

January 31, 2008

CALTECH COLLEAGUES FOR

- CIVIL LIBERTIES
- THE BILL OF RIGHTS
- CONSTITUTIONALLY PROTECTED PRIVACY
- OPEN SCIENTIFIC RESEARCH



Dear Members of the Caltech Community:

In a letter to you on November 12, 2007, we explained that we—28 of your colleagues at JPL—have sued NASA and Caltech in federal court. We did this because NASA and Caltech are forcing us to waive our constitutional rights in order to keep our jobs. We are writing to you now to update you on our legal case and to invite you to join us in our fight to defend constitutionally protected privacy rights.

Our case against intrusive, open-ended background checks under the auspices of Homeland Security Presidential Directive 12 has been a legal roller coaster. In October, a federal district court judge initially dismissed our case. Two days later, the Ninth Circuit Court of Appeals granted an emergency injunction that stopped the HSPD12 activity at JPL until the appeals court could hear arguments. **On January 11, the appeals court upheld substantial portions of our case, continued the injunction, and remanded the case for trial in the district court.**

The Ninth Circuit also noted that Caltech's decision to terminate those employees who refused to comply “*raises serious questions as to whether the university has in fact now become a willful and joint participant in NASA's investigation program,*” and therefore should, at least for the duration of legal proceedings, be enjoined, along with NASA, from potentially unconstitutional intrusions of privacy. Meanwhile, the district court has vacillated on this aspect of the case: first dismissing Caltech, then reinstating Caltech, and, on January 16, dismissing Caltech yet again. Clearly, the road to resolving this case will be neither short nor straight.

In a recent OpEd piece in the *Los Angeles Times*, editor Tim Rutten reminds us that “*Many at the lab...see the background checks as the first step toward establishing a system of intimidation that might be used to silence inconvenient science.*” Perhaps you share our astonishment that our employer, celebrated worldwide as a leader in the search for truth, should be so firmly planted on the wrong side of such a case. As *Pasadena Star News* editor Larry Wilson asserts, “*... Caltech should now join the ongoing case on the side of its employees—not against them.*”

In that spirit, **we ask you to join us by giving as generously as you can to our legal expense fund.** Typical donations of \$1,000 from the plaintiffs, dozens of fellow employees, and friends across the country have allowed our incredible legal team to accomplish much in this battle; but the stakes are now higher than ever, and the journey to justice is long.

Please make your check payable to our attorneys, “HSKRR” (Hadsell, Stormer, Keeny, Richardson & Renick LLP) and return it in the enclosed envelope to Robert Nelson, 775 North Mentor Avenue, Pasadena CA 91104.

For more information, please visit our website at <hspd12jpl.org> or call us at 818-635-5536.

With grateful thanks for your contribution,

Robert Nelson, Dennis Byrnes, and Susan Foster
Plaintiffs in the matter Nelson *et al.* vs. NASA, Dept. of Commerce and Caltech
On behalf of concerned Caltech employees at JPL

This letter and the hspd12jpl.org website were produced by concerned employees of JPL and other NASA centers as private citizens using personal resources, and neither one is endorsed by JPL, Caltech, or NASA.

Inquisition at JPL

The government shouldn't be prying into the personal lives of its scientists.

By TIM RUTTEN < timothy.rutten@latimes.com > January 16, 2008 Copyright 2008 Los Angeles Times

In all the years since Jules Verne first conjoined science and fiction to create a literary genre, nobody ever imagined that mankind's first real exploration of another world would be carried out by a couple of robotic dune buggies controlled from an arroyo northwest of Pasadena.

That's exactly how things have turned out, though. For the last four years, two robot rovers operated from the Jet Propulsion Laboratory in La Canada Flintridge have been moving across the surface of Mars, taking photographs and collecting information. It's an epic event in the history of exploration, one of many for which JPL's 7,000 civilian scientists and engineers are responsible -- when they're not fending off the U.S. government's attempts to conduct an intimidating and probably illegal inquisition into the intimate details of their lives.

Talk about the thanks of a grateful nation.

The problem began -- as so many have -- in the security mania that gripped the Bush administration after 9/11. Presidential Directive No. 12, issued by the Department of Homeland Security, directed federal agencies to adopt a uniform badge that could be used by employees and contractors to gain access to government facilities. Most agencies let the directive become a dead letter, too complex and expensive to implement.

NASA Administrator Michael Griffin, however, is one of the Bush administration's true believers, and his first reflex always is a crisp salute. He directed Caltech, which has a contract to run JPL for NASA, to make sure all of the lab's employees complied. The university initially resisted, then caved when NASA threatened to withdraw its contract. Worse, the government demanded that the scientists, in order to get the badges, fill out questionnaires on their personal lives and waive the privacy of their financial, medical and psychiatric records. The government also wanted permission to gather information about them by interviewing third parties.

In other words, as the price of keeping their jobs, many of America's finest space scientists were being asked to give the feds virtually blanket permission to snoop and spy and collect even malicious gossip about them from God knows who.

Investigators wanted license to seek information as to whether "there is any reason to question [applicants'] honesty or trustworthiness." At one point, JPL's internal website posted an "issue characterization chart" -- since taken down -- that indicated the snoops would be looking for "patterns of irresponsible behavior as reflected in

credit history ... sodomy ... incest ... abusive language ... unlawful assembly ... homosexuality." (We'll leave it to others to explain a standard that links incest with unlawful assembly.)

Twenty-eight of JPL's senior scientists sued in federal court to stop the government and Caltech from forcing them to agree to the background checks as the price of keeping their jobs. About 300 others signed a petition indicating they had agreed to the probes only under duress. All pointed out that the information being demanded was the sort usually associated with the security clearances required to work on classified defense projects. Less than 10% of the work done at JPL is classified, and the scientists involved already obtain security clearances. Imposing that standard on civilian scientists, the plaintiffs argued, violates their right to hold personal information private, constitutes an unreasonable search under the 14th Amendment and requires statutory authority.

A district court judge initially disagreed, but last Friday, a three-judge panel of the U.S. 9th Circuit Court of Appeals overturned that ruling. Writing for a unanimous panel, Judge Kim M. Wardlaw stayed the background checks and said the scientists' claims deserve trial. They're due back in court next month.

Many at the lab believe that there's more than governmental overreaching at work here. They point out that Griffin is one of those who remain skeptical that human actions contribute to global warming, and that some of JPL's near-Earth science has played a critical role in establishing the empirical case to the contrary. They see the background checks as the first step toward establishing a system of intimidation that might be used to silence inconvenient science.

One of the plaintiffs in this suit, Scott Maxwell, drives the Mars rovers. He and his colleagues at the lab are witnesses and heirs to the extraordinary declaration of American wisdom and altruism that Neil Armstrong and "Buzz" Aldrin made on behalf of us all when they left a memorial to mark man's first lunar landing: "We came in peace for all mankind."

As custodians of a great human adventure, the men and women of JPL deserve better from their own country than to be victimized by a shabby crowd of apprentice Torquemadas. By resisting this bargain-basement inquisition, JPL plaintiffs have rendered us all yet another service. Who would have guessed that the folks with the pocket protectors would turn out to be the ones with the right stuff?

Los Angeles Times

To boldly intrude is inexcusable

January 20, 2008

Re "Inquisition at JPL," Opinion, Jan. 16

The background checks at the Jet Propulsion Laboratory are a colossal waste of time and money. They are an unnecessary distraction to a part of the space program that works exceptionally well, and another example of the Bush administration trivializing the momentous and complicating the obvious. "Patterns of irresponsible behavior" like homosexuality? I'm surprised they're not still looking for Communists. The inquest of America's best and brightest vaults the administration's foolishness to new heights.

Kevin Crozier
Sun Valley

How can a government that professes less government smother us with too much government? Rutten's column missed an important point. Genius does not fit in the boxes on a government-designed chart. Neither does the type of personality that gets us to Mars, operates the rovers, imagines and reaches for the impossible. To label and attempt to homogenize them would turn NASA into another FEMA.

NASA Administrator Michael Griffin should reimburse the plaintiffs' costs, withdraw the inquisition, resign and return to academia. The result: America gets to keep forging ahead in science, exploration and igniting the imagination and wonder in us all.

Norma Pierson
Pasadena

In following this story over the past months, I've noticed a few rebuttals along the lines of "everyone has to get screened for their job, why should JPL be any different?" In fact, JPL isn't different, in that all employees are interviewed and have their citizenship, education and employment references verified. But JPL is different in that it doesn't force prospective employees to pee in jars or disclose personal activities that go on behind closed doors at home. Rather than drag JPL down, shouldn't other employers emulate JPL?

An interesting piece of history -- the "Father of Chinese Rocketry" was Tsien Hsue-shen, one of the leading rocket scientists in the U.S. and a co-founder of JPL. However, he was accused of being a Communist in the McCarthy era and barred from further work in the field he loved. So a man who should have become one of our national heroes was driven to return to his birthplace. Let's hope that we don't follow the path of history.

Scott Peer
Glendale

I was gratified to read Tim Rutten's article on the legal fight against intrusive government background investigations at JPL. As a plaintiff in the lawsuit against NASA and Caltech, I have been asked countless times, "What are you trying to hide?" I am amazed that so many people seem to have forgotten the fundamental freedoms on which our country was founded. Thanks to Rutten for describing so eloquently the principles that have motivated us to take this difficult stand.

Bruce Banerdt
Pasadena