

INTRODUCTION TO THE 2004 ACLU INTERNATIONAL CIVIL LIBERTIES REPORT

By: Ann Beeson and Paul Hoffman*

This year, the United States government continued to commit grave human rights abuses in the name of the war on terror. United States officials tortured people detained at Abu Graib and Guantanamo, aggressively questioned and detained people based solely on race, ethnicity, or religion, and engaged in broad surveillance of innocent people. As if that weren't enough, the United States Congress introduced legislation – which the ACLU and other groups continue to fight – that would make reliance on international law by a federal judge an impeachable offense. In response to these and many other serious threats to human rights, in 2004 human rights advocates fought a number of crucial battles and achieved a few limited but important victories. The ACLU is proud to be a part of the growing and dynamic movement to expand the application of human rights principles in the United States. In the following overview, we highlight our human rights work in the past year.

The year kicked off in October 2003 with our landmark national conference at the Carter Center in Atlanta, Georgia, “Human Rights at Home: International Law in U.S. Courts.” Over 250 activists from 30 states participated in workshops to develop new strategies for protecting human rights throughout disparate fields: juvenile justice, women's rights, criminal justice, immigrants' rights, and other areas of the law. These workshops featured presentations by practicing

lawyers, grassroots organizers, scholars, and judges from the U.S., Great Britain, and South Africa. Highlights from the three-day conference included an opening plenary on the necessity of using a human rights framework in U.S. advocacy today, a presentation on the use of human rights strategies to curb the backlash against rights since September 11, and a dialogue with judges about the shifting attitude of judges towards international law. The response to the conference was overwhelmingly positive, and activists accustomed to using domestic constitutional law went home armed with new theories and strategies for advancing human rights in their work.

Given the success of the conference, it is no surprise that the ACLU's use of human rights strategies notably increased in quantity and scope throughout the year. In a major Supreme Court case argued by Paul Hoffman for the ACLU, in June 2004, *Sosa v. Alvarez-Machain*, the court rejected the Bush Administration's attempt to gut the Alien Tort Claims Act, one of the oldest laws of the land, and reaffirmed the rights of victims of human rights violations to bring civil actions against their abusers in U.S. Courts.

Other ACLU advocacy that relied on human rights arguments primarily centered around four issue areas: national security; women's rights; the rights of non-citizens; and criminal justice.

Human Rights and National Security

In January 2004, we filed a complaint with the United Nations Working Group on Arbitrary Detention on behalf of thirteen men who were arbitrarily arrested and detained after the September 11 attacks. (See “The Arbitrary Detention of Immigrants After September 11”, by Omar Jadwat) Our clients were detained for weeks and sometimes months under harsh conditions, they were not promptly notified of charges against them, and they were denied access to counsel and to their family members.

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When we filed the complaint with the Working Group, we released a public education report that profiles our clients and provides personalized accounts of their detention ordeals: "America's Disappeared: Seeking International Justice For Immigrants Detained After September 11." We also featured some of our clients at well-attended press conferences at the United Nations in both Geneva and New York. This month we are publishing a second report, "Worlds Apart: How Deporting Immigrants After September 11 Tore Families Apart and Shattered Communities." While the first report focused on the detention and ultimate deportation of our clients, the second report chronicles the harmful secondary effects of deportation on our clients, and their families and communities.

In April 2004, the ACLU filed a lawsuit to force the government to respond to our Freedom of Information Act request demanding information about the use of torture and other illegal interrogation techniques in U.S. detention facilities abroad, in violation of the Convention Against Torture and other laws. (See "Secrets and Lies: Uncovering the Truth About Torture", by Amrit Singh) We had filed our FOIA request in October 2003, months before the Abu Graib scandal broke, and the U.S. government refused to process it because they claimed the issue was not a matter of widespread public concern. In September 2004, a federal court ordered prompt compliance, noting that "[i]f the documents are more of an embarrassment than a secret, the public should know of our government's treatment of individuals captured and held abroad." The government continues to process documents in the case, and we will continue to analyze these documents and expose any new evidence of human rights abuses.

This year, the ACLU and Human Rights Watch engaged in a joint project, through the Aryeh Neier Human Rights Fellowship, to document and challenge the U.S. government's misuse of the material witness statute to detain

Muslim men without charges. (See "Overlooking Innocence: Refashioning the Material Witness Law to Indefinitely Detain Muslims Without Charges", by Anjana Malhotra) Over the past year, the Neier Fellow documented more than 70 material witnesses held in connection with counterterrorism investigations. In May, the dangers of the statute were brought into sharp focus when the FBI used the material witness statute to detain Brandon Mayfield, an innocent man, in connection with the bombing in Madrid. The FBI obtained the warrant based on a fingerprint match they knew to be faulty, and with knowledge that Mr. Mayfield had not left the United States for ten years. They admitted their mistake only after Spanish authorities apprehended an Algerian man who had a real match to the Madrid print. We expect to release a comprehensive report on the misuse of the material witness statute in January 2005.

The United States Supreme Court firmly staked out its territory in the war against terrorism in a trilogy of cases decided on June 28, 2004. (See "The Supreme Court's Initial Response to the War Against Terrorism", by Steve Shapiro) Viewed collectively, the decisions represent a forceful rejection of the Administration's assertion that it can detain "enemy combatants" without any meaningful judicial review. The ACLU submitted amicus briefs in all three cases. In *Rasul v. Bush*, the Supreme Court held that "the federal courts have jurisdiction to determine the legality of the Executive's potentially indefinite detention of individuals who claim to be wholly innocent of wrongdoing." In *Hamdi v. Rumsfeld*, the Court held that the U.S. government violated the due process rights of Yaser Hamdi, an American citizen seized in Afghanistan, by detaining him in a military brig for over two years with no meaningful opportunity to contest the detention. Mr. Hamdi has since been released and deported to Saudi Arabia. In *Rumsfeld v. Padilla*, the most limited of the Court's rulings, the court dismissed on procedural grounds Mr. Padilla's

challenge to his indefinite detention as an “enemy combatant” for over three years. Padilla, another American citizen, was arrested by the FBI at the Chicago airport after returning from Pakistan. Following the Supreme Court decisions, Padilla has filed a new habeas corpus petition in South Carolina, which is still pending..

The ACLU also became one of four advocacy groups to serve as human rights monitors at the military commissions in Guantanamo Bay, Cuba, in late August and early November. Executive Director Anthony Romero, and national staff attorneys Jameel Jaffer and Jamil Dakwar, posted daily dispatches about the proceedings and the glaring human rights abuses evident in each session. Along with colleagues from Human Rights Watch, Human Rights First, and Amnesty International, the ACLU repeatedly called on the Administration to replace the military commissions with a process that would provide fair and impartial hearings consistent with U.S. and international standards. The ACLU condemned the use of secret evidence and hearsay, the inadequate translation services, the tribunal members’ lack of impartiality and basic knowledge of legal rules, and numerous other violations of due process.

On November 8, the military proceedings abruptly ground to a halt when a federal judge in Washington, DC enjoined proceedings against Salim Ahmed Hamdan because they violated the Geneva Conventions. The ACLU will continue to monitor future commission proceedings and to work with other advocates to stop the ongoing human rights abuses in Guantanamo.

Human Rights for Women

In 2004, the ACLU's Women's Rights Project continued its direct involvement in efforts to draft and enact groundbreaking New York City legislation that would implement the principles of the Convention on the Elimination

of all forms of Discrimination Against Women (CEDAW) and the Convention on the Elimination of all forms of Racial Discrimination (CERD). The New York City CEDAW and CERD project shows the potential for bringing together lawyers and organizers using a human rights framework. The ACLU, Amnesty International, the Urban Justice Center, and NOW Legal Defense and Education Fund have served as coordinating organizations, and have created two committees that operate independently, but in close consultation with each other: the Drafting Committee and the Political Strategies Committee. The Drafting Committee decides on the scope and precise language of the ordinance, while the Political Strategies Committee educates and seeks to gain support for the ordinance from community activists and City Council members. The ACLU is working with its state affiliates and other local activists to identify other cities amenable to local CEDAW/CERD legislation, and hopes to duplicate successful components of the New York City strategy where appropriate.

The ACLU Women’s Rights Project is also working with Andolan (Organizing South Asian Workers) to address human rights violations of workers by diplomat employers ranging from failure to pay wages, to physical, sexual or psychological abuse, to forced labor and trafficking. Diplomats are generally immune from ordinary civil, criminal and administrative processes, making redress for these serious human rights violations impossible. The ACLU and Andolan are developing advocacy to establish a formal mechanism for resolving these abuses, and to establish supervision and monitoring of domestic workers brought in by diplomats and UN employees.

Human Rights for Non-Citizens

In addition to protecting the rights of immigrants targeted after September 11, the ACLU relied on human rights arguments in

other advocacy on behalf of non-citizens. In *Benitez v. Rozos*, the ACLU Immigrants' Rights Project helped to coordinate the submission of a number of amicus briefs in October 2004 urging the United States Supreme Court to reject the government's indefinite detention of "Mariel" Cubans who cannot be deported because Cuba will not allow their return. One brief, submitted by Human Rights Watch, Human Rights First, and Amnesty International USA, argued that the indefinite detention of aliens without meaningful judicial review is incompatible with international law and internationally accepted human rights standards.

The Immigrants' Rights Project also launched an initiative to exchange knowledge and advocacy strategies between lawyers working on immigrants' rights and related national security issues in the U.S., Australia and elsewhere. Called the Transnational Networks Project, it is funded by the New York University Global Public Service Law Project. The project aims to stimulate informal dialogue between lawyers on issues such as the implementation of international human rights principles in litigation in national courts.

Human Rights and Criminal Justice

The ACLU also promoted the use of human rights strategies to protest racial injustice and to expose widespread human rights abuses in the criminal justice system. Building on the success of the Atlanta "Human Rights at Home" conference, the ACLU Washington Legislative Office co-sponsored a conference in April 2004 at American University Washington College of Law on using international human rights standards to strengthen criminal justice advocacy in the United States. The conference included an overview of international human rights standards and norms, specific case studies and strategies, and a panel exploring methods to build constituencies for incorporating international human rights in the U.S. criminal justice system. There were also interactive

discussions on a range of applied issues and themes including the death penalty, juvenile justice, sentencing, and reform of prison conditions.

The ACLU Capital Punishment Project, along with coalition partners, continued to organize international pressure to urge the United States to abolish the death penalty and to use the human rights framework to educate the public and organize activists. Staff attended the World Congress Against the Death Penalty in Montreal and presented on a panel with other American abolitionists to the world community. This fall, the CPP organized 12 public education events at targeted colleges and universities in conjunction with oral arguments in the case of *Simmons v. Roper*, the case in which the Supreme Court is reconsidering the constitutionality of the juvenile death penalty. The international consensus against the juvenile death penalty is one of the key themes discussed at these events. This month, the Project will release the report, "How the Death Penalty Weakens U.S. International Interests." The report details how the United States' refusal to take any significant steps in response to international concerns regarding the death penalty is harming its relations with important allies and costing the U.S. prestige and leadership on human rights and other issues.

Conclusion: The ACLU's Growing Human Rights Staff

As the year closes, the ACLU National Legal Department welcomes an exciting new crew of human rights advocates dedicated to expanding the ACLU's use of human rights principles in U.S. advocacy. Under the guidance of Associate Legal Director Ann Beeson, and with the support of a growing ACLU human rights task force, three full-time human rights advocates will focus on incorporating human rights strategies and frameworks into ACLU advocacy on national security issues, immigrants' rights, womens'

rights, and criminal justice. Steven Watt joins the ACLU after advocating for social justice around the world for thirteen years, most recently at the Center for Constitutional Rights, where he coordinated litigation on behalf of detainees at Guantanamo. Jamil Dakwar, most recently at Human Rights Watch working on torture in Egypt, Morocco and Israel, was one of the founding lawyers of Adalah, one of the most prominent human rights groups in Israel focusing on Arab Palestinian minority rights. Chandra Bhatnagar comes to the ACLU after two years at the Asian American Legal Defense and Education Fund, where he provided legal assistance to low-wage workers from South Asia using a community-based human rights perspective.

In addition, the ACLU Projects welcomed new staff this year with a focus on human rights. Anjana Malhotra, the Aryeh Neier Fellow, began work this fall at the ACLU Immigrants' Rights Project after completing the first year of her joint fellowship at Human Rights Watch. Bassina Farbenblum, an Australian lawyer and human rights advocate, began a fellowship with the Immigrants' Rights Project last summer. Claudia Flores began work this fall as a staff attorney with the Women's Rights Project, bringing a strong background in international human rights.

The ACLU remains committed to playing a major role in promoting United States compliance with universal human rights standards. Given the current climate for human rights in the United States, our human rights advocacy must – and will – continue to grow.