



FBI sets eyes on black freedom of speech

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The FBI has identified a new threat: the “Black Identity Extremist” (BIE), whose perceptions of police brutality are very likely to serve as justification for violence toward police officers, according to a counterterrorism document recently obtained by Foreign Policy magazine. The murder of police officers is clearly wrong and tragic, but in creating this new category of extremist, the FBI risks stifling innocent Americans’ First Amendment-protected activity. To its credit, the FBI narrowly defines BIEs as those who seek to use force or violence to create “a separate black homeland or autonomous black social institutions, communities, or governing organizations within the United States.” The FBI further notes that activism and the use of strong and even violent rhetoric, “may not constitute extremism, and may be constitutionally protected.”

At first glance, this should offer some reassurance to Black Lives Matter activists and protesters from similar organizations. After all, Black Lives Matter isn’t advocating a black ethno-state, let alone urging members to harm police officers. Yet, given the FBI’s history with black activists, it’s understandable that some people might be wary of engaging in protests knowing that the FBI has a designation for black identity extremists.

The FBI’s COINTELPRO surveillance program, begun in 1956, targeted black civil rights leaders, among many others. The FBI went so far as to send Martin Luther King Jr. a letter urging him to commit suicide. The Senate’s Church Committee, which in 1976 published a report on intelligence activities and the rights of Americans, found that the FBI’s “Black Nationalist” program included organizations that weren’t advocating independence at all; they were just primarily black.

The FBI eventually acknowledged some of its mistakes, but mistakes can be made more than once. While the FBI’s counterterrorism document on BIE focuses on violent nationalists, we should be prepared for the FBI to put black organizations under increased surveillance. We should also be prepared for the FBI to establish tenuous links between BIE violence and unrelated crimes. As Foreign Policy noted, former FBI special agent Michael German found that the agency connected radical “black separatists” from the 1970s with attacks in 2010, despite their being no clear connection.

And it's not just black activists and civil rights leaders who need to be wary of increased FBI scrutiny; the bureau's long history includes all kinds of specialized snooping based on race and political views. Shortly after a string of letter bombings inspired by an Italian anarchist in 1919, J. Edgar Hoover, then the head of the "Anti-Radical" division, organized a massive index card database that eventually contributed to hundreds of deportations and thousands of arrests. In 1920, Assistant Secretary of Labor Louis Freeland Post canceled more than 1,000 of 1,600 remaining deportation orders after finding little solid evidence that those rounded up in raids posed any threat.

Innocent people having their rights violated is a risk when the government casts a wide net, but even if the FBI's activities related to BIEs remain narrow, news of the designation and the FBI's interest in BIE could prompt a stifling effect on speech.

Research on Internet activity unsurprisingly suggests that innocent Americans chilled their own online curiosity in the wake of Edward Snowden's revelations. If you know that the FBI is keeping an eye out for BIEs, how likely will you be to attend a Black Lives Matter protest, even if you have no intention to commit a crime? And although the FBI's counterintelligence document notes that "mere advocacy" of a particular view "may not constitute extremism, and may be constitutionally protected," the use of the word "may" leaves the FBI with plenty of leeway.

Some protesters may take comfort in the fact that the historian and King biographer David Garrow views the FBI as too incompetent to be a threat, telling Foreign Policy that the FBI, "are often so clueless." Nonetheless, when it comes to federal government law enforcement and surveillance, it's safe to err on the side of concern.

The murders of police officers in Dallas, Baton Rouge and New York City were awful and unforgivable. Whatever one thinks about the police-involved killings of black men such as Walter Scott, Samuel Dubose, Eric Garner, Philando Castile, and many others, violence against police officers won't help implement reforms that will increase police accountability and transparency.

Yet in responding to this violence the law enforcement community should resist designations that could be abused, leading to the surveillance of innocent Americans participating in activities protected by the First Amendment. It has happened before, and it can happen again.

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