Repressing “Un-American Activities”: The Historical Roots of Today’s Homeland Surveillance State

By Greg Guma
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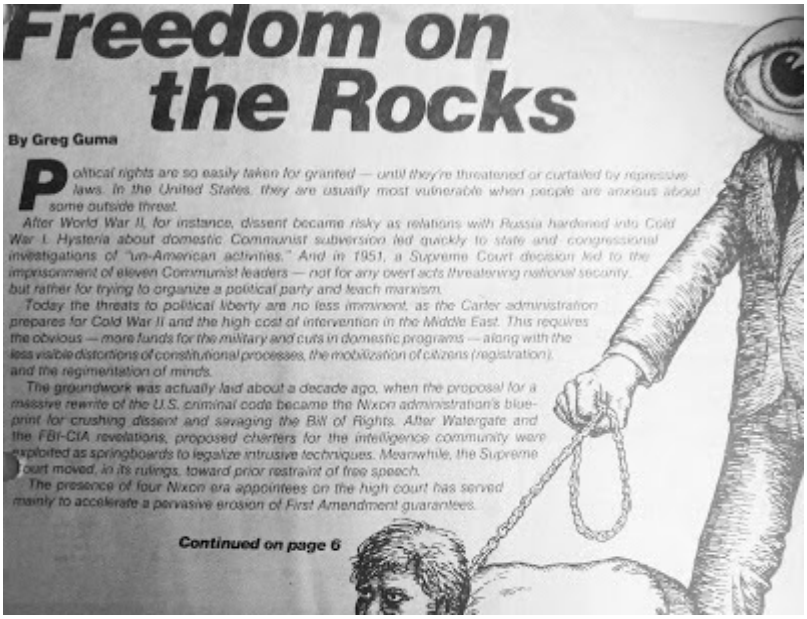
The groundwork was actually laid when a proposal for a massive rewrite of the US criminal code became the Nixon administration’s blueprint for crushing dissent and savaging the Bill of Rights. After Watergate and FBI-CIA revelations, proposed charters for the intelligence community were exploited as springboards to legalize intrusive techniques. Meanwhile, the Supreme Court moved toward prior restraint of free speech.
Prior restraint of the press became government policy in March 1979 when The Progressive magazine was prevented from publishing an article on the H-bomb. The ban succeeded for six months, on grounds that the 1954 Atomic Energy Act gave the government the right to suppress nuclear knowledge. Although the case was eventually dropped, the law may very well be used again.



Freedom on the Rocks

By Greg Guma

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Today the threats to political liberty are no less imminent, as the Carter administration prepares for Cold War II and the high cost of intervention in the Middle East. This requires the obvious — more funds for the military and cuts in domestic programs — along with the less visible distortions of constitutional processes, the mobilization of citizens (registration), and the regimentation of minds.

The groundwork was actually laid about a decade ago, when the proposal for a massive rewrite of the U.S. criminal code became the Nixon administration's blueprint for crushing dissent and savaging the Bill of Rights. After Watergate and the FBI-CIA revelations, proposed charters for the intelligence community were exploited as springboards to legalize intrusive techniques. Meanwhile, the Supreme Court moved, in its rulings, toward prior restraint of free speech.

The presence of four Nixon era appointees on the high court has served mainly to accelerate a pervasive erosion of First Amendment guarantees.

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Support from other publications was slow in coming, possibly because the case involved a small Wisconsin monthly rather than a daily giant like The New York Times' publication of the Pentagon Papers. The press gag ended only when other researchers found and printed the same "secrets."

Even though the government dropped its case, it asserted that the section on violating national security secrets in the Atomic Energy Act would continue to be enforced, one of several "loaded pistols aimed at the First Amendment," as writer Nat Hentoff put it.

In February 1980, the Supreme Court ruled, in the case of ex-CIA agent Frank Snepp, that government agencies have the right to restrict publication of national security information – even if the material is unclassified – when the book or article has been produced by a government worker with access to "confidential sources."

The Court had effectively usurped the lawmaking powers of Congress and gone a long way toward enacting an American version of the British Official Secrets Act. In a letter to The New York Times, Harvard Law Professor Alan Dershowitz, who was working with Ted Kennedy at the time, said that an Official Secrets Act might not be needed since "we have one now."

The decision went further that penalizing one CIA employee for breaking his contract. Any government worker in a relationship of trust with his agency, whether or not a written agreement exists, could have rights to speech diminished. The high court, with four Nixon appointees in the majority, buttressed lower court decisions involving CIA censorship of ex-agent Victor Marchetti. That case dealt with classified material, and the Court set up a powerful precedent for prior restraint that violated the public's right to know.

In the 1950s and afterward, the intelligence community saw itself in a war with those who supposedly threatened the existing social order. Programs conducted in the heat of the Cold War ranged from, multi-million dollar covert actions worldwide – secret support for pro-American political parties, destabilization of "unfriendly" regimes, arms transfers, training and propaganda – to a wide range of domestic "counter-intelligence" efforts.

Americans were shocked to learn that the FBI, CIA, National Security Agency (NSA) and others had conducted massive campaigns of spying and subversion directed at American citizens, most of whom had never committed any crimes.

After the revelations of the mid-1970s Congress moved toward defining a set of standards, to be codified in several laws. But by the time the first of these, the Foreign Intelligence Surveillance Act (FISA) was passed in 1978, the mood had already changed. There was little objection when CIA Director Stansfield Turner nullified regulations banning the use of journalists, academics and the clergy in intelligence work.

Under a 1978 Presidential order on intelligence work, an investigation or covert project could be initiated if a person was “reasonably believed” to be involved in activities which may or may not involve legal violations, or was aiding or conspiring in these possible activities. Reasonable belief as a standard does not require concrete evidence that a law is being broken. The “potential” for a threat can be enough.

As pressures for action in the Middle East mounted, President Carter asked for a freer rein in initiating programs (the CIA was already supplying arms to rebels in Afghanistan, according to several sources). Carter also wanted less public access to CIA information. One proposal was to bar US citizens from obtaining information about any program that didn’t directly involve the individual.

Critics of this exemption to the Freedom of Information Act (FOIA) said it would damage historical and journalistic research and informed public debate. Yet, in a hasty reaction to international tensions, congressional oversight and an independent check of intelligence operations became another casualty of the obsession with “national security.”

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