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- email newsletter of Civil Liberties Australia (ACT Assn. No. A04043)

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CLA to review Powers of Attorney discussion paper; euthanasia debate to get new life?

CLA member Jim Staples (the former Mr Justice Staples) is reviewing an issues paper discussing the Powers of Attorney Scheme in the ACT.

His review may lead to CLA taking a public position on the likely future debate.

Chief Minister and Attorney General John Stanhope released the issues paper – *Substituted Decision-making* – for public discussion last month.

He said the paper canvassed options for the government to consider changes to ACT legislation for powers of attorney, and to advance directives for future medical decisions.

The rather coy wording suggests the issue of euthanasia may become a hot topic as a result of the current discussion process.

"In addition to powers of attorney, advance directions one makes for their future health care are also substituted decision-making instruments.

"Powers of attorney are important devices for people to appoint someone to make decisions about their affairs in life and therefore must be treated with great care and attention," Mr Stanhope said.

His 05 April 2004 media release said the review resulted from recommendations made in 2001 by the ACT Legislative (Assembly) Standing Committee on Health and Community Care in its inquiry into 'elder abuse'.

The committee, he said, recommended measures such as:

- A systematic mechanism to monitor for abuses in powers of attorney;
- investigation of provisions for compulsory registration of powers of attorney; and
- safeguards to assess the capability of the person handing over the power of attorney.

"The ACT Powers of Attorney Act was enacted in 1956 and is well overdue for an overhaul," Mr Stanhope said.

The issues paper – *Substituted Decision-making* – can be found at www.jcs.act.gov.au

Comments are due by 31 May 2004.

- Editorial, New York Times, 3 April 2004

The Confusion Over Voter ID

In (March's) Florida presidential primary, Fort Myers polling places had signs saying voters could not vote without photo ID, according to the American Civil Liberties Union of Florida

The problem is, the signs were wrong.

Florida law guarantees voters without photo ID the right to cast an "affidavit ballot," which counts the same as a regular one.

There is no way of knowing how many eligible voters saw the false notice and did not vote as a result.

The process by which voters prove who they are has largely been left to election professionals. It shouldn't be.

Every barrier to the ballot box reduces the number of voters who end up voting.

ID requirements, which vary widely by state, are complicated, and administered poorly. In November, there is every reason to believe a significant number of eligible voters will be turned away on ID grounds, perhaps enough to decide a close election. Election officials should be working to fix these problems now.

- from NY Times, 3 April 2004

Taking the liberalism out of Liberal Arts

By YILU ZHAO

City halls where gay marriage vows are uttered, the Superbowl half-time show and movie theaters showing "The Passion of the Christ" would seem to be prime battlegrounds in the latest culture wars.

But to conservative crusaders like David Horowitz, the main action is still on college campuses, which he insists have been colonized by "tenured leftists" and turned into "their political base."

So Mr. Horowitz, author of "Left Illusions: An Intellectual Odyssey" (Spence Publishing, 2003) and the president of the Center for the Study of Popular Culture, is spearheading a campaign to end what he calls discrimination against conservative faculty and students.

At its core is an "academic bill of rights," written by Mr. Horowitz, that asks universities, among other things, to include both conservative and liberal viewpoints in their selection of campus speakers and syllabuses for courses and to choose faculty members "with a view toward fostering a plurality of methodologies and perspectives."

The campaign, which is resurrecting the disputes that characterized the culture wars' first wave in the 1980s, has caught the attention of Republican legislators and conservative student groups, much to the chagrin of many university administrators and faculty members.

On March 23 the Georgia Senate passed a non-binding resolution almost identical to the bill of rights drawn up by Mr. Horowitz, who had flown in to testify before the senators on liberal bias.

In mid-March a similar bill was withdrawn from the Colorado legislature after the presidents of four universities, including the University of Colorado, agreed to publicize their grievance policies on campus and pledged to make their institutions open to all political viewpoints.

Meanwhile, Jack Kingston, a Republican congressman from Georgia, has introduced Mr. Horowitz's bill as a non-binding resolution in the House of Representatives.

The bill, he says, is based on the tradition of academic freedom, but many scholars argue that the legislative approach adopted by him and his followers could erode the very freedom the bill champions.

Although several Congressional aides said Mr. Horowitz's bill of rights had little chance of passing, the American Association of University Professors, a Washington-based non-profit organization that first codified principles of academic freedom in 1940, has posted a rebuttal to the bill on its Web site, www.aaup.org.

- from SMH, 26 March 2004

- précis by Diana Simmons

'Belt up; that ís the message for libertarians'

By Richard Ackland

In discussing terrorism legislation Ackland accuses Attorney-General Philip Ruddock of never having enough laws to deal adequately with terrorism.

Measures being formulated or under contemplation by Ruddock include: counsel in terrorist trials could be restrained from having access to sensitive evidence; the power to intern foreign terrorist suspects indefinitely; laws to cover consorting with terrorists; and state police (power) to detain for up to 24 hours people suspected of breaching federal terrorism laws.

Australia now has 17 pieces of federal legislation enacted since 11 September 2001.

In defence of his proposals Ruddock cites Canadian A-G Irwin Cotler, a former international human rights lawyer and counsel to Nelson Mandela. According to Ruddock, Cotler talks about counter terrorism law in terms of 'human security' and that the 'perceived dichotomy' between national security and civil rights is a false one.

Ruddock uses the analogy of society's accommodation to wearing seat belts. People originally thought this an infringement on their liberties but it is now seen as a necessary limitation. It ís all a matter of balance, according to Ruddock.

Ackland states there is little debate on the consequences to civil liberties from the existing and proposed security legislation. What about sunset clauses to take effect once the 'war against terrorism' is over? he asks.

– from the SMH, 26 March 2004

- précis by Diana Simmons

Random tests at frontline of workplace battleground

By Brad Norington

The positive drug test of a Canterbury Bulldogs player brings up issues of possible intimidation and breaches of privacy in the workplace.

More and more employees face random screening. Unions have concerns about appropriate monitoring and contamination of tests and are resisting calls by companies such as Qantas, State Rail and mining for across-the-board testing.

In addition, should companies have the right to know if their employees are taking hearts tablets or anti-depressants, for example?

- from an American Civil Liberties Union email, 8 March 2004:

ACLU files first nationwide challenge to US Government's 'NO-FLY' list

When our own government starts to treat all of us like suspects, the ACLU must take action. That's why we filed suit this week against a Bush administration practice that is trapping innocent people in a web of harassment and suspicion.

No one knows how many people are on these secretive lists.

But we do know that people whose names are on the list are regularly pulled aside and detained. They never know when or if they will be permitted to fly. They can't find out why their names are listed or how to clear themselves and get taken off the list.

(The ACLU) lawsuit, filed in federal district court in Seattle, Washington, is the first nationwide, class-action challenge to the government's secretive 'No-Fly' list. The complaint names Director of Homeland Security Tom Ridge and Transport Safety Authority (TSA) Director David M. Stone and their respective agencies as co-defendants.

(The ACLU is) asking the court to declare that the 'No-Fly' list violates airline passengers' constitutional rights to freedom from unreasonable search and seizure and to due process of law under the Fourth and Fifth Amendments.

The individuals represented in the lawsuit are innocent of any wrongdoing and pose no threat to aviation security. But even after some of the plaintiffs obtained letters from the TSA stating that they were not a threat, they were still subject to delays, enhanced searches, detentions, and other travel impediments.

First, we are seeking justice for the co-plaintiffs who have no idea why they have been singled out by their own government and have been given no recourse to remove their names from the "No-Fly" list.

Second, we must prevent the Transportation Security Agency (TSA) from forcing airlines to provide the government with the travel details of the roughly 100 million Americans who fly.

Third, we must stop our government from further eroding our freedoms by implementing the proposed Computer Assisted Passenger Profiling System (CAPPS II) - a process that will make every American a suspect.

Comment from one of those affected,

John F. Shaw*:

I am joining the ACLU lawsuit today against the government's No-Fly list because I have been repeatedly interrogated, delayed, and have experienced "enhanced" screening procedures and detention whenever I have traveled by plane since 2002 under the name of John F. Shaw.

As a law-abiding citizen who is a retired member of the clergy, I was shocked to discover that I have been placed on the No-Fly list.

I have also tried without success to have my name removed from the list.

The Reverend John F. Shaw, PhD

Age: 74

Nationality: US.Citizen

Occupation: Retired Presbyterian Minister

(NOTE: this is NOT the John F. Shaw who is a member of CLA…but, if our Australian John F. Shaw was to fly in the US, who knows whether he would be held up because he has the same name).

- from UNITY, publication of the United Nations Association of Australia, 16 April 2004 No 376

Inquiry into human rights dialogue process

Federal Parliament's Human Rights Sub-Committee, of the Joint Standing Committee of Foreign Affairs, Defence and Trade, is to conduct an inquiry into Australia's human rights dialogue process and is inviting public submissions.

In 1997, the Australian Government initiated a high level bilateral dialogue on human rights with China. Similar formal talks commenced with Vietnam in May 2002 and with Iran in December 2002.

The aim of the dialogues is to hold "frank and constructive discussions to demonstrate the commitment of both countries to the talks and the overall strength of their bilateral ties with Australia."

The committee, chaired by Senator Marise Payne, will inquire into and report on Australia's human rights dialogue process, with particular reference to:

- parliamentary participation and oversight;
- involvement of non-government organisations;
- the roles and obligations of participating agencies;
- reporting requirements and mechanisms; and
- the monitoring and evaluation of outcomes.

The committee invites public submissions addressing the terms of reference for this inquiry. The committee encourages the lodgement of electronic submissions from anyone with an interest in the issues raised by these terms of reference.

For more information and/or terms of reference, contact the Sub-Committee Secretary on **02 6277 4466** or visit the inquiry website at www.aph.gov.au/house/committee/jfadt/hrdialogue/hrindex.htm

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July 11-13 Conference *Living and Learning Together* -- role of human rights education in strengthening communities in New Zealand and the Pacific.

Hosted by NZ Human Rights Commission and the NZ National Commission for UNESCO, Auckland.

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- from New York Times, 19 April 2004

Study Suspects Thousands of False Convictions

By ADAM LIPTAK

A study of 328 criminal cases over the past 15 years in which the convicted person was exonerated suggests that there are thousands of innocent people in prison.

Almost all exonerations were in murder and rape cases, and that implies, according to the study, that many innocent people have been convicted of less serious crimes. But the study says they benefited neither from the intense scrutiny that murder cases tend

to receive nor from the DNA evidence that can categorically establish the innocence of people convicted of rape.

Prosecutors, however, have questioned some of the methodology used in the study, which was prepared at the University of Michigan and supervised by a law professor there, Samuel R. Gross.

They say that the number of exonerations is quite small when compared with the number of convictions during the 15-year period. About 2 million people are in American prisons and jails.

The study identified 199 murder exonerations, 73 of them in capital cases. It also found 120 rape exonerations. Only nine cases involved other crimes.

In more than half of the cases, the defendants had been in prison for more than 10 years.

The study's authors said they picked 1989 as a starting point because that was the year of the first DNA exoneration. Of the 328 exonerations they found in the intervening years, 145 involved DNA evidence.

In 88 percent of the rape cases in the study, DNA evidence helped free the inmate.

But biological evidence is far less likely to be available or provide definitive proof in other kinds of cases. Only 20 percent of the murder exonerations involved DNA evidence, and almost all of those were rape-murders.

The study was due to be presented at a conference of defence lawyers in Austin, Texas, in mid-April.

– from New York Times, 22 April 2004

European 'official indifference' to anti-semitism masks and compounds rising problem, says new HR First report

NEW YORK - April 22 -- A new report by Human Rights First, *Antisemitism in Europe: Challenging Official Indifference*, calls European governments' response to rising antisemitism in the region 'a pattern of official indifference'.

This indifference, the report says, is marked by many governments' inadequate reporting of anti-Jewish violence and threats -- and their corresponding failure to enact and then enforce laws aimed at stopping anti-Jewish attacks.

"Governments cannot address crimes they do not record or report," said Michael Posner, the executive director of Human Rights First. "The combination of inadequate data collection and gaps in law enforcement create a climate where further acts of antisemitic violence are inevitable."

The findings and recommendations of the report, released 22 April in New York, were to be presented on April 28 at a meeting on European antisemitism hosted by the Organization on Security and Cooperation in Europe (OSCE). Last week, Secretary of State Colin Powell announced he would represent the U.S. government at the OSCE meeting, a move Human Rights First welcomes. In light of its report's findings of "official indifference" in Europe, Human Rights First believes the Secretary's presence will strengthen the level of government participation at the meeting and its potential to yield meaningful commitments.

Antisemitism in Europe: Challenging Official Indifference documents a range of violent antisemitic incidents in Europe over the past two years and outlines what European institutions and governments have done to monitor, record and report on those incidents. The report updates a 2002 report by Human Rights First called *Fire and Broken Glass: The Rise of Antisemitism in Europe*.

- from NY Times, 27 April 2004

Computer student on trial for aid to Muslim web sites

By TIMOTHY EGAN

BOISE, Idaho, 23 April — Not long after the terrorist attacks of Sept. 11, 2001, a group of Muslim students led by a Saudi Arabian doctoral candidate held a candlelight vigil in the small college town of Moscow, Idaho, and condemned the attacks as an affront to Islam.

Today, that graduate student, Sami Omar al-Hussayen, is on trial in a heavily guarded courtroom here, accused of plotting to aid and to maintain Islamic Web sites that promote jihad.

As a Web master to several Islamic organizations, Mr. Hussayen helped to maintain Internet sites with links to groups

that praised suicide bombings in Chechnya and in Israel. But he himself does not hold those views, his lawyers said. His role was like that of a technical editor, they said, arguing that he could not be held criminally liable for what others wrote.

Civil libertarians say the case poses a landmark test of what people can do or whom they can associate with in the age of terror alerts.

It is one of the few times anyone has been prosecuted under language in the antiterrorism law known as the USA Patriot Act, which makes it a crime to provide "expert guidance or assistance" to groups deemed terrorist.

"Somebody who fixes a fax machine that is owned by a group that may advocate terrorism could be liable," said David Cole, a Georgetown University law professor who argued against the expert guidance part of the antiterrorism law this year, in a case where it was struck down by a federal judge.

Mr. Hussayen, 34, a father of three who was pursuing a doctorate in computer sciences at the University of Idaho, is charged with three counts of conspiracy to support terrorism and 11 counts of visa and immigration fraud. His trial opened on April 14 and is expected to last until June.

[In a ruling that bolstered Mr. Hussayen's case on Monday 25 April, Judge Edward J. Lodge of Federal District Court in Idaho would not let prosecutors show the jury a Web page that encourages suicide bombings. The judge said the government must prove that Mr. Hussayen created the page or endorsed its contents.]

Earlier this year, Judge Audrey B. Collins of the Federal District Court in Los Angeles, struck down a part of the antiterrorism law being used in this trial, ruling that it was overly broad and vague. But Judge Collins did not extend her ruling beyond the one case in California.

The American Civil Liberties Union, which is trying to overturn the antiterrorism law in court, tried to join the Idaho case but was rebuffed by Judge Lodge.

"We very much wanted to be involved in this case because it is by far the most radical prosecution we've seen under the Patriot Act," said Ann Beeson, associate legal director of the national ACLU. "You shouldn't be held liable for what somebody else said. Under this theory, you could charge the electrician who services the wrong client."

- from UNITY, the UN Association of Australia e-zine, 23 April 2004, No 377

Australia to toughen laws against non-terrorists

Attorney General Philip Ruddock is planning tougher laws against non-terrorists, he revealed in a speech entitled *A new framework: Counter-terrorism and the rule of law* to the Sydney Institute on 20 April.

“I am looking closely at the appropriateness of a consorting offence which would apply to people who have links with a terrorist organisation or its members, but who themselves are not members of the organisation and who do not have an active involvement with the activities of the organisation.

“Another area of review has been in the area of questioning for the purpose of investigating an offence.

“Care has been taken to recognise that questioning for the purpose of investigating an offence is an altogether different activity from questioning for the purpose of intelligence gathering. The former is about gathering reliable evidence that can be used by a court to convict and sentence someone for many years of imprisonment.

“Apart from the civil liberties concerns, people who make statements after hours of questioning, isolation and sleep deprivation are not good witnesses.

“Currently the fixed time for questioning arrested suspects is a maximum of 12 hours. This is not sufficient for complex terrorism investigations.

“The level of complexity and magnitude of federal terrorism investigation conducted within Australia, spanning State, Territory and international borders is unique. Liaising with overseas agencies in different time zones is often necessary.

“These considerations demand a more flexible framework to enable police to gather sufficient evidence and properly question persons suspected of terrorist attacks. The Government has proposed amendments

that will increase the proposed questioning period to 24 hours.

"Maintaining a fixed time limit for questioning, as well as other investigatory safeguards such as magisterial approval of extensions beyond the initial four hours of questioning, electronic recording of the interview, the right to an interpreter, the presence of a lawyer and time for rest should enhance the reliability of the evidence that is gathered and the potential for successful prosecution. …"

Text of speech www.law.gov.au/

- from UNITY, 30 2004 No 378

National Action Plan on Human Rights

The Australian Government has approved a new draft *National Action Plan on Human Rights* "to strengthen and advance Australia's comprehensive system of human rights protections."

The new national action plan will not be issued to the public in its draft form but will be made available for input and consultation with State and Territory governments, the Human Rights and Equal Opportunity Commission, and non-government organisations.

The draft is expected to be released within two weeks and comments from relevant organisations will be invited through a dedicated e-mail. The final National Action Plan will then be made public.

In 1993 Australia proposed the creation of this action plan, and in 1994 was the first country to produce a plan. Ten years on, this new plan will set out the Government's human rights priority areas for the coming decade.

In their joint statement, the Minister for Foreign Affairs, Alexander Downer, and the Attorney-General, Philip Ruddock, say, "The plan highlights Australia's ongoing commitment to international human rights instruments, as well as our continuing support for peoples in developing countries to achieve higher standards of human rights.

"The development of this new plan coincides with Australia's Presidency of the United Nations Commission on Human Rights, as well the conclusion of the Decade of Human Rights Education (1995-2004), in which Australia played a prominent role."

When the plan is completed it will be published and lodged with the UN.

– from NY Times, 1 May 2004

FBI got records on air travelers

By JOHN SCHWARTZ and MICHELINE MAYNARD

In the days after the 11 Sept terrorist attacks in 2001, (the USA's) largest airlines, including American, United and Northwest, turned over millions of passenger records to the Federal Bureau of Investigation, airline and law enforcement officials acknowledged Friday.

A senior official with the FBI said the airlines cooperated willingly. Some, like Northwest, provided as much as a year's worth of passenger records, which typically include names, addresses, travel destinations and credit card numbers.

The official said the requests were made under the bureau's general legal authority to investigate crimes and that the requests were accompanied by subpoena, not because that was required by law or because the bureau expected resistance from the airlines, but as a "course of business" to ensure that all proper procedures were followed.

Airline industry officials said they could not remember another such sweeping request. In the past, airlines have routinely provided data to the FBI, but typically requests concerned passengers on a single flight, or travel patterns of an individual passenger.

The FBI official said that the purpose of the data dragnet was to detect attacks in the making through patterns in the travel records.

"They developed a model of what these hijackers were doing," he said, "and went back and looked, based on that model, to see if we could find associates, conspirators or other groups out there, particularly in the time immediately following 9/11."

There is no indication that the passenger data produced any significant evidence about the plot or the hijackers, the FBI official said.

The sharing of airline passenger data with the government has sparked some of the

most contentious conflicts underlying the uneasy balance between privacy and security in the post-Sept. 11 world. Three airlines, Northwest, American and JetBlue, have acknowledged sharing weeks or months' worth of data with government researchers or contractors as part of an effort to help develop new methods to spot terrorists.

But the disclosure that airlines had handed over such an enormous trove of data directly to government criminal investigators, 6,000 CD-ROM's full of digital records from Northwest alone, raised red flags among privacy advocates, who played a role in uncovering the information transfer.

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