



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 Friends,

As primary season drags on, organizers in St. Paul (site of the Republican National Convention) and Denver (Democratic National Convention) are fighting city bureaucracies for the right to hold demonstrations at the convention sites. Defending Dissent Foundation strongly supports the free speech rights of the demonstrators. We'll work with organizers, and keep you informed along the way. Our first action alert for the right to protest at the conventions is on the last page of this newsletter.

LEGISLATIVE

FISA Reform

On March 14, the House passed a FISA reform bill (H.R. 3773, the RESTORE Act) that did not include retroactive immunity for telecom companies, but did include some of the civil liberties protections we had been demanding. The bill was far from perfect in our eyes, but it was just good enough to earn a veto threat from President Bush, and accomplish the goal of denying him his preferred bill that would have trampled our rights while granting immunity to phone companies who illegally handed over email and phone data of innocent Americans. It appears that the House and White House are at a stalemate. President Bush is willing to give up the surveillance powers he has claimed were crucial for national security, in order to achieve immunity for the telecoms – while the Democratic leadership in the House appears willing to stand firm against immunity. The debate now moves to the Senate.

Action: This battle over FISA reform is lasting much longer than any of us expected. You may be experiencing FISA fatigue, but we encourage you to call Speaker Pelosi to thank

her for standing up for the rule of law in the FISA debate (and of course, ask that she continue to stand up to Bush on this matter). Her office is: 202-225-0100.

Torture

On March 7, President Bush vetoed HR 2082 (Intelligence Authorization Act for FY 2008), which would have prohibited the CIA from torturing suspects. Specifically, the bill prohibited the use of any interrogation techniques not explicitly authorized by the 2006 Army Field Manual. The House failed to override the veto on March 11.

EXECUTIVE BRANCH

For updates and more information on surveillance abuse and political witch hunts, as well as resources to expand civil liberties, free speech and the right to dissent, please visit the collaborative website: www.stopspying.us

Terrorist Watch List

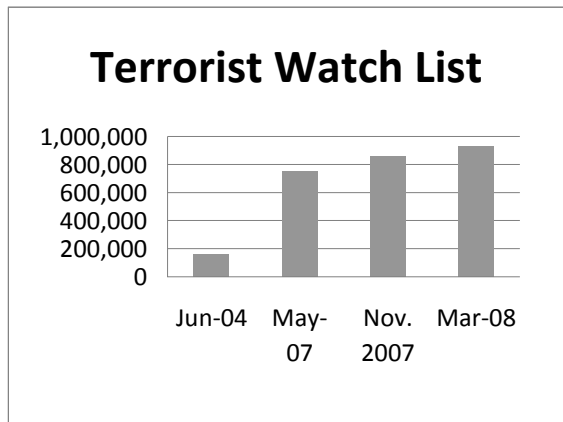
Over the years we've heard the silly stories: Sen. Edward Kennedy, singer Cat Stevens and 'Cat' Stevens (wife of Alaskan Republican Senator Ted Stevens) have all turned up on the terrorist watch list. And, we've heard the stories that cause even more concern, anti-war activists and other dissenters not allowed to fly because their names are on the list.

The Justice Department (DOJ) released an audit of the Terrorist Watch List this month, confirming that the list is inaccurate and outdated. Due to flawed data supplied by the FBI and other agencies, the list includes names of innocent people, while omitting the names of people who may truly pose a threat.

The FBI has primary responsibility within the DOJ for 'nominating' people to the list, and updating the records of those they have

nominated (including deleting people from the list after they have been cleared of suspicion). The audit found a myriad of problems with the way data is added and updated: FBI agents neglecting to file timely and complete nominations of suspected terrorists; FBI neglecting to take innocent people off the list once they are cleared; other DOJ agencies (Bureau of Prisons, Drug Enforcement Administration and others) adding names to the list, but not removing or updating them when appropriate; names inadvertently being added to the list.

According to the audit, the FBI has regularly been adding about 3,000 names to the list each year. The Intelligence agencies as well as other government entities also add names to the list. This audit covered only the names added through Department of Justice agencies, calling into question the reliability of the bulk of the names list, which are provided by other agencies at the rate of 20,000 names per month.



The Terrorist Watch list was born in September 2003, and by June 2004 it had 158,000 names. It has continued to grow out of control.

We'll Do Better Next Time (We Promise!)

The Department of Justice Office of the Inspector General has just issued a review of FBI use of National Security Letters, finding once again, that the FBI has improperly used the letters to obtain private information about Americans in 2006. National Security Letters, or NSLs allow the FBI to get data from phone companies, banks, internet service providers and other businesses without a judge's approval. The FBI also has the authority to place the recipient of the order under an

indefinite gag order. According to the Inspector General, the FBI issued 50,000 NSLs in 2006, and 30,000 of those NSLs targeted Americans.

The Inspector General's report was a follow-up to a report issued in March 2007, which looked at the FBI's use of NSLs from 2003-2005 and found serious problems. The new report found that violations had actually increased in 2006. In testimony before Congress a week ahead of the release of the new report, FBI Director Robert Mueller admitted to the continued misuse of NSLs, but claimed that the FBI has recently put into place new guidelines and procedures to prevent abuse. He also mentioned a bridge in Brooklyn we might like to buy....

The Inspector General's report revealed more FBI actions around NSLs that raise concerns. The initial report (in March 2007) had revealed that the FBI had issued over 700 exigent letters (intended to be used in emergencies) in non-emergency situations from 2003-2005. The FBI was supposed to get back to the communications companies with a proper NSL, but never did. Thus, they had a stash of improperly obtained data. In an attempt to clean up this mistake, the FBI issued 11 improper 'blanket' records demands in 2006 to retroactively justify the collection of the data.

Perhaps more troubling is one case cited in the report: the FBI issued NSLs in defiance of the FISA court, which ruled twice that agents were improperly investigating activities protected by the First Amendment. The FBI general counsel disagreed with the FISA court and told investigators it was appropriate to issue the letter.

Both the House and Senate Judiciary Committees will hold hearings on NSLs in mid-April. Several bills have been introduced in both chambers to address the abuse of NSLs – our May issue will analyze the legislation and provide action steps.

Déjà vu all over again...

In the 1980s, the Committee in Solidarity with the People of El Salvador (CISPES) was at the forefront of the Central America Solidarity movement. In 1981, the FBI undertook an

investigation of CISPES for allegedly acting as a foreign agent of the FMLN, a leftist political party in El Salvador. It was the beginning of a campaign of harassment and illegal surveillance of CISPES that lasted until 1987. (Find a link to Chip Berlet's "The Hunt for Red Menace: The FBI Probe of CISPES" on our website).

Imagine the dismay in the CISPES offices in January when the Department of Justice sent a letter inquiring about the organization's relationship with the FMLN, evoking the Foreign Agents Registration Act (FARA). "In the 1980s the Department of Justice set out to intimidate and repress the powerful Central America solidarity movement," said Angela Sanbrano, CISPES Executive Director during the FBI investigation of the 1980s. "The infamous witch hunt was a complete failure, and yet the Bush Administration has the nerve to return to the original tactics of using an ambiguous law – FARA – to threaten CISPES again."

For now, CISPES has informed the Justice Department that it is not an agent of the FMLN, therefore not required to register under FARA. We will continue to monitor this situation if the Justice Department continues its unjustified inquiry.

Intelligence Oversight Board

In 1976, after the Church Committee brought to light the vast abuses of U.S. intelligence agencies, President Ford issued an executive order that created the independent Intelligence Oversight Board. The board is made up of private citizens with top-level security clearances charged with overseeing U.S. intelligence agencies.

On February 29, President Bush signed a new executive order greatly reducing the oversight authority of the board. The board will no longer have the power to refer matters to the Justice Department for investigation, they will no longer report unlawful activity to the president and attorney general. Each agency director had been required to file a quarterly report with the board, now it will be at the director's discretion. Bush gave no reason why these changes were necessary. Indeed, the board has been a pretty blind and toothless

watchdog since 2000. The Washington Post reported in July 2007 that the board had not filed a single report during the first 5 ½ years of the Bush Administration, in spite of the fact that the FBI had reported hundreds of violations to the board in that time period.

Many of the hard-won reforms of the post-Watergate era have fallen by the wayside under the Bush Administration: the ban on assassinations (justified by Bush because it is wartime); the prohibition on the NSA and other foreign intelligence agencies from gathering info about Americans; the ban on warrantless wiretaps of Americans.....

CASES

Parallel rulings in two military trials

The Pentagon has been fighting defense lawyers in two military cases, trying to restrict access to information and witnesses. Judges in both cases ruled in March in favor of the defendants.

Salim Ahmed Hamdan, known as Osama bin Laden's driver and bodyguard is accused of being a co-conspirator in the 9/11 attacks. His lawyers won the right to question seven prisoners held at Guantanamo, including the alleged mastermind of the attacks, Khalid Sheik Mohammad. The judge rejected the national security arguments made by the Pentagon attorneys, developing a plan he says will allow the questions to be asked while safeguarding national security: defense attorneys will submit their questions to an independent security officer who works for the judge (not the prosecution). The security officer will oversee the translation and possible deletion, redaction or summarization of any answers to ensure that no secrets are revealed or messages passed on from the captives.

In another case, that of Canadian Omar Khadr, the army judge ruled in favor of the defense on five questions, forcing the Pentagon to provide more information during the discovery phase of the trial. His rulings will allow the questioning of U.S. army personnel and require that the Pentagon turn over records and notes from all interrogations of Khadr.

Both Hamdon and Khadr will face military commissions this summer.

