TORCH

Volume 29, Number 2 April 2004

Anthony Romero, Executive Director of ACLU, to be Keynote Speaker at ACLU-NM Bill of Rights Dinner

Anthony D. Romero took the helm of the American Civil Liberties Union in September 2001, a week before the attacks on the World Trade Center and the Pentagon. Under his leadership, the ACLU has continuously stood up for civil liberties and steadfastly maintained that it is possible to be both safe and free.

Romero, an attorney with a history of public-interest activism, has also presided over the most successful membership drive in the ACLU's 83-year history.

He is the ACLU's sixth executive director, and the first Latino and openly gay man to serve in that capacity. He came to the organization from the Ford Foundation's Human Rights and International Cooperation Program, which he led through a period of extraordinary growth, transforming it into Ford's largest and most dynamic grant-making unit.

Romero also served for nearly five years as a Ford Foundation Program Officer for Civil Rights and Racial Justice; and for two years at the Rockefeller Foundation, where he led a foundation review that helped to determine future directions in civil-rights advocacy.

Born in New York City to immigrant parents from Puerto Rico, Romero was the first in his family to graduate from high school. A graduate of

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MARK YOUR CALENDERS

Bill of Rights Dinner
December 4, 2004
7:00PM
Albuquerque Marriott
2101 Louisiana Blvd NE

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Executive Director's Notes

ACLU Was Right about Campaign Finance Reform

By Peter Simonson

Some of you may remember an article that I wrote in the *Torch* about a year ago explaining the ACLU's opposition to campaign finance reform legislation that had just passed Congress—the McCain-Feingold bill. Among several concerns, the ACLU warned of a "virtual ban on issue advocacy" that would result from "redefining express advocacy (i.e. communication that supports the election or defeat of a particular candidate) in an unconstitutionally vague and over-broad manner."

Many traditional allies of the ACLU strongly supported the reform bill, which eventually became known as the Bipartisan Campaign Reform Act, or BCRA. Common Cause, for example, hailed the bill's passage as "a historic victory to help bring our government back to the people." At a local level, a group of ACLU members lobbied the New Mexico affiliate to urge the national ACLU Board of Directors to shift its position on the BCRA. They acknowledged that the BCRA was not a perfect law, but that it was a place to start. The members felt that the law's restrictions on express advocacy were a minor sacrifice to make for the sake of loosening the grip of Big Money on the electoral process.

Now panicked alerts are arriving in our office from political advocacy groups around the country that the much-celebrated reforms have opened a Pandora's box of regulations that threaten to shut down public debate and advocacy during one of the most critical presidential elections in recent history. On March 11, 2004, the Federal Election Commission issued its Notice of Proposed Rulemaking on Political Committee Status (NPRM)—a document intended to clarify and guide enforcement of the BCRA. In a letter to the Commission, a coalition of 415 non-profit organizations of varying mission and political stripe warned that the NPRM would have "a devastating effect on three critical and constitutionally protected areas of non-profit activity: issue advocacy, voter participation, and internal membership communications."

Of greatest concern, the NPRM would expand the regulatory definition of "expenditure" to include any public communications that "promote, support, attack, or oppose" a federal candidate or policy position of a candidate. Under existing Federal Election Campaign Act rules, nonprofit and other corporations are prohibited from making "expenditures" of this nature--only "political committees" are allowed. It looks now as if the BCRA will wind up promoting the importance of "political action committees"—PACs--not discouraging it.

The NPRM also would expand the definition of "political committees" to include any group that spends or has spent $50,000 in the current year or any one of the past four years on voter mobilization activities or on communications that "promote, support, attack, oppose" the positions of federal officeholders running for reelection. This even includes communications with dues-paying members. Such levels of expenditure are not at all unusual for many important organizations that advocate for or against policy views

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and yet do not consider electoral politics as their major purpose.

Under the Federal Elections Commission's proposed rules, the ACLU—a steadfastly nonpartisan organization--would have to create its own federal PAC in order to urge members to call their Congressional delegates to oppose the renewal of provisions of the USA Patriot Act that are due to expire in 2005.

A "good government" organization like Common Cause would become a "political committee" by launching a campaign costing more than $50,000 to promote a report criticizing members of the House of Representatives for taking cruises to the Bahamas as guests of the hotel industry.

In effect, the FEC's proposed rules would transform many nonprofit groups (including charities, civic organizations, religious groups, and labor unions) into federally regulated political committees merely for expressing opinions about federal officeholders' policies or views. The chilling effect of such policies would be enormous. Many non-profits would be unable to survive new restrictions on their program and fundraising.

The ACLU's opposition to McCain-Feingold was not a popular stand with many of our members, but it now looks as if it was the right position to take. Even if the FEC's extreme interpretation of the 2002 law does not stand, it will serve as a reminder of how readily government seizes ground that citizens willingly give up where constitutional protections against government control are concerned. When the unexpected consequences of laws like the BCRA finally begin to surface, no infringement on free speech turns out to be minor.

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Stanford University Law School and Princeton University's Woodrow Wilson School of Public Policy and International Affairs, he was a Dinkelspiel Scholar at Stanford, a Cane Scholar at Princeton, and a National Hispanic Scholar at both institutions.

He sits on several not-for-profit boards and is a member of the Council on Foreign Relations and the New York State Bar Association.

CONGRATULATIONS TO OUR NEW AND RETURNING ACLU OF NEW MEXICO BOARD MEMBERS

A WARM WELCOME TO:

STEVE LAWRENCE * JENNIE LUSK * CHRISTINA ROSADO-MAHER

KEEP UP THE GOOD WORK TO:

BENNETT HAMMER * PATRICIA JONES * ED MACY

THANKS TO ALL OUR MEMBERS FOR A STELLAR VOTER TURNOUT!

Review of Annual Meeting: Voting Integrity In 2004: Is Another Floodgate Around the Corner?

By Ann Steinmetz, Member and Former Board Member

The ACLU-NM Annual Membership Meeting was held Saturday, April 3, 2004 at the Indian Pueblo Cultural Center in Albuquerque, New Mexico with more than 150 people in attendance. Following the annual report by Executive Director Peter Simonson, a three-member panel moderated by Board member Rob Schwartz, UNM law professor presented the program. Neil Bradley, Associate Director of the Voting Rights Project of the National ACLU provided an overview of problems which occurred in the voting process throughout the country. He debunked most of the urban legends expounded by nonbelievers of the use of electronic voting machines. He stated that most problems arise before votes are cast such as in establishing eligibility requirements or the purging of voting rolls. He described problems with voting in Florida which began right after the end of the Civil War and adoption of a new constitution that was required to regain admission to the United States. He stated that there were no national standards for use of a certain type of ballot or for how ballots were counted.

The theme of voting integrity brought many individuals to the meeting who believed an electronic voting process could be corrupted either in the software applications

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Peter Simonson, Executive Director of the ACLU-NM delivering opening comments at the annual membership meeting.

Neil Bradley, Associate Director or the ACLU-NM Voting Rights Project.

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or because of the unique features of the equipment used in such a process. Charlie Strauss, Chair of Verifiedvoting.com, staff member of Los Alamos National Laboratory outlined these concerns. Denise Lamb, Director of the State Bureau of Elections/Ethics Administration described the process of voting in New Mexico, how votes were counted, recounted and audited before a final tally was certified. She said that the federal law Help America Vote Act of 2001 (HAVA) mandated that every voting site in every state have at least one voting machine accessible to blind, deaf and nonspeakers of English so that there was no need to have another person assist in the voting booth. Federal monies were to be made available for the purchase of such machines. Ms. Lamb stated that New Mexico had at least six Native American languages with no written component. Creating a ballot for those who only speak such languages provided a unique challenge for the election bureau. She agreed that the integrity of the vote was most often compromised by human foibles. She told the story of a candidate for county office in New Mexico who was discovered carving his name within a voting booth during an election.

Calendar of Upcoming Events

ACLU of New Mexico

June 5 Board Meeting

August 5-7 Board Planning Retreat

San Juan County Chapter

Chapter meetings will be held the third Thursday of each month, 7:00 PM, at the Farmington Civic Center, 200 W. Arrington, Farmington. There will be a CITIZEN'S FORUM in support of the memorial affirming Civil Liberties and the Bill of Rights on Saturday, October 25, 1:00-4:00 PM, Farmington Civic Center, 200 W. Arrington, Farmington. The chapter meeting dates are as follows;

May 20

June 17

July 15

August 19

September 16

Southwestern Chapter

Chapter meetings take place on the third Thursday of every other month at 6:30 PM at the Silver City Public Library. The annual membership meeting will be held in October. The meeting dates are as follows:

June 17

August 19

October 21

Northern Chapter

Chapter meetings are held on the third Saturday of each month from 10:00 AM-12:00 PM in the community room of the La Farge Library, Llano Street, Santa Fe. The meetings are open to ACLU members and suggestions for agenda items are welcome. Contact Trish Steindler @ 505-438-0518. The meeting dates are as follows:

April 17

May 15

June 19

July 17

August 21

September 18

Southern Chapter

Chapter meetings are held at 7:00 PM on the first Wednesday of each month in the front room of the Unitarian Church, Solano Street, Las Cruces. The meeting dates are as follows:

May 6

June 2

July 7

August 4

September 1

Federal Injustice Hits Home

By Lee Hunt

With the sentencing of Carla Lyn Clifton to 41 months in federal prison the absurdity of the federal sentencing practice under Attorney General John Ashcroft fully arrived in New Mexico. Last week, U.S. District Judge William Johnson was required to sentence Carla Clifton to over 3 ½ years in prison for perjury. Her crime, according to federal prosecutors, was failing to acknowledge that she loaned a cell phone to her cousin's boyfriend. The boyfriend, Jaime Mendoza, was the focus of a federal drug investigation. Federal prosecutors claim that Clifton's statements to federal agents obstructed "the investigation of a major drug trafficker."

> **" Attorney General Ashcroft's attempt to influence sentencing has turned the separation of powers on its head."**

Carla Clifton is 23 years old, has no prior criminal record, is a recent student at the University of New Mexico, a former Sandoval County fair queen, and was looking forward to continuing to be a contributing New Mexican citizen. The promise of a young life has now gone in another direction. Carla Clifton is a convicted felon and will spend the next 41 months in federal prison. She will spend more time in prison than former Judge Charles Maestas, who was convicted of multiple counts of rape and was sentenced to three years in jail. She will spend more time in jail than Margaret Archibeque, who was convicted of involuntary manslaughter for killing Henry Smith of Kirtland, New Mexico. Archibeque was also sentenced under the federal sentencing guidelines and received 21 months in prison, half of Clifton's sentence. In short, a life is ruined because federal prosecutors turned their wrath on Carla Lyn Clifton.

According to a recent article in the *Albuquerque Journal*, Judge Johnson wished that he had discretion in sentencing Clifton. However, under John Ashcroft's current regime, federal judges are not permitted to think for themselves and are required to follow strict guidelines to determine sentencing. Last July, Ashcroft made a thinly veiled threat to any federal judge who would have the audacity to use discretion during sentencing. Ashcroft sent a memorandum to federal prosecutors seeking information on all "downward departures" from the federal guidelines made by judges during sentencing. The Justice Department has used the information from prosecutors to assemble a list of judges that do not follow the Attorney General's plan of sentencing every individual to long sentences. Ashcroft's blacklist will surely be used in considering whether to recommend judges for appellate positions.

Attorney General Ashcroft's directive to federal prosecutors, and his attempt to influence sentencing, has turned the separation of powers on its head. The federal courts have long been the place where victims seek refuge from injustice. During the civil rights movement in the 1950's and 1960's federal courts and judges provided relief when state court judges were afraid of the backlash of public opinion. Federal judges are given life tenure to protect them from the influence of politics. But federal courts are no longer safe from influence. Ashcroft's blacklist of judges, coupled with recent amendments to the federal sentencing guidelines have taken away any meaningful discretion that federal judges have in sentencing. The clear danger is that the prosecutors choose whom to investigate, they choose whom to present to a grand jury, they choose whom to charge with crimes, they choose what crimes to charge, they choose who goes to trial, and now, they choose the punishment. Quite simply, this much power in one person was never intended by the Constitution.

> **"Our resources are misspent, our punishments too severe, our sentences too long." —Supreme Court Justice Anthony Kennedy**

The usurpation of federal judicial discretion has not been lost on the federal bench. Chief Justice Rehnquist, long known for his affinity for federal prosecutors, criticized the Ashcroft memorandum as "an unwarranted and ill-considered effort to intimidate judges in the performance of their judicial duties." In an appearance before the American Bar Association, fellow Supreme

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Court Justice Anthony Kennedy discussed the federal sentencing guidelines. "Our resources are misspent, our punishments too severe, our sentences too long. I can accept neither the necessity nor the wisdom of federal mandatory minimum sentences. In all too many cases, mandatory minimum sentences are unjust."

The obvious question remains, how many Carla Lyn Clifton's are sent away for hard time before the public takes notice? How many young women must be sent to prison for the crime of being associated with a drug-dealer or for not becoming an informant until we rise up and say enough? The answer is simple, give federal judges the discretion in sentencing that they have earned and deserve. Unless action is taken, the Ashcroft Department of Justice will continue to force judges to impose draconian sentences and Congress will continue to pass "law and order" legislation under the guise of protecting law-abiding citizens. Carla Lyn Clifton was a law-abiding citizen until federal prosecutors came knocking at her door. Who's next?

Results of the ACLU-NM Communications Poll

By Harvey Morse

In the October issue of the *Torch* that was mailed to over 4200 current members of the ACLU-NM, we requested that members respond to a brief communications poll. Although the poll was not intended to be a scientific or statistically valid survey, in large part because we did not have the resources to devote to such a formal process, we hoped to get some information that would be helpful to us in determining how to best deliver information to our membership, the types of information that readers liked to read, how frequently they read the *Torch* and/or visited our web site, whether people might be receptive to receiving information delivered via formats such as email, and whether there might be some gender or generational differences in members responses.

Fifty-five people responded to the poll. In general the results were predictable and in some ways clearly reflected the composition of the membership. There were few surprises but we did gain some good insight into issues that we need to look at more closely.

The age breakdown of the 55 respondents was as follows: 38 were 60 or above, 10 between the ages of 50-60, 4 between 40-50, 2 between 30-40, and 1 between 20-30. Thirty-one of the respondents were female and 24 male. Fifty-one members indicated that they read the *Torch* 4 –6 times per year, an indication that the *Torch* is well read and that some people may not be fully aware that we have moved from a bi-monthly schedule to a quarterly schedule. The overwhelming majority of members who responded to the poll read the *Torch* from cover to cover and as often as we produce it. Only three respondents indicated that they read the *Torch* fewer than 4 times per year.

The overwhelming majority of members who responded to the poll read the *Torch* from cover to cover and as often as we produce it

The content preference results were very interesting and did show some slight gender differences. Members clearly like reading topical articles more than any other content section of the *Torch*. Although the Legal/Advocacy section received more first place votes, the Topical Articles section was identified by 32 respondents as being rated among their 1st through 3rd choices. The remaining content sections received the following 1st through 3rd place voting preferences: Legal /Advocacy Docket 22, Executive Directors Column 18, Legislative Report Card 14, Development 11, Special Event Coverage 7, Chapter Calendar Events 4.

The one glaring gender difference is that women in the over 60 age group had the strongest interest in Development Articles; in fact, they rated them as their number one preference along with the Executive Directors Column, but

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when factoring in their second and third choices, Development Articles received more votes than any other content area. This result confirms the sea change that has occurred in women's attitudes about finance and philanthropy over the past 10-20 years. Women have, for the longest time, controlled more financial assets than men but in practice the real control rested with their attorneys and financial representatives who were predominantly male. The women's movement has drastically increased the number of female professionals and has raised the awareness of women in general as to their legal rights regarding property and its disposition. Increasing numbers of women have taken a keen and more direct interest and involvement in their personal financial affairs. It is the 60 and older age group that has been most impacted by these changing attitudes.

A number of members indicated that they would like to see more information on our congressional delegation and governor.

The overwhelming number of respondents thought the *Torch* was the right length: of the 55 respondents, 47 thought it to be the correct length, 4 thought it too long, and 3 not long enough.

The series of questions regarding computer ownership and the ways in which people use their computers was very interesting. Of the 38 respondents over age 60, 26 owned computers and one additional person who did not own a computer had ready access to one, eight of the ten 50-60 year olds owned a computer with one individual who did not own one having ready access. All 6 respondents under 40 owned computers.

ACLU-NM members clearly do not use their computers to view the national or affiliate web sites. No members view the national site (ACLU.org) daily, only 2 members view the national site once a week, 3 view it once a month, 13 almost never, and 28 never. Viewing of the ACLU-NM site (ACLU-NM.org) is only slightly improved: 0 members view it daily, 2 members once a week, 6 members once a month, 12 almost never, and 27 never.

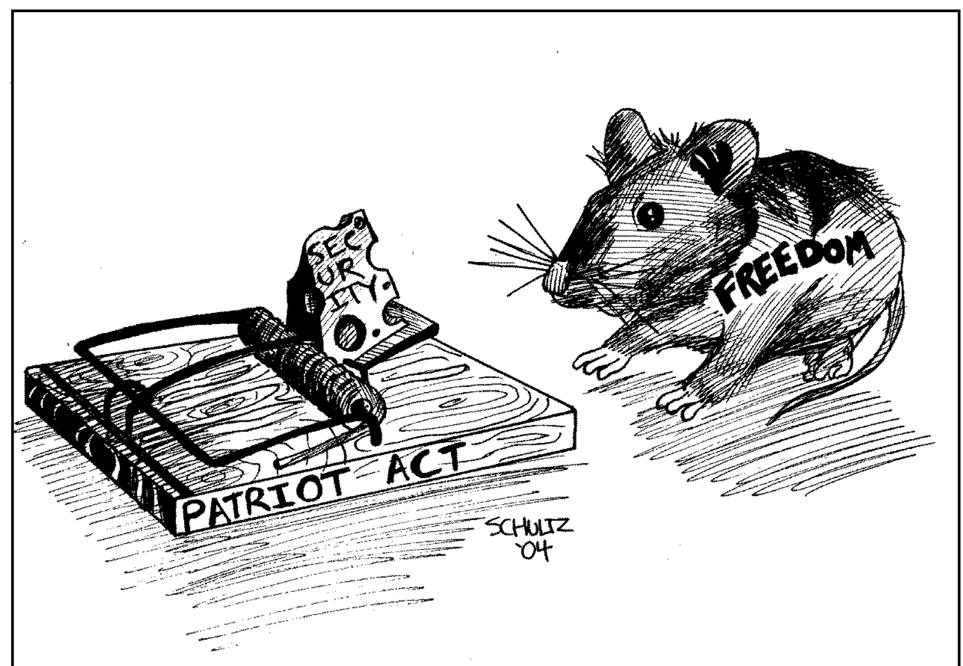
Perhaps the clearest reading from respondents was that they do not wish to receive the *Torch* electronically. In the over 60 membership segment 31 members of the 38 preferred receiving the *Torch* in printed form, 2 via email, and 2 through the web site. In the 40-50 segment, 8 of 10 preferred the printed form with 1 individual preferring email.

In the under 40 group, 4 preferred the printed form and 2 via email

The findings concerning the use of email were very interesting. In the over 60 group, 21 of the 38 respondents have an email address but only 11 have provided their email addresses to us. Only 10 respondents said they would like to receive alerts, announcements and other material via email. In the 40-50 year old group 9 of 10 respondents have email addresses but only 3 wished to receive information via email and only 3 members have given us their email addresses.

There are a few generalizations that can be made from the results of the computer related questions. We need to do a better job in letting our membership know that not only do we want to have their email address but that they may obtain information and alerts via multiple formats including email and the ACLU-NM web site. Also, that if we are to use the web site more effectively we must update the information more regularly. The older membership, while owning or having access to computers, want to control the flow of information they receive electronically and are reluctant give out their email address, primarily for

Evan Shultz:



security reasons and because they feel they already receive too much unsolicited information. These findings were similar with the other age groups polled.

We do not view the delivery of information to our membership electronically or in printed form as an either/or proposition. Clearly we must continue to send the *Torch* in a printed format for the foreseeable future; however, it is also abundantly clear, not so much from the results of our limited poll, but other more extensive national polls, that younger individuals are more apt to communicate electronically, and that electronic communications mediums must be made available if we hope to successfully recruit and retain them as members of the ACLU. We must be prepared to devote greater resources to our website and email alert programs, not only because they may provide cost savings to the ACLU-NM but also because the information can be communicated and responded to so much more quickly. The challenge will be to develop a comprehensive and integrated communications program that provides information in a timely and cost effective manner in formats that our growing and dynamic membership is comfortable receiving.

ACLU-NM Docket

April 2004

Freedom of Speech, Freedom of Association

Buck, et. al v. City of Albuquerque, et. al

The ACLU-NM and the New Mexico chapter of the National Lawyers Guild filed suit against the Albuquerque Police Department for its handling of a protest against the Iraq war that took place in Albuquerque one year ago. Fourteen plaintiffs — including two minors – accuse the Albuquerque police of violating their free speech rights and subjecting them to false imprisonment, wrongful arrest, malicious abuse of process, and excessive use of force. Albuquerque Mayor Martin Chavez, Department of Public Safety Chief Nick Bakas, Chief of Police Gilbert Gallegos, and twelve APD officers are named as Defendants in the suit.

On the evening of March 20th, 2003, a group of several hundred people gathered in front of the University of New Mexico bookstore to protest the decision by U.S. President George W. Bush to invade Iraq. APD officers dressed in riot gear and some mounted on draft horses closed off three blocks of busy Central Avenue and formed "skirmish lines" in front of the demonstrators. The officers then escorted the protestors in a loop that ran through neighborhoods west of the UNM campus.

As the crowd returned to the original gathering spot, officers struck people with batons and used horses to force stragglers to move more quickly. Soon thereafter, they unleashed teargas and shot several protestors with bean-bag and pepper rounds, dispersing the crowd. In one incident, an APD officer fired fifteen pepper-gun rounds at a protestor who lay in a submissive posture in the street. Other protestors reported being hit with tear gas canisters that were fired into the crowd. Several arrests were made.

On November 20, 2003, after interviewing 47 police officers and 23 citizens, Albuquerque's Independent Review Office found that some police officers used excessive force during the March protest. The IRO also found that some officers failed to render aid or to request aid for injured people, failed to follow standard operating procedures, and used weapons that were not authorized or not recommended for crowd control. The IRO concluded that a series of bad decisions made by high-ranking police officials created a dangerous situation for everyone at the protest, including police and demonstrators. Unfortunately, Chief of Police, Gilbert Gallegos is not required to act on the findings of the IRO.

Attorneys for the ACLU-NM and the National Lawyers Guild include Cammie Nichols, Mary Lou Boelcke, Marc Lowry, Larry Kronen, Cindy Marrs, and David Stotts. The suit seeks declaratory and injunctive relief, including improvements in City and APD training and policies regarding the management of peaceful demonstrations.

ACLU of New Mexico and Kenneth D. Seagroves v. City of Albuquerque

The ACLU-NM obtained a temporary restraining order to stop the enactment of an anti-panhandling ordinance that was signed into law on January 12th by Albuquerque Mayor Martin Chavez. The order is in effect indefinitely while both sides consider a settlement agreement.

The ordinance would prohibit anyone from asking for money on the street in the Nob Hill and downtown Arts and Entertainment districts. The law would also prohibit all panhandling from dusk until dawn in all other parts of the city. According to the law's definitions, panhandling would include passively sitting or standing with a sign that asked for help. During daytime hours, people would be prohibited from soliciting in public parking lots, continuing to solicit after receiving a negative response, and soliciting in groups of more than one, in addition to nine other behaviors that the ordinance defines as "aggressive panhandling."

The ACLU complaint argues that the panhandling ordinance violates free speech and due process rights under the New Mexico State Constitution. Cooperating attorneys are Hope Eckert, Scott Cameron, staff attorney for the New Mexico Center on Law and Poverty, and Jane Gagne, Co-Legal Director for the ACLU-NM.

ACLU of New Mexico and John Does 1-5 v. City of Albuquerque (Albuquerque Sex Offender Registration and Notification Act)

State District Court Judge Wendy York struck down key parts of the Albuquerque Sex Offender Registration and Notification Act, "ASORNA," including provisions that prohibit people convicted of sex offenses dating back to 1970 from being alone in a room with a child or within 30 yards of a child. She also nullified a provision that

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requires out-of-state sex offenders to register with the City if they stay in Albuquerque for three consecutive days or more.

York's opinion allows the City to follow through with a provision requiring sex offenders to register with the City. She amended a provision that would have prevented people previously convicted of sex offenses from living within 1000 feet of a school.

ACLU cooperating attorneys Melissa Hill, Kari Morrissey, and Eric Hannum filed a notice of appeal, in part because Judge York's opinion did not address a provision that applies ASORNA to people convicted of sex offenses dating back as far as 1970. The New Mexico state sex offender registry only applies to convictions on or after July 1, 1995.

ACLU of New Mexico and John Does 1-6 v. City of Albuquerque (Sex Offender Alert Program)

In mid-June, 2003, State District Court Judge Ted Baca granted the ACLU-NM's request for a preliminary injunction to halt the enforcement of a new sex offender law known as the Sex Offender Alert Program, or SOAP. In addition to the provisions described for ASORNA above, SOAP would require sex offenders living in Albuquerque to notify employers and prospective employers, as well as landlords, home sellers, and mortgagors of any convictions dating back to 1970. It also would prohibit two people convicted of sex offenses from living in the same household.

Attorneys for the City have announced their intent to appeal Judge Baca's decision. ACLU-NM Cooperating Attorneys Kari Morrissey and George Bach are awaiting the City's first brief.

Tarin, et. al v. Vinson, et. al

Three former Luna County Detention Center officers have accepted an offer of judgment against officials of Luna County and its Detention Center in a civil rights lawsuit claiming violations of freedom of association, freedom of assembly, and free speech, as well as conspiracy for unlawful termination. Attorneys for the American Civil Liberties Union of New Mexico argued that detention officers Carlos Tarin, Keith Snow, and Abel Renteria were unlawfully terminated in the summer of 2002 in retaliation for organizing in support of a local union and the candidacy of then-gubernatorial candidate Bill Richardson. Tarin and Snow organized meetings to plan a 'get out the vote' campaign in support of candidate Richardson, a known supporter of public employee collective bargaining legislation.

George Bach and K. Lee Peifer served as ACLU cooperating attorneys. Named Defendants in the lawsuit were the Luna County Manager Scott Vinson, Luna County Detention Center Director Ed Gilmore, LCDC Deputy Directors Paul Borde and Forest Bostick and the Board of Luna County Commissioners. The county's offer of judgment included $30,000 in damages, legal costs, and attorney's fees.

Gender/Racial Discrimination

Williams, et. al v. W.D. Sports N.M., Inc.

The ACLU of New Mexico has pledged its support to five former employees of the New Mexico Scorpions professional hockey team in their pending lawsuit for hostile and discriminatory working conditions during the 2001-2002 hockey season. The plaintiffs include the team's award-winning community relations and sales representative Rosann Williams, box office manager Kaye Hunter, controller Moira Daly, former assistant coach and player Rob Haddock, and the pro shop employee Mia Marquart. They were represented throughout the preliminary stages of the lawsuit by attorney Katy Hammel, who now becomes the ACLU Cooperating Attorney for the case. Co-Legal Director Maureen Sanders will also enter her appearance in the case on behalf of the ACLU.

The lawsuit alleges that Defendants Patrick Dunn and Tyler Boucher--General Manager and Community Liaison for the Scorpions--regularly made sexual jokes around the female Plaintiffs and openly referred to them as "f**king bitches." The Plaintiffs were pressured to date team patrons and to cheat in ticket and pro shop sales to give some of the Defendants an edge in sales. Plaintiffs reported the problems to Defendant William Douglas Frank, owner of W.D. Sports NM, Inc, who failed to take action to remedy the situation. The female Plaintiffs were given significantly lower compensation and fewer privileges than male employees for performing the same job responsibilities.

Legal papers also accuse Defendants Dunn and Boucher of making racially prejudiced remarks about Plaintiff Robert Haddock and undermining his ability to make sales. Boucher repeatedly swept Haddock's business cards off the office front desk and denied him access to a computer and a phone. Haddock repeatedly complained about the inequities, but to no avail.

The lawsuit alleges multiple violations of the New Mexico Human Rights Act and Title VII of the 1964 Civil Rights Act, as

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well as defamation and retaliatory discharge. The Plaintiffs seek compensatory and punitive damages, as well as equitable relief to prevent future violations. In addition to Frank, Dunn, and Boucher, new General Manager Daniel Burgers, Vice President of Finance and Administration Bruce Levine, W.D. Sports N.M. Inc. and New Mexico Scorpions are named Defendants.

Police Misconduct

Johnson, et al. v. City of Hobbs, et al.

In early February, ACLU-NM Cooperating Attorneys Richard Rosenstock and Daniel Yohalem filed three separate motions of contempt against the City of Hobbs and its Police Department for "substantial non-compliance" with a stipulated agreement between the department and plaintiffs representing the class of African-American residents of Hobbs.

The stipulated agreement was approved in May, 2001 and resulted from Johnson et al. v. City of Hobbs, a class action lawsuit in which ACLU attorneys accused the Hobbs Police Department of leading a "campaign of intimidation" against African Americans in Hobbs. The agreement required improved police procedures and training in the use of force, detentions, searches, seizures, and arrests.

In the first of the new motions, plaintiffs accuse the Hobbs Police Department of ongoing racial discrimination as well as a continuing, pervasive pattern of illegal detentions, illegal arrests, unlawful searches, and excessive use of force. Plaintiffs also accuse the city of failing to take action on citizen complaints and other evidence of officer misconduct.

The second motion calls for sanctions and further relief on behalf of Lamond Alexander, one of the named plaintiffs in the original Johnson lawsuit. Since the implementation of the stipulated agreement, Alexander has been victim to unrelenting police harassment.

The final motion calls for the removal and replacement of Clarence Chapman as the external monitor to oversee the police department's compliance with the stipulated agreement. Chapman is Chief of Police at the University of California, Los Angeles.

Attorneys have submitted to the court all documents supporting their motions and are awaiting a decision from Federal District Judge Martha Vasquez.

Bradford v. County of Bernalillo, et al.

The ACLU of New Mexico settled a civil rights suit against Bernalillo County and a County Sheriff's Officer for brutally beating a young African American man after a County-sponsored concert event at The Beach Water Park. The County agreed to pay damages to Michael Bradford and attorneys fees and costs to the ACLU-NM Cooperating Attorneys who represented him in the federal suit. Michael claimed sheriff's deputies used excessive force and falsely arrested and wrongfully charged him with crimes following his unlawful arrest.

On the evening of June 6, 2001 fights broke out between teenagers after a hip hop concert event at The Beach. Michael Bradford, a member of his high school ROTC outfit, who has since graduated and is now about to enter the United States Marine Corps, was not involved in the fights, but nevertheless was grabbed by sheriff's officers and violently thrown onto the hood of a nearby police car. Although Michael tried to explain that he and his sister were only waiting for a ride home, he was kneed in the groin and thrown him to the ground by sheriff's officers who kicked and beat him until he lost consciousness.

After being ushered out the gates of The Beach, Michael's sister, Robin, a high school varsity athlete, saw an unidentified officer grab her cousin in a choke hold and force her to the ground. As she attempted to help her cousin, another officer grabbed Robin from behind and threw her to the ground.

When Michael and Robin's mother arrived to pick up her children, she found her son in the back of a patrol car, handcuffed and bleeding from the head. Michael was taken to the Juvenile Detention Center where a nurse instructed his mother to take him to the Emergency Room for immediate medical attention.

Sheriff's deputies did not charge or cite Robin Bradford. Both criminal charges brought by sheriff's officers against Michael were ultimately dismissed.

Robin's claims against the County were settled some months ago. Claims against The Beach Water Park brought by Michael and Robin Bradford also were settled earlier.

ACLU-NM Legal Co-Director Phil Davis and Cooperating Attorneys Parish Collins and Alysan Collins brought the suit for ACLU-NM on the Bradfords' behalf.

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Privacy

'No Child Left Behind'

Under the federal 'No Child Left Behind' Act, public schools are required to notify parents of their ability to request to opt out of having their students' contact information automatically sent to military recruiters. Albuquerque Public Schools are out of compliance with this provision. Accordingly, last November, the ACLU-NM sent public records requests to all school districts around the state asking for policies and evidence of procedures that the districts have established to comply with NCLB. We are reviewing legal options for addressing non-compliance. Cooperating attorneys are Karen Myers, and Co-Legal Directors Maureen Sanders and Jane Gagne.

American Middle-East Detainees and You

by Donald Gutierrez

Many Americans likely fail to realize the possible connection of the terrible experience of America's Middle-East detainees to themselves. These hundreds of males were treated by our Justice Department as if already guilty, a crucial violation of the Constitution and due process. Further, they were subjected to physical and extreme psychological roughing-up. According to the detainees, they were slammed against jail walls, deliberately tripped in their ankle-chains by guards at the Brooklyn Metropolitan Detention Center, in some instances beaten and kicked, told they were going to die, placed in cells with violent criminals.

These detainees were picked up suddenly off the street, on their jobs, in their homes and not allowed contact with their families, lawyers, anyone. Their destination or location was not disclosed to anyone, including family. One suspects that the enormous psychic stress and terror of such treatment did meant little to the average American.

This indifference has several causes. First, these detainees are Middle-Easterners, Arabs, Muslims, a suspect group in America before and after 9/11. Then, the White House has been pushing the panic button about this type continually. Despite all of the detainees having since been cleared of serious violations or crimes, their "suspect" status beforehand rendered them vulnerable to legal abuse. They were also kept in the dark about when their incarceration would end, what their legal rights were and when their torment by sadistic guards would end. In addition, some remained incarcerated for months after being found innocent.

The plight of these detainees, then, was aggravated by being suspect in this country. In law, to be suspect does not mean one is guilty of some crime; that remains to be proved. What, however, becomes alarming here is the extreme vulnerability of terms like "suspect" and "terrorist" to definition by people like George Bush, Rumsfeld and Ashcroft who are prone to use those terms not only to win the nation's support for waging war abroad, but for waging it against American citizens. Accordingly, this could apply as well to any American critical of the Bush administration or engaged in activism to resist Bush's onslaught on the poor, the unemployed, the elderly, the environment, civil rights.

Clearly, Bush/Ashcroft and the right-wing media have been transforming dissent by Americans into treason. "Traitor" in this process becomes a synonym for "terrorist." If one doesn't think this process can be effectively intimidating, s/he should recall the paralyzing impact of our Attorney-General upon Congress when he stated to that body that anyone critical of the president's policies towards designated terrorists was aiding terrorists.

Someone supporting, say, the Sierra Club could conceivably be labeled as supporting terrorist organizations and therefore a terrorist. As far as Bush and his friends in the extractive and energy industries are concerned, any environmentalist group or critic of those industries threatening their profits are certainly terrorists. The fact that America's energy corporations are undermining the nation's health and wealth with their depredations of the earth should of course mark them as terrorists.

So, who is the real terrorist? Less controversial is the domestic terrorism inflicted by President Bush's "Military Order" established on November 13, 2001. According to Barbara Olshansky, Assistant Legal Director at the Center for Constitutional Rights, "This new system radically abandons ... the right to an independent judiciary, trial by jury, public proceedings, due process and appeals to higher courts.... all of these /constitutional/ safeguards against injustice are gone" (Secret Trials and Executions: Military Tribunals and the Threat to Democracy, 7-8). Under the "Military Order," Olshansky observes, Bush and Ashcroft become "rule-maker, investigator, accuser, prosecutor, judge and jury, sentencing court, reviewing court, and executioner—and makes no provision for accountability to any other branch of government or to the people" (59-60).

Some might say that this extreme power by the executive branch of government only applies to Taliban prisoners of war, that American citizens have nothing to worry about. That's questionable. According to the New-York-based Lawyers Committee for Legal Right, "The government can hold United States citizens as enemy combatants during war time without the constitutional protections guaranteed to Americans in criminal prosecutions..." (LCLR website, "Media Room, 1). This ruling applied to an American named Yasser Hamdi captured in Afghanistan in 2001. Holding Hamdi indefinitely suggests to LCLR that this treatment could also be applied to other Americans. Further, the revelations surfacing about a possible Patriot Act 2 on the way are grave, because in this proposal citizen rights protected by the Constitution would be eliminated in the case of alleged supporters of alleged terrorist organizations.

Totalitarian government sometimes proceeds step by step in consolidating full power and abolishing fundamental civil rights. The treatment of the Taliban fighters as "Enemy Combatants" instead of as Prisoners of War, of innocent mid-Eastern aliens and mid-Eastern American citizens, and, more recently, of Progressive-activist Americans follows this pattern. Even if the fate of innocent resident aliens means little personally to the average American, and that of Guantanamo prisoners even less so, one should realize that anyone's civil liberties being shredded by Bush/Ashcroft could thus eventually include ours. Moreover, in a society flinging more than 700 Americans a month into prison for social offenses, "detaining" Americans with names like Mary Smith and Bob Gomez for political dissidence becomes increasingly possible. One day the American mid-Eastern detainee could in effect be you.

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