



AMERICAN CIVIL LIBERTIES UNION of MICHIGAN

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ACLU FILES FIRST CHALLENGE TO USA PATRIOT ACT

The ACLU of Michigan and the national ACLU filed the first legal challenge to the USA PATRIOT Act in July. On December 3, oral arguments were heard in Detroit at the Federal District Court aimed at a section of the controversial law that allows FBI agents to secretly obtain

records and personal belongings of innocent people in the United States, including citizens and permanent residents, radically expanding FBI powers.

“Ordinary Americans should not have to worry that the FBI is rifling through their medical records, seizing their personal papers, or forcing charities and advocacy groups to divulge membership lists,” said Ann Beeson, Associate Legal Director of the ACLU and the lead attorney in the lawsuit.

“We know from our clients that the FBI is once again targeting ethnic, religious, and political minority communities disproportionately,” she added. “Investing the FBI with unchecked authority to monitor the activities of innocent people is an invitation to abuse, a waste of resources, and is certainly not making any of us any safer.”

As the ACLU described in a recent report, Section 215 of the PATRIOT Act violates constitutional protections against unreasonable searches and seizures as well as the rights to freedom of speech and association. The report, *Unpatriotic Acts: The FBI's Power to Rifle Through Your Records and Personal Belongings Without Telling You*, describes how the law:

- Violates the Fourth Amendment by allowing the FBI to search and seize records or personal belongings without a warrant, without showing probable cause – and without ever notifying even innocent people of the searches;

- Violates the First Amendment because it allows the FBI to easily obtain information about a person's reading habits, religious affiliations, Internet surfing and other expressive

activities that would be “chilled” by the threat of investigation;

- Violates the First Amendment by imposing a “gag order” that prohibits those served with Section 215 orders from ever telling anyone that the FBI demanded information, even if the information is not tied to a particular suspect and poses no risk to national security.

The ACLU filed the lawsuit in federal court on behalf of six advocacy and community groups from across the country whose members and clients believe they are currently the targets of investigations because of their ethnicity, religion and political associations. The lawsuit names Attorney General John Ashcroft and FBI Director Robert Mueller as the defendants.

The groups participating in the lawsuit are: Muslim Community Association of Ann Arbor (MCA), which operates a mosque and school in Ann Arbor, MI; American-Arab Anti-Discrimination Committee (ADC), a national civil rights organization based in Washington, DC; Arab Community Center for Economic and Social Services (ACCESS), a human services organization based in Dearborn, MI that operates a medical clinic as well as a center for refugees and torture victims; Bridge Refugee and Sponsorship Services (“Bridge”), based in Knoxville, TN; Council on American-Islamic Relations, a grassroots membership organization based in Washington, DC; and The Islamic Center of Portland, Masjed As-Saber, which operates a mosque and school, based in Portland, OR.



Jonathan Hafetz (NAACP, the Asian American Legal Defense Fund and the Japanese American Citizens League); Michael Steinberg, Noel Saleh (ACLU of MI); Ann Beeson, Jameel Jaffer, Brigitte Pak, and Maanit Zemel (ACLU), standing outside the courthouse.

Bridge has been approached twice by FBI agents seeking information about Iraqi refugees, many of whom were granted asylum in the U.S. because they helped the American military during Desert Storm and were then persecuted by Saddam Hussein. The second time, the FBI served Bridge with a subpoena for all records relating to its Iraqi clients.

Because the FBI subpoena served on Bridge was not issued under the PATRIOT Act, Bridge was able to fight it in court. However, Lieberman said she is concerned that the FBI could return with a PATRIOT Act order that she and her staff could not challenge or even discuss publicly.

Since the lawsuit was filed, Attorney General John Ashcroft has admitted that no Section 215 warrants have been issued. However, the fear is that as long as the provision is law, it could be used at any time.

On November 3, more than 20 organizations, filed three separate “friend-of-the-court” briefs saying that the law also violates their members’ First Amendment rights to free speech and free association, as well as their right to privacy under the Fourth Amendment. The coalitions represent more than two dozen civil rights, immigrant and First Amendment advocacy organizations, including the NAACP and the Japanese American Citizens League.

The NAACP, whose members include people of Arab, Muslim and

“ORDINARY AMERICANS SHOULD NOT HAVE TO WORRY THAT THE FBI IS RIFLING THROUGH THEIR MEDICAL RECORDS, SEIZING THEIR PERSONAL PAPERS, OR FORCING CHARITIES AND ADVOCACY GROUPS TO DIVULGE MEMBERSHIP LISTS.”

South Asian backgrounds, noted in its brief that during the 1960's, its members “feared they would lose their jobs and be attacked physically if their membership in the organization was disclosed.” A government requirement that the organization disclose the names of its members “caused membership in Louisiana to drop from 12,000 to 1,700.”

CELEBRITY READ-IN FOR BANNED BOOK WEEK



Hon. Maryann Mahaffey, President of the Detroit City Council

In partnership with the Detroit Public Library, the ACLU held a Celebrity Read-In on the evening of September 24. Five readers, including Ron Dzwonkowski, Detroit Free Press Editor; Nolan Finley, Detroit News Editor; Hon. Maryann Mahaffey, President of the Detroit City Council; Darlene House, a local author; and Dr. Rhea Lawson Brown, the library's deputy director, read from a banned or challenged book of their choice and shared their personal experience and feelings about the book.

The crowd of about 45 people so enjoyed the evening that there is already talk about how to make next year's event bigger and better.



Dr. Rhea Lawson Brown, Detroit Public Library Deputy Director



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IS MICHIGAN SPYING ON YOU?

MULTISTATE ANTI-TERRORISM INFORMATION EXCHANGE RAISES MANY ISSUES



On October 30, the American Civil Liberties Union filed simultaneous state "Freedom of Information Act" requests in Michigan, Connecticut, New York, Ohio and Pennsylvania about those states' participation in the new "MATRIX" database surveillance system. The program, which is receiving \$12 million from the Departments of Justice and Homeland Security, operates in Florida and Utah.

"This is an end-run around the Pentagon's 'Total Information Awareness' program that Congress rightly put a stop to last year," said Kary Moss, ACLU of Michigan Executive Director. "Simply put, this is a state-run equivalent of a bad federal plan."

The ACLU's requests, which were filed under individual states' open-records laws, come on the heels of a federal Freedom of Information Act request it filed October 17. A similar request was also filed in Florida, where the program originated. The goal of the requests is to find out what information sources the system is drawing on— information program

officials have refused to disclose – as well as who has access to the database and how it is being used.

According to Congressional testimony and news reports, the MATRIX (which stands for "Multistate Anti-Terrorism Information Exchange") creates dossiers about individuals from government databases and private-sector information companies that compile files on Americans' activities for profit. It then makes those dossiers available for search by federal and state law enforcement officers. In addition, MATRIX workers comb through the millions of files in a search for "anomalies" that may be indicative of terrorist or other criminal activity.

While company officials have refused to disclose details of the program, according to news reports the kind of information to be searched includes credit histories, driver's license photographs, marriage and divorce records, Social Security numbers, dates of birth, and the names and addresses of family members, neighbors and business associates.

Raising even more issues, the MATRIX is operated by a private com-

pany, Seisint Inc. of Boca Raton, Florida. Ironically, the company's founder was forced to resign after buried information about his own past came to light: according to Florida police, he was formerly a drug smuggler who had piloted multiple plane loads of cocaine from Colombia to the U.S.

Copies of the ACLU's state and federal FOIA requests as well as a fact sheet about the MATRIX are online at <http://www.aclu.org/Privacy/Privacy.cfm?ID=14240&c=130>, and can also be accessed at www.aclu.org/privacy

To read more about MATRIX, go to: <http://www.aclu.org/Privacy/Privacy.cfm?ID=14254&c=130>

At press time, the State of Michigan had asked for a time extension to comply with the FOIA request.

ARE YOU LIVING IN A "SAFE & FREE" COMMUNITY?

NOEL SALEH, SAFE AND FREE PROJECT STAFF ATTORNEY

I am absolutely convinced that had it not been for the incredible caliber of the community's sentiment expressed by these speakers to the commissioners last night, the Commission would not have acted in favor of a resolution in support of civil liberties."

- Jim Rodbard, chair of the ACLU Western Michigan Branch



On September 8th, the local political pundits were all announcing that the Kalamazoo City Commission would reject the proposed Community Resolution To Protect Civil Liberties at that evening's commission meeting. The police chief had submitted a 12-page analysis announcing that the Patriot Act was a "crucial tool" necessary to protect the citizenry. The city manager weighed in by noting that such a resolution "was not really needed." But Jim Rodbard, the Kalamazoo Task Force for the Defense of Civil Rights and the citizens of Kalamazoo knew better.

Jim and the other Task Force members had been working for the previous six months to establish a broad-based coalition to sponsor and promote the resolution. They held numerous community meetings, attended scores of public events, written "letters to the editor" and Op-Ed opinions and sponsored multiple community forums to educate the citizens of Kalamazoo about the threat to civil liberties and core American values caused by the USA-PATRIOT Act and related government actions. Scores of Kalamazoo residents appeared for the evening hearing. They, too, were not convinced by the political pundits.

"While the immediate focus appears to be the Arab and Muslim communities, ordinary Americans are profoundly trou-

bled by the federal government's policies. We do not believe America's system of checks and balances, including meaningful judicial review of surveillance and detention, represent "unreasonable obstacles" to law enforcement, as President Bush and Attorney General Ashcroft have argued; noted one Kalamazoo citizen during his presentation to the Council. Many others followed and shared similar sentiments. By the end of the evening session, the Council, in a near unanimous vote, directed the City Manager to meet with Jim and other Task Force members to bring them a "civil lib-

erties resolution that we will adopt." On October 6th, Kalamazoo became the United States' 187th "Safe and Free Community."

The Kalamazoo experience is being duplicated throughout Michigan and the country. The growing community sentiment is being felt in the halls of Congress. Lawmakers on both sides of the aisle are having doubts about the Patriot Act. An amendment against "sneak and peak" searches, introduced this past summer by Rep. Butch Otter (R) of Idaho, overwhelmingly passed the House of Representatives. A bipartisan group of lawmakers including Senators Russ Feingold (D) of Wisconsin, Larry Craig (R) of Idaho, and Lisa Murkowski (R) of Alaska have introduced several bills designed to scale back or provide greater congressional oversight to the Patriot Act. This legislation is endorsed by a diverse coalition of Washington interest groups ranging from the conservative Americans for Tax Reform to the liberal People for the American Way.

Meanwhile, the number of cities passing resolutions is growing. There are now 217 communities, including three states, which have become "Safe and Free Communities." Besides, Kalamazoo, resolutions have passed in Detroit, Ann Arbor, Meridian Township, Ingham County and Ferndale.

Civil Liberties Resolution Task Forces are active throughout the State of Michigan. Our ACLU branches in Kalamazoo, Lansing, Grand Rapids, Oakland County, Detroit, Flint, Saginaw and Traverse City all have established committees to sponsor resolutions within their communities. If your community is not yet "Safe and Free" contact your branch ACLU chair or call me at (313) 578-6810.

FROM THE CAPITOL

SHELLI WEISBERG

By the time you read this article the legislature will be back from their “deer hunting” hiatus and they should be well on their way to balancing the \$900 million hole in the current state budget. The word around Lansing is that the legislature will be in session well into the third week of December.

Even with all the attention to the budget, though, our representatives in Lansing continue to keep us busy at the ACLU.

SB 395, THE LIVE BIRTH DEFINITION ACT, was vetoed by Governor Granholm on October 10.

- SB 395 is unconstitutional.
- SB 395 is an attempt to prohibit legal and safe abortion procedures.
- SB 395 contains no exception to protect a woman's health.
- The ACLU of Michigan has already successfully challenged this issue twice in Michigan, to the financial detriment of the state.
- Medical decisions should be between a woman, her doctor and her family – not the State Legislature.

The Senate will attempt to override the Governor's veto but it is unlikely that they have enough votes to be successful. Absent an override, the Catholic Conference and Right to Life announced they will launch a citizen's initiative to make the Live Birth Definition Act part of the Michigan Constitution. RTL has announced they will begin collecting signatures in January. Under Article II, Sec. 9 of the state constitution, placing a citizen initiative before the Legislature requires collecting, in a 180-day period, an amount of valid signatures equal to or greater than 8 percent of the number of

people who voted in the most recent gubernatorial election. A majority of both houses of the legislature is all that is needed to approve the constitutional amendment and it is not subject to a gubernatorial override. Call your representatives now and urge them to vote against the citizen initiative on SB 395.

HB 4360, which prohibits displaying or exhibiting certain sexually explicit material, was signed into law on November 5. The ACLU, working with the Media Coalition in New York, objected to the broad definition of sexually explicit material used in the legislation. Though we were successful at the committee level in removing references to the Internet previously ruled unconstitutional, the definition may still include other forms of media. The ACLU is considering a challenge to the new law based on the broad scope definition of sexually explicit material.

A SERIES OF PRIVACY BILLS has been introduced in the Senate relating to identity theft. Overall, the ACLU is pleased about legislation aimed at prohibiting the misuse and overuse of social security numbers. Committee hearings are beginning and have been subject to a great deal of controversy as financial institutions and various government agencies begin to dissect the requirements contemplated by the proposed legislation. It appears these bills will go through many changes and may take months to get to a final vote.

HB 4478, PARENTAL RIGHTS RESTORATION ACT, sponsored by Representative O'Neil – D, is another attempt at limiting access to safe and legal abortions. This bill will make it virtually impossible for a minor to obtain a parental waiver for an abortion through judicial by-pass. The legislation limits a judge's ability to evaluate a case individually by prescribing 7 factors that must be considered, including the minor's sexual history, her economic situation and her academic record. It shifts the determining factor for granting a waiver away from the Supreme Court standard of “the best interest of the minor” to a decision based on irrelevant information. The intent of this bill, which is driven by Right to Life of Michigan, is to make the judicial by-pass option so demeaning and embarrassingly painful that a young girl will simply choose not to seek relief from the court.

HB 4478 has passed the House and is being considered in the Senate. The bill was modified in the Senate Committee on Families and Human Services to address many of our major concerns. However, the bill remains unnecessary. Please call your senator urging opposition to this leg-



islation. Let them know that currently over 70% of minors who have an abortion do so with parental consent. In cases where a young woman simply cannot seek the help of a parent – such as rape and incest within the family or fear of violence – the judicial by-pass procedure is essential and must remain a viable and accessible option for a young woman in a desperate situation.

For more and more women – especially low-income women, young women, and women living in rural areas – legal abortions are increasingly out of reach. Many girls growing up today are unaware that abortions were once illegal, and sometimes fatal. It's time to change that.

THE MARCH FOR CHOICE will be Sunday, April 25, 2004 in Washington D.C. Please join the ACLU of Michigan as we participate in this historic march for abortion rights and reproductive freedom.

In the last eight years alone, Michigan has enacted numerous measures restricting reproductive freedom. These restrictions curtail access to not only abortion but also to contraceptives, sexuality education, and other essential reproductive health care services.

Come and be counted among the majority – Pro-Choice Americans. Show lawmakers that they must stop chipping away at reproductive freedom and stop playing politics with women's health and lives.

YOU MAY HAVE RECENTLY HEARD that there are plans for a ballot initiative to outlaw affirmative action in Michigan. The ACLU is playing a leading role in Citizens for a United Michigan, a wide-ranging coalition of business, labor and social justice groups that has formed to fight this initiative. Watch for more news about this in the coming months.

For more information please e-mail: sweisberg@aclumich.org.

The ACLU is a powerful voice in the legislature because of our passionate and articulate members. We can harness even greater strength by working together as part of a finely tuned Grassroots Legislative Network. If you haven't already done so, sign up at the www.aclumich.org to receive Action Alerts on breaking legislative issues. Talk to your legislators, in their districts and in Lansing. If you're interested in becoming more active in the ACLU of Michigan Action Alert Network, please let me know if are willing to contribute your skills at issues research, letter writing, or providing expert testimony. You can contact me at sweisberg@aclumich.org.

ACLU REACHES PRECEDENT-SETTING SETTLEMENT IN DOMESTIC VIOLENCE EVICTION CASE

In the first case of its kind in Michigan, the ACLU has reached a settlement with a public housing agency which will prevent victims of domestic violence in their own apartments, from being evicted.

The ACLU represented Aaronica Warren, a single mother and VISTA worker who lived in public housing run by the Ypsilanti Housing Commission (YHC). One evening, after Ms. Warren put her son to bed, there was a knock at the door. As she opened the door, a former boyfriend forced his way into the apartment and immediately started an argument and became abusive. He threw Ms. Warren into the entertainment center, picked her off the ground, dragged her outside and threw her face first into the pavement, causing injury to her face. After he fled, Ms. Warren called the police.

When the YHC learned about the incident, it did not take action to protect Ms. Warren by banning the man from the premises. Rather, it went to court in an unsuccessful attempt to evict Ms. Warren and her son from her apartment. The YHC relied on a “one-strike rule” in its lease agreement that permitted it to evict tenants if there was any violence in a tenant's apartment.

The ACLU filed a case in federal court on behalf of Ms. Warren arguing that, not only was it grossly unfair to evict tenants who have been victims of domestic violence, it violated the Fair Housing Act. Because women are almost always the victims of domestic violence, the YHC's one-strike rule had a disproportionate impact on women in violation of the sex discrimination prohibitions in the Fair Housing Act.

After a year of litigation, the YHC agreed to settle the case by agreeing to no longer enforce the no-strike rule against domestic violence victims and by paying Ms. Warren damages for attempting to evict her. The ACLU hopes the settlement – which is the first of its kind in the state and the second in the country – will set a precedent and deter other landlords across the state from evicting victims of domestic violence.

Special thanks to Debra McCulloch, William Thacker and Michael Honeycutt from the law firm of Dykema Gossett for serving as ACLU Cooperating Attorneys and to the Fair Housing Center of Washtenaw County and South Central Michigan Legal Services for their assistance and cooperation.

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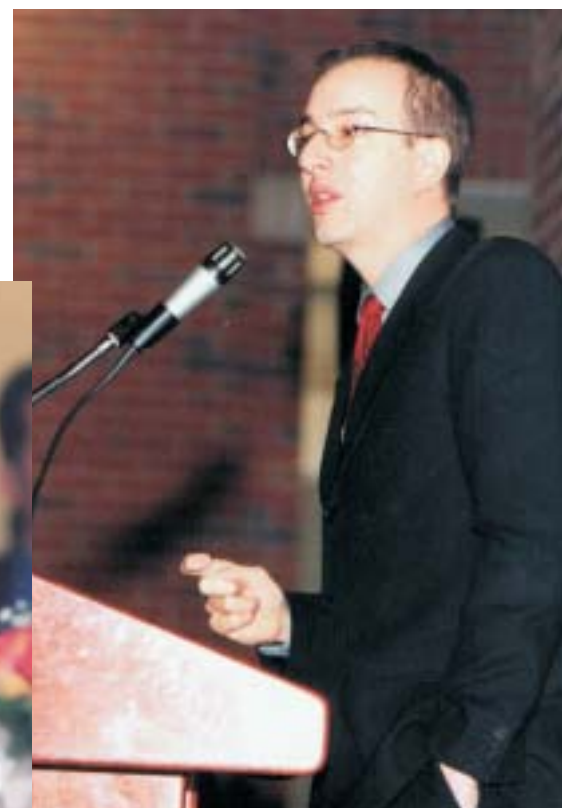
For the fourth year, the ACLU of Michigan's annual dinner was the place to be. The evening began with a profitable and fun Silent Auction that included items ranging from sporting event and theater tickets to the use of vacation homes in New York and Point Pelee. Nearly 400 people had the opportunity to

hear Anthony Romero, the national ACLU executive director, as he recounted the wonderful accomplishments of the ACLU since he took the helm two years ago.

Awards were given to three well-deserving people for their inspiration to civil liberties. Brenda Bove, the ACLU of Michigan's paralegal was recognized for her 25 years of service; Ismael Ahmed, executive director of ACCESS, received the Trailblazer Award for his work with the ACLU and others to protect

civil liberties and civil rights of Arab Americans everywhere; and Bretton Barber, the Dearborn student whose free speech case the ACLU recently won (see page 5) was the recipient of the Wendy Joyrich Educator of the Year Award.

If you would like to become involved in the Annual Dinner Committee for next year's event, please contact Leslie White-Jones at 313-578-6815.



RALPH SIMPSON— UP CLOSE AND PERSONAL

Ralph Simpson, President of the Metro Detroit Branch and the Michigan representative to the National ACLU Board, has only been a member of the ACLU for about 15 years, but his contributions are already a lifetime's worth.

Ralph's passion for civil liberties and the ACLU is evident as soon as he begins to talk about his involvement. "There's so much you can do to contribute to the ACLU—from getting new members to events to meeting so many different people to lobbying for the issues I believe in. The ACLU actually makes a difference."

Just in the last couple of years, Ralph has met with the Detroit Police Chief, been an active member in the Lawyers' Committee, reinvigorated the branch's Friday Forums, marched in the Martin Luther King 40th Anniversary March, represented the branch at the Concert of Colors, Dally in the Alley, Labor Fest, the Michigan Federation of Teachers conference, the Arab-American Festival, helped create a Wayne State University chapter, been a speaker at a Macomb County NAACP meeting, in schools and in pris-

ons, and attended the national membership meeting in Washington, D.C. As one of the first involved in the Silent Auction held at the annual dinner, Ralph continues to be actively involved, not only in preparing for the event, but in finding the best items to auction off. It was Ralph's contribution of a Muhammed Ali boxing glove that garnered the highest bid yet! In fact, a highlight of Ralph's ACLU life was attending the Muhammed Ali reception held at the ACLU Membership Conference in June.

He was also the high bidder last year to have lunch with Mayor Kwame Kilpatrick,

"Having lunch with the Mayor was great for me and my mom - a real supporter of the Mayor. He was frank about the city's problems, but more than that, he



was really interested in civil liberties and wanted to know where the ACLU stood on several issues."

Ralph knows that an understanding of civil liberties can begin at a young age and his vision for the ACLU branch includes addressing school issues, such as curriculum development on the Bill of Rights for all class levels.

"A lot of people join organizations and try to do good things, but it's difficult," he added. "For all the controversy surrounding ACLU issues, we're very effective—we're successful."

VOLUNTEERS ARE ALWAYS NEEDED

One of the most common misconceptions is that only lawyers can play a role in the work of the ACLU. It is true that we depend upon lawyers for our legal



Jacquelin Washington

work—we could not be as effective if it were not for the numerous cooperating attorneys who provide their expertise and time in defense of civil liberties. They provide an invaluable service to this organization and we are grateful for all that they do.

But let me share with you several other ways in which volunteers participate in the work of Michigan ACLU. Three of our branches have been successful in getting their local governments to pass a resolution opposing certain provisions of the U.S. A. Patriot Act. The momentum began with Washtenaw branch members, all volunteers, who raised awareness in their community through letters to the editor, letters, presentations to elected officials and collaboration with other groups. It was this type of concerted effort that enabled Ann Arbor to become the second city in Michigan to pass a resolution of this type.

Soon similar volunteer efforts began in Kalamazoo. Despite predictions that a resolution could not be passed in this conservative community, the local branch volunteers and other community activists were victorious. Lansing branch members also worked with a coalition in Ingham County to pass a resolution there and in Meridian Township. This work could not have been accomplished had it not been for the energy and commitment of people from all backgrounds, people who want to bring about change at the grassroots level.

Volunteers also help raise awareness about civil liberties among high school students. Both the Oakland and Southwest branches sponsor essay contests in which students write about current civil liberties topics. With the assistance of social studies teachers, ACLU reaches out to young people who have expressed themselves eloquently. Branch volunteers throughout the state speak with students at all academic levels, helping them to become more knowledgeable about the Bill of Rights.

Our fundraising efforts are enhanced by a cadre of volunteers who make calls on donors, assist with the annual dinner and auction or participate in membership drives across the state. If you have always wanted to help the ACLU but did not know how, call the state office, (313) 578-6800. We will find a role for you. There's a volunteer opportunity for everyone.

STUDENT CAN WEAR HIS T-SHIRT

THE RULING IS AN IMPORTANT CIVICS LESSON FOR STUDENTS EVERYWHERE.

Brett Barber can now wear his t-shirt with a picture of President Bush that reads, "International Terrorist," according to a ruling in October by federal district Judge Patrick J. Duggan. The ACLU filed a lawsuit last February against the Dearborn Public Schools for violating the First Amendment rights of the student.

"The court's decision reaffirms the principle that students don't give up their right to express opinions on matters of public importance once they enter school," said Kary Moss, ACLU of Michigan Executive Director. "Schools are not speech-free zones."

Judge Patrick J. Duggan granted the preliminary injunction stating that "there is no evidence that the t-shirt created any disturbance or disruption" in the school and that "the record...does not reveal any basis for [the assistant principal's] fear aside from his belief that the t-shirt conveyed an unpopular political message."

Judge Duggan further rejected the school district's argument that the schoolyard is an inappropriate place for political debate. As he wrote in the decision, "In fact, as [the courts] have

emphasized, students benefit when school officials provide an environment where they can openly express their diverging viewpoints and when they learn to tolerate the opinions of others."

Bretton Barber, a senior at Dearborn High School, wore the t-shirt to express his concern about the President's policies on the potential war in Iraq. School administrators asked him to remove the t-shirt, turn it inside out, or go home. The school's justification was that the shirt might cause a disruption despite the fact that he wore the shirt for three hours without incident.

"I wore the shirt to spark discussion among the students on an issue I cared deeply about," Barber said. "I haven't decided when I'll wear the shirt again, but now I have the confidence of knowing that I have the right to wear it."



"The ruling is an important civics lesson for students everywhere. This case teaches that the First Amendment protects our right to express our opinions, and that sometimes we must have the courage—as Brett Barber did—to defend our rights," said Andrew Nickelhoff, the ACLU of Michigan Cooperating Attorney who argued the case.

Brett is now a volunteer at the ACLU office. (See LGBT Update)

The decision can be found online at: <http://www.aclumich.org/pdf/briefs/barberdecision.pdf>



BREATHALYZER TESTS RULED UNCONSTITUTIONAL FOR PEDESTRIANS

In a ruling that will impact young adults throughout the state, a federal judge ruled that the police may no longer force pedestrians under age 21 to take a Breathalyzer test without obtaining a search warrant.

"For years, police officers throughout Michigan have violated the rights of countless college students and others under age 21 by forcing them to submit to Breathalyzers without a warrant," said Kary Moss, ACLU of Michigan Executive Director. "This is a tremendous victory for the civil liberties of young adults."

The case, filed by the American Civil Liberties Union of Michigan, stems from an encounter by Jamie Spencer, a Bay City resident, with the Bay City police in August, 2001, when she was 19 years old. She, her husband and some friends were leaving a city park after rollerblading, when two officers approached Mrs. Spencer and demanded that she blow into a Breathalyzer machine.

She told the officers she had not been drinking and did not want to take the test. However, when the officers threatened her with a \$100 fine, she felt she had no choice. The test indicated that she had not been drinking.

"Even though I had done nothing wrong, the police invaded my privacy," said Mrs. Spencer. "I am glad that because of this decision, the police will not harass innocent young people in the future by forcing them into such a demeaning situation."

U.S. District Court Judge David M. Lawson, in a 23-page opinion issued on Thursday, struck down the Bay City ordinance that makes it illegal for people under age 21 to refuse to consent to a Breathalyzer test. The ruling does not apply to drivers of a motor vehicle. Judge Lawson held that the ordinance violates the Fourth Amendment because (1) a breath test is a search, (2) the Fourth Amendment ordinarily prohibits searches without search warrants, and (3) no exceptions to the search warrant requirement apply.

Judge Lawson further emphasized that "the right to be left alone in public places ranks high on the hierarchy of entitlements that citizens in a free society have come to expect - at least in the context of citizen-police encounters."

Since the Bay City ordinance is identical to state law, the decision will bring welcome relief to college students across the state, according to Jonathan Knapp, president of the Central Michigan University Chapter of the ACLU.

"It is a well-known and common procedure on campuses across the state for the police to stop students walking across campus on weekend nights and force them to take Breathalyzers whether or not they have been drinking," said Knapp. "This is a great student rights decision."

In addition to Moran, Mrs. Spencer is represented by Michael J. Steinberg, ACLU of Michigan Legal Director, and William T. Street, a volunteer ACLU lawyer from Saginaw.

The complaint and brief can be found on line at <http://www.aclu-mich.org/pdf/briefs/mipbrief.pdf> and <http://www.aclumich.org/pdf/briefs/complaintmipcase.pdf>

LGBT PROJECT UPDATE

JAY KAPLAN

"It was the best of times, . . . it was the worst of times." Three recent decisions represent tremendous progress for the LGBT community towards obtaining legal equality and legal recognition of our relationships and families.

The U. S. Supreme Court ruled that gays and lesbians are not to be treated as second class citizens (*Lawrence v. Texas*). And, Ontario and British Columbia began issuing marriage licenses after Canada's high court held it unconstitutional to deny marriage licenses to same-sex couples. In November, Massachusetts' Supreme Judicial Court ruled that the state may not deny the protections, benefits and obligations given to opposite sex couples to same-sex couples who wish to marry (*Goodridge v Department of Public Health*).

In response to these incredible gains, the far-right has begun an anti-gay backlash that has pressured and encouraged politicians to support legislation, resolutions and policies that harm LGBT families.

A constitutional amendment, introduced by State Senator Alan Cropsy, would ban same-sex marriage, and deny recognition of same-sex relationships, including domestic partner benefits now given by some local governments. Even opposite-sex couples could be discriminated against in areas such as housing if



Kara Jennings, Jay Kaplan, Brett Barber

it passes. There is a movement, spearheaded by Gary Glenn and the homophobic American Family Association, to

introduce resolutions in support of the amendment by city and county commissions. Resolutions have already passed in Oakland, Jackson and Lapeer counties, and the cities of Utica, Troy, and Sterling Heights.

The LGBT Project has been busy responding to this backlash in a number of ways. We, together with a coalition of LGBT organizations, have formed the Coalition for a Fair Michigan. Action alerts of upcoming commission meetings are being posted on our website to encourage people to speak out against these efforts. With the help of ACLU branch board members, resolutions were successfully defeated in Kent, St. Clair and Traverse City. Though the rhetoric of the anti-gay opponents is distressing, this issue has provided an important opportunity to educate the public on how inequalities in Michigan law hurt LGBT families.

On a very positive note, Kara Jennings began her Tom Steel Fellowship with the Project in September. She has hit the ground running, playing an active role in the work of the Coalition for a Fair Michigan, outreaching to diverse LGBT populations, developing a series of legal clinics for Michigan's transgender community and creating the "LGBT Family Story Project," a collection of stories from throughout Michigan, regarding how the lack of legal protections and recognition impacts Michigan LGBT families.

We are also lucky to have a new volunteer. Brett Barber, a 17 year old gay high school student, is assisting the Project by making presentations to Gay-Straight Student Alliances around the state. We continue to advocate for the right of students to form GSAs at their schools with the same recognition and privileges as other non-curricular clubs. Of concern to the Project is a policy being considered by the West Ottawa school



district that would require parental consent to participate in a non-curricular club. Such a policy would prevent some students from being able to participate in the GSA, and receiving the social support that they need. We are also trying to resolve a situation in a Detroit Public High School as a result of a principal writing to parents about female students "experimenting or choosing alternative lifestyles," (lesbians) and the "problems in [our] school environment."

We were successful in a Social Security Administrative Hearing appeal on behalf of a woman married to a transgendered male, who underwent sexual reassignment surgery to become female, 30 years after they were married. The SSA had previously held that the surgery invalidated a legal marriage for purposes of spousal benefits.

We were also instrumental in successfully revising State of Michigan birth certificate policy to recognize both same-sex parents on the birth certificate form. Michigan now joins a majority of states have this policy.

The Michigan Judicial Institute, which provides guidance for interpreting the law, recently issued an analysis of Michigan adoption law that stated unmarried same-sex couples could not adopt children together. We have since sent a letter to all Michigan Probate Judges, offering our own analysis of the law, in favor of second parent adoption by gay and lesbian couples.

In spite of our many successes, including a grant from the Gill Foundation to implement a public education program in out-state Michigan, we still have many challenges ahead. LGBT issues will be prominent in 2004 presidential election. We must continue to educate and mobilize to ensure that we are afforded dignity and equality, as promised in the Lawrence decision.

BEAT THE CROWDS THIS HOLIDAY SEASON- GIVE A GIFT OF MEMBERSHIP!

Yes, I want to become an ACLU member by making a gift of:

- \$20 Individual \$30 Joint \$35 Contributing \$75 Supporting \$125 Sustaining
 \$5 Limited income/student

Please accept my tax-deductible donation in the amount of: \$250 \$500 \$1,000 Other _____

Please charge my credit card: Card Number _____

Exp. Date _____ Amount _____

Authorized by _____

Name _____ Phone _____

Address _____ City/State/Zip _____

(Make checks payable to the ACLU. Membership dues are not tax-deductible.)

FROM THE LEGAL DIRECTOR

MICHAEL J. STEINBERG



One of the many great things about working at the ACLU is the great people with whom I work. Brenda Bove, who is celebrating her 25th year at the ACLU, epitomizes the “ACLU spirit.” She doesn’t view her paralegal duties as work at all, but rather a labor of love. Her experience, enthusiasm and skill make her an indispensable part of our legal program.

I am also thrilled to welcome Kara Jennings to our legal staff. We knew that Kara was special when she interned as a law student at the ACLU in 1999 and it was gratifying for me that she decided to seek her own funding to work at the Michigan ACLU in the LGBT project. Kara is the first of hopefully many law interns who will come back as staff attorneys.

Another great aspect of my job is the variety of civil liberties and civil rights cases on which we work. From cutting edge First Amendment cases and lawsuits challenging the Bush Administration’s post-9/11 power grab to civil rights and privacy lawsuits, the work could not be more interesting or important. I encourage you to go to our website to see the more than 50 cases that we, with the help of more than 75 volunteer attorneys, have litigated in 2002-2003. Just go to www.aclumich.org and click on “legal documents” on the home page.

This season is a particularly exciting time for the legal program. Not only do we have a hearing coming up in the first case in the country challenging a section of the USA PATRIOT Act (*see story on p. 1*), but it looks like a number of our cases that have been in litigation for years will be resolved with outstanding results – including the welfare drug testing case and a class action sex discrimination case on behalf of women prisoners in the Livingston County Jail. Hopefully, I will have good things to report on these cases

in the next newsletter.

Additionally, as you can see from elsewhere in the newsletter, we have recently won several cases – including three cases expanding the rights of college and high school students. We hope that cases such as these will help energize young people to become interested in civil liberties issues and become active in their local student chapters of the ACLU.

HERE ARE A FEW ADDITIONAL VICTORIES AND UPDATES:

CHARGED FOR COMPLAINING

A retired union member named Bruce King ran for president of his local, but lost in what he believed to be a corrupt election. King then wrote numerous letters to union officials criticizing their failure to investigate the elections, making fun of some of the leaders. Instead of investigating the election, the union officials called the City of Dearborn police who charged King with “malicious annoyance by writing.” The ACLU defended the case and the judge dismissed the charges. (*City of Dearborn v. King*; Attorney: Mark Krieger).

PARENTS’ RIGHTS PROTECTED

In July, the Michigan Supreme Court, agreeing with the position taken by the ACLU in its friend-of-the-court brief, struck down the Michigan grandparent visitation law as unconstitutional because it conflicts with the presumption that parents will make decisions in the best inter-

est of their children. The ACLU argued in its brief that the state may interfere with the parents’ fundamental right to care for their children only in extraordinary circumstances. (*DeRose v. DeRose*; Attorneys: Robert Sedler, Jay Kaplan and Kary Moss).

APPOINTED APPELLATE COUNSEL CASE

In the last newsletter, I reported that the U.S. Court of Appeals, in a 7-5 decision, struck down the Michigan law prohibiting, in most cases, the appointment of lawyers to assist indigent defendants who have pled guilty with their appeals. The state has asked the U.S. Supreme Court to hear the case and we are opposing the request. (*Tesmer v. Granholm*; Attorneys: David Moran and Mark Granzotto).

SUSPENDED FOR BLUE HAIR

A student in the Flushing School District dyed his hair blue as a means to express himself. However, school officials told him that he could not attend classes with unnatural hair color. The Student Advocacy Center and the ACLU of Greater Flint have intervened on behalf of the student and are working with the district to develop a policy that would prevent the district from disciplining students for hair style or clothing unless the hair or clothing disrupts the operation of the school or poses a danger to the health or safety of other students. (Attorneys: Tana Lin and Gregory Gibbs).

DISTRIBUTING POLITICAL ESSAYS AT SCHOOL

Joshua Blanchard is an honor student at Novi High School who regularly corresponds with Noam Chomsky and Howard Zinn. Joshua wanted to distribute an essay on supply-side economics to other students at school and checked with school administrators to make sure it was okay. When Joshua was told that he could only distribute school-sponsored materials, he contacted the ACLU. I spoke to the principal, and to his credit, he gave Joshua the green light.

PROSELYTIZING DURING PUBLIC ADULT EDUCATION

An ACLU member called after seeing a newspaper article regarding a Dearborn Schools adult education program offering the Alpha Course – a course taught in churches across the country encouraging people to embrace Christianity. When I spoke to the director of adult education, he agreed that it was inappropriate for a public school to sponsor a course promoting religion. The director suggested that the Alpha Course teacher offer the course on her own either at a church or in a room that she could rent from one of the schools.

LAW FOUND TO VIOLATE STUDENTS’ FREE SPEECH

VERBAL ASSAULT LAW & POLICY RULED UNCONSTITUTIONALLY OVERBROAD AND VAGUE

In a case with implications throughout the state, a federal judge has struck down the Michigan “verbal assault” law as violating the free speech rights of students. The American Civil Liberties Union of Michigan challenged the law on behalf of Alex Smith, an honor student at Mt. Pleasant High School who was suspended for committing a “verbal assault” by writing a parody of the school’s tardy policy.

The 1999 law at issue required all school districts in the state to suspend or expel students for committing a “verbal assault.” However, the law did not define what constituted a “verbal assault.” Mt. Pleasant adopted a policy requiring a 10-day suspension of all students who, among other things, “assault the dignity of a person.”

U.S. District Court Judge David M. Lawson ruled that the verbal assault law and policy were “unconstitutionally overbroad and vague,” and could not be

enforced or used to punish criticism that is protected by the First Amendment such as “speech that questions the wisdom or judgment of school administrators and their policies.” Judge Lawson further stated that “the mere fact that someone might take offense at the content of speech is not sufficient justification for prohibiting it.”

Alex Smith, a junior at the high school in 2000 when he wrote the parody, is now a student at Michigan State University.

An op-ed piece written by Alex appeared in *The Detroit News* on November 23 and can be found at: <http://www.detroitnews.com/2003/editorial/0311/23/a15-332160.htm>

Richard Landau, Bradley Smith, and Thomas Bromell were the ACLU cooperating attorneys on the case.

The decision can be found at: http://www.mied.uscourts.gov/_opinions/Lawsonpdf/01-10312%20Smith%20Opinion.



FROM THE EXECUTIVE DIRECTOR

KARY L. MOSS, ESQ.



It is not easy to be a civil libertarian today. After all, the tragedy of September 11 makes it tempting to trust that the current administration is acting only for the public good and that any loss to civil liberties are a necessary cost of the war on terrorism.

But, it has never been easy to be a civil libertarian. There have always been a few courageous souls who were willing to risk arrest or suffer harm in an effort to stand up for principle. Think of all those who spent years on the blacklist during the McCarthy era, or all the freedom fighters during the 1960s who suffered injury or lost their lives to end legal segregation. It took many years, at enormous cost, for public opinion to swing against those who would label people

as extremist radicals.

This time is no different. The war on terror casts a shadow on our democracy. We must clear our eyes and not wait for the years to pass.

But the Department of Justice (DOJ) is working hard to cast that shadow. In response to our very successful grassroots initiative that has led to over 200 municipalities and 3 states to pass resolutions opposing the attack on civil liberties, and to recent congressional action seeking to limit the Patriot Act, the DOJ has launched its own aggressive public relations campaign. This campaign is designed to confuse the American public and make it seem that their initiatives will only affect terrorists. Nothing could be farther from the truth.

Defending the Patriot Act, DOJ spokespeople pointed to the fact that Section 215 (see cover story) does not use the word "library," yet they concede it can be applied to libraries. They point to the fact that no Section 215 warrants have yet been served, yet they concede that the FBI still made several hundred visits to libraries over the last two years and do not deny that a warrant could be served in the future. DOJ spokespeople deny that Section 215 can be used against a U.S. citizen, but they concede that the FBI can search a U.S. citizen provided that it is not done solely on the basis of First Amendment activities. They assert that their current actions bear no resemblance to the abuse of power by the J. Edgar Hoover

THE WAR ON TERRORISM AFFECTS YOU

administration, yet they concede that they will not release the names, charges and whereabouts of more than 1,200 people who have been detained since September 11.

When the Patriot Act was passed, its sponsors promised that it would be used only for the war on terrorism. But now, a spokesman for the Department of Justice, Mark Corallo, told the *Las Vegas Review-Journal*, that federal law enforcement officials have no qualms about using the federal law to pursue criminal investigations that have nothing to do with terrorism. And, in fact, they have done just that in a public corruption probe in Nevada involving a strip club owner accused of racketeering and bribery.

The point here is that our concerns go well beyond the Patriot Act. That law, along with many other Department of Justice initiatives, may well affect every person in this country.

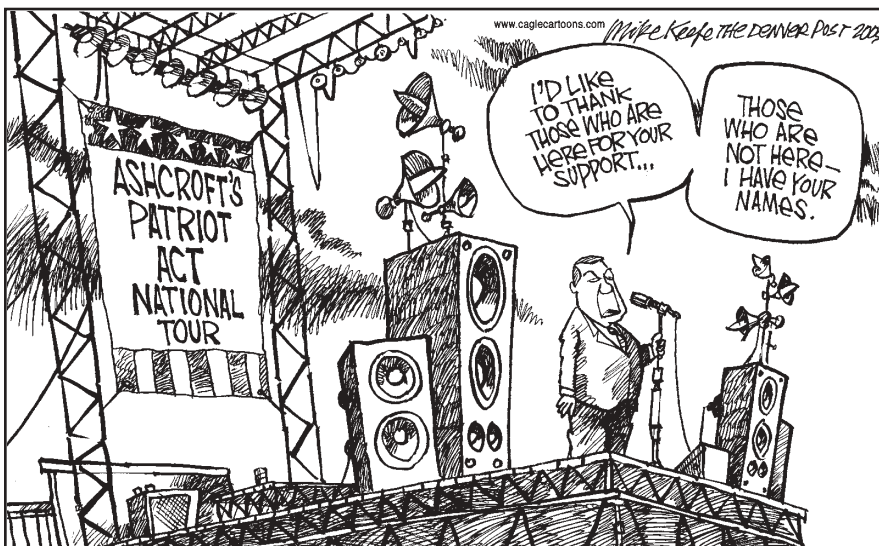
One immediate concern is the degree to which information about our private lives is increasingly subject to "data-mining." When Congress failed to fund an Orwellian program called Total Information Awareness (TIA), the DOJ did an end-run by funding a private corporation to do the same data-mining in several states. MATRIX (Multistate Anti-Terrorism Information Exchange) will be run by Seisint, Inc. in Florida to tie together government and commercial databases to allow law enforcement authorities to conduct detailed searches on particular individuals.

The Atlanta Journal-Constitution reports that the system includes, at least, credit information, driver's license photographs; marriage and divorce records; past addresses and phone numbers; names and addresses of family members; neighbors' addresses and phone numbers; business associates; make, model and color of registered vehicles; speeding tickets; arrests; social security numbers and dates of birth.

MATRIX will be operated by individual states, including Michigan, and we have filed a Freedom of Information Act request of the state police to find out as much as we can.

So, is it easy to be a civil libertarian today? One thing that makes it hard is that there is so much that we do not know. Yet the ACLU and its members have stood up to the challenge. We have been the preeminent watchdog against the Ashcroft administration. I am proud to say many of our supporters have stepped up their contributions, either by volunteering to work with us, increasing their donations, or being more politically active. I am proud to say that new members are joining at an unprecedented rate.

If you are a long-standing member of the ACLU, thank you for standing by us. If you are a new member, thank you for joining. Please visit our website—www.aclumich.org—for more information about how to become involved or to make an end of the year tax-deductible donation to support our work.



First Challenge from page 1

Fear of the PATRIOT Act has caused a dramatic decline in memberships and donations at mosques and forced a church-sponsored group that aids refugees to change its record-keeping practices.

"The degree to which people are afraid to speak out or practice their religion is very hard to identify in this climate of secrecy, particularly given the fact that Section 215 makes it a felony for people to tell anyone if they have been

served with a warrant," said Kary Moss, ACLU of Michigan Executive Director.

Other groups that signed the "friend-of-the-court" briefs filed today include American Booksellers Fund for Free Expression, American Friends Service Committee, Japanese American Citizens League and Episcopal Migration Ministries.

A hearing in the case was held for December 3 before Judge Denise Page Hood of the U.S. District Court in Detroit.

The case is Muslim

Community Association of Ann Arbor et al. v. John Ashcroft, Civil Action No. 03-72913, filed in U.S. District Court for the Eastern District of Michigan, Southern Division. In addition to Beeson, attorneys in the case are Jameel Jaffer of the national ACLU and Michael J. Steinberg, Noel Saleh and Kary Moss of the ACLU of Michigan.

For more on this lawsuit, go to <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=13255&c=207>

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