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- from NY Times, 29 June 2004

Reaffirming the Rule of Law

EDITORIAL: the NY Times said:

Part of the ‘new normal’ that the Bush administration ushered in after 11 September was a radically broader view of the government's power to detain people.

The administration claimed the right to hold foreign terrorism suspects in an

indefinite legal limbo in Guantánamo, and to designate American citizens as ‘enemy combatants’ and hold them for years without access to lawyers.

Yesterday, the Supreme Court delivered a stinging rebuke to these policies. In a pair of landmark decisions, the court made it clear that even during the war on terror, the government must adhere to the rule of law.

The Guantánamo case was brought by 14 of the more than 600 detainees being held at the American naval base at Guantánamo Bay, Cuba.

The detainees insist that they did not engage in combat or terrorism against the US, but were wrongly picked up in the fog of war in Afghanistan.

The Bush administration responded that, guilty or innocent, they have no right to be heard. In its view, non-citizens held outside the US cannot turn to American courts to challenge their confinement. A federal district court and an appeals court both agreed, and dismissed the lawsuit.

The Supreme Court reversed that decision on a 6-to-3 vote.

The court rightly looked beyond the legal fiction that the government relied on, that the base in Guantánamo is not part of the US. For more than 100 years, the court observed, Guantánamo has been under America's "complete jurisdiction and control," and it will remain so for the foreseeable future.

As a legal matter, there is no difference between being held in Guantánamo and being held in the US...

..."It is during our most challenging and uncertain moments that our nation's commitment to due process is most severely tested," Justice O'Connor observed yesterday, "and it is in those times that we must preserve our commitment at home to the principles for which we fight abroad."

SPECIAL TOPIC:

Identity card

National ID card is back on the agenda in the US: – stand by in Australia

Get ready in Australia for resumption of debate over a national identity (ID) card.

Terrorism's rise is driving society towards trying to solve social issues by numbering and badging individuals, and forcing them to pass regularly through state-controlled 'checkpoints'.

For the moment, a card is the favoured labelling device.

But in future generations other types of identification may be preferred, such as biometric identifiers or impregnated microchip.

As discussed in the June 2004 issue of *CLArion*, the introduction of an Electronic Health Record (EHR) for every Australian is another public initiative having increasing impact on more and more individuals in this country.

It is a very minor step to move from a national EHR card to a combined EHR-ID.

In fact, we will be told, it would make economic and security sense to combine the two.

The move to an ID card in Australia will follow a similar move in the United States (see editorial below from the *New York Times*).

Already the move to EHRs is being mirrored across the Pacific by two of the members of the 'Coalition of the Willing' (see last issue).

– from NY Times, 31 May 2004

Editorial

A National ID

The very idea of a national identity card has always rankled Americans across the political spectrum.

It conjures images of totalitarianism — Big Brother or even the German SS soldier asking to see a citizen's papers. But in most European countries, people carry national ID's as a matter of course. And pressure is mounting in America for some kind of security card.

Private companies in the United States are already marketing the idea of providing a secure card for those willing to submit to extra background checks, similar to a concept proposed by the airlines.

Tenants of high-rise buildings or workers at chemical plants, for example, also want security without endless body searches and bag checks.

It's time for Congress to begin a serious discussion of how to create a workable national identification system without infringing on the constitutional rights of Americans...

Private corporations are now marketing identification systems based on personal and unique "biometrics" like eye scans or fingerprints. The airlines are also considering ways to create a kind of frequent-flier security pass for those willing to submit to a more intense identification check.

These private solutions might allow corporations to work out the kinks in these new security systems, a process that could take years if the government tried to do it...

The concept of a national ID card, on the other hand, presents a host of possible problems, not all of them related to civil liberties...

Almost any identification card that can be created can be counterfeited, and a fake super-security pass would present more dangers than a fake driver's license.

If ever there was a good subject for a study commission, this is it. Congress or President Bush should get the best minds, the experts on security, civil liberties and technology, to start

wrestling with the most nettlesome issues in this debate...

If we're going to move to a national identification card, we can't afford to do it badly.

Now is the time to figure out how to create a card that helps identify people but doesn't rob them of a huge swath of their civil liberties in the process, the NY Times said.

– ACLU, by email 04 June 2004

ACLU quizzes US Govt on practice of 'data mining' its own citizens

A new report just released by the United States General Accounting Office (GAO) revealed that at least four programs used by the USA's Defense Intelligence Agency and the Department of Homeland Security may be accessing and analyzing private-sector databases in ways that approach the 'data surveillance' of ordinary US citizens.

"We always knew that the Pentagon's 'Total Information Awareness' program was not the only data-surveillance program out there, but it now appears possible that such activities are even more widespread than we imagined," said Barry Steinhardt, Director of the ACLU's Technology and Liberty Program.

The GAO's investigation uncovered 199 government uses of the statistical analysis techniques known as data-mining, 54 of which use private-sector data.

Such information could include any data held in corporate or other private hands, including credit-card records and Internet logs.

The ACLU is conducting an immediate inquiry to find out whether these programs are indeed threatening, or whether their use of information is benign.

- from Liberty, UK CL organisation
04 June 2004

US high-tech committee proposes laws to protect civil liberties

The US Technology and Privacy Advisory Committee has issued a report recommending that Congress pass laws to protect civil liberties when the government sifts through computer databases containing personal information.

The committee also proposed that federal agencies be required to obtain authorisation from a special federal court "before engaging in data mining with personally identifiable information concerning U.S. persons."

Liberty website: <http://www.liberty-human-rights.org.uk/index.html>

- from Liberty UK

Europe's ID cards show no gain, plenty of pain

There is a strong Government push in the UK for the introduction of a national identity card scheme.

The UK Government published a draft ID Card Bill on 26 April 04.

Liberty is strongly opposed to identity cards both on principled and practical grounds and is campaigning to prevent their introduction in Britain.

"A national identity card has worrying costs and few, if any, benefits," Liberty says.

"It would pose a real and direct risk to rights such as privacy and equality, and would be unlikely to yield any of the supposed results its supporters claim.

"Analyses of (European) countries, where a variety of ID card schemes are in place, show that there are no proven benefits in terms of cutting fraud, reducing crime or tackling terrorism.

"Often, identity cards have been easily forged and have had a very negative

effect on community relations, with those from minority ethnic groups being required to prove their identity most often.”

An identity card scheme would require a national database of every British citizen., Liberty warns.

“With our present data protection laws, we cannot be confident that this information would be stored securely or used sensitively.”

– based on an article 31 May 2004, NY Times, by BENJAMIN WEISER

Can fingerprints lie? Yes!

Rene Ramon Sanchez, a smash repair worker and merengue singer from the Bronx area of New York, bore not even a passing resemblance to Leo Rosario, a complete stranger 12 years his junior, a half-foot shorter, a drug dealer and a prime candidate for deportation.

But Mr Sanchez, in late 2000, was sent back for another week in a detention centre in Manhattan, severed from his family and livelihood, because his fingerprints had been mistakenly placed on the official record of Mr Rosario.

He had been arrested three times for Mr Rosario's crimes, and ultimately spent a total of two months in custody and was threatened with deportation before the mistake was traced and resolved in 2002.

Mr Sanchez's ordeal resulted from a criminal justice system that made a single error of putting the wrong prints on the wrong card – and then compounded it time and again by failing to correct it.

– *excerpt provided by JIM STAPLES*

- from ACLU email, 04 June 2004

New Jersey ACLU wins \$1mn award in discrimination suit

Owners of a swimming club in suburban New Jersey who violated state discrimination laws when they turned away ‘black’ and ‘brown-skinned’ customers and guests will pay \$1 million to settle a lawsuit brought against them by the American Civil Liberties Union of New Jersey.

The ACLU filed the case on behalf of six plaintiffs who were denied entry to the pool or who were retaliated against for defending the rights of others to enter.

Further information

<http://www.aclu.org/RacialEquality/RacialEquality.cfm?ID=15856&c=28&MX=1276&H=0>

- from UNity, 05 June 2004 No 383 (national email publication of the UN Association of Australia)

ICRC warns of erosion of human rights over terror fears

The President of the International Committee of the Red Cross, Jakob Kellenberger, has warned governments that the fight against terrorism should not be an excuse for reducing human rights.

- from NY Times, 11 June 2004

No conviction for student in terror case

Reported by ASSOCIATED PRESS
BOISE, Idaho, 10 June (AP) - Handing the (US) government a stinging defeat, a jury acquitted a Saudi graduate student on charges that he had used his computer expertise to help Muslim terrorists raise money and recruit followers.

The US case has similarities to current charges against a NSW man whose release on bail caused the NSW Government to pass new, ‘instant noodle’ bail laws which turn on the

presumption of guilt rather than innocence.

According to The Associated Press and the NY Times, the case against Mr. Al-Hussayen, 34, a PhD candidate in computer science at the University of Idaho, was seen as an important test of a provision of a new (US) antiterrorism law that makes it a crime to provide expert advice or assistance to terrorists.

Mr. Al-Hussayen set up and ran web sites that prosecutors said were used to recruit terrorists, raise money and disseminate inflammatory rhetoric. They said the sites included religious edicts justifying suicide bombings and an invitation to contribute money to the militant Palestinian organization Hamas.

The student's lawyer, Mr Nevin, said Mr Al-Hussayen had little to do with creating the material posted, which he argued was protected by the First Amendment right to freedom of expression and was not intended to raise money or recruit extremists.

Mr Al-Hussayen was acquitted on all three terrorism charges, as well as one count of making a false statement and two counts of visa fraud.

Jurors could not reach verdicts on three false-statement counts and five visa-fraud counts, and a mistrial was declared on those charges.

Mr. Al-Hussayen faced up to 15 years for each of the three terrorism charges, 25 years on each charge of visa fraud and five years on each charge of making false statements. He still faces deportation.

The jury reached their decision after seven days of deliberations and a trial that lasted seven weeks.

- from UN media release, 10 June 2004

Pacific Island focus on HR

Representatives of 15 Pacific Island countries meeting in Fiji have called

for more measures to make human rights (HR) a reality in the region.

They were taking part in the Pacific Human Rights Consultation from 1-3 June in Suva, Fiji.

Delegates concluded that HR issues in the Pacific region required greater attention, which could be achieved by establishing and developing national human rights institutions and regional initiatives.

Participants called on donors and regional and international agencies to help Pacific Island nations through a range of initiatives such as:

- establishing a Pacific Peoples NGO / Civil Society Human Rights Network;
- establishing a regional secretariat for all Pacific peoples human rights organizations; and
- dispatching an OHCHR adviser as part of the United Nations country team based in Fiji to identify technical cooperation needs in the Pacific and work with all relevant human rights partners.

'Instant noodle' legislation lurches our liberties to the right

By BILL ROWLINGS

A feature article with the heading – 'Disturbing descent into paranoia' – in the Canberra Times in June was by lawyer and doctoral candidate at the ANU's Strategic and Defence Studies Centre, Christopher Michaelsen.

In it, he argued that legislators were over-reacting to any alleged criminal activity which has the word 'terrorist' associated with it.

In part, he said:

"What the latest changes to state and federal law have in common is that they follow a trend to regard every terrorism-related offence as a so-called 'crimen exceptum', an

exceptional crime that needs to be treated differently from all other offences.

“While the notion of ‘crimen exceptum’ is unknown to any modern Western legal system, it featured prominently in 15th century Europe to prosecute the crime of witchcraft.

“A comparable process existed in medieval England and became known as outlawry.

“...in the light of recent legislative amendments and current political rhetoric it seems that alleged ‘terrorists’ are the witches and outlaws of today.

“This is a deeply worrisome development which might ultimately pose a greater threat to ‘our way of life’ than international terrorism itself.

“It is thus especially refreshing and reassuring that the judiciary has not yet been affected by the collective terror paranoia that is currently sweeping the nation,” Mr Michaelsen said in the Canberra Times article.

Elsewhere in the article, he notes that the magistrate in the Mr Bilal Khazal case in Sydney, Mr Les Brennan, did not throw away jurisprudence by allowing the overturning of the presumption for bail. He also notes that the Crown in that case did not oppose bail.

That didn’t stop the NSW Parliament immediately passing ‘instant noodle’ law, reversing the presumption of bail in ‘terrorism’ cases.

Attorney-General Mr Ruddock signalled a further assault on Australian civil liberties by introducing a mandatory non-parole period for people convicted of ‘terrorist’ offences.

As one magistrate wisely ruled for Australian democracy, state and federal Ministers lurched alarmingly to line up with the unreasoned excesses of the neo-conservatives in the USA.

It is a surprise and shock – because it is out of supposed principle and character – to see a State Labor Government in NSW doing this.

Equally, though, the transit of Ruddock from small ‘l’ liberal member of Amnesty at the start of his career to reactive-right legislator towards the end of it sums up how far and fast Australia is being taken away from traditional civil liberties – those that the young Mr Ruddock might well have himself argued for.

...or, perhaps, how far and fast civil liberties are being taken away from Australians in the name of protection against terrorists.

Terrorists strike rarely, affecting the few. Rights wrongly lost to ‘instant’ legislation are gone 24/7, as the Americans say...and affect every Australian.

- 14 June 2004, By JOHN SHAW

Comparison points to Hicks charges possibly proving ‘baseless’

CLA member John Shaw, who has closely followed the David Hicks case, has written the following comment on the US charges made against the Australian last month after 30 months detention in Guantanamo.

One possible guide to the results of the US case against Hicks may be the conclusion in the US case against John Walker Lindh, a Muslim convert like Hicks.

Both were arrested in Afghanistan in December 2001.

Lindh, an American, now 23, was originally charged in February 2002 with 10 offences which carried the possibility of three life imprisonment sentences.

Most of the government case collapsed while it was being assembled in mid-2002 and nine charges were withdrawn.

They ranged from ‘taking up arms’ against the US to membership of Al-Qaeda and knowledge of planned Al-Qaeda attacks on the US.

As an American citizen, Lindh was entitled to trial before a US court but the government eventually decided 'there were risks' that it could not prove its main charges under examination in open court.

So Lindh's lawyers were offered an out-of-court settlement.

In exchange for a guilty plea to a non-terrorist offence Lindh was finally charged with only one offence, the highly technical indictment of violating a 1999 executive order prohibiting US citizens from contributing 'services' to the Taliban.

This is, by US definition, a non-violent felony, a class which rarely produces such extreme sentences as the 20-year, non-parole term imposed on Lindh.

Ironically, US prison authorities have decided Lindh is no great risk. He is detained in a medium-security prison.

David Hicks is charged with conspiracy with Taliban and Al-Qaeda forces and intention 'to kill' coalition personnel. There is no allegation that Hicks killed or wounded anyone.

The US government may find it easier to convince the military tribunal that will try Hicks than it did to indict Lindh before a US civilian court.

Nevertheless, the Lindh case – the first and only conviction of an American for a terrorism-linked offence – suggests that the evidence against Hicks may also be subject to effective challenge. That is, if he gets the 'fair trial' that Australian Prime Minister Howard claims he will.

On the other hand, US prosecutors may have learned from the errors and exaggerations in nine of their ten charges against Lindh.

The tribunal trial of Hicks, the first foreign 'combatant' to be indicted, is a test case for the US which has another 500 foreign prisoners held without charge or trial.

- from NY Times, 15 June 2004

EDITORIAL OPINION

The NY Times recently came out strongly for all US police recording interrogations of suspects in major crimes. It said, in part:

"The Center on Wrongful Convictions at Northwestern University recently surveyed 238 law enforcement agencies around the country that currently record the questioning of felony suspects.

"It found that 'virtually every officer with whom we spoke, having given custodial recordings a try, was enthusiastically in favour of the practice'.

"The police and prosecutors reported that it eliminated the problem of suspects' changing their stories, and let the jury satisfy itself that a confession was obtained honestly.

"Recorded interrogations are a powerful tool for both sides in the criminal justice system.

"More states should enact laws adopting this win-win practice," the NY Times said.

- from a letter, 18 February 2004

Federal Member for Canberra, Liz Ellis, signals support for CLA

MHR for Canberra, Liz Ellis, believes "the need is considerable" for a civil liberties group in the ACT.

"It is pleasing to see the revival of the civil liberties organisation in the ACT," she said in a letter supporting CLA's application for a government grant.

"While there are other organizations which address particular rights, CLA ... is unique ... in that it monitors the rights across the board.... Through my work with constituents I am very much aware that human rights do not often fit into neat boxes," Ms Ellis said.

- from ACLU email news broadcast
18 June 2004

ACLU uses retired admiral in public advertising campaign

The American Civil Liberties Union is using a retired US admiral to publicly question US military behaviour at Guantanamo Bay and Abu Ghraib prison.

It's the type of public-good newspaper advertisement we could aspire to running in a few years time.

"How can we fight to uphold the rule of law if we break the rules ourselves?" – US Navy Admiral John Hutson (Ret.) asks in the advert.

"The ACLU believes the prisoner abuses at Abu Ghraib are a 'predictable result' of American detention policies that have deliberately skirted the rule of law and flaunted American values," the ACLU says in its email.

See the newspaper ad at:
<http://www.aclu.org/images/client/huts on.jpg>

- from ACLU email, 18 June 2004

City of Omaha faces civil rights suit over cover up

What would you do if you had to make a choice between leaving your children unattended at a swimming pool or violating your religious beliefs?

Lubna Hussein, mother of three young children, was forced to make that choice at an Omaha public pool in the USA.

She was told to wear a bathing suit or leave her children unattended.

Her religious beliefs require her to keep all of her body covered except her face and hands.

Hussein took her children to the municipal pool in Omaha several times last year, only to be turned away at the gate after informing city employees that she could not wear a bathing suit without violating her religious beliefs.

She was told she could not be in the pool area in her street clothing, even

though she saw other people in the pool area who were not wearing bathing suits.

The ACLU has filed a federal civil rights lawsuit on her behalf against the city of Omaha.

- from UNity no 385, 18 June 2004
(*Unity is the email newsletter of the UN Association of Australia*)

Legislation addresses 'intentional meetings, with terrorists'

New anti-terrorism measures introduced into the Parliament on 17 June by Attorney General, Philip Ruddock, were contained in The Anti-Terrorism Bill (No.2) 2004 which 'will outlaw intentionally meeting and communicating on two or more occasions with members, promoters and directors of the activities of a terrorist organisation'.

The offence will apply where the association with the organisation provides it with support intended to assist the organisation to expand or to continue to exist. There is a maximum penalty of three years imprisonment.

There are exemptions for close family, public religious worship, humanitarian aid, legal advice and genuine political communication.

Mr Ruddock said that the Government considered that consorting with terrorists was more deserving of criminal sanction than consorting with thieves – an offence on the State statute books for decades.

The *Anti-Terrorism Bill 2004* proposes to recognise as an offence against Australia, under Australian law, 'an offence against a foreign country'. It specifically cites 'an offence triable by a military commission of the United States of America established under a Military Order of 13 November 2001 made by the President of the United States of America and entitled "Detention, Treatment and Trial of

Certain Non-Citizens in the War Against Terrorism”.’

On June 16, Mr Ruddock said: ‘Australia’s counter-terrorism legal framework will be further enhanced after the Government agreed to amendments to the Anti-Terrorism Bill 2004 to ensure bail and parole laws operate effectively in relation to people charged and found guilty of terrorism offences.”

‘The amendments will mean that persons charged with, or convicted of, federal terrorism and related offences would face a presumption against bail unless a bail authority is satisfied that exceptional circumstances justify the granting of bail.’

The National Security Information (Criminal Proceedings) Bill 2004 would allow some evidence to be summarised and given in secret. It also requires lawyers to have security clearance.

The Telecommunications (Interception) Amendment (Stored Communications) Bill proposes to increase powers relating to the interception of telecommunications so that they apply to emails, Short Message Service (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.

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

- from UNity No 386, 25 June 2004

Classified and sensitive information

The Attorney-General, Philip Ruddock, has tabled the result of an inquiry by the **Australian Law Reform Commission** (ALRC) into the protection of classified and security sensitive information.

In developing the report, *Keeping Secrets: The Protection of Classified*

and Security Sensitive Information (ALRC 98), the Commission consulted widely with government, law enforcement and intelligence agencies, the legal profession and other interested parties.

The ALRC was asked to inquire into measures used to protect classified and security sensitive information in the course of investigations, legal proceedings and other relevant contexts. The ALRC report examines whether existing mechanisms adequately protect classified and security sensitive information, or whether there is a need for further regulation in this area.

‘Australia should prioritise HR education in Asia-Pacific Region’

The Joint Standing Committee on Foreign Affairs, Defence and Trade believes the development of a discrete National Plan of Action for Human Rights Education should be a priority for Australia.

The JSCFADT report of its inquiry into *Human Rights and Good Governance Education in the Asia Pacific Region* has been tabled in Parliament.

The Chair of the Human Rights Sub-Committee, Senator Marise Payne said, “Australia is in a strong position to make a contribution to the promotion and protection of human rights and the development of good governance in the Asia Pacific region through its efforts in human rights and good governance education.

“The report found a lack of consensus on the level of community understanding of human rights and good governance in Australia, demonstrating that current promotional and educative approaches are not having the desired impact.

“The Committee recommends that Australia works towards developing consensus on definitions of human rights and good governance regionally, with the aim of promoting the

development of a regional human rights education agreement.

“The report also concludes that there is a need to provide better coordination of human rights and good governance education efforts in Australia to provide direction and assist with the better use of resources and sharing of knowledge and experience.”

More information: call the Sub-Committee on 02 6277 2097.

[rights/children_detention_report/index.html](#) .

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Human rights talks in Hanoi

Australia and Vietnam began their third round of annual bilateral human rights talks in Hanoi on June 24.

The dialogue is titled *International Organisations and Legal Issues, including Human Rights*.

The dialogue covers a range of issues including national approaches to human rights, cultural and religious diversity, judicial reform and approaches to criminal law, and technical cooperation.

The Australian delegation is led by Caroline Millar, Ambassador for People Smuggling Issues and First Assistant Secretary of DFAT's International Organisations and Legal Division, and includes Pru Goward, Sex Discrimination Commissioner, and Diana Temby, Executive Director of the Human Rights and Equal Opportunity Commission.

Australia also conducts dedicated human rights dialogues with China and Iran.

July 28 Racial Respect Public Forum 6-7.30pm Federation Room, Havelock House 85 Northbourne Avenue, Turner ACT. Dr Sev Ozdowski of the Human Rights and Equal Opportunity Commission on 'A Last Resort? The National Inquiry into Children in Immigration Detention' also available online at <http://www.humanrights.gov.au/human>