

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

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**Liberty Victoria on the go**

Liberty Victoria is hosting two events  
on Saturday 2 October 2004.

The 'Go Directly to Jail' Symposium,  
presented in conjunction with Free  
Speech Victoria, will take place from  
10am to 5pm at University of  
Melbourne Law School.

This event will be followed by the  
Liberty Victoria Annual Missen Dinner  
and Oration at 7.30 pm at University  
House, Carlton, with David Marr giving

the address. For details, see:  
<http://libertyvictoria.org.au/index.asp>

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- by email, 30 Aug 2004

**ACLU says Bush's 'Liberties'  
Board is fox guarding the  
henhouse**

WASHINGTON – The American Civil  
Liberties Union (ACLU) has urged the  
US Congress to reject President  
Bush's proposed model for a civil  
liberties oversight board.

"Despite the president's laudable  
attention to these matters, the board  
as proposed would be comprised only  
of the government officials it is meant  
to oversee, would have no  
investigative authority and would be  
utterly beholden to the White House,"  
the ACLU said in a media release

"There is a real danger that this will be  
worse than useless," said Anthony D.  
Romero, ACLU's executive director.

"Not only will it provide the illusion of  
oversight without any real power to  
effect change, its membership  
includes some of the very people in  
the national security establishment  
who are part of the problem.

"Missing are any independent voices  
who are not beholden to the president  
or the political establishment.

"It really would be the fox guarding the  
henhouse," Romero said.

The executive order was released late  
in August as part of a package of new  
presidential policies to implement  
recommendations of the 11 Sept  
(9/11) Commission, set up to respond  
to needs following the terrorist attack  
on the twin towers in New York. The  
proposal is to create a "President's  
Board on Safeguarding Americans'  
Civil Liberties"...otherwise known as  
the Foxy Board.

Based in the US Justice Department,  
the board would be chaired by the  
deputy attorney general and co-  
chaired by the undersecretary of  
border security and transportation at

the Homeland Security Department of the USA.

The Foxy Board would be composed “exclusively” of senior administration officials, most of whom are political appointees of the Bush administration.

Further info: [media@dcaclu.org](mailto:media@dcaclu.org)

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– from *NY Times*, 3 September 2004

### **Judge reverses convictions in 'terrorism' case**

*From an article by DANNY HAKIM*

DETROIT – A US federal judge has thrown out terrorism convictions of two Arab immigrants, undoing what the US Justice Department once proclaimed was its first major courtroom victory in the war on terror, against what it had characterised as a sleeper cell plotting acts of terrorism.

Judge Gerald E. Rosen acceded to the US Government's request for a new trial only on document fraud charges, ending the terrorism case against the men, Abdel-Ilah Elmardoudi, 38, and Karim Koubriti, 26.

A third Moroccan, Ahmed Hannan, 36, convicted of document fraud, was released this year to a halfway house on an electronic tether. A fourth man was acquitted last year.

Three of the men were picked up in a raid six days after the 11 September 2002 aircraft attacks on New York's Twin Towers.

The group was eventually accused of forming a terrorist cell based in Detroit, collecting intelligence for terrorist plots.

But Judge Rosen said prosecutors developed an early theory about what happened “and then simply ignored or avoided any evidence or information which contradicted or undermined that view”.

“The case fits into a broader pattern of the Ashcroft Justice Department overplaying its hand in terror cases and making broad allegations of terror without the evidence to back it up,” said David Cole, a law professor at

Georgetown University, as quoted by the *NY Times*.

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- by email 041003

### **NSW CCL makes its journal electronic to save money**

To cut costs, the NSW Council for Civil Liberties has decided to email its quarterly journal *Civil Liberty* in pdf (Portable Document Format) format to members with an email address.

The e-mailout will start with the issue due out mid-September, according to the NSW CCL secretary, Stephen Blanks.

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### REVIEW

### **Book tries to highlight there has been a 'retreat from justice'**

*Retreat from Injustice: Human Rights Law in Australia* (2<sup>nd</sup> edn) by Nick O'Neill, Simon Rice, Roger Douglas, The Federation Press, Sydney 2004].

The tone for this second edition is set by the flyleaf quote attributed to Justice Deane during a case in 1985: “...the common law of this land has still not reached the stage of retreat from injustice which the law of Illinois and Virginia had reached in 1823.”

The authors noted in their first edition – 10 years after the Deane quote – that the signs were that Australia's approach to human rights law would move forward at a rapid rate, demonstrating that the retreat from injustice in Australian law was complete and irreversible.

This second edition opens with the lament that events of the past 10 years have show that retreat to be a slow and halting one; that Australia, unlike the UK, still has no Bill of Rights apart from the limited one in the ACT.

At 1c a page this book is worth every cent of the \$80 recommended price. For more information, call Federation Press on (02) 9552 2200 or email: [info@federationpress.com.au](mailto:info@federationpress.com.au) website: [www.federationpress.com.au](http://www.federationpress.com.au)

– (condensed) review by Ian Mathews,  
editor of UN Assn Australia newsletter

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### **QCCL forms working groups: are you interested?**

Queensland Council for Civil Liberties (QCCL) is forming a number of working groups to tackle particular issues.

The workload will mainly involve corresponding with other people by email with meetings, when needed, for those in Brisbane.

Any level of assistance would be greatly appreciated - from notification of issues, to research, to submissions to relevant authorities, and public events.

Groups will be formed on:

- \* Aboriginal and Torres Strait Islanders
- \* Children
- \* Disabled persons
- \* Drug law reform
- \* Freedom of information
- \* Freedom of speech
- \* Police powers
- \* Prisoners
- \* Privacy

QCCL project officer this project organiser, Mandy Lister, invites people to become involved on any of the working groups."Make a difference - it's your right," she says.

Email: mandylister@qccl.org.au

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– from ACLU email, 10 Sept 2004

### **'Human shield' claims fine is for protesting, not 'asset control'**

The American Civil Liberties Union (ACLU) of Wisconsin has filed papers in defence of peace activist and businessman Ryan Clancy.

They are contesting a \$10,000 fine by the US Office of Foreign Assets Control because Clancy allegedly travelled to Iraq to act as a 'human shield'.

"This fine clearly isn't about controlling 'foreign assets'," the ACLU said.

"It's about suppressing the freedom of patriotic Americans to travel and learn for themselves what is going on in countries like Iraq and then punishing those who have the courage to question the government's version of events upon their return."

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– from ACLU email, 10 Sept 2004

### **Anti-Bush bumper sticker heads young man into trouble**

Nineteen-year-old Derek Kjar was visited by agents from the US Secret Service after neighbours alerted them to Kjar's 'potentially threatening' anti-Bush bumper sticker.

The sticker depicts George Bush with a crown and the phrase '*King George – Off with his head*'.

"I didn't know what the hell was going on," Kjar said.

"It made me so nervous. I kind of feel trapped, like I'm not allowed to express my opinions. I felt like my freedom of speech was shot to hell right there."

Dani Eyer, director of the Utah branch of ACLU, told reporters that such investigations can create a 'chilling effect' on political speech.

She also pointed out specific examples where the courts have protected political exaggeration under freedom of speech.

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– from Liberty (UK) website, Sept 04

### **79% of police forces in England and Wales use curfew power**

What began with trials over the Easter holiday has extended over (the northern hemisphere) summer as police forces across the country have been imposing 9pm curfews on under-16s, regardless of whether they have done anything wrong.

Liberty's latest research shows that at least 34 of the 43 police forces in England and Wales have authorised curfew zones over summer holidays.

Liberty believes that the imposition of a curfew on young people is unfair.

The police have a range of powers to deal with 'anti-social behaviour', but under-16s are now being treated like criminals just for being out of their homes past 9pm, Liberty says.

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*EDITORIAL: what the NY Times thinks...*  
20 September 2004

### **In Defence of Civil Liberties**

"The debate over intelligence reform, as important as it is, has been obscuring a vital discussion about another recommendation by the bipartisan (USA) commission on the 9/11 attacks.

"The panel's report noted that no one in the government has the job of safeguarding civil liberties as the government seeks expanded powers to combat terrorism. It proposed assigning that critical task to a special board.

"President Bush has already staked out his position by creating, by executive decree, a caricature of the 9/11 commission's proposed board.

"The Senate is considering a much better, bipartisan measure. The issue needs serious debate before the election.

"It ought to have been a shock to hear the commission suggest that we need a new agency to do what the courts, Congress and the attorney general are supposed to do, in theory at least. But the Justice Department has been steadily abandoning its responsibility to protect civil liberties, which now hardly seems to be in Attorney General John Ashcroft's job description at all.

"A polarized Congress, wary of being portrayed as soft on terrorism, is not an adequate defence for our constitutional rights.

"This has become an even more pressing problem since 11 Sept 2001, when Americans realized that they

would have to tolerate tighter security in public places, and federal law enforcement agencies required some expanded powers to effectively root out and destroy terrorist plots.

"So, pragmatically, it's hard to simply dismiss the idea of Congress creating a special agency to focus on civil liberties – especially given this administration's record on the issue.

"Mr Bush has tried to sweep aside the Constitution by declaring selected American citizens to be unlawful combatants and jailing them indefinitely; Mr Ashcroft's Justice Department produced the appalling memo justifying the torture of prisoners.

"It was also responsible for, among other things, jailing a lawyer from Portland, Oregon, on charges of international terrorism based on a misreading of his fingerprints and, apparently, on his religious beliefs.

"The administration set up a detention camp in Guantánamo Bay where minimal standards of justice have been suspended or eliminated altogether.

"But we don't want to trade a situation in which no one gives priority to safeguarding our civil liberties for one in which a Potemkin review board gives reflexive approval to government actions that unreasonably encroach on constitutional liberties. That is the danger with Mr. Bush's approach.

"His board has no authority to speak of. It cannot initiate investigations but has to wait for a cabinet official to request a review of his or her own actions. Most glaring, its members are currently serving presidential appointees who often run the operations that the board is most likely to review - including, incredibly, the Central Intelligence Agency, which has no legal domestic law enforcement function but does have a strong interest in smoothing the way for its intelligence gathering.

"The board - which has already had its first meeting, behind closed doors - has no subpoena power, no mission to conduct regular reviews of laws and no mandate to hold public hearings or issue public reports.

"A bipartisan bill submitted by Senators John McCain and Joseph Lieberman, by contrast, would create a panel of five people from outside the government, appointed by the president and subject to Senate approval. That's a much better approach, but the partisan balance should be even, as is now required on some regulatory agencies.

"The McCain-Lieberman board would be empowered to start its own investigations, require federal officials to testify and provide documents, and issue subpoenas. It would review proposed legislation, regulations and policies, as well as their implementation; receive regular reports from government agencies; and report twice yearly to Congress and the president. The bill also requires public hearings and reports.

"The panel would advise Congress on whether 'to retain or enhance a particular governmental power', like provisions of the Patriot Act, judging whether those powers had actually improved national security and were adequately supervised.

"Mr McCain and Mr Lieberman were too timid here. The review should include the degree to which civil liberties are in fact being breached and whether such breaches are really essential to protect national security and public safety.

"The law also should include the 9/11 commission's notion that the burden of proof is on the government.

"Congress cannot order Mr Bush to disband his new board. Nor can it responsibly shirk its own duties of oversight.

"But it can respond to Mr Bush's preemptive move by creating a board with

independent members and real authority.

"We hope that the public pressure would then be great enough for Mr. Bush to reverse field yet again on the 9/11 report and let the members of his review board go back to their day jobs."

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– from NY Times, 21 Sept 2004

### **Chicago moving to 'smart' surveillance cameras**

*From a report by STEPHEN KINZER*

Chicago people will be watched by more than 2,500 cameras by 2006, making them among the most closely-watched people in the world

Chicago Mayor Richard M. Daley says the cameras are "...the next best thing to having police officers stationed at every potential trouble spot".

Computer programs linked to the cameras will alert police if anyone wanders aimlessly in circles, lingers outside a public building, drives a car on to the footpath, or leaves a package and walks away from it.

Those images will show up in colour at the central monitoring station, so police officers can rush to the scene.

A spokesman for the Illinois chapter of the American Civil Liberties Union, Edwin C. Yohnka, said the new system was "really a huge expansion of the city's surveillance program".

"It really does raise questions about what kind of society do we ultimately want, and how intrusive we want law enforcement officials to be in all of our lives."

The surveillance network will include cameras installed by agencies such as the transit, housing and aviation authorities, and private companies can send video feeds to the central control room in a fortified city building.

A \$US5.1 million federal grant will fund the cameras, with Chicago paying \$US3.5 million for the computer network connecting them.

"We're not inside your home or your business," Mayor Daley said. "The city owns the sidewalks. We own the streets and we own the alleys."

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- from UNity, newsletter of UN Assn of Australia, No 396, 17 Sept 2004

### **Australian re-elected to UN Human Rights Committee**

Professor Ivan Shearer was re-elected to the United Nations Human Rights Committee (HRC) in New York on 09 September.

Professor Shearer has been a member of the HRC since 2001.

He has served as a Judge ad hoc in the International Tribunal for the Law of the Sea, and is a nominated arbitrator under the UN Convention on the Law of the Sea and under the Hague Conventions of 1899 and 1907 (Permanent Court of Arbitration).

He has occupied the Challis Chair of International Law at the University of Sydney, and is an active member of the Australian Red Cross.

The HRC has 18 members elected by 152 states parties to the International Covenant on Civil and Political Rights (ICCPR).

It examines reports from those states on the human rights situation in their countries, and also individual complaints under the First Optional Protocol to the ICCPR.

Professor Shearer's second four-year term on the committee starts in 2005.

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- from NY Times, 22 Sept 2004

### **US wants air traveler files for security test**

WASHINGTON – The Transportation Security Administration will require all airlines to turn over their records on every passenger carried domestically in the USA in June according to a report by Matthew Wald in the *New York Times*.

The agency wants to test a new system to match passenger names against lists of known or suspected terrorists, he wrote.

The data will include each passenger's name, address and telephone number and the flight number, according to the report.

It may also include such information as the names of travelling companions, meal preference, whether the reservation was changed at any point, the method of ticket payment and any comment by airline employees, like whether a passenger was drunk or belligerent in encounters with airline personnel.

The goal, the agency said, is to reduce the number of passengers selected for more intensive screening, including 'wandering', pat-downs and hand-searches of carry-on luggage, and to increase the chance that people on government watch lists will in fact be searched.

The proposed new program, called Secure Flight, seems similar to an earlier program that privacy advocates objected to.

The American Civil Liberties Union (ACLU) said the program appeared to retain most of the objectionable features of the one that was dropped, Wald reported.

By demanding the entire airline 'passenger name record', the security agency would be receiving not only the traveler's name, phone number and address, said Barry Steinhart of the ACLU, but also information like 'whether you ordered the low-salt kosher meal and who is sleeping in your hotel room'.

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- ACLU email, 22 Sept 2004

### **ACLU appeals for opposition to new US ID card proposal**

There were numerous reasons why a national identity (ID) card would not make (Americans) any safer, the American Civil Liberties Union (ACLU)

said in an email appeal to supporters last month.

“In fact, a national ID could make it easier for terrorists to operate,” the ACLU said.

“A national ID, whether a unique card or a standardized driver’s license, could essentially become an internal passport that could compromise privacy, limit freedom and expose (Americans) to unfair discrimination based on national origin or religion.

“The implementation of a national ID program would require integration of huge amounts of personal information included in state and federal government databases.

“One employee mistake, an underlying database error or common fraud could take away an individual’s ability to move freely from place to place or even make them unemployable until the government fixed their ‘file’.

“Terrorists and identity thieves could take advantage of (the) system’s weakness and travel freely.”

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- from ACLU email, 29 Sept 2004

### **Proposed bill ‘fails fairness test, expands government powers’**

The proposed US bill, announced in late-September, would likely create what amounts to a national identification (ID) card, drastically curtail basic fairness in the US immigration system and expand government powers under the PATRIOT Act, the ACLU said in an email.

Although the bill’s original purpose was intelligence reform, the current version included several provisions not in the 9/11 Commission recommendations but long regarded as priorities by the hard-line, anti-immigration lobby.

For example, the ACLU said, the legislation would drastically overhaul the current law to deny immigrants basic judicial review over unfair,

arbitrary or otherwise abusive deportations. In fact, immigrants could be deported even if their appeal was still pending, and could be sent to countries lacking functioning governments.

The proposed bill also expands the Patriot Act and creates new crimes.

For example, mere association or membership in a designated terrorist group would be a crime, even if no money or other resources were provided. It would apply even to someone with nothing to do with the group’s violent activities or who is trying to persuade the group to give up violence and join the political process.

The bill also promotes standardizing driver’s licenses and coordinating databases in a way that could lead to creating a de facto national ID.

For more information:  
<http://www.aclu.org/NationalSecurity/NationalSecurity.cfm?ID=16580&c=24>

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- from NY Times, 30 Sept 2004

### **Judge refuses Patriot Act section allowing secret internet subpoenas**

From a report by JULIA PRESTON

A US federal struck out a surveillance provision of the USA’s Patriot Act yesterday.

Judge Victor Marrero of Federal District Court in Manhattan said that the proposed section violated the US Constitution.

It would give federal authorities ‘unchecked powers to obtain private information’, the judge suggested.

The Patriot Act of October 2001 expanded the powers of the US Government in national security investigations.

Judge Marrero’s ruling invalidated one part of the law, finding that “it violated both free speech guarantees and protection against unreasonable searches,” Julie Preston reported.

The ACLU brought the case against a kind of subpoena created under the act, known as a national security letter, she reported.

These letters could be used in terrorism investigations to require Internet service companies to provide personal information about subscribers and would bar them from disclosing to anyone that they had received a subpoena.

Such a subpoena could be issued without court review, under provisions that seemed to bar the recipient from discussing it with a lawyer.

Judge Marrero vehemently rejected that provision, saying that it was unique in American law in its "all-inclusive sweep" and had "no place in our open society."

He ordered that his ruling would not take effect for 90 days, to give the Bush administration time to appeal.

Anthony Romero, executive director of the A.C.L.U., called the ruling a "stunning victory against John Ashcroft's Justice Department." He said it would reinforce arguments the group had made in a separate challenge in Michigan to another surveillance section of the act.

The ruling does not affect many sections of the act, which is more than 350 pages long, that give the government enhanced powers to control immigration, conduct searches and investigate financial support for terrorism.

It comes as Congress is debating additions to the Patriot Act.

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