



DEFENDING DISSSENT FOUNDATION LETTER

An Amalgam of the First Amendment Foundation and NCARL
(formerly National Committee to Abolish HUAC - House UnAmerican Activities Committee)
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In Memory of Frank Wilkinson, Director Emeritus, and Chauncey Alexander, President Emeritus, and all who went before

Dear Troublemakers,

December, 2007

Amending FISA Again

On November 15, the full House and the Senate Judiciary Committee passed separate bills to overhaul FISA, the Foreign Intelligence Surveillance Act, first passed in 1978. The House passed the Restore Act (H.R. 3773) by a vote of 227-189. The House version would sunset in two years, deny immunity to telecoms and require a warrant when a 'significant purpose' of the surveillance is to listen in on an American. It also would require an audit of the Terrorist Surveillance Program to examine violations of FISA and privacy rights.

The Senate Judiciary Committee rejected some of the more egregious aspects of the FISA Amendments Act (S. 2248) passed by the Senate Intelligence Committee. Most notably, the Judiciary Committee did not include immunity for telecom companies in their bill. In addition, the committee added amendments which would sunset the bill in 4 years, and prevent bulk collection of communications ("sitting on the line"). The Senate Judiciary Committee also adopted a few measures that even were improvements over the largely better House bill. These included a prohibition on listening in on a call between the U.S. and abroad, claiming to be targeting the

foreigner, when in fact targeting the U.S. person, to avoid stricter rules.

The Senate will debate S. 2248 when they return from recess on Dec. 3. **ACTION:** Call 202.224.3121, ask for your Senator and speak either to the receptionist or the staffer who handles judiciary matters. Tell them you want your Senator to support individual warrants for Americans and block immunity for telecoms.

Overwhelming Support for a Dangerous Bill

On October 23, the House passed "the Violent Radicalization and Homegrown Terrorism Prevention Act of 2007" (HR1955), with a vote of 404-6. The bill opens a Pandora's box of threats against the First Amendment, however it has remained below the radar in the media. The bill would set up a "National Commission on the Prevention of Violent Radicalization and Ideologically Based Violence". It would also establish a 'Center for Excellence' to study "the facts and causes of violent radicalization, homegrown terrorism and ideologically based violence in the U.S." and *propose policies for prevention, disruption and mitigation.*

The legislation would sanction government "study" of groups exercising their First Amendment rights. The bill uses overly broad language which would allow the government to target groups based on religion and political beliefs, or those that use non-violent civil disobedience.

There is disagreement in civil liberties circles about the danger this bill poses, but clearly there is great potential for abuse. The bill has been sent to the Senate Committee on Homeland Security and Government Affairs and could reach the Senate floor early in December.

An in-depth article about the legislation, *Bringing the War on Terrorism Home: Congress Considers How to 'Disrupt' Radical Movements in the United States* is available at www.indypendent.org

ACTION: Call the Capitol switchboard at 202.224.3121 and ask for your Senator's office. Tell your Senator to vote against the "Violent Radicalization and Homegrown Terrorism Prevention Act of 2007" (the bill number may change, so refer to the title of the legislation).

Activists Kill Plan to Map L.A. Muslim Population

When activists learned about an L.A. Police Department plan to map the Muslim community last month, the outcry was immediate. Civil liberties and community groups including the ACLU, Muslim Public Affairs Council and the Council on American Islamic Relations came together quickly and effectively killed the plan. "We put it out there, it was rejected, it's dead on arrival," said L.A. Police Chief William J. Bratton.

Extraordinary Un-rendition

Most readers of this newsletter are familiar with the case of Luis Posada Carilles, who faces charges in Venezuela for acts of international terrorism. As you may remember, the U.S. refuses to extradite him, claiming he may face torture. The House of Representatives took the opportunity on November 15 to learn a little more about the case. The House Committee on Foreign Affairs Subcommittee on International Organizations, Human Rights and Oversight, chaired by Rep. Delahunt (D-MA) held hearings on Nov. 15 on the case titled *"Diplomatic Assurances" on Torture: A Case Study of Why Some Are Accepted and Others Rejected*. Much of the testimony focused on the ample evidence against Posada as the mastermind behind multiple acts of terrorism, including the 1976 bombing of a Cuban airliner that killed 73 people. Yet, he continues to live in Miami and avoid charges for his crimes.

L.A. Eight Case Dropped

We've waited almost 21 years to say this: *It's over*. Thousands of activists over the years worked on the case or publicized it, trying to end it. This was David Cole's first case out of law school, and he and Marc Van der Hout stayed with it for 21 years.

The L.A. Eight are seven Palestinians and a Kenyan who were initially charged under anti-communist statutes that prohibited membership in communist related groups. Early on, the government agreed that the case against them was based entirely on their First Amendment activities. Yet they argued that because the LA 8 were not citizens (they were legal permanent resident aliens), the U.S. could prosecute them

for their support for the PFLP – an offshoot of the Palestine Liberation Organization. The case went to almost every level and kind of court (except perhaps for military), including the U.S. Supreme Court.

After many years, the U.S. re-filed the case as an anti-terrorism case – despite it still being a First Amendment case. The L.A. Eight were charged under 'material support for terrorism' statutes, ignoring the fact that they allegedly had committed these non-violent acts nine years *before* it was illegal. These changing charges illustrate the direct connection between U.S. treatment of communism and terrorism.

A few years ago, deportation proceedings against six of the original eight were dropped. But it wasn't until October 30 that the U.S. dropped its effort to deport Khader Hamide and Michel Shehadeh for their First Amendment activities. It acknowledged that the men had not committed any crime, and may apply for citizenship, which they are expected to do.

Michel Shehadeh posted this reflection at www.masnet.org, the website of the Muslim American Society:

...Throughout this 20-year plus ordeal, we never lost faith that we would win against this political and legal oppression. Not only because of our innocence, but because of the tremendous, unfaltering support that we enjoyed all these years across religious, ethnic and civic communities, and a legal team that did not waver once in its commitment to justice. This incredible support has taught us more about America than we could have learned in two

lifetimes; the support of such people who are a living example and a role model for immigrants – to positively engage with the issues facing the country on a daily basis. Struggling to make the place a bit better than when we arrived is what made America home to us. We made that choice, and we're the better for it

Church Must Pay \$10.9 Million for Protest

The Westboro Baptist Church, you may remember are the folks who have been protesting at funerals of soldiers killed in Iraq (on the theory that they died because the U.S. is tolerant of homosexuality). A few months ago, they upped their tactics to include burning and trampling flags at their demonstrations. And the church is being made to pay: on October 31, a federal jury in Baltimore ordered the church to pay \$10.9 million to the father of a slain soldier whose funeral was picketed.

In addition, one of the church's leaders is facing criminal charges of flag mutilation and negligent child abuse in Nebraska. Seems that at a protest of a funeral for a soldier, one of the leaders put a flag on the ground and had her child step on it. This is an example of how flag mutilation is being used expressly as a First Amendment activity.

The church has filed with the U.S. Supreme Court – asking it to throw out both cases. Hateful, disturbing (and certainly not doing much for their cause) this intolerant bunch is still entitled to express their views.

Enemy Combatants

The conservative 4th Circuit Court of Appeals re-heard the case of Ali al-Marri

on October 31. A three-judge panel ruled in June that the Military Commissions Act does not strip al-Marri of his right to a trial. Press reports indicated that the judges asked some pointed questions but that it was not clear which way they were leaning. At issue is whether the Bush administration has the authority to indefinitely detain U.S. citizens or legal residents by calling them enemy combatants.

'Obscene' sentence

Abdelhaleem Ashqar was sentenced to 11 years in jail for refusing to testify before a grand jury. The judge in the case, U.S. District Court Judge Amy St. Eve ruled that the desire to 'promote terrorism' was the motivation for Abdelhaleem's refusal to testify, therefore it required a stiff sentence under new federal guidelines. Attorneys had been expecting a sentence of five years at the most. Another man who refused to testify in the same case was sentenced to two years.

Notes from our Mailbox

Hardly a day goes by that we don't get a note from somewhere in the country about a major or minor assault on the right to dissent. Here are just a few from November:

Excessive Punishment – More than 2 dozen students were suspended from a suburban Chicago high school after an anti-war protest held at the school. Morton West High School slapped 5 and 10 day suspensions on the students and threatened them with expulsion after a peaceful anti-war protest that took place in the cafeteria, and was moved to an area designated by school officials. Outcry from students, parents and

advocates led the school board to retract the threat of expulsion.

Excessive Police Force – Protesters in Olympia Washington blocked traffic in an effort to stop military cargo shipments from leaving the city's port. AP reported that "police in riot gear moved in quickly, spraying pepper spray in protesters' faces, pushing them with their batons and dragging them away from the road". Some protestors reported that their protective goggles had been ripped from their faces.

Free Speech Zones and Academic Freedom – Activists in North Carolina wanted to picket and leaflet a speech by House Speaker Nancy Pelosi at Meredith College. They were directed to an out of the way 'free speech zone'. Attempts to distribute leaflets led to their confiscation by campus security. The college is a private school and can legally prohibit the distribution of leaflets. But the chilling of free speech on a college campus is a frightening spectacle.

Freedom of Assembly – Three peace activists from Northern Indiana traveled to Chicago to attend a speech by CIA Director General Michael Hayden, but were barred from the event. Although the three had purchased their \$30 tickets in advance, they were turned away because their names appeared on a list which hotel security guards said was 'generated by the speaker'. One of the three has been arrested for a civil disobedience action, but the other two have no criminal record. Perhaps their membership in Veterans for Peace and CodePink had something to do with it?

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