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

August 12, 2008

CONTENTS

RIGHTSWATCH

A. EXECUTIVE ACTIONS

Military Commissions, Torture, Guantanamo
• Bin Laden's driver sentenced to 5 ½ years, but could spend his life in prison
• Kafka-esque military commissions on trial with Salim Hamdan
• With teenager's trial set for October, secret report says he was abused
• Videotapes may exist of interrogation sessions
• At least 22 children imprisoned at Guantanamo
• Brother of "enemy combatant" held in US released from Guantanamo
• Mukasey asks Congress to reaffirm that enemy combatants can be detained indefinitely
• Far-flung regime of torture revealed by Mayer's "Dark Side"
• Guantanamo may radicalize the wrongly imprisoned
• Cabal of five prepares way for torture regime
• Key memos authorizing torture obtained by ACLU
• A glimpse at the dark side: interrogation approach described
• US techniques inspired by methods used by Chinese Communists to extract false confessions
• Medical tests provide evidence of torture of detainees
• Abu Ghraib detainees sue contractors over torture
• International human rights panel petitioned by detainee over torture
• Archipelago of "black sites" gradually looming into view
• What we know – and don't know – about detentions in Iraq
• Book says fake letter was drafted to link Al-Qaeda and Iraq
• Woman neuroscientist arrested in mysterious circumstances

Building the National Security Surveillance State
• "Main Core" database may be part of domestic spying program
• "Terrorism liaison officers" feed government databases
• Undercover Maryland police spied on peace groups
• FBI guidelines to permit profiling of Muslims and Arab-Americans
• Border officials can copy contents of laptops and cell phones; examine written material
• Intelligence gathering restructured by Bush

• Former top prosecutor and Member of Congress on million-strong terror watch list
• After scientist kills himself FBI says he was the anthrax killer
• Another FBI misuse of National Security Letters revealed
• Report condemns politicization of Justice Department
• Muslim charities shut down for unfounded reasons; humanitarian causes harmed
• Police department criticizes terror funding focus, says nation not safer

Targeting Immigrants/Visitors
• Prosecutors, courts cooperate with ICE to get speedy guilty pleas
• Citizens and legal residents caught up in ICE raids
• Majority of federal criminal cases involve immigrants
• Scores of cities seek to stop police from working with ICE
• Hospitals deporting uninsured patients who are immigrants
• ICE announces new program called "Scheduled Departure"

B. IN THE US CONGRESS
• Congress caves on domestic surveillance
• Congress holds hearing on the "imperial presidency"
• Congress holds hearings into interrogation methods

C. IN THE COURTS
• Appeals court says "enemy combatants" detained in US can be held indefinitely – and that includes American citizens
• ACLU sues over new wiretap law
• Court rejects Bush claim on wiretapping
• Court rules that White House aides not entitled to immunity from Congressional subpoenas
• Judge rules that White House does not have to turn over records
• Appeals court dismisses rendition lawsuit
• ACLU seeks to clear names of "unindicted co-conspirators"
• Lawsuit filed against DC checkpoints

D. IN THE COMMONWEALTH
• New state law permits prosecutors to obtain electronic communications without subpoenas
• Habib case heard in Boston court
• Boston firm undertakes biggest pro bono effort in its history
• ID theft involving TJX biggest to date
• Massachusetts ICE raids terrify communities
• Lawsuit charges state trooper with civil rights violations

A. EXECUTIVE ACTIONS

Military Commissions, Torture, Guantanamo

• BIN LADEN'S DRIVER SENTENCED TO 5 ½ YEARS, BUT COULD SPEND HIS LIFE IN PRISON

On August 6, at the end of the first Military Commission trial conducted at Guantanamo, six anonymous military officers – including an Apache helicopter pilot shot at by insurgents over Iraq, a Navy Captain privy to classified briefings about Afghanistan, and an Air Force colonel - found Salim Hamdan guilty of five counts of providing material support for terrorism by being bin Laden's bodyguard and driver. In the system set up by the Military Commissions Act (MCA) of 2006, it took the votes of 4 of the 6 jurors to convict and it was not clear how the panel voted. Two days later, the same jury sentenced him to 5 and one-half years in prison. The prosecution had asked for 30 years to life. Although he is eligible for release in six months since he has already been imprisoned for 5 years, Hamden may still spend the rest of his life in prison.

Hamdan was cleared of the two more serious conspiracy charges. The charge of providing terrorists "material support" is not part of the international law of war, but was made a war crime by the MCA. No sooner had Judge Navy Capt. Keith Allred completed his instructions to the military jury than the prosecution objected that he had wrongly told them that Hamdan could only be found guilty of a war crime on the conspiracy charge if the two surface-to-air missiles he was accused of transporting in his car were to be used against civilians not involved in hostilities (Reuters, August 5). Since only US forces had airplanes in the area, they were obviously not destined for use against civilians. The prosecution argued that "unlawful enemy combatants" like Hamdan committed war crimes when they attacked US forces in combat, as provided by the 2006 Military Commissions Act. Hamdan's military defense attorneys said that when the alleged attacks took place, this was not the law and if it had been the law, the US itself committed war crimes in the 1980s by giving the mujahideen forces in Afghanistan missiles to use against the Soviet army. The judge said it was too late to change his instructions, but agreed that the war crime issue had to be clarified for future military commissions. The Pentagon intends to bring war crimes charges against at least 80 other Guantanamo detainees.

• KAFKA-ESQUE MILITARY COMMISSIONS ON TRIAL WITH SALIM HAMDAN

The military commissions are "show trials" in which defendants are "presumed guilty," not innocent. Whatever the judge and juries rule is immaterial, since the government has said it can keep the detainees locked up as long as the "war on terrorism" lasts – which could be a lifetime or more.

The first war crimes trial conducted by the US since the end of World War II got underway soon after Federal District Court judge James Robertson ruled on July 17 that

claims that the military commission system was unconstitutional could only be appealed to a civilian court after the military trial was over (New York Times, July 18). The presiding judge in the first military commission, Navy Capt. Keith Allred, had seemed uncertain about what to do after the Supreme Court ruled in Boumediene v. Bush that Guantanamo detainees do have the habeas corpus rights denied them by the Military Commissions Act. On the day of Judge Robertson's ruling, Judge Allred rejected defense efforts to stop the proceedings. The defense argued that the war crimes charges against Hamdan were unconstitutional because they were based on a law (the Military Commissions Act) that was enacted while he was already in custody. Defense attorneys, who received a chaotic "document dump" of evidence from the government only 12 hours before the trial began, further argued the trial should be stopped since everything Hamdan told interrogators was tainted by the fact that he had been beaten and subjected to sexual humiliation, severe isolation and 50 days of "Operation Sandman," a program of systematic sleep deprivation that constituted torture (New York Times, July 15).

Once the trial was underway, Judge Allred admitted some statements made by Hamdan under interrogation in Guantanamo and Afghanistan, but excluded others made during his imprisonment in certain prisons in Afghanistan because they were obtained in "highly coercive environments and conditions" (Los Angeles Times, July 22). Hamdan was interrogated at least 40 times, with some sessions lasting several days, and it was never clear what criteria the judge was using to admit some statements and exclude others. Prosecution witnesses, including 9 federal agents, admitted Hamdan was never advised that evidence he gave could be used against him. The judge ruled that "the Fifth Amendment of the Constitution does not apply to protect Mr. Hamdan" and the trial went on (New York Times, July 29). The first to testify was Col. L. Morgan Banks III, a senior army psychologist who was responsible for the Army's SERE program (Survival, Evasion, Resistance, Escape) that had been used to devise interrogation methods (New York Times, August 1). One of the 13 prosecution witnesses was Even Kohlmann, "a young terrorism consultant paid to make a movie on the history of Al Qaeda" called "The Al Qaeda Plan" which was modeled on the film "The Nazi Plan" that was shown to the Nuremberg war crimes court (Los Angeles Times, July 30). Kohlmann said he didn't know when asked by defense attorney Charles Swift if Hitler's driver had been tried for war crimes at Nuremburg. (The defense noted that Hitler's driver, Erich Kempka, was not prosecuted as a war criminal). Another witness, former ABC News correspondent John Miller who is now a spokesman for the FBI, told the judge out of earshot of the jury that he didn't recognize Hamdan as one of the Al Qaeda drivers he met when he interviewed bin Laden in 1998.

Much of the testimony was given in secret and during some critical moments of the open sessions, the courtroom camera swiveled away from the faces of witnesses and from evidence, leaving in the dark reporters who watched it the proceedings on closed-circuit television. The defense testimony was given entirely in secret and in cross-examining prosecution witnesses, the defense could not ask a question based on the best-selling

9/11 Commission Report on the grounds that "it's classified" (New York Times, August 1). Neither could the name of the CIA be mentioned, and the defense was not permitted to examine the CIA agents who interrogated Hamdan or see their reports.

In his closing argument defense attorney Lt. Cmdr Brian Mizer said in a secret session that Hamdan offered "critical details" to the American forces "when it mattered most" in the early days of the war in Afghanistan (New York Times, August 5). "You know what Mr. Hamdan agreed to do," he said, referring to classified evidence, You know what happened, how we squandered that opportunity." Testimony during public sessions made it "clear that Mr. Hamdan had provided details about Mr. bin Laden's possible whereabouts, even taking interrogators to some of Mr. bin Laden's Afghan homes and training camps." He also allegedly provided information about Abd al Rahim al-Nashri, the Al Qaeda operative who was allegedly behind the 2000 attack on the Cole. At the end of June, the Pentagon brought 8 charges against al-Nashiri, who has been in custody since 2002 and has been subjected to waterboarding (Boston Globe, July 1).

In its closing statement, the prosecution called Hamdan "an Al Qaeda warrior" and "the last line of defense for Al Qaeda's senior leadership." The defense and the written testimony of Khalid Shaikh Mohammed (the self-described architect of 9/11) asserted he was just a driver with a 4th grade education doing a job for pay. Mohammed had stated, "He was not fit to plan or execute" (New York Times, August 6). Hamdan himself expressed deep remorse over the attacks in a statement to the jurors.

Before the jury handed down its lenient sentence (reminiscent of the 9 months given David Hicks in his Guantanamo plea bargain agreement), the Bush Administration praised the trial - the deputy White House press secretary Tony Fratto called the military commission system "a fair and appropriate legal process" – while the defense strongly condemned it. In an editorial headed "Guilty as Ordered," the August 7 New York Times asserted: "The rules of justice on Guantanamo are so stacked against defendants that the only surprise was that Mr. Hamdan was actually acquitted on the more serious count of conspiring (it was unclear with whom) to kill Americans during the invasion of Afghanistan...Col. Morris Davis, the former chief prosecutor in Guantanamo, put the trial in a disturbing light. He testified that he was informed by his superiors that only guilty verdicts would be tolerated. He also said that he was told to bring high-profile cases quickly to help Republicans score a pre-election public relations coup." On to the high profile cases!

• WITH TEENAGER'S TRIAL SET FOR OCTOBER, SECRET REPORT SAYS HE WAS ABUSED

Omar Khadr, a 22-year-old Canadian who was detained in Afghanistan at aged 15 and has been charged with the July 2002 grenade killing of a US soldier, is due to face trial before a military commission on October 8. On July 15, parts of a blurry video recording of his interrogation at Guantanamo were made public after the Canadian Supreme Court

ordered Canadian officials to release the tape. Khadr is shown sobbing while being questioned by a Canadian intelligence officer, displaying wounds he sustained when captured and begging for help (New York Times, July 16). A report compiled by Canada's Department of Foreign Affairs was turned over to Khader's lawyers in response to another court order. It claims he was subjected to intense sleep deprivation in a program referred to as the "frequent flier program" where, over a three week period, he was moved to a new cell every three hours. The Canadian government has refused to ask the US government for his return to Canada.

• VIDEOTAPES MAY EXIST OF INTERROGATION SESSIONS
According to the August 5 Washington Post, the US may hold thousands of hours of video interrogation tapes made when foreign intelligence and law enforcement teams visited their citizens at Guantanamo, similar to the tape made of the Canadian intelligence officer's visit with Omar Khadr. The State Department informed foreign government delegations visiting the prison that "the United States will video tape and sound record the interviews" they conduct with prisoners, and some members of the delegations have called it standard procedure. The Pentagon has long maintained it did not videotape interrogations.

• AT LEAST 22 CHILDREN IMPRISONED AT GUANTANAMO
According to the July 19 UK Guardian, a prisoner list released in response to a FOIA lawsuit reveals that at least 22 Guantanamo inmates were children when they arrived at the prison. The Pentagon had told the UN in May 2008 that eight were juveniles, while the British human rights group Reprieve believes that 22 is too low a number. Among them were Mohammed el Gharani who was 14 or 15 when he was seized while praying in a Karachi mosque; 16-year-old Hassan bin Attash who endured 16 months of torture in Jordan under the "extraordinary rendition" program and 17-year-old Yasser Talal Al Zahrani who apparently killed himself in June 2006 in his Guantanamo cell.

• BROTHER OF "ENEMY COMBATANT" HELD IN US RELEASED FROM GUANTANAMO
Jarallah al-Maari, a citizen of Qatar, was one of three detainees transferred from Guantanamo to their home countries in late July. He had been seized while riding a bus in Pakistan, never undertook military training and was never accused of taking up arms against US forces (Huffington Post, July 31). But despite these facts which came out in his CSRT hearing, he was put in solitary confinement in Guantanamo for over 16 months, with the lights on in his cell 24 hours a day. He was released two weeks after the Fourth Circuit Court of Appeals ruled that President Bush did have the right to hold Ali Al-Maari indefinitely as an "enemy combatant" in a naval brig off the South Carolina coast. Ali Al-Maari had been legally in the US studying at Bradley University (see In the Courts, below).

• MUKASEY ASKS CONGRESS TO REAFFIRM THAT ENEMY COMBATANTS CAN BE DETAINED INDEFINITELY

On July 21, Attorney General Michael Mukasey asked Congress to devise a legislative response to the Supreme Court's Boumediene ruling in June stating that the United States "remains engaged in an armed conflict with Al Qaeda" and that the government had the power to hold 'enemy combatants' indefinitely (New York Times, July 22). Mukasey asked Congress to specify that all appeals from detainees would be consolidated in a single court (probably the Washington federal district court) and that detainees should not be allowed to attend the hearings in person, but rather could view proceedings through a secure video link from Guantanamo Bay. He said that there should be no appeals to civilian courts of sentences handed down by military commissions until all the war crimes trials are complete and the courts should not be allowed to release a prisoner who has been cleared into the United States.

• FAR-FLUNG REGIME OF TORTURE REVEALED BY MAYER'S "DARK SIDE"

In her book The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals, Jane Mayer, a staff writer for The New Yorker, gives the most complete and harrowing account to date of the United States' nightmare "war on terror" journey into brutality and illegality orchestrated, she says, by Vice-President Cheney. According to Alan Brinkley's review of the book (New York Times, August 3), "It is the story of how a small group of determined men and women thwarted international and American law, fought off powerful challenges from colleagues within the Justice Department, the State Department, the National Security Council and the CIA; ignored or circumvented Supreme Court rulings and Congressional resolutions; and blithely dismissed a growing clamor of outrage and contempt from much of the world – all in the service of preserving their ability to use extreme forms of torture in the search for usable intelligence." Mayer states that a secret report given to the CIA by the International Committee of the Red Cross finds methods used against "high value" detainees like Abu Zubaydah to be clearly torture and that Bush administration officials who approved them were guilty of war crimes. She also reveals that the Bush administration was warned by a CIA analyst in 2002 that up to a third of the detainees at Guantanamo were imprisoned by mistake, but the White House ignored his finding. The top military commander at Guantanamo, Maj. Gen. Michael Dunlavey, thought half were there by mistake.

• GUANTANAMO MAY RADICALIZE THE WRONGLY IMPRISONED

An investigation by McClatchy newspapers based on interviews with dozens of former detainees found that "US officials mistakenly sent a lot of men who weren't hardened terrorists to Guantanamo, but by the time they were released, some of them had become just that" ("Wrongly Jailed Detainees Found Militancy at Guantanamo," June 17). Humiliation and abuse inflicted by captors and religious and ideological training given by Taliban and Al Qaeda cadres made Guantanamo ideal for recruitment purposes.

• CABAL OF FIVE PREPARES WAY FOR TORTURE REGIME
Tom Lasseter writing for McClatchy Newspapers (June 18) maintains that a quintet of lawyers calling themselves the "War Council" laid the legal groundwork for the Bush Administration's "war on terror" strategy: David Addington (Cheney's Chief of Staff), former Attorney General Alberto Gonzales, former Pentagon General Counsel William J. Haynes II, Justice Department lawyer John Yoo, and former Gonzales deputy Timothy Flanigan. Among those most concerned about the new approach were military lawyers, including former Navy Judge Advocate General Donald Guter and former Army Judge Advocate General Tomas Romig. According to Romig, "John Yoo wanted to use military commissions in the manner they were used in the Indian wars. I looked at him and said, 'You know, that was 100-and-something years ago. You're out of your mind.'...As they viewed it, due process is legal mumbo jumbo. They wanted to get them, get the facts and convict them...If you're caught as a terrorist, you're presumed guilty and you have to prove you're innocent. It was crazy."

• KEY MEMOS AUTHORIZING TORTURE OBTAINED BY ACLU
On July 24, the ACLU finally succeeded through a FOIA lawsuit in obtaining three heavily-redacted previously-withheld Justice Department memos authorizing the CIA to use particular coercive interrogation methods including waterboarding. The documents include the notorious August 2002 memo bearing the name of a current federal judge, Jay Bybee, which asserts that an interrogator need only have an "honest belief" that he is not committing torture to avoid legal jeopardy. The memo says interrogation techniques that cause severe mental pain would not amount to torture unless they cause "harm lasting months or even years after the acts were inflicted upon the prisoners." The memos of 2003 and 2003 require the CIA to document "the nature and duration of each such technique employed" and "the identities of those present." This documentation is still being withheld.

• A GLIMPSE AT THE DARK SIDE: INTERROGATION APPROACH DESCRIBED
On June 22, Scott Shane in the New York Times described the "bad cop, good cop" CIA routine involving the SERE program's methods of inflicting pain (including waterboarding) followed by rapport-building undertaken by CIA interrogator Deuce Martinez. Despite the fact that he spoke no Arabic and had no interrogation experience, Martinez' willingness to listen allegedly achieved results with Khalid Shaikh Mohammed and Abu Zubaydah. Shane leaves it an open question whether the same results could have been achieved without the harsh methods, but points out that the FBI claimed its officials earlier got Abu Zubaydah talking entirely without the use of force. CIA officials acknowledge that their approach "was cobbled together under enormous pressure in 2002 by an agency nearly devoid of expertise in detention and interrogation...In its scramble, the agency made the momentous decision to use harsh methods the United States had long condemned. With little research or reflection, it borrowed its techniques from an American military training program modeled on the torture repertories of the Soviet Union and other cold-war adversaries...it located its

overseas jails based largely on which foreign intelligence officials were most accommodating and rushed to move the prisoners when word of locations leaked. Seeking a longer-term solution, the CIA spent millions to build a high-security prison in a remote desert location...The prison, whose existence has never been disclosed, was completed – and then apparently abandoned unused – when President Bush decided in 2006 to move all the prisoners to Guantanamo." Martinez subsequently worked for the consulting company Mitchell & Jessen Associates, which is run by "former military psychologists who advised the CIA on the use of harsh tactics in the secret program."

• US TECHNIQUES INSPIRED BY METHODS USED BY CHINESE COMMUNISTS TO EXTRACT FALSE CONFESSIONS

According to the July 2 New York Times, the "coercive management techniques" adopted by the military trainers who came to Guantanamo in December 2002 were based verbatim on a 1957 Air Force study of techniques used by the Communist Chinese to obtain confessions from American prisoners during the Korean War. The study was entitled "Communist Attempts to Elicit False Confessions from Air Force Prisoners of War." In orchestrated confessions denounced as brainwashing by the US, American servicemen were filmed admitting that they had carried out germ warfare and various atrocities. The US developed a training program based on the Chinese methods and known as SERE (Survival, Evasion, Resistance, Escape) to teach soldiers to resist such coercive interrogation methods. SERE became the basis of the CIA post 9/11 interrogation methods. "In what critics describe as a remarkable case of historical amnesia, officials who drew on the SERE program appear to have been unaware that it had been created as a result of concern about false confessions by American prisoners." The "Chart of Coercion" listing the methods used by the Chinese Communists was made public at a June 17 Senate Armed Services Committee hearing (see In the Congress below for hearings on torture).

• MEDICAL TESTS PROVIDE EVIDENCE OF TORTURE OF DETAINEES

On June 18, the Boston-based Physicians for Human Rights presented a report based on a battery of medical exams carried out on 11 former detainees who spent an average of three years in US detention facilities in Iraq, Afghanistan or Guantanamo. All were eventually released without any charges being filed against them. Most have long-term psychological damage, including post-traumatic stress disorder, and scars and other injuries that back up their accounts of beatings, electric shock, being shackled in stress positions and sodomy. The detainees also report being subjected to prolonged periods of isolation, hooding, sensory deprivation and nakedness; being threatened with dogs; threats of rape and other forms of sexual humiliation; threats against their families; extremes of heat and cold; prolonged sleep and food deprivation. Ali al-Qasi, one of the detainees in the study, told the June 18 Associated Press that he was regularly given electric shocks, sodomized with a stick, molested by women soldiers and harassed by dogs while being forced to be naked for weeks at a time. He said he has "recurring nightmares that I'm in my cell at Abu Ghraib, cell 49 as they called it, being tortured at

the hands of the people of a great nation that carries the torch of freedom and human rights."

• ABU GHRAIB DETAINEES SUE CONTRACTORS OVER TORTURE
The July 1 Boston Globe reported that three Iraquis and a Jordanian have brought lawsuits in 4 different federal district courts against CACI International of Arlington, VA and L-3 Communications Corporation (formerly the Titan Corporation), alleging that named employees from these organizations subjected them to forced nudity, electric shocks, mock executions, and other forms of abuse.

• INTERNATIONAL HUMAN RIGHTS PANEL PETITIONED BY DETAINEE OVER TORTURE
According to the August 7 Agence-France Presse, lawyers for Djamel Ameziane, an Algerian detainee being held at Guantanamo, have petitioned the Inter-American Commission on Human Rights detailing the abuse to which he says he was subjected, including being waterboarded, tied up in stress positions, burned with pepper spray and held in windowless solitary confinement of the past year. He was reportedly sold to US forces for a bounty while trying to cross from Afghanistan to Pakistan.

• ARCHIPELAGO OF "BLACK SITES" GRADUALLY LOOMING INTO VIEW
How many secret jails did the CIA run overseas as part of its "war on terror" program? And where were/are they located? A partial list includes, in addition to Guantanamo, CIA-run jails in Pakistan, Thailand, Afghanistan, and Poland, with Syria, Jordan, Morocco and Egypt providing their services to torture victims of "extraordinary rendition" (The New York Times, June 22). Other "black sites" have allegedly been located in Romania, Kenya, Somalia, Ethiopia and Djibouti (UK Guardian, June 2) and the August 1 Time Magazine reports on the imprisonment and interrogation of suspects in the British territory of Diego Garcia, possibly in the US military base located on the island and/or on ships anchored in its waters. The August 4 UK Guardian published a similar story, urging the British government "to address crimes committed on British territory" including kidnapping, extraordinary rendition, illegal imprisonment and quite possibly torture. An article about the use of as many as 17 ships as "floating prisons" appeared in the UK Guardian on June 2. It quotes Clive Stafford Smith, the legal director of the human rights group Reprieve: "They choose ships to try to keep their misconduct as far as possible from the prying eyes of the media and lawyers...By its own admission, the US government is currently detaining at least 26,000 people without trial in secret prisons, and information suggests that up to 80,000 have been 'through the system' since 2001."

• WHAT WE KNOW – AND DON'T KNOW – ABOUT DETENTIONS IN IRAQ
According to Nick Mottern, writing in the August 8 Perspective about ongoing war crimes research carried out by ConsumersForPeace.org, Task Force (TF) 134, which oversees detentions in Iraq, has been forthcoming with some information, but was silent

on such matters as number of detainees held by Iraqi government; number transferred to Iraqi custody by US forces; who decides who is to be held and whether they will be taken before a court; types of interrogation used; number of US personnel involved in running detention camp. What the researchers were told: detainees are being held under UN Security Council Resolution 1723; there are currently about 23,000 in custody; around 73,000 Iraqi citizens have passed through US detention facilities; about 10 women and 350 juveniles are being held by the US; detainees not charged with crimes are referred to TF 134 and have their detention reviewed by a Combined Review and Release Board and later a Multi-National Force Review Committee, while those who are charged appear before the Central Criminal Court of Iraq. Mottern cites a report by the Global Policy Forum claiming that "nearly all" of the detainees are being held indefinitely without arrest warrants and charges and that detainees cannot attend the review sessions set up by the US, cannot see the evidence against them and cannot be represented by attorneys.

• BOOK SAYS FAKE LETTER WAS DRAFTED TO LINK AL-QAEDA AND IRAQ
Ron Suskind, a Pulitzer-Prize winning journalist, claims in his new book, The Way of the World, that "The White House had concocted a fake letter" to demonstrate that "there was an operational link between Saddam and Al Qaeda, something the vice-president's office had been pressing the CIA to prove since 9/11 as a justification to invade Iraq. There is no link" (Boston Globe, August 6). The White House called the allegation "absurd." Suskind also writes that the White House ignored intelligence that said there were no weapons of mass destruction in Iraq.

• WOMAN NEUROSCIENTIST ARRESTED IN MYSTERIOUS CIRCUMSTANCES
Aafia Siddiqui, a graduate of MIT and Brandeis and mother of three who disappeared five years ago, was reportedly arrested in Afghanistan on July 17 outside the Governor's residence in Ghazni carrying liquids and documents detailing how to make a dirty bomb (UK Guardian, August 6). The next day, according to American accounts, she allegedly sprang out from behind a curtain, grabbed an assault rifle from one of the two US army officers and two FBI agents who were arranging for her transfer into their custody, and shot at them and missed, only to be shot herself in the torso. Siddiqui, who had been named by Khalid Sheikh Muhammed as an Al Qaeda member, had long been presumed to be in US custody in Bagram (US and Pakistani officials once admitted as much) where she was thought to "prisoner 650" who was being held in solitary confinement. On August 4 she was flown to the US. The next day the frail woman appeared in federal district court in Manhattan where she was charged with attacking US army officers in Afghanistan (Agence-France Presse, August 7). Defense lawyers say the alleged shoot-out was intended to cover-up her secret imprisonment by the US, and the head of the Pakistani Human Rights Commission called the account of her capture "one of the greatest lies of the 21st century" (UK Guardian, August 6).

Building the National Security Surveillance State

• "MAIN CORE" DATABASE MAY BE PART OF DOMESTIC SPYING PROGRAM
After Congress agreed to give the telecom companies immunity for their role in illegal NSA spying (see In the Congress below), hopes for finding out about the extent of domestic surveillance through courtroom discovery are dimmed. In a widely-circulated article in Salon (July 23), Tim Shorrock reports that some top House Democrats have been discussing a proposal written by a former senior member of the original Church Committee established to investigate domestic surveillance during the 1970s which calls for a new Church Committee-style investigation. A prime focus of the probe would be the government's alleged use of a giant database dating from the 1980s which is known to government insiders as "Main Core," and which stores vast amounts of personal data on Americans – now reportedly as many as 8 million – who are believed to be national security risks. Shorrock quotes a former intelligence officer who calls Main Core an "emergency internal security database system" designed for use by the military in case of a national catastrophe, a suspension of the Constitution or imposition of martial law. A Harper's journalist, Christopher Ketchum, had broken the story about "Main Core" in an article called "The Last Roundup" in the May/June issue of Radar Magazine. He speculates that the database whose code name is "Main Core" is involved in the classified "Continuity of Government" program and quotes a senior government official with high security clearance under five administrations as saying, "There exists a database of Americans, who, often for the slightest and most trivial reason, are considered unfriendly, and who, in a time of panic, might be incarcerated. The database can identify and locate perceived 'enemies of the state' almost instantaneously." He also speculates that an operation involving the use of the "Main Core" database by the NSA might have been the cause of the March 2004 hospital drama, when Chief of Staff Andrew Card and then-White House counsel Alberto Gonzales visited the ailing Attorney General Ashcroft demanding his reauthorization for a top secret spying program. When James Comey, the acting attorney general at the time, refused to certify it, the White House sent it forward without a Justice Department signature. In his Salon piece, Shorrock suggests that "Main Core" evolved from the database that had been controlled by FEMA during the 1980s to keep track of people critical of what the US was doing in Nicaragua and other Central America countries and that it might involve software called PROMIS (Prosecutors' Management Information System) with powerful searching capabilities which the computer software company Inslaw claims had been stolen from it by the Reagan Administration.

• "TERRORISM LIAISON OFFICERS" FEED GOVERNMENT DATABASES
Matthew Rothschild, writing in the July 9 Progressive, summarizes a Denver Post article about police officers, firefighters, paramedics and utility workers doubling as "terrorism liaison officers" who collect information about "suspicious activity" and send it to Fusion Centers. Quoting from a Terrorism Liaison Officer job description, Rothschild finds these officers, including private sector representatives, now work "in agencies dealing with the harbor, the airports, and the railroads, but also 'University/Campus" in at least 8

states and Washington DC, and that "dozens" of other states are planning to recruit and train Terrorism Liaison Officers.

• UNDERCOVER MARYLAND POLICE SPIED ON PEACE GROUPS
The ACLU of Maryland has released files obtained through a lawsuit that detail at least 288 hours of surveillance of peace and anti-death penalty groups by undercover police over a 14 month period in 2005-6 (Baltimore Sun, July 18). The state police Homeland Security and Intelligence Division planted its covert agents in a peace group called Baltimore Pledge of Resistance, and the Baltimore Coalition against the Death Penalty, among other organizations, in the search for suspected "security threats." "The only potentially unlawful activity mentioned anywhere in the documents...were two instances of nonviolent civil disobedience. In one, activists refused to leave a guard station during a protest at the National Security Agency after bringing cookies and drinks for the guards, and in the other, they hatched a plan to place photographs of soldiers who died in Iraq on the fence surrounding the White House."

• FBI GUIDELINES TO PERMIT PROFILING OF MUSLIMS AND ARAB-AMERICANS
According to the July 3 Associated Press, "The Justice Department could allow the FBI to investigate Americans without any evidence of wrongdoing, relying instead on a terrorist profile that could single out Muslims, Arabs, or other racial and ethnic groups." In revised FBI guidelines expected to be adopted this summer, a "national security" investigation would "let agents open preliminary terrorism investigations after mining public records and intelligence to build a profile of factors that, taken together, were deemed suspicious" – among them "travel to regions of the world known for terrorist activity." Abandoning the presumption of innocence, the revised guidelines would, in the words of Attorney General Mukasey, "allow the FBI to transform itself...into an intelligence-gathering organization." As one FBI official put it, "We don't know what we don't know. And the object is to cut down on that." According to AP, the guidelines would permit "FBI agents to ask open-ended questions about activities of Muslim or Arab-Americans or to investigate them if their jobs and backgrounds match trends that analysts deem suspect."

• BORDER OFFICIALS CAN COPY CONTENTS OF LAPTOPS AND CELL PHONES; EXAMINE WRITTEN MATERIAL
Both American citizens and foreign visitors who are entering the US can have the contents of their laptops, cell phones and digital cameras copied in order to protect the country from criminals and terrorists, the Department of Homeland Security (DHS) told a Senate Subcommittee hearing (McClatchy Newspapers, June 25). Newly-disclosed policies apply to "any device capable of storing information in digital or analog form," and also cover "all papers and other written documentation," including books, pamphlets and "written materials commonly referred to as 'pocket trash' or 'pocket litter'" (Washington Post, August 1). Officers may, according to the policies, "detain" laptops "to review and analyze information...absent individualized suspicion."

Reasonable measures must be taken to protect business information and attorney-client privileged material, but nothing is said about the handling of medical data and financial records and other personal information. If no reason is found to keep the electronic information, copies are supposed to be destroyed. "But the documents specify that there is no limitation on authorities keeping written notes or reports about the materials," according to the August 1 Post. One of those whose electronic equipment has been searched is Jawad Khaki, an American corporate executive from the state of Washington who has also been questioned extensively on each of the 8 times he returned to the US from business trips during the last year (Seattle Times, July 23). Jamed Hyder, an American manager of a technology company who has been questioned at length at the airport on 5 occasions during the past year, was told last November to turn on his computer so customs agents could look through it while they asked him questions about the mosques he attended and activities he was involved in. An imam from the Seattle area who was also asked to turn on his laptop for customs officials had to fill out a form that asked what organizations he was involved in and what he thought of US foreign policy.

• INTELLIGENCE GATHERING RESTRCTURED BY BUSH
New guidelines issued by the Bush Administration overhaul Executive Order 12333 and bolster the three-year-old Office of the Director of National Intelligence (DNI) in an effort to ensure the better coordination of the nation's 16 intelligence agencies (Washington Post, July 31). Some of the new powers given to the DNI impinge on the role traditionally held by the CIA.

• FORMER TOP PROSECUTOR AND MEMBER OF CONGRESS ON MILLION-STRONG TERROR WATCH LIST
Former Assistant Attorney General Jim Robinson who was the Justice Department's top criminal prosecutor under the Clinton Administration is now on the government's terrorist watch list – despite having his own top-security clearance renewed last year (Associated Press, July 14). Robinson joined the ACLU in calling for the watch list to be eliminated on the day which, by ACLU calculations, it reached 1 million names. A spokesman for the FBI's Terrorist Screening Center says it only has 400,000 names, with the rest being aliases. One of them is "John Lewis," which has led Representative John Lewis (D-GA) over the past five years to be repeatedly questioned and searched at airports. "The problem persists even though Homeland Security gave him a letter to show airlines" (Boston Globe, July 19).

• AFTER SCIENTIST KILLS HIMSELF FBI SAYS HE WAS THE ANTHRAX KILLER
After Dr. Bruce Ivins committed suicide on July 29, he emerged as the only FBI suspect in the anthrax attacks that led to five deaths and the swift passage of the USA PATRIOT Act by a terrified Congress. Ivins was a 62-year-old Army microbiologist in a high security federal biodefense laboratory similar to the one that is being built in Boston's South End. He did research into the strain of anthrax which the FBI claims was

responsible for the deaths when it was included in letters mailed from New Jersey. For years, the FBI had focused its $15 million investigation on another researcher, Dr. Steven Hatfill, who recently received a settlement of $5.8 million for his ruined career. Many lives were ruined by the "poorly handled" FBI search, according to the August 10 New York Times. It describes how in the atmosphere of paranoia prevailing at the Army biodefense lab, one suspect drank himself to death and another lost his job and his marriage. A disgruntled Chester, Pennsylvania employee called in a bogus tip that led to three Pakistani-born city officials being subjected to FBI searches, which had consequences for their visas and path to citizenship. On August 6, the FBI made public its evidence against Dr. Ivins, which his lawyers called "heaps of innuendo" that did not directly tie him to the crime (New York Times, August 7). Friends and colleagues pointed out that at least 100 other people had access to the same strain of anthrax and that the evidence offered by the FBI was entirely circumstantial. The New York Times printed passages from some of his emails showing him to be mentally unstable. The FBI hopes to find more evidence linking Ivins to the murders when it searches computers he used at a public library.

• ANOTHER FBI MISUSE OF NATIONAL SECURITY LETTERS REVEALED
On August 8, the FBI admitted publicly that in 2004 it improperly issued "emergency" National Security Letters to obtain phone records of reporters working in Indonesia for The New York Times and The Washington Post (New York Times, August 9). The records, presumably obtained as part of a terrorism investigation, have reportedly been purged from the FBI's database. Because the FBI did not say what it had been investigating or why the reporters' phone records were seized, Senators Patrick Leahy and Arlen Specter sent a letter to FBI head Robert Mueller requesting formal staff briefings to address unanswered questions (New York Times, August 12).

• REPORT CONDEMNS POLITICIZATION OF JUSTICE DEPARTMENT
The Justice Department's Inspector General released a report in late June assailing Justice Department officials, led by Monica Goodling from the Republican National Committee, who used "political or ideological" factors in civil service hiring decisions (New York Times, June 25). Rejected candidates included those with ties to the Democratic Party, the American Constitution Society, Greenpeace, Planned Parenthood, or the Poverty and Race Research Action Council. Some had written opinion pieces critical of the USA PATRIOT Act. Membership in the Federalist Society was a big plus. Goodling wrote such notes as "pro-God in public life," and "pro-civil marriage, anti-civil union" when she recommended certain candidates be hired, and was known to ask in interviews, "Why are you a Republican?" (New York Times, July 29). One woman was denied a job after an unfounded rumor that she was a lesbian. Former Attorney General Alberto Gonzales told Glenn Fine, the Inspector General, that he did not know Ms. Goodling and other aides were using political criteria in their career hiring decisions. Those who were hired in this illegal fashion are apparently there to stay.

• MUSLIM CHARITIES SHUT DOWN FOR UNFOUNDED REASONS; HUMANITARIAN CAUSES HARMED

A report co-authored by OMB Watch and Grantmakers Without Boarders asserts that using USA PATRIOT Act powers and Executive Order 13224, the Treasury Department and other government agencies have suspended the operations of Muslim-affiliated charities and seized and frozen their funds indefinitely on the vague grounds that investigations are "pending" (Maya Schenwar in Truthout, August 5). Executive Order 13224 "Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism" was issued by the White House on September 23, 2001. Some organizations, such as Kind Hearts for Charitable Human Development, have been shut down without ever being designated a "supporter of terrorism" – a phrase that is never clearly defined. As a result, groups that have tried to deliver aid to Sri Lanka after the 2004 tsunami in areas controlled by the Tamil Tigers have risked being charged with providing "material support" to terrorist organizations while the Humanitarian Law Project has been hamstrung in its attempt to do conflict resolution and human rights training with the Kurdistan Workers' Party and other groups. After its funds were frozen, the Islamic American Relief Agency asked for them to be used to aid victims of Hurricane Katrina but the government refused. "To shut down such an organization, OFAC [the Office of Foreign Assets Control] need not explain the reasons for its actions, or back them up with evidence. No independent review is granted to charities that attempt to challenge their terrorist designation, and most of their due-process rights are denied. They do not have a chance to present their own evidence to counter the government's accusations. What's more, the government has no obligation to notify an organization before it is deemed a terrorist supporter and its funds are seized." The report, entitled "Collateral Damage: How the War on Terror Hurts Charities, Foundations, and the People They Serve," calls for Congressional oversight as a first step.

• POLICE DEPARTMENT CRITICIZES TERROR FUNDING FOCUS, SAYS NATION NOT SAFER

According to the July 24 New York Times, the police chief in Providence, Rhode Island thinks the federal government has gone too far in its focus on terrorism, and the nation's security is being harmed. "Flush with federal homeland-security grants, the department acquired millions of dollars worth of hardware and enrolled officers in training courses to detect and response to a terrorist attack. But much has changed. Now, police officials here express doubts about whether the imperative to protect domestic security has blinded federal authorities to other priorities. The department is battling homicides, robberies and gang shootings that the police in a number of cities say are as serious a threat as terrorism." As federal funds have been reduced for criminal justice programs, the DHS continues to pour funding into bomb detection and containment, mobile data terminals, underwater camera and video gear, special protective suits, sophisticated radio and video systems and training at a terrorist bombing school in New Mexico where officers can study weapons of mass destruction, learn how to interpret deceptive

responses and prevent suicide bombings, and carry out role-playing exercises on airport hijackings. Over the past five years the Providence department has received more than $11.6 million in DHS grants but less than $4.5 million in grants to hire more officers and pay overtime. A report by the International Association of Chiefs of Police states, "Unfortunately, funding homeland security efforts at the expense of state, tribal and local law enforcement agencies weakens rather than enhances our nation's security."

Targeting Immigrants

• PROSECUTORS, COURTS COOPERATE WITH ICE TO GET SPEEDY GUILTY PLEAS
Some 117 pages of scripts prepared before a May ICE raid on the Agriprocessors plant in Postville, Iowa enabled the courts to convict in just 4 days the nearly 300 workers detained in this largest ever roundup from a single workplace. Most of the immigrants were sentenced to 5 months in prison for document fraud, to be followed by their deportations (New York Times, August 9). The scripts, compiled before the raid, were presented to 2 dozen defense lawyers to induce them to accept various plea agreements. Defense attorneys were shocked to discover that the judge had apparently ratified the deals before they had even had a change to talk to their clients. In the words of the ACLU's Lucas Guttentag, "The entire process seemed to presume and be designed for fast-track guilty pleas."

• CITIZENS AND LEGAL RESIDENTS CAUGHT UP IN ICE RAIDS
USA Today on June 24 describes how over 100 American citizens and legal residents were detained when ICE raided Micro Solutions Enterprises (MSE) last February and detained a fifth of its Los Angeles workforce on the grounds that they were "illegal." The Center for Constitutional Rights has filed a lawsuit on their behalf, charging that they were detained without justification, and activists say that racial profiling is rife – "If you look like a Hispanic, you're detained or arrested." But ICE head Julie Myers says that ICE has the right to hold and question "all the people inside" a workplace, including citizens. The raid came nearly a year after the company's owners began using the government's E-Verify database to check the immigration status of its workers. No charges have been brought against the employers. According to the July 6 New York Times, California employers have been shocked by the fact that the MSE raid took place despite its owners' voluntary use of the government's database. Business groups are mobilizing against laws that would revoke the licenses of employers caught twice using "illegal" workers and for those that would increase the number of workers allowed into the country.

• MAJORITY OF FEDERAL CRIMINAL CASES INVOLVE IMMIGRANTS
A report by the Transactional Records Access Clearinghouse of Syracuse University indicates that there has been a "highly unusual surge" in new immigration prosecutions in 2008, with 9,350 new prosecutions brought in March. This is a 73 percent increase over the same month the preceding year and represents 57 percent of all new federal

criminal cases brought nationwide (New York Times, June 18). The Justice Department is now pressing criminal charges against virtually all immigrants caught crossing the border illegally through its "Operation Streamline" program. "Immigration lawyers have warned that the widespread application of criminal charges has resulted in overly hasty prosecutions and undermined immigrants' abilities to exercise their immigration rights, which might allow them to avoid deportation."

• SCORES OF CITIES SEEK TO STOP POLICE FROM WORKING WITH ICE
As ICE raids proliferate, approximately 80 communities across the country have passed sanctuary ordinances asking local police forces not to cooperate in federal immigration raids. Some sanctuary ordinances, like one in San Francisco which recently came under attack for "spending all that money to help criminals evade being deported," were passed in the 1980s in an effort to protect refugees from Nicaragua, El Salvador and Guatemala (San Francisco Chronicle, July 6, 2008). More than a dozen California cities and towns now have such ordinances, as do Hartford, Connecticut and Cambridge, Massachusetts in New England. Alaska, District of Columbia, Montana, New Mexico and Oregon are "sanctuary states." The July 31 New York Times published an op ed by George Gascon, a former assistant chief in the LAPD, condemning the way immigration issues are tearing communities apart and the pressures on police to make "illegal arrests" and "to carry out policies that may violate the Constitution...If we become a nation in which the local police are the default enforcers of a failing federal immigration policy, the years of trust that police departments have built up in immigrant communities will vanish. Some minority groups may once again view police officers as armed instruments of government oppression."

• HOSPITALS DEPORTING UNINSURED PATIENTS WHO ARE IMMIGRANTS
In a lengthy piece, the August 3 New York Times documented "a little-known but apparently widespread practice" of deportations of seriously injured or ill immigrants being carried out by American hospitals without any role being played by immigration authorities. "Some advocates for immigrants see these repatriations as a kind of international patient dumping, with ambulances taking patients in the wrong direction, away from first-world hospitals to less-adequate care, if any....Medical repatriations are happening with varying frequency, and varying degrees of patient consent, from state to state and hospital to hospital. No government agency or advocacy group keeps track of these cases, and it is difficult to quantify them." Some hospitals routinely send "uninsured immigrants, both legal and illegal, back to their homelands. One Tucson hospital even tried to fly an American citizen, a sick baby whose parents were illegal immigrants, to Mexico last year."

• ICE ANNOUNCES NEW PROGRAM CALLED "SCHEDULED DEPARTURE"
On July 31, ICE head Julie Myers announced that some immigrants would be allowed to "self-deport" if they have no criminal history and have outstanding removal orders. By coming in voluntarily to an ICE office, they would not have to fear a middle-of-the-night

raid and would not have to remain in custody until their deportation. ICE estimates that their are 572,000 "fugitive aliens" in the country with removal orders or who have failed to keep an appointment with ICE, including 457,000 who do not have criminal histories and would qualify for "Scheduled Department" during the August 5 to August 22 period (ICE press release, July 31).

B. IN THE US CONGRESS

• CONGRESS CAVES ON DOMESTIC SURVEILLANCE

On July 10, nearly three weeks after the House Democrats decided to "compromise" on NSA spying, President Bush signed into law the FISA Amendment Act of 2008 which legalizes the President's warrantless wiretapping program and gives virtual immunity to the telecoms. It permits the dismissal of the 40 or so civil lawsuits that have been filed against telecommunications companies for handing over customer information to the government in the absence of a warrant. All the phone companies have to do for a suit to be dismissed is to demonstrate in a federal district court that they had been given written assurances that their participation in the warrantless wiretapping of Americans was legal and authorized by the President. The lawsuits had provided some hope that through the process of discovery, the public would at last learn about the extent of the illegal spying program. The FISA Amendments Act essentially legalizes the illegal things that the Administration had been doing while ensuring the public is none the wiser. It permits the government to conduct mass, untargeted surveillance through blanket warrants of all communications coming into and out of the US, without any individualized review or finding of wrongdoing. It permits only minimal court oversight from the FISA Court which can only review general targeting procedures but may not know who or what will actually be tapped. It gives the government the authority to wiretap without going to court for up to 7 days in "exigent" circumstances, and permits it to carry on wiretapping if an application is denied by the court.

Senator Russ Feingold, who pushed for more civil liberties protections and tried to lead a filibuster against it, called the deal a "capitulation" by his fellow Democrats (New York Times, June 20). According to Feingold, "the bill will make it very easy for the government to essentially suck up the communications, all communications of Americans that go overseas, whether it's an email or a text message or a phone call to a daughter on a junior year abroad, or a child who's in Iraq or a reporter or a business associate. This is one of the greatest intrusions, potentially, on the rights of Americans protected under the Fourth Amendment...in the history of our country" (Democracy Now! June 24). While House Speaker Nancy Pelosi tried to justify it as a "compromise" and Senator Obama did an about turn to support it (along with Senator McCain), the entire Massachusetts delegation (with the exception of Senator Kennedy who was not present to vote) opposed it and the ACLU immediately brought a law suit challenging it on Fourth Amendment grounds (see In the Courts below). "With one vote, Congress has strengthened the executive branch, weakened the judiciary and rendered itself

irrelevant," declared ACLU Washington Legislative Office Director Caroline Frederickson.

• CONGRESS HOLDS HEARING ON THE "IMPERIAL PRESIDENCY"
With peace activist Cindy Sheehan gathering signatures to oppose her in November, House Speaker Nancy Pelosi did her own about face and permitted the House Judiciary Committee to hold a limited hearing on July 25 into the President's abuse of power. It was not an impeachment hearing, although it followed Rep. Dennis Kucinich's filing of 36 articles of impeachment. According to Dave Lindorff writing in CommonDreams (July 30), Pelosi and House Judiciary Committee chair John Conyers were determined to "limit the scope and intensity of the hearing" and agreed with the Republican demand that public involvement would be minimal and that no derogatory comments about the President would be permitted: "It was clear that this was to be a tightly controlled and strictly limited hearing. It was also clear that it was intended to go nowhere." So limited was the coverage of the hearing that few Americans are probably aware that a bipartisan panel of witnesses repeatedly put "impeachment on the table of a chamber where the speaker had once denied it a place" (The Nation, July 25). Congressman Maurice Hinchey (D-NY said the administration of Bush and Cheney was "the most impeachable administration in the history of our country." Kucinich (D-OH) said that if Congress failed to impeach, it would signal to future presidents that they too could reject the rule of law. Rep. Tammy Baldwin (D-WI) agreed, and made the case for impeachment – the administration has fabricated evidence leading to the Iraq War, suspending habeas corpus, practiced torture and rendition in violation of international law, spied on Americans without a court order, politicized the Justice Department, outed Valerie Plame Wilson as a covert agent of the CIA: "What this Congress does, or chooses not to do in furthering the investigation of the serious allegations against this administration – and if just cause is found, to hold them accountable – will impact the conduct of future presidents, perhaps for generations...I believe there is no task more important for this Congress than to seriously consider whether our nation's leaders have violated their oath of office."

• CONGRESS HOLDS HEARINGS INTO INTERROGATION METHODS
Both the House Judiciary Committee and Senate Armed Services Committee have questioned some of the key figures behind the Pentagon policies permitting torture and other abuse in "war on terror" prisons. The Senators learned from recently released memos that as military officers in the fall of 2002 attempted to get detainees at Guantanamo to talk, they were assured by Jonathan Fredman, the top lawyer for the CIA's Counterterrorist Center, that the definition of illegal torture was "vaguely written. It is basically subject to perception. If the detainee dies you're doing it wrong" (New York Times, June 18). Fredman, who is now a lawyer for the director of national intelligence, warned that interrogation sessions should not be videotaped since they will "look ugly." He also talked about how interrogators could avoid interference by the Red Cross, and strongly defended waterboarding. The hearing learned how techniques used

by the Pentagon to train soldiers to withstand torture were then adapted for "war on terror" interrogations by military psychologists, among others. It heard from former Defense Department general counsel William Haynes II, who refused to take responsibility for the harsh tactics despite the evidence that exists that he was soliciting ideas for coercive methods of interrogation in 2002: "As a lawyer, I was not the decision maker. I was the adviser." The House Judiciary Committee had earlier heard from an evasive former Department of Justice lawyer John Yoo and Cheney's current chief of staff David Addington in May. On July 17, Committee members questioned former Attorney General John Ashcroft who strongly denied that Justice Department methods constituted torture. Ashcroft had approved two Justice Department legal opinions written by John Yoo in 2002 and 2003 stating that waterboarding and other methods could be used as long as they did not "cause pain similar in intensity to that caued by death or organ failure." "I don't know of any acts of torture that have been committed," Ashcroft told the Committee, adding that even waterboarding fell within legally approved guidelines (New York Times, July 18).

C. IN THE COURTS

• APPEALS COURT SAYS "ENEMY COMBATANTS" DETAINED IN US CAN BE HELD INDEFINITELY – AND THAT INCLUDES AMERICAN CITIZENS

On July 15, the US Court of Appeals for the Fourth Circuit ruled by 5-4 that Ali Al-Marri, a citizen of Qatar who had been studying legally in the US, could be detained indefinitely in a military brig in South Carolina. The ruling reversed the opinion of an earlier three-judge panel of the same circuit court, which had concluded that the government did not have the power to detain civilians legally in the US as enemy combatants, and that it either had to charge Marri or release him. The judge who was the swing vote in the latest opinion, William Traxler Jr., agreed that Marri could be subject to indefinite detention if everything the government said about him was true, but stated he should be able to see and refute "the most reliable evidence" against him, subject to national security and other concerns (New York Times, July 16). The door has thus been left open for some due process for Mr. Marri, but it is entirely unclear what that will look like or how it would come about. Among the ominous features of the decision is the interpretation by Judge Diana Gribbon Motz that under the Military Commissions Act of 2006, US citizens deemed enemy combatants can also be denied their constitutional rights and subjected to military commissions, since the Act refers to "any person" as punishable by a military commission without exempting citizens. The New York Times in a July 20 editorial about the Marri decision expressed its alarm: "The decision gives the president sweeping power to deprive anyone – citizens as well as noncitizens – of their freedom. The Supreme Court should reverse this terrible ruling...The implications are breathtaking. The designation 'enemy combatant,' which should apply only to people captured on a battlefield, can now be applied to people detained inside the United States. Even though Mr. Marri is not an American citizen, the court's reasoning appears to apply equally to citizens...Equally troubling, the ruling

supports President Bush's ludicrous argument that when Congress authorized the use of force against those responsible for the Sept. 11 attacks, it gave the president essentially unlimited powers. If a president ever wants to round up Americans on vague charges and detain them indefinitely, this ruling gives him a dangerous green light."

• ACLU SUES OVER NEW WIRETAP LAW
No sooner had the FISA Amendments Act of 2008 been signed into law than the ACLU went to court to try to stop the government from using it to conduct dragnet surveillance, arguing that the law violates Americans' rights to free speech and privacy under the First and Fourth Amendments to the Constitution. Clients in Amnesty v. McConnell, which was filed in the US District Court for the Southern District of New York, are journalists (Naomi Klein, Chris Hedges and The Nation), defense attorneys and Amnesty International and other human rights organizations that maintain that their ability to do their jobs and communicate in a confidential way with people around the world are greatly compromised by the new law. In Naomi Klein's words, "As a journalist, my job requires communication with people in all parts of the world – from Iraq to Argentina...I cannot in good conscience accept that my conversations with people who live outside the US will put them in harm's way as a result of overzealous government spying. Privacy in my communicati0ns is not simply an expectation, it's a right" (ACLU press release, July 10).

• COURT REJECTS BUSH CLAIM ON WIRETAPPING
Judge Vaughn Walker, the chief judge for the Northern District of California who is presiding over consolidated lawsuits against telecoms that took part in the NSA spying program, ruled on July 2 that the FISA Act was the "exclusive" means for the President to carry out surveillance on Americans and the President did not have the power as commander-in-chief to set that law aside (New York Times, July 3). The judge's ruling came in a case involving the charity Al-Haramain Islamic Foundation, whose lawyers had mistakenly been given a government document revealing that it was a target of the illegal NSA spying operation. The ruling came a week before the President signed the FISA Amendments Act which gives telecoms immunity from lawsuits and makes legal the President's warrantless surveillance program. In late July Al-Haramain Islamic Foundation used Walker's ruling to file a new warrantless wiretapping suit against the government.

• COURT RULES THAT WHITE HOUSE AIDES NOT ENTITLED TO IMMUNITY FROM CONGRESSIONAL SUBPOENAS
Judge John Bates from the federal district court for the DC Circuit, a Bush appointee who was a former deputy independent counsel for the Whitewater investigation, ruled on July 31 that Bush aides Harriet Miers and Josh Bolten do have to answer the subpoenas issued by the House Judiciary Committee as part of its investigation into the firing of 8 US attorneys. Miers failed to show up to the hearing she was scheduled to attend, and Bolton refused to cooperate by handing over documents. Both relied on the

President's claim that under "executive privilege" they enjoyed absolute immunity from Congressional investigations – an assertion the Judge called "unprecedented" and "without any support in case law" (Salon, July 31). The ruling means that Miers and Bolton must "respond" to the subpoenas – but how forthcoming they have to be is not specified. Although Judge Bates stated that he was not ruling on the matter of "executive privilege," he did strike a blow for constitutional checks and balances by asserting that it is the role of the federal judiciary to resolve sensitive separation of power issues.

• JUDGE RULES THAT WHITE HOUSE DOES NOT HAVE TO TURN OVER RECORDS

On June 16, federal judge Colleen Kollar-Kotelly ruled that the White House Office of Administration does not have to comply with a FOIA request that it turn over emails and other records to Citizens for Responsibility and Ethics in Washington. The lawsuit had been filed in the effort to discover what happened to emails that disappeared from White House computer archives (Washington Post, June 17).

• APPEALS COURT DISMISSES RENDITION LAWSUIT

A lawsuit brought by Canadian citizen Maher Arar, who was seized from JKF Airport and sent to Syria for a year of torture, was thrown out of the Second Circuit Court of Appeals on the grounds that Arar was never technically inside the US and so did not have standing in federal court (New York Times, June 30). One dissenting judge called that "a legal fiction."

• ACLU SEEKS TO CLEAR NAMES OF "UNINDICTED CO-CONSPIRATORS"

Two charities, the North American Islamic Trust and the Islamic Society of North America, had been named as "unindicted co-conspirators" in the unsuccessful case the government brought against the Holy Land Foundation. On June 18, the ACLU went to a federal district court in Texas arguing that the organizations' names had been smeared when they were branded as conspirators even though they were never charged with anything or accused of wrongdoing. Naming them as co-conspirators had given government lawyers a way to introduce hearsay into evidence, which is usually not permitted. Since they were named, not only has their fundraising dropped off sharply, but their ability to engage in interfaith dialogue and their relations with law enforcement agencies have been harmed (New York Sun, June 19).

• LAWSUIT FILED AGAINST DC CHECKPOINTS

On June 20, 4 residents of Washington DC went to federal court to bring an end to the military-style roadblock deployed on Montello Avenue in Northeast Washington in what the police called a "Neighborhood Safety Zone." Vehicles were stopped at the checkpoint to see if they had "a legitimate purpose" for coming into the area. The plaintiffs say the practice was neither constitutional nor effective (Washington Post, June 20).

D. IN THE COMMONWEALTH

• NEW STATE LAW PERMITS PROSECUTORS TO OBTAIN ELECTRONIC COMMUNICATIONS WITHOUT SUBPOENAS

The recently-signed Massachusetts law toughening penalties for sex offenders ("Jessica's Law") contains a provision allowing law enforcement to obtain private communication records from Internet and other communications providers without getting a grand jury subpoena as had been previously required. All district attorneys and the attorney general now have to do is produce an "administrative subpoena" or demand letter, and customers need never be informed that their private records have been turned over to the government. The measure was supported by the Governor, Attorney General Martha Coakley, and all 11 of the state's district attorneys, who argue that it is simply bringing the law up to date with evolving technology and that it does not permit law enforcement to access actual content, but only records about when emails were sent and to whom (Patriot Ledger, August 7). But in her July 17 op ed in The Boston Globe, ACLU executive director Carol Rose argues that "anyone who knows Internet technology knows that it is virtually impossible to separate out content from other electronic records – it's all relevant content. It is alarming that the State Legislature would approve such an unchecked grant of prosecutorial power." The Boston Globe agreed in a July 19 editorial, and urged Governor Patrick to refuse to sign the bill on privacy grounds unless that clause had been dropped or scaled back.

• HABIB CASE HEARD IN BOSTON COURT

On June 25, the case brought by the ACLU challenging the exclusion from the United States of renown South African scholar Adam Habib was heard in federal district court in Boston. Habib, a deputy vice-chancellor at Johannesburg University who has been critical of the Iraq war, has for the past two years been denied entry into the country without any specific reason being given. The ACLU argued that his exclusion implicated the First Amendment rights of US organizations and citizens who had invited him to speak in Massachusetts, and that the government had to provide some explanation to back up its denial of a visa to Mr. Habib. The government argued that the court did not have any power to hear the case since it had to defer to government decisions about immigration and national security, and that it has given sufficient reason for excluding him – its allusion to a statute barring those that "engage in terrorist activity."

• BOSTON FIRM UNDERTAKES BIGGEST PRO BONO EFFORT IN ITS HISTORY

Representing 6 Algerian detainees at Guantanamo has cost the Boston law firm of Wilmer Hale some $17 million (or 35,448 billable hours) to date, according to the June 25 Boston Globe. Their clients, who were arrested in Bosnia after being freed for lack of evidence by a Bosnian court, were plaintiffs in the June 2008 Boumediene Supreme Court ruling upholding their right to habeas corpus.

• ID THEFT INVOLVING TJX BIGGEST TO DATE
On August 5, a grand jury in Boston indicted 11 people from Estonia, Ukraine, China and Belarus for hacking into the networks of TJX, BJ's Wholesale Club, Boston Market, OfficeMax, Barnes and Noble and other retail companies and installing programs to capture credit card numbers and passwords. They allegedly stole 41 million credit card numbers and sold many of them on the Internet (Boston Globe, August 6).

• MASSACHUSETTS ICE RAIDS TERRIFY COMMUNITIES
Between August 7 and August 11, ICE seized nearly 100 people in mostly middle-of-the-night raids in Somerville and Lowell. It stated that the arrests were of "criminal aliens" as part of "Operation Community Shield," and that most of those detained were gang members. Immigrant rights activists denounced the tactic as "militaristic, intimidating and discriminatory" (Open Media, August 11).

• LAWSUIT CHARGES STATE TROOPER WITH CIVIL RIGHTS VIOLATIONS
A Brazilian-born immigrant, Helder Assumpcao, has brought a federal lawsuit in the Boston US District Court against State Trooper Gerard McGreal, claiming he and friends were stopped in his car in Medford, questioned about their immigration status and mistreated solely because they were immigrants (Boston Globe, August 1). McGreal admitted to his commanding officer that he asked about their immigration status, but claimed he did so "politely" before having the van towed on the grounds that it should have been registered as a commercial vehicle, fining Assumpcao $100 and forcing his passengers to walk home.

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