



# TORCH

American Civil Liberties Union - New Mexico

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David Cole:

Thank you for the wonderful introduction. Let me say that I know that one of the most important things about an after-dinner speech is to not go on too long. I learned that a few months ago when I went to a dinner in Washington. Ralph Nader – you remember Ralph Nader – came, and he was supposed to be the after-dinner speaker and he arrived 45 minutes late and spoke for an hour. I was there to accept an award from another entity and had to sit through the entire thing. So I don't want to be too long. ...

I'm really delighted to be here in New Mexico speaking at the ACLU's annual dinner because I am so proud of the work that the ACLU has done here and around the country since September 11. It is really a testament! I especially want to congratulate those of you, and I know there are many of you in the room, who have worked to get the memorials enacted around the state of New Mexico condemning the Patriot Act. So far, as I see, you have gotten twelve towns and counties to pass ordinances condemning the civil liberties abuses of the Patriot Act: Rio Arriba County, Taos, Aztec, Farmington, Las Vegas, Grant County, Los Alamos, Bayard, Silver City, Santa Fe and Albuquerque. I am hoping to hear in the New Year that New Mexico becomes the fourth state to pass a memorial condemning abuses of the Patriot Act. I think that the consciousness about civil liberties has made tremendous strides over the past year. NPR did a poll one year after September

11 and they asked people whether they felt that they had to give up any important liberties in the fight against terrorism and only 7% said yes. If they had asked the Arab and Muslim communities they might have gotten a different response, but they got that response - 7%. That was one year after September 11. Two years after September 11, CBS News did a poll asking almost the exact same question and they found that now 52% of Americans are concerned about the loss of their civil liberties in the name of the war on terrorism. When you ask what caused that shift; is it the Executive Department of our federal government? No. All you need to do is call spell John Ashcroft. Is it Congress? No. Congress passed the Patriot Act in six weeks and only one senator voted against it. Is it the courts? No. For the most part, the courts have deferred to the Executive and have refused to hear cases for example on behalf of the Guantanamo detainees. The positive shift is because of people standing up and educating their fellow citizens about the importance of having fundamental rights in this country.

The ACLU has been at the center of that fight and I congratulate you for it. I also want to congratulate the ACLU because I think that the most effective thing that the ACLU has done in this war on terrorism is to somehow get card-carrying members into the public relations department

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## Executive Director's Notes

### Why Do We Defend Sex Offenders?

By Peter Simonson

Even some ardent ACLU supporters may be scratching their heads over our rigorous opposition to Albuquerque's sex offender laws. Aren't there more worthy groups for us to defend than sex offenders?

When you clear away the media hype surrounding Albuquerque's sex offender debate, you find laws that are absolutely brazen in their dismissal of constitutional guarantees. In fact, you find laws that, with the exception of New Mexico's death penalty, are more repressive than any single piece of legislation that the ACLU of New Mexico has had to confront in its 40-year history. That includes teen curfews, internet censorship laws, etc.

Under the first ordinance that Albuquerque passed--the Sex Offender Alert Program, or SOAP--sex offenders would have been forced to report their convictions to present and prospective employers, regardless of the consequences for their employment. They would have had to abandon any place of residence, rented or owned, that lay within 1000 feet of a school. Their photographs, names, and addresses could have been prominently posted in parks, bus stops, the zoo, and other central gathering places. They would have been prohibited from being alone in a room with any child other than their own ward or biological child. Taken together, the various provisions under SOAP effectively would have banished

from Albuquerque people previously convicted of sex crimes.

But that's only half of the story. Several of SOAP's provisions might have withstood constitutional scrutiny if they had been narrowly tailored to address a segment of the sex offender population that was demonstrably dangerous to society. They weren't. SOAP applied to anyone who had committed a sex crime--and even some non-sex crimes--dating back to 1970.

1970!

In other words, people who repented their crimes, who served their debts to society, and who have led law-abiding lives for the last 10, 20, or even 30-plus years suddenly would be subject to incredibly severe checks on their freedom. People who genuinely were working to make amends and repair their lives would have been made public pariahs as surely as if big red 'A's were sewn upon their chests.

Don't be deceived by the popular wisdom surrounding sex offenders. Treatment does work. People can be cured of this sickness. Not all sex offenders, but many. In fact, studies show that the recidivism rates for sex offenders are lower than for the average criminal population.

A law like SOAP is an affront to the sensibilities of any concerned civil libertarian--and not just because of the legal consequences. When they go unchallenged, laws like SOAP embolden politicians like Albuquerque Mayor Martin Chavez

to enter more illegal legislation targeting yet other groups that the public scorns. Indeed, last week, Chavez convinced the Albuquerque City Council to pass another boldly unconstitutional law that regulates panhandling in Albuquerque. The ordinance is not as extreme as SOAP, but it seeks to push the envelope of the sorts of restrictions that the courts will allow on the free speech rights of homeless (and other) people.

Even though the city council ultimately passed the Mayor's panhandling law, the ACLU's opposition to the sex offender ordinances clearly has had an effect. Language in the panhandling ordinance was changed to reflect a concern for "constitutional rights." During discussion of the ordinance, Councilor Eric Griego expressed unease about passing a law that would drag the city into "another lawsuit."

We aren't there yet, but our impact is being felt.

If you know the ACLU, you know we don't undertake any fight without good reason. Our decisions to challenge SOAP--and the more recent sex offender law, the Albuquerque Sex Offender Registration and Notification Act--were not motivated by arcane legal questions or a peculiar desire to protect sex offenders. We undertook those fights to send a signal to the Mayor, and to other public officials like him, that they cannot trash the freedoms of any group, no matter how despised, as a ploy to win favor with the public. Even when everyone else disdains the job, the ACLU will hold them accountable to the Constitution.

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of the Justice Department and the Pentagon. Only that can explain this weird national tour that John Ashcroft launched to defend the Patriot Act, in which the first thing he said is "I'm not going to speak to the members of the public I'm only going to speak to invitation only law enforcement audiences." He did more to run up opposition to the Patriot Act by his tour to support it. But the card-carrying member in the Justice Department has nothing on the card-carrying member who is obviously working in the Pentagon, because only that can explain "total information awareness." This is the program by which the Pentagon is going to go out and create a computer program to search the computer accessible files of all of us at all times and look for patterns of terrorist activity. And so they said, what are we going to call this? How about "Total Information Awareness." So they said we need a logo and they came up with a logo of a pyramid with an eye on the top of it. It was taken from the back of a dollar bill, look at the dollar bill. They enlarged the eye and made a digitized computer eye and then they wrote over it, "Knowledge is Power." This was supposed to reassure us. George Orwell and Michel \_\_Kukow (sp) on drugs couldn't have come up with a better

idea. Then they said well, whom will we put in charge of this? Well, how about John Poindexter? And then they came up with a futures market in predicting terrorism activity. So I think the ACLU owes a lot of thanks to whoever is in the public relations department of the Pentagon, and maybe they should hire him like they did Bob Barr and Dick Armev.

I'm delighted to be here in Albuquerque because as Maureen indicated, my first trial as a young lawyer was defending Margaret Randall, who is sitting right over here. I am sure some of you remember that case but I'm sure there are others who don't. This was 1984, and the trial was in El Paso, Texas and Margaret, a U.S. citizen born in New York City, was being deported for having advocated world communism in her poetry. I will never forget sitting there and watching the immigration attorney cross-examine Margaret. This was my first lesson in how to be a highly effective lawyer. The attorney had gone through all of Margaret's books and underlined every time she used the word "communist", including when she described her three-year-old son learning how to share, and suggested that he was learning to be "communist". She questioned her

about that, but then she questioned her about the fact that a poetry magazine that Margaret had edited had been described in print as a revolutionary weapon. "Isn't it true, Margaret, that this poetry magazine was described in print as a revolutionary weapon?" To which Margaret said, "revolutionary weapon is a metaphor," to which the response was, "What's a metaphor?"

We ultimately won that case, which is why Margaret is sitting here with us tonight, and at the time I thought I must be in some kind of time warp. I read about this happening in 1950; but in the 1980's, deporting someone for advocating world communism, it can't get any worse than this. But of course, it did. So what I want to do tonight is talk about, focus on, what has happened since September 11. It calls to mind a quote from Mark Twain, who said, "that by trying we can easily learn to endure adversity, another man's I mean." And it also calls to mind the Palmer raids of 1919 that Maureen referred to. In response to a series of terrorist bombings, the government went out and rounded up thousands of immigrants, not on charges that they were involved in terrorism but on charges of technical immigration violations and guilt by association. They were held incommunicado, they were denied lawyers, they were interrogated until they confessed, and ultimately hundreds were deported not for being involved in terrorism but for their association with various communist groups. Lewis Post, the Secretary of Labor who courageously stepped in and overturned over a thousand of the deportations and was called up on impeachment charges for having done so, wrote about the period, and he said that the delirium caused by the bombings turned in the direction of a deportation crusade with all the spontaneity of water seeking out the course of least resistance. I think today too, that since 9/11, we

have for the most part sought out the course of least resistance. We have talked about the notion that everything has changed, that we need to rethink the balance between liberty and security. But of course, everything has changed for some more than for others. And the government for the most part has not asked us to confront the difficult question, which of your liberties are you going to sacrifice in the name of the promise of greater security? Instead, what it has said is, we have got a better deal for you. We will increase your security by taking away their liberties. "They" being foreign nationals and especially, of course, Arabs and Muslims. This is the way that we have struck the balance between liberty and security; on the backs of those who are the most vulnerable among us, on the backs of those who have no voice in the community, who have no vote in Congress, on the backs of foreign nationals.

I want to just briefly illustrate that double standard. Much of this is familiar to many of you but I want to review that double standard and then argue that it is wrong as a normative matter, that it is counterproductive as a security matter and that it is illusory if we think that when they [U. S. Government] target foreign nationals our rights are somehow going to be kept secure because what the government does to foreign nationals is virtually always a precursor of what will be done to citizens.

So first the case for the double standard. It really has to begin with the preventive detention campaign undertaken by John Ashcroft after September 11 and still going on to this day. Some of you may recall John Ashcroft making a speech in October 2001 to the U.S. Conference of Mayors and he looked around the room and he made sure that Lloyd Bentsen wasn't there and then he compared himself favorably to Robert Kennedy. He

said, just like Bobby Kennedy would arrest a mobster for spitting on the sidewalk, so too I, John Ashcroft, will use very law within my power including immigration law to lock up suspected terrorists, keep them off the street, keeping America safe, preventing the next terrorist attack.

What do we know about that campaign? During the first weeks

of the campaign every time John Ashcroft got on television, and that was often, he would tell us how many suspected terrorists they had arrested; 200 suspected terrorists, 400 suspected terrorists, 800 suspected terrorists. It reminded me of how McDonald's tells you how many hamburgers they sold. The message was, we're doing our jobs. Then people started saying how many of these people have actually been charged with any crime related

## Calendar of Upcoming Events

### 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. The chapter meeting dates are as follows;

February 19  
March 18  
April 15  
May 20  
June 17

### ACLU of New Mexico

January 30	Legal Panel
February 7	Board Meeting in Las Cruces
April 3	Board Meeting
June 5	Board Meeting

### 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:

February 19  
April 15  
June 17

### 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:

February 21  
March 20  
April 17  
June 194

### 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:

February 4  
March 3  
April 7  
May 6  
June 2

## ACLU Extends Representation to UNM

By Erin Barringer, President ACLU-UNM

Flip through UNM's "2003-04 Guide to Student Organizations," and you will promptly notice an eager new organization greeting students: the UNM Chapter of the American Civil Liberties Union. For several semesters one of New Mexico's most influential constituents, the UNM academic community, had been without formal representation in the ACLU-NM. But, thanks to the efforts of a dozen motivated students and instructors, those at UNM's main campus can now become involved in the preservation of civil liberties.

The formation of the ACLU-UNM was a two-fold process. The chapter first sought charter approval from the UNM Student Activities Center and attended seminars to assist with leadership and finance. Upon compliance with UNM's student organization guidelines, the ACLU-UNM then petitioned to the ACLU-NM affiliate. The chapter is also registered with the ACLU National Campus Program.

Joining with campuses in seventeen other states, the ACLU-UNM participated in the ACLU National Week of Student Action to Oppose the PATRIOT Act from October 26-November 2, 2003. The ACLU-UNM organized a 'Rally Against the USA PATRIOT Act' to observe the two-year anniversary of the legislation. Headlining the event was U.S. Representative Tom Udall (D-NM); the rally also featured Albuquerque City Councilor Eric Griego and ACLU-NM Secretary and Board member Tova Indritz as guest speakers. Dozens of concerned students attended the event and expressed their discontent with the controversial act. The ACLU-UNM also attracted student interest at An

Evening with Michael Moore—it was the only student organization allowed to table at the event.

The ACLU-UNM provides meeting and event updates via email to roughly seventy-five students, faculty, and staff throughout the semester. The chapter currently consists of thirteen registered members.

In its next semester at UNM, the chapter will head efforts to coordinate the ACLU-NM's high school essay contest. The ACLU-UNM is also considering sponsorship of another rally on campus to occur during the spring semester.

For more information on the ACLU-UNM, please write to [aclu@unm.edu](mailto:aclu@unm.edu).

Caption for photo: Eric Griego looks on as Tom Udall speaks at UNM's 'Rally Against the USA PATRIOT Act' October 27, 2003

## ACLU Opposes Anti-Gay Ballot Initiative

By George Bach, ACLU-NM Board Member

The ACLU-NM is supporting the lesbian, gay, bisexual, and transgender community in fighting the anti-gay backlash that is sweeping the nation and hitting our l/g/b/t community here in New Mexico. Many of you know that this year, after 13 years of hard legislative work by groups such as the Coalition for Equality and ACLU, New Mexico added sexual orientation and gender identity to the New Mexico Human Rights Act, prohibiting discrimination against l/g/b/t individuals in employment and housing. Unfortunately, this recent victory is now under attack by a group trying to repeal the law by ballot initiative. The last report was that the "family values" group promoting the anti-gay ballot initiative had obtained enough signatures to get the issue on the ballot in November 2004.

Please join us in supporting the l/g/b/t community's fight against this anti-gay ballot initiative that, if passed, will legalize discrimination and allow people to be fired or denied housing just because they are gay. The l/g/b/t organization leading the fight is called Basic Rights New Mexico, and they need volunteers to talk to voters, do work at their headquarters, and recruit more volunteers. Please contact me, George Bach (an ACLU-NM Board Member), at (505) 400-3423 or [georgebachnm@hotmail.com](mailto:georgebachnm@hotmail.com) to get involved or for more information. You can also contact Basic Rights New Mexico directly at (505) 224-BRNM.

## RALLY & MARCH FOR WOMEN'S HEALTH AND LIVES

Sunday, April 25, 2004 -Washington, DC

### Join the ACLU-NM/Coalition for Choice as we rally & march to protect the reproductive rights of all women

Since its inception in 1920, the ACLU has recognized that personal privacy and reproductive rights are among our most important constitutional liberties. The ACLU was the first national organization to argue for abortion rights before the Supreme Court, and has been the principal defender of those rights since 1973, when the Court recognized the right to choose in *Roe v. Wade*.

For more and more women – especially poor women, young women, women of color, and women living in rural areas – critical reproductive health care is increasingly out of reach. In the last eight years alone, states have pushed through more than 330 measures restricting access to not only abortion but also to contraceptives, sexuality education, and other essential reproductive health care services. For the first time since women secured the right to abortion over thirty years ago, the federal government enacted a dangerous, extreme, and unconstitutional ban on abortion practice that threatens the health and rights of women throughout the country. The so-called “Partial-Birth Abortion Ban Act of 2003” was recently enacted by Congress this past fall.

The ACLU has successfully challenged so-called “partial-

birth abortion” bans throughout the U.S., including bans in Alaska, Idaho, Illinois, Kentucky, Michigan, Montana, New Jersey, and Rhode Island, notably winning the first case in the nation to invalidate a state ban.

In October of 2003, the ACLU filed a lawsuit on behalf of the National Abortion Federation (NAF), the professional association of abortion providers in North America, asking the court to block enforcement of this deceptive and extreme measure. Recognizing that the first-ever federal ban on safe abortion procedures is a sweeping and dangerous measure, the U.S. District Court for the Southern District of New York blocked its enforcement in November of 2003.

Here in New Mexico, the Coalition for Choice has taken up the lead

in organizing a delegation from our state to attend the March for Women's Lives on Sunday, April 25th, 2004 in Washington, DC. The March promises to be one of historic proportions with people from across the country standing up in support of reproductive rights. The New Mexico Choice Coalition recognizes this monumental occasion and notes that it is a crucial time to stand up and protect the Right to Choose.

### March for Women's Lives Sunday, April 25:

March in Washington, DC, to let our lawmakers know that we will not stand for this attack on reproductive health care. Help make this the largest rally to support reproductive freedom in U.S. history. March for Women's Health and Lives.

To learn more about the New Mexico Coalition for Choice go to:

<http://www.aclu-nm.org>

To learn more about the ACLU & reproductive rights go to: <http://www.aclu.org/ReproductiveRights/ReproductiveRightsMain.cfm>

To learn more about the ACLU's participation in the March for Women's Lives go to: <http://www.aclu.org/MarchforChoice>.



## Because Reproductive Freedom Can't Protect Itself

The Development Corner  
Harvey Morse

In a recent edition of the Torch we discussed the advantages of creating a charitable gift annuity. The charitable gift annuity is a simple arrangement that allows you to provide long-term support for the defense of individual liberties and at the same time, obtain significant financial and tax benefits for yourself, a family member, partner or friend. The potential benefits may include increased spendable income, an income tax charitable deduction, reduced capital gains taxes if appreciated securities are used, and a reduction of your taxable estate. The added security of a guaranteed fixed return makes this arrangement particularly attractive for people at or near retirement.

A variation of the charitable gift annuity that may be better suited to younger individuals who want an immediate tax deduction, but not additional income right away, is the deferred gift annuity. This gift vehicle offers some tremendous advantages for retirement planning for self-employed individuals. With the limits placed on tax-favored retirement arrangements such as IRA's, Keoghs, and 401 (k) plans, many donors use the deferred gift annuity to supplement their retirement income in a tax wise manner.

An Example:

Carl A., age 50, is a successful attorney in New Mexico and, although an intermittent member of the ACLU of New Mexico has been an avid defender of civil liberties. He is concerned about the impact of the USA Patriot Act as well as recent local ordinances passed in Albuquerque. Carl has had several good years financially and would like to make a contribution to the ACLU of New Mexico but he is concerned about his retirement. After calling

our office and talking about the possibilities, he decides to combine his financial and charitable goals by establishing a \$25,000 deferred gift annuity funded with cash.

The deferred gift annuity will begin making payments to him when he is 65. Carl is entitled to an immediate income tax deduction of \$9,332. When Carl reaches the age of 65, the ACLU will pay him a guaranteed lifetime annuity of \$3,075 per year (\$787.20 tax free), representing a 12.3% return on his initial gift. Carl receives both immediate and future benefits and provides critical support to help fund the issues for which he cares deeply.

The following is a quick comparison of the benefits of a \$25,000 deferred gift annuity funded this year with cash for individuals who are 50, 55, and 60 years of age.

Assumptions:

Annuitant's age	50	55	60
Age at date of first payment	65	65	65
Principal Donated	\$25,000	\$25,000	\$25,000
Cost Basis	\$25,000	\$25,000	\$25,000
Annuity Rate	12.3%	9.7%	7.6%
Payment schedule	Quarterly	Quarterly	Quarterly

Benefits:

Charitable Deduction	\$9,332	\$9,212	\$8,919.25
Annuity	\$3,075	\$2,425	\$1,900
Tax Free Portion	\$ 787.20	\$ 792.97	\$807.50
Ordinary Income	\$2,287.80	\$1,632.03	\$1,092.50

Statements of Interest for Board Membership, 2004

### **Bennett Hammer**

I have been on the Board of ACLU-NM since 1994 and I have thoroughly enjoyed the work. I am on the Development, Long Range Planning, and Executive Committees, and I also now serve as National Board Representative for the organization. My compilation of Hammer Archives serves to preserve the news in context.

I am concerned that the recent increase in membership at the ACLU locally and nationally, though encouraging, is based largely on government intrusions on our privacy in the name of anti-terrorism. The ACLU nationally and the ACLU-NM have lots to do even without issues around terrorism. All the other issues are still there and they do not go away, regardless of the political party in power, and even after court decisions that seem to settle them: abortion rights, prison conditions, free speech, especially in the educational setting, lesbian and gay rights, and so on. I would like to make sure that our membership and others know how varied and vast are the issues tackled by the ACLU, and how important the organization is to each American. Indeed, rights violations in other countries don't have the benefit of an ACLU-type of organization that acts as watchdog over the government.

Every time I mention that I am on the Board of the ACLU here, I am cornered by someone who has a little lecture for me about some case, usually sex offenders, and I am almost always struck at how many people only have part of the story, or think that the ACLU's work is on just a few narrow issues. I think that it is our function especially now to assure that more people know why

ACLU work is important to all of us. I think it is the most important organization in the United States, and I ask for your continued support of me as Board member.

### **Patricia Jones**

I will continue to work hard and do more to promote the endless work of the ACLU if re-elected. I'm really not a politician.

The present Bush administration is doing everything it can to take away every right, privilege and freedom we possess. I'm afraid my grandson and future generations won't know that the government is supposed to be of the people. What really makes me mad is that the majority of people in this nation can see and/or don't care enough to speak out against the injustices that are occurring. "They that give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety"—Benjamin Franklin

I want our children to have opinions, work, travel, drive and be able to walk down the streets of this country without being hassled. "A time comes when silence is betrayal"—Martin Luther King, JR. The Patriot Act now exists and most people don't understand what freedoms have been taken away.

We must band together to protect and preserve all our rights, privileges and freedom.

Please re-elect me so I can proudly serve and participate on the ACLU-NM Board of Directors.

### **Steve Lawrence**

I would bring more than thirty years of experience as a working journalist to my service on the Board of the ACLU. During a twenty five-year career in New York City I was an editor and writer for the New York Times, Forbes, Fortune, and Money magazines, and Time Inc.'s Magazine Development unit. I also

worked for the New York Daily News and the New York Post. Just before moving to New Mexico, I spent four years in Toronto, Canada. For the first two years there, I was editor of the Financial Times of Canada. For the last two, I was Director of Editorial Development for Thomson Newspapers, charged with improving the quality of the company's 52 newspapers across Canada.

For the last eight years, my wife Vera and I have been blessed to live in New Mexico, making our home in Albuquerque. During that time, I have been editor and publisher of Crosswinds Weekly an award winning, free newspaper available every Thursday in Albuquerque and Santa Fe. The newspaper's interests track my own from culture to politics and current affairs, with a heavy emphasis on civil liberties, good government and progressive solutions to our immense domestic and foreign problems. These days, a relentless defense of the Bill of Rights and an intense investigation into the growth of corporate power in this country are at the top of my personal and journalistic agendas. The ACLU's work has never been more important and I look forward to furthering it in any manner within my power.

### **Jennie Lusk**

I am the former executive director of ACLU-NM, a 2001 graduate of the UNM School of Law, and a rabid civil libertarian. I believe the work of the ACLU-NM board of directors is vital for the financial health of the affiliate, and because I served as development director am especially sensitive to the need for active board members willing to ask for money to support the affiliate's work. I respect the work this board has done in recent years to ensure the stability and presence of the ACLU in this state. I respect the distinction between board members and staff. I believe that being only tangentially active with the organization for the



past five years has given me a measure of distance that will discourage my being intrusive or invasive, and if elected, I will serve on the board to support the fine work of the current administration.

My interests in civil liberties have expanded of late, after I traveled to North Korea last Fall and saw that much of the Bush administration's emphasis on the horrors and threats emanating from that place are similar to those cooked up to justify the invasion of Iraq. I now see that the Patriot Act and other national efforts to chip away at civil liberties in this country are of a piece with its larger strategy to silence any protest against the façade of democracy this administration attempts to build. I am convinced that our country risks losing even the rights we have managed to secure if we do not stick together and dedicate ourselves ardently to protecting the constitution.

### **Edwin Macy**

I'm a native New Mexican who became involved in the civil rights struggle when I was a student in college and law school. When I started practicing law, I focused on prisoners' rights. I represented incarcerated people in a wide variety of lawsuits, including actions challenging the unconstitutional treatment of women, Muslims, and segregated prisoners. I was one of the original attorneys involved in the Duran case, which was a case in which the New Mexico Corrections Department was subject to the oversight of the Federal Court enforcing a consent decree for more than twenty years. In 2003, I participated in the Ayers case (known as the "SuperMax" case), in which a favorable resolution was reached regarding the treatment of mentally ill prisoners. I am also a member of the Steering Committee of the New Mexico Coalition to Repeal the Death Penalty.

I've been a member of the ACLU-N.M. Board of Directors for about ten years. I've done many radio interviews and speaking engagements on behalf of the organization. I chair the Major Gifts Committee, which is one of the fundraising arms of the organization. An inescapable fact of life is that the ACLU-NM. absolutely needs money to do the essential work that it does.

In my view, this is a dangerous time for civil liberties in the USA and an exciting time to be a part of a vibrant organization that fights hard to protect the Constitution. I would like to remain on the Board to help continue the struggle.

### **Robert Myers**

I have belonged to the ACLU for quite some time and believe in the principles for which it stands. That's as interested as one can get. Additionally I am completely against the so-called Patriot Act.

My background is a retired Senior Management Analyst for the Defense Electronics Supply Center, Department of Defense. Since retirement I have been a volunteer for many interests in Silver City including three years on the Planning and Zoning Commission and DWI Task Force. Also substitute teacher in the Silver City School System.

### **Christina Rosado-Maher**

I am Lead Attorney for the Immigrant and Refugee Resource Center at Catholic Charities in Albuquerque, NM. Prior to Catholic Charities, I spent five years in California specializing in immigration law. I focused on all types of relief from removal (formerly known as deportation), including cases involving the immigration consequences of criminal conduct. I also was a National Association for Public Interest Law Fellow with Legal Services of Northern

California where I represented a large grass roots organizing group in their naturalization campaign. I formerly served on the Board of Director of the ACLU for San Diego and Imperial counties.

As a member of the Board of the ACLU of New Mexico, I would bring my extensive knowledge of immigration law to bear in defense of immigrants' civil liberties in New Mexico. Many different immigrants reside in our state, from low wage workers from Latin America to high tech workers at Los Alamos. Immigrants also come to our state to attend our colleges and universities. Many of them make New Mexico their home. We need to ensure their civil liberties are protected.

The United States is currently in the midst of a major debate over immigrants and their place in society. This debate is nothing new as our history has taught us that the U.S. government will not hesitate to enact anti-immigrant legislation in the name of national security. The Chinese Exclusion Act of 1882 barred any further Chinese immigration to the U.S. because the government felt that the Chinese were a danger to the "American way of life." Since September 11th, the government has selectively eroded the fundamental rights of non-citizens through legislation and arbitrary enforcement. A post-September 11th initiative by Attorney General John Ashcroft and the U.S. Department of Justice has enlisted state and local police in the routine enforcement of federal immigration laws. National civil rights and immigrant defense organizations are challenging these arbitrary and unfair actions. Immigrants who are victims of crime are afraid to interact with the police for fear they may be deported. Ashcroft's new policy has the appearance of encouraging every police officer to make immigration arrests. While these incidents have not been widely reported in New Mexico, I want to work to prevent

such actions before they become a large problem.

### **Tilda Sosaya**

I would be honored to serve as a board member on the New Mexico ACLU. I strongly believe that the ACLU provides the foremost means we have to protect our hard-won freedoms. In the last two years, we have seen an unprecedented assault on personal liberties and civil rights. The passage of the Patriot Act has resulted in unnecessary surveillance, random detention, and increasing powers of the government to monitor our everyday lives. Our fundamental right to privacy has been eroded and we must stand united to restore these basic freedoms. As a board member, I would work very hard to assist the NM ACLU in achieving the mission to safeguard the American values of freedom and liberty granted to us by the US Constitution. I feel strongly that it takes constant vigilance and active participation by ordinary people to protect the ideals and principles of democracy.

During the last five years I have worked arduously on issues of human rights, particularly prison reform. As a "citizen activist" I have attended NM legislative sessions and many committee hearings during interim periods. I have testified before several legislative committees, and in 2001, I was called upon by the President Pro Tem of the NM Senate to advocate for the passage of Senate Bill 204 which restored the right to vote to 50,000 former prisoners in our State. In addition, I was appointed to the Governor's Transition Team in 2002 to work on improving the Department of Correction's policies and practices. It was the first time a citizen activist had been appointed to this position. I have a good track record as a fund-raiser and was instrumental in organizing fund raising activities, bringing foundation money and many small

donations to the prison reform effort in this State.

Quite simply, I have the time and energy, as well as a strong sense of duty to participate in the critical work undertaken by the NM ACLU. As a board member, I believe that I could make a significant contribution.

### **Suzann Trout**

I am a native New Mexican (66 years, 45 of those years here in Albuquerque!), mother of 5, grandmother of 7. I have an MA from UNM and taught art in Albuquerque Public Schools for 22 years. I have long been active in both professional and political organizations such as the NM Art Education Association, NM teachers unions and am currently the Chair of Democratic Party, precinct 286 in "lower" Nob Hill. I am a member of the Boards of the Gray Panthers of Greater Albuquerque and the Committee on Prison Accountability (COPA). I have been a member of the ACLU for several years and I believe there has never been a more critical need for this organization than there is today!

For the past 3 years I have worked with Dwight Duran through COPA advocating to improve the conditions of confinement of New Mexico's inmates and for humane treatment for their families. After the first anti-terrorist act prisoners' rights were sacrificed in order to improve the "security of the prison facility." Now those same words and practices are being applied all citizens under the guise of "national security" and I believe the ACLU is uniquely capable of coping with these current threats to our civil rights. I would like to have a more active part in these efforts!

### **Alan Wagman**

As a senior in high school in 1965, I learned that the government might

be going after signers of an anti-draft petition. Because I had signed the petition, I became concerned about what might happen next. I still remember sitting across the desk from the ACLU representative and talking about my fears and being reassured that I would not be without a defender. I suffered no repercussions from my exercise of free speech, but I will never forget how important it was to have somewhere to turn when it looked like the government was turning on me.

I joined the ACLU in 1977, because a member mentioned to me that the ACLU was losing members over its stand on behalf of the right of the Nazi Party to march in Skokie, Illinois. I felt then--and I feel now--that civil liberties are not just for those we like, but for everyone, no matter how much we disapprove. How much more true that is now, as the current administration engages in the most far-reaching assault on civil liberties in the last 50 years. Today they are coming for the Middle-easterners, the Muslims, the Arabs. If we don't speak up today, whom will they come for tomorrow?

As a criminal defense attorney and public defender in Silver City, I witness daily the government's ongoing efforts to invade our privacy and erode our rights. Increased governmental intrusion into our freedoms is inevitable--unless we stand in the way. In my professional life, and through my work with ACLU-NM--including helping to restart the ACLU's Southwest Chapter--I have dedicated myself to standing in the way.

My name is Alan Wagman. I am a criminal defense and civil rights attorney in Silver City. I am proud to be running for re-election to a second three-year term on the Board of Directors of ACLU-NM.

**Bobbie Weinbaum**

I would be pleased to serve on your board if elected. I do not take soft money for my campaign.

Civil rights have been an urgent interest of mine, particularly since Joe McCarthy days. Born in Baltimore MD, I was politicized at an early age. In South Carolina, as a child, I was taken on a Sunday outing to see the convicts in their box cars, shackles, and the ever-present striped outfits.

Following this was the Holocaust. Then came McCarthy and the Red Scare. It was during this time that I was investigated by the FBI. The outcome was fortunate or I would have delivered my son while in prison. The pursuit of people who were guilty until proven innocent was a very scary time in this country.

Since then, I have been involved on an ACLU board in Terre Haute, Indiana, Planned Parenthood since 2 years before Roe v Wade, serving on boards in Terre Haute and Bloomington, Indiana, part of that time as president of the affiliate. Also I was on the board in Baltimore, Maryland where I was also volunteer director of volunteers. Since coming to Albuquerque, I established two grassroots networks for alerts to legislation (one for Planned Parenthood, one for AAUW). I also volunteered for office work at the ACLU in Baltimore.

**Board of Directors Ballot for the ACLU of New Mexico**

**Instructions for voting:**

There are eleven (11) candidates running for seven (7) open seats. You may vote for seven of the eleven candidates. If you check off more than seven candidates on the ballot your vote will not be counted. To vote, check or mark the box next to the candidate's name.

For households with two ACLU of New Mexico members, each member may vote—simply have the second member check off the votes in the second column of boxes. For households with one ACLU-NM member check off votes in one column only.

We must confirm ACLU-NM membership and still keep the votes anonymous. We need your help to do this. **Cut out the ballot and insert it in a plain envelope marked "ballot" then place this envelope in a second envelope with your name and return address so that we can check to make sure you are a current ACLU member. Remember to include a second name if you have a household membership.**

After we confirm membership, we discard the outer envelope and count the ballots anonymously. Ballots must reach the ACLU-NM office by March 1. Volunteers will count the ballots and all candidates will be notified of the results prior to posting the results in the next issue of the Torch and on the ACLU-NM website. The seven candidates receiving the highest number of votes will be elected.

**Send ballots to:  
ACLU-NM  
P O Box 80915  
Albuquerque, NM 87198**

**Ballots must be in our office by March 1**

Board of Director Candidates in alphabetical order:

- Bennett Hammer
- Patricia Jones
- Steve Lawrence
- Jennie Lusk
- Edwin Macy
- Robert Meyers
- Christina Rosado-Maher
- Tilda Sosaya
- Suzann Trout
- Alan Wagman
- Bobbie Weinbaum

## DRAFT

Results of the ACLU-NM  
Communications Poll

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 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 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 old 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 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 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 have not done a good 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 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 Legal Docket

December 2004

## Freedom of Speech, Freedom of Association, Liberty Interest

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

On January 16, the American Civil Liberties Union of New Mexico filed in State District Court for 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 Albuquerque City Council passed the panhandling law in the preceding week at the behest of business owners who claimed that panhandling interfered with business in the downtown and Nob Hill areas. The law goes into effect on Wednesday, January 21st.

The new panhandling 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)

On January 6th, State District Court Judge Wendy York granted the ACLU of New Mexico a temporary restraining order barring the City of Albuquerque from implementing "ASORNA," the Albuquerque Sex Offender Registration and Notification Act signed into law by Albuquerque Mayor Martin Chavez last October. The restraining order lasts until January 20th, when the court will hold an evidentiary hearing for a preliminary injunction.

ASORNA narrows the list of crimes and removes employer notification provisions that were part of the Albuquerque Sex Offender Alert Program (SOAP), which the ACLU-NM successfully challenged last summer (see below). It includes provisions that would prohibit people convicted of sex crimes dating back to 1970 from being alone in a room with a child or within 30 yards of a child unless the child was their ward, their adopted or biological child, or their biological grandchild. The law also would prohibit sex offenders from renting, purchasing, or occupying property within 1000 feet of a school. Under ASORNA, sex offenders not only would have to register with the Albuquerque Police Department (in addition to registering with the state's Department of Public Safety), but they also could be required to submit samples of their DNA, even though they were not suspected of criminal activity.

Cooperating attorneys for the ACLU-NM are Kari Morrissey, Melissa Hill, and Eric Hannum.

### 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

On February 12, 2003, the American Civil Liberties Union of New Mexico filed suit against the Luna County Board of Commissioners for the unlawful termination of Luna County Detention Center officers in retaliation for organizing in support of a local union and the candidacy of then-gubernatorial candidate Bill Richardson. Plaintiffs Carlos Tarin, Keith Snow, and Abel Renteria accuse officials of Luna County and its Detention Center of violating their rights to freedom of association, assembly, and free speech as well as conspiring for their unlawful termination. Named defendants in the lawsuit are the Luna County Manager Scott Vinson, Luna County Detention Center Director Ed Gilmore, LCDC Deputy Directors Paul Borde and

**Docket**, continued from p. 14

Forest Bostick and the Board of Luna County Commissioners.

ACLU-NM Cooperating attorneys K. Lee Peifer and George Bach have entered into settlement discussions with the County. If an agreement is not reached in the coming weeks, the case will likely go to trial in April at the federal district court house in Las Cruces before Judge Leslie Smith.

## 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.**

On the evening of June 6, 2001 fights broke out at a hip-hop concert event entitled "Dance, Dance, Dance" at The Beach Waterpark in Albuquerque. A young African American man, Michael Bradford, called his mother to ask that she hurry to come retrieve him and his sister. Even though he was not involved in the fights, Michael was grabbed by unidentified sheriff's officers and violently handcuffed and thrown upon on the hood of a nearby police car. Although Michael tried to explain that he and his sister were waiting for their mother to take them home, sheriff's officers kneed Michael in the groin, threw him to the ground, and kicked and beat him until he lost consciousness.

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

from Robin's back and leaving her exposed.

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.

In late August, 2003, ACLU-NM Legal Co-Director Phil Davis and Cooperating Attorneys Alysan and Parrish Collins settled the Bradfords' claims of negligence and reckless endangerment against The Beach, including \$5,000 in damages to both Michael and Robin.

Claims of excessive force, false arrest, and malicious prosecution are still pending against the County, although Robin is awaiting a court hearing to approve a proposed settlement agreement with the Sheriff's office (because she is a minor). We are hopeful that this case will settle soon.

## Unreasonable Search and Seizure, Privacy

### **Illegal Seizure of Immigration Documents**

The ACLU-NM is representing two women whose legitimate identification documents were seized--and in one case, destroyed--by state police because the officers insisted that they were undocumented immigrants. In the first case, the victim was a legal permanent resident who, because the police confiscated her green card, has been unable to visit her ailing mother in Mexico. The second woman is a U.S. Citizen, born and raised in Española! Linda Vanzi,

Phil Davis, and Luis Stelzner are cooperating attorneys on this case.

In early July, the ACLU-NM met with Department of Public Safety Secretary John Denko and other department representatives to express concerns about state police enforcing federal immigration law. State Police Chief Carlos Maldonado agreed to develop a policy outlining proper procedure regarding the treatment of immigration documents and investigating suspected illegal immigration. Although the DPS agreed to consult with us on the policy, we have not received subsequent contact from them and are contemplating filing a suit contesting the cases mentioned above.

### **'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.

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NM Civil Liberties Foundation  
P. O. Box 80915  
Albuquerque, New Mexico 87198

**PERIODICAL**



to terrorism? And the answer is back down to zero. So in early November that was kind of embarrassing, so the government announced that it had suddenly become too difficult to count how many people they were arresting and so they were no longer going to give us a cumulative total, and they haven't. When you put together various figures that they have acknowledged in Congressional testimony and the like, we now know, that since September 11, in anti-terrorism preventive detention measures, the government has locked up over 5,000 foreign nationals—over 5,000! Of those 5,000, today, more than two years after September 11, how many have been charged with being associated with Al Qaeda? Zero! How many have been charged with being involved in 9/11? Zero! The only person charged with Al Qaeda and 9/11 is Zacharias Moussaoui, who was picked up before this preventive detention campaign began. He was picked up of course, before September 11 even occurred. So, no Al Qaeda, no 9/11 people.

How many have been charged with any crime related to terrorism? Three. And of those three, two were acquitted of the terrorist charges after trial. So you've got, out of 5,000 people locked up, one conviction for the crime of providing material support to some unspecified terrorist attack in the future. Yet many of these people were arrested initially without any charges whatsoever — picked up off the streets and thrown into detention and when they asked why am I being held here, there is no answer because there are no charges. We now know that they got picked up on the basis of tips like — according to the Inspector General who did a report on this in June of this year — on anonymous tips like, there are too many Muslims working in a convenience store down the street. So they send the FBI out to arrest all of the Muslims

working in the convenience store. No evidence that they are connected to 9/11, to Al Qaeda, to any kind of terrorist activity whatsoever, but we can't rule out that they might be terrorists, because after all there were too many Muslims working in that convenience store, and so they are labeled "of interest" and locked up, often without any charges whatsoever. Then the government will figure out some charge to file against them.

All of these arrests in the early going were secret, and are secret to this day. We still don't know the names of the people who were locked up, so a woman could see her husband not come home that night and call the convenience store, call the police, call the FBI, call the INS, and the answer from all the federal officials is, we have no record of this person. He is sitting in jail behind me, but we have no record, because these arrests are secret. Those who were charged with immigration violations and many of them, most of them, were tried entirely in secret. Hundreds and hundreds of secret immigration hearings, so again, a woman could be seeing her husband and the father of her children potentially deported from this country with no opportunity to attend a hearing whatsoever.

Some of these people admitted to having violated the immigration laws and said they would leave the country. Ordinarily that would be the end of the case, because that is the purpose of an immigration proceeding, to deport someone who is not lawfully here. So usually they close the case and say thank you very much, bye and don't come back for ten years and that's the end of the matter. But if you're using immigration law not for the legitimate purpose of deporting people who are unlawfully here but for the illegitimate purpose of locking up people as to whom you

lack exact probable cause of criminal activity, it's a problem when they say they want to leave, when they're willing to not fight their case and leave. So when they adopted the "hold until cleared" policy, which said even after a person did seem to be violating immigration law, even after the judge has said he can leave the country, the FBI and INS won't let him leave the country, we will keep him locked up until the FBI satisfies itself that he is innocent. That takes on average 90 days and as long as 244 days, so people just sat in jail waiting for the FBI to convince itself that these too many Muslims working in a convenience store were in fact not connected to terrorism. Virtually all the Muslims were determined to have no connection whatsoever with terrorism.

Now this is a double standard because first of all the government couldn't get away with this with respect to citizens. As a legal matter they have a right not to be arrested on no charges at all. They have a right not to be arrested without probable cause. They have the right to go before a magistrate within 48 hours of their arrest to determine that there is probable cause. They can't be kept in detention after their case is unresolved simply because the FBI wants to keep them locked up while investigating them, yet this is what's happened to foreign nationals. I think that also politically it is a double standard because if John Ashcroft had locked up 5,000 U.S. citizens after 9/11 and at the end of the day he only came up with one person convicted of anything related to terrorism and no Al Qaeda and no 9/11, he'd be out of a job....

The people on Guantanamo, they are on the cover of my book, a manifold with blackout goggles, earmuffs, a surgical mask covering their nose and mouth, deprived of all sensory input, that's one of our interrogation

tactics. The government you may recall, when they brought people to Guantanamo said, these people are the worst of the worst. These people are so evil that they would chew the cords on their transport planes to bring them down if they could. We now know that there have been juveniles as young as 13 on Guantanamo. We now know that there are people in their 90's on Guantanamo. We now know that there are people on Guantanamo who were not fighting for Al Qaeda, not fighting for the Taliban, who were taxi drivers or farmers who were picked up by the Northern Alliance to claim a reward that we were offering to people to bring them in; the Al Qaeda and Taliban people, in the chaos that was Afghanistan. These people on Guantanamo have been denied any hearing whatsoever to distinguish between those who were fighting for the enemy and those who were innocent civilians. Some of them may have trials set in a military tribunal, but these military tribunals are unusual trials. In a military tribunal, you can be executed on the basis of evidence that neither you nor your chosen attorney have any right to see. There is no judicial review and the president authorizes the case to be brought in the first instance and the president is your final level of appeal. You can ask George Bush if he made a mistake in bringing the case against you in the first instance. That's it, and both the holding of the people in Guantanamo and the military tribunal order are justified on the grounds that we are targeting foreign nationals.

At Guantanamo the government defends on the ground that they are informers, they don't have rights, therefore there is no recourse to legal limitations. The military tribunal order applies only to foreign nationals. There is no reason there to apply it to foreign nationals. The Supreme Court has upheld the

use of military tribunals against citizens as recently as WWII. The reason is political. Dick Cheney, on the day the military tribunal order was issued, went on television and said when a foreigner comes in he doesn't deserve the same rights and guarantees as an American citizen does. The government has an unusual view on ethnic profiling. Michael Chernoff (he is the head of the criminal division of the Justice Department) testifying in Congress, said and I quote, "We are adamantly opposed to ethnic profiling. We do not engage in ethnic profiling." Next sentence: "What we do is target foreign nationals based on country and passport." And then you say, what countries and passports, and they are all Arab and Muslim countries and they say well that's because that's where we find Al Qaeda people. So why isn't England on there? Richard Reed was from there. Why isn't France on there? Zacharias Moussaoui is from France. Why isn't Germany on there? That is where Al Qaeda masterminded 9/11. Why isn't Spain on there? There are probably more Al Qaeda people who have been arrested there of anywhere outside of Afghanistan and Pakistan. The defense is, it's not ethnic profiling because we are targeting foreign nationals.

The worst provisions of the Patriot Act are not the ones that you've heard so much about, the surveillance provision. You've heard so much about the surveillance provision because they might attack us. But the worst provisions are the immigration provisions that target foreign nationals, that allow the government to keep foreign nationals out when there is pure speech, reviving ideological exclusion of the McCarthy era practice to deport foreign nationals based on innocent association, and to give the Attorney General the power to lock up foreign nationals without charges and without showing a judge that they

are a danger or threat to national security. Those are the worst provisions of the Patriot Act and they apply only to foreign nationals.

When you compare those to cases where we have actually been asked to sacrifice our rights in the name of security; national ID card, we'd all have to carry one - killed by Congress in the Homeland Security Act. Operation TIPS, this program where the FBI was going to go out and recruit 11 million of us to spy on the rest of us to provide suspicious information to the FBI. We didn't want that many of our citizens to be spying on us and so Congress killed that in the Homeland Security Act. The Total Information Awareness Program - killed by Congress just this past year. The provisions of the Patriot Act that we have rightly complained about are the ones how that apply, or at least theoretically apply, to us not the ones that apply to them. This double standard, I suggest in closing, is wrong, counter-productive and illusory. It's wrong because the rights that we are denying to foreign nationals are not privileges of citizenship. They are human rights. You look in the Constitution, it does limit certain rights of citizens, but they are very limited: the right to vote, the right to run for federal elective office, the right not to be deported. That's why Margaret Randall is sitting here, despite having advocated communism in her poetry. That's it.

All the other rights in the Bill of Rights - the First Amendment right of free speech and association, the Fourth Amendment right to privacy, the Fifth Amendment right to due process, the Sixth Amendment right to a fair trial for the accused, the Eighth Amendment right against cruel and unusual punishment, all of these rights apply to people, to persons, to the accused, NOT to citizens. That is because these were

understood when the Constitution was drafted as God-given rights. God didn't give them to people with American passports. God gave them to human beings. That understanding also underlies all of the international human rights treaties, including those that we have signed onto. So it's wrong because foreign nationals are every bit as much human beings as the rest of us.

It's also counterproductive as a security matter because when you look around the country or look around the world today I think there is a strong argument that we are much less safe today than we were on 9/11. On 9/11, there was a group out there that hated us sufficiently to hijack planes and to kill 3,000 people. On 9/12 we had the sympathy of the world. Today, two years later, we have not only squandered that sympathy but have created a situation in which there is a higher degree of anti-Americanism around the world than ever before in the history of this country. That is because of two things. It is because of our unilateral foreign policy where we say you don't have to play by the rules everybody else has to play by. It is also because of the double standard we have employed at home; that we have imposed on their nationals, burdens and obligations that we would not tolerate ourselves. That is the greatest threat to national security that we face today. It makes it much less likely that we are going to get the cooperation we need, and it makes it much more likely that Al Qaeda will get the cooperation it needs.

Finally, it's illusory to think these measures charging foreign nationals will somehow protect our liberties because

What history shows is that what is done to the foreign nationals is a precursor for what is done to citizens. The Palmer raids of 1919 were targeting foreign nationals. Why? Because guilt by association, the principal charge, was only applicable to foreign nationals. It was part of the immigration law. In 1940, Congress made it a part of the criminal law in the Smith Act, and it applied to all of us. Tens of thousands of Americans lost their jobs, were blacklisted, and went to jail for their political affiliations.

The first laws penalizing subversive speech were targeting foreign nationals- the Alien Sedition Act of 1798. The Immigration Act of 1903 was extended to U.S. citizens during WWI where over a thousand were convicted for merely speaking out against the war. It was expanded again in the McCarthy era when it became a crime to advocate communism.

The first federal laws authorizing preventive detention during wartime without any evidence that the person was actually dangerous was the Enemy Alien Act of 1798. It applied only to aliens but was extended during WWII to U.S. Citizens of Japanese descent. Seventy to one hundred thousand detained were U.S. citizens. General John Dewitt, the architect of that plan, testified in Congress that "once a Jap, always a Jap. It doesn't matter whether they're citizens or aliens, the racial strains are undiluted." Political spying started out as a measure for tracking foreign nationals. It was run first out of the Alien Radical Division at the Justice Department, headed up by a young J. Edgar Hoover. Well, he wasn't content to limit his findings to foreign nationals, as we all well know. Martin Luther King ultimately had his private affairs in his private hotel rooms taped on the justification that

his organization might be infiltrated by foreigners, so we need to infiltrate his organization to see whether or not it is infiltrated by foreigners. So what is done to foreign nationals will come around to us. We only need to look at Jose Padilla and Yasser Hamdi, the two U.S. citizens being held on the exact same theory that the people at Guantanamo are being held, to see that that has already happened in this country. So for reasons of self-interest, for reasons of security, and most importantly for reasons of principle we should resist the temptation to strike the balance between liberty and security on the backs of the most vulnerable.

I want to close with a quote. It's a quote that I used as the epigraph for my book from a Jewish philosopher from the 19th century named Herman Cohn. And he wrote: "The alien was to be protected, not because he was a member of one's family, clan, or religious community, but because he was a human being. In an alien, therefore, man discovered the idea of humanity." To me one of the great challenges we face in wake of 9/11 is whether we can reclaim that idea of humanity as we seek to make ourselves safe. And I am honored to be speaking here at the ACLU's annual dinner because the ACLU is at the forefront of seeking to reclaim that idea of humanity. Thank you very much.