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A. EXECUTIVE ACTIONS

• BUSH ADMINISTRATION TOUTS "TERRORISM SURVEILLANCE PROGRAM"

By January 20, when Karl Rove addressed the Republican National Committee, the Administration had its public relations act together on the issue of warrantless spying on Americans by the National Security Agency. "Let me be as clear as I can be," Rove declared. "President Bush believes if Al Qaeda is calling somebody in America, it is in our national security interest to know who they're calling and why. Some important Democrats clearly disagree" (*New York Times*, January 23). Rove's speech signaled the start of an all-out effort to make the domestic spying program an asset for the Administration by convincing Americans that their safety depended on it. On January 23, President Bush called it "a terrorist surveillance program" in his visit to Kansas State University. The following day, when he visited the NSA, Bush claimed his authority to circumvent FISA to permit the warrantless spying came "both from the Constitution and the Congress." These arguments were fleshed out by the legal team headed by Attorney General Gonzales in a 42-page legal analysis entitled "Legal Authorities Supporting the Activities of the National Security Agency Described by the President." This was the Administration's answer to two reports critical of the NSA program produced by the non partisan Congressional Research Service (CRS) and to a letter doubting its legality which had been sent to Congressional leaders by 13 law professors and former government officials. Attorney General Gonzales maintains that Congress through the Authorization for the Use of Military Force (AUMF) resolution gave the President the power to carry out whatever tactics he needed to use in the "war against terror." In one footnote, he implies that the USA PATRIOT Act is superfluous in the fight against Al Qaeda because the president already has that power through the AUMF resolution. The PATRIOT Act is mainly useful against non Al Qaeda terrorists and "in contexts unrelated to terrorism" (*Boston Globe*, January 25).

• JUSTICE DEPARTMENT OPENS "AGGRESSIVE" CRIMINAL INVESTIGATION

On December 30, the Justice Department opened a criminal investigation into the leaking of classified information about NSA spying to the *New York Times*. The *Times* published its story on December 16, 2005, after sitting on it for about a year. By early February, while some Members of Congress called for an investigation of whether the President broke the law (see "In the Congress," below), federal agents had interviewed officials at national security and law enforcement agencies. The rapid pace of the investigation contrasts with that into the leaking of the name of undercover CIA agent Valerie Wilson. As a January 4th *New York Times* editorial pointed out, "there is a world of difference" between the Valerie Wilson case and the current one. "The spying report was a classic attempt to give the public information it deserves to have. The Valerie Wilson case began with a cynical effort by the administration to deflect public attention from hyped prewar intelligence on Iraq...When the government does not want the public to know what it is doing, it often cites national security as the reason for secrecy....The White House has yet to show that national security was harmed by the report on electronic spying, which did not reveal the existence of such surveillance – only how it was being done in a way that seems outside the law....Illegal spying and torture need to be investigated, not whistle-blowers and newspapers."

• BUSH SAYS A NEW LAW TO REGULATE EAVESDROPPING WOULD BE DANGEROUS

Claiming the program was legal, President Bush on January 26 declared at a press conference that he would "resist" any attempt by Congress to write legislation giving him authority to conduct warrantless wiretapping on Americans. Such a law would "expose the nature of the program" and be both unnecessary and dangerous (*New York Times*, January 27).

• NSA DID NOT WAIT FOR PRESIDENTIAL DIRECTIVE TO START SPYING ON AMERICANS

According to the January 4 *New York Times*, the NSA expanded its domestic surveillance in the weeks after 9/11 without waiting for formal presidential permission. An NSA shift supervisor was able to sign off on the warrantless surveillance of Americans. Here is what NSA head General Michael Hayden said about the Fourth Amendment before the National Press Club on January 23, 2006:

"*Question:* Jonathan Landay with Knight Ridder. I'd like to stay on the same issue, and that had to do with the standard by which you use to target your wiretaps. I'm no lawyer, but my understanding is that the

Fourth Amendment of the Constitution specifies that you must have probable cause to be able to do a search that does not violate an American's right against unlawful searches and seizures. Do you use --
Gen. Hayden: No, actually -- the Fourth Amendment actually protects all of us against unreasonable search and seizure.

Question: But the --

Gen. Hayden: That's what it says.

Question: But the measure is probable cause, I believe.

Gen. Hayden: The amendment says unreasonable search and seizure.

Question: But does it not say probable --

Gen. Hayden: No. The amendment says --

Question: The court standard, the legal standard --

Gen. Hayden: -- unreasonable search and seizure."

• ADMINISTRATION BRIEFS UNHAPPY FISA COURT

On January 9, Justice Department officials met with the remaining 10 FISA court judges (Judge James Robertson had resigned in protest after the *New York Times* broke the story) to brief them on the program. The chief judge of the court, Colleen Kollar-Kotelly, is the only judge who knew of its existence. According to the January 10 *New York Times*, she had raised objections to it in 2004 and said that information obtained by the NSA without warrants could not be presented to the FISA Court in warrant applications. The wiretapping may have all sorts of ramifications, says Georgetown Law Professor David Cole. "Looking ahead, virtually any case that they bring against someone here based on alleged connections to terrorists abroad is now going to potentially raise this issue: 'Was I tapped by the NSA?'" (*Boston Globe*, December 30).

• NSA SPYING SWAMPS FBI; LEADS TO DEAD ENDS

According to the January 17th *New York Times*, the FBI has been swamped by information provided by the NSA under Bush's direction which produced "mountains of paperwork" but no suspects. One source stated: "It affected the FBI in the sense that they had to devote so many resources to tracking every single one of these leads, and, in my experience, they were all dry leads." While Vice President Cheney has declared the program "has saved thousands of lives," NSA Director Air Force General Michael Hayden said he "cannot personally estimate" such a figure, but added that the program had supplied information "that would not otherwise have been available" (*Washington Post*, February 5). In a February 9th speech President Bush implied the program was involved (without saying so directly) in derailing a 2002 Al Qaeda plot to fly an airplane into the US Bank Tower in Los Angeles. The Los Angeles mayor Antonio Villaraigosa said he had not been personally informed: "I would have expected a direct call from the White House" (*New York Times*, February 10).

• HOW BROAD IS THE NSA SPYING PROGRAM? WE MAY NEVER KNOW

Bush Administration officials insist that the NSA program is legal, limited and tightly controlled. In the words of White House spokesperson Trent Duffy: "This is a limited program. These are designed to monitor calls from very bad people to very bad people who have a history of blowing up commuter trains, weddings and churches" (*New York Times*, December 28, 2005). But one of the sources for the original *New York Times* story, former intelligence officer Russell Tice, told ABC News on January 10 that if the full range of secret NSA programs were being used, then millions of people could be under surveillance. According to the January 14 *Christian Science Monitor*, Tice has been told he could face prosecution if he gives information about the program to the House and Senate Intelligence Committees, since its members do not have high enough clearance to hear the information. (Tice, incidentally, is a conservative Republican who has twice voted for George W. Bush for President.) One reason why the Administration may have decided not to seek FISA court warrants was that the program's goal is to listen in on a vast array of communications in hopes of finding something that sounds suspicious. The NSA Echelon system consists of satellites and microwave interception dishes that vacuum up calls, emails and faxes. According to the February 5th *Washington Post*, "Surveillance takes place in several stages...computer-controlled systems collect and sift basic information about hundreds of thousands of faxes, emails and telephone calls...before selecting the ones for scrutiny by human eyes and ears. Successive stages of filtering grow more intrusive as artificial intelligence systems rank voice and data traffic in the order of likeliest interest to human analysts. But intelligence officers...'wash out' most of the leads within days or weeks." NSA also

reportedly got access to the bulk of America's phone calls and international traffic through "back doors" into switching systems, thanks to the cooperation of top officials of telecommunications companies. A report in the February 5th *Washington Post* ("Surveillance Net Yields Few Suspects") describes various methods used by NSA – clues in the "terabytes of speech, text, and image data," "link analysis" (an expansive global version of "guilt by association"), and various mathematical techniques to reveal Total Information Awareness-style "patterns." According to Jeff Jonas, a chief scientist at IBM Entity Analytics who invented a kind of data-mining technology, techniques that "look at people's behavior to predict terrorist intent are so far from reaching the level of accuracy that's necessary that I see them as nothing but civil liberty infringement engines."

• **JUSTICE DEPARTMENT OFFICIALS – INCLUDING ASHCROFT -- WARY OF NSA PROGRAM**

In its February 6th issue, *Newsweek Magazine* revealed that several Bush appointees tried to rein in the powers claimed by the President in the war on terror and ended up having to leave their jobs in the Justice Department. They included former Deputy Attorney General James Comey and former Assistant Attorney General Jack Goldsmith, now a Harvard Law School professor. The staunch proponents of the program, who believed that executive power had been fatally weakened by Watergate, were David Addington (now Cheney's chief of staff) and the coterie of lawyers responsible for the Bybee torture memo, Guantanamo interrogation methods, military commissions, etc. Attorney General John Ashcroft had to reauthorize the program every 45 days. When Ashcroft was hospitalized in March 2004 with a pancreatic condition, Comey advised him against reauthorizing the program and the Attorney General agreed not to. A compromise was eventually worked out involving additional collection guidelines, but Comey and Goldsmith's days at the Justice Department were numbered.

• **NSA SHARED DATA WITH OTHER AGENCIES FOR DATA MINING PURPOSES**

The FBI, Defense Intelligence Agency, CIA and Department of Homeland Security are among the federal agencies that can get access to NSA intercepts, according to the January 1st *Boston Globe*. It can make available either "content" (transcripts of a phone call or emails) or "noncontent" records (showing who in the US had been called from or had called a foreign number believed to be connected to a terrorist group). An unnamed official said these agencies can use 'data mining' on the information "to look for matches with other databases that they maintain, which may or may not be specifically geared toward detecting terrorist threats."

• **YEAR-LONG DELAY IN PUBLISHING NSA STORY TROUBLES EDITOR**

On January 1 the *New York Times* public editor Byron Calame, who serves as the "readers' representative," published an op ed in the paper calling its explanation of the year-long delay in breaking the story about NSA warrantless wiretapping of Americans "woefully inadequate." Despite the paper's "repeated pledges of greater transparency," he writes that he has been unable in getting beyond its evasive stonewalling on the subject. Executive editor Bill Keller declined to respond to his list of 28 questions. "The most obvious and troublesome omission" in the paper's explanation "was the failure to address whether *The Times* knew about the eavesdropping operation before the Nov. 2, 2004 presidential election."

• **BARRON'S CALLS ON CONGRESS TO CHANGE LAW OR CONSIDER IMPEACHMENT**

Barron's Magazine, a weekly publication for investors published by the *Wall Street Journal*, published a December 24th editorial stating that "putting the president above the Congress is an invitation to tyranny. The president has no powers except those specified in the Constitution and those enacted by law....The most important presidential responsibility under Article II is that he must 'take care that the laws be faithfully executed.' That includes following the requirements of laws that limit executive power....Willful disregard of a law is potentially an impeachable offense. It is at least as impeachable as having a sexual escapade under the Oval Office desk and lying about it later....It is important to be clear that an impeachment case, if it comes to that, would not be about wiretapping, or about a possible Constitutional right not to be wiretapped. It would be about the power of Congress to set wiretapping rules by law, and it is about the obligation of the president to follow the rules in the Acts that he and his predecessors signed into law."

• **COUNTRY DIVIDED ON NSA SPYING PROGRAM**

According to a *New York Times*/CBS News poll, 68 percent of Americans support monitoring the telephone calls and emails of "Americans that the government is suspicious of," but 70 percent oppose the surveillance of "ordinary Americans." While 64 percent said they were very or somewhat concerned about losing civil liberties as a result of antiterrorism measures, 53 percent favored eavesdropping without prior court approval "in order to reduce the threat of terrorism." When terrorism was not mentioned, half of those polled disapproved of the eavesdropping program. The poll was taken just as President Bush launched his effort to portray warrantless wiretapping by the NSA as a "Terrorism Surveillance Program" (*New York Times*, January 27).

• **TERRORISM DATABASE CONTAINS 325,000 NAMES**

There are a lot of enemies out there if the list of "international terrorism suspects" housed at the National Counterterrorism Center is to be given credence. Center officials say because the same person may appear under aliases or be listed twice because of different spellings of his/her name, the "true number" might be closer to 200,000 (*Washington Post*, February 15). The list is compiled from reports from the CIA, NSA, FBI and other agencies. Timothy Sparapani of the ACLU said the numbers were "shocking but, unfortunately, not surprising. We have lists that are having baby lists at this point; they're spawning faster than rabbits." Marc Rotenberg of the Electronic Privacy Information Center stressed the "false positive" problem: "What do you do when someone is wrongly put on this watch list? If there are that many people on the list, a lot of them probably shouldn't be there. But how are they going to get off?"

• **GOVERNMENT AGREES TO SETTLEMENT IN "NO FLY" CASE**

In order to end an ACLU lawsuit filed on behalf of two Northern California anti-war activists, the TSA and FBI have agreed to pay \$200,000. The lawsuit for the first time made public hundreds of records about the secret "no fly" list, revealing that it was being compiled in a "necessarily subjective" fashion in which there were no "hard and fast rules."

• **AUTHOR OF "BUSH'S BRAIN" ON "NO FLY" LIST**

James Moore is the co-author of the bestseller *Bush's Brain: How Karl Rove Mad George W. Bush Presidential*. He is also an Emmy-winning former television news correspondent who has been on a "no fly" watch list for a year, according to an article January 4th *Huffington Post*. Moore writes: "I will never be told the official reason. No one ever is. You cannot sue to get the information. Nothing I have done has moved me any closer to getting off the list. There were 35,000 Americans in that database last year. According to a European government that screens hundreds of thousands of American travelers every year, the list they have been given to work from has since grown to 80,000....There's always the chance that the No Fly Watch List is one of many enemies lists maintained by the Bush White House. If that's the case, I am happy to be on that list. I am in good company with people who expect more out of their president and their government."

• **FOUR YEAR OLD ON "NO FLY" LIST**

The four-year-old son of a Jamaican immigrant has had difficulty boarding planes because his name is the same as a name on the "no fly" list. His mother asked the Continental Airline agents at Bush Intercontinental Airport in Houston: "Is this a joke? You can tell he's not a terrorist" (CNN.com, January 10).

• **"SECURE FLIGHT" SCREENING GOES BACK TO DRAWING BOARD**

After spending \$150 million and four years to develop a program to check domestic airline passengers' names against government terrorist watch lists, the Transportation Security Administration (TSA) is being asked to do more work to protect passenger information. The Government Accountability Office found that system software and hardware "had 82 security vulnerabilities" (*Boston Globe*, February 10).

• **"REGISTERED TRAVELER" PROGRAM TO START AT LOGAN THIS SUMMER**

While TSA is ending restrictions on some sharp objects in carry-on luggage, it is preparing to allow passengers who pass a screening check and pay a yearly fee to enter an "express" line and board planes after getting their identities confirmed by a machine that checks either their iris or finger tip. Among the perks given to these passengers may be allowing them to keep their shoes, belts and jackets on when walking through security checkpoints.

• **FBI SAYS RADIATION TESTS BASED ON INTELLIGENCE, NOT PROFILING**

After news surfaced that the FBI had been secretly monitoring radiation levels at "Muslim sites" around the country, FBI officials "struck a conciliatory tone" in a meeting with Muslim and Arab American leaders in Washington DC (*New York Times*, January 12). A Bureau spokesman explained that the FBI actions were not based on "the patterns of or activities of any mosque or Muslim neighborhood" but because of intelligence about bin Laden's desire to use a dirty bomb and the existence of "cells in the US trained to blend into Muslim communities."

• **CINDY SHEEHAN EJECTED FROM STATE OF THE UNION FOR T-SHIRT**

So was the wife of Rep. C. W. Bill Young, whose wife wore a T-shirt saying "Support the Troops." But she was not arrested. Sheehan was. Her shirt said: "'2245 Dead. How many more?'" Sheehan reports that she "had just sat down and I was warm from climbing 3 flights of stairs...so I unzipped my jacket. I turned to the right to take my left arm out, when the same officer [who had helped her to her seat] saw my shirt and yelled: 'Protester.' He then ran over to me, hauled me out of my seat and roughly (with my hands behind my back) shoved me up the stairs." She was taken to the elevators, cuffed, and removed to a squad car. "After I had my personal items inventoried and my fingers printed, a nice Sgt. came in and looked at my shirt and said, '2245, huh? I just got back from there.' I told him that my son died there. That's when the enormity of my loss hit me. I have lost my son. I have lost my First Amendment rights. I have lost the country that I love. Where did America go? I started crying in pain. What did Casey die for? What did the 2244 other brave young Americans die for?...For this? I can't even wear a shirt that has the number of troops on it that George Bush and his arrogant and ignorant policies are responsible for killing" (www.CommonDreams.org, February 1).

• **NEW ABUSE PHOTOS SHOWN ON AUSTRALIAN TV**

Abu Ghraib pictures similar to those that the ACLU has been seeking as part of a FOIA lawsuit were aired on the Australian TV "Dateline" program in mid February. Last September a federal judge ruled that the government had to turn over the graphic Abu Ghraib pictures, as well as other visual evidence of abuse, but the government has appealed to the Second Circuit Court of Appeals. To date nearly 90,000 documents about the treatment of detainees has been turned over to the ACLU as a result of its lawsuit.

• **BUSH RESERVES RIGHT TO IGNORE TORTURE BAN**

When President Bush on December 30, 2005 signed into law the defense spending bill that included the McCain amendment against torture, he added the following "signing statement" giving his interpretation of the law: "The executive branch shall construe [the law] relating to detainees, in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch" with the objective of "protecting the American people from further terrorist attacks." According to New York University law professor David Golove, the signing statement means Bush thinks he can still authorize harsh interrogation tactics when he sees fit (*Boston Globe*, January 4). In his confirmation hearing in January 2005, Attorney General Gonzales said that the Administration did not believe that anti-torture laws and treaties restricted interrogators at overseas prisons. Human Rights Watch's Elisa Massimino saw the signing statement as a fundamental rejection of checks and balances: "Congress is trying to flex its muscle to provide those checks [on detainee abuse], and it's being told through the signing statement that it's impotent. It's quite a radical view." New Supreme Court Justice Sam Alito is a proponent of the view, championed by the vice president, that the president's intent in signing a bill trumps the intent of Congress in drafting it (see "In the Courts," below).

• **JUSTICE DEPARTMENT WILL SEEK DISMISSAL OF GUANTANAMO CASES**

Since the defense spending bill also contained the Graham-Levin amendment stripping Guantanamo detainees of most habeas corpus protections, the Justice Department has filed a notice to the judges presiding over nearly 200 cases brought on behalf of those detainees asking for the cases to be dismissed. The Justice Department spokeswoman said, "We are aware of no other country that has provided their enemies with such extensive legal review during an ongoing conflict" (*New York Times*, January 4).

• **DETAINEE SAYS HE WILL BOYCOTT MILITARY COMMISSION**

Yemehi Ali Hamza al Bahlul told a military hearing that he would not participate in the military

commission which is due to try him in May. He said Guantanamo detainees had been tortured, and objected to the use of secret evidence and the US characterization of detainees as illegal belligerents (*Boston Globe*, January 12).

• GUANTANAMO HUNGER STRIKERS FORCE FED WHILE STRAPPED TO RESTRAINT CHAIR

The New York Times (February 9, 2005) reported that an Iowa company called "Emergency Restraint Chair" shipped five \$1,150 chairs to Guantanamo last December and an additional 20 chairs on January 10, 2006 where they are being used for the force feeding of hunger strikers. Defense attorneys report that some have had feeding tubes inserted so violently that they have fainted or bled. Sometimes they are deliberately force fed so much food they defecate on themselves while strapped in the chair. Attorneys believe that authorities are using harsher methods to force feed the strikers since Congress passed a law at the end of last year curtailing their habeas corpus rights. They no longer have to worry about courts getting involved in the treatment of detainees. According to Lt. Col. Jeremy Martin, who says they force feeding is being carried out "in a humane and compassionate manner," there were 131 hunger strikers last September, 84 in December and now only four.

• PENTAGON: ONLY 8 PERCENT OF GUANTANAMO DETAINEES BELONG TO AL QAEDA

The February 9, 2006 *New York Times* cites Pentagon documents that indicate "that the military had determined that only 45 percent of the detainees had committed some hostile act against the US or its allies and that only 8 percent were Qaeda fighters."

• GERMAN CHANCELLOR ASKS BUSH TO CLOSE GUANTANAMO PRISON

A February 10 *Boston Globe* editorial invoked Chancellor Angela Merkel's request and agreed with her. (Bush told her at their joint January 13 press conference that Guantanamo is "a necessary part of protecting the American people.") The *Globe* editorial expressed outrage at the treatment of the dozen Chinese Muslim Uighurs, who ended up in Guantanamo in exchange for bounties. They have been found completely innocent, but still remain caged at the camp because they can't be sent back to China where they would be persecuted and they won't be given asylum status in the US.

"Every day this script by Franz Kafka and Joseph Heller goes on, the US loses credibility as a champion of human rights." Their Boston-based lawyer, Sabin Willett, is featured in the February 8 *Boston Globe*. "I want my flag back, he says. "If we care about being a civilized people, then it is precisely in times of fear that we have to hold fastest to our rule of law."

• UNITE NATIONS REPORT URGES CLOSURE OF GUANTANAMO

A draft report ordered by the UN Commission on Human Rights has concluded that US treatment of Guantanamo detainees in some cases constituted torture and violates international law and conventions on human rights. The report is based on a year-and-a-half-long investigation. Investigators did not have access to current detainees, but interviewed former detainees, lawyers and family members as well as US officials (*Boston Globe*, February 13).

• GENERAL REFUSES TO TESTIFY ABOUT INTERROGATION PRACTICES

Maj. General Geoffrey Miller, who had been commander at Guantanamo before overseeing interrogations at Abu Ghraib in Iraq, has invoked his right under military Article 31 (the military equivalent of the 5th Amendment) not to give testimony that might incriminate him. General Miller had been asked to testify in a court-martial against soldiers accused of using dogs to terrify detainees. The dog handlers say they were following orders. The general also announced he will be retiring from military service. Also retiring is Lt. Gen. Ricardo Sanchez, who had approved interrogation methods at Abu Ghraib which were modeled on those used at Guantanamo and exceeded those listed in the Army Field Manual. According to the January 5 *New York Times*, he did not want to face the Senate confirmation hearing that would accompany a new assignment.

• ARMY INTERROGATOR CONVICTED OF NEGLIGENT HOMICIDE

Chief Warrant Officer Leis Welshofer, Jr. has been acquitted of murder and assault, but found guilty of causing the death of Iraqi Maj. Gen. Abed Hamed Mowhoush in Qaim, Iraq. He had forced the General headfirst into a sleeping bag, and then sat on his chest and covered his mouth. Welshofer said it wasn't

clear what interrogation techniques were authorized, and what were not authorized. He faces a maximum of three years in prison.

• **LITTLE PRISON TIME FOR SOLDIERS WHO BEAT PRISONERS TO DEATH**

Two years the *New York Times* published a horrendous story about two Afghan prisoners who were killed at Bagram base, Afghanistan. They died after being subjected to prolonged sleeplessness, forced standing for long periods, and being repeatedly struck in the knees by at least 27 American soldiers while they were shackled by their wrists in isolation cells. One of the prisoners, a taxi driver known as Dilawar who left behind a wife and two-year-old daughter, was believed by interrogators to be "almost certainly innocent of any involvement in the rocket attack on the American base" (*New York Times*, February 13). To date, the stiffest penalty any of the 15 who have been prosecuted has faced is 5 months in military prison. Most entered guilty pleas. Only one has been convicted after a trial and got no prison time. One of the former Bagram interrogators who was prosecuted said he thought he was following the orders of his superiors who wanted him to be "more aggressive in his interrogations. But he gave few details and prosecutors did not press him, saying later that his claims had been 'fully investigated.'" Prosecutors did not mention the secret 10-page memorandum (a copy of which had been obtained by the *New York Times*) written by the military's acting chief lawyer at Bagram which indicated "that interrogators there adopted some of the more extreme interrogation methods that Secretary of Defense Donald H. Rumsfeld approved on Dec. 2, 2002, exclusively for use at Guantanamo Bay, Cuba."

• **ARMY ISSUES NEW DEATH PENALTY REGULATIONS**

Among the new regulations is one which makes it possible for executions to take place at sites other than Fort Leavenworth, Kansas, where six men are currently on death row. This might be a signal that executions are expected to take place at Guantanamo, once the Military Commissions hit their stride.

• **SWISS INVESTIGATORS SAY EGYPTIAN FAX CONFIRMS SECRET AMERICAN PRISONS**

While EU countries have been denying that they had anything to do with "black sites" to which detainees have been consigned, a fax from Egypt's Foreign Ministry to its London embassy allegedly says that the US has held prisoners at detention centers in Romania, Bulgaria, Kosovo, Macedonia and the Ukraine. The fax had been intercepted by the Swiss Strategic Intelligence Service (*International Herald Tribune*, January 12). Meanwhile, a leaked Foreign Office memo in Britain advised the government to sidestep the debate over rendition and "try to move the debate on" by focusing on the importance of cooperating with the US in the war on terror (*Boston Globe*, January 20). Dick Marty, a Swiss investigator for the Council of Europe, said he is collecting evidence that the US has flown more than 100 terrorism suspects through Europe to countries where they would be tortured. Marty asked his European colleagues to decide whether Europe should partner with the US in its war on terror. "The current US administration obviously considers that the traditional instruments of the democratic state governed by the rule of law – justice, constitutional guarantees of a fair trial, respect for human dignity – are inappropriate for facing up to the terrorist threat. Is Europe prepared to accept such an approach?" (*Boston Globe*, January 25).

• **REPORT SAYS US FLOUTS HUMAN RIGHTS**

In its annual report Human Rights Watch accused the Bush administration of adopting a "deliberate policy choice" of abusing terror suspects that was "not only illegal and wrong; it is counterproductive....These human rights violations generate indignation and outrage that spur terrorist recruitment." White House spokesman Scott McClellan responded that Human Rights Watch must have a political agenda since the US "does more than any country in the world to advance freedom and promote human rights" (*New York Times*, January 19).

• **CIA POSTED WRONG PICTURE OF AL QAEDA SUSPECT**

The January 26 NBC Nightly News reported that for a year and a half, the CIA has been asking the public to help find "one of the world's most wanted terrorists," Abu Khabab al Masri, who supposedly is an Al Qaeda poison expert. But the picture they were circulating "bore a striking resemblance to this man, Abu Hamza al Masri, a militant imam now on trial in London." An NBC terrorism expert said of the blooper: "It reflects a certain level of sloppiness and lack of attention to detail."

• **CUSTOMS OFFICIALS CAN OPEN PERSONAL MAIL TO KEEP COUNTRY SAFE**

According to a spokesman for Customs and Border Protection, "One of our areas of responsibility is to inspect international mail coming into our country. We respect privacy and always keep that at the forefront, but at the same time we need to make sure we do our job in keeping US citizens safe" (Reuters, January 9). The policy came to light when an 81-year-old retired University of Kansas history professor found that a letter he had received from another retired history professor in the Philippines, a pen pal of 50 years standing, had been screened.

• ICE AGENTS WILL CONTINUE TO POSE AS SAFETY OFFICIALS TO LURE UNDOCUMENTED

The Bureau of ICE (Immigration and Customs Enforcement) has said it will continue to trick workers into attending OSHA (Occupational Safety and Health Administration) training sessions. In the words of an ICE spokesman, the ruse will enable the agency to round up people whose "illegal status" makes them "vulnerable to exploitation by criminals or terrorists" (*New York Times*, February 11). OSHA objects to ICE using its name for immigration sting operations such as those carried out at Seymour Johnson Air Force Base in North Carolina, Tyndall Air Force Base in Florida and a military testing site near Salt Lake City.

• ERRORS IN PAPERWORK LEAD TO THREATS AND HARSH EXPULSIONS

"Achieving a balance of being a welcoming nation and keeping the borders secure is terribly difficult," said a Bureau of ICE spokesman. And judging from the stories featured in the February 10, 2006 *New York Times*, they are doing a terrible job of it. A second grader in New York is being threatened with being separated from his mother, a US citizen, and expelled to his native Canada because he didn't have the right visa. Seven Tibetan monks were arrested by a dozen agents in riot gear after they became "fugitive aliens" because their sponsor – unbeknownst to them – had revoked their visas. Irish professor of literature John McCourt was handcuffed, strip searched and jailed overnight at Philadelphia airport and then sent back to Europe because there was an omission in his travel papers. He had been on his way to teach at the University of Pennsylvania. A pregnant German woman was imprisoned after being denied entry by immigration officers who canceled her visa because they thought she was planning to violate it by working. "You're scared," she said from her home in Germany. "You have no rights. You cannot contact nobody, nobody can contact you." Immigration lawyers say they "are seeing harsher treatment in situations involving paperwork errors or minor infractions. A political climate more hostile to foreigners, fear of being faulted for leniency, and a lack of coordination among immigration agencies, they say, are leading officers to go overboard in cases that fit the government guidelines for prosecutorial discretion."

• BUSH BYPASSES SENATE TO INSTALL IMMIGRATION HEAD

Julie L. Myers is now the head of the Bureau of Immigration and Customs Enforcement (ICE) in the Department of Homeland Security (DHS). She has not dealt extensively with immigration issues nor managed a large department. She is the niece of former Joint Chiefs of Staff chairman Gen. Richard Myers, and the wife of the chief of staff of the DHS. Her appointment was not just criticized by Democrats. The conservative *National Review* urged Bush to withdraw her nomination, calling her "another unqualified nominee for a vital position in the Department of Homeland Security." But the President decided to sidestep the Senate confirmation process and install her using his power of making recess appointments.

• ANTI-IMMIGRANT VIGILANTES TARGET EMPLOYERS

The vigilante "Minutemen," which had "patrolled" the borders, is now organizing across the country to monitor and report businesses that hire workers who lack work permits or other documents. It aims to have chapters in every congressional district by the November 2006 elections, according to the January 15 *Boston Globe*.

B. IN THE US CONGRESS

• PATRIOT ACT: CONGRESSIONAL DEAL REPORTEDLY IN THE MAKING

Last December, before the President asserted that his power to fight the "war on terrorism" could not be restricted by legislation, it appeared as if a bipartisan group of Senators might be prepared to insist on meaningful reforms to USA PATRIOT Act sunset provisions. But that hope faded when, on February 10,

the Republican holdouts (Craig, Sununu, Murkowski and Hagel) and Democratic Senator Richard Durbin agreed to a compromise which Senate Minority Leader Harry Reid termed "a step in the right direction." The following day House Speaker Hastert backed the revisions and it seemed as if a full Congressional vote would occur well before the current extension of the sunsets expires on March 10. Only Senator Russ Feingold – the sole Senator not to sign the original PATRIOT Act – has publicly vowed to fight on.

The proposed changes do not cure the glaring flaws of the PATRIOT Act. They are in fact quite limited:

- The new language does not require that there be any connection between the records sought under Section 215, and a suspected foreign terrorist or person in contact with such a target. It still does not require that the target of such an investigation be linked to terrorism or criminal activity.
- Although the new language provides for the right to counsel and the right to challenge the gag order accompanying Section 215, it does so under terms that are illusory. The gag remains in place for a year. Only then can it be challenged. All the government has to say is that the disclosure would harm national security or diplomatic relations for the gag to be upheld by a court.
- The same kind of gag provision remains in place for National Security Letter powers, despite a ruling opposing the NSL gag in a case the ACLU brought to federal court.

Added to the PATRIOT Act is this new section:

"SEC. 605. THE UNIFORMED DIVISION, UNITED STATES SECRET SERVICE

(a) There is hereby created and established a permanent police force, to be known as the 'United States Secret Service Uniformed Division'. Subject to the supervision of the Secretary of Homeland Security, the United States Secret Service Uniformed Division shall perform such duties as the Director, United States Secret Service, may prescribe in connection with the protection of the following:

`(1) The White House in the District of Columbia.

`(2) Any building in which Presidential offices are located.

`(3) The Treasury Building and grounds.

`(4) The President, the Vice President (or other officer next in the order of succession to the Office of President), the President-elect, the Vice President-elect, and their immediate families."

The list continues through 9 more categories of people/events that will be protected by the new force, including "an event designated...as a special event of national significance." The new Secret Service police can carry firearms and "make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony." Under this section, it appears that a demonstrator at a "special event of national significance" who ventures into a restricted area may be arrested and charged with a felony. In the words of Bob Barr, the former Republican representative from Georgia, "It clearly raises serious concerns about First Amendment rights."

• NSA SPYING: WHAT HAPPENED TO CONGRESSIONAL CHECKS AND BALANCES?

The Administration says it did brief Congress about the NSA warrantless spying program: but having brief secret meetings with 8 Members of Congress who are not permitted to take notes or ask questions and are sworn to secrecy is hardly conducive to Congressional oversight. Some members of Congress were in the know from the early days of the program and remained quiet for four years. Nancy Pelosi, then the ranking Democrat on the House Intelligence Committee, wrote to NSA head Gen. Michael Hayden after he had briefed the House and Senate Intelligence Committees on October 1, 2001. She now know she expressed concern "whether, and to what extent, the National Security Agency has received specific presidential authorization for the operations you are conducting" (*New York Times*, January 4). President Bush did not sign an executive order authorizing the spying until sometime in 2002. Senator Jay Rockefeller IV, a Democrat and member of the Senate Intelligence Committee, had also been briefed about the program. He called it the largest undertaking in the NSA's 54-year-old history (*Boston Globe*, February 3).

• SENATE JUDICIARY COMMITTEE LEARNS LITTLE FROM GONZALES

When, on February 6, the Senate Judiciary Committee finally got the chance to question Attorney General Gonzales – who was not under oath – they encountered what a *New York Times* editorial called "The Art of Saying Nothing:" "On the absurd pretext of safeguarding operational details, Mr. Gonzales would not say whether any purely domestic communications had been swept up in the program by accident, and what, if

anything, had been done to make sure that did not happen. He actually refused to assure the Senate and the public that the administration had not deliberately tapped Americans' calls and e-mail within the United States, or searched their homes and offices without warrants...He even refused to say whether it had led to a single arrest" (*New York Times*, February 8). What he in fact said when Senator Biden asked him if any "would-be terrorists" have been arrested in the US was the following: "When we can use our law enforcement tools to go after the bad guys, we do that." Gonzales sat looking unfazed as several Committee members – not all of them Democrats – questioned him about his understanding of the rule of law. Senator Russ Feingold reminded him of his response to a question Feingold had asked during his confirmation hearings in January 2005. "Does the president, in your opinion, have the authority, acting as commander in chief, to authorize warrantless searches of Americans' homes and wiretaps of their conversations in violation of the criminal and foreign intelligence surveillance statutes of this country?" Under oath during those hearings, Gonzales maintained that this was a purely hypothetical question since it was "not the policy or the agenda of this president" to authorize actions that conflict with existing law. He said he would alert Congress if the president ever chose to authorize warrantless surveillance (*Washington Post*, January 31). At the Senate Judiciary Committee hearing the Attorney General maintained that his response had been truthful because the spying program was legal. The Bush Administration has meanwhile refused requests from members of the Judiciary Committee for its classified legal opinions on the program.

• **THE INTELLIGENCE COMMITTEE HAS CLOSED DOOR HEARING**

Thanks to the "serious concerns" about NSA spying expressed by the senior Republican on the House Intelligence Committee, Rep. Heather Wilson of New Mexico, the Administration agreed to a secret hearing before the full House and Senate Intelligence Committee. Wilson's Subcommittee on Technical and Tactical Intelligence is supposed to oversee the NSA. The hearing was held on February 8 before a sharply divided Committee. Republican Senator Lindsey Graham called it a "sort of *Marbury v. Madison* moment between the executive and the legislative branch," referring to the 1803 Supreme Court decision which established judicial review. But there was "no showdown," according to the February 11 *New York Times*.

• **IMMIGRATION BILL PROVOKES NATIONAL OUTCRY**

By a vote of 239 to 182 the US House of Representatives on December 16, 2005 passed House Judiciary Committee chair James Sensenbrenner's "Border Protection, Antiterrorism and Illegal Immigration Control Act" (HR 4437). Since then immigration groups, service agencies and churches have condemned many portions of the bill, including the section making it a federal crime to offer services or assistance to immigrants whose documents are not in order. Religious leaders, social workers and health workers could face up to five years in prison and have assets seized if convicted of such a crime. Rallies against the bill have been held around the country – on February 14 one was held at Boston's Faneuil Hall.

C. IN THE COURTS

• **JUSTICE ALITO A PROPONENT OF STRONG "UNITARY EXECUTIVE"**

How will the Supreme Court rule in challenges to the Presidential "war on terrorism" powers? Justice Sandra Day O'Connor had written in the 2004 *Hamdi* decision: "We have long since made clear that a state of war is not a blank check for the president when it comes to the rights of the Nation's citizens....Whatever power the US Constitution envisions for the Executive in its exchanges with...enemy organizations in times of conflict, it most assuredly envisions a role for all three branches when individual liberties are at stake." But Justice Alito is no Sandra Day O'Connor. In a 1986 memorandum, he maintained that the Attorney General should be absolutely immune from prosecution for authorizing illegal wiretaps. In a speech in 2000 he asserted the supremacy of the Executive power over Congress' power to establish independent agencies to carry out government functions (the theory of "unitary executive"). His rulings suggest that only in extremely limited circumstances would he favor a Judicial check on Executive power. In mid February Justice Alito hired as a law clerk a top aide to former Attorney General John Ashcroft, Adam Ciogoli. Ciogoli helped develop the Administration's response to 9/11. One Court expert said "I can think of no other example in the modern history of the court of someone with this type of experience coming on and being a law clerk" (*Boston Globe*, February 13). Most clerks are recent law school graduates without public policy experience.

• **LAWSUITS FILED AGAINST WARRANTLESS NSA SPYING**

The ACLU, Center for Constitutional Rights and Electronic Privacy Information Center have filed separate lawsuits against warrantless surveillance on Americans by the NSA. Plaintiffs in the ACLU case, which was filed in US District Court in the Eastern District of Michigan, include several organizations (such as the Council on American Islamic Relations, Greenpeace, and the National Association of Criminal Defense Lawyers), as well as the writer James Bamford (author of *The Puzzle Palace* – a book about the NSA), scholars, attorneys and journalists who frequently communicate by phone and email with people in the Middle East. The lawsuit seeks a court order declaring that the NSA spying is illegal and ordering its immediate and permanent halt. The Center for Constitutional Rights lawsuit maintains that its attorney-client privilege was probably violated as it represented hundreds of men detained as "enemy combatants."

• **PADILLA TRANSFERRED TO CIVILIAN CUSTODY**

After the Supreme Court agreed to the Administration's request, Jose Padilla, who spent nearly four years incommunicado on a naval brig in South Carolina after being declared an "enemy combatant," has been moved to a federal prison in Miami where he faces charges that he gave "material support" to terrorists. The Fourth Circuit Court of Appeals had sought to block Padilla's transfer to civilian court on the grounds that the Administration seemed to be trying to avoid having the Supreme Court rule on Padilla's status. The Supreme Court has stated it will consider Padilla's petition "in due course." On January 13, federal prosecutors released an application to join an Al Qaeda training camp in Afghanistan which they maintain was signed by Padilla under his Islamic name of Abu Abdallah al Mujahir. His lawyers question its authenticity.

• **ADMINISTRATION ASKS SUPREME COURT TO DROP DETAINEE CASE**

At the end of December, "the Detainee Treatment Act" stripping Guantanamo detainees of most of their habeas corpus rights was signed into law. Now the Administration is arguing that the Supreme Court should throw out the appeal by the Yemeni detainee Salim Hamdan, who is the first person scheduled to be tried by at Guantanamo. *Hamdan v. Rumsfeld* challenges the validity of Guantanamo's Military Commissions. The Administration says the Lindsey Graham-Carl Levin amendment was meant to apply to current and not just future legal challenges. But Rep. Carl Levin says that Congress "specifically considered and rejected language that would have stripped the courts of jurisdiction in cases that they had before them" (*Washington Post*, January 13). Various briefs have been filed with the Court that describe the ancient origins of habeas corpus and the fact that the writ of habeas corpus has only been suspended three times in US history, and then only for an explicit and limited period. Scores of other cases brought by detainees are in federal district court. Many of them have been indefinitely stayed on the grounds that the new law raises questions about whether the courts retain jurisdiction to hear them. One detainee whose case has been stayed, Jumah Dossari, has tried to commit suicide at least ten times, according to his lawyers.

• **JURY SELECTION UNDERWAY IN MOUSSAOUI DEATH PENALTY CASE**

Zacarias Moussaoui has been ejected several times for disruption by federal district court judge Leonie Brinkema as the selection of a jury proceeds in Alexandria, Virginia in the shadow of the Pentagon. In April 2005 Moussaoui had pleaded guilty to conspiring to use aircraft to destroy buildings, but denied any involvement with or knowledge of 9/11. He has never been permitted to call or cross-examine witnesses. The judge has ruled that his lawyers must have access to some documents showing what the government knew about the hijackers before 9/11. If the jury agrees with the defense that the government had more information about the plot than Moussaoui could have provided, he will receive life in prison. Otherwise the jury will decide whether or not he should be executed.

• **SUITS BROUGHT BY MUSLIMS WHO WERE ROUNDED UP AFTER 9/11**

Six Muslim immigrants who were held for months after 9/11 as "persons of interest" and then deported have brought federal lawsuits against former Attorney General John Ashcroft, FBI head Robert Muller, detention guards at the Metropolitan Detention Center in Brooklyn and others. The lawsuits describe the physical and psychological abuse they suffered, and asks the court to declare the detentions illegal, to award damages and order the government to return confiscated property. With considerable trepidation, they returned to the US in late January to give depositions in the suits (*New York Times*, January 23).

• **MUSLIM SCHOLAR SUES FOR BEING DENIED ENTRY TO COUNTRY**

Swiss-born Tariq Ramadan is a leading Muslim scholar who was prevented from entering the US to take up a position at Notre Dame University in August 2004. A provision of the USA PATRIOT Act was used to exclude him. The ACLU is now challenging his exclusion in a lawsuit filed in a federal district court in Manhattan.

• ANIMAL RIGHTS GROUPS CHARGED WITH "ECO-TERRORISM"

The Justice Department has indicted 11 alleged members of Earth Liberation Front and Animal Liberation Front on charges of committing attacks on property in five states and causing millions of dollars of damage. According to FBI director Robert Mueller, "Terrorism is terrorism, no matter what the motive" (*Boston Globe*, January 21).

D. IN THE COMMONWEALTH

• LEGISLATURE MAY BE ASKED TO PROCLAIM SUPPORT OF CIVIL LIBERTIES

As of February 15, the Speaker of the Massachusetts House of Representatives had not moved the Resolution Affirming the Civil Rights and Liberties of the People of Massachusetts (H.B. 1881) to the floor for a vote. With time running out before Congress votes on a renewed Patriot Act, the resolution may be submitted as a proclamation for an up-down vote of the Massachusetts House and Senate. Although this would not have the weight of a piece of legislation, it would enable the Commonwealth to weigh in on the PATRIOT Act debate.

• NEWTON LIBRARY INSISTS FBI GET WARRANT FOR SEIZURE

Kathy Glick-Weil, the director of Newton Free Library, backed up by mayor David Cohen, refused to let FBI agents and local police seize three computers without having a warrant. The FBI agents were tracing a threat made to Brandeis University. The threat was found to be a false alarm before the warrants arrived many hours later.

• NEW ICE FACILITY SLATED FOR LEXINGTON

The objections of many residents did not stop the Lexington Appeals Board from agreeing to give a 7-year-lease for a 35,000-square-foot Bureau of ICE facility near Interstate 95 and the Hanscom Air Force Base at which undocumented immigrants could be processed around the clock. Bruce Chadbourne, director of the New England Field Office of ICE, said the facility would deal with immigration breeches and "our goal is to remove these people from the United States" (*Boston Globe*, February 10). According to the *Boston Globe*, "Residents said they are shocked at the location, the work that will go on there, and what they called a flawed public process."

• GLOBE RECYCLES SUBSCRIBER INFORMATION

The Boston Globe distributed the bank and credit card information of 200,000 subscribers by wrapping it around bundles of the *Worcester Telegram and Gazette*. Many of the subscribers now face the headache of dealing with identity theft.

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