

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

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## **A. EXECUTIVE ACTIONS**

### **• WHITE HOUSE ASSERTS EXECUTIVE PRIVILEGE AS IT REJECTS SUBPOENAS**

On July 9, the White House informed the House and Senate Judiciary Committees that it would not be turning over requested material related to the firings of US attorneys and had urged former staffers Sara Taylor (who testified July 11) and Harriet Miers not to comply with Congressional subpoenas. White House officials had offered to have the two testify behind closed doors and off the record, but this was rejected by the Committees. On July 11, Taylor, the former White House political director, praised the president, said she didn't recall adding prosecutors' names to a list of people to be fired, and that she never talked to the president about the firings. She refused to respond to many questions, telling the Committee that she would only testify on general matters relating to the firings if the courts deemed that the Committee's need for information outweighed executive privilege. The White House asked Miers to skip her House Judiciary Committee hearing altogether, raising legal questions about whether someone can refuse to make an appearance in response to a subpoena. White House officials had earlier refused to hand over material relating to the Administration's warrantless domestic wiretapping program. They invoked the doctrine of executive privilege, arguing that it protected White House communications "from compelled disclosure to Congress" (*Washington Post*, June 28). The subpoenas had been approved by members from both political parties, with Republican Senators Specter, Hatch and Grassley joining the majority in the 13-3 vote. The rejection of the subpoenas opens the way for a vote by the Judiciary Committees and then the full House or Senate on whether to cite White House officials for criminal contempt, leading to a possibly long court battle over executive privilege and the separation of powers. The term "executive privilege" was first used in the Eisenhower administration. President Nixon tried – and failed – to use it to avoid handing over his taped recorded conversations to an independent counsel. In 1974, the Supreme Court ruled in the matter that executive privilege was limited to the president, not his staff, and could be set aside if the need to do so was demonstrated. Since 1975, some 10 executive branch officials have been cited for contempt for refusing to respond to subpoenas, but in all cases deals were worked out before the initiation of criminal proceedings. (*See also In the US Congress, below*).

### **• TESTIMONY ON NSA WIRETAPPING RATTLES WHITE HOUSE, CATCHES GONZALES IN A LIE**

James Comey, a former deputy attorney in the Justice Department who was acting Attorney General when then-Attorney General John Ashcroft was hospitalized in 2004, was supposed to be giving testimony on the firing of US attorneys and politicization of the Justice Department. Matters got off track on May 15 when he mesmerized a Senate hearing with the story of a nighttime visit by then-White House counsel Alberto Gonzales and then-White House chief of staff Andrew Card to Ashcroft's bedside on March 10, 2004. Their intent was to do an end run around Comey as the acting attorney

general and get Ashcroft to recertify the legality of the Administration's warrantless domestic spying program that had been initiated in October 2001. According to Comey, he and other Justice Department lawyers had already termed the program "legally indefensible." Comey said he had raced to the hospital when he heard Gonzales and Card were on their way and asked FBI director Robert Mueller to tell his agents not to let Card and Gonzales evict him from the room. With Comey standing nearby, the "barely conscious" Ashcroft refused to give his signature. "I thought I just witnessed an effort to take advantage of a very sick man...I couldn't stay, if the administration was going to engage in conduct that the Department of Justice had said had no legal basis" (*Washington Post*, May 16). Comey testified that he, along with Mueller and possibly Ashcroft himself would step down if the White House insisted on implementing the illegal spying program. He said that when the possibility of mass resignations became known, the president stepped in and agreed to make certain unspecified changes to the program which would allow the Justice Department to certify its legality. Under oath, Gonzales had testified before the Senate Judiciary Committee in February 2006 that there had been no serious disagreement with Comey or others in the Administration about the warrantless domestic spying program.

- **GONZALES LIED ABOUT MEETING TO DISCUSS FIRING US ATTORNEYS**

Attorney General Gonzales clung to his decision to tough out the furor over the politicization of the Justice Department as his former senior counselor Monica Goodling, a 33-year-old "right-wing true believer" in the words of the May 24 *New York Times*, testified under oath before the House Judiciary Committee that she had "crossed the line" by using political criteria in hiring decisions. Minimizing her role in the firing of nine US attorneys, Goodling – who gave her testimony after receiving immunity from prosecution – described a March meeting with the Attorney General in which the public controversy over the firings was discussed in a way that made her "a little uncomfortable." The Attorney General had earlier told Congress that he had not participated in any discussions about the firings. Goodling hedged when asked whether Gonzales was trying to "shape" her recollections.

- **GONZALES LIED ABOUT FBI VIOLATIONS OF PATRIOT ACT**

On April 27, 2005, as Congress was debating whether to reauthorize the USA Patriot Act, the Attorney General assured Members that there "has not been on verified case of civil liberties abuse" by the FBI using its new PATRIOT Act powers (*Washington Post*, July 10). But in the days and months before his testimony, he had received several FBI reports detailing Bureau abuses under the Act, including its wrongful use of National Security Letters, unauthorized surveillance, an illegal property search, and the seizure of property it was not entitled to collect, according to internal FBI documents obtained under the Freedom of Information Act. He continued to receive reports about FBI violations after the PATRIOT Act was reauthorized. Still, he managed to express surprise when the Justice Department's Inspector General reported that there were "pervasive problems" with the FBI's use of NSLs and other powers. In a letter of March

9, 2007, the Attorney General said how upset he was at what he learned, having believed that there were no problems with the way the NSLs were being used: "I've come to learn that I was wrong."

• **FBI REPEATEDLY VIOLATED LAW IN NATIONAL SECURITY INVESTIGATIONS**

According to an internal FBI audit, the FBI has violated the law or its own rules more than a thousand times in collecting data about domestic phone calls, emails and financial transactions. The audit – which examined just 10 percent of the FBI's national security investigations since 2002 – confirmed findings of an earlier report by the Justice Department's Inspector General that the agency had been misusing National Security Letters (NSLs) and other investigated tools provided by the USA PATRIOT Act. There were more than 700 violations in which telephone companies provided information that exceeded what the FBI had asked for through its NSLs. Rather than destroying the additional information, the FBI added it to its databases (*Washington Post*, June 14).

• **CHENEY UNMASKED: POST PAINTS CHILLING PORTRAIT OF THE 'DEMANDER'**

On June 24, 25 and 26, *Washington Post* reporters Barton Gellman and Jo Becker penetrated the secrecy surrounding the "nation's most powerful vice-president," who recently has claimed to be neither entirely part of the executive nor a part of the legislative branch of government, and hence exempt from the rules that apply to both. They describe how Cheney and his shrinking band of men (which once included Rumsfeld, Scooter Libby, Bolten, Addington, Flanigan and Yoo) created the tools (Guantanamo, secret detention, extraordinary rendition, harsh interrogations, military commissions, domestic warrantless wiretapping) to fight "war on terror" and handed Bush memos to sign. And despite some push back by other members of the Administration and the courts, those tools remain intact. Cheney, a veteran of the Iran-Contra scandal, has worked relentlessly to expand the powers claimed for the executive branch. He and his loyalists have picked the justices to serve on the Supreme Court, designed the tax cuts for the wealthy, and kept his role in shaping energy policy hidden even from top Bush advisors. If Bush is the self-proclaimed "decider," Cheney is the "demander" who invariably gets his way and is to date beyond accountability.

• **CHENEY BACKS AWAY FROM "DUAL ROLE" ARGUMENT**

As the *Washington Post* ran its series on him, the vice-president backtracked from a novel justification for withholding data requested by the Information and Security Oversight Office, a unit of the National Archives. His chief of staff David Addington had been asserting that because national archivists only oversee the handling of classified data in the executive branch, Cheney's dual role as vice president and as president of the Senate meant that he was not technically part of the executive branch and could not come under National Archives oversight. The heat built up when Congressional critics asked how in that case he could continue to invoke executive

privilege as an explanation for the extreme secrecy surrounding his operations? Cheney has refused to disclose even the size of his staff. He has had his visitor logs designated as presidential to put them beyond the records subject to the Freedom of Information Act, and required them to be destroyed by the Secret Service. According to the June 1 Associated Press, Cheney and the White House staff have found numerous "creative ways" to keep information from journalists and the public. On June 26 and 27, his staff reversed itself, and argued that he was not required to cooperate with National Archives officials because he IS a member of the executive branch and "it's not appropriate for a subordinate officer like that to investigate or require reporting from the enforcer of the executive order" (*New York Times*, June 28).

- **PRESIDENT WILL LEAD IN A "CATASTROPHIC EMERGENCY"**

On May 9, the White House released a "National Security and Homeland Security Presidential Directive" subtitled "National Continuity Policy." It ensures "continuity of Federal Government structures and operations" in case of a "catastrophic emergency" (defined as "any incident, regardless of location, that results in extraordinary levels of mass casualties, damage, or disruption" – would this include another Katrina?) by designating the president to "lead the activities of the Federal Government for ensuring constitutional government" and designating the "Assistant to the President for Homeland Security and Counterterrorism" (who is currently Frances Townsend) as "National Continuity Coordinator." It contains several classified "Continuity Annexes." When it was first made public, the plan received very little media coverage. Charlie Savage in the June 2 *Boston Globe* surveys the concerns that have been raised in the weeks since its public release, including the fact that it does not reference existing checks and balances on the president's power to impose martial law and such legislation as the National Emergencies Act, "a post-Watergate law that gives Congress the right to override the president's determination that a national emergency still exists, activating the president's emergency powers."

- **ADMINISTRATION REFUSES TO ENFORCE LAWS**

The Government Accountability Office has investigated a "representative sample" of 19 laws which have been subjected to signing statements by President Bush and discovered that at least a third of them have not been implemented. The president has used the signing statements to challenge more than 1,100 sections of bills, according to Charlie Savage in the June 19 *Boston Globe*.

- **FORMER FISA HEAD CLAIMS COURT CAN MOVE QUICKLY TO ISSUE WARRANTS**

FISA judges rarely speak in public about their work on the secret court. But in late June, US district court judge Royce C. Lamberth, who was the chief judge FISA court judge from 1995-2002, told the American Library Association convention that "we changed procedures and put in all the orders from September 12 forward based on the oral briefing with the director of the FBI and the chief judge of the FISA court. The courts

can respond in times of national crisis, and I think the courts have to, and we did." The Bush Administration has justified its warrantless domestic spying on grounds that the FISA court is not nimble enough in national security matters. Lamberth, a Reagan-appointee to the federal bench, said the FISA court had approved almost 99 percent of warrant applications from the government and claimed that "what the president did with the NSA" was "a worse way" to conduct surveillance. "We have to understand you can fight the war [on terrorism] and lose everything if you have no civil liberties left when you get through fighting the war....what we have found in the history of our country is that you can't trust the executive."

- **WILL BUSH CLOSE GUANTANAMO?**

Early in June, former secretary of state Colin Powell added his voice to those calling for the closure of the detention camp because it has become a major problem in "the way the world perceives American" (*Washington Post*, June 11). He told NBC's "Meet the Press" that he would move the detainees to the US, and saw no problem in giving them access to lawyers and habeas corpus – "Isn't that what our system is all about?" For the next 10 days there was ample media speculation about the debate over Guantanamo reportedly being waged within the Administration, with Secretary of Defense Gates and Secretary of State Rice taking Powell's position while Cheney and Gonzales insisted that Guantanamo stay in business. Upwards of 375 detainees remain there, with three transferred to the prison in the last few months. Commander Jeffrey Gordon, a Defense Department spokesman, acknowledged that the government does not have enough evidence to try most of them in the federal court system and maintained releasing them would be foolhardy: "It would be difficult to secure prosecutions against the majority of them, but they are dangerous enough that we don't want them to become the next hijacking crew" (*Boston Globe*, June 11). On July 3, the *New York Times* reported that the White House was exploring with Congress legislation that would permit the long-term detention of foreign terrorism suspects on US soil without bringing them under full constitutional protection. Guantanamo detainees would be divided into 3 categories: a group of up to 50 who would be housed indefinitely in military briggs; a second group who could face trial in military courts; and a third group to be released to their home countries. A July 11 *New York Times* op ed making a similar proposal was drafted by Harvard law professor Jack Goldsmith and Georgetown law professor Neal Kaytal, an attorney who successfully represented Guantanamo detainees before the Supreme Court in 2006. The Administration may want to resolve the matter before the Supreme Court again rules on Guantanamo (see "*In the Court's below*").

- **ROMNEY WANTS GUANTANAMO TO BE DOUBLED IN SIZE**

This is what former Massachusetts governor Mitt Romney said during a presidential debate on May 15. He added that he would support "not torture but enhanced interrogation techniques" (*New York Times*, May 16).

- **MILITARY JUDGES THROW OUT GUANTANAMO CASES**

Military judges presiding over Guantanamo's Military Commissions have dismissed war crime charges against two detainees, ruling that the Military Commissions Act of 2006 lacked jurisdiction because it was limited to cases involving "unlawful enemy combatants." The two detainees appearing before the judges had been termed "enemy combatants," not "unlawful enemy combatants" by Combatant Status Review Tribunals. The cases involved a Canadian, Omar Khadr, who was only 15 when he was captured, and Osama bin Laden's driver Salim Ahmed Hamdan. According to the June 3 *New York Times*, among the charges against Omar Khadr are acts that occurred when he was younger than 10 years old. His lawyers say the teenager was subject to physical and psychological torture by interrogators and threatened that he would be sent to Egypt to be raped if he did not cooperate. The only other detainee who has been charged with war crimes under the Military Commissions Act was David Hicks, who has a few more months of his sentence to serve in Australia after reaching a plea bargain with US officials. Congress is now figuring out how to fix the Military Commissions Act (*see "In the US Congress" below*).

• **ARMY OFFICER SAID COMBATANT STATUS REVIEW TRIBUNALS DEEPLY FLAWED**

Lieutenant Colonel Stephen Abraham, who was a member of a Guantanamo Combatant Status Review Tribunal (CSRT) that decided whether detainees were "enemy combatants," revealed in an affidavit that when he and his fellow officers on the panel ruled that a particular detainee should not be classified as an "enemy combatant," they were told to reopen the hearing so the government could present more evidence (*Boston Globe*, June 23). An army intelligence officer since 1982, Abraham stated that the intelligence agencies routinely screened the information he was allowed to see during a CSRT hearing and refused to give him a statement certifying that they had not withheld evidence that could point to a detainee's innocence.

• **GUANTANAMO DETAINEE COMMITS SUICIDE**

Abdul Rahman Ma'ath Thafir al-Amri was a Saudi army veteran who reportedly trained with US forces before fighting with the Taliban. Imprisoned at Guantanamo since February 2002 without meeting with a lawyer or being charged with a crime, he was found dead in his cell on May 30, an apparent suicide. He was a persistent hunger striker, and at one point weighted only 88 pounds. "The public record of the accusations against Mr. Amri show contradictory and inconclusive elements like many of the detainees' cases," according to the June 1 *New York Times*. Three detainees committed suicide in their cells on June 10, 2006.

• **QUESTIONS RAISED ABOUT GUILT OF US RESIDENT IN GUANTANAMO**

In 1999, Majid Khan, the son of a Pakistani gas station owner, was a senior in high school in Baltimore. In 2003, he was seized from his bed in a Karachi flat and spent the next three years in secret CIA custody before being moved to Guantanamo in the summer of 2006, where he has twice tried to kill himself by chewing through an artery in

his elbow (*Boston Globe*, May 16). During his Combatant Status Review Tribunal hearing, he insisted that he was not a member of Al Qaeda, was not planning to blow up gas stations and bridges in the US, and repeatedly demanded a lawyer. In written evidence, three witnesses denied they had ever made statements that the government attributed to them. One of those witnesses was Iyman Faris, who was convicted of plotting to bring down the Brooklyn Bridge with an acetylene torch and is now serving 20 years in prison. He wrote that he had implicated Khan only because the government had threatened to take him to Guantanamo if he did not give other names, and that he had visited the Khan family residence to discuss investing in the family's gas station business, not a terrorist plot.

• **NEW BOOK DESCRIBES GERMAN CITIZEN'S FIVE YEARS IN GUANTANAMO**

Murat Kurnaz, a German born of Turkish parents, has written an account of being kidnapped off a bus in Pakistan when he was 19 years old, and his subsequent rendition, torture, detention and interrogation by US forces. His book, which will be published in English early next year, is *Fünf Jahre meines Lebens: Ein Bericht aus Guantanamo (Five Years of my Life: a Report from Guantanamo)*. He describes being hanged by his hands in Kandahar "for hours and days"; while he was suspended in agony he says a man died as he was left hanging in an adjacent room – he watched as the color of his body changed. He claims to have been subjected to waterboarding, electric shock and routine beatings and constant humiliation, and says he was told he was sold to the Americans by Pakistani police for a \$3,000 bounty. "They didn't have any big fish," he writes. "And they thought that by torture they could get one of us to say something. 'I know Osama' or something like that. Then they could say they had a big fish" (Lou Dubose, *The Washington Spectator*, July 9). Kurnaz' case had received attention in the US in 2005, when classified evidence used against him in his Guantanamo Combatant Review Status Tribunal hearing was inadvertently declassified and obtained by the *Washington Post*. After it was reviewed by federal district Judge Joyce Hens Green, she ruled that nothing justified holding him in prison. In her opinion (some of which was redacted) she condemned the government's lack of evidence and sloppy prosecution of Kurnaz, but he remained in his Guantanamo cage. Only public pressure in Germany which led the German Chancellor to take up the matter with President Bush led to his release in August 2006. He was flown back to Germany, shackled for 17 hours and wearing goggles, a soundproof headset and mask that covered his mouth, with no idea where he was going and subjected to curses by his American guards. "They treated me the same as always," he says. "Like I was the number one terrorist."

• **EXPERTS SAY US INTERROGATION METHODS OUTMODED AND UNRELIABLE**

Psychologists and other specialists commissioned by the Intelligence Science Board argue that the interrogation tactics used by the CIA and Pentagon are ineffective at producing good intelligence. While President Bush claims "enhanced" interrogation methods are essential and the television series "24" reinforces this message every week,

former Air Force interrogator and trainer Steven Kleinman pointed out that during World War II, German and Japanese prisoners were effectively questioned without coercion by experienced interrogators who spoke their language, knew their culture, had graduate degrees in law and philosophy, and prepared for 4-6 hours for each hour of questioning (*New York Times*, May 30). By contrast, he said, today's inexperienced interrogators were "amateurish," were ignorant of the culture of those they were interrogating and forced to rely on translators. A CIA spokesman said officers "consulted counterparts in Egypt, Saudi Arabia, Israel and other countries to compile a 'catalog' of techniques said to be effective against Arab and Muslim prisoners" and that these techniques had disrupted terrorist activities and saved lives.

- **SECURITY OFFICIALS SAY CIA HAD SECRET PRISONS IN EUROPE**

Despite denials by their governments, senior security officials in Poland and Romania and disaffected CIA agents have told the Council of Europe that the CIA maintained secret prisons in their countries to interrogate 9/11 detainees. After a 19-month investigation, the Council of Europe has also confirmed that soon after 9/11, NATO signed an agreement with the US allowing the CIA's civilian jets involved in rendition to cross member states' airspace. According to the June 8 *New York Times*, which received an advanced copy, the report states that prisoners in secret jails were subjected to sleep deprivation and simulated drowning. "High value" detainees were sent to the main CIA prison in Poland in a Soviet-era military compound, while lower-level prisoners were held on a military base near the Black Sea in Romania. Jails were staffed entirely by the CIA. The report states it could not rule out the possibility of CIA jails in other European countries.

- **HUMAN RIGHTS GROUPS DEMAND TO KNOW WHEREABOUTS OF "DISAPPEARED"**

In early June, Amnesty International, the Center for Constitutional Rights, Human Rights Watch and three other human rights groups released a list of 39 people they say are being secretly imprisoned by the US. They accused the US of "disappearances" similar to those carried out by Latin American dictators. A CIA spokesman countered that "the plain truth is that we act in strict accord with American law" and "have been very effective in disrupting plots and saving lives" (*New York Times*, June 7). Several of the organizations have filed a Freedom of Information Act lawsuit seeking the immediate release of documents pertaining to extraordinary rendition and "ghost detainees."

- **TRIAL OF CIA AGENTS SUSPENDED BY ITALIAN JUDGE**

On June 18, an Italian judge suspended until October 24<sup>th</sup> the trial of 26 Americans and 7 Italians accused of kidnapping an Egyptian cleric from a street in Milan in February 2003. The judge is waiting for a ruling from the Constitutional Court after the Italian government asked it to throw out the indictments.

- **UIGHURS STRANDED "LIKE ORPHANS" IN ALBANIA**

Five members of China's Uighur ethnic minority who spent four years in Guantanamo before being released as innocent have spent more than a year in a run-down government refugee center in Tirana, unable to speak the language or get work permits. A lengthy article in the June 10 *New York Times*, coinciding with President Bush's trip to Albania, documents the plight of the men. A further 17 Uighurs remain in Guantanamo, although 15 have been cleared for release, some as long ago as late 2003. The US had asked almost 100 countries to offer the detainees asylum, but under pressure from China, they said no. After US officials rejected moving them to the United States, Albania appeared the only option, but refuses to accept more. The US State Department's 2006 human rights report describes the discrimination faced by Uighurs in China, which regards them as separatists, has repressed their Muslim religion and executed many of them.

- **AMNESTY REPORT SAYS US HARMING HUMAN RIGHTS AROUND THE WORLD**

Torture, extraordinary rendition, secret prisons and other measures undertaken in the name of the "war on terror" have undermined human rights globally, according to a report on human rights practices world-wide released on May 23 by Amnesty International. "When countries like the US are seen to undermine or ignore human rights, it sends a very powerful message to others," said Amnesty's Secretary General Irene Khan (*Boston Globe*, May 24).

- **SURVEYS SHOW LEADING "WAR ON TERROR" ALLIES DISLIKE US; RANK IT AS BIGGEST THREAT**

A Pew global survey of attitudes towards the United States reveal that it has an 80 percent or higher approval rating in three African countries. But that plunges to 51 percent in Britain, 39 percent in France, 34 percent in Spain and only 30 percent in Germany. In key "war on terror" countries – Egypt, Jordan, Pakistan, Turkey – the approval rating ranges from 21 percent to 9 percent (*Boston Globe*, July 10). A Harris Research poll conducted for the *Financial Times* showed that 32 percent of respondents in five European countries regard the US as the biggest threat to global stability in the world. In Spain, 46 percent called the US the biggest threat, while in the US itself the figure declines to 11 percent (*Financial Times*, UK, July 1).

- **DHS HURT BY HIGH-LEVEL VACANCIES AT TIME OF RISING FEARS OF ATTACK**

About a quarter of the leadership positions in the Department of Homeland Security remain unfilled, creating what the Office of Personnel Management has called a "gaping hole" in the nation's readiness for a terrorist attack. Of the 138 senior positions that are vacant, DHS provided no explanation for 70. DHS is heavily dependent on private contractors and the politicization of appointments in FEMA, and its legal, policy, immigration and intelligence sections has reportedly hurt staff morale (*Washington Post*,

July 9). US intelligence analysts have meanwhile concluded in their latest threat assessment that Al Qaeda has rebuilt its operating capacity and is "better positioned to strike the West" (*Boston Globe*, July 12). "We see more training. We see more money. We see more communications. We see that activity rising."

• **GAO SAYS DHS IS BREAKING PRIVACY LAWS IN ITS USE OF AUTOMATED TARGETING SYSTEM**

A report issued on May 17 by the Government Accountability Office accuses the Customs and Border Protection agency of the Department of Homeland Security of failing to comply with privacy laws by never publicly disclosing the way it uses personal information to prescreen passengers and detect those who may pose as a security risk. The government requires international carriers to share credit and other information about travelers before they enter or leave the US. The data is then fed into several large government and commercial databases and an Automated Targeting System uses "indicators of possible illegal or other activities" to form a risk assessment for each passenger, US citizens and non citizens included. DHS intends to keep these assessments on file for at least 40 years.

• **EXPLOSION IN GOVERNMENT SECRECY THREATENS DEMOCRACY**

In the June 10<sup>th</sup> *Washington Post*, journalism professor Ted Gup, author of *Nation of Secrets: The Threat to Democracy and the American Way of Life*, documented the alarming increase in the government's resort to secrecy. 3.6 million new documents were classified as secret or top secret in 1995; that number had risen to 14.2 million a decade later. "That works out to 1,600 classification decisions every hour, night and day, all year long...Managing this behemoth has required a vast expansion in the ranks of those cleared to deal in secrets. By 2004, the line of 340,000 people waiting to receive a security clearance would have stretched 100 miles... And the cost of security those secrets is -- much as \$7.7 billion in safes, background checks, training and information security -- is about equal to the entire budget for the Environmental Protection Agency....The abuse of secrecy is emboldened by technology, which hands those who would stymie transparency a powerful new tool. Federal courts have adopted an electronic management system that is the gateway to about 26 million cases...the system was given a default setting that responds 'Case Does Not exist' whenever anyone inquires about sealed cases. Among the cases whose existence the system would deny are many in which leading US corporations -- including Ford, General Motors, America Online, Sprint, McDonnell Douglas, Goodyear and Sunbeam -- are defendants....Courts that once served as an effective warning system for public dangers now collude in suppressing them." He goes on to describe the myriad other ways information is being put beyond the reach of the public, and warns that "without timely information, citizens are reduced to mere residents, and representative government atrophies into a representational image of democracy as illusory as a hologram."

• **"FAMILY JEWELS" FINALLY RELEASED BY CIA**

On June 26, the CIA released 702 pages of heavily-censored documents relating to its domestic misdeeds of the Cold War era. The documents, called the "family jewels" by the agency because of their notorious nature, had been read by various congressional committees in the 1970s. From the 50s to the early 70s the then-fledgling CIA - which was not supposed to operate within the US - had an index of 300,000 American individuals and groups, extensive files on 7,200 citizens, had infiltrated peace groups, spied on dissenters and journalists, opened first class mail, monitored phone calls, carried out mind-control experiments and engineered assassination plots and coup attempts (among other activities) in foreign lands. CIA director Gen. Michael Hayden said that the release of the documents was part of the CIA's "social contract" with the American public "to give those we serve a window into the complexities of intelligence" (*New York Times*, June 27). We have yet to learn whether the 21<sup>st</sup> century CIA is simply engaging in business as usual – or going beyond the bounds of its earlier illegal acts.

- **CIA GENERAL COUNSEL THINKS "FAR TOO MANY PEOPLE KNOW FAR TOO MUCH"**

John Rizzo, the general counsel for the CIA, served in that position for more than a year without being confirmed because the Republican head of the Senate Intelligence Committee feared too many secret documents would be demanded by Democrats in a confirmation hearing, according to a June 24 *New York Times* editorial. When that hearing finally took place in June, Rizzo called the Administration's very narrow definition of torture "overbroad" and refused to say if the US had ever sent a prisoner to another country knowing he would be tortured.

- **FBI TO TARGET TERRORISTS THROUGH COMPUTER PROFILING**

The FBI, which has for years been unable to fix its own computer system, is preparing to target terror suspects – both foreign and citizen - through the System to Assess Risk (STAR) which is being developed by its Foreign Terrorist Tracking Task Force. STAR assigns risk scores according to various criteria. A person's score would rise if he or she comes from a certain country of origin and his or her name matches one on a watch list. Once flagged by STAR, that person would then be subjected to data mining using information obtained from commercial brokers like ChoicePoint and Accurint and government sources (*Washington Post*, July 11). According to the July 10 *New York Times*, the FBI is also using other data mining programs to search for insurance cheats, health care fraud, housing fraud and other criminal activity. The ACLU expressed concern about flawed information contained in the data bases, fearing that information that is not accurate could have "profoundly negative consequences for the individuals who are wrongly identified as potential terrorists."

- **NEW INTELLIGENCE CENTER ESTABLISHED TO DEVELOP NEW SPY TOOLS**

A new government body called Intelligence Advanced Research Projects Activity (IARPA) has been set up at the University of Maryland to sponsor research at university, national labs and other organizations to develop "groundbreaking technology" for 16 US

spy agencies, according to the May 31 *New York Times*. The government is supporting research into whether technology can enable law enforcement to surreptitiously photograph people on buses, trains and planes and then instantly check to see whether they are in terrorist databases using improved face-recognition technology.

• **"HUGE ESPIONAGE-INDUSTRIAL COMPLEX" IS IN THE MAKING, MUCH OF IT PRIVATIZED**

According to Patrick Radden Keefe writing in the June 25 *New York Times*, since 9/11 "government spymasters outsourced everything from designing surveillance technology to managing case officers overseas. Today less than half of the staff at the National Counterterrorism Center in Washington are actual government employees" and contractors at the CIA station in Islamabad outnumber employees by three to one. In 2002, the National Security Agency had cleared 41 "contractor facilities"; in 2006, that number was 1,265. "It was a gold rush, a national security bubble," with military-industrial giants getting giant contracts for projects that have in some cases turned out to be giant boondoggles. "Many contracts are 'cost plus,' meaning that there will be no penalty if a contractor wildly exceeds the initial projection. Better still, a contractor can break something, then bid for the job of putting it back together...The orthodoxy of privatization – that it's the government that's mired by inefficiency and a lack of competition – has been turned on its head in the intelligence industry."

• **WHAT NEXT FOR VIDEO SURVEILLANCE IN WAKE OF FAILED TERRORIST ATTACKS?**

The estimated 500,000 closed-circuit TV cameras in London (there are more than 4 million in the UK) may not have been able to stop the men who wanted to set off bombs in the West End night club district and the Glasgow airport in late June. It was old-fashioned personal observation that detected smoking cars filled with canisters of gasoline and nails. And according to the July 8 *New York Times*, the omnipresent cameras have not prevented a rise in violent crime in London. But camera images have helped in subsequent investigations and given public fears, "in the perennial tug of war between security and privacy, security seems to be winning. The next wave in CCTV, experts say, is to marry traditional surveillance with computer software to make cameras better at detecting suspicious behavior that can be the precursor to a crime." Cameras that detect "suspicious mannerisms" and "facial tics" are being developed. And meanwhile tens of thousands of surveillance cameras are being installed in American cities, with as many as 3000 "smart cameras" that flag suspicious behavior being sited in New York City's Lower East Side.

• **FEW TERRORIST SUSPECTS LOCATED, DEPORTED**

Immigration agencies say antiterrorism is its primary mission. But according to a recent study compiled by the Transactional Records Access Clearinghouse of Syracuse University, of the 814,973 people that the Bureau of Customs and Border Protection and Immigration and Customs Enforcement sought to deport from the country between 2004

and 2006, only 12 individuals were suspected of terrorism. Over 100,000 faced deportation for such charges as human trafficking, drug dealing and other crimes, while the great majority of cases – 86 percent – were for overstaying visas or trying to sneak into the country.

• **TERRORIST PLOT "MORE TALK THAN ACTION"**

That is how the law enforcement claim that four terrorist suspects wanted to detonate fuel storage tanks and pipelines at Kennedy International Airport was described in the June 4 *New York Times*. A law enforcement officer described 63-year-old Russell Defreitas – the chief plotter who had little money and no known training in planning a terrorist attack – as "capability low, intent very high." Defreitas is a US citizen born in Guyana. Other plotters who were arrested in early June 2007 were from Trinidad and Guyana. Defreitas had been befriended by an unidentified undercover informant and convicted drug trafficker, whose sentence was pending as part of his cooperation agreement with the federal government.

• **TERRORIST CHARGES BROUGHT AGAINST SIX SUSPECTS**

Fifteen months after a video store clerk alerted police to a videotape that showed a group of men firing weapons and calling for jihad, six men termed "radical Islamists" who were living in New Jersey were arrested and charged with conspiring to attack Fort Dix. One of them delivered pizzas to the military base and reportedly said, "You can hit an American base very easily" (*Washington Post*, May 9). The group had been infiltrated by paid informers who taped many of their conversations. One of the informers was looked up to for leadership in obtaining weapons, although suspects seemed taken aback by the heavy weaponry he said he could obtain and only wanted to purchase machine guns (*New York Times*, May 10). The men were arrested when they attempted to buy assault weapons supplied by the FBI. Most were from the ethnic Albanian region of Macedonia.

• **ROLE OF PAID INFORMERS PROBED**

On May 29, the *Washington Post* profiled Osama Eldawoody in a piece headlined: "The Informer: Behind the Scenes, or Setting the Stage?" The Egyptian immigrant served as a paid informer for the New York Police Department (NYPD) in 2003 and 2004, and helped put Shahawar Siraj in prison for 30 years for plotting to bomb a subway station. Siraj's supporters say that Siraj had been goaded into the plot by Eldawoody, and played along with a man he believed was his closest friend. Siraj, who was 21 years old when he came to the attention of the informer, was upset by the war in Iraq and the abuses of Abu Ghraib. Eldawoody wove for him a story of a fictitious group in upstate New York, the Brotherhood, which he said would supply explosives if Siraj would place them in the subway. In the last recorded video taken inside Eldawoody's car, Siraj said he didn't want to place the bomb himself and would have to ask his mother for permission. Eldawoody, who now is in hiding for his own safety, had regularly monitored New York mosques, attending some 585 prayer services, sometimes several a day. He was

paid \$25,000 for work over 13 months, and \$75,000 during the 20 months leading up to Siraj's trial. The NYPD paid his relocation costs, and now covers his rent and pays him \$3,200 a month, an arrangement that will continue indefinitely. Reportedly there were at least three undercover men working in the mosque where Siraj prayed.

- **CIVIL RIGHTS COMPLAINTS FILED BY MUSLIMS SHARPLY UP**

According to a report by the Council on American-Islamic Relations, there has been a steep rise (from 1,972 in 2005 to 2,467 in 2006) in the number of discrimination complaints filed by Muslims against the Department of Homeland Security and Justice Department. The complaints filed against government agencies exceeded the number of hate crime complaints. The Pew Research Center published the results of a nationwide poll in May that indicated 53 percent of Muslims living in the US believed their lives had become more difficult since 2001 because of discrimination and government surveillance. In April, the Center for Human Rights and Global Justice at NYU Law School issued a report that found the US government is illegally delaying the naturalization applications of thousands of immigrants by profiling individuals it perceives to be Muslim and subjecting them to indefinite security checks.

- **JUSTICE DEPARTMENT SHIFTS FOCUS FROM CIVIL RIGHTS TO RELIGION**

Its involvement in racially-based civil rights and voting rights cases is down and pursuit of religion-based discrimination cases way up, according to the June 14 *New York Times*. Among its priorities is the vigorous enforcement of a 2000 law allowing churches to be free of some local zoning restrictions and supporting groups that want to send religious literature home with children. As a reflection of its new slant, there has been a notable increase in hirings from religious-affiliated institutions, with an emphasis on "conservative and religious bona fides."

- **FINGERPRINTING DOOMS US-CANADA "SHARED BORDER MANAGEMENT"**

Because Canadian law precludes fingerprinting people unless criminal charges have been filed, Canadian officials refused to accept Washington's demand that it fingerprint travelers on Canadian soil who approach but do not cross the border. The US government insists on taking that individual's fingerprints and comparing them with terrorist and criminal databases, storing them for future use. As a result of the impasse, plans to build a screening facility just over Peace Bridge from Buffalo have been abandoned, angering Canadian business groups.

- **DEADLINE FOR US PASSPORTS EXTENDED**

As long as US citizens can show a receipt demonstrating that they have applied for passports, they should be able to visit Canada, Mexico, Bermuda and the Caribbean this summer. A new passport requirement took effect in January, causing a surge in the demand for passports. By June, people who had applied for passports as long ago as February and sometimes paid an extra fee for expedited service had still not received

them (*New York Times*, June 7). The Department of Homeland Security had opposed any delay in the requirement that US citizens show passports when traveling from Mexico or Canada, saying it puts the nation's borders at risk. But with the State Department staff, capacity and communications overwhelmed by requests for passports and frantic phone calls wondering why they hadn't been received, officials issued a reprieve until September 30.

- **EU CITIZENS TO BE COVERED BY US PRIVACY ACT**

The European Community has struck a deal with the US for the US Privacy Act to apply to the pieces of recorded data (to be reduced from the current 34 to 19) that are transferred to US authorities before flights depart to the US. The data can be kept for a maximum of 15 years, but will become "dormant" after 7 years and only be accessed on a case-by-case basis. It is not clear whether US authorities have abandoned a controversial proposal to require Europeans to fill out an online questionnaire two days before they want to enter the US. This online registration would complement the Automated Targeting System that assigns a "risk assessment" to people entering or leaving the US.

- **AIRPORT WORKERS FILE SUIT AGAINST TSA**

Angered by the Transportation Security Administration's response to the loss of Social Security numbers and payroll information for some 100,000 of its employees, airport security screeners in the American Federation of Government Employees have filed a class action suit in US district court in early May. The external hard drive containing the data went missing from a controlled area at the TSA Headquarters Office of Human Capital.

- **MANY FEDERAL AGENCIES FLUNK COMPUTER SECURITY TEST**

A computer security report card evaluating the performance of 24 federal agencies to ensure the security of their computer systems failed 8 of them – including the Department of Defense, the Nuclear Regulatory Commission, the Department of State and the Department of Treasury. The Department of Homeland Security got a D rating (*Computerworld*, April 12, 2007).

- **"GITMOS ACROSS AMERICA"**

This was the headline of a June 27 *New York Times* editorial concerning the "boom in immigration detention – the nation's fastest-growing form of incarceration" which "ensnares people for dubious reasons, denies them access to medicine and lawyers and sometimes holds them until they die." Among the 62 people who have died since 2004 "while being held in a secretive detention system, a patchwork of federal centers, private prisons and local jails" are legal permanent residents who were deprived of essential medication. The editorial attacks Senator Lindsey Graham's proposal to impose mandatory detention for everyone who overstays a visa: "It's a huge overreach that threatens to swamp the detention system, filling already-strapped prisons at great expense and inevitably leading to more abuses and deaths." Currently, 230,000

immigrants are detained every year, at an annual cost of \$1.2 billion.

- **AFTER FAILURE OF IMMIGRATION BILL APPLICATIONS FOR CITIZENSHIP SURGE**

After "raging conservative criticism" (*LA Times*, June 5) and a mass outpouring of xenophobia doomed the Senate immigration reform bill, one thing seemed certain: times will be rough for immigrants in the months and years ahead. Before the bill died, 63 percent of Americans, including a majority of those who identified themselves as Republicans, had favored offering undocumented immigrants a pathway to citizenship, according to the June 13 *Los Angeles Times*. This year, as immigration raids occurred around the country, a record number of applicants have applied for US citizenship, including many filed by immigrants who have enlisted in the US army as a fast track to citizenship. A huge number of would-be Americans find their applications on indefinite hold because of backlogs in FBI security checks. Since 2005, some 329,160 people, many from Muslim countries, are living in limbo while awaiting the results of security clearance, restricted in their ability to travel, work, vote and access credit and various federal programs (*Washington Post*, June 17).

- **FEES FOR VISAS AND CITIZENSHIP APPLICATIONS GOING UP**

Starting on July 30, the fees for applicants who apply to be legal permanent residents will go up 155 percent. The fee to become a US citizen will increase 66 percent. The US Citizenship and Immigration Services agency says it hope it can then upgrade its computer systems and reduce the average time for processing visa applications.

- **LOCALITIES SEEK TO PUNISH – AND PROTECT - IMMIGRANTS**

The failure of immigration reform in Congress will no doubt spur more cities and towns around the country to attempt to do something about immigration. Despite the opposition of the police chief, on July 10 a particularly vicious anti-immigrant ordinance was passed unanimously in Prince William County, Virginia. Blaming the undocumented for "economic hardship" and "lawlessness," the ordinance provides for police checks on the immigration status of residents and for the undocumented to be barred from education and emergency medical services to which they are entitled under federal law. It also gives residents the right to sue local government officials who fail to enforce the ordinance. By contrast, on June 4, alderman in New Haven, Connecticut voted by 25 to 1 to make municipal identification cards available to the undocumented, the first city to do so. "City officials and immigrant rights advocates said they hoped the cards would give immigrants better access to city services and help the police confirm their identities should they become targets of crime" (*New York Times*, June 5). On June 19, a federal judge blocked the Dallas suburb of Farmers Branch from enforcing a voter-approved law prohibiting apartment rentals to undocumented immigrants pending the resolution of a legal challenge.

- **NEW SANCTUARY MOVEMENT LAUNCHED**

In New York City, Chicago, Los Angeles, San Diego and Seattle religious congregations have undertaken to provide various forms of assistance to individuals and families who face deportation. Elvira Arellano and her 8-year-old son, who is an American citizen, had been living in a church in Chicago for 9 months when they were profiled by the June 4 *New York Times*.

• **IMMIGRATION RAID BY 150 AGENTS NETS 165 WORKERS**

In a raid reminiscent of one conducted in New Bedford, Massachusetts, an army of agents searched Fresh Del Monte Produce in North Portland, Oregon on June 12<sup>th</sup> and arrested undocumented workers who were immediately shipped to Washington state to await their appearance before an immigration judge. Three managers were also arrested as part of a criminal investigation of a scheme to employ undocumented workers. The mayor of North Portland denounced the raid.

• **LEADING ADVOCATE FOR IMMIGRANTS DETAINED ON TRAIN**

Victor Toro, who has lived in the US since 1984, is well known in Manhattan for his community service and work for immigrants. In the 1970s, he was a political prisoner in Pinochet's Chile and was declared dead by the regime. On July 6, he boarded an Amtrack train in Rochester, where he had gone for a meeting about the collapse of the Senate immigration bill, intending to return to his home in the Bronx. US border patrol agents also boarded the train and demanded to know if passengers were citizens, residents or visitors. Mr. Toro, who is 65 years old, told them he was in the country illegally. He was then handcuffed, given an orange jumpsuit, and taken to the Cayuga County Jail in Auburn, New York. He is now out on bond and may belatedly try to seek political asylum (*New York Times*, July 11).

• **ICE DRUGS DEPORTEES**

On June 19, the ACLU has brought a class action lawsuit on behalf of immigrants who were forcibly injected with sedatives at a Los Angeles detention center before being deported from the country (*Washington Post*, June 20). Their detention was abandoned when airline officials at Los Angeles International Airport refused to transport them. One detainee was reportedly wrestled to the floor of an airplane by medical escorts and then injected despite a court order barring his removal (*Los Angeles Daily Journal*, May 8).

**B. IN THE US CONGRESS**

• **LEAHY SAYS HE MIGHT PURSUE CONTEMPT CHARGES AGAINST THE WHITE HOUSE**

At the beginning of July Senator Patrick Leahy (D-VT), chair of the Senate Judiciary Committee, said he will attempt to cite the White House for criminal contempt of Congress if it does not turn over documents relating to the firing of nine US attorneys. "If they don't cooperate, yes, I'd go that far," he told NBC's "Meet the Press". "This is very important to the American people" (*Washington Post*, July 2). The Senator

denounced the refusal of the White House even to account for the documents it was withholding as "Nixonian stonewalling." Three Republicans had joined Democrats on the Senate Judiciary Committee in voting to issue subpoenas relating to warrantless domestic spying by the NSA. In the words of a July 1 *New York Times* editorial, "After six years of kowtowing to the White House, Congress is finally challenging President Bush's campaign to trample all legal and constitutional restraints on his power."

• **JUNE 26 DAY OF ACTION BRINGS THOUSANDS TO LOBBY IN WASHINGTON**

As a result of the mass lobbying day organized by the ACLU and other national organizations, at least 15 new co-sponsors were added to legislation calling for the closing of Guantanamo, roll back of the Military Commissions Act, and end to extraordinary rendition. Among the Massachusetts Congressional delegation, only Senator Kerry and Rep. Lynch have declined to co-sponsor the Restoring the Constitution Act (S. 576 and HR 1415) which fixes the Military Commissions Act. Senator Kerry has instead co-sponsored the more limited bill to Restore Habeas Corpus (S. 185) which might shortly move onto the Senate floor. To date, among the Massachusetts delegation, only Reps. Capuano, McGovern, Meehan, Olver and Tierney are co-sponsoring Markey's Torture Outsourcing Prevention Act (HR 1352) and only Senator Kennedy has signed onto the Guantanamo Bay Detention Facility Closure Act (S. 1469), though Senator Kerry has issued a statement calling for the closure of the prison camp.

• **REAL ID REJECTED IN THE SENATE DURING IMMIGRATION DEBATE**

The Senate Comprehensive Immigration Reform bill sponsored by Senator Kennedy had included REAL ID as a workplace enforcement tool and a document to establish identity and required that all drivers' licenses should be compliant with REAL ID by June 1, 2013. On June 27, an amendment was put forward to remove REAL ID from the bill. An attempt by REAL ID supporters to kill the amendment failed by a vote of 45-52. The vote occurred shortly before the immigration bill lost all momentum in the Senate. Senator Kerry gave a strong speech in opposition to REAL ID calling it "profoundly flawed" and pointing out that 16 states have already enacted anti REAL ID bills or resolutions. "Immigration reform is difficult enough without conditioning it on an unfeasible, unfunded mandate that states are not only unwilling but in some cases legally bound *not* to meet," he said. By the end of June neither Massachusetts Senator had signed onto S. 717, the Akaka-Sununu bill repealing Title II of REAL ID. *They should be urged to do so!*

• **SPECTER INTRODUCES BILL TO RESTRICT SIGNING STATEMENTS**

On June 29, Republican Senator Arlen Specter introduced the Presidential Signing Statements Act of 2007 which would prevent the president from issuing a signing statement that alters the meaning of a statute by instructing federal and state courts not to rely on those statements when interpreting a statute. It would also enhance the

standing of Congress in any court case involving an interpretation of federal law laid out in a signing statement.

- **INTELLIGENCE COMMITTEE FAILS BY ONE VOTE TO CUT FUNDS FOR SECRET CIA INTERROGATIONS**

According to the June 1 *New York Times*, a report produced by the Senate Intelligence Committee questions the continuing value of the CIA's secret detentions and harsh interrogations and has critical things to say about various spying programs, including the expanding use of private contractors by intelligence agencies. While recognizing that the CIA program was hurting the image of the US and "alienating moderate Muslims and Arab communities around the world," the Committee failed by one vote to use its budget authority to shut down the program when Democratic Senator Bill Nelson of Florida joined the Republicans in opposing the cut off of funds.

### C. IN THE COURTS

- **SUPREME COURT WILL HEAR GUANTANAMO APPEALS AFTER ALL**

After refusing on April 2 to hear an appeal of the cases *Boumediene v. Bush* and *Al Odah v. US* which question whether the Military Commissions Act of 2006 validly stripped federal court jurisdiction over habeas corpus petitions filed by Guantanamo detainees, the Supreme Court reversed course on June 29 and agreed to take the cases. The cases have been consolidated and will be heard in a one-hour argument in the new term beginning on October 1, 2007. The DC Circuit Court had ruled on February 20 that the Military Commissions Act stripped detainees of their right to bring habeas corpus challenges to their confinement, a decision which the Roberts' Court will now review.

- **APPEALS COURT STRIKES DOWN ENEMY COMBATANT POLICY AS VIOLATION OF CONSTITUTION**

On June 11, a three-judge panel of the conservative Fourth Circuit Court of Appeals ruled in a strongly-worded decision that the US president can not declare civilians resident in the US to be "enemy combatants" who can be held in indefinite detention by the military with no recognition of their due process rights. The ruling came in a case involving a citizen of Qatar, Ali al-Marri, who is being held as an enemy combatant in a Charleston, South Carolina military brig. The court ruled that the military detention of a person who had lawfully entered the United States and established connections here was a violation of the Constitution. It refused "to recognize a claim to power that would so alter the constitutional foundations of our republic" (*New York Times*, June 12). Unlike the Guantanamo detainees, al-Marri, who lived in Peoria, Illinois at the time of his December 2001 arrest and was studying computer science at Bradley University, has never received any kind of review of his enemy combatant designation. The court said the government should either transfer him to civilian authorities to face criminal charges, initiate deportation proceedings against him, hold him as a material witness in connection with a grand jury proceeding or detain him for the limited period allowed by

the USA PATRIOT Act.

• **APPEALS COURT THROWS OUT ACLU CASE ON NSA WARRANTLESS SPYING**

On July 6, in a 2-1 decision, the Sixth Circuit Court of Appeals dismissed a legal challenge to the Bush Administration's warrantless surveillance program. The 2 judges in the majority were Republican appointees; the dissenting judge was a Democratic appointee. The case had been brought by the ACLU on behalf of prominent journalists, scholars, attorneys and nonprofit organizations who alleged a well-founded fear that their communications with clients and sources overseas were being subjected to illegal surveillance. It was thrown out on the legal technicality that the plaintiffs had no legal standing to question the NSA spying program. The court said that it would be impossible for them to find out whether the government was in fact spying on them without jeopardizing "state secrets." In its ruling, the court did not take a stand on the constitutionality of the program. In August 2006, judge Anna Diggs Taylor, a federal district court judge in Detroit, had ruled that the warrantless domestic spying program was illegal and must be shut down. The government now wants all lawsuits challenging the role played by US phone companies in the NSA spying program to be thrown out as well.

• **ACLU SUES BOEING SUBSIDIARY FOR ROLE IN CIA TORTURE FLIGHTS**

On May 30, the ACLU filed a lawsuit in US District Court in Northern California against Jeppesen Dataplan Inc., a Boeing subsidiary based in San Jose, California, for helping with "the forced disappearance, torture, and inhumane treatment" of three men the government suspected of terrorism (*Boston Globe*, May 31). The suit states that Jeppesen facilitated more than 70 secret rendition flights over a 4-year-period. Jane Mayer had reported in an article in the October 30, 2006 *New Yorker* remarks made at a company board meeting by a senior Jeppesen official: "We do all of the extraordinary rendition flights – you know, the torture flights." Filed under the Alien Tort Statute which permits foreigners to bring claims in the US for violations of the law of nations or a US treaty, the suit was brought on behalf of Binyam Mohamed, Abou Elkassim Britel and Ahmed Agiza who were abducted by the CIA, detained and tortured. Mohamed is now in Guantanamo Bay, Britel is in a prison in Morocco and Agiza is in an Egyptian prison.

• **AL QAEDA FREQUENTLY INVOKED IN PADILLA TRIAL**

As Jose Padilla's criminal trial got underway at the US district court in Miami, the prosecutor said the former "enemy combatant" had become "an Al Qaeda terrorism trainee, providing the ultimate form of material support, himself" when he went to a terrorist training camp in July 2000 (*Boston Globe*, May 15). The indictment says that he and his co-defendants formed a terrorism support cell in South Florida. Padilla is being tried with two other men who are alleged to have supported terrorist groups in Bosnia and Chechnya. On May 15, a CIA officer, who testified while concealing his identity, said that while in Kandahar he was given a file that contained a "Mujahideen Data

Form" filled out by Padilla and bearing his fingerprints. Defense attorneys raised questions about his handling of the documents and about whether the Afghan who allegedly turned over the file or the tribal network that he claimed to be affiliated with was paid for it. The agent said the Afghan was not paid, but did not answer the question concerning payment to the tribal network. Defense attorneys protested strongly when, on June 26, prosecutors were allowed to show a CNN videoed interview with Osama bin Laden along with a taped telephone conversation of Padilla's co-defendants praising bin Laden.

#### **D. IN THE COMMONWEALTH**

##### **• NO ONE SPEAKS UP FOR REAL ID AT STATE HOUSE HEARING**

On June 14, there was a hearing on Senator Richard Moore's resolution opposing REAL ID before the Joint Committee on Veterans and Federal Affairs. The Committee heard testimony opposing its implementation from Senator Moore – a former regional director of FEMA who represents Worcester and Norfolk. He called it a huge bureaucratic problem, an invasion of privacy with no real security value. Attorney General Coakley, Secretary of Public Safety and Homeland Security Burke, Registrar of Motor Vehicles Collins all were sharply critical of REAL ID, calling it wrong headed, impossible to execute, rife with unintended consequences, unproductive in security terms, and a huge danger to privacy which opened the door to identity theft. Other testimony from the ACLU, JALSA, Jane Doe, Mass Law Reform and an individual who had been a victim of identity theft made similar points, and urged the legislature to swiftly pass Senator Moore's Resolution Memorializing the US Congress on Implementation of the REAL ID.

##### **• SHARP DROP IN FOREIGN STUDENTS COMING TO MASSACHUSETTS**

A study by Mass Insight and Collegia released on July 11 indicates that the number of foreign students enrolling in Massachusetts institutions of higher education declined 7.2 percent between 2003 and 2006. This is the steepest decrease among all states which attract significant numbers of foreign students. As the US has made it more difficult to obtain student visas and imposed the SEVIS system to monitor their movements, many international students are choosing universities in other countries, especially England, Canada, Australia and Singapore. Research institutions and high tech industries in the Bay State are also having trouble attracting talented engineers and other workers.

##### **• FBI WARNS UNIVERSITY OFFICIALS OF THREATS TO RESEARCH**

Foreign students at Harvard, MIT and other universities could not have felt especially welcome after news broke in mid June that FBI agents have been visiting campuses and warning administrators about spies and terrorists masquerading as innocent students who are really here to steal research information. The Bureau has been warning officials how to recognize such on-campus threats, according to the June 12 Associated Press.

##### **• IMMIGRATION RAID IN NANTUCKET LEADS TO 18 ARRESTS**

On June 20, a massive force of federal agents descended on the small island and rounded up immigrants from a number of countries as part of what they called "a public safety operation." Some of those arrested had been convicted of various crimes. Others were illegal immigrants. All face deportation. On July 11, Yvonne Abraham wrote an op ed in the *Boston Globe* in which she questioned the role played by state troopers in helping enforce federal immigration law. Early in his term, Governor Deval Patrick had ended the Memorandum of Understanding forged by his predecessor Mitt Romney under which state troopers would engage in immigration law enforcement. But despite this, state troopers have been checking up on the immigration status of some drivers in the Berkshires and were reportedly involved in planning the Nantucket raid.

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