

The Vigil



American Civil Liberties Union of Tennessee

Summer 2004

ACLU Victory for Equal Rights

In an important victory for gay parents, the Tennessee Court of Appeals reversed an earlier court order in Hogue v Hogue barring a gay father from “exposing” his son to a “gay lifestyle.” On March 25, 2004, the Court ruled that “[n]either gay parents nor heterosexual parents have special rights,” and that courts should follow the same principles in placing limits on visitation and custody for both gay and straight parents.

ACLU-TN and the National ACLU Lesbian and Gay Rights Project had intervened on behalf of Joseph Hogue and had asked the Court of Appeals to reconsider their earlier decision upholding a restraining order that prohibited him from “exposing” his son to a “gay lifestyle.” The Court granted the petition for rehearing.

During Mr. Hogue’s divorce, the lower court judge issued a restraining order barring him from “taking the child around or otherwise exposing the child to his gay lover(s) and/or his gay lifestyle.” In September 2002, the judge found Hogue in contempt of the order and sentenced him to jail after Hogue’s ex-wife complained that Hogue told his son that he was gay. The judge also significantly reduced Hogue’s visitation with his son and gave the ex-wife all decision-making power over the son.

“One of the great things about this decision is that it

makes it clear there are no double standards,” said ACLU-TN cooperating attorney Sam Felker of Bass, Berry & Sims. “Courts will have to follow the same principles for child custody and visitation for gay parents as they do for straight parents. The fact that a parent is gay will no longer be an issue.”

In January 2004, the Appeals Court had cleared Hogue of contempt because telling his son that he is gay was not part of the restraining order. However, the Court went on to say that the restraining order itself was valid. Following the ACLU’s request for a rehearing, the Court reversed its ruling and stated that the order did not meet the requirements of Tennessee law because “it (did) not describe the prohibited acts in reasonable detail,” and therefore the “order (was) unenforceable and Mr. Hogue could not be punished for violating an unenforceable restraining order.”

Ms. Hogue’s attorneys are appealing the Tennessee Court of Appeals decision to the Tennessee Supreme Court.

ACLU Cooperating Attorneys are Sam Felker of Bass, Berry & Sims and Ken Choe of the National ACLU Lesbian and Gay Rights Project.

Bill of Rights Celebration

Saturday, November 6, 2004

Keynote Speaker:

Anthony Romero, National ACLU Executive Director

Anthony Romero took the helm of the ACLU in September 2001, just one week before the terrorist attacks. An attorney with a history of public interest activism, Anthony is the first Latino and first openly gay man to serve as Executive Director. Under his leadership, the ACLU has steadfastly maintained it is possible to be both safe and free.

Reserve your tickets now!

Support our Celebration by...

- Purchasing tickets
- Sponsoring a table
- Becoming a Host or Patron

Watch for more info on www.aclu-tn.org or call (615) 320-7142.

From the Executive Director...

The election season is definitely in full swing. In this intensifying political climate, civil liberties issues are front and center in many of the debates now raging. Many of ACLU's issues—reproductive choice, religious freedom, post 9-11 erosions, privacy, separation of church and state, due process, voting rights—are central to the campaign.

As you know, the ACLU is a non-partisan organization and does not endorse candidates. However, I can't stress enough the importance of knowing candidates' positions on civil liberties and civil rights and voting for the folks who will be thoughtful leaders in the fight to protect our freedoms.

There is nothing better than to be surrounded by like-minded folks committed to the principles of equality and justice. The "March for Women's Lives" in April in Washington D.C. and the second annual ACLU Membership Meeting in July in San Francisco were two such events.

While I was unable to attend the Membership Meeting, I returned from the "March for Women's Lives" totally inspired and energized. It was an exhilarating weekend and one those of us there will always remember. We need to take the energy from these events and use it to mobilize more people to make sure our voices for freedom are heard throughout the country.

This year's Tennessee's legislative session was a roller coaster. Our agenda was full as we battled efforts to amend the state constitution to remove any right to privacy as it pertained to abortion; to prohibit civil unions and domestic partnerships of same-sex couples; and to amend the state constitution to define marriage between a man and a woman. (See "Legislative Update.")

We found ourselves celebrating one moment when bills failed or stalled in committees, and the next moment we were lobbying furiously to defeat efforts to pull the bills from committees. Needless to say, this session was one of the busiest I have experienced in my almost twenty years as the executive director.

Our lobbying work is magnified two-fold because of Joe Sweat, our board member extraordinaire, who becomes our official lobbyist during the session. A dedicated volunteer, he shares his expertise, humor, and creative strategies each session. I am especially indebted to him, as all Tennessee civil libertarians should be. Thank you, Joe!

Just when I think I have seen it all...the night before the State Senate vote on the anti-choice resolution, the clergy invited to give the invocation in the chamber prayed for "innocent babies and innocent mothers" and that senators be protected from "civil liberty lawyers and lobbyists against life." And then in Rhea County, commissioners voted to identify ways to keep lesbians and gay men from residing in the county. Needless to say, ACLU-TN put the county on notice that any effort would be challenged immediately.

These experiences remind me that we face many challenges as we work to ensure equal treatment and equal protection for all. While it often seems like an uphill battle, I am confident—because of our many ACLU supporters and friends—we will prevail.

Stay tuned....ACLU-TN was one of seven affiliates to receive a grant from the National ACLU office to hire a staff attorney. Interviews are taking place now and we will soon announce our first-ever ACLU-TN staff attorney.

Know Your Rights....In order to exercise your rights, you must know them. In this spirit, ACLU-TN has prepared several informational flyers. To ensure that Tennesseans who are eligible to vote can vote, ACLU-TN is distributing voter empowerment cards, including specific information for the homeless, ex-felons, and the disabled. To ensure that Tennesseans' free speech and dissent are protected, we have created our "Right to Protest" brochure; and to ensure that Tennesseans can access government records, we researched and prepared a flyer on state and federal freedom of information laws. Please contact our office if you want copies.

Exciting News.....We just learned that Anthony Romero, National ACLU Executive Director, has accepted our invitation to be the featured speaker at the November 6 Bill of Rights Celebration. Make your reservations now for this special evening!

As the summer draws to a close, we have to say goodbye to our wonderful summer interns. Erin Phillippi from Maryville College, Jay Williams who is entering American University Law School, and Virginia Tangel who begins at Beloit College brought infectious enthusiasm to the office and became valuable members of the ACLU-TN family. They represent the best of the next generation of civil libertarians.

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Vanderbilt Students Organize ACLU Club

After interning in the ACLU-TN office during the Summer of 2003, Vanderbilt University student Jonathan Boughtin returned to campus with a mission: revitalize the ACLU student club that had been formed in the 1990s but shut down after its founders graduated. Jon, the president of the Vanderbilt Civil Liberties Union, shares his thoughts and experiences below.

In an attempt to bring civil liberties awareness to campus, Juniors Jon Boughtin, Adam Kugajevsky, Joanna Dilts, and Senior Nick Accrocco revived the Vanderbilt Civil Liberties Union (VCLU) in the Fall of 2003. Though some initially questioned the campus' receptiveness to the idea, the project became a success. The VCLU boasts a small but solid group of roughly twenty members, ranging in political diversity from liberal Democrats to conservative Republicans. As one member noted, "I'm just a conservative who loves freedom."

Issues touched on by the VCLU include the PATRIOT Act, GLBT rights, free speech and student rights, to name a few. The VCLU has conducted informal polling, attended rallies, hosted speakers, and taken part in on-campus panel discussions to help Vanderbilt students keep in touch with civil liberties concerns. In addition, the VCLU has gone off campus to local high schools to speak with students about their rights and urge them to think critically about matters that have recently come into the news. Most recently, select members hosted an informal debate between students at Hillsboro High School in Nashville on the issue of flag burning and answered students' questions concerning how the Constitution applies to them as young citizens. VCLU members hope to continue this program at other schools in the coming months.

The VCLU has dealt with a number of issues on as well as off campus. Last fall, an article was published in the Vanderbilt student newspaper entitled "Sodomy is Wrong,

Disgusting, and Perverse." VCLU members found themselves in the difficult position of having to defend GLBT rights, while at the same time defending the right of others to speak out against the GLBT community and the right of the school paper to publish freely. Members and officers sat on panels, attended other club meetings, and wrote articles in the Vanderbilt Hustler trying to bridge the gap between GLBT rights and freedom of speech. Though tempers flared, the debates brought a period of political thought and engagement long needed on the Vanderbilt campus.

For all that the VCLU has done, we have appeared in a number of campus papers and made a strong presence among students. In the future, the VCLU hopes to expand its member base and open new projects on campus. Members hope to find a place for a "freedom of speech wall" on campus where students can voice opinions and discuss various topics on a monthly basis. Also, the VCLU would love to host debates between opposing on-campus political groups.

New members appear at nearly every weekly VCLU meeting to discuss what is going on in the world, as well as how those issues hold meaning at Vanderbilt University. At the present, the group continues to confront these issues with a spirit of vigilance and thoughtful debate, bringing civil liberties awareness to students and taking a small but faithful stand for the Bill of Rights.

Please join ACLU-TN in fighting to keep our country both SAFE AND FREE.

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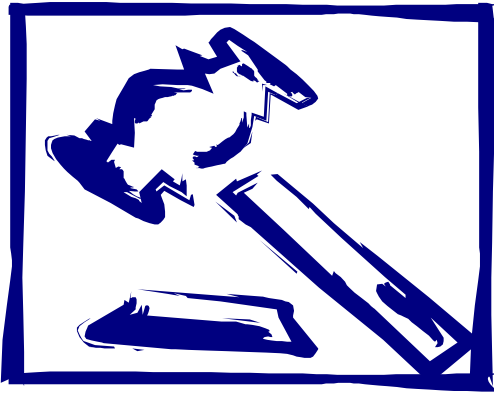
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In the Courts and...

Protecting Religious Freedom in Monroe County

On January 29, 2004, ACLU-TN filed a lawsuit challenging the posting of the Ten Commandments in the lobby of the Monroe County Courthouse in Madisonville. The lawsuit, ACLU-TN et al. v. Monroe County, was filed on behalf of ACLU-TN members residing in Monroe County and K.O. Herston, an attorney practicing in Monroe County.

Before filing the lawsuit, ACLU-TN contacted the Monroe County Commission and asked that the plaque be removed, citing the recent decision in ACLU-TN v. Hamilton County that said such postings were unconstitutional. In response to our request, the County Commission voted to keep the plaque up. Soon after, ACLU-TN filed its lawsuit.

In the lawsuit, ACLU-TN argues that the posting of the Ten Commandments violates the Establishment Clause to the First Amendment, which prohibits government from promoting or supporting a religious doctrine. ACLU-TN is asking that the plaque be taken down in order to protect and preserve religious freedom.

On June 3, 2004, United States District Court Judge Thomas Varlan denied motions filed by the County asking that the lawsuit be dismissed because the plaintiffs did not have the right to challenge the posting. Judge Varlan ruled that K.O. Herston and ACLU-TN members did have standing to bring the lawsuit.

ACLU-TN has filed a motion for a preliminary injunction, asking that the plaque be removed while the case is pending. A trial date has not yet been set.

ACLU-TN Cooperating Attorneys in the case are Susan Kay and K. O. Herston.

“Choose Life” License Plate Lawsuit

On August 2, 2004, ACLU-TN, the ACLU Reproductive Freedom Project (RFP), and Planned Parenthood Federation of America (PPFA) filed its motion for summary judgment in ACLU v. Bredesen. Attorneys argue that the law authorizing the “Choose Life” specialty license plate violates the First Amendment because it discriminates against opposing viewpoints.

The lawsuit, filed in November 2003, challenges not only the statute authorizing the “Choose Life” plate but also the legislature’s general policy and practice of approving specialty license plates. According to the lawsuit, that policy discriminates against those with viewpoints that the General Assembly does not condone.

In late May 2003, the Tennessee General Assembly passed a law authorizing the production of a “Choose Life” license plate but failed to approve a “pro-choice” specialty tag. The bill became law without Governor Bredesen’s signature.

The law makes “Choose Life” license plates available for an annual fee of \$35 over and above the cost of registering a car in the state. Fifty percent of all funds raised (after expenses) go to a private anti-choice organization called New Life Resources, which must redirect much of the proceeds to 49 specific providers of adoption services. These adoption services are required to maintain a relationship with New Life Resources.

ACLU-TN Executive Director Hedy Weinberg explained, “Once the State allows motorists to place political slogans on license plates, the State cannot pick and choose which messages they will allow. If the government wants to use license plates to create a public forum, they cannot engage in viewpoint discrimination. Instead they must ensure that everyone on all sides of the debate has an opportunity to promote their message.”

On March 12, 2004, United States District Court Judge Todd Campbell denied the State’s motion to dismiss the case. A trial is set for February 8, 2005.

New Life Resources and Friends of Great Smoky Mountains National Park successfully filed motions to become Defendant-Intervenors in the case.

Plaintiffs in the case include ACLU-TN, Planned Parenthood of Middle and East Tennessee, and three individuals. ACLU-TN Cooperating Attorneys are George Barrett, Ted Carey and Susan Kay. National ACLU RFP attorneys are Julie Sternberg and Louise Melling. PPFA attorneys are Donna Lee and Roger Evans.

... In the Communities



“God as Foundation” Resolutions

Since last fall, ACLU-TN has been contacted by many concerned residents about the “God as the foundation of our national heritage” resolutions that are being considered by county commissions across the state.

The resolution originated in Greene County last September. After Greene County passed the resolution, Greene County Mayor Roger Jones sent copies of the resolution to the other 94 counties in Tennessee with a letter urging other county commissioners to pass the resolution.

Since then, many county commissions have considered the resolution. ACLU-TN has sent letters to commissioners in Knox, Blount, Putnam, and other counties urging commissioners to uphold religious freedom and vote against the resolution. We are currently tracking the resolution’s progress across the state.

The Right to Protest in Knoxville

When President George W. Bush visited Knoxville in January 2004, ACLU-TN prepared and distributed “right to protest” cards to those participating in the protest.

After the protest, ACLU-TN volunteer attorneys talked with concerned protestors who had been moved from their location by law enforcement and replaced with individuals supportive of the Administration’s policies. We shared the information with the ACLU attorneys who have challenged these unreasonable “protest zones” in other parts of the country.

Their lawsuit, filed in Philadelphia, was dismissed in early May when the Secret Service agreed that treating pro-Administration supporters differently than anti-Administration protestors violated both the First Amendment and official Secret Service policy. Any future violations can form the basis for damages against the officials responsible.

ACLU-TN and other affiliates across the country will continue to monitor protests to ensure that individuals’ right to protest are protected.

“Know Your Rights”

In the Spring of 2004, ACLU-TN distributed over 1,500 “Know Your Rights” brochures to members of the immigrant community across the state. The pamphlets, which provide information on what to do if you are stopped by the police, the FBI, Immigration, or the Customs Service, are in a variety of languages, including Spanish, Hindi, Arabic, and Farsi. If you would like a copy of the brochure, please call our office to request a copy or visit www.aclu.org to download a copy.

Brown v. Board Anniversary

To commemorate the 50th anniversary of the landmark Supreme Court decision in Brown v. Board of Education, ACLU-TN partnered with the National Civil Rights Museum in Memphis to sponsor a panel discussion entitled “Does Race Matter? 50 Years After Brown v. Board.”

At the event, panelists explored the legacy of Brown and debated if, 50 years after the Court decision that ended “separate but equal” as national policy, our country has made any progress toward the ideal of creating a color-blind society. The enthusiastic and diverse audience kept panelists engaged in discussion and debate for over 2 hours. The panelists and audience tackled lingering racial issues affecting public schools in Memphis, discussed the disproportionate number of racial minorities in the criminal justice system, and shared strategies for raising awareness of racial justice issues in the community.

Our distinguished slate of panelists included: Memphis City Mayor W. W. Herenton; Criminal Court Judge W. Otis Higgs, Jr.; Commercial Appeal Managing Editor Otis Sanford; Memphis Food Bank Executive Director Susan Sanford; and civil rights attorney Richard Fields. ACLU-TN Board Member Bruce Kramer moderated the panel.

ACLU-TN Protects Fortuneteller's Speech Rights

In a victory for free speech rights, Federal District Court Judge Robert Echols ruled on June 1, 2004, that a Dickson city ordinance requiring fortunetellers to display written disclaimers in their advertising and on the premises where the readings take place violates the First Amendment to the United States Constitution.

ACLU-TN originally filed Daly v. City of Dickson in July 2003 on behalf of Beth Daly, owner of The Curiosity Corner, who was told by city officials that she could not continue to conduct tarot readings at her shop because the activities violated a Dickson city ordinance. In October 2003, that ordinance was repealed by the city council and a new ordinance placing regulations on fortunetelling was passed. ACLU-TN amended its complaint to challenge the constitutionality of the new ordinance.

Judge Echols rejected the City's argument that the new ordinance was drawn simply to protect its citizens from fraud. He wrote, "Fraud arises from false statements and an intent to deceive. However, this regulation does not apply merely to deceptive practices. Rather, it applies to anyone telling fortunes for profit and to all they say in that capacity." The Court found that the regulation requiring a fortuneteller to display a sign with certain language at her place of business "is content-based be-

cause it concerns the telling of fortunes, not the advertisements for that service." Content-based regulations are reviewed under the strict scrutiny standard.

Ms. Daly first opened her shop, The Curiosity Corner, in July 2002 and sold books, candles, yoga supplies, and local artwork. She conducted tarot card readings for payment until she was notified that the city ordinance prohibited fortunetelling.

ACLU-TN Cooperating Attorney Barbara Moss of Wyatt, Tarrant & Combs lauded the decision and said, "The protections of the First Amendment ensure that our government may not decide which ideas are right or wrong. A person is free to write or sell books that the earth is flat or the moon is made of green cheese. Our client should be free to make predictions, for fun or profit, without government interference."

Judge Echols granted the plaintiffs' motion for summary judgment seeking declaratory judgment. The ACLU-TN lawsuit, Daly v. City of Dickson, was filed in United States District Court, Middle District of Tennessee, Nashville Division.

ACLU REPORTS AVAILABLE!

The ACLU has just issued a new report entitled "**The Surveillance-Industrial Complex: How the American Government is Conscripting Businesses and Individuals in the Construction of a Surveillance Society.**"

The 40-page report outlines the growing role of various business sectors and individual companies in surveillance for the government. Trends highlighted include the increase in data mining government contracts, the voluntary and involuntary turnover of customer data by businesses and the recruitment of individuals into TIPS-like domestic spy programs.

This new report is just one of many available from the ACLU on post 9/11 issues. All can be downloaded from www.aclu.org

Other reports available include:

- **Conduct Unbecoming: Pitfalls in the President's Military Commissions**
- **Sanctioned Bias: Racial Profiling Since 9/11**
- **America's Disappeared: Seeking International Justice for Immigrants Detained after September 11**
- **Freedom Under Fire: Dissent in Post-9/11 America**
- **A New Era of Discrimination: Why African Americans Should Be Alarmed About the Ashcroft Terrorism Laws**
- **Unpatriotic Acts: The FBI's Power to Rifle Through Your Records and Personal Belongings Without Telling You**
- **Seeking Truth From Justice: PATRIOT Propaganda - The Justice Department's Campaign to Mislead The Public About the USA PATRIOT Act**
- **Independence Day 2003: Main Street America Fights the Federal Government's Insatiable Appetite for New Powers in the Post 9/11 Era**
- **The Dangers of Domestic Spying by Federal Law Enforcement: A Case Study of FBI Surveillance of Dr. Martin Luther King**

2003-2004 Supreme Court Review

The 2003-2004 Supreme Court Term will long be remembered for its emphatic repudiation of the Bush administration's claim that it can conduct the war on terrorism as it sees fit with virtually no opportunity for meaningful judicial review.

Insisting that a system of checks and balances is essential to safeguarding both liberty and security, the Court ruled that foreign citizens detained at Guantánamo Bay and American citizens detained in military brigades are both entitled to their day in court.

"These are truly historic decisions," said Steven R. Shapiro, the ACLU's national legal director. "The administration has treated the rule of law as an inconvenience in the war against terrorism. In response, the Supreme Court has sent a powerful message that the end does not justify the means, and that it will not sit on the sidelines while the rule of law is ignored."

The administration's opportunistic approach to the rule of law is perhaps best illustrated by its shifting positions on the legal status of our naval base at Guantánamo Bay. In classified memos that have now been released, the administration argued that the Torture Act does not apply to Guantánamo because it is functionally part of the United States. Before the Supreme Court, however, the administration contended that Guantánamo is still part of Cuba and thus the detainees being held there have no right to challenge the legality of their detention in federal court.

The Supreme Court ruled otherwise in *Rasul v. Bush* (03-334), holding that "the federal courts have jurisdiction to determine the legality of the Executive's potentially indefinite detention of individuals who claim to be wholly innocent of wrongdoing." The case was thus sent back to the lower courts to determine whether the detention policies at Guantánamo Bay are consistent with the Constitution and America's treaty obligations.

The administration's efforts to evade judicial review were likewise rejected in *Hamdi v. Rumsfeld* (03-6696). Unlike the foreign nationals detained at Guantánamo Bay, Yaser Hamdi is an American citizen who was captured on the battlefield in Afghanistan. He has been held in various American military brigades for more than two years without charges and trial and, until very recently, without any opportunity to consult his attorney. The government contended that it could continue to hold Hamdi in this condition indefinitely so long as it presented a federal court with "some evidence" to justify its decision to designate Hamdi as an "enemy combatant." In the government's view, Hamdi was not entitled to present his side of the story or to question the government's case.

The Supreme Court again disagreed. Four justices were prepared to order Hamdi's immediate release on the ground that Congress had not authorized it. That view did not command a majority. But eight members of the Court agreed that Hamdi had been deprived of his due process rights because he has never been given a meaningful opportunity to be heard.

The *Hamdi* opinion also strongly suggests that the Court has learned from its past mistakes and is no longer willing to defer to executive claims of military necessity in every instance, as it did when it upheld the internment of more than 100,000 Japanese-Americans during World War II. As Justice O'Connor wrote for the plurality in *Hamdi*: "[A] state of war is not a blank check for the President when it comes to the rights of the Nation's citizens."

Jose Padilla is the second known American citizen currently detained in a military brig as an "enemy combatant." He is, without doubt, entitled to at least the same due process protections that

have now been granted to Yaser Hamdi. Nevertheless, in *Rumsfeld v. Padilla* (03-1027), the Court dismissed Padilla's *habeas corpus* petition on the theory that he had incorrectly filed it in New York rather than South Carolina, where he is presently being held. In all likelihood, Padilla will soon file a new petition and, based on the language in the *Hamdi* decision, may have a strong claim that he is not subject to designation as an "enemy combatant" because he was arrested at O'Hare Airport rather than captured on a foreign battlefield.

On the final day of the Term, the Court revisited the question of Internet censorship in *Ashcroft v. ACLU* (03-218), and blocked enforcement of the Child Online Protection Act in an important First Amendment ruling. Adopted by Congress in 1998, the Act criminalizes sexually explicit speech on the Internet that is "harmful to minors," but does so in a manner that effectively deprives adults of access to constitutionally protected material.

Justice Kennedy's opinion for the Court noted that "[c]ontent-based restrictions, enforced by severe criminal penalties, have the constant potential to be a repressive force in the lives and thoughts of a free people." He then pointed out that the government had so far failed to prove that its interest in protecting children could not be served even more effectively by allowing parents to rely on filtering software rather than threatening Internet speakers with criminal prosecution.

Church-state issues figured prominently on the Court's docket this Term, as well, but the results were less dramatic than anticipated. In the most closely watched case, *Elk Grove Unified School District v. Newdow* (02-1624), the Court ruled that a non-custodial parent lacked standing to challenge a California school district's practice of reciting the Pledge of Allegiance each morning with the phrase "under God." The underlying issue is unlikely to go away forever, but the battle has at least been postponed.

In *Locke v. Davey* (02-1315), the Court gave state legislatures breathing room in the ongoing debate over school vouchers by holding that the Free Exercise Clause did not require Washington State to extend a scholarship program to students pursuing theology degrees. The result was perhaps less surprising than the vote, 7-2, and the opinion's author, Chief Justice Rehnquist.

The Court's Fifth Amendment record was mixed. In *Missouri v. Siebert* (02-1371), the Court expressed considerable displeasure with the increasingly common practice of questioning criminal suspects without a *Miranda* warning in the hope that they will confess, and then be persuaded to repeat the confession after *Miranda* warnings are given. In *United States v. Patane* (02-1183), on the other hand, the Court held that the failure to follow *Miranda* does not affect the admissibility of physical evidence that is discovered as a result of the suspect's unwarned statements.

Finally, the Fourth Amendment again took a beating in a series of lopsided decisions. In *Hiibel v. Sixth Judicial District Court of Nevada* (03-5554), the Court upheld a Nevada law that permits the police to arrest someone who refuses to identify himself during a valid street stop. And, in a trilogy of cases, the Court upheld the right of police to search a car without a warrant after they have arrested a "recent occupant" of the car, *Thornton v. United States* (03-5165), the right of the police to search all of the occupants of a car when they find drugs concealed under the rear armrest and no one claims ownership, *Maryland v. Pringle* (02-809), and the right of the police to set up a roadblock to investigate a week-old hit-and-run accident, *Illinois v. Lidster* (02-1060).

The ACLU's full summary of the terms' decisions is online at <http://www.aclu.org/court/court.cfm?ID=16028&c=261>

“How Free Are We?” Quiz

Test your knowledge of your post-USA PATRIOT Act rights! Answers are below.

- Which of these locations has special x-ray machines that can view your naked body?
 - CIA Headquarters
 - Star Trek Conventions
 - The Orlando Airport
 - Michael Jackson's Neverland Ranch
- True or False? Your conversations with your lawyer are always confidential and protected from government eavesdropping.
 - True
 - False
- Which of these groups could become targets of a "terror" investigation as a result of the overly broad definition of "terrorism" in the USA PATRIOT Act?
 - PETA
 - IMF and World Bank protesters
 - Quakers and other Pacifist Groups
 - All of the Above
- Who equated dissent with giving aid to his nation's enemies, saying public debate would "erode our national unity ... diminish our resolve ... give ammunition to (our) enemies, and pause to (our) friends?"
 - Colonel Muammar al-Qaddafi
 - Saddam Hussein
 - Osama bin Laden
 - John Ashcroft

- Which of these was NOT a proposed component of President Bush's domestic spy program, Operation TIPS?
 - Cable repairmen looking around your home for anything they deemed "suspicious."
 - Your postal carrier snooping around your home as your mail is delivered
 - Plumbers installing secret cameras in your bathroom.
 - Truck drivers and others in the transportation, shipping, maritime, and mass transit industries reporting on suspicious activity.
- Which of these people was the target of questioning by law enforcement officials after 9/11?
 - A 60-year-old retired phone company worker who said to someone in a gym that "Bush has nothing to be proud of. He is a servant of the big oil companies and his only interest in the Middle East is oil."
 - A Houston art gallery owner who was planning an exhibit on covert government activities.
 - A college student who owned "un-American materials," including a poster of George W. Bush (a staunch proponent of the death penalty) holding a noose.
 - An activist who, while purchasing stamps for mailing, stated his preference for Statue of Liberty stamps over American flag stamps.
 - All of the Above

- True or False? Law enforcement officials must present you with a search warrant before searching your home.
 - True
 - False
- A federal "No Fly" list, intended to keep people who pose security threat to planes, includes:
 - Mime artists who refuse to speak to security screeners.
 - Nine year-old boys with a tendency to eat too much sugar.
 - Peace activists who have engaged in civil disobedience.
- Which of these items may contain an unseen radio transmitter that can be traced?
 - The Pop Tarts in your cupboard
 - The jeans you're wearing
 - The cash in your wallet
 - The tires on your car
 - All of the above
- Which of your personal records are safe from government snoops?
 - Your medical records
 - Your library reading records
 - Your credit card transactional records
 - Your educational records
 - None of the Above



9. **All of the Above.** Plans are underway to replace bar codes on all the products we buy with small radio transmitters—known as RFID chips. This would allow everything we own to be numbered, identified, catalogued and tracked. The things we own will allow us to be tracked anywhere we travel. Michelin is already testing them in their tires. One company is even developing an RFID tag—called the VeriChip—for people. It is about the size of a grain of rice and is designed to fit under the skin.

10. **E. None of the Above.** Section 215 of the USA PATRIOT Act as well as other numerous weak privacy laws that contain sweeping law enforcement and national security exceptions allow the government to obtain all sorts of personal information about you without a warrant and for the flimsiest of reasons. The government does not have to notify you that it is snooping in your private life. Furthermore, the people the government asks for your information—such as your local librarian—can be arrested for telling anyone—including you—that the government is rooting through your records.

Operation TIPS as it was proposed by President Bush. After being alerted to this program by the ACLU, the media and public were so outraged that the President scaled back TIPS, but still plans to recruit transportation workers to spy on their fellow Americans, without the benefit of any formal training or guidance from law enforcement officials.

6. **E. All of the Above.** Each one of these individuals was questioned solely for stating their opinion and exercising their First Amendment rights to freedom of speech and expression.

7. **B. False.** Since passage of the USA PATRIOT Act, law enforcement officials have greatly expanded authority to enter your home or office, search through your possessions, and in some cases seize physical objects or electronic information, without notifying you until after the fact.

8. **C. Peace activists who have engaged in civil disobedience.** Several peace activists—including a 75-year-old nun—have been detained and delayed from flying because their names appear on the "No Fly" list. Furthermore, they have been unsuccessful at removing their names from the list because no federal agency takes responsibility for creating or

maintaining it.

1. **C. The Orlando Airport.** The Orlando International Airport utilizes a body-scanning device that uses low-dose X-rays that can see through clothing but not human skin, essentially performing an electronic strip search.

2. **B. False.** That was once true, but since the passage of the USA PATRIOT Act, the Justice Department has violated attorney-client privilege by monitoring communication between detainees and their lawyers.

3. **D. All of the Above.** By defining terrorism to include acts of simple civil disobedience, the USA PATRIOT Act has made many American groups potential targets for government "terror" investigations.

4. **D. John Ashcroft.** In a stunning display of how out of touch he is with America's great political traditions and principles, Ashcroft testified before Congress that Americans who exercise their First Amendment right to publicly challenge the government aid terrorists.

5. **C. Plumbers installing secret cameras in your bathroom.** The first two were central components of

Legislative Update

The second year of the 103rd Tennessee General Assembly, which convened in late January and adjourned May 21, 2004, was grueling. Despite a hostile political climate, indicative of a pre-election year session, ACLU-TN successfully battled numerous attacks on reproductive freedom, privacy, gay and lesbian rights, and freedom of speech.

ACLU-TN board member Joe Sweat (who continues to generously volunteer his time and expertise) and Executive Director Hedy Weinberg serve as the ACLU-TN lobbyists. Their work was enhanced by ACLU-TN members who participated in the ACLU-TN Legislative Alert network and contacted their state senators and representatives, making clear that there is support for the ACLU's positions. Here is a brief summary of some of our work:

Religious Freedom

"Recognition of God"—HJR815—urges "recognition of God" and the exercise of religion as a "foundation of our state and national heritage." HJR815 is clearly an attempt to undermine the separation of church and state doctrine in Tennessee. The resolution passed (unanimously) and was signed by the Governor.

Oppose

Faith-Based Funding—SB2594/HB2633—allows faith-based agencies to contract with the state departments of children's services and health and human services. While public dollars cannot be used to fund sectarian activities, the bill allows proselytization in programs by privately-paid employees. In addition, these agencies may mandate church attendance, Bible-reading, and other religious activities. While clients may opt out, they are not notified of their right to refuse to participate in religious activities and they are not guaranteed an alternative service provider. The bill also permits agencies receiving these funds to discriminate on religious grounds in their hiring practices. ACLU-TN will monitor the implementation of this Act. The bill passed both chambers and became law with the Governor's signature. **Oppose**

Civil Rights

Date Collection in State Highway Patrol—HB2651/SB2884—this bill would have required the Tennessee Highway Patrol to collect specific information regarding traffic stops by law enforcement. ACLU-TN worked closely with the bill's sponsors and the Department of Safety in drafting the bill and lobbying for its passage. While we were disappointed that the bill failed to get the votes it needed, we are committed to re-introducing the bill next year. **Support**

Racial Profiling Against Public Policy—HJR861—declares that racial profiling by law enforcement officers is contrary to public policy. The resolution was supported and lobbied by ACLU-TN and the Tennessee Association of Chiefs of Police. It passed both chambers and was signed by the Governor. **Support**

Restoration of Voting Rights—SB2693/HB2653—this amended bill, which became law, focuses on educating ex-felons about their voting rights upon their release from prison. ACLU-TN, working in coalition with other groups, is committed to pursuing legislative initiatives to restore voting rights for the over 90,000 disenfranchised voters in Tennessee. **Support**

Freedom of Speech

Specialty License Plates—SB2973/HB2805—would shift approval of specialty license plates from the Tennessee General Assembly to the Department of Safety. This issue is relevant to ACLU-TN's pending "Choose Life" lawsuit (see "In the Courts") which argues that the state engages in viewpoint discrimination

when the Tennessee Legislature picks and chooses which message it will approve for a specialty tag. The bill passed the Senate, but stalled in a House Committee. **Support**

Pro-Choice License Plate—SB3323/HB3410—When an amendment to create a pro-choice specialty license plate (to counter the "Choose Life" plate already approved) was attached to a NASCAR specialty tag bill, the sponsor withdrew the bill. This action is indicative of the problem with allowing the State Legislature to determine which messages will be promoted on license plates. **Support**

Telecommunications Theft Act—SB3101/HB3391—was proposed by the cable, television and motion picture industries to provide tools to combat cable and internet theft. The overly broad bill would have criminalized legal First Amendment activities by consumers, educators, manufacturers, and business users of the Internet and cable. ACLU-TN, joining with Vanderbilt University and the Tennessee Digital Freedom Network, met with the bill's sponsors throughout the session in an effort to correct the serious constitutional problems. A vastly improved amended bill passed both chambers and was signed by the Governor. ACLU-TN still has concerns about the implementation of the new law. **Oppose**

Reproductive Freedom

State Constitutional Guarantee—SJR127—was a joint resolution proposing a constitutional amendment that would exempt abortion from the privacy guarantees of the Tennessee Constitution. This initiative included many supporters in both the House and Senate and, if adopted, would have paved the way for abortion to be outlawed in Tennessee in the event of a reversal of *Roe v. Wade*. In addition, the sponsors' insistence that there be no protection for women whose lives are in danger or who are victims of rape and incest, indicates that the anti-choice movement in Tennessee has been captured by the Radical Right. SJR127 passed the Senate by a 23-6-4 vote, but failed to get out of a House Subcommittee. Even after the resolution failed in the subcommittee, anti-choice legislators attempted to pull the resolution out of subcommittee to the House floor by suspending the rules. Working in partnership with other pro-choice groups, ACLU-TN mobilized grassroots activists, organized press conferences, and strategized with legislators to successfully defeat SJR127. **Oppose**

Equal Rights

Prohibition of Civil Unions and Domestic Partnerships—SB2661/HB2627—would prohibit legal recognition of civil unions and domestic partnerships in Tennessee and prohibit recognition of these relationships from other states. While the bill passed the Senate, it failed in a House subcommittee. ACLU-TN, working with grassroots activists, successfully lobbied against the bill. Tennessee law already prohibits same-sex marriage. **Oppose**

Constitutional Amendment Defining Marriage—SJR990—would amend the Tennessee Constitution to define marriage as a contract between a man and a woman. The resolution passed both chambers and will be reintroduced next year; it will need to receive a 2/3 majority vote in both chambers in order to appear on the ballot in 2006. ACLU-TN is committed to defeating this effort by raising awareness of this aggressive effort to write discrimination into the state constitution. This will be an uphill battle and will require increased grassroots mobilization. **Oppose**

We Need You! If you are not receiving ACLU-TN legislative alerts, please sign up now by emailing us at aclutn@aclu-tn.org and entering "subscribe legislative alert" in the subject line. Please make sure to include your name and street address in the message so that we can determine who your state legislators are. Your emails and calls to your elected officials will make a difference!

ACLU-TN Around the State

- ACLU-TN Board Members Bruce Kramer, Paula Williams and Ben Pressnell spoke about the USA PATRIOT Act at various public forums in Memphis, Knoxville, and Maryville.
- ACLU-TN Board Member Susan Kay and Executive Director Hedy Weinberg conducted a workshop on students' rights at the Urban Resource Center in Clarksville.
- Kramer discussed ACLU issues at several Memphis events, including the Memphis Bar Association's Champion Luncheon, the "Inns of the Court" dinner and at a Public Forum program.
- Weinberg spoke to members of the Lion's Club of Gallatin and to participants at the National Council of Jewish Women's "Day-on-the-Hill" in Nashville. She also spoke about reproductive freedom issues at a meeting of the Medical Students for Choice at Vanderbilt University.
- ACLU-TN Board Members Joe Sweat and Sonnye Dixon participated in a panel discussion on "Race and Criminal Justice" at a MTSU symposium in Murfreesboro commemorating Black History Month.
- Weinberg addressed a TSU class for school administrators on students' rights, spoke to 8th grade students at The Temple in Nashville, and discussed ACLU issues with the Gallatin Rotary Club.
- Sweat visited Eagleville High School and Oakland High School in Rutherford County several times and spoke with students about ACLU issues.
- Weinberg participated in panel discussions on "Free Speech: Is It Really That Free?" at Austin Peay State University in Clarksville and on "Civil Liberties Issues Post 9-11" at the Tennessee Library Association meeting in Knoxville.

Know Your Voting Rights...

To ensure that Tennesseans know their voting rights, ACLU-TN has prepared wallet-size voter empowerment cards. Our goal is to help Tennesseans avoid the problems often associated with casting a ballot.

During the 2000 presidential election people faced numerous problems when they went to vote. For example, many were denied access to the polls because their names were improperly excluded from the registration lists. Others were denied a replacement ballot after spoiling their original one.

Voter education is especially important this year because of the many election changes that are being implemented as a result of the Help America Vote Act (HAVA).

The state-specific voter empowerment cards are available in English and Spanish.

If you are involved in voter education and/or voter registration activities and would like to help us distribute the cards, please contact us at (615) 320-7142.

We're Looking For You.....

..if you were involved in the founding of ACLU-TN or have been an ACLU member since 1970 or before.

Please let us know by contacting us at aclutn@aclu-tn.org.

We are working on a history of the ACLU of Tennessee and would like to talk with you.

Thanks!

Young Civil Libertarians Unite for Students' Rights

Former ACLU-TN student intern Virginia Tangel is currently a student at Beloit College in Beloit, Wisconsin, majoring in political science and romance languages. While she was an intern at ACLU-TN, Virginia primarily worked on organizing our Students' Rights Conference. She shares her thoughts on the experience below.

For the second consecutive year, ACLU-TN held its Students' Rights Conference on Saturday, March 27th at Hillsboro High School in Nashville. The event brought together a diverse group of high school students from the Middle Tennessee area to engage in a day-long conference on civil liberties issues both in schools and in the community.

Making this widely-successful event possible were the guest speakers, who included Juvenile Court Judge Betty Adams Green of Metro Nashville and Metro Police Chief Ronal Serpas. Offering additional viewpoints were John Ferguson and David Hudson of the Freedom Forum First Amendment Center, Susan Brooks of the Vanderbilt University Legal Clinic, and Jeri Mauldin of the Metro Nashville Public Defender's Office.

The topics discussed at this year's Students' Rights Conference ranged from child custody law to drug testing in schools to art censorship. By consensus, the favorite part of the day was the "Shoutout" session, which included an hour of question-and-answer time for the students. Student facilitators led discussion groups where civil liberties issues were addressed and helpful remedies were of-

fered. Frequently occurring civil liberties issues in Tennessee public schools (as reported by the students) were church and state concerns and limits on freedom of expression.

After sitting through a day of panel discussions and guest speakers, students were given the option to pose their own questions in an informal workshop session. Many students were interested in the USA PATRIOT Act and its impact on civil liberties, and others simply had more legal-related questions.

The Students' Rights Conference's purpose as a mechanism for awareness and action about civil liberties issues in Tennessee's schools helped the students who attended to be better prepared to be activists in their walks of life.

Several students emerged from the conference wishing to start ACLU clubs in their high schools; others were simply interested in joining the ACLU. Everyone, however, left energized and informed about their rights as students.

ACLU Seeking Couples to Fight for Marriage Equality

The ACLU is looking for gay and lesbian couples to help us in the fight for marriage equality.

Stories of real couples are what put a face on the issue and will help change public and legal opinion.

We are taking information from all gay couples, but are especially interested in hearing from couples with children, couples who are seniors over age 60, couples who are non-Caucasian, couples in interracial relationships, and couples who can

demonstrate harm due to not being able to marry (i.e., denial of hospital visitation, denial of health insurance, loss of home, challenge of will/estate). Your information will be kept confidential unless you give approval for its release.

If you are interested in completing the survey, please contact us at

aclutn@aclu-tn.org

and put "marriage equality" in the subject line. Send your name and address and we will send you the survey to complete.



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Urgent – Ask Governor for Clemency for Philip Workman

An execution date for Philip Workman is set for September 22, 2004 – this is the fifth time that the State of Tennessee has set an execution date for Philip Workman. Governor Bredesen is the one person who can grant clemency to Philip Workman.

It is urgent that Governor Bredesen receive letters (preferably hand-written) explaining why clemency should be granted.

Please use these talking points:

- State Medical Examiner Bruce Levy's conclusions regarding the testimony of former Shelby County medical examiner O.C. Smith clearly exceed the bounds of his professional training and the scope of his office's responsibilities.

- The critical "eyewitness," Harold Davis, was NOT at the scene of the crime.
- Medical and scientific evidence establishes that Philip Workman did NOT fire the fatal bullet.
- Five of the jurors have signed affidavits that they would not have sentenced Philip Workman to death if they had heard all of the evidence. It takes only ONE juror to prevent a death sentence.

Governor Phil Bredesen
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Nashville, TN 37243-0001
(615) 741-2001
phil.bredesen@state.tn.us