

Statement from

**William Harrell, Esq.
Executive Director, ACLU of Texas
&
Sonali Mehta,
Texas Law Fellow, ACLU of Texas**

To the

House Judicial Affairs Committee

Regarding

**The Committee's Oversight of the Texas Attorney
General's Office**

This statement is also submitted on behalf of:

*The Muslim Legal Fund of America
Wajahat Sayeed, Executive Director*

&

*The League of United Latin American Citizens in Texas (LULAC)
Dr. Vincent Ramos, Executive Director
Ana Yanez Correa, Legislative Director*

**August 15, 2002
San Antonio, Texas**

I. Introduction

We are pleased to testify before the House Judicial Affairs Committee on behalf of the American Civil Liberties Union of Texas. The ACLU is a nation-wide, non-profit, non-partisan organization consisting of about 300,000 members dedicated to protecting the principles of freedom set forth in the Bill of Rights. There are about 9000 members in Texas. These hearings, in furtherance of the Committee's oversight function over the Texas Attorney General's Office, are extremely important.

The Muslim Legal Fund of America and the League of United Latin American Citizens have asked that we make this statement on their behalf as well. They share our conclusions and will join us in our continued monitoring of the Attorney General's Office and reform efforts. They share our appreciation of this Committee attention to these important issues.

We would like to apprise Chairwoman Senfronia Thompson and the Committee of three problem areas in the Texas Attorney General's Office we believe merit attention. First, the Texas Attorney General's Office has been reluctant to perform its duty per the James Byrde Hate Crimes Act. Second, the Texas Attorney General's Office has failed to protect the civil rights of Texans, particularly the people of Tulia and other victims of police and prosecutorial misconduct. Finally, there has been tendency to close previously open records under the Texas Public Information Act.

II. The Texas AG has not Honored the Hate Crimes Act

Under the James Byrde Hate Crimes Act, the Texas Attorney General has very discrete responsibilities. The AG is mandated to 1) establish a Hate Crimes Coordinator position within the office, 2) provide local assistance to District Attorneys offices, and 3) provide support to local educational groups. We believe that the AG's office has failed to honor each of these important mandates.

A. Hate Crimes in Texas related to September 11th

In the wake of the tragedy of September 11th, hate crime across the nation has sharply inclined. Below is a summary of 25 hate crimes reported in Texas since 9-11¹. This information was gathered by the American-Arab Anti-Discrimination Committee (ADC)

¹ The focus of this statement is on hate crimes related to 9/11. We wish not to dismiss other acts of hate that have been leveled against people of color and the gay and lesbian community in Texas. For one example, the ACLU, with local concerned citizens, is currently investigating a rash of hate crime in Brownwood, Texas. We suspect at least 10 hate crimes in that town alone—including murders and even murders of witnesses to those hate crimes. Local officials have repeatedly refused to investigate or prosecute these crimes according to the mandates of the the Hate Crimes Act. In one instance, a field officer drafted a crime report which clearly documented race as the motive of the violent crime. Nevertheless, the local District Attorney's office still refused to prosecute this at all, much less as a hate crime. Our conclusion is that the law alone is not enough. The Texas Attorney General, or some external body, must be vested with full authority to prosecute these crimes or at least monitor the law's enforcement in some meaningful way.

for a report that is not yet released. We have no indication that the Texas AG's office has assisted local investigation and prosecution of these incidents nor is there any indication that the AG has assisted local groups involved with investigation of these incidents or public education about hate crimes in general.

1. VANDALISM

- September 11 - Irving, TX: Windows of an Islamic Center in Irving were shattered by six bullets. The center, which is part school and part mosque, was empty at the time and no one was injured. The Islamic school canceled classes because of the scare. (Dallas Morning News, 9/14/01)
- September 12 - Carrollton, TX: Windows at an Islamic Center were shattered during the night by objects hurled from a vandal's slingshot. (Austin American Statesman, 9/14/01)
- September 12 and 18- San Antonio, TX: A truck carrying four passengers pulled into the parking lot of a Middle Eastern Grocery store. The truck's driver fired at one of the store's employees who was standing outside. The man ran inside when the gunfire broke out and three bullets shattered the windows of the store. A week later, someone rammed a car into the front door of the market, bashing it in. No one was injured. The suspect sped off, leaving the scene shortly afterwards. (San Antonio Express-News, 9/19/01)
- September 13 - Denton, TX: Someone tossed a Molotov cocktail against the Islamic Society of Denton mosque about 2:30 a.m. No one was inside at the time, and the fire caused only minor damage. (Dallas Morning News, 9/14/01)
- September 13- Denton, TX: A grass fire was ignited at the Muslim Cemetery just outside of the city limits. The fire marshal said it was unlikely that the fire was accidental; however, there were no witnesses and no leads to follow. (Denton Chronicle-Record, 9/15/01)
- September 15 - Austin, TX: Someone lobbed a Molotov cocktail at a Middle Eastern owned gas station. The device fell short, causing no damage or injuries. (Austin American Statesman, 9/18/01)
- September 17 - Austin, TX: Vandals in a passing car threw two incendiary devices onto the roof of a Nation of Islam mosque. The firebombs did not explode. A neighbor who had witnessed the scene rushed down the street and up a ladder to extinguish them with a garden hose. Nobody was injured, and the building wasn't damaged. (Austin American Statesman, 9/14/01)
- September 17 - Houston, TX: Federal law enforcement agents and the Houston Fire Department arson unit investigated an early morning blaze at an auto shop in southwest Houston. The business was closed at the time of the fire and no one

was injured. The son of the shop owner, a Pakistani Muslim, had received threats a few days prior to the blaze. (The Houston Chronicle, 9/18/01)

- September 23 - Austin, TX: A Palestinian-American carpet store owner in northwest Austin opened his store to find that it had been destroyed by arson during the night. (The Austin American Statesman, 9/25/01)

2. BATTERY

- September - Richardson TX: An Indian American told police he was assaulted by a group of men who called him an Arab. (The Houston Chronicle, 9/14/01)
- September 15 - Houston, TX: A group of nine men attacked harassed and beat a Hispanic man as he left a nightclub in southeast Houston. The group shouted racial epithets and comments about Osama bin Laden as they assaulted their victim. (The Houston Chronicle, 12/14/01)
- September 20 - Fort Worth, TX: Two Ethiopian men were stabbed by a white man wearing dark sunglasses while they strolled through the Fort Worth Botanic Garden. The attacker apparently walked up to the visitors and, without saying a word, stabbed each man once before running away. The two men were hospitalized. (The Fort Worth Star-Telegram, 9/22/01)
- November 10 and September 13 - San Antonio, TX: Two people in ski masks robbed and beat the female owner of a small Persian restaurant, leaving behind racial slurs on the walls. The attackers forced open a back wooden door, one of them bound the victim's hands and legs with duct tape and beat her to the ground. Meanwhile, the second attacker sprayed hate messages on the walls. The two stole about \$500 before leaving the restaurant. (San Antonio Express-News, 11/14/01) The restaurant had been the target of an act of vandalism on September 13, when the front door and a window were shattered by a slingshot. (The Houston Chronicle, 9/14/01)

3. ATTEMPTED MURDER:

- September 21 - Houston, TX: A 30-year-old political refugee from Iraq was returning home past midnight when he was threatened and injured by a gunman. As he opened his car door, the victim was approached by a young black man who greeted him in Arabic and asked him for a cigarette. The victim gave him one and offered him his lighter. Suddenly, the attacker drew out a handgun and pointed it to the victim's head. When the victim offered money, the gunman said, "I don't want your money. Your people killed my people. You are from the Middle East." The victim grabbed for the gun and was shot in the left hip in the struggle. The gunman fled the scene on foot. (The Houston Chronicle 10/7/01)

4. CONFIRMED HATE CRIME MURDERS:

- September 15 - Dallas, TX: 46-year-old Pakistani Muslim Waqar Hasan was shot in the face while cooking hamburgers in his grocery store. 32-year-old Mark Anthony Stroman, confessed on a Dallas radio program to committing the murder, saying that he had killed Hasan and another man (see below) and shot a third out of revenge for the terrorist attacks. During the interview, Stroman confessed that he wanted to "retaliate on local Arab Americans or whatever you want to call them." He also added that he "did what every American wanted to do but didn't. They didn't have the nerve." (AP, 2/16/02) DOJ
- October 4 - Mesquite, TX: Vasudev Patel, a 49-year-old Indian gas station owner, was shot to death during an armed robbery. His killer, 32-year-old Mark Anthony Stroman, initially explained that the killing resulted from the robbery, but later gave a conflicting explanation, telling police that he was motivated by vengeance for the terrorist attacks. The gunman alleged that he had lost a relative in the World Trade Center. A security camera recorded the armed man walking into the station, ordering the owner to give him all of the money before shooting him. Stroman then attempted to open the cash register and failed. He then fled without taking any of the money. (The Dallas Morning News, 11/3/01)

5. THREATS:

- September - Houston, TX: A Pakistani-American dry cleaning business owner received a letter which threatened to kill him and to burn down his business. The letter made anti-Muslim statements as well. (The Houston Chronicle, 9/14/01)
- September - Houston, TX: An anonymous caller threatened an Iranian man that he would come to his workplace and shoot him. (The Houston Chronicle, 10/7/01)
- September - Wichita Falls, TX: Vandals smashed the window of a Mediterranean sandwich shop. When the owner arrived, he discovered a hammer inside, beside a note which read, "Go back home Iranian Muslims or you will die." (Fort Worth Star-Telegram, 10/2/01)
- September 11 - Fort Worth, TX: An anonymous caller threatened the city's mosque, "If you want war, you've got it." (The Fort Worth Star-Telegram, 9/12/01)
- September 11 - Richardson, TX: Police provided protection to the Holy Land Foundation following several death threats the center had received. (The Houston Chronicle, 9/14/01)
- September 12 - Austin, TX: An Arab-American realtor received anonymous threats by telephone, ordering him, "Leave this country or else!"

- September 14 - Houston, TX: A man claiming to have a knife entered a convenience store and harassed its owner, an immigrant from Bangladesh. The man threatened to set fire to the store. The owner quickly pushed a hidden button behind the counter to alert police, who responded and arrested the man. (The Houston Chronicle, 1/16/02)
- September 18 - Cleburne, TX: A white male pulled his pick-up truck into a local gas station alongside the Pakistani-American owner, who was out cleaning the grounds. The driver stuck his head out the window, and addressed the employee with an expletive, demanding to know where he was from. The owner's answer enraged the driver, who then threatened him, "I'm giving you to Friday to go back to where you are from, or I will come back and shoot you!" The employee called police and resumed his work. Later that evening, while helping a customer, the owner heard a horn honking and he turned to see that the pickup truck had returned. This time, the driver waived a gun in the direction of the store. The owner ducked, called police and the gunman sped away. (The Cleburne Times Review, 9/24/01)
- December 4 - Hewitt, TX: A man pleaded guilty to having phoned a local truck stop and making a bomb threat against its Sikh workers. (Department of Justice, Civil Rights Division, 1/16/02)

B. The Need for a Hate Crimes Coordinator and Local Assistance for District Attorneys' Offices

Information regarding the prosecution of hate crimes is very hard for non-governmental offices to gather, if not impossible. That is why a state AG staff person with clear authority is necessary and why the authors of the Hate Crimes Act had the forethought to mandate its creation under the statute. It is also essential to create uniformity in the investigation and prosecution of these crimes. We submit that there has not been a single hate crimes prosecution in any of the incidents listed above.

There is some dispute regarding the jurisdiction and authority of the Texas Attorney General. There is a widely held belief that only in cases where the local police or prosecutors explicitly request assistance can the AG assert itself. We reject that interpretation as being inconsistent with the intent of the authors. Some police departments and prosecutors have illustrated their utter lack of good faith in the implementation of this law. We offer one case study of neglect.

On June 18, 2002, ACLU of Texas East Regional Director Annette Lamoreaux received a call from a contact at the Islamic Society of Greater Houston (ISGH) about a woman who had been attacked in a drug store. At their request, Lamoreaux attended a meeting at ISGH that evening, along with Hannah Hawk from the Muslim Public Affairs Council (MPAC), and various officers of ISGH, including their general counsel, Crystal Ali-Khan and her husband, Avid.

Crystal told the following story:

That morning at around 10:00 a.m. she had gone to the Eckerd's store near her house to get some allergy medication, along with her three children. The two smaller children, 1 and 2 years old, were sleeping in their car seats. She parked her van directly in front of the store and went inside, leaving the 3 year old with the smaller ones. She told the little girl that she would bring her back a piece of candy. According to Crystal, she rolled the windows down, left the kids with iced milk in "sippy cups" and took the keys with her into the store.

While she was looking for the medication, her daughter left the car and ran into the store, crying. One woman picked the little girl up and brought her to Crystal. Upon seeing her mother, the little girl cried that she wanted her candy. Crystal thanked the woman, gently chastised the little girl and headed toward the cash register. At that point, another woman came up and began berating her for being a bad mother. Crystal said she appreciated her concern, but she had it under control and was leaving the store. The woman tried to restrain her, saying "I've learned all about you people over the last 10 months and I don't trust a single damn one of you."

In an effort to leave, Crystal pushed the woman away. At that point, she said, the woman body-slammed her to the floor and began pulling at her headscarf, choking her. Crystal screamed at the woman to let her go, she couldn't breathe, but the woman kept pulling on the headscarf. One of the store managers came up and said he had called the police. Crystal asked him to help her and he said he couldn't. In a panic, Crystal pulled off the scarf, exposing her hair. All this time, the little girl was crying for her mommy. At some point in the altercation, Crystal told the woman to get off of her or she was "going to have a lawsuit on her." The woman replied that nothing was going to happen to her because "she was a Christian woman."

Crystal said the woman then dragged her by her pony tail to the front of the store. She asked the manager if she could call her husband. He brought a phone over to where the woman was holding her and plugged it in. It was around this time when the woman pulled down her skirt. While still being held down, Crystal managed to call her husband, while her attacker was trying to hang up the phone and the manager was slapping her hand away. When the patrol unit arrived on the scene, the woman was holding her by her hair on the front sidewalk outside of the store. Officers told the woman to get off of Crystal and let her go. The woman replied she was making a citizen's arrest "because this is how we do things in our country." The officer said that was not how one made a citizen's arrest and to let her go. After being let go, Crystal put her headscarf back on.

When Crystal indicated to the officers that she wanted to file a complaint against the woman who attacked her, the officers told her that if she persisted, they would take charges to the District Attorney against her for child abandonment. She said they did not take a statement from her at the scene.

After she returned home, Crystal contacted the ISGH and thus, the meeting. The consensus was that it was important she give a statement and file a complaint against her attacker. This she tried to do by going to the 24 hour intake at the homicide division downtown the next day. However, the officers on duty told her the case was closed – that charges on her had been presented to the DA, who had refused them.

After several phone calls to the Westside substation, on June 21, an officer was sent to her house supposedly to take a statement. However, the officer listened, but did not write anything down and she was not asked to make a statement in writing.

After several weeks had passed and she not heard anything, Hannah Hawk of the Muslim Public Affairs Council contacted Memon Manzoor, in the Mayor's Office for South Asian Affairs. At his suggestion, we had a meeting at his office with Crystal. After hearing her story, he advised that we send letters to Chief Bradford, with whom he said he had spoken. If we did not receive satisfaction, then he said he would approach the mayor, but HPD didn't want the mayor to know they had screwed up. MPAC and the ACLU both sent letters to Bradford urging that the incident be investigated as a hate crime.

Lamoreaux received a response dated July 12 from Acting Chief J.L. Brashears announcing that the case had been referred both to Central Intake and to the Hate Crimes unit of the Criminal Intelligence Division. In the letter, Brashears wrote that a supervisor would contact Lamoreaux to discuss the case further. Another letter, dated July 18, came from Captain S.A. Hutto of the Central Intake Office. This one pointed out that for a complaint against the officers to be investigated, Crystal needed to file a sworn statement outlining the misconduct. The letter went on to summarize the incident, referring to Crystal as the "suspect" and her attacker as the "witness." The letter explained that the DA had refused charges on the "suspect," but there was no explanation about the status of any investigation of the assault or of a hate crime.

Several days later, Lamoreaux received a call from Sgt. Steve Fowler in the Hate Crimes Unit. He apologized that the case had only just been tagged as a potential hate crime. Had it been before, the progress of the case would have been different, he said, including having a team dispatched to the scene. According to Sgt. Fowler, officers in the Hate Crimes Unit do not conduct their own investigations, they only monitor the investigations of other officers by reading their reports and supplements. They also serve as consultants for cultural issues and to educate officers on the hate crime law, he said. He explained that the case had been assigned to juvenile because that's how the call first came in, but assured Lamoreaux that if the investigation turned up a basis for assault charges, it would be referred to homicide. The officer assigned was very thorough, he said, and it was important for her to talk to Crystal before she could proceed further in the investigation. So, Crystal made an appointment and went with Lamoreaux down to talk to the officer in juvenile. The upshot, after Crystal told the story, was that the officer said she was going to present charges to the DA on child endangerment, a state jail felony. The law reads in part, "a person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child younger

than 15 years in imminent danger of death, bodily injury or physical or mental impairment.” (§ 22.014(c)). A more appropriate charge, if one were necessary at all, is § 22.10 Leaving a Child in a Vehicle, a Class C misdemeanor.

Several days later, the ACLU received a call from Officer Catherine Gardner, saying that she had presented charges on Crystal, which the DA had accepted, under § 22.041, but that the charges had been refused on the other woman for assault and that the DA had told her under the law, the circumstances didn’t establish a hate crime.

So, the message which has been sent to members of the Muslim community is that it is acceptable for you to be attacked and humiliated under the guise of someone making “a citizen’s arrest;” that in order for the attack to be even investigated as a hate crime, one need have letters written on your behalf by outside organizations; and that not only will no one be prosecuted for the attack upon you, but that you yourself will be the victim of overblown charges which, before you started seeking justice, were considered merit less. In such a climate, how can the law be a success? There is no motivation for having it enforced, and indeed, one could argue, that the message is potential complainants are punished. If the Texas AG showed the same commitment to enforcing hate crimes as for his Texas Exile program prosecuting firearms violations, Texas would have been a much more hospitable place for ethnic minorities from southwestern and southern Asia since 9-11.

C. The Need for AG Support of Local Educational Efforts

As is illustrated by the alarmingly long list of hate crimes above, there is a genuine need for community education. As the anniversary of 9-11 approaches, we are certain to see another wave of violence against people who are perceived to be Muslim or of Arab or South Asian decent. Local community groups need support to educate their members how to report hate crimes. The Texas Attorney General has offered no support in this regard.

We understand that the Attorney General’s Office has developed a curriculum for the Texas Educational Agency and we applaud that effort. However, we are not aware of any programs initiated by TEA utilizing that information.

III. The Texas AG has not defended the civil rights of Texans

Recently there has been an upsurge of national attention regarding the gross miscarriage of justice in Tulia, Texas. As the members of the Committee are aware, in July of 1999, 43 people in Tulia, a town of less than 5000, were arrested and accused of being cocaine dealers all on the basis of nothing more than the word of Officer Tom Coleman. Almost all of the accused were African American and they represented 16% of Tulia’s black

community. Those arrests and prosecutions have become the subject of overwhelming national and state scrutiny and have received almost universal condemnation².

Nationally acclaimed *New York Times* columnist Bob Herbert published his fifth consecutive piece on Tulia. The series is attached. His most recent piece raises a point that we feel this Committee must address.

Herbert quotes Tom Kelly, a spokesman for the Texas AG, John Cornyn, stating “Certainly we’re concerned in any case about fair justice.” Mr. Kelly further states, “Attorney General Cornyn does stand ready to assist federal authorities in anyway that we can assist them in their ongoing investigation.” We agree with Mr. Herbert’s observation that “You can file that comment in the empty gesture folder” (*New York Times*, 8/12/02).

We take exception to both statements made by Mr. Kelly and urge this committee to make a direct inquiry in this regard.

On October 13, 2000, the ACLU and the NAACP filed a Petition with the US Attorney General’s Office alleging violations of the 4th, the 8th, and the 14th Amendments of the US Constitution. Accordingly, we argued that under 18 U.S.C. Section 241 et. seq., and Title VI of the Civil Rights Act of 1964 as amended, the US DOJ must to investigate the matter for criminal violations and, for blatant, egregious civil right violations, freeze all federal financial support flowing to the Panhandle Regional Narcotic Task Force through the Governors Office³.

In December of 2000, a US AG investigation began. Representatives from the DOJ, the US Attorney’s Office and the FBI undertook several direct interviews with people from Tulia. However, upon the changing of the guard in Washington, there were no further inquiries or any evidence of an investigation. There has been no report. There has never been any criminal charges brought. There was never a federal review of the convictions. The federal money still flows through the Governor’s office to the Pan Handle Regional Narcotics Task Force. And more than a dozen folks from Tulia sit in prisons scattered far from home. Meanwhile, we have discovered several incidents around the state nearly identical to what happened in Tulia.

² Once Nate Blakesley of the *Texas Observer* broke this story (article attached) it has been reported around the state by most of the major media outlets and nationally by the *New York Times*, *LA Times*, *The Nation Magazine*, *In These Times*, *Washington Post*, *Salon Magazine*, *Harpers Magazine*, *The Associated Press*, *Reuters*, and others. Last year 20/20 aired a special on the Tulia story. Conservative Columnist Arianna Huffington has written twice on this case and last week national TV talk show host Bill O’Riley said that this case “stinks”.

³ There were 47 regional narcotics task forces in the state at the time we submitted our Petition competing for \$33 million in short-term Byrne Grants which are administered through the Office of the Governor. Since then, the Capitol Area Narcotics Task Force disbanded. Others have been fraught with scandal and shame. See, Nate Blakesley, “The Numbers Game: An Inside Look at and East Texas Drug Task Force”, *Texas Observer*, October 28, 2001.

We began to lose hope in the federal government's resolve in this matter. Our continuing commitment to bring justice to Tulia combined with our recently gained knowledge of similar miscarriages of justice compelled us to turn to the Attorney General of Texas.

On July 20, 2002 ACLU submitted a Petition for Review to the Texas Attorney General's Office. We urged an investigation "into racial profiling and civil rights abuses by all Texas Regional Narcotics Task Forces and all prosecutions under the Texas Controlled Substances Act involving Officer Coleman, Swisher County Sheriff Larry Stewart, and Swisher County District Attorney Terry McEachern." (Petition attached). In that Petition, we not only requested investigation of the Panhandle Regional Task Force, but also Task Force abuses that transpired in Hearne (Robertson County), Del Rio (Val Verde County), Caldwell (Burlleson County), and LaGrange (Fayette County).

On August 1, 2001, we received correspondence from Michael McCaul, Deputy Attorney General for Criminal Justice, in which he stated that since the US AG was investigating this matter, any effort on the Texas AG's office would be "duplicative". He also suggested that the US DOJ "is the proper authority for this investigation" and that the "federal court system provides the proper forum and remedies should criminal violations be discovered during this investigation."⁴

It is our position that the Texas Attorney General is shirking his responsibility in the most shameless manner. This will no doubt bring further embarrassment to the people of Texas, especially the law enforcement community. We urge this Committee to send in no uncertain terms a message to the Texas AG's office that you expect better.

IV. The AG must enforce the Texas Public Information Act

Regrettably, there is a mounting assault on public information in our nation today, and we must do everything possible to protect it in our state. The recent enforcement of internal edicts and restrictions issued by federal bodies, such as the Immigration and Naturalization Service, puts the integrity of our state courts and law enforcement agencies in jeopardy. This is an affront to the principles of open government and equal justice, as evidenced by the ongoing battles between the Department of Justice and our nations' courts. Attorney General Ashcroft will likely continue to restrict the release of public information. It is up to our local elected officials to protect accountability and open records in Texas by counteracting this pattern of secrecy in our own state legislation.

In order to balance the public's need for an accountable democracy with investigator's needs for secrecy, we must narrowly define confidential information in

⁴ In a recent phone conversation, a representative of the Texas Attorney General's office informed me that the AG can not investigate anything unless they are requested to do so by a local District Attorney. We reject that interpretation. But if this is so, the Legislature must make such reforms necessary to overcome that limitation. The Tulia example provides a perfect case study. Is it likely that the local Judge and District Attorney in Swisher County whose hands are not clean will invite an external investigation of the incident?

light of every person's basic Constitutional rights. As you know, most open records requests are filed—not by terrorists—but by members of the press, concerned citizens, public interest organizations, businesses, and others with an interest in fairness or justice. It is not sufficient to wrap the secrecy in the flag and claim that an exemption will deter terrorism. Demonstrable proof should be required. We must retain our strong presumption in favor of openness. In the preamble to the Texas Public Information Act, Government Code Section 522.001 states:

(a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy.

(b) This chapter shall be liberally construed in favor of granting a request for information.

The ACLU of Texas, along with the Muslim Legal Fund of America, the American-Arab Anti-Discrimination Committee, and others desire to verify that our government is operating within the bounds of the law. Yet we have had our efforts thwarted at each juncture. We offer the following chronology and arguments for the importance of upholding the Texas Public Information Act.

June 17, 2002: Public Information Request regarding Mr. Shadi Kufash, originally sent to Denton County Public Information Officer deferred to Attorney General Cornyn's office with plea for exemption

- Case # 167449. Response from AG's office **due by August 22th**: as per Government Code Section 522.001
- Follow up letter sent by ACLU of Texas citing U.S. District Court Judge Kessler's decision requiring Department of Justice to release names of detainees.

August 6, 2002: Public Information Request regarding Mr. Majid Al-Shihiri, originally sent to Denton County Public Information Officer deferred to Attorney General Cornyn's office with plea for exemption. Response from AG's office due by October 18th.

August 6, 2002: Public Information Request regarding Mr. Abdullah Yousef, originally sent to Denton County Public Information Officer deferred to Attorney General Cornyn's office with plea for exemption. Response from AG's office due by October 18th.

This exchange of information requests and letters evidences the current open government issues and the responsibility of the Texas Attorney General's office in deciding them. The ACLU of Texas, along with many local media publications, have repeatedly filed open record requests for information pertaining to the names, criminal or

immigration charges, medical or dietary conditions, and duration of sentence of “detainees” in Denton County Jail, with whom INS contracts detention space. These requests have been systematically turned over to Attorney General Cornyn’s office in efforts to receive a confidentiality exemption under §552.101. An August 6th letter to the AG’s office from the ACLU of Texas explains the issue, in relevant part:

On June 17, 2002 the Denton County District Attorney’s office sent two open records requests to your office for evaluation. I write this letter to ask that you consider the broader points of the public information requests and the implications of denying them. Denton County has based its position of non-compliance on Government Code §552.101 of the Public Information Act, which states that, “information is excepted...if information is considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Information regarding the names, medical conditions, and criminal status of inmates and jailed individuals is not considered to be confidential, neither constitutionally nor statutorily. On the contrary, the importance of making such information accessible to the public is what prompted the Federal and Texas Open Information Act legislation. Without access to such records, there is little way for the public to hold jails accountable for violations, or for the detainees to learn about and receive legal counsel to which they are entitled. It is clear that Denton County or INS is wrongly using the third factor, that of your judicial opinion, as the last resort in their attempts to evade this request.

Accordingly, we feel that the Attorney General would fail to uphold the current Texas Public Information Act if he were to allow such non-compliance and grant exemptions too liberally. We are still waiting on a response from the Attorney General’s Office on all of these particular cases.

We base this position on the following:

Sheriffs must regularly report the names and reason for detention of people in custody and of the authority under which they are detained.

The Texas Code of Criminal Procedure Art 2.19. requires that Sheriffs produce daily, weekly and monthly reports for various purposes. These reports include the names, charges, and other identifying information about inmates, as well as the authority under which they are being held. Therefore, Denton County’s argument that the requested information is confidential as belonging only to INS records is false in terms of basic information.

Also, county jails (which are run by Sheriffs) are clearly defined as local governmental bodies, and are not exempt from the Act as governmental agencies simply because of their contract with INS. §552 provides that:

The definition of the term “governmental body” encompasses all public entities in the executive and legislative branches of government at the state and local levels. Although a sheriff’s office, for example, is not within the scope of section

552.003(1)(A)(i)-(xi), it is supported by public funds and is therefore a “governmental body” within section 552.003(1)(A)(xi).15

No law makes the names of people in jail, reason for detention, proposed release date, and other "basic information" confidential

In fact a long history of rulings makes them public. In *Houston Chronicle Publishing Co. v. City of Houston*, (536 S.W.2d 559, Tex 1976.), the Texas Court of Civil Appeals, Judge Brown held that “the legislature expressed an intention in Act to make all records available to public, including press; that police blotter, showup sheet, and arrest sheet did not come within exception to Open Records Act and thus were public records available to press and public”

Cornyn himself has upheld the public nature of this information in previous letter opinions. He has held that only information that would actively disrupt jail security (such as a sketch showing security measures, information about actual physical location of individual prisoners within the building, etc.) can be withheld,

Because you have not provided an adequate particularized explanation, you may not withhold the names of the inmates contained in the daily report public disclosure pursuant to section 552.108(b)(1) of the Government Code. Further, you have informed this office that the department has routinely been placing daily reports, which include the names of inmates, in the jail lobby. *See* Gov't Code § 552.007. Accordingly, you must release the names of the inmates confined in the county jail on April 24, 2002, from the submitted daily report. The remaining information in the daily report is not responsive to the present request and need not be released to the requestor.

To summarize, we conclude that the department must release the names of the inmates confined to the county jail on April 24, 2002, from the submitted census report and daily report. (OR2002-4171)

Attorney General Ashcroft has tried to issue an edict keeping the names secret and any hearings closed. This edict has no statutory or judicial authority. In fact, federal judges are now finding it Unconstitutional.

An unconstitutional edict, once struck down, should not be used to maintain the secrecy of these detentions.

In a recent decision, US District Judge Gladys Kessler issued a ruling ordering the DOJ to release the names of all detainees being held in connection with the September 11th attacks and to do it within 15 days. In her 47-page opinion, she was critical of what she termed the “secret arrests” made by the federal government in the wake of 9/11. She wrote, “The idea of secret arrests is odious to democratic society and profoundly contrary to the bedrock value of a free and open society”. Making the names of detainees public is critical information for anyone outside the government who is trying to determine whether the detainee’s rights were violated and whether these individuals are actually connected to any crimes. As Judge Kessler put it, “the public’s interest in learning the

identity of those arrested and detained is essential to verifying whether the government is operating within the bounds of law.”⁵

As the relevant federal law is consistently found invalid, we must look to state law to determine the applicable limits to public information.

Our state policy is that information is public unless it is confidential by "law, either constitutional, statutory, or by judicial decision." PIA Art. 552.101

It is important to interpret the Texas PIA as a law in favor of open records, and realize that an exemption can only be granted where its foundation is proven valid. The authority used as support for secrecy are internal INS regulations, and not made into law, neither “constitutional, statutory, or by judicial decision.” Texas must remain committed to open government, and if the final decision rests in the hands of Attorney General Cornyn, then he must remain committed to the written legislation. He should not be intimidated by federal muscle, and arguments claiming the supremacy of federal regulations requiring state secrecy should not be considered unless they are valid law. In the current situation, where the federal statute is not solid, the Texas provisions are.

Cornyn's first duty is to the Public Information Act and to the citizens of Texas.

As said before, Cornyn must remain faithful to the Texas Public Information Act and consider the weight of his decisions on the future enforcement of the Act. He must also consider the many Texans it will affect each time he issues an opinion limiting open government. Those detainees have concerned families and friends who are entitled to know basic information regarding their detention. All of us have an interest in maintaining the standards and integrity of our criminal justice and law enforcement systems. To this end, we must be weary of limiting their accountability.

V. Conclusion

The Attorney General of Texas is sworn to uphold the laws and constitution of the State of Texas and of the country. We submit that the Attorney General’s office has been remiss in the fulfillment of those duties.

The Texas Attorney General’s Office has not obliged by the Hate Crimes Act, he has not defended the civil rights of Tulia, Texans and that he must be instructed by this Committee to enforce the Texas Public Information Act..

⁵ The New York Times editorialized that “Judge Kessler’s decision is correct on the law, and it helps define a sphere of freedom that, even in these times, the government must respect.” (NYT, 8/6/02). The Los Angeles Times said, “There was an understandable impulse to cast a broad net for people and information. But the post-September 11 emergency does not justify long-term changes that would snuff out the light and openness that distinguish our democracy from the tyrannies that would destroy it.”

We urge that the Judicial Affairs Committee take firm action pursuant to its oversight capacity over the Attorney General's Office and see that our laws and Constitution are honored.

WCH 8/15/02