

In Phone Snooping Case, Feds Want to Disconnect Right to Know

IN A CASE CHALLENGING SECRET government surveillance, the ACLU-NJ has filed a friend-of-the-court brief supporting New Jersey's right to wrest information from telecom companies involved in the Bush administration's program of obtaining customer phone records from telecommunications companies.

Filed in U.S. District Court in Trenton, the case (*United States v. Milgram*) stems from the National Security Agency's warrantless program in which the NSA obtained Americans' phone records ostensibly in search of terrorists. The press exposed the program in December 2005.

After the story broke, the New Jersey state attorney general subpoenaed 10 telephone carriers to learn whether they violated the state's consumer privacy laws by giving the NSA their customers' records without approval or authority. The 10 telecoms include AT&T, Cingular Wireless, Verizon Communications and Verizon Wireless.

Citing national security, the U.S. Department of Justice has challenged New Jersey's right to issue the subpoenas to the telecoms.

"The federal government wants to stop New Jersey's top law enforcement official from finding out whether the telecoms violated state laws in place to protect the privacy of New Jersey's citizens," says ACLU-NJ Legal Director Ed Barocas. "You have to wonder what they're trying to keep New Jersey from uncovering."

In trying to block the subpoenas, the Justice Department cites the "state secrets"



The ACLU-NJ supports the state's quest to determine if phone companies turned over private customer information to the NSA. Photo by François Proulx

privilege. This little-used provision allows the federal government to shield specific information from disclosure if doing so would harm national security.

In its brief, the ACLU-NJ asserts that the state secrets privilege has no place in the case, arguing that the NSA wiretapping program already has been publicly exposed, so there's no state secret to protect. Further,

the Justice Department has failed to tailor its confidentiality request to the specific information sought under the New Jersey subpoenas, a requirement for invoking the state-secrets privilege.

Attorneys Lawrence Lustberg and Megan Lewis of Gibbons, Del Deo, Dolan, Griffinger & Vecchione in Newark wrote the brief on behalf of the ACLU-NJ. ■

N.J. Voter Protection 2006 Makes a Difference in November Elections



Regina Eaton, deputy director of the Democracy Program at Demos, a co-sponsor with the ACLU-NJ of a forum on how Election Day registration can improve voter turnout. Photo by Marc Beebe

ACLU-NJ POLL MONITORS WORKED overtime on Election Day 2006, helping voters around the state cast ballots and, in more than a few instances, reminding poll workers of their obligations under the law — to let voters vote.

From Hudson to Camden and Mercer to Monmouth, ACLU-NJ staff and volunteers stationed at polling places encountered malfunctioning machines, a lack of backup ballots, problems with access to polling places and missing names on voter rolls.

In all, it was just another day's work for the ACLU-NJ's Voter Protection Project.

"Having monitored the last several elections, we knew to expect a lot of problems

Coalition of Business Owners, Residents Challenge Local Anti-Immigrant Law

The ACLU-NJ, IN COOPERATION WITH other civil rights organizations, filed a lawsuit in state court on behalf of landlords and residents challenging the Burlington County township of Riverside's adoption of an anti-immigrant ordinance.

Riverside's Illegal Immigration Relief Act threatens fines, imprisonment and loss of business license for any business owner or landlord who houses or employs undocumented immigrants. In enacting the measure, the town presumes to regulate an area — immigration — long governed by federal law.

"State law simply does not permit Riverside to exclude immigrants from the township," says ACLU's cooperating attorney James Katz of the Spear Wilderman law firm in Cherry Hill. "Nor can the township regulate the rental or hiring decisions of Riverside businesses and landlords."

The Riverside ordinance is among the most draconian of a slew of anti-immigrant measures enacted by local governments across the country. It attempts to ban immigrants from renting, residing, using property or being employed in Riverside, and it bans any actions that "aid or abet" undocumented immigrants anywhere in the United States.

In addition to arguing that the township overstepped its authority, the suit asserts that the ordinance is unconstitutionally vague, unfairly puts businesses at risk and violates state civil rights laws.

"This ordinance is so vague and overbroad that it's virtually impossible to

obey and appears to ban a large amount of innocent conduct," says Elliot Mincberg, vice president and legal director for People For the American Way Foundation, a member of the coalition challenging the ordinance with the ACLU. "Even a hospital or church that allows an immigrant on its premises could be charged with a violation."

"With a developing national dialogue on the problems of our immigration system, it's natural for people to try to seek solutions at all levels of government. But the U.S. Constitution doesn't allow local governments to create their own immigration laws — this is the role of the federal government," ACLU-NJ Legal Director Ed Barocas explains.

"What would be next?" Barocas asks. "Boroughs and townships pursuing their own customs standards and foreign policies? This goes to the essence of our system of federalism, in which the state and federal governments each have their areas of authority and responsibility."

Barocas says that Riverside's immigrant-exclusion law would make every person who looks or sounds foreign a suspect, including those who are here legally. "You might as well paint a target on someone who is perceived to be a foreigner and say, 'Treat me differently,'" he says.

The plaintiffs in the case are represented by attorneys from the ACLU-NJ, the ACLU Immigrants' Rights Project, the Spear Wilderman law firm, the Puerto Rican Legal Defense and Education Fund, People For the American Way Foundation, and Ragonese Albano & Viola law firm of Runnemede. ■

Board of Trustees Candidates – ACLU-NJ 2007



Elizabeth Houston Middlesex

I have been involved with the ACLU-NJ since I was 16 years old, and am completing my fourth year as a member of the Board of Trustees. As a member of the board, leader of student chapters, intern and volunteer, I have been involved in numerous aspects of the organization.

I have had the opportunity to watch the ACLU-NJ grow and mature over the last six years, and the progress that has been made is stunning.

I have participated in whatever ways I was able, and both literally and figuratively I have grown with the organization. As a college student, I bring an otherwise unrepresented point of view to the board; as a board member, I can assist in striving to find ways to further reach out to and involve the student population in the ACLU. I would be honored to be re-elected to the board.



Arnaldo Carrera Essex

According to the Constitution, we have the rights to freedom of speech, privacy and a fair trial. In practice, these rights are being stripped away from us by people who believe the unalienable rights so wisely perceived by our Founding Fathers are not really all that unalienable. I'm proud to be part of the ACLU-NJ, an organization that harnesses the courage, commitment and perseverance necessary to defend our civil rights.

Some initiatives I hope to focus on are the fight for

privacy against unwarranted government surveillance, the need for anti-discrimination in government policies and just treatment of immigrants. I have more than 25 years of executive experience in banking, technology and operations and currently serve as a trustee of an international trade organization, and of the American Repertoire Ballet in Princeton, one of the oldest dance schools in America. I also served four years as councilman of the Township of Belleville.



Beth Hillman Mercer

I'm a professor of law at Rutgers University School of Law at Camden, where I teach and write about military law, legal history, the Constitution, and trusts and estates. I also co-founded and co-direct the Marshall-Brennan Fellowship Program, which sends law students into Camden schools to teach a course on constitutional law.

In my teaching and scholarship, I work to convey how profoundly our world is shaped by legal and political institutions. In my first professional life, as a space operations officer in the Air Force, I found my own opportunities limited by one such institution: the military's anti-gay policy. As an academic, I've tried to break down the barriers that separate academic and popular discourse. I've served on nonprofit boards to promote fairness in military justice, seek equality for LGBTQ Pennsylvanians and fight homelessness. I would be honored to help the ACLU-NJ continue its fight for freedom and tolerance.



Bernard Freaman Essex

I am honored to stand for election to the ACLU-NJ Board of Trustees for another term. In the past three terms, I have done my best to give excellent service and leadership to the organization. I have served as Chair of the Nominating Committee and, this past term, served as the affiliate's Affirmative Action Officer. I also am a member of the Executive Committee and, in that capacity, I try to give guidance to the organization,

particularly when we are confronted with hard issues. I lend my experience and insight whenever I can.

These are extraordinarily difficult times for civil libertarians and all Americans. The ACLU is undoubtedly the most important segment of civil society at work today. I am committed to seeing that our work continues so that the Bill of Rights will continue to be honored and respected by our federal and state governments.



Caitlin Borgmann Essex

I am honored to run for my second term on the ACLU-NJ Board of Trustees. It is hard to overstate the ACLU's importance in today's political climate. Civil liberties are being attacked with a frightening zeal. Many of the battles are being fought right here in New Jersey. I have worked with the ACLU on the front lines of these battles for over a decade. I was the state legislative coordinator at the ACLU Reproductive Freedom Project for six

years. There I provided legal and strategic advice to ACLU affiliates and brought legal challenges to laws restricting reproductive rights. I have written and spoken extensively on civil liberties issues. I currently teach at CUNY Law School. I will continue to be an active board member who works hard to ensure that our organization continues to work as effectively as possible to protect the civil liberties of everyone in New Jersey.



Beth Van Hoeven Mercer

I have been an ACLU board member for more than 10 years. During that time period, I chaired the Strategic Planning Committee and Nominating Committee, participated in the ongoing fundraising and growth of the organization, and served as a delegate at the National ACLU's 2001 and 2005 biennial meetings. The ACLU's unwavering advocacy for civil liberties has never been more important. I am asking for your vote so

that I may continue to work for civil liberties for all as an ACLU board member.



Marc Beebe Union

I blame my parents for my interest in civil liberties. When I was young, my parents would take me to marches for the Equal Rights Amendment and other political activities. They instilled in me a strong concern about social justice and social responsibility.

This is the end of my first three-year term on the ACLU-NJ Board of Trustees and it's been one of the most rewarding experiences of my life. While

on the board, I've chaired the Strategic Planning Committee and co-written a number of grants. I currently serve on the Privacy Committee, chair the Budget and Finance committee and serve as Treasurer. Being on the ACLU-NJ Board of Trustees is an important responsibility, and I take the responsibility seriously. I look forward to continuing to work hard to protect the civil liberties of all people of New Jersey.



Avi Tilak Morris

Since coming to the United States more than three decades ago, what has always amazed me is the individual civil liberties that we enjoy, unlike most other nations on earth. Unfortunately, every government has a tendency to encroach on individual liberties in the name of efficiency. Our government is no exception.

The ACLU is the only organization I know of that defends civil liberties regardless of the underlying political bent of individuals or organizations. It is the only organization that defends the rights of Communist Party members and Ku Klux Klan members to have the same civil liberties.

I have a wide-ranging background in consulting (own/run analytical marketing consulting company), business (owner/partner in motel, restaurants and other businesses), nonprofits (current president of Denville Rotary, past-chair of INFORMS-NJ), academics (currently adjunct in Rutgers) and industry (worked for Ma Bell). I am honored to support the ACLU-NJ in any capacity I can.



Ellen Samuel

Civil liberties are threatened today more than ever, not only from governmental abuse but also from a skewed perception of "nationalism." We are needed more than ever and, with the help of a great Board of Trustees and excellent staff, we do more than ever before. We, at ACLU-NJ, are leaders in the campaign to keep us Safe and Free. Our legal docket is diverse, positive press stories abound, the Board is strong and our donors

appreciate us more.

During my tenure as President, since 1999, I can proudly say that we have steadily grown our membership, our staff, the number of programs we institute, the number of organizational collaborations we work with, our budget and our presence across New Jersey. I am pleased to be nominated again and ask for a vote of confidence to continue to serve you on this board in these difficult times.



Vaughn M. Tripp Hudson

I am a retired administrator from the New Jersey Department of Human Services in Trenton. A graduate of Rutgers University with a Master of Public Administration, I have more than 25 years of high-level administrative public and private sector experience.

I live in Jersey City and am an active volunteer with several community and nonprofit organizations, including WBGO Newark Public Radio; Rutgers Alumni Association; Women's Rights Center of Englewood; International A.N.S.W.E.R.; and WBAI Pacifica Radio in New York. I'm a single parent and a U.S. Air Force Vietnam Veteran. I first got involved with the ACLU-NJ as an office volunteer.

As an ACLU-NJ board member, I would strive to further the goals and reach of the organization and hope to be able to offer something of my knowledge and experience to assist the ACLU-NJ in its mission to promote and defend civil liberties principles.

A Rose by Another Name

THE NEW JERSEY SUPREME Court's recent decision that gay and lesbian couples deserve the same rights as heterosexual married couples stands as a landmark in the Garden State's legal history and as a stepping stone in the fight for marriage equality across America.

In its ruling, the court gave the state Legislature 180 days to create a legal framework that will give same-sex couples all the rights that married couples enjoy. The justices warned that if legislators call the new structure something other than "marriage," they'll have to justify why, which invites further litigation.

Advocates for same-sex marriage responded to the decision with mixed emotions — relief that the court moved gay couples' rights forward, but disappointment that it stopped short of declaring a state constitutional right to same-sex marriage.

As legislators deliberate, we'll advocate for the thousands of children and families who deserve not only the rights and privileges of marriage, but also the recognition and respect of the institution of marriage. Shakespeare wrote, "What's in a name? That which we call a rose/By any other name would smell as



Deborah Jacobs

sweet." In the case of equal rights for same-sex couples and their families, "civil union" is not nearly so sweet as "marriage."

Why? Because civil union instead of marriage sends a negative message: that gay and lesbian couples are second-class citizens whose abiding personal commitments are of less strength, depth and value than those of heterosexual couples, and thus deserve less recognition in the eyes of the state.

This is a message that we must change.

The ACLU-NJ, in coalition with a broad range of supporters of marriage equality, will do everything we can to persuade the Legislature to do the right thing and simply add same-sex couples to our existing marriage laws rather than create a civil union system.

But six months — the deadline set by the court — is not a lot of time to effect a major shift in public and political opinion. And key political leaders like Governor Corzine, who previously supported marriage equality, have come out in support of civil unions.

Opinion research suggests that with sufficient time and resources, the public

and politicians could be persuaded to support same-sex marriage. According to a recent poll reported on by The Star-Ledger, for example, nearly a quarter of New Jerseyans already support marriage equality, and another 17 percent are undecided.

Presumably, a substantial portion of those undecideds, along with outright opponents, could be persuaded to move into the support column with time and education. Meanwhile, we're engaged in efforts to persuade legislators to support marriage equality.

Though not here yet, marriage equality in New Jersey is inevitable. As we work to change hearts and minds, we can take comfort in knowing that with every generation, Americans become more comfortable with gay and lesbian rights, and move closer to accepting gays and lesbians as equals in the law and at the altar. ■

"By excluding same-sex couples from civil marriage, the State declares that it is legitimate to differentiate between their commitments and the commitments of heterosexual couples. Ultimately, the message is that what same-sex couples have is not as important or as significant as 'real' marriage, that such lesser relationships cannot have the name of marriage."

— New Jersey Supreme Court Chief Justice Deborah Poritz, opinion in the same-sex marriage case, *Lewis v. Harris*



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Voter Protection

Continued from page 1

in 2006," says Anne Barron, the ACLU-NJ staff member who oversees voting rights initiatives. "That's why we had a hotline and trained poll monitors to stand up for voters' rights."

The training came in handy in Bloomfield, where voting machines temporarily crashed and poll workers began telling voters to come back later. The ACLU-NJ's on-site poll monitor prevented massive voter disenfranchisement by suggesting that poll workers use emergency ballots.

Among the most serious Election Day incidents occurred in Passaic and Hudson counties, where poll workers improperly demanded that would-be voters present identification in order to cast ballots. Pressed for time, a number of registered voters were unable to go to the court house to petition a judge.

Working with the League of Women Voters of New Jersey, the ACLU-NJ fielded dozens of calls to the league's VOTELine voter hotline, and also assisted our coalition partner ACORN in its efforts to ensure that Hudson County election officials properly registered citizens to vote.

The Voter Protection Project will now analyze the complaints we received in greater detail. "As we spot patterns, we'll recommend improvements to state elections officials," Barron says.

One pattern emerged on Election Day, when poll monitors around the state noted an abundance of partisan legal representatives at the county court houses attempting to dissuade voters from petitioning the courts for the right to vote.

"The state is currently considering its policies on campaigning for a party or candidate, which is illegal within 100 feet of polling sites" says Barron. "Perhaps it needs to consider how to protect voting rights in election court rooms as well." ■

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Board of Trustees Candidates — ACLU-NJ 2007: Nominations Process

The Nominating, Elections and Affirmative Action Committee (NEAAC) presents a slate of 10 candidates for 10 open positions on the ACLU-NJ Board of Trustees. Candidates have been nominated to serve three-year terms, beginning in January 2007.

2006 Board Election Ballot

Return ballot to:
Election Committee, ACLU-NJ
P.O. Box 32159, Newark, NJ 07102

- | | |
|---|--------------------------------------|
| <input type="radio"/> Elizabeth Houston | <input type="radio"/> Beth Van Hoven |
| <input type="radio"/> Arnaldo Carrera | <input type="radio"/> Marc Beebe |
| <input type="radio"/> Beth Hillman | <input type="radio"/> Avi Tilak |
| <input type="radio"/> Bernard Freeman | <input type="radio"/> Ellen Samuel |
| <input type="radio"/> Caitlin Borgmann | <input type="radio"/> Vaughn Tripp |

The ACLU-NJ depends on strong, quality leadership and promotes the opportunity to serve on its Board of Trustees in every issue of the *Civil Liberties Reporter*. Interested members may contact the ACLU-NJ at (973) 642-2086 or e-mail nominations@aclu-nj.org.

In addition to nomination through the NEAAC, individuals also may seek a place on the ballot by gathering signatures of 50 ACLU-NJ members on a petition. Petitions for next year's election are due on September 30, 2007.

Voting and Mailing Instructions

Although this year's election is uncontested, our bylaws require that we prepare a ballot and provide our members with an opportunity to vote.

Individual Memberships: Vote for a maximum of 10 candidates.

Joint Memberships: Joint members vote on the same ballot. If you have a joint membership, you will have two names on the mailing label of this issue of the *Civil Liberties Reporter*. Each member may vote for a maximum of 10 candidates.

To Vote: Simply place an "X" in the circle before each name you select. Clip and return only the "Official Ballot." Include your name (two names for a joint membership) and address on the mailing envelope for us to verify your membership status. Return ballots to: Elections, ACLU-NJ, P.O. Box 32159, Newark, NJ 07102, before December 31, 2006.



DeSilver Society Profiles:

Marc Beebe

"I never even really thought of myself as having an 'estate' to leave to anyone — all I had was life insurance through my job and money in my 401(k). But it seemed clear to me that making this planned gift was the right thing to do."

I JOINED THE DESILVER SOCIETY TWO YEARS AGO when many of us on the Board of Trustees committed ourselves to making planned gifts to the ACLU-NJ in honor of Deborah Jacobs' fifth year as executive director. We were so pleased with the direction of the organization, with the growth of membership and how our affiliate was poised to defend New Jerseyans against the tide of anti-civil liberties legislation coming from Washington that we wanted to ensure that our success would last well into the future.

At the time, I was a "younger" member of the ACLU-NJ, or at least I was at an earlier stage of my life. I had no dependents other than my cat. In fact, I never even really thought of myself as having an "estate" to leave to anyone — all I had was life insurance through my job and money in my 401(k). But it seemed clear to me that making this planned gift was the right thing to do.

Leaving a "Legacy of Liberty" turned out to be very easy. I didn't previously have a will, so this provided the impetus for me to do so. And by completing a very brief Legacy Challenge form, I became a part of the DeSilver Society. It feels great knowing that my gift will benefit the ACLU immediately through the cash match and will help support the organization's work down the road.

Helping to protect the civil rights of New Jerseyans is very important to me and now I know that my contributions will continue to do that.

Legacy of Liberty Challenge:

For a limited time, new bequest gifts made before December 31, 2006 will be matched by an immediate cash gift to the ACLU. The DeSilver Society is composed of all those who make bequest provisions to the ACLU in their will.

Working While Muslim: New Offense?

In a suit filed in federal court in Newark, the ACLU-NJ and the Seton Hall Law School Center for Social Justice say the Transportation Security Administration illegally terminated Wagih H. Makky, a world-renowned aviation security expert, owing to his Arab-Muslim heritage.

"Suspending one of the government's most talented security engineers just because he's an Arab and a Muslim compromises our country's security as well as its values," says Seton Hall Law Professor Baher Azmy, the ACLU-NJ's lead attorney on the case.

Makky was suspended the day the United States invaded Iraq — March 19, 2003. His status was later converted to suspension without pay, effectively terminating him. The TSA has never informed Makky why he was suspended, and nothing in his employment record points to anything but exemplary skills and service.

An Egyptian by birth, Makky came to the United States 30 years ago, later earning a doctorate, professional plaudits and American citizenship.

His skills were so valued that following the bombing of Pan Am 103 over Lockerbie, Scotland, in 1988, the government tapped Makky to create a unit in the Federal Aviation Administration to focus resources on preventing terror attacks on airliners.

He spent the next decade developing devices to detect and prevent explosives from being brought aboard planes, trains and other modes of mass transport.

None of it was enough to overcome institutional bigotry. One supervisor told Makky it was a mistake to hire an Arab, while a new boss wanted to know just one thing about Makky: his national origin.

In addition to Azmy, attorneys on the case are Scott Michelman, also of Seton Hall Law School; Edward Barocas, legal director of the ACLU-NJ; and Arthur B. Spitzer, legal director of the ACLU National Capital Area. ■

TRIBUTES

In memory of Irwin S. Markowitz

Alexander & Adele Holman
Edward & Nicki Kessler
Eric & Kenise Lorberfeld
Richard Norris
Isobel Perry
Judith Prigal
Elaine Scurtis

In memory of Puneet Bhandari

Narendra Bhandari

In memory of Daniel Weitz

Linda D'Addario
Ruth MacNaughton & Harold Spencer
Mary Sklenar & Tom Bahash

In honor of Bobbie Garfinkel

Barbara & Bert Lenoble

In honor of Fred and Joan Waring

Robert & Patricia Bender

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

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.

CREATIVE WAYS TO SUPPORT THE ACLU-NJ

Charity Malls

If you are going to shop online, why not have a percentage go to the ACLU-NJ? Charity mall sites have reached agreements with retailers to donate a percentage of your purchases to the charity of your choice (hopefully that's the ACLU-NJ). Every charity mall works a little differently. Luckily, Justgive.org offers a convenient list of charity malls that you can try this holiday season. When selecting your charity, search for the ACLU of New Jersey Foundation. If we are not listed, you can add us using the address and contact information from this newsletter.

www.justgive.org/html/ways/ways6.html

Does Your Company Match Gifts?

Many of our donors have doubled their contributions simply by filling out a matching gift form from their employer. Check with your human resources department to find out if your company will match your donation.

IRA Accounts

The Pension Protection Act of 2006 (PPA) includes some provisions that could make it beneficial for you to make a significant gift directly from your IRA account. Benefits under the PPA are greater for those over the age of 70.5; however, there may be some benefits that younger IRA holders could realize. Ask your financial advisor if a gift from your IRA would benefit you.

Tributes

Every quarter the ACLU-NJ runs tributes in this newsletter (see page 4) in honor or in memory of friends, family or colleagues. Consider making an extra contribution to celebrate a birthday or bar/bat mitzvah, to remember a friend or to acknowledge an important accomplishment.



LEGACY OF LIBERTY CHALLENGE

Through a generous commitment by ACLU Foundation supporter Robert W. Wilson, a bequest provision in your will or trust will be matched with up to \$10,000 in immediate cash support to ACLU programs. Never before has your commitment to the ACLU been able to accomplish so much. For more information, call the Office of Gift Planning toll free at (877) 867-1025 (through December 2006).

Address Service Requested

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Newark, NJ 07102

