

# THE ORANGE COUNTY REGISTER

## **The FBI's unjustified targeting of Concerned Women for America**

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Forget Tucker Carlson and his fact-free ranting about NSA spying on him. I want to know why the FBI considered targeting the venerable Concerned Women for America for an “Embezzlement of Non-Profit Organizations/Corporate Fraud” investigation with no criminal predicate. First, some background.

For more than two years, the Cato Institute has been conducting a form of “citizens investigation” of the FBI and other federal agencies and departments that in the past were known to have engaged in domestic surveillance and related political repression operations. The most infamous of those FBI activities was its Counterintelligence Program, more commonly known by its acronym, COINTELPRO.

When COINTELPRO and related domestic spying activities conducted by the FBI, CIA, and NSA were exposed by the Church Committee in 1975, various laws and congressional oversight mechanisms were enacted that were designed to prevent a recurrence of those abuses. But there was a catch.

Instead of passing legislation to explicitly bar the FBI from engaging in politically-tinged surveillance (or worse), then-Ford administration Attorney General Ed Levi effectively pre-empted legislative action by promulgating what became known as the Attorney General's Guidelines for Domestic FBI Operations. Sold as a way to prevent a return COINTELPRO-like activities, the AG Guidelines, as they became known, were a failure almost from the outset.

During the Reagan administration, the Committee in Solidarity with the People of El Salvador (CISPES) was targeted by the FBI on a nationwide scale for surveillance and related activities. In the early 1990s, it only took one zealous FBI agent in Chicago to start one of the largest, and worst predicated, “international terrorism” investigations targeting Chicago area Muslims in the ironically named Operation VULGAR BETRAYAL. In the years after the 9/11 attacks, even the relatively weak and ineffectual internal safeguards ostensibly provided by the AG Guidelines effectively disappeared.

In December 2008, then-Attorney General Michael Mukasey modified the AG Guidelines by creating an entirely new class of FBI proto-investigation known as an “Assessment”. Unlike a

normal FBI investigation, an Assessment requires no criminal basis to be opened—just the broad and nebulous formulation of an “authorized purpose.” And while FBI agents can’t—in theory, at least—utilize wiretaps when conducting Assessments on people or organizations, they can still conduct physical surveillance of Assessment targets, scour public and classified databases for information on them, and run confidential informants against them.

It’s a prescription for abuse. Which brings us to Concerned Women for America (CWA).

Earlier this month in response to a Cato Freedom of Information Act (FOIA) request, the FBI provided a redacted but still very illuminating—and alarming—FBI Washington Field Office (WFO) “Charity Assessment” on CWA conducted in July 2016. The Assessment was opened “to determine the possibility of fraudulent activity.” Not “report of fraudulent activity”—just the “possibility.”

It was a pure FBI domestic surveillance “fishing expedition” for the digital age, with the agent focused on CWA’s alleged “two-star rating” from Charity Navigator, as well as searches of other commercial and government databases (all conveniently redacted by the FBI). I note here that the Foreign Intelligence Surveillance Court (FISC), responsible for approving FBI electronic surveillance under Section 702 of the FISA Amendments Act, has repeatedly chastised—but not punished—the FBI for unwarranted digital database searches involving American citizens.

Despite alleged “red flags of fraudulent activity” (also redacted), the agent concluded, on the basis of “no derogatory information” in the many databases consulted, that opening a full investigation of CWA was not warranted.

The FBI should never have opened an Assessment on CWA in the first place.

At no time was there an allegation of actual fraud or embezzlement—just an FBI agent looking to meet a quota for how many Assessments they had opened during the reporting period. This is exactly what happens when fundamental constitutional standards for obtaining warrants or conducting searches and seizures are ignored, or, in the case of the AG Guidelines, effectively subverted as a matter of official policy.

Congress can fix this problem by passing legislation that bans quasi-investigations like Assessments, as well as reassert the requirement to establish probable cause that a crime has been committed in order to open an investigation on an individual or civil society organization. It should also investigate the current scale of the FBI’s misuse of Assessments to determine how many other domestic groups have been subjected to similar unwarranted investigations like the one on CWA.

Engaging in public debate and advocacy should not be a trigger for the FBI to investigate law abiding Americans.

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