



ACLU of Utah Reporter

October 2009

Newsletter of the American Civil Liberties Union of Utah

Proposed Anti-Panhandling Ordinance Raises Constitutional Concerns

The City of Salt Lake recently drafted a proposed ordinance targeting panhandling. In response, the ACLU submitted comments, outlining our concerns with enacting the proposed ordinance. In particular, our concerns centered on the following areas: First Amendment infringement, enforcement difficulties and more effective alternatives to regulating panhandling.

Potential Constitutional Issues with Regards to Free Speech

Courts have recognized that "[b]eggars at times may communicate important political or social messages in their appeals for money, explaining their conditions related to veteran status, homelessness, unemployment and disability, to name a few....

While some communities might wish all solicitors, beggars and advocates of various causes be vanished from the streets, the First Amendment guarantees their right to be there, deliver their pitch and ask for support."

Cities that have enacted similar

anti-panhandling ordinances have been subject to legal challenges, on grounds that anti-panhandling ordinances violate the First Amendment to the Constitution as well as state constitutional provisions protecting free speech. Indeed, in the majority of cases where this issue is considered, courts have held that panhandling or solicitation for money is speech entitled to First Amendment protection. While courts have come to different conclusions regarding the constitutionality of anti-panhandling ordinances, several recent decisions have struck down

similar laws as violating state free speech provisions under state constitutions.

In March 2009, a judge in Oregon ruled that the city of Medford's very similar anti-panhandling ordinance violated Article 1, Section

8, of the Oregon Constitution, which prohibits passing any law restricting freedom of speech. While not yet tested as applied to charitable solicitation, Utah's constitutional provisions regarding free speech have been interpreted by the Utah Supreme Court as providing for



Trading Privacy for Security



The state of Utah began working with the federal government to create a "Fusion Center" in 2006. Fusion Centers are state, local and regional institutions created to improve the sharing of anti-terrorism intelligence among law enforcement agencies.

These centers share information through partnership between law enforcement agencies, other government agencies - such as FBI, Homeland Security, and the military - and some selected private companies. To feed information to the system, the centers create a network of interlinked computers databases and trained officers. Information such as criminal intelligence, public and some private records are saved in the shared database system.

There are certainly legitimate reasons for the government to seek to do a better job collecting and sharing law enforcement information. Nonetheless, the mixing of technology and government

Continued on page 10

Continued on page 10

The Director's Chair



Karen McCreary
Executive Director

As you can imagine, there are more opportunities for civil liberties engagement in Utah than we can address. The ACLU's mission - to protect and defend the Bill of Rights and the Constitution - challenges us in its breadth and importance. How do we go about deciding what issues to pursue? What framework do we use to determine how to allocate our limited resources? Because it is impossible to do everything that needs to be done, how do we make the tough decisions about what is most important to creating societal change?

Strategic planning provides a process and framework for these decisions. Over the past year, our ACLU of Utah board and staff worked together to develop a strategic plan to identify issue priorities that will have a great impact on our state as well as provide direction for us to proactively move forward. We began by surveying community partners and stakeholders, including our members, to determine which civil liberties issues they perceived as requiring primary attention in Utah as well as what they believed we were doing well and how the ACLU could be more effective. With the assistance of a facilitator from the ACLU's national affiliate support department, the board met last winter for several days to identify programmatic priorities and broad strategies. Since then, the board

with input from the staff has worked to identify specific initiatives that will lead to long-term outcomes.

Five priority areas have been identified through this planning process:

- **Participatory Democracy** including strengthening our democratic institutions, eliminating barriers to voting, maintaining transparency, fairness and accountability in government and encouraging the engagement of youth in our civil society;
- **Racial Justice** including our current work to reform the indigent criminal defense system and efforts to address educational inequities as well as on-going efforts to monitor and challenge racial profiling in law enforcement;
- **Immigrant Rights** working to educate immigrants and the broader community regarding Constitutional protections for every person in this country;
- **Privacy and Technology** promoting responsible uses of technology while opposing those that undermine our freedoms and move us closer to a surveillance society;
- **Religious Liberties/Freedom of Belief** working to enhance understanding and practices respecting the free exercise of belief while challenging governmental "establishment" of religion.

We also affirm our continuing commitment to protect **reproductive freedom** and to work for **LGBT rights and equality**. This is an ambitious list of priorities, especially as we are also committed to remaining flexible

to respond quickly and effectively to other issues and problems that will also arise. The board will continue to monitor and evaluate our progress in these areas while we also continue to develop our resources and organizational capacity.

The ACLU of Utah's commitment to strategic planning is particularly important now in the continuing uncertain economic climate alongside a very contentious political one. We are confident we can continue to make a significant impact to redress wrongs and to proactively change Utah's civil liberties landscape.

Become an ACLU of Utah Activist

Keep up-to-date with all of the ACLU of Utah's upcoming events and action alerts by signing up for the ACLU of Utah's Activist email list from our website at www.acluutah.org/activist.htm.

If you are on Facebook become a friend of the ACLU of Utah and let others know that you care about civil liberties.

About the ACLU of Utah

Founded in 1920, the American Civil Liberties Union is a nationwide, nonpartisan organization dedicated to working in the courts, legislatures, and communities to defend and preserve the individual rights and liberties guaranteed to all people in this country by both the Constitution and the laws of the United States.

The ACLU of Utah was chartered in 1958 to work on constitutional issues that are pertinent to those living in this state. Our priorities include freedom of speech, expression, and association; freedom of religion, including the separation of church and state; the right to privacy; safe prison and jail conditions; and equal protection and due process of the laws.

Staff

Karen McCreary, Executive Director
Marina Baginsky Lowe, Staff Attorney
Anna Brower, Development Director
Reinard Knutsen, Office Manager
Michelle Brester, Paralegal
Nariman Noursalehi, Legal Extern
Sac Nichte Yescas - Smoot,
Program Associate

Board of Directors

Jennifer Allred, Tim Chambliss,
Rebecca Chavez Houck,
Beverly Dalley, Debra S. Daniels,
Erika George, Lincoln Hobbs,
Marc Hoenig, Iqbal Hossain,
Bonnie McBride Huntsman,
Sue Marquardt, Andy McCullough,
Tarek Nosseir, Liz Paige,
Jill Sheinberg, Zain Siddiqui,
Richard Van Wagoner, Robert Wood,
Doug Wortham

Legal Panel

Jensie Anderson, Stephen Clark,
Roberto Culas, Linda Jones,
Laura Kessler, Tom Mitchell,
Cathy Roberts, Emily Smith,
Trystan Smith, Karen Stam,
Mary Woodhead

Interns

Jascha Clark, Fotoun Kurdi,
Derek Onysko

Contact Information

355 North 300 West
Salt Lake City, UT 84103
Phone: (801) 521-9862
Fax: (801) 532-2850
aclu@acluutah.org
www.acluutah.org

The President's Corner

Something to Shout About: As the town hall meetings across the nation were interrupted by individuals who have chosen to exercise their constitutionally guaranteed freedoms of speech by shouting down any intelligible dialogue about health care insurance reform, I wondered about the democratic processes that have stirred such passion. I do not at all make light of the issue of health care insurance reform and have my own very strong opinions on the subject; however, I find it a little disconcerting that our national attention is not focused with at least equal passion on the subject of the alleged violation of the rule of law by our nation's leaders regarding the authorization of the use of torture.

I understand the idea of leaving the past behind and moving forward. We as a nation certainly are facing unprecedented challenges that call for focused leadership. Nevertheless, no issue can be more important to the future of our nation than its maintenance of its foundations in the rule of law.

No amount of economic recovery, securities regulation reform, health care restructuring or even victory over international terrorism will compensate for the loss of the grounding of our government and of our very self-definition in a rule of law that applies without exception to every citizen of our great country—including, especially, our highest elected officials.

The process of inquiry into whether laws have been violated by our president, vice president, or other member of their administration is not a pleasant process for the nation to endure—it is time consuming



Robert Wood
President

and distracting. But, in my opinion, there is no better use of our time and our resources than to conduct a thorough and fair inquiry into the matter. The result of the inquiry will be what it will be and is not as relevant as the fact that the world will know and, just as important, we the people of the United State of America will be reminded that the laws of our country apply equally to all of its citizens.

The United States does not and should not enforce laws against those with limited resources and little political power while not enforcing those same laws against those with more substantial resources and great political power. The message sent to our citizens and world neighbors by the vigorous pursuit of the question of whether the rule of law was violated without regard to the status or position of the alleged violators will more resoundingly sound the bell of justice and liberty than any economic stimulus package or any awesome military deployment.

Demand Accountability!

Find more information and take action with the ACLU Accountability for Torture project at www.aclu.org/accountability

IMMIGRANTS' RIGHTS ARE YOUR RIGHTS, TOO!

For the past year, we have been working concertedly in the area of immigrants' rights. Our efforts have been shaped largely by the creation and implementation of Senate Bill 81, "Illegal Immigration." This omnibus law contains numerous provisions that target undocumented immigrants, and potentially impact lawful citizens, such as requiring the use of E-Verify to assess the legal status of public employees and presumption of denial of bail to undocumented immigrants.

Originally passed in 2008, SB81's implementation was delayed one year; it came into effect on July 1, 2009. In advance of that date, the legislature's Immigration Interim Committee held several community hearings throughout the state, and several community responses (including possible litigation) were discussed as we worked with our coalition partners to prevent implementation. We ultimately decided that a facial legal challenge to SB 81 was not feasible.

Many of the provisions outlined in SB81 break no new ground; rather they merely affirm or assert aspects of federal law (such as the 287(g) agreements between ICE and local law enforcement, and the requirements for proof of citizenship in order to receive certain government services). However, the messages from many legislators and some highly vocal constituents was highly negative and threatening. Accordingly, there was much confusion and misinformation in the months leading up to the statute's effective date in July.

In response to that fear and confusion, we led and participated in multiple educational events throughout the state. We developed

a summary of SB81's provisions in both Spanish and English, which is now used by the Mexican consulate, local governments and community organizations. We conducted multiple "Know Your Rights" presentations, both for immigrant communities and for advocates who serve those communities.

We made educational materials and complaint forms available in Spanish on our website, for use in geographic areas where we are not able to personally work with immigrant populations. The purpose of this work was to clarify aspects of SB81 to dispel fear and misinformation, and to ensure that immigrants and their advocates are aware that even undocumented individuals do have rights under our Constitution and need not submit to abuses of power by law enforcement.

We hosted public film screenings of a short ACLU-produced documentary called "Freedom to Dream: Rights of Immigrants," followed by discussions with local experts and advocates. The purpose of these events was to inform the public of the unanticipated negative impacts of anti-immigrant legislation. We also hoped to educate attendees about the critical constitutional rights they may be compromising in over-reaching attempts to control immigration on a local level (such as due process, habeas corpus and the right to privacy).

We are currently monitoring SB81's actual impacts for potential challenges to the law, as it is applied. Specially adapted complaint forms are available, so immigrants and others can report potential civil liberties violations related to SB81 (such as racial profiling).

Continued on page 5

Conversations About IMMIGRANTS' RIGHTS Around the State

IN LOGAN - AUG. 20

The ACLU of Utah hosted a screening of "Freedom to Dream: Rights of Immigrants" at the Logan Public Library, followed by a panel discussion with:

Mark Alvarez
Immigration Attorney
Rulando Murillo
Community Leader, Business Owner
Antonella Packard
Business Owner, Latin American Chamber of Commerce

LESSONS LEARNED AND SHARED

IN LOGAN: Little appears to have changed substantively since SB 81 went into effect on July 1, 2009. One exception? A sense of fear and persecution in the immigrant and Latino communities. Some attendees worried that racism is at the heart of such anti-immigration policies, and business owners who serve the Latino community reported seeing a drop in business as immigrants and even native Latinos leave the state.

IN OGDEN - AUG. 25

The ACLU of Utah hosted a similar event in partnership with the Unitarian Universalist Church of Ogden. Our panel included:

Mark Alvarez
Immigration Attorney
Jesse Garcia
Ogden City Council
Theresa Novack
Unitarian Universalist Church of Ogden
Juan Ruiz
Latin American Chamber of Commerce

LESSONS LEARNED AND SHARED

IN OGDEN: Another negative impact in the aftermath of SB81's implementation appears to be racial profiling. Several audience members shared stories of police officers patrolling Latino shopping areas and stopping Latino drivers. Many attendees expressed a fear that SB81 may be understood both by the immigrant community and by law enforcement in a way that contributes to increased tension and fear.

2009 ANNUAL MEMBERSHIP MEETING THURSDAY, OCTOBER 15

@ the Episcopal Church Center of Utah (75 S. 200 E.)

All members welcome - no cost!



**VIVEK
MALHOTRA**
is the national
State Strategist
for the ACLU
Immigrants'
Rights Project.

Vik coordinates the Immigrants' Rights Project's support of the 53 ACLU affiliate offices throughout the United States through a comprehensive program of advocacy, education and litigation, and provides affiliates with strategic legislative and pre-litigation counsel on the rights of immigrants.

Before joining the Immigrants' Rights Project, Vik was a state lobbyist for five years with both the ACLU California Legislative Office and Asian Americans for Civil Rights and Equality, in Sacramento. He developed legislation and lobbied state lawmakers on a range of civil liberties and civil rights issues, including immigrants' rights. Vik began his career as a civil litigation attorney in the Los Angeles office of Loeb & Loeb LLP. He is a graduate of Pomona College and New York University School of Law.

6:00 - 7:00 - Members Only

Presentation on the ACLU of Utah's priorities, strategies, projects and organizational health

7:00 - 7:30 - Open to All

Reception & Refreshments

7:30 - 8:30 - Open to All

**The U.S. Immigration Policy Patchwork
and Utah's Role in the**

National Immigration Conversation

Presentation by Vivek Malhotra

State Strategist, ACLU Immigrants' Rights Project

The Annual Membership Meeting of the ACLU of Utah is an important gathering, open to all members of the Union. We invite you to attend to learn more about what YOUR membership organization is doing to protect and expand the civil liberties of all Utahns. You will meet your ACLU of Utah staff, board members and fellow ACLU supporters. While this official meeting is for members only, please feel welcome to invite your friends, family members and colleagues to the second half of our evening. The reception and keynote address will be free and open to the public!

**For more information, contact Anna Brower,
(801) 521-9862 x100 or abrower@acluutah.org.
RSVPs are appreciated, but not required.**

Immigrants continued from page 4

We have worked closely with coalition partners to set up a system for reporting and responding to civil liberties abuses, even as we respond to policy developments related to immigrants and immigration. We have also begun to offer a Spanish-language complaint line, and our

website features a "recursos in espanol" section.

With federal comprehensive immigration reform not likely to occur over the next year, we anticipate additional local attempts to "handle" the issues created by immigration in our country.

The ACLU of Utah is committed to

ensuring that any proposed policy does not strip immigrants – and, by extension, the rest of us! – of our most fundamental constitutional rights. In the meantime, we will continue to educate our fellow Utahns that immigrants' rights are our rights, too!

Find more information about our Immigrants' Rights Project at www.acluutah.org/immigration.shtml

Giving Democracy a Chance in Utah

With the nation's worst voter turnout rate, and a reputation as one of the most gerrymandered states in the country, Utah clearly needs to promote more political engagement and minimize obstacles to democratic participation. The ACLU of Utah has supported Election Day Registration and opposed laws that require potential voters to show photo ID and proof of citizenship. We have pushed for legislation that makes challenging voter eligibility on Election Day more difficult. Still, Utah's unbalanced political landscape poses ongoing challenges to a fully participatory democratic system.



This summer we testified before the Governor's Commission on Strengthening Democracy about counterproductive measures such as photo ID requirements, which may alienate voters (e.g. out-of-state students, the elderly and the disabled). We will continue to work with such partners as the League of Women Voters, the Disability Law Center and the newly formed Utah Fair Boundaries Commission to ensure that legislative redistricting in 2010 is both constitutional and friendly to democratic participation by all of Utah's voters.

More information at www.acluutah.org/voting.shtml.

Reforming Indigent Defense in Utah

Utah is one of only two states that provide no state funding for indigent defense services at the trial or appellate level. We rank 48th out of 50 states in per-capita spending on indigent defense. The ACLU of Utah believes that a complete overhaul of this system is long overdue; we see an opportunity to make a huge impact on hundreds of people who are currently not able to realize their right to competent counsel.



Encouraged by a small start-up grant from the ACLU's Racial Justice Project, we have embarked on a long-term project to address serious inequities in Utah's criminal justice system. Though they are the most likely to be stopped, detained, charged, convicted and incarcerated, low-income people and people of color are not receiving the defense they are

constitutionally guaranteed. These people are most seriously impacted by our under-funded, under-managed and under-monitored public indigent defense system, which delegates all responsibility to counties.

We are currently working with interns and volunteers, as well as a civil rights clinic at the U of U to investigate public defender programs throughout the state. We will be conducting interviews and court observations, as well as recruiting cooperating attorneys to assist with the effort. In partnership with other legal advocates, we presented a workshop on the critical need for indigent defense reform at the State Bar Convention in Sun Valley, Idaho, in July.

Learn about similar reforms achieved by the ACLU of Montana at www.aclu.org/crimjustice/indigent/10248prs20050608.html.

Beyond the Division

This past year the ACLU of Utah has been reaching out across Utah attending or organizing events in Torrey, Moab, Cedar City, St. George, Logan, Ogden and Orem.

Apart from our workshops and presentations on immigrant rights, we have also been actively engaged in protecting LGBT rights and equality, not only at the state legislature, but also working with allies and communities around the state.

One of our exciting new projects is a series of panel discussions entitled "Beyond the Division." These discussions center on the need to find common ground between the push for full equality for gay and transgender individuals and respecting the religious beliefs of people and churches that don't approve of non-traditional sexual orientations. So far, we have held these panels at Salt Lake Community College and Utah Valley University. Both events had over 100 attendees and encouraged important and heartfelt conversation encompassing a diversity of viewpoints and beliefs.

During the summer we became involved in the debate over balancing private and public rights in downtown Salt Lake City after two men were given a citation for "trespassing" after publicly displaying affection on the Main Street Plaza. We responded to this incident with an Op-Ed in the Salt Lake Tribune and voiced our renewed concern that the City Creek Project may result in similar incidents of subjective enforcement of "private" rules for behavior in areas that are presented as "public."

We have also begun working closely with LGBT students at Dixie State College by holding a "Know Your Rights" workshop, as well as a broader LGBT town hall meeting in St. George.

ACLU Challenges Patents on Breast Cancer Genes

Should the government allow companies to hold patents on genes that occur naturally



in our bodies? This is a surprisingly common industry practice - about 20% of the human genome is currently patented and has been unchallenged for years. But in May, the national ACLU filed a lawsuit in New York challenging the U.S. Patent Office's granting of patents on two specific human genes, BRCA1 and BRCA2, the mutation of which have been connected to hereditary breast and ovarian cancers. The patents on the BRCA genes are held by the University of Utah Research Foundation which, in turn, grants exclusive license of those patents to Utah-based Myriad Genetics. Thus, Myriad Genetics has sole access to testing for BRCA gene mutations.

The ACLU's lawsuit contends that Myriad Genetics' monopoly on the BRCA genes results in prohibitive costs for gene tests, patients' inability to receive a second opinion on their test results, stifled research toward cures, and decreased access to the genes among researchers, doctors, and patients. The ACLU argues that gene patenting is unconstitutional and violates the First Amendment because it stifles scientific inquiry and the free flow of information. Gene patents also are illegal under U.S. patent law, the lawsuit contends, since genes are "products of nature" and therefore not patentable. The lawsuit is joined by plaintiffs representing more than 150,000 researchers and pathologists, women's health groups, and individual women.

www.acluutah.org

Staff Changes at the ACLU of Utah



We are sad to say goodbye to Barbara Szweda, our Public Policy Advocate for the past year.

Barbara has left the ACLU of Utah to continue her passion as an immigration attorney.

At the same time we would like to welcome three new staff members to the ACLU of Utah family.

Sac Nicté Yescas-Smoot (Sacny) started working part time with the ACLU of Utah in June of this year. Sacny immigrated from Mexico at the age of sixteen and has lived in the US for almost thirteen years now. She recently earned a bachelors' degrees in Political Science and International Studies at the University of Utah.



Sacny has helped translate into Spanish most of our important material that is available on line and as handouts. She has also participated in outreach events and trainings with our local Immigrants Rights Project.

Michelle Brester joined our legal team as a part time Paralegal. She has five years of paralegal experience with a gift for organizing and assisting attorneys. She earned her Associate's degree in Paralegal

studies from Mountain West College in 2004 and is currently working towards her Bachelor's degree in history from the University of Utah.

Michelle has already moved



the ACLU of Utah along in organizational development by creating document retention policies

and procedures, researching legal management software and revamping our legal complaint intake process.

Nariman Noursalehi is another gifted addition to our legal team. He is an associate of Dewey & LeBoeuf LLP, a law firm in New York, and has been assigned as a Legal Extern to assist the ACLU of Utah for one year. While not licensed to practice law in Utah, Nariman will be helping with legal research and case development.

Nariman was born in Iran in 1981, and moved to the United States in 1983. He majored in Gender



Studies and Political Science at the University of Utah. After taking some time off to travel around the United States and Europe he attended University of Virginia School of Law, graduating in 2009.

A Special Thank You to Our Incredible Volunteers

Lydia Brower, David Brower, Eric Ethington, Patrick Hoffman, Esther Lee, Lynda Lee, Maryann Martindale, Ann McDonald, Rudy Meira, Sally Purcell, Jeri Tafoya, Herta Teitelbaum, Tomasso Trudu.

And to Everyone Who Assisted at Events Throughout the Year

Luke Adair, Karen Belcher, Elaine Ball, Mike Barlow, Craig Blanch, Whitney Borup, Kar Burns, Miranda Carter, Rachel Carter, Drew Cloud, Mark Coren, Tricia Devereaux, Jessica Elliot-Barlow, Bryan Glick, Rebecca Huggins, Jordan McCormack, Ann Mock, Heidi Mock, Cori Redstone, Megan Ribson, Mike Stewart, Ver Wenzel, Jacob Whipple, Jason Williams, Stacy Young.



HIGH SCHOOL SENIORS: BECOME AN ACLU YOUTH ACTIVIST SCHOLAR AND RECEIVE FINANCIAL AID FOR COLLEGE!

**The ACLU of Utah is offering three \$1,000 scholarships
to high school seniors who have taken
a stand to protect civil liberties!**

These winning applications will be entered into
the national ACLU scholarship program which
is offering 15 of the nation's most committed
young civil liberties activists \$7,000 each toward
their first year in college!

**If you are passionate about protecting and fighting
for Constitutional rights,
we want YOU to apply!**

**Look for more details and download
an application form on our website
www.acluutah.org/scholarship.htm
or call 801-521-9862 ext 111**

Over the past two years, ACLU of Utah scholarship winners came from many parts of Utah, including Logan, Ogden, Moab, and Salt Lake City.

In 2008, two of the students who received our Youth Activist Scholarship Awards also won larger scholarships from the national ACLU office. You can read about last year's winners and see a video featuring them on our website at <http://www.acluutah.org/scholarship.htm>.

To qualify for the scholarship the student must:

- Have demonstrated a strong commitment to civil liberties through some form of activism
- Be a high school senior planning on entering an accredited college or university as a full-time, degree-seeking student
- Have attained a minimum cumulative GPA of 3.0 on a 4.0 scale at the time of graduation

Students who submit application forms will be judged on:

- The strength and depth of the candidate's contributions to civil liberties

- Demonstrated leadership
- The likelihood of the applicant continuing commitment to civil liberties in the future
- Commitment to academic excellence
- Demonstrated financial need

The application is quite simple. Students must complete a short application form, and write a 1,000 word essay about their commitment to, and work on behalf of, civil liberties. They must also submit a recommendation from a non-family reference.

**The deadline to submit applications
is Tuesday, November 10, 2009.**



shouting fire: stories from the edge of free speech



MON., OCT. 5

Director: Liz Garbus

Running Time: 80 mins.

Post Film Discussion about:

Protecting Speech We Don't Like - Panhandlers, Preachers and the Sanitizing of Our Cities; moderated by Dani Eyer, former Executive Director of ACLU of Utah.

AMERICAN VIOLET



MON., NOV. 2

Director: Tim Disney

Running Time: 102 mins.

Post Film Discussion with:

Graham Boyd, founder and director of the national ACLU Drug Law Reform Project. Mr. Boyd is the ACLU lawyer who litigated the actual legal case on which the film "American Violet" is based.

the least of these



MON., DEC. 7

Directors: Clark Lyda, Jesse Lyda

Running Time: 62 mins.

Post Film Discussion with:

Lisa Graybill, legal director for the ACLU of Texas. Lisa oversees all litigation brought by the ACLU in the state, including the case related to the Hutto Family Detention Center.

CIVIL LIBERTIES FILM SERIES

The ACLU of Utah has teamed up with the Salt Lake City Film Center to present a four-part series of films about some of the most pressing civil liberties issues of our times.

Over the course of four months, the general public is invited - free of charge - to view these critically-acclaimed and award-winning films, each of which will be complimented by an opportunity to discuss in greater detail the complex issues raised in the films. All films will be shown **in the main auditorium of the Salt Lake Public Library's main branch downtown** and will be followed by a post-film discussion about an aspect of that evening's film. **All events begin at 7:00 p.m., concluding by 9:15 p.m.**

The first film in the series - shown Sept. 8 - was "**William Kunstler: Disturbing the Universe**," a documentary about the controversial attorney, directed by his daughters Emily and Sarah Kunstler. More than 80 people showed up to watch the film and participate in the post-film discussion with high-profile criminal defense attorney Ron Yengich and law professor Jensie Anderson (who is also a former staff attorney of the ACLU of Utah!)

For more information about the films and post-film discussions, visit www.acluutah.org.

greater protection than the federal counterpart. As such, any ordinance passed that implicates free speech is necessarily vulnerable to challenge under the more exacting Utah standards.

The First Amendment is meant to protect many messages and varieties of speech that may be difficult and uncomfortable for the public to confront. It is important that all messages, with only the most reasonable of restrictions, are allowed to be shared in the increasingly rare true public spaces of our city. Regulations enacted to shield citizens from the ugly and painful truth of poverty are decidedly inappropriate, particularly in these hard economic times.

Practical Enforcement Difficulties

Anti-panhandling ordinances are difficult to enforce in a sustained manner over time, as police and

prosecutorial resources are scarce. The targets of this type of ordinance are unlikely to have funds to pay fines or to appear in court and jails have limited space and are already overcrowded with serious offenders.

While on its face the proposed ordinance outlaws commercial solicitation in any form and by any individual, this type of ordinance can invite selective enforcement on the part of law enforcement; individual police officers may be inclined to allow solicitation by established charities, such as a group of firefighters or the Salvation Army but enforce the ordinance against a homeless war veteran, despite the fact that both are exercising the same First Amendment right. Section B(4) of the proposed ordinance presents a particularly difficult enforcement scenario. Under this section of the proposed ordinance, police officers would be charged with spending valuable police time determining whether an individual is being truthful in

soliciting charity. Pursuant to this provision, ostensibly police officers would be required to verify whether a war veteran requesting a donation had documentation to prove that he/she had served in a war, establish whether an indigent individual actually has funds, and determine whether a disabled person suffers a disability, among others. Surely Salt Lake City is better served when police officers devote their time to the investigation of serious crime.

Alternatives to Increased Criminalization Through Regulation

While many localities have turned to criminalizing behavior in an effort to clean up city centers, it has become clear that this approach alone is not effective in remedying the underlying problem. Those localities that have taken a more constructive approach to tackling the poverty, homelessness, mental illness, drug addiction and other problems that underlie the practice of panhandling, have enjoyed greater success.

Fusion Center continued from page 1

power, coupled with the desire to deter terrorism, raises privacy issues in our democratic system.

Everyday individuals' activities are watched and recorded; documented reports are controlled by a centralized security agency, and are acquired through computer databases to analyze individuals' behaviors. Consequently, the information is utilized to profile how suspicious one looks or acts. In other words, the information system is set to draw a detailed portrait of one's life.

Utah's fusion center, known as Statewide Information and Analysis Center (SIAC), defines itself as a

public safety partnership designed to appropriately collect, analyze, and disseminate intelligence to enhance the protection, not only of Utah's citizens, communities, and critical infrastructure, but of the nation.

The ACLU considers fusion centers a matter of concern because privacy remains necessary to our democracy and freedom. The ACLU of Utah is not concerned about the asserted goal of SIAC but rather it is the mechanisms used to achieve these ends which raises serious privacy concerns.

In our democracy, Americans do not need to give up privacy for security; there is enough room for privacy and security to coexist. Fusion centers,

in Utah and nationwide can work on a legitimate cause – our safety. However, we need to ensure that proper mechanisms are in place to protect our privacy rights.

Because the Constitution imposes legal restraints on government officials gathering information on citizens, the ACLU deems public education essential to prevent abuse.

In addition, the ACLU of Utah is working closely with other citizen "watchdog" organizations and Utah legislators to put in place structures to ensure public oversight of the Utah Fusion Center and its activities.

Read the ACLU report "What is Wrong With the Fusion Centers" at <http://www.aclu.org/privacy/gen/32966pub20071205.html>

Shackling Pregnant Inmates: “Cruel and Unusual Punishment”

In March of 2008, the ACLU of Utah received a complaint from an inmate who was six months pregnant. The inmate was restrained by means of both traditional and electronic shackling devices despite her legitimate concerns for her developing fetus. This is not the only case in which a pregnant inmate has been restrained in Utah.

Such incidents emphasize the need for the ACLU to persuade the Utah legislature to pass legislation to protect pregnant inmates as well as their fetuses while incarcerated. Pregnancy, by itself, presents unique health issues that pose risks to pregnant women and their fetuses. Shackling a pregnant woman substantially increases those risks. Because of the serious health risks that shackling poses, shackling pregnant inmates can be considered a violation of the Eighth Amendment to our Constitution. The Eighth Amendment guarantees that “cruel and unusual punishment [not be] inflicted.” Cruel and unusual punishment is defined as disproportionate punishment compared to the offense so as to shock the moral sense of the community.

Not only a violation of our constitution, the inhumane practice of shackling pregnant inmates also contravenes international human rights law. According to Amnesty International, the United Nations standard for treatment of all prisoners states that shackles should not be used on inmates unless they are a danger to themselves and others. Therefore, Amnesty International considers shackling pregnant prisoners a

www.acluutah.org

cruel, inhuman and shameful form of treatment in violation of the United Nations Convention Against Torture.

According to research conducted by the ACLU of Utah, there are around eight pregnant inmates in Utah prisons and two to six pregnant inmates in county jails at any given time. Therefore, shackling pregnant inmates, whether using traditional or electronic restraints, is a particularly critical issue in Utah.

The ACLU’s national office recently conducted a study to determine the number of incarcerated women in America. They found that nationwide the number increased at nearly double the rate for men since 1985. Even though women represent the fastest growing population behind bars, there are not corresponding policies to protect them from harmful restraints.

Fortunately, on November 19, 2008, the Utah State prison revised its policies regarding restraints on pregnant women. This has improved the treatment of pregnant inmates in Utah’s state prisons. The new policy states that pregnant inmates in active labor will no longer be restrained. The ACLU of Utah will introduce legislation prohibiting the shackling of pregnant inmates statewide so that Utah’s county jails will also refrain from engaging in this harmful practice. If legislation is passed, not only will it bring Utah into compliance with international law but more importantly, our own Constitution. In doing so, Utah will join the growing number of states that are recognizing the special requirements of women who are incarcerated.



End Invasive Body Scans at Airport



We support Utah Congressman Jason Chaffetz’s proposed legislation to end the use of Whole-Body Imaging (WBI) technology at Salt Lake International (and other) airports. Chaffetz asserts - and the ACLU agrees - that the devices violate the Fourth Amendment by essentially enabling an unjustified strip search, and should only be used when there is probable cause to conduct such an invasive search. The scanners allow security personnel to peer through passengers’ clothes, producing images that are humiliating and an assault on passengers’ dignity. Chaffetz’s bill - which has passed the House of Representatives - would limit use of the screening devices, banning primary use of the “whole-body imaging” machines, but permitting them to be used as secondary screening devices.

NOTE: Passengers passing through security at Salt Lake International Airport can refuse to submit to WBI technology. A refusal may result in a passenger being wanded or patted down by a TSA employee of the passenger’s gender.

More information at www.aclu.org/privacy/35506res20080603.html.



355 North 300 West
Salt Lake City, UT 84103

NON-PROFIT
U.S. POSTAGE
PAID
Permit No. 2578
Salt Lake City, UT

What's Inside

**Proposed Anti-Panhandling Ordinance
Raises Constitutional Concerns - 1**

**Utah Fusion Center: Trading Privacy for
Security - 1**

The Director's Chair - 2

The Presidents Corner - 3

Immigrants' Rights are Your Rights, too! - 4

2009 Annual Membership Meeting- 5

Giving Democracy a Chance in Utah - 6

Reforming Indigent Defense in Utah - 6

**ACLU Challenges Patents on Breast Cancer
Genes -7**

Staff Changes at the ACLU of Utah - 7

ACLU Youth Activist Scholarship - 8

Civil Liberties Film Series - 9

**Shackling Pregnant Inmates: "Cruel and
Unusual Punishment" - 11**

End Invasive Body Scans at Airport - 11



Students' Rights Handbook Online

The ACLU of Utah is committed to educating and empowering young people about their rights. Because we receive many civil liberties complaints from Utah students, we created a Know Your

Rights Guide for Utah Public High School Students, which offers valuable and Utah-specific information about the delicate balance that schools must maintain in providing students with a safe environment along with free expression, rights to privacy, quality education and protection from discrimination. Currently, this is only available online at www.acluutah.org/studentknowyourrights.html.



**Special thanks to
Xmission for their
generous donation of
Internet services**