

# ACLU cautions against 'chilling lawful dissent'

By George E. Curry  
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WASHINGTON (NNPA)—As the United States reorganizes its intelligence-gathering operations, it should make sure that such efforts don't serve the political purposes of the president or stifle lawful dissent, two officials of the American Civil Liberties Union testified Monday.

Appearing before the House Committee on the Judiciary's Subcommittee on Crime, Terrorism and Homeland Security, ACLU Associate Director Gregory T. Nojeim and Legislative Counsel Timothy H. Edgar raised concerns about the danger of becoming a "checkpoint society."

In their written statement to the committee, the ACLU officials said: "Proposals for fundamental reforms of the intelligence community are particularly sensitive because of the fundamental tension between intelligence gathering and civil liberties. Where government is focused on gathering intelligence information not connected to a specific criminal activity, there is a substantial risk of chilling lawful dissent. Such inquiries plainly have a chilling effect on constitutional rights."

The statement continued, "The answer is not to reject all intelligence and other reforms. The answer, instead is to ensure that specific safeguards for domestic collection of intelligence information that preserve the role of the FBI while ensuring against the use of spy tactics against Americans through strengthened guidelines and other checks to bar political spying."

The two officials pointed to past abuses by Republicans and Democrats in power.

"...The worst spying abuses of the Nixon Administration were directed by White House staff with intelligence backgrounds and included warrantless secret searches to obtain medical records, covert wiretaps of journalists, and the Watergate break-in itself," they said.

"Under President Reagan, a covert operation conducted by National Security Council staff member Lt. Col. Oliver North led to the most serious crisis of the Reagan presidency when it was revealed that the operation involved trading arms for hostages and using the proceeds to provide assistance to Nicaraguan rebels.

"Under President Clinton, White House political staff obtained hundreds of confidential FBI files on prominent Republicans that had been created from extensive background checks designed to protect national security."

In spite of these well-known abuses, the ACLU officials observe, the 9/11 Commission still recommended placing what is tantamount to an intelligence czar in the White House, increasing the risk of spying for political ends.

The two officials praised the commission for proposing a Civil Liberties Protection Board and significant reform of excessive secrecy imposed by government officials. In other areas, however, they said the panel did not go far enough.

"As the 9/11 Commission itself acknowledges, 'many of our recommendations call for the government to increase its presence in our lives....' In fact, as outlined, a number of specific proposals could have serious unintended consequences that would be highly detrimental for basic civil liberties."

To avoid those consequences, the ACLU said, "Legislation must include significant changes to some recommendations to protect

civil liberties. The Commission's proposals to advance civil liberties — including increased oversight, reduced secrecy and a Civil Liberties Protection Board — must be implemented to ensure that, as the government centralizes some powers, it provides strong checks and balances."

The ACLU urged Congress to reject any proposal that would make state-issued driver's license conform to any federal standards, require an embedded computer chip bearing biometric identification information such as a fingerprint or retina scan, or link a driver's license to immigration status.

"The report also contains detailed discussion of border and transportation security issues, including airline screening, the 'no fly' list that has stranded many innocent travelers, and passenger profiling," the ACLU officials said. "By endorsing an expansion of intrusive border screening to domestic travel, the report's recommendation could (if implemented without change) result in a 'checkpoint society' in which a federally-standardized license serves as a 'national ID' and internal passport."

In their testimony, the ACLU officials observed, "Even during periods of national threat, most notably the Cold War and World War II, the country has never thought it necessary to require citizens to carry 'papers' with them at all times. If Congress did so now, it would endanger both security and civil liberties."

A major concern cited by the ACLU is the blurring of traditional roles exercised by the FBI and the CIA.

"The United States has — historically and to the present day — entrusted the domestic collection of information about spies, terrorists, and other national security threats to federal and state law enforcement, with the FBI playing the most important role," the ACLU officials testified.

"The reason is simple: Americans do not believe the government should investigate you if you are not involved in a crime — if your activities, however unpopular, are not illegal. For this reason, the CIA — a pure spy agency with no law enforcement function — has been barred from domestic surveillance ever since it was created by the National Security Act in 1947."

The creation of a national intelligence czar, with the power to hire the FBI's director of intelligence as a deputy, may be "very problematic," the ACLU testified.

"The Commission proposal puts the FBI's intelligence capabilities in the hands of a super-spy who could involve domestic spying officials of the CIA and other agencies that use the methods of agencies that operate overseas — such as break-ins, warrantless surveillance, or covert operations."

ACLU officials recalled that the FBI had violated the rights of many innocent citizens.

"The FBI's COINTELPRO operations — 'counterintelligence' programs under FBI Director J. Edgar Hoover that both gathered intelligence and used that intelligence to disrupt perceived national security threats — led to extremely serious abuses of power," the officials recalled. "These abuses included the illegal wiretapping of Martin Luther King Jr., and the infiltration of scores of social, political and religious groups that opposed government policy, as well as 'dirty tricks' campaigns to exploit damaging information without exposing the FBI's sources and methods in a criminal prosecution."

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