



The Government Doesn't Need New Powers To Fight 'Domestic Terror'

We've already seen how this can abuse Americans' civil liberties with little increase in public safety.

Patrick Eddington

January 13, 2022

Bennie Thompson (D-Miss.), chair of the House Select Committee on the January 6 Attack, told ABC's George Stephanopoulos last week that his committee may recommend new domestic intelligence powers. He provided no details, and Stephanopoulos didn't press for any, but recent history shows the combined dangers and uselessness of that approach.

None of the post-9/11 surveillance measures enacted by Congress, including the sweeping USA PATRIOT Act, have ever been demonstrated through a rigorous, independent review to have stopped a single attack on the United States over the last 20 years. There is no reason to believe that still more spying authority for the FBI or the Department of Homeland Security would make a rerun of the Capitol riot less likely.

Indeed, Thompson told Stephanopoulos that "it was the worst-kept secret in America that people were coming to Washington" to protest the election outcome. Because so many of the rioters filmed their deeds and posted them to social media, the real challenge for the FBI has been going through masses of video to conclusively identify the perpetrators. Arresting, charging, and getting plea bargains has been the easy part, as the Justice Department's website shows.

Moreover, the FBI already has unbelievably sweeping authority to surveil individual Americans or domestic groups without ever having to go before a judge to get a warrant.

Under an investigative category known as an *assessment*, FBI agents can search commercial and government databases (including databases containing classified information), run confidential informants, and conduct physical surveillance, all without a court order.

Last year, via a Freedom of Information Act (FOIA) request, the Cato Institute discovered that the FBI had used this mechanism to open an investigation on Concerned Women for America in the absence of any kind of criminal predicate. (The group's stated purpose is to "protect and promote Biblical values and Constitutional principles through prayer, education, and advocacy.") To the best of my knowledge, no one at the FBI has been investigated, much less disciplined or fired, for targeting the group.

And even in regular FBI investigations, the Bureau's organizational mindset and investigation categorization process can slant an inquiry to label it as something it clearly is not, potentially compromising or chilling the constitutional rights of innocent Americans. Another recent Cato FOIA request highlights the problem.

First, some background. In the years immediately after the invasion of Iraq, political passions in the United States were, like now, running high. The FBI, which has a long history of infiltrating and otherwise surveilling anti-war groups, continued the practice in the War on Terror era. One product of that surveillance was a July 2005 FBI field office on events whose case title included the acronym "AOT-DT"—an abbreviation for "Act of Terrorism-Domestic Terrorism."

The document, obtained by Cato via FOIA, described a "honk for peace" event sponsored by the Student Peace Action Network (SPAN) and Campus Green at North Carolina State University in Raleigh, North Carolina, followed by an evening for the "exchange of ideas through music, conversation, and speakers." After that event and separate from it, a small group of anarchists committed acts of vandalism in Raleigh against a Bank of America ATM and a North Carolina GOP headquarters.

As the FBI report subsequently noted, several participants were charged with felony riot offenses. But there's a world of difference between hammering an ATM and using a truck bomb to destroy a federal building in Oklahoma City or using airlines as flying bombs in New York. The fact that the FBI classified this anti-war event as an "act of terrorism" investigation speaks to a mindset problem.

Vandalism is not acceptable, but conflating it with maiming or killing people for political purposes—the generally accepted definition of terrorism today—is reckless. Unfortunately, future search of FBI databases involving the words "domestic terrorism" and "North Carolina" will bring up hits for SPAN and Campus Green, even though neither group engaged in, much less officially endorsed, any act of political violence.

Such episodes underscore the dangers in the powers the FBI already possesses. To give law enforcement agencies still more ill-conceived and sweeping domestic surveillance powers can only make those dangers worse.

***PATRICK EDDINGTON** is a senior fellow at the Cato Institute, a former CIA analyst, and a former senior policy adviser to Rep. Rush Holt (D-N.J.).*