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## Antiwar.com Sues FBI after Secret Surveillance

May 21, 2013

WASHINGTON – Antiwar.com is taking the FBI to court.

The website's founder and managing editor Eric Garriss, along with longtime editorial director Justin Raimondo, filed a lawsuit in federal court today, demanding the release of records they believe the FBI is keeping on them and the 17-year-old online magazine.

Antiwar.com says this is one more example of post-9/11 government overreach, and a stark reminder that the First Amendment has been treated as little more than a speed bump on the road to a government surveillance state. The lawsuit is particularly timely, considering recent scandals in which the Department of Justice secretly seized months of journalists' phone records at the Associated Press, and did the same and more to a FOX News reporter, while the IRS is acknowledging it singled out conservative groups that criticize the government for extra scrutiny.

Suddenly, the press is more aware than ever that the state has the ability to secretly monitor its activities, heretofore thought of as constitutionally protected from government interference and intimidation.

"Freedom of the press is a cornerstone of our democracy, whether it's AP or Antiwar.com," said Julia Harumi Mass, staff attorney for the American Civil Liberties Union of Northern California, which is representing Antiwar.com in the case. "FBI surveillance of news organizations interferes with journalists' ability to do their jobs as watchdogs that hold the government accountable."

The suit was filed on Tuesday at the United States District Court, Northern District of California, San Francisco Division. Both Garriss and Raimondo live and work in the San Francisco Bay area.

According to the suit, the ACLU has made several futile attempts to obtain the FBI files since a reader alerted Garris and Raimondo to this lengthy FBI memo in 2011. The details in question begin at page 62 of the heavily redacted 94-page document. It's clear from these documents, the suit alleges, that the FBI has files on Garris and Raimondo, and at one point the FBI agent writing the April 30, 2004 memo on Antiwar.com recommends further monitoring of the website in the form of opening a "preliminary investigation ...to determine if [redaction] are engaging in, or have engaged in, activities which constitute a threat to national security."

"On one hand it seemed almost funny that we would be considered a threat to national security, but it's very scary, because what we are engaging in is free speech, and free speech by ordinary citizens and journalists is now being considered a threat to national security and they don't have to prove it because the government has the ability to suppress information and not disclose any of their activities – as witnessed with what is going on now at the AP and other things," said Garris.

"The government's attitude is they want to know all, but they want the public to know as little as possible."

In response, the ACLU began filing requests in December 2011 under the Privacy Act and Freedom of Information Act (FOIA) for any records the FBI was currently holding on Antiwar.com, which describes itself as a Libertarian-inspired project of the Randolph Bourne Institute. It was clear from reading the memo that Antiwar.com came under the radar in part for its mission, which is characterized as publishing a non-interventionist "online magazine and research tool designed to keep the American people and the world informed about the overseas plans of the American government." [Full disclosure, this writer is a regular contributor].

*While openly acknowledging that we have an agenda, the editors take seriously our purely journalistic mission, which is to get past the media filters and reveal the truth about America's foreign policy. Citing a wide variety of sources without fear or favor, and presenting our own views in the regular columns of various contributors, we clearly differentiate between fact and opinion, and let our readers know which is which.*

The website was also targeted, according to the FBI memo, for links it published to counter-terrorism watch lists (which were already in the public domain), and for the people who were visiting Antiwar.com and/or talking it up at rallies. The FBI noted at least two of Raimondo's columns and wondered openly, "who are (Antiwar.com's) contributors and what are the funds utilized for?" This, after acknowledging there was no evidence of any crime being plotted or committed.

"This illustrates the troubling, continuing efforts of the federal government to monitor protected speech activity without evidence or even allegation of criminal activity," said Mass, who explained that there are specific prohibitions against such surveillance and record-keeping in the 1974 Privacy Act [5 U.S.C 552a(e)(7)].

After Raimondo wrote about the FBI memo in August 2011, which at the time, independent journalist Marcy Wheeler at EmptyWheel.net deemed a “troubling story,” Antiwar.com started losing donors, and according to the lawsuit, it was big time.

*In October 2011, one of Antiwar.com’s major donors withdrew his financial support from Antiwar.com out of concern that the FBI would monitor him if he continued to provide, as he wished to do, financial support to Antiwar.com. Since then, three significant donors have also withdrawn financial support, citing their fear that FBI interest in Antiwar.com would lead to surveillance of the donors as a reason for withdrawing financial support. As a result, Antiwar.com has lost about \$75,000 per year since 2011 in otherwise expected contributions.*

Reached over the weekend, Wheeler, who routinely investigates and reports on the impact of post-9/11 government surveillance on civil liberties for EmptyWheel.net, voiced her concern about the apparent FBI surveillance of Antiwar.com and its far-reaching implications.

“It’s likely (the) FBI is hiding one or another things: Bush era investigations into the peace community that were improper to start with, and/or the degree to which First Amendment activities have become one reason to investigate completely innocent activity,” she said.

After a series of FOIA requests, amended requests and empty responses, Garriss and Raimondo have “received no agency determination setting forth whether Defendant FBI intends to produce records or any basis for withholding them,” since the last request dated May 24, 2012. Taking it to court, Mass said, is the next step.

“Our clients are entitled to obtain records the FBI has gathered about them and their online magazine,” she said. “This is especially important because the FBI’s surveillance has impacted our clients’ ability to maintain support for their website and has impacted their editorial choices—exactly the type of harm the First Amendment is supposed to protect against.”

## **How it went down**

The strange and unsettling story of Antiwar.com’s debut into the domestic War on Terror came in the summer of 2011, when a reader warned Garriss and Raimondo that the website had been mentioned as a target of surveillance by the FBI in the batch of documents the reader said he obtained through a FOIA request and had subsequently posted on his blog.

The documents mostly concern a 2001 investigation of five Israeli nationals who were witnessed smiling and celebrating and taking pictures of the burning Twin Towers from a rooftop perch across the river from Manhattan in Union City, New Jersey, on 9/11. After witnesses called the police, the individuals, who all worked for a local moving company, were taken into custody and grilled by FBI and CIA for two months after it was deemed their work visas had expired, and there was a big wad of cash, box cutters and other items that raised red flags found in a search of their work van. Questions revolved around whether the Israelis were spies connected to the Israeli government, and whether they had foreknowledge of the tragic events.

The heavily redacted memo says the men were eventually deported back to Israel without charge, and the case closed. However, the FBI still had an interest in tracking evidence gleaned from the case and this is where Antiwar.com comes into the picture. Raimondo, in writing about the case of the five Israelis in 2002, linked to an American-generated terror watchlist (which had been published elsewhere on the Internet) that went out to Italian financial institutions and it included the name of the man who owned the New Jersey moving company in question.

It is not clear whether this sparked further monitoring of Antiwar.com, or whether Antiwar.com was already in the FBI's sights. Interestingly, the memo states that the information attached to the memo as supporting material (none of which was available, aside from copies of two of Raimondo's articles), was obtained in part through a secret Foreign Intelligence Surveillance Act (FISA) request.

The FBI said it also searched the Web, as well as Lexis-Nexis, the Universal Index (FBI central records), the agency's Electronic Case File, Department of Motor Vehicles and Dunn & Bradstreet (credit reports) for information on Antiwar.com and for "one or more individuals" working for the website.

Some of the things that can be discerned from those searches and were noted in the FBI memo:

- That Raimondo had been writing about the five Israelis and in his columns linked to at least three different terror watch lists (all found in the public domain).
- That Antiwar.com was cited in an article, the name of the author redacted, about U.S aid to Israel.
- That an article that listed Antiwar.com as a reference was handed out in 2002 at a "peaceful protest" at a British air base in the U.K.
- That a member of a domestic neo-Nazi group had "discussed a website, Antiwar.com" while encouraging fellow members at a conference to "educate themselves" about the Middle East conflict.
- That a special agent's review of hard drives seized during an investigation of an unnamed subject, revealed that the subject had visited Antiwar.com between July 25, 2002 and June 15, 2003, "among many other websites."

"There are several unanswered questions regarding www.antiwar.com," reads the FBI memo. "It describes itself as a non-profit group that survives on generous contributions from its readers. Who are these contributors and what are the funds used for?"

The memo goes on to say that "many individuals worldwide do view this website including individuals who are currently under investigation and [two lines redacted]."

The unidentified agent writing the memo concludes, "it is recommended that ECAU (Electronic Communications Analysis Unit) further monitor the postings on the website ... it is

recommended that a PI (preliminary investigation) is opened to determine if [line redacted] have engaged in, or are engaging in, activities which constitute a threat to national security on behalf of a foreign power.”

This is the decisive point of the memo as it pertains to Antiwar.com: that Garris and Raimondo and Antiwar.com, for writing about a particularly sensitive subject and for linking to information that is already circulating around the Internet, may be a “threat to national security on behalf of a foreign power,” and therefore subject to secret surveillance. That would make any journalist, who say, linked a story to documents published by Wikileaks, which is currently under federal investigation, suspect too, surmised the plaintiffs.

“This sort of government activity is so chilling because it puts the fear of government at a higher level, and among the news media,” said Garris, noting the negative effect that federal leak investigations are already having on the free press. “Once the people aren’t able to get information, the government can, potentially, have unlimited power.”

According to Mass, the ACLU is filing a separate, administrative request to the FBI to find and further expunge any files it may have on Garris and Raimondo.

“The government,” concluded Mass, “cannot keep records about people’s exercise of free speech unless it is related to a criminal investigation.”