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

November 27, 2007

CONTENTS

RIGHTSWATCH

A. EXECUTIVE ACTIONS
• Chertoff gives new deadlines for REAL ID in effort to save it
• New AG backs Bush on wiretapping; stonewalls on torture; claims "unswerving allegiance" to the law
• Confirmation vote confirms sad state of democracy
• After declaring torture 'abhorrent" Justice Department approves it
• "Camp Justice" rises at Guantanamo
• Detainee facing trial could be exonerated by a witness
• Who gets released from Guantanamo? The nationals of our friends
• Britain to investigate use of Diego Garcia as a CIA "black site"
• Torture charges filed against Rumsfeld in France
• Spain learns of government complicity on rendition
• Top Justice Department officials kept in dark on warrantless surveillance
• Majority oppose immunity for telephone companies
• Phone companies refuse to give Congress key information
• Was Quest punished for refusing to take part in NSA spying before 9/11?
• Cell phones a tracking device in end run around Fourth Amendment
• White House issues new "National Strategy for Homeland Security"
• Justice Department focus on terrorism nets few terrorists
• US has little to show for focus on terrorism while world becomes less safe
• Terrorist watch lists dangerously bloated
• Who is a terrorist? It depends on US interests
• FBI to overhaul terrorism-fighting structure and strategies
• Defense Department wrongly issued National Security Letters
• CIA to investigate its own Inspector General
• US spent more than $50 billion for intelligence in 2007
• Radiation detection machines flub tests
• Security not sufficiently improved at nuclear sites
• Firefighters being trained to spot terrorists
• TSA to expand use of airport body scans
• TSA to test thermal cameras in rail stations
• Two more TSA laptops disappear
• Fake bombs missed by TSA screeners
• "No Fly" on steroids
• EU wants data on American and other passengers
• Secrecy impedes usefulness of terrorism exercises
• Domestic spy satellite program put on hold
• "Preparedness" includes duplicate Wall Street

• NY mayor wants thousands of new surveillance cameras
• Las Vegas an incubator of surveillance technology
• Los Angeles police abandon plan to map Muslim enclaves
• US Commission says Muslim school in Virginia should be shut
• Muslim leader forced to resign from Virginia Commission
• DHS abandons "no match" employment rule
• Driver's licenses for undocumented become hot issue in campaign
• Number of immigration detainees at record levels
• ICE releases new guidelines for raids
• ICE raids detain more than 1,300 immigrants in southern California
• ICE says it detains 1,300 "violent gang members" in New York
• ICE head issues apology for "offensive" Halloween costumes
• Local authorities split on immigrant policies
• Chertoff says border fence must take priority over environment
• Security procedures cause long border delays

B. IN THE US CONGRESS
• What will Congress do about the "Protect America Act"?
• Congressional panel apologizes to Maher Arar
• House approves "Violent Radicalization and Homegrown Terrorism Prevention Act"
• House Judiciary Committee again demands documents

C. IN THE COURTS
• Texas jury refuses to convict Holy Land Foundation
• 20-year-long "LA 8" case finally comes to an end
• Appeals court dithers on "state secrets" involved in NSA spying
• Federal judge criticizes excessive secrecy in terrorism case
• ACLU asks court to declare part of PATRIOT Act unconstitutional
• Court to decide if legal permanent resident can be denied constitutional protections
• Supreme Court refuses to hear appeal in rendition torture case
• Appeals court considering whether to reinstate Arar case
• Federal judge rules against transfer of Guantanamo detainee
• Federal judge permits civil lawsuit against contractor to go forward

D. IN THE COMMONWEALTH
• MBTA transit police prepare for urban rioters
• Are MBTA bomb-sniffing dogs just for show?
• Directors of Boston-based charity accused of supporting jihad
• Exasperated judge administers citizenship oath in court
• Immigration office moves to Burlington; neighbors alarmed
• "Smart" surveillance systems developed by local companies
• Social security numbers inadvertently released

A. EXECUTIVE ACTIONS

• CHERTOFF GIVES NEW DEADLINES FOR REAL ID IN EFFORT TO SAVE IT

Mounting opposition in the states has forced DHS Secretary Michael Chertoff to

postpone the original May 2008 deadline for the implementation of REAL ID to 2013. According to the November 5 *Washington Post*, the deadline for drivers older than 40 or 50 may be extended to 2018 to avoid a surge of customers at motor vehicle registries. As it scrambles to save the deeply flawed program, the DHS also suggested that REAL ID's price tag may fall by "billions of dollars" if demands that new licenses be renewed every five years and that each state develop its own document verification systems and use tamper-resistant materials are abandoned. In a press release, the ACLU expressed its concerns that "Americans' information will still be stored in national databases available to all levels of law enforcement, and personal information would still be readable on the card."

• NEW AG BACKS BUSH ON WIRETAPPING; STONEWALLS ON TORTURE; CLAIMS "UNSWERVING ALLEGIANCE" TO THE LAW

On November 15, former federal judge Michael B. Mukasey became the Bush Administration's third Attorney General. During his confirmation hearing in October, he refused to say whether waterboarding constituted torture, and upheld the right of the president to ignore the 1978 FISA law and carryout warrantless wiretapping as he saw fit. When asked if the president is required to obey the law, he said, "That would have to depend on whether what goes outside the statute nonetheless lies within the authority of the president to defend the country" (*New York Times*, October 23). Although he referred to the Guantanamo Bay detention center as a "black eye" for the US, he said it would be difficult to close it and agreed with the Administration's assertion that detainees were treated better than many US prisoners. When Dianne Feinstein of California and Charles Schumer of New York - two Democratic members of the Senate Judiciary Committee – announced on November 2 that they would support Mukasey, his victory was assured. The final Senate vote was 53-40, with both Senators Kerry and Kennedy opposing him because of his equivocation on torture. This was the closest of the three Senate votes to confirm Bush's candidates to be Attorney General: Alberto Gonzales' confirmation vote was 60-36, while John Ashcroft had a 58-42 tally.

• CONFIRMATION VOTE CONFIRMS SAD STATE OF DEMOCRACY

A *New York Times* editorial headlined "Abdicate and Capitulate" deplored the "sorry record" of Democrats who voted to confirm Mukasey "even though he would not answer a simple question: doe he think waterboarding, a form of simulated drowning used to extract information from a prisoner, is torture and therefore illegal?....It was not a difficult question. Waterboarding is specifically banned by the Army Field Manual, and it is plainly illegal under the federal Anti-Torture Act, federal assault statutes, the Detainee Treatment Act, the Convention Against Torture and the Geneva Conventions. It is hard to see how any nominee worthy of the position of attorney general could fail to answer 'yes.'" Frank Rich's Nov. 12 op ed ("The coup at home") was even more despairing. "What makes the Democrats' Mukasey cave-in so depressing is that it shows how far even exemplary sticklers for the law like Feinstein and Schumer have lowered democracy's bar...A new *Washington Post*-ABC News poll has found that the Democratic-controlled Congress and Bush are both roundly despised throughout the land, and that only 24 percent of Americans believe their country is on the right track...Wrong track is a euphemism. We are a people in clinical depression. Americans know that the ideals that once set our nation apart from the world have been vandalized, and no matter which party they belong to, they do not see a restoration anytime soon."

• AFTER DECLARING TORTURE "ABHORRENT" JUSTICE DEPARTMENT APPROVES IT

According to a lengthy article in the October 4 *New York Times*, the Justice Department issued a legal opinion in December 2004 abandoning the use of brutal interrogation techniques in response to an imminent internal staff rebellion. But under the guidance of Alberto Gonzales and Steven G. Bradbury, head of the Office of Legal Council, another legal opinion, signed by Bradbury, was issued in February 2005 and kept a close secret. This opinion "for the first time provided explicit authorization to barrage terror suspects with a combination of painful physical and psychological tactics, including headslapping, simulated drowning and frigid temperatures." Bradbury remains key "war on terror" strategist.

• "CAMP JUSTICE" RISES AT GUANTANAMO

A massive, portable high tech windowless court building and tent city are being erected at Guantanamo where "military commissions" will take place and the hundreds of people who will witness the proceedings will be housed. The complex is designed to be folded up and shipped to another location if necessary, and permits the military judge to cut off sound in the spectator section at the push of a button (*New York Times*, October 14). To date, only 11 of the 330 detainees still at the prison have been charged with crimes that will be tried by the commissions, and only one "trial" has taken place, which ended in a plea bargain by Australian David Hicks and his transfer home. Attempts to get the military commissions underway were stalled in early October after the chief prosecutor, Col. Morris Davis, quit because of a turf dispute with Brig. Gen. Thomas Hartmann, head of the Pentagon Office of Military Commissions. The October 20th *New York Times* reported that Davis wanted the trials to be as open as possible, with much of the evidence declassified, while Hartmann wanted them to be largely closed. Among the more than 6,000 people housed at the Guantanamo base are dozens of Cuban asylum seekers (*Boston Globe*, November 23).

• DETAINEE FACING TRIAL COULD BE EXONERATED BY A WITNESS

According to the November 9 *Los Angeles Times*, the lawyer for Omar Khadr, who was detained as a 15 year old in Afghanistan and sent to Guantanamo, reveals that there is "potentially exculpatory evidence" about the role played by Khadr which could raise questions about his alleged role in an attack on US soldiers and whether he was an "unlawful enemy combatant" who could be tried by a military commission, or a "lawful enemy combatant" under the Geneva Conventions who could not be tried by the military tribunal. The evidence had been long known by the prosecution but kept from his attorney.

• WHO GETS RELEASED FROM GUANTANAMO? THE NATIONALS OF OUR FRIENDS

Pentagon documents obtained by the Associated Press reveal considerable confusion in the Guantanamo release policy, with dozens cleared for release even though they still were considered to pose a threat to the US and its allies at "Administrative Review" hearings which many refused to attend, while others who had been cleared remain in detention (*New York Times*, October 3). Authorities spoke of "mitigating factors," while Lt. Col. Stephen Abraham, an army reservist who served as liaison between Guantanamo

tribunals and intelligence agencies, declared that "the decisions are not orderly nor analytic and only rational if you accept the premise that they are made for political and not legal reasons." One Saudi was released to his home country after telling the Review panel that he went to Afghanistan to lose weight and to find the Prophet Mohammad's clothing.

• BRITAIN TO INVESTIGATE USE OF DIEGO GARCIA AS A CIA "BLACK SITE"

According to the October 19 *UK Guardian*, British MPs will investigate the possibility that there is a secret CIA prison on the British overseas territory of Diego Garcia. The two thousand islanders who lived there were expelled in the early 1970s after Britain struck a secret deal with the US to lease it the 37-mile long Indian Ocean island, which had been ceded to Britain after the Napoleonic wars. There have been persistent reports of a secret CIA "detention site" on the island, and the CIA's use of a prison ship off Diego Garcia's coast. In May 2004 retired 4-star US general Barry McCaffrey stated, "We're probably holding around 3,000 people, you know, Bagram air field, Diego Garcia, Guantanamo, 16 camps throughout Iraq." That is 3,000 "ghost detainees" that the US is holding without access to any kind of legal procedures and subject to harsh interrogation practices.

• TORTURE CHARGES FILED AGAINST RUMSFELD IN FRANCE

Following similar charges laid against him in the United States, Germany, Argentina and Sweden, a legal complaint was filed against former Defense Secretary Donald Rumsfeld for torture and abuse in Iraq and Guantanamo Bay during a trip he made to Paris in October. The complaint, which was filed by the International Federation for Human Rights, along with the French League for Human Rights, the New York-based Center for Constitutional Rights and the European Center for Constitutional and Human Rights, asks a French prosecutor to open an inquiry and take Rumsfeld into custody. Rumsfeld left the meeting sponsored by Foreign Policy magazine through a door connecting to the US embassy to avoid journalists and human rights attorneys, according to a press release issued on October 26 by the European Center for Constitutional and Human Rights.

• SPAIN LEARNS OF GOVERNMENT COMPLICITY ON RENDITION

On November 12, the Spanish newspaper *El Pais* reported in a major front page article that 50 rendition flights had touched down in Spain between 2002 and 2007 – 25 when the close American ally Jose Maria Aznar was in power, and 25 under the successor Socialist Party. Most of the planes were bound to or from Guantanamo. Several took off from the NATO airbase at Rota. At least 16 flights ended up in Turkey.

• TOP JUSTICE DEPARTMENT OFFICIALS KEPT IN DARK ON WARRANTLESS SURVEILLANCE

According to Jack Goldsmith, former head of the Justice Department's Office of Legal Counsel, the White House prevented then Attorney General Ashcroft, the National Security Agency's general counsel and other leading officials from knowing all the details about the NSA's warrantless domestic spying. "It was the biggest legal mess I had ever encountered," he told the Senate Judiciary Committee (*Washington Post*, October 3), adding that some parts of the program were illegal.

• MAJORITY OPPOSE IMMUNITY FOR TELEPHONE COMPANIES
According to an ACLU survey of 1,000 likely voters, 59% were either opposed or strongly opposed to the idea of giving immunity to telephone companies that sold information to the government as part of the warrantless spying program. In announcing the results, ACLU senior legislative counsel Tim Sparapani said that the wiretapping program could be a "profit center for the telecom companies" (Dow Jones News, October 16) involving substantial fees, if the recently-revealed reimbursement charges contained in a Comcast manual can be taken as a guide for broader industry practices. The legendary commentator Studs Terkel, a plaintiff in an ACLU lawsuit challenging warrantless domestic wiretapping, joined the debate over whether telecoms should be granted immunity in an October 29 *New York Times* op ed titled "The Wiretap This Time." He wrote about the 1978 Foreign Intelligence Surveillance Act: "The law was not perfect, but as a result of its enactment and a series of subsequent federal laws, a generation of Americans has come to adulthood protected by a legal structure and a social compact making clear that government will not engage in unbridled, dragnet seizure of electronic communications. The Bush administration, however, tore apart that carefully devised legal structure and social compact...Compounding these wrongs, Congress is moving in a haphazard fashion to provide a 'get out of jail free card' to the telephone companies that violated the rights of their subscribers."

• PHONE COMPANIES REFUSE TO GIVE CONGRESS KEY INFORMATION
Verizon, AT&T and Quest have said that it would be illegal to divulge classified information and that they could not therefore give Congress the information it wanted about their role in the NSA domestic spying program. Verizon and AT & T did acknowledge receiving "compensation for reasonable costs" when handing over customer records. In a letter addressed to Democrats on the House Energy and Commerce Committee, Verizon's senior vice president and general counsel Randal Milch stated that it routinely complies with the government's emergency "lawful demands" without court orders and that it doesn't try to determine the requests' legality as this would "slow efforts to save lives in criminal investigations" (*Washington Post*, October 16). Between January 2005 to September 2007, Verizon handed over data to federal authorities 720 times on an emergency basis and 94,000 times in response to a subpoena or court order. In the letter Milch said Verizon had also received National Security Letters from the FBI requesting data that would "identify a calling circle" for subscribers' telephone numbers, including people contacted by the people contacted by the subscriber. According to the company, it does not keep such information. Brian Beutler, writing for the Media Consortium on October 24, pointed out that many telecom officials, including another Verizon vice president and general Counsel, William Barr, had government careers before moving into the telecom industry. Barr had worked as a CIA analyst and gave testimony to Congress in 1995 – years before 9/11 - that advocated expanding federal wiretapping authority and using intelligence information to further domestic law enforcement in suspected terrorism cases. After 9/11 he and other Verizon officials used their influence on Capitol Hill in support of the USA PATRIOT Act, broadened wiretap authority, and the use of military commissions.

• WAS QUEST PUNISHED FOR REFUSING TO TAKE PART IN NSA SPYING BEFORE 9/11?
Its former chief executive Joseph Nacchio claimed that the NSA approached Quest more

than six months before the 9/11 attacks, and when it refused to take part in a program it believed to be illegal, the telecom company was deprived of a lucrative government contract. Nacchio's assertions were contained in court filings during his trial for insider trading (*Washington Post*, October 13). At the time of his alleged meeting with the NSA, Mr. Nacchio was the chair of the National Security Telecommunications Advisory Committee, made up of top executives of most major communications companies, and had security clearance to work on secret government projects.

• CELL PHONES A TRACKING DEVICE IN END RUN AROUND FOURTH AMENDMENT

According to the November 23 *Washington Post*, "federal officials are routinely asking courts to order cellphone companies to furnish real-time tracking data" of suspects without demonstrating probable cause of actual or potential criminal activity. They are instead submitting warrants to magistrates stating the location information is "relevant and material" to a criminal investigation. In at least 17 cases since 2005, federal magistrates have rejected these warrants, while an unknown number have been approved.

• WHITE HOUSE ISSUES NEW "NATIONAL STRATEGY FOR HOMELAND SECURITY"

In his *New York Times* column of September 3, Roger Cohen wrote about the post 9/11 period: "The United States was not previously a homeland, it was just our land, and that unhappy neologism with its Orwellian echoes, its sense of exclusion rather than inclusion, its faint fatherland-like echoes, seems to capture the closing and the menace and the terror-terror refrain with which we have all learned to live." Homeland (with a capital "H") and Terror are sprinkled like salt and pepper throughout the 90-page document that was issued by the White House in October to replace the 2002 National Strategy for Homeland Security. True, it is not ONLY about Terror – natural disasters like Katrina and epidemics also get mentioned. But in a box on page 3, "Homeland Security" is defined exclusively in terms of the "concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks that do occur." Early in the document, there is a list of bulleted points showing "progress in Homeland Security" – including the disrupting of "multiple potentially deadly plots against the United States," a "multi-layered approach to securing the Homeland" that brings together government and private sectors, the passage of the USA PATRIOT Act, the Protect America Act, and the Military Commissions Act, and the establishment of the "Privacy and Civil Liberties Oversight Board...to ensure that the rights of American citizens are considered." "Challenges" include the need to ensure that "the War on Terror remains a generational struggle," the need to "guard against complacency," the need to "make additional reforms to the Foreign Intelligence Surveillance Act (FISA) and ensure that the statute is permanently amended so that our intelligence professionals continue to have the legal tools they need to gather information about the intentions of our enemies while protecting the civil liberties of Americans." In a separate box on page 21, the need to "modernize" FISA is spelled out. As well as winning the "battle of arms" the Homeland must win "a battle of ideas. Accordingly, we are advancing effective democracy as the antidote to the ideology of our terrorist enemies and the long-term solution for winning the War on Terror." The document goes on to list methods to secure the borders, deal with immigrants and "visa violators," and ways of "screening people" – including REAL ID, and to "prevent violent

Islamic extremist radicalization in the United States." Perhaps the most cunningly-crafted paragraph reads as follows: "The United States has a domestic legal system that supports the investigation and prosecution of terrorist activities while simultaneously protecting individual privacy, the First Amendment rights of association, religious freedom, and free speech, and other civil liberties. We are a Nation built on the rule of law, and we will apply our laws to defeat terrorism while always preserving our liberties. Toward that end, not only must we guard against any gaps in our system that would offer terrorists a virtual haven to exploit, but we also must ensure that our law enforcement community has the necessary and proper mix of tools and authorities to defeat the threats of the 21st century" (page 22-3). Shortly after the document was released, Fran Townsend, the president's homeland security advisor, announced she would be resigning after 3 and ½ years on the job. She will reportedly be joining a private security company with Iraq contracts.

• JUSTICE DEPARTMENT FOCUS ON TERRORISM NETS FEW TERRORISTS

According to new Justice Department data, between 2000 and 2006 there was a significant drop in federal prosecutions of organized crime, white-collar crime, environmental offenses and civil rights cases. Prosecutions relating to immigration were up 36 percent (there were 18,000 immigration cases in 2006) while terrorism and national security cases increased by 876 percent (*Washington Post*, October 17). However the number of defendants in terrorism-related cases was small and declined from 818 in 2003 to 635 in 2006 and most prosecutions were not for terrorism acts or plans. According to a former Justice Department official, "prevention and disruption of terrorism was a paramount priority, and immigration prosecutions became one of the government's most favored tools for neutralizing people believed to pose a security threat, especially when the government lacked admissible evidence that the individual had committed a terrorism offense."

• US HAS LITTLE TO SHOW FOR FOCUS ON TERRORISM WHILE WORLD BECOMES LESS SAFE

The *Los Angeles Times* on November 18 featured a chart of figures compiled by Georgetown University Law Center professor David Cole and Pittsburgh Law School professor Jules Lobel. The chart shows the number of worldwide terrorist attacks steadily increasing from 1,732 in 2001 to 6,659 in 2006. As of June 2006, the Justice Department claimed 261 convictions or guilty pleas in terrorism or terrorism-related convictions; only 2 of those cases actually involved attempted terrorist activity. Of the at least 5,191 foreign nationals preventively detained in anti-terrorism initiatives, the 83,519 Arab and Muslim foreign residents of the US who complied with "special registration" and the 515 foreign nationals the US says it deported in connection with 9/11 investigations, not a single person was either convicted of or actually connected to terrorism.

• TERRORIST WATCH LISTS DANGEROUSLY BLOATED

According to the Government Accountability Office (GAO), the government's terrorist watch list had ballooned fivefold since 2004 to nearly 860,000 records, 95 percent of them foreign (*Washington Post*, November 7). About 53,000 people on the list have been questioned since 2004, with most being allowed to enter the country while their names

remained on the list. The GAO report added that the TSA was unable to specify how many people on its No-Fly list – a subset of the larger list – were allowed to fly. The head of the FBI's Terrorist Screening Center that maintains the watch lists said that 296 foreigners were denied entry in fiscal 2006.

• WHO IS A TERRORIST? IT DEPENDS ON US INTERESTS

This became clear in a October 23 *New York Times* article about Turkey and the Kurds. The Kurdish guerrillas fighting Turkey are the P.K.K. – they are classified as terrorists because Turkey is an important ally. The Kurdish guerillas fighting Iran – the P.J.A.K. – are not classified as terrorists, and instead may enjoy (covert) US support. "Because the P.K.K. is on the State Department's list of terrorist organizations and aiding such groups is illegal, the United States is eager to avoid any hint of cooperation with the P.J.A.K....In fact, the two groups appear to a large extent to be one and the same, and share the same goal: fighting campaigns to win new autonomy and rights for Kurds in Iran and Turkey. They share leadership, logistics and allegiance to Abdullah Ocalan, the P.K.K. leader imprisoned in Turkey."

• FBI TO OVERHAUL TERRORISM-FIGHTING STRUCTURE & STRATEGIES

In a move that will make the counterterrorism work of the FBI more closely resemble Britain's MI5, the bureau hopes to attract more Arabic speakers and intelligence analysts with specialized subject expertise and create an environment in which they can set investigative strategies and work continuously with FBI field agents and joint terrorism task forces. The organization would forego immediate arrests if there was not an imminent threat to allow surveillance of terrorism suspects to last longer so that collaborators and sympathizers can be identified. According to an FBI spokesman, "We want to be in a position where we...strategically focus our resources in a way that would give us the better chance of dismantling a group, as opposed to only identifying one aspect of a much larger threat" (*Boston Globe*, September 30).

• DEFENSE DEPARTMENT WRONGLY ISSUED NATIONAL SECURITY LETTERS

An extensive three-week internal Pentagon review has found systemic problems with the Defense Department's efforts to obtain records from financial agencies and banks in terrorism investigations through the use of National Security Letters (NSLs). The Pentagon has issued at least 270 NSLs since 2005, despite rules designed to keep the military out of domestic law enforcement operations. According to the October 14 *New York Times*, some internal memos suggest that the Defense Department was encouraging the gathering of records on nonmilitary personnel. The heavily-redacted documents obtained through the Freedom of Information Act by the ACLU and the Electronic Frontier Foundation reveal that the National Security Agency has also been using NSLs to gather information on some of its employees during internal security inquiries.

• CIA TO INVESTIGATE ITS OWN INSPECTOR GENERAL

Unhappy with reports issued by its own chief watchdog, CIA Director Michael Hayden has ordered an internal investigation of CIA Inspector General John Helgerson and his office. Helgerson has sharply criticized both former CIA Director George Tenet and undercover operatives running secret overseas prisons. According to an October 12 *Los Angeles Times* article, such a probe of Helgerson "could have a dramatic chilling

effect...making agency employees reluctant to cooperate with future investigations for fear that their involvement and the information they provide would be exposed." Helgerson, a career CIA office with degrees in political science, reportedly "expressed opposition to agency involvement in handling detainees as part of the war on terrorism."

• US SPENT MORE THAN $50 BILLION FOR INTELLIGENCE IN 2007
The actual total remains classified but this was the estimate based on figures given by national intelligence director Mike McConnell (*Washington Post*, October 30).

• RADIATION DETECTION MACHINES FLUB TESTS
A year after Department of Homeland Secretary Michael Chertoff told Congress that the DHS was buying as many of 1,400 expensive new radiation detection machines that would be installed at the nation's borders, and that this was a "vital priority" for national security, it appears that the machines do not work as intended. The November 20th *Washington Post* reported that a federal investigation is underway to see whether DHS officials requested that data relating to the testing of the machines be deleted or altered.

• SECURITY NOT SUFFICIENTLY IMPROVED AT NUCLEAR SITES
The Energy Department has failed to carry out security improvements at six nuclear bomb factories and laboratories, as required by Congress, according to a Government Accountability Office report. In some cases, security preparations are four years behind the deadline set by Congress (*New York Times*, October 29).

• FIREFIGHTERS BEING TRAINED TO SPOT TERRORISTS
A DHS program which involves training firefighters who respond to emergency calls to be on the lookout for suspicious items that could relate to terrorism is being tested in New York City, according to the November 25 Associated Press. "They are told to be alert for a person who is hostile, uncooperative or expressing hate or discontent with the United States; unusual chemicals or other materials that seem out of place; ammunition, firearns or weapons boxes; surveillance equipment; still and video cameras; night-vision goggles; maps, photos, blueprints; police manuals, training manuals, flight manuals; and little or no furniture other than a bed or mattress" (*Washington Post*, November 25). The article states that in Washington DC Fire/EMS workers who make 170,000 routine calls to businesses and homes every year began their intelligence activities two years ago and now have access to "the same terrorism-related intelligence as the police." And they don't need a search warrant to enter homes. AP obtained reports indicating that nine New York fire chiefs had received security clearance, as part of the program which resembles Operation TIPS, John Ashcroft's widely-reviled plan to train telephone installers, letter carriers and other people with access to private homes to look for suspicious activity.

• TSA TO EXPAND USE OF AIRPORT BODY SCANS
After a test of the machine at Phoenix airport, international airports in New York and Los Angeles will soon get "backscatter" X-ray machines capable of seeing through passenger's clothing for what the ACLU calls a "virtual strip search."

• TSA TO TEST THERMAL CAMERAS IN RAIL STATIONS
The Transportation Security Administration announced in early October that it would be testing heat-seeking cameras to screen passengers for bombs and weapons without having

them go through time-consuming searches. The machine would detect "cold" objects such as metals, plastics and ceramics. Critics say it would also detect cellphones and bunches of keys, clogging the works with "false positives."

• TWO MORE TSA LAPTOPS DISAPPEAR

After the May 3rd loss of a external computer hard data containing data on 100,000 staffers at the Transportation Security Administration, the TSA was expected to make the security of such data a high priority. But in mid October, two laptops containing sensitive personal data on a further 3,930 people disappeared from the possession of TSA contractor Integrated Biometric Technology.

• FAKE BOMBS MISSED BY TSA SCREENERS

A classified report obtained by *USA Today* reveals that security screeners a Los Angeles and Chicago airports missed fake bombs hidden by undercover agents posing as passengers more than 60% of the time (75% in the case of LA's International airport). Despite the heavy emphasis on passenger screening, this represents a marked deterioration from the tests carried out in the late 1990s when screeners missed about 40% of fake bombs (*USA Today*, October 17).

• "NO FLY" ON STEROIDS

This was how an October 18 *Los Angeles Times* op ed was headlined. Sub head: "Under Homeland Security's 'Secure Flight,' your union card or reading preferences could help keep you off a plane." Trade union leaders have expressed anger at a July 26 letter written by DHS head Michael Chertoff to the head of the Council of the European Union outlining privacy safeguards for data the US is collecting on EU passengers which reveal "racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership and data concerning the health or sex life of an individual."

• EU WANTS DATA ON AMERICAN AND OTHER PASSENGERS

The European Union has proposed collecting 19 pieces of personal data including names, telephone numbers, and credit card information on travelers flying in and out of Europe for counterterrorism and criminal investigations. The data would be kept for 13 years or longer. The plan must be approved by all 27 EU states to become law throughout the union. A DHS spokesperson said the US is "definitely open to the idea" (*Washington Post*, November 4). On November 26th the *Boston Globe* reported that the US is worried about a draft European "Reform Treaty" that, if passed by the European Union, would give it sweeping powers over Europe's security policies, from issuing visas to sharing intelligence.

• SECRECY IMPEDES USEFULNESS OF TERRORISM EXERCISES

From October 15-19, the Department of Homeland Security held its the fourth "Top Officials" exercise (TOPOFF), a simulation of what could happen when two "dirty bombs" go off in two major US cities and a third explodes in Guam. Members of Congress complained that results of the 2005 TOPOFF exercise had never been made public, making it impossible to learn from past mistakes. Lessons learned from the 2003 TOPOFF exercise were never released to the states for "security reasons."

• DOMESTIC SPY SATELLITE PROGRAM PUT ON HOLD

The DHS has agreed to delay launching its program of using advanced spy satellites to watch Americans until the privacy concerns of Rep. Bennie Thompson (D-Miss) and Rep. Ed Markey (D-Mass) are addressed (*New York Times*, October 1).

• "PREPAREDNESS" INCLUDES DUPLICATE WALL STREET
In an undisclosed location in Nassau County, Long Island there is, according to the October 18 *Los Angeles Times*, a 46,000 replicate of the New York Mercantile Exchange, which would hum into life if there were another attack or other disaster, including a flu pandemic, affecting lower Manhattan.

• NY MAYOR WANTS THOUSANDS OF NEW SURVEILLANCE CAMERAS
"We just have to do something to make the city safer," Mayor Michael Bloomberg told a press conference on October 2 as he announced his new $90 million Lower Manhattan Security Initiative, which includes installing 3,000 public and private sector closed-circuit cameras and movable barricades to seal the streets in the Wall Street area. He added: "Sadly, it is a little bit of an infringement on your rights" (*New York Times*, October 2). The mayor took as a model the massive camera presence in London. In Britain – which lacks a written constitution and Bill of Rights - there is by some estimates one CCTV camera for every 15 people, and in some British towns they are not only watching; they are telling people what to do, barking out orders like "pick it up" when someone drops a piece of litter (*Los Angeles Times*, October 19).

• LAS VEGAS AN INCUBATOR OF SURVEILLANCE TECHNOLOGY
According to the October 22 *Washington Post*, Las Vegas has become the nation's "security lab. Like nowhere else in the United States, Las Vegas has embraced the twin trends of data mining and high-tech surveillance" including facial recognition technology and RFID chips, and has become "a harbinger of things to come." In the surveillance room of one hotel, 50 monitors are linked to 2,000 cameras and "surveillance specialists" evaluate suspicious behavior under what the hotel's surveillance chief calls the IOU system – "Identify, Observe and Understand."

• LOS ANGELES POLICE ABANDON PLAN TO MAP MUSLIM ENCLAVES
In early November, community and civil rights groups strenuously protested the LAPD's plan to map the geographic distribution of Muslims in Los Angeles and "look at their history, demographics, language, culture, ethnic breakdown, socioeconomic status and social interactions" (*New York Times*, November 9). Soon after, Los Angeles Police Chief William Bratton declared at a press conference that the plan was "dead on arrival." Instead, the police would be developing initiatives jointly with Muslim leaders to "help each get to know the other better" (*Los Angeles Times*, November 16).

• US COMMISSION SAYS MUSLIM SCHOOL IN VIRGINIA SHOULD BE SHUT
The US Commission on International Religious Freedom and 12 US Senators have recommended that the Islamic Saudi Academy in Fairfax County, Virginia, be shut down because it might be using textbooks that promote religious extremism. The Academy was founded in 1984 and has a thousand students, 30 percent of whom are Saudi nationals. Its administrators say it uses a curriculum similar to that in Fairfax public schools, with added classes in religion and Arabic.

• MUSLIM LEADER FORCED TO RESIGN FROM VIRGINIA COMMISSION
After Esam Omeish, a surgeon and national president of the Muslim American Society, was forced to resign from the Virginia Commission on Immigration, he wrote as follows in the October 21 *Washington Post*: "I am disappointed that I was unable to defeat propaganda and partisan politics...bent on creating a police state in Virginia for immigrants. Politics aside, another important issue arose during this controversy. I was attacked for comments I made regarding Israeli military force against Palestinian civilians in Lebanon and the occupied territories and the Lebanon war, a conflict that has been condemned worldwide. Yet we still fail in America, the land of the First Amendment and the melting pot of plurality, to accept different political views. And we are still willing to stifle dissent while we claim that we want to achieve tolerance and inclusion. Our inability to appreciate the inherent goodness of people and the very powerful tool of dialogue and exchange of ideas will limit our capacity to achieve unity. We should be embracing differences. After all, this rich diversity is the framework of our Constitution."

• DHS ABANDONS "NO MATCH" EMPLOYMENT RULE
After a federal court in San Francisco blocked the Department of Homeland Security (DHS) demand that employers penalize or fire all workers whose social security numbers do not match up with the Social Security Administration (SSA) database on the grounds that it is fundamentally flawed and error-prone and the "No Match" program would penalize people working legally (including US citizens), DHS officials said they would be issuing a revised rule before the end of the year. The SSA's Inspector General has found that native-born US citizens are involved in more than 70 percent of the cases involving "no match" social security numbers.

• DRIVER'S LICENSES FOR UNDOCUMENTED BECOME HOT ISSUE IN CAMPAIGN
After New York governor Eliot Spitzer backed down in mid November from a plan to grant driver's licenses to illegal immigrants that opponents had denounced as a "passport to terror," the issue became a stick to use against presidential candidates. Only New Mexico Governor Bill Richardson spoke in straightforward terms about why the policy makes public safety sense at the Democratic forum in Las Vegas (*Washington Post*, November 18).

• NUMBER OF IMMIGRATION DETAINEES AT RECORD LEVELS
In 2006 there were 19,700 immigrants in detention facilities. Now that number has surpassed 30,000 nationally, with 4,000 detained in California, according to the November 5 *Los Angeles Times*. The San Pedro Processing Center on Terminal Island in California was so crowded and chaotic that the facility was temporarily closed on October 24, with 400 immigrant detainees sent to other facilities around the country, and their lawyers only being informed afterwards, causing disruption to cases that could prolong their clients' detention for months. In some instances, attorneys could not locate their clients, whose urgently needed medical care was also disrupted. ICE is now considering transferring control of Terminal Island and its other facilities to private companies. 261,000 immigrants have been deported in DHS FY2007, up from 177,000 two years ago.

• ICE RELEASES NEW GUIDELINES FOR RAIDS
According to a study by the National Council of La Raza, about two-thirds of the children of the undocumented who were detained in immigration raids over the past year were born in the US and are US citizens. Now ICE says it will train agents to be more sensitive toward mothers who are caught up in deportation operations, ordering them to screen detainees to determine if they are caring for young children and consider releasing them to their families while awaiting deportation (*New York Times*, November 17).

• ICE RAIDS DETAIN MORE THAN 1,300 IMMIGRANTS IN SOUTHERN CALIFORNIA
In early October, ICE sweeps at workplaces, homes and jails resulted in hundreds of deportations. According to the October 3 *Los Angeles Times*, "though Los Angeles police...do not routinely inquire about suspects' immigration status, Los Angeles, Riverside, Orange and San Bernardino counties have formal agreements with ICE that allow local sheriff's officials to check the immigration status of inmates" and the partnership with local law enforcement was "very successful." Of the 1,300 immigrants recently rounded up, the US attorney's office now plans to prosecute at least 45 for re-entry after deportation, a charge that could lead to sentences of 20 years in prison. There are now 75 ICE fugitive operations teams at work in the country, up from 17 in 2003.

• ICE SAYS IT DETAINS 1,300 "VIOLENT GANG MEMBERS" IN NEW YORK
Shortly before ICE head Julie Myers announced the summer-long arrests on October 9, a Long Island official asked DHS head Michael Chertoff to investigate "serious allegations of misconduct and malfeasance" by federal agents in executing arrest warrants in Nassau County raids on homes carried out on September 24 and 26 (*New York Times*, October 10). According to Nina Bernstein writing in the November 25 New *York Times*, in Greenport, in eastern Long Island, only one of 11 men captured in a September 27th "Operation Community Shield" raid was suspected of a gang affiliation. The other 10 had no criminal records. "Instead, they were known as good workers and family men. When they suddenly vanished into the far-flung immigration detention system, six of their employers hired lawyers to try to find and free them." Evidence suggests that ICE was using the "gang" label to get local police to participate in raids that were "often based on loosely defined or subjective criteria." Gang lists are compiled based on the clothing people wear, their tattoos and the company they keep. Among those whose name appeared on a "gang" list drawn up by a local detective and whose home was targeted by ICE was a 48-year-old Greenport firefighter and American citizen.

• ICE HEAD ISSUES APOLOGY FOR "OFFENSIVE" HALLOWEEN COSTUMES
Julie Meyers, the head of 15,000-employee Immigration and Customs Enforcement (ICE), was host of its Halloween party and on a three-judge panel that gave the "most original costume award" to a white employee who wore dark makeup, dreadlocks and a black and white stripped prison uniform. On November 2, she emailed ICE employees that "a few of the costumes were inappropriate and offensive" and urged employees "to be compliant with their responsibility to complete Diversity Training on Virtutal University." According to the November 7 *Washington Post*, in addition to complaints that the costume was racist, "there's also the matter of a law enforcement agency making

fun of the people it's imprisoning for immigration violations at a time when ICE is expanding its daily detention population."

• LOCAL AUTHORITIES SPLIT ON IMMIGRANT POLICIES
Jurisdictions near Washington DC have enacted some of the harshest anti-immigrant policies in the country. Prince William County supervisors passed on October 17 by unanimous vote measures requiring police to conduct residency checks and the county to deny services to illegal immigrants. The police portion alone will cost $14.2 million to implement. Shortly before this vote, neighboring Frederick County commissioners rejected by 3-2 a proposal to deny public services, including schooling, to the undocumented.

• CHERTOFF SAYS BORDER FENCE MUST TAKE PRIORITY OVER ENVIRONMENT
After a federal court on October 10 held up construction of a portion of the fence the US is building in Arizona along the border with Mexico, DHS secretary Michael Chertoff waived environmental laws, citing "unacceptable risks to our nation's security" if the construction of the fence was delayed (*New York Times*, October 23).

• SECURITY PROCEDURES CAUSE LONG BORDER DELAYS
Data base checks and new identity rules have disrupted commerce and caused long delays at the borders with Canada and Mexico, according to the October 21 *New York Times*. "Many families that straddle the border are feeling the strain. Border trade groups say the long lines caught them by surprise and are disrupting economic ties vital to both sides of the border." Beginning on January 31, 2008, American citizens will have to present either a passport or a birth certificate and government-issued identity card to re-enter the US.

B. IN THE US CONGRESS

• WHAT WILL CONGRESS DO ABOUT THE "PROTECT AMERICA ACT"?
As the February expiration date approaches of this law permitting warrantless domestic surveillance of Americans that was hastily passed by Congress before the summer recess, there are some indications that the Democrats in Congress may not be prepared to give the Administration everything it wants. But so far, they are doing little to restore the Constitution.

On November 15, the House of Representatives by 227-189 passed the **RESTORE Act** (H.R. 3773), which did not include retroactive immunity for telecommunications companies that cooperated in the Administration's warrantless surveillance program. While supporting this aspect of the bill, the ACLU criticized several of its components. It does not require individual warrants before government agents seize material from Americans on American soil, but instead allows the government to apply for a "blanket" or general warrants from the FISA court without specifying the person or "facilities, places, premises or property" to be under surveillance. It leaves the decision of how to handle U.S. information intercepted by wiretaps in the hands of the Administration instead of requiring that it be destroyed. And it gives the government seven days to carry out "emergency" surveillance on U.S. persons without going to the FISA court, and

permits the government to keep seized information, even if it turns out there is no real "emergency." The American Library Association and university librarians have expressed their concerns that the bill would permit libraries to be included as "communications service providers" and would affect faculty and students who are carrying out online research activities and whose communications on library servers and computers could be subjected to surveillance without court authorization (*Washington Post*, November 2).

Also on November 15, the Senate Judiciary Committee refused to include a provision for blanket immunity in the bill it approved. In Senator Leahy's words, "Passing a law to whitewash the administration's undermining of another law would be a disservice to the American people and to the rule of law" (*Washington Post*, November 16). But by 12-7 – with three Democrats, including Senator Feinstein, joining Republicans - the Committee defeated a proposal from Senator Russell Feingold that would have included language blocking immunity for the telecoms.

The Senate Intelligence Committee, whose chair John Rockefeller was given more than $42,000 in political donations this year from the executives of AT&T and Verizon, had earlier passed legislation giving the telecoms retroactive immunity. Both Sen. Arlen Specter and Sen. Patrick Leahy of the Senate Judiciary Committee denounced the immunity portion of the Intelligence Committee bill, accusing the White House of permiting certain members of the Intelligence Committee to review documents about the warrantless surveillance program in exchange for their cooperation in getting immunity for telecoms (*Washington Post*, October 23). Afterwards, the White House agreed to let Specter and Leahy view the presidential legal opinions relating to the program. The Administration has been particularly anxious to get Congressional approval for immunity because lawsuits have been one avenue for obtaining information about the scope of the spying activities undertaken by the government. Bush has promised to veto any bill that does not include retroactive immunity for telecoms, while Senator Chris Dodd, one of the current Democratic presidential contenders, has vowed to use Senate procedures to stop any bill that grants telecoms such immunity.

• CONGRESSIONAL PANEL APOLOGIZES TO MAHER ARAR

While the White House refuses to issue an apology to the Canadian citizen who was a victim of extraordinary rendition and torture and successfully demanded that the courts throw out his lawsuit on "state secrets" grounds, Rep. Bill Delahunt of Massachusetts and members of the House Judiciary and Foreign Affairs subcomittees issued their personal apologies to the Canadian software engineer and demanded the US government give an official apology. They interviewed Arar by videoconference on October 18 after the US government refused to allow him into the country for the hearing. According to Rep. Jerrold Nadler, "I saw all the classified information. There is nothing there that justifies denying you entry" (Canada.com, October 18). The Canadian government has apologized and awarded Arar a $10.5 million settlement for its role in his detention at JFK Airport in New York and rendition to Syria for 10 months of imprisonment and torture.

• HOUSE APPROVES "VIOLENT RADICALIZATION AND HOMEGROWN TERRORISM PREVENTION ACT"

By a vote of 404-6, the House in late October approved legislation (H.R. 1955) that

would set up a 10-member National Commission on the Prevention of Violent Radicalization and Homegrown Terrorism. The Commission would examine and report on the causes of violent radicalization and "ideologically based violence in prison" and homegrown terrorism, and set up a Center of Excellence at a designated university for the study of the subject. Critics have contended that the bill, which defines "homegrown terrorism" as the "planned" or "threatened" use of force to coerce the government or the people in the promotion of "political or social objectives," opens the door to "thought police" and would chill free speech and First Amendment activities (*Baltimore Sun*, November 19).

• HOUSE JUDICIARY COMMITTEE AGAIN DEMANDS DOCUMENTS
On November 5, the House Judiciary Committee sent a final warning to the White House demanding documents that relate to the firing of nine US attorneys. A refusal from the White House could lead to a vote on contempt citations for former White House counsel Harriet Miers and White House Chief of Staff Joshual Bolten.

C. IN THE COURTS

• TEXAS JURY REFUSES TO CONVICT HOLY LAND FOUNDATION
A mistrial was declared in the high profile "terrorism-financing" case that the government brought against the Holy Land Foundation for Relief and Development which had been accused of funding the Palestinian group Hamas. After 19 days of deliberations, the Dallas jury acquitted three defendants on almost all of the 197 charges and could not agree on a single conviction. In spite of years of investigation, two months of testimony, and more than 1,000 documents, wiretaps and transcripts, one jury member said "there really was nothing there for me, no concrete evidence" and claimed the government should not try to re-try the case (*New York Times*, October 23). The case against the Holy Land Foundation, which was shut down six years ago when President Bush accused it of aiding Palestinian terrorists, eventually "came down to conflicting testimony between an anonymous Israeli security official and a former American diplomat over which neighborhood charities in the Gaza Strip and West Bank were or were not affiliated with Hamas. The government's allegations not only proved unpersuasive but engendered skepticism among some jurors" (*Los Angeles Times*, November 4). In spite of the outcome of the case, the assets of the Holy Land Foundation remain frozen and the charity remains on the Bush Administration's "specially designated global terrorist" list.

• 20-YEAR-LONG "LA 8" CASE FINALLY COMES TO AN END
For the last 20 years, the US government has been pursuing cases against eight immigrants - seven Palestinians and a Kenyan married to one of them - whom it alleged had distributed a publication of the Popular Front for the Liberation of Palestine, organized pro-Palestinian rallies and held fundraisers for Palestinian causes. Although they were never accused of any illegal or violent activities or of any connection with terrorism, the effort to deport the "LA 8", which began under the Reagan administration, continued under the administrations of Bush I, Clinton and Bush II. At various times it involved the McCarthy-era McCarran-Walter Act and the USA PATRIOT Act. For 20 years David Cole and other LA 8 attorneys argued that their clients were simply exercising protected First Amendment rights. At the end of October, the Board of Immigration Appeals finally dismissed all charges against the two members of the LA 8

still fighting to stay in the country, Khader Hamide and Michel Shehadeh. As part of an agreement, the government agreed not to try to remove or expel them or take away their lawful permanent resident status based on their affiliations or associations, and the two men agreed not to apply for citizenship for three years.

• APPEALS COURT DITHERS ON "STATE SECRETS" INVOLVED IN NSA SPYING

On November 16, a three-judge panel of the US Court of Appeals for the 9th Circuit rejected the government's request that it throw out a lawsuit challenging the NSA warrantless wiretapping program on the grounds that "the very subject matter of the litigation is a state secret" (*Los Angeles Times*, November 17). But the judges accepted "the need to defer to the executive on matters of foreign and national security" when "state secrets" are involved, and barred the Islamic charity, Al-Haramain Islamic Foundation, from using a confidential government document that had been inadvertently disclosed to prove it had been illegally spied up. The 9th Circuit sent the case back to the district court to determine whether the FISA statute trumps "state secrets privilege".

• FEDERAL JUDGE CRITICIZES EXCESSIVE SECRECY IN TERRORISM CASE

US district judge Leonie Brinkema, who had presided over the case of convicted September 11th conspirator Zacarias Moussaoui, threatened to grant a new trial to a Muslim imam from Fairfax County, Virginia, Ali al-Timimi, who was convicted of urging his followers in Virginia to train for jihad against the US and sentenced to life in prison. Timimi's lawyers had appealed the conviction before the 4th Circuit Court, arguing that the imam was a prime candidate for warrantless surveillance which would have violated his constitutional rights. The appeals court sent the case back to Brinkema, and 18 months of secret litigation followed. The public got a glimpse of what was going on at a rare open hearing in November, when Judge Brinkema maintained it was "ludicrous" that even prosecutors had not been allowed to see filings that the intelligence community made to the judge. Prosecutors revealed that the CIA told Brinkema that interrogations of enemy combatant witnesses in the Moussaoui trial had not been taped, when in fact they had, leading the judge to express skepticism about government claims in the al-Timimi case (*Washington Post*, November 21).

• ACLU ASKS COURT TO DECLARE PART OF PATRIOT ACT UNCONSTITUTIONAL

A federal judge in Manhattan has been asked to declare that provision of the USA PATRIOT Act unconstitutional which was used to deny visas to people who "endorse or espouse terrorist activity," including the Islamic scholar Tariq Ramadan. Ramadan had visited the US 24 times before being denied a visa in 2004. In court papers the government claimed he was excluded because of contributions he made to suspect charities, not because of the "endorse or espouse" PATRIOT Act provision (*New York Times*, October 26).

• COURT TO DECIDE IF LEGAL PERMANENT RESIDENT CAN BE DENIED CONSTITUTIONAL PROTECTIONS

The entire US Court of Appeals for the 4th Circuit is hearing the case of Ali Saleh Kahlah al-Marri. Al-Marri, a former student at Bradley University and a legal permanent

resident of the US, was arrested as a "material witness" in December 2001, designated as an "enemy combatant" by President Bush in 2003 and subsequently held incommunicado on the same naval brig as US citizens Yaser Hamdi and Jose Padilla. In June, a 3-judge panel of the 4th Circuit ruled 2-1 that al-Marri should either be charged in a civilian court or freed. The government appealed that verdict to the entire court.

• SUPREME COURT REFUSES TO HEAR APPEAL IN RENDITION TORTURE CASE

The US Supreme Court turned down an ACLU appeal in the case of a German citizen, Khaled el-Masri, who was a victim of extraordinary rendition and months of torture before being released as an instance of mistaken identity. Masri's lawsuit against former CIA Director George Tenet, three private aviation companies and 20 unnamed employees of the companies and the CIA had been thrown out on "state secrets" grounds. A *New York Times* editorial for October 11th condemned the Supreme Court for sidestepping its proper oversight role. "In effect, the Supreme Court has granted the government immunity for subjecting Mr. Masri to 'extraordinary rendition'....This unsatisfactory outcome gives rise to new worries about the current Supreme Court's resolve to perform its crucial oversight role – particularly with other cases related to terrorism in the pipeline and last week's disclosure of secret 2005 Justice Department memos authorizing the use of inhumane interrogation methods that just about everyone except the Bush White House thinks of as torture."

• APPEALS COURT CONSIDERING WHETHER TO REINSTATE ARAR CASE

A three-judge panel of the US Court of Appeals for the 2nd Circuit is now deciding whether to hear the appeal of Canadian rendition victim Maher Arar, whose district court lawsuit was also rejected because of "state secrets privilege". In a November 19th editorial, the *New York Times* urged the court to take the case: "Much more is at stake...than fairness for one individual. By allowing Mr. Arar to pursue his claims, and rejecting the administration's attempts to put them beyond the reach of American law, the appeals court can provide a vital measure of justice and accountability for torture."

• FEDERAL JUDGE RULES AGAINST TRANSFER OF GUANTANAMO DETAINEE

Judge Gladys Kessler of the US District Court for the District of Columbia has barred Guantanamo detainee Mohammed Abdul Rahman from being sent to his home country of Tunisia because of fears that he could suffer "irreparable harm" including torture or death. She said he should not be transferred anywhere before the Supreme Court rules in the landmark *Boumediene v. Bush* case that could give detainees direct access to US courts if habeas corpus eliminated by the Military Commissions Act is reinstated. Kessler's ruling marks the first time a US judge has interceded to prevent the government from making such a transfer. In the words of Rahman's attorney Joshua Denbeaux, "The executive has now been told it cannot bury its Guantanamo mistakes in Third World prisons" (*Washington Post*, October 10).

• FEDERAL JUDGE PERMITS CIVIL LAWSUIT AGAINST CONTRACTOR TO GO FORWARD

Federal judge James Robertson refused in early November to throw out a civil lawsuit claiming that CACI International, a Virginia-based contracting firm, is responsible for

torture and other abuse at Abu Ghraib prison. His ruling opens the door for the first civil case in US court involving US contractors alleged to have harmed Iraqi civilians.

D. IN THE COMMONWEATH

• MBTA TRANSIT POLICE PREPARE FOR URBAN RIOTERS

The November 23 *Boston Globe* reported that the MBTA Civil Disturbance Unit has a new $100,000 riot-control bus, which features four surveillance cameras on the roof and new body armor, shields, tear gas and pepper-spray inside. When asked why the 259 MBTA officers needed this kind of riot-control unit, the unit's commander said: "It's our resposibility to make sure that the economic lifeblood of the area – the transportation – continues. We don't want to have to wait for anyone." And anyway, transit police have skills other officers lack, such as "training in the third rail tunnels, and the close confinement of subway conditions" – not exactly the kind of places where the black bus could be of use. The *Globe* states that "the idea for an MBTA riot-control unit was hatched after the 2004 Democratic National Convention in Boston, when the department received intelligence that protestors planned to disrupt the convention by chaining themselves to subway cars. Nothing of the sort happened, but officers said they were not ready to deal with the threat." They are ready now, having spent a week training at the Department of Homeland Security's Center for Domestic Preparedness in Atlanta.

• ARE MBTA BOMB-SNIFFING DOGS JUST FOR SHOW?

Michael Flanagan, legislative liaison for the MBTA Police Sergeants Association, testified before the Joint Public Safety Committee that dogs trained to detect cadavers were being presented to the public as bomb-sniffing dogs in order to make people feel safe. MBTA General Manager Dan Grabauskas called his statement "reckless" and "misleading," according to the October 4 *Metro*.

• DIRECTORS OF BOSTON-BASED CHARITY ACCUSED OF SUPPORTING JIHAD

Emadeddin Muntasser, Muhamed Mubayyid and Samir Al-Monla, leaders of the now-defunct Massachusetts Care International, are being tried in US district court for tax violations, lying to the government and distributing publications promoting "jihad." Defense attorneys claim "this is a tax case, not a terrorism case...There is no charge that Care International or any of the defendants provided material support to terrorism, or had any connection with Al Qaeda, bin Laden, terrorism, or any terrorist attack or plot" (*Boston Globe*, November 13). Muntasser, the owner of the Logan Furniture Company, had sued the government three years ago for failing to act on his citizenship application.

• EXASPERATED JUDGE ADMINISTERS CITIZENSHIP OATH IN COURT

According to an editorial in the November 27 *New York Times*, Boston federal court judge Nathaniel Gorton "became so fed up last month with a delayed background check that he simply gave a plaintiff, Ahmed Dayisty, the oath of citizenship." There is now a backlog of 2.5 million naturalization petitions and visa applications from July and August alone. Applicants are being told that they will have to wait up to 18 months, despite a 66 percent increase in naturalization fees that went into effect at the end of July and was supposed to make Citizenship and Immigration Services "fit for the 21st century."

• IMMIGRATION OFFICE MOVES TO BURLINGTON; NEIGHBORS ALARMED

The November 11th *Boston Globe* reported that local residents in Burlington expressed fears for their safety when they learned that the ICE facility for processing undocumented immigrants was being moved from downtown Boston to a Burlington office park. From there, detainees would be transferred to jails and other facilities.

• "SMART" SURVEILLANCE SYSTEMS DEVELOPED BY LOCAL COMPANIES

With security a huge growth industry, several local companies including VideoIQ , Intuvision, and IntelliVid Inc. are racing for market share for products in which computers are designed hone in on "suspicious activity" (*Boston Globe*, October 22). The computers do "shape analysis" and "spot anomalies" without depending on human minders. As a new generation of "smart video cameras" is developed, "each camera in the network can be programmed to guard against different threats, because each will have a mind of its own." They will supplement the 26 million surveillance cameras that IBM Corporation estimated operated in the US in 2006, most of which required constant human supervision.

• SOCIAL SECURITY NUMBERS INADVERTENTLY RELEASED

Claiming it was "an oversight" caused by a software failure, the Massachusetts Division of Professional Licensure mailed 28 computer disks containing names, addresses and also social security numbers of 450,000 professionals it had licensed to 23 agencies for marketing or promotional purposes (*Boston Globe*, October 4).

Nancy Murray
ACLU of Massachusetts
(617) 482-3170 x 314
nancy@aclum.org