

# SILENT VIGIL FOR PEACE

In front of Borough Hall Monday nights from 5:30-6:30. This vigil is silent and peaceful in the Quaker tradition. Feel free to join us. Bring a candle and a peaceful sign if you wish.

## Do You Know What Section 215 is?

### ***What is Section 215?***

- Section 215 allows the FBI to order any person or entity to turn over "any tangible things," so long as the FBI "specif[ies]" that the order is "for an authorized investigation . . . to protect against international terrorism or clandestine intelligence activities."
- Section 215 vastly expands the FBI's power to spy on ordinary people living in the United States, including United States citizens and permanent residents.
  - The FBI need not show probable cause, nor even reasonable grounds to believe, that the person whose records it seeks is engaged in criminal activity.
  - The FBI need not have any suspicion that the subject of the investigation is a foreign power or agent of a foreign power.
  - The FBI can investigate United States persons based in part on their exercise of First Amendment rights, and it can investigate non-United States persons based solely on their exercise of First Amendment rights.
    - For example, the FBI could spy on a person because they don't like the books she reads, or because they don't like the web sites she visits. They could spy on her because she wrote a letter to the editor that criticized government policy.
  - Those served with Section 215 orders are prohibited from disclosing the fact to anyone else. Those who are the subjects of the surveillance are never notified that their privacy has been compromised.
    - If the government had been keeping track of what books a person had been reading, or what web sites she had been visiting, the person would never know.

### ***Is Section 215 Constitutional?***

- Normally, the government cannot effect a search without obtaining a warrant and showing probable cause to believe that the person has committed or will commit a crime. Section 215 violates the Fourth Amendment by allowing the government to effect Fourth Amendment searches without a warrant and without showing probable cause.
  - The violation of the Fourth Amendment is made more egregious by the fact that Section 215 might be used to obtain information about the exercise of First Amendment rights. For example, the FBI could invoke Section 215 to require a library to produce records showing who had borrowed a particular book or to produce records showing who had visited a particular web site.
  - Section 215 might also be used to obtain material that implicates privacy interests other than those protected by the First Amendment. For example, the FBI could use Section 215 to obtain medical records.
- The provision violates the First Amendment by prohibiting those served with Section 215 orders from disclosing that fact to others, even where there is no real need for secrecy.
- The provision violates the First Amendment by effectively authorizing the FBI to investigate U.S. persons, including American citizens, based in part on their exercise of First Amendment activity, and by authorizing the FBI to investigate non-U.S. persons based solely on their exercise of First Amendment activity.
- The provision violates the Fourth and Fifth Amendments by failing to require that those who are the subject of Section 215 orders be told that their privacy has been compromised.

### ***Doesn't the government need these powers?***

- The government already has the authority to prosecute anyone whom it has probable cause to believe has committed or is planning to commit a crime. It also has the authority to engage in surveillance of anyone whom it has probable cause to believe is a foreign power or spy - whether or not the person is suspected of any crime.
- Section 215 takes away a great deal of our liberty and privacy but isn't likely to get us any security in return.
  - There's a real possibility that setting the FBI loose on the American public will have a profound chilling effect on public discourse. If people think that their conversations and their e-mails are their reading habits are being monitored, people will inevitably feel less comfortable saying what they think, especially if what they think is not what the government wants them to think.

***Is the FBI abusing its powers?***

- Attorney General Ashcroft has gone to great lengths to keep secret even the most basic information about the FBI's spying. For example, in answering questions posed by the House Judiciary Committee, he classified information that should not have been classified, including information that would have shown how often the FBI is spying on people based on their exercise of First Amendment rights.
- The little information that we do have suggests that the FBI is abusing its powers.
  - For example, a survey conducted by the University of Illinois suggested that, by December 2001, the FBI had already approached 85 out of some 1500 libraries.
- The ACLU obtained some information about the FBI's use of Section 215 through a Freedom of Information Act lawsuit. More information about our FOIA request and related litigation can be found at <http://www.aclu.org/Privacy/Privacy.cfm?ID=11048&c=130>.