Where Oregon Fits: The FBI, the ACLU & Portland

If there were any doubt that we have plenty of work ahead of us to restore the Constitution and the rule of law, the overwhelming bi-partisan votes in Congress on May 26 to renew the Patriot Act for another four years highlight the timidity of our political leaders.

Here in Oregon, it is tempting to think that the systematic undermining of civil liberties related to the “war” on terrorism doesn’t touch us directly. It does, but most Oregonians rarely see it or feel it because so much of the government’s actions are shrouded in secrecy.

The expansive powers granted by Congress since 2001, coupled with the additional powers wrested by the Executive branch without explicit authority, have been used to monitor the private lawful activities of hundreds of thousands of Americans, including many in our local communities.

For much of this past winter and spring your ACLU worked hard to educate the Portland City Council about the critical policy issues regarding the relationship of local law enforcement agencies with the FBI Joint Terrorism Task Force (JTTF) in Portland.

Following months of study and review of numerous draft agreements, resolutions and police policies, the Council voted unanimously in April to adopt a framework for cooperating with the FBI on a case-by-case basis while also strengthening the oversight and control of the Portland Police Bureau personnel that interface with the JTTF.

Portland’s framework maintains its standing as the only major city in the U.S. that has refused to sign the FBI’s standard Memorandum of Understanding (MOU) for JTTF’s. However, what’s different this year is that other cities – and our sister ACLU affiliates – are looking at the Portland safeguards as a model that should be adopted elsewhere.

Portland first broke with the FBI JTTF in 2005, when then-Mayor Tom Potter concluded that the FBI’s MOU undermined the ability of city officials to maintain oversight and the chain of command for Portland police officers working with the JTTF. The ACLU and our coalition partners had been urging Portland to pull out of the FBI task force since 2000 – well before 9/11.

The issue heated up again last November after the FBI arrested an OSU student for allegedly conspiring with FBI undercover informants to detonate what the student thought was a truck bomb at Portland Pioneer Courthouse Square. That fake attempted bombing incident triggered calls for Portland to rejoin the FBI JTTF from City Commissioner Dan Saltzman and The Oregonian. Mayor Sam Adams, who had supported the 2005 Council action, responded to the latest controversy by establishing a deliberative process for the City to gather information and review the legal and policy issues involved.

ACLU of Oregon Legislative Director Andrea Meyer quickly reached out to the City Attorney and Mayor’s offices to share extensive background material on the FBI’s internal policies and the U.S. Attorney General’s guidelines for terrorism investigations. We also briefed them on FBI JTTF abuses uncovered elsewhere by ACLU Freedom of Information Act inquiries, as well as a series of follow-up investigations carried out by the U.S. Justice Department Office of the Inspector General which confirmed the abuses by the FBI represented failures of both policy and practice.

Mayor Adams scheduled an unusual four-hour briefing on the issues for the entire City Council on February 15. National ACLU agreed to send Mike German, Policy Counsel for the ACLU’s Washington National Legislative Office, to Portland.

Our very own David Fidanque makes the newsstands.
Oakland had recently denied policies. discuss the FBI’s practices and public session in the nation to Portland briefing was the first on the same issues and the partners in the Bay Area been working with coalition Portland because they have Alan and Veena came to Caucus from San Francisco. Schlosser, and Veena Dubal, of Northern California, Alan Legal Director of the ACLU the work session were the Oregon and Arthur Balizan, Holton, U.S. Attorney for officials from D.C.: Valerie acting Assistant Attorney General for National Security. They were joined by Dwight Holton, U.S. Attorney for Oregon and Arthur Balizan, FBI Special Agent in Charge for Oregon. Also at City Hall to watch the work session were the Legal Director of the ACLU of Northern California, Alan Schlosser, and Veena Dubal, Staff Attorney of the Asian Law Caucus from San Francisco. Alan and Veena came to Portland because they have been working with coalition partners in the Bay Area on the same issues and the Portland briefing was the first public session in the nation to discuss the FBI’s practices and policies. Both San Francisco and Oakland had recently denied public records requests for copies of their signed JTTF agreements because the FBI has classified the document as secret and would not permit its release.

The heart of the controversy is whether state and local police that work with the FBI are complying - or can comply - with stricter state and local laws and policies that prohibit police surveillance of lawful political, religious and social activities. While Oregon is one of two states with a law that prohibits the collection or maintenance of such information when there is no reasonable suspicion of criminal activity, San Francisco, Oakland and many other cities around the country have similar local ordinances or policies. Some have argued that when state and local police act as deputized FBI agents, they are no longer required to abide by state or local laws. The Justice Department’s refusal in the past to address that issue was one of the major reasons that Portland pulled out of the JTTF in 2005. This time around, while still arguing that federal law and policies provide adequate safeguards for constitutionally protected activity, federal officials said they would accommodate Portland’s desire to ensure their officers were in compliance with state law and local policies. The resolution eventually adopted by the Portland City Council also requires that Portland officers are at all times under the command of the Chief of Police and the Mayor, guarantees the officers access to the Portland City Attorney in order to get legal advice regarding Oregon law, requires annual audits of the officers’ activities for the JTTF, as well as a public report to City Council. It’s not a question of whether, but only when the FBI will ask Portland police officers to violate state law.

While the City and the FBI have not signed any agreement, according to the Mayor and U.S. Attorney Dwight Holton, these safeguards were approved by Justice Department officials. We will continue to monitor the FBI and Portland’s implementation of the new framework even as we work with our ACLU colleagues around the country to implement similar safeguards elsewhere. Once again, Portland is leading the way and we are doing what we can to make sure we will not be alone for long.

Thanks again for your ongoing support of ACLU and civil liberties.
Legislative Advocacy Protects Court Victory for Free Expression

This legislative season triggered déjà vu for the ACLU of Oregon and other supporters of free expression with HJR 34, another in a long series of proposals to censor sexual expression by passing overbroad laws and constitutional amendments that would negatively impact bookstores, Internet service providers, Planned Parenthood, HIV service providers and more.

Year after year, we have opposed numerous proposed constitutional amendments, like HJR 34, that would weaken the Oregon Constitution’s Free Expression guarantee. Thankfully, over the past 17 years, Oregonians have rejected four such measures that would have undermined free expression by wide margins. Unfortunately, the would-be censors never give up.

HJR 34 was proposed after the ACLU of Oregon’s successful court challenge to portions of two Oregon statutes passed in 2007 in Powell’s Books v. Kroger because they violated the First Amendment of the U.S. Constitution.

Don’t ask us why the sponsors think they can revive those laws by weakening the Oregon Bill of Rights when the U.S. Court of Appeals for the 9th Circuit overturned the laws on the basis of the federal constitution, because we don’t know. What we do know is that HJR 34 would open the door to government censorship in literature, the arts and in effective sex education that prevents sexually transmitted diseases – among other things.

One person who supports the work of the Oregon ACLU in Powell’s Books v. Kroger is Michael Kaplan, Executive Director of Cascade AIDS Project (CAP), which offers HIV education, prevention and treatment services to people in Oregon and Southwest Washington.

When Kaplan started at CAP in September 2008, the ACLU had already been working with the organization as well as co-plaintiffs Powell’s Books, Candace Morgan and Planned Parenthood of the Columbia Willamette to file a federal court challenge seeking an injunction against enforcement of the legislation that would have severely affected their work and their civil rights.

“We had a vested interest,” Kaplan said, explaining that the legislation would have limited sex education programs that aim to protect young people from unsafe practices.

“It had a real potential to impact our ability to do sex education to youths and to provide the materials we needed,” he said. “The legislation meant you couldn’t have materials that talk about “A lot of kids are sexually active by 13 or 14. The challenge was what if we can’t talk to them about the act but they are already doing it.”

Michael Kaplan

P.K. Rankles-Pearson,
Cooperating Attorney, Lawyers Committee Member, Board of Directors Member

P.K. Rankles-Pearson, an appellate lawyer at Stoel Rives, volunteers as a cooperating attorney, a member of the Lawyers Committee and a member of the Board of Directors for the ACLU of Oregon.

She grew up in Oregon and attended Pacific University, where she first learned the history of civil liberties and civil rights.

“When we read about the Nazis in Skokie, Illinois, I thought, here were people who were really just putting it out there for their beliefs,” she said. “On most things I have very nuanced views, but on civil liberties it is a no-brainer.”

She left the Pacific Northwest to attend law school at New York University, earning her J.D. in 2002. She returned to clerk for the Oregon Supreme Court under Justice Thomas Balmer. After finishing her clerkship, Rankles-Pearson joined Stoel Rives law firm.

Rankles-Pearson began her volunteer work with the ACLU of Oregon as a cooperating attorney, starting with research projects for the Lawyers Committee, the group of volunteer lawyers who decide which cases the ACLU of Oregon will take.

Her first case on behalf of the ACLU was the Powell’s Books v. Kroger case all the way to the U.S. Court of Appeals for the 9th Circuit on behalf of the ACLU of Oregon.

“The best moment of my entire professional life was arguing the Powell’s Books case in front of the Ninth Circuit Court of Appeals. When we walked in there and started hearing the questions from the justices, it was clear that they really got it,” she said. “It felt really important.”

At home, she lives with her husband, who is a chef, and their two “fractious” cats. She spends her free time gardening, canning and preserving.
The Oregon ACLU affiliate was founded in 1955.

Stevie Remington served 21 years as Executive Director before retiring in 1992.

Current ACLU of Oregon Executive Director David Fidanque joined the Oregon staff in 1982.

The number of people to receive the Charles F. Hinkle Distinguished Service Award (that was Charlie himself, when the award was established this year).

“likes” for the ACLU of Oregon’s Facebook page.

2010-2011 Financial Report

Percentage of expenses (based on unaudited financial statements):

ACLU of Oregon

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislative</td>
<td>32%</td>
</tr>
<tr>
<td>Administration</td>
<td>20%</td>
</tr>
<tr>
<td>Communication</td>
<td>23%</td>
</tr>
<tr>
<td>Field</td>
<td>14%</td>
</tr>
<tr>
<td>Development</td>
<td>11%</td>
</tr>
</tbody>
</table>

ACLU of Oregon Foundation

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Litigation</td>
<td>28%</td>
</tr>
<tr>
<td>Administration</td>
<td>14%</td>
</tr>
<tr>
<td>Communication</td>
<td>16%</td>
</tr>
<tr>
<td>Field</td>
<td>21%</td>
</tr>
<tr>
<td>Development</td>
<td>12%</td>
</tr>
</tbody>
</table>

2012

The year in which the Oregon Department of Education will begin releasing annual reports on student discipline broken out by race and ethnicity, both statewide and by district. The result of a coalition effort, the change was made after ACLU published our “School-to-Prison Pipeline” report last October. Among the findings was that African American youth represented 2.94% of Oregon’s student population, but 6.13% of the students receiving discipline in the schools.

150 participated in the ACLU Northwest Civil Liberties conference in October. This year’s Conference on Oct. 28-29 will feature National ACLU Legal Director Steve Shapiro.

32 out of 36 Oregon counties had events observing Banned Books Week.

29 ACLU affiliates joined the National ACLU in issuing travel alerts to warn Americans to bring their passports if they traveled to Arizona, after Arizona began harassing U.S. citizens of Latino descent (yes, Oregon was among the 29 affiliates).

In Oregon, ACLU investigated or litigated 17 matters related to abusive police practices.
2,700 requests for legal help were received and reviewed by ACLU staff and volunteers in Fiscal Year 2010. Our intake program is overseen by our Legal Director and staffed with 17 volunteers, who review and respond to dozens of these requests every week.

An estimated 7,000,000 “I ♥ Boobies” bracelets were sold in the U.S. by the Keep A Breast Foundation. In 2010-11, we successfully represented one student, on free expression grounds, who was disciplined at school for wearing the bracelet. Already this year, we’ve heard from several more students disciplined at different schools.

The Lewis & Clark Law School ACLU student group logged 917.75 volunteer hours in 2010-2011. During the previous year, the student group logged 130 hours.

Nearly 600 bills with civil liberties implications were introduced in the 2011 Oregon Legislature. This included 37 free speech related proposals and 66 related to privacy rights. Your ACLU has been looking out for the Bill of Rights throughout this and every legislative session since the 1960s.
prevention in a realistic way, which is what is necessary to be effective.”

Kaplan closely follows the ongoing research about the age at which teens are becoming sexually active.

“A lot of kids are sexually active by 13 or 14. The challenge was what if we can’t talk to them about the act but they are already doing it,” he said.

Kaplan is grateful for the ACLU’s work around this issue.

“ACLU ran with us and kept us well engaged. We really simply stayed abreast of it. I love how the ACLU is always there in terms of the rights of the individual,” Kaplan said.

“I’ve seen some incredible things happen because of ACLU. They are always taking on issues that are close and dear to my heart in terms of people living with HIV, and in terms of gay people.”

As this report went to press, HJR 34 had received public hearings in the House Judiciary Committee and the House Rules Committee but had not been scheduled for a work session or a floor vote. A separate bill, HB 3323, has been approved by the Senate Judiciary Committee to repeal the portions of the two laws found to be unconstitutional in Powell’s Books v. Kroger.

We’ll have a full report on the 2011 legislative session in our Fall newsletter.
Zero Tolerance Policy Ensnares 3rd-Grader

For Aron and Marnie Anderson, the issue of school zero tolerance policies began with a phone call. It was a Portland elementary school principal reporting that their 8-year-old son had been suspended.

Aron Anderson recalls the January 2010 call: “She said he was being suspended, and I said, ‘What for?’ She said he had a weapon. ‘A weapon? Where did he get a weapon?’ She said it was a toy gun. I said, ‘A toy gun? He doesn’t have anything that even resembles a gun.’”

It didn’t resemble a gun. It was a four-inch-long toy rifle that came with a G.I. Joe. Their son had put the toy in his pocket and forgotten about it. When he found it in his pocket at school, he showed it to a friend; two girls saw him and reported the “incident.”

When Anderson realized that the principal was talking about a small toy, he said, “You’ve got to be kidding me.”

The student, a third-grader at Duniway Elementary School at the time, didn’t point the toy at anyone, and no one thought it was a real weapon. But he was suspended under a zero-tolerance policy that included having his mistake recorded in his school records as bringing a simulated weapon to school.

It’s the kind of policy that schools are increasingly turning to, even though such policies ultimately can push children out of the schools by making minor infractions into high-stakes discipline. At the extreme, students are forced out of school and into the “school to prison pipeline” through discriminatory discipline policies.

“When I picked up my son at school, he was worried about what I was going to say to him,” Anderson said. “He was crying and pretty upset. He didn’t understand what he did. We went over what had happened. We talked about it, and I explained to him that toys are not acceptable at school.”

The student and his parents considered the little plastic G.I. Joe accessory to be a toy. But in the original paperwork about the incident, the school referred to it as “A simulated weapon, firearm.”

“We started the process of working with an attorney and the ACLU, and then they changed the whole policy,” Anderson said.

The original zero-tolerance policy had no room for interpretation or flexibility in crafting the appropriate discipline. A weapon was a weapon, and having one at school meant an automatic suspension. Now, the policy allows some leeway for items such as tiny toy guns like the one Aron’s son had.

“Now they can start with calling the parents to say it’s acceptable to have a toy at school,” Anderson said.

To be clear, Anderson isn’t opposed to enforcement of rules.

“I’m totally against kids bringing things that look like guns to school,” he said. “I can understand if it’s something the actual size that looks like a weapon. This thing was four inches long, and it looked like a toy.”

Anderson was relieved to receive the ACLU’s help: “They were awesome. It was a great experience. They came in, and they were very professional. They said let’s see what we can do. They worked at it and worked at it and worked at it. It turned the school district completely around. We couldn’t have done it without them.”

The third-grade student was suspended in January 2010, and the ACLU worked on the issue with Portland Public Schools during the summer. By then “we had already made a determination that our son would be going to a different elementary school.”

By the time the 2010-2011 school year started, The Anderson’s son was at a different school. The zero-tolerance policy had been changed. And his suspension had been wiped off his school record.

“Obviously, guns have no place in schools. They have rules that say toys aren’t allowed. If it’s a toy, they still need to deal with it and tell the parents. But they needed the leeway to say whether something is a toy or a real weapon,” Anderson said. “I’m glad that they changed the policy and realized the rule they had did not work.”

Cooperating attorneys Heidee Stoller and Stacey Mark of Ater Wynne LLP represented the student in this case.
Shedding Light on the School-to-Prison Pipeline

Last October, the ACLU of Oregon released our report on Oregon’s School-to-Prison Pipeline, exposing the disproportionate discipline of students of color in Oregon’s public schools and juvenile justice system.

After distributing 2,000 copies of the report statewide, we reached out to coalition partners to help us follow-up on our request to Susan Castillo, State Superintendent of Public Instruction, that the Oregon Department of Education (ODE) publish similar reports annually in the future.

We had requested that ODE release comprehensive discipline data, broken out by race and by school district, to the public at no charge.

In March, ODE agreed to do so beginning in the spring of 2012. The coalition plans to monitor and comment on the implications of the data and to partner with ODE in addressing the policies and practices that relate to disproportionate treatment of students of color.

The ACLU of Oregon is also planning to update our school-to-prison pipeline report with 2009-10 discipline data this summer. We plan to print the updated report in English and Spanish. Already, organizations working with Oregon’s Latino community have requested 6,000 copies which they will distribute to their constituents.

Student Stands Up for Breast Cancer Awareness

Bracelets that say “I ♥ Boobies!” have been worn around the nation for breast cancer awareness; the slogan was considered too risqué by some schools, which banned the bracelets.

It’s a free speech issue. In April a federal judge, ruling in a lawsuit brought by the ACLU on behalf of two Pennsylvania students, said students had the right to wear the bracelets.

In Oregon, Milwaukie High School backed down in late 2010 from a ban on the bracelets after the ACLU of Oregon became involved. The issue arose when a school vice principal ordered a student to remove or cover up his “I ♥ Boobies!” bracelet at a football game.

Kevin Rueck, then a 16-year-old junior, told the vice principal that the cause of breast cancer awareness was important to him, particularly because the disease had affected family members. He turned the bracelet inside out after the vice principal threatened to call the police and have him arrested.

Kevin’s mother, Kim Rueck, recalled, “That night he was very upset and felt his rights were violated and wanted to do something about it. I sent an email just wanting to know just how far schools could go with this issue, and (ACLU of Oregon Legal Director) Kevin Diaz got right back to me.”

Shortly after the ACLU of Oregon contacted the school, it reversed its ban on the bracelets. Our cooperating attorney was Jonathan Hoffman of Martin, Bischoff, Templeton, Langslet & Hoffman LLP.

Kim Rueck said her son received the bracelet from a friend, and he still wears it.

“He wears it every day except for baseball games. They cannot wear any type of jewelry at all during the game,” she said.

Breast cancer awareness is important to the Rueck family.

“My mother had breast cancer at 70 years old and was a survivor for two years. She passed away in 2006. She was Kevin’s life, and he was devastated when she died,” Rueck said. “We also have had a couple of very close family friends that had breast cancer that Kevin was extremely close to, which both have passed away, one just in April.”

And the disease has hit very close to home, with Kim Rueck experiencing a “scare” that required frequent tests.

“Breast cancer has more than touched his life and he has very strong feelings about it,” Kim Rueck said. “In fact, when I had my scare, he was all over me to keep appointments. After two years of going for exams every four months, I just got the all-clear to return to yearly exams... Whew!”
volunteer spotlight:
Celine Swenson-Harris
Senior, Eugene High School

Celine Swenson-Harris will enter her senior year at South Eugene High School with an already-impressive portfolio of activism, including volunteer work with the ACLU of Oregon.

Celine, who is 16, has lived in Eugene her entire life. She doesn’t have her career plans mapped out, but “I would like to study political science at the University of Oregon so that I can continue to be involved in my community service here in Eugene.”

Celine’s participation is a result of ACLU outreach work: “The ACLU did a presentation in one of my classes sophomore year,” she said. “I had always been interested in human rights and issues around equality, but I’d never really done any volunteer work before. Having people who had been involved in the ACLU talk about the work they did and how I could get involved really changed my life. It was the first time I got really involved in my community.”

What are her particular civil liberties interests?
“Particularly, I think that the ACLU does a lot of great work to protect equal rights, privacy rights and freedom of expression, which has been why I got involved and stayed involved.”

She’s a strong supporter of the Know Your Rights presentations for young people, and says it is an effective program. “A lot of youth, especially those who are homeless or economically disadvantaged, have encounters with law enforcement in which they don’t really know what their rights are. By giving presentations on basic rights when dealing with police we educate young people and empower them to make safer choices.”

Celine, who serves on her local ACLU chapter board, started a high school student ACLU group, which she chairs.

Her activities include:
- Tabling at community events.
- Conducting Know Your Rights presentations to youth groups.
- With her high school student group, organizing a student forum on freedom of expression last fall. The group hopes to organize a similar event this coming fall.
- Volunteering monthly, with a group of friends, at a food bank.
- Participating at rallies, phone banks and a lobby day for Planned Parenthood Advocates of Oregon.
- Volunteering for candidates and ballot measure.
- Interning for the Bus Project, a nonprofit, nonpartisan organization focused on encouraging young people to vote and become more involved in democracy.

The ACLU Northwest Civil Liberties Conference Returns

This year’s ACLU Northwest Civil Liberties Conference will feature national ACLU Legal Director Steve Shapiro. The conference will be held on Friday and Saturday, Oct. 28-29, 2011, at Lewis & Clark Law School in Portland.

This event is presented by the ACLU Foundation of Oregon, the Lewis & Clark Law School ACLU student group and the Oregon Justice Resource Center.

We’re excited to have keynote speaker Steve Shapiro give an informative and lively U.S. Supreme Court briefing.

The ACLU was involved in approximately 25% of the Supreme Court cases heard this past term. Shapiro has been ACLU Legal Director since 1993 and has been counsel or co-counsel on more than 200 Supreme Court cases. In addition to his work with the ACLU, Shapiro is also an adjunct professor of constitutional law at Columbia Law School and a frequent speaker and writer on civil liberties issues.

Other topics at the conference will include panels on immigration, the First Amendment, and reproductive freedom. ACLU executive directors from around the region, including Alaska, Hawaii, Idaho, Montana and Oregon, will also discuss civil liberties issues affecting their communities.

The conference is an opportunity to bring together legal professionals and law students from around the region to discuss current civil liberty issues. Approval is pending for 8.75 general continuing legal education (CLE) credits for attorneys. Last year’s inaugural conference was very successful with over 150 participants.

For more information about the conference, please visit www.aclu-or.org/2011nwconference.

ACLU Northwest Civil Liberties Conference

Friday and Saturday
Oct. 28-29, 2011
Lewis & Clark Law School
Portland, Oregon

Featuring
Steve Shapiro
ACLU Legal Director

For more information visit:
www.aclu-or.org/2011nwconference