

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

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A. EXECUTIVE ACTIONS

Torture, Secret Detention, Guantanamo

• BUSH, TOP ADVISERS GIVE GREEN LIGHT TO USE TORTURE

According to ABC News (April 11), President Bush was "aware" that his top national security advisors were discussing specific interrogation techniques "and I approved." Then-National Security Advisor Condoleezza Rice, and then-Defense Secretary Donald Rumsfeld were among those who gave a hearty thumbs up to the use of specific "enhanced interrogation techniques" in discussions that were so detailed that they even decided the number of times CIA agents could use a specific tactic (ABC News Internet Ventures, April 9). Then-CIA head George Tenet and former Attorney General Ashcroft both signed off on the techniques but were more cautious. Despite the existence of the August 2002 Bybee memo termed "Golden Shield," Tenet repeatedly checked with White House attorneys to make sure specific interrogation plans were legal, while Ashcroft argued that White House advisers should not be involved in the details of interrogations. He reportedly said after one meeting: "Why are we talking about this in the White House? History will not judge this kindly." But Rice was more resolute, reportedly telling the CIA, "This is your baby. Go do it." The national media generally appears reluctant to cover the story.

• MEMO AUTHORIZING PENTAGON TO USE TORTURE IS DECLASSIFIED

In response to a four-year-long ACLU FOIA lawsuit, the Defense Department was forced on April 1 to declassify and make public a secret Justice Department (DOJ) memo of March 2003 giving it the green light to use torture to extract information from "unlawful combatants" (*New York Times*, April 2). The memo was written by John Yoo as deputy at the DOJ's Office of Legal Counsel. It argues that the wartime powers of the President as commander-in-chief trump federal and international law banning torture and other forms of brutal treatment, and that because of this White House authority, military interrogators can use harsh interrogation techniques when dealing with Al Qaeda suspects. The definition of torture was similar to the one Yoo helped draft for the CIA in August 2002 which is known as the "Bybee memo." It states that in order for treatment to rise to the level of torture, "the victim must experience intense pain or suffering of the kind that is equivalent to the pain that would be associated with serious physical

injury so severe that death, organ failure or permanent damage resulting in a loss of significant body functions will likely result." (In other words, extracting fingernails with pliers might not count as torture.) In 2005, Congress passed the Detainee Treatment Act limiting the Pentagon to the interrogation methods set out in the Army Field Manual. President Bush vetoed a law that would have limited the CIA to these techniques.

• **JUSTICE DEPARTMENT INVESTIGATING AUTHORS OF TORTURE MEMOS**

H. Marshall Jarrett, counsel for the Justice Department's Office of Professional Responsibility, is "examining whether the legal advice in these memoranda was consistent with the professional standards that apply to Department of Justice attorneys" (*The Nation*, April 28). The lawyers under review include John Yoo, now a professor at the University of California at Berkeley Law School, and current federal appellate judge, Jay Bybee.

• **WHITE HOUSE DEFENDS WATERBOARDING**

Throughout February the White House continued to build a PR campaign claiming that the practice of waterboarding (simulated drowning) does not amount to torture and has saved lives. They admit it has been used on three suspects – Khalid Sheikh Mohammed, Abu Zubayda, and Ahd al-Rahim (*Boston Globe*, February 7). A White House spokesman, Tony Fratto, said it could be used again with the approval of the President. The use of waterboarding – what used to be termed water torture – goes back to the Spanish Inquisition. In 1901, a US military court martial sentenced to 10 years hard labor a US major who had waterboarded a prisoner in the Philippines during the Spanish-American war (*Boston Globe*, February 7). The practice was explicitly outlawed after World War II, when eight Japanese officers were executed by the Allies for waterboarding British prisoners. National Intelligence Director Michael McConnell testified before Congress that "It is a legal technique, used in a specific set of circumstances" although he admitted it could lead to death (*Los Angeles Times*, February 6). According to the February 8 *Wall Street Journal*, the CIA's secret interrogation program including waterboarding was "outsourced heavily" to private contractors. It is not just waterboarding which is specifically banned by the US Army Field Manual but used by the CIA. Also banned in the Manual are stripping prisoners, humiliating sexual acts, hooding prisoners, putting duct tape over the eyes, beatings, electric shocks, burns or other forms of physical pain, using military working dogs, intense heat or cold, conducting mock executions, depriving prisoners of necessary food, water or medical care. On March 8, President Bush vetoed a bill which would have barred the CIA from using these techniques (*see In the Congress, below*).

• **IT'S NOT JUST GUANTANAMO WHICH IS BEYOND THE RULE OF LAW**

It is the US-run Bagram detention center in Afghanistan and the archipelago of other secret facilities in Thailand, Eastern Europe, Iraq and Diego Garcia where prisoners have been held without any legal rights or visits with family members for years at a time. The April 13 *New York Times* featured a story about a video conferencing link which the Red Cross established with Bagram, enabling some relatives of detainees to talk to imprisoned family members whom they had not heard from or about in years. One detainee was a young journalist, Jawed Ahmad, who was working with Canadian TV when arrested by Americans, beaten, and placed in Bagram as an "unlawful enemy

combatant." His case has been taken up by the New-York based Committee to Protect Journalists.

• DETAINEES CONVICTED ON HEARSAY EVIDENCE PROVIDED BY US MILITARY

Dozens of detainees at Bagram Air base are being convicted by Afghan tribunals and given prison sentences of up to 20 years after trials that sometimes last little more than 30 minutes. One barely lasted 10 minutes. They are "based almost entirely on terse summaries of allegations that are forwarded to the Afghan authorities by the US military" (*New York Times*, April 10). Witnesses do not appear, there are no sworn statements and there is no cross examination.

• AFTER IRAQI TRIBUNAL ORDERS HIS RELEASE US RELUCTANTLY FREES AP PHOTOGRAPHER

Photographer Bilal Hussein was part of an AP team that won the Pulitzer Prize for coverage of the Iraq War in 2005. In 2006 he was detained by the US military and held without charges at Camp Cropper, near Baghdad. Early in April 2008, an Iraqi tribunal ordered his release, but US military authorities initially refused to free him, arguing that a UN Security Council mandate allows them to continue to hold detainees whom they believe are security risks. The Associated Press says it has found no evidence that Hussein took part in any activities beyond those associated with being a news photographer and called his ongoing imprisonment "a sad black mark on American values of justice and fairness" (*Boston Globe*, April 10). After pressure built up for his release, the US forces finally freed him on April 16.

• CIA ADMITS AL QAEDA SUSPECT BEING HELD IN SECRET DETENTION

In the fall of 2006, the CIA sent 14 suspects to Guantanamo and claimed to have emptied its secret prisons. In mid March it admitted holding Muhammad Rahim, a suspected member of Al Qaeda, under the coercive interrogation program authorized by the President (*New York Times*, March 15).

• TWO AMERICANS APPEAL THEIR DETENTION IN IRAQ TO US SUPREME COURT

Shawqi Omar and Mohammad Munaf are American citizens who have been held in a US prison in Iraq for more than three years without access to lawyers or the courts. In late March, they asked the US Supreme Court to determine the legality of their ongoing detention. The Bush Administration countered that US courts have no power to issue writs of habeas corpus when Americans are being detained by forces "under international authority" as it considers the multinational force in Iraq to be even though US forces in Iraq are accountable only to US military command (*Washington Post*, March 31).

• ACLU TO TAKE RENDITION CASE TO INTERNATIONAL TRIBUNAL

After federal courts invoked "state secrets privilege" to shut their doors to a case brought on behalf of Khaled el-Masri, a German citizen whom the CIA abducted and had tortured only to release him as a case of "mistaken identity," the ACLU is taking the case to the Inter-American Commission on Human Rights. This body is an autonomous part of the Organization of American States, of which the US is a member.

- **ACLU OFFERS TO DEFEND DETAINEES BEFORE MILITARY COMMISSIONS**

In order to protect American values of fairness and justice and the constitutional guarantee of due process, the ACLU, together with the National Association of Criminal Defense Lawyers (NACDL), announced on April 3 that they were assembling defense teams to be available to assist in the representation of detainees appearing before Military Commissions. Six potential clients face the death penalty: Khalid Sheikh Mohammed and five others suspected of orchestrating the 9/11 attacks (Ali Abd Al-Aziz Ali, Ramzi Bin al-Shibh, Walid bin Attash, Mustafa Ahmad al Hawsawi, Mohammed al-Qahtani). In the words of ACLU executive director Anthony Romero, "These trials should represent who we are, what American stands for, and our commitment to due process. They are not about how civilized the accused are, but how civilized we are." The organization is determined to prepare "a robust legal defense while simultaneously working to expose how fundamentally flawed Guantanamo's military commissions are." Among those who applauded the organization's determination to expose the Military Commission's reliance on secret evidence, hearsay and confessions derived from torture are former Attorney General Janet Reno, Former CIA and FBI Director William Webster, and Retired Rear Admiral John D. Hutson. The ACLU and NACDL do not yet have access to the accused, who have not had the opportunity to accept or turn down their offer of legal services. There has been a long delay in getting the trials underway. Overstretched military defense lawyers have been involved in a standoff over the legal resources of the Pentagon – the defense counsel's office currently has only nine attorneys and six paralegals who are making an effort to prevent evidence obtained through torture from being presented at the trials (*New York Times*, April 10). On April 4, lawyers for Salim Ahmed Hamdan, Osama bin Laden's driver, asked a military judge to declare that he had been subjected to abusive interrogations, beatings and sexual humiliation (*New York Times*, April 5). Although the Military Commissions Act establishing the tribunals bars the use of evidence obtained through "torture," it permits coercive evidence to be used if it is seen to be "reliable."

- **FORMER CHIEF PROSECUTOR SAYS GUANTANAMO PROCESS IS RIGGED**

Col. Morris Davis, former chief prosecutor of the Military Commissions established at Guantanamo, claims "the trials are rigged from the start...in an attempt to foreclose the possibility of acquittal" (*The Nation*, February 20). Col. Davis has offered to be a defense witness for Salim Ahmed Hamdan, Osama bin Laden's driver. Even if the trials are fair, it could mean little to detainees, whom the Administration says can be held forever for the duration of hostilities – no matter the outcome of a trial.

- **TEENAGER CLAIMS ABUSE; HIS ATTORNEY SAYS TRIAL RIGGED**

On March 14, the naval defense attorney for a young Canadian prisoner, Omar Khadr, who was 15 years old when he was captured in Afghanistan, accused the Pentagon of doctoring evidence and its version of how he was captured to make him appear guilty (*Los Angeles Times*, March 14). Khadr says he was repeatedly threatened with rape and mistreated while being interrogated in Afghanistan and Guantanamo (*Miami Herald*, March 18).

- **ATTORNEYS FEAR LOSS OF GUANTANAMO EVIDENCE**

Attorneys representing detainees before Military Commissions fear that the government has destroyed video tape of more than 20,000 interrogations which could have provided important evidence (*Washington Post*, February 14). The CIA has admitted destroying videotapes of coercive interrogations of two detainees. Congress is attempting to investigate the destruction of those tapes. The Justice Department is blocking the House Intelligence Committee from interviewing CIA officials, claiming it might prejudice its own investigation (*New York Times*, February 9).

- **SECRET CAMP INSIDE GUANTANAMO HOUSES "HIGH VALUE" DETAINEES**

According to the Associated Press (Feb. 6), there is a top secret Camp 7 on the grounds of Guantanamo where alleged Al Qaeda leaders are held "apart from other prisoners to prevent them from retaliating against long-term detainees who have talked to interrogators. They also want the location kept secret for fear of terrorist attack."

- **THREE GUANTANAMO DETAINEES TO BOYCOTT TRIALS**

Calling the Military Commissions a sham, three prisoners at Guantanamo who are suspected of Al Qaeda ties say they will not take part in the proceedings and will not defend themselves. A Sudanese detainee, Ibrahim Ahmed Mahmoud Qosi, said that the military was practicing discrimination against Third World detainees, since three of the other prisoners due to face Military Commissions – two Britons and an Australian – had been released due to pressure from their home countries. The other detainees who are refusing to defend themselves before the Commissions are a Saudi national, Ahmed Muhammed Haza Darbi, and an Afghani, Mohammed Jawad.

- **US AND UK IN DISPUTE OVER BRITON SUBJECTED TO RENDITION**

The US is demanding that 29-year-old Binyam Mohamed, who was kidnapped from Pakistan in April 2002 and secretly taken by the CIA to Morocco where he was reportedly tortured with a razor, be tried before a Guantanamo Military Commission. But the UK wants him to be returned home, as 13 other British residents who were detained in Guantanamo have been. Britain is questioning the fairness of the Military Commission system and worried about what might come out about the involvement of the British intelligence service, the MI6, according to the April 2 *New York Times*.

- **WHAT IS AN "ENEMY COMBATANT"? UIGHUR CHALLENGES THE LABEL**

Huzaifa Parhat, a Chinese Muslim or Uighur, who was sent to Guantanamo after being captured in Afghanistan, has brought a case before a three-judge panel challenging his designation as an "enemy combatant." The US has never presented evidence that he was involved with the East Turkestan Islamic Movement, a militant group demanding separation from China. Although the group looks to the US for support, the US named it as a terrorist group in 2002, reportedly to appease China (*New York Times*, April 4). Even if Parhat was a member of the East Turkestan Islamic Movement, would that make him eligible for designation as an "enemy combatant"? Or would he have had to be connected in some way with the 9/11 attacks? That is a question before the panel. His attorneys want him released into the US if the court decides he is not an "enemy combatant" since he would be tortured or killed if sent back to China and no third country will take him. Five other Uighur,s ruled to be held illegally in Guantanamo, were sent to a refugee camp in Albania where they could not speak the language and knew

no one. Others who have been ruled innocent remain in solitary confinement in Guantanamo.

• **US DRAMATICALLY FAILING TO WIN HEARTS AND MINDS**

According to the results of a poll designed by the University of Maryland and conducted by Zogby International in six Arab states, popular views of the US in the Arab world have worsened since 2006. Nearly two-thirds of respondents held a "very unfavorable" attitude of the United States, up from 57 percent in late 2006. Two-thirds think Iran has the right to pursue its nuclear program, and three out of four Saudi respondents said if Iran did acquire nuclear weapons, it would have a "positive" influence on the region. Asked to name the two countries that posted the "biggest threat" to them, 95 percent named Israel and the United States. Over 80 percent identified the Israeli-Palestinian conflict as an issue of key importance to them. Four out of five people believe that Iraqis are worse off as a result of the US invasion; only 2 percent believe they are better off. Only 6 percent said they thought the surge was working and could lead to a political settlement, more than 60 percent believe the Iraqis would find a way to bridge their differences if the US withdrew – up from 44 percent in 2006 (*Boston Globe*, April 15; *Electronic Intifada*, April 15).

Building the National Security Surveillance State

• **NSA ENGAGES IN MASSIVE TOTAL INFORMATION AWARENESS-STYLE DOMESTIC SURVEILLANCE**

Siobhan Gorman reports in the March 10 *Wall Street Journal* that the highly secretive National Security Agency (NSA) - which used to be confined to foreign surveillance – "now monitors huge volumes of records of domestic emails and Internet searches as well as bank transfers, credit-card transactions, travel and telephone records" and conducts Total Information Awareness-style searches for "suspicious patterns." In 2003 Congress refused to fund the Total Information Awareness program directed by John Poindexter at the Pentagon'. The records being mined for "social-network analysis" purposes are called "transactional data." According to the report, "Two former officials familiar with the data-sifting efforts said they work by starting with some sort of lead, like a phone number or Internet address. In partnership with the FBI, the systems then can track all domestic and foreign transactions of people associated with that item – and then the people who associated with them, and so on, casting a gradually wider net....If a person suspected of terrorist connections is believed to be in a U.S. city – for instance, Detroit, a community with high concentration of Muslim Americans – the government's spy systems may be directed to collect and analyze all electronic communications into and out of the city." The NSA now gets access to the flow of data from telecommunications switches through the FBI, to all domestic and international financial transactions through the Treasury, to all airplane passenger data, and the databases held by other intelligence agencies. Its budget, which is classified, has been estimated by one official to top \$1 billion annually.

• **"NATIONAL DRAGNET IS A CLICK AWAY"**

This was the headline in the March 6 *Washington Post* about the vast shared digital repositories known as data warehouses being created by several thousand law enforcement agencies. The data in the warehouses is mined to discern links among

people and patterns of behavior. "These network efforts will begin expanding further this month, as some local and state agencies connect to the fledgling Justice Department system called the National Data Exchange, or N-DEX. Federal authorities hope N-DEX will become what one called a 'one-stop shop' enabling federal law enforcement, counterterrorism and intelligence analysts to automatically examine the enormous caches of local and state records for the first time" through a commercial data-mining system called Coplink. This system enables them in a few seconds to "find hidden relationships among suspects and instantly map links among people, places and events...The expanding police systems illustrate the prominent roles that private companies play in homeland security and counterterrorism efforts....Almost every state has established organizations known as intelligence fusion centers to collect, analyze and share information about possible leads. But many of those centers are underfunded and undermanned, and some of the analysts are not properly trained...Federal authorities have high hopes for the N-DEX system," foreseeing the time when it will enable 200,000 federal, state and local investigators to search across millions of police reports "in some 15,000 state and local agencies, with a few clicks of a computer mouse." N-DEX has been developed by Raytheon for \$85 million.

• **FBI CAN OBTAIN PHONE AND EMAIL DATA THROUGH CLICK OF A MOUSE**

According to the April 8 *Washington Post*, the FBI has created a network of links between the nation's largest telephone and Internet firms and its Quantico Technology Center, enabling technicians at telecommunications companies who are given National Security Letters or court orders to immediately transmit to the FBI data about personal cell phone calls, e-mails, instant messages and other communications. "Wiretaps to obtain the content of a phone call or an e-mail must be authorized by a court upon a showing of probable cause. But 'transactional data' about a communication – from whom, to whom, how long it lasted – can be obtained by simply showing that it is relevant to an official probe, including through an administrative subpoena known as a national security letter (NSL). According to the Justice Department's inspector general, the number of NSLs issued by the FBI soared from 8,500 in 2000 to 47,000 in 2005." The FBI is asking the Federal Communications Commission to give it even faster access and more information by building an automatic continuous feed into electronic surveillance, which is being used in both criminal and terrorist investigations. "When you're building something like this deeply into the telecommunications infrastructure, when it becomes so technically easy to do, the only thing that stands between legitimate use and abuse is the complete honesty of the persons and agencies using it and the ability to have independent oversight over the system's use," said Lauren Weinstein, a communications systems engineer and co-founder of People for Internet Responsibility, a group that studies Web issues. "It's who watches the listeners." In an affidavit sent to Congress, security consultant Babak Pasdar claimed that at the telecom carrier he worked for there was a special high-speed DS-3 digital line that allowed a third party – presumably the FBI – "unfettered" access to the company's wireless network.

• **FBI FOUND (AGAIN) TO BE MISUSING NATIONAL SECURITY LETTERS**

The latest report by Justice Department Inspector General Glenn Fine documents abuses in the use by the FBI of National Security Letters (NSLs) which persisted throughout 2006, a year after a previous report called attention to the misuse of this form of warrantless subpoena. In 2006, 60 percent of the nearly 50,000 NSLs issued that year

by the FBI targeted Americans (*Washington Post*, March 14). The report found that the FBI issued nearly 200,000 NSLs from 2003 through 2006 and that there were "hundreds" of possible violations of laws or internal guidelines in the use of the letters, including cases in which FBI agents made improper requests, collected more data than they were allowed to, or did not have proper authorization to proceed with a case. Also "troubling" were the enormous quantities of telephone numbers and other records demanded through a single request, with "blanket" requests being used at least 11 times in 2006. The report led Senator Russ Feingold (D-Wis) to demand that Congress "finally put limits on the overbroad authority it granted in the Patriot Act" (*New York Times*, March 13). NSLs are issued without any judicial oversight.

• **MISSION CREEP: SPITZER TRAPPED BY "SUSPICIOUS ACTIVITY REPORT" SENT BY BANK**

Post 9/11 requirements that banks must exercise an extra level of due diligence for a "politically exposed person" led the North Fork Bank to file an electronic "Suspicious Activity Report" on former New York Governor Eliot Spitzer's financial transactions to shell companies connected to a web-based prostitute service. The IRS then began its enquiry, leading to FBI wiretaps of conversations with the prostitutes that led to the Governor's resignation.

• **FBI SENT WRONG INFORMATION TO TERRORIST WATCH LIST**

According to a report by the Justice Department's Inspector General, the FBI and other federal agencies supplied outdated or inaccurate information to the main government watch list of terrorist suspects, the bureau's Terrorist Screening Center (*New York Times*, March 18). Among the problems with the list was the failure to remove names when it was determined that suspects were not a threat.

• **TERRORIST WATCH LIST CLAIMS INNOCENT VICTIMS**

USA Today (March 24) documents what can happen when someone is wrongly placed on a terrorist watch list. It tells the story of Thomas Kubbany, born and raised in the USA, whose middle name was Hassan. Some bureaucrat thought he might be a relative of Saddam Hussein identified on the Treasury Department watch list – a man 30 years his junior. As a result of an alert delivered by TransUnion, he lost his credit eligibility and a home he was hoping to purchase. And he could not get TransUnion or the Treasury Department Office of Foreign Assets Control to clear his name. He is now suing TransUnion.

• **TREASURY SAYS MONEY IS STILL BEING TRANSMITTED TO TERRORISTS**

"The international cooperation and focus is dropping, the farther we get from 9/11," according to a senior advisor to the Treasury's Office of Terrorism and Financial Intelligence. "Some countries lack political will. Others just don't have the basic capacity to govern their countries, much less create a viable financial intelligence unit" (*Los Angeles Times*, March 24). But the US also faces another problem "Overall, it is nearly impossible to distinguish funds meant for potential terrorism from legitimate transactions," according to a State Department official. A former director of the CIA's Counterterrorism Center said the government had exaggerated the successes of financial enforcement and played down the obstacles. "As a method for identifying and capturing terrorists, it has not been significant."

- **STEEP DECLINE IN CRIMINAL INVESTIGATIONS UNDERTAKEN BY FBI**

The number of criminal investigations undertaken by the FBI has declined by 40 percent in 20 years, according to the March 7 *Los Angeles Times*. The bureau is instead focusing on terrorism investigations. Federal immigration investigations account for more than a quarter of all criminal referrals to the Justice Department, with 41,600 such cases being referred for prosecution in 2007 – double the number in 2001. The investigation of white collar crime has decreased by 82% since 2001.

- **NEW BOOK REVEALS TENSIONS IN ADMINISTRATION OVER NSA SPYING**

A book by New York Times' journalist Eric Lichblau, *Bush's Law: The Remaking of American Justice*, describes how then Attorney General John Ashcroft signed off on the secret spying program with little formal legal review, and then complained that the White House "just shoved it in front of me and told me to sign it" (*New York Times*, March 30). Deputy Attorney General Larry Thompson was so upset at being kept totally in the dark and so worried about the program's legal ramifications that he refused to sign wiretap applications. Lichblau reports that President Bush approved of the program without a formal legal opinion endorsing it by the Justice Department's Office of Legal Counsel. Worries about legality finally led a deputy in the Office of Legal Counsel, John Yoo, to write a (still classified) legal opinion basing the legality of warrantless wiretaps on presidential wartime powers. Former Attorney General Alberto Gonzales had told Congress that there was no disagreement over the program within the Administration, a clear "mis-statement" according to the evidence presented in this book. Lichblau includes stories of many of the innocent American citizens and immigrants who have been harmed by the government's post 9/11 policies, including whistleblowers who lost their jobs for criticizing what the government was doing. He estimates that "several thousand" people in the US had their phone calls and email messages secretly surveilled without warrants.

- **CHERTOFF TO INTRODUCE NEW DOMESTIC SATELLITE SURVEILLANCE**

Saying that Congressional concerns about its legal underpinnings and privacy issues have been "fully addressed," DHS head Michael Chertoff said that the secretive new overhead spying capacities of the National Applications Office (NAO) will be gradually implemented. According to a DHS spokeswoman, "The legal framework that governs the National Applications Office...is reflected in the Constitution, the US Code and all other US laws" (*Washington Post*, April 12). The size and funding for the NAO are classified.

- **PENTAGON USING FBI FOR ITS OWN DOMESTIC SURVEILLANCE PURPOSES**

According to the ACLU, a study of the more than a thousand National Security Letters (NSLs) it has obtained from the Department of Defense through a FOIA lawsuit suggests that the Pentagon is getting around restrictions on domestic spying capacity by using the FBI to get private records of Americans' Internet service providers, financial institutions and telephone companies (*New York Times*, April 2). The FBI can get domestic email and phone records and lists of Web sites people have visited by using a National Security Letter, but the Department of Defense is not supposed do this kind of spying. The military has refused to divulge what kind of information it is obtaining through its own NSL requests and has given Congress misleading information about its

spying activities. On April 15, the ACLU filed a federal lawsuit seeking the release of records relating to the FBI's use of National Security Letters on behalf of other government agencies, particularly the Department of Defense.

• **WAS THE MILITARY CONSIDERED EXEMPT FROM THE FOURTH AMENDMENT?**

A document obtained through an ACLU FOIA lawsuit reveals the existence of a 37-page memo by John Yoo, dated October 23, 2001, and entitled "Authority for Use of Military Force to Combat Terrorist Activities Within the United States." According to the April 3 *New York Times*, it concludes that "the Fourth Amendment has no application to domestic military operations." On April 10, Attorney General Michael Mukasey tried to distance himself from the memo, without repudiating it outright. He responded to a question about the memo from Senator Dianne Feinstein by stating, "The principle that the Fourth Amendment doesn't apply in wartime is not in force." Only after being repeatedly pressed did he say that the Fourth Amendment applied in wartime or peacetime (*New York Times*, April 11). The ACLU is demanding that the government be forced to hand over the document.

• **PENTAGON MAY SHUT DOWN ITS SPYING PROGRAM**

The Pentagon is considering dismantling its secretive Counterintelligence Field Activity (CIFA) office which had been set up soon after 9/11 by former Secretary of Defense Donald Rumsfeld. A 2005 ACLU FOIA lawsuit revealed that CIFA's Talon database included information on anti-war protests and forced the military to delete some of its files. Civil liberties groups fear that the Pentagon may be planning to farm out its activities to other agencies which have not attracted such public scrutiny (*Boston Globe*, April 2).

• **PRIVATE CONTRACTORS ALLOWED "TO RUN AMOK" IN PENTAGON**

A *New York Times* editorial (April 2) expresses outrage over a March 26th report by the Government Accountability Office revealing that 95 major weapons systems have exceeded their original budgets by a total of \$295 BILLION in the past 7 years. The shrinking Pentagon workforce has led to a "heavy reliance on contractors" who are beyond government accountability and control, which is one reason "for the gross mismanagement of acquisition programs." Under the Bush Administration the weapons acquisition budget has doubled from \$790 billion to \$1.6 TRILLION last year. One private firm, CACI International of Arlington, Virginia, which was linked to the Abu Ghraib scandal, did \$1.3 billion of government business in fiscal 2007 (*Washington Post*, March 27).

• **BUSH BLUNTS NEW FOIA LEGISLATION**

After Congress unanimously passed (and the President signed) legislation that would make the Freedom of Information Act more effective by setting penalties for undue delays and empowering an ombudsmen to prod agencies to turn over requested material, Bush found a way to gut it. His new budget proposal would move the ombudsman from the National Archives to the Department of Justice, the very federal agency which is "already responsibly for defending agencies against lawsuits by citizens denied their information requests. It's not hard to see what the administration has in mind, for it was former Attorney General John Ashcroft who exploited 9/11 panic and

notoriously urged federal agencies to use all legal means to kill public document requests. This has remained de facto policy, all the administration lip service to sunlight government notwithstanding" (*New York Times* editorial, February 7). Associated Press reports on March 16 that "despite ordering improvements more than two years ago, President Bush has barely made a dent in the huge backlog of unanswered requests under the Freedom of Information Act," with many agencies seeing pending requests rise during the past two years. Three quarters of Americans surveyed by Scripps Howard News Service and Ohio University thought the federal government was very or somewhat secretive (*USA Today*, March 16).

- **BUSH WEAKENS INTELLIGENCE OVERSIGHT BOARD**

The independent Intelligence Oversight Board, which was established by President Ford in 1976 to look out for illegal spying by government agencies, has had its mandate downsized by President Bush. Composed of private citizens with high level clearance, the Board can no longer refer unlawful intelligence activity it learns about to the Justice Department for criminal investigation, and can no longer oversee each intelligence agency's general counsel and inspector general (*Boston Globe*, March 14).

- **WARRANTLESS SURVEILLANCE OF MAIL ON THE RISE**

USA Today (March 5) reports that postal authorities have approved more than 10,000 warrantless law enforcement requests to record names, addresses and other information from outside letters and packages **each year** since 1998. A single request can target multiple letters and packages from the same sender. Postal authorities would not discuss how much mail was being opened for content examinations. Such a search would require a warrant.

- **CHERTOFF STILL BELIEVES THERE ARE AL-QAEDA CELLS WITHIN US**

That's what he told reporters on March 6, the fifth anniversary of the creation of the Homeland Security Department, according to the March 7 *New York Times*. At the same press conference, Air Force Gen. Gene Renuart, chief of US Northern Command, said although he doesn't know if Al-Qaeda terrorists were plotting to attack the US or disrupt the US presidential elections, they could well be. Bush used the anniversary to lobby for a bill providing immunity from lawsuits to telecommunications firms that turned over information on their customers to the NSA without being served with a warrant as the law requires.

- **"PERSON OF INTEREST" SEIZED FROM AIRPLANE WAS AA PLATINUM CLUB MEMBER**

The March 3 *Los Angeles Times* told the story of Mohamed Fikry, a 53-year-old Pasadena resident who has traveled nearly 5 million miles on American Airlines for his business. Last July during a flight from LAX to Heathrow, he took a sleeping pill and fell asleep, only to find himself surrounded by federal agents when the plane was diverted to JFK. The FBI and New York police yanked him off the plane and interrogated him, saying the flight attendant claimed to have seen him on a tram for American Airlines employees, and feared he might have circumvented security to get on the flight. She was mistaken. He had gone through the regular security procedures and spent time at American's Admiral's Club before boarding the plane. According to an American Airlines spokesman, it was "an honest case of mistaken identity." During his detention at the

airport, US Homeland Security Chief Chertoff went on the "Today" show to say a man was in custody after boarding the plane posing as an American Airlines employee. The Airline never apologized. Last January, he was taking an American Airlines flight from Tokyo to Los Angeles and the same flight attendant was on duty, and that other attendants were pointing at him and whispering. He finally moved from business class to coach to avoid them. "It was as if I was the profile and not the person. It was degrading, and if I was Mr. Smith and not Mr. Fikry, it wouldn't have happened." He has decided to stop flying American Airlines.

• **AIRLINE SECURITY: BILLIONS SPENT, PASSENGERS MORE VULNERABLE THAN EVER**

These days the airline industry is beset by bad PR. While passengers have been willing to endure lengthy screening to ensure safety, the Federal Aviation Agency has been accused of colluding in the cover up of problems in plane maintenance and design, leaving a plane considerably more likely to be brought down by a shattered windscreen than a bomb. Thousands of flights have been cancelled (more than 3,000 by American Airlines), and planes grounded to do catch-up safety inspections and make repairs. According to the February 8 *Washington Post*, more than \$5 billion has been spent to buy, maintain and install explosive detection systems to prevent bombs from being smuggled on board in checked baggage, but all cargo is not screened. A further \$600 million has been spent on new technology to screen people and most gadgets that have been developed have not been deployed by the Transportation Security Administration because of privacy concerns or because they don't work.

• **CHERTOFF SAYS NO LAWS SHOULD STAND IN WAY OF BORDER FENCE**

In early April, DHS head Michael Chertoff issued waivers suspending more than 30 laws that he claimed interfered with "the expeditious construction of barriers" along the border with Mexico. The laws protected endangered species, the environment, religious freedom and Native American burial sites. The Secretary of Homeland Security was given the power by Congress to set aside laws as long as he said it was necessary to safeguard the nation's borders, with his word being final. Now environmental and other groups are challenging the constitutionality of one branch of government transferring unbridled power to set aside laws to the executive branch in a petition to the Supreme Court. Ten years ago, Justice Kennedy, the vital swing vote on the Court, wrote that "separation of powers was designed to implement a fundamental insight. Concentration of power in the hands of a single branch is a threat to liberty." They hope he still maintains this position (*New York Times*, April 8).

• **STATES OPTING OUT OF REAL ID COMPLIANCE CALL BLUFF OF DHS**

In January, Department of Homeland Security head Michael Chertoff announced that states had until March 31 to request an extension beyond the May 2008 deadline for starting work on new REAL ID driver's licenses, or their residents would be unable to board aircraft or enter federal buildings by showing their old licenses. Although seventeen states have passed resolutions or statutes opting out of REAL ID, most went along with the government and requested extensions. But some - like Montana, New Hampshire and South Carolina - called the government's bluff and refused to file for extensions. They then received them anyway on the grounds that their licensing procedures had improved security features. Maine, where the governor signed a law

refusing compliance with real ID, was the last holdout. On April 2, it was given an extension after the governor agreed to stop issuing driver's licenses to undocumented immigrants and to make other changes in its licensing procedures.

• **CONTRACT EMPLOYEES SNOOP IN PASSPORT FILES**

The private employees who peeked into private passport files of all three presidential candidates are among the more than 7.6 million contracted workers who have helped keep the federal workforce small. 60 percent of the 4,400 passport employees now work for private firms (*Washington Post*, March 25). Members of Congress urged the Department of Justice to investigate the unauthorized searches of the passport files.

• **GOVERNMENT DOING LITTLE TO PROTECT PERSONAL INFORMATION IN DATA BASES**

This was the conclusion of a Government Accountability Office study of 24 federal agencies released in mid February. At least 19 of the agencies had experienced at least one data breach, that could expose employees or members of the public to identity theft.

(*Washington Post*, February 26). The April 10 *Washington Post* reported that Social Security numbers for more than 1,200 participants were stored on a stolen National Institutes of Health laptop containing their medical records. The government waited almost a month to warn patients that their information had been stolen.

• **2008 SEES DATA BREACHES INVOLVING 8.3 MILLION PEOPLE IN FIRST THREE MONTHS**

This figure was reported by the Identity Theft Resource Center (*Washington Post*, April 3). During the year's first three months there were 167 major data breaches: 36 percent of them in businesses; 25 percent involving schools; 18 percent involving the government and military, 14 percent in medical and health care and 17 percent in banking and financial institutions.

• **MUSHROOMING OF IDENTITY THEFT CAUSES PROFIT TO DROP**

So rampant is identity theft that the sale of credit card numbers, Social Security numbers and other bank information has dropped from \$10 per identity in 2007 to 40 cents today, according to the latest Internet Security Threat Report issued by Symantec Corporation on April 8. Symantec detected 711,912 new threats in 2007, a 468 percent increase over 2006 (*Metro*, April 9).

• **HOW TO STEAL ENCRYPTED INFORMATION ON COMPUTER HARD DISK**

Just chill the computer memory chip with a blast of frigid air and when it is put back in the computer, you can read the data on it, according to a Princeton University computer security research group (*New York Times*, February 22).

• **THE WINNER IS...BOISE?**

A Homeland Security Department report lists Boise, Idaho, as the western city most vulnerable to terrorist attack. A spokesperson for the Boise Police Department stated, "Everybody was surprised. Basically, we don't understand how they arrived at that conclusion" (*Los Angeles Times*, March 31).

- **TAIWAN ORDERS BATTERIES; GETS PARTS OF NUCLEAR MISSILES**

Early in 2007, Taiwan reported that instead of receiving helicopter batteries, the Pentagon had shipped the wrong equipment, and asked for a refund or the order to be correctly filled. After the Pentagon told them to dispose of the packages, Taiwanese officials took a closer look and found the items were labeled "secret." They turned out to be nose cones for nuclear interballistic missiles, items that were classified, and should never have left US soil, according to the March 27 *Washington Post*. The Defense Department put the botched shipment down to human error, while China demanded to know more.

- **"SECOND LIFE" AND OTHER CYBERSPACE GAMES AID TERRORISTS**

The February 6 *Washington Post* reports that intelligence officials at the government's new Intelligence Advanced Research Projects Activity (IARPA) are worried that role-playing computer games where people take on alternate personalities and earn and spend money in cyberspace are enabling terrorists and criminals to move funds and conduct corporate espionage. "The government's growing concern seems likely to make virtual worlds the next battlefield in the struggle over the proper limits on the government's quest to improve security through data collection and analysis and the surveillance of commercial computer systems." But according to the Center for Democracy and Technology's Jim Dempsey, the national security concerns are overblown since the government can already get access to digital records, and it simply wants "to control this technology and make it even easier to tap than it already is. When the government is finished, every new technology becomes a more powerful surveillance tool than the technology before it."

- **SHOULD TERRORIST WEBSITES BE SHUT DOWN, OR MONITORED?**

One website that aired Al Qaeda propaganda was taken down in March by its Massachusetts-based Internet company, according to the March 27 *Boston Globe*. But many US counterterrorism officials want to monitor the 500 hardcore sites to learn about "the phenomenon of radicalization," not shut them down.

- **NEW ACADEMY ESTABLISHED TO "POLICE TERRORISM"**

The Los Angeles Police Department is teaming up with the Manhattan Institute's Center for Policing Terrorism to establish a counter-terrorism academy which will train as many as 150 police officers and private security personnel to respond to "homegrown and international terrorism" (*Los Angeles Times*, March 11).

- **AMTRAK TO RANDOMLY SCREEN BAGS**

In mid February Amtrak announced that it would deploy officers carrying automatic weapons and bomb-sniffing dogs to randomly screen carry-on bags. The searches are similar to those initiated in subways in Boston and New York. Anyone selected for screening who refuses will not be allowed to board (Associated Press, February 19).

- **CONTRACT AWARDED FOR "NEXT GENERATION IDENTIFICATION SYSTEM"**

On February 19, 2008, Lockheed Martin was awarded a ten-year, \$1 billion contract from the FBI to develop and maintain the Next Generation Identification system, which will expand fingerprint capacity to double the size of its current database, and incorporate palm print, iris, and facial recognition capabilities. The system is also

designed to incorporate other modalities that may become important in the future. It will include data on known criminals and terrorists, as well as information on foreign visitors to the US.

- **MIAMI POLICE TO USE MILITARY DRONES TO FIGHT CRIME**

Miami police intend to deploy a wingless Honeywell aircraft, which fits into a backpack, is capable of vertical take off and landing, and "seems ideally suited for use by SWAT teams" (*New York Times*, March 25). It is also capable of "staring" using electro-optic or infrared sensors. Law-enforcement agencies across the country are interested in using drones for their surveillance operations.

- **PALM SCANS USED TO LOG EMPLOYEE TIME**

Biometric hand scanners that record the precise time of employees' arrivals and departures are being used in a variety of workplaces across the country, from Dunkin' Donuts to Marine Corps bases, according to the March 27 *New York Times*. Civil servants in New York City held protests against the system, saying it was not put in place for security but "to exercise more control over the workforce."

- **LAPD INCLUDES "SUSPICIOUS ACTIVITY" IN INVESTIGATIVE REPORTS**

The Los Angeles police department is including such examples of "suspicious activity" as a car that looks out of place, or people taking pictures of bridges in their standard investigative reports. In this first of a kind police program, there are 65 different "suspicious activity" codes that will later be catalogued by intelligence officers and deposited in the state's fusion center (Associated Press, April 11).

Targeting Immigrants/Visitors

- **ELECTRONIC FINGERPRINTS SWELLING HOMELAND SECURITY DATABASE**

The Coast Guard and Border Patrol are among the federal agencies that are taking digital fingerprints from people who attempt to enter the US and emailing them to the Homeland Security database to be checked against criminal and immigration records. The Coast Guard has been gathering fingerprints from passengers on boats headed to Puerto Rico from the Dominican Republic, and prosecuting those people who are revealed to have criminal records or to have been deported from the US.

- **GOVERNMENT PRESSES AHEAD WITH FLAWED "NO MATCH" PROGRAM**

Despite ample evidence that the use of Social Security records to enforce immigration laws will not work and will hurt US workers, the Department of Homeland Security is moving ahead with plans to force employers to check the Social Security numbers of workers and anyone who applies for a job. If the numbers don't match the records held by the Social Security Administration (SSA), the SSA will send "no match" letters, and the employers have 90 days to fix things or face heavy fines. The SSA has found problems in 4 percent of its records – or 17.8 million out of 435 million records (most belonging to native-born Americans) which could result in "no match" letters being wrongly sent and tens of thousands of legally-employed workers being dismissed (*National Journal*, April 7). Last year a federal judge had issued a stay on implementation of the program. After offering the court an explanation of various aspects of the program, but not making substantial changes, the DHS is pushing it on

employers. The public has until April 25 to make comments on the new rules regarding "no match" letters.

- **SWEEPS OF POULTRY PLANTS ROUND UP 300 WORKERS**

Associated Press reports that raids conducted by ICE agents on April 16 at Pilgrim's Pride poultry plants in Tennessee, West Virginia, Texas, Florida and Arkansas led to the arrests of 300 people on immigration charges, including using stolen or fake identity cards. The company deploys the federal database Basic Pilot to check identity documents of new employees.

- **WHAT IS THE "PERFECT" IMMIGRATION RAID?**

According to ICE, it is learning as it goes along and will endeavor to put social service agencies on standby in case parents are detained. It will also make every effort not to separate breast-feeding babies from their mothers, and in other respects mount kinder, gentler, dragnets (*Los Angeles Times*, April 3).

- **GOVERNMENT FAILS TO DELIVER ON PROMISE OF FAST TRACK TO CITIZENSHIP**

In 2002, President Bush said that immigrants who joined the military would be put on a fast track to citizenship. According to the February 24 *New York Times*, that pledge has not been carried out for 7,200 service members or people who have been recently discharged from the military and have citizenship applications pending. They face long delays "because of background checks, misplaced paperwork, confusion about deployments and other problems."

- **"SPECIAL INTEREST ALIENS" BEING SECRETLY PROFILED**

Documents obtained by McClatchy Newspapers reveal that federal agencies have created internal lists of "special interest" countries whose citizens face special screening techniques when they attempt to enter the United States, including for asylum (McClatchy Washington Bureau, March 4). The lists include 35 countries, most of them Muslim or Arab, that encompass 20 percent of the world's population. According to Georgetown Law Professor David Cole, "This sounds like a continuation and institutionalization of what was essentially a failed initiative in the first couple of years after 9-11. It's a proxy for religious and ethnic profiling."

- **GOVERNMENT TO CHANGE "UNDESIGNATED TERRORIST" ENTRY POLICY**

Since 9/11 refugees and other legal immigrants who have been tied to groups that fought against foreign governments have had their applications for green cards and entry denied. Some of those regarded as members of "undesignated terrorist organizations" because they took up arms against a foreign governments fought as US allies in Vietnam or opposed the Taliban or Saddam Hussein. The catalyst for the decision to try to find a more rational policy was a *Washington Post* article about a translator for US forces in Iraq who arrived with commendations from the secretary of the Navy and then-Maj. General David Petraeus only to find his application for permanent residence denied on the grounds that he had once fought against Saddam Hussein with the Kurdish military (*Washington Post*, March 27).

- **LOCAL IMMIGRATION ORDINANCES BEING UPHELD BY MANY COURTS**

Last July, a federal judge in Pennsylvania struck down the ordinance in Hazelton barring landlords from renting to or local employers from hiring undocumented immigrants on the grounds that this was a federal matter. But more recently, federal judges have upheld similar ordinances in Arizona, Missouri, Oklahoma, and momentum for taking up the immigration issue has passed from the federal government to the states and localities. In the first 11 months of 2007, 1,500 bills dealing with immigration were introduced into state legislatures and 244 have become law (*New York Times*, February 10). In New England, the crackdown on the undocumented has been particularly intense in Rhode Island, according to the February 12 *Boston Globe*.

• **SCHOOLS, JOBS HIT HARD AS IMMIGRANTS LEAVE PHOENIX**

Two months after Arizona passed a law punishing employers who hire undocumented workers, thousands of immigrants are pulling their children out of schools and leaving the state, according to the March 2 *Boston Globe*. The construction industry has been especially hurt by the vanishing workforce.

• **IMMIGRATION POLICY BEING OUTSOURCED TO VIGILANTES**

Local sheriffs and their deputies are increasingly being handed responsibilities for enforcing federal immigration laws, according to the April 9 *Arizona Republic*. Phoenix Sheriff Joe Arpaio, a publicity hound who has built a national reputation for his cruelty to inmates, has, in addition to his 160 police officers, a 3000-member "posse" with 500 guns, airplanes, jeeps, and motorcycles to keep track of who is who, conduct sweeps and deport as many people as possible.

• **ICE HEAD APPEARS TO HAVE LIED BEFORE CONGRESS**

If you are an immigrant who lies to a federal officer you can be accused of a felony and deported. But if you are Bush nominee, a lie before Congress can ease the way to confirmation. Julie Meyers, now assistant secretary of Homeland Security and head of the Immigration and Customs Enforcement (ICE) agency, had told the Senate Homeland Security Committee last fall that she as one of a three-judge panel at an ICE-charity event voted to give the "most original costume" award to a worker dressed as an escaped prisoner, with dark makeup and dreadlocks. She said she was not aware the employee had "disguised his race" and was later "shocked and horrified" to learn that he was wearing makeup and instructed her chief of staff to get all the photos of the employee deleted (*Washington Post*, February 8). When Congress subsequently asked to see the photos, ICE released only redacted ones that did not show the worker's face for reasons of "personal privacy." Later CNN through a FOIA request got the original 113 party photos which clearly show the employee was in dark makeup and a wig.

B. IN THE US CONGRESS

• **A FIRST! DEMOCRATS REFUSE TO BLINK ON IMMUNITY FOR TELECOMS**

Deploying fear as a political stick, President Bush and his intelligence chiefs throughout January and February repeatedly raised the specter of the US being less safe because the Democrats were stalling on renewing the Protect America Act, this time with immunity to the telecoms included. The Act was due to expire on February 15, but the government's ability to carry out warrantless surveillance under its provisions lasts until at least August 2008 and the Act itself can be extended for short periods of time. After

the Senate fell in line on February 12 with a 67-31 vote in which 19 Democrats and Independent Joe Lieberman joined all Republican senators who were present to give the President everything he wanted, it seemed just a matter of time before the House resistance would crumble. But for the first time since the 2006 elections, the House stayed the course and stood up against blatant "war on terror" fear mongering. On February 14, they decided to make no change to the Protect America Act fix known as the RESTORE Act that they had passed last November, and to adjourn without adding immunity to telecoms. Over the next month, the President continued his fulminations, vowing to veto any legislation that does not include immunity for the telecoms. "This is not about protecting Americans. The president just wants to protect American telephone companies," stated Rep. Rahm Emanuel of Illinois, the head of the House Democratic Caucus (*Boston Globe*, February 16). Other Members suspected it was also about preventing 40 lawsuits from going forward that could reveal the extent of NSA spying and presidential law-breaking. On March 13, a month after the Protect America Act expired, a rare hour-long closed session of the House to hear classified information led many to suspect that it would soon fold. But instead, on March 14, the House voted 213-197 to reject retroactive immunity for the telecoms. House Judiciary head John Conyers Jr. stated that the debate over warrantless spying "goes to the very core of who we are as a nation." As Eric Lichtblau commented in the March 15 *New York Times*, "the decision...is one of the few instances when Democrats have been willing to buck the White House on a matter of national security." Meanwhile, as the Republicans refuse to negotiate a compromise, Senator Harry Reid has been filing bills from time to time granting extensions to the Protect America Act, so Democrats can claim they tried to pass legislation on FISA but were blocked by the Republicans if a terrorist act takes place.

• **MORE DEMOCRATIC HARDBALL: CONTEMPT CITATIONS APPROVED**

On the same day they stood up to the President on warrantless NSA spying, the House Democrats, by a vote of 223-32, agreed to issue contempt citations against White House Chief of Staff Joshua Bolten and former White House counsel Harriet Miers for refusing to cooperate with the investigation into the mass firing of US attorneys by the Justice Department. These were the first citations ever issued against White House officials, according to the February 15 *Boston Globe*. Most House Republicans had stormed out of the chamber and refused to vote. Three Republicans voted in support of the citations. The controversy may eventually lead to a judicial determination about the extent of Presidential claims of "executive privilege."

• **FBI RESISTING CONGRESSIONAL EFFORTS TO RESTRICT USE OF NATIONAL SECURITY LETTERS**

After two reports by Justice Department Inspector General Glenn Fine documenting the extent of abuse of National Security Letters by the FBI, there are two bills in Congress (HR 3189 and S 2088) that would significantly fix Section 505 of the USA PATRIOT Act. The bills would require the FBI to make sure NSLs are issued to gather information on someone with some kind of connection to a terrorist – currently there is no such provision limiting the FBI's use of NSLs. It would also force the government to demonstrate that secrecy is needed before a gag provision is imposed. The House Bill would require FBI agents to destroy information obtained under an NSL once a person is no longer of interest to an investigation. But the FBI has testified that it has improved its

methods of deploying NSLs and should not be restricted in their use (*New York Times*, April 15, 2008).

• **MCCAIN PAVES WAY FOR BUSH TO VETO ANTI-TORTURE BILL**

Presidential candidate John McCain, who had spearheaded earlier attempts to ban torture, voted against legislation attached to the Intelligence Authorization Act for fiscal 2008 that would have barred the CIA from using waterboarding and other tactics banned by the Army Field Manual. McCain declared "what we need is not to tie the CIA to the Army Field Manual, but rather to have a good-faith interpretation of the statutes that guide what is permissible in the CIA program" (*Washington Post*, February 15). The legislation passed both Houses but was vetoed by the President on March 8. Senator Edward Kennedy declared, "Unless Congress overrides the veto, it will go down in history as a flagrant insult to the rule of law and a serious stain on the good name of America in the eyes of the world" (*Washington Post*, March 8).

• **SEN. KENNEDY PROPOSES STATE SECRETS PROTECTION ACT**

In order to provide a remedy to people who have been subjected to illegal wiretapping or "extraordinary rendition" but are today blocked from their day in court by the Bush Administration's invoking "state secrets privilege," Senator Edward Kennedy has filed legislation that would give them a chance to sue while protecting real secrets. The bill would allow a federal judge to review in private any information the Administration claims is too sensitive for release, instead of simply relying on the Justice Department's assertions. Lawyers for the plaintiff could also review any evidence the judge says need not be excluded if they have sufficient security clearance. The judge could order an unclassified summary to be made of evidence too sensitive for such a review, or could protect it altogether. Attorney General Mukasey is opposing the bill.

• **"DEMONIC" SAVE ACT MOVING FORWARD**

The SAVE (Secure America Through Verification and Enforcement) Act of 2007 (HR 4008), filed by Reps. Shuler and Tancredo, may soon come to the floor for a vote. It would make the Basic Pilot employment verification system - which relies on the deeply flawed Social Security Administration and DHS databases - mandatory for 6 million employers over the next 4 years. It would result in thousands of US citizens and legal residents being fired because they cannot resolve bureaucratic data discrepancies. In an editorial of April 17, the *New York Times* condemned the SAVE Act and called bills relying on employment verification "demonic. It starts with a flawed database that everyone would have to rely on to get work or change jobs. Think of the 'no-fly' list, the database of murky origins with mysterious flaws that you, the passenger, must fix if you are no it and want to fly. These immigration bills seek to take small, badly flawed 'no-work' lists and explode them rapidly to a national scale. With an error rate of about 4 percent, millions of citizens could be flagged as ineligible to work, too." And for this we would pay \$40 billion over 10 years.

C. IN THE COURTS

• **SUPREME COURT REFUSES TO HEAR NSA WIRETAPPING CASE**

On February 19, the US Supreme Court refused to hear a case on the constitutionality of warrantless domestic wiretapping. The ACLU had hoped that the court would use the

case to rule that Bush had overstepped his powers when he ordered the NSA to carry out warrantless wiretapping and ignored the FISA Act. A judge in Detroit who first heard the suit had decided on behalf of the ACLU, only to be overruled by the US Court of Appeals that decided the plaintiffs did not have standing to sue because they could not show they were in fact targeted for surveillance. The ACLU had appealed that decision to the Supreme Court, which previously rebuffed an ACLU challenge to "extraordinary rendition" on "state secrets" grounds (*Boston Globe*, February 20).

● **ANOTHER CASE CHALLENGES LEGALITY OF WIRETAPPING PROGRAM**

Lawyers for an imam, Yassin Aref, and an Albany pizzeria owner, Mohammed Hossain, are asking the Federal Appeals Court for the Second Circuit to rule that the NSA domestic spying program is unlawful. Such a ruling, they maintain, should reverse the conviction of their clients, who were found guilty of agreeing to help launder money for a terrorist operation and sentenced to 15 years in prison (*New York Times*, March 25).

● **SECOND MISTRIAL DECLARED IN "HOMEGROWN TERRORIST CELL" CASE**

For the second time, a federal jury was unable to agree on a verdict in the case of six men from Liberty City in Miami accused of plotting to blow up the Sears Tower in Chicago and bomb FBI offices. A seventh defendant, Lyglenson Lemorin, had been acquitted in an early trial and now faces deportation to Haiti which he left more than 20 years ago. The government is asking an immigration judge to order his deportation based on the same charges the jury had dismissed (*Washington Post*, March 2). Mr. Lemorin is a lawful green card holder. The Liberty Seven case relied on hundreds of FBI audio and video recordings and the testimony of paid FBI informants. One informant claimed to be an Al Qaeda member and said he would provide them with weapons and money. Narseal Batiste, the accused ringleader of the Liberty City Seven, claimed they were faking an interest in the plot in hopes of conning \$50,000 out of the informant and using it for their charity work in their impoverished neighborhood (*Boston Globe*, April 17). The government is deciding whether to mount a third trial.

● **TERRORIST SUSPECT EGGED ON BY INFORMANTS**

According to the March 31 *New York Times*, taped conversations between suspects were the main evidence used in the trial of six terrorist suspects who are being tried in a New Jersey federal district court for conspiracy to kill US military personnel at Fort Dix. Agron Abdullahu, an Albanian immigrant, on several occasions told the informant who was urging him to buy weapons that he never wanted to hurt anybody. Abdullahu pleaded guilty to a reduced charge of providing firearms to illegal aliens while five other suspects face life in prison if convicted.

● **MUKASEY WANTS TO REINSTATE TERRORIST CHARGE**

In his first appearance before the Supreme Court, Attorney General Michael Mukasey asked it to reinstate an explosives charge against Ahmed Ressay, who was arrested in December 1999 as he tried to cross the border from Canada with explosives in his trunk. He is serving a 22-year prison sentence after being convicted of 8 other counts related to terrorism, but the appeals court in San Francisco threw out a ninth count on the grounds that there was no link between the explosives found in his car and a false customs declaration.

D. IN THE COMMONWEALTH

• CONGRESSIONAL HEARING ABOUT GUANTANAMO HELD IN BOSTON COURTHOUSE

On March 27, attorneys Sabin Willett and Michael Mone Jr., two of the Boston lawyers involved in the defense of detainees at Guantanamo, testified about the horrendous treatment meted out to their clients before a House Foreign Affairs subcommittee meeting chaired by William Delahunt that was convened at the federal courthouse in South Boston. They criticized the US government for dropping leaflets six years ago offering millions of dollars in cash rewards to anyone who turned over to US forces presumed Taliban or foreign fighters. Rep. Delahunt suggested that detainees who have been cleared of wrongdoing like the Uighurs the attorneys represent should be allowed into the United States if there is no where else to send them (*Boston Globe*, March 27).

• NATIONAL COMMISSION HEARS TESTIMONY ABOUT ICE RAIDS

The National Commission on ICE Misconduct and Violations of Fourth Amendment Rights held a hearing on April 7 in the State House in Boston. The commission was launched by the United Food and Commercial Workers International last February to draw attention to the inhuman treatment of immigrants during ICE raids such as the one in New Bedford on March 6, 2007 and violation of their constitutional rights. US Senator John Kerry and Lieutenant Governor Tim Murray appeared before the Commission, and gave it their support. Kerry has filed legislation, the Families First Immigration Enforcement Act, mandating adequate medical care, child care and free legal counsel for detained immigrants (*Boston Globe*, April 8). On the anniversary of the New Bedford raid, he sent a letter to ICE head Julie Myers requesting a detailed report about what ICE had done to ensure that it would act more humanely in the future.

• MILLIONS OF RECORDS EXPOSED IN SUPERMARKET BREACH

The Hannaford Brother supermarket chain, with stores across New England including in Massachusetts, suffered a data breach between December and early March that exposed as many as 4.2 million credit and debit card numbers to theft. Hannaford reported that compromised cards were used in transactions in all the stores it operates. Before Hannaford publicly admitted to the breach in mid March, 70 Massachusetts banks complained that they had been warned by MasterCard and Visa of a data breach at a major retailer between December 7 and March 10, but it was not named (*Boston Globe*, March 18).

• THOUSANDS AFFECTED BY DATA BREACH AT HARVARD UNIVERSITY

In February, the personal information as many as 10,000 of last year's graduate applicants was exposed through the actions of a computer hacker, Harvard has admitted. It is providing free identity theft recovery services, according to the March 13 Associated Press.

• "TERRORIST TIP" LEADS TO PURSUIT OF PROFESSIONAL HARPSICHORDIST ON MBTA

Peter Watchorn, a Cambridge resident and US citizen born in Australia, was mistaken for a terrorist when his conversation was overheard by a passenger at Central Square T

stop. The harpsichordist, who plays at St. Mary of the Hills Church in Milton, was on his way to the airport for a business trip to Buffalo. He never made it. Instead, the subway system was paralysed and he sat in a Red Line car and watched while it was searched by uniformed transit police and dogs. He and a friend were eventually hauled off a Silver Line bus at Terminal B, searched, questioned and let go after 30 minutes. Acting Police Chief Paul MacMillan was pleased with the outcome of the case and said they received 439 similar tips last year and did 31 follow up investigations. He could not say how many arrests were made as a result of such tips but added, "The landscape has definitely changed for mass transit in this country" (*Boston Globe*, March 18).

• **AL QAEDA REFERENCED TO EXPLAIN WHY SIMMONS CAMPUS POLICE TO CARRY GUNS**

Beginning in August, the campus police at Simmons College, a women's college in Boston, will be armed. At a faculty meeting in February, Director of Public Safety Gerald Chaulk chalked this up to terrorism: "One other thing you need to know is that the al-Qaida terrorist training book teaches them to seek out soft targets. Soft targets are described in their training book as college and high school campuses, particularly college campuses that are open and have a minimum male population." The faculty members who were present laughed, according to a transcript of the meeting (*Boston Now*, March 11).

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