



Eastern Region Office
P. O. Box 40008
Philadelphia, PA 19106
215-592-1513 T
215-592-1343 F

Central Region Office
P. O. Box 11761
Harrisburg, PA 17108
717-238-2258 T
717-236-6895 F

Western Region Office
313 Atwood St.
Pittsburgh, PA 15213
412-681-7736 T
412-681-8707 F



**TESTIMONY SUBMITTED BY
DAVID KAIRYS AND MARY CATHERINE ROPER¹
TO THE
PENNSYLVANIA SENATE VETERANS AFFAIRS AND EMERGENCY
PREPAREDNESS COMMITTEE
RE: SURVEILLANCE OF PROTEST GROUPS BY THE
OFFICE OF HOMELAND SECURITY
STATE CAPITOL, HARRISBURG
SEPTEMBER 27, 2010**

Senator Baker and members of the Committee, we commend the Committee for so expeditiously conducting this hearing. The recently revealed activities by state officials and a state contractor targeted wholly peaceful and constitutionally protected speech, associational and religious activities in a baseless and misguided effort to protect the public from “terrorism” and preserve “critical infrastructure”. But in this effort, “critical infrastructure” meant *any* governmental or commercial interest, and the word “terrorism” was stretched to encompass all opposition to these interests, whether or not that opposition carried a threat of violence. The results ranged from the appalling to the absurd: the resources of our central public safety and emergency response network were deployed to improperly aid one side in the public debate on an important environmental and economic issue, and to “protect” against peaceful protests of the treatment of carriage horses.

¹ Mary Catherine Roper is a staff attorney at the ACLU; David Kairys is of counsel at Kairys, Rudovsky, Messing & Feinberg LLP and (for purposes of identification only) professor of law at Temple University. They are investigating and assessing possible legal claims for several people and groups affected by the recently revealed state activities that target constitutionally protected speech and association.

But particularly coming so soon after the initial revelations and before the scope and content of such state activities are known, it is important that the Committee be mindful that, without full knowledge at this early stage, the Committee – and the public – could be easily misled or blindsided about the full extent of this misuse and abuse of the public’s dollars and trust. This can be avoided if the Committee’s inquiries are sufficiently comprehensive and specific both in terms of the witnesses it questions and the questions it asks.

From the documents and media accounts we have seen so far, and from known surveillance activities directed at protest groups by the state in the past, the now public “bulletins” and other materials generated on behalf of the state seem, and make sense only if viewed as, part of a broader effort. A particular task that has come to the public’s attention was relegated to a state contractor, but the Committee should not assume that is all there is, particularly because the definition or criteria used to decide what or who posed a danger to “critical infrastructure and resources” is obviously extremely broad. We support and want the state and national governments to investigate leads and assess threats of terrorism and mass destruction, but no acceptable balance between that task and abiding by our basic constitutional rights equates people and groups whose only “threat” is expressing their views on natural gas drilling and other public issues with those posing a danger of terrorism.

We suggest that the Committee subpoena witnesses and documents, and ask follow-through questions aimed at getting specific answers on the following:

- What are the definitions, standards and criteria used by the Pa. Office of Homeland Security, other state agencies and state contractors (referred to collectively in this document as “the state”) to identify “terrorism” and “threats to critical infrastructure”, and how do they specifically distinguish and exclude from their purview people and groups who simply express their views or exercise their religion?
- What activities or conduct results in a person or group being the subject of investigation or attention by the state on the ground that they pose a danger of terrorism?

- Did the state, or specifically Homeland Security, negotiate with the Institute of Terrorism Research and Response (ITRR) about what was to be covered in the bulletins? Did they tell ITRR what it should or should not do to collect information for the bulletins?
- Did the state, or specifically Homeland Security, direct or ask any other person or entity to cooperate with ITRR in furnishing information for these bulletins: *e.g.*, did Homeland Security direct local governments or police to provide information on local groups or protest permits to ITRR?
- What, concretely and in detail, is the reason or justification for inclusion of individuals and groups who oppose natural gas drilling? Hold an anti-BP candlelight vigil? Favor the governor's education policies? Demonstrate in favor of animal rights?
- Extremists favoring any cause could potentially pose a danger of violation of laws, harm to property, or violence. How does the state decide which causes to investigate? Among the causes that pose some danger of law violation, property damage or violence, how does the state decide which pose a danger of "terrorism" or a threat to "critical infrastructure"?
- In its investigations of people and groups who pose a danger of terrorism, what investigative techniques have been used or are authorized for use by the state? Internet searches? Media monitoring? Interviewing associates, co-workers, family? Surveillance? Undercover agents? Informers? Interrogation?
- In the past, state and city agencies have infiltrated protest groups with undercover law enforcement agents. For example, the City of Philadelphia did this in connection with the celebration of the bicentennial of the Constitution, and the State Police infiltrated the groups demonstrating at the Republican National Convention in Philadelphia in 2000. Is any state agency doing that now or in the recent past, and, if so, what are the standards or criteria for determining which groups to infiltrate?
- What agencies or officials of the state, and of the federal government, participated in the formulation or implementation of the state's definitions, standards, criteria, policies or conduct covered by the preceding questions?
- What records are being kept on persons and groups thought to possibly pose a danger of terrorism? Who keeps them, and where? How are they retrievable? How long are they kept? What state officials or agencies have access to them? Who outside of state officials?
- How are the results of these investigations and these records used? What do state or Homeland Security officials know about how others used the information in these bulletins?

- How broadly were the accusations and characterizations in the ITRR bulletins distributed? Which government agencies received them? The FBI? Federal Department of Homeland Security? Local governments? Local police? The State Police?
 - What non-government agencies? Hospitals? Volunteer fire and ambulance companies?
 - What commercial interests, besides the natural gas affiliated agencies and their advocates? Animal testing facilities? Pharmaceutical companies? Did the same people get them every time?
- Did the state, or specifically Homeland Security, place any restrictions on the use of these bulletins or the information in them on those who received them? Or did they leave it to local agencies to decide what action they would or would not take with regard to the information?
- Why are state officials aiding gas producing companies in their public controversy over natural gas drilling? What is the specific threat of terrorism posed by the opponents of natural gas drilling that were subject to ITRR's surveillance?
- Does the state, or specifically Homeland Security, have any other contracts or other arrangements with non-governmental agencies to provide "intelligence" about "terrorism" or "threats to critical infrastructure" or anything else that might encompass protest activity, peaceful or otherwise? Who authorizes such contracts?
- How did the contract with ITRR come about? Were they recommended? Did Homeland Security go shopping for this service?
- Did Homeland Security receive information back from those who had received the bulletins, such as reports on the events listed in the bulletins?
- Did Homeland Security or any other government agency collect information on the events listed in the bulletins? Where is that information kept? How is it cataloged – by name of group, region, or individuals involved?
- Does Homeland Security or any other government agency have a list of individuals identified in relation to the events listed in these bulletins?

Four decades ago the nation was shocked and outraged by the revelation of the FBI's extensive program of investigating, infiltrating and disrupting peaceful advocacy groups. This had nothing to do with legitimate law enforcement but was a counterintelligence effort – the FBI codename was COINTELPRO – meant to undermine and defeat causes and movements FBI

Director J. Edgar Hoover didn't like. In the 1960s, Hoover's prime targets were the civil rights movement and Rev. Martin Luther King, Jr., both of which he believed were "subversive" and "communist". Any group Hoover placed in those categories was pegged for undermining, sometimes with "black bag jobs" (illegal burglaries into their offices) or violence; these included many civil rights groups, any group or anyone who opposed the Vietnam War or supported the women's rights movement and, among thousands of individuals, Albert Einstein.

The public outrage against this campaign against ordinary Americans, whose only offense was to exercise their rights of speech and association, resulted in serious change because one institution of government listened and acted – a legislative committee. There was a comprehensive congressional investigation known as the Church Committee (named for Senator Frank Church of Idaho), whose findings and recommendations ultimately forced a new era of accountability and restraint upon the FBI. (See http://en.wikipedia.org/wiki/Church_Committee, which has links to the Church Committee Report).

Today, Pennsylvania needs its own Church Committee to investigate thoroughly this trampling on the rights of Pennsylvanians, improper use of public moneys and abuse of public trust to, as we have seen over the last couple weeks, spy for an industry that the state is charged with regulating. Will this Committee conduct the housecleaning that Pennsylvania needs?