



# DEFENDING DISSENT FOUNDATION LETTER

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

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Dear Friends,

DDF was busy in April, as civil liberties issues took a front seat on Capitol Hill, in the courts and in the media. The news is mixed, but there are signs that Congress is waking up to their responsibility to counter the abuses of the Bush Administration. The House still has not caved in to the administration on warrantless wiretapping (although the forecast is not entirely sunny); both chambers are challenging Bush on other fronts as well. We're gaining ground but it will take grassroots pressure to ensure that Congress doesn't back down.

## **"Homegrown Terrorism" Victory**

We reported to you a few months ago that DDF has pulled together a network of civil liberties groups to fight the "Homegrown Terrorism and Violent Radicalization Prevention Act" (H.R.1955 and S.1959). We are pleased to be able to declare victory against the bill, which is buried in the Senate Homeland Security Committee. Unfortunately, the committee plans to keep the issue alive by issuing a report about the threat of homegrown terrorism. That report could create problems.

The committee sponsored a series of hearings last year focused on the problem of homegrown terrorism and the testimony they heard was slanted toward repression of speech, religious and associational rights. We are concerned that the report could adversely affect the debate about security and freedom in the Congress and the media.

Working with our network of civil liberties groups, DDF is leading a campaign to influence the outcome of the report. The centerpiece of the campaign is a memo to the members of the committee (drafted by staff at the Center on Democracy and Technology, OMBWatch and the Washington Office of the ACLU). We are seeking organizational signatures on the memo (available on our website). The deadline for signers is May 30. DDF will also talk directly with sympathetic

members of the committee and their staff to ask them to ensure an evenhanded report.

## **National Security Letters**

DDF joined with dozens of organizations in sending a letter in support of both the House and the Senate version of the National Security Letters Reform Act (H.R.3189 and S.2088). The letter to the Senate was read into the record of a Senate hearing on national security letters (NSLs) on April 23. As we state in the letter, "The PATRIOT Act and Intelligence Authorization Act of FY 2004 drastically expanded the FBI's authority to obtain the business and personal records of Americans by issuing National Security Letters (NSLs). NSLs, which do not require prior judicial approval, can be used to obtain a wide range of documents based upon vague claims that the information is merely "relevant" to a terrorism investigation. Once the FBI acquires records with an NSL, it can keep them indefinitely, even when it concludes that the subject of those records is innocent of any crime and is not of intelligence interest."

Both the House and the Senate versions of the bill include many beneficial reforms, including restricting the use of NSLs to suspects connected to terrorism or espionage; enhancing congressional oversight; and limiting the 'gag' that attaches to an NSL.

Although chances of either bill passing Congress (and being signed by the President) this year are slim, we must build momentum now in order to ensure reform under a new administration. The Senate Judiciary committee should pass this bill out of committee this year.

**ACTION:** Call on key Senators of the Judiciary Committee to sign on as co-sponsors of The National Security Letters Reform Act (S.2088). Key Senators are Sens. Whitehouse (D-RI), Leahy (D-VT), Feinstein (D-CA), Schumer (D-NY). Call the Capitol switchboard at 202-225-3121 and ask for the office of the Senator you wish to talk to.

## **State Secrets Privilege**

Time and time again in the past few years, we have seen important lawsuits dismissed before any evidence can be heard. Trials that could have exposed government abuses from torture, kidnapping, rendition and warrantless eaves dropping have been blocked by judges hoodwinked by defense claims of 'state secrets privilege'. In February, we reported that Senators Kennedy and Spector had introduced a bill to make it harder for the government to use the state secrets claim to stop a lawsuit that could expose government misconduct. The State Secrets Protection Act (S.2533) passed its first hurdle, being voted out of committee earlier this month.

The Bush Administration is against the bill, using a letter from Attorney General Mukasey to issue a veto threat. At this point, it looks unlikely that the bill will even make it to the floor of the Senate, but we will continue to monitor its progress and keep you posted.

## **California Teachers, Free at Last**

Now here is a bill that those of you who have been involved in this organization since our National Coalition to Abolish HUAC days will really love. After half a century or so, California teachers may get their First Amendment rights restored. State Sen. Lowenthal has introduced a bill (S.B.1322) in the California State Senate to eliminate the state's loyalty oath and repeal the law that allowed the firing of public school and community college teachers who are Communist Party members. The bill has passed through several committees, and Sen. Lowenthal's staff informs me that in the California state legislature, every bill gets a vote. The prospect of passage is good – but folks who live in California can give their Assembly member and State Senator a call and ask them to support the bill. (Contact information is available at [www.legislature.ca.gov](http://www.legislature.ca.gov))

## **Update Nuggets**

- Congress will attempt to pass a ban on waterboarding a second time this spring. The Senate Intelligence Committee voted to add a measure to the Intelligence Authorization Bill restricting the CIA to interrogation techniques explicitly allowed in the Army Field Manual.
- Look for the FISA debate to reignite soon because some surveillance orders authorized under the Protect America Act will begin to expire in August. Conservative House

Democrats (known as Blue Dog Democrats) have been targeted with radio attack ads by outside interest groups. Republicans in the House have mounted a discharge petition campaign to force a vote on the Senate-passed FISA bill (which, among its many faults, does grant immunity to Telecom companies that gave customer data to the government). In order to force a vote, Republicans need to get 218 signatures on their petition, they currently have 189.

## **Terrorist Watch List**

Last month we reported on the Justice Department's audit of the Terrorist Watch List (officially the Terrorist Screening Center Watch List). The audit concluded that the list was rampant with errors. Now we find out the list includes Nelson Mandela and other prominent South African leaders who are members of the African National Congress (ANC). When Mandela wants to enter the U.S., his name is flagged and he requires a special waiver from the State Department. Secretary Rice is quoted in USAToday saying it was 'rather embarrassing' to have to issue special waivers for the likes of Mandel and South Africa's Ambassador to the U.S. Even Michael Chertoff, Secretary of the Department of Homeland Security (DHS) admits that it does defy common sense to have members of the ANC on the list.

The ANC was declared a terrorist organization by the South African government in the 1970's, and the U.S. government followed suit. Apparently no one ever got around to taking it off the list. One does have to question Secretary Rice's judgment that she continued to approve waivers for Mandela and his colleagues, rather than removing their names from the terrorist watch list.

In order to correct this glaring error, on April 30, Rep. Howard Berman (D-CA) introduced legislation to exempt the ANC from treatment as a terrorist organization (H.R.5690). Unfortunately the bill does nothing to remove the names of unknown numbers of travelers who have found themselves at the mercy of the terrorist watch list (see below).

## **Terrorist Watch List II**

Akif Rahman and Oussam Jammal, U.S. citizens living in suburban Chicago, have been repeatedly stopped when returning home from abroad. They joined in a lawsuit with six other U.S. citizens to find out if their names are on the terrorist list. The administration argued

that information is a state secret, but a U.S. Magistrate Judge didn't buy it, and ruled in April that DHS must tell them if their names are on the watch list. The Judge will also review their FBI files to decide if the plaintiffs can see them. The government is appealing the ruling.

### **Terrorist Watch List III**

During an April 1 Senate Finance Committee hearing on anti-terrorism financing, Chairman Baucus questioned whether the administration is being aggressive enough in establishing links between charities and terrorists. He had no facts on which to base his assumption that there is a serious problem of charities funding terrorism. One of the possibilities raised to address this (unfounded) concern was to have IRS personnel check U.S. charities and their staff against the Terrorist Screening Center Watch List rather than the more narrow terrorist list maintained by the Treasury Department. This is exactly the wrong use for the faulty list.

### **Privacy & DHS**

The National Applications Office sounds innocuous enough, but watch out. The NAO was established by the Department of Homeland Security last year to compile data from traditional law enforcement monitoring equipment such as radars and chemical detectors and from a new source: our most advanced spy satellites. The domestic use of spy satellites raises obvious civil liberties concerns, and last fall, members of the House Homeland Security Committee forced DHS to delay activation of the domestic spy satellites until an acceptable legal framework for their use is adopted.

However, Homeland Security Secretary Michael Chertoff is so excited about his new toy that he wants to start playing with it NOW. He announced in April that the Department will activate the domestic satellite surveillance, starting with less invasive activities such as surveying hurricane damage and making terrain maps. He says the spy satellites won't be used for law enforcement purposes until lawmaker's concerns are addressed, although he does not seem to take their concerns seriously. DDF objects to Chertoff's determination to launch the program before allowing public debate on the use of new technologies against Americans, and the questionable role the military may play in this domestic surveillance program.

### **Goin' Fishin'? Bring your passport**

An alarming new trend has emerged threatening our right to travel within our own country without a passport or official ID. In New York and Washington State, immigrants are the target of both border patrol agents and Immigration and Customs Enforcement (ICE). In New York, ICE has been boarding buses and detaining those who are not U.S. citizens. In Washington State, border patrol agents have asked passengers on ferries if they are citizens, and arrested those who give the wrong answer. In Michigan, the target is Lake Erie charter fishing boats and their passengers. Although technically the boats sometimes venture into Canadian waters in pursuit of fish – they don't dock or come close to the Canadian shoreline. Still, DHS is requiring all passengers to have a passport or two other IDs and submit their names, birthdates and government ID numbers an hour before they go fishing in order to be checked against the terrorist watch list. When the fishing trip is over, all passengers will have to check in with Customs and Border Protection.

### **Corporate Spies**

Sometimes we have to be reminded that it isn't just government spies we need to watch out for. Corporations who come under attack from environmental, animal rights and farm worker rights activists fight back. And they don't fight fair.

The Coalition of Immokalee Workers (CIW), a farm worker advocacy group based in Florida has waged effective campaigns to pressure McDonalds and Taco Bell to pay an extra penny per pound for tomatoes to increase the wages of tomato harvesters. CIW is now engaged in a campaign to convince Burger King to do the same. Burger King is fighting back (because it could cost them as much as \$300,000 out of their corporate earnings of \$2.2 billion last year). Anti-CIW rants posted on YouTube and other internet sites came from suspicious email addresses: one was traced to BK headquarters in Miami, another belonged to the middle school daughter of a BK vice-president. The girl told a reporter for the Fort Myers (FL) News-Press that it was her father who wrote the posts using her email account.

That's just the Mickey Mouse stuff, it gets worse. The Student Farmworker Alliance (which works with CIW) was infiltrated by a woman claiming to be a student, but who

