

PROPOSALS TO TERMINATE RESTRICTIONS ON SPYING BY LOCAL POLICE

Last year, Attorney General Ashcroft unilaterally lifted restrictions on domestic spying by the FBI that had been put in place after revelations that the government had conducted oppressive surveillance on Martin Luther King, Jr. and other civil rights leaders deemed “subversive.” Many egregious violations of civil rights and civil liberties occurred during the 1950s and 1960s at the hands of local police departments, including the New York City Police Department’s Red Squad and the Bureau of Strategic Services (BOSS), which targeted individuals and groups for surveillance and harassment based on their political or religious beliefs and associations.¹ Many state and local law enforcement agencies, some with disturbing histories of similar abuses, are party to court-supervised consent decrees arising out of legal challenges to these practices. These consent decrees prohibit illegal spying by police departments, and as such the Justice Department argues that they inhibit “effective cooperation” with the federal spying now permissible under the new Ashcroft guidelines.

The Domestic Security Enhancement Act of 2003 (Patriot II), a draft Justice Department legislative proposal, would address this problem by abolishing virtually all of these consent decrees and effectively preventing future consent decrees to oversee prohibitions on spying by local police forces.

Attorney General Ashcroft has said that the prohibitions against police spying are “a relic.” Yet just last year it was revealed that the police department of Denver was spying on many local individuals and organizations, including nuns and advocates for Native Americans. The Denver police had secretly labeled organizations like the Quaker group, the American Friends Service Committee, “criminal extremist” organizations.² The *Portland Tribune* recently uncovered evidence of widespread police spying on “a food co-op, a bicycle repair collective, and a group that was setting up a shelter for abused women.”³

Recently, New York City and Chicago have won legal battles to end consent decrees that prohibited their police from spying. But others question the efficacy of permitting police spying in the war against terrorism. Chicago authorities say the city police have yet to utilize the new spying powers and Los Angeles has not chosen to challenge its consent decree.⁴ In a recent Senate Judiciary Committee hearing, Senator Feingold (D-WI) asked Attorney General Ashcroft, “Can you cite an example of a

¹ Michael Powell, “Domestic Spying Pressed Big-City Police Seek to Ease Limits Imposed After Abuses Decades Ago,” *Washington Post*, November 29, 2002.

² ACLU of Colorado Press Release, ACLU Calls for Denver Police to Stop Keeping Files on Peaceful Protesters, March 11, 2002, available at http://www.aclu-co.org/news/pressrelease/release_spyfiles.htm (accessed February 25, 2003).

³ Dean Schabner, Big Brother Comeback? *ABC News*, January 02, 2003, http://abcnews.go.com/sections/us/DailyNews/police_spying030102.html (accessed February 25, 2003).

⁴ Michael Moss and Ford Fessenden, AMERICA UNDER SURVEILLANCE: Privacy and Security; New Tools for Domestic Spying, and Qualms, *New York Times*, December 10, 2002, available at <http://query.nytimes.com/search/article-printpage.html?res=9D05E4DF173AF933A25751C1A9649C8B63> (accessed February 25, 2003).

terrorist plot that went undetected because local police had their hands tied by a consent decree placing limits on their domestic spying capability?” Ashcroft replied, “I cannot.”