



TORCH

American Civil Liberties Union - New Mexico

Volume 27, Number 5

October 2003

ACLU of New Mexico Bill Of Rights Dinner

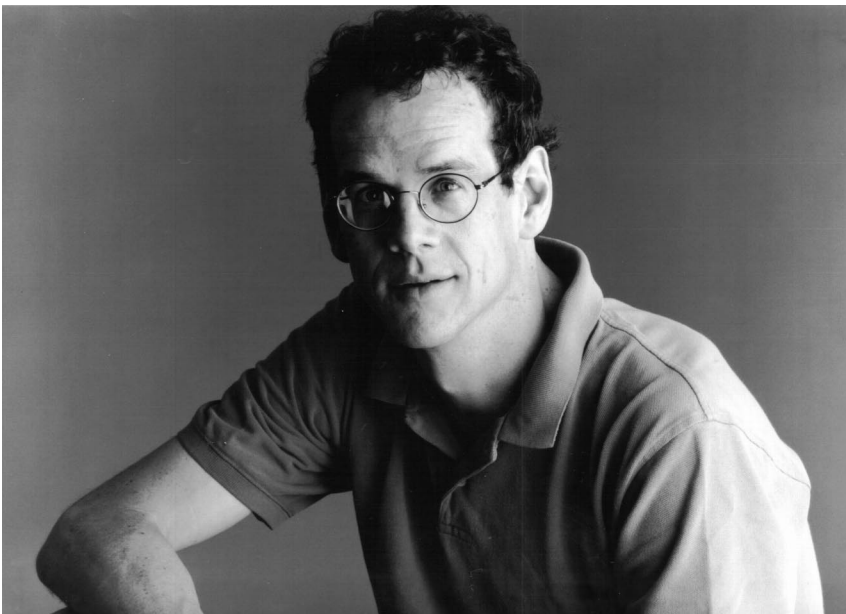
David Cole will be the keynote speaker at the ACLU of New Mexico's Bill of Rights Dinner that will take place at 6:00 PM, December 5, 2003, at the Marriott Albuquerque, 2101 Louisiana Boulevard NE. David Cole is a professor at Georgetown University Law Center, a volunteer staff attorney for the Center for Constitutional Rights, the legal affairs correspondent for The Nation, and a commentator on National Public Radio's *All Things Considered*.

A graduate of Yale University and Yale Law School, he has litigated many First Amendment cases,

including *Texas v. Johnson* and *United States v. Eichman*, which extended First Amendment protection to flag burning. *The American Lawyer* named him one of the top 45 public sector lawyers in the country under 45.

New York Times columnist Anthony Lewis has called him "one of the country's great legal voice for civil liberties today," and former CIA Director James Woolsey has called David's new book, *Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism* (2003), "the essential book in the field."

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David Cole to speak at annual Bill of Rights Dinner

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ACLU of New Mexico Changes Domain Name

In order to access the ACLU of New Mexico web site you must use the NEW web site address: **ACLU-NM.ORG**. (Note the added hyphen, which matches how we normally designate our organization: ACLU-NM.)

Be sure to update your bookmarks!

aclu-nm.org

GLBT Subchapter Forming

Many people within the ACLU have been wanting to participate in a support/advocacy group with a focus on issues that directly affect the gay, lesbian, bisexual, and transgender communities - and now we're finally forming one! This subchapter is very new; we haven't even set a first meeting date yet, so now is a perfect time to get involved from the ground up. If you're interested, contact Michael Alexander (phone 989-1258; email <mrenealexander@yahoo.com>) in Santa Fe or Eric Locher (phone 266-2229; email <locher@comcast.net>) in Albuquerque.

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Executive Director's Notes

By Peter Simonson

In early September, vandals struck a Land Rover dealership in Santa Fe, spray painting a dozen Sports-utility vehicles with messages of "gluttony," "avarice," and "excess."

The incident appears related to similar out-of-state attacks attributed to an environmental advocacy group known as the Earth Liberation Front.

According to newspaper reports, the Joint Terrorism Task Force of the local FBI office is coordinating the investigation.

A little over two years ago this sort of politically motivated graffiti might have been treated as a simple case of vandalism. Today, it gets lumped in with major, catastrophic crimes against the State as a case of "domestic terrorism" and falls under the jurisdiction of the FBI.

The USA Patriot Act defines "domestic terrorism" as "activities that involve acts dangerous to human life and that are a violation of the criminal laws of the United States...and appear to be intended to intimidate or coerce a civilian population or to influence the policy of a government by intimidation or coercion..."

There is no requirement to show that alleged terrorists acted with

the intent to harm human life or to intimidate or coerce. All it takes is an imaginative prosecutor to draw a link between spray paint on a windshield and danger to human life.

Little in the language of the law stands in the way of the FBI investigating most any environmental movement in New Mexico as a result of the vandalism incident

They also enable the FBI to bring to bear all of the powers authorized under the USA Patriot Act: secret searches, greatly relaxed standards for obtaining wiretaps and subpoenas of personal records, civil asset forfeiture, etc. To acquire many of these powers, the FBI need not show "probable cause" that an individual or organization is responsible for the crime. They simply must assert that the wiretap or subpoena "is sought for an ongoing investigation."

Little in the language of the law stands in the way of the FBI investigating most any environmental movement in New Mexico as a result of the vandalism incident, particularly if it previously has endorsed acts of civil disobedience. An organization's internet activity could be monitored, bank records, subpoenaed, and financial assets frozen.

Although no specific penalties apply, charges of domestic terrorism do trigger heightened sentencing for terrorist crimes under federal criminal sentencing guidelines.

Is vandalism of the sort that was practiced on the car dealership any more terror inducing than the graffiti you find spray-painted on the perimeter wall of your house? Is it tantamount to mayhem-creating crimes like the September 11th attack? Why aren't existing state and federal laws against destruction of property adequate for the purpose of prosecuting this crime?

This is the danger that the ACLU warned of in the early days of controversy over the USA Patriot Act: that the sweeping exceptions to civil liberties that were rationalized as essential to fighting terrorism would soon spill over into the prosecution of ordinary crimes. That civil disobedience would come to be equated with terrorism.

According to the *Albuquerque Journal* article, an FBI Special Agent admitted that the perpetrators of the Santa Fe incident "might just be vandals," although the FBI was going to cover the investigation anyway. How will the FBI draw that distinction between simple vandalism and domestic terrorism? Will it be on some objective measure of the threat to our political system and economy? Or will it be according to the fact that political thought motivated the crime?

This is the danger that the ACLU warned of: that the sweeping exceptions to civil liberties would soon spill over into the prosecution of ordinary crimes

We Can Be Both Safe and Free

By Kimberly Lavender

Democracy in Action

The USA PATRIOT Act (USAPA) is in the news almost every day, and NOT because the Department of Justice is harnessing the unconstitutional powers it obtained almost two years ago catching terrorists left and right! Rather, good old-fashioned grass-roots democracy is capturing the headlines in New Mexico and across the nation. As I heard it put recently, concerned citizens "whom wouldn't otherwise be caught on the same side of a protest sign" are organizing

to protect the Bill of Rights in their communities. People feel a need to take back our Constitution by standing up for rights of speech, association, religion, due process, and equal protection.

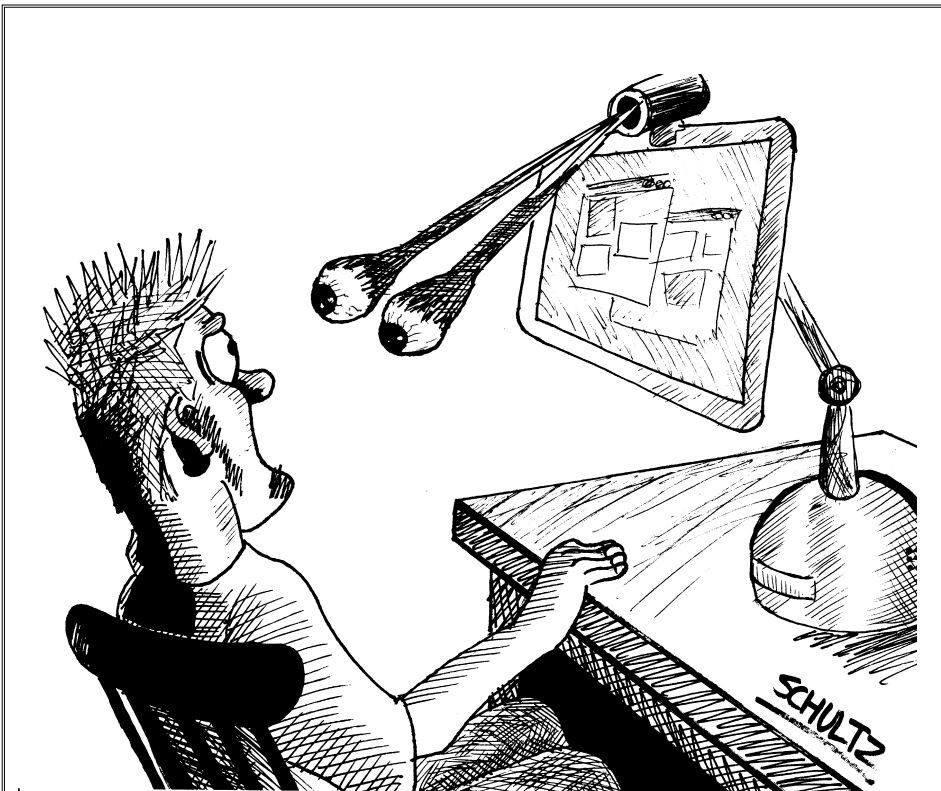
What is Happening in New Mexico?

New Mexico leads the southwest region of the nation in the number of communities that have passed resolutions against the USAPA. The following communities have passed resolutions against the USAPA in support of civil liberties as of October 9th: Albuquerque, Aztec,

Farmington, Grant County, Las Vegas, Rio Arriba County, Santa Fe, Socorro, and Taos. Concerned students are organizing groups for civil liberties, ACLU-NM membership is increasing, and new ACLU-NM Chapters have formed statewide. Rallies are taking place in many communities across the state, the last week in October, to draw attention to the second anniversary of the USAPA.

What is Happening Nationally?

Across the nation 189 communities and States (representing 25.4 million people) have passed resolutions that oppose the Patriot Act. To follow this exciting exercise of democracy in action, check in with the Bill of Rights Defense Committee's web page www.bordc.org or the ACLU's national web page at www.aclu.org/safeandfree. They are both updated on a regular basis.



The Joint Memorial Affirming Civil Rights & Liberties

In the upcoming Special Legislative Session that begins on Monday, October 27th, New Mexico has the opportunity to become the fourth state in the country to pass a Memorial that affirms civil liberties. This SJM declares the New Mexico legislature's belief that:

- Government should protect the public from terrorist attacks in a rational and deliberative fashion; and
- National security and the preservation of liberty are not in inherent conflict. Americans can live both safe and free.

Meet Evan Schultz

Evan Schultz, a sophomore at Albuquerque Academy with strong interests in both journalism and social commentary, will be drawing political cartoons and illustrations for the *Torch*. As a freshman, he received second place awards for his cartoons from the Albuquerque Tribune and from New Mexico Press Women.

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Safe and Free, continued
from p. 4

This SJM *does not* interfere with the ability of law enforcement to investigate and arrest for terrorism. It only asks that authorities carry out those functions in observance of our rights under the New Mexico and U.S. constitutions

The New Mexico Coalition in Support of Civil Liberties will hold a noon Rally at the Roundhouse on that day to mark the second anniversary of the USAPA, draw attention to the Memorial, and highlight the work of activists across the state on this issue. Senator Cisco McSorley will introduce a Joint Memorial on Civil Liberties at that time. Contact your legislators and let them know that New Mexicans want a legislature that upholds the constitutions of our state and this country. Please be watching for legislative email action alerts from us this month!

Life, Liberty, and... the Governmental Pursuit of Personal Records & Wiretaps

In a BusinessWeek article that ran this past May, Don't Tread On Us: The Revolt Against The Patriot Act, writers Paul Magnusson and Lorraine Woellert address the momentum building across the nation against the USAPA as people organize to pass resolutions in their communities. They concluded the article by proclaiming that "as the populist uprising grows,

so will the likelihood that Congress will listen." This article predicted the flood of legislation that was introduced, beginning as a trickle this spring with Rep. Bernie Sanders' (I-VT) Freedom to Read Protection Act, to curb the sweeping powers of the USAPA. The symbolic act of passing a community resolution is in reality a grassroots mandate - Congress must take a second look at the USAPA.

SAFE Act of 2003

Time is now running short for Congress to begin to fix portions of the USAPA this year. The Craig-Durbin Security and Freedom Enhanced Act of 2003 (SAFE), has strong bipartisan support and would represent a significant first step toward reversing portions of the USAPA most criticized by civil libertarians. Passage of the SAFE Act would not remove any of the powers granted to the Department of Justice two years ago. Instead, the SAFE Act would employ the checks and balances that Americans rely on to keep our government accountable. The SAFE ACT would: require individual suspicion for searches of library, bookstore, or other sensitive records; require reasonable limits on "sneak and peak" searches; employ safeguards for "roving wiretaps" in foreign intelligence investigations; and expand sunset - and additional reporting on the USAPA powers.

Citizen's Forum

Affirming Civil Liberties and the Bill of Rights



"Ignore your rights and they will go away"

Speakers

Chantel Reynolds, Gail Terzuola
Paul Adams, Joseph Knight, Judy Palier,
TC Shaffer, Vicki Whitaker,
And Other

Concerned Citizens

Saturday, October 25, 2003

1:00 pm - 4:00 pm
Farmington Civic Center
200 W. Arrington

Stand and Speak in Defense of our Most Precious Freedoms
Stop the USA PATRIOT Act

Entertainment Books for Sale

**Call the ACLU at 266-5915
to order your 2004 Discount
book. Save \$\$ and support the
ACLU-NM**

\$35 per book

Continued on p. 6

The Development Corner

Harvey Morse, Director of Development, ACLU of New Mexico

In a previous edition of the Torch we mentioned that 80% of all planned gifts come through bequest provisions. A bequest provision or other planned gift arrangement with the ACLU will qualify you as a member of the DeSilver Society that recognizes donors who have helped to ensure the ACLU's long term independence and financial security.

Over the past few months a number of ACLU-NM members have taken advantage of a planned giving instrument called the charitable gift annuity. The charitable gift annuity is one of a number of life income arrangements that provide mutual benefits to individuals and the ACLU. We will be discussing other life income arrangements and estate planning ideas in upcoming editions of the Torch. Life income arrangements allow for the tax-deductible transfer of assets to the ACLU in return for a guaranteed income for life or for a specified number of years.

Charitable gift annuities are particularly attractive for older ACLU members (43% of ACLU members are over 65) because they allow for an immediate tax deduction, usually higher rates of return than are currently available, and the assets of the ACLU guarantee the life income. In addition, while not allowing you to escape capital gains entirely, they may provide tax free income and/or, allow you to spread the capital gains over a period of years. In fact gift annuities may be written for one or two lives.

The following example (see sidebar) compares a \$50,000 two-life charitable gift annuity funded with cash versus one funded through a gift of appreciated securities. Generally, capital gains income is taxed at a lower rate than ordinary income.

Charitable gift annuities may be written initially for as little as \$5,000 with increments of \$1,000 thereafter. As you can see from the examples, a charitable gift annuity can be a wonderful alternative to low interest savings accounts, CDs, and low dividend stocks, particularly ones that have appreciated over time. The example provided is for illustrative purposes only. Always consult your accountant or tax adviser.

Gift annuities are particularly attractive for older members because they allow for a tax deduction, usually higher rates of return, and the assets of the ACLU guarantee the life income

The annuity rate is set by the Committee on Gift Annuities, a national organization specializing in gift annuities, and is determined by a variety of factors including whether the annuity is for one or two lives, the age/s of the annuitant(s) and the Federal Discount Rate.

For additional information on charitable gift annuities or other planned giving options contact Harvey Morse at 266-5915, aclunmdd@swcp.com or Jerry Muntz at 212-549-2527, JMuntz@aclu.org.

	Cash	Securities
Annuitants Ages	05/06/1940 63 04/19/1943 60	
Date of Gift	08/20/2003	
Principal Donated	\$50,000	\$50,000
Cost Basis	\$50,000	\$12,000
Annuity Rate	5.5%	5.5%
BENEFITS		
Charitable Deduction	\$5,384	\$5,384
Annuity Annual Income	\$2,750	\$2,750
Tax Free Portion	\$1,575.75	\$0
Ordinary Income	\$1,174.25	\$1,174.25
Capital Gain Income	\$0	\$1,575.75

Safe and Free, continued from p. 5

What Can YOU Do?

Contact Sen. Bingamon and applaud him for co-sponsoring this important piece of legislation. Also, contact Sen. Dominichi and

urge him to support the SAFE Act. Constituents need to let their elected officials know that we want safety without sacrificing freedom. Contact the ACLU-NM to volunteer for the Safe & Free campaign.

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

- October 16
- November 20
- December 18
- January 15
- February 19

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:

- October 18
- November 15
- December 13 (Hanukkah falls on December 20)
- January 17, 2004
- February 21, 2004

ACLU of New Mexico

- November 7 Legal Panel 12:00 PM
- December 5 Legal Panel 12:00 PM
- Bill of Rights Dinner 6:00 PM
- Keynote Speaker: Professor David Cole
- December 6 Board Meeting
- January 30 Legal Panel
- February 9 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.

- October 16
- December 18
- February 19

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:

- November 5
- December 3
- January 7, 2004
- February 4, 2004

ACLU-NM Attends Electronic Music Festival

By Chantel Reynolds

ACLU members Adric Menning, Agate Ponder-Sutton and Chantel Reynolds gave support to free speech by participating in the 2nd Annual Electronic Music Festival in the Albuquerque Civic Plaza on September 6.

The Electronic Music Festival is an annual event dedicated to raising awareness about the electronic music community and began in response to Congressional over-reaction to rave events. In 2002, Congress attempted to pass the RAVE act, but public education efforts from the electronic music and drug reform communities forced the act to die before the session closed. Then in April 2003, the RAVE act snuck through Congress, attached to the Amber Alert legislation and renamed the Illicit Drug Anti-Proliferation Act of 2003 (IDIA).

The IDIA makes it easier for prosecutors to fine and imprison business owners, property owners, and event promoters not for any illegal act of their own, but for failure to prevent drug-related offenses from occurring on their property or at their events. In reality of course, electronic music events are the prime target of this legislation, as the act's sponsors and the Drug Enforcement Agency have defined electronic music as a "threat" to young people.

Singling out one musical genre and culture because of the actions of a few is unfair and un-American, and punishing business owners for the crimes of their customers is particularly chilling. There is nothing in this act to limit prosecution to electronic music events—some people use drugs at

some rave events, and there are already plenty of laws on the books dealing with illicit drug use. But virtually any musical event, from country music concerts to Grateful Dead tours to Hip-Hop events, will have a few who choose to break the law.

ACLU's presence at the Electronic Music Festival was to show support for the time-honored and Constitutionally guaranteed freedoms of expression, speech, and assembly. Organizers estimate 1200 people of all ages attended the EMF throughout the six-hour festival, and the ACLU spokesperson, Chantel Reynolds, was given the opportunity to speak to the crowd of approximately 700. The crowd was

excited, eager to listen, and thrilled to hear somebody support the civil liberties guaranteed to all in this country.

The ACLU literature table was overrun by youth eager to learn more about the organization, and the several requested the phone numbers of their particular congressperson or senator. Membership materials disappeared quickly, and the ACLU has been invited to be a regular participant in the Electronic Music Festival. Civic Plaza roared with the voices of young people determined to make themselves heard by those in power and who, above all, want to be guaranteed not just the right to their music, but also the right to dance.

Menning and Ponder-Sutton are ACLU volunteers. Reynolds is vice president of the ACLU-Northern chapter and an ACLU-NM board member.



Chantel Reynolds at the ACLU-NM table at the Electronic Music Festival

Protecting Basic American Rights In Times Of War

By Soledad Santiago-Vural

Chair/ PEN New Mexico Freedom to Write Committee

On April 18, The New Mexico Civil Liberties Union filed a legal complaint on behalf of two Albuquerque teachers and a guidance counselor who had been suspended during the heady days when the drumbeat of war began to redefine the essential American right to dissent as unpatriotic. The suit, filed against the Albuquerque School District and a number of its officials, alleges a violation of the teachers' right to free speech as protected by the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. Also at stake are the civil liberties protections guaranteed in New Mexico's own constitution. The suit seeks the recovery of lost salaries, momentary damages, and injunctive relief setting a legal precedent preventing future harassment of teachers and requiring the reasoned application of pre-existing district/teacher contracts. The teachers, who personally opposed a United States war on Iraq, while fostering open class discussions on both sides of the issue, share a cumulative 25 years of distinguished service in Albuquerque area schools. So what exactly led to the suspensions?

The complaint offers, among others, the case of Carmelita Roybal, who had been teaching at the Rio Grande High School for eleven years. Over the years, her curriculum had more than once included anti-war readings. No student, no teacher, no administrator had ever complained. In her personal life, Roybal is a pacifist and had explained this to her students. Last winter, before her suspension, she had participated in two debates with pro-war teachers. Ms. Roybal was suspended while conducting a class in performance poetry, which

addressed themes of war and peace. The students presented both pro and anti war sentiments. Ms. Roybal had already been chastised by the school's Vice Principle for hanging an anti-war poster in her classroom window. She had offered to add a pro war poster in the classroom's other window. Her offer had been rejected. As Carmelita Roybal was being asked to leave her classroom, students protested, "She's not trying to force her opinions on us," and staged a walkout.

The complaints also cite the case of Ken Tabish who has taught at Albuquerque High School for 18 years, and has been serving as a guidance counselor for the last eight years. Ken Tabish, a Quaker in his private life, had established a successful Peer Mediation Program, training students to achieve peaceful resolutions of their own in-school conflicts. In keeping with his personal philosophy, he had posted flyers for anti-war rallies in his office. Of the hundreds of students who passed through Tabish's office in the opening months of 2003, only two students commented on the flyers. Both expressed a pro-war stance and Tabish encouraged them to continue speaking their minds. In March, the school Vice Principal had warned Tabish of an anonymous call received in district headquarters demanding the removal of the flyers. The complaint alleges that this anonymous telephone call largely triggered Tabish's subsequent suspension. You don't have to be a lawyer to know that the anonymous call is no friend of democracy.

The complaint alleges that the plaintiffs did not violate Albuquerque Public School policy. The complaint cites a March 23, 2003 email sent by Superintendent Defendants, on the heels of the unwarranted suspensions. This email was mailed in its entirety to APS staff. Ironically, the language

of the email bolsters the case filed by ACLU attorneys Jane Gagne, Lee Peifer and Linda Vanzi and is worth quoting:

"During these uncertain, tumultuous and emotional times it is important to remember our true mission as educators and mentors to Albuquerque's children.

In addition to teaching traditional educational content, it is our responsibility to teach our students about the rights and responsibilities of citizens living in a free, democratic society.

Key among our rights as Americans is freedom of speech. Being responsible means understanding the appropriate time and place to exercise our rights.

We encourage you to stimulate debate about important, even controversial, issues exploring all perspectives within your school or department. Healthy discourse helps us build critical thinking skills and learn how to respectfully make our point, and respectfully disagree with others. But we must be careful not to abuse our authority and the trust placed in us by our students.

We believe in and fully support each person's right to express an opinion in an appropriate and respectful manner. Being responsible citizens and leading by example sends the best message."

The ACLU complaint makes clear that in those fearful and frenzied days leading up to the war, APS violated its own free speech policy and its Code of Ethics. While few of us turn to lawsuits for our private reading, this elegantly written complaint offers both a cautionary tale and a compelling narrative of the valor of four New Mexicans who, even when threatened with suspension, decided that the Constitution, the uniquely American First Amendment, and the power of example mattered.

Dinner, continued from p. 1

David's first book, *No Equal Justice: Race and Class in the American Criminal Justice System*, was named Best Non-Fiction Book of 1999 by the *Boston Book Review*, best book on an issue of national policy in 1999 by the American Political Science Association, and awarded the Alpha Sigma Nu prize from the Jesuit Honor Society in 2001. Professor Cole will also be selling and autographing copies of his book at the reception.

Reservations

You may make reservations may by calling the ACLU office at 266-5915 and speaking to Dolores Campos. Individual ticket prices are \$75 in advance/ \$90 at the door. (\$45 per ticket is tax deductible)

Program Ads

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Freedom Circle - 5 seats + half page add = \$1,000

Guardian - 2 seats + quarter page add = \$500

Amicus - \$75 - donor pays ticket price to enable a student or limited income ACLU member to attend in their place

All sponsors are listed in the Program.

Cole: A Must Read in the Age of Ashcroft Justice

Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism.

By David Cole
233pp. New York:
The New Press. \$24.95.

By Kimberly Lavender

In the wake of 9/11, Congress passed legislation that gives the Executive Branch sweeping new powers that put our civil liberties in peril. The USA PATRIOT Act (USAPA) was passed with little debate, great secrecy, and unusual haste. It is not a pre-requisite to have read the 342-page USAPA, before you pick up a copy of award-winning author and civil liberties lawyer David Cole's book *Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism*.

Cole spells out how rapidly civil liberties have been compromised since 9/11, by the double standard imposed on non-citizens in "the war on terror." It is a quick read, shorter than the USAPA itself, and easy to digest for the layperson concerned about Attorney General Ashcroft's Orwellian sense of justice.

Cole argues that the USAPA puts a new spin on old tactics: in the United States during times of war, aliens are persecuted and prosecuted as enemies, paving the way for Americans to be tried as un-American.

In a society where we are currently experiencing a dearth in solid investigative journalism, Cole's book stands out as brilliantly informative. He is respected as one of the most vocal civil liberties activist today, working to uphold the sanctity of the Bill of Rights. Cole is a professor at Georgetown University Law Center, a volunteer staff attorney for the

Center for Constitutional Rights, the legal affairs correspondent for *The Nation*, and a commentator on National Public Radio's *All Things Considered*.

Cole articulates four reasons to refrain from falling prey to the double standard applied to non-citizens during times of war or perceived crisis. He explains that it is "illusory in the long run, likely to prove counterproductive as a security matter, a critical factor in the oft-regretted pattern of government overreaction in times of crisis; and most importantly, constitutionally and morally wrong." Naturally, the book is divided into four sections.

Part one examines individual cases impacted by the "war of terrorism". He provides detailed facts to the many individual cases that the American public has heard about in sound bites the past several years. Part two is an excellent account of the abrogation of civil liberties in times of war or perceived crisis. Cole highlights injustices that took place chapter by chapter in American history. He highlights the trampling of civil liberties under the Espionage Act of 1917, by J. Edgar Hoover and the Palmer Raids of 1919-20, the Japanese internment camps of World War II and on it goes- marching into the twenty first century.

Part three examines our failure as a nation to balance liberty and security. The first three sections of the book ultimately lead us to part four which reflects on the creation of our constitution.

Cole reminds us that the Bill of Rights crafted by our nation's founders is a declaration of fundamental human rights and critical for a vibrant democracy. If we refuse the rights of speech, association, religion, due process, and equal protection to non-citizens or citizens perceived as un-American, we endanger the very liberties that we claim to be trying to protect.

ACLU-NM Communications Poll

In order to better understand how effectively we are communicating with our membership, we ask that you take a few minutes to complete the following brief questionnaire and return it to Harvey Morse, ACLU of New Mexico, P O Box 80915, Albuquerque, NM, 87198

1. Sex: Male__ Female__
2. Age ___
3. How frequently do you read the *Torch*
Six times a year____
Four times a year____
Twice a year____
Once a year ___
Never___
4. My favorite sections of the *Torch* (1-7, 1 being most favorite)
Executive Directors Column____
Legal/Advocacy Docket____
Development Articles____
Special Event Coverage____
Topical Articles_____
Chapter Calendar of Events____
Legislative Report Card____
5. What additional articles or materials would you like to see in the *Torch*?

6. Do you feel the current number of pages (16) of the *Torch* is,
Too long____
Just right____
Not long enough_____



7. Do you own a computer?_____
- If you do not own a computer, do you have access to a computer?___
8. How frequently do you visit the ACLU National web site?
- Daily_____
- Once a week_____
- Once a month_____
- Almost never_____
- Never_____
9. How often do you visit the ACLU of New Mexico web site?
- Daily_____
- Once a week_____
- Once a month_____
- Almost never_____
- Never_____
10. We currently send you the *Torch* in the mail. Would you prefer to receive the information in the *Torch* electronically?
- In printed form_____
- Via email_____
- Through the web site_____
11. Would you like to receive ACLU-NM alerts, announcements, and other material by email?_____
- Do you have an email address?_____
- Have you given the ACLU-NM your email address?_____
- If not, why not?_____
-



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ACLU-NM Legal Docket

Freedom of Speech, Freedom of Association, Liberty Interest

Roybal, et al. v. Jones, et al.

In mid-April 2003, Cooperating Attorneys for the ACLU-NM filed suit in federal court against the Albuquerque Public Schools for the 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.

As we go to press, this case is inches away from settlement! A detailed explanation of the APS case can be found in this edition of the *Torch*.

ACLU of New Mexico and John Does 1-6 v. City of Albuquerque

In mid-June, State District 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. Under the law, convicted sex offenders living in Albuquerque would be required to notify employers and prospective employers, as well as landlords, home sellers, and mortgagors of any convictions dating back to 1970.

They also would have to register with the Albuquerque Police Department and might be required to submit DNA samples, shoe size, and dental imprints. SOAP would prohibit two people convicted of sex offenses from living in the same household and would prevent them from living within 1,000 feet of a school. Taken together, these provisions make up an extreme law, the true intent of which is to banish people from Albuquerque.

Attorneys for the City agreed to make the preliminary injunction permanent. They have notified us of their intent to appeal Judge Baca's decision. Cooperating Attorneys Kari Morrissey and George Bach will continue litigation to fight the challenge.

In the meantime, Mayor Chavez has succeeded in passing a second ordinance, the Sunshine Act, which contains only the employer-related provisions of SOAP—an ironic choice given that Judge Baca's decision most strongly condemns those particular requirements of SOAP.

We are organizing challenges to this and any similar legislation that is subsequently passed by the Albuquerque City Council.

1000 Friends of New Mexico and New Mexico State Fair

1000 Friends of New Mexico, a smart-growth advocacy group, was

told by New Mexico State Fair officials that they could not gather petition signatures for an upcoming bond issue on state fair grounds unless they purchased a booth at the fair. They were told that under no circumstances could they have "walking privileges" to freely interact with fairgoers.

The ACLU-NM litigated a similar case to this in 1996 when we represented Abraham Gutmann, Green Party nominee for U.S. Senate, against the State Fair after he was arrested and jailed for handing out political brochures at the fair. In that case, Federal Judge Martha Vasquez forced the Fair to abandon its unconstitutional policy prohibiting pamphletting and pay \$226,000 in fees and damages.

John Boyd, who litigated Guttman's case, spoke with the Attorney General's office, which contacted the State Fair's attorney. ACLU-NM Executive Director Peter Simonson also spoke to the Fair attorney and the matter was immediately resolved to our satisfaction. 1000 Friends was allowed to begin petitioning the next day.

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*,

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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 kned 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, 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). Depositions are being scheduled for later this month for Michael's civil rights and tort claims against the County.

Unreasonable Search and Seizure**Edgewood "implied consent" ordinance**

At the request of community residents, the ACLU-NM sent a letter to the Edgewood Mayor and Town Council advising them that a proposed ordinance establishing an automatic and implied consent to search for anyone who entered town property was unconstitutional.

The most problematic provision read: "Any member of the public occupying or using Town property shall submit to a search for firearms, weapons, contraband, or materials that reasonably might be used to damage or deface the property and shall surrender any such items to any peace officer who has jurisdiction upon request. Occupation or use of Town property shall constitute consent to search of the person

**ACLU-NM
online**

(note new address)

<http://aclu-nm.org>

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Docket, continued from p. 14

or any vehicle parked upon Town property by a peace officer, including any containers found on the person or in said vehicle, for the purpose of ascertaining the presence of any prohibited items listed in this section.”

Based on the ACLU-NM’s concerns and testimony by the local National Rifle Association chapter and other groups, the town council dropped the provision from the bill.

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

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ACLU-NM Volunteers at the volunteer luncheon

Top row: Ann Steinmetz, Sid Steinberg, Jean Steinberg, Hubert Davis, Marge Steger, Peter Simonson, Gen Aronson, Annette Chakarian
Seated: Suzanne Burke, Meg Prince, Lorraine Roff, Rita Aronson, Jackie Baron

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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.

Reproductive Rights**Medicaid Regulations**

In 1998, the ACLU-NM, in cooperation with the National ACLU Reproductive Rights Project, represented the plaintiffs in *New Mexico Right to Choose/NARAL v. Johnson*. The case resulted in a unanimous decision by the New Mexico Supreme Court holding

unconstitutional the state Medicaid rule that limited abortion coverage to those procedures necessary to save a woman's life or because the pregnancy resulted from rape or incest.

Since that decision, ACLU-NM Legal Co-Director Maureen Sanders, Cooperating Attorney Linda Vanzi, and Louise Melling, Director of the ACLU Reproductive Rights Project, have worked with providers, the Human Services Department, and the state Medicaid managed care companies to ensure that reimbursement for medically necessary abortions is consistent with the court's decision and to address other obstacles to abortion care. Unfortunately, the Department of Human Services

under Governor Gary Johnson never fully addressed our concerns.

In September, representatives from the ACLU, NARAL, Planned Parenthood and other organizations, testified at a hearing by the Department of Human Services to gather public comments on Medicaid regulations. Our input was well-received and we are hopeful that changes supporting reproductive rights will be incorporated into new Medicaid regulations.

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