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FROM THE EXECUTIVE DIRECTOR

Allen Gilbert, Executive Director

Concerns about privacy are flaring up with increasing frequency. Technology is behind many of the concerns. Visions of "Big Brother" sometimes seem real.

Privacy almost seems like a relative, rather than absolute, concept.

We'll be exploring privacy issues at the ACLU-VT's conference, "Privacy: How Much Is Left?" Tuesday, June 13. Details about the conference are in the special insert.

We Americans have long had deep concerns about our privacy. The concerns spring from general English law and the concept that a "man's home is his castle." They also spring from specific experiences at the time colonial resistance to British rule was building in the 18th cen-

tury.

The drafters of our Fourth Amendment – on which many privacy rights are based – had a specific case in mind when the Bill of Rights was drawn up.

The case involved "writs of assistance" that British officials used to enforce smuggling laws. The writs were "general, universal, perpetual, and transferable search warrants," according to an article in the *Notre Dame Journal of Law, Ethics, and Public Policy*. The writs allowed British officials to enter homes and businesses at will to seize virtually any property.

Boston attorney James Otis was an advocate general in the British crown's vice admiralty court. He was so offended by the writs that he resigned his position. Boston

merchants, who were in the forefront of colonial resistance to King George, hired him to challenge the writs.

Otis called the writs "the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law-book."

John Adams, then a young lawyer, was in the courtroom to hear Otis argue the case. The ideas he heard then spawned the Fourth Amendment 30 years later.

If James Otis were alive today, I doubt that he would be pleased with recent assertions of executive powers made by the president. But I also think he'd be struggling to comprehend the challenges to privacy posed by computers, the Internet, and data aggregation.

JOIN US AT AN ACLU PARTY

Spend an enjoyable evening in the company of fellow civil libertarians at an ACLU party this summer. Parties are scheduled from 5-7 p.m. and include hearty hors d'oeuvres and beverages.

Please reserve
 ____ place(s) for me at:

Waterbury, August 3

So. Burlington, August 9

One person: \$20

One person: \$25

Two or more: \$18 each

Two or more: \$20 each

I'm enclosing my check payable to the ACLUF-VT for \$_____.

I can't attend but have enclosed a tax-deductible contribution of \$_____.

Name & mailing address: _____

Daytime phone and/or e-mail: _____

Names of others in my party: _____

Please return to: ACLUF, 137 Elm St., Montpelier, VT 05602. Directions will be sent upon receipt of your reservation, or you may call the ACLU office at 802-223-6304.

LEGISLATIVE WRAP-UP

A more detailed review of legislative actions can be found on our Web site (www.acluvt.org), but here are some highlights.

Civil commitment defeated. Calls for committing sexual and violent offenders to institutions after they had served out their jail sentences were heard before the session began. The effort, strongly opposed by the ACLU, was defeated. Sentences for sex offenders were toughened, however, and the Web sex offender registry expanded.

Death penalty shunned. Following the Donald Fell trial last year, death penalty supporters announced they would push to reinstitute capital punishment for state convictions. A bill was introduced, but it was never considered.

Public records law strengthened. Last year the Douglas administration asserted a “deliberative process privilege” in refusing to turn over state documents requested by citizens, state workers, and advocacy organizations. An “open government” bill, dismissing the state’s assertion, was passed with support of a broad coalition of groups, including the ACLU.

Opt-out rights clarified. Schools are required by federal law to turn over student contact information to military recruiters – unless families and students “opt-out”. A new law establishes the rights of students to opt “out” of receiving recruitment materials from the military, while opting “in” to receive materials from col-

leges. Families must be informed of other privacy rights.

No shackling of kids. Children transported while in state custody to medical facilities or other institutions will no longer be routinely shackled.

Free expression of gender identity. Discrimination based on a person’s gender identity or expression is outlawed. This protection had not existed in previous laws on harassment and discrimination.

Prescription drug monitoring program limited. A new statewide electronic database of prescriptions filled in Vermont pharmacies will focus on medical, not law enforcement, purposes.

50/50 Raffle to Benefit the ACLU

Take us out to the ball game and help raise a little money!

ACLU-VT board members and other volunteers will sell tickets for a 50/50 raffle at the June 27 Lake Monsters’ baseball game at Centennial Field in Burlington.

A lucky individual in the audience will win 50% of the raffle proceeds, and the ACLU-VT will receive the remaining 50%.

For details, call (802) 223-6304 or e-mail info@acluvt.org.

Fall Membership Conference in D.C.

The 2006 ACLU Membership Conference, *Stand Up for Freedom: Stop the Abuse of Power*, will be held in our nation’s capital October 15-17. Join other ACLU members from around the country to discuss and learn about recent government abuses of power, and develop the tools you need to organize around this issue.

Check the national ACLU Website, www.aclu.org, for details (to be posted shortly), or write info@acluvt.org.

BOOK REVIEW

Fighting Faiths, Richard Polenberg, Cornell University Press, Ithaca, 1987

Oliver Wendell Holmes’ dissenting opinion in *Abrams v. United States* is one of the pivotal arguments in First Amendment law. It defined an approach to speech that radically changed the discussion of civil liberties in this country. The *Abrams* case, and its wider context, are the subject of historian Polenberg’s engaging book

In 1918, Jacob Abrams and three other defendants were charged with printing an anti-war pamphlet, violating the Espionage and Sedition Acts. Their arrests and convictions were part of a broad dragnet aimed at radicals, and especially immigrants. In the

name of wartime national security, constitutional protections were simply scrapped. All of this might sound somewhat too familiar to a reader in 2006; refreshingly, Polenberg wrote two decades ago, and so the book sticks to one story rather than sprawling out into the thinner claims of comparative history.

The story itself is spectacular. There is an all-star cast, from Holmes and Learned Hand to Emma Goldman and J. Mitchell Palmer. Polenberg writes with a historian’s meticulousness, but manages to create what is practically a court-room thriller. For example, the National Civil

Liberties Bureau, later to become the ACLU, sat out the *Abrams* case, because their offices had been raided.

But beyond this intrigue, the *Abrams* case was a philosophical struggle, a battle of ideals and practicalities. Though Abrams and his co-defendants lost the case, Holmes’ broad argument for free speech regained its place in American culture, stronger than before. Polenberg leaves readers — whatever their persuasions — with a good deal to think about by the end of the book.

Reviewer Ethan Mitchell is a stonecarver living in Addison County, and serves on the ACLU board of directors.

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JUNE 2006



The moral arc of the universe is long, but it bends toward justice.
— Theodore Parker

LEGACY OF LIBERTY CHALLENGE

by John Freidin, past president, ACLU of Vermont

Even during these dark times for civil liberties, a great opportunity occasionally arises. I want to tell you about such an opportunity – one I have seized, and that I hope you will, too.

For the balance of 2006 all bequests to the ACLU Foundation (up to \$100,000) will be matched by an immediate contribution of 10% of their value. Thanks to the ACLU's great friend, Robert W. Wilson, both our affiliate and National will receive instant support, but your gift is not paid until your death. The ACLU of Vermont will receive 37.5% of both the

match and your bequest; National will receive the balance. Furthermore, because the ACLU of Vermont is a small affiliate, planned gifts to National provide significant support to us.

For years I have intended to make a bequest to the ACLU. But I kept procrastinating. Robert Wilson's challenge got me to do what I have always intended. What a superb way, I thought, to foster freedom now and for years to come -- in Vermont and throughout the U.S. And by acting this year my bequest will be increased by 10%!

Here's how to do it:

1. Create a legally binding document stating your bequest to the American Civil Liberties Union Foundation. Sample language is at www.aclu.org/legacy.

2. Complete the half-page Legacy Challenge Matching Form, also available at www.aclu.org/legacy. It simply states the value of your bequest.

So please join me in bringing a little sunlight to these dark days. Make your bequest in the next seven months. Your action today will bend the arc toward justice now and forever.