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.

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, Virginia 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 what’s inside

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“We are not a blank check” —U.S. Supreme Court

“LOOK ACROSS this ROOM AND YOU KNOW THAT FAILURE IS NOT AN OPTION.”

—ANTHONY ROMERO,
EXECUTIVE DIRECTOR,
ACLU

NOMINATIONS NOW: BOARD ELECTIONS NOTICE

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 committee to fill at-large positions on the Board.

CONTINUED ON PAGE 2
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, 23, who attends Golden Gate College and lives in San Francisco. “People were holding their fists in the air and shouting, ‘ACLU rock!’”

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.

The conference attracted a wide range of people, for a wide range of reasons. “I’m so energized being here,” said Natalie Wirnemi 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 Tischauer, a Lieutenant in the Cook County (Illinois) Sheriff’s Department, came to attend panels on domestic spying, racial profiling, and the Patriot Act. “These are issues we’re dealing with in the police department,” she said.

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 Ehrlisch. “San Francisco proved the perfect breeding ground for thoughtful discussion, invigorating debate, and the hatching of new strategies to reclaim civil liberties.”

For more conference coverage, see page 6.

MEMBERS ENERGIZED
...THE SUPREME COURT STEPPED FORWARD TO REMIND THE NATION THAT A PERSON’S BASIC RIGHTS CANNOT BE SWEEPT AWAY BY THE STROKE OF A POLITICIAN’S PEN.

—ANTHONY ROMERO, EXECUTIVE DIRECTOR, ACLU

“I AM 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

“I’M SO ENERGIZED TO BE HERE.”

—NATALIE WIRMELI, ACLU-NC YOLO COUNTY CHAPTER

“We renewed our 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

MEMBERSHIPS

A CLU news

THE QUARTERLY PUBLICATION OF THE AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA.

Membership ($20 and up) includes a subscription to the ACLU News. For membership information call (415) 621-2493 or visit www.aclunc.org/join.html.

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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 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 Strelcy 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.

According to the CMA, decisions involving pregnancy, medical necessity and women 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 and are awaiting decisions. All three courts issued orders preventing the government from enforcing the ban until constitutional challenges are complete.

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.

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 OB/GYN. 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

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 grants immunity to Internet users potentially liable for third-party material passed on in an email, posted on a newsgroup, or on a website.

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.

 Hindi

ACLU-NC staff attorney Margaret Crosby

LEGAL BRIEFS

Barrett v. Rosenthal
Sacramento County Superior Court

La Raza v. Alvaro
California Superior Court

Maltez v. Alvaro
Alameda County Superior Court

ACLU-NC v. Ashcroft
U.S. District Court for the Northern District of California
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 Pulitizer 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

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Tobias Wolff

“In a resounding victory for students’ First Amendment rights, the California Supreme Court—acclaimed to Shakespeare, to Eminem—the brief of 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 writing assignments that administrators deemed violent. Michael Chabon, who wrote a New York Times op-ed about George T.’s case. And Chabon and other renowned writers recently convened 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.

The 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 convened 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.

Fact:
The school shooting at Columbine High occurred in 1999.

Fact:
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%.

Fact:
The chance that a school child will die in a school in 1998–99 was one in two million.

Fact:
The number of explosions has doubled since the 1970s: from 1.3 million students in 1974 to 3.2 million students in 1999.

Fact:
Over the same period, school crime has not increased.


“You know what I want to be like they do. I wish I had a choice on the next doctors or loirs. They would probably become the next doctors or loirs [sic] or something. All so happy and vagrant. Each one of us in their own way. They make me want to wake. 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%.

Fact: 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.

Fact: The number of explosions has doubled since the 1970s: from 1.3 million students in 1974 to 3.2 million students in 1999.

Fact: Over the same period, school crime has not increased.


CRIMINAL?

“A lot of people think that… what I say on records is 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.”

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 Bredy, staff attorney with the ACLU-NC.
YOUR VOICE HEARD IN SACRAMENTO

WHEN HUNDREDS OF ACLU MEMBERS EMAILED ATTORNEY GENERAL BILL LOCKEY, 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 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.

Name __________________________ Address __________________________ City __________________________ State __________________________

Email (required) __________________________ Zip (required) __________________________


IS OUR GOVERNOR A CIVIL LIBERTARIAN?

By Jeff Gilkenkirk

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.

“[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 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 coverage—Lobaco believes 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.”

—FRANCISCO LOBACO, ACLU LEGISLATIVE DIRECTOR

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 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 who 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.
“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 at 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 daily 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 elimi- nate 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 com- pounded by revelations of abuses of Iraqi prisoners. Ter- rorist 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 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, classi- fied by the Justice Department as an enemy combatant, trans- ferred 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.”

Clarke 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. Representa- tive 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 us 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, em- phasized the need for transparency in increasingly secretive times. Rowley pointed to a surge in requests for warrants to comb our planes. It has everything to do with the government’s intrusive desire to know everything there is to know about us as citizens and people lawfully in America.”

“John Ashcroft is one of the most dangerous men ever to hold office in this country.”

—ATTORNEY JAMES BROSNAHAN

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SAY “I DO:” 
MAJOR NEWSOM WOBS ACLU CROWD

Almost 2,000 ACLU members erupted in cheers as Dorothy Etoh, 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 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 to Washington, D.C. 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 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, 4,821 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 banning 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.”

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 Naraín, Rachel Wilson, and Thomas Woodrow. Naraín and Wilson, both entering college freshmen, received two of the ten Youth Activist Scholarships given this year by the ACLU. Naraín worked last year at an ACLU hotline, advising Free Trade Area of the Americas (FTAA) protestors about their First Amendment rights. Said Naraín: “Activism cuts across all barriers.” He called the FTAA protests “a beautiful demonstration of people from all over the world coming together.”

Pamela Niko Bowie and Thomas Woodrow have both expressed political messages through fliers. 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 20th 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 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.

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

HIGHLIGHTS OF THE 2004 MEMBERSHIP CONFERENCE

"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

"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."

-RICHARD CLARKE, FORMER NATIONAL COUNTERTERRORISM CZAR

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

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

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

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

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ACLU AGAIN FREEDOM’S FIRST PROJECT FIST! | 7
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 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.

**GOVERNOR DEAN:** It’s [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. 

**GOV. BILL OWENS:** He [Owens] may be used only against suspected terrorists. The records were obtained through a Freedom of Information Act request filed in October 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 that the lives of those four young girls... or the assassination of Martin Luther King, in 1968.

**GOV. OWENS:** Let me remind you that the head of the FBI, J. Edgar Hoover, was tailing and wiretapping Dr. King. The fact is, we have not had a terrorist attack in the United States since September 11, 2001. I don’t believe this is just luck. Law enforcement has testified that specific powers in the Act have already helped prevent terrorist attacks, and I think that this fact deserves very serious examination from those who would erase 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 sight to life. There was an article in the Wall Street Journal that quoted the head of the Iranian Office of Prosecution 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.

**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 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 strengthen 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.
The CIA and the FBI could talk and did. As "…see, I'm not a lawyer, so it's kind of...

And that changed, the law changed has the right to fight his detention in a federal court. tiff Yaser Esam Hamdi, a U.S. citizen seized in Afghanistan, is ignored.

It does not justify the means, the Supreme Court has sent a

against terrorism. In response, an inconvenience in the war has treated the rule of law as 

fit, with virtually no opportunity for meaningful judicial review. The Court ruled that foreign
detained in military brigs are both entitled to their day in court.

y Adam Forest, Writing that "a state of war could get a roving wiretap against both when it had prob-

drug lords. They weren't available for chasing down 

sunset will not do so until December 31, 2005.

The Truth: The President: "By the way, the reason I bring up the Pa-

The President: "How can we fight to uphold the rule of law if we break the rules ourselves?"

Today we are conducting the war against ter-

We cannot allow the war on terror to become the war on civil liberties. It is weakening our cause at home and around the world... Fortunately, the American Civil Liberties Union is speaking out for American values.

ACLU LEGAL DIRECTOR STEVEN SHAPIRO

ACLU AD FEATURES NAVY ADMIRAL

Ratified U.S. Navy Admiral John Hutton is the new face of the ACLU's "Scrabook for Free-

Information and Updates at www.aclu.org

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 Pat-

The Truth: Less than 10 percent of the Patriot Act expires:
much of the law is permanent and those portions that do 

The President: "And that changed, the law changed on roving wiretaps were available for chasing down 

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 intel-

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. (Ap-

cause because of 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 informa-

There are no legal restrictions at all on the ability of the members of the intelligence community to share intelligence information with each other."

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 Ehardt, executive director of the ACLU of Northern California (ACLU-NC). "The ACLU's message -- that unre-

TWO YEARS AGO, IT WOULD HAVE BEEN HARD TO IMAGINE THIS VICTORY

TWO MEMBERS OF CONGRESS FROM NORTHERN CALIFORNIA HAVE COSIGNED THE SAFE ACT, AND TWELVE HAVE STATED THEIR OPPOSITION TO THE CLEAR ACT. THEY DESERVE OUR THANKS.

Senators Feingold and Boxer have not taken a similar stand. They 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 ■ 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:

n Cosponsor the SAFE Act, S. 1709.

n Oppose the Senate version of the CLEAR Act—the Homeland Security Enhancement Act, S. 1906.

Senator Feinstein: (415) 554-7070

Senator Boxer: (916) 448-2787

QuietROWN

IF WE BREAK THE RULES WILY

IN THE WAR ON TERRORISM

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.

JUSTICE JOHN PAUL STEVENS

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.

-FRAMEWORK OF LAW AS AN INCONVENIENCE IN THE WAR AGAINST TERRORISM.

AGAINST TERRORISM.

"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."
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 world 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 executioner, the political bandwagon has been joined by California Attorney General Bill Lockyer, who provoked applause at a recent police memorial by threatening to 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.

This political chorus illustrates how willing politicians are to exploit the death penalty as an easy substitute for a thoughtful response to protecting public safety. Before she was elected District Attorney, Kamala Harris tapped into the research that consistently shows the death penalty does not deter crime such as the tragic loss of a young, dedicated police officer. Nor does the enormous cost and unfairness inherent in the death penalty add up to smart or effective law enforcement. Harris explained that while the desire for raw vengeance may be understandable as an emotional response, it does not justify the terribly flawed and irrevocable punishment of death.

San Francisco voters have twice rejected pro-death penalty ballot initiatives. We should be proud to have a DA who respects the wishes of his constituents and government to get back to the work before us—the daily duty of protecting the public.

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 12: 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 Cacacegilla (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 aids 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.
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 Spicierkorn 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 Jowalut at (707) 946-8099, or Chair Chari Leonard at (707) 953-3852 or rjcowalut@yahoo.com.

Mid-Peninsula Chapter Meeting: First Wednesday of each month from 7:00 to 9:30 p.m. All meetings are in the community room of The Public Library of Redwood City, 1400 Broadway Avenue. Contact Harry Anisgard for more information: (650) 856-9186.

Monsiey Tuesday Chapter Meeting: Third Thursday 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, contact Monterey’s complaint line: (831) 622-8994. 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 Marinsor for more information: (650) 673-5675.

Paul Robeson (Oakland) Chapter Meeting: Usually fourth Monday of each month at the Rockridge Community Congregational Church of Berkeley. Contact Louise Rothman-Rohrer for more information: (510) 596-2580.

Redwood (Humboldt County) Chapter Meeting: Third Tuesday of each month at 6 p.m. above 625 7th 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 aclucl.org or email aclucalifornia.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) 459-9467.

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.

Stanslaus 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 Wornoll: (530) 756-1900.

NEW CHAPTERS ORGANIZING

Contra Cost/Alb/L. Diablo Chapter: Regular meetings. Contact Lee Lawrence for more information at (925) 376-9000 or leelawrence@att.net. 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 Muralidhar Karmi at (916) 480-9453.

San Francisco Chapter Meeting: Meetings to be announced. Call (415) 621-2493.

San Joaquin County Chapter Meeting: Regular meetings. Contact Hamman Ali for more information: (209) 835-0576 or hamman.ali@yahoo.com.

Solano Chapter: Contact Bill Hatcher at (707) 449-0726.
ASK THE EXPERTS!
GOVERNMENT SPYING AND YOUR FIRST AMENDMENT RIGHTS

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.

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 longstanding 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 political, rallies, meetings and events without any suspicion of criminal activity.

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.

Surf Natural is especially important in times of crises, 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.

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.

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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.

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 protests in violation of departmental policy. In Sacramento, a police officer 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’s 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.

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.

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

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.

ACLU FORUM

The ACLU Forum is the place where, 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 your questions about:

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