

# THE SIX FBI REPORTS TREATING MERTON CENTER ANTI-WAR ACTIVISM AS TERRORISM

Glenn Fine—DOJ's Inspector General—is usually one of the most credible agents of oversight in the federal government. But his last report—examining whether the FBI investigated the First Amendment activities of lefty groups as terrorism—is a masterpiece of obfuscation. It manages to look at three different investigative efforts of the Thomas Merton Center's anti-war activism, all treated as terrorism, and declare them unconnected and therefore not evidence that during the Bush Administration anti-war activism was investigated as terrorism.

The coverage of the report has largely focused on Robert Mueller's reportedly unintentional lies to Congress explaining why an anti-war event sponsored by Pittsburgh's Thomas Merton Center was investigated in the guise of international terrorism. For good examples, see Charlie Savage and Jeff Stein's versions of the story.

The short version of Mueller's misinformation to Congress the report offers is that 1) a rookie FBI officer was sent out as make-work to improperly surveil a peace protest, 2) after that became clear through FOIA, his boss and a lawyer in the office and the FBI's Counterterrorism Division tried to retroactively invent reasons for the surveillance, 3) largely through the bureaucratic game of telephone that resulted, Robert Mueller (and in more significant ways, a response to a Patrick Leahy Question For the Record) provided false information to Congress.

One cornerstone to this rather credulous

narrative is the way the IG Report treats the surveillance of Pittsburgh's Thomas Merton Center. Rather than treat all the surveillance of the center together—which would reveal an obvious pattern and much better reason to lie to Congress—the report treats several different iterations of surveillance separately. As a result, Fine was able to look at at least six reports treating Merton Center anti-war activism as terrorism (and ignore one more FBI investigative effort) and declare each of them acceptable.

#### The Chronology of FBI's Thomas Merton Center Surveillance

Let's start with the timeline (note all the names, except that of Farooq Hussaini, are pseudonyms chosen by DOJ IG, as reflected by the quotation marks) which shows fairly sustained surveillance of the Center over the course of three years:

November 29, 2002: Supervisory Special Agent "Susan Crosetti" sends rookie FBI officer "Mark Berry" to surveil people associated with the Thomas Merton Center distributing leaflets opposing the Iraq War. Berry takes photos of some participants. The report recording the surveillance is placed in the "international terrorism" file.

January 2003: Secret Service agent visits Merton Center to discuss upcoming protest in Pittsburgh.

February 26, 2003: Pittsburgh office produces Letterhead Memorandum, titled "International Terrorism Matters," describing a vigil the Merton Center was planning for when the Iraq War started, as well as local events that had taken place on February 15, 2003 in association with the NY-based United for Peace and Justice sponsored protest.

April 4, 2003: FBI produces EC on Pittsburgh organizational meeting at the

Merton Center in advance of Miami FTAA.

July 8, 2003: FBI EC describes threats that FTAA protesters would use puppets to attack riot police and Molotov cocktails.

July 10, 2003: First document recording ties between Person B (alleged to have pro-Palestinian feelings) and the Merton Center (note, this document must have been withheld from the FOIA).

July 21, 2003: Miami Field Office opens domestic terrorism investigation in relation to the FTAA protests.

July 25, 2003: Miami Field Office sends EC to Pittsburgh Field Office on August 29-31 planning meeting for FTAA including Merton Center.

July 26, 2003: FBI designates FTAA a Special Event worthy of heightened surveillance.

August 29-31, 2003: FBI conducts research on FTAA planning meeting at Merton Center in Pittsburgh.

October 29 (?), 2004: First **report** from confidential source mentioning the Merton Center (all these reports were faxed on July 8, 2005 and declassified on January 4, 2006). The source was apparently the friend of an agent's son, and included reporting on planning for an anti-war march the Merton Center was planning. The source was purportedly recruited for an investigation into several alleged members of the Pittsburgh Organizing Group; that investigation was a terrorism investigation.

February 25, 2005: Second **report** from confidential source on the Merton Center.

March 1, 2005: Third **report** from

confidential source on the Merton Center.

March 19, 2005: Fourth report from confidential source on the Merton Center.

Unknown date (before May 18, 2005): FBI agent visits Merton Center intern at intern's residence asking for information about Merton Center activities.

May 18, 2005: ACLU PA FOIAs FBI documents referencing the Thomas Merton Center (among others).

Unknown date, 2006: Pittsburgh's Chief Division Counsel reviews the source reporting (and two earlier anti-war reports) and tells agent to close the source.

January 23, 2006: "Carl Fritsch," a member of Pittsburgh FBI's legal staff, and Crosetti, both search FBI databases on Farooq Hussaini's name.

February 1, 2006: National ACLU files FOIA.

February 8, 2006: FBI Field Division Attorney "Stanley Kempler" sends Record Management Division a routing slip, written by "Carl Fritsch," indicating that the November 29, 2002 surveillance had been directed at Farooq Hussaini and alleging that Hussaini was associated with "Person B" who was the subject of a different investigation. This routing slip was—in the IG Report's judgment—the first attempt to invent a cover story for the November 2002 surveillance. The same slip provided background on the February 26, 2003 and urged RMD not to release it.

March 14, 2006: ACLU releases FOIA documents, focusing on November 29, 2002

report; FBI issues a press release see PDF 205) inventing a public rationale for the surveillance and purporting to address the February 26, 2003 report.

March 22, 2006: FBI Director's Research Group writes document "ACLU Allegations of Spying."

May 2, 2006: Patrick Leahy asks Robert Mueller why FBI was surveilling anti-war demonstrators.

"Soon after" hearing: Leahy asks several Questions For the Record, including for any "earlier investigative memos" that served as the basis for the November 2002 surveillance.

May 16, 2006: Counterterrorism Division's Executive Staff tasks "Clarence Parkman," from their Iraq Unit, to draft a response to Leahy. Minutes earlier, Parkman had done a database search on Thomas Merton Center. Two analytical employees in the Iraq section emailed Kempler (cc'ing Berry) for more information. Kempler forwarded the request to Crosetti.

June 5, 2006: Iraq Unit of Counterterrorism Division provides 3-paragraph response to Leahy's question about November 2002 anti-war rally newly claiming that Person B was the subject of the surveillance. The response also claims—contrary to the description in the original EC but corresponding to story Berry first told to IG—that Berry took pictures of just one, female, protester.

The IG presents this series of surveillance actions directed at the Merton Center as discrete events. It attempts to find an explanation for each incident of surveillance in isolation, and as such, is able to describe each as legally permissible, leaving only the attempt

to retroactively invent an explanation for the November 2002 surveillance as really problematic.

But examining the other reports makes it clear that there was a pattern of investigating the Merton Center's anti-war activities under the guise of terrorism.

The February 26, 2003 Letterhead Report

Whereas the IG Report provides clear evidence that FBI was trying to retroactively justify its November 2002 surveillance, it could offer no explanation whatsoever for a February 26, 2003 Letterhead memo which also labeled Merton Center anti-war efforts as terrorism.

We were unable to determine the origins and author of the February 2003 LHM. We were also unable to determine to whom the LHM was sent, or whether it was distributed outside the Pittsburgh Field Division. The LHM bears no signature, initials, or routing information. It did not have a file number assigned to it. The LHM was on an FBI form used to disseminate information to other law enforcement agencies, but it did not identify intended recipients.

It goes on to describe the February 8, 2006 routing slip—the same routing slip that developed the first retroactive justification for the November 2002 surveillance—strongly urging the Records Management Division people responding to the FOIA not to release the document because it did not appear to be an agency record. The IG Report quotes from the routing slip:

The source of this document appeared on a stenographer's computer hard drive. The Pittsburgh Division was unable to identify the author of this document. Attempts to locate a file associated with this document were negative. The Pittsburgh Division believes that this

document could possibly have been a draft that was never approved for filing.

Here's how that was translated for a response to a Leahy QFR on the report.

In response to the FOIA request the FBI conducted a manual search beyond its record system for all information responsive to the request. The 2/26/03 document was discovered during the search of stenographer's computer hard drive for responsive information. This document identifies no author or file number and contains no markings indicating supervisory approval for entering into any FBI record keeping system. The Pittsburgh Division where the document was located was unable to identify the actual author or locate a file associated with this document. The document could possibly have been a draft that was never approved for filing. As a loose document it could be retrieved only by someone with access to the computer on which it had been saved.

The IG Report goes on to explain that the stenographer's logs from the period indicated a particular Special Agent had authored the LHM, but that she had no independent memory of that agent being the author. The agent in question denied he was the author.

And even though Susan Crosetti, the woman who played a central role in inventing two different explanations for the November 2002 surveillance, was that agent's supervisor, the IG Report concluded "we found no indication that the 2 documents were related or part of a coordinated focus on the Merton Center."

The FBI's Agent's Son's Friend's Confidential Source Reporting on the Merton Center and POG

Then the IG Report discusses the investigation

of several people associated with the Pittsburgh Organizing Group, which it describes as an anarchist group. After the Pittsburgh FBI extended its investigation of these men (though they had no evidence of criminal activity), one of the agents involved recruited what appears to be a friend of his son who was in legal trouble to act as a confidential informant on the POG members.

At the time the source was recruited, he had charges pending against him for [redacted]. In one e-mail from the source to the case agent during the time he was acting as a source, the source described his efforts to obtain an extension on "my court date," and asked if the case agent had contacted a particular officer connected to the case.

[snip]

[T]he agent recruited a friend of his son and gave him surveillance assignments with at best thin relevance to any open investigation or to preventing terrorism.

Though the predicate for this source reporting was the investigation into the three alleged POG members, much of the reporting actually pertained to the Merton Center.

In fact, the first source report filed in the Herman preliminary inquiry contained virtually no information other than information about First Amendment expressions of participants in a political discussion group at the Merton Center. This report had no apparent connection to any actual or potential crime and focused solely on the identity of the participants and the content of their speech.

[snip]

The first source report was limited to identifying information about the participants in a political discussion together with characterizations of the content of the speech of the participants. No information remotely relevant to actual or potential criminal activity was collected. We do not believe that any of the information recorded in the report regarding the Merton Center political discussion was pertinent to the Herman preliminary inquiry or any other authorized law enforcement activity.

[snip]

Three reports related to planning meetings held at the Merton Center for an anti-war protest, as well as a report on the protest itself.

[snip]

The FBI established a confidential source to attend political meetings and protests and collect information that was almost exclusively focused on the First Amendment activities of persons who were not the subject of any investigation.

Now, the document here deserves mention. The source reports released to ACLU in 2006 must be reports from this confidential source because the IG Report does not deal with them anywhere else. Indeed, the first report (chronologically) appears to be the report the IG Report describes as the sources first report on PDF 91. (Though there appears to be at least one more report from 2004 not released to ACLU in FOIA, which therefore must not mention the Merton Center; the original FOIA did not name POG.) Yet the IG Report treats these primarily as surveillance of the three alleged POG members, and not surveillance of the Merton Center. In at least one place (see the third redaction on PDF 91),

the IG Report rather inexplicably redacts what must be a reference to the Merton Center. And the source reports mention the Merton Center on at least two more occasions that the IG Report either redacts or neglects to mention entirely.

The two investigative actions the IG Report doesn't mention

We've seen that the FBI investigated the Merton Center's anti-war activities in November 2002, February 2003, and late 2004 through 2005. All of these investigative actions were classified as terrorism investigations.

But that leaves out at least two more investigative actions, revealed in the original FOIA.

The Thomas Merton Center (the "Merton Center") is a 501(c)(3) entity, incorporated in Pennsylvania in 1972 with its principal place of business in Pittsburgh, Pennsylvania. The Merton Center is a peace and justice resource and organizing center that is actively involved in organizing non-violent resistance to war, racial and economic justice. Among other things the Merton Center is involved with organizing protests and consults with various groups concerning social change. In addition, the Merton Center works with local mosques to address the detention of Arabs and Muslims in the greater Pittsburgh area. Prior to various protests in the Pittsburgh area, the Merton Center has received visits from the Secret Service. For example, in January 2003, a Secret Service agent visited the office to discuss an upcoming protest in Pittsburgh, Pennsylvania. In addition, an intern at the Merton Center was visited by an FBI agent at his residence and asked to provide information about various activities at the Merton Center. [my emphasis]

In 2003—a month before the LHR included in the IG Report—the secret service questioned the Merton Center about an upcoming protest. The protest in question was almost certainly an anti-war protest, as that's all that was listed on its site at the time. And then, at some point before the ACLU filed this FOIA, the FBI was questioning a Merton Center intern at home.

DOJ's IG's jurisdiction is limited to DOJ, so it is understandable that the report makes no mention of the Secret Service interview. But there is clearly at least one more FBI action pertaining to the Merton Center that the report doesn't mention. The absence of any discussion of it is all the more inexcusable since this FOIA was what ultimately led to this report.

The three year investigation of the Merton Center's anti-war activities as terrorism

Ultimately, the story the IG Report tells is something like this: An FBI supervisor trying to make work for a new agent in 2002 sent him to surveil a Merton Center anti-war event that he labeled as terrorism in his report, but that was just make-work and all other problems can be blamed on the agent's inexperience. Three months later, someone reporting to that same FBI supervisor wrote a report on the Merton Center's anti-war actions and again labeled it international terrorism, but since the IG was unable to pinpoint who wrote it and why, we can't conclude anything about that. Then, the following year, an agent trying to help his son's friend beat some kind of legal trouble recruited him as an informant and just because of timing had him report on the planning and implementation of an anti-war protest organized by the Merton Center. The underlying premise for that surveillance was also terrorism. But since the agent was just trying to meet his FBI quota for informant work, we don't have to worry that he used the investigation of POG to once again investigate the Merton Center's anti-war activities.

And all that leaves aside the FTAA-related

surveillance, as well as two more investigative actions that likely pertain to peace activism as well.

So it's all the result of misguided but relatively harmless chance, the IG wants you to conclude.

Except that looked at more closely, it's clear that Pittsburgh's FBI office persistently investigated the Merton Center's anti-war activism as terrorism.