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TV advert and radio program closer to launch

CLA's first television advertisement, a 15-second Community Service Announcement (CSA), is near completion.

It is based on the miners' campaign for rights and liberties of the 1860s. Produced by Southern Cross Television, the advert was due to be finished in early August, with financial support from CLA members Mark and Noor Blumer, of Blumers Lawyers. Keep an eye on the website: a downsized version of the ad will run there.

Meanwhile, planning is accelerating for a 30-minute radio program on civil liberties. It will air weekly in the national capital, with either the full version or a 15-minute, pared-down highlights version being available to community, academic and rural/regional radio throughout Australia.

CLA members Norman Abjorensen will co-host the program with CLA CEO Bill Rowlings. They will be helped by radio presenter and CLA member, Bill Tully. Radio 2XX will help with production.

CLA pushing for breakthrough on Territorians' rights

CLA is creating a cross-party coalition of Senators and Members of the Australian Parliament to introduce a private members' bill ending the executive government's ability to overturn the vote of a Territory parliament.

It is hoped new legislation can be passed by the federal parliament in time for the 20th anniversary of 'self-government' in the ACT, which occurs in May 2009. More details will be announced in September.

CLA's initiative follows two occasions in the past decade when the federal parliament or the executive government have effectively vetoed legitimate legislation passed by the NT and the ACT:

- a decade ago, a private member's bill introduced by Kevin Andrews (Lib, Menzies, Vic) and passed by the parliament negated euthanasia legislation already passed by the NT; and
- in 2008, the ACT Legislative Assembly was over-ruled by the Governor-General, acting on the advice of the executive, when it approved legislation for civil unions.

The CLA move would go some of the way towards restoring full electoral rights to Territorians, though they would not have the same voting rights as Australians living in States.

There is a further anomaly concerning the voting rights and weights of Territorians in House of Representatives elections, but this problem is proving more difficult to resolve. We would like to hear from anyone with a suggested solution for equalising voting rights.

LAST WORD: Aquatic sports by any other name...

Late in 2007 UK writer, polemicist and fierce supporter of the US-led invasion of Iraq, Christopher Hitchens, tried in an article for online magazine *Slate* to distinguish between what he called techniques of "extreme interrogation" and "outright torture". Critics said: "Try waterboarding, then comment." And he has – see last item in this newsletter.

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Debus to hold criminal justice forum

CLA is nominating three people - two experienced lawyers and a student – to attend a national forum on federal criminal justice in Canberra in September.

The forum is a chance to reconstruct how Federal criminal law and procedure is developed, according to Home Affairs Minister, Bob Debus, who is sponsoring it. However, it will not canvass national security or anti-terrorism laws, so the remit is closely curtailed to avoid current controversies.

Topics may include:

- new technology and crime threats
- crime prevention
- victim's rights
- police investigations, powers and procedures
- trial procedure
- forfeiture of assets
- sentencing, and
- management of federal offenders.

People can submit ideas or present a paper, with participants selected from nominations to an independent steering committee.

The kinds of proposals open for consideration include proposals for

- changes to existing laws
- creation of new laws
- other policy responses to criminal justice challenges, and
- improving the process of law reform

The Federal Forum is at Old Parliament House on 28-29 September. Info: www.ag.gov.au/forum

The Law Council and NSW Bar are holding a preliminary forum in Sydney in early September – see 'Dates' below for contact details.

Refugees at last come in from the cold

Immigration Minister Senator Chris Evans announced last month the end to mandatory detention of asylum seekers.

In doing so, he laid out the Rudd Government's 'seven key' immigration principles:

1. Mandatory detention is an essential component of strong border control.
2. To support the integrity of Australia's immigration program, three groups will be subject to mandatory detention:
 - a. all unauthorised arrivals, for management of health, identity and security risks to the community;
 - b. unlawful non-citizens who present unacceptable risks to the community; and
 - c. unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre (IDC).
4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.
5. Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.
6. People in detention will be treated fairly and reasonably within the law.
7. Conditions of detention will ensure the inherent dignity of the human person.

<http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm>

Victoria looks set to open access to public data

Victoria has announced an inquiry into access to Victorian public data and information in what might be a breakthrough in access to publicly held data in Australia.

Proponents of greater access, at minimum cost, to publicly-sourced data argue that open access multiplies benefits to a state's or nation's economic development.

While the data holdings inquiry does not necessarily have implications for Freedom Of Information provisions in Victoria, it would be welcome if it signifies a change in government attitude and culture to reaping the benefits of greater openness in general.

Victoria's Economic Development and Infrastructure Committee has released a discussion paper, and is calling for submissions by 22 August 2008. They are to report to the Victorian Parliament by 30 June 2009 on the potential application of open content and open source licensing to Victorian Government information. Specifically, they are required to

- a) report on the potential economic benefits and costs of maximising access to and use of Government information for commercial and/or non-commercial purposes, including:
 - i. public policy developments elsewhere in Australia and internationally; and
 - ii. the types of information that will provide the greatest potential benefit;
- b) consider whether the use of open source and open content licensing models, including Creative Commons, would enhance the discovery, access and use of Government information;
- c) report on the use of information and communication technology to support discovery, access and use of Government information; and
- d) identify likely risks, impediments and restrictions to open content and open source licensing of Government information, including impacts on and implications for any existing cost recovery arrangements.

http://www.parliament.vic.gov.au/edic/inquiries/access_to_PSI/EDIC_PSI_Discussion_Paper.pdf

CLA's media spokesman becomes Master

CLA's media spokesperson Dean Prail (*pictured*) was last month awarded his Master of Laws degree from the Australian National University.



"I congratulate him wholeheartedly on such a magnificent effort, achieved with one young child in the house and a new one arriving just three months ago. Such an achievement is a great joint effort by Dean and his wife, Vanessa," CLA President, Dr Kristine Klugman, said.

Dean's rise up the law ladder is made even more meritorious by it being his second career: he started as an apprentice electrician, qualifying and working in that trade for some years before turning to the law. He begins a new role with Comcare this month.

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Mexicans to restrict supply of 'death in a bottle'

Mexican authorities look set to crack down on sales of Nembutal, the euthanasia drug used by veterinarians to kill animals and the end-it-all choice for many Australians.

A report in the New York Times on 21 July publicised how freely available Nembutal and other proprietary versions of the drug had been in Tijuana, just across the border from the USA, until recently. Reporter Marc Lacey called it "death in a bottle, a liquid more potent than even the strongest tequila". The drug, pentobarbital, literally takes a person's breath away, the article said.

But, Lacey reported, Mexican authorities were now looking to restrict its sales to people with a vet's prescription only. The report quoted Australian pro-euthanasia campaigner Dr Philip Nitschke, and excerpts from *The Peaceful Pill Handbook*, his co-authored work which is banned in Australia. The book has photos of pentobarbital brands so people can be sure of what they are asking for.

The NYT report also highlighted current cases in Australia where people have been convicted for making Nembutal available to a man with dementia who wanted to die, and did. The convictions are being appealed.

<http://www.nytimes.com/2008/07/21/world/americas/21tijuana.html?th&emc=th>

EDITORIAL: More dangerous than a pedophile

Society appoints judges and prison experts and police to manage pedophiles. The appointed people investigate, charge, convict, sentence, imprison, release them when they've served their time, and manage them back into the community.

Society is at risk when anyone breaks the law: if a pedophile does so, or if police do, or corporate crooks, or bkie gangs, or politicians, or speeding drivers, or mafia criminals, or vigilantes.

Vigilantes are more dangerous than a pedophile: a pedophile can be watched and constrained by authorities, but vigilantes are viral. Why should they stop at pedophiles? There are other offences against children: smacking, bullying, bashing, not looking after them properly. Why not take the kids away from 'bad' parents, and give them to vigilante parents, who know what's best. And why stop at children's matters?

When vigilantes hold sway, society and the rule of law have broken down. Vigilantes are not instruments of justice, they're architects of anarchy.

If you were an undiscovered pedophile, or child-basher, or bully, or not-coping parent, do you know where it would be safest to hide? Camouflage yourself amongst vigilantes. The next time you see vigilantes on TV, see if you can spot who's not protesting, but hiding.

– Bill Rowlings, CEO, Civil Liberties Australia

Court allows ASIO and A-G to foment fear, without judicial test

The Federal Court last month confirmed the right of the Australian Government to slash and burn the basic human rights of Australian citizens.

Syed Mustapha Hussain, a 24-year-old Australian citizen who went to school in Melbourne for more than a decade, then enrolled in a bachelor of medical science degree course at La Trobe University. He studied there for a semester before taking up a scholarship to the Islamic University of Medina in Saudi Arabia.

In 2005 he returned to Australia for a holiday and, while here, ASIO interviewed him. His passport was then cancelled for a reason or reasons never made public. It is thought ASIO said that Hussain might get involved overseas with people who would pose a security risk to Australia or another country.

Hussain applied for a new passport, then asked for Administrative Appeals Tribunal review of the rejection, but he ran into a dreaded certificate from A-G Philip Ruddock that prevented ASIO's 'evidence' being seen by the courts, or by Hussain's lawyers.

"So here we have hearings, whose outcome affects the liberty and movement of a citizen, large parts of which are held in secret, with the citizen's counsel removed from the proceedings and the essential documents kept from them," wrote Richard Ackland in the Fairfax press.

ASIO themselves have pointed out – in the Haneef case – how damning and misleading can be wrong analysis by one agency (AFP in the Haneef case) if secrecy rules. Perhaps it's time for ASIO to be required to make out its case before one or more judges before a man is condemned on secret information.

No A-G should ever absolve ASIO from proving its point beyond mere suspicion. Australia's 'fair go' attitude demands that our police and security forces do more than condemn a citizen on fomented fear: they must be obliged to at least make 'facts' 'public' before one or more judges.

<http://www.smh.com.au/news/opinion/meanwhile-down-south-one-slips-past-the-keeper/2008/07/17/1216163057648.html>

French to be Australia's new CJ

Robert Shenton French is the new Chief Justice of the High Court of Australia from 1 September. He is Australia's 12th CJ, but the first from WA. He comes to the job from serving for 22 years as a Federal Court justice.

French CJ's first degree in 1968 was Science (Physics) from the U. of WA, but he quickly morphed that into an LLB, graduating in 1971. He was a founder of the WA Aboriginal Legal Service and first president of the National Native Title Tribunal.

He has had a fairly conventional career path for a judge, but in recent years has branched out by accepting appointments as non resident judge of the Supreme Court of Fiji and an additional judge of the ACT Supreme Court (though he never sat there). He has also been a deputy president of the Australian Competition Tribunal since 2005 and a part-time commissioner of the Australian Law Reform Commission since 2006.

Retiring CJ Murray Gleeson finishes on 29 August.

For an insight into French's thinking - including the 'ease' of getting appointed to the High Court – see: [French sets pollies straight on tough judicial gigs](#) at <http://www.cla.asn.au/index.php>

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Report recommends new justice, Indigenous-style

An ACT report into Indigenous justice recommends greater use of prevention, diversion and rehabilitation to reduce the over-representation of Indigenous people in the criminal justice system.

The report, *Circles of Support: Towards Indigenous Justice - Prevention, Diversion and Rehabilitation*, was developed by the ACT Council of Social Service (ACTCOSS) and the Aboriginal Justice Centre (AJC).

It seeks to identify reasons for Indigenous over-representation in the criminal justice system; highlight gaps in existing service provision and unmet need; and make recommendations for change.

The report makes a number of recommendations, which include employing Aboriginal Liaison Officers at ACT Courts and for ACT Legal Aid; designing an Aboriginal Recruitment and Career

Strategy for justice agencies; expanding Indigenous community dispute resolution options; and designing improved sentencing options such as bush rehabilitation programs.

Governments consider 'digital health card'

The ACT Government, facing its four-yearly election on 18 October, is floating the idea of a digital health card for its citizens in four years' time.

The ACT Government is considering issuing Canberrans with health cards which will digitally track their medical history, according to Health Minister Katy Gallagher. Her disclosure seems to indicate that governments throughout Australia are working to a 2012 timetable for a new health card, long-mooted to replace and/or improve on the Medicare card, which is long-past its use-by date in technology terms.

The national project is under the control of NEHTA, the National E-Health Transition Authority, which is "a not-for-profit company established by the Australian, State and Territory governments to develop better ways of electronically collecting and securely exchanging health information".

<http://www.nehta.gov.au/>

Minister Gallagher said patient records were dispersed across a range of paper-based data systems. "All the evidence is that it will improve the safety of patients, it will improve the experience of patients because it really puts all their information in one place."

Ms Gallagher hopes the card will be introduced within four years. "It really is just around your individual health record and putting it in an electronic format and then patients in future will be able to access their own records, usually online," she said on ABC Radio Canberra.

CLA has written formally to her, asking to be included in all consultations around privacy, data ownership and integrity, as well as on the required monitoring group to keep a close eye on how a digital health card operates in practice.

<http://www.abc.net.au/news/stories/2008/07/28/2316429.htm>

Key CLA initiatives in July 2008 were:

Media:

ABC Radio News NSW: world youth day, amendments police powers, annoyance or inconvenience, on the spot fines (Neena Olle);

ABC Radio News: re undercover police powers in ACT (live interview, Kathleen Dyett); and

ABC Radio News: concerns over undercover police activities (Kathleen Dyett).

Meetings:

Sexual Assault Reform Program legislation, ACT:

Stephen Lawrence, advisor to ACT AG Simon Corbell

Deb Foskey MLA, Greens

Richard Mulcahy MLA, Independent

Bill Stefaniak MLA , Liberal

CCTV

Bill Brodie, project leader

Charter of rights/responsibilities:

Sen Kate Lundy (*pictured*), plus ABCC legislation, IT issues, sport

Sen Gary Humphries, plus federal over-ride on Territory laws, mental health issues in relation to courts/Canada

Bob McMullan, Parliamentary Secretary for International Development Assistance, plus anti-terror laws amendment, Pacific Island issues, declining human rights

standards in various countries

General:

Justice Hilary Penfold: update on rights to protest outside Parliament House, mental health
ANU students: re research, update on activities
Southern Cross Ten production house: making CLA advertisement
Dr Norm Abjorensen: re CLA Liberty Radio

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Administrative/Web:

Treasurer Kevin Pople changed banking arrangements, adding Westpac as main bank
Lance Williamson and Francis Markham are conferring re website management, adding electronic voting

Networking:

Mishell Warner-Camp, Alice Central Australian Womens Legal Services
HREOC re role of Australian companies in protecting and promoting human rights
A-G NGO forum: for CLA inclusion
South Australia: Brian Deegan ex magistrate re death penalty and Bali 9

Inquiries - formal and from public:

Immigration detention: considering submission
Whistleblowing: considering submission
Rights of the child: considering submission
Reforms to court jurisdiction, etc: CLA submission, plus member submissions
Refusal of entry to USA
ASIO harassment of Masters student
(members interested in working on any of these issues, please contact the secretary by email: secretary@cla.asn.au)

We are particularly keeping watch on:

- Police threats: Toowoomba, Qld
- Coroners' courts matters/police deaths in custody, WA
- Defence: treatment of parents of injured/killed military personnel, Queensland and nationally
- Charter of rights, Tasmania
- 'Bikie' legislation: SA, WA, Qld
- Rights of cigarette retailers: NSW, SA
- Sexual violence 'reform' legislation, ACT

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Disabilities convention ratified: Australia last month ratified the UN Convention on the Rights of Persons with Disabilities, joining 29 other countries throughout the world in a move that aims to promote a global community in which all people with disability are equal and active citizens.

FOI reforms: The federal government last month announced the abolition of "conclusive certificates" which gave ministers sweeping powers to block access to federal documents requested under Freedom of Information laws. Full story
<http://www.abc.net.au/news/stories/2008/07/22/2310872.htm?section=justin>

Whistleblower inquiry opens: The House of Representatives (HoR) Standing Committee on Legal and Constitutional Affairs is inquiring into whistleblowing protections within the Australian Government public sector to develop a preferred model.

Submissions are requested by Friday 8 August 2008, the Democratic Audit of Australia reports.

<http://www.aph.gov.au/house/committee/laca/whistleblowing/index.htm>

Constitutional consequences: *Reforming our Constitution*, a new report from the House of Representatives' Legal and Constitutional Affairs Committee, examines consequences of lack of reform to the Constitution in recent decades. It recommends that all inter-governmental agreements are referred to a parliamentary committee for scrutiny, and advocates greater public debate on constitutional reform, particularly on issues such as setting out rights and protections as well as practical national governance structures.

<http://www.aph.gov.au/house/committee/laca/constitutionalreform/report.htm>

e-Security being reviewed: There is to be a whole-of-government review of e-security, A-G McClelland and Comms/IT Minister Conroy announced last month. The aim is to develop a national framework for securing Australia's electronic networks, covering public and private sectors. Further details: www.ag.gov.au/eseecurityreview

IT operators want to keep things mum: A staggering 96 per cent of technology decision makers did not think the public should be told when data breaches occurred, Karen Dearné wrote in *The Australian's* IT section last month. She was reporting on a survey by email and web security firm Clearswift (208 respondents, taken April 2008). About 82 per cent of respondents did say affected customers should be informed, and only 28 per cent opposed mandatory data breach notification laws. <http://www.australianit.news.com.au/story/0,24897,24019443-24169,00.html>

Privacy law in NSW: Jason Arditi / Research Service, Parliament of NSW, has produced a briefing paper looking at the development of personal information privacy law in the State. It examines the historical context in which privacy emerged as a significant concern that warranted statutory protection and regulation.

http://www.apo.org.au/linkboard/results.shtml?filename_num=223182

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INTERNATIONAL

Group forms in Washington to investigate 'dark revelations'

Salon, the USA online news magazine, last month hinted a group forming in Washington would investigate "dark revelations" about huge abuses of power by the George W. Bush administration.

"A sweeping new inquiry into White House malfeasance" would be modeled on the Church Committee congressional investigations in the 1970s. It would investigate possibly illegal surveillance using a top-secret, sophisticated database," *Salon* reported.

"The parameters for an investigation were outlined in a seven-page memo, written after the former member of the Church Committee met for discussions with the American Civil Liberties Union, the Center for Democracy and Technology, Common Cause and other watchdog groups.

"Key issues to investigate would include the National Security Agency's domestic surveillance activities; the Central Intelligence Agency's use of extraordinary rendition and torture against terrorist suspects; and the US government's extensive use of military assets – including satellites, Pentagon intelligence agencies and U2 surveillance planes – for a vast spying apparatus that could be used against the American people."

The *Salon* report says a prime area of inquiry would be the Bush administration's alleged use of a top-secret database dating back to the 1980s and known to government insiders as 'Main Core'. The database reportedly collects and stores, without warrants or court orders, the names and detailed data of Americans considered to be threats to national security.

It reportedly can be interrogated by the PROMIS system, used worldwide by police and security officials, including the Australian Federal Police. PROMIS stands for Prosecutors' Management Information System,

Salon reports that an article in *Radar* magazine in May, citing three unnamed former government officials, reported that "8 million Americans are now listed in Main Core as potentially suspect" and, in the event of a national emergency, "could be subject to everything from heightened surveillance and tracking to direct questioning and even detention."

"You have to go back to the McCarthy era to find this level of abuse," says Barry Steinhardt, the director of the Program on Technology and Liberty for the ACLU. "Because the Bush administration has been so opaque, we don't know what laws have been violated."

http://www.salon.com/news/feature/2008/07/23/new_churchcomm/print.html

The agency name that dares not be spoken

The name of the Central Intelligence Agency cannot be spoken in the US 'war' crimes trial at Guantanamo Bay.

No records of the agency's interrogations of Salim Ahmed Hamdan can be subpoenaed, and no agent can be called to testify about what he or she learned from the man who was allegedly Osama bin Laden's former driver.

When defence attorney Harry H. Schneider Jr. attempted to demonstrate how many interrogations Hamdan had undergone in the months after his November 2001 arrest – at least 40 – he couldn't list the CIA along with more than a dozen other agencies, including the US Secret Service and what was then known as the Immigration and Naturalization Service.

The prohibition against naming the CIA came in a "protective order" issued by the court at the government's request. The tribunal's deputy chief prosecutor, Army Col. Bruce A. Pagel, couldn't say which agency sought the shield or what arguments were made to justify it.

"It's a bit absurd to go through an entire trial pretending that the CIA doesn't exist," said Matt Pollard, a legal advisor for Amnesty International, present to monitor the proceedings. "The CIA plays a role with the detainees at Guantanamo Bay that has never been fully acknowledged, and the bottom line is that national security should never be claimed against any evidence of torture or human rights violations."

– a report by Carol Williams of the Los Angeles Times, 27 July 2008

http://www.latimes.com/news/nationworld/nation/la-na-gitmo27-2008jul27_0,3749497.story?page=1

UK picks human rights activist to be DPP

One of the UK's leading human rights lawyers is to become the new director of public prosecutions in a move described in legal circles as bold, exciting and encouraging.

Keir Starmer, 45, who challenged the UK Government over the reach of its anti-terror legislation and took on the British military over abuse of prisoners held in Iraq, will head up the Crown Prosecution Service from November.

Starmer, 45, is the head of Doughty Street Chambers. He led the legal challenge in the Lords which ruled that evidence obtained under torture was inadmissible in court. He also acted for two terror suspects in another Lords case last year which declared the control order system for terror suspects was unlawful under human rights law.

He is a director of the Death Penalty Project which offers free legal representation. Starmer has obtained rulings that the death penalty is unconstitutional in the Bahamas and Malawi and brought a class action in Uganda, which overturned the death penalty and saved the lives of 417 people.

Shami Chakrabarti, director of Liberty UK, said: "He is a first rate lawyer and I have no doubt that will come first. But it can't hurt that he has a good human rights grounding."

<http://www.guardian.co.uk/uk/2008/jul/26/law.humanrights>

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Women to gain new defence re premeditated killing of their partner

People who kill their partners after years of abuse would be able to use a new defence that they had acted in response to extreme "words and conduct", under British Government plans to change the law on murder.

The proposals from the Ministry of Justice would also provide a defence for women in domestic violence cases who kill their partners in premeditated attacks. They would be able to rely on a defence of "fear of serious violence" but would not have to show they acted spontaneously.

The reforms, triggered by concerns about the different treatment of men and women in cases of domestic violence, would mean the abolition of the 17th century defence of provocation and a more precise medical definition of diminished responsibility.

At the centre of the reforms is tackling gender inequality: the view that it is too easy for men to say they killed female partners because of infidelity, or the ending of a relationship, while women with abusive partners find it hard to mount a similar partial defence.

<http://www.guardian.co.uk/uk/2008/jul/29/law.ukcrime>

Governments asked to ratify treaty protecting UN staff

Five more governments are being asked to join 14 countries which have ratified the 2005 Optional Protocol (OP) to the 1994 Convention on the Safety of UN and Associated Personnel.

The countries are Austria, Botswana, Gabon, Germany, Kenya, Liechtenstein, Monaco, Netherlands, Norway, Slovakia, Spain, Sweden, Switzerland and Tunisia.

The 2005 OP provides legal protection to emergency humanitarian assistance staff and to those providing political and development assistance in peace-building. It extends the legal protection offered by the 1994 Convention, which only applies to those involved in peacekeeping operations.

The convention has been ratified by 84 member states, or 43% of the UN membership. The Optional Protocol is not yet in force, as eight ratifications are still required for its coming into effect.

Report: <http://www.un.org/apps/news/story.asp?NewsID=27160&Cr=humanitarian&Cr1=personnel>

CLA is helping a final year Law student, Jessica Cumming, to undertake Honours studies towards a similar Convention and Protocol to protect journalists, also for international ratifying.

Alston blasts USA for violating rule of law

After a two-week fact-finding tour of US prisons, an Australian human rights investigator operating on behalf of the UN has blasted the Bush Administration for the country's flawed justice system and continued violations of the rule of law.

Professor Philip Alston, the UN special rapporteur on extra-judicial, summary and arbitrary executions, alleges racism in applying the death penalty in the USA, and criticises a lack of transparency over prisoner deaths in the Guantanamo Bay jail.

Alston, a professor at the New York University School of Law, also complains about the non-availability of information on civilian casualties in Iraq and Afghanistan, and the refusal of the US Justice Department to prosecute private security contractors who commit unlawful killings.

<http://www.informationclearinghouse.info/article20222.htm>

UK Govt advised not to believe US President on torture

A parliamentary committee last month advised the British Government not to accept US assurances that it does not torture people.

The Foreign Affairs Committee, in its 214-page *Human Rights Annual Report 2007-8*, advised against taking at face value statements from President George Bush and Secretary of State Condoleezza Rice that the USA does not torture people.

The committee said the US director of national intelligence, Michael McConnell, had admitted that 'water-boarding' was used on terror suspects. British Foreign Secretary David Miliband had told parliament twice in 2008 that the simulation of drowning during interrogation is torture.

The committee also called for Britain to carry out an "exhaustive analysis" of US government interrogation techniques and seek guarantees about whether US flights carrying terror suspects used British airspace or airports. The USA has admitted that two 'rendition' flights landed on Diego Garcia, a British island in the Indian Ocean leased to the USA as an air base.

Such flights should not use British territory or airspace, even if no detainees were on board,.

<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmfaaff/533/533.pdf>

Tamil journalist's detention without charge continues

A Sri Lanka court on 30 June continued detention without charge of journalist J.S. Tissainayagam and rejected his appeal for transfer away from supervision of the Terrorist Investigation Division (TID) into normal custody.

Tissainayagam, editor of the *OutreachSL.com* news website, had been held by TID without charge for 116 days, having been arrested on 7 March while visiting N. Jesiharan, owner of E-Kwality Printers, and his partner Valamarthi, who were also detained by TID officers in early March. They also remain in TID custody. No-one has been charged with an offence, and no evidence has been brought before a court.

Tissainayagam's lawyer, Subandiran, argued that under Sections 19 and 21 of the Emergency Regulations Act, detainees must be transferred to normal custody (that is, removed from TID special detention into general detention) when 90-day detention order ends. The magistrate's ruling in Colombo's Court 1 means that the senior Tamil journalist will be kept in TID detention until 5 September. – from International Federation of Journalists' media release

CLA is concerned that journalists undertaking normal reporting and investigation tasks may be being targeted by security and military forces aiming to maintain heightened fear in the country.

In another report last month, officials from the Urban Development Authority are said to have assaulted *Daily Mirror* journalist Yohan Perera and photographer Pradeep Dilrukshana. Perera was hospitalised with injuries from the attack. TV journalist Dushantha Manoj from Sirasa TV was also reportedly harassed by the officials.

The media people were reporting on the alleged illegal demolition of hundreds of homes in Colombo for the South Asia Association for Regional Cooperation (SAARC) meeting being held in Colombo on August 2 and 3.

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Lords say halting BAE arms corruption inquiry was lawful

The House of Lords last week ruled that the Serious Fraud Office acted lawfully in stopping an inquiry into bribery allegations during an arms deal between Saudi Arabia and BAE Systems.

The five law lords unanimously overturned a high court decision that PM Tony Blair's government and the SFO caved in too readily to threats by Saudi Arabia over intelligence sharing and trade.

Senior law lord, Lord Bingham, said the SFO's former director, Robert Wardle, was confronted by an "ugly and obviously unwelcome threat". He said Wardle's decision to shelve the inquiry involved "no affront to the rule of law". Faced with threats of withdrawing anti-terrorism cooperation which could have put British lives at risk, "it may indeed be doubted whether a responsible decision-maker could have decided otherwise," Bingham said.

The Campaign Against Arms Trade (CAAT) and the anti-corruption campaigners Corner House had sought a review of Wardle's decision to drop the investigation into allegations of bribery and corruption in the \$90bn Al-Yamamah arms deal agreed by the Thatcher government in 1985.

The SFO was investigating allegations that BAE – one of the world's largest arms makers – ran a \$125m "slush fund", offering sweeteners to Saudi Arabia officials in return for lucrative contracts.

<http://www.guardian.co.uk/world/2008/jul/30/bae.armstrade>

AG Mukasey shows how far the Bush Govt wants to bend the rule of law

Reacting to the US Supreme Court's latest ruling on detainees' rights, Attorney General Michael Mukasey last month urged Congress to strictly limit judicial options.

The US Government's highest legal officer said: "The responsibility of moving forward rests with the Legislative and Executive Branches as much as it does with the judiciary." He was speaking at a forum at the American Enterprise Institute, a conservative think tank in Washington.

The Mukasey plan of legislation, clearly based on fears about what the courts might do with the habeas cases filed by more than 200 detainees, involves these key points, in summary:

- Congress would bar courts ordering that any detainee be released into the USA, or brought into the USA for legal proceedings.
- A new law should curb access by detainees (and perhaps their lawyers) to classified intelligence information about the captives.
- The proposed law should forbid the courts from reviewing any habeas challenge by a detainee facing war crimes trial, until a trial was over.
- The measure should reaffirm the government's power to hold foreign nationals as detainees as long as the 'War on Terror' continues.
- Congress should require that only one District Court judge have exclusive authority over all detainee challenges, deciding 'common legal issues...in a coordinated fashion'.
- A new law should restrict detainees solely to habeas challenges, repealing the power given in 2005 to the DC Circuit Court to conduct civilian review of military detention decisions. No other legal options but habeas would remain, under the plan. – supplied by Ian Mathews

<http://www.scotusblog.com/wp/mukasey-curb-courts-powers-on-detainees/print/>

Court throws out 'absurd declaration' by US Government

In the first review of secret government evidence for holding a detainee at Guantánamo Bay, Cuba, a US federal appeals court ruled that accusations against a Muslim from western China held for more than six years were based on unverifiable claims.

With derision for the Bush Administration's arguments, a three-judge panel said the government contended that its accusations against the detainee should be accepted as true because they had been repeated in at least three secret documents. The court compared that to the absurd declaration of a character in the Lewis Carroll poem *The Hunting of the Snark*: "I have said it thrice: What I tell you three times is true."

"This comes perilously close to suggesting that whatever the government says must be treated as true," said the panel of the Court of Appeals for the District of Columbia Circuit.

The unanimous panel overturned as invalid a Pentagon determination that the detainee, Huzaifa Parhat, a member of the ethnic Uighur Muslim minority in western China, was properly held as an enemy combatant. – from a William Glaberson article, NY Times, 1 July 08

<http://www.nytimes.com/2008/07/01/washington/01gitmo.html?ex=1215576000&en=9131d7524ffb72a5&ei=5070&emc=eta1>

Fiji supremo to bring down new law governing media

Fiji's military leader and self-declared Prime Minister, Mr Frank Bainimarama, last month announced that all laws pertaining to freedom of the press would be consolidated into one media statute.

His announcement came less than 24 hours after he told Media Council chair Daryl Tate that such legislation would not be introduced, according to a report by the International Federation of Journalists.

The IFJ is calling on Fiji's military-led interim Government to respect and uphold the independence of the media, freedom of expression and diversity of opinion as essential elements of a return to stable democratic processes in Fiji. Mr Bainimarama is reported to have said the legislation will involve changing a code of ethics and professional standards for journalists, and establishing a new tribunal to hear appeals on complaints lodged with Fiji's Media Council.

Illegals do jail time, then are deported

People caught working illegally in the USA are now facing criminal charges that include aggravated identity theft, which can bring a hefty prison sentence...before being deported.

After a raid at the Agriprocessors plant in Postville, Iowa, more than 250 workers were sentenced to five months in prison.

Immigrant rights groups and some members of Congress are challenging the practice in the Supreme Court.

Rights groups, defence lawyers and even some judges are questioning the Bush administration's strategy. More than 900 people have been charged with 'identity theft' crimes this year, instead of just being deported as was the operating procedure previously.

<http://www.npr.org/templates/story/story.php?storyId=92830188>

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SIGNS OF THE TIMES:

If traveling to the USA on the new electronic travel authority, this is what you agree to:

Waiver of Rights

As a condition of each admission into the United States under the Visa Waiver Program, the submission of biometric identifiers (including fingerprints and photographs) during processing upon arrival in the United States shall reaffirm the waiver of any rights to review or appeal of a U.S. Customs and Border Protection Officer's determination as to admissibility, or to contest, other than on the basis of an application for asylum, any removal action arising from an application for admission under the Visa Waiver Program.

4,000 US combat deaths, and just a handful of images

A freelance photographer in Iraq has been barred from covering the US Marines after he posted internet photos showing several dead troops.

The banning is a growing effort by the American military to control graphic images from the war, media people say.

Zorih Miller took images of marines killed in a 26 June suicide attack and posted them on his web site, and was subsequently forbidden to work in Marine Corps-controlled areas of the country. Maj. Gen. John Kelly, the Marine commander in Iraq, is now seeking to have Mr. Miller barred from all US military facilities throughout the world.

Images of Australian military people in Iraq and Afghanistan are even more closely controlled than those of Americans. The Australian military frequently fail to even mention major incidents which occur, with details sometimes leaking out months later. Still and moving images of Australian troops are sanitised, Defence Force-provided versions only.

http://www.nytimes.com/2008/07/26/world/middleeast/26censor.html?_r=2&pagewanted=1&th&emc=th&oref=slogin

Editorial: The censors lose in court: published 28 July 2008, *New York Times*: The \$550,000 fine that the (US) Federal Communications Commission imposed on CBS for Janet Jackson's "wardrobe malfunction" during the 2004 Super Bowl was a serious setback to freedom of expression. A federal appeals court threw out the fine last (month), ruling that the agency violated its own standards for what constitutes indecency. It is a well-reasoned decision, and we hope that the Supreme Court, which will soon be taking up a similar case, will take as strong a stand for free speech. Read more... <http://www.nytimes.com/2008/07/28/opinion/28mon3.html?th&emc=th>

Foreign news coverage drops: Almost two-thirds of American newspapers publish less foreign news than they did three years ago, nearly as many print less national news, and despite new

demands on newsrooms like blogs and video, most have smaller news staffs, according to a new study. The study, by the Pew Research Center and Tyler Marshall, a former foreign correspondent for *The Los Angeles Times*, is based on a written survey of the top editors at 259 newspapers of all sizes, and on interviews with a sampling of those editors. – *supplied by Lance Williamson*.
<http://www.nytimes.com/2008/07/21/business/media/21papers.html?th&emc=th>

Bush approves death sentence for soldier: President Bush last month approved the first execution by the US military since 1961, of an Army private convicted of a series of rapes and murders more than two decades ago. Private Ronald A. Gray was convicted by court-martial for two killings and an attempted murder at Fort Bragg, North Carolina. The last military execution was carried out by hanging until 1961. There are six people on the military's death row at Fort Leavenworth, Kansas, but Private Gray was the first whose sentence went to the president. It can still be appealed, meaning an execution is not expected to occur soon, possibly not during Mr Bush's remaining months in office.

Chinese journalist jailed: A Nanjing court has sentenced Chinese journalist Sun Lin to four years' imprisonment for "disturbing the social order" and "concealing a weapon". Sun, who writes for US-based website Boxun News under the pen name Jie Mu, and his wife He Fang were arrested on 30 May 2007, after reporting on civil rights violations in Nanjing and other regions of China. Sun was originally charged with four charges, none relating to his reporting, which were later reduced to two, namely "concealing a weapon" and "disturbing the social order". He Fang was charged with "disturbing the social order" and received a suspended jail sentence on 26 June in a closed-door hearing. She has returned home but refuses to discuss the case.

Trying to track down phone tracking: Since November 2007, the American Civil Liberties Union has been trying through Freedom of Information to get the US Department of Justice to disclose how often police and security agencies track people by triangulating their mobile phone location, which can be accurate down to about 100 metres. In July the ACLU and the Electronic Frontier Foundation filed a case in federal court to try to force the Justice Department to comply with the FOI request, which it has so far refused to do. <http://bits.blogs.nytimes.com/2008/07/01/is-the-government-tracking-us-through-our-cellphones-lawsuit-seeks-answers/?ex=1215662400&en=cefc1571dc5db009&ei=5070&emc=eta1>

Roma are outcasts in Rome: Since being elected in May, Silvio Berlusconi's rightwing Italian Government has appointed three special commissioners to deal with the Roma in each of Italy's three biggest cities – Naples, Milan and Rome. It has also ordered fingerprinting of the country's Gypsy population, including minors, who make up more than half of the estimated 150,000 Roma in Italy. The European Commission has asked the Italian government for more details on the census; last month the European Parliament approved a motion condemning it as an act of discrimination banned by the European convention of human rights. Berlusconi last week told the commission president, José Manuel Barroso, that the information was being collected to ensure Gypsy children went to school. <http://www.guardian.co.uk/world/2008/jul/21/italy.race>

*** For people in Canberra: *Tackling Discrimination: The Roma of Eastern Europe*, lecture by Professor Jack Greenberg, of Columbia University, Tuesday 12 August, 5.30pm Sparke Helmore Lecture Theatre 1, ANU; free and open to the public. RSVP to Yee-Fui Ng E: ngy@law.anu.edu.au by 8 August



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Worldwide governance indicators launched: The seventh update of the Worldwide Governance Indicators (WGI) shows developing country governments making gains in controlling corruption, with some matching rich country performance in overall governance measures. Over a dozen emerging countries, including Slovenia, Chile, Botswana, Estonia, Uruguay, Czech Republic, Hungary, Latvia, Lithuania, Mauritius, and Costa Rica score higher on key dimensions of governance than industrialized countries such as Greece or Italy. The WGI, compiled by the World Bank Institute and the Development Research Group, covers 212 countries and territories, drawing

on 35 different data sources

<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:21815054~pagePK:34370~piPK:34424~theSitePK:4607,00.html>

UK bans youth restraints after deaths: Physical restraint methods on young people in secure training centres (STCs) were outlawed last month by the British Court of Appeal. Three judges decided human rights were being breached by the controversial methods, introduced last year at STCs which hold 12- to 17-year-olds. The rules now abandoned were brought in after the deaths in custody in 2004 of Gareth Myatt, aged 15, who suffocated while being restrained, and Adam Rickwood, aged 14, for committed suicide after a restraint episode.

<http://www.guardian.co.uk/society/2008/jul/28/youthjustice.prisonsandprobation>

Gbay gets its web days in court: After six and a half years, the DC District Court website has finally added a webpage for legal cases involving Guantanamo Bay prisoners.

<http://www.dcd.uscourts.gov/public-docs/gitmo> Meanwhile, the US Administration has appealed against a ruling that it must give lawyers 30 days notice if it plans to move the detainees they represent from Gbay to another location.

DATES:

5 August, Sydney: Law Council of Australia and NSW Bar Association federal criminal law conference, Sydney Hilton. Details: Katie Hall E: khall@nswbar.asn.au

12 August, Canberra *Tackling Discrimination: The Roma of Eastern Europe*, lecture by Professor Jack Greenberg, of Columbia University, Tuesday 12 August, 5.30pm, Sparke Helmore Lecture Theatre 1, ANU; free and open to the public. RSVP to Yee-Fui Ng E: ngy@law.anu.edu.au by 8 August

18 & 19 August 2008, Canberra: *Public Affairs in the Age of Rudd*, examining political campaigning, 2020 summit, the climate of disclosure, lobbying, the relationship between ministers and departments and the 24/7 Rudd work ethic. <http://publicaffairs.alliance.org.au/the-news/latest-news/-canberra-conference>

21-23 August, Brisbane: UN Assn of Australia national conference, Parliament House, Brisbane. Sessions on climate change, life long education, governance, peace, conflict and resolution, human rights, sustainability and global compact. Info: UNAA Qld: unaabalmain@optusnet.com.au on ph/fax 07 32541096.

21-23 Aug, Davao City, Philippines: *Media in Asia: A Tool for Human Rights Education and Monitoring*. Exposing mass communication educators and practitioners to the complex interconnectedness between media and human rights in Asia. <http://www.asianmediacongress.org/conference.htm>

3-5 September, Paris, France: 61st Annual DPI/NGO Conference commemorating 60th anniversary of the Universal Declaration of Human Rights

7 Sept, Sydney: NHMRC and ALRC public meeting on online DNA tests, 6-8pm, State Library of NSW. Info: http://www.alrc.gov.au/ALRC_Invite.pdf

10-13 Sept, New Delhi, India: Human Development and Capability Association conference on relationships between equality, inclusion and human development. Details: <http://www.capabilityapproach.com/>

12-13 Sept, Melbourne: National Indigenous Legal Conference (and Ball), RACV Club. Info: Aislinn Martin (03) 9607 9474; 0413 009 072; f 03 9607 9438; E: amartin@liv.asn.au

19-20 Sept 2008, Dublin, Ireland: Celebrating 60 years of the UDHR - conference explores how the Universal Declaration of Human Rights (UDHR) can contribute to education provision. Hosted by the Centre for Human Rights and Citizenship Education, Amnesty International Irish Section, and the Irish National Teachers Organisation. More info: Brian.Ruane@spd.dcu.ie

3 October, Melbourne: 2008 Protecting Human Rights Conference, Melbourne Law School, 185 Pelham Street, Carlton, \$150 / \$75 concession, issues at state, territory and national levels in Australia, draft Bills being considered in Tasmania and Western Australia, and discussion of similar Acts in other countries. Details: (03) 8344 1011 or law-cccs@unimelb.edu.au Web: <http://cccs.law.unimelb.edu.au>

19-22 October, Manila, Philippines: Global Congress of Women in Politics and Governance, Web: www.capwip.org Congress information - registration form: <http://www.capwip.org/3rdglobalcongress.htm>

30 Oct - 2 Nov, Athens, Greece: 13th International Anti-Corruption Conference, info@13iacc.org

7-8 November 2008, Germany: Social Web – civil society towards networked protest politics, University of Siegen. Drawing on concepts of associative, deliberative or participatory democracy, the conference will

explore new internet opportunities through widening the scope for active public debates. <http://www.e-politik.de/blog/18032008/Social-Web-Towards-Networked-Protest-Politics.html>

2009: 20 Feb, 2009: worldwide: World Day of Social Justice

2010: 10/10/10, World: Target date to start the CLA-promoted death penalty moratorium – 10/10 for Life.

LAST WORD: Aquatic fun morphs into enforced drowning

Late in 2007 UK writer, polemicist and fierce supporter of the US-led invasion of Iraq, Christopher Hitchens, tried in an article for online magazine *Slate* to distinguish between what he called techniques of "extreme interrogation" and "outright torture".

Enraged by what they saw as an exercise in elegant but offensive sophistry, some critics suggested that Hitchens give a whirl to waterboarding (which could sound like some kind of fun, aquatic pastime, but could also be called enforced partial drowning) just to see what it was like. Did the experience feel like torture?

And amazingly, he has done just that. In August's edition of *Vanity Fair*, you can read all about it, and see more photographs

So what did it feel like? "Believe me, it's torture," Hitchens concludes.

<http://www.vanityfair.com/>

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CLArion is the monthly e-newsletter of Civil Liberties Australia A04043, Box 7438 FISHER ACT 2611 Australia. Please feel free to report or pass on items in *CLArion*, crediting CLA and/or the original source. We welcome contributions for the next issue: please send to: <mailto:secretary@cla.asn.au>

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