

RECLAIMING OUR RIGHTS

Declaration of First Amendment Rights and Grievances



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THE AMERICAN CIVIL LIBERTIES UNION is the nation's premier guardian of liberty, working daily in courts, legislatures and communities to defend and preserve individual rights and freedoms guaranteed by the Constitution and the laws of the United States.

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Foreword:

The American Civil Liberties Union (ACLU) was founded in 1920 in response to the excesses of an earlier “crisis,” the so-called Red Scare following the First World War. Peaceful protesters were jailed for expressing their opinions. Thousands of innocent Americans were arrested in the dead of night and whisked away to secret locations, denied access to lawyers, the courts, and their family and friends. In our ongoing post-9/11 “crisis,” we are witnessing too many similar government overreactions. Now as then, speech and association have been suppressed, and dissent has been stifled. Now as then, government officials have been motivated by political self-preservation and not the security of the American people. Whether the Attorney General was A. Mitchell Palmer then or Alberto Gonzales today, their unconstitutional actions remain all too similar.

In 1984, Norman Dorsen, then-president of the ACLU, convened constitutional scholars in Washington, D.C. to discuss growing threats to a “Free Trade in Ideas.” He observed that a “laissez-faire approach” to intellectual life in America was “increasingly in short supply ... as government-imposed restrictions multiply and threaten the exchange of ideas that are indispensable to a healthy republic.” As he detailed, a burgeoning “network of laws . . . restrain open discourse; foreigners are increasingly excluded from our shores; Americans are increasingly told where they may not travel; [and] written material is more frequently censored or excluded.” In light of such threats, Norman deplored “a national administration that has proved itself capable of, to say the least, gross insensitivity to the First Amendment.”

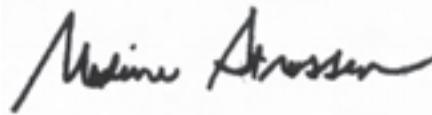
Norman’s words are prescient for today’s sad state of affairs. Nearly a quarter century later, as we meet again in Washington, D.C., our fundamental rights have eroded still further. Our government routinely subjects Americans to unconstitutional searches, unlawful surveillance, and unjustified interception of their communications. Political dissent is shut down. Whistle blowers exposing illicit activities are silenced. Travel to and from foreign countries is restricted based on ideology and association. The press is persecuted for printing the truth. Every communications medium is threatened with censorship. Illegal or embarrassing programs are hidden from judicial review, congressional oversight, and media and public scrutiny under the false guise of “state secrets.”

Information vital to self-governance is denied in defiance of open government laws. Elected officials ignore their representative mandate by governing in the shadows.

An opportunistic administration, supported by an unduly acquiescent Congress, used the September 11, 2001 attacks as a pretext to unnecessarily sacrifice liberty for the illusion of security. However, the government’s war on our freedoms began well before 9/11 – and, indeed, well before both the ACLU’s 1984 conference and the Red Scare that gave rise to the ACLU. That war has been fought throughout American history, going back to the infamous 1798 Alien and Sedition Acts, which criminalized dissent. We must not forget the lessons of history and thereby be condemned to repeat them.

Liberty and security are mutually reinforcing, not mutually exclusive. We can – and must – be both safe and free. A vibrant First Amendment – including freedoms of speech, press, religion, conscience, and association – is this nation’s greatest defense against those who would do us harm. American valor on the battlefield abroad must not be rendered meaningless by policies that undermine American values here at home.

This report, *Reclaiming our Rights: Our Declaration of First Amendment Rights and Grievances*, documents the government’s growing threat to our precious First Amendment freedoms. It is modeled after the Declaration of Independence, to highlight the importance of returning to the first principles on which our nation, and its greatness, was founded. Like the original Declaration, this one describes the most glaring examples of government policies that violate principles of liberty, equality, and democracy. This Declaration renews an urgent national conversation on ways to reclaim the First Amendment in post-9/11 America and to restore an open government of officials who are accountable to “We the People.”



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Declaration of First Amendment Rights and Grievances

When, in the course of human events, the United States government violates with impunity the people's rights under the First Amendment of the Constitution, it is the duty of the people to reclaim them. We hold these truths to be self-evident: that all individuals are created equal; that they are endowed with certain unalienable rights; that among these are freedom of speech, religion, press, and association; that to secure these rights, the government was restrained by the Constitution, deriving its limited powers from the consent of the governed; that vibrant free speech and access to government information are essential to preventing the government from destroying the people's liberties. Prudence, indeed, will dictate that the people must be vigilant against government transgressions of fundamental freedoms; and all experience has shown that the people's civil liberties are more disposed to suffer in the absence of First Amendment freedoms. But when a long train of government abuses and usurpations, pursuing invariably the same object evinces a design to reduce their liberties, it is their right, it is their duty, to reclaim those liberties, and to provide new guards for their future security. Such has been the patient sufferance of these people; and such is now the necessity, which constrains them to demand the rights to which they are entitled.

The history of the present government is a history of repeated injuries and usurpations of the First Amendment, increasingly denying the people access to information vital to their self-governance, and all having in direct object the diminishment of their civil liberties. The threat to a marketplace of ideas has never been greater. To prove this, let facts be submitted to a candid world that the United States government:

- Ignores its representative mandate by governing in the shadows.*
- Maintains a surveillance society through warrantless wiretapping, opening mail, and spying.*
- Secretly uses private parties to spy and seeks immunity to cover their illegalities.*
- Silences dissent.*
- Prevents citizens from petitioning their elected officials.*
- Profiles individuals and denies freedom of movement based on association.*
- Falsifies information to deny liberty.*
- Overclassifies, reclassifies, and impedes the lawful declassification of documents.*
- Prevents soldiers from communicating with their families and prosecutes their lawful speech.*
- Silences whistle blowers.*
- Censors the press, broadcast media, and Internet based on content.*
- Prosecutes the press for revealing illegal programs.*
- Obstructs oversight by elected officials.*
- To preserve secrecy, places secret holds on bipartisan open government legislation.*
- Funds religious programs.*
- Furthers its ideological agenda by censoring the scientific community.*

Security is compatible with liberty, and does not require limiting core First Amendment rights, including free speech, association, press, and religion.

In view of these transgressions, and because the people find themselves deprived of their most fundamental rights, we insist upon the immediate restoration of our First Amendment freedoms.

Ignores its representative mandate by governing in the shadows.

The Administration obstructs judicial review by abusing the “state secrets privilege.”¹ The government has increasingly invoked the state secrets privilege when the Congress, the public, or the courts seek information regarding questionable policies or programs by claiming the disclosure would harm “national security.” The origins of the privilege are unclear, although it was first asserted in Aaron Burr’s trial for treason, when President Jefferson unsuccessfully attempted to withhold a letter he said contained state secrets.² The Supreme Court recognized the privilege in a 1953 decision, finding it only applied when “there is a reasonable danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged.”³ It “is not to be lightly invoked”⁴ and courts cannot abdicate “judicial control” over evidence in a case “to the caprice of executive officers.”⁵ The privilege was never intended to prevent people from suing the government, but instead was meant to prevent discovery of a very narrow class of secret information.⁶ Nevertheless, the government increasingly has asserted the privilege to successfully bar claims against it,⁷ including “claims of constitutional violations of free speech and unlawful surveillance, race and gender discrimination, and retaliation for government employee whistle-blowing.”⁸

The administration is invoking the “state secrets privilege” more now than at any other time in American history. “At the height of the Cold War, the administration used the privilege only 6 times between 1953 and 1976. Since 2001, it has been used a reported 39 times – an average of 6 times per year in 6.5 years that is more than double the average (2.46) in the previous 24 years.”⁹

The administration withholds information documenting its torture.¹⁰ The government has abused the state secrets privilege to withhold documents regarding the systemic torture of detainees in places such as Afghanistan, Guantánamo Bay, and Iraq, which would reveal official policy and responsibility for condoning the abuse. The vast majority of documents have been released only following protracted and ongoing litigation and court orders directing government agencies to produce documents.¹¹ The CIA has yet to release any documents to the ACLU, an issue that is currently before the courts.¹²



The administration hides its actions in “black” budgets.

Each year, billions of dollars in congressional appropriations are secretly diverted to so-called “black” budgets. The government uses these secret budgets to keep Congress and the public in the dark about certain programs. This “slush fund” supports “a covert world of unaccountable intelligence activities, covert military/intelligence operations and classified weapons programs,” all in the name of “state secrets.”¹³ “‘Black’ programs accounted for 18 percent of the (FY) 2007 Department of Defense (DOD) acquisition funding of \$31.5 billion, requested in 2006. Classified funding has more than doubled in real terms since FY 1995.”¹⁴

¹ See American Civil Liberties Union (ACLU), Background On The State Secrets Privilege (Jan. 31, 2007), <http://www.aclu.org/safefree/general/28246res20070131.html>.

² See *United States v. Burr*, 25 F. Cas. 30 (C.C.D. Va. 1807). Chief Justice John Marshall upheld Burr’s right to subpoena the letter, saying that the court would withhold any irrelevant information that would endanger public safety if disclosed. See *id.*

³ *United States v. Reynolds*, 345 U.S. 1, 10 (1953).

⁴ *Id.* at 7.

⁵ *Id.* at 9-10.

⁶ See *id.* at 12.

⁷ See *El-Masri v. United States*, 479 F.3d 296 (4th Cir. 2007), petition for cert. filed, 75 U.S.L.W. 3663 (May 20, 2007) [No. 06-1613]. But see *ACLU v. NSA*, 438 F. Supp. 2d 754 (E.D. Mich. 2006), rev’d on other grounds, *ACLU v. NSA*, 2007 WL 1952370 (6th Cir. 2007).

⁸ Anjetta McQueen, *Security Blanket: The State Secrets Privilege Threat to Public Employment Rights*, 22 LAB. LAW 329, 331 (2007).

⁹ OpenTheGovernment.org, Secrecy Report Card 2007, at 1 (2007), available at <http://www.openthegovernment.org/otg/SRC2007.pdf>.

¹⁰ See ACLU, DIMMING THE BEACON OF FREEDOM: U.S. VIOLATIONS OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 69 (June 2006) [hereinafter DIMMING THE BEACON OF FREEDOM], <http://www.aclu.org/pdfs/iccprrreport20060620.pdf>.

¹¹ See Stipulation and Order of Aug. 17, 2004, *ACLU v. Department of Def.*, No. 04-cv-4151 (S.D.N.Y., filed June 2, 2004).

¹² See generally <http://www.aclu.org/torturefoia/legaldocuments/index.html> (FOIA legal documents seeking disclosure of government torture).

¹³ Michael E. Salla, *The Black Budget Report: An Investigation into the CIA’s ‘Black Budget’ and the Second Manhattan Project* (Nov. 23, 2003), <http://www.american.edu/salla/Articles/BB-CIA.htm>.

¹⁴ SECRECURITY REPORT CARD 2007, *supra* note 9, at 1.

Maintains a surveillance society through warrantless wiretapping, opening mail, and spying.



Big Brother is watching you.¹⁵ The Fourth Amendment protects “the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.” That right only can be overcome through a warrant issued “upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”¹⁶ Despite the plain language of the Fourth Amendment, the president claims it does not apply to him. The president “asserts that he has ‘inherent authority’ to authorize agents to intercept electronic communications without a warrant in the interest of national security.”¹⁷ The National Security Agency (NSA) listens to telephone calls, reads e-mails without warrant, and scans private telephone records. The NSA has accumulated a massive database of Americans’ private communications derived from unconstitutional interceptions.¹⁸

Even Aunt Millie’s letter to you is no longer private.¹⁹ The administration argues it can authorize opening first-class mail without a warrant. In December 2006, “President Bush signed a little-noticed statement ... asserting the authority to open U.S. mail without judicial warrants in emergencies or foreign intelligence cases, prompting warnings ... from ... privacy advocates that the administration is attempting to circumvent legal restrictions on its powers.”²⁰

Can you hear me now? Well, the government sure can.²¹ The USA PATRIOT Act reduces judicial oversight for wiretapping and increases the government’s ability to conduct wiretaps and searches. Specifically, the “Act, and Bush administration guidelines for its use, transformed [national security] letters” issued to phone companies, Internet providers, and others “by permitting clandestine scrutiny of U.S. residents and visitors who are not alleged to be terrorists or spies.”²² On September 6, 2007, a federal court struck down the secrecy provisions of the USA PATRIOT Act on First Amendment and separations of powers grounds and ordered the Federal Bureau of Investigation (FBI) to stop using national security letters.²³ The court described the provisions as “the legislative equivalent of breaking and entering, with an ominous free pass to the hijacking of constitutional values.”²⁴ The court reasoned, “The risk of investing the FBI with unchecked discretion to restrict such speech is that government agents, based on their own self-certification, may limit speech that does not pose a significant threat to national security or other compelling government interest.”²⁵ Permitting such unchecked executive power would render the courts function to a mere “symbolic act: to sing a requiem and lower the flag on the Bill of Rights.”²⁶

Illegal wiretapping knows no boundaries, not even the bounds of decency. The administration reauthorized NSA warrantless wiretapping even after Attorney General John Ashcroft, acting Attorney General James Comey, and FBI Director Robert S. Mueller determined it was illegal. In their zeal to implement the so-called “Terrorist Surveillance Program,” or TSP, then-White House Counsel Alberto Gonzales, accompanied by then-White House Chief of Staff Andrew H. Card Jr., attempted “to persuade a weakened Ashcroft to countermand Comey’s action.” At the time, Ashcroft was in a “Washington intensive care unit, where the attorney general was recovering from gallbladder surgery the day before.”²⁷



An unlawful surveillance program by any other name is still an unlawful surveillance program. The administration has named a wide range of surveillance programs it uses to watch over Americans. The FBI created the Carnivore program, an e-mail intercept program so overbroad that it routinely “resulted in the capture of communications from people not under investigation.”²⁸ The Echelon worldwide intercept system run by the NSA and its partners in Australia, Britain, Canada, and New Zealand, has been criticized for not being “adequately monitored by member nations of the European Union,” possibly resulting in “violating the privacy rights of Europeans.”²⁹ The Department of Defense’s (DOD) Threat and Local Observation Notices (TALON) similarly places Americans at risk by compiling “unconfirmed reports of suspected threats to defense facilities.”³⁰ In many cases, TALON has been used to secretly spy on Americans engaging in peaceful protest.³¹ The Transportation Security Administration (TSA) attempted to use a surveillance program called Computer Assisted Passenger Prescreening System II (CAPPS II), which would have assisted the government in combing through airline passengers’ private records for terrorist connections without any reasonable suspicion of illegal activity. The program was killed under intense pressure from consumers and civil rights groups after it became public.³² As if these surveillance programs were not enough, the president himself touted a program that encourages civilians to spy on one another. In his 2002 State of the Union speech, President Bush “issued a clarion call for Americans to join in a newly created program he called TIPS: Terrorism Information and Prevention System.... Letter carriers, utility workers, repair crews, your cable guy, and others with access to our homes were enlisted to report any activity they considered ‘suspicious.’”³³

¹⁵ See DIMMING THE BEACON OF FREEDOM, *supra* note 10, at 76-77.

¹⁶ U.S. CONST. amend. IV.

¹⁷ Ellen Nakashima, *The Legal Tangles Of Data Collection*, WASH. POST, Jan. 16, 2007, at A09.

¹⁸ Leslie Cauley, *NSA Has Massive Database of Americans’ Phone Calls*, USA TODAY, May 11, 2006, at A1; see Testimony of ACLU Washington Legislative Office Director, Caroline Fredrickson, Before the Privacy and Civil Liberties Oversight Board (hereinafter “Fredrickson Testimony”) (Dec. 5, 2006), available at <http://www.aclu.org/safefree/general/27606leg20061205.html>.

¹⁹ See Press Release, ACLU, ACLU and CNSS Seek Records on Warrantless Mail Surveillance (Jan. 22, 2007), available at <http://www.aclu.org/safefree/spyfiles/28091prs20070122.html>.

²⁰ Dan Eggen, *Bush Warned About Mail-Opening Authority; Recent ‘Signing Statement’ Seen as Stretching Law*, WASH. POST, Jan. 5, 2007, at A03.

²¹ See DIMMING THE BEACON OF FREEDOM, *supra* note 10, at 79-81.

²² Barton Gellman, *The FBI’s Secret Scrutiny*, WASH. POST, Nov. 6, 2005, at A01.

²³ See *Doe v. Gonzales*, No. 04-Civ-2614 (VM) [S.D.N.Y. filed Sept. 6, 2007], available at www.aclu.org/safefree/nationalsecurityletters/31565lgl20070906.html; see Press Release, ACLU, Federal Court Strikes Down National Security Letter Provision of Patriot Act (Sept. 6, 2007), available at <http://www.aclu.org/safefree/nationalsecurityletters/31580prs20070425.html>.

²⁴ Dan Eggen, *Judge Invalidates Patriot Act Provisions*, WASH. POST, Sept. 7, 2007, at A01 (quoting the court order).

²⁵ *Id.*

²⁶ Adam Liptak, *Judge Voids F.B.I. Tool Granted by Patriot Act*, N.Y. TIMES, Sept. 7, 2007, at 1 (quoting the court order).

²⁷ Richard B. Schmitt, *FBI chief seems to contradict Gonzales*, L.A. TIMES, Jul. 27, 2007, at A1.

²⁸ Dan Eggen, *FBI Misused Secret Wiretaps, According to Memo*, WASH. POST, Oct. 10, 2002, at A14; see Jay Stanley & Barry Steinhardt, ACLU Technology and Liberty Program, BIGGER MONSTER, WEAKER CHAINS: THE GROWTH OF AN AMERICAN SURVEILLANCE SOCIETY 9 (2003) [hereinafter BIGGER MONSTER], available at http://www.aclu.org/FilesPDFs/aclu_report_bigger_monster_weaker_chains.pdf.

²⁹ Vernon Loeb, *NSA Plans To Close Listening Station*, WASH. POST, June 3, 2001, at A12.

³⁰ Walter Pincus, *Pentagon Will Review Database on U.S. Citizens; Protests Among Acts Labeled ‘Suspicious’*, WASH. POST, Dec. 15, 2005, at A01.

³¹ See ACLU, NO REAL THREAT: THE PENTAGON’S SECRET DATABASE ON PEACEFUL PROTEST (Jan. 17, 2007) [hereinafter NO REAL THREAT], <http://www.aclu.org/safefree/spyfiles/27988pub20070117.html>; Press Release, ACLU, TALON’s End Doesn’t Stop Pentagon From Spying on Americans (Apr. 25, 2007), <http://www.aclu.org/natsec/gen/29495prs20070425.html>.

³² See Noah Shachtman, *The Man Who Helped Kill CAPPS II*, WIRED NEWS (July 19, 2004), available at <http://www.wired.com/politics/security/news/2004/07/64249>.

³³ Jim Hightower, *The TIPPING Point*, 98 TEX. OBSERVER 12 (June 2, 2006); see BIGGER MONSTER, *supra* note 28, at 10.



Secretly uses private parties to spy and seeks immunity to cover their illegalities.

Historical abuses are repeated when the government wants your private information. Congress passed the Privacy Act of 1974 following revelations of widespread abuse of privacy by the Nixon Administration.³⁴ As the Justice Department explains:

The purpose of the Privacy Act is to balance the government's need to maintain information about individuals with the rights of individuals to be protected against unwarranted invasions of their privacy stemming from federal agencies' collection, maintenance, use, and disclosure of personal information about them. The historical context of the Act is important to an understanding of its remedial purposes: In 1974, Congress was concerned with curbing the illegal surveillance and investigation of individuals by federal agencies that had been exposed during the Watergate scandal; it was also concerned with potential abuses presented by the government's increasing use of computers to store and retrieve personal data by means of a universal identifier -- such as an individual's social security number.³⁵

Nevertheless, the Justice Department and the FBI exploit a loophole in the Privacy Act to purchase information about individuals from consumer databases to illegally track their activities.³⁶ The USA PATRIOT Act has further facilitated government access and misuse of private records.³⁷

Using a law that applies to overseas surveillance to spy on Americans at home. The Foreign Intelligence Surveillance Act (FISA),³⁸ also born after the Watergate scandal, outlines the manner in which the government can secretly eavesdrop on Americans through intelligence investigations inside the United States. It was originally passed to allow the government to collect foreign intelligence information involving communications with “agents of foreign powers.” In an August 14, 2007 interview, Director of National Intelligence Mike McConnell admitted that Americans inside the U.S. are monitored under FISA warrants.³⁹

Spanking the courts for making the government comply with FISA. During the summer of 2007, it was revealed that the court overseeing FISA had placed “restrictions on the ability of U.S. spy agencies to intercept e-mails and telephone calls of suspected terrorists overseas” without warrants.⁴⁰ In response, the administration promptly railroaded through Congress, with the acquiescence of congressional leadership, sweeping amendments to FISA significantly curtailing judicial oversight. The inaptly named “Protect America Act of 2007” removes court supervision of surveillance of communications that begin or end in a foreign country.⁴¹

Rewarding officials engaged in illegal surveillance. The “Protect America Act of 2007” rewards the attorney general and director of national intelligence – the same officials responsible for conducting the illegal program stopped by the FISA court – with virtually unfettered power to authorize, for up to one year, the acquisition of communications concerning “persons reasonably believed to be outside the United States.” The Act also empowers the government to compel compliance from private companies, which are given full immunity for turning over any requested information.⁴²

The phone company really is out to get you. The NSA accesses domestic telecommunications infrastructure to secure private data on millions of innocent Americans.⁴³ The government uses national security letters to cast a wide net over phone companies to produce information about their customers.⁴⁴ Between 2003 and 2005, the FBI issued more than 143,000 national security letters demanding records without court approval and placing the letters’ recipients under gag orders.⁴⁵

Giving immunity to phone companies spying on Americans. To reward phone companies complicit in its unconstitutional wiretapping program, the administration has pushed legislation granting them blanket immunity, leaving Americans with no legal recourse.⁴⁶ The Department of Justice (DOJ) drafted provisions for the reauthorization of FISA that would grant immunity to companies that unlawfully provide private phone records to the NSA. Most disturbingly, the “bill includes complete immunity – from criminal prosecution as well as civil liability – for the telecom companies’ participation in the NSA’s illegal warrantless wiretapping program.”⁴⁷

³⁴ See 5 U.S.C. §§ 552a, *et seq.*

³⁵ U.S. Dep’t of Just., Overview of the Privacy Act of 1974, Policy Objectives, available at <http://www.usdoj.gov/oip/1974polobj.htm> (last visited Sept. 1, 2007).

³⁶ BIGGER MONSTER, *supra* note 28, at 8; see David G. Savage, *Phone Companies’ Actions Questioned in Records Flap*, L.A. TIMES, May 13, 2006, at Bus. Sec.

³⁷ See *supra* notes 21-22 and accompanying text; Editorial, *Fix the PATRIOT Act: Domestic Spying Should Give Congress Pause*, PITTSBURGH POST-GAZETTE, Dec. 30, 2005, at B6; BIGGER MONSTER, *supra* note 28, at 9; DIMMING THE BEACON OF FREEDOM, *supra* note 10, at 79-81.

³⁸ 50 U.S.C. §§ 1801, *et seq.*

³⁹ Chris Roberts, *Debate on the Foreign Intelligence Surveillance Act*, EL PASO TIMES, Aug. 22, 2007, available at http://www.elpasotimes.com/ci_6685679 (last visited Sept. 1, 2007).

⁴⁰ Greg Miller, *New limits put on overseas surveillance: The FISA court ruling raises concerns that U.S. anti-terrorism efforts might be impaired at a time of heightened risk*, L.A. TIMES, Aug. 2, 2007, at 16.

⁴¹ Protect America Act of 2007, Pub. L. No. 110-55 (Aug. 5, 2007).

⁴² See CONG. RES. SERV., CRS REPORT FOR CONGRESS, P.L. 110-55, THE PROTECT AMERICA ACT OF 2007: MODIFICATIONS TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT (Aug. 23, 2007).

⁴³ Dan Eggen, *NSA Spying Part of Broader Effort; Intelligence Chief Says Bush Authorized Secret Activities Under One Order*, WASH. POST, Aug. 1, 2007, at A01; see Fredrickson Testimony, *supra* note 18; DIMMING THE BEACON OF FREEDOM, *supra* note 10, at 76-77.

⁴⁴ See *supra* notes 21-22 and accompanying text.

⁴⁵ See Office of the Inspector Gen., U.S. Dep’t of Just., *A Review of the Federal Bureau of Investigation’s Use of National Security Letters* (March 2007), <http://www.usdoj.gov/oig/special/s0703b/final.pdf>; see Press Release, ACLU, Librarian Who Challenged NSLs Urges Congress to Fix Patriot Act (Apr. 11, 2007), available at <http://www.aclu.org/natsec/gen/29314prs20070411.html>.

⁴⁶ See Press Release, ACLU, *ACLU Demands Disclosure of Legal Documents on NSA Wiretapping, Cautions Senate Committee Against Telecom Inoculation for Domestic Spying* (May 16, 2007), available at <http://www.aclu.org/safefree/general/29753prs20070516.html>. For further discussion, see BIGGER MONSTER, *supra* note 28, at 9.

⁴⁷ Press Release, ACLU, *ACLU Warns Congress Against Broadening FISA Power* (May 1, 2007), available at <http://www.aclu.org/safefree/general/29576prs20070501.html>.

Silences dissent.



The government uses the J. Edgar Hoover playbook for monitoring political activists. A classified FBI memorandum advises law enforcement officials to monitor political demonstrations by using anti-terrorism techniques to chill speech and associational activities.⁴⁸ During the 2004 presidential campaign, agents from the Joint Terrorism Task Force (JTTF) made “visits” to the homes of several activists as well as their families and friends, to discourage political protest. JTTF agents subpoenaed their targets to testify before a federal grand jury on the same day of their planned protests, and dogged their targets through interrogations, surveillance, and intimidation. Their targets included peaceful students and even an intern with the American Friends Service Committee, a Quaker group dedicated to nonviolence.⁴⁹

Renewed use of FBI spying tactics on peaceful protesters.⁵⁰ During the infamous J. Edgar Hoover administration, hundreds of thousands of Americans were unlawfully spied upon and harassed by FBI agents solely because of their political or religious views, including civil rights scions Dr. Martin Luther King, Jr. and his wife Coretta Scott King.⁵¹ Instead of learning from these prior mistakes, the FBI is repeating history. In 2002, then-Attorney General Ashcroft replaced the old FBI investigative guidelines with a new set of guidelines that removed civil liberties protections and granted FBI agents broad spying powers. The Ashcroft guidelines encourage the FBI to infiltrate public meetings and demonstrations, including religious functions and political rallies. They provide that for “the purpose of detecting or preventing terrorist activities, the FBI is authorized to visit any place and attend any event that is open to the public, on the same terms and conditions as members of the public generally.”⁵²

Prevents citizens from petitioning their elected officials.

Muzzling peaceful protests at public events.⁵³ The administration unlawfully bars dissenters from official presidential visits, which are open to and paid for by the public. A White House staffer implemented a policy to exclude individuals perceived to be critical of the administration from public events where President Bush was present. The policy was laid out in a heavily-redacted October 2002 “Presidential Advance Manual,” which repeatedly instructs organizers about “the best method for preventing demonstrators,” “deter[ring] potential protestors from attending events,” “designat[ing] a protest area . . . preferably not in view of the event site or motorcade route,” and the like.⁵⁴ Protesters in Colorado, Oregon, Pennsylvania, and West Virginia, among others, have sued the government for using the policy to violate their freedom of speech.⁵⁵ In August 2007, the government paid Jeffrey and Nicole Rank \$80,000 for being unlawfully arrested at President Bush’s 2004 Fourth of July speech at the West Virginia state capitol. The Ranks’ only “crime” was wearing homemade t-shirts bearing the international “no” symbol (a circle with a diagonal line across it) superimposed over the word “Bush.” One t-shirt said “Love America, Hate Bush” on the back and the other said “Regime Change Starts At Home.”⁵⁶

Silencing protest in the name of “national security.” The Secret Service creates speech “exclusion zones” and runs “national security events.” “When President Bush travels around the United States, the Secret Service visits the location ahead of time and orders local police to set up ‘free speech zones’ or ‘protest zones,’ where Americans opposed to Bush policies (and sometimes sign-carrying supporters) are quarantined. These zones routinely succeed in keeping protesters out of presidential sight and outside the view of media covering the event.”⁵⁷ In the 2004 presidential campaign, both conventions were declared “national security events” to give the Secret Service greater authority to regulate protests at the events.⁵⁸



⁴⁸ FBI Intelligence Bulletin no. 89 (Oct. 15, 2003), <http://www.aclu.org/FilesPDFs/fbi%20memo.pdf>.

⁴⁹ Press Release, ACLU, ACLU Denounces FBI Tactics Targeting Political Protesters (Aug. 16, 2004), available at <http://www.aclu.org/safefree/spying/18514prs20040816.html>.

⁵⁰ See ACLU, HISTORY REPEATED: THE DANGERS OF DOMESTIC SPYING BY FEDERAL LAW ENFORCEMENT 7-9 (May 2007), available at http://www.aclu.org/images/asset_upload_file893_29902.pdf; BIGGER MONSTER, *supra* note 24, at 10.

⁵¹ MSNBC, *FBI Spied on Coretta Scott King, Memos Show* (Aug. 30, 2007), available at <http://www.msnbc.msn.com/id/20520313/>.

⁵² THE ATTORNEY GENERAL’S GUIDELINES ON GENERAL CRIMES, RACKETEERING ENTERPRISE AND TERRORISM ENTERPRISE INVESTIGATIONS 26 (May 30, 2002), available at <http://www.usdoj.gov/olp/generalcrimes2.pdf> (last viewed Aug. 3, 2007).

⁵³ See ACLU, FREEDOM UNDER FIRE: DISSSENT IN POST-9/11 AMERICA 11-13 (May 2003), available at http://www.aclu.org/FilesPDFs/dissent_report.pdf.

⁵⁴ See ACLU, *White House Policy Illegally Silences Americans Critical of Bush*, available at <http://www.aclu.org/freespeech/protest/silenced.html#>.

⁵⁵ See Complaint, *Weise et al. v. Jenkins et al.*, No. 07-515 (D. Colo. filed Mar. 15, 2007), available at http://www.aclu.org/pdfs/freespeech/weise_v_jenkins_complaint.pdf; Complaint, *Moss, et al. v. Secret Serv., et al.*, No. 06-3045 (D. Or. filed Aug. 6, 2006), available at http://www.aclu.org/images/asset_upload_file615_26078.pdf; Complaint, *Egolf v. Witmer*, No. 04-5695 (E.D. Pa. filed Dec. 9, 2004), available at <http://www.aclu.org/FilesPDFs/smoketown%20complaint.pdf>; Complaint, *Rank v. Jenkins*, No. 04-997 (S.D. W. Va. filed Sept. 14, 2004), <http://www.aclu.org/FilesPDFs/rank.pdf>; Complaint, *ACORN v. City of Philadelphia, et al.*, No. 03-4312 (E.D. Pa. filed Aug. 24, 2003), available at <http://www.aclu.org/FilesPDFs/acorn.pdf>.

⁵⁶ Press Release, ACLU, ACLU Calls Government Settlement in Anti-Bush T-Shirt Case a Victory for Free Speech (Aug. 16, 2007), <http://www.aclu.org/freespeech/protest/31331prs20070816.html>.

⁵⁷ James Boward, *Quarantining dissent, How the Secret Service protects Bush from free speech*, S.F. CHRON., Jan. 4, 2004.

⁵⁸ See Michael Slackman, *National Guard Adds Units For Convention In New York*, N.Y. TIMES, July 29, 2004, at B1; ACLU, *The Patriot Act: Where It Stands*, available at <http://action.aclu.org/reformthepatriotact/whereitstands.html> (last visited June 15, 2007).

Profiles individuals and denies freedom of movement based on association.

Spying on peaceful protestors. The administration monitors lawful and peaceful dissenters including the Quakers, the Arab American Anti-Defamation Committee, the American Civil Liberties Union, and the School of the Americas Watch.⁵⁹

Excluding ideas from the American marketplace. The administration regularly censors foreign scholars at the border based on their political ideology, religion, and associations in the name of national security.⁶⁰ In the process, the government perverts Justice Holmes' famous admonition that "Every idea is an incitement."⁶¹

Shutting down charities without evidence of unlawful activities. The government arbitrarily closes Muslim charities on unsubstantiated allegations that they divert money to terrorist organizations, without providing any explanations or evidence for their actions.⁶²

Profiling millions of innocent Americans and tracking their movements. The government maintains private data on millions of individuals through numerous programs, which raise significant privacy concerns. The programs also rely upon profiling that avoids making an individualized determination of guilt or innocence. These programs include:



⁵⁸ See Michael Slackman, *National Guard Adds Units For Convention In New York*, N.Y. TIMES, July 29, 2004, at B1; ACLU, *The Patriot Act: Where It Stands*, available at <http://action.aclu.org/reformthepatriotact/wherestands.html> (last visited June 15, 2007).

⁵⁹ See *supra* notes 53-58 and accompanying text; NO REAL THREAT, *supra* note 31, at 7; Fredrickson Testimony, *supra* note 18; DIMMING THE BEACON OF FREEDOM, *supra* note 10, at 78, 88.

⁶⁰ See Paul Berman, *Who's Afraid of Tariq Ramadan*, THE NEW REPUBLIC 37 (June 4, 2007); Fredrickson Testimony, *supra* note 18; Press Release, ACLU, U.S. Groups Renew Legal Challenge to Lift Ban on Muslim Scholar (Feb. 5, 2007), available at <http://www.aclu.org/safefree/general/28248prs20070205.html>; ACLU, *Ideological Exclusion - Censorship at the Border*, available at <http://www.aclu.org/safefree/general/21211prs20051110.html> (last viewed June 19, 2007).

⁶¹ *Gitlow v. New York*, 268 U.S. 652, 673 (1925) (Holmes, J., and Brandeis, J. dissenting).

⁶² DIMMING THE BEACON OF FREEDOM, *supra* note 10, at 86.

⁶³ Real ID Act of 2005, H.R. 418, 109th Cong. (2005); see BIGGER MONSTER, *supra* note 24, at 12-13; DIMMING THE BEACON OF FREEDOM, *supra* note 10, at 82.

⁶⁴ Leslie Cauley, *NSA has massive database of Americans' phone calls*, USA TODAY, May 10, 2006, available at: http://www.usatoday.com/news/washington/2006-05-10-nsa_x.htm; see *supra* notes 43-47 and accompanying text.

⁶⁵ The Associated Press, AP: *Feds Rate Travelers for Terrorism*, WASH. POST, Nov. 30, 2006; ACLU, *Comments to the Department of Homeland Security Regarding the Proposed Automated Targeting System* (Dec. 1, 2006), <http://www.aclu.org/privacy/gen/27593leg20061201.html> (last visited June 15, 2007).

⁶⁶ See DIMMING THE BEACON OF FREEDOM, *supra* note 10, at 77; Electronic Frontier Foundation, *Total/Terrorism Information Awareness (TIA): Is It Truly Dead?*, available at http://www.eff.org/Privacy/TIA/20031003_comments.php (last viewed July 30, 2007).

⁶⁷ Robert O'Harrow, Jr., *U.S. Backs Florida's New Counterterrorism Database; Matrix' Offers Law Agencies Faster Access to Americans' Personal Records*, WASH. POST, Aug. 6, 2003, at A01.

⁶⁸ Ellen Nakashima, *Terrorism Watch List is Faulted for Errors; Justice Dept. Official Urges Improvement*, WASH. POST, Sept. 7, 2007, at A12.

⁶⁹ See Congressional Research Service, *Fusion Centers: Issues and Options for Congress* (July 6, 2007), available at <http://www.fas.org/spp/crs/intel/RL34070.pdf>.

⁷⁰ Mimi Hall, *State-run sites not effective vs. terror*, USA TODAY, Aug. 24, 2007.

⁷¹ See Elliot Borin, *Feds Open 'Total' Tech Spy System*, WIRED, July 7, 2002, available at <http://www.wired.com/politics/law/news/2002/08/54342>; BIGGER MONSTER, *supra* note 24, at 11.

National ID cards: The REAL ID Act facilitates law enforcement's collection of data on innocent Americans by authorizing a national ID card with biometric data and computer chips.⁶³

Data mining: Without a warrant, the NSA mines data from telecommunications companies by using computer algorithms to seek patterns and information within private customer information.⁶⁴

Tracking and profiling travelers: The Department of Homeland Security (DHS) uses the Automated Targeting System to compile security ratings of American citizens and millions of travelers⁶⁵ and is involved in the Multistate Anti-Terrorism Information Exchange program (MATRIX), which compiles data on individuals with no safeguards for accuracy or challenging erroneous determinations.⁶⁶ The Matrix purports to "let authorities ... instantly find the name and address of every brown-haired owner of a red Ford pickup truck in a 20-mile radius of a suspicious event."⁶⁷ It is doubtful the MATRIX program delivers as promised. Auditors found that a similar government watch list tracking 270 million people traveling by air each month "continues to be marred by errors and inconsistencies that can obstruct the capture of terrorists or cause innocent people to be detained by U.S. authorities."⁶⁸

Community spying: The administration and states are funding "fusion-centers," which combine federal, state, local, and tribal government data with private sector information. The centers encourage civilians to be the eyes and ears of law enforcement.⁶⁹ DHS has given states \$380 million to set up the centers to help law enforcement officials. "However, the centers 'have increasingly gravitated toward an all-crimes and even broader all-hazards approach,' focusing on traditional criminals and local emergencies."⁷⁰

Big Brother's databases: The Defense Advanced Research Projects Agency (DARPA) sought to create the Total Information Awareness (TIA) program, a full-coverage database.⁷¹ The program purportedly was killed after being widely denounced by the American public.⁷² However, the program may have been reborn as Tangram, which would give the government access to vast amounts of private information about individuals.⁷³ Advanced Research and Development Activity (ARDA) is creating another so-called domestic "data-veillance" program, the Novel Intelligence from Massive Data (NIMD) program.⁷⁴ Government agencies maintain thousands of additional databases, including those of the Treasury Department, the Department of Health and Human Services, the Department of Education, and state departments of motor vehicles.⁷⁵

Profiling scorecard: The FBI is developing the System to Assess Risk (STAR), which will assign risk scores to individuals based upon profiling that purportedly will be used to identify suspected terrorists.⁷⁶

Banning travel by war protesters. The Iraqi Sanctions Regulations chill free speech and association by banning U.S. citizens from traveling to Iraq to vocalize views on the war and receive information. Although the regulations are content-neutral on their face, they have been selectively enforced against dissenters seeking to visit Iraq to protest the war and the condition of the Iraqi people.⁷⁷

Limiting speech and associational rights of foreign students. Foreign students are subject to several government screening programs including: the Student and Exchange Visitor Information System (SEVIS); the Visa Condor Program to send information regarding so-called "high risk" student visa applicants to the FBI; the Visa Mantis program to increase scrutiny of students studying majors including community development; and the National Security Entry-Exit Registration System (NSEERS). These programs require foreign students to give up their privacy and censor the debate in American universities through screening devices limiting their interaction with American students.⁷⁸

⁷² Press Release, ACLU, Congress Dismantles Total Information Awareness Spy Program: ACLU Applauds Victory, Calls for Continued Vigilance Against Snoop Programs, (Sept. 25, 2003), available at <http://www.aclu.org/safefree/general/17676prs20030925.html>.

⁷³ Shane Harris, *Terrorist Profiling*, Version 2.0, NAT'L J., Oct. 20, 2006, available at <http://nationaljournal.com/about/njweekly/stories/2006/1020nj3.htm>; see Fredrickson Testimony, *supra* note 18.

⁷⁴ See John Markoff, *Aftereffects: Electronic Surveillance*, N.Y. TIMES, May 21, 2003, at A20; Electronic Frontier Foundation, *Total/Terrorism Information Awareness (TIA): Is It Truly Dead?*, http://www.eff.org/Privacy/TIA/20031003_comments.php.

⁷⁵ See BIGGER MONSTER, *supra* note 24, at 8.

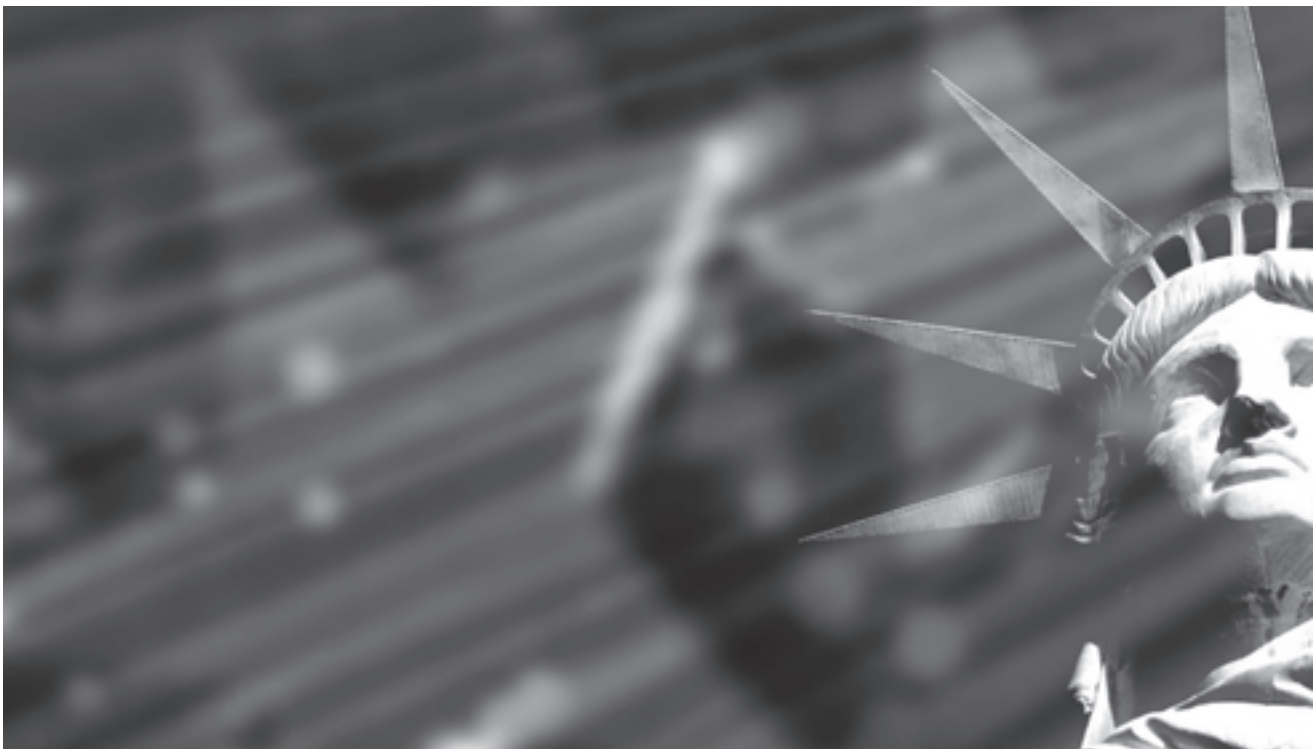
⁷⁶ See Ellen Jakashima, *FBI Plans Initiative to Profile Terrorists*, WASH. POST, July 11, 2007, at A8.

⁷⁷ See Complaint, *Clancy v. Office of Foreign Assets Control, et al.*, No. 5-580 (E.D. Wis. filed May 26, 2005), available at <http://www.aclu.org/FilesPDFs/clancy%20v%20ofac.pdf>.

⁷⁸ See Tania Simoncelli & Jay Stanley, ACLU, *SCIENCE UNDER SIEGE: THE BUSH ADMINISTRATION'S ASSAULT ON ACADEMIC FREEDOM AND SCIENTIFIC INQUIRY 12-20* (2005) [hereinafter *SCIENCE UNDER SIEGE*], <http://www.aclu.org/FilesPDFs/sciundersiege.pdf> [discussing Exec. Order No. 13,292 § 1.1(c), available at <http://www.fas.org/sfp/bush/eamend.html>].

Falsifies information to deny liberty.

Lying to Congress to conceal illegal government spying. Attorney General Alberto Gonzales made countless deceptive and misleading statements regarding his knowledge of civil liberties abuses in testimony before Congress.⁷⁹ He “assured Congress, as it nervously weighed extension of the USA PATRIOT Act, that ‘there has not been one verified case of civil liberties abuse’ under the legislation. Never mind that Gonzales had received a report six days earlier detailing the FBI’s receipt of unauthorized personal information, plus other similar reports before that.”⁸⁰ After losing the confidence of the leadership in both parties, Gonzales resigned in August 2007.⁸¹



⁷⁹ See Dan Eggen & Amy Goldstein, *Gonzales’s Truthfulness Long Disputed*, WASH. POST, Jul. 30, 2007, at A1; Dan Eggen, *FBI Chief Disputes Gonzales on Spying*, WASH. POST, Jul. 27, 2007, at A1; Press Release, ACLU, *ACLU Urges Senate to Hold Attorney General Accountable for False Testimony* (Aug. 24, 2007), available at <http://www.aclu.org/safefree/general/30932prs20070724.html>.

⁸⁰ Editorial, *Does Truth Matter Anymore?*, VIRGINIAN-PILOT & LEDGER STAR, July 15, 2007, at 8.

⁸¹ See Dan Eggen & Michael A. Fletcher, *Embattled Gonzales Resigns*, WASH. POST, Aug. 28, 2007, at A1.

Overclassifies, reclassifies, and impedes the lawful declassifications of documents.⁸²

Over-classifying at record levels. The government is classifying documents at a much higher rate today than it did prior to 2001.⁸³ “For every one dollar the government spent declassifying documents in 2006, the government spent \$185 maintaining the secrets already on the books, a \$51 increase” from 2005.⁸⁴ The number of documents declassified in 2006 was less than twenty percent of the number declassified in 1997 and a third the number declassified in 2001.⁸⁵ Much of this overclassification appears to be solely for the purpose of protecting administration officials from scrutiny.



A president, not a king. An executive order limits releasing past presidents’ documents that have no national security value. The order is so overbroad, it allows “an incumbent president to withhold a former president’s papers even if the former president wanted to make them public.”⁸⁶

The vice president claims he is not in the executive branch. The vice president refused to comply with an executive order requiring him to disclose the classified information he possesses by asserting that he is not part of the executive branch. The vice president also tried to close an office of the National Archives and Records Administration that enforces the executive order.⁸⁷

Violating the Freedom of Information Act to hide illegalities. In October 1993, former President Clinton and then-Attorney General Janet Reno issued a public-friendly interpretation of the Freedom of Information Act (FOIA). Their policy urged greater openness under the Act, “with an overall ‘presumption of disclosure,’” limited exemptions to the Act to only those cases involving “foreseeable harm,” and promoted “‘discretionary’ FOIA disclosures, to achieve the goal of ‘maximum responsible disclosure’ under the Act.”⁸⁸ Former Attorney General John Ashcroft replaced their policy with a directive narrowly interpreting FOIA to withhold all information whenever possible, even if it raised no national security concerns.⁸⁹ As a result, the government now impedes FOIA requests, often only releasing documents when sued and after years of costly appeals, withholding embarrassing information regarding administration misconduct in the name of “national security.”⁹⁰

Reclassifying declassified documents. In April 2006, the National Archives reported that over the preceding decade, at least 25,315 publicly available records were reclassified. “In August 2006, the Pentagon and the Energy Department ... stamped as national security secrets long-public numbers of U.S. nuclear missiles during the Cold War, including data from the public reports of the Secretaries of Defense in 1967 and 1971.”⁹¹

Classifying unclassified information. The administration created a new category of “sensitive but unclassified” documents, which uses only vague and undefined criteria to exclude disclosure of government information.⁹² According to a recent report, “81% of ‘Sensitive But Unclassified’ (SBU) type markings [are] just made up by agencies.”⁹³

Denying taxpaying Americans information about federal agencies. The administration restricts information on federal agency websites.⁹⁴

⁸² See Alexandra Marks, *New twist on government control of data: use of subpoenas*, CHRISTIAN SCI. MONITOR, Dec. 18, 2006, available at <http://www.csmonitor.com/2006/1218/p03s03-usju.html>; Fredrickson Testimony, *supra* note 18; SCIENCE UNDER SIEGE, *supra* note 78, at 3-6.

⁸³ SECRECY REPORT CARD 2007, *supra* note 9, at 1.

⁸⁴ *Id.*

⁸⁵ See *id.* at 5.

⁸⁶ George Lardner Jr., *Bush Clamping Down On Presidential Papers*, WASH. POST, Nov. 1, 2001, at A33.

⁸⁷ Peter Baker, *Cheney Defiant on Classified Material, Executive Order Ignored Since 2003*, WASH. POST, June 22, 2007, at A1.

⁸⁸ U.S. Dep’t of Just., FOIA Update: President and the Attorney General Issue New FOIA Policy Memoranda (Oct. 1993), available at http://www.usdoj.gov/oip/foia_updates/Vol_XIV_3/page1.htm.

⁸⁹ See Ronald Weich, ACLU, *INSATIABLE APPETITE: THE GOVERNMENT’S DEMAND FOR NEW AND UNNECESSARY POWERS AFTER SEPTEMBER 8 [2002]* [hereinafter *INSATIABLE APPETITE*], <http://www.aclu.org/FilesPDFs/insatiableappetite.pdf>; see also *DIMMING THE BEACON OF FREEDOM*, *supra* note 10, at 89.

⁹⁰ Richard Wolf, *Freedom of Information delays take years*, USA TODAY, July 17, 2007, available at http://www.usatoday.com/news/washington/2007-07-17-foia-delays_N.htm; see Statement of Anthony D. Romero, Executive Director, ACLU, on the Freedom of Information Act Before the House Government Reform and Oversight Subcommittee on Information Policy, Census, and National Archives (Feb. 14, 2007), available at <http://www.aclu.org/natsec/foia/28361leg20070214.html> (last visited June 15, 2007); *INSATIABLE APPETITE*, *supra* note 89, at 8.

⁹¹ SECRECY REPORT CARD 2007, *supra* note 9, at 7.

⁹² Karen DeYoung, *Group Will Sort Terrorism Alerts for Local Governments*, WASH. POST, Nov. 17, 2006, at A10; SCIENCE UNDER SIEGE, *supra* note 78, at 6.

⁹³ SECRECY REPORT CARD 2007, *supra* note 9, at 2.

⁹⁴ *INSATIABLE APPETITE*, *supra* note 89, at 8.

Prevents soldiers from communicating with their families and prosecutes their lawful speech.

Denying speech on government computers. The administration blocks soldiers from accessing photosharing, music, and networking websites and restricts their ability to blog on military computers. Military computers often are the only lifeline soldiers have with their family and friends back home. The restrictions are particularly pernicious because they were instituted only after the military learned that soldiers were providing unvarnished accounts of the war that conflicted with official propaganda.⁹⁵

Defending freedom abroad, denied freedom at home. The Marines prosecuted Iraqi war veterans no longer under active duty military orders for protesting the war.⁹⁶



Silences whistle blowers.⁹⁷

Persecuting government workers who report illegal activities. The administration and executive agencies routinely retaliate against government whistleblowers – people who expose government corruption – for reporting unlawful conduct.⁹⁸ They do so even though the Justice Department has reported that in the last two decades, whistleblowers helped the federal government recover over \$18 billion. In fiscal year 2006 alone, the “United States obtained over \$3.1 billion in settlements and judgments” because whistleblowers reported fraud, waste, and abuse.⁹⁹

Avoiding accountability through secrecy. The administration frequently uses the state secrets defense to avoid accountability in whistleblower litigation.¹⁰⁰

Using whistleblower initiatives to silence whistleblowers. Former Attorney General Ashcroft’s interagency task force to review leaks of classified information actively discouraged disclosure by punishing whistleblowers.¹⁰¹

⁹⁵ Dan Frosh, *Pentagon Blocks 13 Web Sites From Military Computers*, N.Y. TIMES, May 15, 2007, at 16.

⁹⁶ Tom A. Peter, *For U.S. military veterans, a free-speech dispute*, THE CHRISTIAN SCIENCE MONITOR, June 8, 2007, at 3.

⁹⁷ See Melissa Goodman, Catherine Crump & Sara Corris, ACLU, *DISAVOWED: THE GOVERNMENT’S UNCHECKED RETALIATION AGAINST NATIONAL SECURITY WHISTLEBLOWERS* (2007), http://www.aclu.org/pdfs/safefree/disavowed_report.pdf.

⁹⁸ See Catherine Rampell, *Whistle-blowers tell of cost of conscience*, USA TODAY, Nov. 23, 2006; Press Release, ACLU, *ACLU Decries Government Crackdown on Whistle-blowers, Calls Transparency Vital to American Democracy* (July 28, 2006), <http://www.aclu.org/natsec/gen/26270prs20060728.html>.

⁹⁹ SECRECY REPORT CARD 2007, *supra* note 9, at 1.

¹⁰⁰ Catherine Rampell, *‘State secrets privilege’ blocks fired translator from suing FBI*, USA TODAY, Nov. 23, 2006; Press Release, ACLU, *ACLU Challenges Government’s Use of Secrecy to Avoid Accountability in National Security Whistleblower Case* (Apr. 21, 2005), [available at http://www.aclu.org/safefree/general/17510prs20050421.html](http://www.aclu.org/safefree/general/17510prs20050421.html).

¹⁰¹ See *INSATIABLE APPETITE*, *supra* note 89, at 8.

Censors the press, broadcast media, and Internet based on content.

Press censorship.

Endangering embedded reporters. The Pentagon's policy of secrecy in Afghanistan restricts reporters' access to information and endangers them in the process.¹⁰²

Using the press as propaganda tools. The administration has propagandized news content by creating small reporter pools to control even non-sensitive information to which reporters have access.¹⁰³

Theatrical press events. The White House Press Corps has become a public-relations theater, making "the most important aspect of the briefing room ... what the White House does with it. And right now, it's more a theater for public-relations gambits and sharp-tongued sparring between press officers and reporters than a venue for substantive discussions of the president's thinking, or policy ruminations, or even breaking news."¹⁰⁴

Television censorship.

Censoring programs on cable. The Federal Communications Commission (FCC) supports content-based time channeling restrictions on cable television for undefined "excessively violent programming."¹⁰⁵

Banning words and images. Proposed legislation would ban "indecent" television content and institute an FCC "policy that a single word or image could be considered 'indecent.'"¹⁰⁶ The legislation to ban so-called "fleeting expletives" is similar to past efforts to censor the public airwaves.¹⁰⁷

FCC fining malfunctions. Following Janet Jackson's so-called "wardrobe malfunction" during the halftime show of the 2004 Super Bowl, the FCC levied dozens of fines on television stations across the country. Congress responded by increasing the fines on broadcasters for "indecent" from \$27,500 to \$375,000 per violation.¹⁰⁸ Since then, the FCC has fined networks for broadcasts including the CBS News program "The Early Show," Fox's "Billboard Music Awards," ABC's drama "NYPD Blue," and PBS's airing of the Martin Scorsese documentary, "The Blues: Godfathers and Sons."¹⁰⁹ Many television stations have engaged in self-censorship, including dozens of ABC affiliates that refused to broadcast "Saving Private Ryan" in 2004 because it contained two obscene words.¹¹⁰ In 2007, Ken Burns' film for PBS about World War II came under scrutiny by the FCC because during the 14½ hour film, three words banned by the FCC were uttered: "one starting with 's,' spoken by a veteran, and two with 'f,' used by narrator Keith David when explaining the origin of two expressions used in the era, SNAFU and FUBAR."¹¹¹

¹⁰² Peter Baker, *On their own: The Pentagon's secrecy policy has not only severely restricted access to unfiltered information about the war in Afghanistan, it has helped create an especially risky environment for the working press*, 24 AM. JOURNALISM REV. 33 (May 1, 2002).

¹⁰³ California First Amendment Coalition, et al., *Joint Statement of Principles Sent to White House, Congress*, 89 QUILL S2 (Nov. 1, 2001).

¹⁰⁴ Kenneth T. Walsh, *A New White House Press Room*, U.S. NEWS & WORLD REP., July 10, 2007.

¹⁰⁵ Fed. Comm. Comm'n Report, In the Matter of Violent Television Programming and Its Impact on Children, MB Docket No. 04-261 (adopted Apr. 6, 2007 and released Apr. 25, 2007), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-50A1.pdf.

¹⁰⁶ Protecting Children from Indecent Programming Act, S. 1780, 110th Cong., 1st Sess. (2007); Press Release, ACLU, ACLU Objects to Rockefeller's Indecency Legislation, Bill Treads on the First Amendment (Aug. 18, 2007), available at <http://www.aclu.org/freespeech/gen/30755prs20070718.html>.

¹⁰⁷ See H.R. 310, 109th Cong. (2005); H.R. 3717, 108th Cong. (2004).

¹⁰⁸ See Alexandra Marks, *With Imus ousted, will other shows clean up their acts?*, CHRISTIAN SCI. MONITOR, Apr. 16, 2007, at 1.

¹⁰⁹ See Jim Puzanghera, *TV Wants Clear Rules on What's a Bad Word*, L.A. TIMES, Apr. 30, 2006, at Bus. 1; Meg James, *Four TV Networks Challenge FCC on Indecency*, L.A. TIMES, Apr. 15, 2006, at 1.

¹¹⁰ *Id.*

¹¹¹ Roger Catlin, *Is FCC "FUBAR"? PBS Stations About to Find Out*, HARTFORD COURANT, Feb. 15, 2007, at D1.

¹¹² See Communications Decency Act of 1996 (CDA), Pub. L. No. 104-104, 110 Stat. 133 (codified in scattered sections of 47 U.S.C.); Child Online Protection Act (COPA), 47 U.S.C. § 231 (1998); Children's Internet Protection Act (CIPA), 20 U.S.C. § 7001 (2000); Child Pornography Prevention Act of 1996 (COPA), 18 U.S.C. § 2252A (1996); Deleting Online Predators Act of 2007 (DOPA), H.R. 1120, 110th Cong. (2007).

¹¹³ See *Reno v. ACLU*, 521 U.S. 844, 885 (1997) [rejecting government censorship of content in "the new marketplace of ideas," the Internet]; *Ashcroft v. ACLU*, 542 U.S. 656 (2004) [upholding a preliminary injunction of the Child Online Protection Act]; *ACLU v. Miller*, 977 F.Supp. 1228 (N.D. Ga. 1997) [granting a preliminary injunction against Georgia's Computer Systems Protection Act]; *ACLU v. Johnson*, 4 F. Supp. 2d 1029 (D.N.M. 1998) [upholding a preliminary injunction of N.M. Stat. Ann. § 30-37-3.2(A)].

¹¹⁴ See Carrie Kirby, *Feds cast a wide net with subpoenas*, S.F. CHRON., Mar. 31, 2006, at C1; Press Release, ACLU, In Two Significant Cases, ACLU Seeks to Protect Anonymous Online Speakers from Legal Intimidation (Feb. 26, 2001), available at <http://www.aclu.org/privacy/anon/15583prs20010226.html>.

¹¹⁵ *The News Hour with Jim Lehrer: Google's Privacy Fight* (PBS television broadcast Jan. 20, 2006), transcript available at http://www.pbs.org/newshour/bb/cyberspace/jan-june06/google_1-20.html.

Internet censorship.

Unconstitutional attempts to censor the Internet. Congress has passed several content-based laws restricting Internet use.¹¹² Federal courts subsequently struck down many of these laws under the First Amendment.¹¹³

Using ISPs as government spies. The government subpoenas Internet service providers (ISPs) to obtain the identities of speakers and to chill lawful speech on the World Wide Web.¹¹⁴

Using search engines as government spies. The government subpoenas search engines for lists of the requests entered during a random week with the intent to trace that information to specific Internet users. The request by the DOJ totals tens of millions of queries, in addition to seeking “one million randomly selected web addresses from various Google databases.”¹¹⁵

Prosecutes the press for revealing illegal programs.¹¹⁶

Shooting the messenger. The administration is more concerned with stopping leaks than in addressing the illegal activities the leaks reveal. President Bush stated in 2003, “if there is a leak out of my administration, I want to know who it is. And if the person has violated law, the person will be taken care of.”¹¹⁷

Compelling reporters to be government informants. To ferret out suspected leaks, the federal government has engaged in an unprecedented crusade against reporters. In 2001, the DOJ “disclosed that it had issued 88 subpoenas involving news reporters in the previous decade.”¹¹⁸ Seventeen of those “sought information about confidential sources, while others sought notes and other unpublished materials or testimony to verify what reporters had published or broadcast.”¹¹⁹

*Publish ... and perish.*¹²⁰ The government subpoenas journalists to reveal their anonymous sources and jails them for refusing to stop reports of unlawful programs or politically embarrassing information.¹²¹ As a result of the government’s aggressive efforts to muzzle journalists, the U.S. has fallen to a ranking of fifty-third in the world for press freedoms.¹²²

Punishment through subpoenas is far worse than for sedition.

Only five journalists were jailed under the Sedition Act of 1798, compared to at least thirty-one who have been jailed for refusing to identify their sources since *Branzburg v. Hayes* rejected a reporters’ privilege under the First Amendment in 1971.¹²³ But apparently subpoenas are not enough. The administration also wants to prosecute journalists under the Espionage Act of 1917 to stop them from exposing illegal government programs.¹²⁴

Dead men tell tales? The administration is not even deterred by a journalist’s death in its efforts to suppress the truth. The FBI was widely criticized for engaging in costly litigation to recover leaked documents possessed by reporter Jack Anderson, who died in December 2005.¹²⁵



San Francisco Chronicle Reporters Lance Williams (left) and Mark Fainaru-Wada (right). Photo courtesy of Darryl Bush/San Francisco Chronicle.

¹¹⁶ See James Thomas Tucker & Frank Knaack, ACLU, PUBLISH AND PERISH: THE NEED FOR A FEDERAL REPORTERS’ SHIELD LAW (2007) [hereinafter PUBLISH AND PERISH], http://www.aclu.org/pdfs/freespeech/publishperish_20070314.pdf.

¹¹⁷ The White House, *President Discusses Job Creation with Business Leaders* (Sept. 30, 2003), at <http://www.whitehouse.gov/news/releases/2003/09/20030930-9.html> (last visited Aug. 3, 2007).

¹¹⁸ Adam Liptak, *Leaks and the Courts: There’s Law, But Little Order*, N.Y. TIMES, Oct. 5, 2003, at 43.

¹¹⁹ *Id.*; see REPORTERS’ COMMITTEE FOR FREEDOM OF THE PRESS, AGENTS OF DISCOVERY: A REPORT ON THE INCIDENCE OF SUBPOENAS SERVED ON THE NEWS MEDIA IN 1997, at 1 (1999).

¹²⁰ PUBLISH AND PERISH, *supra* note 116.

¹²¹ See *Jailed reporter reaches deal in CIA leak probe*, WASH. POST, Oct. 28, 2005, available at <http://www.cnn.com/2005/POLITICS/09/30/cia.leak/index.html>.

¹²² Reporters Without Borders, Annual Worldwide Press Freedom Index (2006), available at http://www.rsf.org/rubrique.php3?id_rubrique=639 (last visited Aug. 3, 2007).

¹²³ PUBLISH AND PERISH, *supra* note 116, at ii.

¹²⁴ Walter Pincus, *Prosecution of Journalists is Possible in NSA Leaks*, WASH. POST, May 22, 2006, at A4; see Fredrickson Testimony, *supra* note 18.

¹²⁵ See *National Briefing Washington: Effort to Recover Leaked Documents Ends*, N.Y. TIMES, Jan. 5, 2007, at A14.

Obstructs oversight by elected officials.

Above the law. The administration has ignored numerous requests from Congress for information about the NSA warrantless wiretapping program.¹²⁶

Justice delayed is justice denied. The administration has failed to comply with congressional subpoenas issued as a last resort to compel a response to questions about illegal government programs. Instead, it has asked for repeated extensions while signaling that it will not fully answer the subpoenas when it does respond.¹²⁷

Nothing to hide but the truth. The administration has disregarded congressional subpoenas regarding politically motivated U.S. attorney firings and unlawful politicization of career DOJ positions. As the New York Times reported, “The Bush Administration’s disregard for the rule of law hit another low ... when Harriet Miers, the former White House counsel, defied a congressional subpoena. Ms. Miers ... refused even to show up at the Capitol. A second former official, Sara Taylor, did testify, but she inappropriately invoked executive privilege to dodge key questions.”¹²⁸

To preserve secrecy, places secret holds on bipartisan open government legislation.

What is a “hold”? A hold is an “informal practice by which a Senator informs his or her floor leader that he or she does not wish a particular bill or other measure to reach the floor for consideration. The Majority Leader need not follow the Senator’s wishes, but is on notice that the opposing Senator may filibuster any motion to proceed to consider the measure.”¹²⁹

FOIA-destroya. Senator Kyl has stalled the Openness Promotes Effectiveness in our National Government Act (the “OPEN Government Act”), S. 849, which would amend the FOIA to “set firm time restrictions for agency responses, require reports to Congress on how agencies handled requests, allow recovery of legal fees ... and create an ombudsman to resolve disputes” with public agencies.¹³⁰ Senator Kyl is acting on behalf of the United States Department of Justice, which wants to preserve secrecy by narrowing the disclosure requirements under FOIA.¹³¹ In place of S. 849, Senator Kyl has proposed an amendment supported by DOJ that would criminalize leaks.¹³²



¹²⁶ See Elana Schor, *White House lets Leahy's deadline pass*, THE HILL, Aug. 20, 2007, available at: <http://thehill.com/leading-the-news/white-house-lets-leahys-deadline-pass-2007-08-20.html>; ACLU, *Subpoena Watch: Will the White House Answer Congress' Demands?*, <http://www.aclu.org/safefree/spyingsubpoenas/index.html> (last viewed July 18, 2007).

¹²⁷ See James Risen, *Extension on Subpoenas*, N.Y. TIMES, July 18, 2007, at A15.

¹²⁸ Dan Eggen & Paul Kane, *Former White House Aides Limit Testimony To Congress on U.S. Attorney Firings*, WASH. POST, July 11, 2007; see Editorial, *Contempt for Congress*, N.Y. TIMES, July 14, 2007.

¹²⁹ See Senate Democrats, “Reid, Feinstein, Lieberman Announce Most Sweeping Ethics, Lobbying Reform In Generations” (July 30, 2007) (promoting the Honest Leadership and Open Government Act of 2007), available at <http://democrats.senate.gov/newsroom/record.cfm?id=280015&>; S. Res. 244, 107th Cong. 2d Sess. (Apr. 17, 2002) (introduced by Republican Senator Charles Grassley and Democratic Senator Ron Wyden), available at <http://www.fas.org/sgp/congress/2002/s041702.html>.

¹³⁰ Editorial & Comment, *Time for a Vote: Arizona Senator should lift roadblock to improved Freedom of Information Act*, COLUMBUS DISPATCH, July 29, 2007, at 4G.

¹³¹ *Id.*; see Press Release, Sen. Patrick Leahy, *Leahy Presses For Passage Of FOIA Reforms, Urges Secret Hold On Bill Be Lifted* (May 24, 2007), <http://leahy.senate.gov/press/200705/052407.html>; Mike Madden, *Kyl Blocked Passage of Public-Information Bill*, ARIZ. REPUBLIC, June 2, 2007, at 12.

¹³² *Sen. Jon Kyl unmasked (off the record)*, ST. LOUIS JOURNALISM REV., June 1, 2007, at 7.

Funds religious programs.

The administration is keeping the fundamentalist Christian faith. The administration’s “faith-based initiative” funds religious social service programs and permits – and even encourages – recipients to engage in religious discrimination in their hiring practices.¹³³

Abstaining from health education. A former surgeon general testified that the administration censored his speech about abstinence-only programs, stem-cell research, emergency contraception, and abortion.¹³⁴

When it comes to sex, ignorance is not bliss. The Center for Disease Control (CDC) removed information about comprehensive sex education from its website and disinvited speakers from a conference who would question abstinence-only policy.¹³⁵

Religion trumps science. The “National Institutes of Health questioned 157 researchers on sexuality and HIV/AIDS, whose research projects had already been screened by a rigorous peer review process, after the Traditional Values Coalition charged that their work was a ‘total abuse of taxpayer dollars.’ NIH claimed the inquiry was to ‘put the research into the context of the agency’s scientific mission’; researchers perceived it as politically-motivated harassment.”¹³⁶

Millions for abstinence, not one cent for health education. Congress has allocated over half a billion dollars to abstinence-only programs but no funds to comprehensive sex-education programs since 1997.¹³⁷

When it comes to contraception, the FDA does not have a Plan B. The administration refused to approve Plan B, an emergency contraceptive, despite the Food and Drug Administration’s (FDA) finding that it is safe and effective. “By law, the Food and Drug Administration is required to approve drugs that are found to be safe and effective. Even after FDA’s scientific staff and two independent FDA scientific advisory committees concluded that Plan B, the emergency contraceptive, is safe and effective, Steven Galson, acting director of FDA’s Center for Drug Evaluation and Research at the FDA, refused to approve it. The Government Accountability Office reported that the rejection was highly unusual and that top political appointees at the agency were involved in the decision.”¹³⁸



¹³³ Bill Sizemore, *Religious charities putting their faith in federal money*, PROVIDENCE J., Jan. 28, 2006, available at: http://www.projo.com/religion/content/projo_20060128_rifaith28.21cfd41a.html; DIMMING THE BEACON OF FREEDOM, *supra* note 10, at 83-87.

¹³⁴ Ricardo Alonso-Zaldivar, *Surgeons general rue politics: 3 past officials tell House of interference*, BALTIMORE SUN, July 11, 2007; see Julie Kay, Op. Ed., *The Politics of Sex*, BOSTON GLOBE, July 16, 2007.

¹³⁵ Knowledge Project, National Coalition Against Censorship, POLITICAL SCIENCE: A REPORT ON SCIENCE & CENSORSHIP 7-8 (2007) [hereinafter POLITICAL SCIENCE], available at www.ncac.org/science/political_science.pdf.

¹³⁶ See also *id.* at 9 (citing *Sex, AIDS Research Under Scrutiny*, CBS News/AP, Oct. 28 2003, <http://www.cbsnews.com/stories/2003/10/28/health/main580425.shtml>).

¹³⁷ Cynthia Dillard, *Abstinence Promotion and Teen Family Planning: The Misguided Drive for Equal Funding*, 5 THE GUTTMACHER REP. ON PUB. POLY #, (2002), available at <http://www.guttmacher.org/pubs/tgr/05/1/gr050101.html>; ACLU Memorandum to Interested Persons Regarding Abstinence-Only-Until-Marriage Programs (Mar. 1, 2006), available at <http://www.aclu.org/reproductiverights/sexed/24541leg20060301.html>.

¹³⁸ POLITICAL SCIENCE, *supra* note 135, at 9 (citing Union of Concerned Scientists, *Scientific Integrity at Risk: The Food and Drug Administration*, available at http://www.ucsusa.org/assets/documents/scientific_integrity/Scientific-Integrity-at-Risk-FDA.pdf); see Marc Kaufman, *Decision on Plan B Called Very Unusual*, WASH. POST, Oct. 13, 2005, final ed., at A9; 25 U.S. Gov’t Accountability Off., *Abstract: Food and Drug Administration: Decision Process to Deny Initial Application for Over-the-Counter Marketing of the Emergency Contraceptive Drug Plan B Was Unusual*, Nov. 14, 2005, GAO-06-109, <http://www.gao.gov/docsearch/abstract.php?rptno=GAO-06-109>.

Furtherers its ideological agenda by censoring the scientific community.

See no evil, hear no evil, speak no evil on global warming. The administration prohibits scientists from presenting scientific evidence that global warming is escalating and retaliates against those who do. “Dr. James Hansen, one of the nation’s foremost climate scientists, disclosed that officials at NASA reviewed his upcoming lectures and papers and screened media requests for interviews with him. He was warned that there would be ‘dire consequences’ if he continued to make statements that global warming is escalating.”¹³⁹ As former Surgeon General Dr. Richard H. Carmona explained in a House hearing “Anything that doesn’t fit into the political appointees’ ideological, theological or political agenda is ignored, marginalized or simply buried.”¹⁴⁰

An unfavorable climate for climate change. The government deletes, suppresses, dilutes, and alters information on climate change.¹⁴¹

A perfect storm of censorship. The National Oceanic and Atmospheric Administration (NOAA) “suppressed a fact sheet suggesting that global warming was contributing to the frequency and strength of hurricanes. The journal *Nature* quoted NOAA Administrator Conrad Lautenbacher as saying that the document ‘could not be released because the agency cannot take an official position on a field of science that is changing so rapidly.’”¹⁴²

Don’t bite the hand that feeds you. The Smithsonian Institution watered down a climate change exhibit, claiming that “it would cause a stir in Congress and the White House.”¹⁴³

Air quality is not the only thing polluted. In September 2002, the White House altered the Environmental Protection Agency’s (EPA) discussion of climate change in its annual air pollution report to try to refute scientific evidence of global warming.”¹⁴⁴



Environmental intimidation. The administration pressures environmental scientists to change their findings and ignores their recommendations.

Mercury rising? Not at the White House. “In February 2005, the EPA inspector general reported that agency scientists had been pressured to change their scientific findings about risks from mercury. The former director of EPA’s Air Enforcement Division complained that ‘The new mercury rules were hatched at the White House; the Environmental Protection Agency’s experts were simply not consulted at all.’”¹⁴⁵

Scientists as an endangered species. “Complaints by staff scientists that a senior political appointee in the Interior Department consistently overruled their recommendations regarding enforcement of the Endangered Species Act has triggered an as-yet unfinished investigation by the agency’s inspector general. The *New York Times* concluded from the edited reports that the official deferred to industry views and failed to provide a scientific basis for her criticisms of scientific conclusions.”¹⁴⁶

¹³⁹ POLITICAL SCIENCE, *supra* note 135, at 6 (citing Andrew C. Revkin, *Climate Expert Says NASA Tried to Silence Him*, N.Y. TIMES, Jan. 29, 2006, late edition, at A1).

¹⁴⁰ Alonso-Zaldivar, *supra* note 134.

¹⁴¹ POLITICAL SCIENCE, *supra* note 135, at 7 (citing Andrew C. Revkin & Katherine Q. Seelye, *Report by E.P.A. Leaves Out Data on Climate Change*, N.Y. TIMES, June 19, 2003, late edition, at A1).

¹⁴² *Id.* (citing Climate Science Watch, *Why the Administration buried a NOAA scientist’s statement on hurricanes and climate*, <http://www.climate-science-watch.org/index.php/csw/details/noaa-scientists-statement/>).

¹⁴³ *US climate exhibit ‘toned down,’* AL JAZEERA, May 25, 2007; ACLU, *ACLU Decries Scientific Censorship at Smithsonian* (May 23, 2007), <http://www.aclu.org/freespeech/gen/29862prs20070523.html>.

¹⁴⁴ POLITICAL SCIENCE, *supra* note 135, at 7 (citing Andrew C. Revkin & Katherine Q. Seelye, *Report by E.P.A. Leaves Out Data on Climate Change*, N.Y. TIMES, June 19, 2003, late edition, at A1).

¹⁴⁵ *Id.* at 8 (citing UCS Author interview with Bruce Buckheit, March 2004).

¹⁴⁶ *Id.* (citing Juliet Elperin, *Bush Appointee Said to Reject Advice on Endangered Species*, WASH. POST, Oct. 30, 2006, final edition, at A3; Felicity Barringer, *Interior Aide and Biologists Clashed Over Protecting Bird*, N.Y. TIMES, Dec. 5, 2004, late edition, at 38).

Scientific permission slips. The administration requires scientists to seek permission to participate in international health panels and to advocate U.S. policy.

Cheerleading policy instead of advocating science. The Department of Health and Human Services requires scientists to obtain approval before participating on scientific panels convened by United Nations organizations, such as the World Health Organization. “Government scientists were also told that they would have to agree to advocate U.S. policy if they wanted to attend WHO meetings.”¹⁴⁷

Losing privileges to attend scientific conferences. “After the administration’s abstinence-only policy was protested by some participants at the International AIDS Conference in 2002, the number of scientists allowed to participate in 2004 and 2006 was dramatically cut, going from 236 in 2002 to only 50 scientists allowed to attend in 2004 and 2006. Many of those permitted to attend were ‘bureaucrats ... rather than the leading scientists.’”¹⁴⁸

Environmentalists lose their allowances. The government cuts and threatens to cut funding for environmental programs.



Denying access to unfavorable information. “The White House slashed the EPA library networks budget by 80%, forcing many of its ten regional libraries to close. The library closings severely undercut access to EPA reports, guidance and technical documents. The collections contained otherwise inaccessible copies of documents on federal Superfund hazardous waste sites, water-quality data, and the health of regional ecosystems.”¹⁴⁹

Punishing agencies for releasing environmental reports criticizing industry practices. “The Fish Passage Center, an agency that counts endangered salmon in the Columbia River to assess the impact of dams on their survival, had its funding threatened after a federal court cited its data in a ruling that angered the hydroelectric industry. Senator Larry Craig (R-Idaho), who had been named ‘Legislator of the Year’ by the American Hydropower Association, led the effort to defund the Center, accusing it of producing ‘false science’ and ‘data cloaked in advocacy.’”¹⁵⁰

¹⁴⁷ POLITICAL SCIENCE, *supra* note 135, at 6 (citing Michael Specter, Political Science: *The Bush Administration’s war on the laboratory*, THE NEW YORKER, Mar. 13, 2006, at 58-69).

¹⁴⁸ *Id.* at 6 (citing David Brown, *U.S. Cuts Number of Delegates to World AIDS Meeting*, WASH. POST, July 9, 2004, at A17; Peter Calamai, *Politics Joins Scientists at AIDS Meeting*, TORONTO STAR, July 22, 2006, at A19).

¹⁴⁹ *Id.* at 9 (citing Christopher Lee, *Budget Cut Would Shutter EPA Libraries*, WASH. POST, May 15, 2006, at A15).

¹⁵⁰ *Id.* at 9 (citing Blaine Harden, *Court Rejects Senator’s Bid To Eliminate Fish Agency*, WASH. POST, Jan. 25, 2007, at A12).

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

-First Amendment to the U.S. Constitution.



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