIA responses to Cato show that in March 2016, Bureau agents from the Omaha field office paid a visit to the Des Moines, Iowa, affiliate of the U.S. Committee for Refugees and Immigrants (USCRI). The purpose of the meeting was to provide “an unclassified briefing regarding radicalization indicators and appropriate means for reporting such information to the FBI.” In fact, according to a 2012 FBI study obtained by The Intercept, there is no detectable pattern or pathway to radicalization that leads to violence. Thus FBI agents in Omaha traveled to another state to tell a local refugee and immigrant rights group to effectively spy on their own clients using a discredited theory of radicalization.

Interestingly, key redactions in the documents provided to Cato were justified under 50 U.S.C. 3024(i)(1)—a legal authority exercised by the Director of National Intelligence to allegedly protect “intelligence sources and methods.” If the briefing was unclassified as claimed in the report, exactly what classified “sources and methods” was the FBI protecting?

I have a different theory. I think the Bureau is trying to hide exactly what discredited theory of radicalization they wanted the USCRI affiliate to use in determining which of their clients should be reported to the FBI. The only way to find out the truth will likely be litigation.

What’s clear is that instead of training its agents and intelligence analysts to avoid the mistakes of its past, the FBI is incentivizing them to violate Americans’ rights in new ways.

The last page of the Albany field office Type 3 Assessment on the meeting with the LWV chapter includes an “Accomplishment Information” section. In it, the three FBI agents involved were listed as having participated in a “liaison-contact” action that is actually part of the “Intel Program” run by the local FBI field office. In short, the three agents in question got performance review-related credit for meeting with and extracting First Amendment-protected information from a civil society organization engaged lawfully in the political process.

How extensive is this kind of FBI activity? We don’t know, in part because the Bureau is stonewalling Cato on FOIAs seeking multiple categories of Assessments and related documents, but more importantly because the House and Senate Judiciary committees have never publicly investigated the practices I’ve described.

Kevin Clinesmith’s illegal conduct took place behind a veil of officially sanctioned secrecy. So has the FBI activity Cato has thus far uncovered. The late Justice Brandeis’ observation that “sunshine is said to be the best of disinfectants” has never been truer, or more needed, than now. The FBI is long overdue for a new and probing examination of its post-9/11 domestic surveillance and related activities. Whether Congress is up to the job remains to be seen.

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