



DEFENDING DISSSENT

f o u n d a t i o n



JUNE/JULY 2009 NEWSLETTER

Dear Troublemakers,

We're on our summer newsletter schedule – a combined June/July and a combined August/September issue, so I have to pack two month's worth of indignation into one letter. Let's start with detention policy. President Obama and White House officials have been floating various ideas for "prolonged detention" lately. Lacking a specific proposal, we can't develop specific talking points, but we can wholeheartedly and unequivocally voice our objection to *any* system that will detain people without a trial, or that uses secret evidence to declare guilt. One of the administration's justifications for "prolonged detention" is that much of the evidence was obtained through torture so it can't be used in court. But they want to use this same 'evidence' to indefinitely detain someone. They seem to be forgetting their own argument that 'evidence' obtained through torture is unreliable and often false. If it isn't good enough for a courtroom, it isn't good enough to keep someone locked up.

Although news of the protests in Iran has slipped off the front pages, we're still smarting from all the irony. I got an email last week with the subject line "Where's my vote – Washington, DC". It was an announcement for a protest outside the Iranian Interests Section of the Pakistan Embassy, but it could have been about a demonstration for voting rights for DC residents. The justified outrage of the talking heads in the past few weeks over the heavy-handed police tactics, including tear gas, presence of 'robo-cops' and use of heavy batons against peaceful protestors was all about Iran, but it could have been about the police in St. Paul during the Republican National Convention. The calls for a complete recount of the votes due to obvious irregularities in the ballot count were not, of course, harkening back to the U.S. election in 2000, but were again about Iran. Check out our blog for links to some great commentary on these and other issues: www.defendingdissent.org/blog.html.

While you are at our blog, please look around our "new & improved" website. We've been working with a wonderful volunteer graphic designer named Tim for several months to make DDF's website more accessible, more comprehensive—and more fun to look at. We think Tim did an especially nice job with our "donate" button, which he redesigned to echo the DDF logo—please feel free to click on the button and try it out! The website is still under construction, so check back often for additional content and features; as always, if you have a suggestion on how to improve the DDF website, we'd love to hear it!

In Solidarity,

Sue Wiley

SURVEILLANCE

Activists in Iowa

Anti-war groups in Iowa were infiltrated by both the FBI and the Ramsey County, Minnesota Sheriff's office before the Republican National Convention last year. St. Paul, the site of the convention, is located in Ramsey, and County Sheriff Bob Fletcher had boasted in the media that his staff had been spying on local groups organizing protests. It turns out that at least one member of his staff followed organizers to meetings in Iowa.

The FBI files from this surveillance contain information about activists who made clear they had no intention of breaking the law in St. Paul. For example, a document released to the Des Moines Register under FOIA gives a physical description, cell phone number and the type of car driven by one activist who planned to be a legal observer or medic during the protests. The files also contain information about activists who were planning non-violent civil disobedience.

Local activists believe they have figured out who the two informants are, and that the infiltration probably began in the fall of 2007 – almost a year before the convention.

DDF is meeting with Senate staff to bring attention to the latest revelation of police spying on activists, and continues to work with activists to develop a more complete picture of domestic spying (see **FOIA Parties**, below).

Operation Vigilant Eagle

The Wall Street Journal reported in April that the FBI has launched a nationwide operation called 'Vigilant Eagle' that focuses on veterans of the Iraq and Afghanistan wars who are involved in white supremacist and "militia/sovereign-citizen extremist groups". In the last days of the

Bush Administration, a joint working group of the FBI's domestic counterterrorism division and the Department of Defense was formed to carry out the operation.

The Journal article cites an FBI memo sent to field offices in February and other documents that show the FBI was working with DOD personnel "in an effort to identify those current or former soldiers who pose a domestic terrorism threat".

FOIA Parties

Defending Dissent Foundation hosted our first FOIA party under the auspices of the DC Bill of Rights Coalition. The party was a great success, resulting in over 50 individual FOIA requests to a variety of agencies including the FBI, CIA, Pentagon and local police agencies. Indeed, the party was such a success we are planning several more in the DC area and are working with activists in Berkeley, Boston, and elsewhere to plan parties.

By organizing FOIA parties around the country, we hope to get information from the files of various police and intelligence agencies to create a more comprehensive picture of the extent to which activists are under surveillance in order to build a case for stricter guidelines. These parties will also provide a forum for us to hear the concerns of activists, and an opportunity to exchange information about the way the FBI guidelines, fusion centers and the growth of the surveillance state threatens their ability to organize. After the party, we'll work together to develop an action plan based on the response we get from the FOIA requests.

DO Try This At Home!

To be effective, we need people to volunteer to host FOIA parties in their towns. It's isn't difficult, and it is fun! Please contact DDF if you are interested in working on a party in your neck of the

woods. Call the office at 202-529-4225 or send us an email: info@defendingdissent.org

Chicago Committee Hosts Surveillance Forum

On June 6, the Chicago Committee to Defend the Bill of Rights (CCDBR) hosted a forum called “The State of the Surveillance State”. An excellent panel laid out the issues we’re faced with, from the infiltration of activist groups and mosques to surveillance cameras in high schools and fingerprinting of elementary school students. Although it sounds grim, with advocacy efforts by national and local groups as well as local activists taking on their school officials, there is a light at the end of this tunnel (and it isn’t the flash from a camera....)



Timuel Black, DDF & CCDBR Board Member chats with ACLU’s Michael German after CCDBR forum.

Domestic Spy Satellite Grounded... Sort Of

We’ve been covering the ups and downs of the National Applications Office program to use spy satellites to collect domestic intelligence. Former Homeland Security Secretary Michael Chertoff loved the program, but Congress would only fund part – putting a hold on the gathering of domestic intelligence, but allowing for the collection of data to help with planning for natural disasters and major events (like the Super Bowl or political conventions). Now,

according to the Los Angeles Times, Secretary Janet Napolitano has decided to end the domestic intelligence program after local and state law enforcement officers told her it wasn’t a priority for them

“Oops, I did it again!” says NSA

In April, the Obama administration revealed that the NSA had some problems with “overcollection” of domestic communications without a warrant. They vowed to do better, and members of Congress promised to investigate.

According to an article in the New York Times, those congressional investigations revealed that the NSA is still sweeping up the communications (it seems to be mostly e-mails) of thousands of Americans – without warrants. The NSA has responded with the claim that it was all a mistake and that those mistakes are being corrected. Hmm... have we heard this before?

Last year’s FISA amendment act gave the NSA broad new eavesdropping powers, but it appears that the agency has overstepped anyway. Representative Holt (D-NJ), who sits on the House Intelligence Committee, is pressing for another investigation. While we support an investigation, we think the problem is obvious without further investigation: the FISA amendment act does not offer Americans the protection we obviously need from an agency that just can’t stop itself from listening in on us. It is time for Congress to repeal the FISA amendment act.

We need Congress to act because the Obama Administration won’t.

The Times article appeared on the day that Attorney General Eric Holder testified before the Senate Judiciary Committee. Unfortunately, Holder did not use the occasion to announce stricter guidelines or more stringent oversight of the NSA to

protect Americans from unwarranted surveillance. Instead, he dodged questions. When Senator Leahy asked Mr. Holder about problems with NSA eavesdropping, he pled ignorance because he hadn't had a chance to review the article in detail. Senator Feingold followed up, asking if the Office of Legal Counsel whitepaper that provided legal justification for Bush's warrantless wiretap program had been rescinded. Holder wasn't sure. Feingold asked if Holder considered the warrantless wiretap program "illegal". Holder called it "unwise", so Feingold tried again, asking the Attorney General a total of five times if the program was illegal, but Holder explicitly refused to say that word.

ACTIVISTS

RICO Strikes Again

Environmental activists in Indiana dreamed up a clever civil disobedience action to protest the building of a superhighway: they 'evicted' the company building the highway from their project office by removing the furniture and staging a sit in. The activists also staged sit-ins in trees, and blocked the entrance in front of one construction site. Two of the activists, Hugh Ferrell and Gina Wertz, have been arrested and charged under RICO. The charges were drafted in a way that turned these misdemeanors into felony racketeering, with charges of conspiracy and theft; by sitting in trees they deprived the owners of the value of the tree. The charges carry a maximum sentence of eight years.

The activists are not charged with any destruction of property or violence, just conspiracy to commit theft. *Of trees. By sitting in them.*

Journalist and blogger Will Potter alerted us to this passage in government's bond request for Hugh Ferrell:

"The defendant has been observed advocating literature and materials which advocate anarchy, property destruction and violence, including 'Ecodefense: A Field Guide to Monkeywrenching' or 'Recipes for Disaster: An Anarchist Cookbook.'"

From that one phrase, we understand that someone in the government has been making note of Mr. Ferrell's First Amendment protected activities, and by setting a higher bail, they are attempting to penalize him for his political activity.

QUIZ

Protests are "Low Level Terrorism"

The question asks, "Which of the following is an example of low-level terrorism activity?" and your choices are:

- Attacking the Pentagon
- IEDs
- Hate crimes against racial groups
- Protests

Did you choose "Protests"? If so, you answered correctly! The question is part of the Department of Defense's Level 1 Antiterrorism Awareness Training for 2009. The course is required for all DOD personnel, and this particular question appeared on the web-based course.

The ACLU has written a letter demanding that the question be purged and that all DOD personnel who have already received the training receive corrective materials. Although the ACLU has not yet received a response, a Pentagon spokesperson, Les Melnyk, admitted to FOXNews "They should have made it clearer there's a clear difference between illegal violent demonstrations and peaceful, constitutionally protected protests". He said that the question had been removed and an email will be sent to everyone who already took the exam "explaining the error and the distinction between lawful protests and unlawful violent protests".

Over 1500 Pentagon employees took the exam and only one was bothered by the question (and sent it along to the ACLU). So, although the immediate problem of the question has apparently been remedied, there remains the deep concern that more than 1499 Pentagon employees do not quite understand the meaning or importance of the First Amendment.

MORE FBI NEWS

FBI Guidelines

The new Attorney General Guidelines for FBI domestic intelligence investigations went into effect at the end of last year. As you know (if you've been reading your DDF newsletter!), the guidelines allow agents to open an investigation without any factual basis or reasonable suspicion. The guidelines also allow agents to use race, or religion as one of the determining factors for an investigation. In conjunction with the new AG Guidelines, the agency also developed Operational Guidelines to detail the procedures and standards for implementing domestic intelligence investigations.

The Electronic Frontier Foundation has filed a lawsuit demanding the release of the Operational Guidelines following the denial of a request for their release under FOIA. "The Attorney General's Guidelines are troubling, allowing for open investigative 'assessments' of any American without factual basis or reasonable suspicion," said EFF Senior Counsel David Sobel. "The withholding of the Operational Guidelines compounds our concerns. Americans have the right to know the basic surveillance policies used by federal investigators and how their privacy is -- or is not -- being protected."

FBI Watchlists

The DOJ Office of Inspector General has completed a new audit of the FBI's terrorist

watch list. You won't be surprised to learn that they found the list to be full of errors. Not only are subjects of terrorism investigations left off the list, but in 72% of cases, the FBI neglected to remove names from the list in a timely manner. The audit concludes that there is a 35% error rate.

National Security Letters and Gag Orders

The use of National Security Letters (NSLs) is on the rise again. According to a Justice Department report issued to Congress in May, the FBI used 24,744 NSLs to investigate over 7000 Americans last year. That's up from 16,804 NSLs issued in 2007.

Remember that the FBI can use NSLs to get confidential information about someone from their bank, Internet Service Provider, or any other party that may have data on them. The FBI can issue an NSL without a court order, and – until recently – the FBI could slap a gag order on the recipient of an NSL without approval from a judge.

Last December, however, a federal appeals court ruled that the FBI must get the approval of a judge for a gag order. In May, the Department of Justice decided not to ask the Supreme Court to review that decision, so it stands. (You have time now for a brief "Hooray!" before I burst your bubble.)

The case that led to the decision is *Doe v. Holder*, and it has been in litigation for about five years. The original NSL that led to the gag order has been withdrawn, and the ACLU (Doe's lawyers) says it is likely that the subject of the investigation is no longer even under investigation. But the Department of Justice is *still* defending the gag order – in secret. The DOJ has provided the judge with their justification for the gag order, but it is classified and Doe's attorneys have not been given even a redacted version or an unclassified summary.

TRANSPARENCY AND OPEN GOVERNMENT

FOIA Hits the Skids

President Obama got off to a great start, proclaiming his commitment to transparency, accountability and open government with two Presidential Memoranda on first full day in office. His strong statement on the Freedom of Information Act included this guideline: “The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.”

Unfortunately, the President’s actions in the last month have spoken louder than his words:

- The Administration has vigorously fought the court-ordered release (as the result of a FOIA request) of photos showing detainee abuse. The basis of their argument, that U.S. military personnel might be harmed due to the incendiary nature of the photos, is clearly a “speculative or abstract fear”. President Obama has supported legislative efforts to keep the photos hidden, and has promised to issue an executive order if legislation fails.
- The Administration has argued against releasing the FBI’s notes from an interview with Vice President Cheney about the Valerie Plame leak. A DOJ lawyer argued “I don’t want a future vice president to say, ‘I’m not going to cooperate with you because I don’t want to be fodder for ‘The Daily Show.’” Apparently the attorney did not read the part that disclosure can’t be denied “because public officials might be embarrassed by disclosure.”
- Two FOIA requests for White House visitor logs (visitors to the Obama White House) have been denied. Like Bush, the Obama Administration is arguing that these are Presidential records not subject to FOIA.

DEFENDING DISSIDENT

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