ACLU
AMERICAN CIVIL LIBERTIES UNION of NORTHERN CALIFORNIA
FOUNDATION

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Via Facsimile and U.S. Mail

Gail McGinn
Acting Under-Secretary of Defense for Personnel and Readiness
4000 Defense
The Pentagon
Washington, DC 20301-4000
Fax: (703) 571-5363

Re: DoD's Level I Antiterrorism Awareness Training

Dear Acting Under-Secretary McGinn:

It has come to our attention that the Department of Defense's Annual Level I Antiterrorism (AT) Awareness Training for 2009 misinforms Department of Defense (DoD) personnel that certain First Amendment-protected activity may amount to "low-level terrorism." We are writing to ask that you take immediate steps to remedy this situation.

Department of Defense Instruction 2000.16 requires all Department of Defense personnel to complete an annual "post-accession Level I AT Awareness Training" course, which may be accomplished through "DoD-sponsored and certified computer or web-based distance learning instruction." DoDI 2000.16 ¶ E3.25. We have been informed that the current web-based instruction course asks, as one of its multiple-choice questions, "which of the following is an example of low-level terrorism activity?" To answer correctly, the examinee must select "protests." (Enclosed is a print-out of the question in full.)

For the DoD to instruct its employees that lawful protest activities should be treated as "low-level terrorism" is deeply disturbing in and of itself. It is an even more egregious insult to constitutional values, however, when viewed in the context of a long-term pattern of domestic security initiatives that have attempted to equate lawful dissent with terrorism. Examples of this shameful pattern can be seen in the Pentagon's monitoring of at least 186 anti-military protests,[1] a North Central Texas Fusion System bulletin that states that law enforcement officers should

[1] *See* ACLU Report Shows Widespread Pentagon Surveillance of Peace Activists, *available at* http://www.aclu.org/safefree/spyfiles/28024prs20070117.html.

report anti-war protest groups in their areas,[2] the FBI's surveillance of potential protesters at the Republican National Convention,[3] the Fresno County Sheriff Anti-Terrorism Unit's covert infiltration and surveillance of Peace Fresno, a community peace and social justice organization,[4] and the covert surveillance by the Maryland State Police of local peace and anti-death penalty groups.[5]

Policing ideas, rather than criminal activities, runs counter to our nation's core principles, undermining the very foundations of the free society that the Department of Defense is dedicated to preserving. Peaceful protest is not terrorist activity;[6] it is protected by the First Amendment and is one of the cornerstones of our democratic society. *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963). As the Supreme Court noted in *Edwards*, gathering together to protest government policies is an exercise of constitutional rights "in their most pristine and classic form." *Id.* The fact that the views espoused may be unpopular or may be critical of the government is hardly a reason to treat engaging in dissent as a suspect activity. *De Jonge v. Oregon,* 299 U.S. 353, 365 (1937); *Stromberg v. California.*, 283 U.S. 359, 369 (1931). Indeed, "a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949).

Teaching employees that dissent on issues of public concern is something to be feared, rather than encouraged, is a dangerously counterproductive use of scarce security resources, making us less safe as a democracy. DoD employees cannot accomplish their mission of protecting our nation and its values unless they understand that those values encompass the right to criticize our government through protest activities. It is imperative that they are taught the difference between political, religious, or social activism and terrorism.

Because the use of these erroneous training materials apparently is already wide-spread and brings about tangible harm, we ask that the Department of Defense take immediate steps to remedy the situation both by correcting the materials before they are used further and by

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[2] *See* Fusion Center Encourages Improper Investigations of Lobbying Groups and Anti-War Activists, Salem-News.com, May 8, 2009, *available at* http://www.salem-news.com/articles/may082009/aclu_fusion_5-8-09.php.

[3] *See* Eric Lichtblau, F.B.I. Goes Knocking for Political Troublemakers, New York Times, August 16, 2004, *available at* http://www.nytimes.com/2004/08/16/us/fbi-goes-knocking-for-political-troublemakers.html.

[4] *See* ACLU and Peace Fresno Call on California Officials and Lawmakers to Investigate Surveillance of Anti-War Group, *available at* http://www.aclu.org/safefree/general/17460prs20040421.html.

[5] *See* ACLU of Maryland Lawsuit Uncovers Maryland State Police Spying Against Peace and Anti-Death Penalty Groups, *available at* http://www.aclu.org/police/spying/36025prs20080717.html.

[6] The Department of Defense defines terrorism as the "calculated use of unlawful violence or threat of unlawful violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological." Joint Publication 1-02, DoD Dictionary of Military and Associated Terms (2001).

sending out corrective materials to all DoD employees who received the erroneous training. We look forward to your prompt response outlining the steps you plan to take in this regard. Please do not hesitate to contact us if you have any questions or wish to discuss this matter further.

Very truly yours,

Ann Brick
Staff Attorney
ACLU Foundation
of Northern California, Inc.
(415) 621-2493

Michael German
National Security Policy Counsel
ACLU Washington Legislative
Office
(202) 544-1681

Enclosure

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Course Introduction

MUTE | REPLAY | TRANSCRIPT | GLOSSARY | RESOURCES

Welcome to Antiterrorism and Force Protection Level 1 Annual Refresher Training

Antiterrorism (AT) and Force Protection (FP) are two facets of the Department of Defense (DoD) Mission Assurance Program. It is DoD policy, as found in DoDI 2000.16, that the DoD Components and the DoD elements and personnel shall be protected from terrorist acts through a high priority, comprehensive AT program. The DoD's AT program shall be all encompassing using an integrated systems approach. AT Awareness training is a part of that approach. This course is certified to fulfill the AT Level I annual refresher training requirement as prescribed by DoD policy.

Be advised that within 90 days before traveling overseas, DoD personnel must receive a country-specific area of responsibility (AOR) briefing in accordance with (IAW) Combatant/Command (COCOM) AT requirements. Contact your administrative office for further details.

The average time to complete this course is about 90 minutes; however, if you are unable to complete the course in one session, you may exit out of the course by clicking **Exit Course** from the header bar. You can return to the page in the course from which you exited by clicking **Resume**.

This course contains audio. Please use the **Mute, Replay** and **Transcript** buttons from the course menu to control the audio on each page.

Click **Next Lesson** on the header bar at the top of the screen to continue.

Terrorism Threat Factors

Knowledge Check 1

Which of the following is an example of low-level terrorism activity?

Select the correct answer and then click **Check Your Answer.**

- ○ Attacking the Pentagon
- ○ IEDs
- ○ Hate crimes against racial groups
- ○ Protests

Check Your Answer Reset