



**ACLU**

AMERICAN CIVIL LIBERTIES UNION

**LEADING** *the way through* **CHANGING** *times*

ANNUAL REPORT  
FISCAL YEAR 2004



Last year was a year in which the United States waged preemptive war against Iraq — sparking the largest protest movement in 30 years — and took aim at same-sex couples who wished to marry. It was a year in which Congress voted to dismantle John Poindexter’s Orwellian “Total Information Awareness” program, and a two-ton Ten Commandments sculpture was removed from an Alabama courthouse, by order of the Supreme Court.

# A YEAR OF CHANGE

It was a year of successful interventions in high court decisions concerning university admission policies and sodomy statutes. 2003 has been a year of grassroots campaigns opposing provisions of the so-called “Patriot Act,” culminating in the passage of pro-civil liberties resolutions in more than 200 communities. This was also a year of mass pardons for Texans who had been jailed on false drug charges.

**This annual report is about the extraordinary leadership the ACLU provided in an uncertain time — not only on the national scene but in towns and villages throughout the country — and about its critical day-to-day work, which is unabated.**

It was a year of triumph, struggle and wrenching change across America — in which the ACLU loomed very large, defending fundamental freedoms when the government wavered.

It is a tribute to the courage and convictions of thousands of attorneys, staff members, clients and card-carrying members who have made the ACLU the nation’s premier guardian of liberty and an essential adjunct to its system of checks and balances.



## THE COURAGE TO SPEAK OUT



By Nadine Strossen

**H**eroes walk among us. That is how I think of the hundreds of thousands of people who defend democracy in our time by speaking out against government repression, standing up for their rights or joining the ACLU.

It takes courage to challenge authority, as the future founders of the ACLU realized at the dawn of World War I, when they began taking aim at government abuses.

Consider Muhammad Ali, who was prosecuted and stripped of his heavyweight title for his conscientious objection to the war in Vietnam, and the Jehovah's Witnesses who were tarred and feathered for refusing on religious grounds to salute the flag.

Like Ali, a few of our clients were already famous. But most were just ordinary people who knew in their hearts that racism, suppression of dissent and religious repression violate our nation's founding ideals.

Some of the very bravest are those who stand up for separation of church and state, a principle that is often misconstrued as being

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"Jails are waiting for them," *The New York Times* thundered in 1917, expressing the prevailing view that "good citizens" would refrain from criticizing their government with a war on.

In contrast, looking back on a century of change in December 1999, the *Times* marveled at the revolution that the ACLU had unleashed in less than 80 years. We had used "the law's majestic machinery" to "right the injustices of everyday life," the *Times* said — improving prison conditions, reducing government secrecy and advancing the rights of women, foster children and the mentally ill.

But the struggle has continued, still carrying enormous risk for ACLU plaintiffs and their lawyers today, as it has throughout our history.

anti-religious. Throughout the ACLU's history, no other issue has sparked as much rancor, or as many death threats. In this highly charged area, not even a legal victory can ensure a pleasant life.

This can be seen in the experiences of just a few ACLU clients:

In Pontotoc County, Miss., Lisa Herdahl paid a high price for her legal victory in a school prayer case: She lost her job. She received bomb threats and death threats. And her children, who are Lutherans, were ostracized and demonized as atheists and devil-worshippers — even by some of their teachers.

In Oklahoma, fanatics firebombed the home of Joann Bell, a member of the Nazarene church, who opposed school prayers because she



➤ New York, 1963. Cassius Clay (Muhammad Ali) shows up at weigh-in with his mouth taped shut.

Despite the heavy personal price they pay, these ACLU clients and activists stand firm in their devotion to individual freedom. As Lisa Herdahl explained, “My children are learning what being a minority means ... they’re learning to stand up for what they believe in, no matter whether the majority thinks that’s right or not.”

Majority rule can be so intimidating that it can become an act of courage merely to join the ACLU — as the 1988 Democratic presidential

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believed that prayer should be private. Bell lost a lifetime of possessions in that fire, but was undaunted – becoming an ardent champion of civil liberties and, ultimately, executive director of the Oklahoma ACLU.

The ACLU’s most recent Supreme Court victory in a school prayer case – striking down school-sponsored prayer at high school football games in Texas (*Doe v. Santa Fe*, 2000) — had to be heard pseudonymously to protect our clients from persecution. But that didn’t insulate them or their remarkably courageous volunteer ACLU lawyer, Anthony Griffin, from harassment after they won.

candidate, Michael Dukakis, learned when he was vilified by his opponent, George H.W. Bush, for being a “card-carrying” ACLU member.

“Dissent is the highest form of patriotism,” according to Thomas Jefferson — but this has to be learned anew by every generation. So among the hundreds of thousands of requests for assistance that ACLU offices around the country receive each year, I am always particularly inspired by the young people who stand up for their rights against their school authorities. One recent example is Bretton Barber, a proud, card-carrying ACLU member who was only 16 years old in February 2003, when he incurred the wrath of school officials by wearing an anti-Bush T-shirt to school to protest the impending war in Iraq.

Bret realized that freedom of expression “does not stop at the schoolhouse gate,” as the Supreme Court declared in a 1969 landmark ACLU case, *Tinker v. Des Moines*, on behalf of three students who had been suspended for wearing black armbands to school to protest the Vietnam War.

A similar sense of justice motivated Lindsay Earls, a member of her high school’s marching band, when she was asked for a urine sample in a random drug test. She challenged the school’s drug policy as a violation of her Fourth Amendment protection from search and seizure without reasonable suspicion, in a case that went all the way to the Supreme Court. The justices ultimately ruled against her in 2002, overturning her lower-court victories — but Earls had made her point, calling the Constitution “a beautiful thing.”

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Dred Scott case, in which it upheld the rights of slave owners. But by mid-century, the court had broken the back of segregation (in *Brown v.*



Where would the ACLU be without such courageous clients? We could not have gone to court without them. *The New York Times* would not have been able to look back at the turn of the century on a sea change in jurisprudence, which it attributed in large part to cases brought by, or with the assistance of, the ACLU. In 1920, the year of our founding, the Supreme Court had never struck down a single law for violating a constitutional right — except in the

*Board of Education, 1954*). And in a 2003 case (*Lawrence v. Texas*), it delivered a stunning affirmation of gay rights and personal privacy.

The ACLU’s staunch clients and activists have also helped to usher in an enormous shift in public attitudes. Our state-based affiliate offices have proliferated since I graduated from law school and signed on as a volunteer lawyer

back in 1975. We have staffed offices in every state and, as of this year, every affiliate office will include at least one staff lawyer.

In a January 2003 article, *The Chicago Tribune* noted that our membership had exploded in the wake of the 9/11 attacks, as a broad cross-section of the public agreed that we can and should be both safe and free. The *Tribune* called ACLU membership a “badge of honor” among conservatives, such as former Republican Congressman Bob Barr of Georgia, who has

post-9/11 pro-civil liberties resolutions by four state legislatures and more than 359 communities (so far!), stretching from the smallest villages in the Alaskan wilderness to the largest cities on both coasts.

As Supreme Court Justice Ruth Bader Ginsburg said earlier this year of the tension between liberty and security, “security will outweigh ... unless people come forward and say, we are proud to live in the USA, a land that has been more free, and we want to keep it that way.”

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surveillance.

Such alliances are possible  
because we speak in measured,  
informed and nonpartisan ways  
— criticizing specific aspects of  
government actions that violate neutral civil  
liberties principles. People understand that  
what drives us is justice, not ideology.

The broad support for the ACLU’s civil liberties  
concerns, across the political spectrum, can be  
seen in Congress’s recent refusals to pass  
Patriot Act expansions; in the protests that  
greeted the attorney general at every stop on  
his pro-Patriot Act tour; and in the adoption of

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*Nadine Strossen, a professor at New York Law  
School, is president of the ACLU.*

# LEADERSHIP IN A TIME OF CRISIS

Reflections on FY 2004



By Anthony D. Romero

One of the toughest challenges for any organization in times of crisis is holding fast to its goals, as we saw after 9/11.

Many well-intentioned people joined the stampede for security-at-any-cost during those first weeks

and months, when our nation's leaders rode roughshod over immigrants' rights and tried to silence their critics. By coming up with a title whose first letters spelled "USA

would be little more today than a moldering relic of democracy. With no one to defend the unpopular and outnumbered, the freedoms enumerated in our Bill of Rights would cease to exist. Even when our country is at war, we must remember what we're fighting for — and not just what we're fighting against.

Half a century ago, during a righteous war supported by a broad cross-section of Americans, the ACLU stood practically alone in its opposition to the Japanese-American internments. Three of the greatest names in American liberalism — President Franklin Delano Roosevelt, Supreme Court Justice Hugo

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PATRIOT" for an act that seized expansive powers to spy on and detain law-abiding people, the government essentially cast suspicion on liberty itself.

There were questions among our supporters about how aggressively to fight racial profiling and civil wrongs in the shadow of the war on terror. But the government's disparagement of debate only reinforced the importance of having it.

And our response was unequivocal: America must be both safe and free.

This unwavering defense of freedom set us apart from other organizations, as it has at other critical junctures in our nation's history.

If crisis-driven fear were all that stood between civil rights and mob rule, our Constitution

Black and California  
Attorney General Earl

Warren — saw the confinement of Japanese-Americans as a necessary compromise of liberty to win the war.

When the crisis passed, of course, people saw it differently. Four decades after the end of World War II, the United States government found it necessary to issue a formal apology to the internees, with an act providing partial restitution for what it concluded had been an injustice "motivated largely by racial prejudice."

In the 1970s, the ACLU took another hugely unpopular position, defending the right of a neo-Nazi organization to march in a Chicago suburb. Widely denounced for our uncompromising defense of free speech, we rode out the maelstrom — and in the end, everyone understood what was at stake. It wasn't the organization we were defending, but the "full



protection” of the group’s rights under the law. It was a defining moment for the ACLU, and we have stood behind that principle through thick and thin.

Then, as now, the ACLU’s mission was clear, but the public’s reaction has changed. During the Skokie crisis, our membership rolls dwindled as thousands of ACLU members resigned. This time around, our membership rolls soared as we struggled to keep America safe and free.

The tipping point came in 2003, when we moved from fighting a defensive battle for our civil liberties to an offensive one. We helped to preserve affirmative action and advance gay rights with two landmark Supreme Court rulings despite unprecedented hostility in Washington. Hundreds of cities, states, towns and counties, representing millions of people in all parts of this country, passed declarations opposing infringements on civil liberties contained in the Patriot Act. And we welcomed 145,000 new members to our ranks, also

## **At the ACLU, we also reject leadership We believe that leaders who avoid discussion of who act in secret and discourage**

As 2003 drew to an end and 2004 began, there was growing consensus that the government had gone too far, too fast. It had rushed the Patriot Act through Congress, discouraged debate and trampled values that Americans across the political spectrum had fought to preserve. Broader cross-sections of the American public seemed to understand the importance of taking a courageous stance for freedom. The crisis brought lapsed members back into the fold, and a new generation into the struggle.

For many young Americans, 9/11 was a life-altering event, transforming the way they saw themselves and their world.

And the ACLU, once the only voice opposing the curtailment of civil liberties by Attorney General John Ashcroft and President Bush, became the lead voice in a growing chorus. Conservative political leaders who had stood behind Bush and Ashcroft, like former Republican congressmen Bob Barr and Dick Arme, came and stood with us.

organized our first national membership conference and forwarded more than 1,700,000 letters to Congress opposing sections of the Patriot Act. Political leaders and issues come and go, but the basic American values enshrined in the Bill of Rights endure because our forefathers provided for a government “deriving just powers from the consent of the governed.”

The last couple of years have also been a remarkable period of change for the ACLU. They have underlined the importance of telling the truth, welcoming change, bracing for setbacks and nurturing a relationship with our rank-and-file members and the broader public. As this FY 2004 annual report makes clear, the ACLU led in the courts, in Congress and state legislatures, in communities, on the airwaves and on the printed page. While we appropriately focus on the ACLU’s activity in 2003, many of our efforts came into fruition the following year. For instance, our advocacy in several national security cases in 2003 had the greatest impact

in 2004 when the Supreme Court rendered a trilogy of decisions with a significant impact on civil liberties. Throughout 2003 and for all of our history, our legal, legislative and communications programs promised that the protections in the Bill of Rights and Constitution are more than just paper guarantees — they extend to all persons.

We also delivered that promise locally. Unlike organizations that parachute in and out of local communities, the ACLU is a leader in

expediency to fill their sails of ambition and power. But Churchill rejected this form of leadership. In fact, he responded to his colleague by pointing out that “the British nation will find it hard to look up to leaders who are detected in this position.”

At the ACLU, we also reject leadership motivated by partisan politics. We believe that leaders who avoid discussion of critical issues, avoid taking positions, act in secret and discourage debate do a disservice to the

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every state because we are rooted in those communities. Two-thirds of our 600-member staff are based in state offices across the country, where they can respond quickly when civil liberties are under attack.

“Keep your ear to the ground,” Prime Minister Churchill was advised by a colleague in Parliament during World War II. Today, some organizations and most politicians keep their ears to the ground mainly by reading polls and heeding pundits. Handlers and spin doctors tell them what to say, what to think and how to act. Today’s leaders often test the winds of political

American people — robbing them of the opportunity to understand the issues fully, and to participate fully in their democracy.

As guardians of liberty, the ACLU holds its leadership role sacred. We will never be caught with our ears to the ground — not even for the sake of political expediency. And with the help of our allies and supporters, we know that failure is not an option.

*Anthony D. Romero is executive director of the ACLU.*

## LEADING THE CHALLENGE IN THE COURTS



By Steven R. Shapiro

**W**hether the rule of law applies to the war on terrorism became a major litigation issue during 2003. We do not yet have a final answer to that fundamental question. Indeed, the answer is likely to evolve over many years. The stakes, however,

are extraordinarily high. The security of our nation is a paramount concern. But since the tragic events of Sept. 11, 2001, the ACLU has never wavered in its view that our freedom must be preserved along with our security.

History has repeatedly vindicated the ACLU's position. The natural tendency of governments in moments of crisis is to accumulate power and to treat civil liberties as a dispensable luxury, yet we have never enhanced our security by diminishing our rights.

We now look back with shame on the arrest of dissidents and the mass deportation of immigrants during World War I, the internment of more than 100,000 Japanese Americans during World War II, the blacklisting of alleged Communist sympathizers during the McCarthy era and the harassment and prosecution of anti-war protesters during Vietnam.

Unfortunately, the courts have too often been complicit in these deprivations of liberty. Most infamously, the Supreme Court refused to interfere with the Japanese internment on the theory that it had little choice but to accept the government's assertion that it was necessary to safeguard vital national security interests.

Will the courts learn from that history or repeat it? In 2003, the results were mixed. The ACLU sought Supreme Court review in three cases

that arose in the aftermath of Sept. 11. The Supreme Court denied review in each instance.

The first case involved a challenge to the government's expanded surveillance powers under the USA Patriot Act, which were upheld by a secret court after a closed-door hearing in which only the government was allowed to argue. The ACLU protested both the process and the result by seeking permission to present its civil liberties concerns to the Supreme Court. For whatever reason, the Supreme Court refused to hear the case.

The Supreme Court also denied our request to resolve a conflict between two lower courts on the constitutionality of a Justice Department policy (since revised by the Department of Homeland Security), which led to more than 700 secret deportation hearings following 9/11. One federal appeals court upheld the policy, accepting the government's contention that judges should not second-guess the attorney general's decision. A second federal appeals judge struck it down, observing that "democracies die behind closed doors."

Another federal judge expressed similar views in response to a third lawsuit brought by the ACLU and other civil rights groups seeking the names of hundreds of Muslim men arrested secretly after Sept. 11, mostly on minor immigration charges. Ordering the government to release the names under the Freedom of Information Act, the judge wrote that "secret arrests are odious to a democratic society." Unfortunately, that decision was reversed on appeal by a 2-1 vote, and the Supreme Court again declined review.

Not content to rely on secret arrests, secret hearings and secret surveillance courts, the government has claimed the extraordinary power since 9/11 to label even American citizens as "enemy combatants" and then hold

them incommunicado in military jails for as long as it sees fit. So far, two citizens (and one noncitizen) have received this designation and been imprisoned in the United States. One citizen was captured in Afghanistan; the other was arrested at O'Hare Airport in Chicago. The government's position is that both can be held indefinitely without charges, trial or access to counsel. The ACLU strongly disagreed and filed briefs with the Supreme Court. In a historic repudiation of the government's view, the Supreme Court held in June 2004 that "a state of war is not a blank check for the President when it comes to the rights of the nation's citizens."

On the very same day, the Supreme Court also rejected the government's claim that American courts were powerless to review the fate of more than 600 detainees who have been held at an American military base in Guantánamo Bay, Cuba for nearly two years. Although the military base has been totally and exclusively controlled by the United States for more than a century, the government argued that the detainees could not challenge their detention in an American court because Guantánamo remains formally part of Cuba, thus leaving the detainees in an unprecedented state of legal limbo without any rights. The ACLU and others strongly disagreed. So did the Supreme Court, which upheld the authority of federal judges "to determine the legality of the Executive's potentially indefinite detention of individuals who claim to be wholly innocent of wrongdoing."

The Supreme Court's initial response to the government's claims of unreviewable authority has been encouraging, but this remains a critical moment in our constitutional history. In the past, civil liberties claims that arose during wartime have been far more likely to succeed if brought to the court after the fighting has stopped. That option is not available this time. While there has been much discussion about whether the war on terrorism is really a war,

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there is little dispute that it is unlikely to have a clear and definitive end. As a result, the restrictions on liberty that the government has imposed will have to be judged in the midst of the struggle and, if ultimately upheld, could permanently transform the American legal system and our understanding of freedom.

As critical as these issues are, they were not the only ones in which the ACLU played an important role in 2003. In one tumultuous week in June, the Supreme Court issued landmark decisions on affirmative action and gay rights that were breathtaking in scope.

By forcefully endorsing the use of affirmative action in university admissions, the Supreme Court effectively ended a debate that had been raging since 1978, when Justice Lewis Powell wrote in the *Bakke* case that universities could promote student diversity by considering race as a factor so long as they did not rely on a rigid racial quota. The court strongly reaffirmed

that view in rejecting a reverse discrimination claim brought against the University of Michigan. Along with other civil liberties groups, the ACLU represented the interests of minority students in preserving the principle of affirmative action.

In the gay rights case, the Supreme Court struck down an antiquated Texas sodomy statute that made it a crime for same-sex couples to engage in acts of sexual intimacy inside their own homes. In a powerful essay on human dignity, the court held that the Constitution bars the government from interfering in the private sexual activity of consenting adults. In so doing, the court overruled its own discredited 1986 decision in *Bowers v. Hardwick*, which had too often been

used to justify discrimination against gay men and lesbians. As Justice Kennedy said, “*Bowers* was not correct when it was decided and it is not correct today.” His opinion cited the ACLU brief on several occasions and, significantly, also referred to evolving standards of international law.

We should not become complacent because of these victories. There remains much work to be done. But the fact that these victories came from a court that remains fundamentally conservative is a measure of how far we have come. We can and must continue to build on these accomplishments.

*Steven R. Shapiro is legal director of the ACLU.*



## THE ACLU DOCKET

**Since 9/11, the federal government has severely tested the U.S. Constitution and the Bill of Rights. In the same forceful way it has defended civil liberties since its founding in 1920, the ACLU has taken on this new challenge while continuing to carry out its core legal programs.**

In addition to the ACLU’s cross-cutting work on race and poverty, and the First Amendment, our Legal Department is organized into nine special projects:

- |                                |                                       |
|--------------------------------|---------------------------------------|
| Capital Punishment Project     | Voting Rights Project                 |
| Reproductive Freedom Project   | Lesbian & Gay Rights and AIDS Project |
| Drug Law Reform Project        | Women’s Rights Project                |
| Technology and Liberty Program | National Prison Project               |
| Immigrants’ Rights Project     |                                       |

Through a national network of more than 100 staff attorneys and collaborations with approximately 2,000 volunteer lawyers, the ACLU handles close to 6,000 cases annually.

## TURNING POINTS: LEGISLATIVE ADVOCACY



By Laura W. Murphy

**T**his past year has been a turning point for the ACLU's legislative advocacy. With the infusion of new staff, new resources and new enthusiasm among our members and the general public for protecting civil liberties, the Washington

Legislative Office is now the primary force to be reckoned with in the debate over civil liberties in the nation's capital.

In part, this is because we have become the keystone of a new right-left coalition in Washington that has both injected these issues into the political debate and kept them above base partisanship. In a city divided so sharply along party lines, and in the face of such a zealous assault on basic freedoms, any approach that refused to cross the political aisle would surely fail.

For example, to bring to life the ACLU's "Keep America Safe & Free" campaign, we engaged lawmakers by hiring spokespeople with whom they could identify.

The Washington Office hired former Georgia Republican Congressman Bob Barr to help amplify ACLU outreach to conservative groups and the Republican party on issues relating to federal law enforcement and personal privacy. These particular concerns are at the very heart of a cross-partisan agreement on civil liberties. As a result of our efforts to engage conservatives, the number of Republican co-sponsors of bills to amend the Patriot Act increased.

We also hired former Democratic White House spokesman Joe Lockhart to reach out to the Democratic party and its presidential

candidates. The subsequent prominence of the Patriot Act in stump speeches and debates was no accident; it was the result of an engineered strategy by the Washington Office to elevate civil liberties concerns in the presidential races.

The Washington Office also hired four experienced field organizers who immediately hit the stump around the country to educate and organize Americans to pass local resolutions denouncing key provisions of the Patriot Act. These grassroots efforts, coordinated with the hard work of ACLU affiliates, led to standing-room-only town hall meetings, educational sessions with local editorial boards and the creation of broad coalitions with conservatives and Muslim, Arab and South Asian groups.

This dialogue across the political spectrum yielded tangible results. In 2003 alone, 218 resolutions critical of the Patriot Act were adopted in 35 states, representing more than 250,000 Americans. By 2004, many passed with broad bipartisan support. The dramatic growth in the number of resolutions began to be mentioned in editorials and news articles about the Patriot Act all over the country.

As a result of this grassroots movement, our prominence increased. We were called upon more than any other civil liberties group to testify on post-9/11 civil liberties problems before Congress. Our office also became the foremost architect for drafting new bipartisan legislation and for creating coalitions to support amending the Patriot Act.

Our work came to a climax in January of 2003 when we learned late on a Friday afternoon that the Justice Department had drafted new legislation to vastly expand the Patriot Act. The Domestic Security Enhancement Act of 2003, later dubbed Patriot II, would have expanded access to so-called "administrative subpoenas,"

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# KEEP AMERICA SAFE AND FREE

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which are issued outside the normal criminal-justice system at the discretion of individual Justice Department officials. Patriot II also would have, for the first time in history, allowed the federal government to strip Americans of their citizenship, a power the Framers rightfully feared because it could be abused for political ends.

The Washington Office worked quickly. We were first to provide reporters with a thorough analysis of the act, sparking an uproar among grassroots activists and opinion leaders about its draconian provisions.

At the end of the day, the Justice Department and White House were stymied. Powerful House Judiciary Committee Chairman James Sensenbrenner said the Patriot II bill would pass “over [his] dead body.” Even after Attorney General John Ashcroft toured the country lauding the Patriot Act — and even after the president got in the mix, calling for new Patriot powers — no one was budging. The only Patriot expansion that squeaked through in 2003 was a

relatively minor extension of how “national security letters” (orders for the production of certain records issued without the assent of a judge) can be used against businesses. Notably, national security letter authority has been successfully challenged by the ACLU in federal district court and the government is appealing. In a remarkable turn of events, the ACLU was forced to file its challenge to the extreme secrecy surrounding the use of NSLs under seal. Even now, the identity of our client and other details about the suit remain under a broad gag order imposed at the government’s request. Another major victory by the ACLU in 2003 involved the Pentagon data-mining system initially dubbed Total Information Awareness (TIA). The program was roundly decried by the ACLU and a broad cross-section of conservative and liberal privacy advocates. Conservative privacy-hawk and *New York Times* columnist William Safire, for example, called the program a “super-snoop’s dream.”

The TIA program would have integrated a vast number of national and international public and private databases, containing billions of bytes of personal information about practically every American. The thesis of its main patron at the Defense Department, retired Rear Admiral John Poindexter (the former Reagan national security advisor who was convicted and then pardoned in the Iran-Contra scandal), was that if the government kept records on everyone, it could detect patterns of behavior that would lead to terrorists. The program presented monumental challenges to traditional concepts of privacy and constitutional rights in America — most notably the idea that if the government has no evidence that you are engaged in any wrongdoing, it shouldn’t be surveilling you.

The ACLU urged leaders of both parties — including Representative Nancy Pelosi, Democrat from California, and former Representative Dick Armey, Republican from

Texas — to go to the floor of the House and demand that the program be dismantled. The White House was forced to back down, and sought Poindexter's resignation.

When future historians look back to write the story of our civil liberties after 9/11, they could well look at last year as the year when the American public — egged on by the ACLU — began a concerted push to roll back policies, laws and regulations that had gone too far, too fast after the worst terrorist attack in American history.

That the ACLU has played a significant role in this turning point is a testament to the courage of our supporters and the worth of the principles that inform our policy positions. I thank and applaud all of our members and supporters for helping us do what we do.

*Laura W. Murphy is  
director of the Washington  
Legislative Office of the ACLU.*

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# TURNING THE TIDE OF PUBLIC OPINION



By Emily G. Tynes

In a world of 30-second sound bites, it's not just what we say to a nation reeling from the latest outrage — it's how we say it. This is as true today as it was in 1999, when the ACLU published its first major report on "Driving While Black" —

contributing an electrifying new term to the language that resonated with millions, spurring them to take action.

After 9/11, there could be no question of trading away our fundamental freedoms for national security. But how should we sound an alarm, in an era punctuated by "orange alerts," when the government was demanding increased powers to detain and spy on ordinary Americans — and deriding its critics as traitors?

We turned to public opinion research — not, as politicians do, to determine what our agenda should be, but in an effort to reframe the debate. And what we learned from focus groups and surveys of voters was that our initial messages about keeping America "safe and free" had a near-perfect pitch for our time — acknowledging the desire to live a fulfilling life, while fighting terrorism.

We learned that voters fell in three groups. One group said it was wrong to question the governmental policies that encroached on our civil liberties and believed that the nation should relinquish fundamental freedoms in order to be safe. Their position was firm and unmoveable. The second group believed that we capitulate to the terrorists if we relinquish our basic freedoms. This group was worried about giving new powers to the government. Like the first group, their position was firm and unmoveable. But there was a larger group of

voters who fell in the middle, undecided about whether they should give the government more power, or insist that the government protect our basic freedoms as it fights terrorism. This group vacillated between the government's position and the civil libertarian position. If they believed that sacrificing freedoms was the only way to be safe, they were willing to relinquish them. But, it worried them. And so we focused our public-education efforts on helping this group to understand that the government's assertion that we had to give up our basic freedoms in the interest of national security was a false dichotomy. We exhorted them to "Keep America Safe *and* Free." We made this our rallying cry, incorporating it into six major reports, into every editorial board briefing and into every interview and speech we gave in 2003. And we did change the frame for the national conversation about the war on terror. The evidence could be seen on editorial pages of newspapers around the country. For example:

**"Let's give our servicemen and women the tools and resources they need to keep America safe and free."**

*[Atlanta Journal-Constitution editorial, Jan. 14, 2003]*

**"America is still one of the truly safe and free countries in the world, and we should keep it that way."**

*[San Diego Union-Tribune, op-ed., March 17, 2003]*

**"We can — and should — be both safe and free."**

*[St. Louis Post-Dispatch editorial, Sept. 17, 2003].*

**"One side claims to protect their safety and the other claims to protect their liberty. Walking this fine line, we must somehow find a way to keep America both safe and free."**

*[South Florida Sun-Sentinel editorial, Oct. 17, 2003]*

## **We learned that voters fell into three groups.**

One group said it was wrong to question the governmental policies that encroached on our civil liberties and believed that the nation should relinquish fundamental freedoms in order to be safe.

***Their position was firm and unmoveable.***

The second group believed that we capitulate to the terrorists if we relinquish our basic freedoms. This group was worried about giving new powers to the government.

***Like the first group, their position was firm and unmoveable.***

But there was a larger group of voters who fell in the middle, undecided about whether they should give the government more power, or insist that the government protect our basic freedoms as it fights terrorism.

This group vacillated between the government's position and the civil libertarian position. If they believed that sacrificing freedoms was the only way to be safe, they were willing to relinquish them.

***But, it worried them.***

The phrase resonated so powerfully that it entered the popular vernacular, in everything from Boeing advertisements to employee handbooks. Eventually, it was picked up even by politicians who had urged the curtailment of certain liberties. Defense Secretary Donald Rumsfeld thanked military families earlier this year for their “hard work every day to keep America safe and free.” Former U.S. Rep. Newt Gingrich told a hotel owners’ conference that the key challenge in the war on terror is “to be safe and free at the same time.” New York Mayor Michael R. Bloomberg told the 9/11 Commission of his efforts “to keep New York City safe and free.”

“And while you do your part,” President Bush told a nationwide television audience in his Jan. 20, 2004 State of the Union address, “all of us here in this great chamber will do our best to keep you and the rest of America safe and free.”

Bush supporters appropriated it for their own purposes. “I would say Bush and his administration are doing the job we elected them to do: keeping our nation safe and free from tyranny and terrorists,” Daniel J. Loran of San Francisco wrote in a letter to the editor of *USA Today*.

Another example of how the ACLU has used communications tools to refocus public debate, even when sentiment runs against us, could be seen in the battle for recognition of marriages between same-sex couples.

We commissioned public-opinion polls and focus groups by Belden Russonello & Stewart in 2003, which again found opinion equally divided among three camps: supporters and opponents, whose minds were already made up, and a middle group that was neither consistently supportive nor opposed. This third group was uncomfortable discriminating against someone who wanted to make a lifelong commitment to a person he or she

loved — providing an opening for exploration in how to communicate to that ambivalent third.

“If you would have talked to me five or ten years ago I would have said marriage is strictly for procreation and only people who have that intention should be married,” a man who described himself as conservative told a focus group in Phoenix in 2003. “But... I’ve changed my viewpoint on this in just the last year... I don’t believe people have the right to impose their values or what they think is right on other people.”

A constitutional amendment banning such couples from marrying “should have no place in government,” said a conservative woman in Columbus.

We saw that by appealing to their sense of fairness, we might persuade such people to walk with us. So we immediately convened a meeting with the heads of gay-rights organizations and other allies, at which we stressed the importance of framing the debate not as a gay-rights issue, but as a civil-rights issue. They in turn shared our findings with networks of organizations, activists and policymakers, whose words and actions shifted the tenor of the debate. Shortly thereafter, the mayors of New Paltz, N.Y. and San Francisco recognized and officiated at marriages between same-sex couples. And Sen. Edward M. Kennedy of Massachusetts thundered on TV’s “Meet the Press” that he had “fought discrimination and prejudice” all his life, and would continue to do so in this case.

The ACLU also uses such research and communication tools to understand the nation better, and chart a course for the recruitment of new members. For example, a poll taken before 9/11 (in the fall of 2000) revealed that better than eight out of 10 Americans (85 percent) had heard of the ACLU — but less than half had strong opinions about it, either favorable or unfavorable. Young Americans,

blacks, Hispanics, single adults, Democrats and those who had been to graduate school were more likely to hold favorable opinions; and older Americans (over 60), whites, Republicans, married adults and those who attend religious services frequently were more likely to have negative opinions. But few in either group were familiar with the principles that guide our work, or with our 84-year history.

Such insights will help us expand our reach, adding to our ranks a new generation of civil libertarians, through college tours and public-service

**Our challenge is to continue to define ourselves, as opposed to letting our opponents define us, as we did in powerful and important ways last year, so that all will know what we stand for.**

campaigns that engage young people in our issues.

Our challenge is to continue to define ourselves, as opposed to letting our opponents define us, as we did in powerful and important ways last year, so that all will know what we stand for.

We stand for a balance between safety and freedom, for freedom of speech, for equal protection under the law and against government secrecy – but we don't stand with one party or another. We are vigorously, vibrantly, nonpartisan, boasting coalitions (for example, for privacy and freedom of worship) that are the envy of other organizations. We are fiercely patriotic, holding our leaders to the standards enumerated in our Constitution — in the courts, in Congress and in the court of public opinion. And we are ever vigilant.

*Emily G. Tynes is director of communications of the ACLU.*

There were no such things as  
“prisoners’ rights,” “civil rights” or  
“women’s rights” in America a century ago, except  
in the minds of visionaries like Roger Baldwin  
or Margaret Sanger, who saw the  
**American Civil Liberties Union as a  
bulwark against injustice.**

From its inception, the ACLU successfully defended groups and individuals that others shrank from acknowledging, in a country divided by wealth, color and class lines.

That work has continued into the 21st century in embattled communities, despite setbacks, sometimes in partnership with other organizations. After the 2000 elections and the 2001 terrorist attacks in New York and Washington, conservative majorities in the courts and Congress threatened to roll back progress in many areas.

In Congress and the courts, ACLU lawyers and lobbyists continually chipped away at injustice. By the year 2003 we helped to build such a solid body of legislation and case law that some of the toughest struggles began to bear fruit.

## LESBIAN AND GAY RIGHTS

In 2003, a powerful legal barrier to gay and lesbian rights came crashing down, in a Supreme Court ruling so sweeping and emphatic that discriminatory laws tumbled in a dozen states, and continue to do so.

In *Lawrence v. Texas* — which joins *Brown v. Board of Education* and *Roe v. Wade* in the pantheon of historic cases that have expanded the boundaries of civil rights — the court on June 26, 2003 struck down a Texas sodomy law that applied only to gay people. Citing a friend-of-the-court brief from the ACLU, the court found that gay people have the same right to form intimate relationships that heterosexuals have.

It was an unmitigated triumph, depriving prosecutors, police, judges and employers of a tool that has been used repeatedly to discriminate against lesbian and gay people in everything from jobs to child-custody disputes and criminal proceedings. It overturned *Bowers v. Hardwick*, a 17-year-old Georgia case, and made sodomy laws obsolete in 12 other states.

The Supreme Court also sent Matthew Limon's case back to the Kansas courts for reconsideration in light of its decision in *Lawrence*. Limon, who is represented by the ACLU, was prosecuted for having sex with another teenager. His sentence was 16 years longer than it would have been if the other teenager had been a girl, because Kansas's "Romeo and Juliet" law covering teenagers who have sex only applies to heterosexuals. Unfortunately, as this report went to press, Limon was still in prison pending an appeal to the Kansas Supreme Court.

But *Lawrence* forced a seismic shift in the debate about equal rights for lesbians and gays across the United States:

In Massachusetts, the state Supreme Court ruled in November 2003 that the state could no



➤ Valerie Damron (left), here with her partner Ann Elliot, won back custody of her two children in a North Dakota Supreme Court decision that completely overturned an influential 1981 anti-gay parenting ruling.

longer discriminate against same-sex couples in marriage. The ACLU was a friend-of-the-court in the case, which led the state to allow same-sex marriages beginning on May 17, 2004.

In the western states, a Federal Court of Appeals ruled in a case brought by the ACLU and the National Center for Lesbian Rights that officials must take steps to protect lesbian, gay and bisexual students from abuse and anti-gay harassment at school. The court declared in April that schools must eliminate such harassment when they learn of it.

In Kentucky, a federal court ordered Boyd County High School — which had shut down all school clubs for four months amid controversy over a Gay-Straight Alliance — to let the groups start meeting again. The ruling helped the ACLU to secure a very favorable settlement in the case, which included training of both students and faculty on how to prevent anti-gay harassment.

In Nebraska, the ACLU and Lambda Legal filed a lawsuit in federal court challenging a state constitutional amendment that not only limits marriage to a man and a woman, but also prohibits the recognition of any type of

same-sex relationship. In November, the court issued a favorable ruling, which allows the case to go forward.

In California, ACLU affiliates lobbied the state legislature to expand its domestic partnership system to provide same-sex couples with nearly all of the rights and legal protections that different-sex couples receive when they marry. The new law, AB 205, will go into effect in January 2005.

In North Dakota, the state's highest court unanimously agreed to allow a lesbian mother, represented by the ACLU, to maintain primary custody of her two children, striking down a 1981 decision that has been used to deny lesbian and gay parents custody because of their sexual orientation. Possible prejudice from others is not a valid reason to take children from lesbian and gay parents, the court said.

And in Florida, the ACLU continued its challenge to a state law that prevents gay people from becoming adoptive parents. Oral arguments were held in Federal Court in Miami in March. Unfortunately, the court sided with the state and the case is now back before the court for reconsideration.

## IMMIGRANTS' RIGHTS

The ACLU's Immigrants' Rights Project, with a historic mission of enforcing and expanding the constitutional and civil rights of immigrants, continued to challenge post-9/11 policies that deny fundamental rights. It brought major cases against unconstitutional federal and state policies and laws, waged public education campaigns in the media and at conferences around the country, launched a Spanish-language Web site and developed a public service campaign for Spanish TV and radio featuring California Supreme Court Justice Cruz Reynoso.

In the courts, it pressed the government to open post-9/11 deportation hearings to the press and public and to disclose the identities

and locations of more than 1,000 Arab and Muslim immigrants who were detained indefinitely. The courts of appeals split over the constitutionality of the secret hearings (which the government claims to have ended) and the Supreme Court refused to hear the case. In another ruling, a divided appeals court declined to compel disclosure of detainees' identities; however, the Justice Department's own report later confirmed many of our concerns that immigrants with no connection to terrorism had languished in federal lock-up for months and that the Justice Department had actively impeded their access to attorneys and family members.

In the IRP's second major Supreme Court argument in the last three years, *Demore v. Kim*, we argued that a mandatory, no-bail immigration detention law violates the Constitution. Four circuits adopted our arguments, invalidating the law, but the Supreme Court narrowly reversed all those decisions (5-to-4), upholding the statute. Justice Souter's dissent eloquently voiced our view that "lock[ing] up a lawful permanent resident of this country when there is concededly no reason to do so forgets over a century of precedent acknowledging the rights of permanent residents."

Immigrants fared better in our challenges to other detention statutes around the country. In *Rosales-Garcia v. Holland*, the en banc Sixth Circuit extended the Supreme Court's 2001 *Zadvydas* ruling to hold that indefinite detention of arriving immigrants who cannot be expelled is impermissible. In a clear defeat for the Bush administration, the Supreme Court refused to review the ruling.

The IRP also challenged the attorney general's attempts (in *NCLR v. Department of Justice*, and *NCLR v. Ashcroft*) to involve local police in civil immigration enforcement. In April we filed suit representing a coalition of civil rights and immigrants' rights groups to force the Justice Department to disclose a secret policy (reversing its own long-held view) that local police departments have the "inherent authority" to

arrest and detain individuals who are suspected solely of violating civil immigration laws. And in December, we filed suit (as part of a broad coalition) to prohibit the unauthorized entry of civil immigration information into the FBI's national criminal database, the National Crime Information Center (NCIC), which state and local police access millions of times daily.

Finally, in response to new state discrimination against legal immigrants, the IRP led a legal team assembled by the ACLU of Colorado to challenge as unconstitutional a Colorado statute that sought to stop thousands of legal immigrants suffering from disease, disability and injuries from receiving essential Medicaid services. In emergency litigation (*Soskin v. Reinertson*) brought in April, we obtained an injunction that remained in effect pending appeal.

## **PRISONERS' RIGHTS**

In 2003, the National Prison Project's staff of five lawyers and two litigation fellows campaigned for prisoner rights and for humane treatment of prisoners, detainees and incarcerated juveniles throughout the country. Since its founding 32 years ago, the project has fought for constitutional standards of confinement, focusing on provision of medical (including mental health) care, protection from assault, decent confinement facilities, prisoners' access to the courts and their ability to engage in free expression. It also promotes progressive criminal justice policies that decrease the over-reliance on imprisonment as a means of social control.

### **Protection from Assault**

After a 12-year-old girl was sexually assaulted by her cellmates at the District of Columbia's juvenile facility, we obtained an order from a judge that all girls be given single rooms. Our Colorado lawsuit on behalf of a woman who

had been sexually assaulted by a jail transport company guard put the negligent company out of business. We also won important procedural victories, which the state has appealed, in our action seeking redress for a Texas prisoner who was bought and sold as a sex slave for 18 months.

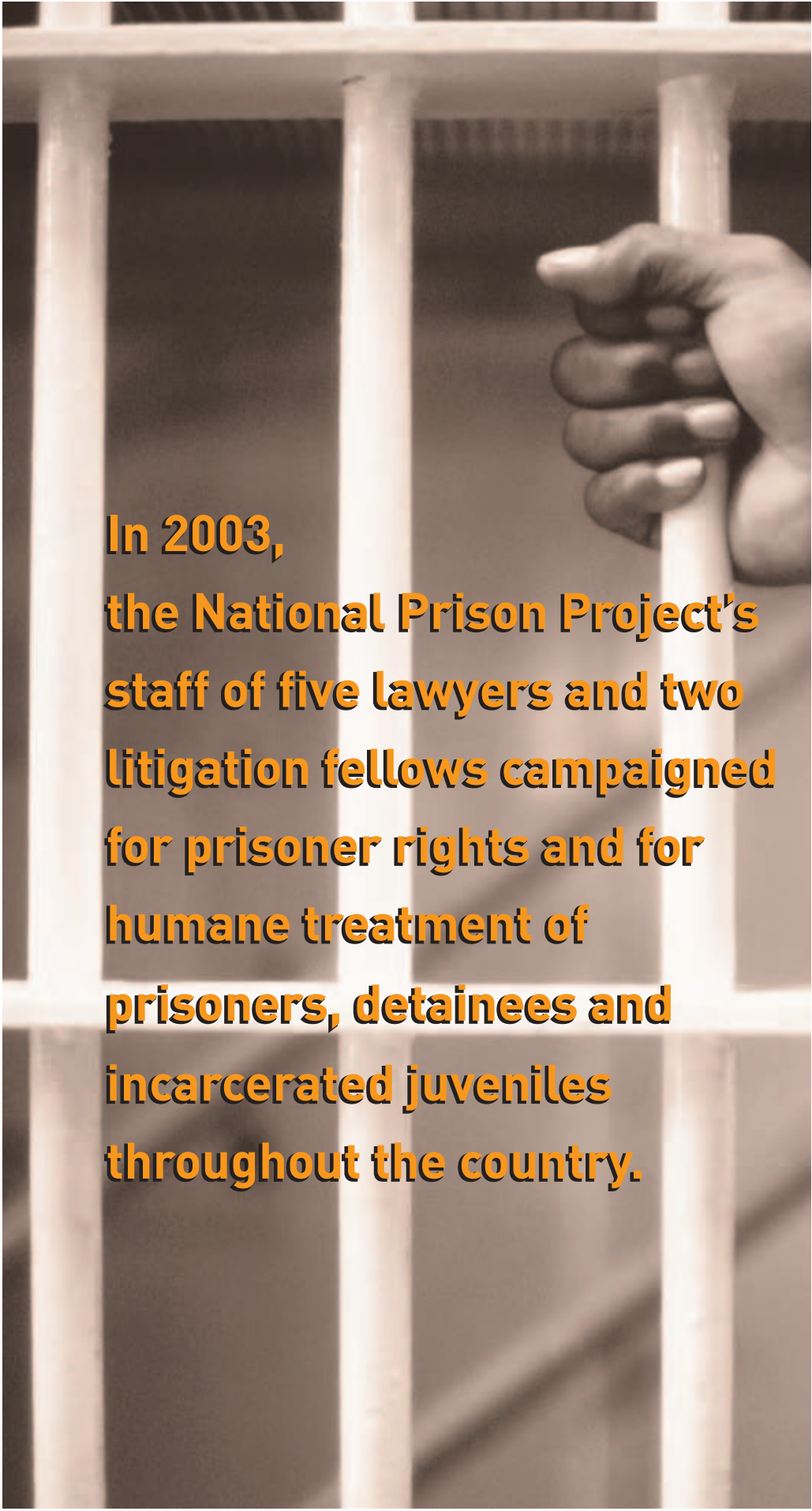
### **Medical Care**

Our litigation forced Michigan to address constitutional violations in medical care affecting thousands of prisoners, and the state of Washington to improve the quality of medical care at the Washington Corrections Center for Women. A \$500,000 settlement in the Washington case will be used to set up a fund for the benefit of inmates. In Baltimore, our work resulted in an agreement from the state to air-condition the entire Women's Detention Center, where ventilation and structural defects subjected pregnant and chronically ill women to temperature levels approaching 120 degrees. We are now seeking to broaden this litigation to address inadequate medical care and inhumane conditions throughout the Baltimore jail.

### **Mental Health Care and Secure Confinement Issues**

It is impossible to separate the issue of mental health care from the issue of high-security confinement because, as has been repeatedly documented, highly restricted confinement engenders and exacerbates mental illness. In 2003, we took on "supermax" prisons in New Mexico and Connecticut, winning comprehensive settlements in both cases: In May, a federal district court ordered changes to remedy extreme deprivations of human contact and grossly deficient mental health care on Mississippi's death row. (However, the state appealed, and we are awaiting a decision from the Fifth Circuit Court of Appeals.) Also, as a result of our efforts, the New Orleans jail is about to open a new psychiatric facility.





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### **Environmental Health and Safety**

Our victory in the Mississippi death row case also produced a comprehensive injunction addressing the facility's lethal summer heat levels, pervasive filth, nonfunctional plumbing and uncontrolled vermin infestations. In December 2003, Michigan proposed a comprehensive plan to address fire-safety violations affecting thousands of prisoners in its oldest and largest prison, as a result of an injunction that we won. (However, both orders have been appealed.)

### **Promotion of Sound Correctional Policies**

After almost two decades of fighting the segregation of prisoners who are HIV-positive, the NPP finally achieved two important victories: In Mississippi, we organized a grassroots campaign that ultimately led the commissioner of corrections to agree that prisoners with HIV should be integrated into general population programs. In Alabama, program integration was formally adopted in January 2004.

## REPRODUCTIVE RIGHTS

The ACLU Reproductive Freedom Project is dedicated to ensuring that everyone — rich or poor, young or old, rural or urban — can get the reproductive health care that he or she needs.

### The Federal Abortion Ban

In 2003, we focused significant time and effort on fighting an unprecedented attack: The Federal Abortion Ban. On November 5, President Bush signed the first-ever Federal Abortion Ban, known by its sponsors as the “Partial-Birth Abortion Ban Act of 2003.” The ban was a broad attack on abortions as early as 13 weeks in pregnancy, failing to include an exception to protect women’s health, as required by the Constitution.

As the president’s pen hit the page, the ACLU was in federal court seeking immediate relief from this broad and dangerous ban in a legal challenge brought on behalf of the National Abortion Federation and seven individual physicians, (*NAF v. Ashcroft*). Within hours, the court blocked the government from enforcing the ban while the case was pending.

The ACLU’s legal challenge to the Federal Abortion Ban was one of three brought by reproductive rights groups throughout the country. By September 2004, all three federal courts that considered the ban had held it unconstitutional because it endangered women’s health. The U.S. Department of Justice has appealed the decisions and we continue our work to stop this extreme measure from harming women.

### Ensuring Reproductive Freedom for All

While the Federal Abortion Ban would in one broad stroke gravely impinge on women’s reproductive health and rights, anti-choice lawmakers throughout the country have been chipping away at reproductive freedom for years. For more than three decades, the ACLU

Reproductive Freedom Project has focused on blocking laws targeting the women with the least political clout and who are hardest hit by lawmakers’ efforts: poor women and teenagers.

### Teenagers

On December 29, two days before a New Hampshire law restricting teenagers’ access to abortion was to take effect, a federal district court declared the measure unconstitutional and barred its enforcement. Earlier in the year, in an effort to protect young women’s health, the ACLU, the New Hampshire Civil Liberties Union and Planned Parenthood Federation of America had filed the lawsuit *Planned Parenthood v. Ayotte*. The law required health care providers to notify a parent at least 48 hours before providing an abortion to patients under 18. However, it contained no exception for circumstances in which the delay would seriously threaten a young woman’s health. In cases where a teen’s life was threatened, the law required physicians to delay a life-saving abortion until they could certify that the abortion was necessary to prevent her imminent death. The state appealed to the U.S. Court of Appeals for the First Circuit; the case was argued before the court in the summer of 2004; we await a ruling.

In March, we distributed more than 3,000 copies of a new guide, “Protecting Minors’ Health Information Under the Federal Medical Privacy Regulations,” designed to assist health care providers in their work with adolescents. Unique in its focus on minors and the new federal privacy regulations, the guide has been well received by numerous medical associations and physicians’ groups.

### Low-Income Women

Soon after the U.S. Supreme Court upheld a federal ban on the use of federal funds for medically necessary abortions in 1980, the ACLU pioneered the use of state constitutions to restore Medicaid coverage — through state funds — for those services. As a result of this

work, we have helped reinstate public funding for abortion for more than 40 percent of Medicaid-eligible women in this country.

In December, along with our Georgia affiliate, we filed such a challenge in Georgia state court, *Feminist Women's Health Center v. Burgess*. The affidavits in the case speak of the harm women suffer because of Georgia's discriminatory Medicaid policy: a woman with a condition characterized by severe vomiting was hospitalized for weeks as she struggled to gather money for an abortion, and a woman suffering sickle cell crises every 48 hours was hospitalized for three months, placed on a high dose of narcotics and forced to carry to term. In both cases, the women's doctors had recommended abortions, and Georgia Medicaid

On November 25, the court rejected Catholic Charities' challenge and emphasized that the narrow exemption in the law for religious institutions engaged in religious activities — such as churches, temples and mosques — protects religious liberty while also ensuring the health and rights of employees who work for organizations that provide primarily social rather than religious services. As many as half a million employees throughout the state stand to benefit from this decision. The ACLU and our Northern California affiliate have played an instrumental role in a similar case in California.

#### *Emergency Contraception in the E.R.*

In July, together with our Pennsylvania affiliate, we released a publication to help advocates ensure access to emergency contraception (E.C.) for

## For more than three decades, the ACLU Reproductive Freedom Project has focused on blocking laws targeting the women with the least political clout and the hardest hit by lawmakers' efforts: poor women and teenagers.

had refused to cover them.

Unfortunately, the court denied our request for an immediate end to this harmful policy. But we remain hopeful that it will ultimately rule in our favor.

#### **Increasing Access to Contraception**

##### *Religious Refusals*

Last year, the ACLU and our New York affiliate helped defend a law that requires employers to cover prescription contraceptives in employee benefits packages. Catholic Charities and similar organizations challenged the law in a case known as *Catholic Charities v. Serio*.

rape survivors, "E.C. in the E.R.: A Manual for Improving Services for Women Who Have Been Sexually Assaulted." Already, more than 300 advocates have requested a copy. Together with that affiliate, we trained three other ACLU affiliates to survey hospitals in their states, and we are convening national organizations and academics to conduct similar surveys to ensure coordination, shared resources and effective messaging. This affirmative work not only increases women's access to E.C., but also helps build a broader and stronger coalition in support of reproductive freedom.

## WOMEN'S RIGHTS

Last year, the ACLU's Women's Rights Project continued its efforts to improve women's lives by ensuring economic opportunities, freedom from discrimination, protection against violence and fair treatment in the criminal justice system.

### Employment

Despite significant gains in equal employment opportunities, the ACLU Women's Rights Project found low-wage, immigrant women workers cruelly exploited in service industries, retail stores and garment factories. The WRP sought to improve working conditions for these employees in several cases.

In one case, the owners of King Chef Buffet, a Chinese restaurant in Wayne, N.J., virtually enslaved Mei Ying Liu and Shu Fan Chen, immigrant women from China's Fujian Province — completely controlling every aspect of their lives, paying them no wages for waitressing, demanding kickbacks from their tips, assigning them fewer and less lucrative tables than male waiters from a different region of China and housing them in deplorable conditions. With the assistance of the New Jersey affiliate and local pro bono counsel, the ACLU sued the restaurant on the women's behalf for unlawful discrimination and nonpayment of wages.

### Domestic Violence

The WRP also made significant progress in its campaign to ensure fair housing for battered women — persuading the U.S. Department of Housing and Urban Development that rental policies that exclude or evict battered women punish victims for the actions of their abusers. Our efforts led the agency to issue a first-of-its-kind advisory, encouraging public-housing authorities to treat battered women fairly and to work with advocates to develop practices for helping them stay safe from harm and discrimination. In 2004, the WRP began working with public housing authorities to carry out HUD's recommendations.

## Welfare

The project is extremely concerned about punitive laws, enacted in the wake of welfare reform, denying benefits to children born to welfare recipients. The WRP, in cooperation with the Nebraska ACLU, submitted a friend-of-the-court brief in *Mason v. Nebraska*, challenging application of the state's "child exclusion" law to disabled parents who are unable to work. Purportedly adopted as a way to move recipients from welfare to work, the law cannot be applied to parents who by definition are unable to work, according to our brief, which cited Nebraska's recently adopted Equal Protection Clause. In 2003, the Nebraska Supreme Court unanimously agreed, extending benefits to children in about 1,000 families. The WRP continues to work for the legislative repeal of such exclusions in other states.

### Criminal Justice

Last year, WRP sought to achieve much needed improvements in the criminal justice and juvenile justice systems to ensure that women and girls are not needlessly imprisoned and that they receive fair treatment while incarcerated. As more women and girls are incarcerated, the failures of the criminal justice system to address their needs become more apparent. Females often face inferior services and facilities compared to males; and women and girls suffer gender-specific harms, including sexual harassment and abuse. The effects of women's incarceration on their families are also of major concern. We are currently working with the ACLU Drug Law Reform Project and other advocacy groups to put together a report on the ways in which the "war on drugs" has impacted women and their children.

### Athletics

The ACLU broke new ground in women's sports, winning a dedicated playing field for girls' softball in Grants Pass, Ore.'s premier park and sports complex, in settlement of a

lawsuit charging violations of the 14th Amendment, state constitution and public-accommodations law. The city had dedicated two high-quality fields exclusively for boys' baseball, requiring girls 8-18 to share the remaining fields with all teams in the city's Little League, the local high school's varsity softball teams and community adult leagues. The city promised the Amateur Softball Association's Grants Pass Blaze girls' league amenities equal to those of the boys.

## DRUG LAW REFORM PROJECT

The ACLU's Drug Law Reform Project (formerly the Drug Policy Litigation Project), founded in 1999, was greatly encouraged by a Ninth Circuit Court of Appeals ruling in *Walters v. Conant*, its first case ever, which affirmed the free speech rights of doctors and patients to discuss the use of medical marijuana. The U.S. Supreme Court in October 2003 refused to hear the federal government's appeal of the finding that a doctor's license could not be revoked for recommending the drug.

The DLRP conducts the only national litigation program addressing civil rights and civil liberties violations arising from the "War on Drugs," and works in tandem with ACLU state affiliates to support local drug policy reform efforts. Its 2003 activities included:

- A civil-damages lawsuit (*Kelly v. Paschall*) for wrongful arrest against a corrupt and racist regional narcotics task force in the small town of Hearne, Texas after a terrifying SWAT-style drug raid in which almost 15 percent of the town's young black men were arrested and 20 were falsely accused of selling crack cocaine. Our brief cites the systemic flaws of these drug law enforcement units.
- Putting an end to the random testing of welfare recipients in Michigan for drugs. Our December 2003 settlement with Michigan's Family Independence Agency concluded a seven-year legal and legislative battle, in

which the state sought to deny income support and other benefits to those who refused or failed to comply with a mandatory substance-abuse treatment plan. The state's Court of Appeals, affirming an April 2003 U.S. district Court ruling, agreed with Judge Victoria Roberts, the DPLP and the Michigan ACLU, that testing an entire class of citizens for drugs simply because they are poor "would be dangerously at odds with the tenets of our democracy."



▶ Carl Alexander, lead plaintiff in *Alexander v. Goose Creek*, with his mother.

- Defending 20 students, some as young as 14, swept up in a drug raid at Stratford High School in South Carolina. In *Alexander v. Goose Creek*, the ACLU charged that the students' right to be free from unreasonable search and seizure and use of excessive force was violated in the Nov. 5, 2003 raid by gun-wielding cops who stormed the school's main highway in a 6:40 a.m. raid seen on national TV. Our suit demands a permanent end to such drug raids at the school, in which some students were held at gun-point and menaced with dogs, and seeks compensatory damages for children (most of them African American) traumatized by the event. No drugs or weapons were found or arrests made.

# LEADING THE DEFENSE OF FUNDAMENTAL FREEDOMS

The defense of liberty became more complicated after the 2001 terrorist attacks. The horrors visited upon New York and Washington led to government demands for expanded powers

filed in November 2003 on behalf of several Michigan nonprofits with sharply declining memberships and donations, and a church-sponsored refugee-assistance group.

**"We are in danger of allowing ourselves to be governed by our fears, rather than our values."**

to spy on and imprison citizens — and to a surprising degree of acquiescence from people who could be expected to recoil from such demands in "normal" times.

ACLU President Nadine Strossen,  
testimony before the 9/11 Commission, Nov. 18, 2003

It fell to the ACLU not only to resist such panic-driven responses, but also to steadily pursue its ongoing work in areas unrelated to the war on terrorism. We had to, in effect, reeducate post-9/11 Americans about the nature of freedom. And we rose to that challenge, leading the defense of free speech, civil rights, privacy and the separation of church and state in courtrooms and legislatures across the country — while helping to launch the most massive grassroots rebellion against the abuse of power since 1776.

The act allows the FBI to demand "any tangible thing," including confidential financial or medical information, without a warrant or show of probable cause, about a person it claims to be investigating "to protect against international terrorism or clandestine intelligence activities." And media reports suggest that the act, rushed through Congress within weeks of 9/11, is being used in ways that go far beyond fighting terrorism - in effect changing the rules of law enforcement. For example, the FBI reportedly used section 314 of the act to order the release of financial information about a Las Vegas strip club owner, with no apparent connection to terrorists.

## SAFE AND FREE

If you suspected that an FBI agent was watching which Web sites you've visited, library books you've read, religious services you've attended or organizations you've joined, you would probably think twice before engaging in any of these constitutionally protected activities. Section 215 of the Patriot Act equipped the government with the power to do all these things — leaving many Americans fearful of government disapproval.

The ACLU filed Freedom of Information Act requests for information about how these extraordinary powers have been used, but the Justice Department refused to comply until a court ordered it to do so; then it provided 200 pages of materials that were heavily redacted.

Some organizations have also suffered adverse consequences, according to an ACLU lawsuit

The ACLU also helped challenge the unprecedented detention of two U.S. citizens as "enemy combatants": Jose Padilla, who was arrested in Chicago, and Yaser Hamdi, who was captured in Afghanistan. The administration accused

Padilla of planning to detonate a “dirty bomb” and Hamdi of fighting with the Taliban against American forces. The government did not, however, charge either Padilla or Hamdi with any crime. Instead, it imprisoned them both in a naval brig in Charleston, South Carolina without charges, trial or access to counsel. Both Hamdi and Padilla challenged their indefinite detention, and the ACLU filed friend-of-the-court briefs in each case. In June 2004, the Supreme Court repudiated the government’s position in a strongly worded opinion holding that “a state of war is not a blank check when it comes to the rights of the Nation’s citizens.” Three months later, Hamdi was released from custody and allowed to return to Saudi Arabia after he agreed to relinquish his U.S. citizenship. Padilla was required to start his case all over again, based on a procedural technicality, and he remains in detention.

The government’s passion for secrecy and surveillance is alarming, and the public has responded explosively to the ACLU’s national “Keep America Safe and Free Campaign.”

Launched within months of 9/11 to raise awareness of the Patriot Act’s implications for civil liberties, the campaign reached its zenith in 2003 with the adoption of more than 200 resolutions by local and state governments opposing sections of the act. From the biggest cities to small towns, the ACLU helped local officials and activists work together on resolutions affirming that the war on terror does not have to come at the expense of our civil liberties. Many communities passed resolutions calling for an end to secret searches and indefinite detentions. For students of American history, the mushrooming discontent had particular resonance, as the Declaration of Independence wasn’t created out of whole cloth. In the months preceding it, similar expressions of anger and purpose, representing the refusal of town and county councils to submit to British rule, circulated widely in the colonies.

As this report went to press in the fall of 2004, anti-Patriot Act resolutions had been passed



**The ACLU also published six “Safe and Free” reports in 2003:**

**Bigger Monster, Weaker Chains: The Growth of an American Surveillance Society (January 2003)**

**Freedom Under Fire: Dissent in Post-9/11 America (May 2003)**

**Independence Day 2003: Main Street America fights the Federal Government’s Insatiable Appetite for New Powers in the Post-9/11 Era (July 2003)**

**Seeking Truth from Justice: Patriot Propaganda – The Justice Department’s Campaign to Mislead the Public About the USA Patriot Act (July 2003)**

**Unpatriotic Acts: The FBI’s Power to Rifle Through Your Records and Personal Belongings Without Telling You (July 2003)**

**A New Era of Discrimination? Why African Americans Should Be Alarmed About the Ashcroft Terrorism Laws (September 2003)**

by 359 communities in 43 states and by four state governments, representing nearly 55 million people.

## **SEPARATION OF CHURCH & STATE**

Though the separation of church and state takes on added significance in a nation at war with a Muslim country, the ACLU’s commitment to keeping the two institutions separate is historic and ongoing. The Supreme Court’s past findings that religious displays in government buildings violate the Constitution have not stopped extremists from trying to chip away at

the wall of separation between church and state. Perhaps the most widely publicized example in 2003 was Alabama Chief Justice Roy Moore’s decision to defy a court order, in a suit brought by the ACLU, to remove a two-ton granite statue of the Ten Commandments from the state court building. The episode led to Moore’s removal from office by a nine-member judicial ethics panel.

The ACLU also sued successfully for removal of Ten Commandments displays in two court-houses and a public school in Kentucky; and we intervened as a friend-of-the-court in a “religious freedom” challenge to Washington state’s denial of scholarship assistance to a student training for the clergy. The Washington case went all the way to the Supreme Court, which in 2003 agreed with the ACLU that taxpayer funds must not be used for religious education, striking at the heart of the Bush administration’s “faith-based initiative.”

To prevent the government from interfering with the practice of religion, however, the ACLU also helped a Pennsylvania Amish family to fight unreasonable vehicle requirements for horse-drawn buggies. We argued that the Swartzentruber family risked traffic tickets and jail time because of the state’s failure to accommodate its religious beliefs, which forbid all ornamental displays, including the bright orange reflective triangles required by the state. The Pennsylvania Superior Court agreed, ordering the state to permit an acceptable alternative, such as reflective tape.

## DISSENT

Dissent has always been a cornerstone of democracy, but the free exchange of opinions and ideas has been actively discouraged by John Ashcroft’s Justice Department — with stifling restrictions on where government critics can meet or march, and what messages they may display on their clothing. Some dissenters have even been spied on by law enforcement agents.

In the months leading up to the Iraq war, mayors and police departments fought the organizers of huge protests in several cities. In New York City, the organizers of a peaceful anti-war rally of 20,000 people were denied a permit until the New York Civil Liberties Union intervened. Then, hundreds of those who showed up were arrested and interrogated about their personal political views.

The ACLU was able to get their charges dismissed, but kept a close watch on New York City’s plans to protect the rights of protesters who returned to its streets for the 2004 Republican convention.

Law enforcement agencies also expanded the use of an ominous new tactic at presidential and vice-presidential appearances: forcing dissenters into hidden “protest zones,” far from the media and the target of their protest. When the president travels, Secret Service agents shield his eyes and ears from offending signs and chants, ensuring that all he sees are cheering supporters.



➤ Police arrest a demonstrator at an Arizona anti-war rally.

This tactic has become so commonplace that the ACLU asked a federal court for a nationwide injunction against the use of “protest zones” at presidential appearances. William Neel, a retired steelworker, experienced this treatment after trying to join a crowd of Bush supporters along a presidential motorcade



route in Pittsburgh. The sign he carried stood out from the rest. "The Bushes must surely love the poor; they have made so many of us!" it said. Secret Service agents attempted to remove him to a "free speech" zone in a ball field behind a six-foot fence, where he and his sign would be hidden from view. When he refused, he was handcuffed, charged with "disorderly conduct" and taken to a firehouse where he was detained for the remainder of the president's visit. The request for an injunction was rejected because the Secret Service denied

Rights" application to the Clemency Board, a complicated and uncertain process that can take years. To help them, the ACLU joined with 40 other organizations to host workshops for hundreds of ex-felons in 2003 and press the Clemency Board for a more streamlined process. The coalition also circulated a petition to put a constitutional amendment on the ballot to end the voting ban.

The ACLU also won a \$775,000 settlement of a racial profiling lawsuit in 2003 against the

## **Florida's permanent disenfranchisement of ex-felons is a shameful vestige of Reconstruction, when it was written into the state constitution to keep newly freed slaves from having a say in their government.**

any policy of discriminating against

protestors. The Secret Service agreed with the ACLU that discriminatory practices against protestors would be inappropriate and unlawful, and in its decision, the court warned that any future violations could lead to monetary damages against the responsible officials.

state of New Jersey for 12 motorists who were targeted for traffic stops based on their race. One of them was Dr. Elmo Randolph, an African-American dentist whose luxury car had been pulled over approximately 100 times. His car had been searched and he had been interrogated numerous times, but he never received a ticket.

### **RACE & ETHNICITY**

The media attention surrounding the Florida election recount in 2000 exposed the plight of ex-felons, many of them African Americans, who had paid their debt to society but could not vote. The state's permanent disenfranchisement of ex-felons is a shameful vestige of Reconstruction, when it was written into the state constitution to keep newly freed slaves from having a say in their government. Thirty percent of African Americans in Florida today are unable to vote as a result.

The only way for ex-felons to try to restore their rights in Florida is to file a "Restoration of Civil

Discriminatory post-9/11 practices set back efforts to eliminate racial profiling elsewhere, as Dr. Bob Rajcoomar discovered on a short flight in the summer of 2002 from Atlanta to Philadelphia, next to an unruly seatmate. Air marshals handcuffed Rajcoomar's seatmate, strapped him in, held all the passengers at gunpoint, and when the plane landed, handcuffed and detained Rajcoomar as well, saying they did not "like the way he looked" and felt he was watching them "too closely." The ACLU sued the Transportation Safety Administration in his behalf, winning an unprecedented agreement from the TSA in July 2003 to review its policies and training procedures.

## PRIVACY

In January 2003, the ACLU joined with privacy advocates from across the political spectrum to block the implementation of “Total Information Awareness,” a Bush administration plan for what would have been the largest and most intrusive electronic surveillance system in U.S. history. John Poindexter’s Orwellian concept involved the creation of a massive database of personal information on law-abiding individuals, from credit card transactions to hotel transactions and receipts for medical prescriptions, to be scanned for suspicious purchases or patterns.

In September, Congress yielded to the public outcry, passing a defense appropriations bill that completely dismantled the program — but not the government’s desire to pry into citizens’ private lives. Many aspects of TIA gained new life as separate programs.

That very month, the public was shocked to learn that JetBlue airlines had secretly handed over personal information about its passengers (including income, occupation and Social Security numbers) to a Defense Department subcontractor as part of an experimental program. The ACLU set up a Web site for JetBlue passengers seeking to file Freedom of Information Act requests as a result, but later learned that Northwest, Delta and most other major airlines had also shared personal passenger data with the government.

These experiments with data collection probably helped to lay the groundwork for CAPPs II, a nationwide program of background checks on everyone who flies, which is a massive invasion of privacy. The entire process is conducted in secret; you may be labeled a high risk passenger and never know. Although the Transportation Security Administration, largely through the efforts of privacy advocates like the ACLU, was forced to abandon the CAPPs II program, there is concern that its successor,

known as “Secure Flight,” will pose similar problems. In particular, the right-left group formed to defeat CAPPs II is monitoring how Americans will be singled out by the profiling system, and how they will be able to clear their names if they do fall victim to a “false positive.”

Plans for new surveillance systems have moved beyond the airport. Several state governments are currently collaborating on the design of a massive database, to be called MATRIX (for Multistate Anti-Terrorism Information eXchange). Based on the dubious assumption that sorting through millions of personal records will find criminals, it amounts to a state-based repository of TIA-type information - everything from credit histories, driver’s license photographs, marriage and divorce records, Social Security numbers and dates of birth to the names and addresses of family members, neighbors and business associates. And all of this personal information is to be managed by a private company, Seisint Inc. of Boca Raton, Fla. The ACLU learned the extent of this program by filing a Freedom of Information Act request in October 2003 — influencing 11 of the 16 states to drop out.

## THE NEXT GENERATION OF CIVIL LIBERTARIANS

### College Freedom Tour

The ACLU led lively discussions of critical issues on college campuses last year, in its first-ever College Freedom Tour. Starting on Sept. 8 at the University of Miami, we brought cutting-edge music and politically provocative entertainers, including dead prez and Dave Chapelle, to nine campuses around the country. Speakers, including ACLU Executive Director



 The ACLU College Freedom Tour

Anthony D. Romero, focused on civil liberties issues in students' own communities. At the University of Wisconsin, Madison, for example, discussions centered on the ACLU's successful



Attendees on their way to Capitol Hill for Lobby Day at the Membership Conference

defense of hundreds of young people who had been prosecuted in nearby Racine for attending a "rave."

The obstacles that gay rights activist Taylor McClelland had to overcome in his successful establishment of a Gay-Straight Alliance for students in his conservative community included an anti-gay rally by outraged local ministers, and a threat of litigation.

School newspaper editor Matt Wynn defied school officials by printing a story about a starting linebacker who was allowed to play football after an arrest for assault, in violation of district policy. Pressured not to run the story, he did so anyway, in spite of retaliation against the paper, "because I had a good story and everything that America is based on supported my decision to publish."

Labor advocate Caitlin Prendiville helped draw attention to the plight of immigrants and farm workers in California, during the summer preceding her senior year at the Marin School, by publishing a report and leading a conference for students throughout Northern California on immigrants' rights.

## 30 percent of participants at the ACLU's 2003 membership conference in Washington, D.C. were between the ages of 16 and 27.

Students alarmed by the latest waves of racial injustice and the attacks on privacy and freedom of speech are joining the ACLU in record numbers. In fact, 30 percent of participants at the ACLU's 2003 membership conference in Washington, D.C. were between the ages of 16 and 27.

### Scholarships

The ACLU awarded \$4,000 college scholarships to "Youth Activists" for outstanding work to protect civil liberties:

Benjamin Waxman was cited for three years of activism against the death penalty and in support of other peace and justice issues as a member of the Abolitionist Group. Working with the ACLU, he organized a statewide tour to publicize the case of two Pennsylvania men who were exonerated after spending years on death row.

# GRASSROOTS LEADERSHIP: BRINGING LIBERTY HOME

## Highlights of ACLU affiliates' struggles and triumphs across the nation last year

### ALASKA

The Alaska Legislature adopted the strongest anti-Patriot Act resolution in the country, in response to efforts by the Alaska Civil Liberties Union. Ten Alaska communities also passed pro-civil liberties resolutions.

### ARKANSAS

An ACLU of Arkansas lawsuit, on behalf of a gay student who was "outed" by school officials, forced to read from the Bible and disciplined for talking about his sexual orientation and punishment, affirmed the First Amendment rights of students to be openly gay.

### NORTHERN CALIFORNIA

California voters overwhelmingly rejected Proposition 54, which would have banned public agencies from collecting data on race, ethnicity and national origin, after an aggressive public-education campaign by the ACLU of Northern California and other organizations warning of disastrous consequences for health, education, public safety and civil rights.

### SOUTHERN CALIFORNIA

The ACLU of Southern California helped to win passage of a comprehensive domestic partner rights bill, conferring on partners most of the rights that California laws grant to spouses, through revisions to more than 4,000 sections of the California Code. It also spearheaded the passage of pro-civil liberties resolutions

opposing the USA Patriot Act by the city councils of Los Angeles, Santa Monica, West Hollywood and Claremont; and worked closely with grassroots organizations to reform California's draconian Three Strikes Law, which has locked up thousands of nonviolent offenders for 25 years to life.

### COLORADO

The ACLU of Colorado sued to force the Denver Police Department to disclose its participation in the FBI's Joint Terrorism Task Force, after obtaining documents indicating that the task force collected information about peaceful protest activities that the Denver police are now prohibited from collecting.

### CONNECTICUT

The Connecticut Civil Liberties Union won the release of immigrants from Connecticut jails who had been held for months beyond the completion of their sentences.

### DAKOTAS

Three years into its campaign to end racial profiling in South Dakota, the ACLU of the Dakotas elicited an apology from a legislator who had made an anti-Native American slur a year earlier, and who now calls for the hiring of more Native Americans on the Highway Patrol.

### DELAWARE

The ACLU of Delaware hosted an all-day symposium entitled "Is the Bill of Rights Relevant to the 21st Century?" with workshops on bioethics, racial profiling, protecting gay and lesbian families and church-state and First Amendment issues.

### FLORIDA

As many as 30,000 ex-felons will regain their voting and civil rights within the next year, in response to a lawsuit by the ACLU of Florida and others against the Florida Department of Corrections.

### GEORGIA

The ACLU of Georgia persuaded the Georgia Supreme Court that the state's notorious fornication law does not permit the government to "reach into the bedroom of a private residence and criminalize the private, noncommercial, consensual acts of two persons legally capable of consenting" to sexual activity. The case involved two 16-year-olds in Georgia, where the age of consent is 16.

### HAWAII

The ACLU of Hawaii won exoneration of a retired police officer who had been put under surveillance, and falsely accused of illegal activities, after criticizing police officers involved in a scandal. In addition, Hawaii was the first state to pass a resolution opposing the USA Patriot Act.

### IDAHO

Legislation drafted by the ACLU of Idaho ended an inhumane requirement that death row inmates be held in solitary confinement, and gave the director of the Department of Corrections the discretion to house them with the general maximum security population.

### ILLINOIS

Chicago's Federal Plaza, a center of demonstrations, prayer vigils and leafleting for years, is accessible to a more diverse range of voices because of an ACLU lawsuit establishing the free speech

rights of counter-demonstrators, and challenging the government's post-9/11 decision to close the plaza entirely.

### INDIANA

The Indiana Civil Liberties Union won 12 court challenges to Ten Commandments displays at public buildings, blocked two municipal ordinances designed to discourage political demonstrations and persuaded the 7th Circuit U.S. Court of Appeals to order government funding of residential health services for severely mentally ill children.

### IOWA

The Iowa Civil Liberties Union is challenging Poweshiek County's "flag desecration" statute on behalf of two Grinnell College students who were prohibited from flying an American flag upside down to protest the invasion of Iraq.

### KANSAS/ WESTERN MISSOURI

This affiliate joined the national ACLU's Lesbian/Gay Rights/AIDS Project in a lawsuit challenging Matthew Limon's 17-year prison sentence for consensual sex with another boy – far in excess of the punishment (15 months) he could have received for sex with a girl.

### KENTUCKY

Working with a coalition of religious leaders and citizens, the ACLU of Kentucky challenged a state legislative resolution to place a Ten Commandments monument on the grounds of the State Capitol – winning an Appeals Court ruling that the Supreme Court refused to review.

### LOUISIANA

The ACLU of Louisiana sued to end school prayers in West Feliciana Parish, and at school events and board meetings in Tangipahoa Parish. It also focused national scrutiny on a Lafayette teacher who punished a 7-year-old for using "bad words" (sic) after the child told a classmate that his mother was gay.

### MAINE

The Maine Civil Liberties Union sued police in Lewiston on free speech grounds

### SAN DIEGO (CALIF.) AND IMPERIAL COUNTIES>

The affiliate won a summary judgment in its suit to have a preferential \$1-a-year Boy Scouts lease of 18 acres in Balboa Park declared unconstitutional, since the Scouts are a religious organization that discriminates.

for rules restricting the content of signs at a white supremacist rally, after Lewiston's mayor called on Somalia to limit the number of refugees moving there.

### MARYLAND

The ACLU of Maryland filed several lawsuits against the Maryland State Police, winning family and medical leave for a "Trooper Dad" and ending racial profiling.

### MASSACHUSETTS

The ACLU of Massachusetts, working with the ACLU's Drug Policy Litigation Project, won a major victory for AIDS prevention, civil liberties and a more sensible drug policy, in *Commonwealth v. Landy*. The state's Supreme Judicial Court ruled that police could not arrest members of lawful needle-exchange programs simply



because they possessed injection equipment in a city or town that did not have such a program within its borders.

### MICHIGAN

The ACLU of Michigan filed a lawsuit challenging section 215 of the USA Patriot Act, which expands the power of the FBI to obtain records and other

"tangible things" of people who need not be suspected of any criminal activity. It also led campaigns for passage of anti-Patriot Act in Detroit, Ann Arbor and other cities.



### ARIZONA>

The ACLU of Arizona won a lawsuit challenging the unlawful arrest of its executive director, Eleanor Eisenberg, who had been acting as a legal observer at a protest rally; and it lobbied successfully to stop state bills that would have unfairly expanded the definitions of religious employer and "victim's rights."



### TEXAS>

The ACLU of Texas partnered with civil rights organizations to win a mass pardon — the largest in Texas history — for 46 Tulia residents who had been arrested on false drug charges, in a case that drew national headlines and outrage.



**EASTERN MISSOURI >**

The treatment of anti-war protesters became a primary focus of ACLU of Eastern Missouri in 2003, after arrests of individuals who

refused to be herded into “designated protest zones” during presidential visits to St. Louis. A legal challenge filed in advance of an August 2003 presidential visit won government officials’ promise not to enforce that policy during the visit.

of Maryland for restricting public speaking and the distribution of literature to a few designated locations on its College Park campus – winning redesignation of most of the campus as a free speech zone for students, faculty and employees, and challenging restrictions on other persons.

**NEBRASKA**

The ACLU of Nebraska vigorously fought police misconduct and abuse in three lawsuits: winning settlements for a teenage girl who was strip-searched by overzealous

officers in a drug search and a Mexican national whose home was invaded by police without a warrant, and a stiff fine and policy changes in a case of racial profiling and police misconduct in Sarpy County.



**ALABAMA >**

The ACLU of Alabama forced the removal of a two-ton Ten Commandments display from the grounds of the state court building, over the objections of Chief Justice Roy Moore, who was removed from his job for defying the court order.

**NEVADA**

After nearly seven years of litigation, the ACLU of Nevada finally persuaded the Ninth Circuit Court of Appeals to declare a historic Las Vegas promenade to be a public forum where all First Amendment-protected activities, including leafleting and soliciting, are allowed.

**NEW HAMPSHIRE**

The small New Hampshire affiliate scored a solid state Supreme Court victory in a right-to-know lawsuit for access to photographs taken by the Manchester police of individuals they stopped based on ethnicity or race but charged with no crimes.

to abolish the death penalty. It also sued the Montana University System to allow lesbian and gay employees to purchase health insurance and other employee benefits for their partners.

**NATIONAL CAPITAL AREA (District Of Columbia and parts of Maryland)**

The ACLU of the National Capitol Area sued the University

**MINNESOTA**

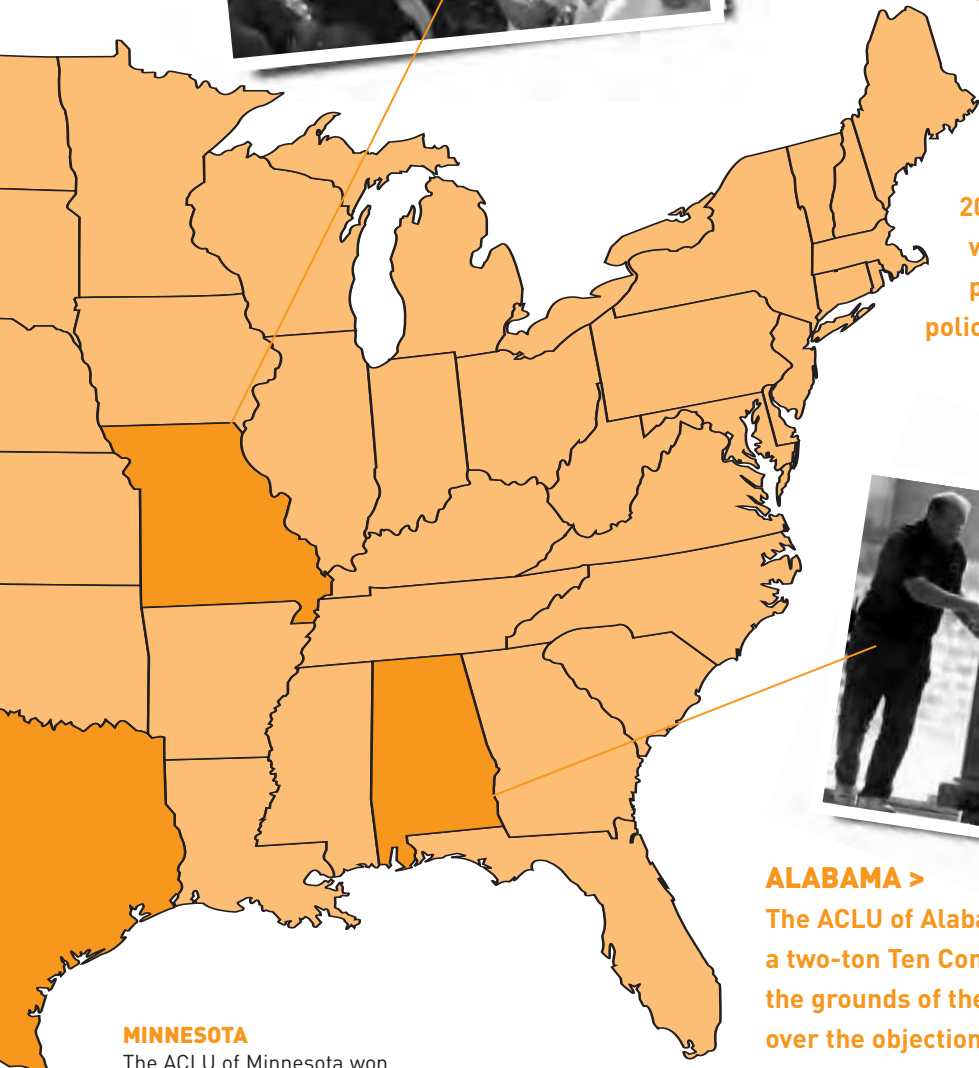
The ACLU of Minnesota won several Fourth Amendment cases, forcing police to show probable cause before instigating a search by drug-sniffing dogs (*State v. Wiegand*), notify suspects that they have the right to refuse a search (*State v. Fort*) and cease “suspicionless” stops of cars with so-called “whiskey” plates (which indicate that the owner has been convicted of driving under the influence).

**MISSISSIPPI**

The Mississippi affiliate helped to develop a “Mississippi Schoolhouse to Jailhouse Coalition,” which is pressing for wide-ranging school and juvenile-justice reforms to keep students from entering the criminal-justice system, and to prevent abuse of youths who are there.

**MONTANA**

The ACLU of Montana persuaded state legislators to rebuff five bills aimed at eroding a woman’s right to choose, and to advance a controversial bill



## NEW JERSEY

The State of New Jersey agreed to pay more than \$775,000 to settle suits brought by the ACLU of New Jersey on behalf of 12 motorists, in a stunning blow against racial profiling. The 12 had been targeted for traffic stops based on their skin color, and in some cases brutalized, including a man who was stopped 100 times without receiving a ticket.

## NEW MEXICO

The American Civil Liberties Union of New Mexico won sweeping changes in the treatment of inmates with mental health problems in settlement of a lawsuit alleging cruel and unusual punishment in a “supermax” (high maximum-security) prison. It also helped legislators to craft what may be the most civil liberties-friendly State Emergency Procedures Law in the country, with extensive due process and job protections for people placed in quarantine.

## NEW YORK

The New York Civil Liberties Union challenged the New York City Police Department repeatedly with First Amendment violations and misconduct against demonstrators – winning a parade permit for an anti-war group, an end to interrogations of protesters about their political associations and an agreement to quit targeting homeless people for arrest.

## NORTH CAROLINA

The ACLU of North Carolina Legal Foundation won important due process and privacy cases against school officials who barred an attorney from representing a high school sophomore at a disciplinary hearing that resulted in his suspension for a semester and against police officers who had spied on and entered a suspect’s house without a warrant.

## OHIO

The ACLU of Ohio ended decades of racial profiling in Cincinnati with a settlement that has been hailed as a model for other cities and filed a class-action voting rights suit to prohibit the use of error-prone punch-card ballots — especially in predominantly black precincts, where more than 94,000 ballots were rejected in the 2000 presidential election.

## OKLAHOMA

Lawsuits brought by the ACLU of Oklahoma overturned the criminal prosecution of a student who had been accused of plotting an armed invasion of his school, based solely on a fictional story he had written; and it won the return of an infant to parents whom the state Department of Human Services had judged unsuitable because of an improper evaluation.

## OREGON

The ACLU of Oregon went to court for students at Portland Adventist Academy (PAA) who had been disqualified from participating in the state basketball tournament because their religious beliefs prevented them from playing from sundown Friday to sundown Saturday; the Oregon Court of Appeals held that reasonable accommodations must be considered.

## PENNSYLVANIA

A racial profiling lawsuit by the ACLU of Pennsylvania forced the U.S. Department of Homeland Security to substantially alter its training of air marshals, and the Transportation Security Administration to apologize to a Lake Worth doctor who had been detained because marshals did not “like the way he looked.”

## PUERTO RICO

The ACLU of Puerto Rico successfully lobbied the Senate of Puerto Rico to eliminate its sodomy law – just a week

before the U.S. Supreme Court announced its landmark gay rights ruling in *Lawrence v. Texas*.

## RHODE ISLAND

The General Assembly approved a Rhode Island ACLU bill requiring judges to notify criminal defendants of immigration consequences before accepting pleas from them. Its lobbying helped to defeat a bill that would have given police broad authority to demand subscriber information from Internet service providers.

## SOUTH CAROLINA

A prison program of the ACLU of South Carolina’s Piedmont chapter, which reduced overcrowding in the local jail by defending the wrongly imprisoned and moving other cases to bail quickly, was taken statewide in 2003. Also, it is helping in the defense of Brett Bursey on charges stemming from his participation in a protest during a visit to Columbia by President Bush.

## TENNESSEE

The ACLU of Tennessee worked with gay, lesbian and transgendered advocates to promote a proposed anti-discrimination ordinance in Nashville.

## UTAH

The ACLU’s long-running battle to wrest Salt Lake City’s Main Street Plaza from Mormon control heated up again in 2003, with the church’s offer of a land swap that the ACLU said violated the separation of church and state. The ACLU, which had prevailed in an earlier court ruling that the U.S. Supreme Court refused to overturn, sued again and applied for an injunction restoring free speech to the plaza, while the case was being heard.

## VERMONT

The ACLU of Vermont struck blows against gender-based discrimination, and for freedom of speech – successfully defending a postal worker who

had been suspended without pay after becoming pregnant, and challenging the constitutionality of a state law banning sexually explicit material from the Internet.

## VIRGINIA

The ACLU of Virginia went to court for and against televangelist Jerry Falwell – in one case winning the repeal of archaic, post-revolutionary state laws that restricted the amount of land religious institutions may own, and in the other, supporting the free speech right of a Falwell critic to parody him, as a public figure, on a Web site.

## WASHINGTON

The ACLU of Washington State negotiated improved conditions for inmates at the Jefferson County Jail in Port Hadlock, in settlement of its class-action lawsuit over inadequate health care and inhumane conditions.

## WEST VIRGINIA

The ACLU of West Virginia scored a victory for the due process rights of inmates in a case challenging prison officials’ denial of “good-time” credit to reduce sentences.

## WISCONSIN

The ACLU of Wisconsin persuaded the City of Racine to drop charges against 442 people ticketed at a benefit concert, with a due process challenge to the language and enforcement of a “disorderly house” ordinance. The affiliate also won the dismissal of charges against nine anti-war protesters arrested for trespassing at a federal building in Milwaukee.

## WYOMING

The ACLU of Wyoming helped to win passage of a voting rights bill allowing non-violent felons to vote, and sued the Department of Corrections for violations of prisoners’ rights in the Wyoming State Penitentiary.

## GIRDING FOR THE FUTURE,

## CELEBRATING THE PAST

Nearly 1,500 “card-carrying” members of the ACLU converged on the nation’s capital June 11-14, 2003, for the organization’s first-ever membership conference, a watershed event in the fight against post-9/11 restrictions on civil liberties.

The extraordinary gathering of rank-and-file members from throughout the United States featured seminars, workshops and a day of lobbying, culminating in the presentation of awards to former World Heavyweight Boxing Champ Muhammad Ali and journalist Anthony Lewis.

Ali was honored for the courageous stand he took in 1967 as a conscientious objector to the Vietnam War — for which he was prosecuted and stripped of his World Heavyweight title, but ultimately exonerated. He was the first recipient of a newly established Muhammad Ali Champion of Liberty Award, which will be awarded annually to heavyweights in the arts, business, science and sports. Lewis, a former *New York Times* columnist and First Amendment scholar, received the Roger N. Baldwin Medal of Liberty, named for the ACLU’s founder, for his lifelong dedication to constitutional law and civil liberties.

What brought us together was “one simple but inescapable fact: Our freedoms are under attack,” ACLU Executive Director Anthony D. Romero told the historic gathering, which included workshops on women’s and reproductive rights, gay rights, disability rights, immigrants’ rights, church-state issues, racial inequality in the criminal justice system, online activism, global human rights and the national grassroots “Safe and Free” campaign.

The conference also featured youth breakouts, leadership training, a half-day training session on lobbying and an array of celebrity speakers —

from entertainers Dave Chappelle and Russell Simmons’s Def Poetry Jam to FBI Director Robert S. Mueller and Justice Ruth Bader Ginsburg.

Members then fanned out across Capitol Hill, visiting every Senate office and a majority of House offices, urging their representatives to resist rollbacks of civil liberties. Laura Murphy, director of the ACLU’s Washington Legislative Office, called the day of lobbying “a counterattack on the administration’s assault on civil



Executive Director Anthony D. Romero (left) and FBI Director Robert S. Mueller III at the ACLU Membership Conference

liberties and civil rights.” Members also protested the government’s use of racial profiling in the war on terror, and its funding of religious organizations.

Attendees included 400 new ACLU members, and a large youth contingent who participated in a two-part youth strategy summit and closing celebration in their own youth-run space.

Members also heard from FBI Director Robert S. Mueller, who was applauded for declaring he did not intend to run roughshod over people’s



privacy in the war on terror. In his speech, Mueller promised to “safeguard for our citizens the very liberties for which we are fighting.” Some observers pronounced his words “out of sync” with the Justice Department’s post-9/11 behavior, but Mueller drew praise for agreeing to speak and answer questions before the ACLU, which has been one of the bureau’s oldest and most persistent critics.

The huge conference capped a record year for membership in the ACLU, which soared after the USA Patriot Act was rushed through Congress, topping 400,000 in 2003.

Romero especially deplored Attorney General John Ashcroft’s roundup and imprisonment of people on minor immigration violations after 9/11, which he said “puts prevention ahead of law enforcement.”

“The problem with this new approach is that it makes no distinction between innocent and guilty people. As a result, the legal system is being turned on its head. A person now is presumed guilty until proven innocent! There is no reason to believe that this violation of basic constitutional protections will be limited to immigrants. ... When the rights of any are sacrificed, the rights of none are safe.”

## **The huge conference capped a record year for membership in the ACLU, which soared after the USA Patriot Act was rushed through Congress.**

Romero also announced that a chief fundraising goal — to raise \$25 million to establish an endowment to provide financial stability during difficult economic and political times — had been more than doubled. As the conference ended, the Trust for the Bill of Rights reached \$53,735,000 and was still growing. “Our message is getting across and we’re making a difference,” said Romero, citing the ACLU’s 83 years of unflagging effort as “an essential part of the system of checks and balances.”

“At a time when the two parties are all too often indistinguishable, when the news media are all too often cowed, and when our fellow citizens are all too often confused,” he said, “we emerge as the last line of defense — democracy’s last and best hope.”







## DIRECTORS AND SENIOR STAFF

**American Civil Liberties Union**  
**125 Broad Street**  
**New York, NY 10004**  
**(212) 549-2500**  
**[www.aclu.org](http://www.aclu.org)**

### OFFICERS AND DIRECTORS

**President**

Nadine Strossen

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American Civil Liberties Union  
125 Broad Street  
New York, NY 10004  
[www.aclu.org](http://www.aclu.org)