

CIVIL LIBERTIES UPDATE
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RIGHTSWATCH

A. EXECUTIVE ACTIONS

• **SECRET CIA "BLACK SITES" REVEALED -- AND PROTECTED -- BY MEDIA**
 On November 2 the *Washington Post* broke the story that the CIA was using Soviet-era facilities in Eastern Europe as "black sites" for "high value" captives in the war on terrorism. However, it acceded to the demands of US officials that it keep the eight or more countries hosting the sites secret so they would not become targets of terrorist retaliation and open the US to legal challenges and further political condemnation. (According to Human Rights Watch, which has matched CIA flights with the testimony of hundreds of those who experienced "extraordinary rendition" and were later released, two of the host countries may be Poland and Rumania.) The *Post* article reported that of the more than 100 prisoners taken to "black sites" for interrogation, only 30 are considered major terrorism suspects. CNN also kept details about the prisons secret while asserting that according to US intelligence officials "these prisons are still supplying useful intelligence" (David Ensor, CNN, November 2). On November 7 the *Washington Post* described two cases of "extraordinary rendition" in which two Yemeni men were taken first to Jordan and tortured and then turned over to US custody. According to Amnesty International, they were then possibly flown to Europe where they were kept for over a year in four separate locations under conditions of maximum sensory deprivation, not knowing where they were or if it was day or night. At one site they were guarded by men who were dressed in "ninja" suits and communicated only

through hand signals. As Bob Herbert wrote in the November 5 *New York Times*, "The individuals held in these prisons have been deprived of all rights. They don't even have the basic minimum safeguards of prisoners of war. If they are being tortured or otherwise abused, there is no way for the outside world to know about it. If some mistake has been made and they are, in fact, innocent of wrongdoing – too bad....This is the border along which democracy bleeds into tyranny." After echoing his boss' "we do not torture" refrain, National Security Adviser Stephen Hadley told a White House press briefing that "the United States will conduct its activities in compliance with law and international obligations" (*Boston Metro*, November 3). Not convinced, the Council of Europe -- the top human rights organization in the European Union -- has said such prisons would violate human rights law and they will investigate to see if they do exist in Eastern Europe. Germany, Italy and Spain are undertaking their own investigations into potential criminal offenses committed by the CIA and its "systematic practice of enforced disappearance," as the UN special rapporteur on torture called it (*New York Times*, November 14). A Spanish official has termed "very serious" the accusations that three CIA planes carrying terrorist suspects made ten stopovers at an airport on its island of Majorca (*New York Times*, November 16). Meanwhile, an unrepentant CIA has urged the Justice Department to open a criminal investigation into the source of the leak about the hidden global internment network.

• **CHENEY HANGS TOUGH; PROMOTES KEY CREATOR OF TORTURE POLICY**

Leading the charge to block any restrictions on the Bush Administration's treatment of prisoners is Vice President Cheney, who has been intensely lobbying Congress for a CIA exemption to a proposed amendment that would ban the use of torture and cruel and inhumane treatment (see "In the Congress" below). Some senior officials, including Secretary of State Rice, have been advising the Administration to reconsider its detention policies, but Cheney is having none of it, as seen by his promotion of David S. Addington to replace the recently indicted Lewis "Scooter" Libby as his chief of staff. As the vice president's counsel, Addington, along with then White House Counsel (now Attorney General) Alberto Gonzales and Gonzales' deputy Timothy Flanigan, was responsible for jettisoning the restrictions imposed on the Executive by treaties and international law. It was Addington who drafted the January 25, 2002 memo signed by Gonzales which called the Geneva Conventions "quaint" and "obsolete" and urged the President to determine that the Geneva Convention on the Treatment of Prisoners of War does not apply to "war on terrorism" suspects in order to minimize the possibility of future war crime prosecutions of American personnel. According to the November 11, 2005 *Executive Intelligence Review*, Addington worked with Cheney to bypass the traditional military justice system and federal courts in the creation of Military Commissions. He contributed to the infamous Bybee memo on torture (which argued it was permissible as long as it stopped short of organ failure or death) the statement that the application of the International Convention against Torture and the US Anti-Torture Act would be "an unconstitutional infringement of the President's authority to conduct war."

- **TORTURE TOPS THE MAINSTREAM NEWS**

While the Bush Administration insisted "we don't torture," two of the eight plaintiffs involved in the ACLU lawsuit holding Secretary of Defense Rumsfeld directly responsible for torture were in the US telling their story to ABC's Nightline, CNN and major newspapers. Thahe Mohammed Sabar and Sherzad Kamal Khalid are Iraqis who were detained by the US military at various locations in Iraq and subjected to torture and degrading treatment – including electric shocks, being beaten with wooden batons while being forced to run through gauntlets of up to 20 uniformed soldiers, being shackled in stress positions, threatened with mock executions, sexual abuse, being deprived of food, water and sleep, and shackled to a fence for several hours in temperatures exceeding 120 degrees Fahrenheit without any water. While the two Iraqis were telling their stories on November 15, there was breaking news that US soldiers had discovered a "secret torture chamber" in the basement of an Interior Ministry building in a suburb of Baghdad where at least 173 malnourished detainees, mostly Sunni Iraqis, were crammed in a small underground space where there were also "instruments of torture." Major General Hussein Kamal who visited the site told CNN, "I saw signs of physical abuse by brutal beating, one or two detainees were paralyzed and some had skin peeling off various parts of their bodies" (*New York Times*, November 16). The US called the situation "totally unacceptable" while the Iraqi Interior Minister claimed that only a handful of people had been tortured there. On November 17 a suicide bombing that was apparently aimed at destroying the secret prison killed people in nearby houses.

- **PENTAGON ISSUES NEW RULES ON TREATMENT OF DETAINEES – WITH A LOOPHOLE**

After 11 months of work, the Pentagon has mandated that all detainees be treated humanely. The new rules prohibit physical and mental torture, bar the use of dogs to frighten suspects and order violations to be reported. However, the revised rules do not apply to CIA interrogations, and give the Secretary of Defense or his deputy the authority to override the policy if they do so in writing. Meanwhile it has been revealed that last year the CIA's inspector general, John Helgerson, issued a classified report warning that certain CIA interrogation procedures were a violation of the International Convention against Torture. The report raises concerns that CIA officers could face legal liability for the use of certain interrogation methods such as waterboarding.

- **DETAINEE ATTEMPTS SUICIDE WHILE LAWYER IS VISITING**

On October 15, 2005 Jumah Dossari, a detainee who had spent four years in Guantanamo, hung himself from a noose tied to the ceiling and was discovered by his lawyer, Joshua Colangel-Bryan, who was waiting to talk to him about his federal court case. According to the November 1 *Washington Post*, "lawyers believe Dossari, who has been in solitary confinement for nearly two years, timed his suicide attempt so that someone other than his guards would witness it, a cry for help meant to reach beyond

the base's walls." Dossari is apparently in stable condition. His lawyer says that detainees see such suicide attempts and hunger strikes as "the only means they have of exercising control over their lives." At least 27 detainees, who began their hunger strike on August 8, are now being force fed through finger-thick tubes thrust up their noses without painkillers in a procedure which has been denounced as abusive by some of their lawyers. On October 26 federal judge Gladys Kessler ordered the government to provide information to their lawyers about detainees who are being force fed. One of them, a Kuwaiti named Fawzi al-Odah, has asked his lawyer Tom Wilner to petition the court to remove his feeding tube "out of desperation" of his being imprisoned without charges or trial. The detention al-Odah had been investigated in the program on Guantanamo made by the late Peter Jennings and in a *Newsweek* article by Roy Gutman, both of which found strong grounds to believe he was an innocent aid worker who was helping refugees on the Afghan border when he was handed over to the Americans for a bounty. His case was featured in the *UK Guardian* for November 17 ("A hero of Guantanamo: as the Camp Delta hunger strikers grow weaker, the US Senate is denying them justice").

- **SPY FOR US AND WE WILL FREE YOU?**

On October 26, 2005 the New York-based Committee to Protect Journalist (CPJ) issued a news alert about the plight of Sami Muhyideen al-Haj, a cameraman for the Al-Jazeera network who was arrested by Pakistani authorities while on assignment for the network in December 2001 and later turned over to the Americans who sent him to Guantanamo Bay where he languishes as an "enemy combatant". The CPJ quoted allegations by his lawyer Clive Stafford Smith in the October 26, 2005 *UK Guardian* that al-Haj was told he would be set free if he would agree to become an informant against Al-Jazeera.

- **DOCTORS GIVEN TOUR IN EFFORT TO END ETHICS CONTROVERSY**

Psychiatrists, psychologists and ethicists who were given a one-day tour of the Guantanamo prison on October 19 spoke with officials but no detainees, whom they only saw from a distance. The trip was intended to lay to rest concerns that the participation of the medical community in Behavioral Science Consultation Teams (known as "biscuit" teams) was a violation of medical ethics. The teams were devised to advise interrogators on how to get information out of suspects. An op ed by Gregg Bloche and Jonathan Marks in the November 14th *New York Times* claims that the Pentagon had mined a Cold War classified program known as SERE ("Survival, Evasion, Resistance, Escape") for interrogation methods used by North Korea and Vietnamese forces to break down prisoners and that "at Guantanamo, SERE-trained mental health professionals applied this knowledge to detainees....Yet the Pentagon cannot point to any intelligence gains resulting from the techniques that have so tarnished America's image. That's because the techniques designed by communist interrogators were created to control a prisoner's will rather than to extract useful intelligence." The American Psychiatric Association has said its members can participate at Guantanamo as long as there is no "coercive" element in the interrogation, while the American

Psychological Association told its members to be "mindful...of contexts that require special ethical considerations" (*New York Times*, November 13).

- **"THE BUCK STOPS WITH LYNNDIE"**

This was the headline above Derrick Jackson's September 28 Boston Globe column about the decision of the court martial in the Lynndie England case that the "blame for Abu Ghraib rests at the bottom." Private England was sentenced to three years in prison for "wrongfully posing" with Abu Ghraib prisoners in sexually-humiliating postures. Meanwhile, after 17 months during which they tried to get superiors to take action on reports of prisoner abuse in Iraq, Army Captain Ian Fishback, a West Point graduate, and two 82nd Airborne Division sergeants told Human Rights Watch and wrote members of the Senate Armed Services Committee that they had personally witnessed the torture of prisoners at Fallujah – including "death threats, beatings, broken bones, murder, exposure to elements, extreme forced physical exertion, hostage-taking, stripping, sleep deprivation, and degrading treatment." Prisoners were also stacked naked in a pyramid as in Abu Ghraib. Their efforts to get superiors to say what techniques were permitted failed, as investigators from the Criminal Investigation Command and the 18th Airborne Corps inspector general seemed more interested in getting the names of the sergeants who reported the abuse than tracing it up the chain of command or interceding to stop it. Captain Fishback refused to disclose the sergeants' names because he had told them he would not make them public if they came forward. He has been told he faces criminal prosecution if he disobeys a "lawful order" to disclose their names (*New York Times*, September 28).

- **FORMER MUSLIM CHAPLAIN PUBLISHES BOOK ABOUT GUANTANAMO**

West Point graduate and Muslim convert James Yee, who served as a chaplain at Guantanamo before being arrested and held for months in solitary confinement on suspicion of espionage, has written about his ordeal in "For God and Country: Faith and Patriotism Under Fire" (PublicAffairs). He describes an atmosphere in which all Muslims were regarded with suspicion and guards were constantly reminded of the September 11th attacks by the Camp commander Major General Geoffrey Miller (who later "Gitmoized" Abu Ghraib) and encouraged to take their anger out on prisoners.

- **FBI EXPANDS ITS REACH INTO "LIVES OF ORDINARY AMERICANS"**

The *Washington Post* on November 6 featured a 2 ½ page article headlined: "The FBI's Secret Scrutiny: In Hunt for Terrorists, Bureau Examines Records of Ordinary Americans." It documents a hundredfold increase in the use of "national security letters" (NSLs) each year, whose scope was expanded by section 505 of the USA PATRIOT Act. Now at least 30,000 are issued annually to universities, internet service providers, all kinds of organizations and individuals by more than 60 FBI special agents – without any judicial or grand jury oversight and with a gag provision attached – to enable the FBI to override privacy laws and secretly review "the telephone calls, correspondence and financial lives of ordinary Americans." All 30,000 annual recipients of such NSLs are

gagged in perpetuity. The Bush Administration "has offered no example in which the use of a national security letter helped disrupt a terrorist plot." According to the report, "senior FBI officials acknowledged in interviews that the proliferation of national security letters results primarily from the bureau's new authority to collect intimate facts about people who are not suspected of any wrongdoing." In late 2003 a 1995 policy requiring agents to destroy files on innocent Americans was reversed by then Attorney General John Ashcroft, who issued new guidelines requiring information acquired through the NSLs to be deposited in government data banks and widely shared among federal agencies. In the same order Ashcroft "directed the FBI to develop 'data mining' technology to probe for hidden links among the people in its growing cache of electronic files. According to an FBI status report, the bureau's office of intelligence began operating in January 2004 a new Investigative Data Warehouse, based on the same Oracle technology used by the CIA." The Ashcroft guidelines allow the FBI for the first time to obtain commercial data from ChoicePoint, Inc. and other entities for the new government data banks. The article describes how the FBI's Proactive Data Exploitation Unit used NSLs to vacuum up the records of as many as a million people who visited Las Vegas in late 2003 in a failed effort to find terrorist suspects. NSLs were used at North Carolina State University "to demand much more information than the law allows" and university officials threatened with sanctions if they did not comply. Congressional intelligence committees cannot exercise oversight over how the power is used since they only get partial statistics from the Justice Department and no information at all about NSLs issued by the Department of Defense and other agencies.

• JOURNALIST CLAIMS NATIONAL SECURITY LETTERS USED TO BUILD POLITICAL "ENEMIES LIST"

Doug Thompson, a former print journalist and Congressional staffer who in 1994 founded the web's first political news site, Capitol Hill Blue, claims that the Bush Administration now has a database of 10,000 political enemies managed by Karl Rove, which includes files on former Ambassador Joseph Wilson and his wife Valerie Plame, Michael Moore, and various political figures and bloggers critical of the Administration (Capitol Hill Blue, November 8). Thompson quotes an unnamed White House aide as saying that NSLs "helped us build files quickly on those we needed to know more about." Thompson reported in the November 7th Capitol Hill Blue that he had seen a printout of the 100 pages of information that the FBI held on him in its computer, which contains "details on my service to my country that I haven't even revealed to my wife or my family. Although the file finds no criminal activity by me or members of my immediate family, it remains open because I am a 'person of interest' who has 'written and promoted opinions that are contrary to the government of the United States of America.'" Thompson says the file began on September 11, 2001 and that NSLs were used to gather much of the information on him.

• INTERNAL DOCUMENTS SHOW FBI VIOLATING ITS OWN POLICY

Heavily redacted documents obtained by the Electronic Privacy Information Center in

response to a FOIA request and a separate internal review revealed in October that on at least 113 occasions in 2004 the FBI had violated federal law or its own policy in handling surveillance investigations, and that Congress had failed to exercise sufficient oversight. In some instances agents extended their investigations for months beyond the deadline without reporting it or getting permission to do so. In other cases they seized records or conducted searches without getting needed approval. The FBI said the problems were not due to an abuse of power but rather to the fact that many agents were recently transferred from criminal work to counterterrorism and were not familiar with their new powers under the USA PATRIOT Act and changed Justice Department guidelines (*New York Times*, October 25).

- **FBI CRIMINAL INVESTIGATIONS IN STEEP DECLINE**

With its focus shifted to investigating terrorism, the FBI is carrying out only about half the number of investigations into financial fraud, bank robberies, drug cases and other crimes that it did before the 9/11 attacks, according to Justice Department Inspector General Glenn Fine. Investigations into healthcare fraud, white-collar crime, corruption and civil rights were also substantially down. Fine's report shows that there were 2,200 fewer field agents investigating criminal matters in 2004, and that drug squads have been decimated and drug cases reduced by 70 percent (*Boston Globe*, October 4).

- **IMMIGRATION PROSECUTIONS SHARPLY RISE**

Federal prosecutions for immigration violations have more than doubled in the last four years, and now surpass drugs "as the most frequently pursued federal crime" (*New York Times*, September 29). 38,000 immigration prosecutions were carried out last year, as opposed to 30,988 drug prosecution, according to a report by Syracuse University's Transactional Records Access Clearinghouse. Criminal charges are being brought in immigration cases that might have once been handled as administrative matters. The report shows that the Justice Department brought 800 terrorism-related cases last year, although the numbers may have been inflated "by including cases that had little or no connection to terrorism." The Department of Homeland Security meanwhile released figures about foreign visitors who have overstayed their visas and stated that only 4,164 of the 301,046 visa violators in 2004 had been actively pursued, resulting in just 671 apprehensions. According to the DHS, 3.6 million people in the US have overstayed their visas and there are only 51 full-time agents working on these cases (*New York Times*, October 22).

- **9/11 COMMISSION SAYS NUCLEAR WEAPONS AND DETAINEE POLICY ARE BIG THREATS**

According to the members of the 9/11 Commission, the Bush Administration has done very little to keep nuclear weapons out of the hands of terrorists and its abusive treatment of terror suspects was fanning "criticism from around the globe." The Commission's latest "report card" on the progress made by the government in the war

against terrorism (it found "minimal" or "insufficient progress" in 7 of 13 areas it examined) urged it to bring its treatment of detainees in line with international law and to make the potential nuclear terrorism its highest priority (*New York Times*, November 15).

- **NUCLEAR SITES AT HOME STILL UNGUARDED**

According to Matthew Bunn of the Managing the Atom project at Harvard's Kennedy School of Government, "Four years after 9/11, most nuclear research reactors at universities across the US are essentially undefended, with no guards on site, no fences or security cameras around the building, and few other security measures in place. Some of these facilities are fueled with highly enriched uranium, the easiest material in the world for terrorists to use to make a nuclear bomb" (*Boston Globe*, October 20).

- **FBI CREATES NATIONAL SECURITY HIGHER EDUCATION ADVISORY BOARD**

According to an FBI press release dated September 15, 16 presidents and chancellors of US universities – including MIT president Susan Hockfield, will work with the FBI "to establish lines of communication on national priorities pertaining to terrorism, counterintelligence, and homeland security" and new research possibilities, degree programs, course work, internships, and opportunities for consulting and jobs related to national security. FBI Director Robert Mueller said he hopes to "foster exchanges between academia and the FBI in order to develop curricula which will aid in attracting the best and brightest students to careers in the law enforcement and intelligence communities."

- **FCC ORDERS OVERHAUL OF COMPUTER NETWORKS TO MAKE MONITORING EASIER**

Citing the need for universities, internet service providers, libraries and municipalities that provide Internet access to help catch terrorists, the Federal Communications Commission has ordered them to upgrade their computer systems to ensure easy surveillance access for federal agents. The Justice Department had requested that the 1994 Communications Assistance for Law Enforcement Act, that required telephone carriers to undertake an upgrade at their own expense to permit easy surveillance, be extended to universities and elsewhere on the grounds that new technologies like Internet telephone service were endangering its ability to conduct "their fight against criminals, terrorists and spies" (*New York Times*, October 23). Universities could have to pay an estimated \$7 billion just on new switches and routers to be in compliance if the new rules take effect as scheduled in May 2007. According to the *New York Times* article, "If law enforcement officials obtain a court order to monitor the Internet communications of someone at a university, the current approach is to work quietly with campus officials to single out specific sites and install the equipment needed to carry out the surveillance...but the federal law would apply a high-tech approach, enabling law enforcement to monitor communications at campuses from remote

locations at the turn of a switch." On October 25 the new wiretapping rules were challenged in federal court by privacy, high tech and telecommunications groups, and separately by the American Council on Education.

- **DOZENS OF SECURITY DEADLINES MISSED SINCE 9/11**

A report into the multiple failures of the Department of Homeland Security to meet deadlines imposed by Congress on national security projects gives grounds to believe that "the incompetence that we recently saw with FEMA's leadership appears to exist throughout the Homeland Security Department," according to Mississippi Rep. Bennie Thompson, the top Democrat on the Homeland Security Committee (*Boston Globe*, October 31). Lapsed deadlines involved plans to defend cargo and ports, commerce, travel and infrastructure. Results of a survey that were released in mid October show the morale of the Department of Homeland Security employees is by far the lowest of all federal agencies. Only 20 percent strongly agreed that "my work gives me a sense of personal accomplishment" and fewer than a quarter said they knew "how my work relates to the agency's goals and priorities" (*New York Times*, October 16)

- **NEW YORK CITY TRANSIT ALERT REVEALS BIG SECURITY MUDDLE – AND AMBITIONS**

On October 6, with his re-election campaign just weeks away and just hours before a debate in Harlem that the October 7 *New York Times* said he had decided to skip, Mayor Michael Bloomberg, with an FBI agent by his side, announced there was a credible terrorist threat to the New York subway system. But the Department of Homeland Security maintained that the threat was of "doubtful credibility" and a counterterrorism official briefed by the DHS said it was similar to "what can be found on the Internet and a map of New York City" (*Boston Globe*, October 7). As National Guard units and thousands of extra police randomly opened passengers' bags, rode the trains and buses and searched trucks, intelligence rivalries among local and federal agencies flared. The threat was supposedly based on information given by an informant in Iraq, which had been found to be bogus around the time Bloomberg's announcement was made. "There was no there there," said a counterterrorism official (*New York Times*, October 11). "From the outset, some federal officials, including those with the Department of Homeland Security, questioned just how real a plot against the subway system had been, and while some supported the city's measures, at least one official said he was astonished by how the city had reacted," according to the *New York Times*. In an October 12th editorial the *Times* commented about rivalries between the Homeland Security Department and the police departments of big cities which have their own intelligence agents and think they can do a better job on their own: "This territorial politics and press spin is not how things should be four years after the 9/11 attacks. Background sniping...leaves people wondering whether all the interlocking part of the nation's security apparatus are really all that interlocking." On October 20 Homeland Security secretary Michael Chertoff announced he would be placing his own representative in the New York City police headquarters.

- **IS THE US LOSING THE WAR ON TERROR?**

Yes, say David Benjamin and Steven Simon, two terrorism specialists, in their book *The Next Attack: the Failure of the War on Terror and a Strategy for Getting it Right* (Times Books). Arguing that "America's badly damaged image in the Muslim World could take more than a generation to put right," they say that Bush has not just given terrorists "an excellent American target in Iraq but in the process has energized the jihad and given militants the kind of urban warfare experience that will raise the future threat to the United States exponentially" (*Boston Globe*, November 2).

- **SPY AGENCIES ORDERED TO FOSTER DEMOCRACY**

In a new intelligence strategy document, taking steps to "bolster the growth of democracy" has joined counter terrorism and efforts against weapons proliferation as the prime "mission objectives" of US intelligence agencies (*New York Times*, October 27). Intelligence operatives are required to "forge relationships with new and incipient democracies" in order to "strengthen the rule of law and ward off threats to representative government."

- **US PASSPORTS TO CONTAIN RFID CHIPS BY OCTOBER 2006**

Despite privacy concerns and the fact that 98.5 percent of the 2,335 comments it has received about its proposals were negative, the State Department is finalizing plans for all new and renewed US passports to contain radio frequency identification chips and a digital photo by next year. Passports are to be equipped with "anti-skimming" technology which will make it harder for signals to be intercepted,

- **GOVERNMENT REFUSES TO DISCLOSE RECORDS ABOUT "IDEOLOGICAL EXCLUSION"**

The ACLU and other organizations brought suit in early November after the State Department refused to hand over in response to a FOIA request records relating to its use of immigration law and Section 411 of the USA PATRIOT Act to keep certain foreign scholars out of the United States. Among those it has excluded are prominent Swiss intellectual Tariq Ramadan, who had a teaching position at Notre Dame University, Dora Maria Tellez, a Nicaragua leader of the 1979 movement that overthrew dictator Anastasio Somoza who had been appointed Robert Kennedy visiting professor in Latin American Studies at Harvard University, and 61 Cuban scholars who were scheduled to attend the Latin American Studies Association international congress. John Clarke of the Ontario Coalition Against Poverty was not permitted to cross the border for a speaking engagement in Michigan on the grounds that he opposed "the ideology of the United States."

- **NEW WATCH LIST FORM PRODUCED BY TSA**

If you are having problems traveling because your name or a similar one is on a Watch List, you can now obtain a form from the Transportation Security Administration that

you can submit when you fly. According to an American Arab Anti-Discrimination Committee update for October 7, "While submitting this form does not remove a name from the Watch Lists, this process distinguishes passengers from persons who are in fact on the Watch Lists by placing their names and identifying information in a cleared portion of the Lists...airline personnel can then more quickly determine when implementing TSA-required identity verification procedures that these passengers are not the persons of interest whose names are actually on the Watch Lists." To download the form visit http://www.tsa.gov/interweb/assetlibrary/PIV_Form.pdf.

- **WOMAN EJECTED FROM PLANE FOR WEARING CONTROVERSIAL T-SHIRT**

After passengers complained, Lorrie Heasley was ordered off a Southwest Airlines flight in Reno-Tahoe International Airport for wearing a T shirt picturing the president, vice-president and an obscene word. She told the *Reno Gazette-Journal*, "I have cousins in Iraq and other relatives going to war. Here we are trying to free another country, and I have to get off an airplane – over a T-shirt. That's not freedom" (*New York Times*, October 7).

- **STUDENT LEARNS ABOUT THE BILL OF RIGHTS**

When a North Carolina high school teacher asked her class "to take photographs to illustrate their rights in the Bill of Rights," one of her students took a photo of George Bush out of a magazine, tacked it on a wall with a red thumb tack through his head and then had a picture taken of himself making a thumb's down sign next to the poster. He took the picture to a Wal-Mart to be developed. A Wal-Mart employee called the police who called the Secret Service which visited the high school and talked to the principal, the teacher and the stunned student. The Secret Service agent told the teacher that a US attorney "would decide whether the student could be indicted" – he wasn't. (*Progressive.org*, October 4).

- **AFTER MILITARY FAILURES IN NEW ORLEANS BUSH PLANS MILITARY RESPONSE TO BIRD FLU**

The UK *Independent* on October 3 published the results of an official, confidential American inquiry into the Hurricane Katrina disaster that described the "near catastrophic" failure due to "endemic corruption, divisions within the military and troop shortages caused by the Iraq war" (*Boston Metro*, October 4). The report concluded, "The one thing this disaster has demonstrated [is] the lack of coordinated, in-depth planning and training on all levels of Government, for any/all types of emergency contingencies...Failure to plan, and train properly has plagued US efforts in Afghanistan, Iraq and now that failure has come home to roost in the United States." A day after the report was made public in the *Independent*, President Bush told a news conference that the military could be used to enforce quarantines in case of a bird flu outbreak. Dr. Irwin Redlener, director of Columbia University's National Center for Disaster Preparedness said the President was asserting martial law in the United States, which was an "extraordinarily draconian measure" that would not be necessary if the nation had built the capacity for rapid vaccine production (*Boston Globe*, October 5).

- **MILITARY RECRUITER USED COUNTERFEIT DOCUMENTS TO ENLIST IMMIGRANTS**

A recruiter for the US Marines has been accused of providing counterfeit green cards and stolen Social Security numbers to illegal immigrants in Miami in exchange for their joining the Marine Corps (*Village Voice*, October 4). There are presently 37,500 non citizens from more than 200 countries in the US active duty forces and reserves.

- **AFTER COMPLAINING ABOUT POLICE HARASSMENT CAB DRIVER FACES DEPORTATION**

The case of a Palestinian cab driver in New York City who was put into deportation proceedings after filing a complaint about a police officer with the Civilian Complaint Review Board is a test of Mayor Bloomberg's two-year-old Executive Order 41 which was designed to assure illegal immigrants they can seek help from city agencies without fear of reprisal. Executive Order 41 does not protect illegal immigrants suspected of criminal activity or terrorism and a police spokesman says that the traffic tickets Waheed Saleh had received amounted to illegal activity. But Saleh maintains that the tickets were written by the officer he was complaining about as a form of harassment, and that the officer let him know that if he did not withdraw the complaint, he would "give him a hard time" (*New York Times*, September 26). Apparently the mayor's commissioner of immigrant affairs has no authority to protect immigrants' access to city agencies or enforce Executive Order 41.

- **VERMONTERS PROTEST MINUTEMEN VIGILANTES**

While members of the so-called Minuteman Civil Defense Corps tried to locate the border between Vermont and Canada in the town of Derby Line so they could begin to patrol for illegal immigrants, at least 40 local people held a protest on the village common in the pouring rain proclaiming, "We don't want their racist policies in Vermont" (*Boston Globe*, October 16). One local resident said, "The border patrol does an ample job. I don't think we need a bunch of yahoos enforcing the law."

B. IN THE US CONGRESS

- **VOTE AVERTED ON VERSION OF PATRIOT ACT STRIPPED OF CIVIL LIBERTIES PROTECTIONS**

The Bush Administration has had a rocky ride in its push to use the debate over the USA PATRIOT Act sunset provisions to expand executive branch powers. In late October, the House voted to add to the Act provisions that would triple the number of terrorism-related crimes carrying the death penalty (making, for instance, a person who gave money to an organization whose members kill someone without his knowledge eligible for death), reduce the size of juries that decide on executions, and permit federal prosecutors to have new juries if the original jury in a case refused to agree on a death sentence. Meanwhile, some Republicans in the House and Senate continued to push to

widen still further the FBI's powers to demand records without any judicial oversight through the use of administrative subpoenas like National Security Letters. But they met major bumps in the road. The enhanced death penalty provisions got a hostile reception in editorials around the country ("Patriot Act developing decidedly un-American tilt" was the headline in the October 27 *Miami Herald* while the *New York Times* on October 31 attacked "The House's Abuse of Patriotism"). Then came the November 6 *Washington Post* expose that the FBI had been issuing at least 30,000 National Security Letters annually, and that the records of innocent Americans were being seized and deposited in government databases for data mining purposes (See **FBI EXPANDS ITS REACH INTO 'LIVES OF ORDINARY AMERICANS'**, "Executive Actions," above). The following day a *New York Times* headline proclaimed, "Lawmakers Call for Limits on FBI Power to Demand Records in Terrorism Investigations." Meanwhile, public pressure for PATRIOT Act reforms intensified. On October 4 six powerful business groups wrote a letter to Senator Arlen Specter, chair of the Senate Judiciary Committee, calling for checks and balances to be inserted into Sections 215 and 505 of the Patriot Act and saying this was "a vital issue for American business" (the letter was signed by the Association of Corporate Counsel, Business Civil Liberties, Inc., Financial Services Roundtable, National Association of Manufacturers, National Association of Realtors, the United States Chamber of Commerce). On November 9 the American Bar Association weighed in with a letter rejecting the criminal provisions that the House had voted to add to the bill and urging greater Congressional oversight over PATRIOT Act FISA powers in sections 206, 213 and 215 of the PATRIOT Act. On the same day, November 9, the House, in a bipartisan push, voted to reject the Administration's demand that Congress limit its role in overseeing PATRIOT ACT powers and called instead for PATRIOT Act reforms along the lines included in the Senate version of the reauthorized Act (S. 1389). By a unanimous voice vote it called on House conferees to support the Senate's four-year sunset provisions instead of the ten-year sunsets in the House version (HR 3199). The next day the conference committee that would reconcile the two versions began meeting. According to the November 10 *Washington Post*, a "tentative deal" had been worked out which would "probably adhere to the outlines" of the Senate version (see Civil Liberties Update, August 15, 2005).

But then, on November 16, Republican heavies struck back, pushing for a "compromise" version that made virtually all of the expiring provisions permanent without including necessary changes to restore checks and balances. The draft conference bill still permitted records of ordinary Americans to be secretly obtained without adequate safeguards, continued to gag recipients of records demands and subjected them to new criminal penalties, allowed sneak-and-peek searches under a broad standard, omitted limits that had been in the Senate version on various PATRIOT Act surveillance powers, created additional death penalties and allowed the Justice Department, not federal courts, to determine if a state had a competent death penalty system. New seven-year sunsets were added to only three provisions out of scores of the surveillance powers given to the government.

On November 16 it appeared that the House and Senate might vote on this version of the reauthorized PATRIOT Act before the Thanksgiving recess. Civil liberties groups immediately orchestrated an outraged response. The next day a bipartisan group of senators (Feingold, D-Wisconsin, Craig, R-Idaho, Durban, D-Illinois, Sununu, R-New Hampshire, Salazar, D-Colorado, and Murkowski, R-Alaska) announced that they would not permit a vote on a conference report "that would eliminate the modest protections for civil liberties that were agreed to unanimously in the Senate." They were then joined by some Republican House Members – Rohrabacher of California, Otter of Idaho, Mack of Florida, Paul of Texas, Bartlett of Maryland, Jones of North Carolina and Duncan of Tennessee who jointly released a statement objecting to the proposed PATRIOT Act conference report unless "major changes are made" to the legislation. According to Representative Duncan, "The Federal Government has too much power already, and it is certainly not a conservative position to expand that power even more. The PATRIOT Act is one of the greatest expansions of federal power in our history." Members of Congress then caught their flights home, leaving the PATRIOT Act reauthorization debate to be resumed in December.

• **SENATE DEBATES TORTURE AND DETAINEE HABEAS CORPUS RIGHTS**

On October 5 the US Senate, by a vote of 90 to 9 (with 46 Republicans voting yes), agreed to add Senator John McCain's amendment barring the use of "cruel, inhuman or degrading treatment" against any prisoner in US custody to a \$440 billion military spending bill. The McCain amendment, which was co-sponsored by former military lawyer Senator Lindsey Graham (a South Carolina Republican) and Armed Services Committee chairman John Warner (a Republican from Virginia) requires interrogation techniques to conform to those stipulated in the revised US Army Field Manual on Intelligence Interrogation. While retired generals and former Secretary of State Colin Powell endorsed the amendment, the President said he would use his veto for the first time to kill it and Vice President Cheney sought to undermine Senate support and ensure there would be no similar amendment in the House. By late October the Vice President was pushing hard for a "CIA exemption" to the amendment but McCain was standing firm: "No amendment at all would be better than that," he stated (*Boston Globe*, October 26). According to an October 26 *New York Times* editorial, Cheney's proposal (made in secret to McCain) "would give the president the power to allow government agencies outside the Defense Department (the administration has in mind the CIA) to mistreat and torture prisoners as long as that behavior was part of 'counterterrorism operations conducted abroad' and they were not American citizens. That would neatly legalize the illegal prisons the CIA is said to be operating around the world and obviate the need for the torture outsourcing known as extraordinary rendition. It also raises disturbing questions about Iraq, which the Bush administration has falsely labeled a counterterrorism operation. Mr. McCain was right to reject this absurd proposal." On November 3 the House Republican leadership, fearing a defeat for the Administration, put off a vote on a motion asking House conferees to adopt the language of the McCain

amendment when they negotiated the final version of the military spending bill.

Days later a bombshell was dropped by McCain amendment co-sponsor Senator Lindsey Graham. On November 10, possibly as part of a deal made with the Administration, he proposed adding an amendment to the defense policy bill that would strip detainees at Guantanamo Bay of their habeas corpus right to challenge their detentions in federal court. That right had been extended to them by the US Supreme Court in its June 2004 decision in *Rasul v. Bush* and 200 detainees have filed habeas corpus petitions. His fellow Senators, including John McCain, supported him by a vote of 49-42, with 5 Democrats – Lieberman of CT, Landrieu of LA, Nelson of NE, Conrad of ND and Wyden of OR voting in the affirmative. The last time habeas corpus was suspended was when over 100,000 Japanese Americans were detained in internment camps during World War II. On November 15 the Senate voted 84-14 to support a compromise amendment, which would still deny detainees broad access to federal courts to contest the conditions of their imprisonment, but grant them the ability to challenge their status as "enemy combatants" and to automatically appeal any sentence of death or 10 years in prison handed down by a Military Commission. The amendment does not allow a habeas corpus challenge for a claim against torture, and does not provide any mandatory court appeal of a sentence for less than 10 years handed down by a Military Commission. Furthermore, it prohibits all habeas claims if the government decides it is simply going to hold a person indefinitely without taking him before a Combatant Status Review Tribunal to decide whether he is an "enemy combatant."

C. IN THE COURTS

• SUPREME COURT MAY NOT AFTER ALL RULE ON MILITARY COMMISSIONS

The Senate vote on the Graham amendment to restrict habeas corpus petitions came during the same week as the US Supreme Court decision to hear the appeal of the detainee who is the first person due to be tried by a Military Commission in Guantanamo Bay. The Bush Administration had strongly urged the justices not to take the case of Salim Ahmed Hamdan, a Yemeni alleged to have been Osama bin Ladin's personal driver. If the Senate passes the compromise version of the Graham amendment, Hamdan's case challenging the constitutionality of Military Commissions might not go before the High Court after all. A year ago federal district judge James Robertson shut down the Military Commission as it was preparing to try Hamdan, on the grounds that it violated the Geneva Conventions, the US Constitution and the Uniform Code of Military Justice. This ruling was reversed in July by a three-judge appeals court panel that included the new Supreme Court chief justice John Roberts, which declared that the commander-in-chief had the power to decide how to treat detainees. Hamdan's attorneys say that the President's unilateral creation of commissions and their rules violates the separation of powers: "The Revolution was fought to ensure that no man, or branch of government, could be so powerful" (*New York*

Times, November 8). David Rivkin, a former associate White House counsel, said it was necessary for Military Commissions to allow secret proceedings and have relaxed standards for the admission of evidence because "you want to discriminate against unlawful combatants because they're bad people by definition. They're the scourge of humanity. And you want to incentivize people to comply with the laws of war" (*Boston Globe*, November 8).

- **GUANTANAMO TRIAL HALTED BY FEDERAL JUDGE**

On November 15 federal district court judge Colleen Kollar-Kotelly halted the trial by Military Commission of the Australian detainee David Hicks, who has been charged with fighting for the Taliban in Afghanistan. She ruled that it should not go forward until the Supreme Court resolves the legality of Military Commissions – something it might not now have the opportunity to do.

- **APPEALS COURT TO RULE ON NATIONAL SECURITY LETTERS**

After the ACLU successfully challenged the government's use of National Security Letters (section 505 of the PATRIOT Act) and their gag provision in two district courts, government appeals in both cases – one involving an Internet Service Provider and the other a Connecticut organization that belongs to the American Library Association -- are being consolidated and heard by a three-judge panel of the Second Circuit Court of Appeals in lower Manhattan. The government asked the November 2nd hearing to be held behind closed doors. The ACLU tried and failed to get their client in the Connecticut case ungagged so he could participate in the PATRIOT Act reauthorization debate.

- **JUDGE ORDERS MORE PRISON ABUSE IMAGES TO BE RELEASED TO ACLU**

On September 29 Manhattan federal district judge Alvin K. Hellerstein wrote that "our nation does not surrender to blackmail" and rejected government arguments that turning over more prison abuse pictures to the ACLU would endanger American troops. At issue are 74 photographs and three videotapes that show Iraqi detainees being abused by US soldiers. The judge said they should be edited to hide the faces of the prisoners before being made public, and one videotape which could not be edited should not be released. The ruling was stayed while the government appealed.

- **ASHCROFT CAN BE QUESTIONED IN ABUSE SUIT**

A Brooklyn federal district court judge, John Gleeson, ruled in late September that former Attorney General John Ashcroft did not have immunity that would shield him from being questioned under oath as part of a lawsuit brought by two Muslim immigrants who charged they were physically abused and deprived of due process while being held for more than eight months in the maximum security unit of Brooklyn's Metropolitan Detention Center. According to Rachel Meeropol of the Center of Constitutional Rights, "The judge understood that this isn't just a case about individuals being abused in detention. These are people who were singled out

according to a policy created on the highest levels of government" (*New York Times*, September 29).

- **TWO RULINGS UPHOLD CELL PHONE PRIVACY**

In October federal judges in two separate rulings in Texas and New York found that the FBI cannot track the location of cell phone users without showing evidence that a crime had occurred or was in progress. The FBI could get other information from wireless carriers (such as logs of numbers a cell phone user had called or received calls from), but they could not monitor their movements without probable cause.

- **ATTORNEY IN AL-ARIAN CASE INVOKES THE FIRST AMENDMENT**

On October 28, after five months during which prosecutors presented their case against former University of South Florida professor Sami Al-Arian and co-defendants who were accused of conspiracy to provide material support for the violent activities of Palestinian Islamic Jihad, Al-Arian's attorney William Moffitt called the case against his client an "all out assault on the First Amendment" and then rested his defense without calling any witnesses. The federal judge agreed to insert a paragraph into jury instructions that states, "our law does not criminalize the mere membership in an organization of a person who is in sympathy with the legitimate arm of the organization." Attorney Moffitt later told reporters, "There's a document, a long document. It's called the US Constitution. Unless the Constitution is repealed in this courtroom, it protects Dr. Al-Arian for his speech...The government has not proven Dr. Al-Arian did anything but speak" (*Tampa Tribune*, October 28).

- **STUDENT WHO CLAIMS HE WAS TORTURED GOES ON TRIAL**

On October 31 the trial began in Virginia of 24-year old Ahmed Omar Abu Ali, an American who has been accused of joining Al Qaeda while attending a Saudi Arabian college and planning to assassinate President Bush. Abu Ali says he was coerced to confess when tortured by Saudi authorities after being arrested in June 2003 while taking his final examinations. He was in a Saudi jail for two years. His attorneys say he was in solitary confinement for 40 days, blindfolded, whipped and threatened with beheading, and pointed to marks on his back as evidence of the whipping. The Justice Department says the plotting did not reach the operational stage, but that Abu Ali translated material to Arabic from English and offered jihadists ideas on vulnerable American targets.

- **"BOUNTY HUNTER" FOUND WITH WEAPONS AT AIRPORT GETS LIGHT SENTENCE**

A Texan who claimed to be hunting Osama bin Laden in hopes of getting the \$25 million award was arrested in February at Detroit Airport on his way to Damascus, Syria. He was carrying radiation detectors, a bulletproof vest, 40 rounds of 9mm Black Talon ammunition, a taser, one rifle scope, a spray can of Mace and \$13,256 in unreported currency. He was sentenced in early November to time served and one-year supervised

release.

- **PLEA BARGAIN ENDS PATRIOT ACT CASE**

David Banach, the New Jersey man who was facing up to 20 years under PATRIOT Act charges when he shined a laser pen at a private airplane, pleaded guilty on November 9 to willfully interfering with a craft involved in mass transportation as part of a plea agreement. Prosecutors agreed not to oppose a "noncustodial" sentence.

D. IN THE COMMONWEALTH

- **H.B. 1881 DOES NOT MAKE IT TO THE FLOOR BEFORE THE THANKSGIVING RECESS**

Despite efforts by its chief House sponsor Cory Atkins and other supporters to move the Massachusetts Resolution Affirming the Civil Rights and Liberties of the People of Massachusetts (H.B. 1881) out of the Committee on Steering and Policy to the floor of the State House for a vote before the recess, this did not happen. There is still a chance that it will come to a vote at a special session following Thanksgiving, and that this can influence the delayed vote on the reauthorization of the USA PATRIOT Act.

- **FACIAL RECOGNITION SOFTWARE TO BE INSTALLED AT REGISTRY**

The Registry of Motor Vehicles (RMV), is investing \$1.8 million for facial recognition software to make sure people are who they say they are, and a computer program to verify that documents such as foreign passports are authentic (*Metro*, October 27). The new technology will be installed by 2006.

- **AS FUNDS INCREASE FOR "HOMELAND SECURITY", PUBLIC SAFETY TAKES NOSE DIVE**

Boston Police Commissioner Kathleen O'Toole and other Boston officials have watched their city's homicide rate double since 1999, while there are 300 fewer police in Boston than in 2000. Mayor Thomas Menino blamed the federal government for cutting public safety aid to cities while spending billions to fight terrorism: "The federal government has to realize that we also need officers on the streets of American cities" (*Boston Globe*, November 2).

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