

**CIVIL LIBERTIES UPDATE  
NEWSLETTER OF THE ACLU OF MASSACHUSETTS'  
CIVIL LIBERTIES TASK FORCE**

**June 8, 2004  
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## **I. TAKE ACTION**

**The Citizens' Initiative for a Safe and Free America is off and running! The time to get involved is now.** Organizers in various state legislative districts are getting 200 certified signatures of registered voters BEFORE JULY 7 to put this non-binding question on the November ballot in their districts:

*“Shall the state representative from this district be instructed to vote in favor of: 1) a resolution asserting that the campaign against terrorism should not be waged at the expense of constitutionally protected civil rights and liberties of Massachusetts residents; (2) legislation barring the use of state resources or institutions to carry out actions that violate constitutional rights, such as racial and religious profiling, conducting secret investigations without reasonable grounds, and maintaining files on individuals and organizations without reasonable suspicion of criminal conduct; and (3) a resolution urging the Massachusetts Congressional delegation to vote to repeal provisions in the federal USA PATRIOT Act and other laws that infringe on civil rights and liberties and to oppose any future legislation that infringes on civil rights and liberties?”*

For more information about this effort and how you can organize in your state legislative district, go to [www.aclu-mass.org](http://www.aclu-mass.org) and click on "Safe and Free Ballot Initiative."

## **I. II. RIGHTSWATCH**

### **A. A. EXECUTIVE ACTIONS**

#### **• ADMINISTRATION GIVES MIXED SIGNALS ON TERRORIST ATTACKS: FBI BLUNDERS**

Confusion reigned during the last week in May after Attorney General Ashcroft and FBI head Mueller -- with Homeland Security director Tom Ridge conspicuously absent -- announced at a press conference on May 26<sup>th</sup> that Al Qaeda was "almost ready to attack the United States" and harbored a "specific intention to hit the United States hard." But no further details were forthcoming about how and where the strike might take place, and the threat level was not raised. Ashcroft called for greater public vigilance in the attempt to find seven people sought by the FBI, none of whom is thought to be in the US. Among the suspects is a 1995 graduate of MIT, Aafia Siddiqui, a Pakistani national, whom the Press Trust of India claims is currently being interrogated by US intelligence officials in Pakistan. When asked why he was bringing these suspects to public attention now, Ashcroft stated: "We believe the public, like all of us, needs a

reminder." Ashcroft asked the public to be "on the lookout" for anything "suspicious" -- including Al Qaeda associates who "can portray themselves as Europeans." By the following day, the FBI had received 2000 tips on its website. On May 28, the FBI issued an urgent bulletin to various cities warning of the prospect of an imminent terrorist attack. The alert was retracted a few hours later on the grounds that the intelligence on which it was based was unfounded. The day before the Ashcroft-Mueller press conference, the Department of Homeland Security had stated that they had no new intelligence pointing to the threat of an attack.

- **THE FBI BLUNDERS AGAIN**

Portland, Oregon attorney Brandon Mayfield was arrested on May 6<sup>th</sup> after the FBI made a "100 percent identification" between his fingerprints and one found on a plastic bag full of detonators at the site of the Madrid terrorist bombing last March. A convert to Islam, Mayfield was held on a material witness warrant without formal charges while the FBI searched his home and confiscated computer files, papers and workbooks his children were using for homework (*New York Times*, May 21). In an affidavit to a federal judge in Portland, the FBI stated that his law firm had advertised in a "Muslim yellow page directory" produced by a man with business dealings with Osama bin Laden's former personal secretary, and that Mayfield was seen driving from his home to the Bilal mosque. Fortunately, he was not declared an "enemy combatant" and sent to legal limbo on a naval brig in South Carolina. Equally fortunately, Spanish authorities raised questions about the FBI's fingerprint match even before his arrest. While the FBI pursued its case against Mayfield on the basis of a digital copy of the fingerprint, not the original "which they never bothered to look at" (*New York Times*, May 26), Spanish investigators identified the print as belonging to an Algerian national. Brandon Mayfield was released on May 20<sup>th</sup> "pending further grand jury proceedings wherein he remains a material witness" (May 21). Four days later, the federal district court threw out the case against Mayfield.

- **ANOTHER 5,000 ARE TARGETED FOR FBI INTERVIEWS**

As part of its search for the seven suspects featured in the Mueller-Ashcroft press conference, the FBI plans to interview another 5,000 men in various parts of the country. The FBI targeted some 8,000 Muslims and Arabs in late 2001 and 2002 without finding a single terrorist.

- **JUSTICE DEPARTMENT GOES PUBLIC WITH CASE AGAINST PADILLA**

Having refused to give Jose Padilla his day in court, the Justice Department chose to try him in the court of public opinion. With the Supreme Court set to rule on whether American citizens can be labeled "enemy combatants" and held incommunicado without access to lawyers or courts, the Justice Department

declassified a Pentagon report and announced that the man it had once accused of being a "dirty bomber" was supposed to identify three apartment buildings supplied with natural gas and blow them up. Deputy US Attorney General James Comey Jr. explained that if Padilla had been permitted to use his constitutional rights he might have been able to win his freedom. The Pentagon report stated in a footnote that Padilla played down or denied his involvement with Al Qaeda. Donna Newman, one of Padilla's lawyers before the Supreme Court, commented that "if we believe someone is bad, there's a new form of justice; we put them in a black hole" (*New York Times*, June 2). In the ACLU's view, "The government cannot justify the imprisonment of an American citizen without trial by now trying this case in the media rather than a courtroom. What the government announced today were a series of accusations. But accusations are not proof -- that is why we have trials. And because Jose Padilla has been held incommunicado for two years, we have no way of knowing the circumstances under which these statements were obtained."

- **TERRORIST SUSPECT DEPORTED FROM US**

The government's mixed signals on terrorism and aversion to trying terrorist suspects in court were underscored when Nabil Al-Marabh, once number 27 on the FBI's post 9/11 list of terror suspects, was deported to his native Syria. While the FBI claimed that Marabh "intended to martyr himself in an attack against the United States," the Justice Department told an immigration judge that he had no terrorist ties and agreed he should be deported. Justice Department spokesman Bryan Sierra said many people with suspected terror ties cannot be tried in court without giving away intelligence methods. "If the government cannot prosecute terrorism charges, another option is to remove the individual from the United States via deportation. After careful review, this was determined to be the best option available under the law to protect our national security" (*Boston Globe*, June 3).

- **BUSH HAS 'INHERENT' AUTHORITY TO USE TORTURE**

According to a legal memo prepared by the Justice Department and White House attorneys for Defense Secretary Rumsfeld in March 2003, President Bush as commander-in-chief had the 'inherent' authority to approve any method needed to protect national security, even torture barred by international and federal law. A basis for this memo was a January 22, 2002 memorandum from the Justice Department stating that the Geneva Conventions did not apply to the war in Afghanistan. The memo said that the infliction of pain or suffering, both physical and mental, was not torture unless that pain was "severe." An interrogator would be immune from any kind of criminal liability if he "believed at the moment that his act is necessary and designed to avoid greater harm" (*New York Times*, June 8).

- **MAJORITY IN US OPPOSE S TORTURE**

According to a *Washington Post* -ABC News poll conducted in late May, some 63 percent of the public say that torture is never acceptable, even in cases in which the suspect might know about an upcoming terrorist attack. Large majorities reject the kind of sexual humiliation practiced at Abu Ghraib. But of those who say terrorism would be their top voting issue in November, over half condone the use of torture against terrorist suspects.

- **US PRISON ARCHIPELAGO A HUMAN RIGHTS NIGHTMARE**

As government officials continue to insist that the horror at Abu Ghraib was caused by a handful of lowly recruits, the Bush Administration is refusing to declassify the procedures it has approved for Guantanamo. Army General James T. Hill stated that military intelligence officials at Guantanamo had permission to use "intensive interrogation techniques" on two prisoners, but maintained that these techniques were consistent with the Geneva Conventions. Maj. General Geoffrey Miller, former commander at Guantanamo who is now in charge of Abu Ghraib, testified before the Senate Armed Forces Committee that there is no program at Guantanamo that violates the Geneva Conventions. But Lt. General Ricardo Sanchez, commander in Iraq, then testified that the procedures brought by Miller from Guantanamo to Iraq "have to be modified" because "the Geneva Convention was fully applicable" in Iraq, unlike in Guantanamo (*Washington Post*, May 23). Reports have recently surfaced that some 10,000 people are being held without charges and trial in secret US prisons around the world. According to the *New Zealand News* (May 13), "some of these detention centers are so sensitive that even the most senior members of the US Congress have no idea where they are." Among the inmates are the CIA's "ghost detainees" who are held without their identities being made public and "moved around within the facility to hide them" from Red Cross teams (*Washington Post*, May 23). According to *The Washington Post*, these prisons are "part of an elaborate CIA and military infrastructure whose purpose is to hold suspected terrorists or insurgents for interrogation and safe-keeping while avoiding US or international court systems, where proceedings and evidence against the accused would be aired in public."

- **BUSH CAMPAIGN LAUNCHES MISLEADING PATRIOT ACT ADS**

The TV ads, which were launched 19 states in late May, give misinformation about what the PATRIOT Act does, and accuse Senator Kerry of "playing politics with national security" and being soft on the PATRIOT Act. At the same time President Bush has called on Congress to end the sunset provisions of the PATRIOT Act.

- **ARTIST FACES PATRIOT ACT CHARGES**

On June 15 a federal grand jury in New York will consider bioterrorism charges which the FBI has brought against Steve Kurtz, an art professor at the University of Buffalo and founder member of the internationally-acclaimed Critical Art Ensemble that educates the public about biotechnology. Kurtz was detained by the FBI for two days in a hotel in mid May after he awoke to find his wife dead of a cardiac arrest and called the police. The police saw the test tubes and petri dishes he was using in an art project featuring a harmless bacteria and called the Joint Terrorism Task Force. As Kurtz' attorney told the June 2<sup>nd</sup> *Washington Post*: "He explained to them that he uses [the equipment] in connection with his art, and the next thing you know they call the FBI and a full hazmat team...showed up in their suits and they're hosing each other down and closing the street off, and all the news cameras were there and the head of the [Buffalo] FBI is granting interviews. It was a complete circus." The FBI impounded his equipment, computers, manuscripts and wife's body for further analysis. After the NY State Commissioner of Public Health conducted tests and announced there was no threat to public health, Kurtz was released from custody but his mobile DNA extraction laboratory - equipment which can be found in high school and university labs which is part of a Critical Art Ensemble exhibit - remains in FBI hands. The FBI has interviewed members of Kurtz' art department and issued subpoenas to four artists, two of whom were on their way to North Adams, Massachusetts where they had an exhibit at the modern art museum. The FBI is seeking charges against Kurtz under Section 175 of the US Biological Weapons Anti-Terrorism Act of 1989 which has been expanded by Section 817 the USA PATRIOT Act. See [www.critical-art.net](http://www.critical-art.net) for examples of the artwork created by Kurtz and his group.

- **SECRET INTELLIGENCE CENTER TO SUPPLY TERRORIST INFORMATION**

At an unidentified location in New York the new Upstate New York Regional Intelligence Center has been established as a computerized depository of "suspicious activity" information gathered by officers on the beat, sheriff's deputies and state troopers in New York and Vermont. The center will allow the FBI to provide guidance and "suggest taskings" to police officers who are not members of a joint terrorism task force, according to FBI head Robert Mueller. He hopes it will serve as a nation-wide model. Local police officers say they hope it will make them more aware of suspicious people who are passing through their towns or cities (*New York Times*, May 25).

- **VISITORS TO US TO BE TRACKED LONG BEFORE THEY ARRIVE**

A contract worth \$15 billion will soon be awarded to either Accenture, Computer Sciences or Lockheed Martin to create from a network of databases "virtual borders" that will screen visitors before they arrive at the physical border. Once they are permitted entry at the border, the intention is to track them while they

are in the US and make sure they leave on time. The system will tie together some 20 federal databases to give information on more than 300 million foreign visitors each year. Techniques like facial recognition, radio-frequency chips, iris scanning, digital photos and fingerprints are expected to be employed in the system. The system will rely heavily on the cooperation of foreign governments in providing data base profiles of those seeking to enter the country.

- **PANEL CITES DATA MINING PERILS**

In a report to Defense Department Secretary Rumsfeld, an 8-person federal panel, the Technology and Privacy Advisory Committee, stated that "in developing and using data mining tools, the government can and must protect privacy" (*New York Times*, May 17). The panel said that many federal agencies were developing programs that resembled DARPA's Terrorism Information Awareness that Congress refused to fund. The panel recommended that a special federal court should give its approval before the government engaged in data mining targeting US citizens and lawful permanent residents. "Those who trade liberty for safety all too often achieve neither," the report declared. According to a General Accounting Office survey whose results were released on May 26, some 52 federal agencies now systematically use data mining techniques. Among them is the Department of Homeland Security which seeks clues to terrorist activity by seeking patterns in records of arrests, crimes, traffic tickets and incidents involving possession of firearms. Classified projects are not included in the total of 199 data mining projects studied by the GAO.

- **COMPANY'S "TERRORISM QUOTIENT" WINS IT MATRIX CONTRACT**

Seisint Inc., a company based in Boca Raton, Florida, won the contract for the development of the MATRIX (Multistate Anti-Terrorism Information Exchange) criminal information project after giving US and Florida authorities the names of 120,000 people who showed a "statistical likelihood" of being terrorists. Many were investigated and arrested. The system includes information on known criminals and people with no criminal record. Seisint's founder, millionaire Hank Asher, resigned from its board of directors after it was alleged that he was tied to drug smuggling.

- **DEFENSE DEPARTMENT DEVELOPING OPTIONS "BETWEEN BULLETS AND A BULLHORN"**

How long will it be before the "Active Denial System" is used for crowd control? This is an invisible directed energy beam that causes people to feel as if they are on fire in three seconds. It can extend beyond the 550-meter effective range of bullets, with the same intensity at any distance. Marine Col. David Karcher, head of the Pentagon's Joint Non-Lethal Weapons Directorate, says it is aimed at helping troops and police in confusing situations, and is not intended to be used as a torture device (*Sacramento Bee*, June 1, 2004).

- **WRITER DETAINED, DENIED ENTRY FOR NOT HAVING JOURNALIST'S VISA**

Elena Lappin, a freelance writer who flew to Los Angeles in May on assignment for the *UK Guardian*, was interrogated at length, handcuffed, and driven to a cell somewhere in central Los Angeles where she was body-searched and detained for 26 hours before being deported. Her offense? Not having a journalists' visa, which she had never heard of. When she told the officer taking her fingerprints that she would be writing about her experience, he replied, "No doubt. And anything you'll write won't be the truth" (*Guardian*, June 5).

- **AMNESTY INTERNATIONAL SAYS "WAR ON TERROR" HAS MADE WORLD LESS SAFE**

A 339-page report compiled by Amnesty International contends that the US-led war on terror has eroded human rights world wide and taken a heavy toll on civilians. The organization reported it had conducted a survey of terrorism specialists at universities and think tanks and found that 80 percent do not believe the world is any safer because of the "war on terror", which is dubbed a "failure." In the words of William Schulz, executive director of Amnesty USA, "By relying on force alone, the US government has sacrificed one of its major weapons in the struggle against terrorism; namely, its own reputation as an exemplar of human rights" (*Boston Globe*, May 27).

- **9/11 COMMISSION TO LEAVE VITAL QUESTIONS UNANSWERED**

A Federal Aviation Administration manager destroyed a tape providing the accounts of six air traffic controllers about their communications with hijacked planes on 9/11. Some 300 Saudis, including at least two dozen members of bin Laden's family, left the US on 61 flights immediately after 9/11 when there were restrictions on the use of US air space, apparently with the approval of the Bush Administration (see Craig Unger, "The Great Escape," *NY Times*, June 1). The 9/11 panel has not yet found evidence that the FBI checked manifests of departing flights against its terror watch list.

## **B. IN THE US CONGRESS**

- **CIVIL LIBERTIES RESTORATION ACT (CLRA) LAUNCHED IN HOUSE AND SENATE**

Massachusetts Senator Edward Kennedy is among the sponsors in the Senate of a bill that would do away with secret detention hearings, secret evidence to which the accused have no access, and other violations of due process. It would eliminate the NSEERS special registration program, and criminal penalties and deportation for failure to report a change of address. It would put checks on the use of data mining, require that criminal databases be accurate and create an

independent immigration court within the Department of Justice. The House version of the bill would allow the government to secretly seize records only if it can show a connection with terrorist activity. We should let our elected representatives know we support CLRA!

- **SENATE BILL TO REPEAL PATRIOT ACT SUNSET CLAUSE**

S.2476 was introduced on May 21 Senators Kyl, Miller, Cornyn, Sessions, Chambliss, Graham, Nickles, McConnell, Inhofe and Roberts. It would make the entire PATRIOT Act permanent.

- **HOUSE JUDICIARY COMMITTEE CONSIDERS EXPANDING THE PATRIOT ACT**

The Anti-Terrorism Intelligence Tools Improvement Act of 2003 (HR 3170) contains several provisions of the leaked PATRIOT Act II. It would increase the government's powers to secretly obtain records without judicial review, limit judicial discretion over the use of secret evidence in criminal cases, and eliminate foreign intelligence wiretapping safeguards. On May 18 former Republican Congressman Bob Barr and the ACLU gave testimony urging the Judiciary Subcommittee on Crime, Terrorism and Homeland Security to reject the measure.

- **ADMINISTRATION WANTS CONGRESS TO BROADEN MATERIAL SUPPORT STATUTE**

1996 legislation barring the provision of material support to terrorists, broadened by the USA PATRIOT Act, will be further expanded if the Bush Administration has its way. It wants the definition of "material support or resources" to be enlarged to include any "tangible or intangible" money, property, or service except religious materials and medicine. Recently two federal courts have found impermissibly vague the definition in the law of "expert advice," "assistance" and "training."

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## **B. C. IN THE COURTS**

- **ACLU REVEALS EXISTENCE OF CLIENT IN HEAVILY CENSORED PATRIOT ACT CASE**

On May 25 the ACLU released information about the case it filed in April that asks the court to strike down the PATRIOT Act's National Security Letter (NSL) provision. The FBI can use National Security Letters without any judicial oversight to get sensitive customer records from Internet Service Providers, businesses, health care providers and libraries. (For instance, *the Las Vegas Review Journal* has reported that in the weeks before the 2004 New Year, the government used National Security Letters to demand travel and hotel records of 300,000 Las Vegas tourists). The case was kept under seal until a New York

federal judge said some information about the case can be made public, including the existence of an (anonymous) client "John Doe", who is the president and sole employee of an unnamed Internet Service Provider. "John Doe" is himself subject to a PATRIOT Act gag which prohibits him from making public that he has been asked for information by the FBI. "I believe that the government may be abusing its power by targeting people with unpopular views," Doe wrote. "I am challenging the constitutionality of the NSL provision in an effort to protect all of my clients' interests."

- **SUPPORTING TERRORISM OR EXERCISING FREEDOM OF EXPRESSION?**

Sami Omar Al-Hussayen, a Saudi computer science graduate student at the University of Iowa, is on trial in a US district court for giving "material support" to terrorists by maintaining websites for various Muslim groups. Al-Hussayen did not himself write the material that was posted on the websites, which the government maintains fostered terrorism in the Middle East and Chechnya. He has been in detention since February 2003, when 120 FBI and INS agents staged a paramilitary raid on his campus before dawn.

### *III. MASSACHUSETTS*

- **MBTA TO SEARCH PASSENGERS' BAGS**

After reports in late May that the Massachusetts Bay Transportation Authority transit police were going to be the first in the nation to stop T passengers for identity checks as part of "behavioral profiling," the MBTA announced on June 7 that it would instead be the first transit agency in the nation to institute a permanent policy of randomly inspecting passenger bags with explosive-sniffing dogs and uniformed police. The searches will increase dramatically as the Democratic National Convention approaches, the MBTA said (*Boston Globe*, June 8).

- **DNC SECURITY PLANS TAKE SHAPE**

According to the May 9 *Boston Globe*, Boston police are preparing for the July DNC by being trained by experts from Israel, Northern Ireland and Philadelphia, where police pummeled demonstrators during the 2000 Republican convention. The police, who will assemble at UMass/Boston (site of the Boston Social Forum), will be required to wear bulletproof vests and carry riot gear. They will be authorized to use pepper spray.

- **CHARGES AGAINST PROTESTOR MAY BE DISMISSED**

On May 26, Joe Previtera, a junior at Boston College, stood on a crate outside the Tremont Street, Boston Armed Forces Career Center. He was hooded and draped in black, with wires extending from his fingers to replicate the widely-

circulated photo of an Abu Ghraib prisoner. After the police called the bomb squad, he was arrested and charged with disturbing the peace, making a false bomb threat and using a hoax device. The June 8 *Boston Globe* quoted the Suffolk district attorney's office as saying it was "strongly considering" dropping the charges.

- **MASSACHUSETTS TOWNS ARE ON THE MOVE!**

Over the last month the number of Massachusetts communities that have passed resolutions upholding civil liberties has reached 45: one in eight of the towns in the Commonwealth. That's an addition of 9 over the past month! Here's the current list: Acton, Amherst, Aquinnah, Arlington, Ashfield, Brewster, Brookline, Buckland, Cambridge, Carlisle, Charlemont, Chatham, Chilmark, Colrain, Concord, Conway, Dennis, Duxbury, Eastham, Groton, Heath, Leverett, Lexington, Lincoln, Littleton, Manchester-by-the-Sea, Marblehead, Newton, North Adams, Northampton, Oak Bluffs, Orleans, Peabody, Pittsfield, Provincetown, Shutesbury, Somerville, Sudbury, Swampscott, Tisbury, Truro, Wellfleet, Wendell, West Tisbury, Weston.

If your town is not yet among them, contact us for information about how you can get a resolution campaign underway.

- **GET INVOLVED IN THE BOSTON SOCIAL FORUM**

Between July 23-25 over 3000 people will converge at UMass/Boston for a series of panels, cultural events, workshops, and performances that will focus on a series of basic questions: What kind of future do we want for Boston? For our region? For our nation? For the world? What is our vision of a better society? How to preserve democracy and civil liberties will be a major focus of several panels and workshops. The ACLU of Massachusetts is a sponsor of this important event. For information about how you can register and get involved, phone 617 338 9966 or visit [www.bostonsocialforum.org](http://www.bostonsocialforum.org).

Nancy Murray  
Director, Bill of Rights Education Project  
Coordinator, Civil Liberties Task Force  
ACLU of Massachusetts  
(617) 482-3170 x 314