

NEW YORK TIMES ARTICLES ON THE PROBLEMS AT THE ACLU – 2004

1. JULY 31, 2004

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NATIONAL DESK

A.C.L.U. Board Is Split Over Terror Watch Lists

**By ADAM LIPTAK
(NYT) 1237 words**

The American Civil Liberties Union is in turmoil over a promise it made to the government that it would not knowingly hire people whose names appear on watch lists of suspected supporters of terrorism. Those lists are the very type it has strongly opposed in other contexts.

In April, for instance, the group filed suit to block the use of "no fly" lists of people barred from air travel or subject to heightened scrutiny, saying the lists were often inaccurate and violated the constitutional rights of some people.

The group made the promise not to employ people it knew to be on similar terrorism lists so that it could continue participating in a program that allows federal employees to make charitable contributions through payroll deductions.

That promise, several members of the A.C.L.U. board said, is at odds with the group's core principles and calls to mind an episode in 1940, when the board passed a resolution purging its staff of people who supported communism. With that history in mind, A.C.L.U. officials said, they had made the commitment in name only and did not intend to consult the lists.

"We oppose 'no fly' lists," said Michael Meyers, a member of the group's executive committee. "Now we have a 'no hire' list that we've signed onto. We're in the midst of an organizational cultural crisis of enormous size."

The promise and related subjects were discussed at a contentious, all-day board meeting in San Francisco on July 9, and a motion to rescind the promise was overwhelmingly rejected by a voice vote. A.C.L.U. officials said the debate would continue.

Anthony D. Romero, the group's executive director, said that the promise had not affected any employment decision by the group and that he had not reviewed the lists.

"I've printed them out," he said. "I've never consulted them."

In the "no fly" suit, the A.C.L.U. said that the name of one of its staff lawyers, a man of Middle Eastern descent, mistakenly appears on government security lists.

Mr. Romero said he signed a certification in January that the group "does not knowingly employ individuals or contribute funds to organizations found on" lists created by the federal government, the United Nations and the European Union. The certification referred specifically to three lists maintained by the Justice, State and Treasury Departments, including one called for by the Patriot Act, the antiterrorism law that the group has often criticized.

The certification has been required since October of all groups that participate in the Combined Federal Campaign, a charity drive for federal employees and military personnel that raised \$250 million for thousands of groups last year. The lists, which contain thousands of names, are posted on the federal program's Web site.

Mr. Romero defended his decision to sign the certification but said he was seeking clarification from the government about the obligations it entails. He said that the language of the certification required knowingly employing someone named on the lists, and that he had taken care not to know the listed names.

"No amount of money is worth violating our principles," he said. "We would never terminate or kick off board members or staff members because of their associational rights. We've made those mistakes in the past."

But Mara T. Paternmaster, the director of the charity program, which is run by the Office of Personnel Management, the government's human resources agency, said that ignoring the information on the lists was unacceptable and no defense.

"We expect that the charities will take affirmative action to make sure they are not supporting terrorist activities," she said. "That would specifically include inspecting the lists. To just sign a certification without corroboration would be a false certification."

"If an organization is found to falsely certify their eligibility for inclusion," she added, "they could be ruled temporarily ineligible for inclusion or they could be permanently excluded."

Mr. Romero disputed Ms. Paternmaster's understanding. "On advice of counsel," he said, "we think our interpretation could be reasonable."

The A.C.L.U. received \$470,000 from federal employees through the program last year, said Emily Whitfield, a spokeswoman for the group. The A.C.L.U.'s 2002 annual budget, the most

recent available, was \$102 million, including its foundations and affiliates, she said. The group's board has more than 80 members.

"That the A.C.L.U. board could vote down a motion to rescind this certification is just stunning to me," said Wendy Kaminer, a board member who walked out on the July 9 meeting on learning that Mr. Romero had signed the certification and so was not present for the voice vote to rescind it. "This is like the pope coming out in favor of abortion rights."

Mr. Romero said that vigorous debate is not unusual among civil libertarians. "That debate," he said of July 9, "was nothing different in tone or substance than debates we had on campaign finance, for instance."

Nadine Strossen, the president of the A.C.L.U. board, said Mr. Romero's decision to sign the certification was based on "a very reasonable, certainly clever interpretation."

"Do we do more harm than good by spurning money by certifying something that is plausible but not the only plausible interpretation?" she asked. "It's completely a debate about strategy, not principle."

"I think Anthony handled it completely appropriately," she added, saying the group's executive committee would consider the issue further on Aug. 7.

Robert B. Remar, a member of the executive committee who said he supported Mr. Romero, said the group should take prompt action given new information about the government's position that the certification requires diligent compliance.

"We either ought to litigate the legality of that or give the money back," he said. "I don't think the A.C.L.U. should be in the business of checking names on these lists."

Stan Furman, another board member, agreed. "It smacks of blacklists," he said. "We've seen that the government under Ashcroft has made numerous lists of 'terrorist organizations' that in my opinion aren't really terrorist organizations."

In 1940, the group dropped Elizabeth Gurley Flynn from its board because she was a member of the Communist Party. (Ms. Flynn was posthumously reinstated.)

At the same time, it passed a resolution calling it inappropriate for anyone to serve on the group's governing committees or staff who was "a member of any political organization which supports totalitarian dictatorship in any country or by his public declarations indicates the support of such a principle."

"It was a colossal error," Samuel Walker, who wrote a history of the A.C.L.U., said of the 1940 decisions. "It has since been almost universally viewed as a reprehensible mistake."

In an article submitted to the op-ed pages of The New York Times and The Wall Street Journal after the July 9 meeting and supplied to a reporter by the A.C.L.U., Mr. Romero criticized the certification requirement as "an insidious chill on speech" though he did not note that he had signed the certification.

"The A.C.L.U. is currently challenging a version of these lists in its 'no fly' litigation," he wrote. "Our concerns are that ambiguous definitions of 'terrorism' and potentially inaccurate 'terrorism watch lists' can also serve to shut down legitimate forms of advocacy and debate. Relying on employers to enforce 'terrorist' lists also evokes eerie echoes of our McCarthy-era past."

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2. AUGUST 1, 2004

THE NEW YORK TIMES
August 1, 2004

NATIONAL DESK

A.C.L.U. to Withdraw From Charity Drive

By ADAM LIPTAK (NYT) 591 words

The American Civil Liberties Union withdrew from a federal charity drive yesterday, rejecting the \$500,000 it expected to receive through it this year.

The move was prompted, the civil liberties group said, by an article in *The New York Times* yesterday. The article reported that the group had signed a certification saying it would not knowingly employ people whose names appeared on several government terrorism watch lists.

Since October, all of the thousands of charities that participate in the drive, called the Combined Federal Campaign, have been required to sign such a certification. The program collects and distributes \$250 million in contributions from federal employees and military personnel.

The A.C.L.U. has criticized similar watch lists, saying they are often inaccurate and violate the constitutional rights of some of those named on them. In April, the group sued the government to block the use of similar "no fly" lists.

The group signed the charity drive's certification in January. In recent interviews, the group's executive director, Anthony D. Romero, said it had not inspected the watch lists or compared them to its employment records. Mr. Romero said his lawyers had advised him that he could sign the certification in good faith because it prohibited only knowing employment of those listed.

"The A.C.L.U. would not have signed the C.F.C. funding agreement if we thought we had to check our employment records against a government blacklist," Mr. Romero said in an interview yesterday.

But Mara T. Paternoster, the director of the charity program, said last week that the program required diligent efforts from participants. "We expect the charities will take affirmative action to make sure they are not supporting terrorist activities," Ms. Paternoster said.

In a letter to Ms. Paternoster yesterday, Mr. Romero said he was "disturbed and surprised" that the charity drive required nonprofit charities to check their employees against a "blacklist" in order to receive donations. He wrote that "the lists are notoriously riddled with error and do not provide individuals with a means to correct false information."

In his letter, Mr. Romero said that the group would withdraw from the program and reject the \$500,000 it expected to receive this year and that it was contemplating legal action.

The question of whether the group should have signed the certification in the first place has been the subject of debate among its board members. At a board meeting on July 9, a motion to rescind the certification was rejected. Mr. Romero said yesterday that Ms. Paternoster's comments, reported in The Times yesterday, caused the group to re-evaluate its position.

Mr. Romero said yesterday that thousands of charities have presumably signed the certification, and the A.C.L.U. posted a list of charities that participated in the drive in 2002 on its Web site. The list includes scores of familiar names, including the A.S.P.C.A., National Public Radio and the NAACP Legal Defense and Educational Fund.

"It's increasingly clear," Mr. Romero said, "that the Patriot Act and the government's war on terror threatens America's charities as well."

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3. OCT 19, 2004

THE NEW YORK TIMES

October 19, 2004

A.C.L.U. Rejects Foundation Grants Over Terror Language

By STEPHANIE STROM

The American Civil Liberties Union has rejected \$1.15 million from the Ford and Rockefeller foundations, saying their effort to ensure that none of their money inadvertently underwrites terrorism or other unacceptable activities is a threat to civil liberties.

The organization has also returned to Ford \$68,000 that it accepted in April and that was governed by the same restrictions as those on the two grants the board decided to decline at a contentious meeting on Sunday.

Anthony D. Romero, the A.C.L.U.'s executive director, said the language of the contracts governing the Ford and Rockefeller grants was broad and ambiguous, leaving them open to interpretation that could impede free speech and limit advocacy work not only at his organization but also at other nonprofits.

Over the last year or so, many foundations, including Ford and Rockefeller, have added language to their grant agreements that requires recipients to ensure against the use of the money for nefarious purposes.

Ford's grant agreement, which governs the use of the money it gives to more than 4,000 organizations it supports, says, "By signing this grant letter, you agree that your organization will not promote or engage in violence, terrorism, bigotry or the destruction of any state, nor will it make subgrants to any entity that engages in these activities."

In an interview yesterday, Mr. Romero said: "What do they mean by terrorism? What constitutes support for terrorism? We need to know precisely what those words mean. It is certainly appropriate for Ford and Rockefeller to require grantees to comply with existing federal law, but in a climate of fear and intimidation, vague language that goes beyond the legal requirements is regrettable and ill advised."

Ford had offered to give the civil liberties union a letter stating that it had no intention of interfering with the group's mission and activities. But Nadine Strossen, president of the A.C.L.U., said the organization had never been concerned that its own activities might be limited by accepting the terms Ford and Rockefeller laid down.

"We have to be the leader here," Ms. Strossen said, "and just because we weren't going to be intimidated or our speech wasn't going to be chilled doesn't mean we can overlook the potentially negative impact the language will have on other entities."

The "side letter" that Ford offered the civil liberties union would have been similar to those it has given universities that expressed concerns about the new language in its grant agreements.

"There have been a very small number of institutions that have some concerns with the new grant agreement," said Susan V. Berresford, Ford's president, "and in every case we try to work with them to see if we can address them, clarifying the grant letter in some fashion that makes them more comfortable."

André Oliver, a spokesman for the Rockefeller Foundation, said more than 300 organizations had signed its grant agreement, whose wording is similar to Ford's.

"We've made it clear that our grant language is not intended to nor should it suppress free speech or academic freedom," Mr. Oliver said.

The issue of bowing to government demands for tighter restrictions on grant making and use of grant money has bedeviled many nonprofit groups, but none other so much as the civil liberties union. This summer angry donors and members descended on the A.C.L.U. after *The New York Times* reported that the organization's board was fighting over its decision to participate in a federal charity drive that had required it to certify that it would not knowingly employ people whose names appeared on government terrorism watch lists.

Similar discord marked its decision on Sunday, board members said, even though the grants in question had been under debate since May, when the new language in agreements came to the attention of board members through a Wall Street Journal article describing concerns about it among universities.

The board then learned that Mr. Romero, previously an executive at Ford, had been among several nonprofit leaders whom the foundation had consulted when drafting its new grant agreement. "He had advised Susan Berresford to mirror and parrot the language in the USA Patriot Act, aspects of which we have been fighting against," said Michael Meyers, executive director of the New York Civil Rights Coalition, who sits on the executive committee of the A.C.L.U.'s board. "My jaw dropped at that, but my jaw was the only jaw to drop on the committee."

Mr. Romero said he had advised Ford to "stick as closely to articulating the law as possible."

After a four-hour debate during a July meeting, the board decided to adopt a resolution expressing concerns about the language but giving the organization's administrators the option of taking the grants governed by the restrictions if Mr. Romero could negotiate an acceptable side letter.

On Sunday, however, at its first meeting since then, the board voted down a proposal to accept the grants and took up one rejecting them. Members of the executive committee tried to amend that proposal to preserve the A.C.L.U.'s ability to take the grants, according to several board members, and an amendment to that effect seemed to pass by show of hands.

But some board members demanded a roll-call vote. That resulted in a 37-to-37 tie on the amendment, which, under the group's bylaws, was therefore defeated. The proposal opposing the grants passed in a show-of-hands-vote with the support of about two-thirds of the voting board members, Mr. Romero said.

Mr. Meyers said he thought the vote had been closer.

"The A.C.L.U. leadership fought mightily to have us take this money in spite of the noxious language," he said. "This is a fight for the soul of the organization that I never would have thought would have occurred over a core free-speech issue."

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4. December 18, 2004

THE NEW YORK TIMES

NATIONAL DESK

A.C.L.U.'s Search For Data on Donors Stirs Privacy Fears

By STEPHANIE STROM (NYT) 1489 words
December 18, 2004

The American Civil Liberties Union is using sophisticated technology to collect a wide variety of information about its members and donors in a fund-raising effort that has ignited a bitter debate over its leaders' commitment to privacy rights.

Some board members say the extensive data collection makes a mockery of the organization's frequent criticism of banks, corporations and government agencies for their practice of accumulating data on people for marketing and other purposes.

Daniel S. Lowman, vice president for analytical services at Grenzebach Glier & Associates, the data firm hired by the A.C.L.U., said the software the organization is using, Prospect Explorer, combs a broad range of publicly available data to compile a file with information like an individual's wealth, holdings in public corporations, other assets and philanthropic interests.

The issue has attracted the attention of the New York attorney general, who is looking into whether the group violated its promises to protect the privacy of its donors and members.

"It is part of the A.C.L.U.'s mandate, part of its mission, to protect consumer privacy," said Wendy Kaminer, a writer and A.C.L.U. board member. "It goes against A.C.L.U. values to engage in data-mining on people without informing them. It's not illegal, but it is a violation of our values. It is hypocrisy."

The organization has been shaken by infighting since May, when the board learned that Anthony D. Romero, its executive director, had registered the A.C.L.U. for a federal charity drive that required it to certify that it would not knowingly employ people whose names were on government terrorism watch lists.

A day after The New York Times disclosed its participation in late July, the organization withdrew from the charity drive and has since filed a lawsuit with other charities to contest the watch list requirement.

The group's new data collection practices were implemented without the board's approval or knowledge, and were in violation of the A.C.L.U.'s privacy policy at the time, said Michael Meyers, vice president of the organization and a frequent and strident internal critic. Mr. Meyers said he learned about the new research by accident Nov. 7 in a meeting of the committee that is organizing the group's Biennial Conference in July.

He objected to the practices, and the next day, the privacy policy on the group's Web site was changed. "They took out all the language that would show that they were violating their own policy," he said. "In doing so, they sanctified their procedure while still keeping it secret."

Attorney General Eliot Spitzer of New York appears to be asking the same questions. In a Dec. 3 letter, Mr. Spitzer's office informed the A.C.L.U. that it was conducting an inquiry into whether the group had violated its promises to protect the privacy of donors and members.

Emily Whitfield, a spokeswoman for the A.C.L.U., said the organization was confident that its efforts to protect donors' and members' privacy would withstand any scrutiny. "The A.C.L.U. certainly feels that data privacy is an extremely important issue, and we will of course work closely with the state attorney general's office to answer any and all questions they may have," she said.

Robert B. Remar, a member of the board and its smaller executive committee, said he did not think data collection practices had changed markedly. He recalled that the budget included more money to cultivate donors but said he did not know what specifically was being done.

Mr. Remar said he did not know until this week that the organization was using an outside company to collect data or that collection had expanded from major donors to those who contribute as little as \$20. "Honestly, I don't know the details of how they do it because that's not something a board member would be involved in," he said.

The process is no different than using Google for research, he said, emphasizing that Grenzbach has a contractual obligation to keep information private.

The information dispute is just the latest to engulf Mr. Romero. When the organization pulled out of the federal charity drive, it rejected about \$500,000 in expected donations. Mr. Romero said that when he signed the enrollment certification, he did not think the A.C.L.U. would have to run potential employees' names through the watch lists to meet requirements.

The board's executive committee subsequently learned that Mr. Romero had advised the Ford Foundation, his former employer, to follow the nation's main antiterrorism law, known as the Patriot Act, in composing language for its grant agreements, helping to ensure that none of its money inadvertently underwrites terrorism or other unacceptable

activities. The A.C.L.U., which has vigorously contended that the act threatens civil liberties, had accepted \$68,000 from Ford under the new terms by then.

The board voted in October to return the money and reject further grants from Ford and the Rockefeller Foundation, which uses similar language in its grant agreements.

In 2003, Mr. Romero waited several months to inform the board that he had signed an agreement with Mr. Spitzer to settle a complaint related to the security of the A.C.L.U.'s Web site. The settlement, signed in December 2002, required the agreement to be distributed to the board within 30 days, and Mr. Romero did not hand it out until June 2003.

He told board members that he had not carefully read the agreement and that he did not believe it required him to distribute it, according to a chronology compiled by Ms. Kaminer.

Many nonprofit organizations collect information about their donors to help their fund-raising, using technology to figure out giving patterns, net worth and other details that assist with more targeted pitches.

Because of its commitment to privacy rights, however, the A.C.L.U. has avoided the most modern techniques, according to minutes of its executive committee from three years ago. "What we did then wasn't very sophisticated because of our stance on privacy rights," said Ira Glasser, Mr. Romero's predecessor.

Mr. Glasser, who resigned in 2001, said the group had collected basic data on major donors and conducted a ZIP code analysis of its membership for an endowment campaign while he was there. He said it had done research on Lexis/Nexis and may have looked at S.E.C. filings.

Mr. Meyers said he learned on Nov. 7 that the A.C.L.U.'s data collection practices went far beyond previous efforts. "If I give the A.C.L.U. \$20, I have not given them permission to investigate my partners, who I'm married to, what they do, what my real estate holdings are, what my wealth is, and who else I give my money to," he said.

On Nov. 8, the privacy statement on the A.C.L.U. Web site was replaced with an "Online Privacy Policy." Until that time, the group had pledged to gather personal information only with the permission of members and donors. It also said it would not sell or transfer information to a third party or use it for marketing.

Those explicit guarantees were eliminated from the Web site after Mr. Meyers raised his concerns about the new data-mining program at the Nov. 7 meeting.

After learning of Mr. Spitzer's inquiry, the executive committee of the board took up the data-mining issue on Dec. 14. Board members are allowed to listen in on any executive committee meeting, and Mr. Meyers asked the panel to participate in its conference call.

The first item on the agenda was whether he could be on the line. The executive committee voted 9 to 1 to bar him and had a staff member inform him that the meeting was of the board of the A.C.L.U. Foundation, not the group's executive committee, and thus he was excluded.

Mr. Remar, who has been a board member for 18 years, said board members had been asked to leave executive committee meetings during personnel discussions, but Mr. Meyers said it was a first.

Mr. Remar said the data collection efforts were a function of the foundation, and thus the executive committee had met as the foundation board.

But Mr. Romero convened a meeting of the executive committee, and Mr. Spitzer's letter was addressed to the A.C.L.U., with no mention of the foundation.

Mr. Meyers said his exclusion raises a profound issue for other board members. "Their rationale for excluding me implicitly means that they can't share anything with the board, but the board as a whole has fiduciary responsibilities," he said. "How can board members do their duty if information is withheld from them?"

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