CIVIL LIBERTIES UPDATE
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A. EXECUTIVE ACTIONS

Building the National Security Surveillance State

• BUSH SEEKS TO MAKE "WAR ON TERROR" POWERS PERPETUAL

In late August, the Bush Administration inserted in its proposal for hearing legal appeals from Guantanamo detainees language affirming and extending the Authorization for the Use of Military Force passed by Congress on September 14, 2001 on which it has based its policies of secret detention and domestic wiretapping without warrants. Because the US is still engaged in "armed conflict with Al Qaeda," the proposal states. Congress should "reaffirm that for the duration of the conflict the United States may detain as enemy combatants those who have engaged in hostilities or purposefully supported Al Qaeda, the Taliban, and associated organizations," the proposal states *(New York Times*, August 30). Bruce Fein, a former Justice Department official in the Reagan Administration, urged Congress to resist: "I do not believe that we are in a state of war whatsoever. We have an odious opponent that the criminal justice system is able to identify and indict and convict. They're not a goliath. Don't treat them that way."

• WHISTLEBLOWERS: NSA ROUTINELY INTERCEPTED AMERICANS' CALLS

Two whistleblowers who worked as linguists for the National Security Agency have told investigative journalist Jim Bamford (author of *The Puzzle Palace* about the NSA and the forthcoming *Shadow Factory*) and ABC's Brian Ross that they listened into the private phone conversations of Americans overseas when they called family and friends back home and even exchanged "phone sex" (ABC News, October 9). Adrienne Kinne, a 31-year-old US Army Reserves Arab linguist, and Navy Arab linguist, 39-year-old David Murfee Faulk, reported listening in on calls from soldiers in Baghdad, journalists humanitarian aid workers, and, in Kinne's words, "really everyday, average, ordinary Americans who happened to be in the Middle East, in our area of intercept and happened to be making these phone calls on satellite phones." Kinne, who now works at a veterans hospital in Vermont, told the *Los Angeles Times* (October 10) that "we identified phone numbers belonging to nonthreatening groups, including the Red Cross. We could have blocked their numbers, but we didn't, and we were told to listen to them just in case." She also said she reported her concerns to members of Congress, including Senator Patrick Leahy, but "nobody ever bothered to call me back." In her view, "by casting the net so wide…it's harder to find that piece of information that might actually be useful to somebody. You're actually hurting our ability to effectively protect our national security." Their revelations contradict then-NSA Gen. Michael Hayden who told Congress that private conversations of Americans were not being intercepted and that "we are narrowly focused and drilled on protecting the nation against al Qaeda." Senate Intelligence Committee Jay Rockefeller called the allegations "extremely disturbing" and said his committee would be doing its own investigation.

• FBI RULES PERMIT PROFILING AND SKIRT FOURTH AMENDMENT

On October 3, the FBI released, and Attorney General Michael Mukasey signed, new guidelines for the bureau that will transform it into "an intelligence agency as well as a law enforcement agency." The revised rules take effect at the beginning of December (*New York Times*, October 4). A Congressional hearing delayed, but did not derail plans

to expand the FBI's ability to conduct "assessments" of threats of terrorism when no evidence exists of any kind of criminal activity (*see "In the Congress, below*). The FBI's 12,000 agents will soon be able to conduct interviews and surveillance in a public place and recruit informants without identifying themselves and without the approval of a bureau supervisor. They will also be able to track people based on their race and ethnicity, without the standard of "suspicion" required by the Fourth Amendment and investigate the likelihood of violence resulting from a planned demonstration for as many as 30 days, with renewals of this time period subject to supervisory approval (*Washington Post*, October 4). The revisions would rewrite the post-Nixon 1976 guidelines restricting the FBI's ability to collect intelligence and infiltrate dissenting groups. The new FBI powers will apply to criminal, national security, and foreign intelligence investigations, as well as civil disorders and demonstrations. In the words of former FBI counterterrorism agent Mike German, who now works with the ACLU, "It is an extraordinarily broad grant of power to an agency that has not proven it uses its power in an appropriate manner" (*Washington Post*, September 12).

• FBI MAY SOON HAVE NEW DATA-MINING TOOLS
According to the British magazine, *The Economist* (September 25), Total Information Awareness-type data mining programs are mushrooming in the US, Britain, China, France, Germany and Israel. Data mining may soon become a "routine tool for the FBI to spy on ordinary Americans" as the Bush Administration races in its final months "to formalize in law programmes that have run solely under authorisation from the White House that bypasses Congress." The article also cites a report compiled by some American police chiefs and the Departments of Justice and Homeland Security, *Suspicious Activity Report – Support and Implementation Project*, which "urges police to question people who, among other things, use binoculars, count footsteps, take notes, draw diagrams, change appearance, speak with security staff and photograph objects 'with no apparent aesthetic value.'"

• DATA MINING TO FIND TERRORISTS UNLIKELY TO WORK, EXPERTS SAY
On October 7, a committee of the National Research Council released a 352-page study concluding that it "will be extremely difficult" to use data-mining tools to deter terrorism and that Total Information Awareness-type programs threatened both the privacy rights of Americans and legitimate national security needs (*New York Times*, October 8). The panel of policy makers and scientific experts concluded that data mining worked in commercial settings to predict buying habits, but could not be easily transferred to finding suspicious patterns of activity because the sample of known terrorists and actual attacks is so small and the danger of "false leads" that would implicate totally innocent people so huge. In the words of former defense secretary William Perry, "More data does not mean better data."

• FBI APOLOGIZES FOR SEIZING JOURNALISTS' RECORDS
It was a "miscommunication," and not an abuse of its powers, that led the FBI to issue an "exigent letter" to seize the phone records of two journalists based in Indonesia in 2004 (Associated Press, August 26). FBI director Robert Mueller apologized to *The New York Times* and *The Washington Post*. "Exigent letters" are supposed to be issued only in times of true emergency, which did not apply in this case. More than 700 such letters have been sent between 2003 and 2006.

• PROTEST AND THE PRESS CRIMINALIZED AT POLITICAL CONVENTIONS
The First Amendment did not fare well at either the Democratic Party convention in Denver or the Republican Party Convention in St. Paul. In Denver, an ABC producer, Asa Eslocker, was pushed off the public sidewalk into oncoming traffic, violently

handcuffed, arrested and charged with trespass and failure to follow a lawful order as he tried to take pictures of Democratic senators leaving a meeting with VIP donors. On August 25, police broke up a demonstration of about 300 people and conducted mass arrests. Nearly a third were taken to a "Temporary Arrestee Processing Site," an industrial warehouse with chain-link cells topped by razor wire, which had been dubbed "Gitmo on the Platt" (Associated Press, August 15). According to the ACLU, they were held barefoot, and taken without shoes and in shackles to the courthouse. Police tricked many of them into pleading guilty by telling them they could not call a lawyer or post bond until they had entered a guilty plea. They were also warned they would face years in prison if convicted on a single count. The scene in St. Paul was even more vicious. Before the Republican Party Convention started, local and federal agents raided at least five private homes, a public meeting place and an "Earth Justice" bus carrying a travelling exhibit about the environment, arresting dozens of activists in the process. Members of Food Not Bombs and I-Witness Video, a media watchdog group, were among those targeted. Many were held without charge for 4 days. The police were only warming up for a massive crackdown on demonstrators, involving the indiscriminate use of pepper spray, concussion and smoke bombs, rubber bullets, long night sticks, and horses. Eight of those arrested were charged with criminal conspiracy to riot in furtherance of terrorism, Minnesota's version of the USA PATRIOT Act, as plans to blockade traffic and try to disrupt the convention were termed terrorist actions. They face 7 and a half years in jail. The media was singled out for special attack, with Amy Goodman of Democracy Now, two Associated Press reporters (Amy Forliti and Jon Krawczynski) and many members of the independent media being harassed and arrested. It was not democracy's finest hour.

• NONVIOLENT PROTESTORS CLASSIFIED AS "TERRORISTS"

The October 8 *Washington Post* reports that 53 nonviolent activists from groups like the Maryland Campaign to End the Death Penalty and the Baltimore Pledge of Resistance were classified as "terrorists" by Maryland State Police and had their names and personal information entered into federal and state databases of terrorism suspects during the years 2005 and 2006. At a state legislative hearing, police superintendent Terrence Sheridan admitted that "the names don't belong in there," and said that the activists were being sent letters inviting them to view their files before they were purged from the databases. The ACLU learned in July that members of the Maryland State Police posing as activists were spying on war protestors, other groups and businesses such as the Baltimore bookstore named Red Emma's, which hosts lectures featuring prominent dissenters. It has since then requested information on the possible surveillance of 32 other grassroots advocacy groups. Among them is Children First, which has protested lead in Baltimore's drinking water. Its director, a former FBI agent, was visited by Baltimore detectives who told him to call off a rally and said they had a file on him (*Washington Post*, October 1). A 93-page report by former Maryland Attorney General Stephen Sachs into the 14-month surveillance operation concluded that undercover troopers were not justified in their surveillance of peaceful protestors and police actions were, in Sachs' words, "inconsistent with an overarching value in our democratic society – the free and unfettered debate of important public questions. Such police conduct ought to be prohibited as a matter of public policy."

• POLICE TO GET EXPANDED POWERS TO TARGET "SUSPICIOUS" ACTIVITY

The Justice Department is proposing that 18,000 state and local police agencies be given broader powers to launch criminal intelligence investigations based on the suspicion that a target is engaged in terrorism or providing material support to terrorists. They would be able to share information – which would be retained for 10 years - with a broad array of federal and other agencies. According to the ACLU's Mike German, a

former undercover FBI agent, "If police officers no longer see themselves as engaged in protecting their communities from criminals and instead as domestic intelligence agents working on behalf of the CIA, they will be encouraged to collect more information. It turns police officers into spies on behalf of the federal government" (*Washington Post*, August 16).

• BUSH APPROVES LIMITED DOMESTIC USE OF MILITARY SATELLITES
An appropriations bill for the Department of Homeland Security gives the green light to a limited use of military satellites for domestic purposes by the National Applications Office (NAO) in apparent violation of the post-Civil War Posse Comitatus Act which bars the military from doing domestic law enforcement (Ars Technica.com, October 5). A report that the Government Accountability Office has not released to the public agrees with the ACLU that there is not adequate "assurance that NAO operations will comply with applicable laws and privacy and civil liberties standards," and there is not the appropriate oversight to prevent the satellite imagery from being misused.

• "NICHE MARKET" TELECOM PROVIDERS MAY FACILITATE NSA DOMESTIC SPYING
Researcher Tom Burghardt, drawing upon information appearing in the *London Review of Books* (August 14) and CNET (September 8), speculates that "government intelligence agencies and niche telecom providers have teamed-up to subvert our privacy rights – while providing security agencies with real-time cell phone tracking capabilities" (Global Research, September 11). According to the CNET piece, while AT&T, Verizon and Sprint may have directly collaborated with the NSA, "with over 3,000 wireless companies operating in the US, the majority of industry-aided snooping likely occurs under the radar, with the dirty-work being handled by companies that most consumers have never heard of." These companies own and operate wireless towers, or provide connections between towers and carriers, or sophisticated billing services, or may help route calls from one company to another. Daniel Soar, editor of the *London Review of Books*, writes: "At a very rough estimate half a trillion calls are made each day on the world's mobile networks: their origin and destination, their time and duration and all identifying codes are logged on telecom provider hard-drives and generally retained…it's impossible to exaggerate the value of these data…it's a cinch to bug someone, but how do you help a law enforcement agency decide who to bug?" If companies like tower providers or call center customer services are reluctant to cooperate because of customary privacy agreements, the USA PATRIOT Act and FISA Amendments Act can be used to induce them to hand over information and maintain their silence or risk violating gag orders.

• PROGRAM DESIGNED TO FIX TERRORIST WATCH LIST "ON BRINK OF COLLAPSE"
A Congressional investigation found that a half billion dollar program called "Railhead" which was supposed to fix problems in the terrorist watch database is crippled "by serious design flaws, management blunders and runaway contractors" (*New York Times*, August 24). It cannot, for instance, do basic searches to find suspects' names. In the words of Rep. Brad Miller (D-NC), "The program not only can't connect the dots. It can't find the dots."

• KIDS AFFECTED BY TERRORIST WATCH LIST
Babies and children have not been spared being held in special rooms because their names match those on the Terrorist Watch List. When the mother of a seven-year-old suspect "asked how to get her son off the list, the response was a shrug" (*New York Times*, September 9). According the *New York Times*, the names of about 20,000

American citizens feature on the "no-fly" (keep off plane) portion and the selectee (further investigation needed) portion of the list, which is estimated by the ACLU to contain more than a million names. The ACLU is calling for the list to be dramatically downsized so it contains only names of those for whom there is evidence of terrorist ties or activity.

• MUSLIM PILOT GOES TO COURT WHEN JOB THREATENED
Erich Schefen, a pilot with Colgan Air who had served 13 years in the US military and is a Gulf War veteran, was threatened with being fired because his name and that of his wife were apparently on one or more government terrorist watch list. Schefen, who lives in Pennsylvania, had converted to Islam in 1994. His wife, Rabina Tareen, was born in Pakistan and became a naturalized American in 1980. After the couple went to court claiming that they were being profiled because of their religion, Colgan Air said he could continue to fly (Associated Press, September 2). The Justice Department issued a statement saying that the FBI's Terrorist Screening Center, "for both national security and personal privacy reasons," does not confirm or deny the existence of any name on the watch lists it maintains. The ACLU, which was part of Schefen's defense team, says there may be as many as 12 separate lists, including a "no fly list" and a "selectee list" of people to get additional screening (*Republican Herald*, August 23).

• ONE HUNDRED AIRPORTS NOW HAVE "BEHAVIOR DETECTION AGENTS"
According to the August 18 *Newark Star-Ledger*, there are a thousand TSA agents who are "thwarting terrorism Israeli-style by looking for telltale signs of possible ill intent…obvious giveaways are excess sweating, nervousness and odd actions." The program is "based on procedures initiated by the Israelis to prevent terrorism…Foes of behavioral profiling, however, worry the program violates constitutional and privacy rights, while offering little practical deterrent."

• "MIND-READING" MACHINE BEING TESTED BY DHS
According to the September 24 Press Association, a "Malintent system" now being tested screens people to seek out "non-verbal cues" which can reveal whether they intend to cause harm to fellow passengers. The system, which is being developed by the Department of Homeland Security's Human Factors division, is "designed to distinguish between a rushed, stressed and sweaty passenger, and a terrorist."

• SHOULD TERRORIST SUSPECTS BE ABLE TO BUY GUNS IN THE US, NO QUESTIONS ASKED?
Congress has been unable to pass a law, backed by the White House, plugging the so-called "terrorist loophole" which permits anyone – including people on the government's terrorist watch list – from arming themselves at one of the nation's 5,000 gun shows without passing a background check. According to the August 23 *Newsweek*, John McCain's campaign has been ducking the question of where he stands on the terrorist loophole provision.

• BORDER AGENTS COLLECTING DATA ON AMERICANS FOR VAST NEW DATABASE
The Border Crossing Information System has been set up by the Department of Homeland Security to compile data that will be stored for 15 years on all US citizens crossing land borders. The same information being collected on foreign visitors will be held for 75 years. Beginning in January, the data was collected manually. Starting next June, every person seeking to cross land borders will need to present a machine-readable document with a radio frequency identification chip, which will streamline the collection of data. According to the August 20 *Washington Post*, "The data could be used

beyond determining whether a person may enter the United States. For instance, information may be shared with foreign agencies when relevant to their hiring or contracting decisions." It can also be shared with federal, state and local government agencies "in cases where customs believes the information would assist enforcement of civil or criminal laws or regulations, or if the information is relevant to a hiring decision." The border information system will be linked to the new database, the Non-Federal Entity Data System which will hold all personal information about all drivers in a state's database.

• NEW YORK OFFERS "ENHANCED DRIVER'S LICENSE" FOR CROSSING BORDERS

The new New York State driver's license comes equipped with an RFID chip which will enable a border officer to pull up biographical and biometric data, according to the September 17 *New York Times*. "This is part of the function creep around driver's licenses that some people have long been fearing. The push to make the driver's license a secure identity document, as opposed to simply a credential to drive, has caused protests among privacy advocates…who warn that the licenses are verging on becoming a de facto national ID."

• FINGERPRINTS REQUIRED TO CASH CHECKS

The Bank of America will only cash checks of people who don't have accounts if they ink their thumbs and put their thumbprints on the check (Capecodonline.com, October 4). The checks are scanned into a computer and originals destroyed soon after they clear, according to a spokesman for the Massachusetts Bankers Association. But Barry Steinhardt, an ACLU technology expert, worries that banks are not legally required to destroy the fingerprints and technology is moving so swiftly that genetic and lifestyle information, such as drug use, can be lifted from skin remnants left behind when the thumbprint was made.

• NSA SPYING LED WHITE HOUSE TO THE BRINK

On September 14 and 15, *The Washington Post* published long articles about NSA warrantless domestic surveillance adapted from Barton Gellman's new book *Angler: The Cheney Presidency*. The pieces focuses on the "flat-out rebellion" within the Justice Department which forced Cheney and Bush in the spring of 2004 to back down on the special NSA domestic surveillance operation which had been going on in secret for more than two years.

• CHENEY DEFENDS "ALTERNATIVE" INTERROGATIONS

Vice President Cheney told the American Legion's annual convention that the Bush Administrations use of "alternative" interrogation techniques was legal and proper and "no nation in the world takes human rights more seriously than the United States…The misdeeds of a few should never be used to slander the good and decent Americans who go to work every day to keep our country safe" (CNN, August 27).

• LAWSUIT SEEKS TO FORCE CHENEY TO PRESERVE HIS PAPERS

Fearing that Vice-President Cheney will destroy his records as the Bush Administration comes to an end, Citizens for Responsibility and Ethics in Washington is asking a federal judge to rule that his records are covered by the Presidential Records Act of 1978 and cannot be destroyed or withheld without proper review (*Washington Post*, September 8).

• WHITE HOUSE EMAILS HAVE VANISHED

While unprecedented amounts of data are being collected on Americans and preserved for years, the White House has been unable to retrieve lost emails from 35,000 disaster

recovery backup tapes covering a 225-day period dating from March 2003. Gone are emails that might have shed light on the White House reaction to the Abu Ghraib scandal and the outing of CIA operative Valerie Plame (Associated Press, August 21).

• GONZALES MISHANDLED SECRET DOCUMENTS
A report by the Inspector General of the Justice Department finds that former Attorney General Alberto Gonzales broke Justice Department regulations when he removed top secret documents about detainee interrogations and NSA surveillance from special secure facilities. He took kept some documents in his unlocked briefcase and others in a safe in his office where they were seen by people without top security clearance. Although mishandling classified materials is a crime, the Justice Department decided not to bring charges against Gonzales (Associated Press, September 2).

• GONZALES WILL NOT FACE CRIMINAL CHARGES FOR ROLE IN THE FIRING OF ATTORNEYS
An 18-month probe by Justice Department Inspector General Glenn Fine and Office of Professional Responsibility head H. Marshall Jarrett into the firing of 9 US attorneys and the politicization of the Justice Department uncovered emails hinting that White House lawyers and aides were directly involved. However, the refusal of key officials to be interviewed or provide documents meant they could not carry out a thorough investigation (*Washington Post*, October 1). As a result, it is unlikely that former Attorney General Alberto Gonzales will face a criminal investigation.

• ANNUAL SECRECY REPORT CARD FINDS SECRECY CONTINUES TO RISE
A report by Open The Government found that the government in 2007 spent $195 maintaining secrets for every $1 spent declassifying them, a 5 percent increase over the year. Classified programs accounted for $31.9 billion. Although the number of Freedom of Information Act requests increased by 2 percent to 22 million, FOIA spending in key agencies fell by $7 million and 209 fewer people were involved in processing the requests. Federal surveillance activity under the jurisdiction of the Foreign Intelligence Surveillance Court has more than doubled during the Bush Administration, with 2,371 orders being issued in 2007 (only 3 were rejected). The report documented a sharp increase in the use of "state secrets privilege" and in the use of National Security letters (*The Public Record,* September 11). In the Defense Department, 18 percent of the acquisition budget is classified. According to the September 14 *Kansas City Star*, "This kind of secrecy in government encourages cronyism, drives up costs to taxpayers and worsens the national debt" and "it's becoming harder for the press and watchdog groups to ferret out abuses."

• NYPD PLANS TO SCREEN VEHICLES ENTERING MANHATTAN
The New York Police Department, which has 1,000 officers assigned to counterterrorism duty, is developing a plan called Operation Sentinel, which will screen cars and trucks entering Manhattan for radioactive material and other signs of terrorist activity. They plan to install an unknown number of radiation detectors, license-plate readers and cameras in addition to the 118 license-plate readers and 3,000 closed circuit cameras being planned for the "ring of steel" protecting lower Manhattan (*Los Angeles Times*, August 18).

• US STILL VULNERABLE TO CHEMICAL OR NUCLEAR ATTACKS
According to a bipartisan study by the Partnership for a Secure America which includes several members of the now disbanded 9/11 Commission, the Bush Administration has missed major opportunities to improve security, with the result that "the threat of a new, major terrorist attack" involving chemical, biological or nuclear weapons is "still very

real" (*Boston Globe*, September 19). It gave the government marks ranging from "C minus" to "B minus" for its efforts to keep such weapons from spreading. Another report by staffs of the House Homeland Security and Foreign Affairs Committees faults the Bush Administration for failing to act "on a myriad of critical homeland and national security mandates."

• MAJORITY OPPOSE EXPANSION OF PRESIDENTIAL POWER
According to a poll conducted in late August by the Associated Press and National Constitution Center, "Americans strongly oppose giving the president more power at the expense of Congress or the courts, even to enhance national security or the economy" (Associated Press, September 15).

• FEAR-INDUCING VIDEO DELIVERED TO 28 MILLION HOMES IN SWING STATES
Copies of a 60-minute video, "Obsession: Radical Islam's War Against the West," have been distributed to some 28 million homes in Denver, Miami, Tampa, Orlando, Detroit, Kansas City, St. Louis, Cincinnati, Allentown, Philadelphia, Pittsburg and Milwaukee with daily newspapers (*Editor and Publisher*, September 13). The *St. Louis Post-Dispatch* refused to deliver the video on the grounds that it was inflammatory. The film, which compares "radical Islam" and the Palestinian cause to Nazism, was sponsored by the shadowy Clarion Fund, and distributed by its producer, the Endowment for Middle East Truth (EMET), whose advisers include prominent hard line neoconservatives and three former Likud diplomats opposed to any land concessions by Israel (Inter Press Service, September 24).

• REPORT SAYS US NEEDS NEW RELATIONSHIP WIH MUSLIM WORLD
"Changing Course: A New Direction for US Relations with the Muslim World" was written by 34 prominent Americans, including former Secretary of State Madelyn Albright, two former Republican Congressmen, a former head of the American-Israel Public Affairs Committee and current president of the Islamic Society of North America as well as several academics and business leaders. It recommends more diplomatic engagement, including with Iran, and major investment for economic development in Muslim countries. It calls on the US to immediately renounce the use of torture and appoint a special envoy to jump start Israel-Palestinian peace negotiations (*New York Times*, September 24).

<u>Military Commissions, Torture, Guantanamo</u>

• CANDIDATES RAISE POSSIBILITY OF PROSECUTING BUSH OFFICIALS
Both Barack Obama and Joe Biden have indicated that their Administration would examine whether there was a basis to pursue criminal charges against the Bush Administration because of its treatment of detainees (*UK Telegraph*, September 5). Speaking in Deerfield Beach, Florida, Biden stated: "If there has been a basis upon which you can pursue someone for a criminal violation, they will be pursued, not out of vengeance, not out of retribution, out of the need to preserve the notion that no one, no attorney general, no president – no one is above the law." In April, Obama told the *Philadelphia Daily News*, "If crimes have been committed, they should be investigated," and promised to ask his attorney general to review the Bush Administration's decisions in order to differentiate between "genuine crimes" and "really bad policies."

• PSYCHOLOGISTS REJECT PARTICIPATION IN COERCIVE INTERROGATIONS

After a long campaign mounted by the Coalition for an Ethical Psychology and Psychologists for an Ethical APA, members of the 140,000 strong American Psychological Association (APA) voted in favor of a referendum stating that APA members may not work in US detention centers that are outside of or in violation of international law or the US Constitution "unless they are working directly for the persons being detained or for an independent party working to protect human rights." On September 17, referendum organizers announced that 59 percent of the 15,000 members who participated in the mail-in vote supported the referendum. The Defense Department, which has given psychologists lucrative contracts to advise on how to make detainees divulge information and to participate in its Behavioral Science Consultation Teams, issued a press release condemning the referendum question ("Psychologists Reject the Dark Side: American Psychological Association Members Reject Participation in Bush Detention Centers" by Stephen Soldz and Brad Olson, September 29). The American Medical Association and American Psychiatric Association had both endorsed policies barring participation in coercive interrogations in 2006, but the APA leadership insisted that the participation of psychologists helped keep interrogations "safe, legal and ethnical."

• CALIFORNIA CONDEMNS PARTICIPATION OF HEALTH PROFESSIONALS IN COERCIVE INTERROGATIONS

In August, the California legislature passed Joint Resolution 19, requiring state medical boards to "inform health professionals of their obligations under both domestic and international law regarding treatment of prisoners and detainees. They will be warned that if they participate in interrogations that do not conform to these standards, they risk future prosecution." The New York State Assembly is considering a similar resolution.

• MILITARY PSYCHOLOGIST TAKES "THE FIFTH"

US Army Col. Diane Zierhoffer, a military psychologist who worked with the secretive Guantanamo Behavioral Science Consultation Team, invoked her right not to incriminate herself and refused to testify for the defense in the Mohammad Jawad case *(see below).* Jawad's attorneys have been trying to get charges against him dismissed based no government misconduct in using prolonged isolation, sleep deprivation and other abusive techniques. After a month-long period of intense isolation reportedly recommended by the military psychologist, he attempted suicide (Dailykos.com, August 14).

• US "ENEMY COMBATANT" DRIVEN TO BRINK OF INSANITY

According to documents recently obtained by the ACLU in response to a FOIA lawsuit, officials on military brigs where US citizens (Yasser Hamdi and Jose Padilla) and a legal resident (Ali Saleh al-Marri) were being held as "enemy combatants" were increasingly concerned about their mental state and skeptical about the Administration's position that they are not entitled to Constitutional protections but Guantanamo rules should be applied to them (Associated Press, October 8). Of particular concern was Yasser Hamdi's mental state after more than a year in intense isolation without natural light and no contact with lawyers, his family or other prisoners. "I fear the rubber band is nearing its breaking point here and not totally confident I can keep his head in the game much longer," a prison officer wrote to an unnamed government official in June 2003. Hamdi was held for three years without charges before being deported to Saudi Arabia on the condition that he relinquish his US citizenship.

• USE OF ABUSIVE INTERROGATIONS PREDATED ABU GHRAIB

Air Force Colonel Steven Kleinman, a military interrogation specialist, told the Senate Armed Services Committee that he witnessed brutal interrogations by "SERE"

specialists in Iraq before the revelations about what was going on at Abu Ghraib (*Boston Globe*, September 26). SERE – or Survival, Evasion, Resistance and Escape – was a training program originally designed to help American special forces withstand torture, which military psychologists reportedly "reverse-engineered" for application in "war on terror" interrogations. Techniques included forced nudity, stress positions, waterboarding, exposure to extreme temperatures, sleep deprivation and repeated facial slaps, all designed to "physically and psychologically debilitate an individual's ability to resist, with the primary object of forcing compliance," Kleinman testified.

• PRE-TRIAL HEARINGS FOR TEEN DETAINEES REVEAL SYSTEM'S FLAWS
The next trials before the Military Commissions Act are likely to be that of two young "enemy combatants" who were children when taken into custody: Mohammed Jawad, an Algerian national arrested at age 16 or 17 and Omar Khadr, a Canadian national who was 15 when captured six years ago and, like Jawad, is accused of throwing a grenade at a US soldier. They have both been subjected to abusive treatment amounting to torture and coercive interrogations in detention (Amnesty International, 13 August). A military judge barred legal advisor General Thomas Hartmann from participating in Jawad's trial on the grounds that he made public statements partial to the prosecution when his role demands neutrality. He had earlier been disqualified from participating in the Military Commission trial of Salim Hamdan. By September 19, he had been removed from direct supervision of the prosecution, and appointed to the newly-created position of director of operations, planning and development for military commissions. During Jawad's pretrial hearing, Army Lt. Col. Darrel Vandeveld, a prosecutor in the case who had recommended that a plea agreement be reached that would allow Jawad to be released in the near future, abruptly quit (*Washington Post*, September 25). He testified that his experience with the military tribunal process has changed him from a "true believer" to feeling "truly deceived." Vandeveld does not think justice can be delivered by a Military Commission since the government is so reluctant to turn over exculpatory evidence to the defense (Associated Press, September 26).

• CALLING IT A "FARCE," DETAINEE BOYCOTTS PRE-TRIAL HEARING
Yemeni Ali al-Bahlul, alleged to be a secretary to Osama bin Laden, told his Pentagon-appointed lawyer not to defend him and left the courtroom where his pre-trial hearing was underway. He faces a maximum of life in prison if convicted of charges of conspiracy, solicitation to commit murder and supporting terrorism (Associated Press, August 15).

• CHARGES BROUGHT AGAINST AFGHAN DETAINEE
A 26-year old Afghan, Obaidullah, became the 24th Guantanamo prisoner to be charged with war crimes. The government alleges that he stored and hid anti-tank mines in Afghanistan and charged him with providing material support and conspiracy, without saying whom he was conspiring with (Reuters, September 11). In the transcripts of his hearings, Obaidullah maintains that he gave false confessions when he was deprived of sleep, held in stress positions and threatened at knifepoint at Bagram. He also says that he made false allegations against another Guantanamo prisoner, Bostan Karim, a shopkeeper with whom he had fallen out in a dispute over money. According to the September 15 Huffington Post, "these false allegations were then used not only against Karim but also against Obaidullah himself."

• JURIST SAYS HAMDAN TRIAL WAS "LIKE USING THE HAND GRENADE ON THE HORSEFLY"
Lt. Col. Patrick, a Marine lieutenant who asked that his last name not be used, told National Public Radio on August 13 that the government had no business going after

Salim Hamdan for its first Military Commissions trial. Patrick, who was on the six-member Hamdan jury, said there was no evidence that Bin Laden's driver was an al-Qaeda warrior and no evidence that he ever fired a weapon. He also said Hamdan had cooperated fully with interrogators and the jury would be "extremely annoyed" if he was detained indefinitely after his short sentence was over. Military prosecutors have meanwhile asked the judge in the Hamdan trial to order a new sentencing hearing, stating that he should not receive credit for time served (*New York Sun*, September 26).

• ATTORNEYS "EXTREMELY TROUBLED" BY TRANSLATOR PROBLEMS
Anthony Barkow, the executive director of the Center on the Administration of Criminal Law at NYU who is a witness at the Guantanamo hearings of the five "high value" detainees, reports that "on too many occasions to count, interpreters could not keep up with events in court, or incorrectly interpreted what was being said. At least some of these interpreters…are simply not up to the task…Defense lawyers are aghast…and accused the government of trying the 9/11 capital cases 'on the cheap'…If this problem is not fixed in Guantanamo, the proceedings will not be accurately interpreted. The defendants will not understand the proceedings. The court and the jurors will not accurately be told, and the record will not accurately capture, what the defendants say. And the defendants will not meaningfully participate in their defense. The result would be a travesty" (Human Rights First, September 24).

• AL-JAZEERA JOURNALIST SAYS US TRIED TO GET HIM TO SPY ON NETWORK
Sami al-Hajj, a Sudanese journalist who worked as a cameraman for Al-Jazeera and was held for more than 6 years at Guantanamo before being released without charges in May, has reported that Al-Jazeera was the main topic of his more than 130 interrogations. According to his lawyer, Clive Stafford Smith, the Americans "thought Al-Jazeera was an al Qaeda front" (SFGate.com, August 17). He was offered his freedom if he agreed to spy on the organization and told them "he'd rather stay in Guantanamo for another 10 years." He was both physically and psychologically abused during his captivity, and was force-fed twice a day during a hunger strike that began in January 2007 and lasted until his release. He is now back at work with Al-Jazeera, as news producer for human rights.

• US HAS DETAINED 12 JOURNALISTS AS TERRORISTS
Reporters Without Borders reports that the US has arrested dozens of journalists and detained at least 12 for long periods as terrorist suspects in Iraq, Afghanistan as well as Guantanamo, ordering them to detail their activities and contacts (SFGate.com, August 17). In addition to Sami al-Hajj, they include Bilal Hussein, an Associated Press photographer, and Jawad Ahmad, an Afghan journalist working for Canadian television.

• DETAINEE WHO TRIED TO KILL HIMSELF DURING LAWYER'S VISIT TELLS HIS STORY
The *Washington Post* on August 17 featured a piece by Jumah al Dossari, former Guantanamo detainee #261 whose desperation led him to make a suicide attempt during a visit from his lawyer in October 2005. Long described as a dangerous terrorist who fought with the Taliban against US forces, Dossari never faced any charges and was sent home to Saudi Arabia in July 2007. In "I'm Home, but Still Haunted by Guantanamo," he describes how he went to Afghanistan to assess the progress of a mosque-building project paid for by his government, only to flee to Pakistan when the US bombing started. At the border checkpoint he was put in prison by Pakistani guards and handed over to the Americans, "I suspect, for a bounty." He describes the physical

brutality he faced in Kandahar and then in Guantanamo, and his long months in solitary confinement, stripped to his shorts with the air conditioner cranked up 24 hours a day. "There were many times in Guantanamo when I felt as though I was falling apart, like a sandcastle being washed out by the tide. I lost all hope and faith. The purpose of Guantanamo is to destroy people, and I was destroyed. I decided that I preferred death to life, and I attempted suicide several times…In Guantanamo, I was very angry with the people who had decided to hold me thousands of miles from home without charging or trying me…I was very angry about having no rights at all. I was not angry with Americans in general and I even drew comfort from some, such as my lawyers and the kind soldier. But I could scarcely comprehend how US policy had allowed me to be treated as I had been. On the plane ride home, though, I decided that I would have to forgive to go on with my life…I thought of the soldier who had offered me compassion in Guantanamo. Her words reminded me that we all share common values, and only by holding on to them can we ensure that there is mercy and brotherhood in the world. After more than five years in Guantanamo, I can think of nothing more important."

• GUARDS FAIL TO NOTICE THREE SUICIDES
According to 3,000 pages of documents detailing the investigation into the three simultaneous suicides that took place at Guantanamo on June 10, 2006, guards failed for hours to notice the rigid bodies of 22-year old Yasser Talal al-Zahrani, 26-year old Ali Abdullah Ahmed Naser al-Sullami and 32-year old Mana Shaman Allabard al-Tabi which were hanging behind blankets in the cells. The investigation found six violations of Guantanamo's standard operating procedures by the guards. Al-Sullami, a Pakistani college student who had been on hunger strikes throughout 2005 and 2006 and subjected to force-feeding, was deemed by the military's Criminal Investigation Task Force years earlier to be "not someone they could prosecute" (*Washington Post*, August 23). Al-Zahrani was on a list of detainees who were shortly to be sent home.

• BRITISH JUDGES RULE TORTURED DETAINEE'S DETENTION IS ILLEGAL
Two British judges have ruled that Binyam Mohamed, an Ethiopian national and London resident, was illegally detained in Pakistan, with British security services colluding in his arrest and interrogation (*UK Guardian*, August 21). The judges also ruled that documents held by the British intelligence services that shed light on the alleged prolonged torture he suffered in Bagam, Morocco and Guantanamo "were essential for him to have his case fairly considered." However, it did not order the immediate hand over of the documents, but instead gave the government time to consider the national security implications of its finding. Mohamed has been at Guantanamo for the last four years and is facing a possible death penalty charge before a Military Commission for planning to detonate a "dirty bomb." He has claimed that he made a false confession after being brutally tortured in Morocco, including being cut on his genitals with a razor. The US State Department warned on August 27 that the disclosure of the secret information could cause "serious and lasting damage" to security relations between the countries (*UK Guardian*, August 28). But a day later, it agreed to turn over documents related to Mohammed's time in detention (*Herald Tribune*, August 29).

• UK SOLDIERS WARNED NOT TO HAND OVER IRAQI PRISONERS TO US
A British legal opinion submitted to Parliament states that British soldiers should not "render" detainees in Iraq to the US military since under UK law it is a criminal offense "to commit an act of torture" and it is likely that they would be at risk of torture if transferred to US hands (UK *Guardian*, September 29).

• HUMAN RIGHTS FIRST CREATES STEP-BY-STEP GUIDE FOR CLOSING GUANTANAMO
With both presidential candidates agreeing that Guantanamo must be closed, Human Rights First has issued a series of recommendations advising them on how to get the job done over the course of a year ("How to Close Guantanamo: Blueprint for the Next Administration," August 19). It advises that all pending Military Commission proceedings be suspended and the Military Commissions Act repealed by Congress. Cases should be reviewed for federal court prosecution with detainees either being repatriated, resettled or – if there is evidence that they have committed crimes against the US - transferred to US soil for prosecution.

• KENYA, ETHIOPIA INVOLVED IN CIA RENDITIONS AND INTERROGATIONS
In 2007, according to Human Rights Watch, hundreds of Somalis, Kenyans and Ethiopian Ogadenis and Eritreans were rounded up as "terrorist suspects" and disappeared into "black sites" in Ethiopia, where they were interrogated by the CIA and FBI ("More Blowback from the War on Terrorism," Salon, October 1). Among them were pregnant women and children. An unknown number remain in detention today. The participation of Kenya in the US program of "extraordinary rendition" was the subject of an article in the Kenyan online paper, *The Standard,* on August 11. For the preceding two months US military planes, possibly carrying CIA agents and licensed by the Prescott Support Group, had reportedly been landing at night at Nairobi's Wilson Airport on secret missions.

• REPORT SAYS DRUG PLANE HAD BEEN USED FOR RENDITION FLIGHTS
According to a report in a Mexican newspaper, documents show that a private jet that crash-landed nearly a year ago in eastern Mexico carrying over 3 tons of cocaine had previously been used for US "rendition" flights to Guantanamo and elsewhere (*Agence France-Presse*, September 4).

• US MILITARY USES RENDITION TO DEAL WITH FOREIGN FIGHTERS
According to the August 28 *New York Times*, the US military has, like the CIA, been sending hundreds of captives it seized in Afghanistan and Iraq to the intelligence services of Saudi Arabia, Egypt and elsewhere for interrogation because they have the necessary "language skills and cultural knowledge." Unlike the CIA's "ghost detainees," prisoners can, according to military officials, block their transfers to home countries and the Red Cross has their names. A former top counterterrorism official with the State Department says the decision was driven "by the realization that Guantanamo was a strategic failure…If you don't send them to Gitmo, and the CIA doesn't want them, then were do you put them?"

• ITALIAN JUDGE REFUSES TO SUSPEND CIA RENDITION TRIAL
On September 17, Italian judge Oscar Magi rejected a request by Niccolo Pollari, a former head of Italian military intelligence, to suspend the trial of himself and 8 other Italian agents and 26 CIA agents for kidnapping of Hassan Moustafa Osama Nasri, Muslim cleric, known as Abu Omar, from a Milan street in 2003 (*Times Online*, September 17). The CIA agents are being tried in absentia since the US has refused to extradite them. Pollari's attorneys plan to call Secretary of State Condoleezza Rice to testify, believing she was in charge of the extraordinary rendition program.

• RICE LED MEETINGS ON USE OF INTERROGATION TECHNIQUES
According to the September 25 *New York Times*, then national security advisor Condoleeza Rice led White House meetings attended by then defense secretary Donald

Rumsfeld and then attorney general John Ashcroft on the use of interrogation techniques to be used against Abu Zubaydah, an Al Qaeda member. Instructions were given to use harsh methods on Zubaydah weeks before the secret August 1, 2002 Justice Department memo penned by John Yoo authorizing the use of techniques amounting to torture.

• SOUTHERN EVANGELICALS WAVER ON USE OF TORTURE
A poll of white Southern Evangelicals conducted by Faith in Public Life and Mercer University found that 57 percent of respondents believe torture can often or sometimes be used to get information from torture suspects, but that the percentage declined when they were asked to consider the Christian principle of the Golden Rule or if they agreed that the US should not use methods against our enemies we would not want used on American soldiers (Human Rights First, September 12). Last February, a Pew Research Center poll found that 48 percent of the general public thought torture could be justified.

• ALAN DERSHOWITZ DOES NOT SO WAVER
Arguing that "we need to develop a jurisprudence for the emerging preventive state" where torture will inevitably take place, Harvard Law School professor Alan Dershowitz in his new book Is *There a Right to Remain Silent?* makes the case that torture should be brought within the confines of the US legal system through the use of special "torture warrants" (*New York Times*, September 17).

Targeting Immigrants

• IOWA TOWN NOW AN OPEN-AIR PRISON
After 400 undocumented workers were arrested at Agriprocessors, a kosher meat-packing plant in Postville, Iowa, the men were charged before hastily assembled immigration judges at the National Cattle Congress building in Waterloo, with many not understanding the charges to which they pled guilty. They were dispersed to 9 different prisons or immediately deported. Their wives and children – 43 women and 150 kids – have been left in Postville without status or means of support. The women, who have been barred from leaving the town, have been fitted with leg monitoring bracelets. According to a local priest, "The women are effectively prisoners. The difference between them and anybody who is in jail is that in jail the government pays for them, but if they're on the streets we pay for them. What kind of government makes prisoners of 43 mothers who all have children and then says, 'You can't work, you can't leave and can't stay?' That boggles the imagination" (*National Post*, August 15).

• DEPORTATION: CHILDREN PAY THE PRICE
According to a report by a working group on migration issues in the Mexican Chamber of Deputies, the US has deported around 300,000 Mexican adults and 90,000 children in the first seven months of 2008 (*La Jornada*, August 11). Some 13,500 of those children, many of whom were brought to the US by traffickers, are virtually stranded along the Mexican border without government protection, and forced to survive by begging, stealing or prostitution.

• US CITIZENS SWEPT UP IN ICE RAIDS
According to the August 16 *Washington Post*, growing numbers of Americans are being snared in raids on companies and homes and in many cases, detained in handcuffs for hours or longer. In at least one case involving a disabled man, a citizen was deported. Currently more than 40,000 immigrants are being held in detention facilities.

• HUGE MISSISSIPPI RAID EXPOSES RACIAL AND POLITICAL TENSIONS

On August 25, almost 600 workers were seized from Howard Industries electrical transformer plant in Laurel, Mississippi in the largest immigration sweep at a single site in US history (*Washington Post*, August 28). Some 475 were sent to be processed for deportation in Jena, Louisiana, 106 women released for "humanitarian reasons" and outfitted with electronic monitoring devises to await pending court appearances, and 8 face criminal identity theft charges. It is not known if any of those arrested will be tried under a new law making it a state felony for a undocumented worker to hold a job, punishable by a prison term and $1,000-$10,000 in fines. An ICE spokesperson claimed that the raid took place after a tip from a "union member" two years before– it took two years, she said, to research the situation (Truthout, August 31). But some union members and Mississippi activists say the raid had a political agenda. According to AFL-CIO staff member Jim Evans, who belongs to the state legislature's Black Caucus, "This raid is an effort to drive immigrants out of Mississippi. It is also an attempt to drive a wedge between immigrants, African Americans, white people and unions – all those who want political change here."

• MISSISSIPPI RAID HIGHLIGHTS FLAWS OF E-VERIFY SYSTEM

Howard Industries had joined the E-Verify system last year under which employers check Social Security numbers of prospective workers against a database. Employers complain that agreeing to use the system does not protect them from raids and exposes them to a range of problems, including worker protests and the fact that they have no way of knowing if a particular Social Security number actually belongs to an applicant. Critics point out that 4 percent of the 435 million Social Security records used by the system (that's 17.8 million records) contain errors and wrongly rejected foreign-born US citizens 9.8 percent of the time in the first half of 2007. About 82,000 companies now have enrolled in E-Verify, which is still voluntary for private employers. The Bush Administration has mandated that 169,000 federal contractors participate in the program and verify the eligibility of all employees, not just new hires. The US Chamber of Commerce estimates that this would cost $10 billion to implement, or 100 times the government estimate. Thirteen states, including Mississippi, now require employers to use E-Verify while Illinois has barred it. A Rhode Island Superior Court judge rejected the ACLU's attempt to obtain a temporary restraining order against the Governor's executive order that all vendors and contractors participate in E-Verify (*Providence Journal*, September 16). There will be a full hearing on the matter before Thanksgiving.

• DETENTION HORROR STORIES MULTIPLY

Immigrants in detention often receive insufficient or no medical treatment. Among them is Hiu Lui Ng, a 34-year old engineer who died in mid August in a Rhode Island hospital after being denied medical care in ICE detention facilities for complications of cancer and a fractured spine. Advocates and activists have also accused ICE and authorities at the Wyatt Detention Facility of subjecting Mr. Ng to "sadistic violence." Members of Rhode Island's Congressional delegation are seeking a DHS investigation (Projo.com, August 18). An international human rights organization called Breakthrough has created a video game focused on the story of a Guinean tailor who died after suffering a skull fracture and brain hemorrhage in a New Jersey jail where he was sent for overstaying his visa. Players walk through a simulated detention center and try to find out what happened to Boubacar Bah. The game has been downloaded 110,000 times, according to the October 5 *New York Times*. It is available at http://66.232.104.66/homelandgitmo.com/

• MANY POLICE DEPARTMENTS RELUCTANT TO WORK WITH ICE

According to the August 23 *Washington Post*, only 55 of more than 18,000 police and other law enforcement agencies across the country have signed agreements to work with

Immigration and Customs Enforcement (ICE). At a conference sponsored by the Police Foundation, the mayor of El Paso said, "Once people don't trust a police officer in immigrant communities, they become communities that foster crime, where people won't report domestic violence or the theft of a TV. If people feel they are under threat of being deported, they become silent." Houston police chief Harold Hurtt stated that it was very hard to track down illegal immigrants without infringing on the rights of others: "There is a moral issue here. We are here to provide not only law enforcement, but justice."

• PASSPORTS DENIED TO US-BORN CITIZENS DELIVERED BY MIDWIVES
With a passport required starting next June to cross the US-Mexico land border, the US State Department has been denying passports to people who were delivered by midwives in southern Texas, citing a history of fraud going back to the 1960s. The ACLU has brought a class action lawsuit on behalf of tens of thousands of people of all ages, charging systematic discrimination against US-born citizens on the basis of ethnicity and national origin. One of its plaintiffs is a 43-year-old man who grew up in the Rio Grande Valley, served 4 years in the US Army, and had all his documentation rejected when he went to apply for a passport – his birth certificate, baptismal certificate, state immunization records, public school records, affidavits from his mother and someone who witnessed his birth and his Army discharge certificate (*Washington Post*, September 9).

• LATINOS EXPERIENCE PROFILING, DISCRIMINATION
According to a Pew Hispanic Center poll, 10 percent of Latinos, including 8 percent of those born in the US, have been stopped by police or other authorities and asked about their immigration status. 15 percent say it has been hard to find or keep a job because they are Latino, 53% disapprove of the E-Verify policy and 57% worry that a friend or family member will be deported (*Los Angeles Times*, September 19).

• BUSH APPOINTEES MORE LIKELY TO REJECT ASYLUM CLAIMS
According to the August 24 *New York Times,* 28 immigration judges who were vetted by the Justice Department's Monica Goodling and like-minded Bush loyalists and selected for their conservative credentials are more likely to rule against immigrants seeking asylum than their colleagues who did not go through the politicized vetting process. The September 8 *Washington Post* states that "as many as 40 judges won jobs through the improper process, but efforts by Democratic lawmakers and interest groups to dislodge them are unlikely." More than 200 immigration judges sit on 54 courts around the country.

• IMAM PERMITTED TO STAY IN US
After US immigration authorities sought to deport a prominent New Jersey Muslim cleric, Mohammed Qatanani, on the grounds that he had failed to disclose on his green card application a prior detention without charge in Israel and suspected Hamas ties, a federal immigration judge in Newark, Alberto Riefkohl, ruled there was no credible evidence linking the Palestinian to terrorism and that he could stay permanently in the US. The 44-year-old Imam had widespread community support, including from law-enforcement officials.

B. IN THE US CONGRESS

• FEINGOLD CHAIRS HEARING ON RESTORING THE RULE OF LAW
On September 16, Senator Russ Feingold, who is chair of the Senate Judiciary Committee's Constitution Subcommittee, presided over a hearing intended to provide

the next Administration with recommendations for restoring checks and balances and the rule of law, and "tackling the wreckage that this President will leave" (*Huffington Pos*t, September 17). Legal and historical experts offered their spoken and written testimony.

• SIGNING STATEMENTS CONDEMNED BY HOUSE COMMITTEE
A report issued on August 18 by the House Armed Services Committee criticizes President Bush's use of signing statements to reverse the intent of Congressional legislation, saying they generated confusion and undermined Congressional oversight of national defense policy. Former judge and legal commentator Catherine Crier called the report "a very big deal," but Huffington Post editor Roy Sekoff stated that "It's yet another hard-hitting Congressional report with on teeth to it" which is unlikely to change anything (MSNBC, August 22).

• BILL INTRODUCED TO CURB "SECRET LAW"
On September 16, Senators Russ Feingold (D-WI) and Dianne Feinstein (D-CA) introduced a bill that would require the Attorney General to report to Congress whenever the Department of Justice issues a legal opinion indicating that the executive branch is not bound by existing statute. Rep. Brad Miller (D-NC) introduced a similar bill in the house.

• SENATORS CONDEMN SECRECY ON TORTURE POLICY
Senator Patrick Leahy and members of the Senate Judiciary Committee say they cannot exercise effective review or oversight of government policy because of the secrecy surrounding interrogation, detention and torture. "After more than five years of requests, we have only recently received access to redacted versions of OLC [Office of Legal Counsel] legal opinions related to the CIA's interrogation program," Senators Leahy and Spector wrote on August 19 (*Secrecy News*, August 20).

• FBI BOSS TELLS HOUSE HEARING WHY GUIDELINES MUST BE REVISED
"The bureau needs to be more proactive," FBI Director Robert Mueller told the House Judiciary Committee at a September 17 hearing. "And we have to build up our intelligence and in doing so, we need the tools that we have on the criminal side, on the national security side" (NPR, September 18). The FBI now has a special division dealing with terrorism, its National Security Branch, as well as a specialized unit on terror financing. Senators Edward Kennedy, Russ Feingold, Richard Durban and Sheldon Whitehouse had written a letter to the Attorney General expressing their concerns about the revised guidelines, which were drafted in conditions of secrecy. Attorney General Mukasey refused to allow House and Senate Judiciary members and staff to view the guidelines except for a few hours at a time during the August Congressional recess. In Senator Patrick Leahy's words, "He's saying he can't give us copies of the proposed guidelines until they are finalized, but, of course, once they are finalized they are no longer proposed or subject to change" (*The Public Record*, September 19).

C. IN THE COURTS

• FEDERAL JUDGE ORDERS UIGHUR DETAINEES TO BE RELEASED INTO US
On October 7, federal district court Judge Ricardo Urbina ruled that 17 Guantanamo detainees from the Uighur Muslim community in western China should be brought to the US and released by Friday, October 10. The Bush Administration immediately appealed to a three judge panel of the US Court of Appeals for the DC Circuit, which granted a stay of the judge's order and demanded that briefs be filed by both sides by October 16 to see if the stay should remain in place (*Boston Globe*, October 9). The

Uighur detainees, who had fled to Afghanistan to seek refuge from persecution in China, were swept into detention by mistake in 2001. Guantanamo authorities admitted that they were not "enemy combatants," but they remain imprisoned because there no country will accept them. Judge Urbina declared, "Because the Constitution prohibits indefinite detentions without cause, the continued detention is unlawful," as he ordered the detainees to be brought to Washington where they would be housed with the close-knit local Uighur community (Associated Press, October 7). The Bush Administration said that the judge had exceeded his powers and should defer to the executive branch.

• FEDERAL JUDGE DELAYS GUANTANAMO APPEALS AT REQUEST OF ADMINISTRATION

What would the June 2008 Supreme Court ruling on habeas corpus mean in practice for Guantanamo detainees? Four months later, little has been done to expedite approximately 250 habeas corpus appeals that are being coordinated by federal judge Thomas Hogan. Hogan had hoped to rule on the cases by the end of August, but in late September he "reluctantly" gave the Bush Administration more time to review and declassify documents for the first 50 habeas hearings (*Agence France-Presse*, September 22**).**

• APPEALS COURT ORDERS RELEASE OF PHOTOS DEPICTING DETAINEE ABUSE

On September 22, the US Court of Appeals for the Second Circuit ordered that 21 pictures taken at six different sites in Iraq and Afghanistan be released to the ACLU as part of a FOIA lawsuit. The pictures show detainees being physically abused and sexually humiliated, demonstrating that this treatment was not confined to Abu Ghraib (Reuters, September 22).

• APPEALS COURT BLOCKS ORDER ON WHITE HOUSE AIDES

After US District Court Judge John Bates ordered former White House counsel Harriet Miers to comply with a Congressional subpoena and testify before Congress, and White House chief of staff Joshua Bolten to turn over documents relating to firing of federal prosecutors, the Bush Administration appealed the ruling, hoping to run out the clock on the current Congress (Associated Press, August 26, 2008). On October 6, a DC Circuit Appeals Court three-judge panel (two of whom were Republican-appointees) backed the Administration and blocked Judge Bates order (*Boston Globe*, October 7).

• MAHER CASE TO BE RE-HEARD BY FEDERAL APPEALS COURT

In a rare move, the US Court of Appeals for the Second Circuit has decided to review its 2-1 ruling last June dismissing a lawsuit filed by Maher Arar, the Canadian victim of "extraordinary rendition." All 13 judges will hear the case in December. Defendants include former Attorney General John Ashcroft and other Bush Administration officials (Inter Press Service, August 18). The government is expected to again seek the dismissal of the case by invoking "state secrets privilege."

• APPEALS COURT THROWS OUT TWO TERRORISM CONVICTIONS

Citing errors by the lower court judge, a panel of the US Court of Appeals for the Second Circuit overturned convictions of a Yemini cleric accused of financing terrorism, Sheik Mohammed Ali Hassan al-Moayad, and his aide, Mohammed Mohsen Yahya Zayed (*New York Times*, October 3). The court ruled that prosecutors were wrong to introduce graphic testimony of a survivor of a Tel Aviv bus bombing which had nothing at all to do with the defendants. The men had been sentenced to 75 years and 45 years in a federal supermax. The government is now deciding whether to re-try them.

• SAMI AL-ARIAN RELEASED FROM CUSTODY

On September 2, a former South Florida University professor critical of Israeli policies in the occupied territories, Sami al-Arian, was finally freed on bond after spending five years in prison, much of that time in solitary confinement. Al-Arian, a Palestinian American accused of ties to Islamic Jihad, had been acquitted by a Florida jury of serious terrorist charges in December 2005, and in a plea bargain, admitted to conspiring to help the Palestinian Islamic Jihad by helping a cousin with links to the group get immigration benefits (*Washington Post*, September 3). After the time to which he was sentenced expired, he remained in prison for "contempt of court" after refusing to testify against others in front of a grand jury. He faces a trial on the contempt charges.

• FEDERAL COURT IN VIRGINIA TO RULE IN TORTURE LAWSUITS

Three federal lawsuits accusing Americans of carrying out the torture of detainees at Abu Ghraib have been consolidated and transferred to the US District Court in Eastern Virginia. CACI International is arguing that it has immunity from allegations of torture at Abu Ghraib on the grounds that "it was doing the US government's work as a supplier of interrogators" (Associated Press, September 26).

• NO END TO MYSTERIES SURROUNDING SIDDIQUI CASE

The case involving Dr. Afia Siddiqui, a Pakistani behavioral scientist who studied at Brandeis and MIT before disappearing with her three children for five years and then reappearing in a Manhattan court, remains shrouded in mystery. Her lawyer, Elizabeth Fink, told the federal judge that she believes her client had been imprisoned and tortured for years and is now mentally incompetent (*Washington Post*, September 5). Her sister strongly disputes the government's claim that Siddiqui was arrested by Afghan police on July 17 after she was found accompanied by her son planning a suicide bombing (Inter Press Service, August 20). Siddiqui's arrest came shortly after a British journalist, Yvonne Ridley, had identified her as "Prisoner 63" in Bagram Air Base ("the gray lady of Bagram"). US officials say she was shot in the abdomen when she appeared from behind a curtain in the Afghan jail, grabbed a rifle and shot at US Army and FBI officials. On September 12, court documents were released stating that she was diagnosed with chronic depressive type psychosis. On September 15, the BBC reported that Afghan officials handed over her American-born son, 12-year-old Mohammed Ahmed, to the Embassy of Pakistan in Kabul.

• ACLU CHALLENGES NEW WIRETAPPING LAW

No sooner did Congress pass the FISA Amendments Act legalizing warrantless domestic NSA surveillance, than the ACLU brought a legal challenge against the legislation in the Federal District Court in New York. The case, filed on July 20 against Attorney General Mukasey and NSA Director McConnell (among other), argues that the legislation is an unconstitutional violation of the First and Fourth Amendments and the separation of powers. Plaintiffs include journalists Naomi Klein and Chris Hedges, attorneys and human rights organizations.

• WIRETAP LAWSUITS ARE STILL, FOR THE TIME BEING, ALIVE

The government is attempting to kill lawsuits against telecoms that handed over customer information to the NSA by invoking the retroactive immunity provision of the FISA Amendments Act. At a December 2 hearing, California district court judge Vaughn Walker will consider arguments against their dismissal offered by the Electronic Freedom Foundation (*Wired*, September 22).

• APPEALS COURT TO RULE ON NATIONAL SECURITY LETTERS

In late August, the ACLU argued before a three-judge panel of the US Court of Appeals for the Second Circuit that the USA PATRIOT Act's National Security Letter provision, complete with gag order, violated the First Amendment (Law.com, August 28). District court judge Victor Marrero had struck down the NSL provision in 2007, and the government is appealing his ruling. The ACLU had brought the case, *Doe v. Gonzales*, in 2004 on behalf of an Internet Service Provider who was gagged after receiving a NSL ordering him to turn over information about his clients. During the years 2003 to 2006 alone, nearly 200,000 NSLs were issued (Reuters, August 27).

D. IN THE COMMONWEALTH

• SHARON IMAM FORCED TO LEAVE US

Found guilty of lying in his green card application, Imam Muhammad Masood, who had served as the highly respected spiritual leader of the Islamic Center of New England's mosque in Sharon, was sentenced by the US District Court in Boston to three years on probation and agreed to immediately leave for Pakistan in order to avoid being arrested (*Boston Globe*, October 3). The prosecution had sought to have him serve time in prison before being deported. The Imam, who leaves behind his wife and 8 children, had lived in the US for 20 years. He became the leader of the mosque in 1998 and was known for his moderate views and his participation in interfaith services. His lawyer, Norman Zalkind, said the case, which should have been treated as simply an immigration matter, reflected a prevailing government anti-Islamic bias and the fact that the US Attorney's office had such a big budget for fighting terrorism.

• HIGH TECH SECURITY CAMERAS BRING "BIG BROTHER" TO MASSACHUSETTS TOWNS

Cambridge, Brookline, Somerville, Quincy and Winthrop are among the communities which are installing 95 powerful surveillance cameras obtained with Department of Homeland Security grants (*Cambridge Chronicle*, August 13). The new digital cameras can "see" for a mile and swivel 360 degrees in a fraction of a second. According to Charlie Savage in the August 12 *Boston Globe*, DHS grants are inducing cities and towns like Liberty, Kansas (population 95) to install closed-circuit surveillance systems whose digital images "can be easily transmitted, copied, and stored indefinitely on ever-cheaper hard-drive space…technicians are developing ways to use computers to process real-time and stored digital video, including license-plate readers, face-recognition scanners, and software that detects 'anomalous behavior'…As this technological capacity evolves, it will be far easier for individuals to attract police suspicion simply for acting differently and far easier for police to track that person's movement closely, including retracing their steps backwards in time. It will also create a greater risk that the officials who control the cameras could use them for personal or political gain." It is unclear which agencies will have access to the digital information captured by the cameras, whether it will transmitted to the Commonwealth Fusion Center, and who – if anyone - will have oversight over its use.

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