

THE DEFENDER



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SEPTEMBER 2010

PUBLIC RECORDS: WHAT WE KNOW

The ACLU-VT is involved in two court cases over public records. We also made an administrative request for

records in a third case, which — since our request — has become the subject of a lawsuit by the *Rutland Herald*. Meanwhile, a reporter seeking budget reduction documents from the state Department of Education was stonewalled, despite the fact the department acknowledged the records were public.

The litigation that's been filed is likely to continue for

some time, especially if any of the cases goes to the Vermont Supreme Court. But we've already learned some important things.

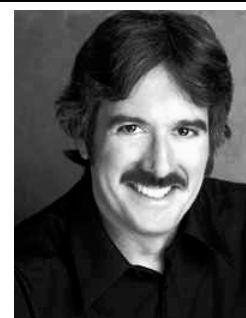
1. Denial of access to public records is widespread among public officials. It's not just one part or branch of government that feels justified in withholding records from the public. Nor is it just state officials or local officials. Instead, there's a broad

sense that it's OK for government to act in the dark, away from public scrutiny.

2. Law enforcement agencies sometimes twist exemptions to the public records law beyond what is reasonable and allowed. Some police feel they can withhold any record they want — despite specific mandates to disclose records.

3. The Attorney General's office uses an arcane legal proceeding, an inquest, to obtain cell phone tracking data without a warrant. The AG's office has also refused access to a report on pornography use at the Vermont Police Academy, an officer's suicide, and an executive officer's abrupt resignation.

The public records law is not self-enforcing. It depends on officials respecting the constitutional mandate that government be open and accountable. Access should not depend on litigation.



Keynote speaker at the ACLU of Vermont's annual meeting will be David Goodman, a nationally recognized journalist and author who lives in Waterbury. Goodman will speak on "Data Aggregation and Privacy."

ANNUAL MEETING SATURDAY, OCTOBER 30

In addition to guest speaker David Goodman, this year's annual meeting will feature awards, an auction, and a luncheon.

Full details, along with voting information for the board election, may be found in the annual meeting insert.

BANNED BOOKS EVENT

We're noting Banned Books Week again this year with a program of readings from banned works. Well-known Vermont authors will read passages from books targeted by censors.

The free program takes place Thursday, Sept. 30 at 7:30 p.m. at the Centre

Congregational Church on Main Street in Brattleboro. The event is in collaboration with the Brattleboro Literary Festival and is co-sponsored by the Vermont Library Association.

Details about the readers and featured works are at www.acluvt.org.

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FROM THE EXECUTIVE DIRECTOR

Allen Gilbert, Executive Director

The ACLU-VT went to court this summer on behalf of a journalist seeking to learn more about a case that on its face seemed like blatant racial profiling.

Hartford police officers had gone to a home where someone had reported a possible burglary in progress. They found a dazed man sitting naked on the toilet in the bathroom, assumed he had broken into the house, handcuffed him, wrapped him in a blanket, and carried him out of the house.

It turned out that the “burglar” was the homeowner, who had slipped into a coma-like state due to a chronic blood-sugar imbalance. Neighbors tried to tell the police what was going on, but police wouldn’t listen.

The ailing homeowner was

African-American.

Police immediately clamped a lid on information about the incident. The journalist we’re representing simply wanted the basic arrest report — the “police blotter” information, in other words. That’s supposed to be public. But Hartford officials have denied access. That’s why we went to court.

The week before, we joined other ACLU affiliates in asking the FBI for records related to the agency’s collection and use of race and ethnicity data in local communities.

According to a 2008 FBI operations guide, FBI agents have the authority to collect information about, and map, so-called “ethnic-oriented” businesses, behaviors, lifestyle characteristics, and cultural traditions in communi-

ties with concentrated ethnic populations. The data can be used in the FBI’s “domain awareness” and “intelligence analysis” activities.

Law enforcement officers in this state deny they profile by race, ethnicity, or other physical characteristics. Members of minorities say they do.

Until we have more information from police about how they go about their work, we won’t know the truth. That’s why we went to court and why we filed a FOIA (Freedom of Information Act) with the federal government.

Public safety is diminished by profiling. Law enforcement is about the detection of crime — not assumptions that people with a certain skin color, hairstyle, or food preference commit crimes.

LIFETIME GIVING

With a charitable gift annuity, when you make a donation of cash or securities of \$5,000 or more to the ACLU Foundation, you receive fixed guaranteed payments for life.

You will be eligible for an income tax deduction and receive substantial capital gains tax savings on gifts of appreciated stock.

Your payment rate is based on your age at the time of your gift, and you must be at least 60 years of age when payments begin. You may even be able to use real

estate, art work, or other property to generate lifetime payments while supporting civil liberties.

SAMPLE ANNUITY RATES

AGE	RATE
60	5.2%
65	5.5%
70	5.8%
75	6.4%
80	7.2%
90	9.5%

Have Questions?

Contact the national ACLU at:

- E-mail: legacy@aclu.org
- Toll-free: 877-867-1025
- <http://www.aclu.org/annuity>

This information is not intended as tax or legal advice. We recommend that you consult with your legal and financial advisors to learn how a gift would work in your circumstances. Laws and regulations governing all gifts and availability of certain life income gifts vary by state.

CAMPAIGN DISCLOSURE LACKING

We like to think that Vermont politics are clean and transparent. That might well be true, but it's sometimes hard to know given the lax reporting requirements for state political campaigns.

The state's campaign finance reporting is so lax, in fact, that Vermont has earned a failing grade from the Campaign Disclosure Project at the University of California at Los Angeles School of Law. The project is underwritten by the Pew Charitable Trusts.

Access to campaign finance reports is poor, the project said. Information such as occupation and employer of donors is not collected, as it is for federal campaigns. Audits of reports are not routine or required.

Most states require

candidates to file their reports online. The information can then be accessed, in a database, by anyone via the Web.

Vermont still uses paper forms. The forms are made into PDFs and posted — which means that analyzing the information is difficult because it's not part of a searchable database. It's like having data on a stone tablet.

Money is blamed for the low-tech approach. The Secretary of State's office estimates that an electronic system would cost \$1 million, an amount the Legislature has been reluctant to provide.

There's another major shortcoming to Vermont's system. Personal financial statements are not required of candidates running for statewide offices or

legislative seats. Nearly all states require this, as does the federal government.

The ACLU-VT believes Vermont needs legislation that does four things:

- Requires earlier reporting and first-of-month filing of campaign donations and expenditures.
- Makes reports accessible, online, within 48 hours.
- Mirrors federal law in requiring a donor's occupation and employer.
- Gets Vermont up-to-speed with the rest of the country by mandating personal financial disclosure by candidates for statewide and legislative positions.

In the past, Vermont has devoted attention to limits on donations and expenditures. What's needed now is a strong focus on access and disclosure.



BOOK REVIEW

American Privacy: The 400-year History of Our Most Contested Right, Frederick S. Lane, Beacon Press (2009)

Privacy is a right we as Americans hold dear. We revel in our personal space and celebrate our secret passwords, believing that our top-secret information is held in confidence by the deaf, dumb, and blind cyber monkeys who promise never to betray our trust.

Frederick S. Lane's *American Privacy* quickly disabuses the reader of any illusion of privacy. Lane traces the concept of privacy throughout U.S. history, from the days of the founders and the Alien and Sedition Acts to the modern day with its technological innovations

like Twitter. Throughout the book Lane highlights historical events, legal rulings, and technological advancements that have altered the way American society, government, and corporations view privacy.

But, as Lane points out, the government and corporations aren't the only ones to blame for the erosion of privacy. Lane places the blame squarely at the feet of the American public, noting that our "modern" system of online life management (we do everything online these days) is ripe for abuse. He claims that putting our entire lives into the vast network of

computer databases, often for the sake of convenience, is leading to identity theft, one of the fastest growing crimes.

In *American Privacy*, Lane confronts you in the place where you live, challenging you to think twice about what privacy really means, daring you to question what you will do to protect this contested right, and forcing you to ponder whether privacy really exists.

— Reviewer Traci Griffith is an associate professor in media law and ethics at Saint Michael's College and a member of the ACLU-VT's Board of Directors.

'RED SCARE' STORIES SOUGHT

Did the "Red Scare" of the late 1940s and 1950s affect your Vermont community?

Rick Winston of Calais has written an article for the *Vermont History Journal* about events in Bethel and Randolph Center in 1950, when Sen. Joseph McCarthy charged that summer residents (such as Owen Lattimore and Vilhjalmur Stefansson) were establishing a "Red cell." He is eager to expand his research to include other Vermont towns.

Contact Winston with information: 802-454-7103; Box 32, Adamant VT 05640; or winsrick@sover.net.

CIVIL LIBERTIES BOOK SERIES

Looking for ideas for your book club? Consider ACLU-VT's new series on civil liberties.

Five titles dealing with civil liberties issues are now available for free loan.

For details, contact the ACLU-VT at info@acluvt.org.

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SEPTEMBER 2010

DEATH PENALTY DISCUSSION NOV. 21

The Parish Players in Thetford is putting on the William Inge play, *The Pad*, Nov. 4-7, 11-14, and 18-21. It's a powerful work that explores issues around capital punishment through conversations among a trio of death row inmates.

The ACLU-VT is working with the company to host a special panel discussion in conjunction with a matinee performance on Sunday, Nov. 21. More info at www.parishplayers.org.

THERE'S NO HIDING ON THE 'NET

If you wanted to erase your “digital footprint,” could you do it? Probably not, concludes a report in the *San Francisco Chronicle*.

Your digital footprint is all the information that exists about you in computers all over the world, linked together on the Internet. The information is collected anytime you do anything online — use your credit card, e-mail, search for a book, or register for a free e-newsletter about cheap air fares.

Some information you know is being collected because you give it — such as personal information to set up an online account. Other information is collected through “cookies,” electronic

“spies” that send reports of what you're doing online.

And of course there are the myriad public records about us that data companies have collected and put on the Web. The companies make a hefty profit selling the information.

To counter all this data collection, new companies that promise to erase data about you have sprung up. There's ReputationDefender, for example. But even it doesn't promise it can wipe your digital slate clean.

(If you want to take matters into your own hands and at least extricate yourself from social networking sites, try “Web suicide” at the site, www.suicidemachine.org.)

U.S. law doesn't give citi-

zens the right to have personally identifiable information for which you haven't given explicit consent for sharing deleted from private databases. By contrast, most European countries do.

One way to drop out of digital sight may be to let your online information grow old. That makes it less accessible since older information is placed lower in search results.

Another way — change your name and move to a new address.

But generally, the picture painted in the *Chronicle* article is that digital anonymity is an oxymoron. You need to stay off the Web if you want to keep out of digital sight.