



PRIMER: Lawfare at 10,000 Feet

When the Left weaponizes government to target free speech, free association, and freedom itself, the process is the punishment.

By: Patrick Foos

Introduction

Donald Trump has had four lawsuits filed against him. Steve Bannon is in jail for contempt of Congress while Attorney General Merrick Garland walks free. The justice system, law enforcement agencies, and the federal government have been weaponized against these high-profile Americans. Across the country Americans have their speech stifled and records surveilled for espousing conservative viewpoints. The term for such weaponized applications of prosecution, investigation, and law enforcement authority is “lawfare,” and, as this brief will show, the rot goes far deeper than a few headlines about prominent politicians and the felony conviction of Donald Trump.

For the “lucky” targets of lawfare, the process is the punishment as they are driven out of house and home by overbearing legal costs and the threat of prison time, but for the less fortunate others, that threat is made all too real as they spend years of their lives behind bars, separated from those they love. All the while, violent rioters walk free, tolerated by federal law enforcement that prioritizes the prosecutions of peaceful political rivals over those of hardened criminals. The utopian leftist ideology that drives this lawfare offensive on speech, religion, and decency won’t stop until it has exhausted every possible avenue of assault, or its ability to curtail freedom is ended and the rule of law is restored. What follows is just a smattering of the battles and battlefields of lawfare, as they stand today.

Truth Tellers or Terrorists?

A broad suite of federal entities has repeatedly described political rivals as terrorists using specious anti-conservative sources to justify investigations of Americans for the exercise of their constitutional rights. Catholics, pro-lifers, parents, gun-owners, and even purchasers of religious texts have all been explicitly targeted in these smears.

The Catholic Canard

In February 2023, a Federal Bureau of Investigation (FBI) report targeting “radical-traditional Catholics” (a broad term that includes Catholics who adhere to church teachings on sexuality) as potential violent extremists was leaked by a whistleblower. The document encourages “exploration of new avenues for tripwire and source development,” in other words, surveillance, based on religious affiliation.¹ No substantive basis was provided to support such expansions of operations. Perhaps worse, the report cited left-wing publications as authoritative and forwarded the Southern Poverty Law Center’s anti-conservative “hate group” list. Future plans would have expanded the document into an outward facing FBI-wide product, but those plans were scrapped when public outrage forced the FBI to retract the original document and remove it from agency servers.

The Real Threat to the Supreme Court

The FBI also targeted pro-lifers with investigations while claiming to track threats to Supreme Court justices. According to FBI whistleblower Garret O’Boyle, the bureau ordered investigations of pregnancy centers and asked him to question his pro-life source on potential threats to the Supreme Court.² This investigation of pro-lifers was initiated in the wake of the *Dobbs* decision, when pro-abortion activists were making violent threats to Supreme Court justices, protesting in front of their homes, and attacking the same pro-life movement the FBI suspected of doing everything that pro-abortion protestors actually were.

Pro-life Groups or Terrorist Organizations?

Department of Defense briefings for entry point guards at Fort Liberty described mainstream pro-life organizations as terrorist groups³. The training, which was meant to brief servicemembers on terrorist organizations, took a sharp turn after discussing ISIS, pivoting to show logos for National Right to Life and Operation Rescue under the large heading of “Terrorist Groups.” The briefing also included an image of the “Choose Life” specialty plate, which raises money for crisis pregnancy centers, whose owners, based on the briefing, would be flagged as terrorists if they attempted to enter a military base. After media exposure, Fort Liberty

¹ 118th U.S. Congress, 2d Sess, House, Committee on the Judiciary, Select Subcommittee on the Weaponization of the Federal Government, Interim Staff Report, “The FBI’s Breach of Religious Freedom: The Weaponization of Law Enforcement Against Catholic Americans,”

<https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2023-12-04-the-fbis-breach-of-religious-freedom-the-weaponization-of-law-enforcement-against-catholic-americans.pdf>

² Brooke Singman and Fox News, “FBI Threat Tag Created after Supreme Court’s *Dobbs* Ruling ‘shifted’ to Focus on pro-Lifers, Whistleblower Says,” Fox News, March 2, 2023, <https://www.foxnews.com/politics/fbi-threat-tag-created-supreme-courts-dobbs-ruling-shifted-focus-pro-lifers-whistleblower-says>.

³ Steve Baker and Joseph M. Hanneman, “Pro-life Groups Slap Back at ‘terrorist’ Designation From Fort Liberty,” *Blaze Media*, July 12, 2024, <https://www.theblaze.com/news/pro-life-groups-slap-back-at-terrorist-designation-from-fort-liberty>.

announced that it would stop using the slideshow, but use of the presentation dates back years, perhaps decades, and was likely not confined to use at Fort Liberty.⁴

Counterterrorism Counters Concerned Parents

A now rescinded letter from the National School Boards Association asked Attorney General Merrick Garland to treat school board protestors as domestic terrorists. Law abiding parents were targeted by Garland when, in response, he issued a directive to track investigations of protestors at school boards. FBI counterterrorism units opened investigations into several parents using the threat tag, including investigations where there was “no specific information or observations ... of any crimes or threats.”⁵ A Judiciary Committee report found that the use of the FBI’s limited resources to investigate the vacuous tips “would not have occurred but for [Garland’s] directive.”⁶

FinCEN Spies on Bible Buyers

Federal agents from the FBI and Financial Crimes Enforcement Network (FinCEN) asked banks to search for transactions that marked purchasers as potential threat actors. Transactions that fit the bill included religious texts, purchases from Cabela’s or Bass Pro Shops, small arms, and Zelle transactions labeled “Trump” or “MAGA.”⁷ Communications by FinCEN to some of the largest financial institutions in the world also suggested using Anti-Defamation League and Institute for Strategic Dialogue resources that identified mainstream conservative organizations as hate groups. Donors to the listed groups were also financially surveilled and marked as potential extremists. This wide-ranging financial surveillance was done irrespective of criminal activity and without legal process, allowing federal agents to peer into the financial data of huge swaths of Americans based on their utilization of their constitutional rights.

⁴ WRAL, “Fort Liberty Responds to Slide Calling Anti-abortion Groups ‘Terrorist Organizations,’” July 12, 2024, <https://www.youtube.com/watch?v=eOj9x2VCJWg>.

⁵ 117th U.S. Congress, House, 2d Sess, Committee on the Judiciary, Republican Staff Report, “FBI Whistleblowers: What Their Disclosures Indicate About the Politicization of the FBI and the Justice Department.” https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/legacy_files/wp-content/uploads/2022/11/HJC_STAFF_FBI_REPORT.pdf

⁶ Ibid

⁷ Committee on the Judiciary, Select Subcommittee on the Weaponization of the Federal Government, and U.S. House of Representatives, “FINANCIAL SURVEILLANCE IN THE UNITED STATES: HOW FEDERAL LAW ENFORCEMENT COMMANDEERED FINANCIAL INSTITUTIONS TO SPY ON AMERICANS,” *Interim Staff Report of the Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government*, March 6, 2024, <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/How-Federal-Law-Enforcement-Commandeered-Financial-Institutions-to-Spy.pdf>.

The FACE Act Frenzy

The Federal Access to Clinics (FACE) Act was put into law to protect access to places of worship as well as abortion clinics and crisis pregnancy centers. But in recent years, the statute has been used almost exclusively to prosecute peaceful pro-life activists. While the Department of Justice (DOJ) has prosecuted dozens of pro-life activists for non-violent protests at and in abortion clinics, there have only been five prosecutions for attacks on pro-life pregnancy centers and zero prosecutions of acts of violence against places of worship under the FACE Act⁸. Meanwhile, in just the time after the Dobbs decision, there have been over a hundred attacks on pro-life organizations and churches consisting of vandalism, arson, and graffiti of phrases like “If abortions aren’t safe, neither are you” on church walls.⁹ One can only conclude that higher on the weaponized DOJ’s priority list than prosecuting those vandals is prosecuting peaceful protestors and raiding the homes of upstanding pro-life citizens.

That most glaring instance of FACE Act abuse is the persecution of Mark Houck. Houck was performing sidewalk counseling at an abortion clinic when he defended his son from a clinic volunteer’s repeated verbal harassment. Local authorities declined to press charges, but the DOJ not only prosecuted the incident, but also sent an FBI raid to arrest him at gunpoint even after he promised to submit peacefully. The early morning raid sent over a dozen armed federal agents to arrest Houck in his home in front of his wife and seven children, causing them severe emotional trauma.¹⁰ Houck was found not guilty, and the judge in the trial questioned the validity of the prosecution, at one point asking the prosecution if the FACE Act did not “seem to be stretched a little thin here.”¹¹

Feds Frightened by Freedom of Expression

Intelligence agencies have also frequently pressured companies to restrict the speech of their users. From pointing out specific accounts and posts to be removed as disinformation, to prosecuting meme posters, the weaponization of the bureaucracy is in no place more apparent than the stifling of constitutionally protected speech. This application of power, used to decide

⁸ “Rutherford Urges Equal Prosecution Under FACE Act | Congressman John Rutherford,” Congressman John Rutherford, May 17, 2024,

<https://rutherford.house.gov/media/press-releases/rutherford-urges-equal-prosecution-under-face-act>.

⁹ Jonah McKeown, “TRACKER: Pro-abortion Attacks in the U.S. Continue (Updated),” *Catholic News Agency*, July 26, 2024,

<https://www.catholicnewsagency.com/news/251553/map-vandalism-attacks-continue-at-pro-life-centers-across-us>.

¹⁰ Mary Margaret Olohan, “Mark Houck, Family Sue Biden DOJ for ‘Malicious and Retaliatory Prosecution,’” *The Daily Signal*, November 9, 2023,

<https://www.dailysignal.com/2023/11/08/mark-houck-family-sue-biden-doj-for-malicious-and-retaliatory-prosecution/>.

¹¹ Joe Bukuras, “UPDATE: Mark Houck Cleared of FACE Act Charges in Rebuke to Justice Department’s Aggressive Prosecution,” *Catholic News Agency*, July 26, 2024,

<https://www.catholicnewsagency.com/news/253477/breaking-mark-houck-cleared-of-face-act-charges-in-rebuke-to-justice-department>.

what Americans should and should not be able to read, think, and say, is the fundamental essence of the left's totalitarian agenda.

Social Media Meltdown

Using "Covid" as justification, the Biden administration placed enormous pressure on Facebook to remove and deboost all content skeptical of covid vaccines, including jokes and descriptions of side effects (which were clearly allowed by Facebook rules).¹² Facebook also provided access to a portal where agents could flag content for deletion (perhaps unsurprisingly, the flags had a consistent partisan bias).¹³ Meanwhile at Twitter (now X) agencies from across the government made similar requests for posts to be axed and accounts banned. That story was unveiled by the release of "The Twitter Files" after Elon Musk gave journalists access to internal and external Twitter communications.

Brigaded Bookstore

These applications of law enforcement clout to push censorship extended beyond just social media platforms and extended to retailers as well. In yet more censorship, administration officials pressured Amazon to remove and hide books that were deemed vaccine misinformation.¹⁴ While Amazon initially tried to stave off the pressure, it eventually chose to reduce the visibility of books that argued covid and other vaccines were unsafe or ineffective, bowing to the control of aggressive officials.

Imprisoned for Posting

The first American to be sent to prison over a meme, Douglass Mackey was sentenced to seven months in prison and a \$15,000 dollar fine for memes he posted during the 2016 election that suggested that people could vote for Hillary via text.¹⁵ The legal justification used by the DOJ was that Mackey's satirical meme implicated him in a conspiracy against rights, specifically the

¹² 118th U.S. Congress, 2d Sess, House, Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government, Interim Staff Report, "The Censorship-Industrial Complex: How Top Biden White House Officials Coerced Big Tech to Censor Americans, True Information, and Critics of the Biden Administration."

https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Censorship-Industrial-Complex-WH-Report_Appendix.pdf

¹³ 117th U.S. Congress, House, Judiciary Committee, "FBI Whistleblowers"

https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/legacy_files/wp-content/uploads/2022/11/HJC_STAFF_FBI_REPORT.pdf

¹⁴ Tyler O'Neil, "EXCLUSIVE: Amazon Bowed to White House Pressure to Suppress Books Skeptical of COVID-19 Vaccines," The Daily Signal, February 7, 2024,

<https://www.dailysignal.com/2024/02/05/exclusive-amazon-bowed-white-house-pressure-suppress-books-skeptical-covid-19-vaccine/>.

¹⁵ Associated Press, "Far-right Influencer Convicted in Voter Suppression Scheme," Politico, March 31, 2023,

<https://www.politico.com/news/2023/03/31/far-right-influencer-convicted-in-voter-suppression-scheme-00090042>

right to vote. A case with drastic implications for speech rights, the horrifying standard of the prosecution has also been inconsistently deployed, targeting Mackey but not other posters of similar jokes, left and right.

Whistleblowers

When institutions are corrupt, violating the law, and departing from their mission, brave American whistleblowers step up and do their patriotic duty to expose the misfeasances of their organizations. These courageous men and women are protected by law from retribution by employers. But what happens when those protections fail, and governmental and non-governmental employees alike face political persecution for blowing the whistle? That chills their speech and the speech of future whistleblowers who see what happens to those who step up. It is also happening now.

Telling Truth About Trans in Texas

In 2022, the Texas attorney general issued an opinion finding sex-change procedures performed on minors to be child abuse. In defiance of the opinion, the Texas Children's Hospital secretly continued to perform such procedures. Eithan Haim, a resident of the hospital at the time, was appalled by the falsehood and sent evidence of the procedures to Chris Rufo, who published them and continued the fight. Haim, having done his part to expose the scandal, anonymously continued his life until armed Health and Human Services agents arrived at his doorstep to inform him that he was under investigation for HIPAA violations related to his whistleblowing.¹⁶ He has since been indicted on four counts alleging that the hospital, which was illegally abusing children, was harmed by his disclosure.¹⁷

Off-Duty for Honesty

Many of the above instances of lawfare are only known today because of whistleblowers, especially those from the FBI. For their service, several of them have found themselves without an income, job, or housing. Inside the FBI, being conservative, or even a military veteran, is seen as a risk factor for disloyalty, and being a whistleblower only compounds that.¹⁸ Such "disloyal"

¹⁶ Eithan Haim et al., "Letter to U.S. Attorney Alamdard S. Hamdani Regarding the Prosecution of Whistleblower Dr. Eithan Haim," by United States Attorney's Office for the Southern District of Texas, May 25, 2024, https://www.cruz.senate.gov/imo/media/doc/eithan_haim_letter.pdf.

¹⁷ Brian Flood and Nate Foy, "DOJ Unseals Indictment Against Texas Doctor Who Blew Whistle on Gender-affirming Care for Minors," Fox News, June 18, 2024, <https://www.foxnews.com/media/doj-unseals-indictment-against-texas-doctor-who-blew-whistle-gender-affirming-care-minors>.

¹⁸ Kerry Pickett, "FBI Accused of Targeting Trump types; Agents who Served in Military Deemed 'Disloyal,'" The Washington Times, November 10, 2023, https://www.washingtontimes.com/news/2023/nov/10/whistleblowers-fbi-officials-singled-out-agents-wh/?utm_campaign=shareaholic&utm_medium=twitter&utm_source=socialnetwork

individuals have their security clearances suspended, forcing them to either resign their posts or attempt to navigate a punishing and opaque system of appeal. A May 2024 memorandum by the inspector general found that statutory obligations for providing opportunities for appeal of clearance suspensions were not apparent in policies across the DOJ.¹⁹ Absent those policies whistleblowers under retaliation face a choice between seeking justice and feeding their families.

Epitomizing the abuse inflicted upon FBI whistleblowers are the trials of Garret O'Boyle, an FBI agent who blew the whistle on an instance of the FBI's targeting of pro-life Americans. After he testified before Congress, he was ordered to a new post and moved his family across the country only to find himself suspended on his first day, left homeless with the FBI in possession of his family's belongings.²⁰ To make ends meet, he has been forced to make withdrawals from retirement accounts while he pursues justice, as he is precluded from taking a new job while suspended from the FBI.

O'Boyle is far from the only FBI agent to face such persecution for telling the truth. Even agents tasked with investigating the suspension have faced retaliation. An FBI special agent tasked with adjudicating O'Boyle's suspension who suggested that O'Boyle should not have been suspended was transferred to a new job and the finding was revoked.²¹

Conclusion

The current weaponized federal bureaucracy is in desperate need of redirection. The republic can no longer tolerate lawfare against its citizens and the slander, surveillance, and targeting of peaceful protestors, protective parents, legal gun owners, and everyday Americans. There is no silver bullet for fixing the habits and attitudes of the weaponized bureaucracy, but strong leadership would help limit the extent of its abuses. Better oversight of the DOJ would help stem the use of anti-conservative documents, initiation of political prosecutions, and abuse of security clearance systems though that would be only a band-aid over larger issues. Ultimately, the only way to stop current and future lawfare is to establish a precedent of deterrence through the investigation and prosecution of lawfare's practitioners. Those defenses of the rule of law must be impartial and just to ensure that everyone who weaponizes the government faces punishment.

¹⁹ Michael E. Horowitz, "Notification of Concerns Regarding the Department of Justice's Compliance With Whistleblower Protections for Employees With a Security Clearance," 2024, <https://oig.justice.gov/sites/default/files/reports/24-067.pdf>.

²⁰ Brooke Singman, "FBI Threat Tag Created After Supreme Court's Dobbs Ruling 'shifted' to Focus on Pro-lifers, Whistleblower Says," Fox News, March 2, 2023, <https://www.foxnews.com/politics/fbi-threat-tag-created-supreme-courts-dobbs-ruling-shifted-focus-pro-lifers-whistleblower-says>.

²¹ Kerry Pickett, "FBI Agent Accuses Top Brass of Retaliation for Defending Whistleblower," The Washington Times, May 9, 2024, <https://www.washingtontimes.com/news/2024/may/9/fbi-agent-accuses-top-brass-of-retaliation-for-def/>

Leftists will claim that these prosecutions are weaponizing the government against them in turn, but defending the rule of law is the definitional opposite of lawfare.