CLArion No. 8 – 01 June 2004

- email newsletter of Civil Liberties Australia (ACT Assn. No. A04043)

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SPECIAL LEADING TOPIC this issue: Electronic Health Records (EHRs) – your personal data on the internet

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EHRs raise serious questions about civil liberties /privacy

The use – and possibly abuse – of electronic health records is shaping as one of the next major issues in civil liberties (CL) in Australia.

For example, NSW last month decided to make personal health records available on line – without spelling out robust civil liberty and privacy safeguards in relations to the private enterprise companies involved in the pilot projects.

As well, trials have been running in other States and Territories for about two years…but there has be no public (or even 'private', within the health sector) debate on the significant civil liberty and privacy issues raised by introducing electronic health records (EHRs) and making them available online – that is, on the internet.

There is urgent need for public discussion, debate and a developed national consensus on how Australians want their health information kept safe and secure – from other people, from employers and potential employers, from insurance companies, from governments.

Beyond the CL issues, there are still significant questions to be resolved in relation to ownership of the information contained in health records.

For example, do you own (as opposed to having a right to access to) the information in your health record at the local doctor's surgery? Or does the doctor, whose intellect and knowledge created the record, own it? Or does ownership vary according to whether you have been bulk billed or you paid as a private patient?

If bulk billed (the doctor 'working for the government') does the government own 'your' EHR? Or, if you have paid privately, does the doctor own it, or do you?

In the NSW trials, external-to-government private companies will have custody and control over the personal health data of NSW citizens.

NSW media release

In a media release of 16 May, NSW Minister for Health Morris Iemma, said:

"NSW patients and parents of children in medical care will soon be able to log on to the internet and view their comprehensive

medical histories following the signing of a contract to establish two pilots for an electronic health record system for NSW.

"(The Minister) today announced the commencement of the groundbreaking $19.4 million program to put patients' medical records online.

"The Health e-link will for the first time in NSW give GP's (sic), specialists, emergency department clinicians and allied health workers online access to their patients' detailed medical histories and to the most up to date information on their treatment and medication.

"This new system means that whenever a patient visits the local doctor, the emergency department or a specialist all members of the health care team will have access to the same records.

"Illegible and incomplete hand written medical records can lead to mistakes being made and these are removed in Health e-link," Mr Iemma said.

"The Minister said the system, which will be piloted at the Children's Hospital at Westmead and at Maitland and Raymond Terrace in the Hunter, will also provide patients with unprecedented access to their own medical records.

"The electronic health record will include information on:
* Family history
* Allergies and alerts
* Medical and surgical history
* Procedures performed (pathology and radiology)
* Diagnostic results
* Multidisciplinary care plans

"Mr Iemma said that a consortium led by LogicaCMG, and including Orion International and Healthlink, had been selected to work with NSW Health to commence the pilot with a view to delivering a state-wide electronic health record system.

"The first groups to participate in the pilot are

* Children aged 0 -15 accessing the public health system in the South Western Sydney, Wentworth and Western Sydney Area Health Services

* Chronic disease patients in Maitland and Raymond Terrace

"Mr Iemma stressed that Health e-link has in-built security systems to ensure patient privacy and confidentiality.

"Information will be password protected and each patient will have a unique patient number, individuals would only be able to access their own personal information.

"Participation in the pilot will be voluntary.

"The NSW Health e-link project is also a trial site for the national electronic health record system, HealthConnect, along with Tasmania, Queensland, South Australia and the Northern Territory.

"Mr Iemma called on the Federal Government to make a genuine commitment to funding this program in NSW, citing the fact that Tasmania and South Australia have received generous grants as a result of Medicare Plus negotiations in the Senate, but not NSW or other states."

Further information:
www.health.nsw.gov.au

Comment: by Bill Rowlings

The age groups involved in the trial demonstrate the approach of governments in Australia to EHRs – they are being introduced for the young and the aged (for which 'chronically ill' is the code word).

The strategy is that the mass of people in the middle will follow, like sheep, without discussion or debate on privacy and civil liberties issues.

Two imperatives are driving the move to electronic health records nationally:

- *The fact that electronic health records may save many lives (hundreds, if not thousands, annually in Australia) by avoiding misdiagnosis, mistreatment, wrong prescribing or conflicting prescriptions; and*
- *Potentially enormous cost savings, of the order of $5-10 billion a year nationally.*

Guess which of these is more responsible for driving governments throughout Australia to rapidly introduce (EHRs)?

Ultimately, governments and health funds are likely to end up paying hospitals and doctors based on their performances calculated from statistical analysis of the

EHRs (for a view into the future, see following story from the USA, where it refers to 'mistakes'*). This 'scoreboard' medicine may well mean doctors cut consultation times further, and hospitals are forced to turn patients out even earlier than now.*

Health could become just a numbers game.

Despite EHRs being on the health agenda of governments for more than five years, no government in Australia has moved to initiate the public debate that should be held about safeguards needed to protect privacy and civil liberties, and other significant questions raised by the direction that EHRs takes the health system.

Write to your Federal and State MP, and to newspapers, to express your opinions.

US sparks debate <u>before</u> introducing EHRs

The unlikely alliance in the USA of Republican Newt Gingrich and Democrat Patrick J. Kennedy spells the start of a campaign to introduce electronic health records (EHRs) universally in the United States.

Gingrich, former House speaker, and Kennedy, a representative from Rhode Island, jointly penned an Op-Ed (opinion-editorial) article in the New York Times on 3 May.

In it, they argued for universal introduction across the USA of a sophisticated EHR system.

They claim:

- 20 per cent of medical tests are ordered a second time simply because previous results can't be found;
- 30 cents of every dollar spent on health care does nothing to make sick people better;
- $US 7.4 trillion will be spent over the next decade for duplicate tests, preventable errors, unnecessary hospitalizations and other waste; and
- every year 98,000 Americans die in hospital from preventable medical errors, like receiving the wrong medication.

"Nearly half (all) patients do not get all the treatments or tests that should have been administered… because of systemic failures stemming from the absence of good health information," Gingrich and Kennedy say.

"Existing technology can transform health care just as it has nearly every other part of society. If all Americans' electronic health records were connected in secure computer networks that safeguarded patient privacy, health care providers would have complete records for their patients, so they would no longer have to re-order tests that have already been done."

Computer programs could warn doctors of possible adverse drug and allergy interactions, and remind them of new advances in evidence-based practice guidelines. Patients could also have easier access to their important health information, allowing them to be active participants in their own care.

"New information systems would also allow us to reinvent the way providers get paid.

"Now, most doctors and hospitals get paid by the procedure, regardless of quality. They get paid even if they make mistakes, and then paid again to fix the mistakes. And under our current perverse payment practices, when providers improve quality and efficiency, it frequently hurts their bottom lines.

"New information systems would give us nationwide data to develop standardized performance measurements for providers, so anybody can get an apples-to-apples comparison about how good a job a doctor or hospital does.

"This data would also allow (health funds) to restructure their reimbursement practices, so that the market would drive competition in quality and value among hospitals and doctors, just as in most other fields.

"Politicians like to say that the United States has the best health care system in the world.

"Actually, what we have right now is the best medical talent, technology and facilities in the world — but the system that delivers our care is badly broken.

"Democrats and Republicans should agree that moving American medicine into the 21st century is not only an important goal, it is also literally a matter of life and death," Gingrich and Kennedy say.

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31 May 2004, CLArion special report:

Military respecters of CL speak out… to their credit

By JOHN SHAW

"Military intelligence" is a phrase said by many to be an oxymoron, a contradiction in terms.

However a group of American military officers recently showed both intelligence and enterprise by taking their concerns about prisoner abuse in Iraq to a New York committee on human rights, not normally a first-stop shopping place for the military.

The New Yorker magazine reported on 24 May as follows:

"In 2003, Rumsfeld's apparent disregard for the requirements of the Geneva Conventions while carrying out the war on terror had led a group of senior military legal officers from the Judge Advocate General's (JAG) Corps to pay two surprise visits within five months to Scott Horton, who was then chairman of the New York City Bar Association's Committee on International Human Rights.

"They wanted us to challenge the Bush Administration about its standards for detentions and interrogation," Horton told me.

"They were urging us to get involved and speak in a very loud voice. It came pretty much out of the blue. The message was that conditions are ripe for abuse, and it's going to occur.

"The military officials were most alarmed about the growing use of civilian contractors in the interrogation process, Horton recalled.

"They said there was an atmosphere of legal ambiguity being created as a result of a policy decision at the highest levels in the Pentagon. The JAG officers were being cut out of the policy formulation process."

They told him that, with the war on terror, a fifty-year history of exemplary application of the Geneva Conventions had come to an end."

MAKE A KILLING?

A recent report said that $16,500 is the average price of a contract killing in Australia.

When death is so cheap, what is liberty worth?

– from ACLU email alert, 04 May 2004

Lawmakers grab for more secret powers over citizen information

Acting in the name of stopping terrorism, Members of Congress continue to seek expansion of government power despite widespread concern about privacy and protection against government abuse, according to the American Civil Liberties Union.

“One invasive piece of legislation being stealthily pushed through the House (US House of Representatives) would enhance the government’s secret power to obtain personal records without judicial review.,” ACLU says in an email alert to members.

“It would also limit judicial discretion over the use of secret evidence in criminal cases; and (it would also) allow the use of secret intelligence wiretaps in immigration and possibly other civil cases without notice or an opportunity to suppress illegally-acquired evidence.

“The proposed legislation would allow government agents to gather information about you even if they have no reason to believe you were involved with the commission of a crime,” ACLU said.

“And, if your banker or travel agent told you that the FBI had requested your private information, they could be imprisoned.”

ACLU said James Sensenbrenner (a Republican from Wisconsin) had introduced a bill (H.R. 3179) that would enhance the government’s secret power to obtain personal records without judicial review.

It would also limit judicial discretion over the use of secret evidence in criminal cases and allow the use of secret intelligence wiretaps in immigration and possibly other civil cases without notice or an opportunity to suppress illegally acquired evidence.

“If passed, this bill would be a major and unwarranted expansion of the government’s secret surveillance powers under the USA PATRIOT Act, “ ACLU said.

More details:
http://www.aclu.org/NationalSecurity/NationalSecurity.cfm?ID=15629&c=24

July 11-13 Conference *Living and Learning Together* -- role of human rights education

in strengthening communities in New Zealand and the Pacific.

Hosted by NZ Human Rights Commission and the NZ National Commission for UNESCO, Auckland.

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NGOs to report on Rights of the Child Convention

The National Children's and Youth Law Centre is coordinating a Supplementary Report to the Australian Federal Government's latest Report to the United Nations Committee on the Rights of the Child. The NGO report will be considered with the Government's report in 2005 by the Committee on the Rights of the Child.

Instructions as to how to lodge submissions are contained in the consultation paper.

The NCYLC have set up a website, http://www.ncylc.org.au/croc/home.html, which contains PDF copies of the consultation paper and background briefing. The website also has background information on CROC, an online survey for children and young people, and links.
For paper copies of the consultation paper and background briefing, call (02) 9398 7488 or
e-mail: ncylc@unsw.edu.au.

- received by email, 7 May 2004

ACLU CHALLENGES 'NATIONAL SECURITY LETTER' AUTHORITY

In an extraordinary sealed case, the ACLU has challenged the FBI's unchecked authority to issue 'National Security Letters' (NSLs), which demand sensitive customer records from Internet Service Providers and other businesses without judicial oversight.

Before the Patriot Act, the FBI could use the NSL authority only against suspected terrorists and spies. Thanks to Section 505 of the Patriot Act, the FBI can now use NSLs to obtain information about anyone at all.

The ACLU (American Civil Liberties Union) filed the lawsuit under seal to avoid penalties for violating the NSL statute's broad gag provision, a provision that the ACLU is challenging on First Amendment grounds. While our challenge to the NSL provision was filed on April 6, it took nearly three weeks for the ACLU to reach an agreement with the government that allowed the disclosure of anything at all about the case.

An edited version of the complaint is now publicly available, but many details about the case are still under seal. The ACLU believes that the public has a right to more information about the government's use of the Patriot Act and is committed to unsealing more information about the case as quickly as possible.

A special feature about the case, including the edited complaint:

http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=15543&c=262&MX=1224&H=0

- excerpt from Toronto Star, 8 May 2004

Bushites set tone that led to abuse

By LINDA MCQUAIG

There was no shortage of outrage (recently) over the torture of Iraqi prisoners. Welcome as the outrage is, it does seem a little odd.

In September, 2002, a joint session of the US House and Senate intelligence committees heard Cofer Black, the CIA's counterterrorism chief, describe how America's handling of captives had changed.

As Black put it: "There was a before 9/11, and there was an after 9/11. After 9/11 the gloves come off."

The tone for this new gloves-off era was set by the White House itself, which has openly scorned the notion that prisoners in its "war on terror" have any rights. The whole purpose of building a special prison camp at Guantanamo Bay was clearly to put detainees beyond the reach of US law.

Of course, the Geneva Conventions should have applied there; but the Bush administration simply announced that the detainees were "unlawful combatants", a newly-defined category of human being arbitrarily stripped of all legal rights by a country that, paradoxically, continued to bill itself as the world's leading democracy.

What possible reason would there be to hold prisoners in a law-free, offshore enclave except to do things to them that the law doesn't permit – including perhaps to "soften them up" before interrogations, to apply the very gloves-off treatment that Black set out to members of Congress as the new normal.

There was plenty of international outrage over this stance but, to a large extent, the US media and intellectual community accepted it.

Indeed, there were media debates about the pros and cons of torture, just like debates over free trade or social security reform. So, for instance, CNN's Wolf Blitzer, right after the arrest of senior Al Qaeda leader Khalid Shaikh Mohammed, had on two guests to debate: "Should he be tortured to make him tell what he knows?"

Torture had gone mainstream. It was no longer one of those universally condemned activities, like bestiality, slavery or incest. It was now possible to argue that, in the case of torture, there were shades of gray, situations where it might be okay – not ideal, but defensible. Reputable people, who presumably wouldn't give bestiality the time of day, were apparently willing to give torture a second look.

One such person was Harvard law professor Alan Dershowitz, ironically known as a civil libertarian. Dershowitz acknowledged torture was very bad, but suggested that perhaps it was time for governments to start issuing "torture warrants" so the practice could at least be properly regulated.

It was in this new climate – with open declarations that the gloves were off, with the Geneva rulebook tossed aside and with torture a hot topic on prime time TV – that the now-famous grinning crew of American soldiers took up their posts inside Iraq's Abu Ghraib prison.

This was clearly a sadistic bunch. But it's hard to avoid noticing the green light flashing at them from the White House, which had communicated in its words and deeds that all was fair in the "war on terror".

Once that signal had been given, it's no surprise that individuals came up with their own creative gloves-off variations, in addition to standard infliction of pain and rape.

– Excerpt provided by Julie Klugman

- from *The New York Review of Books,*
27 May 2004
http://www.nybooks.com/articles/17111

Bush and the Lesser Evil

By Anthony Lewis

Suppression of civil liberty in the name of national security is an old story in the United States. It has happened repeatedly in times of war or fear since the early days of the republic.

In 1798, just seven years after the Bill of Rights was added to the Constitution, the Sedition Act made it a crime to criticize the president; the supposed reason was the danger of French Jacobin terror infiltrating America.

The Civil War, World Wars I and II, and assorted episodes of national fear were all made occasions for punishing speech and depriving people of due process of law.

- contributed by Jim Staples

"When times are normal and fear is not stalking the land, English law sturdily protects the freedom of the individual and respects human personality.

"But when times are abnormally alive with fear and prejudice the common law is at a disadvantage: it cannot resist the will, however frightened and prejudiced it may be, of Parliament." – Lord Scarman

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13 May 2004

AUSTRALIA BREACHES CHILDREN'S HUMAN RIGHTS

A Human Rights and Equal Opportunity Commission Inquiry has found that children in Australian immigration detention centres have suffered numerous and repeated breaches of their human rights.

In its *National Inquiry into Children in Immigration Detention Report - A Last Resort?*, tabled in Federal Parliament on 13 May, the Commission found Australia's immigration detention policy has failed to protect the mental health of children, failed to provide adequate health care and education and failed to protect unaccompanied children and those with disabilities.

The two-year inquiry also found that the mandatory detention system breached the *UN Convention on the Rights of the Child*. It failed, as required by the Convention, to make detention a measure of "last resort", for the "shortest appropriate period of time" and subject to independent review.

The system failed to make the "best interests of the child" a primary consideration in detaining them and it failed to treat them with humanity and respect.

Furthermore, the Government's failure to implement repeated recommendations by mental health professionals to remove children with their parents from detention amounted to "cruel, inhumane and degrading treatment".

The report follows two years of consideration of evidence and submissions. The inquiry visited all detention centres in Australia and took evidence from a vast range of individuals and organisations - detainee children and parents, human rights advocacy groups, medical and legal experts, State governments, Australasian Correctional Management (ACM) and the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) amongst others.

Human Rights Commissioner Dr Sev Ozdowski said it was time to release all children with their families from detention centres and residential housing projects and for steps to be taken by Federal Parliament to ensure that no child who arrives in Australia ever suffers under this system again.

"With every right there is a responsibility. The Government has a right to develop its migration policy, but it has a responsibility to uphold the conventions it has signed," said Dr Ozdowski. "Remember these are children with human rights. They are not numbers, or acronyms."

"There have been more than 2000 children in immigration detention over the past few years. We can act to ensure we do not repeat the mistakes we made in their care and treatment. We have the opportunity to change the system to ensure these breaches do not happen again."

"Last Christmas, there were more than 100 children in detention centres and housing projects in Australia and there are still a significant number of children in detention now," Dr Ozdowski said. "This is not ancient history. We are still abusing the rights of children in detention today. Children are still behind barbed wire now."

The Commissioner called on the Government to release all remaining children within four weeks, for federal Parliament to change the law to ensure that detention is no longer the first and only resort for asylum seeker children and to ensure that decisions about the detention of children be made by an independent court.

"For a country that is a passionate advocate of human rights internationally and is currently the Chair of the Human Rights Commission at the United Nations, this is a great opportunity to be a leader," Dr Ozdowski said.

"All Australians should look at these findings, read the examples and think of their children, their grandchildren or the children of their friends and ask themselves – how would I feel if my children were raised behind barbed wire and their human rights were abused?" asked Dr Ozdowski.

"Almost 93 per cent of these families have been accepted as 'genuine refugees' so why do we lock them up for years behind barbed wire?" asked Dr Ozdowski.

"The treatment of some of these children has left them severely traumatised and with long-term mental health problems. Children with emotional and physical scars will be a legacy of our mandatory detention policy," the Commissioner said.

http://www.humanrights.gov.au/human_rights/children_detention_report/

- 14 May 2004, - from Issue No. 380, UNity, the UN Assn of Australia newsletter

Human rights and civil law deadlines set

14 June is the deadline for submissions to the Federal Parliament's Human Rights Sub-Committee, of the Joint Standing Committee of Foreign Affairs, Defence and Trade, inquiry into Australia's human rights dialogue process.

The Committee is inviting public submissions addressing the terms of reference for this inquiry.

The committee encourages the lodgement of electronic submissions from anyone with

an interest in the issues raised by these terms of reference.

For more information and/or terms of reference, contact the Sub-Committee Secretary on 02 6277 4466 or visit the inquiry website at www.aph.gov.au/house/committee/jfadt/hrdialogue/hrindex.htm

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Deadline extended

The Attorney-General, Philip Ruddock, has extended the deadline for submissions on the Federal Civil Justice System Strategy Paper to June 18 to enable stakeholders to respond fully.

“The Strategy Paper is a wide-ranging examination of the federal civil justice system and likely future directions,” he said.

“It identifies the need to settle disputes as fairly, quickly and cheaply as possible, to assist self-represented litigants while preventing unmeritorious or misguided litigation from clogging the courts, and to provide information to the community about their legal options.”

The Strategy Paper was prepared by the Attorney-General’s Department in consultation with the courts, the legal profession and legal service providers.

The Government is seeking public comment on the Strategy Paper to assist with developing its response.

The strategy paper is available online at http://www.ag.gov.au/civiljusticestrategy.

- NY Times, 17 May 2004

Panel urges new protection on Federal 'Data Mining'

By ROBERT PEAR

WASHINGTON, 16 May - A (US) federal advisory committee says Congress should pass laws to protect the civil liberties of Americans when the government sifts through computer records and data files for information about terrorists.

"The Department of Defense should safeguard the privacy of U.S. persons when using data mining to fight terrorism," the panel says in a report to Defense Secretary Donald H. Rumsfeld.

The report, expected to be issued in about two weeks, says privacy laws lag far behind advances in information and communications technology.

The eight-member panel, which includes former officials with decades of high-level government experience, found that the Defense Department and many other agencies were collecting and using "personally identifiable information on U.S. persons for national security and law enforcement purposes."

Some of these activities, it said, resemble the Pentagon program initially known as Total Information Awareness, which was intended to catch terrorists before they struck, by monitoring e-mail messages and databases of financial, medical and travel information.

The Pentagon program, later renamed Terrorism Information Awareness, was flawed from the start, though its goal was worthwhile, the panel said. "Our nation should use information technology and the power to search digital data to fight terrorism, but should protect privacy while doing so," it concluded.

"In developing and using data mining tools, the government can and must protect privacy."

Data mining is defined in the report to mean "searches of one or more electronic databases of information concerning U.S. persons, by or on behalf of an agency or employee of the government."

The panel, the Technology and Privacy Advisory Committee, said the Pentagon program was "not the tip of the iceberg, but rather one small specimen in a sea of icebergs."

Although the panel was created by Mr. Rumsfeld to scrutinize Pentagon programs, it offers sweeping recommendations for privacy safeguards throughout the government.

"The privacy issues presented by data mining cannot be resolved by the Department of Defense alone," the panel said. "Action by Congress, the president and the courts is necessary as well."

One of the panel's most important recommendations is to involve the courts in deciding when the government can search electronic databases.

In general, it said, the Defense Department and other federal agencies should be

required to obtain approval from a special federal court "before engaging in data mining with personally identifiable information concerning U.S. persons."

To obtain such approval, the government would have to show that it needed the information to prevent or respond to terrorism.

In an emergency, the government would not have to get approval in advance, but would need to seek a court order within 48 hours of beginning the search.

– 25 May 25 2004, NY Times

Bomb case against Oregon lawyer is rejected

By SARAH KERSHAW and ERIC LICHTBLAU

SEATTLE, 24 May - A US federal judge in Portland, Oregon, on Monday threw out the case against an American lawyer jailed for two weeks as a material witness in the Madrid train bombing.

The Federal Bureau of Investigation said it had mistakenly matched his fingerprints with prints on a plastic bag found near the scene of the attacks that killed 191 people in March.

FBI officials said that the erroneous fingerprint evidence against the lawyer, Brandon Mayfield, 37, of Aloha, Oregon, stemmed from the poor quality of a digital image of the print sent from Spain and that they were conducting a review into the use of such procedures. The officials said they were no longer investigating Mr. Mayfield, a Muslim convert who was released from a Portland jail last week.

Late in the day, FBI officials in Washington issued a statement saying: "The FBI apologizes to Mr. Mayfield and his family for the hardships that this matter has caused."

Mr. Mayfield shook as he spoke at his news conference earlier in the day, thanking his family and supporters. "This is a serious infringement on our civil liberties," Mr. Mayfield said.

He added, "In a climate of fear, this war on terrorism has gone to the extreme and innocent people are victims as a result."

The Mayfield episode is likely to lead to calls for a broad examination of both the laboratory work by the FBI and the increasingly aggressive US Justice Department use of the federal material witness statute to detain people who it says may have information about a crime.

The Justice Department is known to have used the statute at least 50 times since the 11 September 2001 attacks, and civil liberties advocates said Monday that the Mayfield case demonstrated the potential for abuse.

"This is indicative of how the Justice Department has overreached and cut constitutional corners since 9/11," said David Fidanque, executive director of the American Civil Liberties Union of Oregon. "The Justice Department is using the material witness statute in a way that it was never meant to be used, and this is just the most dramatic example of that trend."

Mr. Mayfield said that in the weeks before his arrest he had sensed that he was being watched and that things were not quite right in the house, in the Portland suburb of Aloha, where he lives with his wife, Mona, an Egyptian immigrant, and their three children.

He said a bolt on the front door had been locked, when no one in the family used it. Blinds were raised higher than usual, and there was a large footprint in the living room carpet, much larger than the shoe sizes of any of the Mayfields, he said.

"I feel that I was being surveyed or watched," he said.

"Any of us sitting in this room could be subject to it. They will fiddle around with your possessions; they may take things or bring them back.

“People should wake up, is what I'm saying. We need to start protecting our civil liberties. You can't trade your freedom for security, because if you do, you're going to lose both."

Mr. Mayfield, a former lieutenant in the Army who was raised in a small town in Kansas, converted to Islam in 1989.

He had also represented Jeffrey Leon Battle, who had been convicted of conspiring to aid the Taliban and Al Qaeda, in a custody case. He said he believed he had been investigated and arrested because he was a Muslim and because of his representation of Mr. Battle.

But Karin J. Immergut, the United States attorney in Portland, said at a news

conference that the investigation of Mr. Mayfield had nothing to do with his religion.

Steven T. Wax, Mr. Mayfield's lawyer and a public defender in Oregon, said: "What we know is that very early in this investigation, after the FBI received the prints, the F.B.I. examiners met with Spanish fingerprint examiners and we are advised that very early on, the FBI was told, 'We do not agree with your analysis, and we don't see a connection.' "

The F.B.I. said that after the Madrid attacks, it had received digital images from Spanish officials showing partial latent fingerprints from plastic bags containing detonator caps.

The Spaniards asked the FBI to analyze the images, and they were run through a database comparing unknown prints to millions of known prints, the FBI said. Mr. Mayfield's fingerprints were on file because of his Army service.

Mr. Mayfield was released last week after officials in Spain matched the fingerprint found in the bag near the Madrid bombing site with those of an Algerian. After Mr. Mayfield's release, officials said, two FBI examiners traveled to Madrid to investigate the prints.

– from New York Times, 21 May 2004

Database tagged 120,000 as possible terrorist suspects

By THE ASSOCIATED PRESS

Before helping to start the criminal information project known as Matrix, a database contractor gave United States and Florida authorities the names of 120,000 people who showed a statistical likelihood of being terrorists, resulting in some investigations and arrests.

The "high terrorism factor" scoring system also became a critical selling point for the involvement of the database company, Seisint Inc., in the project.

Public records obtained by The Associated Press from several states show that Justice Department officials cited the scoring technology in appointing Seisint the sole contractor on the $12 million federal project. Seisint and the law enforcement officials who oversee Matrix insist that the terrorism scoring system was ultimately kept out of the project, largely because of privacy concerns.

But new details about Seisint's development of the "terrorism quotient," including the revelation that the authorities apparently acted on the list of 120,000, are raising questions about Matrix's potential power.

"Assuming they have in fact abandoned the terrorist quotient, there's nothing that stops them from bringing it back," said Barry Steinhardt, director of the technology and liberty program at the American Civil Liberties Union, which learned about the list of 120,000 through its own records request in Utah.

Matrix, short for Multistate Anti-Terrorism Information Exchange, combines state records and data culled by Seisint to give investigators fast access to information on crime and terrorism suspects. It was begun in 2002.

Because the system includes information on innocent people as well as known criminals, Matrix has drawn objections from liberal and conservative privacy groups. Utah and at least eight other states have pulled out, leaving Connecticut, Florida, Michigan, Ohio and Pennsylvania still in the program.

Officials involved with Matrix have said that the statistical method was removed from the final product.

"I'll put my 26 years of law enforcement experience on the line," said Mark Zadra, chief investigator for the Florida Department of Law Enforcement. "It is not in there."

Mr. Zadra said that Matrix, which has four billion records, merely speeds access to material that the police have always been able to get from disparate sources and that it did not automatically identify suspects.

Bill Shrewsbury, a Seisint executive and former federal drug agent, said the terrorism scoring algorithm that produced the names was "put on the shelf" after it was demonstrated after 11 Sept 2001.

The scoring incorporated such factors as age, sex, ethnicity, credit history, "investigational data," information about pilot and driver licenses, and connections to "dirty" addresses known to have been used by other suspects.

– from Unity No 381 21 May 2004
UN Assn of Australia online newsletter

Legal approval sought for demolition

B'tselem, the Israeli Centre for Human Rights in the Occupied Territories, reports that the Israeli Defence Force (IDF) has asked Attorney-General Menachem Mazuz to legally sanction plans for widespread demolitions of hundreds of additional houses in the Rafah Refugee Camp in order to widen the 'Philadelphi Route' along the Gaza-Egypt border, thereby preventing the smuggling of weapons through tunnels dug under the route.

B'Tselem sent an urgent request to Mr Mazuz to categorically reject the IDF's proposal, "as it constitutes a severe violation of international humanitarian law."

Israel, as the occupying force in the West Bank and the Gaza Strip, is obliged by international humanitarian law to protect the local population and ensure its safety and welfare.

The Israeli Centre for Human Rights in the Occupied Territories was established in 1989 by a group of prominent academics, attorneys, journalists and Knesset members.

B'Tselem acts primarily to change Israeli policy in the Occupied Territories and ensure that its government, which rules the Occupied Territories, protects the human rights of residents there and complies with its obligations under international law.

Legal background:
http://btselem.gns.co.il/Rafah/English.asp

June 18 Deadline for comment on the

Federal Civil Justice System Strategy

The strategy paper is available online at http://www.ag.gov.au/civiljusticestrategy. Comment either by e-mail to civiljusticedivision@ag.gov.au or to: Comments on Federal Civil Justice System Strategy Paper, Civil Jurisdiction and Federal Courts Branch, Attorney-General's Department, Robert Garran Offices, National Circuit, BARTON ACT 2600

June 21 National Forum on *Mental Health and Human Rights in the Political Context of Contemporary Australia,* Federal Parliament House, Canberra ACT 2600 8:30am – 5:30pm

Cost $150 (Waged), $120 (Un-waged), $125 (Organisations – Minimum of 4 Attendees)

Advance booking essential by 15 June 2004 due limited seats

Contact: Media-Officer@SAVE-Australia.com.au

- from ACLU email newsletter
21 May 2004

ACLU MEMBERSHIP CONFERENCE: STAND UP FOR FREEDOM

The 2004 ACLU Membership Conference in San Francisco will be an exciting celebration of civil liberties, it is claimed.

Confirmed special guests include classic rock legend Jefferson Airplane; playwright Eve Ensler (of The Vagina Monologues fame); Joe Trippi (Howard Dean's campaign manager); singer/songwriter Steve Earle; police chief Charles Moose (who pursued the Beltway snipers); and Coleen Rowley (FBI whistleblower and one of Time Magazine's 2002 Persons of the Year).

The conference program includes sessions on the most timely topics, including marriage for same-sex couples, racial profiling, domestic spying, new challenges to reproductive freedom and balancing our need for national security with our right to personal privacy.

- Excerpts from an article by Johann Hari, UK freelance journalist, 23 May 2004

There's no gaiety in being Muslim

Despite the threat of violence, at least in democratic societies gay Muslims can wrestle with their dual identity.

For most of the 50 million gay Muslims in the world, this isn't an option. They are more likely to be worried about avoiding imprisonment or even execution.

For example, when 52 gay men were recently arrested and jailed for attending an unofficial gay club in Egypt, even the Egypt Organisation for Human Rights (EOHR) refused to condemn their prison sentences. EOHR's Secretary-General, Hafez Abu Saada, said, "Personally, I don't like the subject of homosexuality, and I don't want to defend them."

Ten years ago, the words 'gay' and 'Muslim' seemed like polar opposites, and an out gay Muslim seemed as probable as a black member of the Ku Klux Klan.

All of the seven countries that treat homosexuality as a crime punishable by death are Muslim. Of the 82 countries where being gay is a crime, 36 are predominantly Muslim.

There have been a small number of groups for gay Muslims over the past 20 years, and their history is not encouraging.

A San Francisco-based group called the Lavender Crescent Society sent five members to Iran in 1979 after the Islamic revolution there to spur an Iranian gay movement. They were taken straight from the airport to a remote spot and shot dead. Gay Iranians went underground straight after.

Even in the West, a Toronto-based group called Min-Alaq was formed in the early 1990s but closed down after fundamentalists threatened to murder all its members.

See the story at:

http://www.johannhari.com/archive/article.php?id=395

– *from website (see below), May 2004*

Lawyers' HR body changes name

The organisation that, for 25 years has been at the forefront of the human rights movement in the USA has this year changed its name.

The Lawyers Committee for Human Rights has become Human Rights First (HRF).

The organisation has offices in New York and in Washington.

HRF combines legal analysis and representation with in-depth human rights research, reporting and public advocacy on important policy issues.

"We don't just make a point, we make a difference," they claim.

You can visit them at: HumanRightsFirst.org

– from NY Times, 27 May 2004

Ruling upholds Oregon law authorizing assisted suicide

By ADAM LIPTAK

A (US) federal appeals court yesterday upheld the only law in the nation authorizing doctors to help their terminally ill patients commit suicide. The decision, by a divided three-judge panel of the United States Court of Appeals for the Ninth Circuit, in San Francisco, said the Justice Department did not have the power to punish the doctors involved.

The majority used unusually pointed language to rebuke (federal) Attorney General John Ashcroft, saying he had overstepped his authority in trying to block enforcement of the state law, Oregon's Death With Dignity Act.

"The attorney general's unilateral attempt to regulate general medical practices historically entrusted to state lawmakers," Judge Richard C. Tallman wrote for the majority, "interferes with the democratic debate about physician-assisted suicide and far exceeds the scope of his authority under federal law."

Charles Miller, a Justice Department spokesman, said lawyers there were reviewing the decision and had not decided on their next move.

The government could ask an 11-member panel of the Ninth Circuit to re-hear the case or try to appeal to the United States Supreme Court.

The assisted-suicide law in Oregon, the product of a 1994 voter initiative, allows adults with incurable diseases who are likely to die in six months to obtain lethal drugs from their doctors. The doctors may prescribe but not administer the drugs, and they are granted immunity from liability.

- from Unity, UN Assn ezine, 28 May 2004

War on terror cuts liberties, says Ruddock

Attorney-General Philip Ruddock, commenting on Amnesty criticism in its report on human rights in Australia in 2003, said:

"In this new climate of terrorism, we can no longer assume that protecting national security is mutually exclusive to protecting our civil liberties. If we are to preserve human rights then we must preserve the most fundamental right of all - the right to life and human security."

Mr Ruddock said the Government had introduced measures to strengthen Australia's counter-terrorism legislation and bolster its security agencies' ability to assess and respond to terrorist threats to Australia and Australian interests.

He said he respected Amnesty International as an organisation but the criticism of the Australian Government contained in its annual report did not reflect the reality of the war on terrorism. He cited Article 3 of the Universal Declaration of Human Rights which provides *"everyone has the right to life, liberty and security of person".*

- from Unity, as above

Ruddock seeks some closed court proceedings

In what he calls “a further step to enhance Australia's national security” the Attorney-General, Philip Ruddock, has introduced the National Security Information (Criminal Proceedings) Bill 2004, which would allow some evidence to be summarised and given in secret.

It also requires lawyers to have security clearance.

"Prosecutions for federal security offences, such as terrorism and espionage, may rely on information that relates to, or the disclosure of which may affect, our national security," Mr Ruddock said.

In these cases, the Commonwealth is faced with two unsatisfactory options:

- risk disclosing sensitive information or;
- abandon a prosecution, even if the alleged offences are serious.

"If an Attorney-General believes the information should be protected, a certificate can be issued that requires the court to take into account the national security implications,” he said.

"It enables the court, in a closed session, to manage the treatment of the information and its sources by, for example, allowing for documents and information to be tendered in a summarised or edited form in open court. This enables the essence of sensitive information to be used without prejudicing Australia's national security."

The Bill also requires legal representatives to obtain a security clearance at an appropriate level if that person requires access to sensitive national security information.

Giving some background to the legislation, Mr Ruddock said the Government moved to enact the legislation in response to cases such as the recent case of Simon Lappas where the court found that certain prosecution documents should be granted protection from disclosure under the public interest immunity.

Having made this ruling the court had no option but to stay the charge relating to the unlawful disclosure of those documents, given that it also found that the fair trial of the accused depended on their disclosure.

The “inadequate situation” was further compounded when defence counsel refused to undergo a security clearance.

The matter has also been referred to the Australian Law Reform Commission.

For more information, call the office of the Attorney General (02) 6277 7300 website: www.law.gov.au

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– from UNity, as above

Bugging laws for e-mail, SMS and voicemail

The Attorney-General, Philip Ruddock, introduced the Telecommunications (Interception) Amendment (Stored Communications) Bill on 27 May to increase powers relating to the interception of telecommunications so that they apply to e-mails, SMS messaging and voicemail.

The Bill will ease access to stored communications by limiting the scope of the Telecommunications (Interception) Act 1979 to live telecommunications.

"By limiting the Act in this way, the amendments will enable access to stored communications, such as e-mail and voicemail, without a telecommunications interception warrant.

“The amendments will allow access to stored communications under other forms of lawful authority, such as a search warrant," Mr Ruddock said.

New communication technologies that may involve storage, but which are similar to standard voice telephony, remain protected in the same way as telephone calls under the new legislation.

Voice over Internet Protocol and comparable communications are specifically excluded from the amendments.

The amendments made by the Telecommunications (Interception) Amendment (Stored Communications) Bill

will operate for a period of 12 months from their passage through Parliament, pending further review of the Australian interception regime.

Proceedings from the Conference on *"Human Rights and Mental Health in the Political Context of Contemporary Australia"* held on March 8 at the NSW Parliament House, Sydney, are available on website: www.SAVE-Australia.com.au in Word and PDF format.

Human rights: Australia recently promised $1.5 million for human rights programs in Bangladesh and Sri Lanka as part of the South Asia Governance Fund.

Sri Lanka will use the funds to improve legal access through legal aid and administrative training at village level.

Bangladesh intends to establish a human rights commission and a human rights education program.

Details: DFAT

DIARY DATES (with thanks to UNity)

June 4-6 Amnesty International human rights conference "Stop Violence Against Women!" Australia and the Asia-Pacific region; Fremantle, WA,. Information and registration website http://www.amnesty.org.au/whats_happening/stop_violence_against_women/svaw_conference Info: Anne Fitzsimmons, Conference and Events Co-ordinator Ph: 02 9217 7698 Fax: 02 9217 7663
E-mail: afitzsimmons@amnesty.org.au website http://www.amnesty.org.au/whats

J**une 14** Deadlines for submissions to the Federal Parliament's Human Rights Sub-Committee, of the Joint Standing Committee of Foreign Affairs, Defence and Trade, inquiry into Australia's human rights dialogue process. For more information and/or terms of reference, contact the Sub-Committee Secretary on 02 6277 4466 or visit the inquiry website at www.aph.gov.au/house/committee/jfadt/hrdialogue/hrindex.htm

June 16 United Nations Human Rights Commission 2004 – What happened in Geneva? Report by Margaret Reynolds, National President of the United Nations Association of Australia. Response: Dr Meredith Burgmann MLA, President of NSW Legislative Council

Tickets: $10. Reservations Sydney Peace Foundation, ph (02) 9351-4468 e-mail spf@arts.usyd.edu.au website: www.spf.arts.usyd.edu.au

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June 18-20 "International Law and Security In The Post-Iraq Era: Where to for International Law?", held jointly by the Centre for International and Public Law at the ANU and the Australian and New Zealand Society of International Law (ANZSIL), University House, ANU. Info: Bronwyn Penny. National Programs Coordinator, Australian Red Cross ACT, ph: (02) 6206 6037 e-mail: bpenny@act.redcross.org.au or (02) 6125 0454 fax (02) 6125 0150 e-mail anzsil@law.anu.edu.au

June 21 "National Forum on Mental Health and Human Rights in the Political Context of Contemporary Australia" Federal Parliament House, Canberra ACT 2600 8:30am – 5:30pm. Cost $150 (Waged), $120 (Un-waged), $125 (Organisations – Minimum of 4 Attendees). Advance booking essential by 15 June 2004 as there are limited seats. Contact: Media-Officer@SAVE-Australia.com.au

August 21-Sept 3 United Nations Ad Hoc Committee for negotiations on text of an international convention on the rights and dignity of people with disabilities. Info: Office of the Minister for Foreign Affairs (02) 6277 7500 e-mail: A.Downer.MP@aph.gov.au website: www.dfat.gov.au

December 10 Human Rights Day www.unhchr.ch

ENDS CLArion 040601