



# DEFENDING DISSSENT FOUNDATION LETTER

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*To protect and advance the right to dissent in the United States*

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Dear Troublemakers,  
Please visit our website, which is improving every day: [www.defendingdissent.org](http://www.defendingdissent.org)  
We welcome your feedback on the site and the information we post.

## **DDF NEWS**

### **DDF launches network on Violent Radicalization and Homegrown Terrorism Prevention Act**

In December, we reported on our concern about a bill that had overwhelmingly passed the House of Representatives. H.R. 1955 seeks to prevent homegrown terrorism by using methods that remind us too much of COINTLPRO and HUAC. The bill is currently stalled in the Senate Committee on Homeland Security and Government Affairs, but could be resurrected at any moment. DDF is building a network of civil liberties groups to work on the bill.

Our initial meeting attracted 19 national organizations who are concerned about the bill in whole or in part. The groups involved divide into two camps – those who believe the bill can be improved and turned into a positive piece of legislation and those who are troubled by the basic premise of the bill. Groups taking the former view are more concerned about the possibility of far worse legislation being introduced by Sen. Lieberman (the Chair of the Homeland Security Committee). In the latter camp, there is grave concern that the bill focuses too much on thought rather than actual criminal behavior. It also fails to

consider the impact of external conditions and events, including government policies and actions, in leading to violence. All agree that the bill as currently written is dangerous and unacceptable.

Actions going forward will include a sign on letter, delegations to meet with Senate Homeland Security Committee staff, and broader education efforts about similar initiatives. *Individuals and organizations interested in participating in the network should contact DDF.*

## **LEGISLATIVE** **More FISA Mess**

As we go to press, the Senate is debating amendments to the FISA bill, and will likely have passed an unacceptable bill by the time you read this. Since the Senate version will differ from the House version, a conference committee will be formed to reach a compromise. After that, the compromise version will go to both the House and the Senate for a final vote. Congressional leadership aims to have this finished before February 15, when the Protect America Act will expire. At this point, Bush is threatening to veto any bill that contains even basic civil liberties protections or omits telecom immunity.

### ***Action:***

Calls to your Senators and Representative telling them – *Vote No* on any FISA bill that does not: require warrants for surveillance of Americans, prohibit bulk collection of data, prohibit use of illegally obtained information, and hold telecoms

accountable for breaking the law. Call the capitol switchboard at 202-224-3121.

### **State Secrets Privilege**

Senators Kennedy and Specter have introduced a bill, *The State Secrets Protection Act* (S. 2533), that could address most of the abuses of the government's use of the state secrets privilege.

The privilege was recognized by the Supreme court in 1953 (U.S. v. Reynolds) as a way for the government to withhold evidence that would risk national security. The state secrets privilege has been rapidly expanding in recent years, as the government has used it to keep cases from even being heard. For example, the El-Masri case was dismissed at the pleading stage before any evidence could be heard (even evidence that was already public and unrelated to any state secret). El-Masri was an innocent victim of the CIA's extraordinary rendition policy.

On the positive side, S. 2533 would not allow cases to be dismissed at the pleading stage due to the state secrets claim; the bill would require that a judge review the allegedly secret evidence to determine if it does contain state secrets; if the evidence is deemed by the judge to contain state secrets, the bill would require the judge to decide if a non-privileged substitute could be crafted.

The bill is potentially problematic in that it allows cases to be thrown out if necessary evidence is protected under the state secrets privilege and no substitute can be crafted.

## **DISSENT**

### **Finding a place to Protest...**

#### **...Could get more difficult in D.C.**

The National Park Service is developing plans to renovate the National Mall – the site of many historic First Amendment protests and rallies. DDF and others are working to ensure that any changes don't adversely impact first

amendment rights. Specifically, one of the options would construct a 'town hall' area for rallies and protests at the end of the Mall closest to the Capitol Building. While this would provide a pleasant site (including bathrooms and seating) for smaller protests, DDF is seeking assurances from the Park Service that protests will not be limited to this space or limited in size. In addition, the Park Service is considering a prohibition on structures (such as stages and sound systems) that would temporarily obstruct the view from the Washington Monument to the Capitol.

You can read about the different plans for the Mall, and **register your input** at their website:

<http://www.nps.gov/nationalmallplan/>.

#### **...Just got easier in N.Y.C.**

The N.Y.C. Parks Department agreed to rescind its regulation limiting public events on the Great Lawn in Central Park. The city had always maintained that the rule was in place to protect the lawn, but in effect the rule denied permits for antiwar protests. The city was ordered to pay \$25,000 each to the National Council of Arab Americans and the Answer Coalition, who were denied permits for a rally on the Great Lawn before the Republican National Convention in 2004. They also were awarded \$500,000 in for attorney's fees. The city will undertake a study of "the optimum and sustainable use of the Great lawn for large events", and provide recommendations. The plaintiffs have the right to reopen the case if they find the recommendations unsatisfactory.

#### **...Is easy as pie in Berkeley...**

The Berkeley City Council voted to give the anti-war group CodePink a parking space in front of a Marine Recruiting office. The parking space is for the exclusive use of CodePink on Wednesday afternoons when they hold a weekly protest in front of the recruiting office.

## **License Plates, the New Bumper Sticker**

Specialty license plates are a growth industry, allowing motorists to advertise their alma mater, their political views or their favorite sports team. Recently though, license plate commissions in both Missouri and Arizona denied applications to advocacy groups who sought to put an anti-abortion message on license plates. In both states, courts ruled that the denials were unconstitutional. As more advocacy groups seek publicity through specialty plates, we can expect more of these cases.

## **CASES**

### **Westboro Baptist Church**

A federal judge ruled that the church's tasteless protests at military funerals do not enjoy absolute First Amendment protection. Last year, a jury had awarded \$10.9 million in damages to the family of a fallen soldier. The judge reduced the award to \$5 million but ruled that "the First Amendment does not afford absolute protection to individuals committing acts directed at other private individuals". He upheld the jury's verdict that the church was guilty of inflicting emotional distress and invasion of privacy.

### **Padilla**

After more than five years, the case against Jose Padilla has ended in something of a defeat for the government, but hardly a victory for Mr. Padilla, Justice, or our legal system. His sentence of 17 years was far less than the life in prison the government wanted, and the judge took into account the 'harsh' conditions of his detention when giving him credit for the three and half years he spent incarcerated on a Navy brig.

You all know the sordid tale, starting with Padilla's arrest in 2002 as an accused

terrorist, being held without charge, being held in isolation, subject to intense interrogation. Just when the Supreme Court was about to rule on the constitutionality of his detention, he was transferred to civilian courts. Contrary to Bush Administration claims that only military detention and trials by military commissions could mete out justice in such cases, the civilian courts were able to handle it.

### **Sami Khouzam**

Sami Khouzam has been fighting deportation to Egypt, which has convicted him, in absentia, of murder. He denies the charge, and fears that he will be tortured for his Coptic Christian beliefs if he is returned to Egypt. A federal judge blocked his deportation because Bush Administration officials were relying on secret Egyptian assurances that Khouzam would not be tortured. The judge ruled that Egypt's assurances must be subject to independent judicial review. The ruling has positive implications for those detainees at Guantanamo who are fighting deportation to countries where they might be tortured.

### **Whales and the Imperial Presidency**

One in awhile, President Bush *doesn't* get to be the Imperial President. This time the whales benefit... one day us humans will too.

A federal judge ruled that Bush could not, by executive fiat, decide what laws the executive branch can ignore. At issue was a law banning sonar training that harms whales. Bush had signed a waiver exempting the Navy from the ban, citing 'emergency circumstances'. The judge ruled that there is not an emergency. She also indicated concerns in her ruling about the constitutionality of the waiver, but didn't resolve that issue.

