

CIVIL LIBERTIES UPDATE

NEWSLETTER OF THE ACLU OF MASSACHUSETTS CIVIL LIBERTIES TASK FORCE

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RIGHTSWATCH

A. EXECUTIVE ACTIONS

• NEW YORK TIMES: CHECKS AND BALANCES IN THE BALANCE AS PRESIDENT PUTS COURTS "UNDER SIEGE"

"One big thing we've learned from watching President Bush's assault on the balance of powers," stated a July 29 *New York Times* editorial, "is that the federal courts are the only line of defense. Congress not only lacks the spine to stand up to Mr. Bush, but is usually eager to accommodate him. So it is especially frightening to see the administration use the debates over the prisoners at Guantanamo Bay and domestic spying to mount a new offensive against the courts." On NSA warrantless wiretapping, the President was pushing a bill "that is a mockery of the judicial process" and would strip the Supreme Court of its ability to decide the constitutionality of the domestic surveillance program (*see this section, below and IN THE CONGRESS*). And following the Supreme Court's June 2006 ruling in the *Hamdan* case (*see IN THE COURTS*), the White House drew up a bill that offered "a particularly twisted bit of reasoning that says Congress has decided to interpret the conventions in such a way that everything Mr. Bush has done, or will do, conforms with their requirements" (*see this section, below, and IN THE CONGRESS*). The way the debate over these two issues plays out may well determine the future of constitutional checks and balances.

MORE ON CHECKS AND BALANCES

• BUSH ADMINISTRATION INVOKES "STATE SECRETS" TO KILL LAWSUITS

The lawsuit against his "extraordinary rendition" which Maher Arar brought against US authorities is one of several thrown out by US judges after the Bush Administration asserted "state secrets privilege" – the claim that any court consideration would

endanger national security. The state secrets privilege is derived from the 1953 case *US v. Reynolds*, when the Supreme Court upheld the government position that an accident report into a 1948 crash of a military plane could be kept secret in the interests of national security. In 2004, when the military finally declassified its old reports, the family learned that the accident report contained no national security secrets, but did reveal the Air Force's failure to make needed repairs on its B-29 fleet. The state secrets privilege has traditionally been used in a very narrow way, to block the disclosure of specific information. But now it is being stretched in new ways to get entire cases dismissed. According to the June 4th *New York Times*, the current Justice Department has asserted it 19 times to bring lawsuits to a halt, despite the fact that information about the supposed "state secrets" was already in the public realm. The cases axed in this way include whistleblower challenges such as that brought by translator Sibel Edmonds against the FBI and the challenge to his "extraordinary rendition" by German citizen Khaled el-Masri. The government has also invoked the privilege in the attempt to stop suits against NSA warrantless spying.

- **AMERICAN BAR ASSOCIATION CHALLENGES PRESIDENTIAL "SIGNING STATEMENTS"**

After the ABA in June appointed a panel to look into the constitutionality of Presidential "signing statements" appended to pieces of legislation, its 550-member House of Delegates representing 400,000 lawyers voted on August 8 to call on President Bush and future presidents to abandon the practice of issuing such statements that assert executive power to by pass laws passed by Congress. President Bush has appended signing statements to more than 750 laws since he took office. The ABA claimed that under the Constitution, the President could either sign a bill into law and enforce it, or veto it. It also recommended that Congress pass legislation giving the courts jurisdiction to review signing statements. (*Boston Globe*, August 9).

- **"HOW THE PRESIDENCY REGAINED ITS BALANCE": JOHN YOO**

One of the leading architects of the Administration's counterterrorism policy wrote in the September 17 *New York Times* that "the president has broader goals than even fighting terrorism – he has long intended to make reinvigorating the presidency a priority. Vice President Dick Cheney has rightly deplored the 'erosion of the powers and the ability of the president of the United States to do his job'...Thus the administration has gone to war to pre-empt foreign threats. It has data-mined communications in the US to root out terrorism. It has detained terrorists without formal charges, interrogating some harshly...It has re-classified national security information made public in earlier administrations...The White House has declared that the Constitution allows the president to sidestep laws that invade his executive authority. That is why Mr. Bush has issued hundreds of signing statements...the founders intended that wrongheaded or obsolete legislation and judicial decisions would be checked by presidential action." In Yoo's view, the Bush Administration is right on course to set right the constitutional balance that had been eroded in the 1970s

by legislation like the War Powers Act and the Foreign Intelligence Surveillance Act which "have produced little but dysfunction" and "contributed to our failure to stop the 9/11 attacks."

- **9/11 COMMISSIONERS MARK ANNIVERSARY WITH "TO DO" CHECKLIST**

On the fifth anniversary of the 9/11 attacks, Thomas Kean and Lee Hamilton of the 9/11 Commission drew up a list of what they saw as ongoing national security problems: the failure to spend funds widely, shortcomings in emergency response plans, ongoing turf fights and problems sharing information among intelligence agencies, bureaucratic and technological inadequacies plaguing the FBI, inadequate screening of airline passengers, the failure to do a good job "reaching out to the Muslim world, so that America is seen as a source of hope and opportunity, not despair" (*Boston Globe*, September 11). They also called for the Privacy and Civil Liberties Oversight Board (which they had recommended that Congress create) demonstrate it has "a strong voice on behalf of individual and civil liberties. Stories we read every day point to the importance of a second opinion before the executive branch goes ahead with controversial information-gathering measures." And they urged Congress to "reform itself...To protect our freedoms, it now needs to be an effective check on the executive."

NSA SPYING AND OTHER INTELLIGENCE ISSUES

- **HOW EXTENSIVE IS THE NSA DOMESTIC PHONE RECORD DATABASE?**

Four months after *USA Today* revealed that the NSA had compiled a massive database of domestic phone calls as part of its effort to monitor terrorist activity, the nation remains in the dark about its parameters. On June 30 *USA Today* reported that the House and Senate Intelligence Committees confirmed that the NSA had been amassing such a database without getting a court order as required by FISA, but suggested that it might not be as vast as first reported. "Several lawmakers, briefed in secret by intelligence officials about the program after the story was published, described a call records database that is enormous but incomplete. Most asked that they not be identified by name, and many offered only limited responses to questions, citing national security concerns." They wouldn't discuss which companies had cooperated with the NSA. AT& T, BellSouth and Verizon had been cited in the original story, with BellSouth and Verizon later issuing carefully-crafted statements denying "that they had contracted with the NSA to turn over phone records," leaving open the possibility that long-distance subsidiaries did. At least one Senator, Saxby Chambliss of Georgia, complained that the program did not go far enough: "It's difficult to say you're covering all terrorist activity in the United States if you don't have all the [phone] numbers. It probably would be better to have records of every telephone company."

- **ACLU PUSHES FOR PHONE COMPANY ACCOUNTABILITY**

The ACLU and other organizations have brought multiple legal challenges to the handover of phone records to the NSA, and the ACLU has urged the Federal Communication Commission and 22 state Public Utility Commissions (PUC) to

investigate what the telecommunications industry was doing. In Massachusetts, the complaint was filed before the Department of Telecommunications and Energy on behalf of the mayors of Somerville, Northampton, Chicopee and Newton (see IN MASSACHUSETTS below). The Justice Department immediately invoked the "state secrets privilege" in an attempt to block an investigation by the New Jersey Attorney General and also intervened in Connecticut, Maine, Kansas, and Missouri. In Vermont, Governor James Douglas and the state's Department of Public Service ordered an investigation to go forward and the federal government has not yet interfered. In other states the public utility agencies have stonewalled or rejected requests for an investigation or hearing.

- **NSA MAY HAVE SOUGHT US CALL RECORDS BEFORE 9/11**

According to a court filing in a New York case challenging the handover of phone records to the NSA, *McMurray v. Verizon Communications Inc.*, there is evidence that a NSA initiative code-named "Pioneer Groundbreaker" asked AT&T to help it set up a monitoring site seven months before 9/11 (Bloomberg, June 30).

- **BUSH BLOCKED INTERNAL JUSTICE DEPARTMENT INQUIRY INTO WARRANTLESS NSA SPYING**

On July 18, Attorney General Alberto Gonzales told the US Senate that President Bush had denied clearances to staff members of the Justice Department's ethics department (the Office of Professional Responsibility) so it could not investigate the process by which the Bush Administration set aside the FISA law requirement that it get warrants in order to conduct domestic surveillance of American citizens. This is the first time in its 31-year-old history that the ethics department was prevented from pursuing an enquiry.

- **FBI DROPS DEMAND FOR LIBRARY RECORDS; NSL GAG ORDER CHALLENGED**

Four librarians on the board of the Connecticut Library Connection had resisted a FBI National Security Letter (NSL) that ordered them to turn over records from a computer. The librarians, who were gagged under Section 505 of the USA PATRIOT Act, sought assistance from the ACLU, which, in secret, brought a legal challenge on their behalf. The librarians hoped to have the gag lifted in order to give testimony on the reauthorization of the USA PATRIOT Act, and a federal judge late last year ruled that the gag unfairly prevented them from taking part in the PATRIOT Act debate. But the Administration appealed the judge's ruling, and only dropped its appeal after the PATRIOT Act had been reauthorized. On June 26, the FBI dropped its demand for the records, but warned the librarians that their failure to cooperate "could have increased the danger of terrorists succeeding" (Associated Press, June 26). The legal documents in the case were recently unsealed, revealing that government attorneys had censored whole newspaper articles and direct quotes from Supreme Court opinions that had undercut the government's arguments in the case. Meanwhile in another NSL case

involving a gagged Internet Service Provider known as "John Doe," the ACLU filed new legal papers challenging the reauthorized PATRIOT Act's National Security Letter provision (according to reports, some 30,000 National Security Letters are issued every year by the FBI, without any court oversight). The filing included the first public statement that John Doe has made since the original lawsuit was filed in April 2004. In the statement, he expresses regret that he could not participate in the debate on the USA PATRIOT Act: "Congress was specifically debating whether to amend the NSL statute – the statute I believed was so constitutionally deficient that I was willing to file a federal lawsuit challenging it – but I was prohibited from contacting members of Congress and advocating for changes to the law. The gag has compelled me to systematically deceive my friends, family and girlfriend." In a landmark September 2004 ruling in his case, Judge Victor Marrero asserted that "democracy abhors undue secrecy" and struck down the indefinite gag orders. The government appealed his ruling. Because the PATRIOT Act was reauthorized before the appeals court could rule, the case is now back before Judge Marrero.

- **SOME 9/11 COMMISSION MEMBERS THINK PENTAGON LIED**

On August 2 the *Washington Post* reported that the 9/11 Commission debated whether the Pentagon should be investigated for making statements that were "knowingly false" about its reaction to the attacks of 9/11. The Pentagon had claimed its air defenses reacted quickly and fighters were prepared to shoot down UA Flight 93, but tapes obtained through subpoenas show these statements were totally misleading and designed to hide its botched response.

- **SIXTEEN INTELLIGENCE AGENCIES SAY IRAQ WAR HAS MADE TERRORISM WORSE**

The September 24 *New York Times* reported that the classified National Intelligence Estimate, which is the consensus view of all US intelligence agencies, maintains that "the Iraq war has made the overall terrorism problem worse." Their assessment casts doubt on the White House report "9/11 Five Years Later: Successes and Challenges" that states: "We have done much to degrade Al Qaeda and its affiliates and to undercut the perceived legitimacy of terrorism." The independent research group the Council of Global Terrorism meanwhile gave the US the grade of D+ on its efforts over the past five years to combat Islamic extremism.

- **REPORT FINDS INTELLIGENCE OVERHAUL LAGGING**

On July 27 the House Intelligence Committee's Subcommittee on Oversight said John Negroponte's office of national intelligence, which was supposed to consolidate operations of 16 different intelligence agencies, was not getting the job done quickly enough. The spy agencies were still plagued by lack of communication and cumbersome bureaucracy. The new CIA director, General Michael Hayden, has meanwhile said that the CIA had to change the way it worked, with operations officers who collect intelligence cooperating more closely with CIA analysts. "The collectors are

over here and the analysts over there. We are too segmented, and thinking has been driven by focusing on their own piece of action," Hayden said (*Washington Post*, September 19).

- **FBI DRAFTS LEGISLATION TO REQUIRE INTERNET WIRETAPPING HUBS**

In the name of thwarting terrorists and criminals, the FBI is drafting a bill to expand the 1994 Communications Assistance for Law Enforcement Act to require Internet service providers to create wiretapping hubs for police surveillance and networking gear manufacturers to build backdoors for eavesdropping, according to CNET News.com (July 7). Ohio Republican Senator Mike DeWine is expected to introduce the bill.

- **FBI COMPUTER CONSULTANT HACKS INTO COMPUTER OF FBI HEAD**

Using free software found on the Internet, an FBI computer consultant got Robert Mueller's secret passwords and "intentionally exceeded his authorized computer access," according to the charges he faces. The FBI has long been struggling – so far in vain - to modernize and make secure its computer system.

- **GAO SAYS PENTAGON ERRATIC IN HOW IT CLASSIFIES DOCUMENTS**

In a June 30 report, the Government Accountability Office has concluded that "a lack of oversight and inconsistent implementation of DOD's Information security program are increasing the risk of misclassification" (*Washington Post*, July 14). More than 1.8 million defense employees have input into the classification process.

TORTURE, RENDITION AND GUANTANAMO

- **TO TORTURE OR NOT TO TORTURE?**

All summer long, the Department of Defense wrestled with this question, with the vice president, his chief of staff David Addington, and the Pentagon's undersecretary for Intelligence Stephen A. Cambone fighting efforts to restore the Geneva Convention's Common Article 3 to the Army Field Manual directives on the treatment of detainees as required by the Supreme Court ruling in the *Hamdan* case. The Article covers the treatment of captives without POW status (called "enemy combatants" by the US), and bars them from being subjected to torture or humiliating and degrading treatment. Bush and Cheney worked hard to keep what they called "alternative interrogation techniques" in the Army's tool chest. Then, on the eve of the fifth anniversary of the 9/11 attacks, President Bush finally admitted in public what his Administration had routinely denied – that there were secret CIA detention facilities in which "high value" detainees were subjected to "alternative" interrogation techniques that "saved American lives" (*Boston Globe*, September 7). The president robustly defended the secret prisons and methods used to "keep America safe." Reportedly in response to fears by CIA agents that they would be prosecuted under the 1996 War Crimes Act if they continued to detain and use "alternative" techniques on "high value" suspects, fourteen detainees, including the alleged planner of 9/11, Khalid Sheik Mohammed, were transferred to Guantanamo where, Bush says, they would be charged and tried (it was unclear

whether evidence obtained under torture could be used against them). Just hours before his revelation about CIA prisons, the US Army released its new rules for the treatment of detainees, banning exactly the techniques which Bush says are necessary to keep the country safe - waterboarding, sleep deprivation, exposure to extreme cold, stress positions, forcing prisoners to stand for up to 40 hours, bombardment with ear-splitting noises and other assaults causing physical and psychological agony. The Army Manual, *Human Intelligence Collector Operations*, applies to the armed forces, but not the CIA, which, Bush insisted, would continue to detain and interrogate suspects in secret locations. CIA officials have reportedly been signing up for a government-reimbursed private insurance plan to pay their legal expenses and civil judgments if they are charged with criminal wrongdoing (*Washington Post*, September 11), and administration officials have drawn up draft legislation to shield US personnel from prosecution under the War Crimes Act of 1996. Erecting such a shield was the centerpiece of the vaunted "compromise" which Bush reached with the Senate rebels in his own party (Senator John McCain of Arizona, Senator Lindsey Graham of South Carolina and Senator John Warner of Virginia), who opposed redefining US obligations under the Geneva Conventions on the grounds that such a move might harm US troops. Under the compromise, the language of the Geneva Convention is unchanged, but the capacity of the Convention to constrain US law is scaled back, as the White House is given the go ahead to insert into the War Crimes Act techniques which the CIA can use to interrogate detainees (*for details of the compromise see IN THE CONGRESS, below*). Murder, rape, mutilation, biological experimentation and other techniques that rise to the level of "torture" as defined by the executive branch are expected to be barred as "grave breaches" of the Convention, while other "aggressive" techniques would be permitted. Before the compromise was reached, Eugene Robinson had written in the *Washington Post* (September 19): "Bush says he is waging a 'struggle for civilization,' but civilized nations do not debate slavery or genocide, and they don't debate torture, either." Tom Malinowski, again in the *Post* (September 18) compared the methods that Bush insists are not torture to those used under the Soviet system, stating that the Soviets "were honest with themselves about the purpose of such cruelty - to brutalize their enemies and to extract false confessions, rather than truthful intelligence. By denying this, President Bush is not just misleading us. He appears to be deceiving himself." And Paul Krugman wondered in the September 18th *New York Times*: "Why is the Bush Administration so determined to torture people? To show that it can...Torture, I believe, appeals to the president and the vice president precisely because it's a violation of both law and tradition. By making an illegal and immoral practice a key element of US policy, they're asserting their right to do whatever they claim is necessary." Despite the spin put on the compromise by the three Republican rebels, it does not appear that the White House has relinquished much ground.

- **CANADIAN COMMISSION BLAMES US & CANADA FOR KIDNAPPING & TORTURE**

Maher Arar, a Canadian software engineer who used to live and work in Massachusetts,

has been exonerated of any ties to terrorism by a Canadian commission that investigated his kidnapping from JFK Airport in New York by US officials on September 26, 2002. On October 8, 2002 he was flown to Jordan in an American Gulfstream jet and then driven to Syria where he was held for a year and subjected to torture. According to the September 25 *New York Times*, days before he was sent to Syria by the US, Canadian investigators told the FBI that they had not been able to link him to Al Qaeda. The commission was harshly critical of the Canadian Mounted Police's incompetent investigation of Arar, and of the US for its "extraordinary rendition" of Arar while keeping the Canadian government in the dark (*New York Times*, September 19). The September 20 *New York Times* had reported that Arar, who learned that his name, that of his wife and two children were on terrorist watch lists, wanted the Canadian prime minister to contact President Bush and clear their names. Arar stated, "It is my hope that the US government provides the people with a valid explanation of what happened. What does this do for the credibility of the US government when it talks about protecting human rights?" On that day the Canadian Parliament unanimously voted to present the country's apologies to Arar. US Attorney Alberto Gonzales meanwhile claimed that the US was not responsible for Arar's being sent to Syria and was "not aware that he had been tortured." He made the statement despite front page revelations in Canada that Arar had been sent to Syria on US orders and despite the Canadian Commission's description of his being confined for a year to a cell the size of a grave and being repeatedly beaten with a metal cable [maybe this didn't qualify as torture under the Administration's standard]. A Justice Department spokesman later said the Attorney General had meant to make the point that deportations are handled by the Department of Homeland Security, not Justice, and "had his timeline mixed up," forgetting that at the time of Arar's deportation the INS handled such matters as part of the Justice Department (*New York Times*, September 21).

• TWO OTHER VICTIMS OF EXTRAORDINARY RENDITION DESCRIBE ITS HORRORS

Laid Saidi, an Algerian who had run an Islamic charity in Tanzania, and Khaled el-Masri, a German citizen, were lodged next to each other in a filthy prison in Afghanistan, where they were taken after being kidnapped under the secret US "extraordinary rendition" program. The *New York Times* documented their stories on July 7. American and German officials admit that El-Masri was "erroneously detained" after being seized while on holiday in Macedonia in December 2003 – his name apparently resembled that of a terrorist suspect (*New York Times*, June 2). The German external intelligence service, the BND, admitted much later that it knew about his mistaken arrest some months before El-Masri was deposited in a field in Albania in May 2004. A US judge threw out the lawsuit the ACLU brought on his behalf on "state secrets" grounds. Saidi was seized in May 2003. He admitted that he had been carrying a fake passport, but said that was because he had lost his Algerian one. He described being hung from the ceiling of a cell for five days, and had scars on his wrists to prove it. Saidi said that during one of the interminable interrogation sessions, his interrogators produced an

audiotape of a conversation in which he allegedly talked about airplanes. He said they had the translation wrong, and that what he was talking about were tires ("tirat" in Arabic) which his brother-in-law was selling, not planes ("tayrat"). After 16 months of terrible conditions, humiliation and physical brutality, he was released.

- **FORMER DETAINEES GET A VOICE AND A HUMAN FACE**

Men who spent years in Guantanamo Bay without their name and identities being publicly known and without charges being filed against them are now making their voices heard. The riveting book written by Moazzam Begg, a British-born Muslim who spent three years in US prisons, most of it in solitary confinement, has just been published in the US by The New Press (*Enemy Combatant: My Imprisonment at Guantanamo, Bagram and Kandahar*). He has been interviewed by US television and the press, and had an op ed published in the September 14 *Boston Globe*. Bakker Qassim's op ed "The View from Guantanamo" was published in the *New York Times* on September 17. Qassim is a Uighur who left his home country of China (where Muslim Uighurs are persecuted) because of a threat to his life. Pakistani bounty hunters sold him and 17 other Uighurs to the US military for \$5,000 a head. "I was locked up and mistreated," he writes, "for being in the wrong place at the wrong time during American's war in Afghanistan. Like hundreds of Guantanamo detainees, I was never a terrorist or a soldier...Without my American lawyers and habeas corpus, my situation and that of the other Uighurs would still be a secret. I would be sitting in a metal cage today." After spending four years in prison, and on the eve of their court challenge to their continued detention in Guantanamo, Qassim and four other Uighurs were taken to Albania, where they are now, in the words of one of their lawyers still "effectively behind bars." They live in a refugee camp, cannot speak the language, and have "a bleak and unpromising future in one of Europe's poorest countries" (*New York Times*, August 15). Twelve remain in Guantanamo, and Qassim fears they may be there forever since the passage of the Graham-Levin amendment stripping Guantanamo detainees of their habeas corpus rights. A French former detainee, Mourad Benchellali, wrote in the June 14th *New York Times* of spending two and a half years in Guantanamo: "The worst aspect of being at the camp was the despair, the feeling that whatever you say, it will never make a difference...there is unlimited cruelty in a system that seems to be unable to free the innocent and unable to punish the guilty."

- **GUANTANAMO DETAINEES KILL THEMSELVES; COMMANDER CALLS IT ACT OF "ASYMMETRIC WARFARE"**

On June 10, two Saudi prisoners (Mani Shaman Turki al-Habardi al-Utaybi and Yasser Talal al-Zahrani) and a Yemeni (Ali Abdullah Ahmed) were found hanged in their cells at Guantanamo. They had all been involved in a mass long-term hunger strike over the past year, which was broken when authorities used restraint chairs and force feeding on those who refused to eat. One had reportedly been cleared for transfer to another country. The prison commander, Rear Admiral Harry Harris, said "the detainees we have here are dangerous men, committed to killing Americans on the battlefield....They

have no regard for life – either ours or their own. I believe this was not an act of desperation, but rather was an act of asymmetric warfare waged against us." Collen Graffy, the deputy assistant secretary of state for public diplomacy, told the BBC that the suicides were a "good public relations move to draw attention." In the aftermath of the suicides, four American journalists who were island were ordered to go home by Secretary of Defense Rumsfeld. Over the years, there have been dozens of group hunger strikes and 41 publicly reported suicide attempts in the prison. In August 2003, 23 detainees tried to hang or strangle themselves during a single 8 day period, a fact that the military suppressed for 18 months.

- **IN WAKE OF SUICIDES NEW CALLS FOR GUANTANAMO TO BE SHUT DOWN; NEW QUESTIONS ABOUT GUILT OF DETAINEES**

Many European officials condemned US statements that the suicides were "good PR" and a form of "asymmetric warfare" and demanded that the prison be shut down. Luxembourg's foreign minister stated that "it's hard to understand why when people kill themselves, that is an attack on America. Something has to change in the American mentality" (CNN.com, June 12). Defense lawyers, human rights activists and former detainees argued that the deaths were an act of desperation, not a PR move. "A stench of despair hangs over Guantanamo," said law professor Mark Denbeaux, whose analysis of Combatant Status Review Tribunal records reveals that only a small percentage of detainees have any connection with Al Qaeda and a large number had been sold to American troops in exchange for cash bounties. Some have been held in years because of allegations that they worked for charity groups which do not appear on lists of designated terrorist organizations (*Boston Globe*, August 31), and only 10 have been charged with any crime. According to a *Boston Globe* investigation (June 18), "the US government routinely failed to give detainees at Guantanamo Bay access to witnesses who might have helped them prove their assertions of innocence," saying it could not locate them. But *Boston Globe* reporters had no problem locating some of those witnesses. In addition, declassified records show that "the US military's accusations against detainees at Guantanamo Bay contain factual errors and some easily disproved assertions...raising questions about whether the US military has thoroughly investigated its cases against the roughly 400 inmates" (*Boston Globe*, July 14).

- **US CRACKS DOWN ON DETAINEES FOLLOWING SUICIDES**

Claiming that materials passed by lawyers might have enabled three detainees to communicate with each other and plan their suicides, Guantanamo authorities seized documents from detainees that are traditionally protected by attorney-client privilege (*New York Times*, July 9)

- **PENTAGON STUDY SHOWS ABUSE OF DETAINEES CONTINUES AFTER RULES CHANGED**

US Special Operations troops used harsh interrogation techniques in 2004 in Iraq, long after they were officially withdrawn. According to General Richard Formica, "it is

regrettable. But they were erroneously given the wrong policy" (*New York Times*, June 17). A heavily censored declassified version of General Formica's classified report was made public in response to an ACLU Freedom of Information Act request.

- **BUSH NOMINATES FRAMER OF TORTURE POLICY TO FOURTH CIRCUIT COURT**

In mid July the president nominated William Haynes II, the Pentagon's general counsel, to a seat on the US Court of Appeals for the Fourth Circuit, a court which hears war on terror cases. Haynes has helped shaped Administration policies on torture. Twenty retired military officers have expressed their concern over his fitness for the court.

- **AMERICAN PSYCHOLOGICAL ASSOCIATION SPLIT ON ROLE PLAYED BY PSYCHOLOGISTS IN INTERROGATIONS**

On July 26, Salon reported that there was a revolt brewing within the American Psychological Association over interrogation ethics principles. Salon revealed these principles, which allowed psychologists to play a role in interrogations, were drafted in large part by psychologists who had close ties with the military, including four who had been involved with handling detainees at Abu Ghraib or Guantanamo.

- **US IMAGE SINKS IN POLLS**

According to a survey of 15 nations (including the United States) carried out in the spring by Pew Research Center there were sharp declines for the fourth straight year in how the United States is regarded by the international community. In Spain only 23 percent had a positive opinion of the US, down from 41 percent the previous year. The "war against terrorism" was backed by more than 50 percent of people only in Russia and India (people in the US were not asked this question). Only 75 percent of the Americans polled had heard reports of abuses in Abu Ghraib and Guantanamo, while 90 percent of other nationalities had heard about them (*New York Times*, June 14).

TERROR PLOTS, ARRESTS AND TARGETING OF SUSPECTS

- **ADMINISTRATION CRANKS UP THE RHETORIC AFTER UK TERROR PLOT REVEALED**

On August 10, British police announced that they had arrested 24 British-born Muslims who were plotting to carry liquids in drink bottles onto planes and combine them to make bombs. (Weeks later, 12 were charged in court). Immediately, chaos ensued at airports, as flights were cancelled and a list of prohibited substances was hastily assembled. No doubt aware that the arrests were underway, Vice President Cheney played the "terror card" on August 9, when, in a discussion of Ned Lamont's defeat of Senator Joseph Lieberman in the Democratic primary in Connecticut, he said that Democrats who opposed the war in Iraq were encouraging "the Al Qaeda types" and have a "pre-9/11 mind-set." A few days later, President Bush said the plot was evidence that the US would probably be fighting terrorists for years to come. "America is safer than it has been," he intoned. "But it's not yet safe" (*Boston Globe*, August 16). In the

following days and weeks, the Bush Administration pumped up the rhetoric, depicting a free world imperiled by "Islamofascists." An editorial in the August 25 *Boston Globe* challenged this extravagant world view: "The thwarting of the plot suggests that local terrorists and jihadists are best fought with sound intelligence and old-fashioned police work. They may be capable of mass killing...but the threat they represent is very different from that of Stalin's Soviet Union or Hitler's Germany. Inflating the danger from jihadi terrorists into an existential threat and invoking a grandiose third world war, as President Bush and his advisers have been doing, only plays into the hands of bin Laden...."

- **US REPORTEDLY INSISTED ON EARLY ARRESTS IN ALLEGED BRITISH PLOT**

According to NBC, the British and Americans did not see eye to eye on when to make arrests in the airline plot. The British wanted to wait and gather more evidence, but the Americans insisted on early arrests – even though the alleged plotters had not yet bought their tickets and some even lacked passports (*Boston Globe*, August 14). The White House said "news of the plot had served to focus the public on the White House's campaign against terrorism at a time attention seemed to be waning" (*New York Times*, August 12). A senior Administration official said "news of the plot against airlines would add momentum to efforts to create military tribunals for Guantanamo detainees that would strictly limit defendants' rights" and also help secure the passage of a bill making warrantless wiretapping legal.

- **CHERTOFF WANTS MORE AGGRESSIVE SURVEILLANCE AND ARREST POWERS**

In the wake of the British "liquid bomb" threat, Homeland Security head Michael Chertoff said that US antiterrorism laws should be stiffened and brought more closely in line with those of the UK. The British "have an easier time getting electronic surveillance, and they also can detain people for up to, I think, 28 days without charging them. And those are very useful tools when you're trying to intercept an ongoing and very dynamic plot when you may not have collected all the evidence" (*Boston Globe*, August 14).

- **OFFICIALS WANT TO SEARCH PASSENGER LISTS AND FACES**

The government also insisted that the bomb plot showed the need for more passenger information to be shared with the US before any planes take off for the United States from Europe. European privacy laws have prevented information on passengers from being provided to the US in advance of take off. The Transportation Security Administration, which has suspended the installation of "puffer" devices that screen passengers for explosives because of problems with the equipment, now says it plans to adopt Israeli airport methods and deploy hundreds of "behavior detection officers" at busy airports who will be trained to screen passengers by observing their faces (*New York Times*, August 17). A version of the "behavior observation program" which was piloted at Logan Airport is the subject of a lawsuit brought by the ACLU of

Massachusetts after it resulted in the targeting of an African American passenger who happened to be the national coordinator of the ACLU's Campaign against Racial Profiling.

- **SECURITY EXPERT SAYS FEAR PLAYS INTO TERRORISTS' HANDS**

Bruce Schneier, the author of the book, *Beyond Fear: Thinking Sensibly About Security in an Uncertain World*, counseled against the kind of overreaction which, on August 16, got two men escorted off a plane because some passengers thought they looked Middle Eastern, could have been talking Arabic and looked at their watches. He wrote on his August 24 blog that "the real point of terrorism is not the act itself, but our reaction to the act. And we're doing exactly what the terrorists want....The implausible plots and false alarms actually hurt us in two ways. Not only do they increase the level of fear, but they also waste time and resources that could be better spent fighting the real threats and increasing actual security....Imagine for a moment that the British government arrested the 24 suspects without fanfare...imagine that the press didn't write about it endlessly, and that the politicians didn't use the event to remind us all how scared we should be. If we'd reacted that way, then the terrorists would have truly failed....The surest defense against terrorism is to refuse to be terrorized. Our job is to recognize that terrorism is just one of the risks we face, and not a particularly common one at that. And our job is to fight those politicians who use fear as an excuse to take away our liberties and promote security theater that wastes money and doesn't make us any safer."

- **NEW REPORT ANALYSES TERRORISM PROSECUTIONS**

According to a study by the Transactional Records Access Clearinghouse of Syracuse University, in the 8 months ending last May, the Justice Department refused to prosecute more than 9 in every 10 terrorism cases sent to them by the FBI, Immigration or other federal agencies because of weak evidence or no evidence of criminal intent. Since 9/11, only 14 people have been sentenced to 20 years or more in prison in terrorism cases. Only 625 of 1,329 - or fewer than half - of convicted defendants received a prison sentence. A Justice Department spokesman said the report is flawed, and that prison sentences are "not the proper measure of the success of the department's overall counterterrorism efforts" (*Boston Globe*, September 4). The lesser charges leveled against terrorism suspects (such as fraud or immigration violations) result from the effort to disrupt terrorist activities before they are brought to fruition.

- **TERROR PLOT "MORE ASPIRATIONAL THAN OPERATIONAL"**

That's how an FBI official described the alleged plot to topple the Sears Tower in Chicago which received sensational media coverage after the FBI arrested seven men from South Florida who were termed members of a "homegrown" terrorist cell by Attorney General Alberto Gonzales on June 23. The men were reportedly members of a religious group called Seas of David that wore the Star of David, studied the Bible and practiced martial arts in a Miami warehouse. According to the indictment, their leader

was a US citizen of Haitian heritage who talked with an FBI informant posing as a member of Al Qaeda about getting funding, equipment and training. The June 24 *Boston Globe* stated: "Despite the government's claims, the indictment held scant evidence that the group was anywhere close to capable of attacking the Sears Tower or any other building. They had no access to explosives and no real contact with Al Qaeda, and they were incapable of obtaining even basic equipment on their own, such as boots."

- **"NOTHING IMMINENT" IN PLOT TO BLOW UP HOLLAND TUNNEL**

In early July the *New York Daily News* reported that FBI agents monitoring Internet chat rooms had uncovered a plot to blow up the Holland Tunnel in hopes of flooding Manhattan. The *New York Times* of July 9 reported that one of the alleged conspirators was arrested in Lebanon on April 27 and that members of the group had never met one another and were not in the United States. While Republican New York Congressman Peter King, the chair of the House Committee on Homeland Security, claimed "it is essential that the FBI get rid of its pre-9/11 mentality of not making an arrest until they have enough evidence to commit," Martin Stolar, a New York defense lawyer, said "talk without any kind of action means nothing. You start to criminalize people who are not really criminals."

- **MEN OF ARAB DESCENT CHARGED WITH TERRORISM AFTER BUYING CELL PHONES**

First two men were arrested in Ohio after arousing suspicion because they had bought 600 cell phones in recent months. They were charged with money laundering in support of terrorism, but the terrorism charge was later dropped. Three days later, three Palestinian-Americans were arrested in Michigan for buying 80 cell phones at a Wal-Mart. A thousand other phones were found in their minivan. They were charged with collecting materials for terrorist acts and surveillance of a vulnerable target (reportedly the Macinac Bridge) for terrorist purposes. The men claimed they had bought the cell phones to re-sell them for a profit. On August 16, the county prosecutor backed off from the terrorism charges and charged them instead with federal fraud conspiracy for trafficking in counterfeit goods.

- **ARAB-AMERICANS FEAR POLICE, RACIAL PROFILING**

A two-year study released on June 12 by the Vera Institute of Justice reveals a growing lack of trust between the Arab-American community and law enforcement officials. Expanded powers given FBI agents and local police to carry out surveillance and enforce immigration rules, false information given in the form of anonymous tips and particular policies such as Special Registration have all contributed to Arab American's increasing sense of victimization and fear.

- **MUSLIM CHARITIES AFRAID TO SEND MONEY TO THE MIDDLE EAST**

The *Washington Post* on August 9 reported that Muslim charities were collecting food and other supplies instead of money to send to Lebanon and the Gaza Strip in the wake

of Israeli invasions because people are afraid they will end up in a government database as a supporter of terrorism if they write a check. The article described the runaround given individuals who seek government approval before making cash donations for medical relief or humanitarian work in the Middle East, with the Treasury Department referring them to the National Security Council, which sends them to the State Department, which directs them to the Justice Department, which refers them back to the Treasury.

- **SIMILARITY OF NAMES LEADS TO BORDER ORDEALS**

A report issued in late July by the Department of Homeland Security's Inspector General has criticized inflexible rules which lead to people being interrogated and delayed whenever they travel because their name is similar to one on a no fly list. The report recommends that individuals who face this problem provide their fingerprints so they can be cleared more quickly.

- **TWO US CITIZENS BARRED FROM ENTERING THE COUNTRY**

On August 26, Reuters reported a naturalized US citizen and his son, who had been born in the US, were not permitted to fly from Islamabad via Hong Kong to the United States because they were on a "no fly" list. They were told they would be barred from the country until they submitted to further FBI questioning in Pakistan. It was not clear whether they would be permitted to return after answering FBI questions. Mohammed Ismail and Jaber Ismail are the uncle and cousin of a California man, Hamid Hayat, who was convicted of providing material support to terrorists by attending training camps in Pakistan. His defense lawyers claim the camp he attended was for religious instruction, not terrorism, and that the government never presented any evidence of his presence at a camp beyond his own words.

- **FBI TELLS MUSLIMS: INFORM OR BE DEPORTED**

According to the July 11 *Wall Street Journal*, FBI agents have been taking the green cards of Muslims and giving them the choice of becoming informants or being deported. In one case, a Moroccan citizen had his green card taken as he crossed the Canadian border into New York state and was then told to take a bus to San Francisco and contact an FBI agent. The agent told him if he agreed to become an informant on Muslims in San Francisco they would give him back his green card and he would be able to bring his wife to the United States. If not, he would be sent back to Morocco.

- **ANTI-MUSLIM INCIDENTS AT 12-YEAR HIGH**

Reported cases of harassment, hate crimes and discrimination have increased 29 percent over the past year to 1,972, according to a study released on September 18 by the Council on American-Islamic Relations.

- **NEW YORKER FACES TERROR CHARGES FOR SATELLITE BROADCASTS**

"The charge lurking in the background is material support for terrorism," an assistant US

attorney told a US Magistrate in Manhattan. Javed Iqbal's offense? Running a small company from a Brooklyn storefront and his backyard that provided satellite programming for households, including Christian evangelical sermons and broadcasts of the Lebanese TV station Al Manar, which is controlled by Hezbollah (*New York Times*, August 25).

- **PENTAGON MONITORS STUDENT ANTI-WAR AND OTHER PROTESTS**

According to information obtained by the ACLU as part of a FOIA request, the Department of Homeland Security kept the Pentagon informed of anti-war activity at the University of California in 2005. The intent was "to alert commanders and staff to potential terrorist activity or apprise them of other force protection issues." The Pentagon's Talon database is still keeping track of student anti-war activity, Earth Day activity and plans to protest on-campus military recruitment, according to information obtained by the Servicemembers Legal Defense Network in response to its FOIA request. The Defense Department has monitored emails from college students who were planning protests against the war in Iraq at the State University of New York at Albany, Southern Connecticut State University and William Paterson University of New Jersey.

- **STUDY SAYS TERRORISTS ARE BEING BRED IN US PRISONS**

A joint study by George Washington University and the University of Virginia which was released at a Senate hearing on "homegrown terrorists" on September 19 states that "radicalized prisoners are a potential pool of recruits by terrorist groups." According to the report, "the US, with its large prison population, is at risk of facing the sort of homegrown terrorism currently plaguing other countries." The US has more than 2 million people in prison, six percent of whom are Muslim (*Boston Globe*, September 20).

- **ENVIRONMENTALIST VISITED BY FBI AFTER SAYING DAM SHOULD BE DESTROYED**

Jim Bensman made this recommendation at a public meeting in Illinois organized by the Army Corps of Engineers to discuss the construction of a bypass channel for fish at a dam on the Mississippi River. The corps had itself considered blowing up the dam. After Bensman's statements at the meeting were reported in the newspaper, an FBI agent from Springfield, Illinois called Bensman at home. The agent said he had been asked to investigate him as a "terrorist threat" by someone in the corps and threatened to put him down as "not cooperating" because he wanted a lawyer. Corps officials admitted that he had "long been a thorn in its collective side" but said they knew he wasn't "malicious" (*New York Times*, August 22). Although Bensman was told he is not now considered a threat, "he worries that his phone may be tapped and wonders what will happen if he is pulled over for a traffic violation. 'Are the cops going to think I am a terrorist? You never know what is going to happen nowadays.'"

- **JETBLUE PASSENGER TOLD TO TAKE OFF "OFFENSIVE" T-SHIRT OR MISS**

HIS PLANE

On August 12, Raed Jarrar, an Iraqi-born architect, was told at JFK airport in New York that he could not board a plane wearing a T-shirt that read "We will not be silent" in Arabic and English because passengers found it to be "offensive." Citing his constitutional rights to free expression, he expressed shock that such an action could be taken in the US.

DATA MINING AND TECHNOLOGY

• US HAS ACCESS TO CONFIDENTIAL FINANCIAL DATABASE

On June 23, the *New York Times* angered the Bush Administration by revealing that the CIA, overseen by the Treasury Department, had access to the records of the global banking industry through a Belgian cooperative known as SWIFT (Society for Worldwide Interbank Financial Telecommunication) that routes funds between banks and stock exchanges. The program was initiated in the weeks after 9/11, and SWIFT has grown increasingly uneasy about its role. In 2003, SWIFT executives wanted to end the arrangement, but were encouraged to continue by Alan Greenspan, then chairman of the Federal Reserve, and FBI head Robert Mueller. Searches are only supposed to be conducted if there was a suspicion of a terrorist connection, but in the beginning of the program the entire SWIFT database was turned over to the CIA. "The volume of data, particularly at the outset, was often overwhelming, officials said." According to the Treasury, SWIFT, which routes more than 11 million transactions every day, was exempt from American laws restricting government access to financial records because it is considered a messaging service, not a financial institution. SWIFT says its cooperation was never voluntary, and only given in response to a broad administrative subpoena or National Security Letter. On June 27, a European group, Privacy International, lodged complaints in 32 countries against SWIFT for violating European data protection rules, and on September 25, a European Union panel expressed its doubts about the legality of the program, but said they would not request that it be stopped altogether. On July 11, Rep. Sue Kelly (R-NY), the head of the House Financial Services subcommittee on oversight, complained that the Bush administration had failed to adequately inform Congress about the program for the five years of its existence. She is asking the Government Accountability Office to investigate (*New York Times*, July 12).

• NEW YORK TIMES LAMBASTED AS "A NATIONAL SECURITY THREAT"

After President Bush, Vice President Cheney and other Administration officials called the *New York Times* "disgraceful" (and worse) for publishing the piece about SWIFT, Republican Congressmen demanded that the paper be prosecuted and introduced a resolution (which passed 227-183) condemning media leakers and declaring that the exposure of the "Terrorist Finance Tracking Program" may have "placed the lives of Americans in danger both at home and in many regions of the world." Right-wing pundit Heather MacDonald wrote in the *Weekly Standard*: "By now it's undeniable: *The New York Times* is a national security threat. So drunk is it on its own power and so antagonistic to the Bush Administration that it will expose every classified antiterror

program it finds out about, no matter how legal the program, how carefully crafted to safeguard civil liberties, or how vital to protecting American lives" (*Washington Post*, June 27). The *Times* defended itself in a June 28 editorial entitled "Patriotism and the Press": "From our side of the news-opinion wall, the Swift story looks like part of an alarming pattern. Ever since Sept. 11, the Bush administration has taken the necessity of heightened vigilance against terrorism and turned it into a rationale for an extraordinarily powerful executive branch, exempt from the normal checks and balances of our system of government. It has created powerful new tools of surveillance and refused, almost as a matter of principle, to use normal procedures that would acknowledge that either Congress or the courts have an oversight role.... The free press has a central place in the Constitution because it can provide information the public needs to make things right again."

- **COUNTERTERRORISM OFFICIALS FIND RICH PICKINGS IN PRIVATE SECTOR**

According to the June 18 *New York Times*, at least 90 officials at the Department of Homeland Security, including senior executives like Asa Hutchinson and Tom Ridge, moved through the revolving door to act as consultants or lobbyists for companies with names like Fortress American Acquisition that receive government contracts for gizmos that enhance "national security." Many have exploited legal loopholes to avoid having to wait the year required by federal law.

- **TOTAL INFORMATION AWARENESS PROGRAMS FUNDED BY INTELLIGENCE AGENCIES**

After Congress in 2003 refused to fund the Defense Department's Total Information Awareness (TIA) because of privacy concerns, US intelligence agencies continued to invest heavily in at least 5 data mining programs that were part of TIA and a further 3 TIA programs are ongoing, according to the July 20 *USA Today*. They include a software project called Automated Detection, Identification and Tracking of Deceptive Terrorist Activity (developed by 21st Century Technologies Inc. of Austin), software projects developed by researchers at the University of Connecticut, Carnegie Mellon University and Science Applications International Corporation. According to the paper, intelligence agencies use massive computer hardware and software that is capable of searching twice as much information as is held in all research libraries in the USA. The National Security Agency (NSA) uses a program "designed to identify members of terrorist networks and determine the most important members of those networks." The June 9 *New Scientist* news service reports that the NSA is funding research "into the mass harvesting of the information that people post about themselves on social networks. And it could harness advances in internet technology...to combine data from social networking websites with details such as banking, retail and property records, allowing the NSA to build extensive, all-embracing personal profiles of individuals." Critics worry that "automated intelligence profiling" could harm reputations and worse, especially since there will be no way to confirm the accuracy of the data. Under its

director John Poindexter, TIA was designed to search massive databases in order to uncover patterns of terrorist activity. The absence of accountability convinced Congress to kill the program, with the exception of certain classified areas of research.

- **GOVERNMENT AGENCIES PURCHASE INFORMATION FOR DATA MINING**

According to the Government Accountability Office, 4 government agencies spent \$30 million in 2005 to obtain information from data-crunching companies to use for law enforcement, counterterrorism and to compile data on teenagers it can recruit for the army. The June report reveals that 52 government agencies had launched at least 199 data-mining projects combing through huge amounts of information in hopes of finding links or patterns to locate suspicious activity (*Washington Post*, June 15). Federal and local police have bought Americans' phone records from private data brokers who have in some cases tricked phone companies into violating laws, according to the Associated Press, enabling law enforcement to dispense with subpoenas or warrants.

- **EDUCATION DEPARTMENT TURNS OVER STUDENT DATA TO FBI**

According to the August 31 *Chronicle of Higher Education*, the US Department of Education cooperated with a secret FBI program known as "Project Strike Back" by providing information on about one thousand students who applied for federal financial aid under the Fafsa program. The aim of Project Strike Back was to find out if suspected terrorists were financing their operations through federal student aid obtained by using other students' identities. *USA Today*, which got information about the program as part of a FOIA request, reported on August 31 that it is now closed. It became public as the US Department of Education prepared to unveil a new "national unit records system," a database which would track students throughout their academic careers.

- **DATA BROKERS TELL CONGRESS HOW THEY GATHER PHONE RECORDS WITHOUT WARRANTS**

On June 21, private data brokers testified before Congress about the tricks and other methods they used to get private information, including phone records, often by duping customer service representatives at telephone and credit companies. "Brokers have...broken into online accounts, in some cases guessing passwords that were the names of pets" (*Boston Globe*, June 22). The FBI's deputy general counsel told Congress, "There are compelling reasons for the government to believe that these operations violate federal law" (Associated Press, June 22). But one FBI agent acknowledged that he had personally requested phone records from data brokers without warrants or subpoenas.

- **GOVERNMENT FUNDS STUDY ON HOW TO RESTRICT PUBLIC DATA**

According to the July 5 *USA Today*, the federal government is paying St. Mary's University School of Law in San Antonio, Texas to research how it can rollback the amount of data that can be made available to the public and the press through Freedom of Information Act requests. The research will be the basis for a statute which state

legislatures and Congress can pass "to make sure that politically embarrassing information stays out of the hands of the bad guys."

- **DISNEY WORLD TO SCAN FINGERPRINT INFORMATION**

By the end of September, the four Disney Orlando theme parks will be equipped with an image scanner to capture fingerprint information. Visitors who object to having their fingerprints scanned can provide photo identification instead, although that option is not posted at park entrances (*Boston Globe*, September 3).

IMMIGRATION, ASYLUM AND THE 'WAR ON TERROR'

- **"MATERIAL SUPPORT TO TERRORISM" PROVISION HARMS REFUGEES**

Because a Liberian woman and her daughter were kidnapped by Charles' Taylor's rebels, raped and forced to work for them under threat of death, they are being denied entrance to the US as refugees on the grounds that they gave "material support" to terrorists. According to the June 12th *Legal Times*, the anti-terrorism provisions of the USA PATRIOT Act and the Real ID of 2005 have resulted in an estimated 26 percent of the 54,000 refugees awaiting resettlement in the US being kept out because they provided "material support" (possibly under duress) for a group (possibly one supported by the US) that fits the statutory definition of "a terrorist organization." Under the USA PATRIOT Act, that definition does not just refer to groups on a formal list of "Foreign Terrorist Organizations," but can include "any group of two or more persons, whether organized or not, who engage in certain activities" In the words of Cornell law school professor Stephen Yale-Loehr, "We don't have a precise and exclusive definition of material support, so the US government has interpreted the concept broadly enough that giving a glass of water or one bowl of rice to a terrorist organization is enough to raise concerns." The "material support" provision is also harming those already in the country seeking green cards or citizenship or in another way seeking to change their status.

- **FEDERAL ROUND-UPS OF THE UNDOCUMENTED SOMETIMES ANGER COMMUNITIES**

According to the July 24 *Boston Globe*, 2,100 people without papers were detained in workplace raids in the first half of 2006, more than doubling the numbers detained in 2005. But these raids have not always received community support. A July 2005 raid in Arkadelphia, Arkansas, during which 119 poultry workers were handcuffed and taken off to a detention center awaiting deportation, has been criticized by prominent residents, the Republican governor and other politicians for removing people who belonged in the community. In the words of the county sheriff Troy tucker, "We take them into our public schools. We accept them into our churches. They play on our football, soccer teams. And then one day Immigration comes in and sweeps them all away." In California, church leaders of four different religious faiths denounced the federal anti-immigrant sweep called "Operation Return to Sender" for tearing apart families. The operation has rounded up 24,000 people nationally, and resulted in 6,800

deportations (*San Francisco Chronicle*, September 14).

- **ICE BRINGS INDICTMENTS AGAINST COMPANIES THAT PLACE TEMPORARY WORKERS**

Immigration authorities have been bringing stiff federal indictments against companies that contract out undocumented temporary workers, spreading fear among employers and immigrant communities. According to the July 31, 2006 *New York Times*, the president of the Garcia Labor Company in Cincinnati, Ohio that provides low-wage labor to businesses faces charges that could lead to 20 years in jail, the forfeit of his headquarters and a \$12 million fine. The company was targeted, said a Bureau of ICE agent, because it supplied workers to an air freight company that flew shipments for DHL. This represented "a huge, gaping vulnerability. You had people who you really don't know who they are having access to the underbelly of an airplane."

- **POLICE TO GET ACCESS TO FEDERAL IMMIGRATION DATA**

According to the August 21 Associated Press, the Department of Homeland Security and FBI are combining their records on criminal and immigration offenders, with the intent of making immigration information accessible to state and local law enforcement. "What we hope this program will do is provide that one-stop shop, where you'll see that person's criminal and immigration history," said the director of the US Visitor and Immigrant Status Indicator Technology (US-VISIT) program. US-VISIT is in place at air and sea ports, and collects biometric information like fingerprints and digital photos and biographic data from foreigners entering the country. An automatic alert will be sent to the Bureau of ICE when the fingerprints of a suspected criminal are found to belong to someone with an immigration violation. Subsequent phases of the program "will provide a complete view of a person's criminal and immigration history, thereby enhancing the ability of state and local authorities to develop comprehensive criminal and immigration histories and threat assessments" (*New York Times*, September 7). The program will be piloted in Boston (*see below, IN THE COMMONWEALTH*).

- **CITIES AND LEGISLATURES PASS ANTI-IMMIGRANT ORDINANCES**

More than 70 immigration-related bills and ordinances have been passed by state legislatures and towns with the intent of preventing contractors and other businesses from hiring undocumented workers and landlords from renting to them. The city council of Hazleton, Pennsylvania passed an ordinance in mid July that would deny a business permit to anyone hiring the undocumented, fining landlords who rent to the undocumented \$1,000, making English the town's official language and forbidding any official documents from being translated into other languages. It is being challenged in federal court.

- **ICE SEEKS MORE DETENTION FACILITIES AS GAO INVESTIGATES CONDITIONS**

The Bureau of Immigration and Customs Enforcement (ICE), which holds about 21,000

people, including asylum-seekers, in detention on any given day and more than 200,000 over the period of a year, wants as many as 35,000 new detention beds for undocumented immigrants. In June the Government Accountability Office announced it would investigate conditions in facilities after many detainees complained of mistreatment. Many of those warehoused for months or even years in such facilities without the opportunity for outdoor exercise or other programs are asylum seekers. ICE runs 8 facilities directly, while for-profit companies run 6 detention facilities, and the government leases space in 312 county and municipal jails.

- **HOW MANY IMMIGRANTS HAVE DIED IN DETENTION FACILITIES?**

This is the question that National Public Radio has investigated without coming up with a conclusive number. It had reported on December 5, 2005 about the death in detention of Richard Rust, who collapsed and died in a federal prison in Oakland, Louisiana without any medical intervention. It then spent months trying to get federal officials to discuss events surrounding Rust's death, without success. On September 14, 2006, it quoted Dr. Robert Greifinger, who has investigated health care systems in prisons for the federal and local governments, as saying that if detainees' accounts are true, then the staff's response "was more than negligence – that it was what, in legal terms is called 'deliberate indifference' to serious medical needs. If there's deliberate indifference, it constitutes cruel and unusual punishment." NPR also failed to get authorities to discuss the deaths of detainees in detention centers in Alabama, Maryland and Florida in the months since Rust's death. Detainees in those cases also say guards and other staff failed to give victims prompt medical care.

- **ICE FAILS TO ROOT OUT INTERNAL CORRUPTION**

The Department of Homeland Security's Inspector General reported that the Bureau of ICE does not track cases of internal corruption, decide them quickly and apply uniform punishments. The cases include allegations of bribery, smuggling, falsification of documents, sexual harassment and mismanagement (*Washington Post*, September 12).

- **POLITICS DRIVE IMMIGRATION HEARINGS**

With elections looming, House Republicans made the issue of immigration a device to rally the "conservative base" by scheduling 21 immigration hearings in 13 states during the August recess. The August 28 *Boston Globe* editorialized: "Mix anti-immigrant sentiment and overinflated rhetoric about terrorists, and false images emerge of white America being overrun by brown-skinned criminals."

- **BOEING WINS MULTI-BILLION DOLLAR CONTRACT TO GUARD BORDER**

The Boeing proposal for a network of 1,800 sensor and camera-equipped towers along the borders with Mexico and Canada has been accepted by the Department of Homeland Security, beating out proposals by Lockheed Martin, Northrop Grumman, and Raytheon (*Washington Post*, September 20).

B. IN THE US CONGRESS

With the October recess looming, Republican Members of Congress have rushed to pass legislation that they hope will play well with their electoral base, while Democrats stand by, not wanting to give opponents the opportunity to portray them as "weak on terrorism." As a result, there are ominous developments on the issues of, Torture and Military Commissions, NSA Spying and Immigration.

• SENATE MOVES TO DO PRESIDENT'S BIDDING ON TORTURE AND MILITARY COMMISSIONS

After the US Supreme Court struck down military commissions as unconstitutional and ordered the Bush Administration to observe the Geneva Conventions (*see IN THE COURTS, below*), the Administration stated on July 11 that terror suspects in US custody did have rights under the Geneva Conventions. It then proceeded to draft a bill which was at odds with this statement. The bill made some modest changes in the procedural rules of military commissions, but still deprived detainees of seeing the evidence against them, allowed for hearsay evidence, and for evidence obtained during interrogations where coercion was used, unless a military judge found it "unreliable." The legislation did not provide for a speedy trial for so-called enemy combatants – it said they "may be tried and punished at any time without limitations" and permitted them to be held until hostilities ended, even if they had been found not guilty by a commission. The draft bill explicitly stated that the Geneva Conventions "are not a source of judicially enforceable individual rights," barring detainees from bringing lawsuits stating that their rights to be free of "humiliating and degrading treatment" were violated under the Conventions. With draft in hand, Administration officials then set out to get buy in from judge advocates general (Jags) from each of the armed services, many of whom had previously told the Senate Armed Services Committee that they preferred detainees to be tried under the Uniform Code of Military Justice in court-martial proceedings. For more than a month, the White House pressured military lawyers to agree to the draft and according to the September 16 *New York Times*, the effort turned into "a scuffle that left at least some of the military lawyers embittered and stoked old tensions at the Pentagon between civilian leaders and uniformed military officers, who under Defense Secretary Donald H. Rumsfeld have often found themselves privately at odds." Pressure built up on the Administration as three Republican Senators (Lindsey Graham, John Warner and John McCain) proposed a bill that would bar the use of coerced testimony and secret evidence, and former Secretary of State Colin Powell on September 18 declared that the US was losing the moral high ground in its war on terrorism and should bring its policies in line with Common Article 3 of the Geneva Conventions. The White House responded that Powell was "confused" about its proposal. Just when it seemed that the dissident Republicans were gaining strength, with at least five other Republican senators saying they would side with the original three holdouts, Graham, Warner and McCain "compromised." They agreed to support the **Military Commissions Act of 2006 (S. 3902 and H.R. 6054)**. It would:

- Make the core protections of Common Article 3 essentially irrelevant and

unenforceable.

- Prevent lawsuits from being brought against CIA operatives and other government officials who had used or ordered torture or supplied the rationale for it or in other ways violated the Conventions;
- Give the president the authority to declare what is – and what is not – a grave breach of the War Crimes Act. The president would have the unilateral authority to declare certain forms of torture and abuse legitimate. CIA techniques would be kept secret, although the bill gives an appearance of transparency by calling for regulations concerning "the meaning and application of the Geneva Conventions" to be published in The Federal Register. (On September 24, Senator McCain named extreme sleep deprivation, forced hypothermia and waterboarding as among the "extreme measures" that he *thought* would be banned).
- Allow the president to declare any foreigner anywhere an "illegal enemy combatant" and detain him or her without trial (according to the September 26 *Boston Globe*, the White House and Republican lawmakers will broaden who can be considered an enemy combatant, making it possible that the designation can apply to US citizens and those who "support hostilities" but don't necessarily engage in specific acts against the US or its allies).
- Strip all detainees of the right to habeas corpus, and throw out of court habeas cases that are now pending from Guantanamo detainees. Detainees would have no ability to challenge their detention or the conditions under which they were held.
- Permit detainees who are not tried before military commissions to be imprisoned indefinitely – even for life – without the ability to challenge their detention.
- Permit evidence coerced from prisoners to be presented against them, if a judge found that it was "reliable";
- Permit detainees to see whatever evidence is presented to juries, although in summarized or redacted form. This could mean that the name of an accuser is blacked out, preventing the detainee from challenging his or her reliability. According to Lindsey Graham "we struck a great balance" by allowing defendants to "confront the evidence." That was about the only victory that the dissident senators could lay claim to, but national security adviser Stephen Hadley immediately told reporters that it still might be necessary to keep evidence secret ("A Bad Bargain," *New York Times*, September 22) and other Republican senators agreed.

At a September 25 Senate hearing on the bill, protestors stood in T-shirts stating "Torture is Un-American" and "Save Habeas Corpus" while retired rear admiral and top military lawyer John Hutson said of habeas corpus, "Without these kinds of protections, we're just another banana republic."

• **HOUSE JUDICIARY COMMITTEE NARROWLY ENDORSES BUSH PLAN AFTER DEMOCRATS MISS VOTING FOR ALTERNATIVE**

On September 21, by a vote of 20-19, after "an afternoon animated by switched votes, parliamentary gymnastics and protest cries from Democrats," the House Judiciary Committee endorsed White House legislation on military commissions and the Geneva Conventions. Rival legislation drafted by Warner, McCain and Graham would have been passed had all Democrats had been present (two Democrats from Florida were at a Medicare new conference next door). Now there will be a race to get the "compromise" legislation agreed to by Graham, Warner and McCain to the floor for a vote before the October recess.

• **BILLS TO APPROVE WARRANTLESS NSA SPYING MOVE FORWARD IN BOTH CHAMBERS**

On September 13, the Senate Judiciary Committee by a vote of 10-8 approved S.2453, the "**National Security Surveillance Act,**" drafted by Vice-President Cheney and Committee Chair Arlen Specter. The bill:

- Gives the president the option of complying – or not complying – with the Foreign Intelligence Surveillance Act and Fourth Amendment protections;
- Allows "program warrants" – routine approval of the spying operation by the Foreign Intelligence Surveillance Court every 45 days. The court would make its determination of warrants not on an individual basis, but on a blanket review of the entire wiretapping program;
- Ends any effort to get the facts about how many Americans have had their phone calls or emails examined by the NSA without a warrant, as well as the true extent of the secret programs initiated by the president;
- Bypasses the oversight authority and responsibility of Congress;
- Rewards the president's failure to follow federal laws on wiretapping and disclosure by authorizing a broader spying program than the president has admitted to;
- Makes the domestic spying program legal, vastly increasing the government's statutory power to examine all international conversations and emails and expanding the ability to conduct warrantless physical searches of Americans' homes.

The Senate Judiciary Committee also approved **Senator Mike De Wine's "Terrorist Surveillance Program Act of 2006 (S.2455)** by a vote of 10-8. This bill:

- Ratifies the NSA program and weakens the Foreign Intelligence Surveillance Act;
- Limits disclosures about the program to a small subcommittee and attempts to limit access to this information by other elected federal officials;
- Makes judicial oversight and warrants optional. The bill would allow Americans' phone calls and emails to be monitored for 45 days without any court oversight, and makes court review after that period optional.
- Says Americans can be monitored only with "probable cause" but there are

gaping holes in what it means by probable cause. There is no requirement that the American knows that a caller from abroad is involved in terrorism or that such a person actually is so involved. The bill is not focused on either Americans suspected of conspiring with terrorists or even the terrorists themselves – instead a call from someone who may indirectly be connected to a terrorist suspect or group can trigger monitoring of an American's phone.

- Punishes whistleblowers who make unauthorized disclosures about the program. They can be sent to prison for 15 years and fined one million dollars.

More positively, Senator Dianne Feinstein's "**Foreign Intelligence Surveillance Improvement and Enhancement Act of 2006**" (S.3001), co-sponsored by Senator Specter, was also approved by 10-8. It would restore the rule of law by requiring the president to follow the procedures set by Congress for wiretapping Americans and would streamline procedures for seeking a FISA warrant.

The House Judiciary Committee and House Permanent Select Committee on Intelligence on September 20 both approved versions of **HR 5825, the "Electronic Surveillance Modernization Act."** Drafted by Rep. Heather Wilson (R-NM), it gives the president unprecedented unchecked power and authorizes NSA warrantless surveillance. The bill:

- Allows warrantless surveillance of all international calls and emails of Americans and businesses without evidence that they are involved with terrorism;
- Gives approval in advance for searches without warrants whenever US territory is attacked.

• **HOUSE PASSES ANTI-IMMIGRANT LEGISLATION**

On September 21, the House passed the "Community Protection Act" (H.R.6094) and the "Immigration Law Enforcement Act" (H.R. 6095), bills taken from the punitive Sensenbrenner bill passed last December. **H.R. 6094:**

- Expands the detention of immigrants and expedited removal, including the removal of immigrants who members of "gangs" (as defined by the Attorney General). Just belonging to such a gang – even if no crimes have been committed – can lead to deportation;
- Reverses two Supreme Court decisions holding that the government cannot indefinitely detain an immigrant who has committed a crime and completed a sentence if there is no realistic prospect of that person being deported. Under this law such a person can expect to serve a life sentence.

H.R.6095:

- Affirms that state and local law enforcement may enforce civil immigration laws (the old CLEAR Act), leaving it up to state and local law enforcement agencies to decide whether to do so.
- Shields the government from accountability for misdeeds in how immigration

law is applied to individuals.

The House also passed H.R.4830, the "**Border Tunnel Prevention Act of 2006**", providing for tough penalties (20 years in prison) for the construction of tunnels under borders.

- **HOUSE PASSES BORDER FENCE BILL**

On September 14, the House, by a vote of 283 by 138, passed a Republican bill to build 700 miles of a two-layer fence along the US-Mexican border. The comprehensive immigration bill passed in the Senate includes 350 miles of fence. But the Senate voted on September 20 to take up the House bill. The cost is estimated at between \$2.2 billion and \$9 billion, and is attached to a separate funding bill.

- **WILL SENATE PASS SENSENBRENNER PROVISIONS?**

House leaders are apparently working feverishly behind closed doors and using various procedural mechanisms to get H.R. 6094, H.R. 6095, and H.R. 4830 attached to the Department of Homeland Security appropriations bill, a "must pass" piece of legislation. If they succeed in attaching them, advocates for immigrant rights fear it might be impossible to defeat them.

- **HOUSE PASSES VOTER IDENTITY MEASURE**

On September 20, by 228-196, the House passed H.R. 4844, "**the Federal Election Integrity Act of 2006**," which requires voters to obtain and show a government-issued photo ID to prove their citizenship before being able to vote. This bill is likely to keep senior citizens, the poor, the disabled, and others who are more likely to be without required ID cards from voting.

- **SENATE PASSES PORT SECURITY MEASURE**

By a vote of 98-0, the Senate on September 14 approved a port security package that would cost more than \$5 billion and impose deadlines on the installation of radiation detectors at the largest ports. It would also require random passenger and baggage screening at mass transit stations, and encourage ports worldwide to improve the security of containers. The issue of securing chemical plants has divided the parties, with some Republicans wanting to bar government mandates on the use of chemicals and insisting that owners of chemical plants should decide what safety measures to adopt. The *New York Times* on September 25 editorialized, "The federal government is spending extraordinary amounts of money and time protecting air travel from terrorist attacks. But Congress has not yet passed a law to secure the nation's chemical plants, even though an attack on just one plant could kill or injure as many as 100,000 people. The sticking point has been the chemical industry, a heavy contributor to political campaigns, which does not want to pay the cost of reasonable safety measures....It is outrageous that something as important as chemical plant security is being decided in a backroom deal...when it comes to a choice between homeland security and the desires of

corporate America, the Republican leadership always goes with big business."

- **REAL ID PROGRAM WILL COST STATES \$11 BILLION**

This is according to a report released by the National Governors Association, the National Conference of State Legislatures and the American Association of Motor Vehicle Administrators. Sensenbrenner's REAL ID Act was passed late in 2005 as an "anti-terrorist" measure. It requires 250 million holders of US drivers' licenses to apply for new licenses, provide original copies of birth certificates, Social Security cards, marriage certificates and other identification documents. In return they would get a new "smart card" and a huge new data base of their information would be created in each state, and linked to other data bases across the country. Homeland Security officials have said that the new smart cards will cost about \$140 each.

- **SENATE COMPREHENSIVE IMMIGRATION BILL WOULD COST \$126 BILLION**

According to a Congressional Budget Office analysis, the Senate Immigration bill which combines enforcement with a legal path to work and citizenship for many undocumented people would require hiring of 31,000 federal workers over the next five years, establishing a powerful computerized system to verify the eligibility of applicants for lawful employment, building of new detention facilities and 870 miles of fencing, and would require the payment of federal benefits to newly-legalized immigrants, resulting in a \$126 billion price tag over the next decade.

- **JUSTICE DEPARTMENT OPPOSES DELAHUNT BILL TO HOLD FBI ACCOUNTABLE**

The House Judiciary Committee passed – but the government opposed – a bill sponsored by Massachusetts Rep. William Delahunt requiring FBI officials to give local authorities information about such "serious violent felonies" as murder, sexual assault, and kidnapping carried out by their informants. The bill was a response to the FBI's relationship with James "Whitey" Bulger and Stephen Flemmi, who murdered scores of people while on the FBI payroll. The Justice Department said FBI rules provide sufficient oversight. "But a Justice Department review last year found that, during a three-month period in 2004, agents failed to follow the rules in 87 percent of the cases that were analyzed" (*Boston Globe*, July 13).

C. IN THE COURTS

- **SUPREME COURT UPHOLDS GENEVA CONVENTIONS; RULES MILITARY COMMISSIONS VIOLATE BASIC RIGHTS**

On June 29, the US Supreme Court ruled 5-3 in the case *Hamdan v. Rumsfeld* that Common Article 3 of the Geneva Conventions requiring humane treatment applies to detainees in US military custody. The Court also declared that the Congressional Authorization for the Use of Military Force (AUMF) does not entitle the Administration to deny detainees basic rights provided by US and international law, such as the right to be present at one's tribunal, and that Guantanamo detainees who have filed habeas

corpus petitions have a right to their habeas hearings. The military commissions which had been set up to try Salim Ahmed Hamdan, Osama bin Laden's former driver, do not, the Court said, comply with either the Uniform Code of Military Justice or the Geneva Conventions. The ruling gave the Bush Administration the choice of either trying Guantanamo detainees before military courts-martial with such rights as allowing them to see and challenge evidence, and appeal a conviction to a civilian court, or get Congress to pass a law establishing military commissions which give defendants enough due process rights to meet legal requirements. Justices Stevens, Breyer, Kennedy, Ginsburg and Souter made up the Court majority, and were opposed by Thomas, Scalia and Alito. Justice Thomas argued that the ruling "would sorely hamper the president's ability to confront and defeat a new and deadly enemy." Because Chief Justice Roberts had already voted against Hamdan as an appeals court judge, he did not take part in the decision. This represents the third time the Supreme Court has staked out a position giving detainees some rights and denying the president a "blank check" in the "war on terror."

• **FEDERAL JUDGE RULES WARRANTLESS WIRETAPPING VIOLATES THE LAW**

Judge Anna Diggs Taylor of the US District Court in Detroit ruled on August 17 in the case *ACLU v. NSA* that the Bush Administration's program of warrantless domestic wiretapping violated both the Fourth Amendment and the FISA law requiring warrants for intelligence wiretaps involving US persons. She rejected the government's assertions that the president had inherent authority and authority under the Congressional Authorization for the Use of Military Force to carrying out the warrantless spying program. "It was never the intent of the framers to give the president such unfettered control, particularly when his actions blatantly disregard the parameters clearly enumerated in the Bill of Rights," she wrote. "The three separate branches of government were developed as a check and balance for one another" (*New York Times*, August 18). The ACLU filed the case on behalf of journalists, scholars, lawyers and nonprofit organizations who said that the possibility that the government was eavesdropping on their international communications interfered with their work. The government had invoked "state secrets privilege" to get the lawsuit thrown out. According to a *New York Times* editorial, "It's good news that this ruling exists at all. Mr. Bush's lawyers tried to have the entire suit thrown out on national security grounds, a tactic they have used in an alarming number of cases...No sooner had this ruling been issued than Mr. Bush's loyalists in Congress, who have been searching for ways to give legal cover to an illegal spying program, began calling for new laws to overcome Judge Taylor's objections...But for now, with a careful, thoroughly grounded opinion, one judge in Michigan has done what 535 members of Congress have so abysmally failed to do. She has reasserted the rule of law over a lawless administration." In the wake of the ruling, Judge Diggs Taylor was attacked both for her legal reasoning and accused of a possible conflict of interest in her role as trustee of a community foundation which had given grants to educational programs run by the ACLU. The government is appealing the decision.

- **ADMIMINSTRATION WANTS TELECOMMUNICATIONS LAWSUITS TO BE THROWN OUT ON STATE SECRET GROUNDS**

The Justice Department intends to seek dismissal of all 20 lawsuits challenging AT&T, Verizon and BellSouth for their reported handover of phone records to the National Security Agency once they are consolidated before a single judge. It made this claim in a Chicago lawsuit brought by the ACLU.

- **JUDGE REFUSES TO THROW OUT PRIVACY SUIT AGAINST AT&T**

A federal district court in San Francisco rejected a motion by the Justice Department to throw out on national security grounds a lawsuit brought by the Electronic Frontier Foundation concerning the alleged collaboration by AT&T in the National Security Agency's warrantless surveillance of telephone calls and emails between the US and other countries. The suit cited evidence that monitoring equipment had been installed at the AT&T internet switching center in San Francisco.

- **FEDERAL JUDGE RULES IMMIGRANTS CAN BE ROUNDED UP, DETAINED INDEFINITELY**

A district judge court judge in Brooklyn has ruled in *Turkman v. Ashcroft* that foreign nationals can be rounded up and held on immigration charges based solely on their race, religion or country of origin, and that they can be detained indefinitely, even if they have agreed to be removed from the country. The case was filed as a class action on behalf of Arabs and Muslims who had been arrested in secret immediately after 9/11 and held for weeks or months on immigration pretexts. According to Georgetown University Law Professor David Cole, writing in the June 16 *Los Angeles Times*, Judge John Gleeson has "authorized a repeat of the Japanese internment – as long as the internment is limited to foreign nationals charged with visa violations (a group that at last count numbered about 11 million people)."

- **9/11 DOMESTIC DETAINEE FINALLY RELEASED; HAD BEEN CLEARED BY FBI IN NOVEMBER 2001**

Benamar Benatta, possibly the last of the men swept up in the post 9/11 round up still in domestic detention, was released in mid July and allowed to go to Canada to pursue a political asylum claim. Benatta, a former lieutenant in the Algerian air force, had come to the US in 2000 for military training and overstayed a six-month visa.

- **ARAB-AMERICANS SUE OVER HARASSMENT ON RE-ENTRY**

The ACLU has filed a class action suit in a federal district court in Chicago asserting that repeated border detentions and interrogations violate the plaintiffs' protection against unreasonable search and seizure and their right to travel. Border agents screen names against a watch list maintained by the Terrorist Screening Center which in 2005 contained 237,000 names. A June 2005 report found that 42 percent of the calls made to the Screening Center showed the wrong person was detained at the border, and that

many people on the list are "wrongly categorized as dangerous, resulting in agitated, armed border agents swarming them" (*New York Times*, June 20). One of the plaintiffs, 68-year-old Dr. Elie Khoury who is a physician who has been an American citizen since 1974, says he has been stopped seven times since May 2002 and now dreads traveling abroad.

- **GOVERNMENT GIVES NEW REASON FOR EXCLUDING RAMADAN**

After the government denied Oxford University Professor Tariq Ramadan a visa to take up a job in the United States on PATRIOT Act "ideological exclusion" grounds, a lawsuit was brought on his behalf by the ACLU, the American Academy of Religion, PEN American Center and the American Association of University Professors. The suit forced the government to drop its previous allegation that Professor Ramadan, who was recognized by *Time Magazine* as one of 100 "innovators" of the 21st century, supported terrorism. In late September, after more than two years of investigating Ramadan, and faced with a deadline imposed by the court, the State Department said he had been excluded for donating about 600 Euros to French and Swiss organizations that provide humanitarian aid to Palestinians – information that Ramadan voluntarily provided to the State Department months ago. The Bush Administration contends that the groups gave funds to Hamas and that Ramadan was being denied a visa under the "material support" provision. In spite of US District Judge Paul Crotty's statement that Ramadan has been a consistent and vocal critic of terrorism, the government re-affirmed its position that he should be excluded from the country.

- **QUESTIONS OF BIASED EVIDENCE ARISE IN CHARITY CASE**

The case against the largest US-based Islamic charity, the Holy Land Foundation, rests on 8,000 pages of evidence from Israeli intelligence, according to court records. "Disputes already have surfaced over assertions of political influence, interrogation methods and allegedly faulty translations" (*Los Angeles Times*, June 18). The White House froze its assets soon after 9/11 and now seven former Holy Land officials, six of them American citizens, are charged with conspiracy to provide material support to terrorists by sending money and goods to Palestinian organizations controlled by Hamas, which the officials deny doing. The case is shrouded in secrecy, making it difficult to assess the strength of the government's evidence. According to defense lawyers, one FBI memo contained a sentence translated from Arabic to Hebrew to English stating that charity "was channeled to Hamas" when it should have read "we have no connection to Hamas."

- **PADILLA ARRESTED AFTER HE DECLINED FURTHER COOPERATION WITH FBI; ADMISSIBILITY OF EVIDENCE QUESTIONED**

According to the July 18 *Washington Post*, Jose Padilla talked freely to the FBI for five hours when they detained him at Chicago's O'Hare International Airport in May 2002. But when he was asked to testify before a grand jury, he refused, leading the FBI to arrest him on a material witness warrant. A month later, Bush declared him to be an

"enemy combatant" and he spent three years incommunicado in military custody before being brought to face criminal charges in Miami. The FBI got a warrant to intercept Padilla at the airport based on a report from a "confidential source" that he was plotting to build a "dirty bomb." They did not say that this information had been extracted under torture. The "confidential source" – Zayn Abu Zubaydah – was the same person identified later by President Bush as the first Al Qaeda suspect subjected to "an alternative set of procedures" (in Bush's words) by the CIA. (*Christian Science Monitor*, September 15). On August 21, a federal judge ruled that the government had brought overlapping and redundant charges against Padilla, and threw out a conspiracy charge that could have resulted in a life sentence. It is not clear whether the information provided by Abu Zubaydah will be admissible in court, or whether statements made by Padilla during nearly eight hours of questioning by Customs, Immigration and FBI agents before he was given Miranda warnings and arrested will be admissible.

- **NEW DATE SET FOR LYNNE STEWART SENTENCING**

On October 16, Lynne Stewart, a New York defense attorney, will be sentenced by Judge John Koeltl. The government is asking for her to be sent to a federal prison for 30 years for breaking an administrative rule and issuing a press release in the name of her client, Sheikh Omar Abdel Rahman. Now in her late 60s, she faces spending the rest of her life in prison.

D. IN THE COMMONWEALTH

- **ACLUM AWAITS HEARING INTO REPORTED HAND OVER OF PHONE RECORDS**

The ACLU of Massachusetts, which filed a complaint on May 24 with the Department of Telecommunications and Energy (DTE) in response to reports that phone companies have been handing over phone records of customers to the National Security Agency without any warrants, is still awaiting action on that complaint. The complaint requests that the DTE act in accordance with Massachusetts law and hold a public hearing into whether the phone companies were turning over customer records without warrants. ACLUM also filed a separate request asking the DTE to adopt regulations that prohibit phone calling records from being turned over without specific legal authority and notice to customers. Over a thousand Massachusetts residents have petitioned against their privacy being violated by the phone companies and have urged the DTE to take action. You can still send a message to the members of the DTE by going to www.aclum.org/telephone_privacy/.

- **MASACHUSETTS PILOT CLEARED IN COURT SETTLEMENT**

The ACLU of Massachusetts settled two cases it brought on behalf of Massachusetts pilot Robert Gray against the Transportation Security Administration (TSA). Gray, a lawful permanent resident of the US who originally came from Northern Ireland, had been labeled a threat to aviation or national security in January 2005, and rejected for training to fly planes larger than the small commuter planes he had been flying for many

years. The rejection was based on secret allegations, secret sources and secret evidence. At one point before talks began, the government appeared to retaliate against Gray for having challenged the training denial through lawsuits by temporarily putting his name on the "No Fly" list and preventing him from flying even the smaller planes, and from flying as a passenger.

- **GOVERNOR ROMNEY WANTS STATE POLICE TO ENFORCE IMMIGRATION LAWS**

On June 20, the governor announced he was seeking to enter into an arrangement with the federal government to permit state troopers to check on immigrants' legal status during routine stops and to be able to arrest them for civil immigration offenses. The troopers would be provided with 4 ½ weeks of training in immigration laws and procedures. Civil rights advocates fear the plan could lead to racial profiling, and have a chilling effect on people who will be afraid to report crimes. Only a handful of states have entered into such agreements with the federal government, since the voluntary program was included in the 1996 Amendments to the Immigration and Nationality Act. Less than 2 weeks after Romney made his announcement, a *Boston Globe* review of payroll data revealed that the State Police had been relying on a cleaning company which has employed large numbers of undocumented workers (July 2, 2006). The governor said he would have investigate, as the debate on immigration intensified across the state and state legislators put forward bills to force employers to verify the immigration status of their workers.

- **BOSTON POLICE TO PILOT IMMIGRANT FINGERPRINT CHECKS**

The Boston Police Department will soon pilot a program that will check a Homeland Security Department immigration database every time officers do fingerprint checks of criminal records. In the immigration database are the records of 420,000 people who have violated immigration laws. If there is a hit, the police can hold the person for up to 48 hours until he or she can be taken into custody by immigration agents or deportation proceedings initiated. The DHS database has been criticized for relying on just two fingerprints instead of ten, and therefore being more subject to error with the result that a person could be wrongly detained on immigration charges.

- **GLOBE OUTLINES KEY SAFETY CONCERNS**

On September 10, the *Boston Globe* took a close look at the security of Boston, and found it still vulnerable to terrorist attack, despite the expenditure of \$145 million in Boston and around the state since 2003. Prime areas of concern were Boston harbor and especially incoming cargo and the route taken by liquified natural gas tankers bound for the Distrigas terminal in Everett, and the nuclear power plant at Plymouth.

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