

Attorney General Bill Lockyer
1300 I. Street, 1740
P.O. Box 944255
Sacramento, CA 94244

May 20, 2003

Re: California Anti Terrorism Information Center

Dear Attorney General Lockyer,

For the past year and a half, the American Civil Liberties Union has been cautioning you and your administration about the grave dangers to our basic freedoms posed by loosened standards for intelligence gathering and, among other things, the California Anti-Terrorism Information Center. Each time we raised concerns, we were assured by you and by your staff that important civil liberties, including California's constitutional right to privacy, would not be sacrificed in the process.

It is against this backdrop that we write to express our utter dismay over revelations reported in the *Oakland Tribune* on May 18 that, rather than being used exclusively to combat terrorism, CATIC "since Day One" has been used to gather and analyze information on protest activity and activists. From anti-war protests to critical mass rides, the *Tribune* documents how CATIC is being used to "compile dossiers" on a wide range of organizations.

Are Anti-War Protesters Terrorists?

Even more disturbing than the disclosure that such information is being gathered and disseminated to law enforcement officials throughout the state, is the opinion shared by those in CATIC regarding the range of activity classified as "terrorist." Shortly following September 11, 2001, Attorney General John Ashcroft testified before the Senate Judiciary Committee that those who raise their voices in dissent aid terrorists when he stated:

To those who scare peace-loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists, for they erode our national unity

and diminish our resolve. They give ammunition to America's enemies and pause to America's friends.

CATIC spokesperson Mike Van Winkle appears to have gone even further than Mr. Ashcroft in equating anti-war protests with terrorism itself. According to the *Oakland Tribune*, Mr. Van Winkle said:

You can make an easy kind of link that, if you have a protest group protesting a war where the cause that's being fought against is international terrorism, you might have terrorism at that (protest). You can almost argue that a protest against that is a terrorist act.

Further, the range of activity classified as terrorist by CATIC plainly goes beyond violence and, in fact, encompasses a broad range of activity that includes virtually any protest activity. Again, Mr. Van Winkle:

I've heard terrorism described as anything that is violent or has an economic impact, and shutting down a port certainly would have some economic impact. Terrorism isn't just bombs going off and killing people.

The range of protest activity that has an "economic impact" is so broad that it would include boycotts or strikes launched by labor unions, peaceful civil disobedience by civil rights protesters, or, in this most recent circumstance, a peaceful anti-war picket at the Oakland Port. Is it the position of the Justice Department that such activity is, in fact, terrorist?¹ Should law enforcement agencies be giving CATIC bulletins additional weight in determining the level of force to use in response to protest activity as appears may have happened at the Port of Oakland on April 7, 2003?

The threat posed by an unregulated or under regulated CATIC is heightened in light of the re-writing of the federal intelligence guidelines by Attorney General Ashcroft last May. As you well know from our prior correspondence, these guidelines allow federal agents to monitor political and religious activity in the absence of any suspicion. Federal agents may now attend peaceful protests to see who is saying what and who is associating with whom. We need only go back to the 1960's and 70's in this state and this country's history to chronicle the gross abuses that occurred as a result of unfettered intelligence gathering.

Failure to Respond to Concerns

We have conveyed these concerns to you and your office in a number of different ways and on a number of different occasions. On November 5, 2001 ACLU attorneys met with your staff regarding CATIC. We sent you a letter on November 26, 2001 outlining

¹ On previous occasions, you have written that federal regulations requiring reasonable suspicion before entry into CATIC provide a necessary check on abuses; however, as the *Oakland Tribune* article indicates, even minor acts such as "causing a traffic jam" can be used as a criminal predicate. This provides very little protection, since any planned civil disobedience – even a sit in – has *some* criminal predicate.

our initial concerns including the need for “explicit policies and training regarding the improper consideration of individual’s protected political and social affiliations and political beliefs.” On July 2, 2002 we wrote again outlining our concerns regarding intelligence gathering in the wake of the easing of the Ashcroft intelligence guidelines, Joint Terrorism Taskforces, CATIC, and threats to California’s strong and explicit right to privacy. On September 23, 2002 we wrote again (in response to your September 12, 2002 letter) to express similar concerns.

And on January 13, 2003 we met with your staff to convey once again, our concerns and to request action from your office. At that meeting, your staff committed to responding to our concerns and our specific policy requests within one month. Now, more than four months later, we have yet to hear back from your office in response to our requests, yet it appears that strong action to protect civil liberties is necessary, now more than ever.

Policy Reforms

We therefore, again, call on you to take immediate action to ensure that CATIC is not being abused and that Californians’ right to privacy is protected. Specifically, we request that you use your position as Attorney General and the top law enforcement officer in the state to:

1. Immediately direct CATIC to cease collecting information on individuals and organizations engaging in non-violent protest activity and order CATIC systems to be purged of such information.
2. Immediately develop guidelines to ensure that CATIC is used *only* for disseminating information on true terrorist activity. The CATIC website states that only “reliable information that meets *stringent guidelines* for intelligence gathering and civil rights protections will be made available only to authorized local, state and federal law enforcement personnel as necessary to protect the health and safety of Californians and others at risk from *criminal terrorist activity*.” As evidenced in the *Oakland Tribune* article, this clearly is not the case. Guidelines that must be implemented include a definition of terrorism that is narrowly drawn and not so expansive as to include any activity that has an economic impact as well as clear regulations stating that political and social affiliations or beliefs not be considered in determining whom to input into the CATIC system.
3. Immediately issue guidance to state and local law enforcement agencies (as has been requested on three previous occasions) stating clearly that, pursuant to California’s constitutional right to privacy, law enforcement agents may not surveil or monitor individuals or organizations engaged in peaceful protest activity in the absence of reasonable suspicion.

More than thirty years ago, Californians explicitly adopted by referendum a constitutional right to privacy specifically to stop the “proliferation of government snooping and data collecting [that] is threatening to destroy our traditional freedoms.” *White v. Davis* (1975) 13 Cal.3d 757, 774 (quoting the ballot argument in favor of the initiative). Now, it appears that that right is being sacrificed, not only by the Federal Government, but at the state level as well. We call on you to ensure that Californians’ rights to free speech, assembly, and privacy are protected from state sponsored intrusions.

Sincerely,

Mark Schlosberg
Police Practices Policy Director
ACLU of Northern California

Ben Wizner
Staff Attorney
ACLU Foundation
of Southern California