

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

**September 7, 2004  
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**I. TAKE ACTION**

- **HELP PREVENT ELECTION DAY ABUSES**

The Lawyers' Committee for Civil Rights and a coalition of legal and community groups have formed the 2004 Massachusetts Voter Protection Project. If you would like to help monitor polling places in communities of color where abuses have occurred in the past, or help staff a hotline, contact the Greater Boston Civil Rights Coalition at [GBCRC@lawyerscom.org](mailto:GBCRC@lawyerscom.org). The Election Protection Project will be described at a meeting on Friday, September 10 from 9:30 AM at the Lawyers' Committee for Civil Rights, 294 Washington Street, Suite 443, in Boston.

- **URGE CONGRESS TO FIX USA PATRIOT ACT**

As we near the November election, let your Members of Congress hear from you by sending them a free fax urging them to fix provisions of the USA PATRIOT Act that undermine the Bill of Rights. Go to [www.aclu.org](http://www.aclu.org), click on the red SAFE AND FREE button, and then on "Fix USA PATRIOT Act" in upper left hand corner (under ACT).

## **I. II. RIGHTSWATCH**

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

- **AS ABU GHRAIB REPORTS MULTIPLY, THE BUCK STOPS NOWHERE**

Will the Pentagon be able to pin the abuses and torture at Abu Ghraib onto a handful of low-ranking soldiers as Army Inspector General Mikolaschek recommended? New reports by the Army (the Fay report) and by a civilian panel appointed by Secretary of Defense Rumsfeld consisting of two former secretaries of defense, a retired general and a former Republican congresswoman are disputing Mikolaschek's findings. They point to the culpability of military intelligence officers, civilian contractors, CIA agents, army medical staff, General Ricardo Sanchez (who approved "aggressive interrogation techniques"), General Geoffrey Miller (who brought harsh interrogation techniques from Guantanamo to Abu Ghraib), and Rumsfeld himself, who authorized practices forbidden by the Geneva Conventions such as hooding prisoners, using dogs to terrify them, forcing them into "stress positions" for long periods of time, holding them naked and in isolation. But will these higher ups be held accountable? Or even criticized? Apparently not. According to civilian panel head James Schlesinger, firing Rumsfeld would be aiding "the enemy." Rumsfeld himself initially denied that the reports linked abuses to the interrogation process, leading a Pentagon spokesman to say "he misspoke, pure and simple. But he corrected himself" (*New York Times*, August 28). Meanwhile, it was reported that army reservist Charles Grener, Jr., who has been identified as a ringleader in the abuse, was praised in a memorandum issued by his platoon leader eight days after he was photographed standing grinning by a pyramid of naked prisoners. Captain Christopher Brinson said Grener was "doing a fine job." CACI International Inc., a private contract firm that provided 36 interrogators to the army, issued their own report stating that they had found no evidence of prisoner abuse at the hands of their employees -- a conclusion that contradicts the findings of Maj. Gen. Antonio Taguba's report.

- **FBI TARGETS ACTIVISTS LONG BEFORE THEY TAKE TO THE STREETS**

For the last few months activists in at least six states have received visits from FBI agents and members of the Joint Terrorism Task Force who asked them if they were planning to

disrupt the political conventions, if they knew anyone else who was, and if they knew it was a crime to withhold such information ((*New York Times*, August 16). Three young men in Missouri were trailed by federal agents for days and subpoenaed to testify before a federal grand jury as part of a domestic terrorism investigation. So intimidated were they that they cancelled their plans to go to Boston for the Democratic National Convention. A young intern with the American Friends Service Committee (AFSC) in Denver was visited at her home and asked similar questions. In Boston in August an activist who works at the AFSC and said he had no plans to go to New York for the Republican National Convention was followed for two weeks by as many as ten plainclothes security agents. On August 17 Representative John Conyers and Democratic colleagues on the House Judiciary Committee sent a letter to the Justice Department calling for an investigation of FBI tactics which, they said, appeared to represent "systematic political harassment and intimidation of legitimate antiwar protesters" (*New York Times*, August 18). According to a *New York Times* editorial, "When protesters are made to feel like criminal suspects, the chilling effect is potentially quite serious...The knock on the door from government investigators asking about political activities is the stuff of totalitarian regimes" (August 17).

- **ACLU CITES "DR. JEKYLL AND MR. HYDE APPROACH TO POLICING" AT THE RNC**

According to the New York Civil Liberties Union, the New York Police Department (NYPD) "generally did a fine job protecting protest at the permitted events" but also actively undermined the right to dissent through actions that included: pre-emptive and indiscriminate arrests, which often captured journalists, legal observers and passersby in Spiderman-type orange mesh netting; hitting bystanders with batons and driving scooters and into crowds; dangerous conditions at the Pier 57 detention facility where many people received burns, rashes and respiratory problems from being forced to sit or lie on a floor covered with soot and possibly toxic chemicals; excessive delays in processing arrestees, with people routinely being detained for 36 hours or more on minor offenses before being brought before a judge; pervasive police videotaping and use of surveillance to record lawful protest activity, raising the prospect of a return to the bad old days of keeping political dossiers on critics of the government.

- **DEPARTMENT OF HOMELAND SECURITY "CRIPPLED BY SPECIAL INTERESTS" AND "OBSESSION WITH IRAQ"**

According to Matthew Brzezinski writing in *Mother Jones* (September/October 2004), the Department of Homeland Security (DHS) with its 186,200 employees and a now hard-pressed \$27 billion budget has been "relegated to bureaucratic obscurity" in a difficult-to-locate building at the end of a narrow alley in Washington's Naval District. "The reception area was no bigger than a cubicle, without even room for a chair." Brzezinski describes how DHS efforts to come up with a plan to protect the 15,000 chemical plants in the US were derailed by lobbyists for the petrochemical industry, leaving a DHS official to declare "I have every confidence that the private sector will act responsibly, that they will do the right thing on their own." The result? "Virtually anyone can still gain entry into thousands of chemical sites across the country." As budget priorities have shifted to fighting "terror" in Iraq, the number of counterterror lobbyists has

quintupled Washington. They advise potential clients on "securing your piece of the homeland security pie."

- **TED KENNEDY NEARLY GROUNDED BY NO-FLY LIST**

Between March 1 and April 6, 2004 Massachusetts Senator Ted Kennedy was kept from boarding a plane on three occasions because his name showed up on the Department of Homeland Security's no-fly terrorist watch-list. Senator Kennedy described his experience at an August 19<sup>th</sup> hearing of the Senate Judiciary Committee, wondering how ordinary people are "going to be able to get treated fairly and not have their rights abused" if he had so much trouble getting off the no-fly list. The Department of Homeland Security said it was addressing the issue and that travelers with problems should contact the ombudsman at the Transportation Security Administration "who would help them take steps to clarify their identity" (*New York Times*, August 20). The DHS said its officials were taking over the checking of names of passengers against no-fly lists, instead of leaving this to the airlines. The ACLU is suing the government on behalf of seven passengers who were wrongly placed on no-fly lists and have been unable to have their identities "clarified." Meanwhile, DHS says that the CAPPS II system to assign passengers color-coded security ratings based on data mining of their personal records is being "reconfigured."

- **"TRUSTED TRAVELER" PROGRAM PILOTED AT LOGAN**

If you are an American Airlines frequent flier and are willing to provide your name, address, phone number, birth date, finger prints and retinal scan and have that information matched against government and intelligence data bases, you may be eligible for a card that allows you into a special "low security" lane. According to security technologist Bruce Schneier (*Boston Globe*, August 24), this is a bad idea: "The Trusted Traveler program is based on the dangerous myth that terrorists match a particular profile and that we can somehow pick terrorists out of a crowd if we only can identify everyone. That's simply not true. Most of the 9/11 terrorists were unknown and not on any watch list."

- **NAME CAUSES TERROR SCARE**

After police in Florida stopped businessman Mohammad Suid for speeding, they found his name on a national watch list, and immediately called in the feds and shut down the surrounding communities. Officers later said it was a case of mistaken identity.

- **WELCOME MAT, NOT HANDCUFFS TO AWAIT VISITORS FROM 27 NATIONS**

Visitors from Britain, Germany and Japan and 24 other industrialized nations will no longer be taken to a detention center in handcuffs for the night and then put on a plane home if they had stayed longer than 90 days on a previous trip to the US. Instead, they will now be allowed to enter the country and required to get visas for future trips. Travelers "deemed to be criminals, who pose security threats to the US or seem likely to become illegal immigrants" will continue to be detained (*New York Times*, August 16, 2004).

- **UN REPORT SAYS IMMIGRANTS SEEKING ASYLUM HARASSED AT US AIRPORTS**

Travelers fleeing persecution have been handcuffed and shackled with belly chains and leg restraints, and those from Mexico and Canada have been summarily deported by poorly trained Border Patrol agents at US airports in New York, Newark, Los Angeles and Miami, according to a confidential UN report by the High Commissioner for Refugees. The report found that there were problems providing translators for asylum seekers who did not speak English, and that in some cases asylum seekers were not allowed to make their case before an immigration judge. One case cited by the study was of a Liberian asylum seeker who was ordered to strip naked at JFK airport in New York to see whether he had scars consistent with torture. "The inspectors then allegedly ridiculed him, using racial and sexual taunts" (*New York Times*, August 13).

- **BORDER AGENTS TO BE GIVEN BROAD DEPORTATION POWERS**

In order to deter "terrorists" from slipping across the nation's borders the DHS has issued a new deportation policy giving Border Patrol agents the power to deport illegal immigrants who have spent up to 2 weeks in the US and are found within 100 miles of the Mexican and Canadian borders. They no longer have to be given a hearing before an immigration judge. In 2003 some 43,000 immigrants were deported without scrutiny from immigration judges, a number which is expected to double under the new rules.

- **HOSPITALS TO RECEIVE FUNDS IF THEY REPORT ON IMMIGRATION STATUS**

The Medicare Modernization Act of 2003 which is now being implemented makes up to \$250 million annually available to hospitals nationwide that provide emergency care to undocumented immigrants if they agree to ask a patient's immigration status and keep a file on that person including photocopies of passports, visas and border crossing cards. Hospital officials fear that immigrants would come to regard medical professionals as an arm of law enforcement and be afraid to come forward for treatment. Meeting the requirements would also necessitate profiling, according to Dr. Walter Ettinger Jr. of UMass Memorial Medical Center, as hospital employees try to determine which patients should be asked about their immigration status. "Anyone with a foreign accent? Anyone with dark skin? And that is just totally inappropriate. We can't do that" (*Boston Globe*, August 23).

- **IMMIGRANT DRIVERS MAY LOSE LICENSES**

In New York as elsewhere in the country the state legislature is taking action to deprive immigrants of driving licenses if they cannot demonstrate that they are in the country legally and have valid Social Security numbers. Up to 200,000 people may have their licenses taken away in New York. Opponents of the policy state that this could lead to a bureaucratic nightmare since "someone legal today can be illegal tomorrow and someone illegal today can be legal tomorrow" (*New York Times*, August 19) and that hard-working members of society will now be forced to drive illegally and uninsured in order to do their jobs. `

- **PROMINENT MUSLIM SCHOLAR HAS US VISA REVOKED**

Tariq Ramadan, a Swiss citizen who was scheduled to teach at Notre Dame University's Kroc Institute for International Peace Studies this fall, has been denied entry to the US. According to Kelly Shannon, a spokesperson for the State Department, under the USA PATRIOT Act people can be excluded if they have offered a "public endorsement of acts of terrorist activity" that could undermine US "efforts to reduce or eliminate terrorist activities" (*Chicago Tribune*, August 24). The 42-year-old Ramadan is an academic star known for his moderate views and for demonstrating how Islamic values are compatible with those of secular western society. He has also been a critic of the "unbalanced" US role in the Israeli-Palestinian conflict. According to Graham Fuller, former vice chair of the National Intelligence Council at the CIA, "the essence of the problem is that pro-Likud organizations want to block people that can speak articulately and present the Muslim dilemma in a way that might be understandable and sympathetic to Americans...They succeed by presenting this as a security matter. There is no way Homeland Security would initiate this on its own." In an op ed in the September 1<sup>st</sup> *New York Times*, Ramadan states that "in the more than 20 books, 700 articles and 170 audio tapes I have produced, one will find no double talk, but a consistent set of themes, and an insistence that my fellow Muslims unequivocally condemn radical views and acts of extremism."

- **CENSUS BUREAU TO WEIGH GIVING SECURITY DATA ON ARAB-AMERICANS**

On August 30 the Census Bureau backed away from its policy of giving specially-tabulated population statistics on Arab-Americans to the Department of Homeland Security without the approval of senior officials. After heated criticism from more than 40 civil rights groups the Bureau said it will now require that the requests be vetted at the highest levels before sensitive information is handed over. 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.

- **GOVERNMENT SECRECY ON THE RISE**

Between 2001 and 2003, there was a 60 percent increase in the number of documents classified by the federal government according to a report released in late August by a coalition of watchdog groups ([www.OpenTheGovernment.org](http://www.OpenTheGovernment.org)). The report says the government is also declassifying documents at a slower rate. Republican Trent Lott and Democrat Ron Wyden co-authored an op ed in the August 26 *New York Times* criticizing "Washington's fog of secrecy" for depriving the American people "of their ability to judge the effectiveness of their government on national security matters" and supporting legislation for an independent national security classification board.

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

- **MEMBERS SPAR OVER 9/11 COMMISSION RECOMMENDATIONS**

Turf issues are heating up as Congress decides whether to take up the 9/11 Commission recommendation for a strong intelligence chief with broad budgetary power,

supervision over 15 intelligence agencies and independence from the White House. Senator Pat Roberts, the Republican chair of the Senate Intelligence Committee, and Democrat John Rockefeller IV are drafting legislation that goes beyond the Commission's recommendations and calls for the dismantling of the CIA and the Pentagon's spy bureaucracy and the creation of a "reordered" intelligence agency under a national intelligence director.

- **CIA NOMINEE SAYS "I AM NOT QUALIFIED"**

It was reported by Reuters in mid August that US Rep. Porter Goss (R-FL), President Bush's appointee to head the CIA, had told filmmaker Michael Moore on March 3 that he was not qualified to get a job with the CIA since he lacked both the language skills and the technical skills. Goss' comments were cut from the final version of "Fahrenheit 9/11".

- **MOMENTUM GROWING FOR FEDERAL CIVIL LIBERTIES BOARD**

Shortly after the 9/11 Commission published its regulations, President Bush issued an executive order establishing a Board on Safeguarding Americans' Civil Liberties. In a September 7th op ed in the *New York Times* 9/11 Commission member Richard Ben-Veniste criticized the president's panel for being merely advisory, and consisting entirely of insiders who "almost all are from the very agencies and departments whose actions are likely to be the subject of civil liberties challenges and complaints." Furthermore, the board would be unlikely, he writes, "to prevent one of the most serious potential problems brought on by the government's new powers -- the possibility of applying them in areas that have nothing to do with terrorism. Already, the Patriot Act has been used to investigate official corruption, money-laundering and computer hacking." He called on Congress to establish "a truly independent board" that can "strike the right balance between enhanced powers to combat terrorism and adequate protection of our cherished civil liberties." Several Representatives are meanwhile working on the draft of a bill to create a federal civil liberties board. But there is as yet no agreement on whether the commission would oversee activities like data sharing, domestic surveillance and Guantanamo detainees, and how much power and independence of action it would have. The ACLU insists the board must be independent of the White House and possess security clearance so it does not end up becoming window dressing.

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

- **MILITARY COMMISSION OFF TO ROCKY START IN GUANTANAMO**

A small group of journalists and human rights activists were invited in the last week of August to witness what one observer called an entirely new set of rules being "written on the run" (*New York Times*, August 27). But in order to be present, they had to agree to a five-page set of "ground rules" limiting what they can say or write about the military commissions. Military defense lawyers for the Australian David Hicks, Salim Ahmed Hamdan of Yemen, Ali Hamza Ahmad Sulayman al Bahlul of Yemen and Ibrahim Ahmed Mahmoud al Qosi of Sudan tried to delay the hearings, stating they were blocked in their efforts to communicate with their clients and prepare the defense, and

were outnumbered and outgunned by the prosecutors. The four detainees appeared separately before a panel of five US military officers beginning on August 24. If acquitted, the Bush Administration says they can still be held indefinitely. During the first week of the hearings, defense lawyers attacked the qualifications and close friendships of the panel members and asserted that the tribunal process violated international standards and US constitutional guarantees of due process. Matters were thrown into disarray when al-Bahlul demanded to be able to serve as his own lawyer. According to defense lawyer Lt. Cmdr Philip Sundel, "The entire process is still in flux and is so poorly designed and the definitions are so ambiguous, yet they keep saying this is a full and fair process. How would an average person feel going into court without knowing the rules in advance?" (*New York Times*, August 22). Commander Sundel, who has been strongly critical of the tribunal process, was passed over for promotion for a second year in a row and is leaving military service.

- **MILITARY COMMISSION "DIDN'T LOOK ANYTHING LIKE JUSTICE, MILITARY OR OTHERWISE"**

Under the headline "Guantanamo Farce" a *Los Angeles Times* editorial (September 2) claimed the opening round of the "detainee military tribunals at Guantanamo Bay last weekend resembled something between a Mel Brooks farce and the kangaroo courts of former Ugandan dictator Idi Amin. Maybe Captain Kangaroo courts." The editorial pointed out that only one member of the tribunal, Col. Peter Brownback III, had legal training, that the procedures were confused, and "the cards are stacked against detainees...Given the confusion, officials must feel justified in limiting reporters to pen and paper, which might as well be quill and parchment. No photographic, video or audio recordings of the hearings will ever be released. From the government's perspective, perhaps the less that Americans know of these bumbling proceedings, the less they'll care."

- **AMERICAN "ENEMY COMBATANT" MAY SOON BE RELEASED**

In order to avoid litigation in the wake of the June 28 Supreme Court ruling, the Justice Department may soon release Yaser Hamdi, who has spent nearly three years in detention without access to lawyers or the courts. Hamdi would be sent to Saudi Arabia, where he grew up. His lawyer Frank Dunham says he is convinced that Hamdi was not a fighter when he was detained by the Northern Alliance in Afghanistan and had never raised arms against American soldiers. A spokesman for the Justice Department said he could now be released because he had been thoroughly questioned for over two years and had no further "intelligence value" (*Boston Globe*, August 12). On August 27 a federal judge ordered the government to explain why Hamdi was still being held in solitary confinement while the details of his release were worked out.

- **JUDGE THROWS OUT DETROIT TERRORISM CONVICTIONS**

On September 2 Judge Gerald Rosen said the prosecution "materially misled the court, the jury, and the defense" and threw out the convictions against two alleged members of an "operational sleeper cell" in one of the Justice Department's high profile anti-terrorism cases. When the government obtained its convictions on material support of terrorism charges in June 2003, Attorney General Ashcroft had stated they "send a clear message.

The Department of Justice will work diligently to detect, disrupt and dismantle the activities of terrorist cells in the US and abroad." Then it turned out important information had been withheld from the defense, including the fact that a key prosecution informant bragged about how he lied to the FBI. Subsequently, among many other blunders, government investigators conceded that a crucial piece of evidence found in the apartment raided by federal agents on September 17, 2001 was in fact a doodle of an outline of the Middle East, and not a sketch of an American air base in Turkey used to patrol Iraq's no-fly zone. One of the prosecutors, Assistant US Attorney Richard Convertino, is now suing the government alleging that the Justice Department is seeking to make him the scapegoat for the botched case.

- **JUDGE ORDERS RELEASE OF ALBANY MUSLIMS**

After prosecutors found that key piece of evidence had been wrongly translated in a case against two leaders of an Albany mosque accused of helping launder money as part of a plot to assassinate Pakistan's ambassador to the UN, the judge ordered Yassin Aref and Mohammed Hossain to be released on \$250,000 bonds and held in home detention while they awaited trial. The judge said there was no firm evidence linking the men to terrorism. Aref's defense attorney called the case a "piece of junk" and a "two-bit frame-up" and commented that "the Department of Justice is exploiting everybody's legitimate fear of terrorism for political purposes. This is a stark example" (*Boston Globe*, August 19).

- **LATEST GOVERNMENT TALLY IN ANTI-TERRORISM PROSECUTIONS**

According to the latest available figures, the Justice Department since 9/11 has charged some 310 people in terrorism-related cases and won 179 convictions. But according to the September 7 *Boston Globe*, many of these convictions are for minor infractions like document fraud and immigration violations. Us Attorney David Kelley of New York stated, "You have to have a zero-tolerance policy for anything that could germinate into a terrorist plot...We've been rooting out people before things get too far along. Our success in that area has likely led to some disruption activity."

- **JUDGE ORDERS GOVERNMENT TO RELEASE DATA ON DETAINEES**

In response to a Freedom of Information Act request filed by the ACLU over a year ago, a federal judge in Manhattan has given the government a limited amount of time to release 70 documents that provide information on the treatment of detainees held at military bases or other facilities overseas.

### **III. GET INVOLVED**

- **EDGARTOWN BECOMES 46<sup>th</sup> MASSACHUSETTS TOWN TO PASS CIVIL LIBERTIES RESOLUTION**

Several other towns have resolution campaigns underway, in spite of the Justice Department's effort to spike the resolution movement. Email [cltf2004@yahoo.com](mailto:cltf2004@yahoo.com) if you would like information about starting a campaign in your community. If you are a Boston resident, please let us know if you will be willing to lobby the City Council.

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