THE LEGACY OF THE INDEFINITE "WAR ON TERROR" IN RHODE ISLAND:

CIVIL LIBERTIES IN THE AFTERMATH OF 9/11

A report prepared by the Rhode Island Affiliate, American Civil Liberties Union

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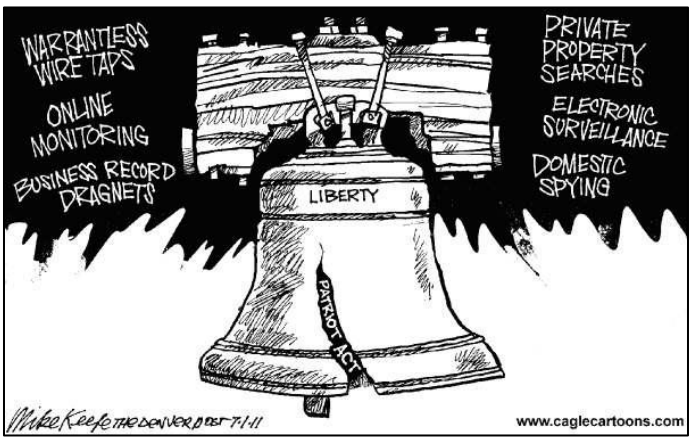
INTRODUCTION

The tenth anniversary of 9/11 offers a time for deep reflection. First, of course, we must remember the devastating and horrific loss of life that occurred that day. It was, and remains, a tragedy of immense proportions.

But it also presents an opportunity to reflect on all that has happened since then, and particularly on how our government has responded. All too often, it has acted in ways inimical to basic civil liberties, presenting a false choice between safety and freedom when, in fact, these two values can – and must – co-exist if we are to be true to the fundamental values that are our country's strength.

Torture, secret renditions, Guantanamo, Abu Ghraib – the list of shameful acts committed by the federal government since 9/11 goes on and on. At the national level, the ACLU has been fighting daily against a "war on terrorism" that quickly turned into a war on civil liberties. As many of those highly-publicized battles continue, it is important to note that the government's "war on terrorism" has also permeated almost every facet of our life in small, but meaningful, ways and has left significant marks on the civil liberties of Rhode Islanders.

This report takes a look at a small sample of some of the civil liberties battles that have taken place specifically in Rhode Island in the past decade in response to the government's indefinite "war." It is not an attempt to provide a comprehensive summary of all the ways that the rights of local residents have been affected by this "war," nor is it even an attempt to review a



large number of the Rhode Island-specific activities with civil liberties implications that have taken place since 9/11.

Rather, we have chosen a small but meaningful sample of local incidents, activities and policies that manage to demonstrate the breadth and depth of 9/11's effect on our freedoms in Rhode Island, and Rhode Island's own role in protecting or eroding those freedoms.

Some – like the very public arrest of a devout Sikh one day after 9/11 who was singled out solely because of the way he looked – reflect not just a one-time response in the immediate aftermath of a terrible tragedy, but point to larger, more lasting concerns. Some – like passage of a state law in 2003 intended to deal with bioterrorism – remain abstract and latent, while carrying the potential of enormous risk to our civil liberties in the state at some indefinite point in the future. Some – like the presence of a state "fusion center" – represent a "new normal," where widespread surveillance and secrecy now almost go unnoticed like the air we breathe. And some – like the hasty withdrawal of an extraordinarily dangerous "homeland security" bill proposed by the Governor in 2004 – represent Rhode Island at its best, taking a hard and skeptical look at an effort to erode our freedom in the name of security. Altogether, they show that our basic civil liberties – our rights to freedom of speech, to privacy, to an open government, and to equality under the law – have been touched in various and significant ways here in Rhode Island.

Ten years after 9/11, we still face the challenge of remaining both safe and free. The choice to do so rests with all of us. In looking at the past ten years, the RI ACLU hopes this report will remind readers of that choice and of our constant need to recommit ourselves to the core values of justice and the rule of law that define our nation and our state's "lively experiment" in freedom.

THE FEAR OF "THE OTHER" AFTER 9/11

The toll that 9/11 would take on civil rights became almost immediately apparent in Rhode Island – on September 12, 2001, to be exact. In response to a tip about suspected terrorists, police swarmed the Providence Amtrak station that day and took into custody a train passenger, Sher J.B. Singh, a resident of Milford, Massachusetts and a devout Sikh. It became very clear, very quickly, that the "tip" had been based on nothing more than Mr. Singh's appearance – the color of his skin, his beard and his wearing a turban.

What happened at the station that day serves as a vivid reminder of the prejudice that lingers on ten years after the attacks, a prejudice that may be less blatant, but present nonetheless. And it is a prejudice not only against Muslims but even against individuals who, like Singh, may be erroneously perceived as Muslim. A *Providence Journal* article at the time captures the flavor of the moment:

> *Drawn by live TV accounts of police detention of the train, a crowd of more than a hundred gathered around the train station and on the nearby State House lawn: men and women in business attire, younger people wearing T-shirts.*
>
> *As the incident continued, word spread that at least one suspect had been arrested and would be taken away by police. As he was led from the building, some in the crowd lunged toward him. Police kept them away but they could not prevent the whoops and jeers.*
>
> *"Kill him!" one man yelled.*
>
> *"You killed my brother!" screamed another.*
>
> *No one seemed to know anything about the man nor did they seem to care. Police safely escorted him to a cruiser, which sped off to the Providence police station.*

Although police quickly realized that Singh had no connection to terrorism, he was nonetheless arrested and held for hours on a charge of carrying a concealed weapon. The

"weapon" was a kirpan, a blunt ceremonial knife worn by devout Sikhs as an integral part of their religious beliefs. The ACLU and other civil rights groups berated the Department for pursuing the charge, but it took two months before the City agreed to dismiss the case against Singh. At the time, the ACLU noted that the tip leading to Singh's detention was prompted solely by his appearance, and that "even if one could forgive this overreaction in light of its proximity in time to the horrible events of the preceding day, it certainly does not justify the City's pursuit of questionable criminal charges." The ACLU also called the use of the state's "concealed weapon" statute in the case a violation of Mr. Singh's rights to religious freedom. The logical effect of the City's position in applying the statute to Singh was to essentially banish devout Sikhs from the state if they wished to practice a basic tenet of their religion.

The incredible taunting Mr. Singh encountered at his arrest and the immediate uninformed characterization of him as a terrorist by many people was bad enough. But the government's actions in pursuing criminal charges against him for two months could only have had the effect, even if not intended, of encouraging that attitude. Although the charge was dropped and such blatant public displays of discrimination have since been rare in Rhode Island, it would be a mistake to forget or ignore the reaction that bubbled so quickly to the surface after the horrendous attack on 9/11. It is one that our country has, regrettably, witnessed time and again in wartime.

PEACEFUL PROTEST AND THE POST- 9/11 POLICE STATE

Political Protesters as Terrorists: Across the country since 9/11, there have been numerous revelations about federal, state and local law enforcement spying on political organizations. The revelations have been sporadic, which is not surprising in light of the secrecy surrounding law enforcement surveillance that allows most spying on dissenters to remain hidden from public view, but they have also been persistent. Rhode Islanders got one first-hand glimpse of how, post-9/11, law enforcement continues to twist the notion of "terrorism" beyond the stretching point.

In response to a Freedom of Information Act (FOIA) request and lawsuit filed in 2006, the Rhode Island ACLU received documentation confirming that federal officials had entered information about a local peaceful protest into a terrorism database.

At the time of the ACLU's FOIA request, news reports revealed that the Pentagon had gathered and shared political surveillance data with other government agencies through its Threat and Local Observation Notice (TALON) database. The TALON program was initiated in 2003, purportedly to track groups and individuals with possible links to terrorism. However, the media reports indicated that the database included information about peaceful protests. The ACLU received from the United States Army Intelligence and Security Command a two-page document confirming that at least one Rhode Island political protest made its way into that database: a demonstration held by the R.I. Community Coalition for Peace (RICCP) in December 2004 in front of the National Guard recruiting station in downtown Providence.

The TALON document, dated December 10, 2004, begins by stating that it was being provided "only to alert commanders and staff to potential terrorist activity or apprise them of other force protection issues." The memo explained that "an emerging RI coalition in opposition to the war in Iraq will hold a picketing action in front of a RI National Guard Recruitment Station"

on “13 Dec 04 from 1630 to 1800.” The memo added that the goal of the protest is “to create an awareness of an organized, action oriented anti-war movement in Providence.”

The “incident type” was labeled “specific threats,” and the source of the warning was described as “a special agent of a federal law enforcement agency.” The memo added that the source apparently obtained the information from a “posting on an Internet bulletin board.”

It was appalling to read a government memo that designated RICCP’s planned picketing as “potential terrorist activity.” At the time, Nicholas Schmader, a representative of the RICCP, said: “When a federal agency uses the word ‘terrorists’ to refer to ordinary citizens exercising democracy, then outrage is in order.” It was only an unauthorized leak that brought this to light; how many more incidents like it that have taken place, and continue to take place, remains unknown.

Peaceful Protests as Terrorism: The equation of political protest with terrorism showed itself in other ways. One of the more revealing instances involved the RI ACLU’s discovery that the City of Providence obtained over $100,000 of FY2004 federal Homeland Security money – almost 25% of the funds earmarked to the police department – for police officers to attend a training on how to handle protests and broadly-defined “civil actions” that might arise out of a Weapons of Mass Destruction (WMD) incident. Providence Police involvement in this training demonstrated a dubious setting of priorities, a potential blueprint for the violation of peaceful protesters’ free speech rights, and a questionable use of taxpayer money.

Among other things, the course provided police “with the skills and tactics necessary to prepare for and successfully mitigate protesters and their devices.” A catalog for the course further explained: “Civil actions in threat incidents are known by a variety of names: riots, civil disturbances, or protests. From a small, peaceful assembly to a large out-of-control violent confrontation, public safety officials must be prepared to handle the incident.”

That the course lumped together “riots, civil disturbances and protest” was cause for alarm. The ACLU noted at the time: “The fact is, there is nothing for police ‘to handle’ should ‘a small, peaceful assembly’ occur. And if a WMD incident takes place, protesters are the last thing that the police should be worried about handling.”

2004 was the same year that, in the guise of providing delegates security from terrorist threats, police confined political protesters in Boston at the Democratic National Convention to a fenced-in enclosure topped by razor wire. It was difficult to ignore that in reading about the training course.

THE "WAR ON TERRORISM" INVADES THE SCHOOL

Public Schools: It is no secret that, in times of crisis, dissent often takes a beating. Then-U.S. Attorney General John Ashcroft set the tone early on when, in addressing a Congressional committee just three months after 9/11, he equated dissent with being unpatriotic. In chilling words, he said, "To those who scare peace-loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists [and] … give ammunition to America's enemies and pause to America's friends."

A message like that easily trickles down, but it is especially unfortunate when it infiltrates the public schools, as it did shortly after the 2001 attacks. In the first few months after 9/11, the Affiliate received a number of complaints in the school setting. A middle school student was called "un-American" by a teacher for declining to take a flag lapel pin being distributed to all children in the school. In at least two schools, in Pawtucket and Burrillville, students were kicked out of class for refusing to stand during the Pledge of Allegiance. In both instances, after the parents contacted the ACLU, school officials agreed that the students did not have to stand. In fact, the law had been clear for decades that students have a First Amendment right not to salute the flag or stand for the Pledge of Allegiance. Yet, in the mad fervor of superficial patriotism that 9/11 provoked in some people, a more basic patriotic principle – adherence to the fundamental constitutional right to freedom of speech – got lost in some classrooms.

In light of incidents like these, the ACLU asked state Commissioner of Education Peter McWalters to remind school officials of their obligations to respect students' First Amendment rights. He did so, sending an advisory to all school districts that eloquently reminded them: "The protection of the democratic principles that ensure the rights of school children to hold dissenting views are among our nation's highest expressions of patriotism. These democratic principles that we hold most dear must be protected even more rigorously at times of great

national distress – it is their durability in hard times that is the measure of their importance at all times."

University of Rhode Island: While one would hope to count on universities to be bulwarks of academic freedom and resist the tide of governmental oppression that accompanies times of crisis, at least one in Rhode Island quickly caved in to a questionable federal request. The Affiliate unsuccessfully objected when, in October 2001, the University of Rhode Island handed over student records in response to a grand jury subpoena, without first notifying the students whose records were the subject of the subpoena. The subpoena, which a number of other universities across the country similarly received, was part of a federal investigation into the terrorist attacks. The focus appeared to be on foreign students. Although a federal law, known as FERPA, strictly protects the confidentiality of student records, the U.S. Department of Education ("DOE") advised schools that turning over records under these circumstances – "these circumstances" apparently being widespread and non-individualized government investigations prompted by the September 11 attacks – was allowable. The ACLU argued that the DOE's interpretation of FERPA – which generally requires student notification and/or consent before third parties can obtain educational records – was clearly contrary to the agency's own regulations.

According to a URI spokesperson, the FBI sought information "based on a certain category of people," but not "based on country of origin, race or ethnicity." But when the obvious purpose of the FBI's request was to weed out people based on those very categories, the fact that its "fishing expedition" may have encompassed other students as well was of small comfort. The University's failure to notify students of this request was an extremely troubling and unwarranted invasion of their privacy without their knowledge. The willingness -- indeed, apparent eagerness – with which the University was willing to ignore FERPA was an

unfortunate sign of the ease with which institutions sometimes felt obligated to show almost-unthinking support for the government's new "war on terror."

EXPANDING GOVERNMENT POWERS IN THE NAME OF SECURITY

Bioterrorism: One of the most problematic laws to get enacted by the General Assembly post-9/11 was a so-called "emergency health powers act" passed in 2003, and designed to deal with threats of bioterrorism. Although unused thus far, the law remains on the books, and if the powers granted the state government by this law were ever to be actually implemented, it would amount to a wholesale evisceration of civil liberties for all the state's residents.

The law gives the Governor expansive martial powers to declare a "state of emergency" and unilaterally suspend state laws and regulations as he or she sees fits. Further, once an act of bioterrorism is "declared," the Governor has the ability to "use any force necessary" and "commandeer private property." The Department of Health is given the power to coercively treat, examine and immunize people without consent; to isolate and quarantine individuals or groups with virtually no procedural safeguards; and to obtain access to and disseminate identifiable health care records with few limits.

Stripped from the law as it passed the legislature in the final days of the session were such basic provisions as authorizing quarantine and isolation only if no less restrictive alternatives were available; requiring, in the absence of emergency conditions, a court order before such infringements on liberty were authorized; and giving individuals subject to involuntary confinement a right to counsel.

Although the legislation was based loosely on a model bill being promoted nationally at the time as a way of preparing states for the possibility of bioterrorism, the civil liberties protections missing from Rhode Island's bill were included in most of the laws that other states adopted after 9/11. One can only hope that this is a law that will never awaken from its slumber.

Governor Carcieri's Homeland Security Bill: In February 2004, the RI ACLU learned that Governor Donald Carcieri was preparing to introduce comprehensive "homeland security" legislation. After managing to obtain an advance copy of the bill, the Affiliate denounced the legislation as "one of the most extreme attacks on freedom of speech that the ACLU has seen in recent history," and further claimed that it had "alarming ramifications for political and labor protest, freedom of association, academic freedom and the public's right to know." The Affiliate explored those ramifications in a detailed written analysis that it disseminated to dozens of organizations that could have been directly affected by the bill.

At the heart of the Governor's 18-page proposal was an incredibly broad characterization of "terrorism" taken from the Patriot Act. The bill defined "terrorism" as an activity that is intended to "intimidate or coerce a civilian population" or "influence the policy of a unit of government by intimidation or coercion" and involves "a violent act." The penalty for any act meeting these criteria was a sentence of up to life imprisonment. The ACLU's analysis noted that since political protest is designed to "influence the policy of a unit of government," and effective protest will, in many instances, be designed to "intimidate or coerce," the commission of any sort of "violent act" in such circumstances would become a capital crime. Thus, commission of a misdemeanor assault or throwing a rock through a window could turn a political protester or labor organizer on a picket line into a criminal facing life imprisonment.

Other provisions in the legislation were throwbacks to the McCarthy era, including sections that would have made it a felony for any person to merely *teach or advocate* "acts of terrorism" as defined by the bill, or to even belong to a political group that advocated such acts. The college professor who enthusiastically assigned her students to read *The Autobiography of Emma Goldman* could have faced ten years in prison for that deed.

Yet another provision in the bill added broad new exemptions to the open records law that would keep the public uninformed on important safety matters. The exemptions included –

incredibly enough, at the same time the state was commemorating the anniversary of The Station tragedy – business fire safety records.

After the ACLU published its analysis, an incessant drumbeat of criticism followed from constitutional scholars and First Amendment experts alike. The only disagreement appeared to be just how reactionary the Governor's bill was. For Jane Kirtley, a well-respected First Amendment scholar and former executive director of Reporters Committee for Freedom of the Press, it was a "throwback to World War I." Paul McMasters from the First Amendment Center said the proposal would "take the state of Rhode Island back 200 years."

Unlike many of the other excesses of the post-9/11 era, fortunately, this one did not stick. Two days after the ACLU released its analysis, the Governor acknowledged that he had not even read the legislation, and he agreed to withdraw it from consideration. Despite this happy result, it was sobering to think that such a bill could have seen the light of day even for a moment.

THE RISE OF SECRECY

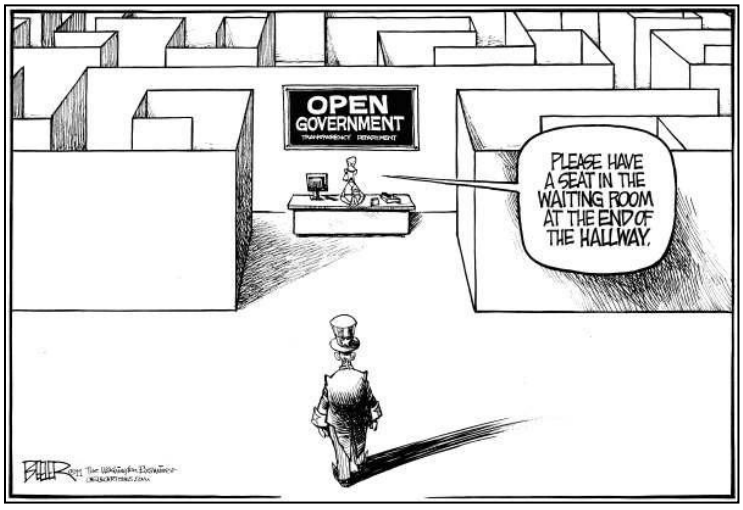
Water Management Records: Time and again since 9/11, federal and state agencies have hidden behind the mantel of "national security" to hinder public oversight of governmental activities. Although the General Assembly by and large resisted efforts by executive officials to codify secrecy into the law, legislators accommodated one such request in 2002. With virtually no debate in the last days of the session, the legislature passed a bill that exempts from the open records law numerous once-public records of water management supply systems. The absurd concern appeared to be that terrorists might be waiting to go to local town halls to find the location of private wells across the state so they could then drop toxic chemicals in then. This new secrecy created a dangerous precedent, and its only real effect since its passage is to keep citizens in the dark about environmental problems with the water supply. Indeed, quite ironically, the bill was approved at the very time that Burrillville residents were dealing with a public water supply that had been tainted by the leaching of a gasoline additive, MTBE. Passage of the bill meant that residents could be stymied in the future from obtaining information about water contamination incidents like this.

Fusion Centers and Terrorism Task Forces: Like the best horror movies, one of the most frightening aspects of the post-9/11 era is what the public doesn't see. Law enforcement agencies have become aggregators of enormous quantities of information, and exactly how broad their collection of information is and what they do with it largely remains a mystery, until every so often some information is leaked that paints a chilling suggestions of what is going on behind closed doors.

Rhode Island is one of a number of states that has a so-called "fusion center," a post-9/11 secretive collaboration of federal, state and local law enforcement agencies, housed at State Police

headquarters, whose activities remain a shadowy blur. These secret intelligence centers have access to personal information about millions of Americans, including unlisted cellphone numbers, insurance claims, driver's license photographs, credit reports and much more. Their major goal is to compile, sift, analyze and share the data for purported national security-related purposes. Col. Steven G. O'Donnell, superintendent of the Rhode Island State Police, perhaps summed it up best a few years ago when he said, “There is never ever enough information when it comes to terrorism. That's what post-9/11 is about." Although little is known of Rhode Island’s fusion center, it is no surprise to learn of abuses that have been discovered at fusion centers across the country. For example, Virginia’s fusion center labeled that state's historic black colleges a “possible threat,” the Wisconsin fusion center targeted abortion protesters as a threat to public safety, and the Maryland fusion center focused on dozens of lawful advocacy organizations.

A similar concern arises with state police collaboration with the FBI’s Joint Terrorism Task Force (JTTF). One rarely hears mention of this entity, but the public got a small peek into its activities through a news story that appeared in 2004. The story reported on the collaboration between the state police and the JTTF that resulted in the arrest of a city man wanted on a Superior Court warrant.



On the surface, it was difficult to comprehend the involvement of the JTTF in such a run-of-the-mill matter. The person who was arrested was wanted for failing to appear in court on a charge of receiving stolen goods over $500. According to court records, he was the employee of a small corner market, and had been arrested for allegedly buying stolen items, such as jewelry and camera equipment, from a 16-year-old. A state police spokesperson claimed that the arrest

was a routine failure-to-arrest case and nothing more. That the JTTF would be involved in such a minor incident could only be explained by one fact: the man arrested was of Middle Eastern descent. The incident left unanswered many disturbing, but obvious, questions.

PHONE SURVEILLANCE IN THE POST-9/11 ERA

Police Cell Phone Tracking: It is difficult to dispute that a surveillance society, eerily reminiscent of George Orwell's *1984*, has taken hold across the country since 9/11, shrouded in secrecy and in claims of "national security." The RI ACLU is seeking to crack open one of those secrets, through the use of open records requests that were just sent out last month.

In a campaign coordinated with its national office, the Rhode Island ACLU sent the requests to the RI State Police and the Providence Police Department to obtain information as to how and the extent to which they are using cell phone location data to track the movements of Rhode Islanders. The requests are an effort to strip away the secrecy that has generally surrounded law enforcement use of cell phone tracking capabilities across the country.

The two police agencies are being asked for such information as: their procedures for obtaining cell phone location records, including the standard of proof and legal process used to initiate requests; statistics on how often such records are sought and the outcome of their use; documents indicating whether the agencies seek records to identify all of the cell phones at a particular location; and invoices reflecting payments for obtaining cell phone location records.

Law enforcement's use of cell phone location data has become increasingly controversial recently. In July, the general counsel of the National Security Agency suggested to members of Congress that the NSA might have the authority to collect the location information of American citizens inside the United States. In a case in which the National ACLU was involved last year, the FBI sought and received tracking information without a warrant, not just for the criminal defendant, but for about 180 other people.

Cell phone technology has given law enforcement agents the unprecedented ability to track individuals' movements. Cell phones can be tracked in real time, and cell phone companies frequently retain records on the past travels of their customers. The ACLU believes that police should not be able to track the location of cell phones without obtaining a warrant

and demonstrating probable cause. This is because so much about a person's private life can be revealed from such information. As one court recently explained, "A person who knows all of another's travels can deduce whether he is a weekly church goer, a heavy drinker, a regular at the gym, an unfaithful husband, an outpatient receiving medical treatment, an associate of particular individuals or political groups — and not just one such fact about a person, but all such facts."

Congress is currently considering a bill supported by the ACLU that would require police to get a warrant to obtain personal location information, and would also require customers' consent for telecommunications companies to collect location data. In the meantime, the Affiliate is awaiting a response to its open records requests.

Telephone Companies Share Phone Records: Although the secrecy surrounding so much activity of government agencies is disturbing enough, the federal government's ability to prevent the judiciary from addressing some of the abuses that have flowed from the expansion of powers post-9/11 is even more insidious. Rhode Island was a direct witness to one prominent example of this.

In 2006, the ACLU of Rhode Island filed a complaint with the Division of Public Utilities and Carriers, calling for an investigation of allegations that Verizon and AT&T had improperly shared telephone records with the National Security Agency. The complaint was filed in response to national media reports that AT&T and Verizon provided the NSA, without either customer consent or court order, the personal calling details of millions of residential phone customers, including telephone numbers called,

time, date, and direction of calls.

The customer information allegedly provided to the NSA could be easily matched with other databases to obtain the name and residence of each caller. That information would enable the government to track virtually every phone call made by Rhode Island residential customers, including the identity of the people they called and the length of each conversation. The complaint called the companies' release of the data a "systematic and flagrant violation of their customers' privacy rights." In support of this allegation, the ACLU's complaint cited state laws limiting the disclosure of telephone information and prohibiting deceptive advertising practices, as well as AT&T and Verizon's own customer privacy agreements.

The ACLU complaint called the data sharing allegations "too serious and too well-founded to be dismissed without a thorough investigation." In fact, at the time the complaint was filed, two other public utilities commissions in New England – Maine and Vermont – had already begun investigating these claims.

The response to the complaint was, at many levels, extremely troubling. In answering the complaint, the phone companies claimed that "national security" barred them from addressing the allegations and further barred the DPUC from engaging in any investigation of the matter. An excerpt from Verizon's filing best sums up their position: "There is no basis to assume that Verizon has violated the law. Further, Verizon is precluded by federal law from providing information about its cooperation, if any, with this national security matter. Verizon accordingly cannot confirm or deny cooperation in such a program … As a result, there would be no evidence for the Division to consider in any investigation." This is a response straight out of Kafka. In essence, the companies were saying: "You shouldn't assume we did anything wrong, and even if we did, it's none of your business, and even if it is, we can't tell you anyway."

To the discredit of political leaders, including Rhode Island's Attorney General Patrick Lynch who supported the telecoms, Congress put a halt to any efforts to get to the bottom of the scandal. In 2008, it passed a law that essentially provided the companies retroactive immunity

for any illegal sharing of telephone records with the NSA. The law required courts to dismiss any cases against the telecoms if the U.S. Attorney General merely certified to the court, in secret, that either the phone company did not participate in surveillance activities or that it did so in reliance on a Presidential assertion that the activity was legal. More to the point, it also barred any state investigations into the legality, under state law, of any warrantless spying facilitated by the phone companies. The effect of the law's passage was to kill the Affiliate's pending DPUC complaint and, more broadly, to keep the entire American people in the dark about how deeply their privacy rights may have been violated by these telecommunication giants.

THREATS TO FREEDOM OF SPEECH

Administrative Subpoenas: One of the most misleading aspects of the USA Patriot Act is that, although purportedly prompted by, and designed to address, the tragedy of 9/11, many of its provisions were not, and are not, limited to the "war on terrorism." Instead, law enforcement agencies were given broad new powers to conduct investigations of any criminal matter totally unrelated to terrorism.

Of the many such provisions in the Patriot Act, one that received a significant amount of public attention at the time gave federal law enforcement the power to obtain records of the books a person has purchased from a store or borrowed from the library, without evidence that the buyer is suspected of committing a crime, and without notifying the buyer of this surreptitious examination. Indeed, until the "gag rule" provision in it was struck down in 2008, the law went so far as to make it a *felony* for a bookseller to tell the affected customer or others about receipt of a demand for their records. However, these so-called "national security letters" actually gave the FBI authority to gain access to a wide variety of information, well beyond library or book records. It is no surprise that reports from the Office of Inspector General have found that the FBI has time and again abused the authority given them under this provision.

It should also not be surprising that, when federal law enforcement agencies were given these powers, local police wanted some of them too. And so it was that in 2003, the Rhode Island State Police first began actively pushing a bill, based on this Patriot Act provision, to give local law enforcement authorities broad authority to obtain from Internet service providers subscriber information and other data. Their efforts finally came to fruition in 2011 with passage of the legislation by the General Assembly, over the RI ACLU's strong objections. Like the FBI's power to obtain bookstore records, the legislation allows police to issue administrative subpoenas to ISP's for personal identifying information without providing subscribers any

chance to contest the request, and the subscriber would not even have to be suspected of a crime for the information to be released.

The ACLU, along with the Rhode Island Press Association, unsuccessfully argued that enactment of the bill would not only lead to a very serious erosion of privacy rights, but would also have a chilling impact on freedom of speech.

Until passage of the law, police had to obtain a judicial search warrant to obtain personal information of Internet users. Now, however, police merely need to themselves certify that they are investigating a computer-related crime, and Internet service providers must turn over subscriber information to them. While ignoring the warrant process certainly makes police work easier, it does so at enormous expense to individual liberties and the safeguards that the warrant process protects. There is an importance to having a neutral magistrate review the request for information in order to ensure that there is probable cause of criminal activity and a person's privacy is not unnecessarily invaded. Indeed, in at least two cases in the past year, police sought to obtain ISP information based solely on anonymous online comments made about political figures. The police will no longer need to convince a court to give it access to this information. And so it was that in 2011, ten years after 9/11, remnants of the Patriot Act have come to roost in Rhode Island.

Access to Government Buildings: A legislative commission established shortly after 9/11 to study ways to improve security at the State House responded to concerns raised by the ACLU about some of the measures that were initially being considered.

In particular, the Affiliate strongly opposed a proposal that there be a sign-in requirement for visitors. One need only think of some of the controversial issues that are debated at the State House – from abortion to gay rights – and that are the subject of public hearings and of

rallies to recognize the chilling effect that a sign-in requirement could have. A person wishing to peacefully protest at the State House should not be forced to give his or her name to the government as the price for exercise of that basic right. The ACLU emphasized to the commission the State House's status – both tangibly and symbolically – as "the people's house." The Affiliate expressed concern about any security measures that would have the effect of discouraging the public from exercising their First Amendment right to petition the government. Acknowledging those concerns, the Commission shelved the sign-in requirement.

A similar problem arose and was resolved in the state's courthouses. For more practical reasons, the ACLU vigorously objected to a policy summarily adopted by Supreme Court Chief Justice Frank Williams shortly after 9/11 that prohibited a person from entering any courthouse without photo identification. The ACLU noted that a person intent on causing harm in a courthouse would not be significantly deterred by the need to produce photo identification. But as a result of the policy, people who had a legal obligation to appear in court – including criminal defendants and witnesses under subpoena – were being denied entry. The policy thus had the unintended effect of prohibiting citizens from fulfilling their legal obligations, resulting in the issuance of bench warrants and default judgments that were monumentally unfair to those citizens. A week later, the Chief Justice issued a revised policy rescinding the ID requirement.

THE PATRIOT ACT AND MUNICIPAL DISSENT

In 2002, grassroots Bill of Rights Defense Committees formed around the country to urge local city councils to go on record in opposition to the repressive provisions of the Patriot Act. Hundreds ended up doing so, including six in Rhode Island. The six communities that took a stand were incredibly diverse.

New Shoreham was the first town in Rhode Island to officially adopt an anti-Patriot Act resolution. Among other things, it declared that the Town "believes that sufficient constitutionally acceptable tools existed, prior to the passage of the USA Patriot Act, for law enforcement officers to accomplish their intended lawful purposes" and "strongly encourages all citizens, organizations, and governmental legislative bodies to study the State and Federal Constitutions and their history, and especially the Bill of Rights and its history, so that they can recognize and resist attempts to undermine our constitutional republics and the system of government that has brought our civilization so much success."

In November 2002, Middletown voters actually went to the polls and approved a resolution asking the state's Congressional delegation to "monitor the implementation of" and "reexamine" the Patriot Act "in order to prevent the unfair infringement of fundamental rights and liberties guaranteed by the Constitution of the United States." In the next few years, the Providence City Council and the Town Councils of South Kingstown, Charlestown and Bristol joined those two communities in approving anti-Patriot Act resolutions.

The activism in the community and the response from elected officials in these communities, just like the resolutions they passed, were stirring symbols of the continued vitality of democracy and dissent in Rhode Island and the country. Ten years after 9/11, it is time to remember both the reason for passage of those resolutions and the need for constant vigilance to protect the freedoms those resolutions defended.

CONCLUSION

Regrettably, the city and town resolutions recognizing the serious dangers to democracy posed by the Patriot Act seem like a discussion from another time. Congress has twice voted to extend the duration of some of the most controversial provisions of the Patriot Act, and both national and local reaction to continued intrusions on our liberty appears to get more muted with each passing year. Unfortunately, the security state created by the Patriot Act has, as some commentators have noted, become the "new normal."

But there is no reason it needs to remain that way. Just as the tragedy of 9/11 has touched everybody in some way, so have some of the less noble actions of the government in the wake of 9/11. Benjamin Franklin famously wrote over 250 years ago, "Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety." As those words suggest, it is wrong to believe that we can have security only at the expense of our liberty.

We do not have to repeat the mistakes of the past. We can be both safe *and* free. A healthy respect for our Constitution and a commitment to the rule of law it embodies, and a deep recognition of the importance of our civil liberties even in times of crisis are the best responses to violence and to those who advocate it.

The RI ACLU hopes that this report, reviewing some of the civil liberties battles that have been won and lost in the last ten years, will encourage a renewed dedication and devotion to protecting these rights despite, as well as a healthy skepticism of the ongoing efforts by some government agencies to scare us into believing that civil rights are incompatible with a strong nation facing an amorphous and indefinite "war."