

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

**August 11, 2004
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I. TAKE ACTION

• PROTEST MBTA SEARCHES

The ACLU of Massachusetts and the other organizations that have formed the Safe and Free "T" Alliance (SAFE-T) will be holding their fifth demonstration to protest the MBTA's policy of "random" searches on subways, buses and commuter rails. (See "In Massachusetts" below). It will take place on Monday, August 23, from 4-6 PM outside Downtown Crossing T station. For more information call 617 482-3170 x 314 or email nancy@aclu-mass.org.

• HELP CREATE LIST OF COMPANIES TAKING THE "NO SPY PLEDGE"

On August 9 the ACLU launched a new campaign aimed at combating the emerging "Surveillance-Industrial Complex." A new 38-page report, "The Surveillance-Industrial Complex: How the American Government is Conscripting Businesses and Individuals in the Construction of a Surveillance Society," is available at www.aclu.org. It documents how advances in technology combined with weak privacy laws and soaring private sector profits are endangering our privacy rights to a point never before seen in our history. The campaign asks you to contact prominent companies and ask them to take the "no spy pledge" and reject government requests to voluntarily turn over information on their customers. The pledge states that the company will not turn individually identifiable data over to the government for security purposes unless legally required to do so, and will use every legal means to fight government demands for data that are not authorized by current law, or which violate their constitutional rights or those of their customers. A list of suggested companies, sample letters and other campaign information is available at www.aclu.org/privatize.

I. II. RIGHTSWATCH

A. A. EXECUTIVE ACTIONS

• 9/11 REPORT RAISES CIVIL LIBERTIES CONCERNS

On July 22 the bipartisan 10-member National Commission on Terrorist Attacks Upon the United States released a 567-page report showing how the failure of law enforcement

communities to use existing counter-terrorism powers fully contributed to the attacks. Detailing these systemic failures, the report is critical of excessive government secrecy ("secrecy stifles oversight, accountability and information sharing") and powers that erode constitutional rights and respect for the rule of law. The report states: "The burden of proof for retaining a particular governmental power should be on the executive, to explain a) that the power actually materially enhances security and b) that there is adequate supervision of the executive's use of powers to ensure protection of civil liberties. If the power is granted, there must be adequate guidelines and oversight to properly confine its use." Opposing Administration calls for making permanent now those provisions of the USA PATRIOT Act due to sunset in 2005, the report declares: "Because of concerns regarding the shifting balance of power to the government, we think that a full and informed debate on the Patriot Act would be healthy." It recommends the creation of a board within the executive branch to protect civil liberties and explicitly rejects the creation of a domestic intelligence agency modeled after Britain's MI-5. The ACLU has applauded the Commission's commitment to civil liberties but cautions that unless a civil liberties watchdog is independent from the executive branch and has enforcement power, it could be worse than useless. It has also expressed fears that the Commission's recommendation for the creation of a post of National Intelligence Director based at the White House could lead to the further politicization of intelligence and the sidestepping of constraints on domestic spying, and that some Commission recommendations could pave the way to a national ID card that, given the risks of identity theft, could endanger, not enhance, security and threaten privacy rights (see also In the Congress, below).

- **ARMY REPORT SAYS SYSTEM NOT TO BLAME FOR ABU GHRAIB**

Overshadowed -- perhaps deliberately -- by the 9/11 Commission Report was the stealth release of the Pentagon report compiled by Army Inspector General Mikolaschek into the abuse at Abu Ghraib prison. The report examines 94 cases of physical and sexual mistreatment and concludes the abuse was an aberration caused by the regrettable behavior of a few low-ranking soldiers, and not the systemic problem pointed to by the International Red Cross and Army Maj. Gen. Antonio Taguba. Undermining its own conclusion was the report's description of poor training, the shortage of experienced interrogators and interpreters, and "a command climate that encourages behavior at the harsher end of the acceptable range of behavior towards detainees" that "may unintentionally increase the likelihood of abuse."

- **SYSTEMIC ABUSES AIRED IN MILITARY HEARING**

An out-of-control prison environment was described by several witnesses during the preliminary hearing that began on August 3 when the last of the seven "rogue" soldiers accused of the abuses at Abu Ghraib -- Pfc. Lynndie England -- appeared before a military judge in Fort Bragg, N.C. According to claims, many inmates were held naked for months because of a shortage of prison jump suits, and military intelligence officers ordered soldiers to hide some detainees from the International Red Cross in violation of international law. On August 8 the preliminary hearing was indefinitely postponed while the judge considered what to do about the request of defense lawyers that Secretary of Defense Rumsfeld and other Bush Administration officials be asked to testify.

- **CHILDREN MISTREATED, HELD INDEFINITELY BY US FORCES**

According to the Glasgow *Sunday Herald* (July 31) more than 100 children, some as young as 10, have been detained by British soldiers in southern Iraq and turned over to US forces who interrogate them and detain them indefinitely in Abu Ghraib and other prisons. The paper quoted an Iraqi TV reporter saying he heard the cries of a 12-year-old girl who had been beaten and was calling out, "They have undressed me." Some children were abused in front of their fathers to break them down.

- **RELEASED GUANTANAMO DETAINEES ALLEGE TORTURE**

According to the UK *Guardian* ("Britain is Complicit in this Horror," August 4) three British citizens who were released from Guantanamo and recently released French, Spanish and Swedish citizens tell similar stories of being shackled in a bent position to a ring in the floor for hours or days, being held naked, kept in freezing air conditioning, sleep deprivation, near starvation, imposed injections, beatings, sexual humiliation and psychological torture to force false confessions or false testimony against others.

- **PENTAGON PAPER TRAIL REVEALS APPROVAL FOR TORTURE AND OTHER HARSH METHODS**

A series of legal memoranda were leaked in June giving the Bush Administration reasons why torture could be used despite federal anti-torture law and US treaty obligations. Jay Bybee, who was subsequently elevated by President Bush to the US Court of Appeals for the 9th Circuit, drafted a memorandum dated August 1, 2002 and addressed to White House counsel Alberto Gonzales that defined torture narrowly as pain like that accompanying "death, organ failure or the permanent impairment of a significant body function" that could be used in a situation of necessity and self-defense. Any lesser physical force did not merit being called torture. A March 2003 legal memorandum prepared for Secretary of Defense Rumsfeld by a group of military and civilian lawyers stated that President Bush as commander in chief had the authority to approve any technique needed to protect the nation's security and was not bound by either an international treaty prohibiting torture or by a federal anti-torture law. An interrogator could justify breaching treaties and be immune from liability if he "believed at the moment that his act is necessary and designed to avoid greater harm" (*New York Times*, June 9, 2004). Appearing on June 8 before the Senate Judiciary Committee, Attorney General Ashcroft stated the Administration "rejects torture" but refused to answer questions about particular legal documents. Other memos indicate that in late 2002 Secretary of Defense Rumsfeld approved interrogation methods aimed at Al Qaeda and Taliban detainees that included threatening them with attack dogs, stripping them naked, the use of stress positions, hooding, 20-hour interrogations, exposure to cold water, wrapping heads in wet towels to induce the "misperception of suffocation," and "noninjurious physical contact." A subsequent review completed in April 2003 stated that interrogators must not commit physical or mental harm. Another document shows that Rumsfeld ordered at least one "ghost detainee" to be hidden from the Red Cross.

- **AMERICAN BAR ASSOCIATION CRITICIZES ABUSE OF DETAINEES**

On August 9 the 400,000-strong American Bar Association (ABA) condemned "a widespread pattern of abusive detention methods" that "feed terrorism by painting the

United States as an arrogant national above the law" (*Boston Globe*, August 10). The resolution also recommended strengthening the federal law against torture.

- **PATRIOT ACT USED IN PRISON ABUSE PROSECUTION**

David Passaro, a contract employee who is accused of abusing a prisoner in Afghanistan who died as a result of his treatment, is being tried in a federal court in North Carolina on charges brought under the USA PATRIOT Act. According to Attorney General Ashcroft, the PATRIOT Act makes possible the prosecution of offenses committed overseas as it "expanded US law enforcement jurisdiction over crimes committed by or against US nationals on land or facilities designated for use by the US government" (*Boston Globe*, June 19).

- **ASHCROFT PRESENTS "MOUNTAIN OF EVIDENCE" IN SUPPORT OF PATRIOT ACT**

On July 14 Attorney General Ashcroft released a 29- page report purporting to show that "the Patriot Act has been our laser-guided weapon to prevent terrorist attacks." Among cases described in the report are those involving terrorist cells in upstate New York and Oregon, money-laundering, kidnapping, and child pornography. When asked how many of the cases brought against the 310 individuals cited in the report were dropped or resulted in acquittal, "Ashcroft said he did not have that information, and Justice Department officials did not respond to additional queries" (*New York Times*, July 14).

- **TERROR ALERT: MANIPULATION -- OR THE REAL THING?**

On Sunday, August 1, a few days after the close of the Democratic National Convention, the terror alert was raised to "high risk" for five financial institutions in NYC, northern New Jersey and Washington. As he made the announcement Secretary of the Department of Homeland Security Tom Ridge declared that the intelligence behind the alert was "the result of the president's leadership in the war against terror." It soon transpired that the intelligence was three or four years old. Howard Dean declared that the government "is manipulating the release of information in order to affect the president's campaign," while a *New York Times* editorial (August 5) stated that "There is nothing more important for Mr. Bush to do every day until Nov. 2 than to make it clear that he would never hype a terror alert to help his re-election chances." The Administration maintains that the plots could still be underway, and that valuable information from a computer seized in Pakistan was making possible the arrests of al Qaeda operatives around the world. But the leak of the name of the owner of the computer, Mohammed Naeem Noor Khan, even as he was cooperating secretly by sending emails to terrorists so their location could be traced, has caused new controversy in Congress and the media.

- **CENSIS BUREAU GIVES HOMELAND SECURITY DATA ON ARAB-AMERICANS**

A Freedom of Information Act request by the Electronic Privacy Information Center has revealed that specially-tabulated population statistics on Arab-Americans produced in August 2002 and December 2003 have been provided to the Department of Homeland Security at its request. The statistics include a detailed break down by zip codes of residents' countries of origin in the following categories: Egyptian, Iraqi, Jordanian,

Lebanese, Moroccan, Palestinian, Syrian, "Arab/Arabic" and "Other Arab." A spokesperson for the Department said "the information is not in any way being used for law enforcement purposes. It's being used to educate the traveler" (*New York Times*, July 30). In 2000 the Census Bureau issued a formal apology for providing statistical data that was used to round up Japanese-Americans in World War II.

- **NEW ROUND OF INTERVIEWS OF MUSLIMS NOW UNDERWAY**

Beginning in mid July the FBI initiated a new series of interviews of community leaders, students, business people and attorneys who are Muslim and Arab- American. An FBI official said those chosen for the interviews "are identified by intelligence or investigative information" but they were not necessarily under investigation themselves (*Washington Post*, July 17). One US graduate student of Iranian descent was asked about Iranian groups in this country and the Middle East. Others have been asked their opinion of the US invasion of Iraq and the Syrian government, and whether they know anyone who has shown hostility to the US. The ACLU is providing attorneys to be present during interviews, and urges people to call its offices if they get contacted by the FBI (*in Massachusetts call 617-482-3170 x 318*).

- **CRITIC OF FBI FIRED; INVESTIGATION INTO HER CASE CLASSIFIED**

Sibel Edmonds, a translator who worked for the FBI, was fired in April 2002 after telling her supervisors about shoddy and misleading wiretap translations being done by other interpreters and about information passed on by one interpreter to the target of an investigation. The Justice Department has declared that details of her case are a "state" secret, and retroactively classified material that had been available to the public over the internet and briefings given to Congressional officials in 2002. Edmonds was also blocked from testifying in a lawsuit brought by families of 9/11 victims. After a federal judge in June dismissed a lawsuit she brought against the government on the grounds that it could expose intelligence-gathering methods and harm relations with foreign governments, the Justice Department's Inspector General Glenn Fine investigated her claims and determined that her allegations of security lapses at the FBI were at least in part responsible for her firing. Fine's secret report was the subject of a letter FBI head Robert Mueller wrote to the Senate Judiciary Committee on July 21. Mueller stated FBI employees should "raise good faith concerns about mismanagement or misconduct" at the bureau without fear of reprisals (*New York Times* July 29).

- **WRONGLY IMPRISONED MUSLIM CHAPLAIN RESIGNS FROM ARMY**

Army Captain James Yee, who was held for 76 days in solitary confinement after being wrongly suspected of spying at Guantanamo, resigned from the army on August 2. He said he was never given an apology for his detention, and for the damage to his reputation and ruined career, and that the army had refused to return his personal belongings from Cuba.

- **STATE DEPARTMENT REPORT GETS NUMBERS WRONG**

Secretary of State Colin Powell admitted that the State Department's claim of a decline in terrorist incidents last year instead of a sharp increase was a "big mistake" but there was no intention to "cook the books" (*Boston Globe*, June 14). The data contained in "Patterns of Global Terrorism" had been compiled by the new Terrorist Threat Integration Center

run by the CIA. The Bush Administration had used the report to show the war on terrorism was being won. The statistics do not include civilians killed by military action inside a country.

- **SECURITY LAPSES AT NUCLEAR PLANTS TO BE KEPT FROM PUBLIC**

Claiming they need to keep this information out of the hands of terrorists, the Nuclear Regulatory Commission will no issue public updates of security gaps at nuclear power plants. Meanwhile the Nuclear Energy Institute has hired Wackenhut, the company that guards half of the nation's civilian reactors, to train and manage the "adversary teams" that attack the plants in drills. In January in a drill at the Oak Ridge nuclear installation, Wackenhut attackers told Wackenhut defenders which buildings were to be attacked and how, undermining the value of the tests, according to the Inspector General of the Energy Department.

- **CHARITY OFFICIALS ARRESTED, CHARGED WITH SUPPORTING TERRORISM**

On July 27, three years after the freezing of the assets of what was then the largest Muslim charity in the US, five of its officials were arrested in the US. Two other Holy Land Foundation officials were also charged, but had left the country a few months ago while under criminal investigation. The officials are charged with providing material support to terrorists. The indictment says they used hospitals and other charitable organizations in the West Bank and Gaza Strip to funnel money to the group Hamas. Lawyers for the Holy Land Foundation have filed a complaint with the Justice Department's Inspector General claiming that the FBI has fabricated evidence and relied on faulty translations to build its case.

- **ACLU REFUSES TO CHECK "BLACKLIST"; WITHDRAWS FROM CHARITY DRIVE**

The ACLU has withdrawn from the Combined Federal Campaign which was expected to net it \$500,000 after deciding that it could not check its employment records against the various watch lists of terrorist suspects maintained by the Justice, State and Treasury Departments. Beginning last October groups participating in the charity drive for federal employees had to promise to consult the lists in order to qualify for the program. In a August 5 editorial *The Boston Globe* said that the terrorist watch lists "contain many common Spanish and Arabic names, often with scant information as to who the person actually is." It quoted the ACLU stating that as "these databanks grow and feed off each other, the potential for error multiplies...". The *Globe* concluded: "Charities should say no to this unfair burden. They, along with every US citizen, must be 'vigilant,' as the government continually tells us -- vigilant not only to a terrorist threat but also to the erosion of democracy."

- **WATCH LIST TRAPS MAN WITH COMMON NAME**

The *New York Times* (July 13, 2004) featured the story of Irfan Ahmed, an Indian immigrant living in New York, who went to Montreal to renew his work visa and was told he would have to stay in that city for at least a month because his name had appeared on a terrorism watch list. In 2002 he had undergone a similar case of mistaken identity at Kennedy Airport when officials told him not only was his name on

a list, but the terrorist in question also had a mother named Begum -- a respectful form of address for women in Urdu and Hindi.

- **PLUG REPORTEDLY PULLED ON CAPPS II**

After spending more than \$100 million on the Computer-Assisted Passenger Prescreening System (CAPPS II), the government has decided to abandon the program under which databases would be trawled to give each air passenger a color-coded security rating. Homeland Security Department director Tom Ridge said the government would work on a new approach to airline security involving matching names against watch lists of known terrorists, and that meanwhile people would be asked to volunteer personal information for a "registered traveler" program. The program, which relies on biometric testing, fingerprints and iris scans, has already been introduced in Minneapolis-St Paul, Los Angeles and Houston, and is being tried out by American Airlines at Boston's Logan Airport.

- **PLUG NOT PULLED ON "TOTAL INFORMATION AWARENESS"**

Although Congress refused in 2003 to fund the Pentagon's Defense Advanced Research Project Agency's (DARPA's) "Total Information Awareness" (TIA), the program once overseen by Admiral John Poindexter is thriving as a "black bag" job without Congressional oversight, according to the June 7th Capitol Hill Blue. Congress agreed to supply DARPA with research funding to develop data mining alternatives to TIA, and the Bush Administration then cut Congress out of the loop by making the program covert. The result is that "any bank transaction, all credit card charges plus phone records, credit reports, travel and even health records are captured in real time by the DARPA computers" which use "database profiling" to look for patterns that break from norms and might indicate terrorist activity. Computer programs open investigative files if they detect "keywords" that suggest suspicious behavior. According to privacy expert Susan Morrissey, "We have a police state far beyond anything George Orwell imagined in his book 1984. The everyday lives of virtually every American are under scrutiny 24-hours-a-day by the government."

- **SHARP DECLINE REPORTED IN FOREIGN STUDENT APPLICATIONS**

Applications for student visas for graduate study in the US have dropped 32 percent over the past year because of post 9/11 bureaucratic hurdles, according to the Council of Graduate Schools. Asa Hutchinson, undersecretary for Border and Transportation Security, stated that the Student Exchange Visitor Information Service (SEVIS) had made the country "safer" by detecting 1,600 visa violations -- including the failure to maintain a full course load -- and by making 155 arrests (*Boston Globe*, August 3).

- **FCC AGREES TO GIVE FEDS EASY ACCESS FOR SURVEILLANCE OF INTERNET CALLS**

The Federal Communications Commission has agreed to require telephone carriers to engineer new Internet-based services (including cable modems, wireless, satellite and broadband) to permit the monitoring of conversations of suspects in accordance with the 1994 Communications Assistance for Law Enforcement Act. It is unclear how Internet surveillance can be conducted without also tapping into communications of people who are not suspects.

- **UK TO TRACK FORMER INMATES BY SATELLITE**

Satellite technology developed in the US will be used to track 5,000 - 20,000 "anti-social" criminals in the UK who have been released from prison and fitted with electronic tags.

- **COUPLE ARRESTED FOR WEARING ANTI-BUSH T SHIRT**

Nicole and Jeff Rank were taken away in handcuffs and charged with trespassing for wearing a T-shirt saying "Love America, Hate Bush" at a Bush Fourth of July rally in Charleston, W.Va. Spectators wearing pro-Bush T-shirts and Bush-Cheney campaign buttons were permitted to stay in the area from which the Ranks were removed. After the incident, Nicole Rank also lost her job with FEMA. They are contesting charges with the help of the ACLU.

In

B. IN THE US CONGRESS

- **ACLU CALLS FOR INTELLIGENCE REFORMS THAT DO NOT THREATEN CIVIL LIBERTIES**

In testimony before the House Permanent Select Committee on Intelligence ACLU Legislative Counsel Timothy Edgar outlined the dangers to our constitutional system presented by several of the recommendations made by the 9/11 Commission. His remarks summarize the history of domestic spying in the US, and spell out the pitfalls of giving greater power to the CIA or proposed new National Intelligence Director over domestic intelligence matters: "Americans do not believe the government should investigate you if you are not involved in a crime -- if your activities, however unpopular, are not illegal...The 'tools' of foreign intelligence agents include break-ins, searches and surveillance outside the oversight of a traditional warrant process that requires probable cause of criminal activity, infiltration and spying on lawful political activity, and 'dirty tricks' including extortion, bribery and blackmail. These spy techniques operate -- and are designed to operate -- outside the normal laws of any given society and its system of checks and balances. The American system of government...simply cannot tolerate the use of many such techniques domestically, on its own citizens or residents." After September 11th the Defense Department established the powerful regional Northern Command (NORTHCOM) with responsibility for the domestic US which is completing its own \$29 million military intelligence unit in Colorado Springs, "creating a real risk of blurring the military and civilian functions." He makes fifteen recommendations for meaningful reform of the intelligence industries that would result in greater effectiveness, openness, real accountability to both Congress and the public, and the protection of national security whistleblowers and other measures that can prevent the abuses associated with the FBI's COINTELPRO operation (for a complete transcript of testimony see www.aclu.org/news/NewsPrint.cfm?ID=16207&c=111).

- **SENATE COMMITTEE RECOMMENDS DOMESTIC SPYING BY MILITARY**

The Senate Intelligence Committee has approved allowing Pentagon spy agencies to operate domestically without complying with the 1974 Privacy Act that requires government officials seeking information from US citizens to disclose who they are and

what they want the information for. Language permitting this kind of domestic spying was inserted into the Senate version of the Intelligence Authorization Bill, but did not make it into the House version. Last year powers expanding the PATRIOT Act were slipped into the Intelligence Authorization Bill without open debate, and there are fears of something similar happening this year. A vigorous letter-writing campaign has thus far prevented the "Anti-Terrorism Intelligence Tools Improvement Act of 2003" (HR 3179) from being tacked onto the House version, but there may be attempts to add key provisions in stealth fashion before the end of the year.

- **EFFORT TO AMEND PATRIOT ACT FAILS WHEN RULES CHANGED**

Bernie Sanders' effort to amend Section 215 of the USA PATRIOT Act was headed for a 213-206 win when Republican leaders on July 8 extended the voting time by 38 minutes and persuaded colleagues to change their vote, producing a 210--210 deadlock which equals defeat. Sanders' amendment, tacked onto a spending bill, would have required law enforcement to get a warrant based on probable cause before demanding library, bookstore and Internet records in an intelligence investigation. President Bush had promised to veto the entire bill if the amendment were not defeated, and the Justice Department sent a letter to Congress saying at least twice in recent months "a member of a terrorist group closely affiliated with Al Qaeda used Internet services provided by a public library" (*New York Times*, July 9).

- **SENATE REQUIRES PRESIDENT TO ABIDE BY GENEVA CONVENTIONS**

Despite heavy pressure by the Administration, the Senate in early July added an amendment to the Defense Department's Appropriations Bill that calls on the Administration to account for all foreign prisoners who have been denied POW status including those at Guantanamo, and to turn over to turn over Red Cross reports on American prisons that it has been withholding. The Administration maintained that the amendment, introduced by Senator Leahy, "inappropriately intrudes" into the President's powers. But five Republicans voted for it -- John McCain, Lindsey Graham, Chuck Hagel, Arlen Specter and Mike DeWine -- enabling its passage.

- **PENTAGON OBSTRUCTS CONGRESSIONAL INVESTIGATION OF ABU GHRAIB**

A June 30th editorial in *The New York Times* cites examples "of the administration's bad faith on the prison scandal" -- its refusal to turn over to the Senate the full report by Maj. Gen. Antonio Taguba into the abuses at Abu Ghraib (2,000 pages of the 6,000 page document are missing) and 40 Red Cross reports that document the mistreatment of Iraqis at American military prisons. The Red Cross has asked in vain for the documents to be turned over to the Armed Services Committee in Congress.

C. IN THE COURTS

- **SUPREME COURT RULES "ENEMY COMBATANTS" CAN CHALLENGE THEIR DETENTION IN COURT**

On June 28 the Supreme Court handed down rulings rejecting Bush Administration arguments that its actions in the war on terrorism are beyond the rule of law and cannot be reviewed by American courts. Arguing that "a state of war is not a blank check for

the president," the Supreme Court ruled that detainees being held as "enemy combatants" in the US and in the Guantanamo prison camp must be given the ability to challenge their detention before a judge or other "neutral decision-maker." All the justices except Clarence Thomas overruled the Fourth Circuit Court of Appeals and maintained that American citizen Yasser Hamdi must be able to contest the basis of his indefinite detention with the help of a lawyer, though not necessarily in a civilian court (the case of American citizen Jose Padilla was sent back to a lower court on a technicality). The Court ruled 6-3 that the US federal court system does indeed have jurisdiction over its military camp in Guantanamo and that 14 plaintiffs who all claimed to be innocent did have the right to habeas corpus. But the ruling was ambiguous. The Court did not specify what kind of hearing they were entitled to, which federal courts they could approach, whether they had the right to counsel, and whether the Guantanamo decision applied to non-citizens held elsewhere outside the US. In his dissent (joined by Rehnquist and Thomas) Justice Scalia called on Congress to legislate that the Guantanamo base was not "US soil," and that therefore detainees did not have the right to habeas corpus.

- **PENTAGON SETS UP PANEL TO REVIEW GUANTANAMO CASES**

On July 7th the Defense Department announced a response to the Supreme Court ruling that would enable it to maintain as much control as possible over the Guantanamo detainees. A Combatant Status Review Tribunal of three "neutral" military officers would be set up to rule on their status. Detainees would not be entitled lawyer, but only to military officers as "personal representatives." They would not necessarily have access to witnesses, and their consultations with their "personal representatives" would not necessarily remain confidential. The tribunal would assume the government's evidence is correct unless the detainee could prove otherwise. As a result of the recent Supreme Court ruling, appearing before the Review Tribunal does not preclude detainees bringing challenges in civilian courts. As the Tribunal got underway on July 30, there were reports that some Guantanamo detainees had refused to appear before it.

- **PENTAGON REFUSES TO ALLOW DETAINEES TO SEE LAWYERS**

No sooner had the Supreme Court handed down its ruling in the Guantanamo case, than human rights lawyers began pressing the government to either justify its detentions in Guantanamo or release individuals. At the end of July the Justice Department filed a brief in federal court stating that detainees were not entitled to see lawyers because they were foreigners held outside the jurisdiction of the US with "no cognizable constitutional rights" (*New York Times*, July 31). By then it had released 129 Guantanamo detainees in elaborate deal-making, and transferred 22 to the control of other governments. Thus far 15 detainees have been designated to appear before the "military commissions" established by a November 21, 2001 Military Order. The commissions have yet to get underway.

- **SAUDI STUDENT ACQUITTED OF TERRORISM CHARGES**

On June 10 a jury in Idaho, after a seven-week trial and seven days of deliberation, acquitted a Saudi computer science graduate student, Sami Omar Al-Hussayen, of terrorism charges as well as charges of making a false statement and visa fraud. Arrested during a paramilitary-style raid on the University of Idaho by 120 FBI and INS

agents in February 2003, he had been accused under the USA PATRIOT Act of giving "expert advice or assistance" to terrorists by maintaining websites which were used to raise money and featured inflammatory rhetoric. His lawyers maintained that he had little to do with the material on the sites which was protected by the First Amendment. The defense presented only a single witness -- former CIA operative Frank Anderson -- who testified as an expert on terrorist recruitment methods and cast doubt on the government's assertion that people become jihadists because of what they read online.

- **PAINTBALL "TERRORISTS" GIVEN LENGTHY PRISON SENTENCES**

Saying she found it "appalling" that she was forced to hand down such stiff sentences under federal sentencing guidelines, US District Judge Leonie Brinkema sentenced members of the "Virginian jihad network" that was convicted of training for holy war by playing paintball in the Virginia woods in 2000 and 2001 to terms of life and 85 years. The defendants said that the games were innocent fun.

- **LYNNE STEWART'S TRIAL IS UNDERWAY**

The long-awaited trial of 64-year old Lynne Stewart began in Manhattan federal district court on June 21. The New York criminal defense attorney is charged with providing "material support" to terrorists and violating the Special Administrative Measures (SAMS) imposed on her by the US Bureau of Prisons. On trial with attorney Stewart are a paralegal who worked with her, Ahmed Abdel Sattar, and Mohamed Yousry, her Arabic translator during her prison visits with her client Sheikh Omar Rahman. She represented Sheikh Rahman during his 1993 trial for conspiracy to bomb the World Trade Center.

D. IN MASSACHUSETTS

- **FREE SPEECH PEN "AN AFFRONT" TO FIRST AMENDMENT**

On July 22 the ACLU of Massachusetts and National Lawyers Guild challenged the transformation of the area near the Fleet Center where the Democratic National Convention was due to take place into a caged enclosure under the girders of the Green Line surrounded by razor wire and patrolled by the National Guard. After viewing the site US district court judge Douglas Woodlock called it "affront to the spirit of the First Amendment" and said that claiming it resembled an internment camp was an understatement. However, the judge ruled that because of "security concerns" in the post 9/11 environment he could not mandate changes to the site, a fact that he found "irretrievably sad." The First Circuit Court of Appeals upheld his ruling. In a parallel case Judge Woodlock ruled that demonstrators should be permitted to stage a march past the Fleet Center the Sunday before the beginning of the DNC. After the Convention was over *The Boston Globe* editorialized (August 2): "One of the abiding, and galling, images of the convention will be the so-called free speech zone near North Station...Even its architect, Police Superintendent Robert Dunford, referred acerbically to the dank area under the vacant MBTA tracks as the 'constitutional infringement zone.'"

- **JUDGE PERMITS MBTA SEARCHES DURING CONVENTION**

On July 28 US district court judge George O'Toole, Jr. ruled against groups that had sought a preliminary injunction against the MBTA's search of passengers at some

Orange Line and bus stations during the DNC. The ruling, in a lawsuit brought by the National Lawyers Guild, denied the injunction on the grounds that "the security concerns that motivated the adoption of the scheme are genuine" and the plan is limited in its duration and scope. It is not to be confused with the "random" searches that the MBTA introduced on July 22 and said would be permanent.

- **ACLU SEEKS INFORMATION ON MBTA SEARCHES**

The ACLU of Massachusetts is asking people who have been subjected to searches on the MBTA to fill out the form on its website (www.aclu-mass.org) or call in the information (617 482-3170). It is especially interested to see if random searches will be resumed now that the DNC is over, and intends to challenge them in court as a violation of the Fourth Amendment. The ACLU and several community organizations have formed the Safe and Free 'T' Alliance to raise public consciousness about the fact that the searches do not make the public safer, only less free. To get involved, call 617 482-3170 x 314, or email Nancy @aclu-mass.org.

- **POWERFUL NEW SECURITY CAMERAS INSTALLED IN BOSTON**

At least 75 high-tech video cameras operated by the federal government were installed in Boston on the eve of the DNC. The can "see" nearly a mile day or night, zoom in for facial details, and swivel more than 360 degrees in under a second. The feeds from them are sent to Washington DC as well as monitoring stations in Boston. According to *The Boston Globe* (July 18), the cameras are "here to stay....'We own them now,' said Police Superintendent Robert Dunford. 'We're certainly not going to put them in a closet.'" The mayor has said that many of them will be moved to high crime areas in Dorchester, Mattapan and Roxbury. Critics fear the monitoring and chilling of political activity, and wonder how the information from the cameras will be stored and used.

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