

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

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RIGHTSWATCH

A. EXECUTIVE ACTIONS

- **ACROSS THE NATION CALLS MOUNT FOR END TO ABUSE OF POWER**

As the Democratic-led Congress attempts (so far in vain) to rein in an executive branch that insists on the "inherent authority" to conduct the so-called war on terror as it sees fit, calls for holding the Bush Administration to account have traveled from the grassroots to political representatives. In Vermont, after 40 towns supported a measure in March calling for the impeachment of President Bush and Vice-President Cheney for misleading the nation about the reasons to go to war in Iraq, the Vermont Senate on April 20 voted 16-9 to support an impeachment resolution. On April 24, Rep. Dennis Kucinich, a Democratic Party presidential hopeful, filed House Resolution 333 calling for impeachment of the president and vice-president for hurting US security through their manipulation of intelligence. On April 29, the California Democratic Party passed a resolution calling on the US Congress to use its subpoena power to investigate the misdeeds of the president and vice-president and hold them accountable "with appropriate remedies and punishments, including impeachment." The resolution asserted that the Administration subverted the Constitution by using false information to justify the invasion of Iraq, authorizing the torture of prisoners of war, authorizing warrantless wiretaps on US citizens, disclosing the name of an undercover CIA operative, suspending the historic Writ of Habeas Corpus, and adding signing statements to over 750 Congressional statutes.

• **CONGRESS TOLD PRESIDENT HAS POWER TO SPY ON AMERICANS WITHOUT WARRANTS**

On April 30, National Intelligence head Michael McConnell told the Senate Intelligence Committee that under the Article II of the Constitution the President had the authority to decide how and when to wiretap Americans and that he is not bound by FISA warrant requirements. He added that currently all domestic electronic surveillance was being conducted with FISA warrants (*New York Times*, May 1).

• **BUSH & SPY CHIEF SEEK EXPANSION OF SURVEILLANCE POWER**

The Administration and National Intelligence Director Mike McConnell are pushing legislation that would "modernize" the 1978 FISA law. It would increase surveillance of both Americans and non citizens (*see In the US Congress, below*).

• **GONZALES STONEWALLS CONGRESS; REFUSES TO RESIGN**

The furor over the politicization of the Justice Department revealed by the firing of 8 US attorneys has not abated. Republicans joined Democrats on the Senate Judiciary Committee to condemn what Texas Republican John Cornyn called a "really deplorable" performance by the Attorney General when, after weeks of preparation, he finally testified before the Committee on April 19. As protestors in the chamber shouted "resign" or "stop lying!" Gonzales on 64 occasions claimed memory lapses, including about a pivotal meeting that happened last November. Nor could he recall the process leading the Justice Department to add an amendment to the reauthorized PATRIOT Act allowing the Attorney General to replace US attorneys without Senate confirmation. (On May 2 the *Washington Post* reported that the Justice Department had added another

amendment to the PATRIOT Act to retroactively clear a Montana US attorney of the charge that he was violating residence requirements by working in Washington DC as Gonzales' assistant and only visiting the state a few days a month, the kind of absenteeism which supposedly led to the firing of New Mexico prosecutor David Iglesias). After Gonzales' Congressional appearance, President Bush immediately commended the Attorney General for his outstanding performance, leaving some critics to ponder whether his amnesia was staged to buttress the unitary executive theory embraced by the Administration, which asserts strict limits on the power of Congress to divest the President of control over the executive branch. That theory might also explain the refusal of the Justice Department to comply with requests for all the materials relating to the firings. Subpoenas for additional documents were issued on April 10 after the Justice Department had provided the Judiciary Committee with a batch of heavily-censored emails containing an 18-day gap leading up to the week of the firings. On April 25, after Senator Arlen Specter (R-PA) called Gonzales' refusal to step down "no doubt, bad for the Justice Department," the Senate Judiciary Committee voted to grant immunity to Gonzales' senior aide Monica Goodling. The Justice Department's Inspector General is investigating whether Goodling took party affiliation into account when hiring career federal prosecutors (a violation of federal law). On May 3, James B. Comey, who was deputy Attorney General when the firings were first considered, testified before the House Judiciary Committee that the targeted attorneys were all very competent prosecutors who never should have been dismissed. On the same day, University of Missouri-Columbia law professor Frank Bowman wrote an op ed in the *New York Times* making the case for impeachment proceedings to be initiated against Gonzales.

- **RICE "TOO BUSY" TO ANSWER SUBPOENA**

On April 25, the House Committee on Oversight and Government Reform issued a subpoena to Secretary of State Condoleezza Rice to appear to answer questions about prewar claims that Iraq had a nuclear weapons program. The following day she said she might respond in writing to the Committee's questions but was unlikely to appear in person.

- **WHEN "TRUST US" DOES NOT WORK: THE IMPLICATIONS OF FIGHTING PRE-CRIME**

Members of Congress expressed their outrage at the March 21 testimony by Justice Department Inspector General Glenn Fine that the FBI might have violated the law regulating the use of National Security Letters (Section 505 of the USA PATRIOT Act) at least 3,000 times when it secretly collected telephone, business and credit card records of US citizens and residents and that it sometimes lied to cover up its abuses. NSLs are issued by FBI field officers without any court oversight. In the words of California Republican Congressman Dan Lungren, " Mr. Fine has said that this is the result of mistakes, carelessness, confusion, sloppiness, lack of training, lack of adequate guidance, and lack of adequate oversight. That sounds like a report about a first or second grade

class." Writing in the April 15 *New York Times*, Jeffrey Rosen described what happened when the PATRIOT Act allowed FBI field agents to issue NSLs "on their own say-so merely by asserting that they were 'relevant' to a terrorism investigation. Critics warned that these changes would let the FBI collect the personal data of Americans with no clear ties to suspected terrorists, but few predicted the magnitude of the FBI's incompetence...The bureau wasn't keeping signed copies of all its national-security letters and, as a result, couldn't properly track the data it got. In the spirit of the Keystone Kops, it didn't realize when it received data on the wrong person. When an FBI official complained to his superiors, he was ignored." But the real problem, in Rosen's view, was the FBI's effort to reinvent itself to prevent future crimes: "The prevention strategy is based on the idea that the best way to avoid future 9/11s is to collect information on lots of people who aren't obviously terrorists and prosecute them for minor crimes before they have an opportunity to blow up buildings. This necessarily encourages dragnet searches of millions of people who turn out to be innocent. But even if FBI agents clear the subject of a national-security letter, they store the information gleaned from it in digital databases that include more than a half-billion records, are not purged for at least 20 years and can be shared with state law-enforcement agencies or with private businesses for data mining."

- **CAN THE FBI POLICE ITSELF?**

In response to the outrage created by the release of the Inspector General's report on the misuse of National Security Letters, the FBI's internal inspection division announced it would undertake an audit of the use of these letters on a regular basis in all 56 field offices. It said it would also give agents better training and put in place a computerized tracking system for the NSLs. Judiciary Committee chairman John Conyers (D-MI) did not sound mollified, claiming the FBI had used the NSLs as a "handy shortcut to illegally gather vast amounts of private information" (*New York Times*, March 21). Demands for more drastic action came from a variety of sources, with Richard Clarke and Roger Cressey in the April 4 *Boston Globe* and former Bush Administration legal strategist John Yoo in the March 21 *New York Times* calling for national security investigations to be taken away from the FBI. While Clarke and Cressey suggest a fix which "is thoughtful, logical and supportive of the nation's security and constitutional liberties," Yoo sees its failure as the opportunity for a radical makeover: "The 9/11 attacks forced us to reconsider the nature of war. They should now make us rethink how we organize the government....Instead of new limits on the Patriot Act or more layers of inefficient bureaucracy, our leaders in the executive branch and Congress could take a lesson from the financial markets and ask whether it is time for a breakup and spinoff of the FBI." (*See In the US Congress below*).

- **GAGGED NSL RECIPIENT FEATURED IN WASHINGTON POST**

On March 23, the *Post* published an anonymous piece from ACLU client "John Doe." An Internet service provider, he described his experience being the recipient of a National Security Letter in 2004 that "ordered me to provide sensitive information about one of

my clients." Instead of complying with the demand, he contacted ACLU lawyers which filed a lawsuit (in secret) in April 2004 and has lived under the gag order ever since. "I found it particularly difficult to be silent about my concerns while Congress was debating the reauthorization of the Patriot Act in 2005 and early 2006. If I hadn't been under a gag order, I would have contacted members of Congress to discuss my experiences and to advocate changes in the law. The inspector general's report confirms that Congress lacked a complete picture of the problem during a critical time...I've now been under a broad gag order for three years, and other NSL recipients have been silenced for even longer. At some point – a point we passed long ago – the secrecy itself becomes a threat to our democracy."

• **FORMERLY GAGGED NSL RECIPIENT ASKS CONGRESS TO RECONSIDER PATRIOT ACT**

On April 11, George Christian, the executive director of the Library Connection in Connecticut, described his experiences as a recipient of a National Security Letter before the Senate Judiciary Subcommittee on the Constitution. Three of his librarian colleagues were also gagged and unable to testify when the reauthorization of the PATRIOT Act was being debated. Rather than hand over the requested records the Connecticut Four went to the ACLU because we "felt we were defending our democracy by insisting that the checks and balances established in the Constitution be observed. We had no court order, and there was no evidence that an independent judge had examined the FBI's evidence and found there to be probable cause justifying their request for information." Christian told the Committee about the stresses of living with the gag order, especially once their lawsuit became a national story because of government carelessness in its redacting process. A few days after the PATRIOT Act was renewed, "the FBI said they no longer needed the information they had sought from us and thus abandoned the case completely." He concluded: "Ours is a story we hope will encourage the US Congress to reconsider parts of the USA PATRIOT Act and in particular, the NSL powers that can needlessly subject innocent people to fishing expeditions of their personal information with no judicial review. Because of the gag order, you, our Senators and elected representatives and the American public, are denied access to the stories and information about these abuses. This is information you need to conduct oversight, work for appropriate changes to current law and seek to protect our constitutional rights."

• **MISTAKES MAR FBI WARRANT REQUESTS FROM FISA COURT**

FBI agents were not just sloppy when they filled out National Security Letters. They also were inaccurate and made mistakes when they applied for surveillance warrants from the secret FISA court, according to the March 27 *Washington Post*. Despite this, the FISA court approved 2,074 warrants in 2005 without rejecting a single one. However, it "modified" 61 and chief judge Colleen Kollar-Kotelly raised the possibility of requiring the agents to swear in her courtroom that the information they were providing was accurate.

- **FBI CAUGHT LYING IN QUESTIONING, DETAINING PEACE ACTIVISTS**

Ever since April 2002, the FBI and DC police had denied Bureau involvement in the surveillance and arrest of more than 20 peace protesters who were arrested when they went to Washington DC parking garage to pick up their lunch after taking part in an anti-war rally on the Mall. But recently a civil lawsuit has unearthed police records that confirm the undercover FBI agents were involved in their arrest for trespassing. Why was the FBI suspicious of the group? Because they were wearing black and were hence believed to be anarchists (*Washington Post*, April 3). On April 12, US District Judge John Bates said he was "deeply concerned" about the incident and why FBI intelligence agents had interrogated anti-war demonstrators about their political views. Charges against the demonstrators were dropped for lack of evidence.

- **FBI SAYS IT NEEDS SIX YEARS TO FULFILL FOIA REQUEST**

The Electronic Frontier Foundation has sued the Justice Department for records detailing how the FBI protects privacy while collecting personal records for its Investigative Data Warehouse, which contains 659 million documents that are used for counterterrorism purposes. The agency has a poor record of turning over information in response to FOIA lawsuits - one request is now 18 years old. FBI lawyers asked a federal judge to give it until 2013 to comply (*Washington Post*, April 11).

- **25% OF WORK BY SPY AGENCIES DONE BY PRIVATE CONTRACTORS**

Without revealing exactly how many people work for the CIA, DIA, FBI, NSA and other American spy agencies because that number – like the size of their budgets – is classified, Ronald Sanders, the chief human capital officer for the National Intelligence Director, said a study found about 25% of intelligence work was now contracted out. It is thought that the annual budget for the various agencies is about \$44 billion per year, with nearly 100,000 people are employed by them (*New York Times*, April 26).

- **PENTAGON SAYS IT MAY CLOSE TALON DATABASE**

In 2003 the Defense Department initiated its "Threat and Local Observation Notice" (TALON) program, to collect information about people with possible links to terrorists. After the ACLU as the result of a FOIA lawsuit revealed that the names and activities of peace activist groups were included in the database and forced the purging of its files and Senator Patrick Leahy termed in "another costly, controversial and poorly focused venture that did not make us any safer," the Pentagon conducted a review of the program and said it does not believe it should be continued "as currently constituted" (William Fisher in *Truthout*, April 28). The Talon database is part of the Defense Department's Counterintelligence Field Activity office or CIFA, which was created by then Defense Secretary Rumsfeld in 2002.

- **REGULAR FOLKS BEING FLAGGED AS TERRORISTS**

A report by the Lawyers' Committee for Civil Rights of the San Francisco Bay Area

reveals that US business customers have had their transactions denied or delayed because their names were a partial match with a name on Office of Foreign Asset Control's (OFAC) 250 page list of 3,300 groups and individuals suspected of links to terrorism. Tom Kubbany, a Northern California mental health worker, could not get a mortgage because of a Treasury Department OFAC alert that showed his middle name, Hassan, to be an alias for Ali Saddam Hussein, purportedly a "son of Saddam Hussein." Saad Ali Muhammad, an African American who converted to Islam in 1980, was unable to buy a used car because of an OFAC alert which seemed to suggest the problem was the name "Muhammad."

• **TERRORIST WATCHLISTS OVERWHELM THE WATCHERS**

The Terrorist Identities Datamark Environment (TIDE) which has grown to 435,000 files from 100,000 in 2003 is threatening to overwhelm the people who manage it, according to the March 25th *Washington Post*. "TIDE has also created concerns about secrecy, errors and privacy. The list marks the first time foreigners and US citizens are combined in an intelligence database. The bar for inclusion is low, and once someone is on the list, it is virtually impossible to get off it." The Government Accountability Office has reported that misidentifications account for about half of the tens of thousands of times a "hit" was triggered. TIDE collects electronic intelligence data which arrives daily from around the world. Russ Travers, who is in charge of TIDE at the National Counterterrorism Center, says much of it is "fragmentary, inconsistent and sometimes just flat-out wrong." TIDE dumps about 1,000 to 1,500 new names into the FBI Terrorist Screening Center database on a daily basis. It "only" contained about 235,000 names as of last year. There is little people who share a name with someone on the list can do to evade extra scrutiny each time they travel.

• **HOW TO GET ON A "NO FLY" LIST – FASCISM IN THE MAKING**

On April 24, the *UK Guardian* published a chilling article by Naomi Wolf, "Fascist America in 10 easy steps." The steps she enumerates and describes are: "Invoke a terrifying internal and external enemy," "Create a gulag," "Develop a thug caste," "Set up an internal surveillance system," "Harass citizens' groups," "Engage in arbitrary detention and release," "Target key individuals," "Control the press," "Dissent equals treason," "Suspend the rule of law." Here is one passage: "Professor Walter F. Murphy is emeritus of Princeton University; he is one of the foremost constitutional scholars in the nation and author of the classic *Constitutional Democracy*. Murphy is also a decorated former marine, and he is not even especially politically liberal. But on March 1 this year, he was denied a boarding pass at Newark, 'because I was on the Terrorist Watch list.' 'Have you been in any peace marches? We ban a lot of people from flying because of that,' asked the airline employee. 'I explained,' said Murphy, 'that I had not so marched but had, in September 2006, given a lecture at Princeton, televised and put on the web, highly critical of George Bush for his many violations of the constitution.' 'That'll do it,' the man said." Wolf goes on: "In every closing society, at a certain point there are some high-profile arrests – usually of opposition leaders, clergy and

journalists. Then everything goes quiet. After those arrests, there are still newspapers, courts, TV and radio, and the facades of a civil society. There just isn't real dissent. There just isn't freedom. If you look at history, just before those arrests is where we are now...our experiment in democracy could be closed down by a process of erosion."

• **NEW YORK POLICE CONDUCT NATION-WIDE SPYING OPERATION BEFORE GOP CONVENTION**

According to records obtained by the *New York Times*, the "R.N.C. Intelligence Squad" of the New York City police spied on groups and individuals in at least 15 places outside New York from Albuquerque to Massachusetts in preparation for the 2004 Republican National Convention (March 25). Among those infiltrated by undercover police or whose websites were monitored were church groups, antiwar organizations, environmentalists, street theater groups, anti-death penalty and anti-globalization activists. A police report dated October 9, 2003 stated: "Activists are showing a well-organized network made up of ant-Bush sentiment; the mixing of music and political rhetoric indicates sophisticated organizing skills with a specific agenda." David Cohen, deputy police commissioner for intelligence and a former senior official at the CIA, wrote in an affidavit: "Given the range of activities that may be engaged in by the members of a sleeper cell in the long period of preparation for an act of terror, the entire resources of the NYPD must be available to conduct investigations into political activity." The *Times* reported that the police searched the Internet to identify groups making plans for demonstrations. "Files were created on their political causes, the criminal records, if any, of the people involved and any plans for civil disobedience or disruptive tactics. From the field, undercover officers filed daily accounts of their observations on forms known as DD5s that called for descriptions of the gatherings, the leaders and participants, and the groups' plans." In the week before the *New York Times* article appeared, lawyers for the NYPD had argued before the federal court that was hearing cases about the mass arrests of demonstrators during the RNC that the records of mass surveillance should be kept secret since the news media would "fixate upon and sensationalize them" and they would be "misinterpreted" (*New York Times*, March 26).

• **POLICE PLAN FOR 3,000 ARRESTS AT NEXT GOP CONVENTION**

The Minneapolis-St. Paul Star Tribune reported on April 17 that St. Paul police are preparing for 3,000 arrests during the 2009 Republican National Convention in St. Paul, and want included in the budget more than half a million dollars for a possible fenced detention facility. They also want \$350,000 in riot equipment and Tasers.

• **GLOBAL TERRORISM REPORT SHOWS SHARP INCREASE IN ATTACKS**

According to the State Department's "Country Reports on Terrorism 2006" the number of deaths and injuries caused by terrorist attacks rose 40% over figures reported for 2005, with more than 20,000 deaths and 38,000 injuries, the majority from Iraq and Afghanistan. There was an 80% increase in the number of children victims. In a news briefing acting State Department counterterrorism coordinator Frank Urbancie Jr.

acknowledged that "the statistics could be used to question the effectiveness of counterterrorism measures" (*Boston Globe*, May 1).

- **"HEARTS AND MINDS" NOT BEING WON**

World Public Opinion survey results released on April 24 show that the overwhelming majority of people in Egypt, Morocco, Pakistan and Indonesia say they believe the US seeks to "weaken and divide the Islamic world" and "achieve political and military dominance to control Middle East resources" (*Los Angeles Times*, April 25). Big majorities in Egypt (91%) and Morocco (68%) approved of attacks on US troops in Iraq and Afghanistan.

- **NEARLY HALF OF US TROOPS IN IRAQ APPROVE OF TORTURE**

A Pentagon report featured in the May 5 *Boston Globe* reveals that 4 in 10 of the US soldiers in Iraq approve of using torture to gather information from insurgents, with higher numbers saying it should be allowed to try to save the life of a soldier. Some 10% said they had physically mistreated civilians, with a third reported cursing or insulting them. Less than half believed civilians should be treated with dignity and respect.

- **SLENDER MAJORITY OPPOSE TORTURE IN US**

A BBC poll of 25 countries indicates the majority of the world's population opposes torturing terror suspects. In the US 58% oppose using torture, while 72% oppose it in Britain, a similar figure to that recorded in Spain. In three countries, a minority of the population were opposed to using torture: Israel, China and Russia.

- **RELEASE OF CIVILIAN CLAIM DATA SUGGESTS MAGNITUDE OF WAR HORROR**

In mid April the ACLU made public 500 claims filed by Iraqi and Afghan civilians for compensation that it had received from the US Army in response to a FOIA request. The army paid out more than \$32 million to the claimants who in some cases had to endure the loss of their entire family. 87 percent of the cases were not related to combat, but rather to incidents that occurred at checkpoints or when the army patrolled roads. For instance, after a soldier shot dead a boy whose book bag was mistaken for a bomb satchel, his uncle was paid \$500 (*New York Times*, April 12). The army gave \$4,000 to a civilian whose only son – a 9 year old – was killed by a stray bullet while playing outside.

- **RULES STILL NOT IN PLACE FOR CIA INTERROGATIONS; CIA PRISONS STILL SECRET**

Six months since President Bush authorized secret CIA interrogations, there is an ongoing struggle within the CIA over the treatment of terrorist suspects, according to the March 25 *New York Times*. State Department officials apparently rejected a draft of an executive order that provided for broad interrogation guidelines on grounds that the White House was trying to legalize practices that violated Common Article 3 of the

Geneva Conventions. The Military Commissions Act, signed into law in October 2006, states that the president "shall" issue an executive order establishing guidelines for the interrogation of detainees and some Members of Congress are irate that the guidelines are not yet in place. On April 16, top Bush allies in Congress blocked an intelligence bill requiring the White House to disclose locations of secret CIA prisons and the amount spent annually by American intelligence agencies.

- **RULES FINALLY IN PLACE TO SECURE CHEMICAL PLANTS**

It took five years but it seems that the Department of Homeland Security and other government agencies have finally agreed on new security requirements for high-risk chemical plants (*Washington Post*, April 3). Up to 400 of the 15,000 chemical plants in the country which are deemed high risk will be required to secure their perimeters with fences and guards.

- **20 COMPUTERS USED FOR BUILDING NUCLEAR WARHEADS GO MISSING**

For the 13th time in four years, an Energy Department audit has revealed the loss of computers on which classified information is stored regarding the nuclear weapons industry. In January, security problems led to the firing of the head administrator of the National Nuclear Security Agency, the Energy Department's agency in charge of nuclear weapons (*New York Times*, April 1).

- **TJX THEFT OF DATA "THE BIGGEST CARD HEIST EVER"**

The March 29 *Boston Globe* reported that the debit card information stolen from the computer systems at TJX Company amounted to 45.7 million numbers over a period of at least 2 years, possibly longer. In addition, 455,000 customers who returned merchandise had their driver's license numbers and other personal data stolen. The company is offering credit monitoring for customers whose driver's licenses are the same as their Social Security numbers. On April 24, stating that reports of fraudulent purchases tied to the TJX breach had been coming in from around the world, bank associations in Massachusetts, Connecticut and Maine brought a federal lawsuit against TJX claiming that the company failed to adequately protect sensitive customer data.

- **ACCESS TO BE LIMITED TO STUDENT LOAN DATABASE**

On April 17, the Education Department temporarily shut off outside access to the National Student Loan Data System, the government database where personal financial information of student aid applicants is stored. The move followed the intercession of Education Committee chair Senator Edward Kennedy, who warned, in the wake of the student loan scandal, that the privacy of millions of students was at risk from improper searches. On May 2, new security rules were in place for use of the database and access was restored to agencies that guarantee federal loans against default, with access for other groups to follow as new regulations are developed.

- **TERROR SUSPECTS MAY BE FINALLY BLOCKED FROM PURCHASING GUNS**

Former Attorney General John Ashcroft made sure that the FBI could not compare federal gun-buying records against a list of suspects on the terrorism watch list. Such suspects could only be prevented from buying a gun if they had a felony conviction, illegal immigrant status or involuntary commitments for mental illness. But after the Virginia Tech shootings, the Justice Department proposed legislation that would give the Attorney General discretion to bar terrorism suspects from buying firearms (*New York Times*, April 27).

- **MILITARY COMMISSION HEARS ITS FIRST CASE – SORT OF**

In fact, the hearing never got very far. After an acrimonious session in which the presiding military judge barred two of David Hicks' attorneys from the courtroom and they countered that he was biased, it took just a minute on March 26 for defense attorney Maj. Michael Mori to say that his client, who had spent five years at Guantanamo, pleaded guilty. A few days later, a plea agreement was hatched out in which Hicks would serve 9 more months in custody in Australia. In the words of the March 31 *New York Times*, "the agreement for just nine additional months of imprisonment was remarkable for a detainee who, before the plea negotiations, had faced a potential life term and had become an international symbol of many of the 385 detainees here." Included in the deal was a statement by Mr. Hicks that he "has never been illegally treated" – although he had claimed previously that he had been beaten and given mysterious injections – and a promise not to "communicate in any way with the media" for a year. ACLU attorney Ben Wizner wrote in the April 5 *LA Times*, "What are we to make of this? How did the very first case brought before a military commission – a system we were told was necessary because of the danger and impracticality of prosecuting arch-terrorists in US courts – result in a sentence of only nine months...it is widely understood that the government made extravagant claims that simply could not withstand scrutiny. No wonder the administration has fought so vigorously to deprive Guantanamo detainees of the bedrock right of habeas corpus – the right to challenge unlawful detention in court."

- **SECOND DETAINEE TO BE CHARGED AT GUANTANAMO WAS 15 YEARS OLD WHEN SENT THERE**

Omar Khadr, now 20 years old, is the second detainee to be charged under the military commission system. He is accused of killing a US soldier with a grenade and injuring another during a firefight in Afghanistan. He faces life imprisonment if convicted.

- **SAUDI SUSPECT SAYS HE WAS TORTURED**

Abd al-Rahim al-Nashiri, one of the so-called 14 "high-value detainees" being held at Guantanamo, told a Combatant Status Review Tribunal that torture led him to confess to being part of the attack on the USS Cole. "From the time I was arrested five years ago, they have been torturing me. It happened during interviews. One time they tortured me one way and another time they tortured me in a different way. I just said those things to make the people happy" (*Boston Globe*, March 31). The details of the torture

were redacted from the transcript which was reproduced in an April 6 *New York Times* editorial: "President (of the tribunal): Please describe the methods that were used. Detainee: (CENSORED) What else do I want to say? (CENSORED) There were doing so many things. What else did they do? (CENSORED) After than another method of torture began. (CENSORED) They used to ask me questions and the investigator after that used to laugh. And, I used to answer the answer that I knew. And if I didn't replay what I heard, he used to (CENSORED)."

- **COLONEL REFUSES TO PROSECUTE SUSPECT BECAUSE OF TORTURE**

The March 31 *Wall Street Journal* focused on the moral dilemma facing Lt. Col. Stuart Couch who was asked to prosecute the case of a Guantanamo prisoner, Mahamedou Ould Slahi who had been fingered as an Al-Qaeda member. After nine months, he refused to proceed with the prosecution after concluding that the statements which incriminated Slahi were the product of torture and hence inadmissible under US and international law. In May 2004, when Col. Couch reached his decision, he had an "impassioned debate" with the then-chief prosecutor, Army Col. Bob Swan, who maintained that the Torture Convention didn't apply to military commissions. In a September 2006 letter to his attorneys, Mr. Slahi "divided his time into pre-and post-torture eras. In the latter, he wrote, 'I yessed every accusation my interrogators made.'"

- **RELEASED DETAINEE ISSUES PUBLIC STATEMENT**

On April 1, Bisher Al Rawi, one of the British detainees featured in the play "Guantanamo: Honor Bound to Defend Freedom," was finally sent back to England after more than four years at the prison camp. In a statement he released to the public, he expressed "great sorrow" for the other ten British residents who still remain in Guantanamo, some of whom are on hunger strike to protest their extended solitary confinement. "The extreme isolation they are going through is one of the most profoundly difficult things to endure. I know that all too well. The hopelessness you feel in Guantanamo can hardly be described. You are asked the same questions hundreds of times. Allegations are made against you that are laughably untrue, but you have no chance to prove them wrong. There is no trial, no fair legal process. I was alleged to have participated in terrorist training in Bosnia and Afghanistan. I've never been to Bosnia and the only time I visited Afghanistan was thanks to the hospitality of the CIA in an underground prison – the Dark Prison – outside Kabul."

- **20% OF DETAINEES CLEARED FOR RELEASE – BUT STILL HELD AT GUANTANAMO**

Some 82 detainees have been ruled by a military panel to be eligible to leave Guantanamo Bay but will remain there indefinitely because of the US government does not know where to send them. Many of their countries of origin do not want them back, which is not surprising since the Bush Administration has insisted they are "the worst of the worst." The State Department says that it often takes months or even years "to negotiate human rights assurances that we are comfortable with before we will transfer

someone to another country." According to Human Rights Watch, three Russians who were released from Guantanamo three years ago have been tortured on their return.

- **NEW HUNGER STRIKE AT GUANTANAMO**

According to the April 9 *Boston Globe*, at least 13 hunger-striking detainees are enduring force-feeding in restraint chairs to protest conditions in the new maximum security complex (Camp 6) to which 160 of the Guantanamo detainees were moved last December. At Camp 6 detainees are locked in 8 by 10 cells for 22 hours a day or more and exercise alone in small wire cages. They can only talk with other prisoners by shouting through food slots in their doors. The hunger strike apparently began early in 2007 and reached 17 by mid March. Boston attorney Sabin Willet said of Camp 6, "They're just sitting on a powder keg down there. You're going to have an insane asylum" (*New York Times*, April 9).

- **GUANTANAMO LAWYERS BLAMED FOR UNREST**

The Justice Department proposes limiting to three the number of times lawyers can meet with their Guantanamo clients and permitting the reading of attorney-client mail on the grounds that these communications are fomenting unrest and leading many of the nearly 400 prisoners still incarcerated there to resume a hunger strike. In a May 3 editorial decrying the proposal and stating that the prison should be shut down, *The Boston Globe* writes that "prisoners who have been through several interrogations at the hands of the military are often so distrustful of Americans, including lawyers, that it takes extended visits just to establish a normal attorney-client relationship....Those attorneys, most of whom are working on a pro-bono basis, are the thin line that is keeping Guantanamo from becoming a gulag." A few days later, on May 5, *The New York Times* reported that many detainees are refusing to see their lawyers, afraid that they are actually interrogators. They see nothing positive coming from court cases which, over the years, have not led to a single release, and know that everything they say is being monitored." On April 27, a *New York Times* editorial had called the government's policy restricting attorneys an "outrageous" attempt to cover up what is going on in the camp. It called for Congress "to restore basic rights to Guantanamo Bay and to impose full accountability for what has happened there." The New York City Bar representing 23,000 members then wrote a letter to Attorney General Gonzales stating that "blaming counsel for the hunger strikes and other unrest is a continuation of a disreputable and unwarranted smear campaign against counsel" and urging him to lift the restrictions on the mail and visits (*New York Times*, April 30). On May 1, 75 Guantanamo lawyers lobbied Members of Congress to give prisoners access to US courts and overturn the habeas-stripping portion of the Military Commissions Act.

- **"TERROR TROPHY" PROSECUTIONS ALLEGED**

While the focus has been on the firing of US attorneys by the Justice Department for reasons of insufficient political loyalty, a group of upstate New Yorkers is contending that US Attorney Glenn Suddaby went out of his way to bring selective prosecutions in

order to curry favor with Justice Department officials by brining what they call "terror trophy" prosecutions. They point to the prosecution of oncologist Dr. Rafil Dhafir, now 60 years old, who is serving a 22-year-old prison sentence after being labeled a "terrorist" in 2003 by then Attorney General John Ashcroft and subsequently tried not on terrorist but on fraud charges connected with his charity, Help the Needy, which sent funds to Iraq. Among those prosecuted by US Attorney Suddaby were the pizza store owner, Mohamed Hossain, and Imam Yassin Muhiddin Aref in Albany whose cases – which involved entrapment by an FBI informant – were recently featured in the PBS "America at the Crossroads" series. They are both now serving 15 year sentences. Editorial writers and columnists in the *Albany Times-Union*, *Syracuse Post-Standard* and *Schenectady Gazette* have criticized the US Attorney and FBI for the fictitious sting operation that snared the men. In the words of the *Post-Standard*, "There is nothing new to say about the injustice done to Yassin Aref and Mohammed Hossain. All we can do now is shake our heads in disbelief that this could happen in America" (April 19).

- **"TIDE OF FEAR" IN LODI, CALIFORNIA**

In "Echoes of Terror Case Haunt California Pakistanis," the April 27 *New York Times* described the lingering impact on the community of the trials of two American citizens, Umer Hayat, an ice cream truck driver, and his son Hamid, who were incriminated by an FBI informer. Terrorism charges were dropped against the father who was convicted of lying about the amount of money he took out of the country. The son was convicted of giving material support to terrorism by attending a training camp in Pakistan. "Even now, residents with sudden wealth, like a new car, are immediately rumored to be on the FBI's payroll. Anything connected to the government is inherently suspect....The tension builds upon an already deep split over control of the mosque; indeed, many suspect that one faction may have brought in the FBI to smear its rivals."

- **DISCRIMINATION AGAINST MUSLIMS IN CITIZENSHIP PROCESS**

The Center for Human Rights & Global Justice (CHRGJ) at the NYU School of Law released a report in late April entitled "Americans on Hold: Profiling, Citizenship & the 'War on Terror'." It reveals "excessively long delays" – some stretching for years – in the processing of applications for citizenship from Muslims, and applicants originally from the Middle East and South Asian. Among the factors which the study says contribute to the delays is the use of the immigration process as a counter-terrorism measure, where profiled groups are synonymous with the terrorist "threat." The similarity of names with those in the giant security databases have been a major problem, with delays "deeply rooted in public and private conflation of race, religion, national identity and terrorism, wherein the profiled group is regarded as inherently suspect and the primary target of name check procedures." The report warns that "profiling on the basis of religion, race, ethnicity or nationality institutionalizes prejudice and promotes and legitimizes the prejudice of the general public." While lawful residents of the US wait for years to hear about their citizenship applications, they are unable to travel to visit ill relatives in their countries of origin. In the name of the 'war on terror' the government

has been "breaking up families, engendering fear and insecurity, and disenfranchising entire communities," according to CHRGI's director Professor Smita Narula.

- **PROFILING AT BORDER UNRELENTING**

Abe Dabdoub, a newly naturalized American citizen in Ohio who frequently visits his relatives in Canada, has been fingerprinted 14 times, had his body searched 9 times, been handcuffed 4 times and isolated in a separate detention room 13 times during the 14 trips he has made across the bridge from Canada into Michigan since last August, according to the April 29 *New York Times*. Mr. Dabdoub reportedly faced no problems crossing the border between 2001 and 2006 when he lived in the US as a Canadian with a green card. He has tried to use the Department of Homeland Security's Traveler Redress Inquiry Program (TRIP) to no avail, and has now lost faith in the system. Cases like his have led various Arab-American organizations and the ACLU to demand that Congress intervene to protect the civil rights of Arabs and Muslims. Two cases brought by the ACLU are working their way through the courts. In one instance, border agents reportedly googled the name of an Ohio man they had stopped for questioning, and asked him about a letter regarding events in the Middle East which he had written to *The Toledo Blade*.

- **PLANS FOR ARABIC SCHOOL ON HOLD**

Protests have forced the New York City Department of Education to drop plans to open in Brooklyn's PS 282 a public school that would teach the standard college preparatory curriculum with a special focus on the study of the Arabic language and culture. The Khalil Gibran International Academy – named after the Lebanese poet and philosopher who was born into a Maronite Christian family - was denounced as a "madrassa teaching the Koran" by *The New York Sun*.

- **MUSLIM BRINGS LAWSUIT AGAINST BALTIMORE HOSPITAL**

Shortly before undergoing oral cancer surgery, 61-year old Mohammed Hussain, an American physician, went to the hospital bathroom to wash his hands and feet before praying. A hospital security guard, Rodney Corban, came into the bathroom, screamed racial epithets at him and manhandled him outdoors, ordering him to leave the hospital as his family stood in shocked silence. He has brought a lawsuit against the hospital.

- **ANTI-CUBAN TERRORIST OUT ON BAIL**

Luis Posada Carriles, whose career includes working with the CIA, the Bay of Pigs, running guns for the Contras, masterminding the bombing of Cuban hotels and nightspots and the bombing of a Cuban airliner in 1976 which killed 73 passengers and crew members, had entered the US illegally in 2005. On April 19, he was released on bail by Texas officials and is now with relatives in Miami awaiting trial for an immigration violation on May 11. The Bush Administration is reportedly hoping to shore up its terrorist-fighting credentials by indicting him on charges related to a Havana hotel bombing, but is wary of alienating anti-Castro Cubans in Miami.

- **PACE OF DEPORTATIONS RISES AROUND THE NATION**

Over the past year, 221,684 people without documentation have been removed from the country, a 20% increase over the preceding year, according to the bureau of ICE and "a growing number of deportee families have children who were born here and are United States citizens" (*New York Times*, May 1). According to ICE, tracking down 636,000 "fugitive aliens" who have ignored orders to leave the country are its main priority (*New York Times*, March 31). Across the country newspapers have featured articles about the impact of the raids on children, who are in many cases traumatized and living in fear. According to the April 10 *New York Times*, raids such as one conducted by seven armed men in bulletproof vests on the home of the Leon family in East Hampton, New York have deepened anger and mistrust, and acutely heightened feelings of vulnerability. In the East Hampton case the federal officials burst into a house lived in by a family of third-generation immigrants who were American citizens by birth or naturalization. They were reportedly looking for the father of 12-year-old Erica Leon, who had been ordered deported after his 2003 divorce from Erica's mother and has not lived in the house since then.

- **GROUPS SUE ON BEHALF OF 6-YEAR-OLD US CITIZEN DETAINED BY ICE**

On April 16, the ACLU and other civil rights groups sued government agents for taking a 6-year-old, Kebin Reyes, into custody when they raided his family home in San Rafael, California on March 6, 2007. The agents stormed into the family's apartment, rounded up all the occupants and demanded immigration papers and passports. The boy was taken into custody even though his father Noe Reyes gave the officials a passport indicating that Kebin was an American. The father was not permitted to make calls to find someone who would look after Kebin, who was only released from a locked room 10 hours later when his uncle heard about the incident from neighbors and rushed to the ICE office.

- **UNDOCUMENTED PAYING TAXES IN RECORD NUMBERS**

According to the April 16 *New York Times*, talk of an immigration overhaul has led a record number of people to file tax returns, using individual taxpayer identification numbers (ITIN). The IRS does not inquire about immigration status. In 2005 alone tax payments using ITIN numbers instead of Social Security numbers amounted to \$5 billion.

- **BUSH WANTS MILITARIZED BORDER, GUEST WORKER PLAN**

On April 9, President Bush visited Yuma, Arizona where he condemned illegal immigration which, he said, "puts pressure on public schools and the hospitals...drains the state and local budgets...brings crimes to our communities" (*Foreign Policy in Focus*, April 12). His answer? To spend billions (the inspector general of DHS put the figure as high as \$30 billion) on lavish contracts for the defense industry to supply walls, fences, monitors, sensors, predator drones and border communications. He also has been

backing a guest worker scheme similar to the notorious bracero program of the post World War II years. The Southern Poverty Law Center recently issued a report into the current guest worker program that reveals the abusive conditions endured by workers who in some cases are virtually enslaved.

B. IN THE US CONGRESS

On Tuesday June 26 in Washington DC there will be a national DAY OF ACTION TO RESTORE LAW AND JUSTICE in Washington DC featuring a rally and mass lobbying. Let is know if you can make it! Meanwhile please ask your Members of Congress to support the legislation below if they aren't already doing so.

- **BILLS TO ROLL BACK MILITARY COMMISSIONS ACT GATHER SUPPORT**
Senator Kennedy is now a co-sponsor of Senator Christopher Dodd's **Restoring the Constitution Act of 2007 (S. 576)** which was described in the last update. Please call Senator Kerry (202 224-2742) and ask him to co-sponsor as well.

The House version of Restoring the Constitution Act of 2007 is **H.R. 1415**, which was introduced by Jerrold Nadler (D-NY) and Jane Harman (D-CA). The following Massachusetts Representatives are now co-sponsors: Capuano, Frank, McGovern, Meehan, Olver, Tierney. Please thank them! And call Reps. Delahunt, Lynch, Markey and Neal and ask them to co-sponsor: we need the entire Massachusetts delegation to push this critically important legislation forward (see contact information below).

- **MARKEY'S BILL AGAINST EXTRAORDINARY RENDITION NEEDS MORE MASSACHUSETTS CO-SPONSORS**

Of the 50 Representatives who are co-sponsors of Edward Markey's **Torture Outsourcing Prevention Act (H.R. 1352)**, only five of them are from Massachusetts: Capuano, McGovern, Meehan, Olver, Tierney. Please ask the other Massachusetts Members to sign up!

- **NO MASSACHUSETTS MEMBERS HAVE YET SIGNED ONTO CONGRESSIONAL BILLS ADDRESSING REAL ID**

Massachusetts Senators Kennedy and Kerry still have not signed onto the **Identification Security Enhancement Act of 2007 (S. 717)**, filed by Senators Akaka and Sununu (and co-sponsored by Senators Leahy and Tester). It would repeal the driver's license section of the Real ID Act and replace it with the negotiated rulemaking process established by the Intelligence Reform and Terrorism Prevention Act of 2004. Please ask them to do so - Congress needs to act against Real ID, not delay it. In the House, not a single Massachusetts Representative is among the 25 co-sponsors of **H.R. 1117, the Real ID Repeal and Identification Security Enhancement Act**, filed in the House by Rep. Tom Allen, a Democrat from Maine. This is a companion bill to the Akaka-Sununu bill.

CALL:

Senator Kennedy	(202) 224-4543	Senator Kerry	(202) 224-2742
Capuano	(202) 225 5111	Rep. McGovern	(202) 225 6101
Rep. Delahunt	(202) 225 3111	Rep. Meehan	(202) 225 3411
Rep. Frank	(202) 225 5931	Rep. Neal	(202) 225 5601
Rep. Lynch	(202) 225 8273	Rep. Olver	(202) 225 5335
Rep. Markey	(202) 225 2836	Rep. Tierney	(202) 225 8020

• BUSH PROPOSES CUTTING BACK FISA RESTRICTIONS ON SPY POWERS: WOULD EXPAND SURVEILLANCE OF AMERICANS & NON CITIZENS ALIKE

On April 13, the Bush Administration filed legislation which would allow warrantless monitoring of persons who reside in the US but are not citizens if they are thought to "possess significant foreign intelligence information." The proposal would permit all forms of electronic surveillance, and allow the FBI, NSA and other intelligence agencies to intercept foreign phone calls and emails routed through US carriers. It would extend from 72 hours to a week the time agencies would have to conduct eavesdropping before having to seek a FISA-approved warrant. It would give telecommunications companies immunity for providing information to the government (retroactive to September 11, 2001) and require that any legal challenges to surveillance operations be heard by the secret FISA court rather than in open federal court as at present. And it would let agencies keep information they capture which is not related to the reason for the surveillance rather than destroy it as the law currently requires. According to the ACLU's Jameel Jaffer, the proposed law would "not just be reforming FISA but doing away with it." Former FBI agent Mike German, who now works with the ACLU, says the bill is not just about increasing surveillance of foreigners, but is targeting Americans too, since by changing the definition of 'electronic surveillance' the Administration would be able to exempt ALL international phone calls and emails from the warrant requirement, and any communication routed through a foreign country would be fair game. "So, for example, If AOL routes an email originating in Washington, DC to a recipient in San Francisco – via Canada – the government could mine the content of that email...And let's say the government just happened to grab some of this information in violation of the law...currently it is required to destroy it. The new proposal allows the government to 'keep material that they improperly took by accident.'"

• NEW BILL WOULD REIN IN NSL POWER OF FBI

On March 28, in the wake of Congressional hearings about the FBI's abuse of its power to issue National Security Letters, Rep. Jane Harman (D-CA), the chair of the Homeland Security Subcommittee on Intelligence, introduced the "National Security Letter Judicial and Congressional Oversight Act." The bill would require a FISA judge or a designated US magistrate judge to sign off on NSLs and require the Attorney General to submit semiannual reports on NSLs to Congress.

• BYRD AND CLINTON CALL FOR A REPEAL OF RESOLUTION AUTHORIZING

THE USE OF MILITARY FORCE IN IRAQ

On May 3, legislation was filed by Robert Byrd (D-WA) and Hilary Clinton (D-NY) to "decommission" the 2002 Congressional resolution authorizing the President to invade Iraq. The legislation calls for the resolution to sunset on its fifth anniversary, October 11, 2007. It gives the President the opportunity to make the case for a "new mission" in Iraq which Congress would then have to approve.

C. IN THE COURTS

• SUPREME COURT PASSES UP CHANCE TO UPHOLD HABEAS CORPUS

On April 2, and then again on May 1, the US Supreme Court refused – for now - to hear urgent appeals of Court of Appeals' rulings denying detainees habeas corpus rights. Three justices – Breyer, Souter and Bader – dissented both times from the majority decision, arguing that the cases needed immediate attention. The refusal to hear the cases leaves intact the Military Commissions Act which had stripped detainees of their habeas corpus rights.

• JAPANESE-AMERICAN INTERNMENT CAMPS INVOKED IN BRIEF CHALLENGING DETENTION

The grandchildren of Japanese-American litigants who had challenged the government's racial detention in World War II internment camps have filed a brief to the US Court of Appeals for the Second Circuit, urging it to overturn a lower court ruling which upheld the mass detention of Muslim non citizens in the aftermath of 9/11. Holly Yasui, Jay Hirabayashi and Karen Korematsu-Haigh stated that Judge Gleeson's ruling in the case *Turkmen v. Ashcroft* "painfully resurrects the long-discredited legal theory" used to intern their grandparents (*New York Times*, April 3). Judge Gleeson had upheld the right of the executive branch to single out 'nationals of a particular country' for detention at a time of national emergency. The brief states that the ruling "overlooks the nearly 20-year-old declaration by the United States Congress and the president of the United States that the racially selective detention of Japanese aliens during World War II was a 'fundamental injustice' warranting an apology and the payment of reparations" and ignored the "tragic consequences" to families of the deference to executive power.

• PADILLA TRIAL UNDERWAY

After a federal judge refused to dismiss terrorism support charges against former "enemy combatant" Jose Padilla, the jury selection process began on April 16. The trial is expected to last until September. The Associated Press reported that a key piece of evidence in the case against Padilla came from an Afghan man, unknown to the CIA at the time, who said he found it in an Al Qaeda safehouse. It was a "mujahedden data form" signed by "Abu Abdullah al Mujahir," reportedly a Padilla alias (*Boston Globe*, March 29). The CIA is requesting that the officer who got it from the Afghan man be permitted to testify in disguise.

D. IN THE COMMONWEALTH

• STATE HOUSE OPPOSITION BUILDING TO REAL ID

On April 3, Attorney General Martha Coakley called the Real ID Act an unfunded mandate that is logistically impossible to implement. In the legislature, Senator Richard Moore has filed Senate bill 2138, "Resolutions Memorializing the US Congress on the Implementation of REAL ID" which calls on the Commonwealth of Massachusetts "to oppose any portion of the Real ID that violates the rights and liberties guaranteed under the Constitutions of the US and the Commonwealth of Massachusetts, including the Bill of Rights" and calls on the legislature not to authorize any appropriation "to further the implementation of the Real ID in Massachusetts." Maine, Idaho, Arkansas, Washington State and Montana have already passed similar resolutions through their state legislatures and many other states are considering joining the revolt. ***PLEASE ASK YOUR STATE SENATOR TO SUPPORT SENATE BILL 2138!***

• NEW BEDFORD SWEEP DETAINEE DEPORTED DESPITE RESTRAINING ORDER

The March 7 New Bedford immigration sweep continues to have local and national fallout. Lawyers for many of the more than 350 immigrants rounded up at Michael Bianco Inc. have charged that the government acted in bad faith when it moved them to detention centers in Texas, denying them adequate access to lawyers. On April 6, US District Court Judge Richard Stearns barred federal officials from deporting over a hundred of them for ten days. On April 20, after hearing new arguments from the ACLU and partner organizations, he allowed 54 of the detainees to stay in the country while their cases were being heard. On May 2, it was reported that Juan Sam-Castro, one of those in detention in El Paso Texas, had been deported to Guatemala on April 25, although he was one of the group of detainees temporarily protected by Judge Stearns' order. An ICE spokesman said it was a "case of mistaken identity." On May 1, in Boston and several other communities across Massachusetts, immigrants and supporters of immigrant rights held rallies denouncing the raids and demanding fair treatment and comprehensive reform.

• TAUNTON SCHOOLS DECIDE NOT TO FINGERPRINT STUDENTS

After some parents and the ACLU objected, the Taunton School Committee in mid April voted 7-1 to scrap plans to use a biometric fingerprint scan to enable students to pay for lunch. On April 9, James Carroll addressed the subject in a *Boston Globe* column called "Fingerprint foreboding" which urged the use of fingerprints to be reserved for criminal prosecution.

• PENTAGON ENLISTS BOSTON IN HIGH TECH TERROR FIGHT

The March 28 *Boston Globe* reported that the Pentagon's secretive Defense Threat Reduction Agency has selected Boston College and the Woburn-based Aptima Inc. to investigate whether "social network analysis" can help detect terrorist plots involving

nuclear, chemical or biological weapons. Aptima's role is "to determine if the theory can be translated into computer software that can synthesize the billions of bits of data a social network under analysis can develop" to form a kind of "early warning system."

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