

CIVIL LIBERTIES UPDATE
E-NEWSLETTER OF THE ACLU OF MASSACHUSETTS
March 9, 2010

CONTENTS

A. EXECUTIVE ACTIONS

Building the National Security Surveillance State

- FBI repeatedly broke the law and fabricated threats
- Obama's Justice Department legalizes wrongdoing
- Report into legal work of Yoo and Bybee finally released; "misconduct" downgraded to "poor judgment"
- Missing Yoo emails: investigation demanded
- Yes, Americans abroad can be assassinated by US intel agencies
- Drone data threatens to overwhelm watchers
- UK to adopt drones for covert domestic surveillance
- Department of Defense spied on Planned Parenthood and peace groups
- Zazi pleads guilty to plotting to blow up New York subway
- Abdulmutallab persuaded by family to cooperate with FBI
- List of blunders grows ever longer in underwear bombing case
- "Hold onto your underwear: this is not a national emergency"
- Screening of passengers from 14 countries widely criticized
- Body-scanning technology ignites more controversy
- Mind-scanners may be on their way to US airports
- Chemical swabbers to fan out through airports
- Ten thousand TSA scanners to get classified intel
- Over a thousand electronic devices seized at borders
- Flight diverted because of Jewish prayer
- Arabic flashcards lead to lawsuit against TSA
- Eight year old has spent six years on watchlist
- Nominee selected to head TSA had illegally searched database
- State Department opens door to visits by two prominent Muslims
- 'War on drugs' and 'war on terror' merged
- Report says counterterrorism center needs improvement
- Privacy and civil liberties oversight board continues to languish
- Intelligence officers say attack on US is coming soon
- Google teams up with NSA to investigate cyber-attacks
- Hacking reaches epidemic proportions
- European parliament votes to reject US rules on bank transfers
- PATRIOT Act does not undermine census confidentiality
- Majority think rights are threatened by government
- United States less free than 45 other countries

Military Commissions, Torture, Guantanamo

- Cheney embraces war crime
- Obama may bow to pressure on trials of "high value" detainees
- 47 Guantanamo inmates slated for indefinite detention
- Widely-reported recidivism of released detainees debunked as Pentagon propaganda
- Judge opposes indefinite detention
- "Suicides" in Guantanamo – was there a homicide cover up?
- "Obama's secret prisons in Afghanistan endanger us all"
- Obama reverses course to permit naming of Bagram detainees
- British court orders release of classified information relating to torture of detainee

- Americans say they were tortured in Pakistan
- Former Guantanamo inmate wins right to sue Australia
- Spain may probe alleged torture of detainee with Spanish nationality
- Canadian supreme court rules that detainee's rights were violated at Guantanamo
- Rendition planes landed in Poland
- Pentagon agrees to allow access to Guantanamo lawyers
- ABA blasts smear on Guantanamo lawyers
- 42 arrested in DC protesting failure to close Guantanamo

Targeting Immigrants/Visitors

- Catalogue of horrors downplayed by ICE
- Obama administration appears to think ICE can police itself
- American Bar Association says deportation system "severely flawed"
- Secretive "secure communities" program relies on flawed data, racial profiling
- Arpaio rides again, this time with 881 deputies
- "Virtual" border fence hit hard in budget

B. IN THE US CONGRESS

- Congress reauthorizes PATRIOT Act
- Is the White House teaming up with Republicans on indefinite detention and military trials?
- Bill introduced in Senate authorizes indefinite detention
- Measure introduced to re-criminalize torture
- Senate judiciary committee holds hearing on torture report
- It's official: Austin attack was an act of "terrorism"
- Senator Brown given defense, homeland security assignments

C. IN THE COURTS

- Supreme Court hears "material support" case
- Supreme Court dismisses Uighur appeal
- Arar appeals rendition ruling to Supreme Court
- Appeals court says sentence too light in terror plot case
- Aafia Siddiqui found guilty
- ACLU files lawsuit on behalf of Bagram detainees
- Judge allows torture suit against Rumsfeld to proceed
- Administration wants warrantless tracking of cell phone users

D. IN THE COMMONWEALTH

- Boston police unveil 'real time crime center'
- Police will be able to get military weapons, but under more restrictions
- Full-body scanners now at Logan
- Witness in Mehanna case gets reward: probation
- First Amendment on trial in Mehanna case
- Massive security alert for LNG tanker from Yemen
- ICE stops cars; detains immigrants
- Newton declines to welcome detainee
- College relents on veil ban

A. EXECUTIVE ACTIONS

Building the National Security Surveillance State

- **FBI REPEATEDLY BROKE THE LAW AND FABRICATED THREATS**

The latest report compiled by the Department of Justice's Office of the Inspector General reveals that the FBI illegally obtained thousands of private phone records from telecommunications offices during the period 2002 and 2006 and often made up threats to justify using emergency "exigent circumstances letters" instead of going through the process of getting a subpoena for the records. (*New York Times*, January 21). The letters were a device designed by the FBI shortly after the passage of the PATRIOT Act which allowed an FBI supervisor to declare an emergency and obtain the records through "exigent letters," and then issue a national security letter after the fact. The device was authorized in a January 6, 2003 memo issued by then FBI Assistant Director for Counterterrorism Larry Mefford, which stated that this method of instant access to records was "imperative" to "protect our nation against future attacks" even if it did lead to the scooping up of records not connected to terrorism investigations (*Washington Post*, January 19). Exigent letters were used to get the phone records of reporters at *The Washington Post* and *The New York Times* in investigations of leaks. The report says that "the FBI's use of exigent letters became so casual, routine and unsupervised" that employees of three telecommunications companies [AT & T, Verizon and MCI] that were working closely with the FBI "sometimes generated the exigent letters" for FBI agents to sign and return to them (Truthout, January 21). To protect itself, the FBI starting issuing blanket national security letters to authorize all past searches. Although the practice violated the Electronic Communications Privacy Act and FBI and DOJ guidelines, the DOJ's Public Integrity Section has decided not to bring any prosecutions. In the words of Senator Patrick Leahy, "This was authorized at the highest levels of the FBI, and continued for years...When Americans break the law, there are consequences. No one in the FBI should be above the law."

• **OBAMA'S JUSTICE DEPARTMENT LEGALIZES WRONGDOING**

It turns out they that the whole illegal exigent letters process has now been made legal. The Inspector General revealed in a final heavily censored section that the Obama Administration's Office of Legal Counsel "issued a secret rule almost two weeks ago saying it was legal for the FBI to have skirted federal privacy protections" to obtain American's phone records (wired.com, January 21). On January 22, Senators Ron Wyden, Dick Durbin and Russ Feingold wrote a letter to Attorney General Holder demanding a copy of the retroactive immunization rule (*Washington Independent*, January 22).

• **REPORT INTO LEGAL WORK OF YOO AND BYBEE FINALLY RELEASED; "MISCONDUCT" DOWNGRADED TO "POOR JUDGMENT"**

After a five-year investigation into the responsibility of the Office of Legal Counsel for giving a green light to torture, the original finding by the Justice Department's Office of Professional Responsibility that John Yoo, who now teaches at UC Berkeley law school, and Jay Bybee, who sits on the 9th Circuit Court of Appeals, had committed "professional misconduct" was revised by a senior DOJ official, David Margolis. He decided that the two had exercised "poor judgment," but had the excuse that everyone was frightened after the attacks of 9/11. The watering down of the report by the Obama Administration means that the DOJ will no longer recommend that the two are disbarred by their state bar associations (Truthout, February 19). Among other revelations in the original report was the fact that John Yoo said that presidential powers were virtually unlimited even in a vaguely defined "war on terror," and that the president could legally order the extermination of a village full of civilians. Rep. John Conyers and Senator Patrick Leahy both immediately condemned Margolis' conclusion, and scheduled hearings on the report. *The New York Times* editorialized, "Mr. Yoo and Mr. Bybee were not acting as fair-minded analysts of the law but as facilitators of a scheme to evade it. The White House decision to brutalize detainees already had been

made. Mr. Yoo and Mr. Bybee provided legal cover....The quest for real accountability must continue. The alternative is to leave torture open as a policy option for future administrations" (February 25). *The Wall Street Journal*, on the other hand, congratulated David Margolis and said that the campaign against the Bush Administration lawyers "has now been exposed as a partisan, and unethical, smear" (February 22).

• **MISSING YOO EMAILS: INVESTIGATION DEMANDED**

The National Archives and the Records Administration, which are supposed to approve the destruction of documents under the Federal Records Act, have written to the Justice Department demanding an investigation into the destruction of emails written by John Yoo in the summer of 2002, when he was writing legal memos justifying torture. Also missing were the emails of Deputy Assistant Attorney General Patrick Philbin. According to DOJ rules, "the unlawful removal or destruction of federal records" can result in "criminal or civil penalties, fines and/or imprisonment" (Truthout, February 26). The fact that emails were missing came to light during the DOJ's investigation of the Office of Legal Counsel.

• **YES, AMERICANS ABROAD CAN BE ASSASSINATED BY US INTEL AGENCIES**

Dennis Blair, the Director of National Intelligence, told the House Intelligence Committee that US spy agencies have the authority to kill Americans if they think they are involved in terrorism. But the good news is that they have to get permission. "If...we think that direct action will involve killing an American, we get special permission to do that" (*Newsweek*, February 5). According to *Newsweek*, a classified "intelligence briefing authorizing assassination of suspected terrorists which had been signed by George W. Bush continues under his successor. Foreign terrorist suspects can be killed by the CIA and Pentagon without consulting with anyone, but "strikes specifically targeting Americans" must first be approved by a secret committee made up of senior intel officials and members of the cabinet. If Americans just happen to be in the vicinity of strikes aimed at foreign targets they can be killed without special permission being required.

• **DRONE DATA THREATENS TO OVERWHELM WATCHERS**

Intelligence agencies like the NSA, CIA and FBI are not the only bodies being overwhelmed with intercepts. So are the military analysts whose job is to watch every second of footage collected by the growing number of drones carrying a growing number of cameras over Afghanistan, Iraq and wherever else they are flying on secretive missions. In the words of Lt. Gen. David Deptula, the Air Force's top intelligence official, we could soon be "swimming in sensors and drowning in data" (*New York Times*, January 11). What to do about it? They are "testing some of the splashier techniques used by broadcasters, like the telestrator that John Madden popularized for scrawling football plays. It could be used to warn troops about a threatening vehicle or to circle a compound that a drone should attack." As many as 550 people, including civilians, were killed by drone attacks in Pakistan in 2009, according to a document compiled by Nebraskans for Peace. Nebraska is the home to the US Strategic Command which targets the missions of the drones.

• **UK TO ADOPT DRONES FOR COVERT DOMESTIC SURVEILLANCE**

Police forces in the UK are planning to use drones to "revolutionise policing" at home. According to the January 29 UK *Guardian*, spy drones will be used to monitor immigration, demonstrations and "antisocial driving" and to conduct "covert urban surveillance." Drone spying would, some police officials contend, be no more "intrusive" than the CCTV cameras which blanket the country.

- **DEPARTMENT OF DEFENSE SPIED ON PLANNED PARENTHOOD AND PEACE GROUPS**

Intelligence oversight reports released in response to a Freedom of Information Act lawsuit filed by the Electronic Frontier Foundation reveal that the Pentagon collected and disseminated intelligence on groups ranging from Planned Parenthood to Alaskans for Peace and Justice, and Army Signals Intelligence in Louisiana intercepted civilian cell phone conversations. The reports detail activities that the Department of Defense's Inspector General has "reason to believe are unlawful" (Truthout, March 3).

- **ZAZI PLEADS GUILTY TO PLOTTING TO BLOW UP NEW YORK SUBWAY**

On February 22, Najibullah Zazi, an Afghan national, entered a guilty plea during an appearance at the federal district court in Brooklyn. He admitted receiving Al Qaeda training, and stated that "I would sacrifice myself to bring attention to what the United States military was doing to civilians in Afghanistan" (*New York Times*, February 23). Zazi reportedly decided to cooperate with the prosecution after four months in jail out of fears that his refusal to do so could bring charges against his mother and other family members. Charges had already been brought against his father and uncle. On February 25, charges of assisting in the plot to bomb the New York subway were brought against two of his friends, Adis Medunjanin and Zaren Ahmedzay, who had traveled with him to Pakistan where they were allegedly recruited by Al Qaeda. On March 4, Ahmad Wais Afzali, the imam who had let Zazi know he was being sought by the authorities in a phone conversation shortly before his arrest, appeared in court on the charge of lying to the FBI. Afzali, who had long provided the police with information, must leave the country voluntarily or be deported to Afghanistan, the country which he had left as a child (*New York Times*, March 5). The case has been held up as a demonstration that terrorists can be indeed be successfully tried in civilian courts, and don't need to be tortured to get their cooperation. According to the *New York Times*, 73 defendants have appeared in a federal courthouse on terrorist charges and 215 have appeared in courts nationwide, 90 percent of whom have been convicted of at least one terrorist charge.

- **ABDULMUTALLAB PERSUADED BY FAMILY TO COOPERATE WITH FBI**

After the Obama Administration was condemned by Republicans for having "a blind spot when it comes to the war on terrorism" because it allegedly did not take the gloves off after arresting the would-be underwear bomber Umar Farouk Abdulmutallab but instead treated him like a criminal defendant, the Nigerian youth's family was brought to the US by the FBI. According to reports in early February, they convinced him to cooperate and give the FBI the intelligence it was seeking (Associated Press, February 3). Shortly after his arrest, a Rasmussen telephone survey revealed that 58 percent of US voters supported waterboarding Abdulmutallab to extract information from him. 71 percent want him investigated by military authorities and only 22 percent say he should be treated as a criminal by the civilian court system (*Washington Times*, December 31).

- **LIST OF BLUNDERS GROWS EVER LONGER IN UNDERWEAR BOMBING CASE**

The Abdulmutallab case revealed the failure of American officials to flag the would-be bomber for closer scrutiny after his parents told the US Embassy in Nigeria that he had come under the influence of religious extremists in Yemen, the failure of analysts in the National Counterterrorism Center to move his name from its Terrorist Identities Datamart Environment (TIDE) system which contained 550,000 names to the master watchlist in the Terrorist Screening Center maintained by the FBI, the failure of a junior CIA analyst to finish the memo on Abdulmutallab he had in his computer and the failure of intelligence agencies to integrate NSA intercepts about an attack being planned

by a “Nigerian” and all the other “dots” (*New York Times*, January 18). In the words of Melvin Goodman, “Tremendous amounts of useful intelligence are collected, but intelligence analysis has not been appreciably improved” (Truthout, January 23). Then there are the other flags that were not raised. His ticket was bought with cash. He was permitted to board the plane at Schiphol Airport without luggage and without a coat – despite the fact that he was flying to Detroit in the winter (*Boston Globe*, January 14). Yossi Melman, writing in the Israeli paper *Ha’aretz* (January 10), attributes at least part of the airport intelligence failure to the Israeli company International Consultants on Targeted Security (ICTS), which oversaw the profiling of passengers at the Amsterdam airport.

- **“HOLD ONTO YOUR UNDERWEAR: THIS IS NOT A NATIONAL EMERGENCY”**

In a February 14 TruthDispatch piece, Tom Engelhardt attempted to put the failed airplane bombing “into some kind of context,” pointing out that had the plot succeeded, the death toll would not have equaled the number of traffic fatalities in the single state of Nevada in 2008. “Thanks to what didn’t happen on Flight 253, the media essentially went mad, 24/7. Newspaper coverage of the failed plot and its ramifications actually grew for two full weeks after the incident until it had achieved something like full-spectrum dominance, according to the Pew Research Center’s Project for Excellence in Journalism....Under the circumstances, you would never know that Americans living in the United States were in vanishingly little danger from terrorism, but in significant danger driving to the mall....It’s striking when a Democratic administration finds safety in the claim that it’s acting like a Republican one, that it’s following the path to the imperial presidency cleared by George W. Bush. Fear does that to you, and the fear of terror has been institutionalized at the top as well as the bottom of society.”

- **SCREENING OF PASSENGERS FROM 14 COUNTRIES WIDELY CRITICIZED**

President Obama’s announcement that extra scrutiny at airports would be given to visitors to (including US citizens) and nationals from 14 mainly Muslim countries has been attacked as racial and ethnic profiling which would not necessarily enhance airline security. The Information Minister of Nigeria declared that “It is unfair to discriminate against over 150 million people because of the behavior of one person” – a reference to the would-be underpants bomber, Umar Farouk Abdulmattab. The countries whose nationals will now be screened are Afghanistan, Algeria, Cuba, Lebanon, Libya, Iran, Iraq, Nigeria, Pakistan, Saudi Arabia, Somalia, Sudan, Syria and Yemen (*New York Times*, January 5).

- **BODY-SCANNING TECHNOLOGY IGNITES MORE CONTROVERSY**

President Obama has called for the immediate installation of \$1 billion in full body scanners at US airports, a measure which was criticized by many civil liberties and religious groups. According to the Electronic Privacy Information Center (EPIC), the Transportation Security Administration is not being forthcoming when it claims the scanners would not record or transmit the images or naked bodies. Documents obtained through a Freedom of Information Act reveal that the machines will be able to store and transmit bodily images when placed in the “test mode.” American Muslims have said the scanners are a violation of Islamic law which highly emphasizes modesty. In the UK, the “government recently deemed that the full-body scanners being installed at UK airports illegally create images of child pornography when they are used on underage individuals. Authorities in the UK ordered that the scanners not be used on passengers under 18, leading some observers to wonder about their usefulness if they are not applied to persons as old as 17” (Rawstory, January 12). The European Union will not rush to install the machines. In the words of European Minister Viviane Reding,

“Europe’s need for security cannot justify an invasion of privacy. Our citizens are not objects; they are human beings” (EPIC, January 21).

- **MIND-SCANNERS MAY BE ON THEIR WAY TO US AIRPORTS**

According to the January 28 Associated Press, “mind—reading” technology developed by the Israeli company WeCU Technologies (as in “we see you”) may soon be tried out in US airports. Company CEO Ehud Givon said the system would project images onto screens that (only?) would-be terrorists would recognize. They would give themselves away by a “darting of the eyes, an increased heartbeat, a nervous twitch or faster breathing” that would be detected by human watchers and hidden cameras and sensors. The price tag of this “public safety” device was not revealed.

- **CHEMICAL SWABBERS TO FAN OUT THROUGH AIRPORTS**

TSA screeners will soon be randomly pushing carts with bomb detecting machines around airport waiting rooms and swiping swabs along bags and hands (*USA Today*, February 16).

- **TEN THOUSAND TSA SCANNERS TO GET CLASSIFIED INTEL**

The Transportation Security Administration will give secret intelligence information to 10,000 managers, supervisors and ‘behavior detection’ experts so they are able to provide “context to things they see every day which may otherwise not appear unusual” (*USA Today*, February 11). It will, however, take two years to get the 10,000 people cleared so they can have access to the secret information.

- **OVER A THOUSAND ELECTRONIC DEVICES SEIZED AT BORDERS**

The ACLU through a FOIA lawsuit has discovered that in a recent 9 month period, US Customs and Border Protection have taken 1,644 electronic items from travelers – 582 cellphones, 398 laptops, 259 digital cameras and MP3 players, flash drives, hard drives and DVDs.

- **FLIGHT DIVERTED BECAUSE OF JEWISH PRAYER**

When a 17-year-old Jewish passenger on a flight from La Guardia to Kentucky took out the leather straps known as tefillin to prepare for morning prayer, the flight crew “erred on the side of caution and decided to radio that in and to divert the flight” (*New York Times*, January 22). When the plane landed in Philadelphia it was boarded by police with drawn guns, who took the passenger and his sister away in handcuffs.

- **ARABIC FLASHCARDS LEAD TO LAWSUIT AGAINST THE TSA**

Don’t try to study Arabic at an airport. The flash cards in English and Arabic carried by Nicholas George at the Philadelphia airport caused the 22-year-old Pomona College student to be subjected to handcuffs, four hours of detention and abusive questioning by the Transportation Security Administration, the FBI and the Philadelphia police. With the help of the ACLU, he is suing these agencies (*LA Times*, February 11).

- **EIGHT YEAR OLD HAS SPENT SIX YEARS ON WATCHLIST**

Mikey Hicks, now eight years old, was first patted down at an airport when he was two, according to the January 14 *New York Times*. He still gets vigorously frisked whenever he flies, despite the assertion of the Transportation Security Administration that “there are no children on the no-fly or selectee lists.” His father, who has the same name, has only been given extra screening on one occasion.

- **NOMINEE SELECTED TO HEAD TSA HAD ILLEGALLY SEARCHED DATABASE**

Former FBI agent Errol Southers, who has been nominated by the White House to head the Transportation Security Administration, admitted in a letter to key Senators that he had committed a “grave error in judgment” when he accessed criminal records to get information about his estranged wife’s new boyfriend and passed it on to the police (*Boston Globe*, January 1). He withdrew his nomination from consideration on January 20. It had been held up for months by Republicans. On March 8, it was reported that President Obama has selected Major General Robert Harding to lead the TSA. He had retired from the army in 2001 after 33 years of military service and then served as director of operations in the Defense Intelligence Agency and subsequently, founded a defense and intelligence contracting firm which employs more than 400 people (*Washington Post*, March 8).

• **STATE DEPARTMENT OPENS DOOR TO VISITS BY TWO PROMINENT MUSLIMS**

After the ACLU challenged the exclusion from the United States of two prominent Muslim scholars, Tariq Ramadan and Adam Habib, Secretary of State Hillary Clinton has signed orders permitting them to submit new visa requests.

• **‘WAR ON DRUGS’ AND ‘WAR ON TERROR’ MERGED**

According to the January 18th *New York Times*, US Attorney Preet Bharara is merging two units he coordinates in Manhattan, the Terrorism and National Security unit and the unit on International Narcotics Trafficking. The rationale for the move is the suspicion that Islamic extremist groups are turning to the drug trade to help finance their operations. A new law gives “federal drug agents the authority to pursue narcotics and terrorism crimes committed anywhere in the world if they can establish a link between a drug offense and a terrorist act or group.”

• **REPORT SAYS COUNTERTERRORISM CENTER NEEDS IMPROVEMENT**

According to the report financed by Congress and compiled by the non partisan Project on National Security Reform, the National Counterterrorism Center which was created in 2004 still suffers from “systemic impediments” including culture clashes, tensions between the State Department’s counterterrorism office and the CIA, overlapping statutes, inadequate authority to coordinate counterterrorism efforts and staff who are not always the “best and the brightest” (*New York Times*, February 23).

• **PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD CONTINUES TO LANGUISH**

President Obama is apparently no more eager to get this board up and running than President Bush had been. It was established in 2004 on the recommendation of the 9/11 Commission to be a mouthpiece for privacy protections in the intelligence community. The President has not appointed members to the Board and has not spent the funding allocated for it by Congress (*Washington Times*, February 2).

• **INTELLIGENCE OFFICERS SAY ATTACK ON US IS COMING SOON**

In a briefing before the Senate Intelligence Committee, CIA head Leon Panetta, FBI head Robert Mueller and National Intelligence director Dennis Blair said that the failed Christmas bomb attempt was the opening salvo of an ominous threat environment, in which large-scale cyber-attacks and homegrown extremists with “clean” records could wreak havoc on the US (*Boston Globe*, February 3).

• **GOOGLE TEAMS UP WITH NSA TO INVESTIGATE CYBER-ATTACKS**

The world’s largest search engine and largest electronic surveillance agency have entered into a secret agreement to try to discover the identity of hackers who reportedly

attempted to gain access to Gmail accounts of Chinese human rights activists. According to the February 5 *New York Times*, “by turning to the NSA, which has no statutory authority to investigate domestic criminal acts, instead of the Department of Homeland Security, which does have such authority, Google is clearly seeking to avoid having its search engine, e-mail and other Web services regulated as part of the nation’s ‘critical infrastructure.’” The Electronic Privacy Information Center (EPIC) expressed grave concern about what the agreement would mean for the privacy of millions of users of Google’s products. In an interview last December, Google CEO Eric Schmidt had stated: “The reality is that search engines, including Google, do retain this information for some time and it’s important, for example, that we are all subject in the United States to the Patriot Act and it is possible that all that information could be made available to the authorities” (*Technology Live News*, February 5).

- **HACKING REACHES EPIDEMIC PROPORTIONS**

One of the largest cyber attacks ever detected targeted 75,000 computer systems in 2,500 companies in the health and technology industries, stealing corporate data, emails, and credit card transaction data, according to February 15 *The Washington Post*. This attack follows the hacking of Google and 30 other large financial, defense, technology, energy and media companies, including the *Wall Street Journal*. In mid February, the Bipartisan Policy Center staged a “Cyber Shock Wave” simulation to see how the US government would fare in an all-out cyber war. Current and former senior government officials took part in it. What was learned? In the words of former deputy attorney general Jamie Gorelick, “Americans need to know that they would not expect to have their cell phone and other communications to be private – not if the government is going to have to take aggressive action to ramp down the threat” (*Washington Post*, February 17).

- **EUROPEAN PARLIAMENT VOTES TO REJECT US RULES ON BANK TRANSFERS**

In mid February, by a vote of 378-196, the European Parliament rejected an agreement to share information with the US about bank transfers that was aimed at keeping track of the finance of terrorist suspects. Dissenting members said it granted the US too much power to intrude into the lives of European citizens (*New York Times*, February 12).

- **PATRIOT ACT DOES NOT UNDERMINE CENSUS CONFIDENTIALITY**

The Justice Department has clarified that provisions of the USA PATRIOT Act on the gathering and sharing of information do not take precedence over confidentiality laws that shield information in the US Census (*Washington Post*, March 5).

- **MAJORITY THINK RIGHTS ARE THREATENED BY THE GOVERNMENT**

According to the results of a CNN poll released on February 26, 56 percent of those responding to the survey think the federal government is so large and powerful that it poses a threat to the rights and freedoms of citizens. By large numbers, independents and Republicans are more fearful of the government’s power than Democrats.

- **UNITED STATES LESS FREE THAN 45 OTHER COUNTRIES**

According to the 2010 Quality of Living Index put out by *International Living*, the US ranks behind Hungary, Malta, Lithuania and 42 other countries in the “Freedom” category. *International Living* editor Dan Prescher explained that “since the passage of the Patriot Act, many Americans have the feeling that their basic rights and freedoms, especially the right to privacy and the freedom from unwarranted searches and seizures, have been drastically reduced...How would you even know if they were reading your email or tracking your cell phone calls? You really wouldn’t...which makes for a

general feeling of insecurity and uncertainty” (*International Living* Press Release, January 14).

Military Commissions, Torture, Guantanamo

• CHENEY EMBRACES WAR CRIME

“I was a big supporter of waterboarding,” former vice president Dick Cheney told ABC News’ “This Week” (Truthout, February 15). While Cheney admitted to breaking Section 2340A of the federal criminal code that provides jail terms or death for those who use torture or conspire to torture, the media and current Administration barely shrugged. To date, not a single torturer has been prosecuted under federal law and not a single torture victim has had his day in court.

• OBAMA MAY BOW TO PRESSURE ON TRIALS OF “HIGH VALUE” DETAINEES

Facing growing pressure from Republicans in Congress, White House officials close to President Obama are reportedly pushing him to override Attorney General Holder and try Khalid Sheik Mohammed and four other ‘high value’ detainees before military commissions instead of in civilian courts (*New York Times*, March 5). “If this stunning reversal comes to pass, President Obama will deal a death blow to his own Justice Department, not to mention American values,” stated the ACLU Executive Director Anthony Romero. The ACLU placed a full page ad in the March 8 *New York Times* urging the President not to turn his back on due process, justice and the rule of law. *The New York Times* agreed. Its March 5 editorial stated: “It would be disastrous if the administration were to now give in to this effort to abandon terrorism trials in federal courts and retreat to the tribunals, which may never be able to produce a conviction that Americans can be proud of” (See “*In the Congress*” below).

• 47 GUANTANAMO INMATES SLATED FOR INDEFINITE DETENTION

Because they are deemed “too dangerous” to release and they cannot be tried – for lack of evidence or because the evidence has been tainted by torture or, in an explanation the Administration prefers, because a trial would put classified information at risk of disclosure - the President’s special task force on Guantanamo has recommended that 47 prisoners be detained indefinitely without charges or trial. Approximately 35 others will be prosecuted in civilian courts or before military commissions and 10 detainees will be transferred home or to third countries. Included in that number are some 30 Yemenis whose transfer is on indefinite hold. Far from closing Guantanamo during its first year, the Administration has only transferred about 40 inmates out of the prison in that time (Associated Press, January 22). The decision to opt for indefinite detention has alarmed the ACLU, many constitutional scholars and the former lead counsel for the Office of Military Commissions Defense, Air Force Lieutenant Colonel David Frakt. In Frakt’s words, “The administration has acknowledged the right of all detainees to petition for habeas corpus in federal court. Why does the administration seem to believe classified information could be adequately protected in federal habeas litigation, but not in a criminal trial? It seems far more likely that there is simply inadequate admissible non-coerced evidence of criminality” (InterPress Service, January 25).

• WIDELY-REPORTED RECIDIVISM OF RELEASED DETAINEES DEBUNKED AS PENTAGON PROPAGANDA

The New York Times contributed to the growing support for indefinite detention by publishing reports that the recidivism rate for released Guantanamo detainees who had allegedly “returned to terrorism” was as high as 14 percent, while other papers put it as high as 20 percent. *The Times* apologized for printing unsubstantiated figures after the

New American Foundation and Seton Hall Law School demonstrated that the actual figure was closer to 4 percent of the 534 detainees who had been released (Andy Worthington in Truthout, January 7). But by then the media furor about Guantanamo recidivism had done its job, and President Obama had bowed to pressure and put a hold on the release of any detainees from Yemen. Yemenis make up half the remaining prisoners at Guantanamo. Many have been in US custody without charges or trial for 8 years.

- **JUDGE OPPOSES INDEFINITE DETENTION**

A sitting federal district court judge, John Coughenour, told a forum that detainees should not be held indefinitely because the evidence against them is too tainted by torture to bring them to court. The US must accept that losing out on a prosecution is “part of the price you pay for being committed the way we are to the due process and a constitutional process for convicting people” and that saying they are too dangerous to release is no argument: “The world is not at a loss for dangerous people” (*Washington Independent*, January 22).

- **“SUICIDES” IN GUANTANAMO – WAS THERE A HOMICIDE COVER UP?**

Scott Horton, writing in the March issue of *Harper’s Magazine*, which appeared on news stands in mid February, has looked again at the case of the three Guantanamo inmates (Salah Ahmed Al-Salami, Mani Shaman Al-Utaybi, and Yasser Talal Al-Zahrani) who allegedly committed suicide at the same time on June 9, 2006. At the time, Rear Admiral Harry Harris, the commander at Guantanamo, stated that “I believe this was not an act of desperation, but an act of asymmetrical warfare against us.” The report on the investigation into the deaths conducted by the US Naval Criminal Investigative Service which was issued two years later was not made public by the Pentagon, but Seton Hall University obtained 1,700 heavily-redacted pages through a FOIA request. Its analysis, which was made public in December 2009, revealed major problems with the official story. According to Horton’s article, after Obama became president, one of the soldiers on guard duty that night, Sergeant Joseph Hickman, decided to become a whistleblower because he was haunted by his time at Guantanamo. His account was borne out by three other soldiers on guard duty. They were all reportedly told at the time not to speak out. The men “provide evidence that authorities initiated a cover-up within hours of the prisoners’ deaths...The guards’ accounts also reveal the existence of a previously unreported black site at Guantanamo where the deaths, or at least the events that led directly to the deaths, most likely occurred” (*Harper’s Magazine*). One of the four claims to have seen a paddy wagon leave the area of the site (nicknamed “Camp No” because it was not supposed to exist) and make 3 trips directly to the medical center. The men also claimed it was “common knowledge” that the men had died of suicide by stuffing rags down their own throats, but that the camp commander Col. Michael Bumgarner told them the media “would report something different” – that they had hung themselves in their cells (Rawstory, January 18). The men who died were considered “problem prisoners” who had participated in hunger strikes and were held in a special area reserved for troublemakers. In a January 19 Truthout piece, Andy Worthington speculated that “Camp No” might be controlled by the Joint Special Operations Command, which former Defense Secretary Donald Rumsfeld hoped to make into a Pentagon version of the CIA.

- **“OBAMA’S SECRET PRISONS IN AFGHANISTAN ENDANGER US ALL”**

Writing in the February 12 UK *Independent*, Johann Hari states that “he was elected in part to drag us out of this trap – but in practice he is dragging us further in.” The escalation of the war in Afghanistan, the network of secret prisons under Joint Special Operations to which people disappear, the holding of dozens of children in Bagram,

many as young as 10, the kidnapping of suspects by secret agents, the killing of civilians with drones are all building support for Al Qaeda. The British lawyer Clive Stafford Smith estimates that 18,000 people are trapped in Obama's "legal black holes." On January 27, the UN Human Rights Council issued a report calling on 66 governments which have been involved in secret detentions to investigate and prosecute those responsible: "Secret detention might reach the threshold of a crime against humanity," the report stated (Agence France-Presse, January 27).

- **OBAMA REVERSES COURSE TO PERMIT NAMING OF BAGRAM DETAINEES**

In response to an ACLU lawsuit, the Obama Administration on January 15 released the names of 645 detainees being held at Bagram Air Base in Afghanistan. But all other information about the detainees requested under the lawsuit was redacted from the documents, including where they are from and when and where they were captured. After reviewing the list and finding that at least one person whose presence at Bagram had been earlier confirmed was missing from it, Andy Worthington wrote, "It is not inconceivable that some prisoners were not included in the list because they are being held elsewhere – perhaps in a corner of Bagram to which the list does not extend" (Truthout, January 19). In a February 4 article headlined "Bagram: Graveyard of the Geneva Conventions," Worthington took another look at the list and reported that "based on the numbering system used, it appears that a total of 3,000 prisoners have been held at Bagram since the last of the regular prisoners were transferred to Guantanamo in November 2003." The article raises the possibility that a new network of secret facilities has been created under the Obama Administration, including a secret jail at Bagram Air Base. The Obama Justice Department has been fighting the extension of habeas rights to Bagram prisoners in the DC Circuit Court (Blog of Legal Times, January 8).

- **BRITISH COURT ORDERS RELEASE OF CLASSIFIED INFORMATION RELATING TO TORTURE OF DETAINEE**

After the British government attempted to do the bidding of the Bush-Obama Administrations and prevent 42 documents about the treatment of former detainee Binyam Mohamed from seeing the light of day, senior UK judges ordered a summary of the documents to be disclosed (Truthout, February 11). After 18 months of stonewalling on the part of the government, the judges prevailed, and a 7-paragraph summary of the documents was put on the website of the Foreign and Commonwealth Office. The paragraphs summarize the subjection of Mohamed to continuous sleep deprivation, threats to make him "disappear," stress positions and inducements that caused him "significant mental stress and suffering." In the words of the Lord Chief Justice, the paragraphs "vindicate Mr. Mohamed's assertion that UK authorities had been involved in and facilitated the ill-treatment and torture to which he was subjected while under the control of USA authorities" and that they violated legal prohibitions about torture, cruel, inhumane and degrading treatment of prisoners. The summary also demonstrates that US agents were using previously banned techniques in April 2002, 4 months before they were approved by legal memos produced for the Bush Administration. Mohamed had been arrested in Pakistan and was apparently tortured there, in Morocco and in a CIA-run prison near Kabul before being sent to Guantanamo. He has a legal suit pending before the Ninth Circuit Court of Appeals which the Justice Department is trying to have thrown out. A spokesman for President Obama expressed "deep disappointment" with the British court's action in forcing the summary to be made public (*New York Times*, February 15).

- **AMERICANS SAY THEY WERE TORTURED IN PAKISTAN**

Five young Americans who were arrested in Pakistan after their parents tipped off the FBI that they might have gone abroad for training with a terrorist group say they have been tortured while in the custody of the Pakistani police (*Boston Globe*, January 19). The charge sheet submitted to a Pakistani court accuses them of conspiracy to carry out a terrorist act, but formal charges have yet to be brought against them.

- **FORMER GUANTANAMO INMATE WINS RIGHT TO SUE AUSTRALIA**

Mamdouh Habib, an Australian national who was released from Guantanamo in 2005 after being held there for three years, has been told by a federal court that his suit against the Australian government for its complicity in his torture and detention can proceed (BBC News, February 25).

- **SPAIN MAY PROBE ALLEGED TORTURE OF DETAINEE WITH SPANISH NATIONALITY**

According to the January 31 Agence France-Presse, Spanish judge Baltasar Garzan may act on complaints that Ahmed Abderraman Hamed, a Spanish national, was tortured at Guantanamo. The cases of three other detainees with links to Spain may also be investigated by Judge Garzan.

- **CANADIAN SUPREME COURT RULES THAT DETAINEE'S RIGHTS WERE VIOLATED IN GUANTANAMO**

The Supreme Court of Canada has ruled that a Canadian national, Omar Khadr, had his rights violated in the treatment he was given at Guantanamo. Khadr, who was 15 years old and severely wounded when he was captured in Afghanistan, had been subjected to severe sleep deprivation. The court left it up to the Canadian government "to decide how best to respond to this judgment in light of current information" (*New York Times*, January 29).

- **RENDITION PLANES LANDED IN POLAND**

The Polish Air Navigation Services Agency has given two human rights groups flight logs which indicate that CIA rendition flights landed in Szymany airport in 2003. Polish authorities have long denied that their country hosted "black sites" (*New York Times*, February 23).

- * **PENTAGON AGREES TO ALLOW ACCESS TO GUANTANAMO LAWYERS**

After blocking a group of attorneys from meeting with the "high value" detainees at Guantanamo whom Attorney General Holder said would face a trial before civilian courts, the Pentagon reversed itself and agreed on February 24 to allow them to contact their clients (FoxNews, February 24).

- **ABA BLASTS SMEAR ON GUANTANAMO LAWYERS**

In a (second) attempt to smear the loyalty of lawyers who have represented Guantanamo detainees and imply that the current government is 'anti-American,' former Vice President Cheney's daughter Liz has put an ad on her website denouncing the "Gitmo Nine" - attorneys now working in the Justice Department who had, in Liz Cheney's words, "voluntarily represented terrorists" as if this meant they embraced their cause. Fox News ran with the 'story.' In response, a March 8 *New York Times* editorial denounced "this ugly bullying" as McCarthyite demagoguery, and the American Bar Association slammed the ad as "a divisive and diversionary tactic" to impugn "the character of lawyers who have sought to protect the fundamental rights of unpopular clients" (TPMuckraker, March 4).

- **42 ARRESTED IN DC PROTESTING FAILURE TO CLOSE GUANTANAMO**

On January 21, Witness Against Torture held a demonstration at the US Capitol to protest President Obama's failure to keep the promise he made on the first day of his Presidency to close Guantanamo by January 20. They held up signs denouncing "Broken Promises, Broken Laws, Broken Lives." Other activists in the Rotunda simulated the suicides of the three Guantanamo detainees whose acts were called an act of "asymmetrical warfare" by the Bush Administration and whose deaths were the subject of a disturbing piece in *Harper's Magazine* which raised the possibility they had been murdered. The 42 who were arrested were not carrying identification, and instead gave the names of detainees as a way of bringing their stories to Congress (Press Release, Witness Against Torture, January 21).

Targeting Immigrants/Visitors

• CATALOGUE OF HORRORS DOWNPLAYED BY ICE

"Officials Obscured Truth of Migrant Deaths in Jail" was the headline of the article by Nina Bernstein in the January 10 *The New York Times* which reported that the Immigration and Customs Enforcement (ICE) agency had covered up many of the 107 immigrant deaths in detention.. Drawing upon documents obtained by the *Times* and the ACLU through a FOIA lawsuit, she described medical horror stories which in one case, contributed to the suicide of a detainee and wrote that some immigration officials, who have retained their key positions, "cover up evidence of mistreatment, deflect scrutiny by the news media or prepare exculpatory public statements after gathering facts that pointed to substandard care or abuse." Her story was followed by a *New York Times* editorial on January 20, which gave as an example of ICE's mind set this warning from an ICE official to his supervisor concerning a reporter who was looking into detention deaths: "These are quite horrible medical stories, and I think we'll need to have a pretty strong response to keep this from becoming a very damaging national story that takes on long legs."

• OBAMA ADMINISTRATION APPEARS TO THINK ICE CAN POLICE ITSELF

On January 17, William Fisher's Truthout column highlighted further ICE atrocities, among them the erroneous deportations of people who were actually American citizens. A German citizen, Majed Chehade, who owns a house in Massachusetts and whose wife, three children and grandson are US citizens, "was on his way to visit his daughter in December 2006, when he was detained at Las Vegas Airport. He was taken to a local jail, where he was subjected to strip and visual cavity searches, denied access to medical care and his prescription medications, and told that if he wanted to return to the US, he would have to spy on behalf of the government." There are today no legally enforceable rules governing immigration detention, and the Obama Administration has refused to follow the order made by a federal judge that such rules be created, since rule-making would be "laborious, time-consuming and less flexible" than the current ICE inspection system that relies in part on private contractors.

• AMERICAN BAR ASSOCIATION SAYS DEPORTATION SYSTEM "SEVERELY FLAWED"

A report produced by the ABA's Commission on Immigration reveals that the number of people deported annually from the US has grown from just over 69,000 to more than 350,000 in the last eight years, and that immigration judges are too overwhelmed to deal with the complexity of immigration law. "There is strong evidence that [legal] representation affects the outcome of immigration proceedings," the report states. But in 2008, more than half of the people in removal proceedings had no representation, and 84 percent of those in detention lacked lawyers. A study produced by the Transactional Records Access Clearinghouse at Syracuse University has similar findings and reports

that in 2008, ICE officers apprehended 791,568 deportable noncitizens, initiated 291,217 removal proceedings in hard-pressed immigration courts, detained 378,582 non citizens and deported 356,886 – many after virtually no due process (Truthout, February 15).

• **SECRETIVE “SECURE COMMUNITIES” PROGRAM RELIES ON FLAWED DATA, RACIAL PROFILING,**

ICE’s “Secure Communities” initiative purports to target “dangerous criminal aliens” by facilitating, in the words of DHS Secretary Janet Napolitano, “access to timely and accurate information about state and local arrests to better identify criminal aliens and to prioritize those who are the most dangerous for removal from the United States.” But critics say that given the flawed information in the DHS immigration database and the FBI’s criminal database, “there is a huge risk that innocent people will be misidentified” (William Fisher in Truthout, February 18). According to Sunita Patel, an attorney at the Center for Constitutional Rights, “We’ve already seen an increase in racial profiling, pretextual arrests and mistaken identity of US citizens. Combined with the lack of regulation and publicly available information on Secure Communities, ICE will be essentially immune to accountability or transparency. With a budget reaching the billions, taxpayers should be very concerned.” Now implemented in at least 95 jurisdictions, the program is intended to be in every prison and jail by 2013.

• **ARPAIO RIDES AGAIN, THIS TIME WITH 881 DEPUTIES**

Joe Arpaio, the sheriff of Maricopa County in Arizona, has announced that he is training 881 deputies to hunt down undocumented migrants. After his mass sweeps of Latino neighborhoods led the Department of Homeland Security to revoke the 187(g) arrangement under which 160 of his officers had served as immigration agents, he has declared he will act under his own authority and invoked a controversial legal memo produced under former Attorney General John Ashcroft that states that local police have “inherent authority” to stop and arrest people in order to enforce immigration law. Arpaio claims that since 2007 his deputies have detained 30,000 undocumented immigrants and turned them over to immigration authorities (newstrust.net, February 15).

• **“VIRTUAL” BORDER FENCE HIT HARD IN BUDGET**

The problem-ridden high tech fence of cameras and sensors aimed at preventing crossings of migrants from Mexico has had its budget allocation reduced by \$225 from the \$800 million it received last year. Meanwhile, the project is being reviewed to see if it can indeed be made to work (*USA Today*, February 4).

B. IN THE US CONGRESS

• **CONGRESS REAUTHORIZES PATRIOT ACT**

The hope that a Democratic-controlled Congress would open the way for at least minimal PATRIOT Act reform was killed on February 25, when House Democrats succumbed to pressure from the Republicans in the Senate and the Obama Administration and reauthorized the PATRIOT Act sections that were due to sunset for another year without any of the privacy protections which they wanted to include. The vote was 315-97. All of the Massachusetts Representatives opposed it, with the exception of three members of the delegation: Delahunt, Lynch and Tsongas, who voted for the legislation. President Obama, who had co-sponsored legislation in 2005 proposing several of the fixes he now opposed and who had promised supporters after his vote for the FISA Amendments Act that as president he would re-visit the “imperfect” bill, did not want to re-visit any part of the PATRIOT Act, including to the National Security Letters section which has been gravely abused over the years and

found unconstitutional by the federal courts. In the words of Representative Dennis Kucinich, who also opposed the reauthorization without any reforms: "As Members of Congress sworn to protect the rights and civil liberties afforded to us by the Constitution, we have a responsibility to exercise our powers fully and significantly to reform the PATRIOT Act, ensuring that the privacy and civil liberties of all Americans are fully protected. More than eight years after the passage of the PATRIOT Act, we have failed to do so" (Truthout, February 26).

• **IS THE WHITE HOUSE TEAMING UP WITH REPUBLICANS ON INDEFINITE DETENTION AND MILITARY TRIALS?**

Senator Lindsey Graham (R-SC) is reportedly talking with White House Chief of Staff Rahm Emanuel to trade Republican support for the closing of Guantanamo in exchange for an agreement by the Obama Administration to use military commissions instead of civilian courts to try the "high value" detainees (Charlie Savage, "Senator Proposes Deal on Handling of Detainees," *New York Times*, March 3). The Senator is proposing comprehensive legislation that would also "explicitly authorize the government to imprison some terrorism suspects without trials – not just Guantanamo inmates, but detainees who may be captured years in the future." The ACLU's Anthony Romero has called Graham's proposal a constitutional "debacle" and a "Faustian bargain" that would "doom this president's commitment to civil liberties and the rule of law." As a bargaining chip, Congress has yet to approve the \$237 million to buy the Illinois prison to which Guantanamo detainees would be transferred, permitting the Cuban prison to be shut down. Senator Graham had earlier introduced S. 2977, a bill which would "Bar Prosecution of Some Terrorism Defendants in Federal Courts."

• **BILL INTRODUCED IN SENATE AUTHORIZES INDEFINITE DETENTION**

On March 4, Senators McCain and Lieberman introduced "The Enemy Belligerent Interrogation, Detention and Prosecution Act of 2010." It would create a new system of interrogation by requiring that a "high value detainee team" interrogate and determine whether alleged terrorist suspects are "unprivileged enemy combatants." If they are deemed to be such, and charges are brought against them, the bill requires they be tried before military commissions and not in civilian courts. The bill would also give the government the power to detain terrorism suspects indefinitely without charge or trial. In introducing the bill, Senator McCain repeatedly invoked the aborted Christmas day bombing plot, which the Republicans had turned into a fear-inducing *cause célèbre*: "This legislation seeks to ensure that the mistakes made during the apprehension of the Christmas Day bomber, such as reading him a *Miranda* warning, will never happen again and put Americans' security at risk."

• **MEASURE INTRODUCED TO RE-CRIMINALIZE TORTURE**

The chairman of the House Intelligence Committee, Rep. Silvestre Reyes (D-TX), has attached an amendment to the 2010 Intelligence Authorization Bill called the "Cruel, Inhuman and Degrading Interrogations Prohibition Act." It would impose a 15-year-sentence on any "officer or employee of the intelligence community" who carries out practices involving the sexual mistreatment of inmates that occurred at Abu Ghraib prison or the "beatings, electrical shock, burns, or inflicting physical pain, using military working dogs, inducing hypothermia" that occurred at Guantanamo and various "black sites" (*Washington Independent*, February 25).

• **SENATE JUDICIARY COMMITTEE HOLDS HEARING ON TORTURE REPORT**

On February 26, the Senate Judiciary Committee held a hearing on the Justice Department's Office of Professional Responsibility (OPR) report into the "torture memos" authored by John Yoo and Jay Bybee. The ACLU had urged the Judiciary

Committee to broaden the investigation into those who authorized and sanctioned torture (Common Dreams, February 25). The Committee heard from Acting Deputy Attorney General Gary Grindler, who told the Senators that the Justice Department would be taking no further action against the authors of the memos, although it might look into the disappearance of the emails of John Yoo and Patrick Philbin which had “hampered” the OPR investigation (*See In the Executive, above*). While Senator Durbin (D-ILL) denounced torture and stated that we should never forget our basic values, the Republicans on the Committee praised Yoo and Bybee. In the words of Sen. Cornyn (R-TX), “The Department’s decision confirms that John Yoo and Jay Bybee deserve nothing but thanks from a grateful American public” for saving them from the next terrorist attack (Human Rights First, February 26).

- **IT’S OFFICIAL: AUSTIN ATTACK WAS AN ACT OF “TERRORISM”**

If the man who deliberately crashed a plane into the Echelon building complex in Austin, Texas that housed offices belonging to the IRS, CIA and FBI had been Arab-American or Muslim, would he have been termed a terrorist? It took a Congressional resolution, passed by a vote of 408-2 (Ron Paul and Don Young) to affix that label on the February 18 action of Joseph Stack (*Wall Street Journal*, March 3). In the two weeks which preceded the Congressional vote, Stack did not receive the kind of saturation media attention given, for instance, to Maj. Nidal Hasan, the Fort Hood shooter. Indeed, Stack was praised as a patriot by some commentators who viewed his action as a strike against big government. The resolution “rejects any statement or act that deliberately fans the flames of hatred or expresses sympathy for those who would attack public servants serving our nation.”

- **SENATOR BROWN GIVEN DEFENSE, HOMELAND SECURITY ASSIGNMENTS**

The new Massachusetts senator, Scott Brown, is joining the Armed Services, Homeland Security, and Veterans Affairs committees. Neither Massachusetts Senator has committee roles that focus on the domestic issues associated with Senator Kennedy (*Boston Globe*, March 4).

C. IN THE COURTS

- **SUPREME COURT HEARS ‘MATERIAL SUPPORT’ CASE**

On February 23, the US Supreme Court heard arguments in *Holder v. Humanitarian Law Project*, a case which examines whether the ‘material support’ provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and, indirectly, the USA PATRIOT Act are overbroad infringements on the constitutional rights of freedom of speech and association. The case, which concerned the provision of training in dispute resolution and peacemaking to the Kurdistan Workers’ Party and the Liberation Tigers of Tamil Eelam, tests whether such non-violent and humanitarian support offered groups that are on the designated terrorism list should be criminalized by laws that make it a crime to give ‘material support’, ‘service’, ‘training’, ‘personnel’, and ‘expert advice or assistance’ to such groups. Breaking the law can lead to 15 years in prison. In 2007, the US Court of Appeals for the Ninth Circuit had struck down portions of the material support provision as unconstitutionally vague. US Solicitor Elena Kagan called the provision “a vital weapon in this nation’s continuing struggle against international terrorism” and maintained there was nothing overbroad about it (*Washington Post*, February 24). Arguing for the Humanitarian Law Project, David Cole stated that the case concerns speech protected by the First Amendment “promoting lawful, nonviolent activities.”

- **SUPREME COURT DISMISSES UIGHUR APPEAL**

The US Supreme Court has sidestepped the issue of whether Guantanamo detainees can be ordered by a federal judge to be released into the United States by dismissing an appeal from 7 Uighur detainees on the grounds that they have been offered another place to go. (*Los Angeles Times*, March 1). Switzerland has said that it would accept 2 of the Chinese Muslims. The other 5 had been invited to go to Palau but had reportedly rejected the offer.

- **ARAR APPEALS RENDITION RULING TO SUPREME COURT**

Maher Arar, a Canadian victim of “extraordinary rendition” and torture whose challenge to rendition under the domestic Torture Victim Protection Act was thrown out by the US Court of Appeals for the Second Circuit, is appealing that ruling to the Supreme Court (Jurist, February 2). Both the US District Court for the Eastern District of New York and the Second Circuit had decided that he could not sue the government for damages because such a suit implicated national security, foreign policy and sensitive diplomatic matters.

- **APPEALS COURT SAYS SENTENCE TOO LIGHT IN TERROR PLOT CASE**

A 3-judge panel of the Ninth Circuit Court of Appeals has tossed out the 22-year prison sentence imposed on Ahmed Ressay, who had plotted to set off bombs at LAX Airport on New Year’s Eve 1999. Rather than reducing the sentence as Ressay’s attorneys had asked, the court demanded a stiffer sentence be given. Ressay had supplied information to the government on Al Qaeda for two years under a plea agreement, but then stopped doing so and recanted his previous testimony (*New York Times*, February 3).

- **AAFIA SIDDIQUI FOUND GUILTY**

On February 4, Pakistani-born Dr. Aafia Siddiqui, a neuroscientist and mother of 3 who had been educated at Brandeis and MIT, was convicted by a New York jury of attempted murder, armed assault and using and carrying a firearm. No physical evidence was presented in court to prove that she had touched the rifle which she allegedly fired at a group of US soldiers and FBI agents when under detention in Afghanistan. None were injured, but she was shot in the stomach. (Democracy Now February 4). Human rights groups and the Pakistani public have long maintained she was forcibly ‘disappeared’ during a trip to Pakistan in 2003, was tortured under interrogation and confined to Bagram prison. The jury was not told that she had been missing for 5 years, that 2 of her children are missing and that some former prisoners have identified her as ‘Gray Lady of Bagram.’ She now faces a life sentence.

- **ACLU FILES LAWSUIT ON BEHALF OF BAGRAM DETAINEES**

On February 26, the ACLU filed *habeas corpus* petitions in the US District Court for DC challenging the illegal detention of 4 men who have been held for over a year, who were picked up far from the battlefield, who have never engaged in hostilities against the US and have never been told why they are being detained or given a meaningful opportunity to challenge their detention. The 4 are Sibghatullah Jalalzai, who had served the US military as a translator, his brother Samiullah Jalalzai, an Afghan government employee Haji Abdul Wahid and his nephew Ziar-ur Rahman.

- **JUDGE ALLOWS TORTURE SUIT AGAINST RUMSFELD TO PROCEED**

On March 5, Illinois Federal Judge Wayne Anderson ruled that a civil lawsuit alleging torture brought by two American contractors in Iraq against former Defense Secretary Donald Rumsfeld could go forward. In 2006, Navy veteran Donald Vance, who was working as a private security employee for Shield Group Security, and his co-worker, Nathan Ertel, became unpaid informants for the FBI in Chicago and three US Embassy

officials in Iraq. They gave information about illegal pay offs the company was making and its arms dealing. They ended up having their lives threatened by the company, and then being arrested and held in custody for three months as “persons of interest”, during which time they say they endured sleep deprivation and long hours of interrogation, being denied food, being subjected to blasting music, extreme cold and threats, and being slammed into walls – the same “enhanced interrogation techniques” that had been approved by Secretary of Defense Rumsfeld (*Huffington Post*, March 9).

- **ADMINISTRATION WANTS WARRANTLESS TRACKING OF CELL PHONE USERS**

Most people are probably not aware that cell phones – both newer ones with GPS chips and older ones that rely on cell towers - are also tracking devices. The Obama Administration has appealed to the US Court of Appeals for the Third Circuit a lower court ruling that the government needs probable cause and a search warrant to obtain the ‘locational information’ provided by a cell phone. John Yoo weighed in on the government’s behalf by writing an article for the American Enterprise Institute defending its position (thenewamerican.com, February 15). The ACLU, Electronic Frontier Foundation and the Center for Democracy and Technology maintain that the government’s position violates the Fourth Amendment and have criticized it for stating: “One who does not wish to disclose his movements to the government need not use a cellular telephone” (William Fisher, *Truthout*, February 24).

D. IN THE COMMONWEALTH

- **BOSTON POLICE UNVEIL ‘REAL TIME CRIME CENTER’**

Boston has become the fifth city in the nation to open a center that enables technicians to “witness shootings, robberies and even homicides on many city streets from computer screens at headquarters” and phone out descriptions of suspects (*Boston Globe*, March 3). In addition to being connected to video cameras, the \$500,000 Center is also hooked up to a gunshot detection system. The Center is an offshoot of the BRIC (Boston Regional Intelligence Center). At present there are only funds to pay for 5 technicians to watch the screens, one of whom is a police officer.

- **POLICE WILL BE ABLE TO GET MILITARY WEAPONS, BUT UNDER MORE RESTRICTIONS**

Last June, Governor Patrick suspended a Massachusetts scheme that had enabled local police forces to obtain from the military such weapons as fully automatic M-16 rifles and grenade launchers. According to the January 2 *Boston Globe*, there will be new procedures when the program starts up again under the supervision of the State Police. Over the previous 15 years, 82 local police departments, including those at state colleges, had received 1,068 weapons including 486 fully automatic M16s, many without community knowledge. West Springfield police received two M74 grenade launchers, Wellfleet got three M-14s, Bridgewater State College received six M-16s and Marblehead police got eight M-16s.

- **FULL-BODY SCANNERS NOW AT LOGAN**

In early March, 4 machines that submit passengers to a “virtual strip search” were installed in Terminal A at Logan Airport (*Boston Herald*, March 2). Critics say the expensive devices violate privacy, might be a health risk, and are ineffective since they would not be able to detect contraband in body cavities and might have missed the sort of explosives carried by the underwear bomber.

- **WITNESS IN MEHANNA CASE GETS REWARD: PROBATION**

Under a plea arrangement made in 2005, Bilaal McCloud reportedly agreed to give evidence to the government in the terrorism investigation of Tarek Mehanna if it would drop the more serious of the two charges he faced, being a felon in possession of a firearm. In early February, McCloud was rewarded with a sentence of probation (*Boston Globe*, February 5). Because of prior drug convictions, McCloud, who converted to Islam in prison, could have given a jail term of as long as 15 years.

• **FIRST AMENDMENT ON TRIAL IN MEHANNA CASE**

An FBI affidavit alleges that Tarrek Mehanna, a Sudbury resident, and his friend, Ahmad Abousamra (who is believed to be in Syria), plotted to blow up a shopping mall and assassinate government officials – but they have not been charged with those crimes. Instead, they were charged with attempting (and failing) to join a terrorist training camp in 2002 and 2004 and lying to the government. Mehanna faces the additional charge of giving material support to terrorists by translating Al Qaeda documents and blogging for jihad in an effort to radicalize others. “Terrorism experts say it is believed to be the first time US prosecutors have put Internet translations at the heart of the alleged crime” (*Boston Globe*, February 1). His lawyer, Jay Carney, claims “this will be a trial about unpopular speech and the government prosecuting people for what they believe, and not what they’ve done.”

• **MASSIVE SECURITY ALERT FOR LNG TANKER FROM YEMEN**

The liquefied natural gas tanker from Yemen that Mayor Menino and other government officials wanted to keep out of Boston harbor because of possible terrorist ties was surrounded by dozens of law enforcement boats and searched by a “legion” of state and local police, special operations officers, and federal officers before being permitted to enter the harbor (*Boston Globe*, February 24).

• **ICE STOPS CARS; DETAINS IMMIGRANTS**

As part of a “routine” investigation to find undocumented immigrants, ICE agents detained 9 people who were pulled over in Foxborough and ordered a further 49 to report to the ICE office to see if they were ‘illegal’ (*Boston Globe*, January 7). ICE spokeswoman Paula Grenier said the agency’s priority was fighting “crime and terrorism” but when it encounters people who might be in the country illegally it can detain them. The possibility that racial profiling was wrongly used to decide who to stop was raised by the Massachusetts Immigrant and Refugee Advocacy Coalition.

• **NEWTON DECLINES TO WELCOME DETAINEE**

After 2 Newton-based attorneys who represent Abdul Aziz Naji, an Algerian detained at Guantanamo who has been cleared of wrongdoing, presented a petition to the Aldermen asking them to consider a resolution inviting him to resettle in Newton if Congress lifts the ban on Guantanamo detainees moving to the United States, it seemed likely that Newton would follow Amherst and become the second community to pass such a resolution (*Boston Globe*, January 15). The resolution was unanimously approved by a subcommittee of the Board of Aldermen. But then dozens of residents expressed outrage at the proposal, saying it put their children “at risk”. Several demanded the resignation of the Aldermen who supported the resolution. It ended up being dismissed by the full Board.

• **COLLEGE RELENTS ON VEIL BAN**

The Massachusetts College of Pharmacy and Health Sciences has amended its policy banning face coverings to include a religious exemption. The policy now reads: head coverings that obscure the face “may not be worn either on campus or at clinical sites, except when required for medical and/or religious reasons” (*Boston Globe*, January 7).

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