



# DEFENDING DISSSENT

f o u n d a t i o n



## AUGUST/SEPTEMBER 2009 NEWSLETTER

Dear Troublemakers,

Normally Washington is hot, steamy and sleepy in the summertime, but not this year. It's been oddly cool and busy. Two damning reports came out this summer: one on the President's Surveillance Program (including the NSA's illegal wiretap program) and the other was the long-awaited Inspector General report on torture. The torture report has been much discussed, and led Attorney General Holder to the inescapable conclusion that an investigation is necessary (true, he's committed only to the most meager of investigations, but we can continue to push for more). Unfortunately, the report on the President's Surveillance Program was released in mid-summer and hasn't generated a lot of discussion – but we'll be talking to members of Congress about the need for a full investigation of surveillance activities.

I hope you're all rested and ready for an active fall, our work has just begun!

In Solidarity,

A handwritten signature in cursive script that reads "Sue Wiley".

### ACTIVISTS

#### Army Spy Infiltrates Activist Groups

Activists in Olympia, Washington discovered a spy in their midst when they examined documents released in response to a FOIA request.

For two years, an Army civilian from nearby Fort Lewis had been spying on Port Militarization Resistance, Students for a Democratic Society, and other peace and anarchist groups in Tacoma, Olympia and elsewhere in the Pacific Northwest. "John Jacob" was actually John Towery, a civilian employee at Fort Lewis who managed to become an integral part of several activist groups, especially PMR, where he administered the group's email listserve. This enhanced his access to information, which he apparently shared

far and wide. Thomas Cincotta, writing for his blog, *Liberty Beat* explained:

"John Jacob" administered the email listserv for Port Military Resistance. Mr. Towery attended meetings of the group and reported on its activities to the Fort Lewis Force Protection Fusion Cell. The Fusion Cell coordinates local, state, and federal law enforcement, as well as military police and intelligence analysts. The Fusion Center's dynamic increases the potential for information covertly gathered by the Army to be shared over a variety of intelligence networks, and even with private industry.

By actually administering this group's listserv, the Army's agent did not

simply gain access to public meetings. He gained access to private correspondences, membership lists, email addresses, and internal discussions. This "intelligence" was clearly shared with other agencies attached to the base Fusion Cell. Further, it was used to sanction members of the organization with pre-emptive arrests during at least one political action.

This is a huge and evolving story, involving not only illegal government spying, but military involvement in domestic law enforcement and Fusion Centers. It also shows the value of pursuing information using FOIA and state public records requests. Read more about this case and its implications on our website – and find a link to *Liberty Beat*.

### **White House Enemies List?**

*These rumors often travel just below the surface via chain emails or through casual conversation. Since we can't keep track of all of them here at the White House, we're asking for your help. If you get an email or see something on the web about health insurance reform that seems fishy, send it to [flag@whitehouse.gov](mailto:flag@whitehouse.gov).*

White House website

How should the President counter the right-wing smear campaign against healthcare reform? One way he *shouldn't* respond is by keeping track of people who send out critical emails or post real or imagined concerns on websites. But that is just what the White House is doing. In early August an announcement on the White House website asked people to forward 'fishy' emails and websites to White House staff so they could keep track of all the 'misinformation' about healthcare reform. DDF sent a letter to the President urging him to immediately discontinue the program because "it is likely that the request that Americans forward 'fishy' emails to the White House will chill the free speech rights of people who may have

legitimate concerns about health care reform or other issues. Americans who raise questions about any public policy should not have to worry that their email address, and possibly other personal information, will end up in a White House database". We have not yet received a response, and the request is still on the White House website. Two advocacy groups have filed a lawsuit charging the White House with violating their free speech and privacy rights.

### **Civil Rights Protestors Pardoned**

On August 11, Birmingham Mayor Larry Langford pardoned 2,500 people who were arrested during nonviolent civil rights protests in the 1960s. The Rev. Joseph Lowery told the Associated Press, "It vindicates the people who went to jail and says that what they did was a good thing," and "It shows that the city has grown to recognize the jail-ins as spiritual acts, not criminal acts. They didn't violate the law; they helped fulfill the law."

### **Buffer Zones upheld**

In July, a federal appeals court upheld a Massachusetts law that created a 35-foot buffer zone around entrances and exits to reproductive health clinics. Protests are not allowed inside the buffer zone, and anti-abortion activists sued on First Amendment grounds, claiming the statute is aimed at curbing anti-abortion speech. The court disagreed, holding that the law is a reasonable response to a significant threat to public safety and merely regulated the time, place and manner of the protests.

### **Rah Navy? Rah Army? Rah Peace!**

When anti-war activists stood up in the stands wearing t-shirts spelling "U.S. Out of Iraq" during a nationally televised Army-Navy basketball game at West Point in 2004, they were kicked out, arrested and charged with disorderly conduct, and banished from the campus for five years. So the activists sued the officials who kicked them out, claiming a violation of

their First Amendment rights. In July, 2009, after a weeklong trial and 3½ hours of deliberation, a federal jury ruled in favor of the West Point officials. During the trial, the officials made it clear that the activists were kicked out of the stands not because they were creating a disturbance, but because of the message on their t-shirts. It was also clear that West Point had no written policy banning protests on campus, so the officials really had no grounds to evict the activists. The pro-bono attorney in the case, Michael Sussman, has filed a motion to set aside the verdict, or for a new trial. We'll keep you posted.

## **SURVEILLANCE**

### **“Extraordinary and Inappropriate”**

*The Bush-era torture regime might have been that administration's most flamboyant act of criminality, but its illegal NSA warrantless eavesdropping program (and other still-unknown surveillance programs) has always been the clearest.* Glenn Greenwald, Salon.com, August 12, 2009

On a Friday in mid-July 2009, the Inspectors General of the CIA, NSA, Departments of Defense and Justice and the Office of the Director of National Intelligence issued their report on the President's Surveillance Program (PSP). The PSP included the NSA's warrantless wiretap program, which we have known about, and “Other Intelligence Activities,” that remain classified and unknown. The report was mandated by Congress as part of the FISA Amendments Act passed last year, and is a far cry from the real investigation that is needed. Among the many shortcomings of the report: the Inspectors General (IGs) had no subpoena power, and many of the key players simply refused to talk to the IGs, including John Yoo, David Addington, Dick Cheney, and John Ashcroft; and the absence of any information about the mysterious “Other Intelligence Activities”. In spite of its shortcomings, the report yielded some important conclusions:

1. The surveillance program was massive, but not necessarily effective. For example, at the FBI, most leads developed through the program were “determined not to have any connection to terrorism.” The report also notes that most intelligence officials “had difficulty citing specific instances” of how the illegal wiretap program helped fight terrorism. This is, of course, in direct contrast to repeated assertions by President Bush and V.P. Cheney that the program was crucial and saved lives.

2. The report also noted that “extraordinary and inappropriate” secrecy about the program kept intelligence gleaned from the program out of the hands of agents who may have been able to use it, rendering it far less useful.

3. The report revealed how the program was born, and how just a few Justice Department officials were aware of the program... and the curious way that John Yoo became the lawyer to write the memo justifying the program, somehow bypassing his superiors and any peer review process. The report states:

“it was extraordinary and inappropriate that a single DOJ attorney, John Yoo, was relied upon to conduct the initial legal assessment of the PSP, and that the lack of oversight and review of Yoo's work, as customarily is the practice of the OLC, contributed to a legal analysis of the PSP that at a minimum was factually flawed.”

4. Those “Other Intelligence Activities”, carried out between 2001 and 2004 must have been whoppers! The report gives us no details about the activities themselves, but makes clear that DOJ officials (who were copasetic with warrantless wiretaps and torture) were not happy with them. The DOJ told the President that they could find no legal rationale for these Other Intelligence Activities and that they should be discontinued. This prompted an arrogant response from the White House, thanking the DOJ very much for their thoughts, but asserting that since the

President had authorized them, they were legal. That's it – President Bush's legal theory is apparently "because I said so"! The President backed down only when several senior DOJ officials threatened to resign over the program. So what were the activities that the DOJ said were illegal? We can't be sure, that's why a full investigation is necessary, but according to the New York Times (July 11, 2009), "current and former officials say that those programs included data mining of e-mail messages of Americans."

## **PENTAGON**

### **Pentagon Pundits**

Last year the New York Times broke the story of the 'Pentagon Pundits', a program wherein the Dept. of Defense (DOD) recruited retired military officers (RMOs) to promote the wars in Iraq and Afghanistan through media appearances and in op-eds (see April 2008 Newsletter, on our website). As we reported in our May 2008 Newsletter, "these 'analysts' attended special Pentagon briefings and used Pentagon talking points when they appeared on Fox, CNN, ABC, NBC, CBS and MSNBC. But they never disclosed their special relationship with the Pentagon to viewers." We thought it looked like illegal 'covert propaganda', so DDF and other civil liberties groups asked Congress to investigate. As a result, Congress mandated a Government Accountability Office (GAO) legal opinion on the program.

In July 2009, the GAO ruled that the program was not illegal even though it found that, "clearly, DOD attempted to favorably influence public opinion with respect to the Administration's war policies in Iraq and Afghanistan through the RMOs". The GAO based its ruling on the assertion that the Pentagon did not pay the RMOs to appear as cheerleaders for the wars in the media, and claimed they could find no evidence that the Pentagon concealed the program from the public. The last claim is troubling, since the NY

Times had to fight for two years to get the Pentagon to respond to its FOIA request for documents about the program.

The GAO ruling is a great disappointment since it ignores the basic fact that Americans were clearly fed Pentagon talking points dressed up to look like independent analysis to build support for war. Diane Farsetta, the senior researcher at Center for Media and Democracy wrote in her blog, "I fear that by giving a pass to a nefarious PR tactic that undermines transparency and democratic values, the GAO has helped pave the way for similar deceptive campaigns in the future".

### **Pentagon Profiles Reporters**

Like any institution, the military wants favorable press coverage, but it looks like the Pentagon has been trying to control what the media reports in Afghanistan. A series of articles in *Stars and Stripes*, the official paper of the Armed Forces, documents that the Pentagon has been using Rendon Group, a controversial PR firm\*, to profile reporters and in some cases to deny reporters embeds in Afghanistan and Iraq. The profiles used pie charts to illustrate whether the reporter's past work was positive, neutral, or negative in relation to 'mission objectives' and included advice on where to embed a reporter in order to get the best possible coverage. One Rendon employee told independent reporter P.J. Tobia, "We just help the military figure out what embed is right for a particular reporter. If a reporter is classified as 'negative' they are less likely to go where the action is and more likely to be covering a platoon that guards sandbags in Herat."

The first article in the series was published on August 27, in less than a week the Pentagon had cancelled the contract with Rendon Group.

\*The Rendon Group specializes in public relations work (or propaganda) selling military interventions to the American public for decades. The group has

helped both Democratic and Republican administrations build public support for interventions in Haiti, Kosovo, Panama, Argentina and more. Most recently, if you recall the Iraqi National Congress (INC) and its leader, Ahmed Chalabi and their pleading for the US to invade their country, you can thank Rendon Group, which created the INC and did their PR work.

## **ACCOUNTABILITY**

### **Torture Investigation**

The long-awaited CIA Inspector General Report was finally released on August 24, full of details about the brutal treatment of detainees. It was finally enough to convince Attorney General Holder to launch an investigation. Unfortunately, he says he will restrict the investigation to CIA interrogators who went beyond the methodology approved by the Office of Legal Counsel (OLC) – as if the torture approved by the OLC was legal and acceptable! One of the best arguments I've heard for a full investigation by an independent special prosecutor was made by John McCain on "Face the Nation" – while he was arguing *against* an investigation: "I think the interrogations were in violation of the Geneva Conventions and the Convention Against Torture that we ratified under President Reagan." He added, "I think these interrogations helped al-Qaeda recruit, the damage that it did to America's reputation in the world we're still on the way to repairing." What's the best way to repair that reputation? Accountability.

## **COALITIONS**

### **Charity and Security Network**

DDF is a member of the steering committee of the Charity and Security Network, a diverse network of civil liberties and international charity groups seeking to update US counterterrorism policies that create barriers for charities. The network has been busy lately, meeting with the White House and representatives of the Department of Treasury to discuss improvements to US policies that hamstring charities.

One of the most glaring problems is a provision in the Patriot Act that allows the Treasury Department to freeze the assets of a charity, without notice, while it investigates whether the charity is somehow supporting terrorism. In 2006, the Treasury Department froze the assets of KindHearts, a charity working in Gaza. The organization sued, and on August 18, 2009, a federal court ruled that shutting down a charity without notice "pending investigation" and seizing its assets indefinitely violates the Fourth and Fifth Amendments. We applaud this ruling. KindHearts has never been found to have done anything wrong, but the seizure of its assets and the investigation effectively closed the charity down. And the \$1 million in assets – donated to help people in need in Gaza and elsewhere – has been frozen for 3 years. Kay Guinane, Executive Director of the Charity and Security Network wrote that the ruling "rights a terrible wrong- freezing funds for humanitarian aid for over three years, with no effort by Treasury to ensure people in need ever get the assistance intended. Congress should take notice and investigate the charity situation and the administration should continue its dialog with the charitable sector to find solutions to the problem".

## **CASES**

### **Follow-up: Tariq Ramadan**

We've been following the case of Tariq Ramadan, a Swiss professor and leading Muslim scholar who was denied entry into the US. He had been invited to teach at University of Notre Dame in 2004, but his contributions to a Palestinian charity were deemed 'material support for terrorism'. The ACLU challenged the exclusion on First Amendment grounds. The US Court of Appeals ruled in favor of Mr. Ramadan in July, and remanded the case back to district court, but civil libertarians have been pushing the Obama Administration to drop the case. We'll see.....

## **ACTION ALERT!**

### **END RACIAL PROFILING IN IMMIGRATION ENFORCEMENT!**

On August 25, DDF and 520 other organizations from around the country – civil rights, criminal justice, community and immigrant rights organizations – joined together to send a letter to President Barack Obama urging him to terminate the Department of Homeland Security's (DHS) widely criticized 287(g) program, which relinquishes the authority to enforce civil federal immigration law to local law enforcement and corrections officials. Advocates, expecting a major overhaul – or termination – of this controversial program, were shocked to learn that DHS was expanding it to 11 new jurisdictions. While DHS claims to have standardized the agreements, close scrutiny has shown that these changes do nothing to prevent civil and human rights abuses, and in fact only further exacerbate the program's problems.

**Sheriff Joe Arpaio** in Maricopa County, AZ has been the most public example of the egregious human rights abuses that have resulted from the program. However, despite an ongoing civil rights investigation into the Maricopa County Sheriff's Office by the Department of Justice, DHS has not terminated its 287(g) agreement. Similarly, other law enforcement agencies around the country have aggressively targeted immigrants by using pretextual traffic stops or other racial profiling tactics.

#### ***We are asking for you to add your voice to this demand!***

Visit the DDF website *Take Action* page for a link to send President Obama, the Department of Homeland Security, and members of Congress an email in support of the demand to terminate the 287(g) program and to restore fundamental fairness for all in our immigration enforcement policy. You can also see a full list of the organizations which have signed the letter on the DDF website *Take Action* page.

**The 287(g) program, which has contributed to the pervasive racial profiling our communities face day after day, must come to end. For more information, you guessed it: visit the DDF website *Take Action* page!**

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