



AUGUST/SEPTEMBER 2010 NEWSLETTER

Dear Troublemakers,

I am really working hard at finding a silver lining to the Glenn Beck rally this weekend. The rally itself was no big deal, but the incessant media coverage it garnered was. I'm sure a lot of you have been to Washington over the years for civil rights, anti-war or anti-globalization protests and gone home wondering "where was the media?" And of course, you only knew to come to these rallies through word of mouth, from a flyer, or more recently, from an email or a website. You never heard about them on T.V. But this weekend's "Restoring Honor" rally was a media-driven event. I wonder how many people would have shown up to any of our protests over the years if the media had spread the word the way they did for this one? Can you imagine?

So here is the possible silver lining – maybe the media have discovered that political protests are news and that they make good copy. Maybe the next progressive protest will actually get covered, maybe the media will help progressives with turnout too. We'll have to hold the media accountable, but we don't have to wait long. On October 2, civil rights, immigrant rights, unions and peace and justice groups will rally in Washington under the banner "One Nation Working Together". Although the broad agenda of that rally goes beyond the DDF agenda, we have endorsed the parts of the platform that promote civil rights, immigrant rights and civil liberties. See more at www.onenationworkingtogether.org

In Solidarity,

Sue

EXECUTIVE

FBI DOESN'T UNDERSTAND ITS OWN RULES

The Justice Department Inspector General is investigating whether hundreds of FBI agents were allowed to cheat on their Domestic Intelligence Operations Guidelines exam. Apparently in some field offices, agents were allowed to take the test in groups, or use the test itself as a study guide. The kicker is that it was an *open book test*, so agents really should not have needed additional help to pass. But there is more (yes, it gets worse). FBI Director Robert Mueller testified before the Senate Judiciary Committee at an FBI oversight hearing at the end of July. When asked about the testing scandal, he said that "I am confident that the ...testing and the continuous training we have has put our workplace and our people in a position to fully know and understand the opportunities, but also the limitations of what we can do." Unfortunately, in response to a question from Senator Durbin, Mueller demonstrated that even *he* doesn't understand really understand the "opportunities and limitations" set forth in the guidelines. Mueller told Durbin that religious groups are protected from profiling because FBI agents cannot begin an investigation without reasonable suspicion of wrongdoing. WRONG! As everyone who reads this newsletter knows by now, the guidelines adopted nearly two years ago allow FBI agents to investigate anyone without any suspicion of wrongdoing whatsoever. After the hearing, Mueller sent a note to Durbin saying he had 'misspoken'. Duh.

As this story illustrates, there is a problem at the FBI. We need stronger congressional oversight of the FBI, as well as a tightening of the domestic guidelines to prohibit investigations that are not based on reasonable suspicion of wrongdoing. DDF worked with the Bill of Rights Defense Committee on a letter to the Senate Judiciary Committee asking Congress to hold hearings and address the issue of FBI oversight. The letter was signed by 46 organizations and is available on our website.

NSL POWERS AND THE INTERNET

Does the FBI want to be able to look over our shoulder while we surf the internet, or is it really just seeking a "technical fix" to the Electronic Communications Privacy Act? The FBI says it simply wants to clarify the law by adding "electronic communication transaction records" to the list of records that can be obtained using National Security Letters (remember that NSLs already allow the

FBI to get communication, financial and credit information without court order about people who are not even suspected of a crime).

We haven't seen actual legislation yet, but we're troubled by the proposed change for the following reasons:

- The term "Electronic Communication Transaction Records" (or ECTR) is an undefined term – what information does it include? ECTR definitely includes "to" and "from" information about your email activity, and could also mean anything from internet search records to friend requests, to Ebay purchases and more.
- Even if ECTR is interpreted to only include the "to" and "from" data, that's really quite a lot of personal information. Although the FBI might like to equate it to reviewing your telephone calling history, by looking at whom you communicate with by email, the FBI will know what political organizations you get action alerts from, what listservs you belong to, where you've purchased something (confirmation emails from vendors) and much more. It seems to me that email to/from data reveals a lot about your First Amendment activity that should be protected vigorously.
- The Department of Justice Inspector General has found that the FBI has abused its NSL powers over and over again in the past several years, and that over 190,000 NSLs were issued between 2003-2006. That's a lot of information about Americans who are not even suspected of wrongdoing. Yet, in spite of these abuses, Congress has been deaf to our calls for restrictions to NSLs, greater oversight and other reforms. Congress should be reigning in the FBI, not granting them new ways to invade our privacy!

Our argument is not that the FBI should never be allowed to see this information, but that it is such detailed, private information that a court order should be required.

The timeline on this proposal is still unclear, and legislative language has not yet been proposed, so we're not asking you to make any phone calls to congress at this time. But be ready, this could move at any time. (This is

a very good reason to sign up for our newsletter and action alerts via our website)

MURDER BY FIAT

The Obama Administration has taken the constitutionally questionable and morally reprehensible position that it has the authority to murder American citizens. Of course, this would only be Americans that the Administration was darn sure are terrorists, and only when they are not on American soil. It was widely reported in the press that Anwar al-Aulaqi, a Muslim cleric with alleged ties to al-Qaeda was targeted for death. When al-Aulaqi's father asked the ACLU and CCR for help in challenging the constitutionality of the death order against his son, he learned that lawyers had to apply to the Department of Treasury for permission. You see, since al-Aulaqi had been named a *Specially Designated Global Terrorist*, any transaction with or support of him is illegal. ACLU and CCR applied for a permit to represent al-Aulaqi, which was only granted after they also filed a lawsuit challenging the regulatory scheme that requires lawyers to get government permission to represent certain clients.

ACLU and CCR are now able to represent al-Aulaqi and challenge the government's targeted killing of U.S. citizens (the lawsuit was filed on Aug. 30 as we went to press – check our website for links). It will be an interesting case – will the government really try to argue it has the right to kill U.S. citizens without due process, or will they try to avoid a trial using the state secrets privilege?

Take Action

Representative Dennis Kucinich (D-OH) has introduced legislation (HR 6010) barring extrajudicial killings. It only has six co-sponsors so far, so please call your Rep. and ask him/her to sign on right away. The Capitol switchboard is 202-224-3121. Find a link to the bill and talking points on the *Take Action* page of our website.

LEGISLATIVE

MORE MIRANDA SHENANIGANS

Representative Adam Schiff (D-CA) has introduced a bill (HR 5934), *The Questioning of Terrorism Suspects Act of 2010* to allow prosecutors to question 'terrorism suspects' for four days before bringing them before a judge. The bill also includes a 'sense of the Congress' that the reading of Miranda rights may be delayed as long as necessary. So far, the bill has no co-sponsors, and although Schiff told Politico that he had discussed it with the Obama administration, they have not yet taken a stance on the bill. The bill has been referred to the House Judiciary Committee (Schiff sits on that committee).

ACTIVISTS

AETA 4

A judge has dismissed an indictment against four animal rights activists who were charged with conspiracy to commit "animal enterprise terrorism" because the indictment didn't include any details about specific activities that the government considered terrorism. Lawyers for the activists say that's because a detailed indictment would have shown that the 'terrorist' activities were actually standard political protest actions clearly protected by the First Amendment such as picketing, chanting, leafleting and leaving chalk drawings on the sidewalk.

"This decision is a huge victory for people everywhere who care about the First Amendment. When our government seeks to punish speech and protests as a crime, it cannot avoid First Amendment scrutiny by failing to provide details about what that defendant is alleged to have said or done," said Rachel Meeropol, staff attorney at the Center for Constitutional Rights and a member of the activists' defense team (and I know that name will ring a bell for many readers, she is daughter of Robert Meeropol and granddaughter to the Rosenbergs). The case is an important test of the Animal Enterprise Terrorism Act (AETA), a terrible law that defines many clearly First Amendment activities as 'terrorism'.

DDF is part of a re-invigorated effort to repeal AETA, helping to organize a lobby day earlier this summer, and increasing our advocacy efforts on the Hill. We expect a bill to repeal the AETA will be introduced in the House very soon. We will keep you posted.

WESTBORO BAPTIST

A US District Court judge ruled that two Missouri laws restricting protests near funerals are unconstitutional. The laws were passed in 2006 after funeral protests by the Westboro Baptist Church and banned protests within 300 feet of a funeral location, and within one hour before and after a funeral. As a reminder, these are the offensive anti-gay protests staged outside military funerals. Church members promote the idea that God is punishing America for tolerating homosexuality by killing U.S. soldiers – clearly idiotic, but also clearly protected by the First Amendment. The Missouri Attorney General plans to appeal the ruling.

WE'VE MOVED!

Our new address is 8630 Fenton St. #524, Silver Spring, MD 20910. Phone number and email stays the same.

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

