

ACLU-NJ Helps Secure Precedent-Setting Internet Privacy Victory

Thanks in part to a friend of the court brief filed by the ACLU-NJ, the New Jersey Supreme Court has acknowledged that the power of the police to investigate suspects in cyberspace is — and should be — governed by the same principles that apply to ordinary police investigations.

The Supreme Court's decision in *State v. Reid* is the first of its kind in the nation. Shirley Reid, the defendant in a criminal investigation, allegedly used her home computer to sabotage her employer by changing the firm's shipping address to a nonexistent location. Her boss called the police, who issued a flagrantly defective subpoena to her Internet service provider to obtain her identity.

The police argued that the defects in the subpoena shouldn't matter, but the court agreed with the ACLU-NJ that when the government obtains personal information through improper means, it threatens the

fundamental right of privacy. The defective subpoena was thrown out.

This is the first ruling in the country to find a privacy right in an IP address and a victory for online privacy. The decision is a first step in keeping the police from tracking down our private online information to use against us.

The court created long-needed rules spelling out how the government can obtain and keep our IP addresses, which are like Social Security numbers of the Internet. Our online information is now safer and our privacy rights more secure.

However, the police will get a second shot at Shirley Reid. The Supreme Court ruled that a grand jury subpoena would be sufficient to pierce internet anonymity. This aspect of the case is disappointing because Internet service providers rarely have incentives to protect the anonymity of their customers.

The Supreme Court's decision reflects the reality that people do expect a measure of privacy for personal transactions in cyberspace, which people increasingly use to communicate.

The Constitution creates a government of limited powers. Before the police can search our files or intercept phone calls, they have to follow standard procedures. With help from the ACLU-NJ, the New Jersey Supreme Court has recognized that these standard procedures apply in cyberspace. [ACLU](#)

The Supreme Court's opinion in *State v. Reid* is available at:
www.judiciary.state.nj.us/opinions/index.htm

The ACLU-NJ amicus brief is available at:
www.aclu-nj.org/issues/privacy

Transferred Women Prisoners Who Were Coerced and Beaten Get ACLU Help

On April 11, ACLU-NJ Legal Director Ed Barocas argued for sanctions against the New Jersey Department of Corrections for witness tampering, official misconduct and violation of court rules. The arguments are the latest chapter in an ongoing legal battle to stop the transfer of 40 women prisoners from the Edna Mahan Correctional Facility for Women to the men's New Jersey State Prison, where they have been held in lockdown conditions and denied basic hygiene.

Superior Court Judge Maria Sypek, who heard the arguments, expressed grave concern and promised to issue a decision soon.

The ACLU-NJ, with the ACLU Women's Rights Project, filed its motions for sanctions in March when evidence showed that James Drumm, assistant administrator of the New Jersey State Prison, offered women in the disciplinary segregation unit reduced disciplinary sentences if they described conditions there positively.

"One prisoner in the segregation unit testified that the day after she told the ACLU about the offer, she was beaten by a prison guard."

But the women Drumm approached had never seen the unit he asked them to describe.

The women in disciplinary segregation — where prisoners who violate regulations in the Edna Mahan facility serve time, often for short periods — were asked to whitewash the transferred women's unit, not their own.

One prisoner in the segregation unit testified that the day after she told the ACLU about the offer, she was beaten by a prison guard.

The ACLU also asked the court for permission to investigate whether prison officials read confidential correspondence between prisoners and their ACLU attorneys, and to investigate psychiatric exams of the women that the prison conducted without the ACLU's consent, as required by court rules. [ACLU](#)



Newark City Council Woman Mildred Crump speaks at a rally held in December 2007 outside of the New Jersey State Prison against the poor treatment of the women prisoners transferred there. (Photo by Eliza Reshefsky)

Court Decision Ensures Religious Freedom Not Brought to Its Knees

In a lawsuit over whether a coach's participation in prayers amounted to an official endorsement of religion by a public official or whether it was constitutionally protected religious expression, the 3rd U.S. Circuit Court of Appeals upheld East Brunswick High School's ban on the coach praying with his students.

For 23 years, East Brunswick football coach Marcus Borden had led his team in religious prayer before games. But in 2005, after being told he could no longer lead the team prayer, he knelt and bowed his head while his team prayed, believing it would not constitute prayer.

Some students and the school district thought otherwise, and in April, a federal appeals court agreed, given his history.

The high school originally asked him to stop leading the prayer when some students said they were uncomfortable, especially given Borden's authority over team dynamics and selection of players. When Borden joined in voluntarily, the school district stepped in again, and Borden sued, alleging that his First Amendment rights were violated. All three judges agreed that Borden improperly endorsed religion.

"A public school coach should not demand religious conformity as the price of participating in school activities," said Lawrence Lustberg of the law firm Gibbons, P.C., who filed a brief in the case on behalf of the ACLU-NJ. [ACLU](#)



The ACLU is representing women transferred to the men's New Jersey State Prison, pictured. The ACLU filed sanctions in March against the Department of Corrections for witness tampering and other violations. (Photo by Eliza Reshefsky)

Students Can Practice Religion in Good Faith Thanks to ACLU-NJ Suit

It's only fitting that Bilal Shareef's case was settled during graduation season. This June, two years after Bilal Shareef could not attend his West Side High School graduation in Newark because school officials chose to hold it in the sanctuary of a Baptist church, the ACLU-NJ settled the lawsuit on behalf of the Muslim honor student, ensuring religious freedom for students in the city, and sending a message to school districts around the state.

"I was forced to choose between honoring my education and my faith, and no one should be put in that position," said Shareef, whose Muslim faith forbids him from entering buildings with religious iconography, from an image of Allah to a crucifix. "I'm proud that I stood up for my beliefs, and I'm proud that my experience will keep other

students from facing the choices I did."

In addition to scheduling graduation in the sanctuary of a Baptist church, then-Principal Fernard Williams provided students with two extra tickets to the graduation if they agreed to attend a baccalaureate ceremony at a Catholic church.

The settlement stipulates that Newark Public Schools cannot hold events in religious environments and cannot promote or sponsor a religious event. The settlement also forbids the school from granting or denying any benefit based on participation in a religious event.

"There is a reason the Constitution forbids preference of one religion over the other: Government, especially school officials, should not be in the position of making certain people

feel favored, while making others feel like outsiders," said ACLU-NJ Legal Director Ed Barocas, who represented Bilal and his father Ahmad.

As part of the settlement, Newark Public Schools also apologized to Bilal, his father and other members of the Newark community who felt forced to forego or were uncomfortable attending the 2005 or 2006 graduations.

The ACLU-NJ initially contacted Newark Public Schools in 2005, after receiving complaints that West Side's graduation was held in New Hope Baptist Church. Newark Public Schools wrote a letter assuring the ACLU-NJ it would not happen again, but the next year, the Shareefs told the ACLU-NJ it had, and legal action was taken.

Read the ACLU-NJ press release and amicus brief at <http://tinyurl.com/6jtu8w> **ACLU**

Birds of a Feather Flock Together for Free Speech

The ACLU-NJ helped the protesters pictured here secure a permit to hold a demonstration against Bird Paradise in Burlington, NJ, which local animal rights groups Mobilization for Animals, the New York Bird Club and Reach Out for Animal Rights oppose for keeping captive birds as pets.

The owners of the store took legal action to try to stop the demonstration, but the ACLU-NJ stepped in to secure the groups' First Amendment rights.

The day of the protest, however, one of the store owners threatened and physically assaulted Marianne Bessey, a lawyer and activist pictured on the left. Despite video evidence showing that Bessey did not physically respond, the police charged both Bessey and the store owner, and the ACLU-NJ is now helping Bessey with her defense. **ACLU**



Marianne Bessey, left, holds a sign during a protest of a bird store that the ACLU-NJ helped secure. She was assaulted by an owner of the store during the demonstration, and the ACLU-NJ is representing her. (Photo by Eric McKinley)

New School Funding Formula Doesn't Add Up to Quality Education

Nearly 20 years ago, when New Jersey's municipalities could not afford to pay for the "thorough and efficient" education mandated by the state Constitution, the New Jersey Supreme Court required the state to cover those costs.

Eighteen years after that case, *Abbott v. Burke*, with urban centers still impoverished, the state is changing its rules to hold municipalities responsible for their own education costs.

At the end of April, the ACLU-NJ submitted a friend of the court brief to the New Jersey Supreme Court opposing this new funding formula. The brief was written on behalf of the New Jersey Urban Mayors Association, whose cities are most harmed by the change in the funding formula. The changes disproportionately hurt minorities and poor families.

"The state is asking struggling municipalities to choose between the future of their communities and the future of their children," said Irvington Mayor Wayne Smith, president of the Urban Mayors' Association. "That is exactly the untenable choice the court sought to prohibit originally."

Many cities in New Jersey suffer from "municipal overburden," requiring them to spend a higher percentage of their funding on services that wealthier suburban districts do not struggle to pay for. Most school funding comes from district-specific property taxes, leaving lower-income areas in need of supplemental funding from the state. The ACLU-NJ's brief argued that municipal overburden is still a problem, only now it is exacerbated by home foreclosures and tax abatements.

"Communities that are already the most burdened will suffer even more from the state's changes," said Emily Goldberg of the Seton Hall Center for Social Justice, which served as ACLU-NJ cooperating counsel. **ACLU**



The ACLU-NJ is fighting alongside the New Jersey Urban Mayors Association, headed by Irvington Mayor Wayne Smith, pictured here with students, for the state to help municipalities that cannot afford education costs on their own.

Embattled Student Paper Becomes Independent

He who pays the piper may call the tune, but he who pays for the student newspaper doesn't call the shots.

The Montclair State University Student Government Association (SGA) learned that lesson the hard way in a First Amendment fight with The Montclarion student newspaper over access to closed SGA meetings.

Last year the SGA, a nonprofit, student-led organization that distributes public university funding to student groups, had approved money for the paper to hire a lawyer, who determined that the SGA's closed meetings violated the state's Open Public Meetings Act.

In response, SGA President Ronald Chicken ordered The Montclarion to turn over all confidential legal correspondence between the paper and its attorney, and even passed a measure that The Montclarion should have no constitutional free-press protections. When the editor refused to release the records, the SGA froze the paper's funding.

That's when the ACLU-NJ got involved. At an SGA meeting, ACLU-NJ Legal Director Ed Barocas explained that attorney-client privilege still stands regardless of who pays for representation.

In January, the SGA agreed to release most of The Montclarion's funding for 30 days and rescind its request for legal documents. But it kept some of the paper's funds anyway.



Montclarion News Editor Shayna Jacobs, flanked by Montclarion staff, takes the floor in a Student Government Association meeting to regain the student paper's funding, which the SGA had rescinded. (Photo by Montclarion photographer Justina Villanueva)

In February, Christopher Michie of the Dechert Law Firm, an ACLU-NJ cooperating attorney, told the university and SGA that the newspaper would sue if its funds weren't released in full at the SGA meeting the following day.

At the meeting, University President Susan Cole declared that beginning in June, The Montclarion would be independent from the SGA, and the university would pay for The Montclarion to publish if the SGA froze its funding in the interim.

The SGA voted, 8-7, to unfreeze the paper's funding.

The ACLU-NJ is working with the university and ACLU-NJ cooperating counsel Gary Nissenbaum of Nissenbaum & Associates on the paper's transition to independent operation. **ACLU**



In Memoriam: Judge Martin L. Haines

The ACLU-NJ mourns the loss of a dear friend and a lifelong advocate for open government, civil rights and justice for all, Burlington

County Superior Court Assignment Judge Martin L. Haines, who died April 27.

Judge Haines was the epitome of a legal professional. The Moorestown resident was a dis-

tinguished practitioner, State Bar president and a stellar New Jersey Superior Court judge. He is widely praised for being the spark that started the public defender system in the state.

He served on the ACLU-NJ Board of Trustees and was active in ACLU-NJ's drug policy reform work, open government advocacy and much more. In 2004, he received the Roger Baldwin Award, the ACLU-NJ's highest honor, for his monumental achievements in civil liberties.

After he retired from the bench in 1990, he began to issue a different kind of opinion: com-

mentary in New Jersey publications. He spoke out against scourges he contended with in the criminal justice system, including mandatory minimum sentencing and the "war on drugs." He saw the fruition of his work against the death penalty last year when it was abolished in New Jersey.

He was a legend among lawyers, but above all he was a true believer in the principles of freedom, justice and equality. New Jersey will have other great judges, but none will surpass Judge Haines' integrity and courage. **ACLU**

Support Open Records, Open Meetings, Open Government

By Deborah Jacobs



Openness in government is central to a strong democracy. Yet for a state whose leaders invoke the word “transparency” as often as Rudy Giuliani invokes September 11, New Jersey’s legislators have done little to support this fundamental principle.

Too often, “transparency” is a word without meaning.

Some of the most vexing problems regarding openness are among the most basic, such as exorbitant fees to copy public records and local rules that shut residents out of public meetings.

Despite the Open Public Records Act and the Open Public Meetings Act — known as the “Sunshine Law” — people across New Jersey encounter obstacles to accessing public information every day.

Government agencies, for instance, grossly inflate the fees they charge for copies of public records. Fees, often topping a dollar per page, gouge residents, who need public records to do their jobs, improve their communities, exercise their political rights and conduct business.

A trip to any commercial copy shop will confirm that the state’s charges bear no relation to the actual costs of copying.

New Jersey’s courts have helped. Court rulings forced the City of Hoboken and the clerks’ offices of Burlington and Camden counties to lower their copying fees to five cents per page.

But going to court town by town isn’t practical. Besides, under current law, enforcement mechanisms for Sunshine Law violations are too weak to have an impact statewide.

We need a change in state law.

Fortunately, bills sponsored by Joseph Cryan in the Assembly (A-1095) and Loretta Weinberg in the Senate (S-1646) would limit copy fees to 10 cents a page for letter-size and 15 cents for legal-size copies. The bills enjoy support from a broad coalition of organizations, including the League of Women Voters, the New Jersey Foundation for Open Government, People for Open Government and the Society for Professional Journalists, among others.

The barriers against access to public meetings are equally intolerable. We regularly receive complaints about restrictions on the right to videotape meetings, denial of access to meeting minutes, officials’ failures to cite legal authority for closing sessions to the public and inadequate notice of public meetings.

We’ve even gotten complaints that public officials text message among themselves in

meetings to avoid speaking publicly.

Senator Weinberg’s bill would extensively revise New Jersey’s outdated Sunshine Law, first enacted in 1975, when widespread use of cell phones, let alone text messaging, didn’t exist. Among other things, her bill would account for e-mail and text messaging; require better public notice of public meetings; clarify the public’s right to videotape meetings; require public bodies to record their meetings on audiotape; mandate more detailed minutes;

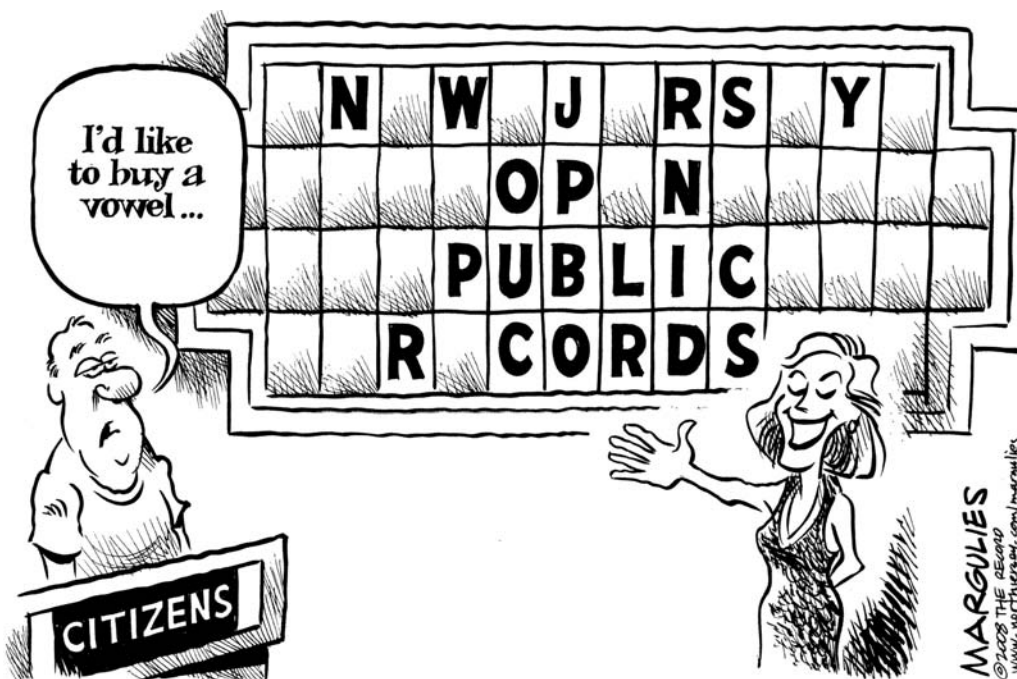
allow all Sunshine Law violations to be heard in Superior Court; and increase fines ten-fold for breaking the Sunshine Law.

To know if our government is acting in our interests, we need to understand what our government is even doing. These bills are a good start. [ACLU](#)

“Too often, ‘transparency’ is a word without meaning.”

Please contact your representatives in Trenton today to support legislation limiting the cost of copying and updating the Open Public Meetings Act, without amendment. The contact information can be found at: <http://tinyurl.com/3nletq>

NJ court okays charge for government documents



Cost of Knowledge Gets Higher in New Jersey

Need information? It could cost you.

In April, a New Jersey appellate court upheld a nearly \$1,900 charge from the New Jersey Attorney General for information requested under the state Open Public Records Act (OPRA).

The American Civil Liberties Union of New Jersey’s client, Janon Fisher, a reporter and member of the Foundation for Open Government (FOG), had initially argued successfully before the Government Records Council that the cost was too high for his request. But the GRC later reversed itself, and the appellate division upheld that reversal.

In 2004, gathering information for a FOG report on how the new Government Records Council was functioning, Fisher had requested related documents regarding the Office of the Attorney General’s handling of certain OPRA requests. Fisher put his request on hold when the state came back with its bill: \$1,877.93.

The ACLU-NJ agreed that the government could charge for Fisher’s request because of the time it would take to collect the information, rather than only standard copying costs. But the ACLU-NJ didn’t believe that Fisher should have to pay for attorneys to collect and review the documents themselves, when the custodians of records typically investigate OPRA requests.

Because of that attorney review, the documents Fisher received were heavily redacted without a real explanation. The appellate court ruled that these redactions were adequately explained, even with only general descriptions.

“We still have many hurdles to overcome to achieve transparent government in New Jersey,” said ACLU-NJ Legal Director Ed Barocas. “However, in New Jersey, government is still required to provide reasons for denying or redacting documents from open records requests and this decision leaves that unchanged.” [ACLU](#)

ACLU-NJ Calls for Putting the ‘Public’ in ‘Public Information’

Overwhelmed with information? For a change of pace, visit the New Jersey court system’s Web site. Online information on cases is so sparse that court officials have issued recommendations to make sure the public is not short-changed.

In response to complaints about limited online access to court records and consistent with a nationwide trend toward putting court records online, a New Jersey Supreme Court committee recently developed recommendations for giving the public the same access to records online that they have by making a visit to the courthouse.

“The recommendations generally strike a good balance between protecting the public’s right to know and litigants’ right to privacy,” says ACLU-NJ Legal Director Ed Barocas.

The committee recommended redacting certain private information — such as Social Security numbers and private financial data — for cases that will take place in the future, but decided it was too burdensome to redact that information for past cases. In addition, the burden of seeing the private information redacted will rest with the litigants. In its comments, the ACLU-NJ urged the court to develop a “know your rights” brochure alerting everyone involved in cases of their rights and responsibilities to preserve their own privacy.

The court fell short of recommending that every type of record be made available online and excluded certain categories of data.

“If it’s public inside the building, then it should be public on the Internet” said Barocas. “The bottom line is that our system of government is based on public participation and democratic rights are threatened when government restricts access to public information.”

For a copy of the ACLU-NJ’s comments, see <http://tinyurl.com/5h2fr2> [ACLU](#)



Profile in Liberty: Adrian "A.J." Feliciano

I've always cared about civil liberties. But when I made the documentary "Unlock the Vote" as an intern with the ACLU-NJ this spring, I realized just how important civil liberties are.

With my co-filmmaker and fellow ACLU intern Samantha Mendenhall, I interviewed ex-offenders who were denied their right to vote — some of them for the rest of their lives. The loss of their voting rights was almost as hard as losing their freedom when they were imprisoned.

It was a daunting task to put these lifetimes of struggle into a seven-minute movie. But hearing someone like Stacey Kindt, who started an organization called Redeem-Her to help other women get their lives back after prison, explain what it felt like to be able to reclaim her right to vote was life-changing.

There are people who don't like the ACLU, usually based on misconceptions. But who else is there to protect our rights? I was humbled when I talked to people who faced appalling conditions in prison, to people who endured the consequences of crippling zero-tolerance sentencing policies and to people whose fundamental free speech and religious freedom rights were denied. And I was humbled by the incredible work the ACLU-NJ does to change all of that.

I plan to go to law school in the fall, and wherever I end up, I will proudly carry my ACLU membership card. No matter where I go in the future, I will stay involved with the ACLU. When I am a lawyer, I will do everything I can to give back to the ACLU. Giving what you can to the ACLU — whether it's your time, your money or your talent — is an investment in the future of our freedom. [ACLU](#)

"No matter where I go in the future, I will stay involved with the ACLU."

TRIBUTES

In Memory of Hon. Martin Haines
Ed & Nicki Kessler

In Memory of Puneet Bhandari
Narendra C. Bhandari

In Honor of Sylvia Stengle for the Allentown Women's Center's National Coalition of Abortion Providers' and Abortion Conservation Project's 2008 Vision Award

In Honor of Jim Katz receiving the New Jersey Bar Association's Pro Bono Award for his work against Riverside's anti-immigrant ordinance

In Honor of ACLU-NJ Racial Justice Staff Attorney Nadia Seeratan for passing the New Jersey bar exam

Tributes are contributions made to honor or remember special friends, family, colleagues and occasions.

To have your tribute appear in the Civil Liberties Reporter, please contact the ACLU-NJ office at (973) 642-2086 or P.O. Box 32159, Newark, NJ 07102.

Civil Liberties Reporter

ACLU-NJ staff and the following volunteers contributed to this issue of the Civil Liberties Reporter: Peggy Brooks, Jay Gartman, Rich Pliskin and Sylvia Stengle.

Published Winter, Spring, Summer and Fall by the American Civil Liberties Union of New Jersey

P.O. Box 32159
Newark, NJ 07102
(973) 642-2084

www.aclu-nj.org • info@aclu-nj.org
ISSN: 0009-7934

STIMULATE Liberty! THE ECONOMY

Finally, you can make George Bush do something to support liberty!

Consider donating all or a portion of your federal tax rebate to the ACLU-NJ Foundation.

Use the donation envelope in your newsletter and just write "for Liberty" anywhere on it, or donate online at www.aclu-nj.org/donate

The Kids are More Than All Right — They're the Future of Our liberty.

The ACLU-NJ has a new youth initiative and we want you — teens, college students, law students and young professionals alike — to get involved. Now is the time.

Contact us today to help ensure freedom, justice and equality for tomorrow. E-mail youngblood@aclu-nj.org

Wanted:

ACLU members willing to work, help set policy, raise money and shape the organization. If you're interested in serving on the Board of Trustees, contact nominations@aclu-nj.org to find out how you can lead the fight for civil liberties.



JOIN THE DESILVER SOCIETY

Please include the ACLU of New Jersey Foundation in your will or consider making a charitable gift annuity. We can help find a plan that works for you.

For more information, contact the Office of Gift Planning at (877) 867-1025 or legacy@aclu.org or visit www.aclu.org/legacy

American Civil Liberties Union
of New Jersey
P.O. Box 32159
Newark, NJ 07102
Address Service Requested



Non-Profit Org.
U.S. Postage
PAID
NEWARK, NJ
Permit No. 6593