



TORCH

American Civil Liberties Union - New Mexico

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May-June 2003

“The Unpatriotic Act”

Speech by Tom Udall on April 26, 2003, at the annual membership meeting.

I don't get these warm welcomes much - I haven't had a welcome like that about, as Nancy [Hollander] says, “the unpatriotic act”. It's good to see all of you here actively involved and engaged and I hope we can have a little bit of a discussion here as we move down the road ...

Peter let me thank you for your hard work in the community.

I'm sure that Nancy is going to give you a lot more of the specifics, but I agree with her on the unpatriotic part. I think this goes to the core of our constitutional system, our constitutional values, and we should call it what it is, it undermines our constitution and she's absolutely right about how long it's been around.

Most of the provisions of the so called USA Patriot Act are provisions that we heard in hearings in previous times where administrations had asked for the same powers, and prior to Sept. 11 had always been denied. And the reason they have been denied is that we had a real airing of all of those views. And the typical thing that happens in a democracy is that if you think you have a great idea and you expose it to the marketplace of ideas and expose it to the people and the people that you represent in your democracy get to go out and have hearings. You hear from the experts, you hear from people who work in the public defenders department, you hear from prosecutors, you hear from legal scholars

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SPECIAL THANK YOU!!

As we were packing up to leave the Indian Pueblo Cultural Center after the ACLU-NM Annual Meeting on April 26, we discovered a card that was left in one of our boxes of materials. When we opened the unsigned card we were pleasantly surprised to find nine \$100 bills inside! Many thanks to our anonymous donor!



Rep. Tom Udall explains the “Unpatriotic Act.”

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Supermax Victory Means Substantial Prison Reform

Negotiations with the NM Department of Corrections over the inhumane treatment of inmates led to a major settlement victory in the Supermax class action lawsuit. Filed in October, 2002, the ACLU-NM lawsuit challenged the conditions of confinement in Special Control Facilities, alleging cruel and unusual punishment in violation of the 8th amendment, as well as violations under the 1st, 4th and 14th Amendments. Claims were also brought under the American Disabilities Act, which requires the government to provide "reasonable accommodations" for people with disabilities. The lawsuit also challenged the Department's severely restrictive "cognitive restructuring" program.

In the name of rehabilitation, the restructuring program isolated inmates and placed them in extreme sensory-deprivation conditions. These harsh conditions provoked mental health crises among prisoners with pre-existing mental illnesses, and put those prisoners without prior disabilities at risk of spiraling into illness. Mental health services were woefully inadequate, inmates' psychiatric needs were largely ignored, and nonprofessionals were expected to deal with psychological issues without the benefit of training.

The program punished inmates immediately upon incarceration, and in the absence of provocation or misbehavior. At the program's most extreme level, inmates were locked in their cells for all but six hours each week, and only allowed to go outside once every fifteen days. The program unreasonably restricted access to personal and educational materials, and inmates were only allowed three letters, three

photographs, no personal reading material, three books from the prison library, and five sheets of writing paper per week. Inmates were given limited access to phones, visits with relatives, employment opportunities, and legitimate educational programs. If family members sent letters or photographs, inmates had to give up one of the same in order to keep the new one.

The only way for an inmate to gain a semblance of freedom, stimulation, and human connection was to provide pre-approved answers to cognitive restructuring quizzes and assignments. This forced inmates to abandon their free speech rights in return for a gradual and arbitrary lifting of the punishments. There was also no clear way to advance along the levels of the restriction system. This led to a sense of endless punishment and hopelessness. Moreover, there was no system in place for appeals, and inmates could not use good time credit to shorten their incarceration period.

The settlement terms bring sweeping reforms especially in the area of mental health treatment. Mentally

disabled inmates will no longer be housed at the Supermax facility and deprived of treatment. The State has agreed to greatly expand the number of psychiatric treatment beds in the alternative placement area for inmates with serious mental health disabilities. This staff will be directly involved in the ongoing screening of inmates for mental health needs, and developing pre and post placement treatment plans. They will also actively participate in decisions classifying inmates within the level system, in disciplinary proceedings, and will train nonprofessional staff to deal more effectively with mental health problems among inmates.

The agreement calls for an expansion of inmates' rights in disciplinary hearings, increased access to counsel, increased access to legal materials, and the establishment of a system for appeals. Non-contact, face-to-face visiting with family members will replace video visiting, outdoor recreation facilities will be created, along with education and self-help programs. Telephone contact with relatives will increase, as will allowances for personal and educational materials.

These changes are to be made within 120 days of the settlement

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Supermax, continued from p. 2

agreement, and, significantly, the Department of Corrections has agreed to engage a monitor chosen from an ACLU approved list of candidates to conduct an audit and assess compliance with the settlement terms.

In sum, the commitment vindicates the fundamental right of Supermax inmates to humane and fair treatment. This important success is even more impressive in light of 1996 federal law that severely restricts the ability of inmates to succeed in civil rights suits challenging their conditions of confinement.

The Richardson administration brought a new philosophy to the Department of Corrections and to the treatment of inmates. A genuine interest in prison reform and humane conditions, with an emphasis on mental health treatment, made the settlement and far-reaching changes possible. Those involved in the negotiations on both sides agree that the reforms will make New Mexico a leader in the area of mental health treatment of inmates. ACLU lawyers believe that inmates gained more through the settlement commitments than would have been possible in a court victory.

The inmates were represented by the ACLU of New Mexico Co-Legal Director Phil Davis, and ACLU-NM Cooperating Attorneys Larry Kronen, Edwin Macy, Peter Cubra, Mark Donatelli and Nancy Simmons. ACLU National Prison Project lawyer David Fathi was co-counsel.

Calendar of Upcoming Events

ACLU of New Mexico

June 9-11	ACLU Biennial Meeting, Washington, D.C.
June 12-15	Inaugural Membership Conference, Washington, D.C.
June 27	Legal Panel 12:00 PM
June 28	Board Meeting/Annual Picnic
August 1-4	Al Bronstein (Confirmed-details to follow)
August 2	Board Meeting
August 15	Legal Panel 12:00 PM
September 26	Legal Panel 12:00 PM
October 4	Board Meeting
November 7	Legal Panel 12:00 PM
December 5	Legal Panel 12:00 PM Bill of Rights Dinner 6:00 PM
December 6	Board Meeting

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:

- June 21
- July 19
- August 16
- September 20
- October 18
- November 15

Southern Chapter

Chapter meetings are held at 6:00 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:

- July 2
- August 6
- September 3
- October 1
- November 5
- December 3

ACLU-NM Volunteer Opportunities

Website Assistant

The ACLU is looking for a volunteer to periodically up-date the ACLU-NM website. We are looking for someone who can commit several hours each week or every other week. Prior website experience is not necessary. However, this position requires general competency with computers.

Volunteer Responsibilities

1. Receive ACLU-NM web-site orientation.
2. Frequently review web-site pages and up-date as appropriate.
3. Add new press releases, torch publications, front page cover stories, as well as current events of interest.

Technology Assistant

The ACLU is looking for volunteers to assist with specific computer needs, such as computer programs like our membership database, server problems, and networking.

Volunteer Responsibilities

1. Available on-call as needed.
2. Completion of project.

Publications Organizer

The ACLU is looking for a volunteer to catalogue materials and create a database system to track all ACLU publications and library materials.

Volunteer Responsibilities

1. Catalogue all ACLU publications and materials.
2. Create user-friendly database to track ACLU-NM materials

Editorial Assistant for *The Torch*

To help with writing, organizing and editing the Torch. Currently, the Torch is produced six times a year and is distributed to current members of the ACLU of New Mexico.

Project on Juvenile Detention Facilities ACLU Internship Opportunity

ACLU Seeks Volunteers to Help Assess Conditions in State Juvenile Detention Facilities

Background

A number of youth and their family members contacted the New Mexico affiliate of the American Civil Liberties Union (ACLU) in 2002 regarding their concerns with the operation of the delinquency facilities operated by the Children, Youth, and Families Department (CYFD). In light of an ACLU investigation and the recent change in state administration, CYFD has expressed its intention to improve the operation of the Juvenile Justice Division (JJD), appointing ACLU cooperating attorney, Peter Cuba, as the ombudsman for children and youth in JJD custody. This position is designed to facilitate an assessment of the needs of juvenile clients, communicate the findings with CYFD officials, and devise strategies to improve the care provided to clients in CYFD custody.

Volunteer Responsibilities

The ACLU is looking for volunteers to provide support for this ombudsman initiative. We are looking for people who can commit a day or two each month for at least six months to:

For more information or to express your interest for any of these positions, please contact:

ACLU-NM
PO Box 80915
Albuquerque, NM 87198
(505) 266-5915
aclunmed@swcp.com

1. Visit one of the four delinquency facilities (New Mexico Boys' School at Springer, Youth Diagnostic and Development Center/ New Mexico Girls' School/ Camino Nuevo in Albuquerque, Camp Sierra Blanca near Ruidoso and the Juvenile Justice and Rehabilitation Center in Las Cruces) at least monthly to interview youth and staff to help determine what the clients need and ways to improve the facilities.

2. Work in the ACLU office sending correspondence to the youth, reviewing in-coming correspondence and taking phone calls from facility residents during designated hours.

3. Help to plan the development of community corrections programs, as alternatives to incarceration.

4. Monitor Juvenile Parole Board proceedings and activities.

For more information or to express your interest, please contact:

ACLU-NM
PO Box 80915
Albuquerque, NM 87198
(505) 268-2158
aclunm@swcp.com

Financing ACLU-NM Operations

Harvey Morse
Director of Development

During my first three months as Director of Development for the ACLU of New Mexico I have been struck by two things; 1) the complex relationship between the National ACLU and its affiliates with respect to revenue sharing and financial support and 2) how few members are aware of how the ACLU-NM is funded.

There are four primary sources of revenue supporting small affiliates like the ACLU-NM; membership income, charitable gifts, attorneys fees, and financial assistance from the National office through their Guaranteed Minimum Income program and/or program grants.

It is important to note that there are two legal entities that comprise the ACLU-NM. The **first** is the American Civil Liberties Union of New Mexico, a non-profit 501(c)(4) corporation. By federal law, moneys contributed to this entity, membership income, are not tax deductible primarily because they are used for political lobbying. The National has primary responsibility for direct mail membership recruitment and marketing which removes a large burden from small affiliates. The resulting economies of scale make this program much more cost effective than if undertaken at the local level.

Affiliates may, and in fact are encouraged to, recruit new members albeit in a more limited and focused manner. Membership income is normally shared between the National and affiliate, although the first two years of membership dues go to whatever entity was responsible for generating the membership. Since the income is often renewed it is referred to as Base Renewable Income (BRI). BRI also includes

extra membership contributions (special appeals) and tax-deductible direct mail gifts under \$2,500 and other forms of workplace giving banked by the National. The actual cost of raising these funds is deducted before the monies are shared.

The **second** entity is the New Mexico Civil Liberties Foundation (NMCLF), a non-profit 501(c)(3) corporation established for the purpose of supporting cases involving violations of the Bill of Rights and civil rights issues argued before the judicial system in New Mexico. The work of the New Mexico Civil Liberties Foundation also includes education and community outreach program as well as legal education. Gifts to the NMCLF are fully tax-deductible within the limits of federal and state law. All individual gifts under \$5,000 are retained by the affiliate with gifts in excess of that amount to be shared with National. A \$10,000 gift to the NMCLF would result in \$7,500 being retained by NMCLF with \$2,500 being sent to National to support their work. Local foundation grants are retained by the affiliates as are grants from government agencies where permitted. Approaches made to national foundations must be coordinated with National.

The ACLU-NM does not charge clients for its services but it does try to recapture some of its expenses through successful litigation. When the ACLU-NM Legal Panel (of civil rights experts) accepts a case for litigation it does so recognizing the limited resources of the ACLU-NM as well as the potential to successfully litigate a particular case. The panel must find a cooperating attorney willing to take a case and who, if successful in the litigation, will return 25% of their fees to the ACLU, if the court awards fees or the case is successfully settled. The

ACLU bares the expenses for each case and only recovers those expenses if successful in the litigation.

It is extremely difficult to predict cash flow that might be derived from litigation in any particular year because the number and types of cases vary and because the collection of attorney's fees and case expenses is completely predicated upon prevailing in the litigation.

In the case of the ACLU-NM, a small affiliate, we would not be able to support our broad programs solely through membership contributions, so the National grants us a \$100,000 subsidy through its Guaranteed Minimum Income program. We and other small affiliates benefit from this program that was set up in 1994 through the establishment of an Affiliate Development Fund from contributions made by National and other larger affiliates. The fund is sustained through donations made through bequests. Under normal conditions any bequest going to National or an affiliate is divided 37.5% to National, 37.5% to the affiliate, and 25% to the Affiliate Development Fund. This sharing formula applies to other planned gifts such as charitable gift annuities, annuity trusts, pooled income funds, charitable remainder unitrusts, or other life estate agreements such as the donation of a personal residence or farm. Donors may elect to allocate their gifts differently, however National and the affiliates will only solicit gifts based on the agreed upon sharing formulas.

New memberships to the ACLU-NM have grown by over 70% since September 11, 2001 as the challenges to our constitutional rights dramatically increased. If we can continue to expand our membership and also increase our gift income in the years ahead through outright donations and bequests/planned gifts, the ACLU-NM will be better able to serve the people of our state.

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Udall, continued from p. 1

in the universities and you air the idea. Up until Sept. 11 when these ideas would come up they were routinely voted down in the Judiciary Committee. I don't think most of them ever got to the House of Representatives or to the Senate.

Ben Franklin said, 200 years ago, if we surrender our liberty in the name of security then we shall have neither. The key to me is the word security – that's the change, this big sweeping change, that has taken place in our society.

If we look at our history because I think it's important to do that in times of emergency, in times of war, in times of fear, our country has sometimes acted very rashly. I'm not going through the history, but I'm just going to remind you a little bit. Many of you may recently have read David McCulloch's book on John Adams where he portrays John Adams as a wonderful patriot. John Adams did a lot of wonderful things for the country, but let me be clear that when he was president there were passed the Alien and Sedition Acts, and you could go to prison for speaking against the government. If you got up and said some of the things that people are holding up today about President Bush on protesting signs, they would come and get you and prosecute you. In fact, I think people were prosecuted who were in the legislature for saying things in the legislature. They were

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Each of the upcoming editions of *The Torch* will include a development related topic to better inform our readers of ways in which they might be able to financially support the ACLU-NM while deriving a personal financial benefit as well.

caught and prosecuted, so that wasn't a very good chapter in our history.

Abe Lincoln, who was probably the last great Republican president. There are a lot of great things that Abe Lincoln did and we know what they are, but during the Civil War Abe Lincoln suspended the writ of habeas corpus. He suspended the whole idea that you would be protected from the government taking and keeping you someplace without due process; that the government had to bring the body [habeas corpus] to court and answer to the court and show that there was some legal reason for holding the individual. Not only did he suspend habeas corpus but when the Supreme Court told him that his action was unconstitutional he ignored the Supreme Court. So it shows you how fragile our whole system is.

Many of you here in the room will remember the McCarthy era and the cold war and we did a lot of things in that period that I think would be considered in the long run unconstitutional and unpatriotic.

And then during World War II one of the worst cases of violating people's rights – we rounded up Japanese Americans. These weren't immigrants. These were American citizens, 2nd and 3rd generation American citizens. The basic thing that the government said at the time was, we're protecting them. We swept them away from their homes, took them away from their businesses, many of them lost their homes, they lost their businesses. It was devastating to the Japanese-American community. They were put in concentration camps. We had one up in Santa Fe and we are finally putting a little monument there to try to say what we did, so we remember it. So in times of crisis and in times of fear, a lot of times our country doesn't act rationally and that's the situation we've found ourselves in. I would like to give you an idea of just how this act passed

because I want to educate you so you can talk to people about it, about how this act actually passed, because to me the most appalling thing is what was done to the democratic process that we go around the world talking about..

Well, we had Sept. 11. When the Judiciary Committee met, and they didn't meet for very long, remember the Patriot Act passed about 6 weeks after Sept. 11. The Judiciary Committee didn't go around the country and hold hearings on a major expansion of the governmental powers. They had a couple of hearings in Washington and developed what was considered a bipartisan bill. You got the characterization that we got aboard on that bill – pretty amazing. Many of you have probably heard of Bob Barr, right? Well, Bob Barr on the right, Barney Frank on the left, this is the Judiciary Committee. This is the same Judiciary Committee for the most part that impeached President Clinton, so you saw them all - you saw it play out in the impeachment committee. That Judiciary Committee agreed on a bipartisan bill, OK? It reported out of the Judiciary Committee with all members of the Judiciary Committee voting for the bill.

I was studying this because I was very interested in what was happening and I was listening to all the hearings and I was getting briefed by the staff and people were starting to write letters because this thing was moving along and a few of the newspapers were editorializing. The day before the vote, when it was coming to the House floor, I thought I was voting on that bill. Well, the way the House of Representatives works is, no bill comes to the floor of the House of Representatives unless you have what's called a rule, and because we are such a huge body we are much more restricted than the Senate in how many

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amendments we can offer and in the length of the debate ... probably the decisive difference in the Senate and the House is the procedures and the rules. So every bill goes to a rules committee. The rules committee met in the middle of the night. All the way leading up to the vote we were thinking this was the bill that had come out of Judiciary, but the people on the rules committee had done their work in the middle of the night.

The Judiciary Committee bill was scheduled for the Rules Committee and the Rules Committee has extraordinary power. Rarely do they use their power but they can completely throw out a bill and rewrite it. Normally, the chairman of the committee is so strong but the committee members do stand up for their authority, so very rarely does that happen, yet that's what they did in this case. The administration was pressuring the Rules Committee

and the leadership of the house. The Rules Committee is stacked, right now, 9 to 4 -- 9 Republicans and 4 Democrats -- so there's nothing the Democrats can do about the rule or how it's brought up. They just have a few votes they can throw away if some members of the Rules Committee want to appear back in his or her district looking like they're a little bit moderate. The bipartisan bill junked and the bill that the Administration had been pushing, or something very close to it, then came up before the Committee. First they used this extraordinary procedure of throwing out the other bill and bringing in a brand new bill without giving notice to anybody.

The second thing they did with regard to that bill is they restricted enormously the amount of debate. I can tell you if you study your history in the Congress, anything this expansive and this big in this country such as the Surface Coal Mining Act, which my uncle managed on the floor in the 1970's, which included all the coal areas in the country, was brought to the floor, debated on the house floor for 6 weeks with 100's of amendments. Mo Udall was there on the house floor having to fend off all these amendments, many of them very devious, trying to undermine the act, but that was our democracy and that was the way it worked.

Well we did all of the Patriot Act in a couple of hours, in 1 day, with no amendments, no amendments! We couldn't stand up and say, members of the Judiciary Committee, there's this provision in the Judiciary Committee bill we want to insert that would wipe out these other

provisions. We basically had a vote on the motion to recommit and a motion for a vote on the bill and that was the bill -- no amendments, very little debate.

So it passes the House, the Senate passes their bill, and they go to conference. There are obviously differences in the bill. When you get a conference report back, the conference report is a routine thing -- rarely do you have amendments to that process. The bill was brought back within a matter of days I think and then passed with the vote that Nancy or Peter mentioned. The first time around we got in the high 70's in terms of members of the House of Representatives that voted against the Patriot Act. When the Conference report came back we lost 12 members and so there were 66 to 68 of us that voted against it. So that's how this thing occurred, and it's why a lot of you heard about it. You are thinking folks and you are out there following these things. Most of the American public, in my opinion,, didn't hear or know about this, they didn't know what was happening.

And the predominant feeling in the country, post Sept. 11, was one of mourning and fear, so let's never forget that highly, highly charged atmosphere that this was passed in.

I want to talk briefly now about the whole security issue post-Sept. 11. I think that all of us as Americans have to be honest with ourselves about analyzing security and so we have to confront these issues. Is this threat that we talk about of terrorism, the small groups of individuals, is this something that is realistic and that is out there? I have been in law enforcement. I was a federal prosecutor for several years and I was your state's attorney general for 8 years. I always felt that in doing those jobs I was upholding the Constitution. I was bringing that mindset to both



ACLU-NM Legal Co-Director Maureen Sanders shares a penetrating insight.

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positions, always thinking that there are bad guys out there and we need to have methods and laws to apply to them to bring them to justice. And so you need to analyze the situation – is this different from the typical law enforcement situation or are there other things we can do? In a traditional law enforcement scenario, you have a crime. You investigate the crime and after you finish your investigation you give the prosecutors the case, they present the case, and the whole thing plays out in the courts.

The difference here is there is somewhat of an urgency. It's fair to say that we're not dealing with this traditional situation of trying to figure out what's happening on the terrorist front, and using any powers we have, of course recognizing the values in the Constitution of getting after the bad guys. So I ask myself what did we do wrong on Sept. 11 in terms of the terrorist threat?

What demands that we give expansive powers to the government? The jury's still out on that, and I hope you will follow it because I think that the key is: what happened? What occurred? What were our failings in terms of the society or the government that was overseeing the various powers? What actions are required subsequent to that analysis?

The reason I say the jury's out, is because the Senate and the House had a joint committee and it didn't work very well and they got bogged down in partisanship and they made a report that they weren't very proud of. Congress has now commissioned an independent group to go out for 1 ½ years and they've given them \$14 million bucks to answer the questions. In about 1 to 1 ½ years we will have that report. The committee has some good people on it - independent minded people, and I think that, like the Warren Commission and

the Dade Commission, they are going to tell us what the failings are. Here is what we've learned so far: (1) Not utilizing the information we already had. What do I mean? Two examples: do you remember the courageous woman in the FBI, Colleen Rowley, who was put on the front of Newsweek and Time as a whistleblower with some of the women in Enron and other corporate scandal cases? She came forward and spoke about trying to urge, at her level, that certain actions be taken on the Moussaoui case, that's now under indictment by the court. She felt that there were a lot of things that the FBI could have done with the execution of search warrants. So you had an experienced law enforcement person saying, we had tools and we didn't use them. Also, there was a Phoenix FBI agent who suspected a connection between Middle Eastern men and flight schools - he tried to rattle chains and was unsuccessful. (2) The CIA has become enormously bureaucratic yet they - pulled back most of their "human assets" in the Middle East (people who watch and report back). You don't expand government power, just do the traditional things to gather information.

(3) We tell the world about our immigration policies, but our immigration service doesn't have a clue, once people get here, about them. It is totally dysfunctional. The immigration service mailed some of the hijackers visas 6 months after September 11!

I was taught as a prosecutor to have a warrant when going into people's homes. Now, the practice is a "warrant in secret". Agents can come in and search your computer and xerox your papers with portable machines and you don't know they've been there.

The Patriot Act created the ability to create a massive database on citizens. It is in the Defense Department, and John Poindexter is

in charge of it. He was convicted of lying to Congress - reputable guy! (The conviction was overturned later on an a technicality.)

In the senate, we are working on putting in provisions that make them come out in the open what's in the database, I think the whole thing will die when it comes out. The Senate also killed the "TIPS" program, where utility workers were encouraged to spy on people while working at their houses and report them.

Finally, if President Bush calls you an "enemy combatant," you can be picked up and put in the military brig - no attorney, no talking to the court. There are two such people in custody now.

In closing,

"Beware the leader who bangs the drums of war in order to whip the citizenry into a patriotic fervor, for patriotism is indeed a double edged sword. It both emboldens the blood just as it narrows the mind, and when the drums of war have reached a fever pitch, and the blood boils with hate and the mind has closed, the leader will have no need in ceasing the rights of the citizenry. Rather, the citizenry, infused with fear and blinded with patriotism, will offer up all of their rights, leader, and gladly so. How do I know? For this is what I have done, and I am Caesar."

Correction

The ACLU-NM wishes to acknowledge the egregious editorial oversight that appeared in the last edition of the *Torch*. John Ashcroft is the Attorney General, not Donald Rumsfeld.

ACLU-NM Legal Docket: May, 2003

Supermax Lawsuit [*Ayers et al. v. NM Department of Corrections*]

On May 20th, 2003 ACLU-NM Cooperating Attorneys settled this class action lawsuit against the New Mexico Department of Corrections agreeing to sweeping improvements in the Special Controls Facilities of the NM state penal system. See the article detailing the conditions of the settlement agreement in this edition of the *Torch*.

Police Abuse Class Action Suit Re-Opened [*Johnson et al. v. City of Hobbs*]

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 that 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.

APS Teachers Fired for 'No War' Signs [*Roybal et al. v. Albuquerque Public Schools*]

On April 18, 2003, Cooperating Attorneys for the American Civil Liberties Union of New Mexico filed suit in federal court against the Albuquerque Public Schools for the

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INVITES YOU TO

**"Stand Up
for Freedom –
Because Freedom
Can't Protect Itself"**

**2003 ACLU Inaugural
Membership Conference**

**June 11-15, 2003
Washington, D.C.
Omni Shoreham Hotel**

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unlawful suspension of four APS Teachers in retaliation for putting up posters, artwork and other materials in their classrooms and offices that expressed opposition to the invasion of Iraq. Plaintiffs Carmelita Roybal, Ken Tabish, Francesca Tuoni and Allen Cooper accuse officials of Albuquerque Public Schools of violating their rights to freedom of speech and equal protection under the law. In each instance, the plaintiffs were suspended from their jobs for two days without pay for insubordination stemming from their alleged violation of the APS policy on controversial issues.

ACLU-NM Cooperating Attorneys include Jane Gagne, Linda Vanzi and K. Lee Peifer. Named defendants in the lawsuit are the APS Director of Human Resources Gena W. Jones, Staff Director of Human Resources Ronald Williams, Highland High School Principal Ace Trujillo, and Superintendents Joseph Vigil, Elizabeth Everitt, Michael Vigil, and Thomas Garrity. Plaintiffs in the lawsuit seek compensatory and punitive damages.

Albuquerque's Sex Offender Alert Program [John Doe et al. v. City of Albuquerque]

The American Civil Liberties Union of New Mexico wasted no time in stopping the implementation of a sex offender registry ordinance that Albuquerque Mayor Martin Chavez signed into law on April 21, 2003. The Sex Offender Alert Program, or "SOAP," was scheduled to go into effect on April 25. However, a complaint filed by ACLU-NM Cooperating Attorneys George Bach, Kari Morrissey, and Justin Lesky and ACLU-NM Legal Co-Director Reber Boulton convinced District Court Judge Teresa Baca to grant a ten-day temporary

restraining order ("TRO"), preventing the ordinance from going into effect.

The ACLU's complaint alleges that SOAP is unconstitutional because it re-punishes people who have already served their debt to society, without court action or due process of law. It also claims that provisions of SOAP violate plaintiffs' rights to be free of unwarranted search and seizure, to acquire, possess and protect property, and to freedom of association under the New Mexico Constitution. The complaint contends that, together, the various provisions of SOAP amount to "banishment" from the City of Albuquerque of people that the ordinance identifies as "sex offenders".

Under SOAP, convicted sex offenders living in Albuquerque will be required to notify employers and prospective employers, as well as landlords, home sellers, and mortgagees, of any convictions dating back to 1970. They also must register with the Albuquerque Police Department and may be required to submit DNA samples, shoe size, and dental imprints. SOAP prohibits two people convicted of sex offenses from living in the same household and prevents them from living within 1000 feet of a school.

In addition to constitutional problems, the ACLU complaint alleges that SOAP is unlawful because sex offender registration and notification are entirely preempted by the state's Megan's Law. Plaintiffs allege 13 separate counts of violations of the state constitution and common law. The complaint asks the court to issue a preliminary and permanent injunction enjoining the City from enforcing any provisions of SOAP. The six plaintiffs in the lawsuit are all listed as "John Doe" in order to protect their anonymity. A hearing for a preliminary injunction has been scheduled for June 13th. Judge Baca extended the TRO to that date.

Excessive Force and Racial Profiling at Water Park [Bradford v. County of Bernalillo]

In December, 2002, the ACLU-NM filed suit against the Bernalillo County Sheriff's Office for brutally beating a young African American man and accosting his sister after a County-sponsored concert event at The Beach Water Park. Plaintiffs Michael and Robin Bradford accuse sheriff's deputies of using excessive force as well as false arrest and malicious prosecution. They also accuse The Beach of negligence and reckless endangerment. Their lawsuit seeks compensatory and punitive damages.

On the evening of June 6, 2001 fights broke out between teenagers at a hip-hop concert event entitled "Dance, Dance, Dance." While Michael Bradford was calling his mother to hurry to come get him and his sister, Robin, unidentified sheriff's officers grabbed Michael, violently handcuffed him, and threw him upon 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 kned him in the groin and threw him to the ground. Sheriff's officers kicked and beat Michael until he lost consciousness. In a separate incident, officers grabbed Robin Bradford 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.

Continued on p. 16

American Civil Liberties Union of New Mexico 2003 Legislative Report Card

The ACLU-NM's legislative report card gives a snapshot of how New Mexico legislators voted on select civil liberties issues in the 2003 Legislative Session. Readers should not jump to conclusions if a normally civil-rights-friendly legislator opposed us on a particular bill. Sometimes lawmakers are caught by a vote without fully understanding the issues. Read the report card for the general trends it reveals and contact us if you'd like more information about how your political representative performed on civil liberties legislation.

Each of the eight bills and the memorial on the 2003 Report Card significantly impact an aspect of civil liberties.

Each legislator's score is a percentage of the number of pro-civil liberties votes out of the total number of possible votes. If a legislator was absent (AB) for a vote, this vote is still included in the total number of votes, and will reduce the legislators total score. Excused absences (EX) are excluded from the tally of possible votes because they often are the result of committee meetings or obligations and should not be penalized.

The total number of possible votes will vary depending upon committee membership and overall attendance. Note that SB 365 only reached the Senate Floor, and HB 453, HB 242, HB 313 and HJM 40 were voted on the House Floor Only.

KEY TO ABBREVIATIONS IN 2003 REPORT CARD

HB	House Bill
SB	Senate Bill
HJM	House Joint Memorial
☺	Indicates a PRO-CIVIL LIBERTIES vote.
☹	Indicates an ANTI-CIVIL LIBERTIES vote.
AB	Indicates an unexcused absence (vote included)
EX	Indicates an excused absence (vote not-included).
N/A	Score not calculated, legislator voted less than twice on selected bills due to excused or unexcused absences.

Contact us for more information about the bills and local ACLU involvement in New Mexico's Legislature:

ACLU-NM
PO Box 80915
Albuquerque, NM 87198

Local (505) 266-5915
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Anti-Terrorism Bills

👉 **Civil Liberties Memorial, HJM 40/SJM 30 (House Floor Vote Only) – Rep. Max Coll; Sen. Cisco McSorley** – These Joint Memorials critiqued various elements of the USA Patriot Act and discouraged state police from assisting federal agents in investigations, surveillances, and searches that violate the rights of New Mexicans. The Memorials directed schools to notify people whose education records have been obtained by federal agents under the Patriot Act. They also directed libraries to post notices informing the public that federal agents can obtain record of books checked out by patrons. Finally, the Memorials required the state office of Homeland Security to make a public report every six months about the federal anti-terrorist activity in the state and how it affects state residents.

Immigration Bills

👉 **Tax ID Number for Drivers Licenses, HB 173 (SB 201) – Rep. Miguel Garcia, Sen. Richard Martinez** – This bill allows drivers license applicants to use an Individual Tax Identification Number (ITIN) in lieu of a social security number for the purposes of identification. It extends the privilege of lawful driving to all immigrants, regardless of status, and contributes to public safety by ushering all immigrant drivers through driver testing procedures. The law would also make all immigrants eligible for driver's insurance.

Anti-Discrimination / Employment Bills

👉 **Sexual Orientation Discrimination, HB 314 (SB 28) – Rep. Gail Beam, Sen. Cisco McSorley** – This bill amends the Human Rights Act to prohibit discrimination based on sexual orientation and gender identity in housing, employment, public accommodations, and credit. Religious and denominational organizations would be exempt.

👉 **Protection of Genetic Privacy, HB 453 (House Floor and Senate Judiciary Only)– Rep. Danice Picraux** – This bill would have amended the Human Rights Act to prohibit employers from using genetic information in any employment-related decisions, including hiring, discharge, promotion, demotion, compensation and terms, conditions and privileges of employment.

👉 **Collective Bargaining for Public Employees, SB 46 (HB 508) Sen. Romero; Lujan** – This bill grants public employees the right to organize and bargain collectively with their employers.

Youth, Health and Reproductive Rights Bills

👉 **Sexual Assault Survivors Emergency Care, HB 119 (SB 314) – Rep. Mimi Stewart; Sen. Michael Sanchez** – These bills require health care facilities to provide medically accurate information and emergency contraceptive services to sexual assault survivors.

👉 **Health Care Whistleblower Bill, HB 313 (House Floor Vote Only) – Rep. Rick Miera** – This bill protects employees who report the illegal activity of their employers from retaliation.

Drug Policy Reform Bills / Criminal Sentencing Bills

👉 **Legalization of Medical Marijuana, HB 242 (House Floor Vote Only) –**

Sen. Kenneth Martinez – This bill legalizes the use, cultivation, and distribution of marijuana for certain medical purposes.

👉 **Treatment versus Incarceration, SB 365 (Senate Floor Vote Only) – Sen. Manny Aragon** – This bill expands drug treatment options as an alternative to incarceration.

2003 REPORT CARD

Party Affiliation
 Civil Liberties Memorial
 Tax ID For Drivers Licenses
 Sex. Orient. Discrimination
 Protection of Genetic Privacy
 Collective Bargaining
 Sex. Assault Emergency Bill
 Whistleblower Bill
 Legalization of Med. Marijuana
 Treatment vs Incarceration
 % CIVIL LIBERTARIAN
 ACLU SCORE

REPRESENTATIVES													
Tom	Anderson	R	☺	☺	☹	☺	☹	☹	☹	☹		63%	D
Janice	Arnold-Jones	R	☹	☹	☹	☹	☹	☹	☹	☹		0%	F
Gail	Beam	D	☺	☺	☺	☺	☺	☺	☺	☺		100%	A
Raymond	Begaye	D	☺	☺	☹	EX	☺	☺	☺	☺		88%	B
William	Boykin	R	☹	☹	☹	☹	☹	☹	☺	☹		13%	F
Donald	Bratton	R	☹	☹	☹	☹	☹	☹	☹	☹		0%	F
Jose	Campos	D	☺	☺	AB	☺	☺	☺	EX	☹		75%	C
Joseph	Cervantes	D	☺	☺	☺	☺	☺	☺	☺	☹		88%	B
Max	Coll	D	☺	☺	☺	☺	☺	☺	☺	☺		100%	A
Kandy	Cordova	D	☺	☺	☺	☺	☺	AB	☺	☹		75%	C
Anna	Crook	R	AB	☹	AB	☺	☹	☹	☹	☹		13%	F
Daniel	Foley	R	☹	☹	☹	AB	☹	☹	☹	☺		13%	F
Mary Helen	Garcia	D	☺	☺	☺	☺	☺	☺	☺	☹		88%	B
Miguel	Garcia	D	☺	☺	☺	☺	☺	☺	☺	☺		100%	A
Ron	Godbey	R	☹	☹	AB	☺	AB	☺	AB	☹		25%	F
Roberto	Gonzales	D	☺	☺	☺	☺	☺	☺	☺	☹		88%	B
Dianne Miller	Hamilton	R	☺	☹	☹	☺	☹	☺	☺	☹		50%	F
George	Hanosh	D	☺	☺	☺	☺	☺	AB	☺	☺		88%	B
Irvin	Harrison	D	☺	☺	☺	☺	☺	☺	☺	☺		100%	A
John	Heaton	D	☺	AB	☹	☺	☺	☺	☺	☹		63%	D
Manuel	Herrera	D	☺	☺	☺	☺	☺	☺	☺	☹		88%	B
Ted	Hobbs	R	AB	AB	☹	☺	☹	☹	☹	☹		13%	F
Dona	Irwin	D	☺	☺	☺	☺	☺	☺	☺	☹		88%	B
Rhonda	King	D	☺	☺	☺	☺	☺	☺	☺	☹		88%	B
Larry	Larranaga	R	☹	☹	☹	☺	☹	☹	☹	☹		13%	F
Antonio	Lujan	D	☺	☺	☺	☺	☺	☺	☺	☺		100%	A
Ben	Lujan	D	☺	☺	☺	☺	☺	☺	☺	☹		88%	B
Fred	Luna	D	EX	☺	EX	☺	☺	☺	☺	☹		88%	B
Patricia	Lundstrom	D	☺	☺	EX	☺	☺	☺	☺	☺		100%	A
James Roger	Madalena	D	☺	☺	☺	☺	☺	☺	AB	☹		75%	C
Terry	Marquardt	R	☹	☹	☹	☺	☹	☹	☹	☹		13%	F
W. Ken	Martinez	D	☺	☺	☺	☺	☺	☺	☺	☺		100%	A
Rick	Miera	D	☺	☺	☺	☺	☺	☺	☺	☺		100%	A
Brian	Moore	R	☺	AB	☹	☺	☹	☺	☺	☹		50%	F
Andy	Nunez	D	☺	☺	☺	☺	☺	☺	☺	☹		88%	B
Rory	Ogle	R	☺	☹	☹	☺	☹	☹	EX	☹		38%	F
Al	Park	D	☺	☺	☺	☺	☺	☺	☺	☺		100%	A
Danice	Picraux	D	☺	☺	AB	☺	☺	☺	☺	☺		88%	B
Pauline	Ponce	D	☺	☺	EX	☺	☺	AB	☺	☹		75%	C
Jane	Powdrell-	R	AB	☹	☹	☺	☹	EX	EX	☹		38%	F
Bengie	Regensberg	D	☺	☺	EX	☺	☺	☺	☺	☺		100%	A
Earlene	Roberts	R	☺	☹	EX	☹	AB	☹	☹	☹		25%	F
Debbie	Rodella	D	☺	☺	☹	☺	EX	☺	☺	☹		75%	C
Raymond	Ruiz	D	☺	☺	☺	☺	☺	AB	☺	☺		88%	B
Henry Kiki	Saavedra	D	☺	☺	☺	☺	☺	☺	☺	☺		100%	A
Nick	Salazar	D	☺	☺	☺	EX	☺	☺	☺	☹		88%	B

SENATE FLOOR VOTE ONLY

2003 REPORT CARD

Party Affiliation
 Civil Liberties Memorial
 Tax ID For Drivers Licenses
 Sex. Orient. Discrimination
 Protection of Genetic Privacy
 Collective Bargaining
 Sex. Assault Emergency Care
 Whistleblower Bill
 Legalization of Med. Marijuana
 Treatment vs Incarceration
 % CIVIL LIBERTARIAN
 ACLU SCORE

REPRESENTATIVES													
Edward	Sandoval	D	☺	☺	AB	EX	☺	AB	☺	EX	SENATE FLOOR VOTE ONLY	75%	C
Daniel	Silva	D	☺	☺	AB	AB	☺	☺	☺	☹		63%	D
Sheryl Williams	Stapleton	D	☺	☺	☺	AB	☺	AB	☺	EX		75%	C
Joe	Stell	D	☺	☺	☹	☺	☺	☺	☺	☹		75%	C
Mimi	Stewart	D	☺	☺	☺	☺	☺	☺	☺	☺		100%	A
Thomas	Swisstack	D	☺	☺	☺	☺	☺	☺	☺	☹		88%	B
J. Paul	Taylor	D	☺	☺	☺	☺	EX	☺	☺	☹		88%	B
James	Taylor	D	☺	EX	☺	☺	☺	☺	☺	AB		88%	B
Thomas	Taylor	R	☹	☹	☹	☺	☹	☺	AB	☹		25%	F
Joe	Thompson	R	☺	☹	☺	☺	☹	☺	☹	☺		63%	D
Nick	Tinnin	R	☹	☹	☹	☺	☹	EX	☺	☹		38%	F
Sandra	Townsend	R	☺	☺	☹	☺	AB	☺	☺	☹		63%	D
Don	Tripp	R	AB	☹	☹	AB	☹	☺	☹	☹		13%	F
Jim	Trujillo	D	☺	☺	☺	☺	☺	☺	☺	EX		100%	A
Lucky	Varela	D	☺	☺	☺	☺	☺	☺	AB	☺		88%	B
Gloria	Vaughn	R	☺	☹	☹	☹	AB	☹	☹	☹		13%	F
Richard	Vigil	D	☺	☺	☺	☺	☺	☺	☺	☹		88%	B
Jeannette	O'Wallace	R	AB	☹	☹	☺	☺	AB	☺	☹		38%	F
Donald	Whitaker	D	☺	AB	☹	☺	☹	☺	☺	☹		50%	F
Robert	White	R	☺	☹	☹	☹	☹	☹	☹	☹		13%	F
W.C.	Williams	R	☺	☺	☺	☺	☹	☹	☺	☹	63%	D	
Avon	Wilson	R	☹	☹	☹	☺	☹	☹	☹	☹	13%	F	
Eric	Youngsberg	R	☺	☹	EX	☺	☹	☹	☹	☺	50%	F	
Teresa	Zanetti	R	☹	☹	☹	☺	☹	☺	EX	☹	38%	F	

REPORT KEY	
PRO-CIVIL LIBERTIES VOTE	☺
ANTI-CIVIL LIBERTIES VOTE	☹
ABSENT (Counts against score)	AB
EXCUSED (Not included in score)	EX
SCORE NOT CALCULATED Legislator voted less than twice.	N/A
DEMOCRAT	D
REPUBLICAN	R
NOT ON VOTE	

Contact us for more information about the bills and local ACLU involvement in New Mexico's Legislature:

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Local
 Toll Free

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 Whistleblower Bill
 Legalization of Med. Marijuana
 Treatment vs Incarceration
 % CIVIL LIBERTARIAN
 ACLU SCORE

SENATORS												
Rod	Adair	R		☒	☒		☒	☒			☒	0% F
Ben	Altamirano	D		☺	☺		☺	☺			☒	80% B
Manny	Aragon	D		☺	☺		☺	☺			☺	100% A
Mark	Boitano	R		☒	☒		☒	☒			☒	0% F
Pete	Campos	D		☺	☺		☺	☺			☒	80% B
Joseph	Carraro	R		☒	☒		AB	☒			☺	20% F
Carlos	Cisneros	D		☺	☺		☺	☺			☒	80% B
Kent	Cravens	R		EX	☒		☒	☒			☒	20% F
Dianna	Duran	R		☒	☒		☒	☒			☒	0% F
Dede	Feldman	D		☺	☺		☺	☺			☺	100% A
Joseph	Fidel	D		☺	☺		☺	☺			☒	80% B
Mary Jane	Garcia	D		☺	☺		☺	☺			☺	100% A
Ramsay	Gorham	R		☒	☒		☒	☒			☒	0% F
Phil	Griego	D		☺	☺		☺	☒			☺	80% B
Clinton	Harden	R		☺	☒		☒	☒			☺	40% F
Allen	Hurt	R	HOUSE FLOOR VOTE ONLY	☒	☒		☺	☒	HOUSE FLOOR VOTE ONLY		☒	20% F
Stuart	Ingle	R		☒	☒		☒	☒			☒	0% F
Timothy	Jennings	D		☺	☺		☺	☺			☒	80% B
Gay	Kernan	R		☒	☒		☒	☒			☒	0% F
Don	Kidd	R		☒	☒		AB	☺			☒	20% F
Steve	Komadina	R		☺	☒		☒	☒			☒	20% F
Carroll	Leavell	R		AB	☒		AB	AB			☒	0% F
Linda	Lopez	D		☺	☺		☺	☺			☒	80% B
Roman	Maes	D		AB	☺		☺	☺			☺	80% B
Richard	Martinez	D		☺	☺		☺	☺			☺	100% A
Cisco	McSorley	D		EX	☺		☺	EX			☺	100% A
Cynthia	Nava	D		☺	☺		☺	☺			☺	100% A
Mary Kay	Papen	D		☺	☺		☺	☺			☺	100% A
William	Payne	R		☒	EX		☒	☺			☒	40% F
John	Pinto	D		☺	☺		☺	☺			☺	100% A
Lidio	Rainaldi	D		AB	☒		☺	☺			☺	60% D
Leonard	Rawson	R		☒	☒		☒	☒			☒	0% F
Shannon	Robinson	D		☺	☺		☺	AB			☺	80% B
Nancy	Rodriguez	D		☺	☺		☺	☺			☺	100% A
Richard	Romero	D		☺	☺		☺	☺			☒	80% B
Bernadette	Sanchez	D		EX	☺		☺	☺			☺	100% A
Michael	Sanchez	D		☺	☺		☺	☺			☺	100% A
William	Sharer	R		☒	☒		☒	☒			☒	0% F
John	Smith	D		AB	EX		☺	☺			☒	60% D
H. Diane	Snyder	R		☒	☒		☒	☺			☒	20% F
Leonard	Tsosie	D		AB	☺		☺	☺			☒	60% D
Sue	Wilson Beffort	R		☒	☒		☒	☺			☒	20% F

Docket, continued from p. 10

Sheriff's deputies did not charge or cite Robin Bradford. Both criminal charges brought by sheriff's officers against Michael were ultimately dismissed. ACLU-NM Legal Co-Director Phil Davis and Cooperating Attorney Parish Collins are litigating the suit on behalf of the ACLU-NM.

**Luna County Jail
Officers Fired for Labor
Organizing [Tarin et
al. v. Board of County
Commissioners for the
County of Luna]**

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 Forest Bostick and the Board of Luna County Commissioners.

On June 26, 2002, Tarin and Snow received termination letters from the detention center's Deputy Director, Forest Bostick. Although Tarin and Snow were told that 'cutbacks' were the reason for their termination, the Detention Center advertised

openings for the two officers' positions in the local newspaper just two days later. County officials then told Tarin and Snow that they were not 'a good fit' for the agency and that they were 'hell-raisers' who 'didn't fit the mold.' The officers filed formal grievances and written complaints regarding their terminations, all of which were ignored or denied. Abel Renteria was terminated after he inquired with defendants about the reasons for Tarin and Snow's termination.

ACLU-NM Cooperating Attorneys are George Bach and Lee Peifer.

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

PERIODICAL