

ACLU SUMMER 2004 news

BECAUSE FREEDOM CAN'T PROTECT ITSELF

VOLUME LXIV ISSUE 3

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STAND UP FOR FREEDOM 2,000 ACLU MEMBERS GATHER IN SAN FRANCISCO

By Jeff Gillenkirk, *Guest Editor*

In a passionate address, executive director Anthony D. Romero opened the ACLU's 2004 membership conference by characterizing those assembled as "guardians of liberty [who] not only have the right to disagree with our government—we have the responsibility."

Close to 2,000 ACLU members and supporters converged on San Francisco July 6-8 for the organization's second annual membership conference, gathering to plan and mobilize for protecting civil liberties at a time when the federal government is curtailing those liberties in the name of national security.

"LOOK ACROSS THIS ROOM AND YOU KNOW THAT FAILURE IS NOT AN OPTION."

—ANTHONY ROMERO, EXECUTIVE DIRECTOR, ACLU

The intensive three-day conference at the downtown Hilton Hotel was a feast of inspiring speeches on critical social issues, and practical workshops on legal strategy and organizing. ACLU president Nadine Strossen, ACLU of Northern California (ACLU-NC) director Dorothy Ehrlich, and other ACLU leaders were joined by former Vermont Governor

Howard Dean, former White House terrorism czar Richard Clarke, investigative journalist Seymour Hersh, "Vagina Monologues" author and performer Eve Ensler, San Francisco Mayor Gavin Newsom, and others. The mood at the conference was upbeat after recent U.S. Supreme Court rulings allowing foreign captives at Guantanamo Bay and U.S. "enemy combatant" Yaser Hamdi to have access to the court system (see page 9 for more on these rulings).

"President Bush and Attorney General John Ashcroft received a much-needed tutorial on the separation of powers," Romero declared in his keynote speech. "The Supreme Court stepped forward to remind the nation that a person's basic rights cannot be swept away by the stroke of a politician's pen."

Opening night featured a moving film tribute to the ACLU's 84-year history of defending the Constitution and Bill of Rights. Singer-songwriter Steve Earle later showcased



ACLU of Northern California board chair Quinn Delaney speaking at the ACLU's second annual membership conference in San Francisco.

those hard-earned freedoms by singing a song dedicated to Lenny Bruce with the refrain, "Fuck the FCC... Fuck the FBI... Fuck the CIA..." But the opening plenary belonged to Romero, who called on participants to use this election year to "challenge both Democrats and Republicans to build a broad consensus for freedom and liberty."

SPEAKERS CROSS PARTY LINES

In the tradition of ACLU's non-partisan defense of civil liberties, the conference included participation by Wayne La Pierre, Jr., executive vice president and CEO of the National Rifle Association; former independent counsel Kenneth Starr; former Georgia congressman and conservative gadfly, Bob

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NOMINATIONS NOW: BOARD ELECTIONS NOTICE

The ACLU-NC Board of Directors, in accordance with changes adopted in 1996, have an election schedule as follows:

Nominations for the Board of Directors will now be submitted by the September Board meeting; candidates and ballots will appear in the Fall issue of the *ACLU News*; elected board members will begin their three-year term in January.

As provided by the revised ACLU-NC by-laws, the ACLU-NC membership is entitled to elect its 2004-2005 Board of Directors directly. The nominating committee is now seeking suggestions from the membership to fill at-large positions on the Board.

ACLU members may participate in the nominating process in two ways:

1. They may send suggestions for the nominating com-

CONTINUED ON PAGE 2

SAVE THE DATE! BILL OF RIGHTS DAY 2004

THE ACLU OF NORTHERN CALIFORNIA'S 2004 BILL OF RIGHTS DAY CELEBRATION

IN SAN JOSE THIS YEAR, ON SUNDAY, DECEMBER 11

AT THE FAIRMONT HOTEL IN SAN JOSE
RECEPTION AT NOON, PROGRAM AT 1 P.M.

HONORING JULIAN BOND, CHAIRMAN OF THE NAACP

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MEMBERSHIP CONFERENCE CONTINUED FROM PAGE 1

Barr; and the Republican governor of Colorado, Bill Owens, who defended the Patriot Act in a debate with former presidential hopeful Dean.

"PRESIDENT BUSH AND ATTORNEY GENERAL JOHN ASHCROFT RECEIVED A MUCH-NEEDED TUTORIAL ON THE SEPARATION OF POWERS..."

his upcoming film, "Silver City," a satirical allegory of George W. Bush's Texas gubernatorial campaign. Hersh, who won the Pulitzer Prize in 1970 for his coverage of the My Lai massacre in South Vietnam, forced the Abu Ghraib prison scandal into the public eye after disclosing a report by Major General Antonio

Wednesday's Gala Dinner showcased investigative journalist Seymour Hersh, humorist Sandra Tsing Loh, who spoke about her termination from Santa Monica's National Public Radio affiliate after using an expletive in a pre-recorded commentary, and writer-director John Sayles, who discussed

Taguba detailing criminal abuses by U.S. military and contract personnel in Iraq.

"What happened at Abu Ghraib... was a series of massive crimes by this administration," said Hersh. "It's not an academic debate about the Geneva Conventions. We have to ask ourselves the tough questions: are we doing what the Argentinians did? Are we disappearing people?"

Numerous "breakout sections" provided practical advice from experts in human genetics and civil liberties, politics and the Internet, reproductive freedom, immigration rights, and domestic spying. The conference also offered an "Action Center" that included a direct link by telephone to members of Congress. Volunteers staffed booths offering in-depth information about current topics such as racial profiling, marriage equality, the Patriot Act, and abolition of the death penalty.

MEMBERS ENERGIZED

The conference attracted a wide range of people, for a wide range of reasons. "I'm so energized being here," said Natalie

Wormeli from ACLU-NC's Yolo County Chapter. "I learned a lot more about racial profiling, which is helpful because we're starting a racial profiling campaign in Davis." Andre Mercado, from Mujeres Unidas Y Activas in Oakland, came to "learn about immigrants' rights and civil liberties issues." Laura Tischauser, a Lieutenant in the Cook County (Illinois) Sheriff's Department, came to attend panels on domestic spying, racial profiling, and the Patriot Act. "Those are issues we're dealing with in the police department," she said.

"...THE SUPREME COURT STEPPED FORWARD TO REMIND THE NATION THAT A PERSON'S BASIC RIGHTS CANNOT BE SWEEPED AWAY BY THE STROKE OF A POLITICIAN'S PEN."

-ANTHONY ROMERO, EXECUTIVE DIRECTOR, ACLU

Five hundred conference delegates were members from the northern California region, as befits the ACLU-NC's status as the largest affiliate. "It was a great privilege to welcome so many members from the region and from across the nation, to our home city," said the ACLU-NC's Ehrlich. "San Francisco proved the perfect breeding ground for thoughtful discussion, invigorating debate, and the hatching of new strategies to reclaim civil liberties."

The passion of Romero's keynote address echoed throughout the three-day conference. "The people in this room know that we're pushing uphill and fighting the tide of conventional wisdom," he said. "But look across this room and you know that failure is not an option." ■

MEMBERS SAID:



GIGI PANDIAN

"I'M HERE FOR ACTIVISM. COMING TO THIS CONFERENCE WAS A WAY FOR ME TO FIGURE OUT WHAT I CAN BE DOING MYSELF."

- OLIVER GRAVES, SAN FRANCISCO



GIGI PANDIAN

"I'M SO ENERGIZED TO BE HERE."

- NATALIE WORMELI, ACLU-NC YOLO COUNTY CHAPTER



GIGI PANDIAN

"WE RENEWED FRIENDSHIPS WITH OLD FRIENDS WE'VE MET THROUGH THE ACLU OVER THE YEARS. IT RENEWS YOUR ENTHUSIASM AGAIN TO SPREAD THE WORD"

- PAT AND HERBERT NELSON, REDBLUFF, CA

For more conference coverage, see page 6.

CARD CARRYING AND PROUD



ADAM FOREST

On June 27, an ACLU contingent of over 50 people—more than half of them students—marched proudly at the annual San Francisco Gay Pride Parade, carrying signs chronicling the ACLU's five-decade history of fighting for gay rights. "It was very empowering," said marcher Mike Chan, 21, who attends Bowdoin College and lives in San Francisco. "People were holding their fists in the air or shouting, 'ACLU rocks!'"

Marriage equality was the main theme of the march. The ACLU of Northern California is presently working for marriage equality in two lawsuits brought by the ACLU and its coalition partners in California courts. The first defends Mayor Gavin Newsom's authority to grant same-sex marriage licenses; the second argues that denying licenses to same-sex couples violates the California State Constitution. ■

BOARD ELECTION CONTINUED FROM PAGE 1

mittee's consideration prior to the September Board meeting (September 9, 2004). Address suggestions to: Nominating Committee, ACLU-NC, 1663 Mission Street, #460, San Francisco, CA 94103. Include your nominee's qualifications and how the nominee may be reached.

2. They may submit a petition of nomination with the signatures of 15 current ACLU-NC members. Petitions of nomination, which should also include the nominee's qualifications, must be submitted to the Board of Directors by September 29, 2004 (twenty days after the September board meeting). Current ACLU members are those who have renewed their membership during the last 12 months. Only current members are eligible to submit nominations, sign petitions of nomination, and vote.

ACLU members will select Board members from the slate of candidates nominated by petition and by the nominating committee. The ballot will appear in the fall issue of the *ACLU News*.

REVISED ACLU-NC BY-LAWS

Article VII, Section 3: Presentation of Nominations and Additional Nominations. The final report of the committee to nominate members-at-large to the Board shall be presented at the September Board meeting. Members of the Board may propose additional nominations. If no additional nominations are proposed by Board members, the Board by a majority of those present and voting, shall adopt the nominating committee's report. If additional nomina-

tions are proposed, the Board shall, by written ballot, elect a slate of nominees with each member being entitled to cast a number of votes equal to the vacancies to be filled; the persons nominated by the Board shall be those persons, equal in number to the vacancies to be filled, who have received the greatest number of votes. The list of nominees to be placed before the membership of the Union for election shall be those persons nominated by the Board as herein provided, together with those persons nominated by petition as hereinafter provided in Section 4.

Article VII, Section 4: Recommendations and Nominations by Members of the Union. Any fifteen or more members of the Union in good standing may themselves submit a nomination to be included among those voted upon by the general membership by submitting a written petition to the Board not later than twenty days after the adoption by the Board of the slate of Board nominees. No member of the Union may sign more than one such petition, and each such nomination shall be accompanied by a summary of qualifications and the written consent of the nominee. This provision of the By-Laws shall be printed in the first page of the summer issue of the *ACLU News* together with an article advising members of their rights in the nominating process. ■

**The Board of Directors of the ACLU of Northern California revised the By-Laws of the organization in February, 1995, to change the timeline for Board election procedures.*

NOT A CARD-CARRYING MEMBER? JOIN ONLINE AT WWW.ACLUNC.ORG

ACLUnews

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FEDERAL ABORTION BAN STRUCK DOWN

by Stella Richardson, *Media Relations Director*

In a major victory for reproductive rights, Judge Phyllis Hamilton ruled on June 1, 2004, that the first-ever federal ban on abortion is unconstitutional.

“THE JUDGE SAW THROUGH THE MISLEADING RHETORIC TO THE REALITY: THAT CONGRESS WAS PLAYING POLITICS WITH WOMEN’S HEALTH.”

—ACLU-NC STAFF ATTORNEY MARGARET CROSBY

The decision striking down the so-called “Partial Birth Abortion Act of 2003” came after a trial in San Francisco federal court on the impact of the ban on women and their doctors. Planned Parenthood brought the case against Attorney General John Ashcroft.

“This law made abortion as early as 12-15 weeks a crime,” said ACLU-NC attorney Margaret Crosby. “The judge saw through the misleading rhetoric to the reality: that Congress was playing politics with women’s health.” The ACLU-NC represented the California Medical Association

(CMA) as a friend of the court. ACLU cooperating attorneys Curt Kalia, Evan Cox and Tara Steeley of the law firm of Covington & Burling authored the amicus brief.

In a detailed, 117-page decision, the judge ruled that the Act violated the Constitution for three independent reasons:

- The law unduly burdens women’s right to reproductive privacy because it bans 95 percent of safe and legal abortion methods after the first trimester.

- The law is unconstitutionally vague because doctors must guess at where the prohibited line exists.

- Finally, the law is unconstitutional because it lacks any exception for pregnant women’s health, and the banned procedures are – contrary to congressional findings – sometimes the safest method available.



ACLU-NC staff attorney Margaret Crosby

According to the CMA, decisions involving pregnancy and medical care are among the most serious a woman will make in her life, and should be made without political interference. The 2003 law “prevents physicians from exercising their best medical judgment to preserve the health and well-being of their patients [and] dangerously intrudes on a physician’s ability (and duty) to provide medical care,” CMA told the court in an amicus brief.

The San Francisco case is one of three cases filed to challenge the Act; another is the ACLU’s challenge on behalf of the National Abortion Federation in New York. Trials in those cases have been completed

WHAT THE COURT TOLD ASHCROFT

“...The Act, as written, may force pregnant women to undergo a procedure that is less safe under their particular circumstances.”

“The Act creates a risk of criminal liability during virtually all abortions performed after the first trimester.”

“The term ‘partial-birth abortion’... is neither recognized in the medical literature nor used by physicians who routinely perform second trimester abortions.”

“Congress’ grossly misleading and inaccurate language... appears to have been intentional.”

“Like the government witnesses in this case, none of the six physicians who testified before Congress had ever performed an intact dilation and extraction. Several did not provide abortion services at all; and one was not even an OBGYN. It is apparent to this court ... that the oral testimony before Congress was not only unbalanced, but intentionally polemic.”

“This court concludes [that] the Act... poses an undue burden on a woman’s right to choose an abortion... in violation of the Supreme Court’s holding.”

Planned Parenthood v. Ashcroft

U.S. District Court for the Northern District of California

and are awaiting decisions. All three courts issued orders preventing the government from enforcing the ban until constitutional challenges are complete.

The government is expected to appeal the San Francisco ruling to the Ninth Circuit Court of Appeals. ■



Pro-choice forces march in Washington, DC for reproductive freedom. Women won an important victory when the U.S. District Court of Northern California recently struck down the so-called “Partial Birth Abortion Act of 2003.” The ACLU-NC represented the California Medical Association as a friend of the court in a case that pitted Planned Parenthood against Attorney General John Ashcroft.

LEGAL BRIEFS

INTERNET FREE SPEECH

The California Supreme Court is soon to review a case with heavy implications for the free speech rights of Internet users. On Wednesday, April 14, 2004, the Court voted unanimously to grant review of *Barrett v. Rosenthal*, a lawsuit involving the issue of whether a 1996 federal law protects Internet users from civil liability for re-posting a third-party’s statements on the Internet.

In January 2004, the Court of Appeal for the First District overruled the dismissal of a defamation lawsuit filed against activist Ilena Rosenthal for posting on the Internet someone else’s email message that was highly critical of the plaintiff. Disagreeing with every other court to have considered the issue, the Court of Appeal argued that the Communications Decency Act of 1996 does not provide absolute immunity from suit to those who make a third party’s material available on the Internet.

The issue of whether individuals are protected when re-posting third party material pivots on whether section 230 of the Communications Decency Act grants immunity to Internet “users” as well as Internet “providers,” like AOL or Yahoo. The Court of Appeal’s decision greatly narrows the scope of protection afforded by the statute, and if upheld by the California Supreme Court, would make individual internet users potentially liable for third-party material passed on in an email, posted on a newsgroup, or on a website. *Barrett v. Rosenthal*

IMMIGRANTS’ RIGHTS

Israel Mendez and Miguel Perez, two San Francisco day laborers, have not received thousands of dollars in wages earned over four months working as carpet layers in Bay Area homes and hotels. In an effort to recoup their pay, the laborers, along with La Raza Centro Legal’s Day Labor Program, filed a complaint with the Labor Commission and launched a public campaign—including picketing the home of their former employer, Marvin Maltez—to publicize the alleged exploitation of undocumented workers.

Maltez, while admitting that he owes Perez and Mendez money, has filed a retaliatory lawsuit against both laborers, La Raza, and members of its staff. The ACLU of Northern California is seeking dismissal of Maltez’s lawsuit. The motion to strike was filed in Alameda Superior Court under California’s anti-SLAPP statute, which protects speakers exercising their free speech rights from retaliatory lawsuits. *Maltez v. Alvaro*

GOD STAYS IN PLEDGE

The U.S. Supreme Court ruled in June that Michael Newdow lacked the legal standing to bring a lawsuit over the constitutionality of the phrase “under God” in the Pledge of Allegiance. In an 8-0 decision, the Justices overturned a lower court ruling that had found the phrase is a violation of the First Amendment, thereby allowing “under God” to remain in the Pledge.

Sacramento-area Newdow filed the suit against the school district of Elk Grove, where his nine-year-old daughter is a student, and the Pledge of Allegiance is recited daily. Newdow argued that the phrase is a government endorsement of religion, which violates the establishment clause of the First Amendment. In June 2002, the Ninth Circuit Court of Appeals agreed, bringing national attention and controversy to the case.

The U.S. Supreme Court heard the case on appeal, for which the ACLU filed a friend-of-the-court brief arguing that the phrase “under God,” at least when recited in school, unconstitutionally linked belief in God with loyalty to the nation. A five-justice majority ruled that because Newdow does not have legal custody of his daughter, he did not have standing to bring the case. The majority opinion did not address the merits of his claim, a decision Newdow describes as “a way to punt.” Three other Justices—Rehnquist, Thomas and O’Connor—concur that Newdow did have standing and the lower court’s ruling should be overturned on the merits.

Newdow says he plans to try again with a different plaintiff. “It would be the exact same case,” Newdow explains. “All the work has been done. Just plug in a different name and do it all over again.”

Elk Grove Unified School District v. Newdow

WHEN IS A POEM MORE THAN A POEM? FREE EXPRESSION IN THE CLASSROOM

In a unanimous decision this July, the California Supreme Court issued a staunch defense of free expression in the post-Columbine classroom, quashing the conviction of a San Jose schoolboy for writing a poem that a lower court deemed a “criminal threat.” Here, the *ACLU News* explores a case that has galvanized some of the nation’s leading literary lights.

When can a poem become a criminal threat?

As the California Supreme Court considered that question in July, a Pulitzer Prize winner, a Nobel laureate in literature, and other notable writers mounted a vocal and impassioned defense of a high school student’s freedom of expression.

“IF WE PUT THIS KID IN JAIL OVER A VIOLENT POEM, IT WOULDN’T BE HARD TO ARGUE THAT WE SHOULD PUT MOST OF OUR BEST-KNOWN AUTHORS THERE, TOO.”

—TOBIAS WOLFF

In the spring of 2001, George “Julius” T., a San Jose 15-year-old, who had only recently transferred to his new high school, asked a classmate in his honors English class to read a poem he had written. The poem, entitled “Faces,” talked about his feelings of alienation and ended with the lines: “For I can be the next kid to bring guns to kill students at school.” (see sidebar for full text of the poem).

The student told a teacher that she was frightened by the poem.

In the highly-charged post-Columbine climate, the police were called in and before he knew it George T. found himself convicted of violating California’s criminal threats statute, and sentenced to 100 days in juvenile hall. As the challenge to George T.’s conviction moved before the state Supreme Court, an array of literary heavyweights and free speech advocates quickly sprang to his defense. Nobel Prize winner J.M. Coetzee, Pulitzer Prize winner Michael Chabon, and Virginia’s former Poet Laureate, George Garrett, are among the writers who joined with the ACLU of Northern California (ACLU-NC), the First Amendment Project, PEN USA and other groups in filing a friend-of-the-court brief arguing that his conviction must be overturned.

NOT A TRUE THREAT

At the heart of the issue was whether the poem can be considered a “true threat.” The ACLU’s brief argued that “creative works such as a poem or painting cannot, on their face, constitute a true threat.”

“Only the circumstances surrounding the communication of a poem or other creative work can transform it from protected expression into an unprotected true threat,” the brief said.

Drawing on eclectic sources—from Chaucer, to Shakespeare, to Eminem—the brief examined the long-standing literary tradition of violent imagery and the exploration of dark themes in poetry. It also used the expertise of literary critics to explain that poetry must not be interpreted literally, and that first-person narration is a literary device—not a signal to interpret the poem as containing the thoughts, desires, or intentions of the author.

STATE SUPREMES UNANIMOUS

In a resounding victory for students’ First Amendment rights, the California Supreme Court agreed on Thursday, July 22, ruling that the poem was too ambiguous and equivocal to constitute a criminal threat. “What is apparent is that much of the poem plainly does not constitute a threat,” wrote Justice Carlos Moreno for the unanimous, seven-member court.

“The court’s decision makes clear that students’ creative works deserve the same high level of First Amendment protection from criminal prosecution as that accorded to established poets, authors, and artists,” said Ann Brick, staff attorney with

the ACLU-NC, and one of the co-authors of the brief. “This case provides much-needed guidance to both school officials and law enforcement in responding in a sensible and measured way when confronted with student work that raises questions about safety. As the court so rightly noted, school safety and protecting freedom of expression need not be ‘antagonistic goals,’” she added.

WRITERS MOBILIZE

George T. won his day in court—but he is not alone in being punished for violent expression in the post-Columbine era. In Atlanta, a 14-year-old honor student was expelled for writing a fictional story in her journal about a student who dreamed she killed a teacher. In Texas, a 13-year-old received a passing grade—and six days in jail—for writing a “scary” Halloween story about shooting up a school.

IN ATLANTA, A 14-YEAR-OLD HONOR STUDENT WAS EXPELLED FOR WRITING A FICTIONAL STORY IN HER JOURNAL ABOUT A STUDENT WHO DREAMED SHE KILLED A TEACHER.

In 2002 a California appellate court overturned the conviction of a high school student who painted a picture for his art class showing him shooting a police officer who had earlier cited him for possessing marijuana.

Alarmed by the specter of classroom censorship, the literary community has mobilized. Writers have turned out to protest the Academy of Art University, where

two students were recently expelled after submitting creative writing assignments that administrators deemed violent. Michael Chabon recently wrote a *New York Times* op-ed about

George T.’s case. And Chabon and other renowned writers recently converged in San Francisco at the First Amendment Project’s “Fighting Words: Violent Passages From Acclaimed Literature,” an evening of readings designed to draw attention to the issue.

For, as horror writer Peter Straub writes: “The ability freely to represent terrible and distasteful subjects is essential to my purpose, which, largely speaking, concerns the moral significance of emotions such as grief and the pain of loss.”

Perhaps Tobias Wolff, professor of English and creative writing at Stanford and an award-winning author, put it best when he told the *San Jose Mercury News*, “If we put this kid in jail over a violent poem, it wouldn’t

be hard to argue that we should put most of our best-known authors there, too.” ■



Author Michael Chabon, who wrote a *New York Times* op-ed about George T.’s case.

CRIMINAL?

“A lot of people think that... what I say on records
Or talk about on a record, that I actually do in real life
Or that I believe in it
Well, shit, if you believe that
Then I’ll kill you
You know why?
Cuz I’m a
CRIMINAL
CRIMINAL”

—Eminem, “Criminal,” *The Marshall Mathers LP*, Interscope Records, 2000.

FACES

A POEM BY GEORGE T., AGE 15

Who are these faces around me?

Where did they come from?

They would probably become the next doctors or loirs [sic] or something. All really intelligent and ahead in their game. I wish I had a choice on

what I want to be like they do.

All so happy and vagrant. Each

origonal [sic] in their own way. They

make me want to puke. For I am

Dark, Destructive, & Dangerous. I

slap on my face of happiness but

inside I am evil!! For I can be

the next kid to bring guns to

kill students at school. So Parents

watch your children cuz I’m BACK!!

—Julius AKA Angel

THE POST-COLUMBINE CLASSROOM FACTS AND FEARS

The school shooting at Columbine High occurred in 1999.

FEAR: WHEN ASKED WHAT WORRIED THEM THE MOST, THE SECOND MOST FREQUENT RESPONSE BY PARENTS POLLED IN 1999 WAS THAT “CHILDREN ARE NOT SAFE IN THEIR OWN SCHOOLS.”

FACT: SCHOOL-ASSOCIATED VIOLENT DEATHS BETWEEN 1997-1999 DECREASED 40%.

FEAR: 71% OF RESPONDENTS TO THE 1999 POLL SAID A SCHOOL SHOOTING WAS “LIKELY” IN THEIR COMMUNITY.

FACT: THE CHANCE THAT A SCHOOL CHILD WILL DIE IN A SCHOOL IN 1998-99 WAS ONE IN TWO MILLION.

FEAR: THE NUMBER OF EXPULSIONS HAS DOUBLED SINCE THE 1970S: FROM 1.3 MILLION STUDENTS IN 1974 TO 3.2 MILLION STUDENTS IN 1998.

FACT: OVER THE SAME PERIOD, SCHOOL CRIME HAS NOT INCREASED.

Justice Policy Institute: *School House Hype, Two Years Later*, www.justicepolicy.org.

TAKE ACTION ONLINE TO PROTECT CIVIL LIBERTIES: SIGN UP AT WWW.ACLUNC.ORG

YOUR VOICE HEARD IN SACRAMENTO

WHEN HUNDREDS OF ACLU MEMBERS EMAILED ATTORNEY GENERAL BILL LOCKYER, HIS OFFICE RESPONDED—PERSONALLY

The online campaign was the latest from the ACLU of Northern California (ACLU-NC)'s Action Network, whose members received an email action alert asking them to contact the Attorney General and urge him to investigate wrongful police surveillance of community groups.

The campaign began when the local group Peace Fresno (featured in the Michael Moore film, *Fahrenheit 9/11*) realized it was under surveillance by the Fresno Sheriff's Department. Peace Fresno and the ACLU-NC then filed a formal complaint, calling on Lockyer to investigate.

Thanks to the hundreds of emails sent by Action Network members, the campaign is succeeding. Lockyer's office replied to each email, stating in a June 15th letter that his office "will be conducting an investigation into the alleged undercover surveillance of Peace Fresno during 2003."

You can join the ACLU-NC Action Network for

free. Members receive an Action Alert email once or twice a month. A quick point-and-click is all it takes to defend civil liberties.

To sign up for free,

1. Go to www.aclunc.org/takeaction.html, or
2. Fill out the form below and mail it back to us.



TAKE ACTION

Fill out this form to receive email action alerts from the ACLU-NC once or twice a month.

Sign me up for the ACLU-NC's Action Network!

Name _____

Address _____ City _____ State _____

Email (required) _____ Zip (required) _____

Return to: ACLU-NC Action Alert Sign-Up
1663 Mission St. Suite 460, San Francisco, CA 94103

ACLU SAYS "YES" ON 66 —THREE STRIKES REFORM

In 1994, Californians overwhelmingly passed a "Three Strikes and You're Out" law, believing it would target violent and serious felons. In fact, more than half of the people punished under Three Strikes are convicted of non-violent offenses. Consider the following examples:

- Robert Blasi received a 31-year sentence for stealing a pair of AA batteries.
- Nathan Thomas shoplifted three packs of T-shirts from J.C. Penny and was sentenced to 25 years in prison.

Fortunately, sensible reform is on the ballot this fall. Proposition 66 will make Three Strikes sentencing more reasonable, and save the state hundreds of millions of dollars in the process. The ACLU-NC strongly encourages its members to vote "yes" on Proposition 66.

AND "NO" ON 69 —THE "GUILT BY ARREST" INITIATIVE

This proposition would dramatically expand California's existing criminal DNA database to include more people's DNA—including people who have not committed any crime. The initiative mandates the collection of DNA from "any adult person arrested or charged with any felony offense." In other words, someone *arrested* for shoplifting \$401 in merchandise or for writing a bad check for \$201 (both felony crimes)—but who is *not charged* and is *released*—would have her DNA collected and stored in a criminal database.

For more information on Propositions 66 and 69 go to www.aclunc.org, and see our next issue of the ACLU News.

IS OUR GOVERNOR A CIVIL LIBERTARIAN?

By Jeff Gillenkirk

The ACLU of Northern California (ACLU-NC) has scored a number of impressive victories in the state legislature this year, with at least five important bills making their way towards a showdown with our new governor, Arnold Schwarzenegger.

Francisco Lobaco, ACLU-NC's legislative director in Sacramento, says that while he expects these bills to eventually pass the legislature, what happens when they reach the Governor's desk is anybody's guess.

"These kinds of issues haven't come to him yet," Lobaco said. "We'll see where he stands on civil liberties with his reactions to these bills." As with most things in Sacramento, strong public input could be a key factor in determining

whether he stands with us—or against. Lobaco believes that Schwarzenegger, unlike former Governor Gray Davis, won't have to prove he's tough on crime.

"He [Schwarzenegger] has made some indications he's willing to take a more rational view on criminal justice issues than Gray Davis, who was so intent on appearing tough on crime

"HE'S CLEARLY A GOVERNOR WILLING TO LISTEN — AND TO CHANGE HIS MIND IF ENOUGH PRESSURE IS BROUGHT."

—FRANCISCO LOBACO, ACLU LEGISLATIVE DIRECTOR

that public pressure could play a key role in whether he signs some key ACLU-supported measures (see *Sacramento Report*, below, for discussion of specific bills and how to take action).

"He's clearly a governor willing to listen—and to change his mind if enough pressure is brought," Lobaco concluded. ■

that he was unwilling to make any reform in the criminal justice area," Lobaco said. "For example, he's permitted some inmates to be paroled, which Gray Davis wouldn't do."

Because Schwarzenegger ran for office on a platform of open government—and with so much publicity about prison abuse and cover-up—Lobaco believes

SACRAMENTO REPORT

By Bob Kearney, Associate Director

The ACLU's lobbying team in Sacramento is hard at work every day on bills affecting civil liberties in the state legislature. These are among the key bills currently moving towards Governor Schwarzenegger's desk. To help secure signature of these crucial steps for civil liberties, call the governor's office at (916) 445-2841. Or go to the ACLU-NC Action Center, at www.aclunc.org/takeaction.html.

PRISON OVERSIGHT

Senate Bill (SB) 1164 (Romero) increases public oversight of California's beleaguered prison system by restoring media access to prisons and inmates. Since 1996, when the California Department of Corrections implemented a policy restricting media access to prisons and prohibiting the use of writing or recording devices in prisons — including video cameras — a series of notorious scandals have rocked California's prison system, the largest in the nation. SB 1164 will restore the media's right to record voluntary interviews with inmates, and help keep the public informed about how its tax dollars are spent.

ATHLETIC EQUITY

The "Gender Equity for Community Athletics" bill (Assembly Bill (AB) 2404 (Steinberg)), requires that local governments not discriminate on the basis of gender in the allocation of athletic resources. "Discrimination against girls in community youth athletics is routine," says Valerie Small Navarro, ACLU legislative advocate in Sacramento. "Cities and counties often provide more and better facilities, equipment, funding, and services to boys' sports than to girls' sports."

COMPASSIONATE RELEASE

AB 1946 (Steinberg) would require that permanently incapacitated and dying prisoners and their families be notified of their rights to early release. A previous version of this bill was vetoed by then-Governor Gray Davis.

PETTY THEFT

AB 2705 (Goldberg) increases the threshold between petty theft to grand theft from \$400, where it has been since 1982, to \$800. This will make it easier to distinguish

between first-time offenders who can be subject to felony penalties and state prison time, and those to be charged with misdemeanors.

STUDENT DRUG TESTS

SB 1386 (Vasconcellos) would provide for the drug or alcohol testing of students only upon a reasonable suspicion, and restrict access to test results to specified individuals. It would ensure that a pupil who tests positive is referred to a school counselor, substance abuse professional, or other appropriate school staff to develop a course of treatment, rather than simply be suspended or expelled.

FOOD STAMPS FOR DRUG OFFENDERS

AB 1796 (Leno) would restore federal food stamp eligibility to people convicted of certain drug-related crimes, helping them become self-sufficient while overcoming drug dependence.

TAKE ACTION ONLINE TO PROTECT CIVIL LIBERTIES: SIGN UP AT WWW.ACLUNC.ORG

HIGHLIGHTS OF THE 2004 MEMBERSHIP CONFERENCE



GIGI PANDIAN

"MORE THAN 500 OF THE MEMBERS HERE TODAY ARE FROM NORTHERN CALIFORNIA. I ESPECIALLY WANT TO WELCOME THEM."

**—DOROTHY EHRLICH,
ACLU-NC EXECUTIVE DIRECTOR**



SUSANA MILLMAN

"FREEDOM IS NOT A SELF-EXECUTING PRINCIPLE. IT HAS TO BE FOUGHT FOR."

**—BOB BARR,
FORMER REPUBLICAN
CONGRESSMAN FROM
GEORGIA**



SUSANA MILLMAN

**—EVE ENSLER,
PLAYWRIGHT**

"PERSONALLY, I OWE A LOT TO THE WORK OF THE ACLU; IT'S BECAUSE OF THE ACLU THAT I CAN SHAKE PEOPLE UP BY SAYING A WORD LIKE 'VAGINA.'"



GIGI PANDIAN

"SAME-SEX MARRIAGES ARE ON THE ROAD TO HELPING US BECOME, REALLY BECOME, FULLY HUMAN... NO ONE SHOULD HAVE TO SUFFER THE INDIGNITIES OF BEING DEHUMANIZED"

**—REVEREND CECIL WILLIAMS, PASTOR,
GLIDE MEMORIAL UNITED
METHODIST CHURCH, SAN
FRANCISCO**



GIGI PANDIAN

MEMBERS ATTENDED WORKSHOPS SUCH AS THIS ONE ON SAFE SCHOOLS, WITH ACLU-NC FRIEDMAN YOUTH PROJECT DIRECTOR EVELINE CHANG AND ACLU-NC CLIENT FREDDIE FUENTES.

"LESS SAFE, LESS FREE" FORMER TERRORISM CZAR BLASTS POST-9/11 BLUNDERS

The Bush administration's actions since 9/11 have fanned the flames of anti-U.S. hatred, carved deep divisions at home and abroad, and turned al Qaeda into a "hydra-headed monster," charges Richard A. Clarke.

Clarke should know. As one of the nation's foremost experts on terrorism, he served under Presidents George H.W. Bush, Bill Clinton and George W. Bush before resigning as the National Security Council's counterterrorism czar in 2003. Clarke has described his frustrated efforts to warn President Bush of the dangers of al Qaeda before 9/11, and to focus the administration on the terrorist threat thereafter in a tell-all book, *Against All Enemies*, and in testimony before the 9/11 commission. He was also the first government official to issue a public apology to the families of 9/11 victims.

Less well known is one of Clarke's other affiliations: he revealed being an ACLU member since 1971. While he does not agree with all ACLU positions, he takes extremely seriously his oath of office: to protect and defend the U.S. Constitution "against all enemies, foreign and domestic."

On July 8, more than a thousand ACLU members listened intently as Clarke described how observing that oath today means defending Americans both against terrorists and against their own government. High on Clarke's list of policy missteps since 9/11 is the Bush administration's decision to invade Iraq. Besides diverting resources from efforts to eliminate al Qaeda and protect the homeland, he contends, the invasion of an oil-rich Arab nation squandered goodwill toward the U.S. in the aftermath of 9/11, playing into the hands of the terror network's leaders.

A recent Pew Center poll shows hatred of the United States at an all-time high, a situation that has been compounded by revelations of abuses of Iraqi prisoners. Terrorist attacks last year were at an unprecedented high, with twice the number of attacks around the world in the 34 months since 9/11 as in the 34 months before.

DIVIDED ABROAD AND AT HOME

As threats mount abroad, the Bush administration has also divided the country at home by engaging in illegal and extra-legal moves, Clarke charged.

There is nothing in the USA Patriot Act, or any piece of law, he notes, that justifies what happened to Jose Padilla. Padilla, the U.S. citizen who was suspected of attempting to build a "dirty bomb," was arrested at Chicago's O'Hare Airport, classified by the Justice Department as an enemy combatant, transferred to a Department of Defense military brig and denied due process rights, including the right to counsel and to know, or challenge, the charges against him.

"I don't like Mr. Padilla. I don't like what he stands for. I don't like who he associates with. I don't like what he might have been trying to do," said Clarke. But, "If they

can pluck him from the streets of Chicago... then they can do it to you."

In addition, Clarke questioned Section 215 of the Patriot Act, which permits the government to scrutinize personal library records without probable cause, noting that the FBI could not envision a situation in which they would need the provision. If we don't need it, asks Clarke, why do we have it in law?

"The whole point of fighting Jihadists is to fight a group who would take away all of our civil liberties," he said. "It makes no sense for us to do their work for them and to divide the country by taking away civil liberties." Clark exhorted the ACLU to continue to challenge the erosion of liberty. "It's not unpatriotic to question the administration's conduct after 9/11," he said.

OTHERS ECHO CLARKE'S VIEW

Clarke was far from alone: Many other distinguished panelists did exactly that.

Former U.S. Representative Bob Barr (R-GA), now a consultant to the ACLU on privacy issues, took aim

at the Matrix Program, CAPPs II, the "sneak and peek" provisions of the Patriot Act, and other proposals that threaten Americans' privacy rights.

"For the first time in history we will be color coded, might as well wear an armband," he said of CAPPs II, the airline profiling plan that would pool personal data from airlines, the government, and private industry, and assign a color code to passengers based on their perceived security risk. "This has nothing to do with legitimately protecting the airlines and preventing someone from bringing explosives on our planes. It has everything to do with the government's insatiable desire to know everything there is to know about we as citizens and people lawfully in America."

Coleen Rowley, the FBI whistleblower who was named *Time Magazine's* woman of the year after writing a 13-page memo exposing grave operating flaws within the agency, emphasized the need for transparency in increasingly secretive times. Rowley pointed to a surge in requests for warrants to monitor communications or conduct searches from the secret FISA (Foreign Intelligence Surveillance Act) Court—from 900 in 2001 to 1,728 in 2003—as a sign of potential abuse. Reminding Americans that "the bedrock of democracy rests

upon the *informed* (Rowley's emphasis) consent of the governed," Rowley urged increased whistleblower protection, noting that it is currently very risky to speak out, but that "the public needs to know how the nuts and bolts of this 'war' are being carried out."

Prominent trial attorney James Brosnahan described the country as having been brought "to the edge of a precipice" by a government that believes the President's executive power must not be re-

"JOHN ASHCROFT IS ONE OF THE MOST DANGEROUS MEN EVER TO HOLD OFFICE IN THIS COUNTRY."

**—ATTORNEY JAMES
BROSNAHAN**

viewed. "John Ashcroft is one of the most dangerous men ever to hold office in this country," said Brosnahan, a partner in the San Francisco law firm, Morrison and Foerster. "He's also a perfect foil. God has provided someone who has no idea what he's doing." ■



SUSANA MILLMAN

Former national counterterrorism czar Richard Clarke speaking at the ACLU Membership Conference.

SAY "I DO:" MAYOR NEWSOM WOWS ACLU CROWD

Almost 2,000 ACLU members erupted in cheers as Dorothy Ehrlich, executive director of the ACLU of Northern California (ACLU-NC), introduced one of the conference's most popular speakers: Mayor Gavin Newsom of San Francisco.

The mayor, who was catapulted into the national headlines when he instructed city officials to begin marrying same-sex couples early this year, thrilled ACLU loyalists with an inside view of the City's bold stand in a keynote speech on July 7.

All mayors, Newsom said, take an oath to "bear true faith and allegiance to the Constitution of their state and

WHEN PRESIDENT BUSH VOICED HIS SUPPORT FOR ABSTINENCE-ONLY SEX EDUCATION, DRUG TESTING, AND A CONSTITUTIONAL AMENDMENT BARRING SAME-SEX MARRIAGE, NEWSOM FELT THAT THE PRESIDENT WAS MAKING AN ELECTION CAMPAIGN SPEECH "TO THE TEN PERCENT [OF AMERICANS] ON THE FENCE IN 17 STATES."

of the United States of America." His decision to begin granting same-sex marriage licenses was an attempt to fulfill that oath.

The idea began to germinate in Newsom's mind after House Minority Leader Nancy Pelosi flew him out to Washington, DC to watch President Bush's State of the Union address. When President Bush voiced his support for abstinence-only sex education, drug testing, and a constitutional amendment barring same-sex marriage, Newsom felt that the President was making an election campaign speech "to the ten percent [of Americans] on the fence in 17 states."

Deeply troubled, Newsom asked his staff to research what



San Francisco mayor Gavin Newsom brought ACLU members to their feet.

it would take to grant same-sex marriage licenses in San Francisco. His staff returned that they need simply change the language on the computer screen. After consulting with attorneys from the ACLU-NC and the National Center for Lesbian Rights, and carefully selecting the day, and the couple, the first marriage license was issued to Del Martin and Phyllis Lyon—a couple of 51 years—on February 12.

Newsom was on tenterhooks that day, fearing that a court would halt the weddings before the first marriage took place. But the weddings didn't end that day. In fact 4,021 marriage licenses were granted to couples from 46 states and eight countries before the California Supreme Court issued a stay directing San Francisco to stop issuing marriage licenses to same-sex couples.

Months later, the most remarkable thing, Newsom said, "is how unremarkable it has been.... People are going back to their lives and realizing that their [heterosexual] marriages haven't dissolved because gays and lesbians are married."

Newsom believes that we will look back at laws against same-sex marriage with the disbelief that we look at laws barring interracial marriage now -- "but I don't think it's going to take 20 or 30 years."

"Separate is never equal," he concluded. "You know that better than anyone else." ■

HIGHLIGHTS OF THE 2004 MEMBERSHIP CONFERENCE



GIGI PANDIAN

"YOU READ THE DECLARATION [OF INDEPENDENCE] AND YOU SEE THAT BASICALLY IT'S A LEGAL CASE FOR REVOLUTION. JEFFERSON CREATED A DOCUMENT THAT NOT ONLY PROCLAIMED OUR FREEDOM FROM AN AUTOCRATIC KING, BUT ALSO OUR DEVOTION TO THE RULE OF LAW."

—ANTHONY ROMERO,
ACLU EXECUTIVE DIRECTOR



SUSANA MILLMAN

—RICHARD CLARKE,
FORMER NATIONAL
COUNTERTERRORISM
CZAR

"THE WHOLE POINT OF FIGHTING [AL QAEDA] IS TO FIGHT A GROUP WHO WOULD TAKE AWAY ALL OF OUR CIVIL LIBERTIES... IT MAKES NO SENSE FOR US TO DO THEIR WORK FOR THEM."

"WE NEED TO TALK ABOUT WHAT WE CAN DO ABOUT [RACIAL PROFILING]. IT IS A PROBLEM; IT IS REAL; THE DATA TELL THE TRUTH."



GIGI PANDIAN

—CHARLES MOOSE,
FORMER POLICE CHIEF,
MONTGOMERY COUNTY, MD



SUSANA MILLMAN

—NADINE STROSSEN,
ACLU PRESIDENT

"I BELIEVE ALONG WITH THOMAS JEFFERSON THAT DISSENT IS THE HIGHEST FORM OF PATRIOTISM."



GIGI PANDIAN

MEMBERS OF THE UC BERKELEY ACLU STUDENT CLUB ATTENDED THE CONFERENCE.

CIVIL LIBERTIES: THE NEXT GENERATION

By Amelia Rosenman, Friedman Project Youth Activist Committee

Over 300 civil libertarians in their teens and twenties attended this year's National ACLU Membership Conference. The large contingent of youth at the conference brought fresh energy, enthusiasm, and insight to the three-day rally for freedom, participating in general plenaries as well as sessions specifically oriented to youth.

The conference closed with a panel discussion of "The Next Generation of Civil Libertarians" featuring five youth presenters: Niko Bowie, Morgan Macdonald, Stephen Narain, Rachel Wilson, and Thomas Woodrow. Narain and Wilson, both entering college freshmen, received two of the ten Youth Activist Scholarships given this year by the ACLU. Narain worked last year at an ACLU hotline, advising Free Trade Area of the Americas (FTAA) protesters about their First Amendment rights. Said Narain: "Activism cuts across all barriers." He called the FTAA protests "a beautiful demonstration of people from all over the world coming together."

Panelists Niko Bowie and Thomas Woodrow have both expressed political messages through film. Bowie's documentary, "The Fog of Fear: Exchanging Liberty for Security in the World War I Era," was produced in collaboration with classmate Nick Haycock and claimed first prize in the Boston region for the 2004 History Day Competition. Bowie

and Haycock completed extensive research before creating their film, which covers the Sacco and Vanzetti trial during the red scare of the 1920s. Enthused by the box-office popularity of recent documentaries, including Michael Moore's "Fahrenheit 9/11," Bowie commented: "reality is as good as a feature film."

Thomas Woodrow is also a filmmaker. His work, "Truth Is Not a Four Letter Word," won the ACLU College Freedom Public Service Announcement (PSA) Contest. Just 30 seconds long, the chilling PSA comments on broadcast bans of the Federal Communications Commission by showing a man's growing fear as he watches a heavily censored edition of the nightly news. Woodrow, along with his creative collaborator Ehren Park, produced the PSA to warn

of the dangers inherent in limiting freedom of the press. Woodrow felt the current political climate, especially the assault on civil liberties, has made it easier "to find a broad audience for discussing these issues. What better target for a piece of media than the media itself?" he asked.

The ardent and innovative activism of the panelists and other youth at the conference reflects the deep concern of the rising generation for civil liberties and social justice. "Even though you may be on a particular campus, you're still part of the global sphere," Bowie said. ■



Youth Activist Committee members William Walker and Jason Wong at a reception put on by the ACLU-NC.

WANT TO SUPPORT THE ACLU? GIVE ONLINE AT WWW.ACLUNC.ORG

THE COST OF FREEDOM? GOVERNORS OWEN AND DEAN DEBATE

To renew or not to renew, that was the question. On the final day of the ACLU membership conference, executive director Anthony Romero moderated a spirited debate on renewal of key provisions of the USA Patriot Act. The debate pitted a fervent proponent of the Act, Colorado Republican Governor Bill Owens, against former Governor of Vermont, Howard Dean.

Named the “best Governor in America” by the conservative *National Review*, Owens led off the debate by raising the specter of “cold-blooded killers [who] promise to use every weapon known to man” against America. Declaring the Patriot Act an essential tool in the war against terrorism, Owens said he was prepared to defend it “line by line.” Dean, a physician by training who sprang to national prominence last year as a presidential hopeful and vocal critic of the invasion of Iraq, linked the Act’s most controversial measures with other Bush administration assaults on civil liberties. Here are some highlights of the debate:

GOVERNOR OWENS: I believe that the greatest danger we face to civil liberties and civil justice is what I fear would follow another successful terrorist attack – anthrax in our water supply, four or five suicide bombers, the destruction of a sports arena with 50,000 people inside. Think for a moment what would happen then. These are important questions we’re facing today – the balance between liberty and order, between freedom and security. I believe we’re striking the right balance in the Patriot Act.

“IT IS THE GROUNDWORK OF THIS COUNTRY THAT PEOPLE CANNOT BE IMPRISONED WITHOUT KNOWING WHY. THE ABILITY OF THE GOVERNMENT TO LOCK YOU UP WITHOUT DUE PROCESS IS A SLIP TOWARDS AN AMERICA THAT HAS NOT EXISTED FOR 226 YEARS.”

—GOV. HOWARD DEAN

problem is, that’s not in the Patriot Act. The law can be used only for national security investigations, not for domestic terrorism, and not for ordinary crime. To date, not one library record or bookstore record has been sought under the Patriot Act.

[editor’s note: An October 29, 2003, FBI memorandum obtained by the ACLU under the Freedom of Information Act acknowledges that the Patriot Act can be used to obtain information about innocent people—contradicting the government’s repeated assertion that it can be used only against suspected terrorists. A report released by Attorney General Ashcroft on July

14 confirmed that the Patriot Act has been used to investigate ordinary crimes.]

DEAN: The Patriot Act has a different standard, a lesser standard, for obtaining information from video stores and libraries—who are not allowed to tell me that they’ve been visited by the FBI. That should not be. The government itself is trying to take away the very freedoms that terrorists would deny us.

OWENS: I only wish back to September of 1963 that federal authorities could have prevented the dynamite explosion of the 16th Street Church in Birmingham

that took the lives of those four young girls... or the assassination of Martin Luther King, in 1968.

DEAN: Governor Owens mentioned the bombings at the 16th Street Church in Birmingham, and the assassination of Dr. King. And he implied if only we had had these laws, then these tragedies could have been avoided. Let me remind you that the

“THESE ARE IMPORTANT QUESTIONS WE’RE FACING TODAY – THE BALANCE BETWEEN LIBERTY AND ORDER, BETWEEN FREEDOM AND SECURITY. I BELIEVE WE’RE STRIKING THE RIGHT BALANCE IN THE PATRIOT ACT.”

—GOV. BILL OWENS

every word of this Act from our federal statutes.

DEAN: The problem is, if somebody here gets arrested in the middle of the night for speeding by somebody who doesn’t happen to like you and you get charged with domestic terrorism instead of speeding, you’re done. Because your due process just went out the window. Every day that John Ashcroft is Attorney General, we’re creeping closer to that day.

OWENS: It’s a very dangerous world out there. And there are people who are trying to take away not only our civil liberties, they’re trying to take our right to life. There was an article in the *Wall Street Journal* that quoted the head of the Iranian Office of Doctrinaire Affairs saying, “we have a strategy drawn up for the destruction of Anglo-Saxon civilization.”

DEAN: This argument is not about Democrats or Republicans. This argument is about standing up for American freedom, or sacrificing American freedom for short-term political gains. ■



ACLU executive director Anthony Romero (center) moderated the debate between Bill Owens (l) and Howard Dean.

GOVERNOR DEAN: He [Owens] did not talk about the most egregious parts of the Patriot Act. It is the groundwork of this country that people cannot be imprisoned without knowing why. The ability of the government to lock you up without due process is a slip towards an America that has not existed for 226 years.

OWENS: Let me address some other areas of the Act that have gotten some of you a bit overheated. The idea of our government rifling through America’s reading choices without a court order, building a criminal case on what they find, scares people. And it should scare people. The



Howard Dean

Bill Owens

SAFE AND FREE CAMPAIGN DIGEST

MANEUVER KILLS LIBRARY FREEDOM ACT

Q: When is a vote not a vote?

A: When the majority party changes the rules to change the result.

It was no joke when House Republican leaders, threatened with an embarrassing loss on a crucial civil liberties bill, extended the time allotted for a vote on Rep. Barney Frank’s Library Freedom Act. The Act, which would have removed from the Patriot Act provisions that allow the government to monitor our reading habits, passed by nine votes—until GOP leaders extended the time limit by 25 minutes in order to strongarm Republican dissenters into changing their votes. The final count: a tie, killing the measure.

PATRIOT ACT WHITEWASH

A report submitted to Congress on July 14 by Attorney General Ashcroft on the government’s use of the Patriot Act omits key information and fails to mention controversial provisions, says the ACLU. “President Bush and Attorney General Ashcroft need to spend less time waging public relations campaigns and more time responding to the specific, legitimate concerns of the American people,” said ACLU executive director Anthony Romero.

The report avoids mention of key sections of the law that the ACLU and some Members of Congress are attempting to fix, including Section 213, which expanded federal access to so-called “sneak-and-peek” search warrants, and Sections 215 and 505, which allow the FBI access to medical, library, and financial records. Sections 215 and 505 are the subject of pending constitutional challenges brought by the ACLU and others.

The report reveals that the Patriot Act, touted as an anti-terrorism tool, is frequently used in non-terrorism cases. It sidesteps any mention of the Patriot Act’s use against innocent Americans whose records have been turned over to the FBI, and fails to mention the frequency of intrusive investigations that did not result in prosecutions.

PATRIOT ACT REVEALED

New records turned over to the ACLU under court order reveal these troubling truths about the Patriot Act:

- Weeks after Attorney General John Ashcroft declared that the government had never used the surveillance powers in Section 215 of the Patriot Act, the FBI submitted an application for a Section 215 order, according to an FBI memo dated October 15, 2003.
- Another document confirms that Section 215 may be used to obtain physical objects, such as a person’s apartment key.
- Section 215 can be used to obtain information about innocent people—contradicting the government’s repeated assertion that it can be used only against suspected terrorists and spies, according to an October 29, 2003, internal FBI memo.

The records were obtained through a Freedom of Information Act (FOIA) request filed in October 2003 on behalf of the ACLU, the Electronic Privacy Information Center, the American Booksellers Foundation for Free Expression, and the Freedom to Read Foundation.

CONTINUED ON NEXT PAGE

"WAR IS NOT A BLANK CHECK FOR THE PRESIDENT"

— U.S. SUPREME COURT

By Adam Forest, *ACLU Intern*

The U.S. Supreme Court term that ended June 29 will long be remembered for its emphatic repudiation of the Bush administration's claim that it can conduct the war on terrorism as it sees fit, with virtually no opportunity for meaningful judicial review. Insisting that a system of checks and balances is essential to safeguarding both liberty and security, the Court ruled that foreign citizens detained at Guantanamo Bay and American citizens detained in military brigades are both entitled to their day in court.

"These are truly historic decisions," said Steven R. Shapiro, the ACLU's national legal director. "The administration has treated the rule of law as an inconvenience in the war against terrorism. In response, the Supreme Court has sent a powerful message that the end does not justify the means, and that it will not sit on the sidelines while the rule of law is ignored."

Writing that "a state of war is not a blank check for the President when it comes to the rights of the nation's citizens," the Court ruled 8-1 that plaintiff Yaser Esam Hamdi, a U.S. citizen seized in Afghanistan, has the right to fight his detention in a federal court.

In a separate case, the Supreme Court ruled 6-3 that the

600 men from 42 countries detained at Guantanamo Bay, Cuba, can also contest their treatment.

"These decisions reflect the growing momentum, fueled by the ACLU, to ensure that the voices of those who disagree with this administration's policies are heard loud and clear," said Dorothy Ehrlich, executive director of the ACLU of Northern California (ACLU-NC). "The ACLU's message — that unrestrained government power is a threat to fundamental freedom — is reflected both in the Supreme Court's end-of-term decision, and is a growing concern in the court of public opinion. Two years ago, it would have been hard to imagine this victory without the groundwork that has been laid."

Hamdi's family says that the Saudi-born 20-year-old relief worker was in the wrong place at the wrong time when he was arrested in Afghanistan by the Northern Alliance in late 2001. The Bush administration alleges he was carrying a gun and fighting with a Taliban unit. After his arrest, Hamdi was shipped to Guantanamo Bay and eventually transferred to a Navy brig in South Carolina after authorities verified that he was indeed a U.S. citizen. Since his arrest, he has been interrogated repeatedly, but has only recently been allowed to meet with lawyers.

In both Hamdi's case and that of the Guantanamo detainees, the administration contended that the men being held are neither prisoners of war—and thus protected by the Geneva Conventions—nor common criminal suspects

with automatic rights to an attorney or to know the charges against them.

The Supreme Court disagreed. "Striking the proper constitutional balance here is of great importance to the nation during this period of ongoing conflict," wrote Justice Sandra Day O'Connor in the majority opinion in the Hamdi case. "But it is equally vital that our calculus not give short shrift to the values that this country holds dear or to the privilege that is American citizenship."

In a third ruling, the Court voted 5-4 to dismiss on a technicality the case of Jose Padilla, an American citizen arrested at O'Hare Airport, Chicago, and classified as an 'enemy combatant.'

"At stake in this case is nothing less than the essence of a free society," wrote Justice John Paul Stevens in an emotional dissent.

"For if this nation is to remain true to the ideals symbolized by its flag, it must not wield the tools of tyrants even to resist an assault by the forces of tyranny." ■



ACLU legal director Steven Shapiro

ACLU AD FEATURES NAVY ADMIRAL

Retired U.S. Navy Admiral John Hutson is the new face of the ACLU's "Scrapbook for Freedom" advertising campaign. In the advertisement, which has appeared in *The Economist* and the *New York Times Magazine*, Hutson is featured with the headline, "How can we fight to uphold the rule of law if we break the rules ourselves?"

"Today we are conducting the war against terrorism in a manner that is inimical to those values of freedom and justice," Hutson says in the ad. "It is weakening our cause at home and around the world... Fortunately, the American Civil Liberties Union is speaking out for American values."



CONTINUED: SAFE AND FREE CAMPAIGN DIGEST

PRESIDENTIAL PATRIOT ACT MYTHS

The national ACLU provided this point-by-point rebuttal of President George W. Bush's speech in Buffalo NY, April 22, 2004.

The President: "By the way, the reason I bring up the Patriot Act, it's set to expire next year. I'm starting a campaign to make it clear to members of Congress that it shouldn't expire. It shouldn't expire for the security of our country."

The Truth: Less than 10 percent of the Patriot Act expires; most of the law is permanent and those portions that do sunset will not do so until December 31, 2005.

The President: "And that changed, the law changed on roving wiretaps were available for chasing down drug lords. They weren't available for chasing down terrorists, see?"

The Truth: Roving wiretaps were available prior to 9/11 against drug lords and terrorists. Prior to the law, the FBI could get a roving wiretap against both when it had prob-

able cause of crime for a wiretap eligible offense. What the Patriot Act did is make roving wiretaps available in intelligence investigations supervised by the secret intelligence court without the judicial safeguards of the criminal wiretap statute.

The President: "...see, I'm not a lawyer, so it's kind of hard for me to kind of get bogged down in the law. (Applause). I'm not going to play like one, either. (Laughter.) The way I viewed it, if I can just put it in simple terms, is that one part of the FBI couldn't tell the other part of the FBI vital information because of the law. And the CIA and the FBI couldn't talk."

The Truth: The CIA and the FBI could talk and did. As Janet Reno wrote in prepared testimony before the 9/11 commission, "There are simply no walls or restrictions on sharing the vast majority of counterterrorism information. There are no legal restrictions at all on the ability of the members of the intelligence community to share intelligence information with each other." ■

TAKE ACTION

GOOD BILL/BAD BILL

TWO BILLS IN CONGRESS HAVE THE POTENTIAL TO SIGNIFICANTLY IMPACT CIVIL LIBERTIES IN THE U.S.:

The SAFE Act of 2003 (S. 1709 / HR 3352) is an important bill that would roll back some of the Patriot Act's worst excesses.

The CLEAR Act (HR 2671) is antithetical to civil liberties. It would require state and local law enforcement agencies to enforce federal immigration laws or risk losing federal funds. It is also known as the Homeland Security Enhancement Act (S. 1906) in the U.S. Senate.

Ten Members of Congress from northern California have cosponsored the SAFE Act, and twelve have stated their opposition to the CLEAR Act. They deserve our thanks.

Cosponsoring the SAFE Act:

Nancy Pelosi ■ Barbara Lee ■ Lynn Woolsey ■ Pete Stark
Sam Farr ■ Mike Honda ■ Tom Lantos ■ Bob Matsui
George Miller ■ Mike Thompson

Opposing the CLEAR Act:

Nancy Pelosi ■ Barbara Lee ■ Lynn Woolsey
Pete Stark ■ Sam Farr ■ Mike Honda ■ Tom Lantos
Bob Matsui ■ George Miller ■ Mike Thompson
Zoe Lofgren ■ Anna Eshoo

Unfortunately, U.S. Senators Dianne Feinstein and Barbara Boxer have not taken a similar stand.

Please call Senators Feinstein and Boxer today. Urge them to:

- Cosponsor the SAFE Act, S. 1709.
- Oppose the Senate version of the CLEAR Act—the Homeland Security Enhancement Act, S. 1906.

Senator Feinstein: (415) 393-0707

Senator Boxer: (916) 448-2787

THE DA AND THE DEATH PENALTY

When she ran for election in November 2003, San Francisco's District Attorney Kamala Harris made clear to voters that she opposed the death penalty and would not enforce it. But just three months into her term, a tragic cop killing put Harris under enormous pressure to modify her position. Here, the ACLU of Northern California's Dorothy Ehrlich stands up for Harris's bold stance.

The following commentary by the ACLU-NC's Executive Director Dorothy Ehrlich aired on radio station KQED-FM, on May 29, 2004

Throughout the sordid history of the death penalty, the official public executioner frequently has worked within earshot of a vengeful mob.

This history makes the shrill campaign by elected officials who have targeted District Attorney Kamala Harris's courageous decision to seek life without the possibility of parole instead of the death penalty for the killing of a police officer, particularly unseemly. For it's coming not from the mob on the street, but from elected officials who should know better.

Ignited by Senator Dianne Feinstein, who turned a solemn funeral mass into a pep rally for an execution, the political bandwagon has been joined by California Attorney General Bill Lockyer, who provoked applause at a recent police memorial by threatening to have his office take over prosecution of the case; and by Senator Barbara Boxer, who has

actually urged Attorney General John Ashcroft to step in and make this a federal death penalty case. And finally, a group of state legislators has even proposed to cut funds from San Francisco to punish District Attorney Harris for her decision.



Anti-death penalty activists at the May 5 rally.



Surrounded by anti-death penalty activists, ACLU-NC associate director Bob Kearney speaks at a rally in San Francisco supporting Kamala Harris.

SAN FRANCISCO VOTERS... SHOULD BE PROUD TO HAVE A DA WHO REFUSES TO PARTICIPATE IN THE UNWORTHY AND RECKLESS PRACTICE OF EXPLOITING THE DEATH PENALTY FOR POLITICAL PURPOSES.

San Francisco voters have twice rejected pro-death penalty ballot initiatives. We should be proud to have a DA who refuses to participate in the unworthy and reckless practice of exploiting the death penalty for political purposes. ■

PEER PRESSURE

In just her third month in office, San Francisco District Attorney Kamala Harris faced an onslaught of pressure from politicians and police for her decision to not seek the death penalty for the slayer of a policeman. In a poll, 70 percent of San Franciscans support Harris's stance, which has not changed despite the pressure.

APRIL 10: San Francisco police officer Isaac Espinoza is killed by an AK-47 while working undercover in San Francisco's Bay View/Hunters Point neighborhood.

APRIL 11: David Hill, 21, is taken into custody as a suspect.

APRIL 13: DA Harris, elected in 2003 after publicly opposing the death penalty, charges Hill with "special circumstance homicide," which automatically carries a sentence of life in prison without possibility of parole.

APRIL 16: Senator Dianne Feinstein calls for the execution of Espinoza's killer from the podium in St. Mary's Cathedral, the city's Catholic center.

APRIL 21: Police brass and union members march on the Hall of Justice and demand that the DA withdraw from the case so state prosecutors can seek the death penalty. Harris vows to retain control over prosecution of the case.

APRIL 23: Harris publishes an op-ed in the *San Francisco Chronicle*, defending her decision and calling on those "in law enforcement and government to get back to the work before us—the daily duty of protecting the public."

APRIL 27: California Assemblyman Joe Cansamilla (D-Pittsburg) introduces a resolution asking Attorney General Bill Lockyer and the U.S. Attorney's office to intervene and seek the death penalty. The resolution also calls for a review of state funds allocated to Harris's office.

MAY 4: Senator Barbara Boxer asks the U.S. Justice Department to look into the Espinoza case for possible prosecution as a federal death penalty case.

MAY 5: The ACLU of Northern California, Amnesty International and other civil liberty and criminal justice advocacy groups hold a press conference at SF City Hall in support of Kamala Harris's stance against the death penalty.

MAY 9: Lockyer addresses the annual California Peace Officers Memorial Ceremony and pledges to review the Espinoza case for possible state intervention.

JUNE 4: San Francisco Board of Supervisors votes 8-2 to support Harris's stance.

JUNE 9: Attorney General Lockyer announces he will not intervene in the Espinoza case, though says he would have sought the death penalty if the case were his.

AROUND THE REGION

B.A.R.K. (BERKELEY-ALBANY-RICHMOND-KENSINGTON): MEDICAL MARIJUANA

Angel McClary Raich, Vice-Chair of the East Bay's B.A.R.K. Chapter, will be in the U.S. Supreme Court later this year. Angel, a medical cannabis patient, won her suit against the government's intention to deprive her of her life-saving medicine when a 9th Circuit panel agreed with her. The plaintiff has appealed in what may become a landmark case.

UC BERKELEY ACLU: CELEBRATING FREE SPEECH

The ACLU group at UC Berkeley is preparing for a year-long celebration of the 40th anniversary of the Berkeley Free Speech Movement. Plans include several speakers who have been pivotal in the struggle for free speech. In addition, the students will host their annual Fred Korematsu Lifetime Achievement Award in October.



"Democracy in the Balance"—a library display by the Contra Costa/Mt. Diablo Chapter.

CONTRA COSTA/MT. DIABLO: DEMOCRACY IN THE BALANCE

When the Contra Costa/Mount Diablo chapter learned that public library display windows could be reserved by non-profits, a light bulb went on. With creative support from Linda Green and stained glass artists Sister Rita Frances, activists Harvey Green and John Williams created a montage that lists important liberties transgressed by the Patriot Act on one side and the Act's abuses on the other (see picture, above). Patrons requesting information about the display receive brochures and reading lists at the library desk. "Democracy in the Balance" has spent a month in Walnut Creek and Lafayette, is now in Concord, and will soon make an appearance in Pleasant Hill.

MARIN: ANNUAL LUNCH

The Marin Chapter of the ACLU held its annual meeting and lunch on July 11, at the Contempo Marin Clubhouse

in San Rafael. The event featured Marin County Public Defender Joe Spaeth, who spoke on Community Justice Using Restorative Practices. The Chapter also honored Cesar Langleva, community activist and Marin Human Rights Commission member, with this year's Benjamin Dreyfus Award for achievements in civil liberties. ACLU-NC Associate Director Bob Kearney also spoke at the event.

MENDOCINO COUNTY: POSTER COMPETITION

Happy with the success of their Diversity Program in Willits, the fledgling Mendocino County chapter is planning a poster competition for young artists, and formation of a legal advice panel. Chair Linda Leahy and member-attorney Michael Anderson have regular radio spots reporting activities and plans.

MID-PENINSULA: POLICE PRACTICES

The Mid-Peninsula chapter continues its work in the area of police practices. Chapter members are looking at ways to deal with potential police harassment in the eleven communities that make up the chapter.

NORTH PENINSULA: PATRIOT ACT OUTREACH

The North Peninsula Chapter has been reaching out to the Peninsula community by having 'coffee' in the homes of Chapter members and speaking about the Patriot Act and other civil liberties issues. Any member interested in attending or hosting an evening at their home should contact Marlene DeLancie at (650) 343-8227. Board Member Marshall Dinowitz has been named to the San Mateo County Task Force on Disproportionate Minority Confinement in the Juvenile Justice System. This group is charged with making recommendations to the Board of Supervisors regarding how to implement remedies for this serious civil liberties issue. ■

UPCOMING CHAPTER EVENTS

B.A.R.K. (BERKELEY-ALBANY-RICHMOND-KENSINGTON): ANNUAL MEETING

B.A.R.K. will be holding its annual meeting on October 15. The featured speaker will be Amy Goodman, host of the radio news program Democracy Now! The event will be held at 7 p.m. at the First Congregational Church of Berkeley. Contact Jim Hausken at (510) 558-0377 for more information.

YOLO COUNTY: COMEDY NIGHT

The Yolo County chapter proudly presents an evening with comedian Will Durst on Thursday, October 7 at 8 p.m. at the Varsity Theater in Davis. For further information on this event contact event coordinator Lyle Smith at (530) 759-9921 or lyleasmith@yahoo.com. To make reservations send a check payable to the Yolo County American Civil Liberties Union, PO Box 795, Davis, CA 95617 (\$20 per person).



ACLU field organizer Sanjeev Bery thanks Congressman Mike Honda for cosponsoring the SAFE Act and opposing the CLEAR Act.

GET INVOLVED! LOCAL CHAPTER MEETINGS

Local chapters are a force for change in their communities. Learn more about their activities above, and contact your local ACLU chapter (information below) to get involved!

B-A-R-K (BERKELEY-ALBANY-RICHMOND-KENSINGTON) CHAPTER MEETING: Third Wednesday of each month at 7 p.m. Contact Roberta Spieckerman for more information: (510) 233-3316.

MARIN COUNTY CHAPTER MEETING: Third Monday of each month at 7:30 p.m. at the public media room, Sewerage Agency of Southern Marin, 450 Sycamore Ave., Mill Valley, CA 94941. Contact Bob Harmon for more information: (415) 388-3980. Or call the Marin Chapter complaint hotline at (415) 456-0137.

MENDOCINO COUNTY CHAPTER MEETING: Second Saturday of each month. Locations rotate throughout Mendocino County. For information on the next meeting, contact Jessie Jesulaitis at (707) 964-8099, or Chapter Chair Linda Leahy at (707) 937-3452 or lleahy@mcn.org.

MID-PENINSULA CHAPTER MEETING: First Wednesday of each month from 7:00 to 9:30 p.m. All meetings are in the conference room of Community Activities Building, Red Morton Community Park at 1400 Roosevelt Avenue. Contact Harry Anisgard for more information: (650) 856-9186.

MONTEREY COUNTY CHAPTER MEETING: Third Tuesday of the month at 7:15 p.m. at the Monterey Public Library. Contact Matt Friday to confirm time and location: (831) 899-2263. Or to report a civil liberties concern, call Monterey's complaint line: (831) 622-9894. Visit www.aclumontereycounty.org.

NORTH PENINSULA (DALY CITY TO SAN CARLOS) CHAPTER MEETING: Usually third Monday of each month at 8:00 p.m. in the downstairs conference room at 700 Laurel Street (off Fifth Avenue), San Mateo. Contact Linda Martorana for more information: (650) 697-5685.

PAUL ROBESON (OAKLAND) CHAPTER MEETING: Usually fourth Monday of each month at the Rockridge library (corner of Manila and College Ave.), Oakland. Contact Louise Rothman-Riemer for more information: (510) 596-2580.

REDWOOD (HUMBOLDT COUNTY) CHAPTER MEETING: Third Tuesday of each month at 6 p.m. above 632 9th St. Arcata, CA 95525. Contact Greg Allen for more information: (707) 825-0826.

SANTA CLARA VALLEY CHAPTER MEETING: First Tuesday of each month, 1051 Morse Street (at Newhall), San Jose. Contact acluscv@hotmail.com or visit www.acluscv.org for more information.

SANTA CRUZ COUNTY CHAPTER MEETING: Third Tuesday of each month at 7 p.m. at 260 High Street. Contact Kathleen Hughes for more information: (831) 439-9467.

SONOMA COUNTY CHAPTER MEETING: Third Tuesday of each month, at 7 p.m. at the Peace and Justice Center, 467 Sebastopol Avenue, Santa Rosa (one block west of Santa Rosa Avenue). Call the Sonoma hotline at (707) 765-5005 or visit www.aclusonoma.org for more information.

STANISLAUS COUNTY CHAPTER MEETING: Fourth Wednesday of each month. Contact Tracy Herbeck for more information: (209) 522-7149.

YOLO COUNTY CHAPTER: Every third Wednesday at 1175 Lake Blvd. #144, Davis. Contact Natalie Wormeli: (530) 756-1900.

NEW CHAPTERS ORGANIZING

CONTRA COSTA/MT. DIABLO CHAPTER MEETING: Regular meetings. Contact Lee Lawrence for more information at (925) 376-9000 or leehelenalawrence@yahoo.com. All ACLU members in central and eastern Contra Costa County are invited to participate.

NAPA COUNTY CHAPTER MEETING: Meetings to be announced. Call (415) 621-2493.

SACRAMENTO COUNTY CHAPTER MEETING: Regular meetings. Contact Mutahir Kazmi at (916) 480-9543.

SAN FRANCISCO CHAPTER MEETING: Meetings to be announced. Call (415) 621-2493.

SAN JOAQUIN COUNTY CHAPTER MEETING: Regular meetings. Contact Kamran Alavi for more information: (209) 833-0576 or calm_ron@yahoo.com.

SOLANO CHAPTER: Contact Bill Hatcher at (707) 449-0726.

ASK THE EXPERTS! GOVERNMENT SPYING AND YOUR FIRST AMENDMENT RIGHTS

WHY IS THE ACLU PARTICULARLY CONCERNED ABOUT SURVEILLANCE NOW?

In the last two and a half years, the federal government has dramatically decreased the checks on inappropriate government surveillance. The USA Patriot Act increased the government's ability to obtain information about individuals' private lives, including library records, financial records, and Internet usage without meaningful judicial review. The Act also allows federal agents to search private property without notice to the owner.

In addition to the Patriot Act, in 2002 U.S. Attorney General John Ashcroft—

without congressional consultation or hearings—unilaterally rewrote long-standing FBI guidelines, allowing federal agents to engage in virtually unfettered surveillance on religious, political, and community organizations. Under Ashcroft's guidelines, federal agents can monitor religious, political, and community events and meetings without any suspicion of criminal activity.



Mark Schlosberg

These new measures are disturbing, given the historical backdrop. Many of the provisions changed by the administration, including the FBI guidelines, were adopted after revelations about government abuses in the 1950s through the 1970s. During that period, the FBI infiltrated and disrupted the civil rights movement, including spying on and attempting to discredit Dr. Martin Luther King Jr. Two years ago, the *San Francisco Chronicle* obtained information that documented FBI surveillance—and involvement in the firing of—University of California President Clark Kerr.

Safeguards are especially important in times of crisis, when people with strong feelings want to express themselves on issues of public concern. Regulation of government surveillance is necessary to protect privacy rights, safeguard free speech and association, and guard against government abuse.

WHEN DOES THE ACLU THINK IT IS ACCEPTABLE FOR THE POLICE TO CONDUCT SURVEILLANCE ON PEOPLE?

There are times when government surveillance is appropriate, but it should not be done in an indiscriminate manner or used to target people because of their political or religious views. Law enforcement should only conduct surveillance if there is reasonable suspicion that a crime has been committed.

In 1972, California voters overwhelmingly voted to incorporate a right to privacy into the California constitution specifically to guard against the "proliferation of government snooping and data collecting [that] is threatening to destroy our traditional freedoms." The first California Supreme Court case to interpret the privacy amendment—*White v. Davis*—held that the police infiltration of classes and political associations at UCLA violated the constitutional right to privacy in the absence of any compelling state interest.

The concerns behind the privacy amendment are as timely now as they were in 1972. Law enforcement has no business monitoring people engaging in First Amendment-protected activity in the absence of reasonable suspicion of a crime.

The Bush administration's "War on Terrorism" has produced a corresponding war on Americans' civil liberties in the name of national security. Federal, state and local law enforcement entities have stepped up surveillance of American citizens and non-citizens alike. ACLU-NC police practices policy director, Mark Schlosberg, answers questions about the resurgence of government snooping, and what it means to you.

ARE THERE GROUPS OF PEOPLE THAT ARE MORE LIKELY TO BE SPIED UPON?

While it is impossible to know the extent to which individuals and organizations are being monitored or spied on by law enforcement, there have been a number of reported incidents. The targets in these incidents include activists and the Arab-Muslim community. In northern California, there have been anecdotal reports of FBI surveillance of mosques. Arab, Muslim, and South Asian communities have been targeted for questioning in a number of nationwide questioning programs.

Anti-war protests have also been targeted. Undercover San Francisco police officers monitored last year's anti-war

IN SACRAMENTO, A POLICE OFFICIAL WEARING A JACKET WITH THE WORDS "IDENTIFICATION TECHNICIAN" VIDEOTAPED AN ANTI-WAR PROTEST, DRAWING COMPLAINTS FROM PROTESTERS.

protests in violation of departmental policy. In Sacramento, a police official wearing a jacket with the words "identification technician" videotaped an anti-war protest, drawing complaints from protesters. Earlier this year, two undercover members of the Contra Costa Sheriff Department's Homeland Security unit monitored a labor demonstration at a Safeway in San Francisco. When asked, they repeatedly denied being law enforcement before admitting who they were.

COULD THE GOVERNMENT BE SPYING ON ME EVEN WHEN THEY DON'T SUSPECT ME OF A CRIME?

Most glaring, a community organization called Peace Fresno was infiltrated by a member of the Fresno County Sheriff anti-terrorism team. Members of Peace Fresno realized that they had been the subjects of surveillance when they saw a picture of Sheriff's Deputy Aaron Kilner in the obituary section of the *Fresno Bee* after he'd died in a motorcycle accident. For the previous six months, Kilner—under the alias Aaron Stokes—had gone to Peace Fresno meetings and events, taken notes, and lied about his name and occupation. Attorney General Bill Lockyer has launched an investigation into the incident.

It's not supposed to, but as we have seen, this is not always the case. After September 11, 2001, the government questioned thousands of individuals from the Middle East and South Asia, not based on any individualized suspicion of a crime, but on who they were. This questioning program did not yield a single terrorism related arrest.

Gathering intelligence based on racial, ethnic, religious, or a political profile is not effective, and is often counterproductive. It has a chilling effect on expression, engenders fear in the community, and makes people less trusting of law enforcement. So yes, the government may be conducting surveillance of individuals or organizations without reasonable suspicion of criminal activity, even though it is counterproductive and inconsistent with California's constitutional right to privacy.

DON'T WE NEED INCREASED SURVEILLANCE SINCE SEPTEMBER 11?

The tragic events of September 11, 2001 highlighted significant flaws in our intelligence system. Critical pieces of information were not connected and there was insufficient coordination between agencies. September 11 should not be used as an excuse

to remove necessary checks and balances and allow for unfettered surveillance of people and organizations based on their political or religious beliefs, or racial or ethnic background. Law enforcement should certainly be allowed to engage in necessary surveillance—but only with meaningful judicial review.

IF PEOPLE HAVE NOTHING TO HIDE, WHY SHOULD THEY CARE IF THE GOVERNMENT IS SPYING ON THEM?

There are a number of reasons people may not want the government spying on them even if they haven't been involved in criminal activity. Some personal information is highly sensitive, such as health information. People may not want anyone—let alone the government—learning about it. Others may be fearful of the consequences of being monitored. There have been real consequences to surveillance of dissenters in the past, including disruption of the civil rights movement and the firing of Clark Kerr. With this historical precedent, people certainly may have justifiable concerns. Government surveillance has a chilling effect on speech and expression. People may be more fearful to express themselves if they have to worry about whether what they are saying is acceptable to the government or not. The rights to free speech, association, and privacy are fundamental constitutional rights and part of the American tradition. ■

ACLU FORUM

The ACLU Forum is the place where you, our readers and members, can ask questions of our experts and share your comments with us. In each issue, we will focus on one or two specific topics.

WE WANT TO HEAR FROM YOU!

For the fall 2004 issue, please send us questions about:

Proposition 69—the "guilt by arrest" initiative on the november ballot, which would require DNA collection from all persons arrested for any felony

We also encourage you to send letters to the editor on any of the subjects we cover, though we cannot print every letter or answer every question. Letters should not exceed 200 words.

Send your questions and comments to gpandian@aclunc.org or Gigi Pandian, 1663 Mission Street #460, San Francisco, CA 94103.