

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

**December 23, 2004
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I. TAKE ACTION

• THANK SPONSORS OF STATE-WIDE RESOLUTION; ASK YOUR LEGISLATORS FOR THEIR SUPPORT

By December 15th 33 members of the Massachusetts House and 10 state senators had signed onto the Resolution Affirming the Civil Rights and Civil Liberties of the People of Massachusetts. See list at www.aclu-mass.org/cltf/state_resolution.html. If your legislator is among them, please thank him or her. For their telephone numbers, call House information: 617.722.2000; Senate information: 617.722.1276. If your legislators have not yet agreed to sponsor the Resolution, please ask them to do so. You can also support this effort by:

* being part of a group that visits your state senator and representative to talk about the need to protect civil liberties. For more information about joining such a group, email nancy@aclu-mass.org.

* obtaining endorsements for the resolution from organizations you belong to. New endorsements will be added to our website list and to communications we send to our elected officials. Keep us updated on your endorsements via email.

• TELL SENATOR KENNEDY THAT ALBERTO GONZALES HAS A TERRIBLE RECORD ON CIVIL RIGHTS AND CIVIL LIBERTIES

In January Senate hearings will begin into whether White House Consul Alberto Gonzales should replace John Ashcroft as Attorney General. Senator Edward Kennedy is on the Senate Judiciary Committee. Call his office at (617) 565-3170 and say how concerned you are over Gonzales' record, including his justification of the use of torture and belittling of the Geneva Conventions and international law.

II. RIGHTSWATCH

A. A. EXECUTIVE ACTIONS

- **BUSH MAY HAVE ISSUED EXECUTIVE ORDER AUTHORIZING HARSH INTERROGATION METHODS IN IRAQ**

Documents released in response to a lawsuit brought by the ACLU, Center for Constitutional Rights and other groups indicate that President Bush directly authorized the use of stress positions, sleep deprivation, the use of military dogs and "sensory deprivation through the use of hoods, etc." against detainees being held in Iraq. "These documents raise grave questions about where the blame for widespread detainee abuse ultimately rests," said ACLU Executive Director Anthony Romero. "Top government officials can no longer hide from public scrutiny by pointing the finger at a few low-ranking soldiers." The ACLU has asked the White House to confirm or deny the existence of such an Executive Order.

- **FBI AGENTS DESCRIBE "TORTURE TECHNIQUES" AND COVER-UP**

Additional documents released to the ACLU as part of the Freedom of Information Act lawsuit show that FBI agents at Guantanamo and Abu Ghraib observed military interrogations in which detainees were beaten, strangled, had lit cigarettes pushed into their ears, had their genitals grabbed by female interrogators, had their heads and mouths covered with duct tape for chanting the Koran, were menaced with dogs, and chained in stress positions for up to 24 hours at a time. Torture at Abu Ghraib continued after photographs showing the horrifying conditions in the prison were made public. According to the heavily redacted documents, detainees at Guantanamo were shackled hand and foot in fetal position on the floor for up to 24 hours and most had "urinated or defacated[sic]" on themselves. There were mock executions by US Marines of four Iraqi juveniles, one detainee was shocked with an electric transformer and another had his hands set afire after being covered with alcohol. One FBI agent witnessed a detainee who was left in an unventilated room that was "well over a hundred degrees" lying unconscious on the floor "with a pile of hair next to him. He had apparently been literally pulling his own hair out throughout the night." Another detainee at Guantanamo was wrapped in an Israeli flag and bombarded with loud music and strobe lights. At Abu Ghraib the FBI initiated an enquiry into the alleged rape of a teenage male detainee (see *New York Times*, December 21 and www.aclu.org/torturefoia/released/fbi.html). The released records show that FBI agents argued heatedly with Pentagon officials that such abusive treatment was not an effective way of obtaining intelligence and that it would make it impossible to prosecute detainees, and complained to top Defense Department attorneys. One document states that Department of Defense interrogators at Guantanamo were impersonating FBI officers and that if the torture became public "the FBI will [sic] left holding the bag before the public." A June 25, 2004 memo from Vice Admiral Lowell Jacoby, chief of the Defense Intelligence Agency, stated that some DIA personnel who complained about abuses were threatened and ordered "not to talk to anyone in the US." According to ACLU staff attorney Jameel Jaffer, "It is astounding that these methods appear to have been adopted as a matter of policy by the highest levels of the government."

- **CIA RAN SECRET FACILITY AT GUANTANAMO**

In response the ACLU lawsuit, 9,000 documents have been turned over to the organization from various government agencies, and hundreds of thousands of pages of material may be in the offing. However, the CIA, which was granted greater flexibility

in conducting interrogations by the Bush Administration, has refused to release any records. The ACLU went back to court on December 20 to demand them. They may shed light on a secret CIA jail at Guantanamo whose existence was disclosed in the December 17th *Washington Post*, and the other secret detention and interrogation facilities for "high-value detainees" maintained by the CIA around the world, including in a remote corner of the Bagram air base in Afghanistan, as "ghost detainees" in Abu Ghraib, on ships at sea, and on the Indian Ocean island of Diego Garcia. Neither the Defense Department nor the CIA would confirm whether the secret Guantanamo jail buried inside the Camp Echo complex is still operational.

• RED CROSS SAYS GUANTANAMO INTERROGATIONS "TANTAMOUNT TO TORTURE"

The International Committee of the Red Cross has compiled confidential reports claiming that the US military has been using physical and psychological techniques amounting to torture in its treatment of detainees at Guantanamo Bay. After a lengthy visit in June, the Red Cross stated that the military was attempting to break the will of detainees through "humiliating acts, solitary confinement, temperature extremes, use of forced positions" as well as exposure to loud and persistent noise and music and prolonged cold as well as "some beatings" (*New York Times*, November 30, 2004). "The construction of such a system, whose stated purpose is the production of intelligence, cannot be considered other than an intentional system of cruel, unusual and degrading treatment and a form of torture," according to the report on the June visit. The report stated that the participation by doctors and other medical personnel in planning for interrogations was "a flagrant violation of medical ethics."

• DEFENSE DEPARTMENT ON THE DEFENSIVE; CONTINUES TO STONEWALL

"Years from now, the mistreatment of Afghan war detainees at Guantanamo and Iraqi war detainees at Abu Ghraib will likely rate with the internment of Japanese-American civilians in World War II as a violation of the nation's principles," editorialized *The Boston Globe* on December 6th. "But the Bush administration continues to stonewall criticism of its actions, whether it comes from US courts or the International Red Cross." According to *The New York Times*, "The White House, the Pentagon and the Justice Department clearly have no intention of addressing the abuse." Both papers call for Congress to take action to hold the Administration accountable (December 1). On December 13th Human Rights Watch published an Open Letter to Secretary of Defense Donald Rumsfeld detailing six cases of abuse of prisoners in Afghanistan which resulted in their deaths and accusing the Department of Defense of operating outside the law and creating "a culture of impunity" among interrogators that allows abuse to spread (*New York Times*, December 14). In response to the publicity given its interrogation practices, a Pentagon spokesman said, "US policy condemns and prohibits torture. US personnel are required to follow this policy and applicable law. We've said all along we don't tolerate any mistreatment of detainees" (*Boston Globe*, December 8). On December 20th President Bush referred to Rumsfeld as "a caring fellow" and the following day the White House press secretary stated that allegations of abuse would be investigated and that the president wants to "make sure that the abuse does not occur again" (*New York Times*, December 22). The Judiciary Committee's Senator Patrick Leahy has stated that the torture of detainees will be a focus of the hearings in January 2005 into whether

White House Counsel Alberto Gonzales should replace John Ashcroft as Attorney General of the US. Gonzales has been vitally involved in marshalling legal justifications for skirting the requirements of the "quaint" (his word) Geneva Conventions in the treatment of prisoners.

- **HUNT FOR SPIES AT GUANTANAMO FUELED BY ZEAL, NOT EVIDENCE**

On December 19 *The New York Times* published a lengthy piece about the arrest and prosecution of Guantanamo chaplain James Yee and translator Airman Ahmad Al Halabi. According to the report "questionable evidence and disparate bits of information," various "petty personal conflicts," the "antipathy between some Muslim and non-Muslim troops at Guantanamo," and the zeal of investigators who believed that "ferreting out spies at the base had put them, too, on the front lines of the fight against terrorism" all contributed to the piling on of charges of espionage and aiding the enemy that eventually "grew into a major source of embarrassment for the Pentagon, as the prosecutions...unraveled dramatically." The "evidence" against Airman Al Halabi included the "second-hand claim" that he had "boasted of distributing baklava pastries to the detainees. It was soon determined, however, that he had been on a mission in Afghanistan when the sweets arrived at Guantanamo by mail, and that they had been consumed by other translators before he returned."

- **PENTAGON GETS BAD NEWS, CONSIDERS MAKING NEWS UP**

The Defense Science Board has presented Secretary of Defense Rumsfeld with a report claiming that American efforts have not just failed in the "struggle for hearts and minds" -- "they may also have achieved the opposite of what they intended" (Australian *Sunday Herald*, December 5, 2004). While President Bush says that the opponents of the US in the Middle East "hate our freedoms," the report maintains "they do not 'hate our freedoms', but rather, they hate our policies." While the report urges the US to move quickly to improve its communications with the Muslim world, the Pentagon is debating planting false news stories, creating false documents and Web sites and in various other ways using disinformation and deception to shape perceptions abroad (*New York Times*, December 13).

- **ACLU SEEKS INFORMATION ON FBI SPYING ON POLITICAL AND RELIGIOUS GROUPS**

On December 1 the ACLU filed Freedom of Information (FOIA) requests seeking to expose FBI political surveillance and the spying activities of the 100 Joint Terrorism Task Forces (JTTFs). The JTTFs are partnerships between the FBI, other federal officers, and state and local police, in which local officers are "deputized" as federal agents and work with the FBI to identify and monitor individuals and groups. The ACLU has evidence that the JTTFs are spying on environmental, anti-war, political, and faith-based groups, and has launched its "FBI Spy Files" project to shed light on the extent of this potentially-widespread abuse of power and misuse of policing resources. By wrongly labeling political and religious groups as "potential threat elements" or PTEs, the JTTFs are helping funnel federal dollars to local police for spying on groups like the American Friends Service Committee and Citizens for Peace in Space. If the FBI declines to turn over the information being sought through the FOIA requests, the ACLU can sue in federal court.

- **180,000 DHS EMPLOYEES REQUIRED TO SIGN GAG ORDERS**

Employees of the Department of Homeland Security must sign three-page nondisclosure agreements prohibiting them from sharing "sensitive but unclassified information with the public" (*Washington Post*, November 16). This represents a significant expansion of official secrecy, since to date state and local security officials had to sign the statement for classified information only. The DHS tried to impose the same secrecy pledge on Congressional aides but was rebuffed.

- **DHS TO USE GIANT DATABASE TO TRACK "TERRORIST FINANCING"**

A British company called World-Check has provided the Department of Homeland Security with a database of 250,000 people and firms "with suspected ties to terrorist financing, drug trafficking, money laundering and other financial crimes" (*New York Times*, December 12). The company claims its database, culled from 140,000 public sources, contains names of people and businesses considered "a high risk" of committing financial crimes. Critics say this kind of "outsourcing" to private firms raises a host of questions of accountability. According to Marc Rotenberg of the Electronic Privacy Information Center, "People can find themselves on a watch list incorrectly, and the consequences can be very serious." The company has acknowledged using lower standards than governments in declaring someone a "high risk."

- **KERIK 'S BACKGROUND CHECK SHOWS INTELLIGENCE GAPS**

The Judiciary Committee will not after all have the opportunity to mull over the amazing life story of former New York City police commissioner Bernard Kerik. On December 11th, a week after President Bush had nominated him to be Tom Ridge's replacement as head of the vast Department of Homeland Security, he withdrew his name from consideration on grounds that he had hired an undocumented household worker and failed to pay payroll taxes. During that week allegations surfaced about a love nest where he conducted simultaneous affairs, about a brother with possible mob connections, and much more. The man who made \$6.2 million in stock options as a Board member of Taser International -- which supplies stun guns to law enforcement -- had helped the company enter markets controlled by the Department of Homeland Security, but during his week in the sun as Bush's pick a White House spokesman assured reporters he would adhere to "the highest ethical standards" (*New York Times*, December 10). There would be no conflict of interest for the senior vice president of Giuliani Partners, whose clients included firms developing data-mining software, and software to enable businesses to respond to terrorist attacks. During the same week we learned of his respect for the USA PATRIOT Act: "If you take the Patriot Act away, if you replace it, if you attempt to change it, it's going to remove a lot of necessary tools that we need to do our job in law enforcement, and I think it's absurd." He was also quoted in *Newsday* as condemning opponents of the Iraq War: "Political criticism is our enemies' best friend" (*New York Times*, December 9).

- **BACKGROUND CHECKS GET IRANIAN COUPLE FIRED FOR "NATIONAL SECURITY REASONS"**

Aliakbar and Shahia Afshari, legal permanent residents who came to West Virginia from Iran 18 years ago, were fired from their jobs at the National Institute for Occupational

Safety and Health after failing a secret background check. According to the December 12 *New York Times*, they were given the news and then escorted to the door and told not to return. Their lawyer has been unable to obtain any information or documents used to justify the action. Unable to clear their names or find new employment in their field, the Afsharis, neither of whom worked with classified material or toxins and who had passed background checks when they were first hired in the mid 1990s, have sued the Institute and its parent agencies, the Centers for Disease Control and Prevention and the Department of Health and Human Services. The suit contends that the secret nature of the process in which even the rules appear to be unwritten makes it impossible for them to defend themselves. The Afsharis speculate that they may have been targeted for dismissal because more than five years ago they attended two conventions of a Persian Muslim Students Association which has since come under FBI scrutiny. Their lawyers believe theirs is a case of "guilt by association" similar to the witch hunts of the 1950s. Dozens of their former colleagues have written letters protesting their firing.

- **TARIQ RAMADAN DROPS EFFORT TO GET A US VISA**

After the Bush Administration last summer revoked the visa given to the highly-respected Muslim scholar Tariq Ramadan, barring him from taking up a tenured appointment in classics and peace studies at Notre Dame University, he had reapplied for his visa. On December 14th he decided that he and his family could no longer remain in limbo, and withdrew his visa application. His visa had apparently been revoked under a section of the USA PATRIOT Act barring terrorists and their associates from entering the US.

- **FOREIGN APPLICATIONS FOR GRADUATE STUDY IN US DOWN 28 PERCENT**

Foreign students who contribute \$13 billion to the US economy each year are increasingly unwilling to endure long waits to get visas to enter graduate programs in the US, and are turning instead to universities in the UK, Germany, Ireland, New Zealand and Canada, according to the December 21st *New York Times*. Students from the Middle East and China face special problems getting entry to the US.

- **GOVERNMENT WANTS TO TRACK STUDENTS**

The federal government has proposed creating a huge new database of records on all college and university students to enable it to track them through the higher education system. It said that the National Center for Education Statistics (NCES) of the Department of Education would not hand over this information to other agencies, but critics point out that Section 508 of the USA PATRIOT Act permits the Attorney General to obtain NCES records considered relevant to an ongoing investigation.

- **US-VISIT SCREENING PROGRAM CALLED A "STRIKING FAILURE"**

As the new program to take digital photos and fingerprints of visitors and match them to government watch lists of suspected terrorists, sexual predators and other criminals expanded to six border crossings along the border with Mexico and Canada, US Rep. Jim Turner of Texas, the leading democrat on the Homeland Security Committee, called it "a striking failure" which is so plagued with problems that it will be useless in securing borders (*USA Today*, December 17). With \$1 billion invested in it so far, US-VISIT is expected to cost \$10 billion before it is fully implemented. Since the beginning

of 2004 it has been installed at 115 airports and 14 seaports. No suspected terrorists have been detected, but 319 people have been detained or turned away. Problems include the fact that agents at borders only take two fingerprints, while FBI databases use prints from all fingers and this makes a match difficult to make. Taking prints from all ten fingers would require larger equipment than would fit in inspection areas. The exit part of the program designed to ensure visitors actually leave the country is not yet in place. To implement it will require new buildings, driving lanes and staff at land crossings. But even then only a fraction of visitors who cross into the US from Mexico and Canada will be checked, as visitors from certain "low risk" countries will be exempt.

- **TSA TELLS PASSENGERS HOW TO GET NAMES OF "NO FLY" LISTS**

The Transportation Security Administration has issued information to "Dear Traveler" about how to get names of "no fly" lists if they have repeatedly been subjected to frustrating delays because of mistaken identity. The message instructs people to contact the Transportation Security Agency Contact Center at 1-866 289-9673 or email TSA-ContactCenter@dhs.gov, provide their name, date of birth, telephone number, mailing address and email address and then wait 45 days. Meanwhile, airlines and airports have criticized as unnecessary and time-consuming a new TSA policy requiring them to report any incident that might have a security dimension so it can "track trends" and look for patterns that might be significant. Critics say a more useful security policy would be to monitor cargo carried on passenger planes.

- **TSA POLICY ON PAT-DOWNS IS SECRET**

As reports hit the front pages about women being groped at airports and subjected to humiliating pat downs as part of security screening, the TSA reportedly told a former member of Congress who was taken aside for additional screening that she would not be allowed to see a copy of the regulation authorizing pat-downs because it was "sensitive security information." According to the Federation of American Scientists "Secrecy News," she refused to go through additional screening without seeing the regulation and was not allowed to fly (InterPress Service, November 30).

- **MASS REGISTRATION PAVES WAY TO MASS DEPORTATIONS**

Although no terrorists were caught by the Justice Department's Special Registration call-in program for visitors from 25 Arab and Muslim countries and North Korea, the government claims it has been a success because, in the words of the creator of the program, Kris Kobach, "We have gained a lot of information and we have to remember the disruptive value: this forced terror cells in the United States to modify their behavior...We were able to identify terrorists who came in to register. And for those terrorists who didn't come in, we now have a legal basis for arrest if we encounter them" (*New York Times*, December 21). Critics say there is no evidence that any "terrorists" voluntarily came in to register, and the government is using irregularities in status detected during registration, as well as failure to register or re-register at airports on leaving the country as pretexts to deport or exclude otherwise law-abiding residents. According to James Ziglar, the commissioner of the INS before it was taken over by the Department of Homeland Security, "To my knowledge, not one actual terrorist was identified. But what we did get was a lot of bad publicity, litigation and disruption in our relationships with immigrant communities and countries that we needed help from

in the war on terror." Overall, a record number of 186,000 non citizens were expelled from the US last year, and 887,000 others were required to make "voluntary departure" resulting in the creation of "a growing tribe of American children who have lost a parent to deportation," according to the November 24th *New York Times*.

• **POLICE DOGS SHOULD NOT BE USED TO CONTROL IMMIGRANT DETAINEES**

The US Bureau of Immigration and Customs Enforcement, part of the Homeland Security Department, issued a memo to 22 regional field offices ordering them to stop contracting with facilities that use police dogs to control the tens of thousands of immigrants currently in detention. The ruling came after a dog attack at the Passaic County Jail in Paterson, New Jersey, one of 81 detention centers that uses dogs against immigrant detainees and convicted prisoners, had been featured on National Public Radio.

• **NEARLY HALF SAY RIGHTS OF MUSLIMS SHOULD BE RESTRICTED**

According to a Cornell University survey, 44 percent of people interviewed in a nationwide telephone poll said there should be some restrictions on the civil liberties of Muslim Americans (such as the requirement that they register where they live with the federal government, that they submit to religious and ethnic profiling and that undercover agents infiltrate their religious and civic organizations), while 48 percent said they should not be restricted in any way. Those favoring restrictions were likely to be highly religious Republicans who watched television news. A Fox News reporter, Michelle Malkin, has written a book justifying the internment of the Japanese-Americans during World War II and strong anti-terrorist measures to defend national security today. *In Defense of Internment: The Case for Racial Profiling in World War II and the War on Terror* (Regnery, 2004) may well be given a boost by Fox TV in the months ahead.

B. IN THE US CONGRESS

• **INTELLIGENCE ACT EXPANDS REACH OF PATRIOT ACT**

On December 6, after last-minute revisions overseen by Vice President Cheney, the US Congress passed the "Intelligence Reform and Terrorism Prevention Act of 2004" which implements many of the 9/11 Commission recommendations concerning the overhaul of how the country's 15 intelligence agencies are funded and function. The legislation also centralizes the intelligence community's surveillance powers, expands the government's wiretap authority, and establishes a Privacy and Civil Liberties Oversight Board that sits at the President's pleasure and lacks subpoena power. Although many of the anti-immigrant provisions desired by Rep. F. James Sensenbrenner of Wisconsin were stripped from the bill, the legislation requires the DHS to establish federal "minimum standards" including digital photographs for birth certificates and drivers' licenses that will be linked via a national database, a national ID system in all but name. It expands the "guilt by association" material support provision of the PATRIOT Act, makes it a crime to visit a terror training camp, makes it virtually impossible for anyone indicted by a grand jury on terrorism charges to obtain bail, makes terrorism hoaxes a federal crime, and allows for the surveillance of "lone wolf" extremists who are not known to be tied to any terror group. These provisions, many of which appeared in the

draft legislation known as "PATRIOT II", had not been called for by the 9/11 Commission.

A December 11th *New York Times* editorial on "Intelligence and Civil Rights" comments: "As much as the nation needed to overhaul its badly flawed intelligence system, it hardly needed more surveillance and detention powers to invite federal agencies to abuse civil rights even further in the name of tracking terrorism suspects...Based on the Bush administration's record of trampling on individual rights, Americans can have little faith that the new police powers will be used with proper discretion by the Justice Department...The new law protects the administration's free rein in ignoring the Constitution in the pursuit and detention of suspects...this government's leeway to track and harass individuals will probably grow with new powers to focus on 'lone wolf' suspects, not connected to known terrorist groups. The law provides that some of these crackdown provisions will require reauthorization in a few years. But the public cannot expect much protection from a Congress that passed intelligence reform but glaringly failed to overhaul its own morass of oversight committees."

• **SECRET \$9.5 BILLION SPY PROJECT CALLED "WASTEFUL" ON SENATE FLOOR**

When Senator John Rockefeller of West Virginia, the ranking Democrat on the Senate Intelligence Committee, termed a secret spy project code-named Misty "stunningly expensive," few of his colleagues had any idea what he was talking about. But the press found out that he was referring to a stealth satellite project run by the National Reconnaissance Office, with Lockheed Martin as the prime contractor. With a \$9.5 billion price tag, the satellite was reportedly unable to collect images at night or in cloudy weather. The Justice Department is considering opening an investigation of how news of the spy satellite program reached the press.

• **US TO DENY AID TO COUNTRIES THAT DO NOT SHIELD AMERICANS FROM WAR CRIMES PROSECUTION**

An amendment to a 3,000-page budget bill signed into law in early December bars aid from an economic support fund designed to foster democracy and human rights from going to countries that have joined the International Criminal Court and have declined to promise they will not send American citizens before the Court without US permission. Jordan stands to lose \$250 million earmarked to foster pluralism and secular education, and anti-terrorism and democracy-building programs in Ireland, Cyprus, Peru, Ecuador, Paraguay and South Africa are also threatened by the amendment. The US is seeking to force all 139 countries that signed the treaty establishing the Court to ratify bilateral agreements promising to shield American citizens and non-Americans who work for US intelligence agencies from the Court's reach. Threatened since 2002 with the withdrawal of military aid, 96 countries have already signed bilateral agreements, many doing so in secret.

• **POLICE CHIEF ASSOCIATION ANNOUNCES OPPOSITION TO CLEAR ACT**

On December 1st the International Association of Chiefs of Police, with more than 18,500 members in 92 countries, has issued a statement of opposition to the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act that is intended to compel local

and state law enforcement agencies to enforce federal immigration laws. According to the IACP President Joseph Estey, Chief of the Hartford, Vermont police department, "Many leaders in the law enforcement community have serious concerns about the chilling effect any measure of this nature could have on legal and illegal aliens reporting criminal activity or assisting police in criminal investigations. This lack of cooperation could diminish the ability of law enforcement agencies to police effectively their communities and protect the public they serve."

• **CONYERS SEEKS INVESTIGATION OF VOTE FRAUD IN OHIO**

Rep. John Conyers of Michigan, the top Democrat on the House Judiciary Committee who is holding a hearing into allegations of voter fraud in Ohio during the 2004 Presidential election, has called on the FBI to impound vote-tabulating computers and investigate evidence of election tampering in Ohio. As an election recount requested by the Green Party got underway in Ohio in mid December, an Ohio election official stated in an affidavit that an employee of Triad Governmental Systems that wrote voting software used in 41 of Ohio's 88 counties had days before the recount dismantled the tabulation computer used in Hocking County and "put a patch on it." The Green Party called this "compelling evidence" of tampering, but Triad says it was just fixing the machine. Conyers has also asked the Associated Press and five broadcast networks that conducted exit polls to turn over the raw data they collected so discrepancies can be investigated. "Clearly the American election system needs significant improvement, starting with voter-verified paper trails for every vote cast electronically," editorialized the December 20th *New York Times*. "In the current flawed system, the best chance we have of producing accurate results is to be on guard for manipulation of electronic voting machines and tabulation software, and to conduct conscientious recounts when the outcome is at all in doubt."

C. IN THE COURTS

• **"LITTLE OLD LADY" WHO GAVE TO CHARITY COULD BE IMPRISONED AS AN ENEMY COMBATANT; TORTURE EVIDENCE CAN BE ADMITTED**

In answer to questions posed by federal district court Judge Joyce Hens Green, Principal Deputy Associate Attorney General Brian Boyle claimed that the US President could imprison a "little old lady from Switzerland" if she donated to a charity not knowing her money was eventually used to finance the activity of terrorists (*New York Times*, December 2). "Someone's intention is clearly not a factor that would disable detention," he said. It would then be up to a newly-established Combatant Status Review tribunal to decide whether to believe and release her. Boyle maintained that the definition of an enemy combatant "is not limited to someone who carries a weapon" and that the battlefield "has a global reach." The hearing concerned the government's motion to dismiss the 54 habeas corpus petitions submitted by Guantanamo detainees in the wake of the US Supreme Court's June 2004 ruling that the detainees were entitled to some due process. The government is asserting that the Combatant Status Review panels set up after that ruling meet the Supreme Court's requirements, but attorneys for the detainees say they "make a mockery of the commitment to due process" because detainees do not have lawyers and cannot see the evidence against them. Boyle has claimed that the

panels can consider evidence gained from torture: "Nothing in the due process clause [of the Constitution] prohibits them from relying on it" (*Boston Globe*, December 3).

- **NINTH CIRCUIT COURT REINSTATES TERRORISM INDICTMENTS**

Reversing a federal judge in Los Angeles who had found a 1996 law on providing material support to terrorists to be unconstitutional, the Ninth Circuit Court of Appeals on December 20th reinstated indictments against seven defendants who were accused of raising funds for a terrorist organization linked to Saddam Hussein.

- **AMERICAN IN SAUDI JAIL MAY BE ABLE TO CHALLENGE HIS DETENTION IN A US COURT**

Washington-based district court Judge John Bates has ruled that a 23-year-old American, Ahmed Abu Ali, who was studying in a Saudi university when imprisoned without charges on June 11, 2003, can challenge his detention in US court if there is evidence that he was arrested at the behest of the US government. His lawyers say that US authorities ordered the Saudis to arrest and torture him for information, but the Justice Department denies involvement. His family claims that American prosecutors had boasted that his fingernails had been torn out. The FBI has questioned Abu Ali about his involvement with men who played paintball near his home in Virginia who have been convicted on charges of aiding a group trying to force India out of Kashmir.

- **NEW INDICTMENTS BROUGHT AGAINST DETROIT DEFENDANTS**

Insurance and mail fraud charges have been brought against Karim Koubriti and Ahmed Hannan, whose convictions in the high profile Detroit "terror sleeper cell" case had been thrown out by a judge on the grounds of prosecutorial misconduct. They are now charged with filing false claims after a 2001 car accident.

- **HIGHEST BRITISH COURT RULES INDEFINITE DETENTION VIOLATES INTERNATIONAL LAW**

By a vote of 8-1, judges from the House of Lords ruled on December 16th in favor of nine Muslim men who have been held for as long as three years under a British antiterrorism law passed in the wake of 9/11. Because the law applies only to foreigners, the judges said it is "discriminatory". Threats to national security, they maintained, do not justify suspending the European Convention on Human Rights and other human rights law. Since 9/11, the law has been used against 17 foreign nationals who have been held in London's Balmalsh prison.

D. IN THE COMMONWEALTH

- **ROMNEY WANTS NATION-WIDE TIPS PROGRAM**

In his capacity as leader of a national working group on safeguarding the nation, Massachusetts Governor Mitt Romney told homeland security officials that "meter readers, E.M.S. drivers, law enforcement, private sector personnel need to be on the lookout for information" in the domestic war against terrorism (*New York Times*, December 15). "We have to be able to find the bad guys before they carry out their acts, and that can only be done through intelligence. The financial resources of our nation and our states should be increasingly devoted to this effort." Romney is urging every

state to enlist local agencies and business to collect "details and observations that might, when stitched together, point to a potential terrorist attack." He wants many intelligence "fusion centers" to be set up, such as those currently being established in Framingham, Massachusetts, Colorado and California.

- **MASSIVE VIDEO SURVEILLANCE PLANNED FOR CHINATOWN**

At least 17 of the powerful surveillance cameras purchased for ensuring security during the Democratic National Convention will soon be moved to Chinatown in Boston. According to the December 5th *Boston Globe*, this "will mark the first time Boston police will use their own cameras to routinely tape street activity." Police say it is a pilot program and they are consulting with residents about the installation of the cameras. But many of the people on a 23-person police-appointed committee of residents, community activists and businesspeople "were unaware until recently they had been named to it."

- **ARSON DESTROYS MOSQUE; AUTHORITIES SAY NO EVIDENCE OF HATE CRIME**

A fire destroyed the Al-Baqi Islamic Center in Springfield on December 8th. Officials concluded the fire was deliberately set, but declined to call it a hate crime. A mosque member said there were break ins at two Springfield mosques in the weeks before the fire (*Boston Globe*, December 10).

- **HARVARD LAW SCHOOL HIRE JUSTIFIED CIRCUMVENTING GENEVA CONVENTION**

In his work with the Department of Defense and the Department of Justice, Jack Goldsmith III, a recently hired professor at Harvard Law School, authored a draft memo dated March 19, 2004 advising the CIA that it was legally acceptable to transfer detainees out of Iraq to other countries, a practice barred by the Fourth Geneva Convention. Goldsmith, who is known for arguing that international law should not always be binding on the US, has denied being connected with memos concerning torture. Due to begin teaching at Harvard Law School in January 2005 he has been praised by the law school dean Elena Kagan as "a very agenda-setting scholar."

III. GET INVOLVED

- **ORGANIZE A SHOWING OF THE FILM "UNCONSTITUTIONAL" IN YOUR TOWN**

Robert Greenwald's film "UNCONSTITUTIONAL: The War On Our Civil Liberties" is a terrific overview of the post 9/11 costs to our freedoms. If you organize a showing of this 1 hour 10 minutes long film, we will provide you with a copy of the DVD and a speaker to follow it. This is a great way to kick off a resolution drive in your community. Contact 617 482-3170 x 314 or email nancy@aclu-mass.org for more information.

- **WE NEED TO REACH 100,000 SIGNATURES**

In 2005 the debate will heat up over the provisions of the USA PATRIOT Act that are due to sunset by December 2005 unless re-authorized by Congress. We have 50,000

Massachusetts signatures on our petition asking the Massachusetts Congressional delegation to roll back certain provisions of the Act. Let's get 50,000 more so we can reach our 100,000 signature goal. Please download the petition from the homepage of our website (www.aclu-mass.org) and mail it back to us with the signatures of your friends and neighbors.

- **ATTEND THE MEETINGS OF THE CIVIL LIBERTIES TASK FORCE**

Next meeting of the Boston Resolution group: **Tuesday, January 4, from 6-8 PM**

Next meeting of the overall CLTF: **Thursday, January 13, from 6-8 PM**. Both meetings are at the ACLU of Massachusetts office.

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