



MAY 2010 NEWSLETTER

Dear Troublemakers,

I'm trying a new format for our letter this month – it is a challenge to fit all the news and information I want to share with you onto one piece of paper, so I cheated and made it legal size. But, if you want more information about any story, you will be able to find it on our website. Yes, we are putting more attention and energy into our web presence. You can follow us on Twitter, you can friend me and/or become a fan of DDF on Facebook! But if all this internet stuff drives you crazy and you want more information about our work or any of the articles in this newsletter – just give me a call! Our phone number is still 202-529-4225.

In Solidarity,

Sue

JUDGE: NSA WIRETAPS WERE ILLEGAL

Both the Bush and the Obama Administrations fought hard against the al-Haramain Islamic Foundation over the last four years, seeking to drive the case out of court using the state secrets privilege. But on March 31, Judge Vaughn Walker (Ninth Circuit Court) ruled that the government had violated the Foreign Intelligence Surveillance Act (FISA) and illegally wiretapped the charity. The Judge harshly criticized the government's overbroad claim of executive power: "Under defendants' theory, executive branch officials may treat FISA as optional and freely employ the SSP (state secrets privilege) to evade FISA, a statute enacted specifically to rein in and create a judicial check for executive branch abuses of surveillance authority."

The charity has accepted the judgment, asking for about \$4 million in damages and legal fees; asking the government to declare that the warrantless surveillance was unlawful; and for all information illegally collected to be purged. The plaintiffs dismissed all other claims. It is now up to the Obama administration to decide whether to appeal or not.

PUNISHING THE MESSENGER

Advocates of a free press have to worry about two recent actions by the Department of Justice against a reporter and a whistleblower who, in two separate instances, exposed mismanagement, recklessness and wrongdoing within the NSA and CIA.

In 2006, the *Baltimore Sun* ran an article with the headline "NSA Killed System That Sifted Phone Data Legally." The article detailed waste and mismanagement, and revealed that the NSA rejected technology that could have protected the privacy of Americans while it swept up and analyzed massive amounts of data. Instead, the agency chose a tool without privacy protections (and, critics say, was less capable in analyzing data). Sounds like good public interest reporting to me, but the Obama administration has indicted Thomas Drake, a 'high-ranking' NSA official, who they say provided the information for the article. He has pled not guilty.

In an unrelated case, *NY Times* reporter James Risen has been subpoenaed to testify before a grand jury about his confidential sources for a chapter in a book about the CIA. In the chapter, Risen exposes what he says was a reckless attempt to infiltrate Iran's nuclear program – in a way that may have provided valuable information to the Iranians. He will fight the subpoena.

In both cases, DOJ spokesmen have stressed the importance of prosecuting leaks of classified information (while ignoring the importance of, say, prosecuting agents who spied on Americans illegally, or tortured prisoners....).

Lucy Dalglish, executive director of the Reporters Committee for Freedom of the Press is concerned that more such cases are in the pipeline, raising serious concerns about the chilling effect on both reporters and sources and damaging the public's "right to know."

NATIONAL ID CARD IN IMMIGRATION REFORM

Look out! Senate Democrats have rolled out a draft immigration reform proposal, and it includes a biometric national ID card. In a press conference, Sen. Schumer (D-NY) describe the card this way: "Our framework creates a fraud-proof, hi-tech version of the Social Security card every one of us has. New hires must show this card to their employers who will swipe the cards through a machine to confirm their identity and immigration status."

What their framework really creates is a requirement that everyone who wants to work in this country will have to get fingerprinted (which will go into a national database). This information will apparently then be available on a national network that anyone can just "swipe" into. DDF has already signed onto a coalition letter to Congress, and will continue to fight this horrible idea.

The proposed bill also includes continuation of the 287(g) program, which allows local police to enforce federal immigration laws. A recent Inspector General report detailed problems with the 287(g), and there is evidence that it leads to increased racial profiling and other civil liberties abuses.

Since the bill is just in draft form right now, we're not asking you to take action – but we will let you know if that becomes necessary.

CONYERS ET AL REBUKE FBI

You were shocked (shocked!) to read in our February letter that a Justice Department report found that the FBI had again abused their powers in order to gain access to personal records they had no right to. Agents had demanded information from phone companies by claiming non-existent emergencies, or got information just by asking (without any documentation at all).

A subcommittee of the House Judiciary Committee held a hearing on FBI abuses of National Security Letters (NSLs) on April 16, and members of that committee were angry indeed. Rep. Conyers, Chair of the Judiciary Committee, unequivocally stated that the FBI had broken the law and there may be grounds for removal of the General Counsel of the FBI, Valerie Caproni. Even Rep. Sensenbrenner (R-WI), Ranking Member of the Subcommittee, was fed up: "I'm extremely disappointed that every time Congress has tried to plug potential civil rights and civil liberties

violations in our counterterrorism activities, the FBI seems to have figured out a way to get around it.”

Too bad the committee didn't hold this hearing before Congress voted on the sunseting PATRIOT Act provisions earlier this year. As you know, they extended the measures *without* any reforms or safeguards. See below for more on that...

PATRIOT ACT PROTECTIONS

It is true that we lost an important battle earlier this year when Congress voted to extend three sunseting PATRIOT Act provisions without even including minimal civil liberties protections or tools for accountability. But Sen. Leahy has written a letter to Attorney General Holder (find it on our website) pointing out that important reforms can and should be implemented administratively, without waiting for Congress to act. Specifically, Sen. Leahy asks the AG to raise the standard for Section 215 orders (which compel businesses to turn over records to the FBI), gag orders and NSLs. Leahy also asked Holder to issue public reports on the use of NSLs, FISA authorities and section 215 authority and how these authorities impact the privacy and civil liberties of U.S. persons. We will see if Holder is willing to use his authority and implement these changes without waiting for a congressional mandate.

UN TO REVIEW U.S. HUMAN RIGHTS RECORD

The human rights record of the United States will be subject to review by the UN this year as part of the Universal Periodic Review process. There are different avenues for providing input into the process for both organizations and individuals. The State Department is soliciting input from individuals and groups in the U.S. You can send your comments on any domestic human rights issue (detention, death penalty, surveillance, repression of dissent, etc) to this email address: upr_info@state.gov. Find a link to more information by visiting the DDF website. The State Department has been holding civil society consultations around the country on various aspects of human rights with invited presenters. On April 30, DDF Board member Kate Martin presented concerns related to surveillance and civil liberties.

DDF signed on to a document submitted directly to the UN by the Charity and Security Network, asserting that US security laws and policies create unnecessary and unreasonable barriers to the legitimate activities of civil society organizations and thus violate human rights.

IN THE STREETS

Photographers Beware

Did you know there is a federal regulation prohibiting the taking of photographs on federal property? It's been on the books since 1957 and has been unevenly applied, to say the least. Recently, police used the regulation to arrest a political activist who was taking a video of another

activist being arrested for handing leaflets to potential jurors in front of the federal court in Manhattan. The regulation requires that anyone taking a picture on federal property get the written permission of the tenant agency (pictures are allowed of entrances, lobbies and corridors without written permission for 'news purposes' only). Although the charges were dropped against the activist, the New York Civil Liberties Union is suing, charging that the regulation is unconstitutional and has been used inconsistently—for example, picture taking is allowed at the same courthouse as people leave the weekly citizenship ceremony.

Parents Beware

A group of Iowans have been visiting their Senators' offices each week over the last several months to deliver anti-war petitions. In early April, two of the activists, Christine Gaunt, 53, and Frankie Hughes, 12, decided to stage a sit-in in Sen. Harkin's office. They refused to leave when the office closed, and were duly arrested. Pretty typical story so far, right? Until the next day when police charged Frankie's mom with "contributing to the delinquency of a minor" for refusing to make her daughter leave the protest. Des Moines Police Sgt. David Murillo told the *Des Moines Register*: "I understand and fully appreciate a person's constitutional right to free speech. However, this was a case of bringing a child into a criminal arena."

Response from the activist community (including DDF) was swift and vocal. Police dropped the charges against Frankie's mom.

UPDATES ON ARTICLES FROM PREVIOUS LETTERS

- Sen. David Vitter (R-LA) has withdrawn as a co-sponsor of the McCain/Lieberman Enemy Belligerent Interrogation, Detention, and Prosecution Act of 2010.
- Privacy and Civil Liberties Oversight Board – this issue has gotten a lot of attention in the media since we sent our coalition letter to President Obama urging him to nominate members to the PCLOB. At least two editorials, in the *Washington Post* and the *LA Times* also called on the President to appoint members to the board. And, 22 Democratic members of the House sent a letter to the President shortly after we sent ours. But, we are still waiting.
- On the eve of his trial, Fahad Hashmi who was held in solitary confinement for three years awaiting trial pled guilty to one count of material support. His decision came after the judge in the case agreed to allow an anonymous jury trial. Hashmi's lawyers called this "a clear attempt to influence the jury by creating a sense of fear for their safety and to paint Mr. Hashmi as already guilty."



1100 Wayne Avenue, Suite 1020 ♦ Silver Spring, MD 20910 ♦ 202-529-4225 ♦ info@defendingdissent.org ♦ www.defendingdissent.org

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In Memory of Frank Wilkinson, Director Emeritus, and Chauncy Alexander, President Emeritus, and all who went before

