

100DAYS
to restore the constitution

white papers

Restore. Protect. Expand.

The Right to Dissent



centerforconstitutionalrights
on the front lines for social justice

Preface

The Center for Constitutional Rights is dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change.

CCR uses litigation proactively to empower poor communities and communities of color to guarantee the rights of those with the fewest protections and least access to legal resources and to train the next generation of civil and human rights attorneys.

Formed in order to work hand in hand with people's movements, CCR has lent its expertise and support to a wide range of movements for social justice. We are dedicated to defending the right to political dissent, combating the mass incarceration of both citizens and immigrants, and fighting government abuse of power. We strive to complete the unfinished civil rights movement through targeting racial profiling and other modern day manifestations of racial and economic oppression and through combating discrimination that is based on gender or sexuality.

For decades, CCR has pushed U.S. courts to recognize international human rights and humanitarian protections – and we have had groundbreaking victories that have established the principle of universal jurisdiction in this country and extended human rights standards to abuses committed by corporations and other non-government groups. CCR also, through its web site and through reports like this, works to inform lawyers, policymakers, other organizations and the public about ongoing legal and human rights violations.

This paper is one of a series published by CCR in the period leading up to the 2008 Presidential elections and beyond. Looking back at the legacy of the past eight years – and more – of torture, repression and an unprecedented expansion of executive power and elevation of an imperial presidency, this set of papers is driven by an urgent call to move forward, restore the Constitution and present a vision of justice, human rights and accountability. This vision is pressing and immediate – which is why CCR is calling upon the next President-elect to work to implement its policy prescriptions within the first 100 days of the new Administration.

Each paper in this series will explore one of the many issues of Constitutional import facing the United States, its people, and those affected by its actions around the world, and present policy prescriptions that present a vision of an accountable executive, adherence to international law and human rights, and the protection and expansion of civil rights and liberties.

This paper, “The Right to Dissent” explores the current situation of attacks upon and criminalization of dissent, from the surveillance of activists to the federalization of local law enforcement, to the labeling of activists as “terrorists.” It presents a vision for the First 100 Days of the next President’s administration that repudiates such attacks and upholds the First Amendment and our human rights.

RESTORE. PROTECT. EXPAND: THE RIGHT TO DISSENT

“Terrorism” is a word that has been exploited by the Executive branch repeatedly since 9/11 to provide rationale for going to war, unlawfully wiretapping U.S. citizens, and indefinitely detaining and torturing non-U.S. citizens in violation of the Constitution and international law. In doing so, the Executive has redirected the American people’s tax dollars away from critical domestic problems – such as

healthcare, education, and truly preventing terrorism through safeguarding nuclear material or improving airport screening. In addition, it has encouraged law enforcement agencies to abuse their powers both domestically and internationally, through targeting, torturing and detaining political activists and Muslim and Arab individuals and communities.

From the passage of the USA PATRIOT ACT in 2001 and the Animal Enterprise Terrorism Act (AETA) in 2006, to the broad usage of existing repressive legislation, such as the Anti-Terrorism and Effective Death Penalty Act of 1996, the past seven years have seen a wide-scale expansion of the use of “terrorism” descriptions, definitions and charges, particularly justifying repressive measures taken against political activists. The broad definitions of “domestic terrorism” established in the USA PATRIOT Act and “animal enterprise terrorism” established in the AETA have not effectively combated terrorism. They have, however, led to widespread abuse by the Executive and law enforcement agencies, which have used these policies as justification to investigate politically motivated activities that do not resemble terrorism in any way.

The United States government has experimented with similar legislation for more than 200 years, almost always at the expense of constitutional protections and civil liberties. The list includes the Alien and Sedition Acts of 1798, which restricted First Amendment rights and targeted immigrants with policies that are widely believed to have been unconstitutional.ⁱ The anti-Communist Palmer raids in 1919, in which executive action combined with legislation to crack down on radical leftists and immigrants,ⁱⁱ are also now considered unconstitutional, as is the Special Committee on Un-American Activities set up in 1934, which became the House Un-American Activities Committee (HUAC) after WWII. HUAC, a Congressional committee whose purpose was to investigate political thought and speech among Americans, imprisoned people who refused to answer questions about their political affiliations. Its

activities led to fear-mongering, paranoia, and blacklists that destroyed hundreds of lives and careers.ⁱⁱⁱ The preventive detention and internment of more than 120,000 Japanese Americans during WWII remains a testament to wartime excesses in racial profiling, preventive detention, and violation of civil liberties.^{iv} The FBI's secret counter-intelligence program (COINTELPRO) that illegally targeted various individuals and groups across the political spectrum, including Dr. Martin Luther King Jr., the Southern Christian Leadership Counsel, the Black Panther Party, the American Indian Movement, Daniel Ellsberg, and many others during the 1950s, 1960s and 1970s, is another example of the type of abuse that comes when the government is given overly broad powers to monitor potential "threats."^v

The Anti-Terrorism and Effective Death Penalty Act of 1996, enacted in the wake of the Oklahoma City bombing, yet containing little to no content relevant to the circumstances that produced that action, created a new category of prohibited activity - "material support" to any one of a list of organizations designated by the State Department as "Foreign Terrorist Organizations." These FTOs, which range from groups from Palestine to Colombia to the Philippines, share in common opposition to U.S. foreign policy. Within the United States, "material support" prohibitions - later expanded in the USA PATRIOT Act of 2001 - have been used to attack charitable giving and expressive political activity, particularly in exile and immigrant communities.

The USA PATRIOT Act of 2001 and the Military Commission Act of 2006 set the tone for post-9/11 erosion of civil liberties and constitutional rights. These laws, of questionable constitutionality, expand government surveillance powers, erode the right to habeas corpus, formalize the use of military tribunals rather than courts in the judicial branch, and allow for the use of coerced testimony and torture as part of military prosecution techniques.^{vi} Under these laws, much of what would traditionally be standard civil disobedience are now viewed as terrorism.^{vii} The broad language in the laws allows the government to

group nonviolent civil disobedience in the tradition of Gandhi and King together with al Qaeda, all under the single banner of terrorism. The USA PATRIOT Act opened the door to the criminalization of dissent. The Bush Administration, using these existing laws and proposing new legislation, such as the Homegrown Terrorism and Violent Radicalization bill, seeks to attack the ideological underpinnings of movements and groups that have different beliefs or engage in civil disobedience.

Today, there are already lawsuits pending against the FBI and the Justice Department challenging illegal surveillance of political activists and organizers and discriminatory policing targeting Muslims, Arabs, and South Asians. FBI agents have themselves protested that President Bush's NSA warrantless wiretapping program generates hundreds of bad leads that waste time and resources.^{viii}

On July 2, 2008, the Department of Justice announced that it is considering new "attorney general guidelines" that will allow for the use of so-called "terrorist profiles" for the FBI to open an investigation into U.S. citizens or legal residents. Currently, the FBI can only open such an investigation based on specific information. Under the new, proposed guidelines, the FBI could open an investigation based on data mining and the development of a "terrorist profile." The traits measured could include race, national or ethnic identity, religion, and political activity, as well as travel to certain areas of the world – again, targeting those with family and kinship ties to targeted areas.^{ix} The FBI is, in other words, openly putting forward a plan to make racial profiling official agency policy – the next and latest step in the systematic dismantling of constitutional protections.

Surveillance of Activists

From Quaker peace activists critical of the war on Iraq to organizers planning protest activities at major political conventions, politically active people have been affected by a dramatic rise in the quantity of

surveillance of activists, as well as the wide increase in information-sharing between local law enforcement and high-level federal security forces, particularly through the FBI's Joint Terrorism Task Forces.

The Department of Defense's TALON (Threat and Local Observation Notice) databases have been shown to contain a myriad of peaceful political activities and meetings. As revealed through Freedom of Information Act (FOIA) requests and lawsuits, a secret division of the Department of Defense, the Counterintelligence Field Activity Agency (CIFA), whose budget and expenditures are classified, had been directed to investigate "domestic terrorist" activity through use of the TALON databases. The TALON databases, set up in 2003, purportedly to monitor potential threats to Department of Defense installations within the United States, should have contained information about an alleged "threat" and whether it was judged, by the agency, to be "credible" or "not credible."^x However, the files released through FOIA and later confirmed by the department's investigators following extensive media coverage revealed that the Department of Defense went well beyond its stated mission, including sweeping surveillance of a wide variety of peaceful activities and meetings.^{xi}

Numerous events organized by the American Friends Service Committee, a Quaker organization, found their way into the TALON database, including a Quaker meeting in Lake Worth, Florida.^{xii} From student protests against military recruiters on college campuses to anti-war church services, numerous TALON reports - even those deemed by the department itself to be "not credible" - remained in the DoD's databases and files.

For example, the Rhode Island Community Coalition for Peace discovered that one of its anti-war vigils remained in the TALON database, as did a display of white crosses by Veterans for Peace in New

Mexico.^{xiii} The report on the latter action alleged that, although VFP's many prior protest actions had always been peaceful, the TALON entry stated concern that future demonstrations "could become violent."^{xiv} At least 263 anti-war and peace protests were included in the TALON database, among over 2,400 overall reports involving Americans.^{xv} TALON was not shut down until September 2007, and it is unknown if a new program has since replaced TALON.

Meanwhile, the FBI also ramped up its surveillance of peaceful protesters under the rubric of its Joint Terrorism Task Forces. In June 2002, the Joint Terrorism Task Force in Colorado Springs, Colorado recommended that the FBI open an investigation and surveillance into potential "domestic terrorism," focusing particularly on a nonviolence training taking place for a planned protest of a Colorado timber industry convention. A JTTF report included the license plate numbers of numerous protest attendees, most of whom were not arrested nor charged with any crime. Their personal data was recorded in terrorism-related FBI files solely because of their participation in peaceful protest activity.^{xvi}

A further JTTF FBI investigation was opened in 2003 in Colorado, after the FBI learned of a public local demonstration against the War on Iraq, organized by the Colorado Coalition for Middle East Peace. The FBI report, released through a Freedom of Information Act request, revealed that the agency planned surveillance of a parking area where attendees of the peaceful demonstration planned to park their cars to carpool to the demonstration, and that the FBI sought and obtained information about a web site promoting the protest, from Nextel. While the report was replete with references to "domestic terrorism," it contained no references to any actual "terrorist" or criminal activity and instead focused on websites promoting a peaceful, legal protest against the War on Iraq. JTTF agents attended protest meetings and collected intelligence on attendees.^{xvii}

Concern about such surveillance is augmented by the ways in which “domestic terrorism,” a crime defined in the USA PATRIOT Act, has been interpreted by the Department of Homeland Security. In the USA PATRIOT Act, domestic terrorism is broadly defined as activities “dangerous to human life that are a violation of the criminal laws of the United States or of any State; ‘(B) appear to be intended— “(i) to intimidate or coerce a civilian population; “(ii) to influence the policy of a government by intimidation or coercion; or “(iii) to affect the conduct of a government.”^{xviii} In an unclassified DHS bulletin from April 2006, the Department provides suggestions on how corporations can defend against “domestic terrorism” activities such as “flyer distribution,” “graffiti,” and “tying up company phone lines” committed by animal rights and environmental extremists.^{xix} Many of the actions mentioned in the bulletin are not criminal acts; they include non-violent First Amendment-protected activities.

Broad definitions such as those in the USA PATRIOT Act not only threaten constitutionally protected activities—they also cause law enforcement agencies to misdirect resources and abuse government authority. A Justice Department report published in March 2007 found widespread abuse stemming from provisions in the PATRIOT Act and criticized the FBI for improperly and, in some cases, illegally using the Act to secretly obtain personal information about people in the United States.^{xx} In June 2007, U.S. District Judge John D. Bates ordered the Justice Department to release an estimated 100,000 pages of documents pertaining to possible FBI misconduct after the agency admitted to as many as 1,000 potential violations since 2002.^{xxi} While the USA PATRIOT Act was originally passed as a tool for counter-terrorism, its provisions are frequently applied to criminal investigations that have nothing to do with terrorism.^{xxii}

The use of surveillance against activists is, of course, nothing new. In the wake of COINTELPRO, numerous restrictions were placed on law enforcement surveillance of expressive political activity, due to

the extreme threat to privacy and liberty posed by such surveillance. Nevertheless, in the past seven years, the widespread expansion of surveillance and the federalization of such surveillance activity has become a reality in many local communities.

Attacks on Protest

In addition to the surveillance efforts described above, the FBI has engaged with local law enforcement in systematic programs that threaten the right to protest. The Miami protests in 2003 against the Free Trade Act of the Americas – and the massive police presence and police violence that accompanied those protests – provide a key example of this sort of attack on political expression and protest activity.

When thousands of social justice, labor, human rights and environmental groups and organizers converged in Miami to protest the latest round of negotiations over a so-called “free trade” zone that would be established by the FTAA, they were met by thousands of officers in a militarized-style force in riot gear, in many cases with no identification. Pursuant to a joint operational plan supported by Homeland Security, more than 40 state, local and federal agencies formed the so-called “*Miami Model*” of policing mass demonstrations in the U.S. More than 40 law enforcement agencies – local, state and federal – combined in the efforts to constrain the protests in Miami. These agencies effectively swept the streets of all protestors and suspected protestors, violating the First and Fourth Amendments of the Constitution with impunity.^{xxiii}

These agencies engaged in political profiling, the pre-emptive arrests of over 300 people, and intensive surveillance of protest groups and social justice organizations, the results of which were distributed through the Department of Homeland Security to law enforcement agencies across the country. In

addition, the collaborative local/state/federal agencies policing the protest itself used a variety of dangerous “less-lethal” weapons against protestors, including batons, pepper spray, tear gas and Tasers, and targeted independent media journalists and legal observers for detention and arrest.^{xxiv}

CCR and others have filed several lawsuits against various police agencies, and in one case, *Killmon vs. City of Miami-Dade, et. al.*, a major settlement has been reached.^{xxv} Nevertheless, the so-called “Miami Model” remains as a dangerous precedent for attacks on protest and political dissent.

The Animal Enterprise Terrorism Act and the “Green Scare”

In November 2006, Congress passed the Animal Enterprise Terrorism Act (AETA), a law that amends the Animal Enterprise Protection Act (AEPA) by increasing the penalties for activities that disrupt the business of companies that exploit and abuse animals and by broadening the scope of businesses that the law protects. AETA was rushed through Congress under suspension of rules, meaning that there was no extensive debate about it and many Senators and Representatives were not even present to vote on it. The sponsors of AETA say its purpose is to crack down on violent animal and environmental rights extremists, even though there has not been a single death caused by anyone involved in an animal or environmental action. Instead, the bill criminalizes constitutionally-protected activity and chills free speech by exploiting the public’s fear of “terrorism.”^{xxvi}

It violates constitutionally protected First Amendment rights by deterring protests, leafleting, boycotts, and joining an animal rights organization. While AETA does not directly prohibit these activities, its vague, broad language scares people from participating in these activities for fear of being labeled as “terrorists.” Furthermore, the AETA fundamentally alters the course of normal criminal law for acts it defines as politically motivated, adding the element of political motivation as an aggravating criminal

factor and dramatically ramping up and federalizing penalties for civil-disobedience type actions that, prior to the AETA's passage, would be classified as minor crimes, prosecuted under state law, simply because they may be deemed to "interfere with" an "animal enterprise."^{xxvii}

Environmental activists have already faced a new onslaught of prosecutions, particularly those with "terrorism enhancements." In environmental and animal rights circles, the situation has been termed the "Green Scare," akin to the Red Scare of the past. A number of environmental activists have been tried and sentenced to enhanced sentences due to "terrorism enhancements" added solely for political reasons. In one case, that of the SHAC 7 (Stop Huntington Animal Cruelty), seven environmental and animal rights activists were tried and sentenced for "animal enterprise terrorism" for their operation of a Web site reporting various activities - both legal and illegal - taken by various activists against a corporation engaging in animal testing and research, Huntington Life Sciences. The illegal activities reported on the website generally concerned reports of property damage, or the "liberation" of animals from HLS facilities rather than any injury to human life; all of the website's reports were sent in by independent contributors. None the less, the website's operators were convicted and sentenced for their "encouragement" of political activity - not for criminal activity in and of itself, but because of its political motivations.^{xxviii}

Prior to the passage of the AETA, another environmental activist, Jeffrey "Free" Luers, was sentenced to more than 22 and a half years in prison for burning two SUVs at a dealership in Eugene, Oregon. The SUVs were later repaired and sold, and Luers' actions were estimated to have caused a total of \$28,000 in damages. Nevertheless, Luers was given a sentence widely at variance with those convicted of criminal activity, including arson - particularly without injury - seemingly based solely on the content of his political advocacy.^{xxix} His sentence was finally reduced to 10 years following an

appeal.^{xxx}

The Return of COINTELPRO

The ghost of COINTELPRO has arisen in more ways than a renewed government effort at intensive surveillance of political activists. For example, in one case – that of the San Francisco 8 – the old attacks on the Black Panther Party and the Black liberation movement, including police torture, have returned.

The San Francisco 8 are Richard Brown, Richard O'Neal, Ray Boudreaux, Hank Jones, Francisco Torres, Harold Taylor, Herman Bell, and Jalil Muntaqim. Bell and Muntaqim have been held for over 30 years in New York State prisons. The new charges against them, for the murder of a San Francisco police officer in 1971, were first thrown out in 1975, after the torture tactics of the New Orleans police were revealed.^{xxxi} In 2003, using funds earmarked by the Department of Homeland Security, the case was reopened – and in 2007, these veteran Black activists were again accused of the same crime, on the basis of the same old torture evidence.^{xxxii} In a statement released by the eight defendants, they said that, “This case represents the continuation of that COINTELPRO objective, to further indicate how the government will persecute today’s activists. The government is seeking to rewrite the history of struggle as exemplified by the BPP, venomously trying to define that legacy of struggle as a ‘terrorist’ movement. We vehemently reject that labeling, as the government attempts to characterize the San Francisco 8 as ‘terrorists,’ ‘criminals,’ and ‘wanton killers.’”

“They will never say the SF8 were political activists and progressive civil/human rights organizers. They will never say they sought to relieve the community of all forms of state sponsored terrorism that is often found in Black, Asian and Latino communities today. They will never admit to the unconstitutional practices of the FBI COINTELPRO activities, despite the 1974 Senate Church Committee findings

condemning those practices. Furthermore, they will never seek to establish remedies for those who are victims of the illegal FBI and local police actions under COINTELPRO, and now under the Patriot Act, if we don't demand they do so."^{xxxiii}

Ron Jacobs, an independent journalist, wrote that: "According to police records, the men charged were members of the Black Liberation Army (BLA). The BLA was the result of a split in the Black Panther Party and believed the time was ripe for armed struggle in the United States. Other Panthers took a different route which place more community organizing, community programs, and municipal electoral politics foremost among their strategies for self-defense of the community and black liberation. The split itself was the product of genuine ideological differences in the party, but was intentionally exacerbated by the FBI, local police Red Squads, military intelligence, state undercover police agencies and other elements of the US counterinsurgency apparatus. These agencies worked under the aegis of the COINTELPRO program—a series of FBI counterintelligence programs designed to neutralize political dissidents, primarily of the left and anarchist temperaments. Methods used in this campaign ranged from the spreading of rumors regarding individuals personal lives, putting snitch jackets on activists, publishing and planting false stories about groups and individuals involved in antiwar and antiracist activities, police raids and harassment of activists, false arrests and charges, and murder. The Black Panther Party was the target of all of the aforementioned methods, including murder. In 1971, many of its leaders were either in prison, facing prison time, in exile, or murdered by police. The FBI claimed to have ended its COINTELPRO activities in 1971, but evidence presented to the Church Senate committee investigating the excesses of the program in 1974 proved otherwise. Indeed, all that really occurred was that the program was renamed. The dissident neutralization program continues to this day under other names."^{xxxiv}

The California Attorney General's office stated that no new scientific evidence had emerged in the case; on the contrary, in the era of Guantánamo and extraordinary rendition, the old torture evidence was all that existed. The torture faced by these men included blindfolded beatings, stripping them naked and covering them in blankets soaked in boiling water, and the use of electrical prods on their genitals.^{xxxv} Now, in an age of a new acceptance of torture, surveillance and the intimidation of activists, the Department of Homeland Security and the California Attorney General's Office are trying to resurrect evidence declared inadmissible thirty years ago and set a dangerous precedent for the acceptance of torture evidence produced by police agencies – not only in Guantánamo's military commissions, but in U.S. courts.

Material Support

The 1996 Anti-Terrorism and Effective Death Penalty Act created a new class of criminal activity – “material support” of a designated “Foreign Terrorist Organization,” an organization named to a list by the U.S. State Department. Designated FTOs are diverse in their outlook and location – from Palestinian groups like the Popular Front for the Liberation of Palestine, to the Revolutionary Armed Forces of Colombia, to the Kurdistan Workers Party, to the Communist Party of the Philippines – the common ground between FTOs is their opposition to U.S. foreign policy and their engagement in armed struggle, usually against a foreign foe or their home government, rather than United States government itself.^{xxxvi}

The definition of “material support” is broad and fluid, and has been construed to include charity organizations and other entities accused of links to designated organizations. In fact, these material support provisions violate the First Amendment as they criminalize activities like distribution of literature, engaging in political advocacy, participating in peace conferences, training in human rights advocacy, and donating cash and humanitarian assistance, even when this type of support is intended only to

promote lawful and non-violent activities.

For example, the Humanitarian Law Project (HLP), which sought to provide training in Gandhian nonviolence to two designated FTOs, was told that this project qualified as “material support” in the eyes of the government. The HLP’s challenge to the law has, to date, resulted in the overturning of the act’s prohibitions on “expert assistance.”^{xxxvii}

In the refugee and asylum context, “material support” has been interpreted so broadly that it includes attending a demonstration or even the payment of ransom to designated organizations to free hostages.^{xxxviii} Within the United States, “material support” has been used against a variety of defendants, most of whom faced prosecution based on charitable donations, political advocacy, and other constitutionally protected political work.

The “material support” provisions of the 1996 AEDPA developed from Executive Orders of the Clinton Administration that prohibited financial transactions with designated “Foreign Terrorist Organizations.” These executive orders provided for freezing of funds and other restrictions on financial transactions, but not for criminal sanctions. Then-President Clinton argued that such laws were necessary to protect what he described as the “Middle East Peace Process,” sponsored by the United States in regard to Palestine, and prohibited funding of all major Palestinian groups (and one small Israeli group) who opposed the negotiations then taking place between the Palestinian Authority and Israel.^{xxxix}

However, the effect of these laws in the post-September 11 climate can barely be overstated. With various Arab and Muslim charities closed on suspicion of “material support,” rarely directly connected to a designated FTO, but, rather, to an organization accused of links to one, the “material support”

provisions in the AEDPA and expanded in the USA PATRIOT Act have created a vast chilling effect, particularly in the Arab, Muslim and South Asian community, in regard to legal political and humanitarian activity. Targets of “material support” investigations and/or prosecutions have included major charities like Benevolence International and the Holy Land Foundation, and a few high-profile “material support” prosecutions, including the cases of Palestinian American professor Dr. Sami al-Arian, Mohammad Salah and Dr. Abdelhaleem Ashqar, the Holy Land Foundation’s board, and even radical lawyer Lynne Stewart.

On the basis of the USA PATRIOT Act’s labeling of “expert advice” as material support – a provision since ruled unconstitutional – Idaho college student Sami al-Hussayen was accused of violation of the material support statute simply for maintaining a website with links where, if one followed the links, one could read materials linked to designated FTOs or originating from such organizations. The Department of Justice argued that this meant that al-Hussayen was providing “expert advice or assistance” through the creation of this website. An Idaho jury rejected these charges, recognizing that al-Hussayen’s website clearly fell within the boundaries of free speech and association.^{xi}

Since 2001, the government has unilaterally shut down 7 major Muslim charities. Their funds have been frozen indefinitely.^{xli} Nevertheless, the government’s ability to achieve convictions has been low, even when using such repressive legislation as the material support statute. However, the ripple effects on the community – and not simply the Muslim or Arab community, but all oppressed communities – cannot be understated, when, particularly combined with the upswing in surveillance and the labeling of activists as “terrorists,” political and even humanitarian activity becomes a dangerous risk rather than a protected right.

The First 100 Days: What the Next President Must Do

It is imperative that in the first 100 days of his administration, the next president take action to restore Constitutional rights and stop the attacks on dissent taking place in the name of “counterterrorism.”

The Executive has a record of combating terrorism by undermining constitutional rights and international standards. In the name of the “war on terror,” the Executive has actively tortured and abused non-U.S. citizens, has refused non-U.S. citizens the right to challenge their detention in U.S. courts, has unlawfully wiretapped Americans’ phones, and has reinterpreted the Geneva Conventions and international law to the detriment of the American public. These actions have not protected the American people from terrorism. Rather, they have damaged the lives of hundreds of thousands of non-U.S. citizens and have tarnished the United States’ moral reputation in the global community.

The U.S. Constitution, domestic criminal law, and international law already provide the government with a plethora of effective tools to investigate potential threats. There is no rationale, then, for Congress or the Executive to pursue unconstitutional avenues such as preventive and indefinite detention, torture and abuse, and unlawful surveillance in the name of combating terrorism.

The Center for Constitutional Rights specifically calls upon the next president to:

- 1. Submit draft legislation to Congress to repeal repressive legislation, including the USA PATRIOT Act, the Animal Enterprise Terrorism Act (AETA), the Anti-Terrorism and Effective Death Penalty Act (and particularly its “material support” provisions) of 1996.**

Executive leadership to not only prevent new and dangerous legislation, but also to take a clear stand to repeal old, dangerous legislation, is critical toward moving the United States away from repression and towards the restoration of the Constitution.

2. Appoint officials to the Department of Justice and the Department of Homeland Security who will institute and apply strict guidelines prohibiting surveillance and targeting of activists.

Under the Bush Administration, these departments have become a fertile ground for new surveillance policies, and a home for politically-based prosecutions. The next president must appoint officials at these departments who will focus on protecting civil rights and civil liberties, rather than devising new mechanisms to undermine them.

3. Place a policy priority on strict adherence to surveillance guidelines by the FBI, including official repudiation of racial profiling and any "attorney general guidelines" that allow for the practice.

It must become clear that in the next administration, racial profiling and abusive surveillance will not be targeted, and will, in fact, be punished and prosecuted as violations of civil and individual rights. It is time to make clear that such abuses of basic constitutional and human rights will no longer be condoned and/or promoted by the Executive.

4. Encourage the utilization of the Department of Justice's investigatory power to open investigations into government misconduct and repression.

The systematic attacks on dissent of the past period have not come about in a haphazard manner. Policies reaching to the highest levels in the Department of Justice, the Department of Defense, and the Department of Homeland Security have imperiled civil rights and civil liberties. The next president should call for a full investigation into the mechanisms by which these policies were enacted and pursued.

5. Reject any new repressive legislation and encourage its defeat by Congress, asserting the political leadership and commitment in order to do so.

The next president can and must take the political lead in opposition to any new legislation that criminalizes protected First Amendment activity. The next president should instead prioritize the promotion of legislation that points the United States in a new direction: a direction where constitutional rights and international standards are not just acknowledged but are *restored*, where loopholes for Executive abuse of constitutional rights and international standards are closed, and where avenues for accountability for prior government abuse of these rights are increased. The American people do not need an Executive that continues to misuse its authority. Rather, the American people need the Executive and Congress to work together to prohibit unlawful surveillance, stop the use of federal law enforcement against protesters, end the targeting of community organizers, protect the right to dissent and create mechanisms for accountability when laws are violated. The attacks described above are dangerous and inexcusable results of the current "counter-terrorism" policy, and they must be reversed. It is imperative that the next president take action to reverse the current executive's destruction of the United States Constitution by aggressively promoting constitutional rights and international standards.

- ⁱ Walter Berns, "Freedom of the Press and the Alien and Sedition Laws: A Reappraisal," *The Supreme Court Review*, Vol. 1970 (1970), pp. 109-159.
- ⁱⁱ William Preston, *Aliens and Dissenters: Federal Suppression of Radicals, 1903-1933*, Champaign-Urbana: University of Illinois Press, 1994.
- ⁱⁱⁱ William M. Wiecek, "The Legal Foundations of Domestic AntiCommunism: the Background of Dennis v. United States," *The Supreme Court Review*, Vol. 2001 (2001), pp.375-434.
- ^{iv} See <http://densho.org/> for more information and oral histories of those detained.
- ^v Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities.: *Intelligence Activities and the Rights of Americans*, A report published by the Senate's Church Committee 04/26/1976. Retrieved from <http://www.aarclibrary.org/publib/church/reports/book2/contents.htm> 1/31/2008.
- ^{vi} See, for example, <http://ccrjustice.org/learn-more/reports/report%3Amilitary-commissions-act-2006> for an analysis of the Military Commission Act.
- ^{vii} See, for example, Section 802 of the Patriot Act which creates a federal crime of "domestic terrorism" that broadly extends to "acts dangerous to human life that are a violation of the criminal laws" if they "appear to be intended...to influence the policy of a government by intimidation or coercion," and if they "occur primarily within the territorial jurisdiction of the United States."
- ^{viii} Lowell Bergman, Eric Lichtblau, Scott Shane, and Don Van Natta Jr., "Spy Agency Data After September 11 Led FBI to Dead Ends," *New York Times*, January 17, 2006, A1.
- ^{ix} Juan Cole, "The FBI's Plan to Profile Muslims," *Salon*, July 10, 2008. http://www.salon.com/opinion/feature/2008/07/10/muslim_profiling/
- ^x Office of the Inspector General, "The Threat And Local Observation Network (TALON) Report Program," *Department of Defense*, June 27, 2007.
- ^{xi} Chris Pifer, "Dissent Is Not Terrorism," *American Friends Service Committee*, April 22, 2007. http://www.tompaine.com/articles/2007/03/22/dissent_is_not_terrorism.php
- ^{xii} *Id.*
- ^{xiii} American Friends Service Committee, "Quaker Organization Seeks Pentagon Surveillance Files," February 1, 2006.
- ^{xiv} Eric Lichtbau and Marc Mazetti, "Military Documents Hold Tips on Antiwar Activities," *The New York Times*, November 21, 2006.
- ^{xv} Office of the Inspector General, *Ibid.*
- ^{xvi} Democracy Now!, "FBI Joint Terrorism Task Force Collected Intelligence on Peaceful Protestors in Colorado," December 15, 2005. http://www.democracynow.org/2005/12/15/fbi_joint_terrorism_task_force_collected
- ^{xvii} Michelle Goldberg, "Outlawing Dissent," *Salon*, February 11, 2004. <http://dir.salon.com/story/news/feature/2004/02/11/cointelpro/index.html>
- ^{xviii} USA PATRIOT Act 2001, Sec. 802.(a)(5) modifying U.S. Code Title 18 § 2331.
- ^{xix} Office of Intelligence and Analysis, "Preventing Attacks by Animal Rights Extremists and Eco-Terrorists: Fundamentals of Corporate Security," *Department of Homeland Security* April 13th, 2006, pg 2.
- ^{xx} Office of the Inspector General, "A review of the Federal Bureau of Investigation's Use of National Security Letters," *U.S. Department of Justice*, March 2007. Available online at <http://www.usdoj.gov/oig/special/s0703b/final.pdf>
- ^{xxi} Associated Press, "Justice Dept. told to release info about FBI records," *AP*, 06/18/2007.
- ^{xxii} Eric Lichtblau, "U.S. Uses Terror Law to Pursue Crimes from Drugs to Swindling," *The New York Times*, 09/28/2003.
- ^{xxiii} Naomi Klein, "America's Enemy Within," *The Guardian*, November 26, 2003.
- ^{xxiv} Marilyn Onisko, "Criminalization Of Dissent In The United States: Obligations Of The US Under Articles 19 And 21 Of The ICCPR," *Guild Practitioner*, Volume 63, No. 1, Winter 2006.
- ^{xxv} Tamara Lush, "FTAA Settlement Reached," *Miami New Times*, October 24, 2007.
- ^{xxvi} Civil Liberties Defense Center, "The Animal Enterprise Terrorism Act," <http://cldc.org/pdf/AETA%20trifold%20front%20back.pdf>
- ^{xxvii} Animal Enterprise Terrorism Act 2006, Sec. 2. modifying modifying U.S. Code Title 18 § 43.
- ^{xxviii} Chris Maag, "America's #1 Threat," *Mother Jones*. January/February 2006.
- ^{xxix} Gregory Dicum, "Flaming SUVs: A Conversation with Jeff Luers," *SF Gate*. June 22, 2005.
- ^{xxx} Victoria Stephens, "Jeffrey 'Free' Luers Closer to Free," *Eugene Weekly*, March 6, 2008.
- ^{xxxi} Democracy Now! "Murder Charges Against Former Black Panthers Based on Convictions Extracted by Torture," January 26, 2007. http://www.democracynow.org/2007/1/26/murder_charges_against_former_black_panthers
- ^{xxxii} Marilyn Bechtel, "Nobel Winners: 'drop charges against San Francisco 8'," *People's Weekly World*, December 8, 2007.
- ^{xxxiii} "Joint Statement from the San Francisco 8," http://www.thejerichomovement.com/images17/Joint_Statement_from_the_SF8.pdf

-
- ^{xxxiv} Ron Jacobs, "The Men The Authorities Came to Blame: The San Francisco 8," *Alternative Press Review*, February 7, 2007. <http://www.altpr.org/modules.php?op=modload&name=News&file=article&sid=732>
- ^{xxxv} Center For Constitutional Rights, "Former Black Panthers Arrested and Indicted in 1971 Homicide Charges Based on Evidence Obtained through Torture," January 23, 2007.
- ^{xxxvi} Audrey Kurth Cronin, "The 'FTO List' and Congress: Sanctioning Foreign Terrorist Organizations," *Congressional Research Service*, October 21, 2003.
- ^{xxxvii} OMB Watch, "Parts of Patriot Act Definition of Support for Terrorism Held Unconstitutional," January 8, 2008. <http://www.ombwatch.org/article/articleview/4127/1/407?TopicID=1>
- ^{xxxviii} Human Rights First, "Abandoning the Persecuted." <http://www.humanrightsfirst.info/pdf/06925-asy-abandon-persecuted.pdf>
- ^{xxxix} William J. Clinton, "Message to the Congress on Terrorists who Threaten to Disrupt the Middle East Peace Process," January 23, 1995. <http://www.presidency.ucsb.edu/ws/print.php?pid=51623>
- ^{xl} Maureen O'Hagan, "A Terrorism Case that Went Awry," *Seattle Times*, November 22, 2004.
- ^{xli} OMB Watch, "The USA PATRIOT Act and its Impact on Nonprofit Organizations," September 10, 2003. <http://www.ombwatch.org/article/articleview/1803>

centerforconstitutionalrights

666 Broadway, 7th floor, New York, NY 10012

Phone (212) 614-6489 Fax (212) 614-6422

ccrjustice.org

Acknowledgements: This paper is the work of a number of staff and associates of the Center for Constitutional Rights, in particular Chesa Boudin, Annette Warren Dickerson, Qa'id Jacobs, Lindsey Kaley, C. Lynne Kates, Lauren Melodia, Nicholas Modino, Jen Nessel, Matthew Strugar and Vincent Warren.