FEDERAL BUREAU OF INVESTIGATION
FOI/PA
DELETED PAGE INFORMATION SHEET
FOI/PA# 1199215-0

Total Deleted Page(s) = 78
Page 6 ~ Duplicate - to 65X-LA-153918-A serial 37x1;
Page 7 ~ Duplicate - to 65X-LA-153918-A serial 37x1;
Page 8 ~ Duplicate - to 65X-LA-153918-A serial 37x1;
Page 10 ~ Duplicate - 63-HQ-1063619 Serial 22;
Page 11 ~ Duplicate - to 65X-LA-153918-A serial 30;
Page 12 ~ Duplicate - to 65X-LA-153918-A serial 30;
Page 17 ~ Duplicate - to 65X-LA-153918-A serial 35;
Page 19 ~ Duplicate - to 65X-LA-153918-A serial 35;
Page 24 ~ Duplicate - to 65X-LA-153918-A serial 34;
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Page 58 ~ Duplicate - to 65X-LA-153918-A serial 39;
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Page 66 ~ Duplicate - to 65X-LA-153918-A serial 40;
Page 68 ~ Duplicate - to 65X-LA-153918-A serial 40;
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Page 99 ~ Duplicate - to 65X-LA-153918-A Serial 1;
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Page 111 ~ Duplicate - to 65X-LA-153918-A Serial 46;
Page 114 ~ Duplicate - to 65X-LA-153918-A Serial 46;
Page 115 ~ Duplicate - to 65X-LA-153918-A Serial 1;
Page 118 ~ Duplicate - to 65X-LA-153918-A Serial 48;
Page 120 ~ Duplicate - to 65X-LA-153918-A Serial 48;
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Page 125 ~ Duplicate - to 65X-LA-153918-A Serial 49;
Page 127 ~ Duplicate - to 65X-LA-153918-A Serial 49;
Page 128 ~ Duplicate - to 65X-LA-153918-A Serial 1;
Page 129 ~ Duplicate - to 65X-LA-153918-A Serial 49;
Page 131 ~ Duplicate - to 65X-LA-153918-A Serial 51;
Page 135 ~ Duplicate - to 65X-LA-153918-A Serial 51;
Page 136 ~ Duplicate - to 65X-LA-153918-A Serial 51;
Page 138 ~ Duplicate - to 65X-LA-153918-A Serial 53;
Page 139 ~ Duplicate - to 65X-LA-153918-A Serial 53;
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Page 144 ~ Duplicate - to 65X-LA-153918-A Serial 52;
Page 146 ~ Duplicate - to 65X-LA-153918-A Serial 52;
Page 149 ~ Duplicate - to 65X-LA-153918-A Serial 54;
Page 151 ~ Duplicate - to 65X-LA-153918-A Serial 54;

Page 152 ~ Duplicate - to 65X-LA-153918-A Serial 54;
Page 154 ~ Duplicate - to 65X-LA-153918-A Serial 55;
Page 155 ~ Duplicate - to 65X-LA-153918-A Serial 55;
Page 160 ~ Duplicate - to 65X-LA-153918-A Serial 52;
Page 162 ~ Duplicate - to 65X-LA-153918-A Serial 56;
Page 164 ~ Duplicate - to 65X-LA-153918-A Serial 56;
Page 165 ~ Duplicate - to 65X-LA-153918-A Serial 1;
Page 168 ~ Duplicate - to 65X-LA-153918-A Serial 57;
Page 170 ~ Duplicate - to 65X-LA-153918-A Serial 57;
Page 171 ~ Duplicate - to 65X-LA-153918-A Serial 1;
Page 172 ~ Duplicate - to 65X-LA-153918-A Serial 57;
Page 173 ~ Duplicate - to 65X-LA-153918-A Serial 57;
Page 175 ~ Duplicate - to 65X-LA-153918-A Serial 58;
Page 177 ~ Duplicate - to 65X-LA-153918-A Serial 58;
Page 178 ~ Duplicate - to 65X-LA-153918-A Serial 58;
Page 183 ~ Duplicate - to 65X-LA-153918-A Serial 58;
Page 185 ~ Duplicate - to 65X-LA-153918-A Serial 59;
Page 187 ~ Duplicate - to 65X-LA-153918-A Serial 59;
Page 188 ~ Duplicate - to 65X-LA-153918-A Serial 59;

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July 8, 1993

Honorable Steve Buyer
House of Representatives
Washington, D.C. 20515

Dear Congressman Buyer:

I am writing in further response to your May 31st communication on behalf of several constituents who expressed concern over allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies.

Based on the considerable press coverage this issue has received, the concerns expressed by your constituents are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may assure your constituents that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals or any enterprise discovered to be involved in illegal activity in violation of Federal statutes.

Thank you for providing the FBI an opportunity to address your constituents' concerns.

Sincerely yours,

Charles E. Mandigo
Legislative Counsel
Office of Public and
Congressional Affairs

MAILED 32
JUL 09 1993
FBI

1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurtel of 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Indianapolis - Enclosures
1 - Mr. Collingwood (Room 7240)
1 - Mr. Gilbert (Room 5222)
1 - Ms. [redacted] (Room 4133)
1 - Congressional Affairs Office (Room 7240)

63-HQ-1063619-55
LA-153918-56

b6
b7C

NOTE: Response coordinated with SSA [redacted] INTD, and is based in part on a response dated 2/19/93 from Director Sessions to a 1/21/93 letter from [redacted] American-Arab Anti-Discrimination Committee. This response has been sent to several congressional representatives who have written about this matter on behalf of their constituents. Bufiles checked.
BHM:cmw (15)

Dep. Dir.
ADD Adm.
ADD Inv.
Asst. Dir.:
Adm. Servs.
Crim. Inv.
CJIS
Ident.
Info. Mgmt.
Insp.
Intell.
Lab.
Legal Coun.
Tech. Servs.
Training
Off. of EEOA
Off. Liaison & Int. Affs.
Off. of Public & Cong. Affs
TOM Office
Telephone Rm.
Director's Office

MAIL ROOM

APPROVED:
Director
Dep. Dir.
ADD-Adm.
ADD-Inv.
Adm. Servs.
Crim. Inv.
Crim. Jus. Info. Servs.
Ident.
Info. Mgmt.
Inspection
Intell.
Laboratory
Legal Coun.
Tech. Servs.
Training
Off. of EEO Affs.
Off. of Liaison & Int. Affs.
Off. of Public & Cong. Affs
TOM Off.

July 9, 1993

b6
b7C

[redacted]
Harrisburg, Pennsylvania 17104-1941

Dear Mr. [redacted]

This is in reply to your recent letter to Senator Arlen Specter, which he forwarded to the FBI. Senator Specter asked that we respond to your concerns over allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies.

Based on the considerable press coverage this issue has received, the concerns you expressed are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may be assured that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals or any enterprise discovered to be involved in illegal activity in violation of Federal statutes.

I am glad to have had an opportunity to address this issue and, hopefully, to allay your concerns.

Sincerely yours,

MAILED 22
JUL 09 1993
FBI

Charles E. Mandigo
Legislative Counsel
Office of Public and
Congressional Affairs

1 - Honorable Arlen Specter (detached) 63-HQ-1063619-59
United States Senate 65X-LA-153918-58
Washington, D.C. 20510
1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurairtel of 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Philadelphia - Enclosures
1 - Mr. Collingwood (Room 7240)
1 - Mr. Gilbert (Room 5222)
1 - Ms. [redacted] (Room 4133)
1 - Congressional Affairs Office (Room 7240)

Dep. Dir.
ADD Adm.
ADD Inv.
Asst. Dir.:
Adm. Servs.
Crim. Inv.
CJIS
Ident.
Info. Mgmt.
Insp.
Intell.
Lab.
Legal Coun.
Tech. Servs.
Training
Off. of EEOA
Off. Liaison & Int. Affs.
Off. of Public & Cong. Affs.
TOM Office
Telephone Rm.
Director's Office

BHM:rfw (13)

SEE NOTE PAGE TWO

MAIL ROOM

Mr. [redacted]

b6
b7C

NOTE: Response coordinated with SSA [redacted], INTD, and is based in part on a response dated 2/19/93 from Director Sessions to a 1/21/93 letter from [redacted] American-Arab Anti-Discrimination Committee. It has been used previously in reply to other congressional inquiries on this matter. Bufiles checked.

APPROVED:

Director	Adm. Servs.	Inspection	Off. of EEO Affs.
Dep. Dir.	Crim. Inv.	Intell.	Off. of Liaison & Int. Affs.
ADD-Adm.	Crim. Jus. Info. Servs.	Laboratory	Off. of Public & Cong. Affs.
ADD-Inv.	Ident.	Legal Coun.	TOM Off.
	Info. Mgmt.	Tech. Servs.	
		Training	

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: LINDER, CONG. JOHN
To: AG.
ODD: 07-09-93
Date Received: 06-08-93 Date Due: 07-09-93 Control #: X93061011838
Subject & Date
05-21-93 LETTER ON BEHALF OF [redacted] ATLANTA, GA, REGARDING REPORTS THAT THE FBI AND THE SAN FRANCISCO POLICE DEPARTMENT ARE CONDUCTING A CRIMINAL INVESTIGATION OF ILLEGAL SURVEILLANCE OF AMERICAN CITIZENS BY THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH.

b6
b7C

Referred To:	Date:	Referred To:	Date:	
(1) FBI;SESSIONS	06-10-93	(5)		W/IN:
(2)		(6)		
(3)		(7)		PRTY:
(4)		(8)		2
INTERIM BY:		DATE:		OPR:
Sig. For: FBI		Date Released:		MMH

Remarks
CC: OLA (GRAUPENSPERGER). ORIGINAL TO AG FILES.
(1) RETURN CONTROL SHEET WITH SIGNED AND DATED COPY OF THE RESPONSE TO EXEC. SEC., ROOM 4400-AA.

Other Remarks:

OLA CONTACT:

FILE:

Copy sent back to Exec Sec

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

July 9, 1993

Honorable John Linder
House of Representatives
Washington, D.C. 20515-1004

Dear Congressman Linder:

I am writing in further response to your May 21st communication on behalf of Mr. [redacted] b6 b7C expressed concern over allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies.

Based on the considerable press coverage this issue has received, the concerns expressed by Mr. [redacted] are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may assure Mr. [redacted] that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals or any enterprise discovered to be involved in illegal activity in violation of Federal statutes.

Thank you for providing the FBI an opportunity to address your constituent's concerns.

Sincerely yours,

/S/

Charles E. Mandigo
Legislative Counsel
Office of Public and
Congressional Affairs

APPROVED:
Director
Dep. Dir.
ADD-Adm.
ADD-Inv.

Adm. Servs. ___ Inspection ___ Off. of EEO Affs. ___
Crim. Inv. ___ Intell. ___ Off. of Liaison & Int. Affs. ___
Crim. Jus. Info. Servs. ___ Laboratory ___ Off. of Public & Cong. Affs. ___
Ident. ___ Legal Coun. ___ TOM Off. ___
Info. Mgmt. ___ Tech. Servs. ___
Training ___

MAILED 30
JUL 12 1993

1 - Executive Secretariat - Enclosure
Room 4400-AA
1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurtel of 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Atlanta - Enclosures
1 - Mr. Collingwood (Room 7240)
1 - Mr. Gilbert (Room 5222)
1 - Ms. [redacted] (Room 4133)
1 - Congressional Affairs Office (Room 7240)
1 - FBICR (Room 4913A)

65X-LA-153916-60
65X-LA-153110
63-HQ-1063619-61

Dep. Dir. ___
ADD Adm. ___
ADD Inv. ___
Asst. Dir.:
Adm. Servs. ___
Crim. Inv. ___
CJIS ___
Ident. ___
Info. Mgmt. ___
Insp. ___
Intell. ___
Lab. ___
Legal Coun. ___
Tech. Servs. ___
Training ___
Off. of EEOA ___
Off. Liaison & Int. Affs. ___
Off. of Public & Cong. Affs. ___
TOM Office ___
Telephone Rm. ___
Director's Office ___

NOTE: Response coordinated with SSA [redacted] INTD, and is based in part on a response dated 2/19/93 from Director Sessions to a 1/21/93 letter from [redacted] American-Arab Anti-Discrimination Committee. This response has been sent to several congressional representatives who have written about this matter on behalf of their constituents. Bufiles checked.

BHM:majh (15)
MAIL ROOM

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: BACCHUS, CONG. JIM
To: OLA
ODD: 07-07-93
Date Received: 05-26-93 Date Due: 07-07-93 Control #: X93060811512
Subject & Date
05-10-93 LETTER ON BEHALF OF [redacted] TITUSVILLE, FL, REGARDING REPORTS THAT THE FBI AND THE SAN FRANCISCO POLICE DEPARTMENT ARE CONDUCTING A CRIMINAL INVESTIGATION OF ILLEGAL SURVEILLANCE OF AMERICAN CITIZENS BY THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH.

b6
b7C

	Referred To:	Date:		Referred To:	Date:	
(1)	FBI;SESSIONS	06-08-93	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			2
	INTERIM BY:			DATE:		OPR:
	Sig. For: FBI			Date Released:		MMH

Remarks
(1) RETURN CONTROL SHEET WITH SIGNED AND DATED COPY OF THE RESPONSE TO EXEC. SEC., ROOM 4400-AA.

Other Remarks:

OLA CONTACT:

FILE:

Copy sent back to Exec Sec

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

July 9, 1993

Honorable Jim Bacchus
Member of Congress
900 Dixon Boulevard
Cocoa, Florida 32922

Dear Congressman Bacchus:

I am writing in further response to your May 10th communication on behalf of Mr. [redacted] b6 b7C expressed concern over allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies.

Based on the considerable press coverage this issue has received, the concerns expressed by Mr. [redacted] are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may assure Mr. [redacted] that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals or any enterprise discovered to be involved in illegal activity in violation of Federal statutes.

Thank you for providing the FBI an opportunity to address your constituent's concerns.

Sincerely yours,

Charles E. Mandigo
Legislative Counsel
Office of Public and
Congressional Affairs

APPROVED: Director, Dep. Dir., ADD-Adm., ADD-Inv., Adm. Servs., Crim. Inv., Crim. Jus. Info. Serv., Ident., Info. Mgmt., Inspection, Intell., Laboratory, Legal Coun., Tech. Servs., Training, Off. of EEO Affs., Off. of Liaison & Int. Affs., Off. of Public & Cong. Affs., TOM Off.

MAILED 30
JUL 12 1993

1 - Executive Secretariat - Enclosure
Room 4400-AA
1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurtel of 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Tampa - Enclosures
1 - Mr. Collingwood (Room 7240)
1 - Mr. Gilbert (Room 5222)
1 - Ms. [redacted] (Room 4133)
1 - Congressional Affairs Office (Room 7240)
1 - FBICR (Room 4913A)

NOTE: Response coordinated with SSA [redacted] INTD, and is based in part on a response dated 2/19/93 from Director Sessions to a 1/21/93 letter from [redacted] American-Arab Anti-Discrimination Committee. This response has been sent to several congressional representatives who have written about this matter on behalf of their constituents. Bufiles checked.

Dep. Dir., ADD Adm., ADD Inv., Asst. Dir.: Adm. Servs., Crm. Inv., CJIS, Ident., Info. Mgmt., Insp., Intell., Lab., Legal Coun., Tech. Servs., Training, Off. of EEOA, Off. Liaison & Int. Affs., Off. of Public & Cong. Affs, TOM Office, Telephone Rm., Director's Office

BHM:majh (15)
MAIL ROOM

July 9, 1993

Honorable Larry LaRocco
Member of Congress
Room 136
304 North Eighth Street
Boise, Idaho 83702

Dear Congressman LaRocco:

I am writing in further response to your May 17th communication on behalf of Mr. [redacted] b6 b7C expressed concern over allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies.

Based on the considerable press coverage this issue has received, the concerns expressed by Mr. [redacted] are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may assure Mr. [redacted] that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals or any enterprise discovered to be involved in illegal activity in violation of Federal statutes.

Thank you for providing the FBI an opportunity to address your constituent's concerns.

Sincerely yours,

APPROVED:

Adm. Servs. ____ Inspection ____ Off. of EEO Affs. ____
Crim. Inv. ____ Intell. ____ Off. of Liaison & Int. Affs. ____
Crim. Jus. Info. Servs. ____ Laboratory ____ Off. of Public & Cong. Affs. ____
Ident ____ Legal Coun. ____ TOM Off. ____
Info. Mgmt. ____ Tech. Servs. ____
Training ____

Charles E. Mandigo
Legislative Counsel
Office of Public and Congressional Affairs

MAILED 1
JUL 15 1993
FBI

1 - Executive Secretariat - Enclosure
Room 4400-AA, DOJ
1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurtel of 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Salt Lake City - Enclosures
1 - Mr. Collingwood (Room 7240)
1 - Mr. Gilbert (Room 5222)
1 - Ms. [redacted] (Room 4133)
1 - Congressional Affairs Office (Room 7240)
1 - FBICR (Room 4913A)

Dep. Dir. ____
ADD Adm. ____
ADD Inv. ____
Asst. Dir.:
Adm. Servs ____
Crim. Inv. ____
CJIS ____
Ident ____
Info. Mgmt. ____
Insp. ____
Intell. ____
Lab. ____
Legal Coun. ____
Tech. Servs ____
Training ____
Off. of EEOA ____
Off. Liaison & Int. Affs. ____
Off. of Public & Cong. Affs. ____
TOM Office ____
Telephone Rm. ____
Director's Office ____

NOTE: Response coordinated with SSA [redacted] INTD, and is based in part on a response dated 2/19/93 from Director Sessions to a 1/21/93 letter from [redacted] American-Arab Anti-Discrimination Committee. This response has been sent to several congressional representatives who have written about this matter on behalf of their constituents. Bufiles checked.

BHM:majh (15)
MAIL ROOM

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: LaROCCO, CONG. LARRY
To: OLA ODD: 06-30-93
Date Received: 05-20-93 Date Due: 06-30-93 Control #: X93060210976
Subject & Date
05-17-93 LETTER ON BEHALF OF [redacted] STAR, ID, b6 b7C
REGARDING REPORTS THAT THE FBI AND THE SAN FRANCISCO POLICE DEPARTMENT ARE CONDUCTING A CRIMINAL INVESTIGATION OF ILLEGAL SURVEILLANCE OF AMERICAN CITIZENS BY THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH.

	Referred To:	Date:		Referred To:	Date:	
(1)	FBI;SESSIONS	06-02-93	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			2
	INTERIM BY:			DATE:		OPR:
	Sig. For: FBI			Date Released:		MMH

Remarks
(1) RETURN CONTROL SHEET WITH SIGNED AND DATED COPY OF THE RESPONSE TO EXEC. SEC., ROOM 4400-AA.

Other Remarks:

OLA CONTACT:

FILE:

Copy returned to Exec Sec

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

July 9, 1993

[redacted]

Leesport, Pennsylvania 19533

Dear Mr. [redacted]

This is in reply to your April 14th letter to Senator Arlen Specter, which he forwarded to the FBI. Senator Specter asked that we respond to your concerns over allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies.

Based on the considerable press coverage this issue has received, the concerns you expressed are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may be assured that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals or any enterprise discovered to be involved in illegal activity in violation of Federal statutes.

I am glad to have had an opportunity to address this issue and, hopefully, to allay your concerns.

Sincerely yours,

FBI JUL 09 1993

Charles E. Mandigo
Legislative Counsel
Office of Public and
Congressional Affairs

1 - Honorable Arlen Specter
United States Senate
Washington, D.C. 20510
1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurairtel of 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Philadelphia - Enclosures
1 - Mr. Collingwood (Room 7240)
1 - Mr. Gilbert (Room 5222)
1 - Ms. [redacted] (Room 4133)
1 - Congressional Affairs Office (Room 7240)

BHM:rfw (14) SEE NOTE PAGE TWO

MAIL ROOM

Dep. Dir.
ADD Adm.
ADD Inv.
Asst. Dir.:
Adm. Servs.
Crim. Inv.
CJIS
Ident.
Info. Mgmt.
Insp.
Intell.
Lab.
Legal Coun.
Tech. Servs.
Training
Off. of EEOA
Off. Liaison & Int. Affs.
Off. of Public & Cong. Affs.
TOM Office
Telephone Rm.
Director's Office

Mr. [redacted]

b6
b7C

NOTE: Response coordinated with SSA [redacted] INTD, and is based in part on a response dated 2/19/93 from Director Sessions to a 1/21/93 letter from [redacted] American-Arab Anti-Discrimination Committee. It has been used previously in reply to other congressional inquiries on this matter. Bufiles checked.

APPROVED:	Adm. Servs.	Inspection	Off. of EEO Affs.
	Crim. Inv.	Intell.	Off. of Liaison
Director	Crim. Jus. Info.	Laboratory	& Int. Affs.
Dep. Dir.	Servs.	Legal Coun.	Off. of Public
ADD-Adm.	Ident.	Tech. Servs.	& Cong. Affs.
ADD-Inv.	Info. Mgmt.	Training	TQM Off.

July 9, 1993

b6
b7C

[redacted]
Portage, Pennsylvania 15946

Dear Ms [redacted]

This is in reply to your April 28th letter to Senator Arlen Specter, which he forwarded to the FBI. Senator Specter asked that we respond to your concerns over allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies.

Based on the considerable press coverage this issue has received, the concerns you expressed are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may be assured that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals or any enterprise discovered to be involved in illegal activity in violation of Federal statutes.

I am glad to have had an opportunity to address this issue and, hopefully, to allay your concerns.

Sincerely yours,

JUL 0 9 1993
FBI

Charles E. Mandigo
Legislative Counsel
Office of Public and
Congressional Affairs

1 - Honorable Arlen Specter (detached)
United States Senate
Washington, D.C. 20510
1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurairtel of 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Pittsburgh - Enclosures
1 - Mr. Collingwood (Room 7240)
1 - Mr. Gilbert (Room 5222)
1 - Ms. [redacted] (Room 4133)
1 - Congressional Affairs Office (Room 7240)

65X-LA-153918-70
63-HQ-1063619-69

Dep. Dir.
ADD Adm.
ADD Inv.
Asst. Dir.
Adm. Servs.
Crim. Inv.
CJIS
Ident.
Info. Mgmt.
Insp.
Intell.
Lab.
Legal Coun.
Tech. Servs.
Training
Off. of EEOA
Off. Liaison & Int. Affs.
Off. of Public & Cong. Affs.
TOM Office
Telephone Rm.
Director's Office

BHM:rfw (13)

MAIL ROOM

SEE NOTE PAGE TWO

Ms. [redacted]

b6
b7C

NOTE: Response coordinated with SSA [redacted] INTD, and is based in part on a response dated 2/19/93 from Director Sessions to a 1/21/93 letter from [redacted] American-Arab Anti-Discrimination Committee. It has been used previously in reply to other congressional inquiries on this matter. Bufiles checked.

APPROVED:	Adm. Servs.	Inspection	Off. of EEO Affs.
	Crim. Inv.	Intell.	Off. of Liaison
Director	Crim. Jus. Info.	Laboratory	& Int. Affs.
Dep. Dir.	Servs.	Legal Coun.	Off. of Public
ADD-Adm.	Ident.	Tech. Servs.	& Cong. Affs.
ADD-Inv.	Info. Mgmt.	Training	TOM Off.

310 80

310

July 9, 1993

b6
b7C

[redacted]
Harleysville, Pennsylvania 19438

Dear Mr. [redacted]

This is in reply to your May 19th letter to Senator Arlen Specter, which he forwarded to the FBI. Senator Specter asked that we respond to your concerns over allegations of criminality by the Anti-Defamation League of B'nai B'rith.

Based on the considerable press coverage this issue has received, the concerns you expressed are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may be assured that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals or any enterprise discovered to be involved in illegal activity in violation of Federal statutes.

I am glad to have had an opportunity to address this issue and, hopefully, to allay your concerns.

Sincerely yours,

MAILED 32
JUL 0 9 1993
FBI

Charles E. Mandigo
Legislative Counsel
Office of Public and
Congressional Affairs

1 - Honorable Arlen Specter (detached
United States Senate
Washington, D.C. 20510
1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurairtel of 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Philadelphia - Enclosures
1 - Mr. Collingwood (Room 7240)
1 - Mr. Gilbert (Room 5222)
1 - Ms. [redacted] (Room 4133)
1 - Congressional Affairs Office (Room 7240)

65X-LA-153918 52
65X-LA-153116 52
63-HQ-1063619-71

Dep. Dir.
ADD Adm.
ADD Inv.
Asst. Dir.:
Adm. Servs.
Crim. Inv.
CJIS
Ident.
Info. Mgmt.
Insp.
Intell.
Lab.
Legal Coun.
Tech. Servs.
Training
Off. of EEOA
Off. Liaison & Int. Affs.
Off. of Public & Cong. Affs.
TOM Office
Telephone Rm.
Director's Office

BHM:rfw (13)

MAIL ROOM

SEE NOTE PAGE TWO

Mr. [redacted]

b6
b7C

NOTE: Response coordinated with SSA [redacted] INTD, and is based in part on a response dated 2/19/93 from Director Sessions to a 1/21/93 letter from [redacted] American-Arab Anti-Discrimination Committee. It has been used previously in reply to other congressional inquiries on this matter. Bufiles checked.

APPROVED:

Director	Adm. Servs.	Inspection	Off. of EEO Affs.
Dep. Dir.	Crim. Inv.	Intell.	Off. of Liaison & Int. Affs.
ADD-Adm.	Crim. Jus. Info. Servs.	Laboratory	Off. of Public & Cong. Affs.
ADD-Inv.	Ident	Legal Coun.	TOM Off.
	Info. Mgmt.	Tech. Servs.	
		Training	

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: KASSEBAUM, SENATOR NANCY LANDON
To: OLA ODD: 07-15-93
Date Received: 06-02-93 Date Due: 07-15-93 Control #: X93061612330
Subject & Date
05-24-93 LETTER ON BEHALF OF [redacted] DIRECTOR, b6 b7C
THE FREEDOM INSTITUTE, WICHITA, KS, REGARDING REPORTS
THAT THE FBI AND THE SAN FRANCISCO POLICE DEPARTMENT ARE
CONDUCTING A CRIMINAL INVESTIGATION OF ILLEGAL SURVEILLANCE
OF AMERICAN CITIZENS BY THE ANTI-DEFAMATION LEAGUE OF
B'NAI B'RITH.

	Referred To:	Date:		Referred To:	Date:	
(1)	FBI;SESSIONS	06-16-93	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			2
	INTERIM BY:			DATE:		OPR:
	Sig. For: FBI			Date Released:		MMH

Remarks
(1) RETURN CONTROL SHEET WITH SIGNED AND DATED COPY OF THE
RESPONSE TO EXEC. SEC., ROOM 4400-AA.

Other Remarks:

OLA CONTACT:

FILE:

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

310

July 15, 1993

[redacted]

b6
b7C

The Freedom Institute
Suite 122
608 North West Street
Wichita, Kansas 67203

Dear [redacted]

Senator Kassebaum requested the FBI to respond directly to you about your concerns over allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies. I am glad for this opportunity to address this issue.

Based on the considerable press coverage this issue has received, your concerns are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you can be assured that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals or any enterprise discovered to be involved in illegal activity in violation of Federal statutes.

Sincerely yours,

Charles E. Mandigo
Legislative Counsel
Office of Public and
Congressional Affairs

63-HQ-1063619-73
65X-LA-153918-81

1 - Honorable Nancy Landon Kassebaum
United States Senate
Washington, D. C. 20510-1602
1 - Executive Secretariat - Enclosure
Room 4400-AA, DOJ
1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurtel of 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Kansas City - Enclosures
1 - Mr. Collingwood (Room 7240)
1 - Mr. Gilbert (Room 5222)
1 - Ms. [redacted] (Room 4133)
1 - Congressional Affairs Office (Room 7240)
1 - FBICR (Room 4913A)

BHM:rfw (15)

SEE NOTE PAGE TWO

Dep. Dir.
ADD Adm.
ADD Inv.
Asst. Dir.:
Adm. Servs.
Crim. Inv.
CJIS
Ident.
Info. Mgmt.
Insp.
Intell.
Lab.
Legal Coun.
Tech. Servs.
Training
Off. of EEOA
Off. Liaison & Int. Affs.
Off. of Public & Cong. Affs
TOM Office
Telephone Rm.
Director's Office

MAIL ROOM

mailed from FBICR 7/19/93

[redacted]

b6
b7C

NOTE: Response coordinated with SSA [redacted] INTD, and is based in part on a response dated 2/19/93 from Director Sessions to a 1/21/93 letter from [redacted], American-Arab Anti-Discrimination Committee. This reply has been sent to several congressional representatives who have written about this matter on behalf of their constituents. Bufiles checked.

APPROVED:

Director	Adm. Servs.	Inspection	Off. of EEO Affs.
Dep. Dir.	Crim. Inv.	Intell.	Off. of Liaison & Int. Affs.
ADD-Adm.	Crim. Jus. Info. Servs.	Laboratory	Off. of Public & Cong. Affs.
ADD-Inv.	Ident.	Legal Coun.	TQM Off.
	Info. Mgmt.	Tech. Servs.	
		Training	

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: SMITH, CONG. CHRISTOPHER H.
To: AG.
ODD: 07-23-93
Date Received: 06-09-93 Date Due: 07-23-93 Control #: X93062413139
Subject & Date
06-07-93 LETTER ON BEHALF OF [redacted], WHITING, NJ, REGARDING REPORTS THAT THE FBI AND THE SAN FRANCISCO POLICE DEPARTMENT ARE CONDUCTING A CRIMINAL INVESTIGATION OF ILLEGAL SURVEILLANCE OF AMERICAN CITIZENS BY THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH.

b6
b7C

	Referred To:	Date:		Referred To:	Date:	
(1)	FBI;SESSIONS	06-24-93	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			2
	INTERIM BY:			DATE:		OPR:
	Sig. For: FBI			Date Released:		MMH

Remarks
CC: OLA (GRAUPENSPERGER). ORIGINAL TO AG FILES.
(1) RETURN CONTROL SHEET WITH SIGNED AND DATED COPY OF THE RESPONSE TO EXEC. SEC., ROOM 4400-AA.

Other Remarks:

OLA CONTACT:

FILE:

Copy sent to Exec Sec

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

July 20, 1993

Honorable Christopher H. Smith
House of Representatives
Washington, D.C. 20515-3004

Dear Congressman Smith:

I am writing in further response to your June 7th communication on behalf of Mr. [redacted] expressed concern over allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies.

b6
b7C

Based on the considerable press coverage this issue has received, the concerns expressed by Mr. [redacted] are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may assure Mr. [redacted] that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals or any enterprise discovered to be involved in illegal activity in violation of Federal statutes.

Thank you for providing the FBI an opportunity to address your constituent's concerns.

Sincerely yours,

Charles E. Mandigo
Legislative Counsel
Office of Public and
Congressional Affairs

1 - Executive Secretariat - Enclosure
Room 4400-AA, DOJ
1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurtel of 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Newark - Enclosures
1 - Mr. Collingwood (Room 7240)
1 - Mr. Gilbert (Room 5222)
1 - Ms. [redacted] (Room 4133)
1 - Congressional Affairs Office (Room 7240)
1 - FBICR (Room 4913A)

63-HQ-1063619-75
65X-LA-153918-87

NOTE: Response coordinated with SSA [redacted] INTD, and is based in part on a response dated 2/19/93 from Director Sessions to a 1/21/93 letter from [redacted] American-Arab Anti-Discrimination Committee. This reply has been sent to several congressional representatives who have written about this matter on behalf of their constituents. Bufiles checked.

BHM:jam (15)

Dep. Dr. ___
ADD Adm. 1
ADD Inv. 1
Asst. Dr.:
Adm. Servs. ___
Crim. Inv. ___
CJIS ___
Ident ___
Info. Mgmt. ___
Insp. ___
Intell. ___
Lab. ___
Legal Coun. ___
Tech. Servs. ___
Training ___
Off. of EEOA ___
Off. Liaison & Int. Affs. ___
Off. of Public & Cong. Affs. ___
TOM Office ___
Telephone Rm. ___
Director's Office ___

APPROVED:
Director ___
Deputy Dir. ___
ADD Adm. ___
ADD Inv. ___

Adm. Servs. ___ Inspection ___ Off. of EEO Affs. ___
Crim. Inv. ___ Intell. ___ Off. of Liaison & Int. Affs. ___
Crim. Jus. Info. Servs. ___ Laboratory ___ Off. of Public & Cong. Affs. ___
Ident. ___ Legal Coun. ___ TOM Off. ___
Info. Mgmt. ___ Tech. Servs. ___
Training ___

MAIL ROOM

Mailed from FBICR 7/20/93

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: CRAIG, SENATOR LARRY E. [redacted] b6 b7C
To: OLA ODD: 07-27-93
Date Received: 06-14-93 Date Due: 07-27-93 Control #: X93062813370
Subject & Date
06-11-93 LETTER ON BEHALF OF SEVERAL CONSTITUENTS REGARDING REPORTS THAT THE FBI AND THE SAN FRANCISCO POLICE DEPARTMENT ARE CONDUCTING A CRIMINAL INVESTIGATION OF ILLEGAL SURVEILLANCE OF AMERICAN CITIZENS BY THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH.

Referred To:	Date:		Referred To:	Date:	
(1) FBI;SESSIONS	06-28-93	(5)			W/IN:
(2)		(6)			
(3)		(7)			PRTY: 2
(4)		(8)			
INTERIM BY:			DATE:		OPR: MMH
Sig. For: FBI			Date Released:		

Remarks
(1) RETURN CONTROL SHEET WITH SIGNED AND DATED COPY OF THE RESPONSE TO EXEC. SEC., ROOM 4400-AA.

Other Remarks:

OLA CONTACT:

FILE:

Copy sent to ExecSec

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

July 21, 1993

Honorable Larry E. Craig
United States Senate
Washington, D.C. 20510-1203

Dear Senator Craig:

I am writing in further response to your June 11th communication to the Department of Justice on behalf of Mr. [redacted] and other constituents, which was referred to the FBI and was received on July 1st. Mr. [redacted] expressed concern over allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies.

b6
b7C

Based on the considerable press coverage this issue has received, the concerns expressed by your constituents are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may assure your constituents that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals or any enterprise discovered to be involved in illegal activity in violation of Federal statutes.

Thank you for providing the FBI an opportunity to address your constituents' concerns.

Sincerely yours,

APPROVED: Adm. Serv. ___ Inspection ___ Off. of EEO Affs. ___
Crim. Inv. ___ Intell. ___ Off. of Liaison
Director ___ Crim. Jus. Info. Serv. ___ Laboratory ___ & Int. Affs. ___
Exec. Sec. ___ Legal Coun. ___ Off. of Public
Asst. Dir. ___ Ident. ___ Tech. Serv. ___ & Cong. Affs. ___
Asst. Dir. ___ Info. Mgmt. ___ Training ___ TOM Off. ___

Charles E. Mandigo
Legislative Counsel
Office of Public and
Congressional Affairs

63-HQ-1063619-77
65X-LA-153916-01

1 - Executive Secretariat - Enclosure
Room 4400-AA, DOJ
1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurtel of 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Salt Lake City - Enclosures
1 - Mr. Collingwood (Room 7240)
1 - Mr. Gilbert (Room 5222)
1 - Ms. [redacted] (Room 4133)
1 - Congressional Affairs Office (Room 7240)
1 - FBICR (Room 4913A)

Dep. Dir. 1
ADD Adm. 1
ADD Inv. ___
Asst. Dir. 1
Adm. Servs. 1
Crim. Inv. 1
CJIS 1
Ident. ___
Info. Mgmt. 1
Insp. ___
Intell. ___
Lab. ___
Legal Coun. ___
Tech. Servs. ___
Training ___
Off. of EEOA ___
Off. Liaison & Int. Affs ___
Off. of Public & Cong Affs. ___
TOM Office ___
Telephone Rm. ___
Director's Office ___

NOTE: Response coordinated with SSA [redacted] INTD, and is based in part on a response dated 2/19/93 from Director Sessions to a 1/21/93 letter from [redacted] American-Arab Anti-Discrimination Committee. This response has been sent to several congressional representatives who have written about this matter on behalf of their constituents. Bufiles checked.

BHM:ljbm (14)

MAIL ROOM
mailed from FBICR 7/30/93

July 21, 1993

Honorable Pete V. Domenici
United States Senate
Washington, D.C. 20510

Dear Senator Domenici:

I am writing in further response to your June 21st communication on behalf of [redacted] b6 b7C expressed concern over allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies.

Based on the considerable press coverage this issue has received, the concerns expressed by Mr. [redacted] are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may assure Mr. [redacted] that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals discovered to be involved in illegal activity or any enterprise which involves a violation of Federal statutes.

Thank you for providing the FBI an opportunity to address your constituent's concerns.

Sincerely yours,

Charles E. Mandigo
Legislative Counsel
Office of Public and
Congressional Affairs

MAILED 31
JUL 21 1993
FBI

Dep. Dir.
ADD Adm.
ADD Inv.
Asst. Dir.:
Adm. Servs
Crim. Inv.
CJIS
Ident.
Info. Mgmt.
Insp.
Intell.
Lab.
Legal Coun.
Tech. Servs.
Training
Off. of EEOA
Off. Liaison & Int. Affs.
Off. of Public & Cong. Affs
TOM Office
Telephone Rm.
Director's Office

1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurtel of 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Albuquerque - Enclosures
1 - Mr. Collingwood (Room 7240)
1 - Mr. Gilbert (Room 5222)
1 - Ms. [redacted] (Room 4133)
1 - Congressional Affairs Office (Room 7240)

BHM:rfw (13)

SEE NOTE PAGE TWO

MAIL ROOM

Honorable Pete V. Domenici

NOTE: Response coordinated with SSA [redacted] INTD, and is based in part on a response dated 2/19/93 from Director Sessions to a 1/21/93 letter from [redacted] American-Arab Anti-Discrimination Committee. This reply has been sent to several congressional representatives who have written about this matter on behalf of their constituents. Bufiles checked.

b6
b7C

APPROVED:	Adm. Servs.	Inspection	Off. of EEO Affs.
	Crim. Inv.	Intell.	Off. of Liaison
Director	Crim. Jus. Info.	Laboratory	& Int. Affs.
Dep. Dir.	Servs.	Legal Coun.	Off. of Public
ADD-Adm.	Ident.	Tech. Servs.	& Cong. Aff.
ADD-Inv.	Info. Mgmt.	Training	TQM Off.

July 21, 199[illegible]

b6
b7C

[redacted]

Fort Lauderdale, Florida 33316

Dear Mr. [redacted]

This is in reply to your April 28th letter to Senator Connie Mack, which he forwarded to the Department of Justice. He asked that a response be sent directly to you regarding your concerns over allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies.

Based on the considerable press coverage this issue has received, the concerns which prompted you to write are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may be assured that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals or any enterprise discovered to be involved in illegal activity in violation of Federal statutes.

I am glad to have had an opportunity to address this issue and, hopefully, to allay your concerns.

Sincerely yours,

APPROVED:
Director
Dep. Dir.
ADD-Adm.
ADD-Inv.
Adm. Servs.
Crim. Inv.
Crim. Jus. Info.
Servs.
Ident.
Info. Mgmt.
Inspection
Intell.
Laboratory
Legal Coun.
Tech. Servs.
Training
Off. of EEO Affs.
Off. of Liaison & Int. Affs.
Off. of Public & Cong. Affs.
TOM Off.

Charles E. Mandigo
Legislative Counsel
Office of Public and
Congressional Affairs

Original & letter to Mack mailed from FBICR 7/22/93

1 - Honorable Connie Mack
United States Senate
Washington, D.C. 20510-0904
1 - Executive Secretariat - Enclosure
Room 4400-AA, DOJ
1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurtel of 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Miami - Enclosures
1 - Mr. Collingwood (Room 7240)
1 - Mr. Gilbert (Room 5222)
1 - Ms. [redacted] (Room 4133)
Congressional Affairs Office (Room 7240)
1 - FBICR (Room 4913A)

63-HQ-106369-80
LA-153918-7[illegible]

Dep. Dir. 1
ADD Adm. 1
ADD Inv. 1
Asst. Dir.
Adm. Servs. 1
Crim. Inv. 1
CJIS
Ident 1
Info. Mgmt. 1
Insp. 1
Intell.
Lab.
Legal Coun.
Tech. Servs.
Training
Off. of EEOA
Off. Liaison & Int. Affs.
Off. of Public & Cong. Affs.
TOM Office
Telephone Rm.
Director's Office
2 MAIL ROOM

NOTE: Response coordinated with SSA [redacted] INTD, and is based in part on a response dated 2/19/93 from Director Sessions to a 1/21/93 letter from [redacted] American-Arab Anti-Discrimination Committee. This reply has been sent to several congressional representatives who have written about this matter on behalf of their constituents. Bufiles checked.

BHM:jam (15)

July 22, 1993

Honorable Barbara F. Vucanovich
House of Representatives
Washington, D.C. 20515-2802

Dear Congresswoman Vucanovich:

I am writing in further response to your June 21st communication on behalf of Mr. [redacted] b6 b7C expressed concern over allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies.

Based on the considerable press coverage this issue has received, the concerns expressed by Mr. [redacted] are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may assure Mr. [redacted] that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals or any enterprise discovered to be involved in illegal activity in violation of Federal statutes.

Thank you for providing the FBI an opportunity to address your constituent's concerns.

Sincerely yours,

/S/

Charles E. Mandigo
Legislative Counsel
Office of Public and
Congressional Affairs

MAILED 6
JUL 22 1993
FBI

1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurtel of 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Las Vegas - Enclosures
1 - Mr. Collingwood (Room 7240)
1 - Mr. Gilbert (Room 5222)
1 - Ms. [redacted] (Room 4133)
1 - Congressional Affairs Office (Room 7240)

65A-LA-153918-83
63-HQ-1062619-82

NOTE: Response coordinated with SSA [redacted] INTD, and is based in part on a response dated 2/19/93 from Director Sessions to a 1/21/93 letter from [redacted] American-Arab Anti-Discrimination Committee. This reply has been sent to several congressional representatives who have written about this matter on behalf of their constituents. Bufiles checked.

BHM:jam (13)

Dep. Dir. ___
ADD Adm. 1
ADD Inv. 1
Asst. Dir. ___
Adm. Servs. ___
Crim. Inv. ___
CJIS ___
Ident ___
Info. Mgmt. ___
Insp. ___
Intell. ___
Lab. ___
Legal Coun. ___
Tech. Servs. ___
Training ___
Off. of EEOA ___
Off. Liaison & Int. Affs. ___
Off. of Public & Cong. Affs. ___
TOM Office ___
Telephone Rm. ___
Director's Office ___

MAIL ROOM ☐

APPROVED:

Director	Adm. Servs.	Inspection	Off. of EEO Affs.
Dep. Dir.	Crim. Inv.	Intell.	Off. of Liaison & Int. Affs.
ADD-Adm.	Crim. Jus. Info. Servs.	Laboratory	Off. of Public & Cong. Affs.
ADD-Inv.	Ident	Legal Coun.	TOM Off.
	Info. Mgmt.	Tech. Servs.	
		Training	

July 22, 1993

Honorable Bill Sarpalius
House of Representatives
Washington, D.C. 20515

Dear Congressman Sarpalius:

I am writing in further response to your July 2nd communication on behalf of Mrs. [redacted] expressed concern over allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies.

b6
b7C

Based on the considerable press coverage this issue has received, the concerns expressed by Mrs. [redacted] are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may assure Mrs. [redacted] that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals discovered to be involved in illegal activity or any enterprise which involves a violation of Federal statutes.

Thank you for providing the FBI an opportunity to address your constituent's concerns.

Sincerely yours,

/S/

Charles E. Mandigo
Legislative Counsel
Office of Public and
Congressional Affairs

MAILED 6
JUL 22 1993
FBI

1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurtel of 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Dallas - Enclosures
1 - Mr. Collingwood (Room 7240)
1 - Mr. Gilbert (Room 5222)
1 - Ms. [redacted] (Room 4133)
1 - Congressional Affairs Office (Room 7240)

LOS LA-153916-SF
63-HQ-1063619-84

Dep. Dir. 1
ADD Adm. 1
ADD Inv. 1
Asst. Dir.:
Adm. Servs.
Crim. Inv.
CJIS
Ident
Info. Mgmt.
Insp.
Intell.
Lab.
Legal Coun.
Tech. Servs.
Training
Off. of EEOA
Off. Liaison & Int. Affs.
Off. of Public & Cong. Affs.
TQM Office
Telephone Rm.
Director's Office

NOTE: Response coordinated with SSA [redacted] INTD, and is based in part on a response dated 2/19/93 from Director Sessions to a 1/21/93 letter from [redacted] American-Arab Anti-Discrimination Committee. This reply has been sent to several congressional representatives who have written about this matter on behalf of their constituents. Bufiles checked.

BHM:ljbm (13)

ljbm

MAIL ROOM

APPROVED: Director, Dep. Dir., ADD-Adm., ADD-Inv.
Adm. Servs., Crim. Inv., Crim. Jus. Info. Servs., Ident., Info. Mgmt.
Inspection, Intell., Laboratory, Legal Coun., Tech. Servs., Training
Off. of EEO Affs., Off. of Liaison & Int. Affs., Off. of Public & Cong. Affs., TQM Off.

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: NICKLES, SENATOR DON
To: DOJ
ODD: 08-05-93
Date Received: 06-24-93 Date Due: 08-05-93 Control #: X93070814209
Subject & Date
06-21-93 LETTER ON BEHALF OF [redacted] BROKEN ARROW, OK, REGARDING REPORTS THAT THE FBI AND THE SAN FRANCISCO POLICE DEPARTMENT ARE CONDUCTING A CRIMINAL INVESTIGATION OF ILLEGAL SURVEILLANCE OF AMERICAN CITIZENS BY THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH.

b6
b7C

	Referred To:	Date:		Referred To:	Date:	
(1)	FBI;SESSIONS	07-08-93	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			2
	INTERIM BY:			DATE:		OPR:
	Sig. For: FBI			Date Released:		MMH

Remarks
(1) RETURN CONTROL SHEET WITH SIGNED AND DATED COPY OF THE RESPONSE TO EXEC. SEC., ROOM 4400-AA.

Other Remarks:

OLA CONTACT:

FILE:

Copy sent to Exec Sec

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

Finalact
7/29/93
BHM:cnw

July 29, 1993

Honorable Don Nickles
United States Senate
Washington, D. C. 20510-3602

Dear Senator Nickles:

I am writing in further response to your June 21st communication to the Department of Justice on behalf of Mr. [redacted] which was referred to the FBI for reply. Mr. [redacted] expressed concern over allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies.

b6
b7C

Based on the considerable press coverage this issue has received, the concerns expressed by Mr. [redacted] are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may assure Mr. [redacted] that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals or any enterprise discovered to be involved in illegal activity in violation of Federal statutes.

Thank you for providing the FBI an opportunity to address your constituent's concerns. As requested, your enclosures are being returned.

mailed fm FBICR 8/3/93

Sincerely yours,

Charles E. Mandigo
Inspector-Deputy Chief
Office of Public and
Congressional Affairs

Enclosures

1 - Executive Secretariat - Enclosure
Room 4400AA, DOJ
1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurtel of 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Oklahoma City - Enclosures
1 - Mr. Collingwood (Room 7240)
1 - Mr. Gilbert (Room 5222) 65X-LA-153918-98
1 - Ms. [redacted] (Room 4133)
1 - Congressional Affairs Office (Room 7240) - Enclosures
1 - FBICR (Room 4913A) - Enclosures 63-HQ-1063619-86

NOTE: Response coordinated with SSA [redacted] INTD, and is based in part on a response dated 2/19/93 from Director Sessions to a 1/21/93 letter from [redacted] American-Arab Anti-Discrimination Committee. This reply has been sent to several congressional representatives who have written about this matter on behalf of their constituents. Bufiles checked.

BHM:cmw (15)
MAIL ROOM

APPROVED:
Director
Dep. Dir.
ADD-Adm.
ADD-Inv.
Adm. Servs.
Crim. Inv.
Crim. Jus. Info. Servs.
Ident
Info. Mgmt.
Inspection
Intell.
Laboratory
Legal Coun.
Tech. Servs.
Training
Off. of EEO Affs.
Off. of Liaison & Int. Affs.
Off. of Public & Cong. Affs.
TOM Off.

Dep. Dir.
ADD Adm.
ADD Inv.
Asst. Dir.:
Adm. Servs.
Crim. Inv.
CJIS
Ident.
Info. Mgmt.
Insp.
Intell.
Lab.
Legal Coun.
Tech. Servs.
Training
Off. of EEOA
Off. Liaison & Int. Affs.
Off. of Public & Cong. Affs.
TOM Office
Telephone Rm.
Director's Office

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: NICKLES, SENATOR DON
To: DOJ ODD: 08-11-93
Date Received: 06-30-93 Date Due: 08-11-93 Control #: X93071414810
Subject & Date
06-28-93 LETTER ON BEHALF OF [redacted] PRAGUE, OK, b6 b7C
REGARDING REPORTS THAT THE FBI AND THE SAN FRANCISCO POLICE DEPARTMENT ARE CONDUCTING A CRIMINAL INVESTIGATION OF ILLEGAL SURVEILLANCE OF AMERICAN CITIZENS BY THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH.

Referred To:	Date:		Referred To:	Date:	
(1) FBI;SESSIONS	07-14-93	(5)			W/IN:
(2)		(6)			
(3)		(7)			PRTY:
(4)		(8)			2
INTERIM BY:			DATE:		OPR:
Sig. For: FBI			Date Released:		MMH

Remarks
(1) RETURN CONTROL SHEET WITH SIGNED AND DATED COPY OF THE RESPONSE TO EXEC. SEC., ROOM 4400-AA.

Other Remarks:

OLA CONTACT:

FILE:

Copy sent to Exec Sec

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

August 3, 1993

Honorable Don Nickles
United States Senator
Washington, D.C. 20510-3606

Dear Senator Nickles:

I am writing in further response to your June 28th communication on behalf of Mr. [redacted] expressed concern over allegations of an ~~illegal~~ surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies.

b6
b7C

Based on the considerable press coverage this issue has received, the concerns expressed by Mr. [redacted] are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may assure Mr. [redacted] that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals or any enterprise discovered to be involved in illegal activity in violation of Federal statutes.

Thank you for providing the FBI an opportunity to address your constituent's concerns. As requested, your enclosure is being returned.

Sincerely yours,

/s/

Charles E. Mandigo
Inspector-Deputy Chief
Office of Public and
Congressional Affairs

APPROVED:
Adm. Servs. ____ Inspection ____ Off. of EEO Affs. ____
Crim. Inv. ____ Intell. ____ Off. of Liaison & Int. Affs. ____
Crim. Jus. Info. Servs. ____ Laboratory ____ Off. of Public & Cong. Affs. ____
Ident. ____ Legal Coun. ____ TOM Off. ____
Info. Mgmt. ____ Tech. Servs. ____
Training ____

MAILED 16
AUG 0 3 1993
FBI

Enclosure

1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurtel of 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Oklahoma City - Enclosures
1 - Mr. Collingwood (Room 7240)
1 - Mr. Gilbert (Room 5222)
1 - Ms. [redacted] (Room 4133)
1 - Congressional Affairs Office (Room 7240)
1 - FBICR (Room 4913A)

Dep. Dir. ____
ADD Adm. ____
ADD Inv. ____
Asst. Dir.:
Adm. Servs. ____
Crim. Inv. ____
CJIS ____
Ident. ____
Info. Mgmt. ____
Insp. ____
Intell. ____
Lab ____
Legal Coun. ____
Tech. Servs. ____
Training ____
Off. of EEOA ____
Off. Liaison & Int. Affs ____
Off. of Public & Cong. Affs. ____
TOM Office ____
Telephone Rm. ____
Director's Office ____

NOTE: Response coordinated with SSA [redacted] INTD, and is based in part on a response dated 2/19/93, from Director Sessions to a 1/21/93 letter from [redacted], American-Arab Anti-Discrimination Committee. This reply has been sent to several congressional representatives who have written about this matter on behalf of their constituents. Bufiles checked.

BHM:ljbm (14)
MAIL ROOM

FAX MESSAGE FROM

BOB SMITH

UNITED STATES SENATOR FOR NEW HAMPSHIRE

To: David Boland

From: Ed Corrigan

Date: _____ Page 1 of: _____

Notes:

Per call to Corrigan 7-29-93, he did not fax inc from [redacted] because it was identical to what was sent in by constituent [redacted] 7-29

b6
b7C

Sent From:

☐ WASHINGTON, DC
SD 332
Dirksen Building
Washington, DC 20510
202-224-2841

☐ MANCHESTER
The Gateway Bldg.
50 Phillippe Cote St.
Manchester, NH 03101
603-634-5000

☐ CONCORD
46 South Main St.
Concord, NH 03301
603-228-0453

☐ PORTSMOUTH
1 Harbour Place
Portsmouth, NH 03801
603-433-1667

☐ BERLIN
136 Pleasant St.
Berlin, NH 03570
603-752-2664

FBI/DOJ
ENCLOSURE
63-HQ-1063619-89

JUL 19 '93 1

PAGE.001

August 3, 1993

Honorable Bob Smith
United States Senate
Washington, D.C. 20510-2903

Dear Senator Smith:

I am writing in further response to your June 6th and July 19th communications on behalf of Mrs. [redacted] and Ms. [redacted] Your constituents expressed concern over allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies.

Based on the considerable press coverage this issue has received, the concerns expressed by your constituents are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may assure your constituents that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals or any enterprise discovered to be involved in illegal activity in violation of Federal statutes.

Thank you for providing the FBI an opportunity to address your constituents' concerns.

Sincerely yours,

/s/

Charles E. Mandigo
Inspector-Deputy Chief
Office of Public and
Congressional Affairs

MAILED 16
AUG 0 3 1993
FBI

1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurtel of 4/30/93. Incoming from [redacted] was not provided by Senator Smith's office.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Boston - Enclosures
1 - Mr. Collingwood (Room 7240)
1 - Mr. Gilbert (Room 5222)
1 - Ms. [redacted] (Room 4133)
1 - Congressional Affairs Office (Room 7240)

63-HQ-1063619-90
65X-LA-153918-95

NOTE: Response previously used and approved by INTD.

BHM:cmw (14)

Dep. Dir. ___
ADD Adm. ___
ADD Inv. ___
Asst. Dir.: ___
Adm. Servs. ___
Crim. Inv. ___
CJIS ___
Ident. ___
Info. Mgmt. ___
Insp. ___
Intell. ___
Lab. ___
Legal Coun. ___
Tech. Servs. ___
Training ___
Off. of EEOA ___
Off. Liaison & Int. Affs. ___
Off. of Public & Cong. Affs. ___
TQM Office ___
Telephone Rm. ___
Director's Office ___

APPROVED: Director ___ Dep. Dir. ___ ADD-Adm. ___ ADD-Inv. ___
Adm. Servs. ___ Crim. Inv. ___ Crim. Jus. Info. Servs. ___ Ident. ___ Info. Mgmt. ___
Inspection ___ Intell. ___ Laboratory ___ Legal Coun. ___ Tech. Servs. ___ Training ___
Off. of EEO Affs. ___ Off. of Liaison & Int. Affs. ___ Off. of Public & Cong. Affs. ___ TQM Off. ___

MAIL ROOM

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: NICKLES, SENATOR DON
To: DOJ ODD: 08-12-93
Date Received: 07-02-93 Date Due: 08-12-93 Control #: X93071514937
Subject & Date
06-30-93 LETTER ON BEHALF OF MR. & MRS. [redacted] ADA, OK, REGARDING REPORTS THAT THE FBI AND THE SAN FRANCISCO POLICE DEPARTMENT ARE CONDUCTING A CRIMINAL INVESTIGATION OF ILLEGAL SURVEILLANCE OF AMERICAN CITIZENS BY THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH.

b6
b7C

Referred To:	Date:		Referred To:	Date:	
(1) FBI;SESSIONS	07-15-93	(5)			W/IN:
(2)		(6)			
(3)		(7)			PRTY: 2
(4)		(8)			OPR: MMH
INTERIM BY:			DATE:		
Sig. For: FBI			Date Released:		

Remarks
(1) RETURN CONTROL SHEET WITH SIGNED AND DATED COPY OF THE RESPONSE TO EXEC. SEC., ROOM 4400-AA.

Other Remarks:

OLA CONTACT:

FILE:

Copy returned to Exec Sec

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: LAUGHLIN, CONG. GREG
To: OLA ODD: 08-20-93
Date Received: 07-20-93 Date Due: 08-20-93 Control #: X93072315816
Subject & Date
07-15-93 LETTER ON BEHALF OF [redacted] CHRIESMAN, TX, REGARDING REPORTS THAT THE FBI AND THE SAN FRANCISCO POLICE DEPARTMENT ARE CONDUCTING A CRIMINAL INVESTIGATION OF ILLEGAL SURVEILLANCE OF AMERICAN CITIZENS BY THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH.

b6
b7C

	Referred To:	Date:		Referred To:	Date:	
(1)	FBI;CLARKE	07-23-93	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			2
	INTERIM BY:			DATE:		OPR:
	Sig. For: FBI			Date Released:		MMH

Remarks
(1) RETURN CONTROL SHEET WITH SIGNED AND DATED COPY OF THE RESPONSE TO EXEC. SEC., ROOM 4400-AA.

Other Remarks:

OLA CONTACT:

FILE:

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: McKEON, CONG. HOWARD P. "BUCK"
To: OLA ODD: 09-14-93
Date Received: 08-09-93 Date Due: 09-14-93 Control #: X93081617958
Subject & Date
08-02-93 LETTER ON BEHALF OF [redacted] PALMDALE, CA, b6 b7C
REGARDING REPORTS THAT THE FBI AND THE SAN FRANCISCO
POLICE DEPARTMENT ARE CONDUCTING A CRIMINAL INVESTIGATION
OF ILLEGAL SURVEILLANCE OF AMERICAN CITIZENS BY THE
ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH.

	Referred To:	Date:		Referred To:	Date:	
(1)	FBI;CLARKE	08-16-93	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			2
	INTERIM BY:			DATE:		OPR:
	Sig. For: FBI			Date Released:		MMH

Remarks
(1) RETURN CONTROL SHEET WITH SIGNED AND DATED COPY OF THE RESPONSE TO EXEC. SEC., ROOM 4400-AA.

Other Remarks:

OLA CONTACT:

FILE:

Copy sent to Exec Sec

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: McKEON, CONG. HOWARD P. "BUCK"
To: OLA ODD: 09-14-93
Date Received: 08-09-93 Date Due: 09-14-93 Control #: X93081617957
Subject & Date
08-02-93 LETTER ON BEHALF OF [redacted] GRANADA HILLS, CA, REGARDING REPORTS THAT THE FBI AND THE SAN FRANCISCO POLICE DEPARTMENT ARE CONDUCTING A CRIMINAL INVESTIGATION OF ILLEGAL SURVEILLANCE OF AMERICAN CITIZENS BY THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH.

b6
b7C

	Referred To:	Date:		Referred To:	Date:	
(1)	FBI;CLARKE	08-16-93	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			2
	INTERIM BY:			DATE:		OPR:
	Sig. For: FBI			Date Released:		MMH

Remarks
(1) RETURN CONTROL SHEET WITH SIGNED AND DATED COPY OF THE RESPONSE TO EXEC. SEC., ROOM 4400-AA.

Other Remarks:

FILE:

Copy sent to Exec Sec

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: DOLE, SENATOR BOB
To: OLA ODD: 09-28-93
Date Received: 08-27-93 Date Due: 09-28-93 Control #: X93083019538
Subject & Date
04-12-93 LETTER ON BEHALF OF [redacted] b6 b7C
OVERLAND PARK, KS, CONCERNING ILLEGAL SURVEILLANCE
BY THE ANTI-DEFAMATION LEAGUE.

	Referred To:	Date:		Referred To:	Date:	
(1)	FBI;CLARKE	08-30-93	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			2
	INTERIM BY:			DATE:		OPR:
	Sig. For: FBI			Date Released:		DEB

Remarks
INFO CC: OLA.
(1) RETURN CONTROL SHEET WITH SIGNED AND DATED
COPY OF THE RESPONSE TO EXEC. SEC., ROOM 4400-AA.

Other Remarks:

FILE:

Copy sent back to Exec Sec

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

September 20, 1993

Honorable Bob Dole
United States Senate
Washington, D. C. 20510

Dear Senator Dole:

I am writing in further response to your recent communication to the Department of Justice on behalf of Mr. [redacted] expressed concern over allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies.

b6
b7C

Based on the considerable press coverage this issue has received, the concerns expressed by Mr. [redacted] are certainly understandable. While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may assure Mr. [redacted] that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals or any enterprise discovered to be involved in illegal activity in violation of Federal statutes.

Thank you for providing the FBI an opportunity to address your constituent's concerns. As requested, your enclosure is being returned.

Sincerely yours,

Mailed by
FBICR SEP 20 1993

Charles E. Mandigo
Inspector-Deputy Chief
Office of Public and
Congressional Affairs

Enclosure

1 - OLA, DOJ - Encs.
1 - ES, DOJ - Encs.
1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurtel 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Kansas City - Enclosures
1 - Mr. Collingwood, Room 7240
1 - Mr. Gilbert, Room 5222
1 - Ms. [redacted] Room 4133
1 - Congressional Affairs Office, Room 7240
1 - FBICR, Room 4913A

63-HQ-1063619-1046

NOTE: Response previously used and approved by INTD. Mr. [redacted] also sent this inquiry to Senator Nancy Kassebaum. At her request, a response was sent to Mr. [redacted] on 6/4/93.

BHM:cmw (15)

APPROVED:

Dep. Dir. ____ ADD Adm. ____ ADD Inv. ____ Asst. Dir.: Adm. Servs. ____ Crim. Inv. ____ CJIS ____ Ident. ____ Info. Mgmt. ____ Insp. ____ Intell. ____ Lab. ____ Legal Coun. ____ Tech. Servs. ____ Training ____ Off. of EEOA ____ Off. Liaison & Int. Affs. ____ Off. of Public & Cong. Affs. ____ TOM Office ____ Telephone Rm. ____ Director's Office ____

MAIL ROOM

Adm. Servs. ____ Crim. Inv. ____ Crim. Jus. Info. Servs. ____ Intell. ____ Info. Mgmt. ____ Inspection ____ Intell. ____ Laboratory ____ Legal Coun. ____ Tech. Servs. ____ Training ____ Off. of EEO Affs. ____ Off. of Liaison & Int. Affs. ____ Off. of Public & Cong. Affs. ____ TOM Off. ____

November 2, 1993

310

b6
b7C

[redacted]
Oak Park, Illinois 60304

Dear Mr. [redacted]

Your recent communication to the U.S. Commission on Civil Rights was referred to the FBI for reply.

Based on the considerable press coverage given to allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies, the interest which prompted you to write is certainly understandable.

While the FBI, as a matter of policy, will not disclose information which could compromise a pending investigation, you may be assured that all aspects of this case are being explored. The San Francisco Police Department has been most cooperative in this investigation. With its assistance, the FBI will actively seek prosecution of any individuals or any enterprise discovered to be involved in illegal activity in violation of Federal statutes.

Thank you for providing the FBI an opportunity to address your concerns.

Sincerely yours,

151

Charles E. Mandigo
Inspector-Deputy Chief
Office of Public and
Congressional Affairs

MAILED 28
NOV 02 1993

1 - SAC, San Francisco (264B-SF-100978) - Enclosures
Reurtel 4/30/93.
2 - SAC, Los Angeles (65X-LA-153918) - Enclosures
1 - SAC, Chicago - Enclosures
1 - Mr. Collingwood (7240)
1 - Mr. Bryant (5222)
1 - Ms. [redacted] (4133)

63-HQ-1063619-109

Dep. Dir.
ADD Adm.
ADD Inv.
Asst. Dir.:
Adm. Servs.
Crim. Inv.
CJIS
Ident.
Info. Mgmt.
Insp.
Intell.
Lab.
Legal Coun.
Tech. Servs.
Training
Off. of EEOA
Off. Liaison & Int. Affs.
Off. of Public & Cong. Affs.
TQM Office
Telephone Rm.
Director's Office

NOTE: [redacted] forwarded to the U.S. Commission on Civil Rights a copy of a newspaper article and an unsigned form letter which requests an immediate congressional investigation of allegations of an illegal surveillance of American citizens by the Anti-Defamation League of B'nai B'rith using information provided by its contacts in law enforcement agencies. The Commission referred the correspondence to the FBI for reply. Response previously used and approved by the National Security Division.

OCT 28 3 58 PM '93

BHM:cmw

MAIL ROOM

APPROVED:

Director	Adm. Servs.	Inspection	Off. of EEO Affs.
Dep. Dir.	Crim. Inv.	Intell.	Off. of Liaison & Int. Affs.
ADD-Adm.	Crim. Jus. Info. Servs.	Laboratory	Off. of Public & Cong. Affs.
ADD-Inv.	Ident	Legal Coun.	TQM Off.
	Info. Mgmt	Tech. Servs.	
		Training	

Boston

FBI — Updated Control

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: MICA, CONG. JOHN L.
To: AG. ODD: 11-30-93
Date Received: 10-20-93 Date Due: 11-30-93 Control #: X93102924626
Subject & Date
10-19-93 LETTER ENCLOSING A COPY OF A LETTER TO THE AG FROM [redacted] (DATED SEPTEMBER 22, 1993), LAKE HELEN, FL, URGING THE AG TO NOT TAKE ANY ACTION AIMED AT DEPORTING OR OTHERWISE FURTHER PUNISHING JOHN DEMJANJUK. ALSO REQUESTS INFORMATION REGARDING AN FBI INVESTIGATION INTO REPORTS OF AN ILLEGAL SURVEILLANCE BY THE ANTI-DEFAMATION LEAGUE. (NO PRIOR RECORD IN EXEC. SEC. OF CONSTITUENT's LETTER TO THE AG.)

b6
b7C

	Referred To:	Date:		Referred To:	Date:	
(1)	CRM; [redacted]	10-29-93	(5)			W/IN:
(2)	FBI;FREEH	10-29-93	(6)			
(3)			(7)			PRTY:
(4)			(8)			2
	INTERIM BY:			DATE:		OPR:
	Sig. For: CRM/FBI			Date Released:		DEB

Remarks
INFO CC: OLA. ORIGINAL TO AG FILES.
(1) CRM TO RESPOND TO QUESTION REGARDING JOHN DEMJANJUK.
(2) FBI TO RESPOND TO QUESTION REGARDING THE ANTI-DEFAMATION LEAGUE.
(1)&(2) PER AG's REQUEST, PLEASE FORWARD COPIES OF INCOMING LETTER AND DRAFT OF FINAL RESPONSE DIRECTLY TO OLA FOR REVIEW AND APPROVAL PRIOR TO YOUR MAILING. AFTER

Other Remarks:
APPROVAL BY OLA, PROVIDE EXEC. SEC. WITH SIGNED AND DATED COPY OF THE RESPONSE WITH CONTROL SHEET.

FILE:

Copy Back to Exec Sec

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

Anti-Defamation League
Washington, D.C. Office

1913 1993 ADL 80 Anti-Defamation League®

JESS N. HORDES
Director

MICHAEL LIEBERMAN
Associate Director/Counsel

STACY BURDETT
Assistant Director

December 10, 1993

The Honorable Louis J. Freeh
Director
Federal Bureau of Investigation
J. Edgar Hoover Building
Tenth Street and Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Director Freeh:

We are pleased to enclose a copy of the Anti-Defamation League's 1993 Litigation Docket. This report contains a review of the cases in which ADL has been involved, defending rights and liberties of Americans and combatting bigotry and discrimination. Over the past year, the League has been particularly active in the hate crime area, in efforts to safeguard the constitutional guarantee of separation of church and state, and in promoting retroactive enforcement of the Civil Rights Act of 1991.

Also enclosed is the latest issue of ADL's Law Enforcement Bulletin, which features articles on ADL's most recent Fact Finding Report on neo-Nazi Skinheads and an update on terrorism and the World Trade Center bombing.

63-HQ-1063619-116

Please do not hesitate to contact our office if you have any questions about these publications or if we can be of assistance to you in any way.

Best regards.

Jess N. Hordes
Washington Representative

Michael Lieberman
Associate Director/Counsel

1100 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036
Tel: 202/452-8320, FAX: 202/296-2371

Memorandum

Dep. Dir.
ADD Adm.
ADD Inv.
Asst. Dir.:
Adm.Servs.
Crim.Inv.
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Off. Liaison & Int. Affs.
Off. of Public Affs.
Telephone Rm.
Director's Office

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To : The Director

Date 1/26/94

From : [redacted]

Subject : REVIEW OF MATERIAL PROVIDED BY THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH

PURPOSE: To provide the results of a review by the Domestic Terrorism Unit of materials provided to the FBI by the Anti-Defamation League of B'nai B'rith.

RECOMMENDATION: None, for information only.

APPROVED:

Director	Adm. Servs.	Inspection	Off. of EEO Affs.
Dep. Dir.	Crim. Inv.	Intell.	Off. of Liaison
ADD-Adm.	Crim. Jus. Info. Servs.	Laboratory	& Int. Affs.
ADD-Inv.	Ident.	Legal Coun.	Off. of Public & Cong. Affs.
	Info. Mgmt.	Tech. Servs.	TQM Off.
		Training	

DETAILS: The attached materials were provided to the FBI by the Washington, D.C., office of the Anti-Defamation League (ADL) of B'nai B'rith. Their publication entitled 1993 Litigation Docket contains information regarding court cases in which the ADL has been involved, regarding bigotry and discrimination. They also furnished a copy of their Fall, 1993, issue of their Law Enforcement Bulletin, which contains information pertaining to neo-Nazi Skinheads and an update on the World Trade Center bombing.

63-HQ-1063619-117

2 ENCLOSURE

ENCLOSURE ATTACHED

Enclosures (3)

1 - Mr. Binney
1 - Mr. [redacted]
1 - Mr. Kennedy
1 - Mr. [redacted]
1 - Mr.
1 - Mr.
1 - Mr.

1 - Mr. H. Shapiro
1 - Mr. [redacted]
1 - Miss [redacted]
1 - Ms.
1 - Mr.
1 - Mr.
1 - Mr.

TJG:tjg (15)

(Continued - Over)

Memorandum from [redacted] to The Director
Re: Review of Material Provided
By the Anti-Defamation League
Of B'nai B'rith

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The Domestic Terrorism Unit, Violent Crimes and Major Offenders Section, has reviewed the information contained in these documents. While the publications contain a large amount of information regarding hate crimes, none of this information is of investigative value to the FBI. The articles in the Law Enforcement Bulletin are mainly information gleaned from public sources regarding investigations either by the FBI or state/local authorities which have already been adjudicated. The information contained in the 1993 Litigation Docket provides information regarding briefs which the ADL has filed in Civil Rights trials.

ADL
Anti-Defamation League®

CIVIL RIGHTS REPORT

ADL in the Courts: Litigation Docket 1993

ANTI-DEFAMATION LEAGUE
1993

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Introduction

In 1947 ADL filed its first *amicus curiae* ("friend of the court") brief, thereby inaugurating the use of a critical method to pursue its mandate of combatting bigotry and discrimination, and defending the rights and liberties of all Americans. An *amicus* brief is filed by an individual or group, which is not a party to the lawsuit, but generally has expertise regarding the issue before the court, as well as an interest in the outcome of the case. ADL's first *amicus* brief, submitted together with other Jewish civil rights organizations in the landmark United States Supreme Court case *Shelley v. Kraemer*, argued against restrictive real estate covenants.

Since 1947, ADL has filed *amicus* briefs in numerous cases covering a broad range of issues — from separation of church and state to racial discrimination to abortion. The principal way in which ADL gets involved in litigation is by filing *amicus* briefs, most commonly at the appellate level. While some of the cases in which ADL has intervened have involved Jewish litigants, or raised issues pertaining solely to the Jewish people or Israel, most have not. But, in every *amicus* brief which ADL has filed, it has sought to combat discrimination and prejudice, based upon the conviction that the rights and liberties of Jews will only be secure when those of all minorities, and of all Americans, are secure as well.

In many cases, ADL has filed *amicus* briefs together with other Jewish, public interest or civil rights organizations. Often *amicus* briefs are written on ADL's behalf by outside experts or lay leaders in consultation with ADL's Legal Affairs Department. On other occasions, briefs are prepared by ADL staff attorneys.

"ADL IN THE COURTS: Litigation Docket 1993" describes the *amicus* briefs which ADL has filed since the previous docket was published in the fall of 1992, and also discusses decisions handed down in the past year in cases in which ADL previously filed an *amicus* brief.

I. Separation of Church and State

A. Religious Displays

American Jewish Congress v. City of Beverly Hills, No. 90-6521 TJH (Bx),(U.S. District Court, C.D. California)

In February 1990, the City of Beverly Hills passed a resolution authorizing a "standard agreement" to be used when groups sought to display a "menorah, cross or other religious object on City property." Pursuant to its policy, the city approved an application by Chabad Lubavitch for a permit to display a 28-foot menorah and conduct a prayer and lighting ceremony for a period from December 6th through December 20th, 1990, on public property directly across from city government buildings.

Before Chanukah began, the American Jewish Congress, represented by the Southern California Civil Liberties Union, filed a lawsuit challenging the display and the city's policy, and requested a temporary restraining order. Judge Terry Hatter of the U.S. District Court for the Central District of California ruled that the display of the menorah alone would not pass constitutional muster, but that it would be acceptable if a comparably sized Christmas tree were placed next to it, and if no religious ceremony were held. Although Chabad made an effort to comply with the court ruling by stringing lights on the trees behind the menorah, prayers were recited during the menorah lighting ceremony.

After a hearing on the preliminary injunction, now moot, an early trial date was set. While ADL was prepared to submit an *amicus* brief at the trial level supporting a challenge to the menorah display and Beverly Hills' policy, for community relations reasons the League instead became involved in efforts to settle the case.

The proposed settlement agreement provided that the Chabad menorah could be displayed on public property in the City of Beverly Hills during the Chanukah season only if it strictly complied with the requirements and conditions set forth in the agreement. The settlement would have allowed Chabad to display the menorah for a total period of no more than 21 calendar days in a public park which is not in view of city government buildings. Further, the city reserved the right to impose all reasonable conditions upon the display, and the city could have concurrently decorated and illuminated with electric lights a Christmas tree in proximity to Chabad's menorah. Also, Chabad would have erected a disclaimer next to the Menorah, reading that "[t]his menorah display is not constructed, maintained, endorsed, sponsored or funded by the City of Beverly Hills." Further, Chabad represented that it had no intent to conduct any religious ceremonies in connection with the menorah display, and the City was prohibited from endorsing or participating in any such ceremonies which might have occurred in the future.

In December 1991, however, Chabad withdrew from the agreement. The judge in the case ordered the parties to attend one last settlement conference, in a vain attempt to avoid a court battle. Chabad, however, was unwilling to change its position.

In December 1992, without any hearing or oral argument, Judge Hatter granted summary judgment in favor of the City. The order allowed Chabad to display its menorah provided that: "1) The Menorah is placed in close proximity to a secular Christmas tree; 2) The Menorah and Christmas tree are of comparable size to each other and each is prominently displayed; 3) If either symbol of the holiday season is lighted, both must be lighted; and 4) The disclaimer sign that is placed on the south side of the Menorah must, also, be readable from the north side of the Menorah."

Murphy v. Bilbray, 782 F. Supp 1420 (S.D. Cal. 1991), *aff'd sub. nom. Ellis v. La Mesa, Calif.*, 61 U.S.L.W. 2582 (9th Cir. March 23, 1993)

In this case, the U.S. Court of Appeals

for the Ninth Circuit ruled that the permanent hilltop display of large crosses on two public parcels of land, and the prominent depiction of a cross on the government insignia of the City of La Mesa, violated the California Constitution.

Mt. Helix and Mt. Soledad are the two highest knolls in San Diego County, easily viewable by area residents and commuters. In 1925, a 36-foot high Latin cross was erected on Mt. Helix, which was then private land. In 1929, the cross and the land surrounding it were deeded to San Diego County. The deed required the County to permit an annual Easter sunrise service to be held "commemorating the resurrection of the Lord Jesus Christ as taught by the Christian churches of the world." The deed also required the cross to be illuminated each year from Christmas Eve to New Year's Eve, and on the evening before Easter Sunday. A 43-foot high cross was erected on Mt. Soledad in 1952 (replacing earlier crosses dating back to 1913), ostensibly as a war memorial, although it has rarely been used for that purpose.

The appearance of the cross on La Mesa's insignia purports to represent Mt. Helix, which is not located within the City of La Mesa, but on a nearby hill which is the property of San Diego County. The cross is clearly the focal point of the insignia.

The U.S. District Court for the Southern District of California ruled that the permanent display of the two large crosses and the prominent depiction of the cross on the City of La Mesa government insignia violate the no-preference clause of the state constitution. California's constitution provides in relevant part: "[f]ree exercise and enjoyment of religion without discrimination or preference are guaranteed....The Legislature... shall make no law respecting an establishment of religion..."

ADL submitted an *amicus* brief to the U.S. Court of Appeals for the Ninth Circuit. The California Constitution, argued the brief, strictly prohibits any religious favoritism on the part of government, or even the appearance of such favoritism. A 1991 Ninth Circuit decision noted that the three provisions of the California Constitution which insist on government neutrality toward religion are to be given a broader meaning than even the U.S. Constitution gives to such neutrality. *Hewitt v. Joyner,* 940 F.2d 1561 (9th Cir. 1991). The brief cited the California Supreme Court's interpretation of the California Constitution as forbidding even the appearance of government partiality toward any religion.

The brief next reviewed the district court's reasoning, stating that its findings of fact and law "are clearly correct, and are well-supported by a long series of cases at various appellate levels. The Latin cross, as the California Court of Appeals has noted, is the quintessential symbol of Christianity." The brief asserted, moreover, that the history of the crosses warrants the conclusion that they were intended for a religious purpose, and to the present day have been used for that purpose.

If the cross on Mt. Soledad is a mere war memorial, it excludes the many Jews, atheists, and other non-Christians who served and died in the wars of this nation. As the brief stated: "A rabbi or other non-Christian clergyman has to feel some discomfort in conducting a service overshadowed by a Latin cross....Likewise, the appearance by a police officer with a cross attached to his uniform or patrol car raises questions about the officer's ability to provide fair and even-handed protection and service."

The U.S. Court of Appeals for the Ninth Circuit in an opinion authored by Judge Robert Beezer, affirmed the district court's decision. Looking at past jurisprudence of the no-preference clause, he distilled five factors relevant to determining whether a given display on public property violates the California Constitution: 1) the religious significance of the display, 2) the size and visibility of the display, 3) the inclusion of other religious symbols, 4) the historical background of the display, and 5) the proximity of the display to government buildings or religious facilities.

Examining the constitutionality of the Mt. Helix cross, the court concluded that the display carried religious significance as "the preeminent symbol of many Christian religions." The court found the cross's reli-

gious significance to be "further amplified by its sheer size and visibility" and by the fact that no other religious symbols are displayed in the park. Judge Beezer found the appearance of governmental preference for a particular religion exacerbated by the one historically significant aspect of the cross: "its long-standing use as the site of annual Easter services." Although not located in close proximity to any government buildings or religious facilities, the court held that the weight of the first four factors rendered the Mt. Helix display unconstitutional.

The same constitutional infirmities were found to be inherent in the Mt. Soledad display. The court rejected the argument that a display with historical significance need not undergo no-preference clause scrutiny. Instead, Judge Beezer asserted that "[a] sectarian war memorial carries an inherently religious message and creates an appearance of honoring only those servicemen of that particular religion."

Finally, the court ruled that the La Mesa insignia also exhibited a preference for Christianity and is unconstitutional.

After the district court's ruling the city and county of San Diego took steps to circumvent an injunction "forbidding the permanent presence of each cross on the public property," by transferring the ownership of the crosses to private organizations. The Court of Appeals declined to rule on these actions, stating that "[a]ny issue concerning compliance with the injunction should be decided in the first instance by the district court."

Cobb County, Georgia v. Bruce S. Harvey and James D. Cunningham, No. 93-8194 (11th Cir.)

A panel hanging in the Cobb County, Georgia courthouse displays the Ten Commandments as well as the following inscription:

> Jesus said: 1. Thou shalt love the LORD thy GOD with all thy heart, and with all thy soul, and with all thy mind. 2. Thou shalt love thy neighbor as thy self. On these two commandments hang all the law and the prophets.

The U.S. District Court for the Northern District of Georgia held that the presence of the panel violated the establishment clause, *Harvey and Cunningham v. Cobb County, Georgia,* No. 92-CV-45-MHS (January 13, 1993). Cobb County appealed, and ADL's *amicus curiae* brief urges the U.S. Court of Appeals for the Eleventh Circuit to affirm the district court's ruling.

The brief argues that the presence of the display fails to satisfy the requirements of the three-part establishment clause test of *Lemon v. Kurtzman,* 403 U.S. 602 (1971), a test still utilized by the U.S. Supreme Court.[1] First, the brief maintains that Cobb County has failed to identify a legitimate secular purpose for displaying the panel, thus violating the first prong of the *Lemon* test. In *Stone v. Graham,* 449 U.S. 39 (1980), the Supreme Court invalidated a Kentucky statute requiring the posting of the Ten Commandments on the wall of public school classrooms. Despite the state's claim of a secular purpose of showing the historical origin of Western legal codes, the Court found the law's purpose to be plainly religious. The Cobb County display, which contains not only the Ten Commandments but quotes from Jesus, has even greater religious significance.

Furthermore, ADL's brief argues that the sincerity of the secular purposes put forward by Cobb County on appeal seems questionable. Although the County asserts that the panel's purpose is to honor the donor of the panel and to commemorate the old courthouse where the panel originally hung, the brief observes that it was only after the district court ordered the display removed or modified that the County chose to add a plaque explaining the panel's history.

Cobb County contends that *Graham* is distinguishable in that the Kentucky law mandated hanging the Ten Commandments in a classroom setting. The ADL *amicus* brief points out, however, that the *Graham* Court

[1] A government action fails the *Lemon* test if it lacks a secular purpose, has the primary effect of advancing or inhibiting religion, or promotes excessive government entanglement with religion.

did not limit its holding to the classroom. Furthermore, a courthouse is quite similar to a classroom in many respects. Not only is attendance often mandatory in both settings, but the public also assumes that the essential state tasks of both sites, educating the children and administering justice, will be undertaken without regard to religious belief or affiliation.

Cobb County relies on *Lynch v. Donnelly*, 465 U.S. 668 (1984), in which the Supreme Court allowed a city-sponsored nativity scene, as precedent for the assertion that a government's actions must be motivated *wholly* by religious considerations in order to violate the establishment clause. ADL notes, however, that in order to determine the city's motivation in displaying the scene, the *Lynch* Court examined the context in which the creche was presented. In that case the display was surrounded by other secular and commercial symbols of the holiday season. The Cobb County panel more closely resembles the creche display, presented without any surrounding items, which was struck down by the Court in *Allegheny v. American Civil Liberties Union*, 492 U.S. 573 (1989). Not only does the Cobb County panel hang all year round, but, as the district court stated, "the display stands alone in the alcove, and there are no countervailing secular passages or symbols."

The amicus brief then argues that the panel has the primary effect of advancing religion on two levels, thereby violating the second prong of the *Lemon* test as well. The presence of the panel sends a message of governmental endorsement of religion over no religion. Non-believers observing the panel may well feel that they are not starting out on equal footing in the Cobb County Court system. Furthermore, by choosing a specific translation of the Ten Commandments, the panel has the effect of expressing government preference for one religion over another. The Roman Catholic version of the Second Commandment ("Thou shalt not make unto thee any graven images") differs significantly from the Protestant version, while the Jewish tradition interprets some commandments differently from the Christian tradition. Because the theological implications of these variations can be profound, Cobb County's selection of one version of the Ten Commandments amounts to endorsement of one religion over another.

ADL's *amicus* brief in this case was prepared by Elliot H. Levitas and John F. Beasley, Jr. of Kilpatrick & Cody in Atlanta, in consultation with ADL Southern Counsel Charles Wittenstein and the Legal Affairs Department.

B. Religion and the Public Schools

***Zobrest v. Catalina Foothills School District*, 963 F.2d 1190 (9th Cir. 1992), *rev'd*, 61 U.S.L.W. 4641 (June 18, 1993)**

On June 18, 1993 the United States Supreme Court handed down this 5-4 decision, ruling that the government may constitutionally provide a sign language interpreter to a deaf student attending a religious high school. ADL filed an *amicus curiae* brief in the case, urging the Court to affirm a lower district and appellate court decisions which ruled that the provision of an interpreter violated the establishment clause of the First Amendment. The decision is disappointing to ADL because it opens the door to state participation in the communication of religious doctrine in a religious setting.

ADL's brief, which was prepared by the American Civil Liberties Union, and joined by the American Jewish Committee and Americans United for Separation of Church and State, agreed with the Court of Appeals' conclusion that the "presence and function of an employee paid by the government in sectarian classes would create [a] 'symbolic union' between government and religion.... and [create] the appearance that it was a 'joint sponsor' of the school's activities." Moreover, ADL submitted that the provision of the interpreter would constitute actual assistance by the state in "the teaching and propagation of religious beliefs."

ADL further asserted that the government's refusal to provide a sign language interpreter in a sectarian school neither burdens the plaintiff's free exercise rights, nor discriminates against his religion, emphasiz-

ing that the Court has never held free exercise rights to be burdened by a state's refusal to provide affirmative assistance to an individual's or institution's pursuit of religious activities.

The case involved the application of the federal Individuals with Disabilities Education Act (IDEA) which distributes benefits to children qualifying as disabled. James Zobrest, the deaf student, and his parents alleged that the Act, taken together with the First Amendment's free exercise clause, required the Catalina Foothills School District ("the District") to provide an interpreter for James at Salpointe, a Roman Catholic High School. The federal district court granted a summary judgment in favor of the District, finding that providing an interpreter would violate the establishment clause because "the interpreter would act as a conduit for the religious inculcation of James—thereby promoting James' religious development at government expense." The United States Court of Appeals for the Ninth Circuit affirmed.

Chief Justice Rehnquist's majority opinion reversing the decision below, joined by Justices White, Scalia, Kennedy and Thomas, began by explaining that although the District raised several arguments which might enable the Court to decide the case on statutory and regulatory grounds, the Court would nevertheless reach the First Amendment issue. Because the District did not choose to litigate the non-constitutional issues in the lower courts, the Court found inapplicable the familiar jurisprudential principle that "federal courts will not pass on the constitutionality of an Act of Congress if a construction of the Act is fairly possible by which the constitutional question can be avoided."

Turning to the merits of the constitutional claim, the majority cited *Mueller v. Allen*, 463 U.S. 388 (1983) and *Witters v. Washington Dept. of Services for Blind*, 474 U.S. 481 (1986) to support its holding that "government programs that neutrally provide benefits to a broad class of citizens defined without reference to religion are not readily subject to an establishment clause challenge just because sectarian institutions may also receive an attenuated financial benefit."

In *Mueller* the Court upheld a Minnesota tax law permitting parents to deduct certain educational expenses from their state income tax, even though most of the deductions went to parents sending their children to religious schools. Chief Justice Rehnquist noted that in validating the Minnesota scheme, two factors were dispositive. First, the law permitted all parents, whether their children attended public or private schools, to deduct their children's educational expenses. Second, "public funds [became] available to sectarian schools 'only as a result of numerous private choices of individual parents of school-age children.'" The Court cited similar reasoning in *Witters* when it validated state-funded vocational aid to a blind student attending a private Christian college.

The majority then applied the same reasoning to benefits distributed under IDEA, determining that their distribution is neutral regarding religion, and that any benefit to the school is attenuated and not attributable to a state decision. The Court concluded that the District may constitutionally provide the interpreter because the benefit is provided "without regard to the 'sectarian-nonsectarian, or public-nonpublic nature' of the school," and because "a government-paid interpreter will be present in a sectarian school only as a result of the private decision of individual parents."

The Court next addressed the District's assertion that the IDEA benefits differ from those in *Mueller* and *Witters* in that the Zobrests sought to have a government employee physically present in a sectarian school. The majority rejected the District's reliance on *Meek v. Pittenger*, 421 U.S. 349 (1975) and *School Dist. of Grand Rapids v. Ball*, 473 U.S. 373 (1985) as holding that the establishment clause prohibits having public employees in religious school classrooms. Instead, Chief Justice Rehnquist distinguished *Meek* and *Ball*, in which aid to religious schools, including the provision of state-employed teachers and guidance counselors, was struck down. First, he held that in those cases the aid provided to the sectarian institutions amounted to a direct subsidy to the religious schools because it consisted of

"costs they otherwise would have borne in educating their students." Second, he found the establishment clause particularly tolerant of a sign language interpreter's unique function, as opposed to a teacher's. He observed that the interpreter will merely "accurately interpret whatever material is presented to the class as a whole" and will "neither add to nor subtract from [the sectarian] environment." Hence, the majority concluded, "the provision of such assistance is not barred by the Establishment Clause."

Four justices dissented from the majority. Justice Blackmun's dissent, which was joined by Justice Souter, and in part by Justices Stevens and O'Connor, began by arguing that the majority unnecessarily addressed the constitutional issue, and should have vacated and remanded the case for consideration of the non-constitutional questions. According to the dissent, the Court cast aside the "time-honored canon of constitutional adjudication" of not passing on "questions of constitutionality...unless such adjudication is unavoidable." Justice Blackmun found that regardless of the substance of the lower court litigation, the Court should have decided the case based on the District's two non-constitutional arguments. These arguments were: 1) IDEA does not require the District to furnish James Zobrest with an interpreter "at any private school so long as special education services are made available at a public school," 2) IDEA, which prohibits the use of federal funds to pay for "[r]eligious worship, instruction, or proselytization" forbids the provision of a sign language interpreter at a religious school.

Nevertheless, because the majority did reach the constitutional question, the dissent responded, disagreeing with the Court's disposition on the merits. Justice Blackmun argued:

> "At Salpointe, where the secular and the sectarian are 'inextricably intertwined,' governmental assistance to the educational function of the school necessarily entails governmental participation in the school's inculcation of religion. A state-employed sign-language interpreter would be required to communicate the material covered in religion class, the nominally secular subjects that are taught from a religious perspective, and the daily Masses at which Salpointe encourages attendance for Catholic students. In an environment so pervaded by discussions of the divine, the interpreter's every gesture would be infused with religious significance."

The dissent did not find it dispositive that IDEA is a general government program distributing aid neutrally to any qualifying child, and that any aid to a particular school results from a private decision. Rather, the dissent contended that "even a general welfare program may have specific applications that are constitutionally forbidden under the Establishment Clause." Justice Blackmun observed that a general program providing teachers for remedial assistance to disadvantaged schoolchildren attending secular and sectarian schools alike would offend the establishment clause despite the fact that the teachers were supplied to all schools. "Nor," he continued, would the program be saved because the "teachers were furnished to pupils and their parents, rather than directly to sectarian schools."

In holding that the Court "has always proscribed the provision of benefits that afford even 'the opportunity for the transmission of sectarian views,' *Wolman v. Walter*, 433 U.S. 229, 244 (1977)," the dissent next argued that no significant distinction exists, for constitutional purposes, between a state-funded teacher and sign language interpreter. Justice Blackmun asserted that precedent clearly prohibits government from furnishing "the medium for communication of a religious message." He found it "beyond question that a state-employed sign-language interpreter would serve as the conduit for petitioner's religious education, thereby assisting Salpointe in its mission of religious indoctrination."

Justice Blackmun distinguished *Witters* and *Mueller* as cases dealing "with the payment of cash or a tax deduction, when government involvement ended with the disbursement of funds or lessening of tax," while this case "involves ongoing, daily, and

intimate governmental participation in the teaching and propagation of religious doctrine." He further noted that unlike funds dispensed to individuals, a public employee in the classroom is likely to be interpreted by students as government "support of the religious denomination operating the school."

Justice O'Connor, in a separate dissent joined by Justice Souter, agreed with Justice Blackmun that the Court should have vacated and remanded the case for consideration of the statutory and regulatory issues. She refrained, therefore, from addressing the constitutional question.

Lamb's Chapel v. Center Moriches Union Free School District, 959 F.2d 381, *rev'd*, 61 U.S.L.W. 4549 (June 7, 1993)

On June 7, 1993 the United States Supreme Court handed down a decision in this case, ruling that once public school facilities have been opened to community groups during non-school hours, a local school board lacks the authority to deny religious groups access to those same facilities. ADL filed an *amicus curiae* brief in this case in support of Center Moriches Union Free School District ("the District"), urging the Court to affirm the lower court decisions that a state statute limiting the purposes for which public schools may be used is constitutional.

While ADL did not support the winning side in *Lamb's Chapel*, it was gratifying that a majority of the Court resisted the urging of Justice Scalia to revisit the three-part Establishment Clause test articulated in *Lemon v. Kurtzman* 403 U.S. 602 (1971). ADL has consistently defended the Lemon test as a useful framework for preserving the fundamental principle of government neutrality with respect to religion.

The dispute in *Lamb's Chapel* concerned the constitutionality of a local school district's application of Section 414 of the New York Education Law. Section 414 regulates the scope of authority which public school boards throughout the state may exercise over the custody, control and supervision of all school district property entrusted to them. The law specifies ten purposes for which local school boards may allow school property to be used during non-school hours. These uses do not include gatherings for religious purposes. Of these ten, the Center Moriches Union Free School District allowed only two: "social, civic, or recreational uses" (Rule 10) and "use by political organizations if secured in compliance with § 414." Furthermore, the District specifically states that the "school premises shall not be used by any group for religious purposes" (Rule 7).

Pursuant to its application of § 414, the District denied the request of Lamb's Chapel, an evangelical church, to use the school to show a film series promoting a traditional Christian perspective on family issues and child-rearing. Both the district court and the Second Circuit Court of Appeals upheld the District's decision, holding that public schools are limited public forums not open to religious use either by policy or practice, and that the District's denial of access did not violate the First Amendment. 959 F.2d 381 (2d Cir. 1992).

Justice Byron White's majority opinion, joined by Chief Justice Rehnquist and Justices Blackmun, Stevens, O'Connor and Souter, accepted the classification of the public school as a limited public forum, access to which "can be based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral." However, the opinion rejected the Court of Appeals' view that the District's rule excluding religious groups from using the school was reasonable and viewpoint neutral.

The Court held that the application of Rule 7 was not saved by the fact that it was "applied in the same way to all uses of school property for religious purposes." Instead, the Court found that opening the school for "social, civic, or recreational purposes" allowed for "school property to be used for the presentation of all views about family issues and child rearing" except for a religious one. Justice White found no indication that the general subject matter of the film would be off-limits were it not presented from a religious perspective. Therefore,

denial of Lamb's Chapel's request was unconstitutional under the Court's holding in *Cornelius v. NAACP Legal Defense and Education Fund,* Inc., 473 U.S. 788 (1985):

> "[a]lthough a speaker may be excluded from a nonpublic forum if he wishes to address a topic not encompassed within the purpose of the forum...or if he is not a member of the class of speakers for whose special benefit the forum was created... the government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject."

The Court went on to say that if permitting school property to be used for religious purposes violated the establishment clause, the District might be justified in abridging Lamb's Chapel's free speech. Justice White stated, however, that granting Lamb's Chapel access would constitute no such violation. Justice White determined that allowing the film to be shown did not violate the *Lemon* test, adding that no one would construe the church's use of school facilities as District endorsement of religion in general, or of any particular creed.

Finally, the Court rejected the District's argument that it was justified in denying its "use of property to a 'radical' church for the purpose of proselytizing, since to do so would lead to threats of public unrest and even violence."

Justice Scalia, in an opinion joined by Justice Thomas, concurred in the judgment. As noted above, however, he objected strongly to Justice White's invocation of the *Lemon* test, comparing it to "some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried...frightening the little children and school attorneys of Center Moriches Union Free School District." He concluded that the test should be thrown out, arguing that the Court has been inconsistent in its determinations of when to apply the test, and how much weight the test should be given. The concurrence also rejected the majority's statement that endorsement of religion in general would violate the establishment clause.

In a very brief partial concurrence, Justice Kennedy agreed with Justice Scalia's objections to the majority's opinion.

Grumet v. Board of Education of the Kiryas Joel Village School District, 81 N.Y. 2d. 518 (1993)

This decision of the New York State Court of Appeals (the state's highest court) invalidated a state statute which established a separate public school district in and for Kiryas Joel, a Satmar Hasidic village in Orange County. ADL filed an *amicus curiae* brief urging the Court to uphold the Appellate Division's ruling that Chapter 748 of the Laws of 1989 ("Chapter 748") violated the First Amendment's Establishment Clause, *Grumet v. Board of Education of the Kiryas Joel Village School District,* No. 65398 (N.Y. App. Div. Dec. 31, 1992).[2]

The state legislature passed Chapter 748 in order to provide a special education public school to handicapped children of Kiryas Joel. Although some handicapped Satmar children had attended special education classes in the surrounding public schools of the Monroe-Woodbury Central School District prior to the passage of Chapter 748, their parents withdrew them from these programs, claiming that it was too traumatic for the children to be with people whose ways of life were so different from their own. Chapter 748 created a new district coterminous with the village, and provided for a board of education elected by the voters of the village. The board and the student body consisted entirely of members of the Satmar Hasidic community.

Judge Smith's opinion for the Court, which was joined by Chief Judge Kaye and

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[2]Chapter 748 provides, in part:

§1. The territory of the village of Kiryas Joel...shall be and hereby is constituted a separate school district, and shall be known as the Kiryas Joel village school district and shall have and enjoy all the powers and duties of a union free school district under the provisions of the education law.

§2. Such district shall be under the control of the board of education, which shall be composed of from five to nine members elected by the qualified voters of the village of Kiryas Joel...

Judges Simons and Hancock, held that Chapter 748 failed the three-part establishment clause test first articulated in *Lemon v. Kurtzman* 403 U.S. 602 (1970). Because the Appellate Division struck down Chapter 748 solely on the basis of its violating the second prong of the *Lemon* test, the Court of Appeals ruled only on whether the legislation unconstitutionally advanced or inhibited religion. Judge Smith concluded that Chapter 748 failed the *Lemon* test by authorizing "a religious community to dictate where secular public educational services shall be provided to the children of the community." The majority concluded:

> Because special services are already available to the handicapped children of Kiryas Joel, the primary effect of Chapter 748 is not to provide those services, but to yield to the demands of a religious community.... [T]he primary effect of such an extensive effort to accommodate the desire to insulate the Satmarer Hasidic students inescapably conveys a message of governmental endorsement of religion.

The Court distinguished this case from the United States Supreme Court decisions in *Zobrest v. Catalina Foothills School Dist.*, 61 U.S.L.W. 4641 (U.S. June 18, 1993) and *Wolman v. Walter* 433 U.S. 229 (1977). The *Zobrest* Court held that an educational benefit that was part of a general and neutral governmental program could constitutionally be provided to a parochial school student. However, the State Court pointed out that the creation of a school district and board of education coterminous with Kiryas Joel Village "cannot be viewed as part of a general government program." In *Wolman*, the Supreme Court allowed the government to provide therapeutic and remedial services to students of sectarian schools "at a neutral site off the premises of the nonpublic schools." Judge Smith observed that the New York scheme "goes far beyond any directive...for the provision of special services to handicapped children at a neutral site."

In a concurring opinion, Chief Judge Kaye agreed that the legislation failed to satisfy *Lemon*'s second prong, but asserted that a law, such as Chapter 748, "that singles out a particular religious group for special benefits or burdens should be evaluated under a strict scrutiny test." She concluded that although the governmental interest of providing special educational services to the disabled children was compelling, "far more moderate measures" could have been used to accomplish the goal. She noted that while only disabled children were in need of educational services in Kiryas Joel, "the Legislature responded by creating a new public school district vested with all the powers of a union free school district, which are vast."

Judge Hancock, in a separate concurrence, held that Chapter 748 failed the first part of the *Lemon* test, in addition to the second. He found that the purpose of the law could not have been merely to provide special education services to the residents of Kiryas Joel, because such services were already available to them in the existing public schools. Rather, Judge Hancock asserted: "Unquestionably, the accommodation was to meet a requirement peculiar to the residents of Kiryas Joel — that their children be permitted to associate only with children of the Satmar Hasidic sect."

In a dissenting opinion joined by Judge Titone, Judge Bellacosa noted that the new school district operated in a secular manner and complied with all state laws affecting public education. Addressing the second part of the *Lemon* test, the dissent found that the primary effect of the law was secular and that any affect on religion was incidental and attenuated. Judge Bellacosa further concluded that an "objective observer" would not interpret the legislation as an endorsement of Satmar beliefs. Finally, he argued that Chapter 748 is a "reasonable accommodation of the Satmarer's free exercise of religion" because it alleviates their having to choose between foregoing special educational services and compromising religious principles. Such an accommodation, the dissent held, does not necessarily create an unconstitutional union between church and state.

The defendants, the Board of Education of the Kiryas Joel Village School District, have expressed their intention to seek review

of the case by the United States Supreme Court.

Berger v. Rensselaer Central School Corporation, 766 F. Supp. 696 (N.D. Ind. 1991), *rev'd*, 982 F.2d 1160 (7th Cir. 1993)

This decision of the U.S. Court of Appeals for the Seventh Circuit held that the Rensselaer Central School Corporation's community literature distribution and access policy, under which Gideon Bibles were distributed to students during school hours, violates the establishment clause. ADL submitted an *amicus* brief to the Seventh Circuit, asserting that the First Amendment prohibits a religious group from distributing sectarian literature to public school students during school hours.

Each year, representatives of the Gideons, a Christian religious organization, would distribute various items of sectarian literature to fifth grade students in the Rensselaer, Indiana school system. The method of distribution varied. At times, the Gideon representatives simply sought out students in the school corridors. Usually, however, the Gideon representatives were allowed to interrupt classes to speak to students. On those occasions, students were directed to form a line and accept a Gideon Bible as it is individually presented to them. Students were urged to return the Bibles to their teachers if their parents objected to the distribution.

ADL's brief argued that the Gideons' activities clearly violate the *Lemon* test. The Gideons distribute religious literature for the express purpose of promoting their religious beliefs and winning converts to their faith. As such, the purpose underlying the challenged practices is wholly religious and violative of the first prong of the *Lemon* test. Additionally, Rensselaer school officials permitted the Bible distribution program because they wished to further the Gideons' evangelical purposes. When the constitutionality of the practice was initially challenged, the School Board explicitly ratified the program through a special vote. There has been no suggestion that the religious literature was distributed as part of any academic or cultural program.

According to the brief, the Gideons' activity also constitutes an impermissible advancement of religion. The U.S. Supreme Court has emphasized that courts must evaluate whether religious minorities are likely to perceive governmental action as a disapproval of their own religious choices. To students of a minority faith who do not share the Gideons' beliefs, the experience of having their class effectively divided on religious lines seems guaranteed to make them feel like outsiders in their public school classroom. In addition, allowing a religious group to proselytize creates the impression in the eyes of the students that the Gideons' beliefs are officially sanctioned by the school authorities.

The final establishment clause violation engendered by the challenged activity is the state's conferring of tangible material support to the Gideons. The Gideons do not merely enjoy unrestricted access to and use of the school building; they are also provided access to an audience assembled at state expense pursuant to Indiana's compulsory education statute. The use of public revenues to support religion is a blatant violation of the establishment clause.

ADL's brief concluded by asserting that the distribution of sectarian religious literature in the public schools undermines the public schools' fundamental role of instilling the lessons of civic equality in our nation's youth. It emphasized that the public schools must teach respect and tolerance for the enormous diversity of belief in this country, and cannot become involved in the promotion of a particular creed.

The Seventh Circuit agreed that the policy of the Rensselaer Central School Corporation ("the Corporation") is unconstitutional. The Court rejected the Corporation's contention that the Rensselaer schools are a public forum and therefore, the Gideon's free speech rights would be violated if they were excluded from speaking based on the content of their message. This argument fails, the Court stated, as a matter of fact and law. First of all, the Corporation did not act as a "neutral

non-participant" in the Gideon's visit, but was "intimately involved if not downright interested in seeing that each student left at the end of the day with a Gideon Bible in his or her pocket." Also, the school classrooms were not true open forums. Not only did very few other groups ever speak to the students or distribute literature, but the school superintendent "had every intention of excluding...groups she found objectionable."

The Court distinguished this case from *Widmar v. Vincent,* 454 U.S. 263 (1981), in which the Supreme Court held that a university could not exclude a religious organization from after-school use of its facilities after allowing access to non-religious groups. In *Widmar,* the Court of Appeals pointed out, the organization sought access to school facilities only, while the Gideons seek access to the children, who have no choice but to be in the classroom during school hours. Even if the Gideons' free speech rights were implicated, the Court observed that "First Amendment jurisprudence is densely populated with cases that subordinate free speech rights to Establishment Clause concerns."

In its analysis, the Court of Appeals relied on *Lee v. Weisman,* 112 S. Ct. 2649 (1992), a 1992 case in which the Supreme Court held that public school principals may not invite clergy to offer prayers at public school graduation ceremonies, to strike down the Corporation's policy. For the following reasons, the Court asserted that "[t]he Corporation's practice of assisting Gideons in distributing Bibles for non-pedagogical purposes is a far more glaring offense to First Amendment principles than a nonsectarian graduation prayer": 1) the fifth grade students in Rensselaer are more impressionable than the 14-year-old plaintiff in *Lee,* 2) the prayer in Lee was nonsectarian while the Gideon Bible is unquestionably Christian, 3) attendance at the graduation ceremony in *Lee* was voluntary while attendance in class is mandatory, and 4) the prayer in *Lee* took place during an extra-curricular event while the Gideons visited the school during instructional time.

The Court concluded by noting that even without *Lee,* the Corporation's policy would be invalid under the *Lemon* test.

***Garnett v. Renton School District No. 403,* 874 F.2d 608 (9th Cir. 1989), *vacated and remanded,* 496 U.S. 914 (1990), *on remand* 772 F. Supp. 531 (W.D. Wash. 1991), *rev'd* 61 U.S.L.W. 2558 (9th Cir. 1993)**

In this case the U.S. Court of Appeals for the Ninth Circuit held that the federal Equal Access Act ("EAA") preempts the Washington Constitution's establishment clause to the extent that the clause prohibits students seeking to use secondary school facilities with limited open forums from meeting on campus during non-instructional hours for prayer, Bible study and religious discussions. ADL submitted an *amicus* brief arguing that Washington schools can comply with both the EAA and the Washington Constitution, that the Washington Constitution does not conflict with the full objectives of Congress, and that the court should compel the school's direct compliance with both the EAA and the Washington Constitution.

The lawsuit originated in 1987 when three Lindbergh High School students and one former student challenged the Renton School District of Washington State regarding a decision not to allow a student religious group to meet for study and worship on school grounds during the school day. The district court concluded that the defendants had not created a limited open forum, and that even if they had, the EAA could not require activity which was prohibited under provisions of the Washington Constitution prohibiting sectarian influences in the school and the appropriation of public money for religious purposes. The Ninth Circuit affirmed the district court ruling. ADL participated as *amicus* at both the district and appellate court levels in support of the Renton School District.

However, the U.S. Supreme Court granted *certiorari* and remanded the case to the Ninth Circuit to reconsider the status of the school's student groups in light of the decision in *Board of Education of Westside Community Schools v. Mergens,* 496 U.S. 226 (1990). The Court ruled in *Mergens* that the Equal Access Act does not violate the First Amendment. The appellate court subse-

quently remanded the case to the district court to "more expediently resolve the issues raised."

On remand, ADL again filed an *amicus* brief with the district court for the Western District of Washington. The district court, citing the ADL's *amicus* brief with approval, concluded that when non-curriculum related groups meet on school premises, a "limited open forum" is created under the EAA; this, however, is superseded by the Washington State Constitution's strict separation of church and state. The court held that the supremacy clause of the U.S. Constitution does not prevent the Washington Constitution from limiting the EAA's application, and that the EAA does not manifest Congressional intent to preempt state law. The district court's decision was appealed to the Ninth Circuit, and ADL submitted another *amicus* brief.

ADL's brief quoted the U.S. Supreme Court' opinion in *Mergens*: "To the extent that a school chooses to structure its course offerings and existing student groups to avoid the Act's obligations, the result is not prohibited by the Act." 110 S. Ct. 2356, 2367 (1990). Since schools *may* avoid the obligations of the EAA by adjusting course offerings and existing student groups, Washington schools *must* do so to comply with the Washington Constitution and federal law.

The brief further argued that the Washington Constitution prohibits the relief requested by appellants. The brief endorsed the district court's belief that religious groups meeting on school premises "would introduce sectarian influences into the school and...would result in an impermissible appropriation of public money or property for a religious purpose." *Garnett v. Renton School District*, 675 F. Supp. 1268, 1276 (W.D. Wash. 1987); 772 F. Supp. 531, 535 (W.D. Wash. 1991). "The Washington Supreme Court has cited the district court's opinion with approval," the brief added, an opinion which expressly adopted ADL's arguments.

Contrary to *Article IX*, Section 4 of the Washington State Constitution, *permitting* religious groups to meet and pray on campus tends to introduce sectarian influence into the schools. Washington precedent requires schools to be "completely free" of sectarian influence: "Const. art 9 §4 does not provide that a minimal amount of sectarian influence is permissible." *Weiss v. Bruno*, 82 Wash. 2d 199, 228 509 P.2d 973 (1973). Permitting prayer and religious study groups to meet in public schools during the school day would violate this strict separation of church and state which the Washington Constitution demands. "It is indisputable that this more restrictive clause [of the Washington Constitution] was the deliberate design of the framers of our constitution... Obviously not satisfied with the broader concept of control, the authors of our constitution added the words 'or influence.' A motion to strike those words failed." 82 Wash. 2d at 206.

The prayer and study groups would also entail an impermissible appropriation of public money or property, forbidden by Article I, Section 11 of the Washington Constitution. The brief cited precedents supporting its argument. For example, the Washington Supreme Court struck down as unconstitutional a program permitting students to leave school for religious study offgrounds because the program was announced on school bulletin boards and because the school facilitated the solicitation of students for participation in that program. *Perry v. School Dist.* No. 81, 54 Wash. 2d 886 (1959); the Washington Supreme Court also struck down a program permitting public school students to receive credit for extracurricular religious courses, because public school staff members would have to spend part of their working day computing how many credits to allocate for each student's religious studies, *State Ex. Rel. Dearle v. Frazier*, 192 Wash. 369, 173 P. 35 (1918).

The brief also argued that in Washington, schools must structure their course offerings and student groups to comply with both the EAA and the Washington Constitution. "Appellants," the brief states, "have taken the extreme and untenable position that the Washington State Constitution has been entirely preempted by the Equal Access Act." The brief contends that the U.S. Supreme Court has stated that Congress can

preempt state law only under very proscribed circumstances. Appellants' preemption argument is "fatally flawed" because none of these preemption rules applies to the instant case. The brief also emphasized the policy reasons which oppose casting aside state constitutional law.

The brief concluded that appellants' First Amendment rights have not been violated, as alleged. Quoting *Hazelwood School District v. Kuhlmeier,* 108 S. Ct. 562, 567 (1988), the brief stated: "First Amendment rights of students in the public schools 'are not automatically coextensive with the rights of adults in other settings'...and must be applied in light of the special characteristics of the school environment;...A school need not tolerate student speech that is inconsistent with its 'basic educational mission,'... even though the government could not censure similar speech outside the school."

The 9th Circuit reversed the district court's opinion, which had relied on Sections 4071 (d)(5) and (7) to allow schools to comply with state statutory and constitutional provisions.[3] The Court of Appeals interpreted those sections as "rules of construction" and not "exceptions to the statute." "As such, they instruct the court how to interpret the EAA's central command that schools not discriminate against religious speech." According to the court, the words "otherwise unlawful" in (d)(5) authorized "schools to bar meetings that are unlawful for reasons other than their religious content." The court also interpreted (d)(7) narrowly, reading it as a "'savings' clause that protects against reading implications into the EAA that might abridge *federal* constitutional rights..." (emphasis added).

Furthermore, the *Garnett* court read the *Mergens* decision as a determination that the EAA must be read as effectuating "a broad congressional purpose" of preempting state law when state establishment clauses which are more restrictive than the federal establishment clause might bar religious meetings on school grounds.

[3] Sections 4071 (d)(5) and (7) provide: "Nothing in [the EAA] shall be construed to authorize the United States or any State or political subdivision thereof...(5) to sanction meetings that are otherwise unlawful; [or]...970 to abridge the constitutional rights of any person."

***Duncanville Independent School District, et al. v. John Doe, et al.,* 994 F. 2d 160 (5th Cir. 1993)**

The U.S. Court of Appeals for the Fifth Circuit upheld a district court order enjoining the Duncanville, Texas school district from permitting employees "to lead, encourage, promote or participate in prayer with or among students during curricular or extracurricular activities, including before, during or after school related sporting events." ADL had filed an *amicus* brief with the Fifth Circuit supporting the injunction.

This lawsuit was initiated by a twelve-year-old girl who objected to the practice of her coach saying a Christian prayer prior to every girls' basketball team game and practice. During games the students prayed in the center of the basketball court on their knees, in front of the spectators. Prayers were also conducted at various other school activities such as physical education classes, pep rallies, and sporting events. The school district appealed the trial court's preliminary injunction enjoining school employee participation in these school religious events.

ADL's brief maintained that the conduct of school employees initiating, promoting or participating in student religious activity violates the establishment clause. These practices violate the first prong of the *Lemon* test, since they lack a secular purpose. The school district contended that its policy of permitting teachers to encourage and promote student prayer through "participation" has as its secular purpose the accommodation of the religious needs of its teachers. ADL's brief maintained that this argument fails because the preliminary injunction places little or no burden on the religious practices of teachers, and if the state takes action to "accommodate" religion by lifting a nonexistent or insignificant burden on religion, the state acts with an improper, nonsecular motivation. Moreover, preventing a violation of the establishment clause is a compelling governmental concern that justifies regulations that may have the effect of imposing a minimal burden on religiously

motivated conduct.

Further, the school district policies violate the second prong of the *Lemon* test by impermissibly advancing and endorsing religion. The school district's argument that "accommodation" of the religious practices of its teachers does not advance religion cannot withstand scrutiny. Citing the U.S. Supreme Court's decision in *Lee v. Weisman,* the brief stated: "[s]ubtle yet powerful coercive pressures exist in elementary and secondary schools which increase the danger that any connection between school officials and religious practices will convey the message to students with religious beliefs different than the majority that they are outsiders, less valued members of the community." The brief maintained that the teachers' activities send a clear message of government endorsement of religion: "[i]t is hard to imagine a more effective message of government advancement and endorsement of religion than that sent by a teacher or coach praying with her class or team, whether before, during or after school." Regarding the school district's effort to distinguish this case from *Lee v. Weisman,* the brief stated "if anything, the context and frequency of the prayers make this an even more compelling case of injunctive relief."

Next the brief contended that the Equal Access Act ("EAA") does not support the school district's policies. The EAA affords protection only for voluntary, student-initiated religious meetings at school facilities during off-hours and specifically prohibits the state or a school, through agents or employees, from initiating, sponsoring or participating in student religious activity. Moreover, no part of the EAA can be interpreted to permit religious activities that take place in a curriculum-related setting. Finally, the brief argued that the school district cannot justify its policies by claiming that teachers' free speech or academic freedom are at stake.

The Fifth Circuit upheld the injunction, agreeing with the district court that a substantial likelihood exists of the Does succeeding on the merits. The Court distinguished this case factually from *Board of Education of Westside Community Schools v. Mergens,* 496 U.S. 226 (1990), in which the Supreme Court held that under the EAA a public school which had established a limited open forum could be required to "permit a student-initiated prayer group to be formed and accorded official recognition and access to facilities on an equal basis with other 'noncurriculum related student groups.'" The *Duncanville* Court observed that while *Mergens* involved "*non* curriculum related activities," the school sponsored basketball team is extra curricular. Also, the prayers in this case were not student-initiated, but initiated and led by the coach. Finally, the Duncanville School District did not establish a "limited open forum," thereby rendering the opening of government facilities to religious groups or practices closer to "endorsement than accommodation."

The Court asserted that precedent foreclosed accepting the school district's argument that its employees were merely asserting the rights of free speech and free exercise of religion. The Court stated:

> ...even the most cursory reading of the [Supreme] Court's school prayer cases belies any notion that [school employees' free exercise and free speech rights] may trump school children's Establishment Clause rights. A teacher has no free exercise rights to lead schoolchildren in prayer in the classroom, for example, or to hang the Ten Commandments on the classroom wall, or even to invite a Rabbi to deliver an invocation and benediction to open graduation ceremonies....The Court's long stated and emphatic prohibition of prayer from the classroom leads us to the conclusion that it has no place, constitutionally, on the basketball court either.

Finally, the Court held that the district court's injunction is not overbroad and permits the "custodial supervision" of student-initiated religious activity allowed in *Mergens.*

C. Freedom to Worship

***Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,* 936 F.2d 586**

(1991), *rev'd*, 61 U.S.L.W. 4587 (U.S. June 11, 1993)

In the above case, the first significant Supreme Court decision concerning the free exercise clause since *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), the Court invalidated a series of municipal ordinances which prohibited ritual animal sacrifices practiced by members of the Santeria Church. In conjunction with a broad coalition of religious and civil rights organizations, ADL filed an *amicus curiae* brief challenging the ordinances as violating the First Amendment. Although *Smith* survived Hialeah intact, several Justices harshly criticized *Smith's* holding that a neutral and generally applicable criminal law which burdens religion is constitutional, even in the absence of a compelling governmental interest.

Plaintiffs in this case are practitioners of Santeria, a religion which originated in nineteenth-century Cuba when slaves from Eastern Africa incorporated elements of Roman Catholicism into their traditional religion. There are over 50,000 Santerias in southern Florida today, many more in the New York metropolitan area, and supposedly a hundred million worldwide. In Santeria, small animals are sacrificed as part of important rituals, including those of birth and marriage, and as a way of expressing devotion to spirits known as *orishas*.

In June of 1987 members of the Church of the Lukumi Babalu Aye ("the Church"), adherents of Santeria, sought the appropriate licenses from the City of Hialeah, Florida to officially establish a Santeria Church on property they owned there. The city council initially responded by passing a resolution expressing Hialeah's "commitment to a prohibition against any and all acts of any and all religious groups which are inconsistent with public morals, peace or safety," and an ordinance subjecting to criminal punishment "[w]hoever...unnecessarily or cruelly...kills any animal." In September the city council passed several substantive ordinances which specifically referred to religious animal sacrifices.[4]

Following passage of these ordinances the plaintiffs sought a declaratory judgment and injunctive and monetary relief, alleging violations of their rights under the free exercise clause. The U.S. District Court for the Southern District of Florida found no such violations and denied relief. The Court of Appeals for the Eleventh Circuit affirmed.

Justice Kennedy's opinion for the Supreme Court, which did not attract a majority, was joined by Justice Stevens, and in part by Chief Justice Rehnquist and Justices White, Scalia, Souter and Thomas. The Court first reiterated the holding in *Smith* that "a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." The Court noted, however, that a law which failed to satisfy the "neutrality" and "general applicability" requirements "must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest."

Justice Kennedy determined that the Hialeah ordinances failed to satisfy the neutrality requirement. He held that a law is not neutral if its object "is to infringe upon or restrict practices because of their religious motivation." Examining the text of the ordinances, the Court found evidence of facial discrimination in the use of certain words with strong religious connotations, and in the language of the resolution stating the City's opposition to religious practices conflicting with "public morals, peace or safety." Looking at the ordinances' operation, Justice Kennedy asserted that the only conduct subject to regulation was the sacrifices of the Santeria church members. "Indeed," he observed, "careful drafting ensured that, although Santeria sacrifice is prohibited, killings that are no more necessary or humane in almost all other circumstances

[4] Ordinance 87-52 prohibited animal sacrifice, defined as "to unnecessarily kill...an animal in a public or private ritual ceremony not for the primary purpose of food consumption." In addition, the ordinance provided that any individual or group who "kills, slaughters or sacrifices animals for any type of ritual, regardless of whether or not the flesh or blood of the animal is to be consumed" was prohibited from owning or possessing an animal "intending to use such animal for food purposes." "[L]icensed establishments" were exempted. Ordinance 87-71 forbade any animal sacrifices within Hialeah, and 87-72, which defined "slaughter" as "the killing of animals for food," restricted slaughter to areas zoned for slaughterhouse use.

are unpunished." He pointed to hunting for sport, kosher slaughter, eradication of pests and euthanasia as examples of practices exempted by the Hialeah ordinances.

Further evidence of specific targeting of Santeria was found in the fact that the City prohibited more than was necessary to achieve its purported goals of protecting health and ensuring humane treatment of animals. The Court concluded that the City passed ordinances which sought "not to effectuate the stated governmental interests, but to suppress the conduct because of its religious motivation."

Justice Kennedy next examined the ordinances' legislative history, noting that although the City claimed to have had significant problems resulting from animal sacrifice before the announced opening of the Church, the city council made no attempt to address these problems before that time. Furthermore, the city council's records reflected significant hostility on the part of residents, city officials and city council members towards the Santeria religion.

Turning to the question of whether the ordinances were of general applicability, the Court noted that they were substantially underinclusive in advancing their stated ends. Justice Kennedy pointed out, for example, that although "[t]he health risks posed by the improper disposal of animal carcasses are the same whether Santeria sacrifice or some nonreligious killing preceded it," the City "does not...prohibit hunters from bringing their kill to their houses, nor does it regulate disposal after their activity."

Because the ordinances were found to be neither neutral nor generally applicable, the Court held that, in order to be found constitutional, they needed to advance a compelling governmental interest and to be narrowly tailored to that interest. The Court concluded that the Hialeah ordinances did neither, and were therefore unconstitutional. Justice Kennedy asserted that "[w]henever government restricts only conduct protected by the First Amendment and fails to enact feasible measures to restrict other conduct producing substantial harm or alleged harm of the same sort, the interest given in justification of the restriction is not compelling."

Justice Scalia and Chief Justice Rehnquist, in a concurring opinion, objected to Justice Kennedy's consideration of the motivation of the legislature. According to Justice Scalia, legislative intent is irrelevant in First Amendment cases, for if a legislature intends to burden religion but drafts its law so sloppily that it fails to do so, the law is constitutional. Similarly, if a legislature with pure motivations inadvertently passes a law violating the First Amendment, the law is not saved by the legislature's intentions.

In a separate concurring opinion, Justice Souter called for a complete reexamination of the *Smith* rule. He observed that *Smith* requires mere formal neutrality of a law. That is, in order to avoid strict scrutiny, it is sufficient that the law was not passed for the purpose of discriminating against religion. Justice Souter contended, however, that "substantive neutrality" is also required, "which, in addition to demanding a secular object, would generally require government to accommodate religious differences by exempting religious practices from formally neutral laws." According to Justice Souter, *Smith* departed from previous free exercise jurisprudence (which required both formal and substantive neutrality) without overruling the conflicting precedents, thus creating an "intolerable tension in free-exercise law which may be resolved, consistently with principles of *stare decisis*, in a case in which the tension is presented and its resolution pivotal."

In a final opinion joined by Justice O'Connor, Justice Blackmun quoted from his dissent in *Smith*, asserting that "a statute that burdens the free exercise of religion 'may only stand if the law in general, and the state's refusal to allow a religious exemption in particular, are justified by a compelling interest that cannot be served by less restrictive means." He then proceeded to reach thesame result as the Court in *Hialeah*, but by a different route. Justice Blackmun held that laws such as the Hialeah ordinances, which target religion for disfavored treatment through both underinclusion and overinclusion, automatically fail strict scrutiny because by definition they are not narrowly tailored to a compelling governmental interest.

II. Hate Crimes

Wisconsin v. Mitchell, 485 N.W.2d 807 (1992), *rev'd,* 113 S.Ct. 2194 (1993)

In an important milestone in the struggle against criminal conduct motivated by bigotry, the United States Supreme Court, in a unanimous decision, upheld a Wisconsin hate crime statute based on model legislation drafted by ADL. In *Wisconsin v. Mitchell,* handed down on June 11, the Court held that a statute which enhances a defendant's penalty when the prosecution is able to prove that the defendant selected his or her victim because of race, religion, color, disability, sexual orientation, national origin or ancestry does not violate the First Amendment's protection of freedom of expression.

ADL filed *amicus curiae* briefs in support of the State before the Wisconsin and United States Supreme Courts describing the compelling need for hate crime legislation and explaining how the Wisconsin law comports with the First Amendment. The brief maintained that the penalty enhancement statute served to punish more severely crimes which are motivated by an intent to harm based on race, religion, or similar characteristics, and which impact the entire community as well as the victim. "Enhancing the penalty also serves to give a message as to the seriousness with which society judges bigotry that takes the form of criminal conduct directed toward certain groups and acts as a deterrent to such conduct." The brief contended that the statute did not regulate speech; it merely enhanced the penalty for crimes where bias was the principal motivating factor. As such, speech *per se* was not subject to punishment.

The brief stated that Wisconsin has enacted numerous laws prohibiting discrimination based upon age, race, religion, color, handicap, sex, physical condition, sexual orientation, or national origin, terms similar to those used in the challenged hate crimes law. Proof of the requisite intent for violation of these statutes also often involves proof of the words used by the perpetrators. If the Hate Crimes Act were found to punish protected speech or to be unconstitutionally vague, the same would apply to these other civil rights acts.

The case concerned a young black man, Todd Mitchell, whose sentence for the aggravated assault of a white youth was enhanced because Mitchell intentionally selected his victim on account of the victim's race. The penalty enhancement was upheld by a state Court of Appeals but reversed by the Wisconsin Supreme Court.

Chief Justice Rehnquist's decision began by explaining that although the Court is bound by a state court's construction of a state statute, the Wisconsin Supreme Court did not, in this instance, construe the meaning of any particular statutory language. Rather, the state high court "merely characterized the 'practical effect' of the statute for First Amendment purposes." Therefore, the Court argued, it is not bound by the Wisconsin court's assessment of the hate crimes law.

In explaining why the Wisconsin statute is constitutional, the Court acknowledged that a determination that the law punished conduct and not thought or speech does not automatically end any First Amendment inquiry. However, far from finding the statute constitutionally problematic, the Court emphasized that motive is traditionally a factor considered by judges in sentencing. Although "abstract beliefs, however obnoxious to most people" are barred by the First Amendment from becoming considerations in sentencing, Chief Justice Rehnquist noted that the Court's decision in *Barclay v. Florida,* 463 U.S. 939 (1983) held that a defendant's beliefs and associations can be taken into account in sentencing if they are not abstract, but are related to the crime.

The Court then compared the hate crime law to federal and state anti-discrimination laws which have been held constitutional. Both take the defendant's bias into account when it can be shown that it was a factor in his or her conduct. The Court stat-

ed: "Title VII, for example, makes it unlawful for an employer to discriminate against an employee '*because of* such individual's race, color, religion, sex, or national origin.'....in *R.A.V. v. St. Paul*...we cited Title VII...as an example of a permissible content-neutral regulation of conduct" (emphasis in original).

Chief Justice Rehnquist next made a point of distinguishing the Wisconsin statute from the one found unconstitutional in *R.A.V. v. City of St. Paul,* 112 S.Ct. 2538 (1992). The St. Paul ordinance, which punished the use of words that insulted or provoked violence based on their bias against someone of protected status, was struck down as content-based discrimination because it regulated only the subset of "fighting words" containing bias-motivated hatred. The Court stated that the Wisconsin statute, in contrast, aims "at conduct unprotected by the First Amendment."

Furthermore, the Court found the reasons behind the Wisconsin statute to be legitimate. Referring to several *amicus* briefs, including ADL's, the opinion stated:

> "[T]he Wisconsin statute singles out for enhancement bias-inspired conduct because this conduct is thought to inflict greater individual and societal harm. For example, according to the State and its *amici*, bias motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest....The State's desire to redress these perceived harms provides an adequate explanation for its penalty-enhancement provisions over and above mere disagreement with offenders' beliefs or biases."

Finally, the Court rejected Mitchell's contention that "the Wisconsin statute is unconstitutionally overbroad because of its 'chilling effect' on free speech." Chief Justice Rehnquist found any chill generated by the statute far too attenuated and speculative to invalidate the law on overbreadth grounds. It is unlikely, he observed, that a Wisconsin citizen would feel compelled to suppress his

> "unpopular bigoted opinions for fear that if he later commits an offense covered by the statute, these opinions will be offered at trial to establish that he selected his victim on account of the victim's protected status, thus qualifying him for penalty enhancement."

Moreover, the Court added that evidence of a defendant's previous statements or declarations is commonly used, subject to evidentiary rules, in establishing elements of a crime, including motive or intent, without triggering First Amendment scrutiny.

The penalty-enhancement statute adopted by Wisconsin is the centerpiece of ADL's efforts to counteract hate crimes, and the implications of the Supreme Court's decision are likely to be significant and widespread in the courts and legislatures, and perhaps on the streets as well. In a number of pending cases in which the constitutionality of similar statutes is at issue, the *Mitchell* decision should ensure that the laws are upheld by federal and state courts. Moreover, states that have hesitated to approve hate crime statutes for fear that they would not survive judicial scrutiny can now be encouraged to pass such legislation. Finally, the decision will hopefully cause those who would commit hate crimes to think twice before acting on their bigotries to victimize others.

State of New Jersey v. Mortimer, No. 36,107 (N.J. Sup. Ct.)

A decision is pending from the Supreme Court of New Jersey in this case involving the constitutionality of a New Jersey hate crime law. In September 1992, a state Superior Court struck down the law as unconstitutionally punishing expression. In an *amicus* brief filed before the U.S. Supreme Court's decision in *Wisconsin v. Mitchell,* ADL argued that the New Jersey statute does not impermissibly punish a defendant's thoughts or words.

The New Jersey law imposes a heavier sentence on a defendant who has "acted... with ill will, hatred or bias toward, and with a

purpose to intimidate, an individual or group of individuals because of race, color, religion, sexual orientation or ethnicity." David Mortimer was convicted under the statute for painting a swastika and anti-Semitic slogan on a Jewish teenager's car, and painting an anti-Asian slogan on an Asian family's garage.

The brief explains that an interest unrelated to the suppression of free expression justified the New Jersey legislation. Quoting from an ADL publication, the brief describes the particularly heinous nature of hate crimes:

> Hate crimes may effectively intimidate other members of the victim's community, leaving them feeling isolated, vulnerable, and unprotected by the law. By making members of minority communities fearful, angry, and suspicious of other groups — and of the power structure that is supposed to protect them — these incidents can damage the fabric of our society and fragment communities.

Next, the brief maintained that the New Jersey law avoided the constitutional infirmities of the St. Paul ordinance struck down in *R.A.V.* by requiring that a defendant, in order to be prosecuted under the statute, commit an act that is "criminal regardless of the victim" *and* chose a victim "based on race, color, religion, sexual orientation or ethnicity." Otherwise permissible thoughts or words are not punished; only the defendant's already criminal actions based on these thoughts and words are punished. The brief compared the criminal harassment statute to laws prohibiting discrimination in areas such as housing and employment, laws whose constitutionality is widely accepted.

Finally, ADL's brief pointed out that the U.S. Supreme Court has ruled that a defendant's racial bias can constitutionally be considered by a judge in sentencing in the penalty phase of a capital case.

The People of the State of California v. Mearra S., No. A066072 (Cal. Ct. of App. 1993)

The defendant in this case was found guilty of anti-homosexual violence under §§ 422.6 and 422.7 of the California Penal Code.[5] She subsequently challenged the constitutionality of those hate crime provisions in the California Court of Appeal, First Appellate District, Division Two, and ADL filed an *amicus* brief urging the court to uphold the state laws.

ADL's brief began by asserting that §§ 422.6 and 422.7 serve a compelling government interest. The brief documented an alarming rise in bias-related crimes nationally, and in Los Angeles County in particular, which the state legislature was seeking to address. Next, quoting from an ADL statement on proposed national hate crime legislation, the brief described the often devastating effect of hate crimes on society:

> ...[hate] crimes have a special emotional and psychological impact which extends beyond the individual victim. They intimidate others in the victim's community, causing them to feel isolated, vulnerable, and unprotected by the law. By making members of minority groups fearful, angry, and suspicious, these crimes pulverize cities and damage the very fabric of our society.

Using the *Mearra* case as an example, the brief illustrated the potentially dangerous consequences hate crime laws attempt to counteract:

[5] § 422.6 provides in part:

(a) No person...shall by force or threat of force, willfully injure, intimidate or interfere with, oppress, or threaten any other person... because of the other person's race, color, religion, ancestry, national origin, or sexual orientation.

(c) No person shall be convicted of violating subdivision (a) based upon speech alone, except upon a showing that the speech itself threatened violence...and that the defendant had the apparent ability to carry out the threat.

§ 422.7 provides in part:

Except in the case of a violation of Subdivision (a)...of § 422.6, any crime which is not made punishable by imprisonment...shall be punishable by imprisonment...or by fine...or by both...if the crime is committed against the person or property of another...because of the other person's race, color, religion, ancestry, national origin or sexual orientation under any of the following circumstances:

(a) The crime against the person of another, either includes the present ability to commit a violent injury or causes actual injury.

> The appellant and her co-assailants attacked their victims, members of the homosexual community, with threats, fists, feet and bottles. Words alone would be and were, in fact, useless in response to such force and threats. The typical response to the violent conduct of the appellant and her co-defendants would be more violence. If courts prevent legislatures from punishing hate crimes, courts will be indirectly promoting violence and vigilantism, which cannot be tolerated in our society.

The second section of the brief rejected the argument that §§ 422.6 and 422.7 violate the First Amendment guarantee of freedom of expression. Responding to the assertion that the provisions are overbroad, the brief pointed out that § 422.6 forbids conviction "based upon speech alone," but rather proscribes only conduct which is violent or threatens violence. § 422.7 merely increases the penalty for certain pre-existing crimes when they are committed under certain circumstances.

Finally, the brief distinguished §§ 422.6 and 422.7 from the impermissible content-based restrictions struck down in *R.A.V. v. City of St. Paul,* 112 S. Ct. 2538 (1992). The St. Paul ordinance aimed at pure speech, and punished that speech based on its content. The California provisions, like anti-discrimination laws, punish conduct motivated by the victim's status. Furthermore, the *R.A.V.* Court held that laws aimed at conduct but "associated with particular 'secondary effects' of the speech" are valid "without reference to the content of the...speech." Nothing in *R.A.V.*, the brief concluded, mandates state neutrality between assaults motivated by bias toward the victim's status, and identical assaults lacking such a motivation.

In August 1993, as this publication was going to press, the California Court of Appeal upheld the convictions in this case, ruling that the challenged statutes were constitutional.

The People of the State of California v. Joshua H., 13 Cal. App. 4th 1734 (1993)

This case before the California Court of Appeal marked the first time an *amicus curiae* brief was filed jointly by ADL and the ACLU in support of a hate crimes statute. The court's decision, which upheld the constitutionality of California's hate crimes statute before the U.S. Supreme Court's decision in *Wisconsin v. Mitchell,* represents an important victory for ADL, which has been in the forefront of the fight for hate crimes legislation for over a decade.

Defendant-appellant in *Joshua H.* was convicted by the lower court under California Penal Code §422.7, the state's hate crimes statute ("422.7")[6], for brutally attacking his homosexual neighbor. The California Court of Appeal affirmed the conviction in the face of decisions by both the Wisconsin and Ohio Supreme Courts striking down hate crimes statutes as unconstitutional. The court accepted the arguments made in ADL's brief that the statute does not violate the First Amendment, and does not improperly require the court to consider defendant's motive.

The California Court of Appeal held that § 422.7 does not violate the First Amendment because it does not proscribe expression, but rather "an especially egregious type of conduct — that of selecting crime victims on the basis of race, color, religion, ancestry, national origin, or sexual orientation." The court quoted from Justice Bablitch's dissent in *State v. Mitchell,* 485 N.W.2d 807, in which he contended that Wisconsin's hate crimes statute, which was struck down by the majority, was no less constitutional than other anti-discrimination laws. As Justice Bablitch stated:

> How can the Constitution not protect discrimination in the marketplace when the action is taken 'because of' the victim's status, and

[6] Under section 422.7, a misdemeanor may be punished as a felony if:

> the crime is committed against the person or property of another for the purpose of intimidating or interfering with that other person's free exercise or enjoyment of any right secured to him or her by the constitution or laws of the United States, because of the other person's race, color, religion, ancestry, national origin, or sexual orientation...[where] [t]he crime against the person of another either includes the present ability to commit a violent injury or causes actual physical injury.

at the same time protect discrimination in a street or back alley when the criminal action is taken 'because of' the victim's status?

The Court held that *R.A.V. v. St. Paul,* which involved a Minnesota ordinance against the use of symbols such as a burning cross or Nazi swastika, was distinguishable. The Court found that while the ordinance in *R.A.V.* unconstitutionally restricted speech, "[t]he violent conduct proscribed by section 422.7 is not, in our view, sufficiently imbued with elements of communication to be labelled 'speech'." The Court further noted in dicta that even if "hate crime statutes enhance penalties based on the perpetrator's bigoted thoughts," which they do not, they would fall within the exceptions to the First Amendment prohibition against content discrimination set forth in *R.A.V., supra.*

The Court rejected the notion propounded by the Wisconsin Supreme Court, which struck down that state's hate crimes statute, that while "'intent' could be made an element of a crime ... 'motive' could not." Quoting directly from the *amicus curiae* brief filed by the ACLU and ADL, the Court in *Joshua H.* asserted that the Wisconsin Supreme Court's "enslavement to labels makes little or no sense in either logic or constitutional policy." The Court observed that an actor's motive is considered relevant both in the context of criminal law, where, for example, a homicide may be charged differently depending on the perpetrator's motive, and also in anti-discrimination law, where, for example, refusing to rent to a black person is permissible if based on the applicant's poor credit history rather than his or her race. Again quoting from ADL's *amicus* brief, the Court stated that the "critical inquiry" is whether the government has a "legitimate interest in distinguishing one act from another on the basis of the element at issue, whether the element be labeled 'intent' or 'motive.'"

The Court concluded that "[i]n the case of hate crime legislation, the government has a legitimate and even compelling interest in distinguishing between acts of violence randomly committed and acts of violence committed because the victim is a member of a racial, religious or other protected group"(emphasis added).

The Court found that the lower court properly admitted evidence that defendant had expressed a desire to join the Skinheads and had repeatedly used the word "faggot," because such evidence had a "tendency in reason" to prove that the attack was at least partly motivated by defendant's animus towards homosexuals. The Court also found evidence of a prior attack by the defendant on a different homosexual man to be admissible, because evidence of other crimes, "when offered to prove the ultimate fact of intent", rather than identity, "need only be 'substantially similar' to the charged offenses."

California v. Baker, No. G013054 (California Ct. of Appeals, 4th Appellate District)

The case involves a challenge to California hate crime statutes patterned after the ADL model. ADL's brief supports the State of California, arguing that following the United States Supreme Court ruling in *Wisconsin vs. Mitchell,* the California hate crimes statutes which provide for penalty enhancement should be upheld.

The defendant in the case, Frank Robert Baker, was found guilty of attempted murder for the violent beating of a victim selected because of his Mexican origins. Sentence enhancement was applied because defendant's crime was found to be motivated by bigotry.

The defendant argues that California Penal Code §422.75, which provides for the penalty enhancement, is an unconstitutional limitation of freedom of speech. He bases his argument on the Supreme Court's 1992 ruling in *R.A.V. vs. City of St. Paul* which found a St. Paul ordinance "facially unconstitutional," holding that the ordinance was specifically aimed at prohibiting speech.

In its argument in Baker, ADL said:

"This statute [California Penal Code §422.75] is similar to and based upon the same model as the one upheld in *Mitchell.* Specifically, the court held that a statute which enhances the defendant's penalty

when the prosecution is able to prove that the defendant selected his or her victim because of race, religion, color, disability, sexual orientation, national origin or ancestry, does not violate the first amendment's protection of freedom of expression."

The brief argues that the *Mitchell* decision should be entirely dispositive of the California case and that the statute is neither vague nor overbroad.

ADL's brief points out that when Penal Code §422.75 was added in 1991 to amend the 1987 Bane Civil Rights Act, it implemented the recommendations of the California Attorney General's Commission on Racial, Ethnic, Religious and Minority Violence. That Commission conducted public hearings for two years in the state and found that California's existing laws did not adequately protect various minorities in California from an increase in violent crimes based on the victim's minority status. The brief notes that penalty enhancement for hate crimes is essential because:

> "The threat presented to our society by hate crimes is even greater than the enormous harms that individual victims suffer. It is well documented that members of the immediate victim's minority group suffer as a result of attacks motivated by bigotry and members of other minority groups may also feel the effects of bigoted or racist attacks."

Huchinson v. State of Florida and Todd v. State of Florida, Nos. 92-132435-E and 92-132465-E (Fla. Ct. of App. 1st Dist.)

The Anti-Defamation League joined the American Jewish Congress in an *amicus curiae* brief in this case, urging the Florida District Court of Appeal, First District, to affirm the conviction of two defendants prosecuted under F.S.A. § 806.13(2), a state law enhancing the penalty for vandalism of a house of worship.

The brief began by articulating the state government's legitimate interests in passing § 806.13(2), interests which were offered by Congress in enacting nearly identical federal legislation, 42 U.S.C. § 247. The free exercise of religion is a fundamental constitutional right which, the brief pointed out, government has an obligation to ensure for all citizens. Section 806.13(2) serves this purpose, reflecting the importance society places on religious liberty.

Furthermore, the law is an effective means of general and specific deterrence. Not only are houses of worship particularly vulnerable to vandalism, but those who commit such crimes might reasonably be thought to "hold a world view which makes it more likely that they will commit similar crimes in the future." The brief argued that § 806.13(2) is a legitimate government attempt to respond to a serious problem in the State of Florida.

The brief next addressed the establishment clause challenge raised by the defendants. Quoting former U.S. Supreme Court Justice Goldberg, the brief asserted that the establishment clause challenge to the Florida law must be considered in light of the Constitution's affirmative protection of the free exercise of religion:

> Untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands; but of a brooding and pervasive devotion to the secular and a passive or even active hostility to the religious. Such results are not only not compelled by the Constitution, but are prohibited by it. *School Dist. of Abington Township v. Schempp*, 374 U.S. 221, 306 (1962).

The Florida statute does not sponsor or finance religion, nor does it encourage anyone to attend religious services or pay homage to religious ideas. Furthermore, the brief observed that § 806.13(2) does not regulate otherwise legal conduct, but rather "simply treats a more pernicious form of vandalism more stringently than less pernicious

manifestations." In this sense the law is similar to the penalty-enhancement statute which was upheld by the U.S. Supreme Court in *Wisconsin v. Mitchell,* 113 S.Ct. 2195 (1993) because it aims at "conduct unprotected by the First Amendment."

The next section of the brief contended that § 806.13(2) passes the three part establishment clause test of *Lemon v. Kurtzman,* 403 U.S. 621 (1971), which remains valid law. Addressing the third part of the test first, the brief stated, "§ 806.13(2) creates no contact between prosecuting authorities and a house or worship beyond the ideologically neutral contacts necessary to prosecute a crime." Next the brief found the purpose of the statute, "to deter a crime which is all too common, and which has not been deterred by...lesser penalties," to be secular.

Finally, the brief asserted that the law does not have the primary effect of advancing religion. No direct benefit flows from the government to a house of worship. Even if some attenuated advantage is provided in the form of "some marginal extra degree of physical security in those cases in which the damage to the property is less than $1,000," such an indirect advancement has never been sufficient to invalidate a statute. Moreover, the enhanced penalties have the effect of promoting substantive neutrality by compensating for the fact that houses of worship are more likely to be vandalized than most secular property. Finally, the brief refuted the claim that the law unconstitutionally conveys a message to non-believers that their groups' property is of lesser value than houses of worship. According to the brief, "[t]his argument would necessarily invalidate any law singling out religion for special protection, a position wholly inconsistent with our constitutional text and tradition....[and] precisely the argument rejected in [*Wisconsin v. Mitchell*]."

State of Florida v. Stalder, 599 So.2d 1280 (Fla. 1992)

In July 1992 ADL filed an *amicus* brief with the Florida State Supreme Court in this case. The brief supports the constitutionality of a Florida penal statute, which ADL helped to develop, that provides for an enhanced penalty in crimes motivated by bias.

The defendant was initially charged with battery, but pursuant to the Florida statute the charge was enhanced to a third degree felony because the defendant allegedly made comments about the victim's ethnicity. The defendant challenged the constitutionality of the enhancement statute by filing a motion to dismiss, which the lower tribunal granted, adopting the defendant's arguments as the basis for its decision. The court's dismissal order specifically stated that the statute was unconstitutionally vague because it did not contain a requirement that the allegation of prejudice must be proved beyond a reasonable doubt.

ADL's *amicus* brief, written before the U.S. Supreme Court's decision in *Wisconsin v. Mitchell,* began by arguing that the statute is consistent with other anti-discrimination laws and that such laws spring from a "compelling governmental interest," as recognized most recently by the U.S. Supreme Court in *R.A.V. v. City of St. Paul.*

Crimes where the victim is chosen because of his race, ethnicity, or religion, the brief continued, cause harm to society that "can be greater than the harm caused by the injurious conduct alone, since entire classes of people are put at risk." This harm includes increased "fear and intimidation" on the part of members of the community, not to mention to the victim and his loved ones. "Florida has chosen to enforce its ideal of a non-discriminatory society by enacting a statutory scheme in which criminal transgressors are punished more severely because an offender has chosen to commit a crime while practicing bias or discrimination." The Florida statute punishes criminal conduct, not thought; it is relevant only if the criminal has been convicted of the substantive crime.

Florida has penalty enhancement provisions for other types of crimes, thus the hate crimes statute should be equally valid. "For example," the brief explained, "various Florida statutes enhance the penalties for criminal conduct committed while wearing a mask, while possessing a firearm during the course of a felony, for committing a crime against law enforcement officers, for engag-

ing in violent crimes against the elderly, or for committing a battery on a pregnant woman." Such statutes affect only the punishment scheme, making crimes motivated principally by bias subject to greater punishment. The brief also contended that "[s]peech is very often a part of the evidence of a crime. For instance, evidence that a defendant slashed the victim with a knife while screaming 'I hope you die' is certainly a relevant and admissible fact in a murder prosecution. Why, then, would a defendant's statement that the victim was a 'dirty Jew' or 'black mother' be entitled to more protection when said in the context of punching the victim in the face?"

The brief stated that the lower tribunal erred in concluding that the statute is unconstitutional because it did not require proof of prejudice beyond a reasonable doubt. The brief noted: "[o]f course, all elements of the charged offense, including enhancement factors, must be proved beyond a reasonable doubt." It cited several U.S. Supreme Court cases which support this point. A statute is not unconstitutional simply because it fails to specify the prosecution's burden of proof which, in any event, "is generally not a component of statutory codifications."

The brief also argued that, under Florida state court precedents, the statute "is valid with or without a specific intent to perpetuate the crime because of the victim's status. An intent may be inferred from the commission of the act itself."

The controversial *R.A.V.* decision invalidated a very different statute than that before the Florida Supreme Court. The Minnesota ordinance in *R.A.V.* established a new offense, relying on the "fighting words" exception to the free speech clause. Under that law, a penalty could be imposed for the expression itself, whereas the Florida statute enhances the penalty only for "patently criminal conduct."

Florida's statute is in accordance with U.S. Supreme Court jurisprudence because it is directed against the defendant's conduct; it is not based solely on the words that communicate the defendant's bias. Justice White's concurrence in *R.A.V.* states that the statute at issue was overbroad "because it not only criminalizes categories of speech which are constitutionally unprotected, but also proscribes a substantial amount of expression that, even if repugnant or distasteful, is nevertheless shielded by the First Amendment." The brief adds: "That concern is not applicable to Florida law, which comes into play only when a defendant has first engaged in "criminal activity." In the Florida statute, "neither the words nor the expression is on trial. The expression, then, is merely relevant evidence and does not constitute the crime itself."

The brief concluded: "Society can, and should, punish the transgressor for the harm resulting from the transgressor's conduct. When that conduct selects out a criminal victim for discriminatory or biased reasons, then society has a right to inflict greater punishment because of the greater societal harm."

A decision from the Florida Supreme Court is pending.

***State of Florida v. Bryan Richards,* No. 2912 (Florida Third District Court of Appeal)**

In February 1990, Bryan Richards confronted two young Jamaican men who were waiting in the parking lot of his building for a friend who resided there. After a heated verbal exchange, Richards battered the two men, punching them in the face and calling them "niggers" and "boat people." Upon his arrest by a black female Metro police officer, he continued to spew racist invective and expressed his belief that there is nothing wrong with a redneck beating up a couple of blacks.

The Richards case represents the first conviction under the 1989 Florida Hate Crimes Act, patterned after ADL's Model Act. It provides for enhanced penalties when a misdemeanor or felony evidences prejudice based on race, religion, color, ethnicity, ancestry, national origin, or sexual orientation. Richards was convicted after a jury trial and was sentenced to an enhanced term of four years imprisonment and two years probation.

Richards' counsel had filed a pre-trial motion to strike the enhancement language

based on the allegedly unconstitutional nature of the Hate Crimes Act. The trial judge denied the motion, and enhancement instructions were given to the jury. Similar arguments were also offered by the defense predicated on vagueness and free speech. The defense filed a notice of appeal in Florida's Third District Court of Appeal in Miami in December 1990. ADL filed an *amicus* brief in support of the Hate Crimes Act.

Appellant's brief argued that the trial court erred in not requiring that the state prove intent to commit the hate offense in a prejudicial manner. The appellant contended that the failure to include intent as an essential element could give rise to a presumption in any criminal episode where a minority group member is the victim that the crime was "*per se* racial prejudice." Moreover, appellant argued that the absence of a definition for the word "prejudice" renders the statute defectively vague because it does not put a person of common intelligence on notice of the proscribed conduct.

The State's brief contended that the Hate Crimes Act does not require proof of intent underlying the acts giving rise to the reclassification and that the due process clause does not require any such intent. Support for this position is found in comparable Florida statutes providing for enhanced penalties for the possession of firearms or the wearing of masks in the commission of an offense. Moreover, the State maintains that the statute is not unconstitutionally vague in that the words "evidences" and "prejudice" are fully capable of being understood by ordinary people of common intelligence. Lastly, the state concludes that since appellant's conduct is clearly proscribed by the Hate Crimes Act, he lacks standing to raise the vagueness argument.

ADL's *amicus* brief tracked the State's arguments and also argued that the words "evidences" and "prejudice" have a long, recognized history in Florida jurisprudence; as such, they need no additional explanation or definition to ensure implementation of the Hate Crimes Act. The brief stressed the importance of this case in the accumulating body of case law concerning hate crimes around the nation. The *amicus* brief emphasized that ADL's message concerning the anathema of hatred and bigotry was affirmed by the Florida Legislature in passing the Hate Crimes Act.

A decision in this case is still pending amid speculation that the court will await the Florida Supreme Court's decision in *Stalder*, discussed above.

State of Florida v. Dobbins, 605 So.2d 922 (Fla. 1992)

A decision is also pending from the Florida Supreme Court in this case regarding the state appellate court's affirmation of the state's hate crime laws. The case involved a skinhead convicted for his role in a violent bias crime. In Daytona Beach, five members of a racist skinhead group called American Front were charged with attempted first degree murder, conspiracy to commit aggravated battery and aggravated battery for attacking a 17-year-old fellow skinhead, in October 1990, after they discovered he was Jewish. The victim was beaten and his head was held under the surf near a pier. Two of the perpetrators received 10 year prison terms — the toughest sentences to date under the Florida Hate Crimes Act. A third, Michael Dobbins, challenged the constitutionality of his conviction under Florida's penalty enhancement hate crimes law. Dobbins was sentenced to serve a year in jail plus a four-year probation term, and has been ordered to take a college class on the Holocaust for his role in the crime.

Dobbins appealed his conviction under the Florida Hate Crimes Act, claiming that it was unconstitutional in light of the U.S. Supreme Court's decision in *R.A.V. v. City of St. Paul*. ADL filed an *amicus* brief on behalf of the State, urging the court to uphold Dobbins' conviction under the statute. The arguments made by ADL in its brief are substantially similar to those raised in the League's *amicus* brief in *State of Florida v. Stalder*, 599 So.2d 1280 (Fla. 1992), discussed above.

In upholding the hate crimes statute, the District Court of Appeals held that "the act of choosing a victim for a crime because of his race or religion is a type of speech that is subject to regulation." Moreover, the court

said, "[e]ven if the statute is considered to regulate the content of speech, it is nonetheless justified because it is narrowly tailored to serve the compelling state interest of ensuring the basic human rights (not to be a target of a criminal act) of members of groups that have historically been subject to discrimination."

The lower court distinguished its decision from *R.A.V.* by noting that the Florida statute regulated conduct, and was not content-based legislation which would violate the defendant's First Amendment rights to freedom of expression. According to the court, "in our case, it is the act of discrimination against people because of their race, color or religion by making them victims of crime that is prohibited and punished; not the specific opinion that leads to the discrimination. We think that appropriate."

Ladue v. State of Vermont, No. 91-313 (Vt. Sup. Ct. July 1, 1993)

In a brief "Entry Order," the Supreme Court of Vermont upheld the Vermont Hate Crime Act in light of the U.S. Supreme Court's decision in *Wisconsin v. Mitchell.* The case involved a gay bashing in which the victim suffered multiple abrasions and lacerations. The appellant, who pled guilty to aggravated assault, admitted that he assaulted the victim because he thought the victim was gay, apparently fabricating a claim that the victim had "made a pass" at his brother. The appellant acknowledged, in open court, that he would not have beaten up a girl for making a pass at his brother; the victim testified that, prior to the attack, the defendant said to him "so are you a faggot or gay or what?"

The Vermont Hate Crime Act challenged in this case, like the Wisconsin law which was declared constitutional in *Mitchell,* uses a penalty enhancement scheme much like the ADL model. The Act, which was upheld by the trial court, authorizes additional punishment for criminal conduct "maliciously motivated by the victim's actual or perceived race, color, religion, national origin, sex, ancestry, age, service in the armed forces of the United States, handicap...or sexual orientation."

ADL's *amicus* brief for the State, submitted before the Wisconsin statute was upheld by the Supreme Court, began by noting that "hate crimes are a national problem and punishing them advances clear and compelling public policy." The opening section of the brief provided a national context for the Vermont Supreme Court, pointing to the significant number of such laws which have been enacted in recent years and case law upholding them, and adding that such laws represent an effort to respond to crimes which "are damaging to the very fabric of society and deserve special statutory treatment."

The brief next distinguished the Vermont Hate Crime Act from the St. Paul, Minnesota ordinance struck down by the United States Supreme Court in *R.A.V. v. St. Paul* 112 S. Ct. 2538 (1992), and rejected the appellant's contention that the Vermont Act punishes bigoted thought or speech. "If the appellant's intention was to convey publicly his hatred of gays, he could certainly have done so without engaging in brutal criminal conduct." The brief added:

> The Vermont Hate Crime Act's application in this case goes to punishing this physical attack. If the appellant had simply voiced his animosity toward gay men without more, that speech would have enjoyed full protection; however, when his beliefs propelled him to commit the crime of assault and battery against a select victim, that protection evaporated.

Following its discussion of *R.A.V.*, the ADL brief touched on the relevance of motive and intent in criminal codes throughout the country, pointing out that "determining motive through circumstantial evidence is a common practice in criminal law." The brief then concluded with a comparison between the Vermont Hate Crime Act and anti-discrimination laws which also penalize conduct tied to the victim's status. "It would be odd, indeed," the brief stated, "if states were prevented from protecting citizens from physical harm who are targeted because of race, sexual orientation, or other protected categories, when it provides those very persons with protections from civil

wrongs like employment or housing discrimination."

State of Washington v. Myers and *State of Washington v. Talley*, Nos. 58733-7 and 58492-3 (Washington Supreme Court)

Both the *Myers* and *Talley* cases, which are before the Washington State Supreme Court, involve cross burnings — in one case the white defendant burned a cross on a black family's lawn; in the second case, the defendant burned the cross on his side of the property line in full view of a mixed race family preparing to move in. One lower court struck down the Washington law, while a second court attempted to narrow its reach. The Washington statute as drafted has several components, including a penalty enhancement provision similar to the Wisconsin statute which was based on the ADL model and which was declared constitutional by the United States Supreme Court in *Wisconsin v. Mitchell*. Although the whole statute will be reviewed by the Washington Supreme Court in these two cases (which will be argued together), ADL's *amicus* brief for the State focused only on the penalty enhancement provision, urging that it be retained. The brief made many of the same arguments as ADL's brief in *Ladue*.

Once again, this brief began by highlighting the national scope of the hate crime problem, citing numerous examples from across the country. It discussed the need for hate crime legislation, noting that "the conduct targeted by the legislation at issue in *Talley* and *Myers* is a distinct breed of criminal behavior, rooted in a set of motives unlike those that prompt conventional criminal acts...these are crimes where the victim is selected because of his or her actual or perceived status; where the racial, religious or similar animus is the reason for the crime."

The brief next contended that the Washington statute "does not punish bigoted thought, but rather violent crimes committed because of the victim's race, religion or other enumerated status." As in *Ladue*, the brief noted that this penalty enhancement law "is not directed as suppressing ideas or expressions of belief...one is free to think, speak, publish and even advocate racist, homophobic and bigoted ideas and philosophies without running afoul of [its] provisions." However, when such prejudices prompt criminal conduct, the government has a "substantial, indeed compelling" interest in treating those crimes more seriously because their impact extends beyond the individual victim. Hate crimes "instill fear and anger in the victim's community and create a sense of victimization and injustice...such crimes also increase racial or other intergroup tensions generally, creating feelings of divisiveness and disharmony."

Emphasizing that the Washington statute "focuses on the egregious nature of violent discriminatory crimes rather than the perpetrator's bigoted thoughts," the brief observed that "racial hatred or bigoted beliefs are *not* a necessary element of the crime. It does not matter precisely *why* the perpetrator selected the victim on the basis of race or other status....What is essential to the crime is the act of targeting a victim for violence on the basis of race or other enumerated status." In this connection, as in *Ladue*, the brief drew an analogy to anti-discrimination laws whose constitutionality has never been questioned.

The brief concluded by distinguishing the Washington statute from *R.A.V.*, comparing it instead to other Washington laws which prohibit conduct targeted at specified victims, such as the governor, witnesses, jurors and judges. The essential message in both cases is the same — unless such laws are upheld, "the fight against ethnic intolerance and racist violence will be deprived of an essential weapon."

State of Ohio v. Van Gundy, 64 Ohio St. 3d 230 (Ohio 1992); *State of Ohio v. Wyant*, 64 Ohio St. 3d 566 (Ohio 1992), *cert. granted and judgment vacated by Ohio v. Wyant*, 113 S. Ct. 2954 (1993)

ADL filed an *amicus* brief in *State of Ohio v. Van Gundy* which was consolidated with *State v. Wyant* and two other challenges to the constitutionality of Ohio's penalty

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LAW ENFORCEMENT BULLETIN

A periodic update from the Anti-Defamation League of B'nai B'rith

This publication has been made possible through a grant from the William and Naomi Gorowitz Institute On Terrorism and Extremism

Latest ADL Report Warns: Skinhead Strength Growing, Violence Increasing

Neo-Nazi Skinheads in the United States have grown in strength, and the number and frequency of the murders they have committed is increasing, according to a report issued in the Summer of 1993 by the Anti-Defamation League (ADL).

The ADL report, entitled *Young Nazi Killers — The Rising Skinhead Danger*, is the seventh in a series on the Skinhead threat by the ADL since 1987. The report was issued only a few days before the arrest in Los Angeles of eight white supremacists, several of whom were Skinheads, charged with planning to kill blacks and Jews. (See article, page 3.)

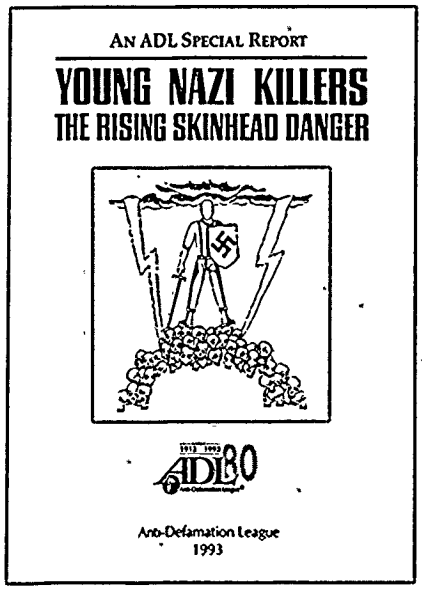
"Membership in these hate-filled youth gangs is growing steadily," said Abraham H. Foxman, ADL national director. "There are now 3,300 to 3,500 neo-Nazi Skinheads in 160 gangs in 40 states and the latest figures show how they have spread since our last count in 1990."

Most of their victims have been members of minority groups. The ADL report concluded that "the Skinheads are today the most violent of the white supremacy groups. Not even the Ku Klux Klans," the ADL said, "so notorious for their use of the rope and the gun, come close to the Skinheads in the number and severity of crimes committed in recent years."

The report, prepared by ADL's Fact Finding Dept., noted that from 1987 to 1990 there were six murders by neo-Nazi Skinheads but that in the three years since 1990, the number of such murders more than tripled, to 22. The victims have included Hispanics, blacks, Asians, homosexuals, homeless people and even other Skinheads killed in rage or in demonstration of "macho" by their assailants.

In addition to homicides, Skinheads across the country have committed thousands of lesser crimes, including beatings, stabbings, shootings and synagogue desecrations.

The ADL document noted that in addition to their overall growth of 300 to 500 members, the Skinheads are now active in eight states where they had not previously been seen: Alaska, Iowa, Kansas, Kentucky, Nebraska, New Hampshire, Utah and Virginia.



The seven states with the greatest number of Skinheads are New Jersey (400), Texas (300-400), Oregon (300), Colorado (200), Florida (200), Michigan (200), and Virginia (200).

The ADL report said there is no single neo-Nazi Skinhead organization. Rather, there are networks of gangs that are loosely linked, with names such as American Front, Northern Hammerskins, Aryan Resistance League and SS of America. Frequent changes in the names of various

(continued on back page)

Clinton's Anti-Crime Package Under Scrutiny by Congress

The Clinton Administration's multi-faceted anti-crime package is being considered by the U.S. Congress.

The President's program contains far-reaching proposals targeting crime prevention and gun-control as major areas for action.

Highlights of the Clinton anti-crime package include:

- A proposed five-year $3.4 billion program to help communities across the country put up to 50,000 more police officers on the streets.
- Enactment of the Brady gun control bill which calls for a five-day waiting period on handgun purchases to allow background checks on would-be handgun buyers.
- Expansion of the Federal death penalty to cover nearly 50 offenses, including the killing of a Federal law enforcement officer.
- A proposed limit on Federal habeas corpus appeals, primarily by death row inmates, to reduce delays in carrying out sentences.
- Proposed initiation of a four-year $100 million Police Corps program, providing college scholarships and police training to up to 5,000 students in return for a commitment by students to four years of police work.
- Conversion of closed military bases and other facilities into bootcamps for youthful offenders.
- Proposed initiation of a five-year program to help create "safe havens" in and around schools.

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Blind Sheik, 14 Others Face Trial For Plotting 'Urban Terrorism' And Bombings Against U.S.

Fifteen members of a New York-based group, allegedly led by blind Egyptian cleric Sheik Omar Abdel Rahman, face trial in Federal District Court on charges of orchestrating the World Trade Center bombing and plotting to blow up river-crossing tunnels and bridges, the United Nations and other public buildings.

The 20-count indictment, made public on August 25, 1993, charged that since 1989, the 15-man cabal conspired "to levy a war of urban terrorism against the United States."

The indictment also links Abdel Rahman and his followers to the 1990 murder of militant Zionist Rabbi Meir Kahane and with plotting to assassinate Egyptian President Hosni Mubarak when he visited the U.S.

According to the indictment:

- Some members of the conspiracy conducted their own paramilitary firearms training in Pennsylvania, New Jersey and Connecticut as early as 1989.
- In the Winter of 1992 conspirators tested an explosive device shortly before the February 26th World Trade Center bombing.

After the bombing, the indictment charges, the conspiracy gained momentum. Group members began to scout locations in New York City as targets for further bombing, including some military installations, and plans were discussed for bombing the Federal building in lower Manhattan, and killing FBI agents. The alleged plotters also explored plans for taking hostages who might be exchanged for the defendants arrested in the World Trade Center bombing.

- The alleged conspirators took steps to rent a safehouse in Queens in May 1993 to make bombs but Sheik Rahman told them not to bomb the United Nations at that time. He said that while the idea was not "impermissible," they should instead pursue plans to bomb the U.S. military. The sheik said they should proceed "cautiously" with plans to bomb the Federal building in lower Manhattan.
- During May and June 1993 the defendants met at the Queens safehouse to discuss bombing the Federal building and the Lincoln Tunnel under the Hudson River. They also tested a timing device for detonating a bomb.
- Late in May, several of the alleged plotters scouted various bombing targets in Manhattan, including the Federal building and the United Nations. They also drove through the Diamond District and talked about killing Jewish merchants there by placing a bomb at a strategic location in the district..
- At a June meeting in Yonkers, New York, plans were discussed for bombing both the Lincoln and Holland Tunnels and the George Washington Bridge. One defendant agreed to provide funds for the operation.
- Later that month, an explosive made in the safehouse was tested in Connecticut.
- On June 24, the Queens safehouse was raided and the bombing plot was discovered. A defendant was found in possession of a written budget of $176,930 to provide for military training in camps. Attached to the budget was a list of weapons that would be used in the training: assault weapons, assault machine guns, shotguns, sniper rifles and pistols.

Terrorism Expert Warns: World Trade Center Blast "Only the Beginning"

Western countries in general and the United States in particular are prime targets of an Islamic-terrorist-international created by a strategic alliance of Iran, Syria and Sudan and supported by them. The bombing of the World Trade Center in New York on February 26, 1993 was a major blow in this Islamic terrorist warfare against the U.S. and the Western world of Judeo-Christian values, but it was "only the beginning."

So writes terrorism expert Youssef Bodansky in his recently-published book entitled Target America — Terrorism in the U.S. Today. (Shapolsky Publishers Inc., New York, paperback, $5.99).

Bodansky worked on Capitol Hill in Washington, D.C. as Director of the House Republican Task Force on Terrorism and Unconventional Warfare of which Rep. Bill McCollum of Florida is Chairman. Bodansky has been director of the Task Force for almost five years. McCollum writes in the Introduction to Bodansky's book that his reports "have proved to be, unfortunately, all too accurate in predicting and assessing terrorist activities and threats against America and its allies."

Bodansky has also worked as a Defense Department consultant and has taught at the Johns Hopkins School of Advanced International Studies.

Bodansky cites an Iranian intelligence official as explaining that thousands of

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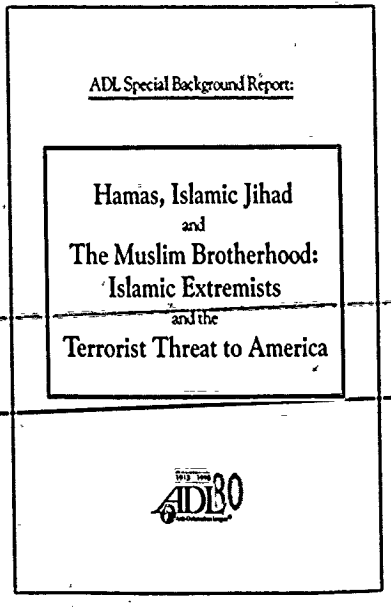

*A new ADL special background report – **Hamas, Islamic Jihad and The Muslim Brotherhood: Islamic Extremists and the Terrorist Threat to America** – identifies the organizations and individuals who espouse violence and engage in terrorism against the U.S, Israel, and moderate Arab regimes. Available from your nearest ADL office.*

Ex-Egyptian Army Man Served as FBI Informer In N.Y. Bomb Plot Case

Emad Ali Salem, 43, is a former Egyptian Army officer who became a close aide to Sheik Omar Abdel Rahman and secretly tape recorded 150 hours of conversations with the group of Muslim extremists charged with plotting urban terrorism and bomb warfare against the United States. He served as an informer for the Federal Bureau of Investigation since approximately November 1991.

The tapes made by Mr. Salem are expected to play an important role in the trial of the Sheik and the 14 other defendants in the New York bomb plot case.

Accused Bomb Plotters Listed

The following persons are defendants in the alleged plot "to levy a war of urban terrorism against the United States" (in the words of Federal indictment) by blowing up New York tunnels and bridges, the United Nations and Federal buildings in New York City, and targeting FBI agents, Jewish merchants and leading personalities for assassination:

- *Sheik Omar Abdel Rahman,* 55. Charged with being the leader of the terror organization that bombed the World Trade Center and plotted other violence.
- *El Sayyid Nosair,* 37. Charged with being a top member of the alleged conspiracy faces racketeering charges connected to the killing of militant Zionist activist Rabbi Meir Kahane.
- *Ibrahim El-Gabrowny,* charged with being a top member of the plotting group, assaulting officers, and possessing forged passports for Nosair and his family.
- *Siddig Ibrahim Siddig Ali,* 32. Charged with being a top member of the plotting group and with being the ringleader behind the plot to blow up targets in New York City.
- *Clement Rodney Hamptonn-El,* 24. Charged with training gang members and supplying them with weapons and explosives.
- *Mohammed Abouhalima,* brother of alleged WTC bombing mastermind Mahmud Abouhalima, charged with being involved in a plot to kill Egyptian President Mubarak.
- *Abdo Mohammed Haggag,* 34, served as an aide and translator for the Sheik and charged in the plot to kill Mubarak.
- *Amir Abdelgani,* 33. Charged with attempted bombing in the plot to blow up New York landmarks. Was slated to become a U.S. citizen in July 1993.
- *Fares Khallafalla,* 31. Charged with attempted bombing in the plot to blow up New York City landmarks.
- *Tarig Elhassan,* 38. Charged with attempted bombing in the plot to blow up New York City landmarks.
- *Fadil Abdelgani,* 25. Charged with attempted bombing.
- *Mohammed Saleh,* 40. Yonkers, N.Y. gas station owner. charged with supplying the bomb plotters with fuel to ignite their explosives. Worshipped at the Sheik's mosque.
- *Victor Alvarez,* 32. Converted to Islam and American born. Charged with attempted bombing and weapons supply. Worshipped at the Sheik's mosque.
- *Matarawy Mohammed Said Saleh.* Charged with conspiracy, attempted bombing and with arranging to provide automobiles for car bombings.
- *Earl Grant,* 27 of Philadelphia. Charged with supplying explosives and attempted bombing.

Of the foregoing, several are Sudanese nationals including Amir Abdelgani, Fadil Abdelgani, Siddig Ibrahim Siddig Ali, Tarig El-Hassan and Fares Khalafalla.

L.A. "Race War" Accused Admit Earlier Attacks

Three members of a white supremacy group called the Fourth Reich Skinheads, who were arrested during Summer 1993 in Los Angeles on charges of planning to foment a race war, have told investigators they participated in earlier racial attacks, according to papers filed in Federal Court.

In July 1993, Christopher David Fisher, 20, and two juveniles were charged with plotting to bomb Los Angeles area churches and synagogues in an effort to ignite a race war.

Fisher claims to be the head of the Fourth Reich Skinheads. He told authorities that he had taken part in two earlier bomb plots, including one against an Orange County synagogue.

A second defendant told investigators that he and Fisher had taken part in a pipe bomb attack on a member of the Spur Posse, a group of Lakewood, Cal., youths who kept tallies of their sexual activities.

Fisher acknowledged firebombing the Paramount, Cal., home of a black man and plotting to firebomb Temple Beth David. The juveniles admitted serving as lookouts during one of the pipe bomb attacks. A court document said the Spur Posse member was chosen as a victim because he is part Mexican and part Asian.

Three Arrested in Bombings at 3 Western NAACP Offices

Federal agents have arrested three suspects claiming to be members of a white supremacist group known as the American Front in connection with the bombings of three western offices of the National Association for the Advancement of Colored People (NAACP) in mid-summer 1993.

The bombings took place at the NAACP offices in Sacramento and San Francisco, Calif., and Tacoma, Wash.

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Terrorism Expert Warns: World Trade Center Blast "Only the Beginning"

(continued from page 2)

secret agents have been sent around the world as long-term plants called "submarines" by the Iranians. They are in American, Canadian, European, Asian and African cities. They have been highly trained.

Bodansky says they have been dispatched by Teheran as students, workers, diplomats, employees of air transport agencies, and as seekers of political asylum. Installing these submarines in the West was Iran's "ultimate priority."

These moves came in the wake of a series of international terrorist conferences in the 1970s, the 1980s and the early 1990s. In mid-1990, Teheran convened a major conference of Islamic terrorists — and another in October 1991 when a who's who of terrorism met in the Iranian capital.

The participants, in addition to the Sudan's Sheik Hassan al-Turabi, the *de facto* ruler of Sudan, included representatives of Palestinian terrorist groups — Hamas, Islamic Jihad, the Popular Front for the Liberation of Palestine-General Command (PFLP-GC) headed by Ahmed Jibril, the Lebanon-based Hizbollah, and the Iranian and Syrian governments. This network had four characteristics:

1) Cooperation between Shi'ite and Sunni Muslim terrorist groups.

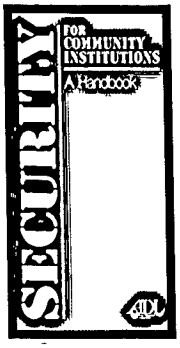
2) Cooperation with previously anti-religious, Marxist terrorist organizations such as the Popular Front for the Liberation of Palestine (PFLP), headed by Dr. George Habash, and Jibril's PFLP-GC.

3) Financial support from Iran.

4) An apparent willingness to support terrorist strikes in the U.S.

At least two branches of the network's Sunni Muslim wing allegedly operate in the U.S. — Hamas, and Sheik Abdel Rahman's group.

The bombing in New York, Bodansky concludes, "was merely a prelude to a new terrorist campaign in which America is the target."



ADL has prepared a new, updated handbook on Security for Community Institutions. The ADL handbook was produced in cooperation with the Crime Prevention Section of the New York City Police Department. It provides practical measures for preventing, and coping with, destructive violence against persons and property. The material reflects ADL's experience in monitoring and countering hate crimes. (Price $5.)

Three Arrested in Bombings at 3 Western NAACP Offices

(continued from page 3)

The most serious blast was at Sacramento, causing $130,000 in damage.

The suspects were Jeremiah G. Knesal, 19, of Auburn, Wash., Wayne P. Wooten, 19, of Tacoma, and Mark F. Kowalski, 24, of Auburn, who was charged with possession of a destructive device, agents stating that a pipe bomb was found in his home.

All three suspects claim membership in the American Front, according to John J. Covert, special agent in charge of the San Francisco FBI office. They were also alleged to have had affiliations with the Florida-based Church of the Creator, a white supremacist group.

American Front was founded in 1987 by Robert Heick in San Francisco. In the late 1980s, Heick worked in close cooperation with hatemonger Tom Metzger. Heick then began operating on his own.

Groups using the name "American Front" have been reported in various locations around the country, including Florida, Pennsylvania, New York, Michigan, Colorado and Arizona.

Giving the Green Light for Vigorous Enforcement of Hate-Crime Laws

By Michael Lieberman

The U.S. Supreme Court's unanimous decision on June 11 upholding the constitutionality of Wisconsin's hate crime penalty-enhancement statute removes any doubt that state legislatures may properly increase the penalties for crimes in which the victim is targeted because of his or her race, religion, sexual orientation or ethnicity. The focus now turns to efforts to ensure more effective enforcement of these laws.

Confronting Hate Violence

Hate crimes are designed to intimidate the victims' community in an attempt to leave them feeling isolated, vulnerable and unprotected by the law. These crimes can have a special emotional and psychological impact on the victim and his or her community, exacerbate racial, religious or ethnic tensions, and lead to reprisals by others in the community. By making members of minority communities fearful, angry and suspicious of other groups — and the power structure that is supposed to protect them — these incidents can damage the fabric of our society and fragment communities.

Getting a Message Through

Along with human rights groups like the Anti-Defamation League, the law enforcement community has actively supported hate crime penalty enhancement legislation and data-collection initiatives. At present, 47 states and the District of Columbia have enacted some type of statute addressing hate violence.

Like laws in some two dozen other states, the Wisconsin penalty-enhancement statute approved by the Supreme Court is based on a model law drafted more than 10 years ago by the Anti-Defamation League. A similar Federal hate-crime measure, the Hate Crime Sentencing Enhancement Act, sponsored by

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Hate-Crime Laws

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Representatives Charles Schumer D.-N.Y.) and James Sensenbrenner (R.-Wisc.), is now pending before Congress and is likely to be enacted into law.

Under these laws, no one is punished merely for bigoted thoughts, ideology or speech. But when prejudice prompts an individual to act on these beliefs and engage in criminal conduct, a prosecutor may seek a more severe sentence. Increasing the penalties for these crimes has a deterrent impact — by demonstrating that they will be dealt with severely — while reassuring targeted groups that law enforcement officers treat these matters seriously.

The Case Against Mitchell

The Wisconsin hate crime statute approved by the Supreme Court authorized enhanced sentences when the defendant "intentionally selects the person against whom the crime...is committed...because of the race, religion, color, disability, sexual orientation, national origin, or ancestry of that person..." Mitchell was convicted of aggravated battery, but the jury also found that Mitchell had intentionally selected the victim because of his race, and thus the maximum penalty was increased by five years. Mitchell challenged the law, arguing that his First Amendment free-speech rights were being violated because the only reason for the enhanced penalty was his discriminatory motive in selecting his victim.

A particularly impressive group of government officials and human rights, police and civil liberties organizations — led by the United States Government and the attorneys general of the 49 other states — filed amicus briefs urging the Court to uphold the constitutionality of the Wisconsin statute. Fifteen national organizations signed onto the ADL's brief, including the International Association of Chiefs of Police, the Fraternal Order of Police, the National Organization of Black Law Enforcement Executives, and the Police Executive Research Forum, as well as the Southern Poverty Law Center, the National Gay and Lesbian Task Force, and People for the American Way.

On June 11, a unanimous Supreme Court rejected Mitchell's free-speech arguments, holding that his actions constituted "conduct unprotected by the First Amendment." The Court ruled that "a defendant's abstract beliefs, however obnoxious to most people, may not be taken into consideration by a sentencing judge." However, the Court went on to hold that legislatures may elect to more severely penalize bias-motivated crime because "this conduct is thought to inflict greater individual and social harm."

A New Tool for Law Enforcement

Unfortunately, some of the most likely targets of hate violence are the least likely to report these crimes to the police. In addition to cultural and language barriers, some immigrant victims fear reprisals or deportation if incidents are reported. Gay and lesbian victims, facing hostility and discrimination because of their sexual orientation, may also be reluctant to come forward to report these crimes.

Studies by NOBLE and others have revealed that victims are more likely to report a hate crime when they know a special reporting system is in place. The Federal Hate Crime Statistics Act, enacted in 1990, provides government and law enforcement officials with a tangible, practical tool to enhance police-community relations. The law requires the Justice Department to acquire data on crimes which "manifest prejudice based on race, religion, sexual orientation, or ethnicity" and to publish an annual summary of the findings.

Attention has now turned to implementation of the law by the FBI, as well as by state and local law enforcement officials. The FBI's well-crafted and inclusive hate-crime training manuals have now been distributed to over 16,000 law enforcement agencies nationwide. The bureau has also conducted training seminars for over 2,500 law enforcement officials, from over 700 agencies, across the country.

The First Data

In January 1993, the FBI released its first report on hate crime data collected by law enforcement agencies around the country. The FBI report documented a total of 4,558 hate crimes in 1991, reported from almost 2,800 police departments in 32 states.

The FBI report indicated that over 62 percent of the reported hate crimes were race-based, with over 19 percent committed against individuals on the basis of their religion, 10 percent on the basis of ethnicity, and 9 percent against gays and lesbians. Crimes against Jews and Jewish institutions constituted the largest segment of the religion-based crime, fully 17 percent of the total. Thirty-six percent of the reported crimes were anti-black, 19 percent of the crimes were anti-white, 6 percent of the crimes were anti-Asian, and 5 percent anti-Hispanic.

Beyond mere numbers, implementation of the act has dramatically increased awareness of this national problem and sparked improvements in the overall response of the criminal justice system to hate crimes. Hate-crime training sessions have occurred at many state law enforcement training academies and on the Law Enforcement Television Network.

An Action Agenda

With constitutional questions settled — and reported cases of hate violence

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Pro-Nazi Charged With Two Murders To Defend "Aryan Beauty"

Jonathan Preston Haynes, 34, a white supremacist and anti-Semite of Rockville, MD, has confessed to killing a Chicago plastic surgeon earlier this year and a San Francisco hairdresser in 1987 because they helped people "dilute Aryan beauty," according to Cook County, Illinois law enforcement authorities.

Cook County State's Attorney Jack O'Malley said Haynes had confessed to killing Dr. Martin Sullivan, 68, at his Wilmette office near Chicago in August. Dr. Sullivan was chief of plastic surgery at Evanston Hospital and Shriners Hospital for Crippled Children in Chicago.

Haynes attended San Francisco State University and graduated in 1989 with a bachelor's degree in chemistry. From November 1991 until March 1993 he worked as an analytical chemist for the Bureau of Alcohol, Tobacco and Firearms (BATF) in Rockville, Md.

As late as 1991, Haynes corresponded with neo-Nazis in prison.

After Haynes left the BATF early in 1993, he told police, he drove to Chicago intending to kill one or two people who sell blue-tinted contact lenses. O'Malley said Haynes changed his mind after arriving in Chicago and that he had chosen Dr. Sullivan as his target because the doctor had the largest ad for plastic surgeons in the Yellow Pages.

EXTREMIST PROFILE:

Gary "Gerhard" Lauck

Gary Rex Lauck, a/k/a "Gerhard" Lauck, was born in Milwaukee, Wisconsin, in 1953. He says that while he is an American citizen and obeys American laws, he has "been a German for 1,000 years."

Lauck says he remembers drawing swastikas at the age of four. "I was born a Nazi," he has said and boasts of reading Hitler's *Mein Kampf* at the age of 13 and identifying with Hitler, whom he has said "was the greatest man who ever lived," although he faults his Fuhrer for being "too humane." In his teens he started calling himself "Gerhard," began distributing propaganda materials, including a homemade Nazi newspaper, *NS Kampfruf* — National Socialist Battlecry — to German neo-Nazis.

His organization, founded in 1972 just a few months before his 20th birthday, is named after Hitler's Nazi Party. Lauck's group is called the *National Sozialistische Deutsche Arbeiter Partei – Auslands Organization* (National Socialist German Workers Party – Overseas Organization or NSDAP–AO) It operates out of a post office box in Lincoln, Nebraska, where Lauck moved with his family from Milwaukee in 1964. Today, Lauck's NSDAP-AO has become the world's largest supplier of neo-Nazi propaganda materials to Germany, where Nazi propaganda and political activity are illegal.

Lauck's stated aim is the legalization of National Socialism in Germany, and he has significantly fortified the movement there. The German police stated that at the end of 1991 that "Gary Lauck of the United States, who prints and ships all of this into our country, has become a major problem for us." During 1991, in fact, German officials tallied 72 criminal incidents involving Lauck's propaganda materials, which bear his Nebraska post office box address.

During 1992, when an upsurge of xenophobic and neo-nazi violence engulfed Germany, the number of criminal incidents associated with Lauck's propaganda tripled.

Before smuggling neo-Nazi propaganda into Germany became his major preoccupation, the teen-aged Lauck became known for his fascination with war in general and Hitler's regime in particular. Lauck studied philosophy and German at the University of Nebraska for two years before dropping out and becoming a full-time Nazi propaganda activist. In addition to establishing the NSDAP-AO in 1972, Lauck was chief propagandist for Frank Collin's Chicago-based National Socialist Party of America (NSPA) until it was dissolved in the early 1989s. He has edited *NS Kampfruf* as well as the *National Socialist Bulletin* (later *The New Order*), the Nazi-oriented and blatantly anti-Semitic English-language publication of both Collin's NSPA and Lauck's own NSDAP-AO. Lauck now claims to publish neo-Nazi newspapers in 10 languages.

Lauck has also become well-known among the rank-and-file of the neo-Nazi cells that have proliferated throughout Germany. They wear his Nazi armbands, post his propaganda stickers and display posters, and listen to his cassettes of Hitler-ear military songs and speeches.

Lauck's notoriety in Germany has also brought him into conflict with law enforcement and legal authorities there.

Lauck, however, has asserted that he continues to visit Germany. In a 1978 interview describing his distribution strategies, he said: "We have gotten the literature into Germany through various means. We smuggle it in, mail it or sometimes when I go, I carry it myself." (Authorities believes that much of Lauck's propaganda is brought in by auto from neighboring countries.)

The varied materials Lauck has supplied to hate activists who have distributed them in Germany are openly listed in his newspaper, *The New Order*, and his Lincoln, Nebraska address is no secret. The materials include books such as "Jewish Ritual Murder," "Racial Biol-

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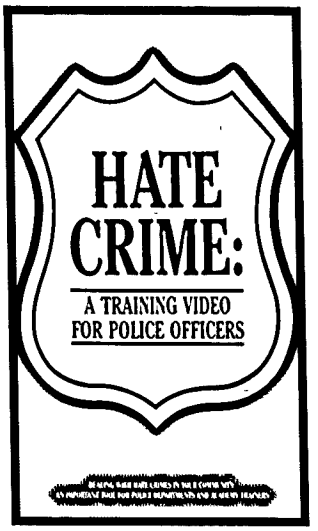
Hate Crime: A Police Training Video



Produced by the Anti-Defamation league in cooperation with the New Jersey Department of Law and Public Safety, this new video portrays actual incidents of criminal activity motivated by hate. It dramatically illustrates the impact of this type of crime on the victim and the victim's community. Most importantly, the video concisely outlines appropriate law enforcement response by detailing how to identify hate crime and how to deal with the victim's trauma, and by underlining the importance of treating this criminal action seriously.

The new video has received the endorsement of the U.S. Attorney General and the International Association of Chiefs of Police, among others.

"Hate Crime: A Police Training Video" is 17 minutes long and can be purchased from the Intergroup Relations Division of the Anti-Defamation League, 823 United Nations Plaza, New York, NY 10017.

VHS 1/2" video cassette $40.00
Beta video cassette $40.00
3/4" video cassette $60.00

An instructor's discussion manual accompanies the video.

How to Subscribe

To be placed on the mailing list for the Law Enforcement Bulletin, write on your official letterhead to Dept. GG, Anti-Defamation League, 823 U.N. Plaza, New York, NY 10017. Please give your title. There is no charge. We welcome your comments and suggestions.

Hate-Crime Laws

(continued from page 5)

on the increase — the time is ripe to promote the use of these important tools for law enforcement.

Municipalities should establish an integrated hate-crime response network, including liaisons to local prosecutors, city or county human rights commissions, and private victim advocacy organizations. Local human relations groups like ADL, can assist in analyzing the hate-crime data for both their own constituents and for the media.

The establishment of specifically focused departmental policies and procedures for addressing hate violence is a proactive step which will send a strong message to victims and would-be perpetrators that hate-crimes are not pranks and that police officials take them seriously. Every department should adopt a written policy, signed by the police chief, to respond effectively to hate violence.

Excellent resources now exist to help municipalities establish hate-crime response procedures. The ADL has developed a number of hate-crime training resources which are available to communities and law enforcement officials, including a 17-minute video (produced in cooperation with the New Jersey Department of Law and Public Safety) on the impact of hate-crime and appropriate responses, a handbook of existing hate-crime policies and procedures at both large and small police departments, and a general human relations training program to examine the impact of discrimination, while promoting both better cultural awareness and increased appreciation for diversity.

Even the best-trained officers, however, will not eliminate criminal activity motivated by prejudice. The long term solution is education and experience, leading to better understanding and appreciation of diversity in our society.

(Michael Lieberman is the Associate Director and Counsel of the Washington office of the Anti-Defamation League. He has written extensively on the impact of hate crimes and was actively involved in efforts to secure passage of the Hate Crimes Statistics Act.)

Reprinted with permission from Law Enforcement News, John Jay College of Criminal Justice, New York City, September 15, 1993.

Two Skinheads Get Long Prison Terms For 1991 Texas Murder

Darrel Ray Hughes, 19, was sentenced in August to 40 years in prison for murder in the October 1991 killing of Charles Sides, 36, whose ear was sliced off in a Port Arthur, Texas, Skinhead initiation rite.

Previously convicted and sentenced in the same killing was Arron Lee Malone, who received 50 years.

Sides had been stabbed 27 times.

Both Hughes and Malone were wearing camouflage clothing and combat boots when they were arrested. Police said the two declared that they belonged to a neo-Nazi hate group.

Malone told police he and Hughes drank with Sides and decided to kill him after Sides passed out. Malone said he dragged Sides to an alley and that Hughes encouraged him to kill Sides.

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Latest ADL Report Warns: Skinhead Strength Growing, Violence Increasing

(continued from front page)

groups in their network affiliations are common. Skinheads have also been linking up with old-line hate groups such as the Ku Klux Klan, White Aryan Resistance (WAR) and the Church of the Creator. Some of the older hate groups have called the Skins their "front-line warriors."

The ADL report emphasized that, with Skinhead crime on the increase, tough law enforcement is required — but that it must be applied persistently if it is not to be only temporarily effective. ADL national director Abraham Foxman said that "unless the law enforcement community now develops a plan to address the problem, and gets the resources needed to implement it, there is every likelihood that Skinhead crime will continue unabated."

Foxman noted that as the Los Angeles riots demonstrate, there are many potentially combustible conditions in the U.S. and the Skinheads can be the matchthrowers. He said: "More than law enforcement is plainly needed if the Skinhead problem is to be truly resolved. But right now the message needs to go forth to the Skinheads that the moment they step over the line that separates free expression from violence, society will come down on them — hard."

Clinton's Anti-Crime Package Under Scrutiny by Congress

(continued from front page)

At the time the anti-crime program was announced, President Clinton said he was issuing two executive orders that would impose immediate new weapons restrictions. One of the orders adds foreign-made assault weapons, such as the Uzi, to the Government's current import ban on assault-type rifles.

The new restriction, the President said, is aimed at guns that have "become the weapons of choice for many gangs and drug dealers."

The second executive order requires strict new limits on the Federal licensing of gun dealers.

Although the President had previously called for a total ban on the sale of assault-style weapons, the steps he announced would continue to allow the manufacture of American-made assault weapons sold in the United States.

The five-year $3.4 billion program to add 50,000 police officers throughout the country was described as the first installment on President Clinton's promise to help local governments hire an additional 100,000 police officers.

When the Clinton anti-crime package was announced in mid-August 1993, it was criticized by the National Rifle Association as an attempt to "disarm American citizens."

Extremist Profile

(continued from page 6)

ogy of the Jews," "SS Race Theory and Mate Selection Guidelines" and other original SS publications, Holocaust denial tracts, and flattering profiles of Nazi leaders.

Lauck also promotes videotapes such as the Nazi SS film "The Eternal Jew," which likens Jews to rats.

Lauck also produces and distributes a wide variety of Nazi flags, armbands, badges, Iron Crosses, swastika stickpins, stickers and propaganda leaflets.

Lauck says that "tons" of this Nazi materials has been distributed in Germany. "The activities of Gary Lauck are a thorn in our side," a German police official has said, "and we cannot figure out a way to stop it. He smuggles it in, he changes addresses. We would like to see the American authorities help us."

Lauck continues to dream of a Nazi rebirth and to work for it from his post office box in Nebraska. He has said:

"I am totally dedicated...to the destruction of Judaism. To the preservation of the white race. And to the elevation of National Socialism to world power...I'd like one day to reach a point where kids in school will be taught that I helped to create the new order."

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February 18, 1994

Mr. Jess N. Hordes, Director
Mr. Michael Lieberman, Associate Director/Counsel
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Dear Messrs. Hordes and Lieberman:

Thank you for sending the FBI a copy of your 1993 Litigation Docket and Law Enforcement Bulletin. The information compiled by your organization is extremely comprehensive, and provides an excellent resource for those who follow the types of cases monitored by the Anti-Defamation League.

The FBI continues to aggressively investigate and assist in the prosecution of all cases within our jurisdiction, and we give high priority to the types of violations monitored by your organization such as civil rights violations, terrorist actions, and hate crimes. It is imperative that our nation have zero tolerance for all crime, but especially those committed against persons or groups solely because of their racial or ethnic status, religious beliefs, or any other affiliation protected by our Constitution.

Thank you again for the information and good luck in your future endeavors.

63-HQ-1063619-1118

Sincerely,

Louis J. Freeh
Director

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1 - Mr. [redacted]
1 - Mr. J. T. Sylvester
1 - Ms [redacted]
1 - Mr[redacted]
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enhancement hate crimes statute. In the consolidated case, *Wyant,* the Ohio Supreme Court held the state's hate crimes statute unconstitutional under state and federal law. This decision was vacated by the U.S. Supreme Court in June 1993, and remanded to the Ohio Supreme Court for reconsideration in light of the Supreme Court's decision in *Wisconsin v. Mitchell.*

The Ohio statute, like the Wisconsin law later upheld, was based on ADL model legislation. The law enhances the penalty for acts already made criminal under state law if the crimes were committed "by reason of the race, color, religion or national origin of another person or group of persons."

Although the Ohio Supreme Court in its decision in Wyant prefaced its opinion by expressing its "abhorrence for racial and ethnic hatred, and especially for crimes motivated by such hatred," it held that the statute is unconstitutional for creating a "thought crime." The court reasoned that a penalty enhancement statute which is intended to increase the punishment for crimes motivated by hate "punishes the person's thought, rather than the person's act or criminal intent." By contrast, the court stressed that other penalty enhancement statutes punished "an additional act or intent," but did not punish motive.

While citing *Chaplinsky v. New Hampshire,* 315 U.S. 568 (1942), for the proposition that there may be unprotected forms of speech, the Ohio Supreme Court said it does not follow from that case "that there are unprotected forms of belief." Since the Ohio Constitution guarantees citizens the right to "speak, write and publish [their] sentiments on all subjects," the court concluded that "a citizen of Ohio is free to have sentiments on all subjects."

According to the court, the Ohio statute violates this right, embodied in the Ohio and U.S. constitutions, by punishing a defendant's beliefs (ADL, of course, has agreed that beliefs are protected, but insists that criminal conduct motivated by bigoted beliefs is punishable). According to the Ohio court, once an underlying offense is committed, the government further

> criminalizes the underlying thought by enhancing the penalty based on viewpoint. This is dangerous. If the legislature can enhance a penalty for crimes committed "by reason of" racial bigotry, why not "by reason of" opposition to abortion, war, the elderly (or any other political or moral viewpoint)?

The Court cited several U.S. Supreme Court decisions to emphasize that First Amendment protection for freedom of speech presupposes freedom of thought.

The Ohio Supreme Court appeared fearful that upholding the constitutionality of the statute would send a message to legislators that a tyranny of majority preferences could trump First Amendment guarantees. "If the thought or motive behind a crime can be separately punished," the court said, "the legislative majority can punish virtually any viewpoint which it deems politically undesirable." The court reasoned that under such a scenario, a legislature could conceivably convict persons simply based on any unpopular views which they held.

The court cited recent decisions concerning hate crimes in support of its ruling. In *R.A.V. v. City of St. Paul,* 112 S. Ct. 2538 (1992), the U.S. Supreme Court struck down a St. Paul, Minnesota city hate crime ordinance as being a content-based restriction on expression. Shortly after the *R.A.V.* decision the Wisconsin Supreme Court struck down that state's penalty enhancement statute as "unconstitutionally infring[ing] upon free speech, *State v. Mitchell,* 169 Wis.2d 153 (1992), *rev'd Wisconsin v. Mitchell, id.*

The Wyant court held that the Ohio statute was a "greater infringement on speech than either the St. Paul or Wisconsin 'hate crimes'" laws because it was intended to punish only motive instead of action or expression. Moreover, the court noted, existing criminal statutes already punished the underlying crime found in hate crime statutes that are based on the penalty enhancement approach.

The *Wyant* case concerns a 53-year-old man found guilty of threatening a black couple with racial slurs. The appellate court in Wyant upheld the constitutionality of the Ohio hate crimes law. In contrast, the appel-

late court in *Van Gundy* found that the same statute was unconstitutional. *Van Gundy* involves ethnic intimidation charges against seven white men, ages 18 to 20, who were accused of harassing seven black teenagers.

ADL's *amicus* brief to the Supreme Court of Ohio in *Van Gundy* supported the constitutionality of Ohio's hate crimes law. The brief stated that "[t]he Ethnic Intimidation Statute is a legitimate exercise of the legislature's authority to address one or our more pernicious social problems — racial, religious and ethnic violence. It expresses the heightened outrage of society at crimes motivated by racial, religious and ethnic hatred, and recognizing the more damaging impact such crimes have, punishes them severely."

The brief contended that the statute must be presumed to be constitutional, under a longstanding principle requiring courts to presume the constitutionality of legislative enactments. Next, the brief maintained that the statute is not unconstitutionally void for vagueness, since it gives persons of ordinary intelligence a reasonable opportunity to know what conduct is forbidden. The statute's penalty enhancement structure also eliminates the risk of arbitrary and discriminatory enforcement, the other risk which the void for vagueness doctrine is intended to address. Further, the brief asserted that the statute is not overbroad and does not violate the First Amendment by impermissibly chilling unprotected speech. The statute does not punish mere speech or association, but rather wrongful conduct that involves actual violence or the imminent threat of violence. It targets only conduct already recognized as criminal, and any "expression" conceivably involved in such a crime is not protected by the First Amendment.

ADL filed an *amicus* brief urging the U.S. Supreme Court to take this case and overturn the Ohio Supreme Court's decision. In the fall of 1993, ADL will file another brief with the Ohio Supreme Court as it reconsiders the case in light of *Mitchell.*

Berhanu v. Metzger, 850 P. 2d 373 (1993)

The Oregon Court of Appeals upheld a state trial court's $12.5 million judgment against Tom Metzger, his son John, two skinheads, and White Aryan Resistance ("WAR"), a right-wing racist hate organization which Tom Metzger heads. ADL and the Southern Poverty Law Center brought the civil suit on behalf of the family of a victim of skinhead violence. The judgment represented an enormous setback for WAR.

The lawsuit arose from the brutal murder of Mulugeta Seraw, an Ethiopian immigrant, by a group of Portland skinheads on November 12, 1988. The skinheads, part of a group known as East Side White Pride, kicked Seraw to the ground and smashed his skull with three blows of a baseball bat. The skinheads who carried out the murder each pleaded guilty to criminal charges and received lengthy prison sentences. Further investigation revealed ties between East Side White Pride and Tom and John Metzger, two leading figures in the hate movement. Tom Metzger, former grand dragon of the California Knights of the Ku Klux Klan, ran the White Aryan Resistance organization out of his house in San Diego. His son John led the Aryan Youth Movement, WAR's youth recruitment arm.

In addition to evidence ADL had linking the Metzgers to the Portland skinheads, ADL's Los Angeles office was contacted by David Mazzella, a former skinhead with extensive ties to Metzger. Mazzella had led an East Side White Pride meeting the night of Seraw's murder in which he had encouraged skinheads to commit acts of racial violence.

In November 1989, ADL and the Southern Poverty Law Center filed a wrongful death suit in Oregon state court which sought to hold the Metzgers vicariously liable for the violence orchestrated by their agent, David Mazzella. The trial was conducted under heavy security. The Metzgers chose not to be represented by legal counsel, and they did not suppress their attitudes towards blacks, Jews and other minorities. David Mazzella offered testimony on his indoctrination into the racist movement, and the role he had played, on the Metzgers' instructions, in training the Portland skinheads to become more violent.

In his closing argument, Morris Dees of the Southern Poverty Law Center asked the jury to send the message that their community will not tolerate racists and extremist violence. The jury awarded $5 million in punitive damages against Tom Metzger, $3 million against WAR, $4 million against John Metzger, and $500,000 against the two skinheads who actually killed Seraw.

The process of seizing the Metzgers' assets is now underway, and the sale of Tom Metzger's house has been compelled.

In the brief urging affirmance of the trial court judgment against the Metzgers, ADL and the Southern Poverty Law Center asserted that none of the defendants' assignments of error were properly presented for appellate review. The brief noted that *pro se* litigants like the defendants may not take advantage of their ignorance of the law by failing to comply with the rules of civil and appellate procedure. If the Metzgers are allowed to obtain appellate review of matters to which they never objected at trial, the brief contended, they will have succeeded in subverting and abusing the legal process. Moreover, the brief argued, even if all the assignments of error were properly before the court, there would still be no reason to disturb the trial court's judgement because none of the alleged errors has merit.

The Metzgers relied on the Supreme Court's decision in *Brandenburg v. Ohio,* 395 U.S. 444 (1969) as their primary basis for appellate review. The defendants alleged that the trial court failed to properly instruct the jury under *Brandenburg* that substantial assistance or encouragement to another who commits a tort is protected speech unless it is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

The ADL and the Southern Poverty Law Center asserted that none of the Metzgers' *Brandenburg* arguments have any relevance to the civil conspiracy question, the second theory upon which the jury found the Metzgers liable. The brief contended that under both state and federal law, the fact that someone participates in a conspiracy through words does not immunize that person from liability. The brief argued that the Metzgers improperly applied *Brandenburg* by overlooking the standard the Supreme Court employed in *Noto v. United States,* 367 U.S. 290 (1961) — a standard cited for approval in *Brandenburg* itself — that "preparing a group for violent action and steeling it to such action," *id.*, at 298, is not protected conduct.

III. Discrimination

A. Employment

Gersman v. Group Health Association, Inc., 931 F.2d 1565 (D.C. Cir. 1991, *vacated and remanded*, 112 S.Ct. 960 (1992), 975 F.2d 886 (D.C. Cir. 1992)

ADL filed a brief along with a coalition of other civil rights groups in this case before the District of Columbia Court of Appeals. The case raised the issue of the retroactive application of one provision of the Civil Rights Act of 1991 to pending litigation. ADL's *amicus* brief argued that the newly enacted statute should be applied to this case. The Court, however, held that the Civil Rights Act does not apply retroactively.

The case arose in 1987 when Alan Gersman's contract with Group Health Association Inc. was allegedly terminated because he is Jewish. Mr. Gersman sued Group Health under a post-Civil War statute, 42 U.S.C. §1981, which prohibits discrimination in contractual relations. While Mr. Gersman's case was pending before the trial court, the U.S. Supreme Court narrowed the scope of Section 1981, ruling in *Patterson v. McLean Credit Union*, 491 U.S. 164 (1989), that the law pertained only to contract *formation*. Once a contract is established, the Court held, the statute placed no further restrictions against discrimination. As a result, Mr. Gersman's claim — based on contract *termination* — was dismissed as outside the scope of Section 1981.

Congress effectively reversed Patterson through the enactment of the Civil Rights Act of 1991. Section 101 of this Act "corrects" the U.S. Supreme Court's interpretation of Section 1981 by stating explicitly that the law prohibits discrimination throughout the contractual relationship, including discriminatory termination.

Mr. Gersman appealed the dismissal of his claim to the U.S. Supreme Court, arguing that the 1991 statute effectively reinstated his case. The Court remanded *Gersman* to the D.C. Circuit for reconsideration in light of the new law. The issue on remand was whether the 1991 Civil Rights Act restoring the broad scope of Section 1981 can be applied retroactively to the *Gersman* case.

ADL's *amicus* brief, prepared by the Lawyers Committee for Civil Rights Under Law on behalf of ADL and other organizations, argued that the provisions of the Civil Rights Act of 1991 pertaining to *Patterson* must be applied to the *Gersman* case in order to give effect to the intent of Congress.

Relying first on statutory language, the brief argued that Congress apparently intended the law to apply retroactively because two other provisions state explicitly that they are only effective *prospectively*. These provisions would be totally superfluous unless the Act was generally intended to apply *retroactively*.

Further, the brief asserted that sound public policy dictates that the statute be applied to *Gersman*, which was pending when the *Patterson* case was decided. At that time, it was understood that Section 1981 applied to all contract cases and today that is the meaning Congress has explicitly given to Section 1981. "It would thus be an act of extreme injustice to grant the [defendant] an unjustifiable windfall based on a decision that was not the law at the time the conduct occurred and that is not the law today."

Moreover, the Act must be applied to pending cases in order to give full meaning to Congress' ability to correct erroneous interpretations of the law, such as the interpretation of Section 1981 in *Patterson*. Title VII litigation often lasts many years; unless the 1991 Civil Rights Act is applied retroactively, Congress is effectively thwarted in correcting judicial misinterpretations of the law.

Additionally, the brief pointed out that when courts hesitate to apply statutory law retroactively, it is usually out of concern for the vested rights and reliance interests of the parties. In this case, however, the defendant Group Health Association cannot assert a reliance interest on *Patterson* because it was decided two years after the alleged discrimination occurred.

Joining in the *amicus* brief with ADL were People for the American Way, the Washington Lawyers' Committee for Civil Rights Under Law, the NAACP Legal Defense and Education Fund, Inc., and the National Association for the Advancement of Colored People.

On September 15, 1992 the D.C. Circuit held that the Civil Rights Act does not apply retroactively. The 2-1 appellate decision, authored by Judge David Bryan Sentelle and joined by Judge James L. Buckley, found that the statutory language of the Civil Rights Act did not provide clear evidence of congressional intent on the issue of retroactivity, nor was legislative history helpful in clarifying the issue. After reviewing two seemingly contradictory lines of Supreme Court caselaw on the issue cited by the plaintiff and defendant, respectively, the appellate court found a way to reconcile the rulings. Judge Sentelle drew a distinction between acts of Congress which change *substantive* rights and those which are merely *remedial* changes. The court concluded:

> It is the general rule that substantive statutory amendments do not apply to pre-amendment conduct. This holding is consistent with *Bradley [v. Richmond School Board,* 416 U.S. 696 (1974)] and *Thorpe [v. Housing Authority of Durham,* 393 U.S. 268 (1969)] which dealt with remedial and procedural amendments. The present case concerns a substantive amendment and pre-amendment conduct. The rights of the parties must be adjudicated as they were under the law prevailing at the time of conduct.

Circuit Judge Patricia M. Wald dissented from the appellate court's decision.

The D.C. Circuit's ruling against the retroactivity of the Civil Rights Act comports with decisions by several other appellate courts. To date, appellate courts for the Second, Fifth, Sixth, Seventh, Eighth and Eleventh Circuits have refused to apply provisions of the Act retroactively. However, a few weeks after the *Gersman* decision, the Ninth Circuit ruled that the provision of the new Civil Rights Act allowing recovery of expert witness fees applies retroactively. *Davis v. City and County of San Francisco,* 61 U.S.L.W. 2192 (9th Cir. Oct. 6, 1992). Several of these decisions are on appeal to the U.S. Supreme Court.

Landgraf v. USI Film Products, 968 F.2d 427 (5th Cir. 1992), *cert. granted,* 113 S.Ct. 1250 (1993)

The issue presented to the U.S. Supreme Court by this case is whether the Civil Rights Act of 1991 (the "Act") should be applied to employment discrimination claims pending at the time of its enactment. In an *amicus curiae* brief filed jointly by ADL, the NAACP, the American Asociation of Retired Persons, and the American Jewish Committee, ADL argued that the statutory language of the Act and the interpretation given to earlier civil rights statutes demonstrate that the Act should be applied retroactively.

The Civil Rights Act of 1991 reversed or modified a series of Supreme Court cases which construed various prior civil rights statutes. For example, Section 101 of the Act reversed *Patterson v. McLean Credit Union,* 491 U.S. 164 (1989), in which the Supreme Court held that 42 U.S.C. §1981, which prohibits discrimination in the making and enforcing of contracts, does not apply to claims arising from conduct occurring after the formation of the employer-employee relationship. In its *amicus* brief, ADL argued that if the Act is not applied retroactively, courts will be forced to clarify the scope of Patterson, as well as numerous other cases which were overturned by Congress when it enacted the Act. As stated in the brief, "Congress simply cannot be presumed to have intended a waste of judicial and other resources of this magnitude."

In addition, ADL's brief asserted that if the Act is not given retroactive effect, and the holding in *Patterson* is applied to all claims under 42 U.S.C. §1981 brought before the Act was passed, many minority Americans whose cases are now pending will be left with no remedy for the "indisputable wrongs" which have been perpetrated upon them. Similarly, ADL argued that if Section

102 of the Act, which concerns discrimination claims brought by federal employees, is not applied retroactively, thousands of federal workers with pending claims will be denied remedies available under the new section.

ADL's brief also argued that retroactive application of the Act is consistent with its statutory language. For example, Section 109 expressly provides that it does "not apply to conduct occurring before the date of the enactment of this Act," and Section 402(b) specifically excludes "any disparate impact case for which a complaint was filed before March 1, 1975, and for which an initial decision was rendered after October 30, 1983." The brief argued that if the Act in general was not meant to have a retroactive effect, these sections would be "wholly superfluous."

Additional arguments made in the brief in support of retroactive application are as follows: 1) other civil rights statutes have been held applicable to pending cases, and 2) the Civil Rights Act of 1991 is a "procedural and remedial statute," which is traditionally given retroactive effect. The brief concluded by reiterating that if the Act is not applied retroactively, "untold thousands will suffer the unjust dismissal of their claims and the inability to obtain any remedy for unlawful conduct by discriminating employers."

B. Housing

Attorney General of the Commonwealth of Massachusetts v. Desilets, No. SJC-06284 (Supreme Judicial Court of Massachusetts)

This case, which is pending before the Supreme Judicial Court of Massachusetts (the state's highest court), involves a conflict between two prime concerns of the ADL, freedom from discrimination and religious freedom. ADL, together with the American Jewish Congress, the American Baptist Churches of Massachusetts, the Episcopal Diocese of Massachusetts, the Union of American Hebrew Congregations and the United Methodist Church, filed an *amicus curiae* brief arguing that defendants' religious beliefs do not justify their discrimination against housing applicants on the basis of their unmarried status.[6]

The defendants claimed that the United States and Massachusetts constitutions exempted discrimination motivated by sincere religious belief from the state law prohibiting discrimination based on marital status. ADL's brief, however, asserted as follows:

> The statute is valid as applied, and there is no constitutional exemption from it, because it expresses a compelling state interest against discrimination; it imposes no direct burden on the defendants' religious beliefs or ritual practices; and although it imposes a significant burden on the defendants' religiously motivated but essentially secular conduct, that is a burden which the defendants voluntarily accepted and is outweighed by the public interest in prohibiting discrimination.

The brief pointed out that defendants' conduct, and not the validity or sincerity of their religious beliefs, is at issue. This conduct was secular and commercial, rather than religious. Furthermore, the brief argued, the conduct is likely to "disturb the peace" and "victimize those whom the legislature has sought to protect." According to the brief, any burden on defendants' religion was extremely light in that it affected only a "voluntary activity...otherwise unrelated to religious belief...chosen for religiously inspired motives."

The state interest in enforcing the anti-discrimination statute against the defendants, on the other hand, is particularly strong for several reasons. The brief contended that the entire housing discrimination scheme would collapse if individuals could opt out of it by claiming a religious motivation. Furthermore, the fact that the legislature established an enforceable policy "with carefully prescribed exceptions," against housing discrimination gives the state interest significant weight. In this situation, the state's strong interest, "asserted to

[6] The Superior Court for Franklin County granted summary judgment for the defendants, *Commonwealth of Massachusetts v. Desilets*, No. 90-178 (December 21, 1992).

vindicate the rights of other individuals," should override the relatively indirect burden on religion.

Donahue et al. v. Fair Employment and Housing Commission, 5 Cal. Rptr.2d 781 (Cal. 1992)

A decision is still pending from the California Supreme Court in this case in which ADL, joined by the American Jewish Congress, Jewish Community Relations Committee, and Jewish Federation Council of Greater Los Angeles filed an *amicus* brief. The case arose when the landlords of a five-unit apartment complex in Downey, California refused, due to their religious beliefs, to rent an apartment to an unmarried couple. The couple filed a complaint with the California Department of Fair Employment and Housing alleging housing discrimination based on marital status, and the landlords were found to be in violation of the Unruh Civil Rights Act and the Fair Employment and Housing Act.

The California Court of Appeals reversed this ruling. The court determined that statutory proscriptions against discrimination in housing on the basis of marital status protect not only single, divorced, or widowed individuals, but also protect unmarried cohabiting couples. However, the court held that the non-resident landlords were entitled to a constitutionally-based religious exemption from laws which protect unmarried cohabiting couples from discrimination, due to their religious beliefs against premarital sex. The court came to this conclusion by determining that the "incidental effect" test promulgated by the U.S. Supreme Court in *Employment Div., Dept. of Human Resources of Oregon v. Smith,* 494 U.S. 872 (1990), did not apply to the balancing test and compelling state interest analysis required under the California Constitution. The court concluded that requiring the landlords to choose between adhering to their sincerely held religious beliefs or modifying their behavior to comply with the Fair Employment and Housing Act was an undue burden, and that the state had failed to establish a "compelling interest" in protecting unmarried cohabiting couples against housing discrimination. The Fair Employment and Housing Commission appealed the decision to the California Supreme Court, urging it to adopt the U.S. Supreme Court's restrictive view of the free exercise clause contained in the *Smith* analysis.

The *amicus* brief ADL filed with the California Supreme Court argued that the language and history of California's free exercise clause, combined with the unpersuasive rationale of *Smith,* dictate that the court should continue to apply the compelling state interest analysis. The California Constitution mandates that "[f]ree exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts which are licentious or inconsistent with the peace and safety of the state." The language of the California Constitution free exercise clause significantly differs from the language of the First Amendment, demonstrating "an intent to constitutionally mandate religious exemptions to general laws through the use of the compelling interest test." The brief reviewed the history of the enactment of the California free exercise clause and enjoyment clause, as well as the interpretation of that clause over the years, to support the argument that the clause must be interpreted independently of the First Amendment's free exercise clause.

The brief emphasized that the rationale of the *Smith* decision does not create a "sound reason" for rejecting the compelling state interest test, stating that "[f]rom an analytical standpoint, the legal reasoning utilized by the court in *Smith* has been almost universally rejected." While the brief did not aim to write a critique of the legal reasoning of the *Smith* decision, California's free exercise clause and enjoyment clause jurisprudence reveal a rejection of Justice Scalia's interpretation of federal free exercise law in *Smith.* The brief maintained that California courts have never required a "hybrid" constitutional claim before enforcing the state free exercise clause, that California laws have recognized a religious exemption to neutral laws of general applicability, that sound policy reasons weigh strongly against abandon-

ing California's compelling state interest test, and that the policy rationale delineated in *Smith* is not compelling.

However, as noted earlier, the brief urged the California Supreme Court to reverse the holding of the Court of Appeals, since under the compelling state interest test the Donahues' free exercise of religion rights are not violated by requiring them to rent to an unmarried couple. The brief maintained that renting an apartment to an unmarried couple does not place a substantial burden on the free exercise of religion rights of the nonresident commercial landlords. Moreover, the state's interest in eliminating housing discrimination and protecting prospective tenants' constitutionally mandated privacy and associational rights provide compelling reasons to outweigh the minimal burdens placed upon the Donahues.

C. Restrictive Clubs

Louisiana Debating and Literary Association v. New Orleans, Nos. 93-0658, 93-0660, 93-0661 (U.S. District Court., E.D. Louisiana)

This case involves a challenge to the constitutionality of a New Orleans city code provision which provides specific guidelines for determining when a social or business club is not a distinctly private club exempt from public accommodation laws. ADL filed a brief supporting the city of New Orleans.

ADL's brief begins by asserting that New Orleans code chapter 40C comports with the factors which the Supreme Court has previously found relevant in determining whether an establishment is or is not legitimately private. Among other things, such factors include the club's size, its provision of meal service to non-members on a regular basis, and its receipt of payments from or on behalf of non-members for the use of its services and facilities.

The brief next contends that "Chapter 40C does not unconstitutionally infringe expressive association rights." Acknowledging that the code provision touches on associational rights, the brief points out that the city of New Orleans has a "compelling interest in exposing and eliminating an institutional barrier to women and minorities attaining equal access to business opportunities and professional advancement." Chapter 40C does not suppress ideas, and makes no distinction among clubs based upon any "constitutionally impermissible criteria." On the contrary, its provisions are "content neutral and narrowly drawn to accomplish New Orleans' goal of eliminating discrimination in restrictive clubs that advance members' professional careers and business contacts."

After submitting its brief, ADL learned that at least one of several plaintiffs involved planned to drop its facial challenge to Chapter 40C, and others may follow its lead. If the litigation proceeds as a challenge by these clubs to the code provision only as it applies to them, ADL's brief will have served its purpose.

D. The Arab Boycott

Israel Aircraft Industries, Ltd. v. Sanwa Business Credit Corporation and Sanwa Bank of Japan, No. 93-1949 (7th Circuit)

The Anti-Defamation League recently filed its second *amicus curiae* brief in the above case which is now before the U.S. Court of Appeals for the Seventh Circuit[7].

In this lawsuit, Israel Aircraft alleges that it was on the verge of a credit agreement with another company when Sanwa withdrew, stating that they would not extend credit to the venture because of its ties to Israel. Sanwa is headquartered in Osaka, Japan. ADL's *amicus* brief urges the Court of Appeals to overturn the District Court's ruling that Israel Aircraft does not have a private right of action under the Export Administration Act ("EAA") to file a lawsuit claiming violation of the EAA's antiboycott provisions.

In light of the League's vital interest in enforcement of the antiboycott provisions of

[7]The District Court ruled for the defendant, *Israel Aircraft Industries Ltd. v. Sanwa Business Credit Corporation and Sanwa Bank of Japan,* No. 92 C 6036 (N.D. Ill. March 18, 1993).

the EAA, ADL submitted the brief "to emphasize the impact and magnitude of the Arab boycott and to clarify the historical context and legislative history of the EAA." Focusing specifically on the private right of action question, the brief states: "the language of the EAA, the legislative history and the context in which the antiboycott provisions were adopted clearly demonstrate that Congress intended that private rights of action would be available to augment the executive branch's enforcement of the EAA."[8]

ADL's brief seeks to provide the Seventh Circuit with a historical perspective, describing the inception, expansion, and growing impact of the Arab boycott of Israel. The brief also discusses the methods by which the boycott has been enforced by the Arab League, and its discriminatory effects on companies and individuals. The brief then reviews the enactment of the federal antiboycott provisions, which Congress adopted in 1977 primarily to deal with the unfairness and discrimination implicit in the Arab boycott of Israel, and details the continuing effects of the Arab boycott.

According to ADL's brief, the antiboycott provisions were intended to protect the civil rights of a special class. This special class includes people discriminated against on the basis of race, religion, sex, or national origin; nationals, residents and business concerns of boycotted countries; and American Jews as well as U.S. companies employing American Jews or supporting Jewish organizations. Also, the legislative history and language of the statute demonstrate an intent to create a private right of action for victims of the Arab boycott of Israel. Finally, the preemption of state and local boycott discrimination laws demonstrates that Congress intended to permit private rights of action under the EAA.

The brief concludes that "the EAA's antiboycott provisions were intended to protect victims of the Arab boycott, both by permitting them judicial redress and by prohibiting any further participation in the boycott. These purposes can only be served by recognition of a private right of action under the EAA."

ADL was joined in filing this brief by the International Association of Jewish Lawyers and Jurists.

E. Discriminatory Judicial Proceedings

***Ex Parte Ricardo Aldape Guerra*, No. H-93-290 (U.S. District Court, S.D. Texas)**

This case in the U.S. District Court for the Southern District of Texas, Houston Division, concerns the admissibility of evidence regarding a defendant's illegal alien status in a capital sentencing proceeding. Ricardo Aldape Guerra, an illegal alien from Mexico, was sentenced to death by a Texas jury in connection with the shooting death of a Houston police officer, James D. Harris, in July of 1982. Under Texas law, the death penalty can only be imposed where the jury affirmatively responds to three "special issues." One of these special issues is "whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society."

In the *Guerra* case, the prosecution was permitted to instruct four jurors during *voir dire* that defendant's alleged entry into the United States without proper documentation was relevant to the aforementioned issue. In addition, the prosecution was permitted to refer to Guerra's illegal alien status in its closing argument to the jury.

ADL has joined an *amicus* brief on behalf of the defendant, alleging as a "point of error" that "the trial court violated the Texas rules of evidence and the Fourteenth Amendment of the United States Constitution in ruling that entry into the United States without proper documentation can be considered by a capital sentencing jury as evidence of the probability that an individual would commit criminal acts of violence in the future." The brief was prepared by the Washington office of McKenna & Cuneo,

[8] The only two reported decisions which deal with this issue reached opposite conclusions. In *Bulk Oil (Zug) v. Sun Company, Inc.* 583 F.Supp. 1134 (S.D.N.Y. 1983), *aff'd without op.* 742 F.2d 143 (2d Cir. 1984) the court ruled that there was no implied private right of action under the EAA, and in *Abrams v. Baylor College of Medicine*, 581 F.Supp. 1570 (S.D. Tex. 1984), *aff'd in part and rev'd in part*, 805 F.2d 528 (5th Cir. 1986) the court determined that there was indeed an implied private right of action. ADL participated as *amicus curiae* in both cases.

and originally filed by the American Immigration Lawyers Association, the American Immigration Law Foundation, the Hispanic Bar Association, the Lawyers Committee for Civil Rights Under Law of Texas, the League of United Latin American Citizens, the Mexican American Bar Associations of Texas and Houston, and the Texas Catholic Conference.

The first portion of the brief asserts that under the Texas rules of evidence and the Fourteenth Amendment, "the probative value of evidence submitted in a capital sentencing proceeding must outweigh the risk of unfair prejudice." The brief notes that the federal government, which is responsible for enforcing the immigration laws, does not generally treat illegal entry as a criminal offense, and that federal immigration law does not consider illegal entry as evidence of bad "moral character." The brief further refers to Congressional findings regarding contributions made to this country by undocumented aliens, and to empirical data which purportedly demonstrate that illegal aliens are less likely to commit crimes than other members of our society. The brief thus concludes that evidence of defendant's illegal alien status lacked probative value.

The brief then asserts that "[t]he arguments concerning Mr. Aldape Guerra's undocumented entry not only lacked probative value, but also were highly prejudicial." According to the brief:

> Studies of public attitudes show that, both nationally and in Houston, undocumented immigrants were subjected by the public to extremely negative stereotypes at the time of Mr. Aldape Guerra's trial. Among other things, undocumented immigrants were viewed as being more likely than the population at large to commit crimes, a stereotype not supported by the data.

The second portion of the brief argues that "the manner in which the State used such evidence here violated constitutional standards for capital sentencing." According to the brief:

> The State played into the stereotype that illegal immigrants are bad people who deserve condemnation. Indeed, the State argued its case in such a manner that a reasonable juror could well have understood that Texas law actually endorses prejudice against undocumented aliens.

The brief expands on this argument at some length, concluding with a section asserting that "the State's use of evidence of illegal entry in this case resulted in arbitrary and racially motivated imposition of the death penalty in violation of the U.S. Constitution.

F. Discrimination Against Homosexuals

Evans v. Romer, 854 P.2d 1270 (1993)

In November of 1992, plaintiffs filed this suit seeking a declaration that the just-passed "Amendment 2" to the Colorado State Constitution is unconstitutional. The Amendment provides that the State shall not:

> enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of, or entitle any person or class of persons to have any claim of minority status, quota preferences, protected status or claim of discrimination.

In January of 1993, plaintiffs' motion for a preliminary injunction barring enforcement of Amendment 2 was granted, and the State of Colorado appealed. ADL joined an *amicus* brief in support of the plaintiffs, filed by the American Jewish Committee and the United Church of Christ Office of Church in Society.

The essential point of the brief is that Amendment 2 infringes upon fundamental rights and must therefore satisfy the "strict scrutiny" standard of review. The brief argued that the Amendment, by prohibiting protection against discrimination based on sexual orientation, will curtail "the exercise by gays of their freedom of association for

the purpose of combatting, preventing or prohibiting the very discrimination authorized by that Amendment." In addition, the Amendment infringes upon a gay citizen's fundamental right to petition government for redress of his or her grievances. Thus, Amendment 2 must by justified by a "compelling State interest," which, the brief argues, it clearly is not.

The brief further asserted that the Amendment also fails to satisfy a lesser standard of scrutiny, since it lacks even a "legitimate" state interest. In conclusion the brief stated that "to allow the right to discriminate against homosexuals prescribed in Amendment 2 to take effect in Colorado is to declare open season on homosexuals and those who would protest such discrimination."

In July 1993, the Colorado Supreme Court agreed that the Amendment did infringe on the plaintiffs' fundamental right to participate on an equal basis in the political process. The Court upheld the lower court's preliminary injunction barring its enforcement.

G. Discrimination by a Foreign Government

Siderman de Blake v. Republic of Argentina, 965 F.2d 699 (9th Cir. 1992), *cert. denied*, 113 S.Ct. 1812 (1993)

The U.S. Supreme Court denied *certiorari* in this case, letting stand a May 1992 decision of the Ninth Circuit Court of Appeals that Argentina had waived its immunity from suit under the Foreign Sovereign Immunity Act ("FSIA") for claims of torture and expropriation of property made by the Siderman family. The appellate court, in remanding to the district court, vacated the district court's judgment dismissing the claims.

ADL had filed an *amicus* brief with the Ninth Circuit in this case, arguing that the district court had improperly granted Argentina immunity under the FSIA's Act of State Doctrine. *Siderman v. Argentina* revolves around the confiscation of property and acts of torture committed against the Siderman family in Argentina by the Argentine military junta which seized power in 1976. The Sidermans were among the many victims of the Argentine military, whose rule from 1976 to 1983 was characterized not only by virulent anti-Semitism, but also by kidnappings, torture, and the "disappearances" of thousands of Argentine citizens.

Jose Siderman was a prominent Argentine Jew who miraculously survived being kidnapped, beaten, and tortured. He and his family ultimately found a safe haven in the United States. After the Siderman family fled here, their assets, including the largest hotel in northern Argentina and other significant real estate holdings, were confiscated. When their initial efforts to obtain redress in Argentina failed, they initiated a lawsuit in this country. At that time, ADL supported their complaint in federal district court with an *amicus* brief which detailed a pattern of anti-Semitism in Argentina and argued that U.S. courts have jurisdiction to redress injuries such as those the Sidermans suffered.

In 1984, the district court issued a default judgment in favor of the Sidermans. However, that judgment was vacated a year later when a representative of the Argentine government appeared in court for the first time in the case and invoked the Foreign Sovereign Immunities Act.

The Sidermans chose not to appeal the district court's decision immediately. Instead, they again sought to obtain redress in Argentina, where the military was no longer in power. However, after several years their efforts proved fruitless, prompting a decision to return again to the U.S. courts.

In ADL's brief supporting the Sidermans' appeal to the Ninth Circuit, the focus again was on anti-Semitism in Argentina, both historically and specifically under the rule of the military junta. In addition, the ADL brief argued that the facts of the *Siderman* case bring it within an exception to the Act of State doctrine and consequently the district court erred in applying that doctrine.

The judicially created Act of State doctrine allows U.S. courts to abstain from deciding a case involving an international transaction on the grounds that one of the actors in the transaction is a foreign state. What has come to be known as the *Bernstein*

exception to the doctrine precludes its application by the courts if the U.S. State Department informs the court that the executive branch has determined application of the doctrine to be unnecessary.

In the brief, ADL contended that *Bernstein* stands for the general proposition that the Act of State doctrine does not bar claims for property seized by a foreign government based on religious discrimination. Furthermore, the brief pointed out that the Sidermans' property was confiscated by a regime no longer in power, and therefore "it can hardly be argued that a court's consideration of this case could embarrass the Executive's conduct of foreign affairs." Finally, the brief noted that the treatment of the Sidermans was also a violation of international law which U.S. courts should redress.

The Ninth Circuit held that the Sidermans' expropriation claims "allege sufficient facts to bring [them] within both the commercial activity and international takings exceptions to the FSIA's grant of foreign sovereign immunity." On remand, Argentina may seek to challenge this with its own evidence. "Under the procedures our circuit has developed for considering jurisdiction under the FSIA, Argentina now bears the burden of proving by a preponderance of evidence that none of the FSIA exceptions applies to the Sidermans' claims." The district court erred, stated the Ninth Circuit, because it acted on its own initiative when it dismissed the expropriation claims, instead of requiring Argentina to refute them.

The court also concluded that Argentina would be in violation of international law were it established that it tortured Jose Siderman. Under the *jus cogens* theory, when a foreign state transgresses from international norms of behavior, it loses its sovereign immunity from actions brought against it for those transgressions. The court, however, refused to allow *jus cogens* to supersede the "affirmative Act of Congress," the FSIA. "Clearly, the FSIA does not specifically provide for an exception to sovereign immunity based on *jus cogens*...[I]f violations of *jus cogens* committed outside the United States are to be exceptions to immunity, Congress must make them so."

The court also found no treaty exceptions to the FSIA, as the Sidermans had urged. However, the court found that "Argentina has implicitly waived its sovereign immunity with respect to [the Sidermans'] claims for torture. The evidence indicates that Argentina deliberately involved United States courts in its efforts to persecute Jose Siderman . . . Only because the Sidermans have presented evidence indicating that Argentina's invocation of United States judicial authority was part and parcel of its efforts to torture and persecute Jose Siderman have they advanced a sufficient basis for invoking that same authority with respect to their causes of action for torture."

Hugo Princz v. Federal Republic of Germany, Nos. 92-7247, 93-7006 (D.C. Circuit)

The plaintiff in this case, before the U.S. Court of Appeals for the D.C. Circuit, is an American citizen who was interned in concentration camps and "leased" by the German government for work at I.G. Farben during World War II. He is seeking reparations from Germany. ADL, together with the International Association of Jewish Lawyers and Jurists and faculty members of the American University, Washington College of Law, filed an *amicus curiae* brief urging the court to uphold the district court's decision denying Germany's claim of immunity from suit.

In 1942, 17-year-old Hugo Princz was an American citizen living in Czechoslovakia where his father was engaged in business. About 90 days after war between Germany and the United States was declared, Mr. Princz and his parents, sister, and two brothers were arrested by the Slovak Fascist Police, turned over to the SS and sent to Camp Maidanek in Poland. Mr. Princz believes his parents and sister were killed at Treblinka. After being transferred to Auschwitz, he and his brothers were "leased" as slave labor to I.G. Farben, a German chemical cartel. They worked at Birkenau, a facility near Auschwitz, where Mr. Princz's brothers were starved to death. He was subsequently sent to the Warsaw ghetto camp,

forced on the death march from Warsaw to Dachau, and enslaved at the Messerschmidt underground airplane factory. When U.S. troops liberated the concentration camps, Mr. Princz was identified as an American and sent to a U.S. military hospital, rather than a Displaced Persons Camp. He is the only member of his family to survive the war.

Mr. Princz's reparation claims have been repeatedly denied.[9] In 1992 he filed suit in U.S. District Court for the District of Columbia against the Federal Republic of Germany to recover damages for his enslavement. Germany filed a motion to dismiss for lack of subject matter jurisdiction, relying on the Foreign Sovereign Immunity Act ("FSIA"), 28 U.S.C. §1330 et seq, which extends broad immunity to foreign states. The district court rejected Germany's claims and ordered the case to trial. Germany appealed to the D.C. Circuit.

Asserting that sovereign immunity is "a matter of consent given by the United States to a foreign state as a matter of grace and comity," ADL's brief first refutes Germany's argument that it is immune under the pre-1952 common law of immunity. The brief notes that prior to 1952 the courts adopted a common law policy of deference to the executive branch on questions of sovereign immunity. The Nuremberg trial demonstrates unambiguously that, because of Germany's "utter lawlessness during World War II," the executive branch chose not to allow that country a sovereign immunity defense. It follows, therefore, that if applied today, the pre-1952 common law would not allow Germany sovereign immunity from Mr. Princz's suit. As the brief states,

> Simply put, if the German state is afforded sovereign immunity here, for acts that were the predicate for the absence of immunity at Nuremberg, this Court will undo the international precedent that Nuremberg represents, and confer an "immunity" for the very conduct that Nuremberg condemned, merely because time has passed.

The brief also notes that in *Bernstein v. N.V. Nederlandsche-Amerikaansche Stoomvaart Maatschappij*, 210 F.2d 375 (2d Cir. 1954) ("Bernstein II"), the Second Circuit, consistent with common law doctrine, rejected Germany's "act of state" defense in favor of the State Department's position of "reliev[ing] American courts from any restraint upon the exercise of their jurisdiction to pass upon the validity of the acts of Nazi officials."

The brief next addresses the law of sovereign immunity as found in the FSIA, noting that §1605(a)(1) of the Act provides that immunity that might otherwise exist may be deemed waived "by implication." According to the brief, Germany "waived sovereign immunity by implication by its egregious violations of the most fundamental and universally accepted norms of international law, committed knowingly and deliberately against an American."

These "fundamental and universally accepted norms of international law" are characterized by the Latin phrase *jus cogens*, meaning "compelling" or "fundamental." International law does not generally recognize *jus cogens* violations as legitimate acts of a sovereign state. For example, treaties violating *jus cogens* are deemed void. Germany's conduct during World War II generally, and her specific alleged conduct giving rise to Mr. Princz's claims, clearly violated *jus cogens* norms. The brief concludes that a reasonable interpretation of the FSIA would require a court to incorporate universal norms of international law into the waiver provisions. Such an interpretation would include an "implied waiver based upon *jus cogens* violations committed against an American," and would serve to "reconcile the FSIA with accepted principles of international law."

[9] In 1955, Germany's United Restitution Office advised Mr. Princz that he was not eligible for a pension because he was an American citizen at the time of his enslavement. In 1965, Germany's pension law was amended. Mr. Princz understood the amendment as simply extending the time period during which a claim could be made, and therefore, did not file another claim. Germany asserts that Mr. Princz's failure to file a timely claim renders him ineligible. Mr. Princz was also denied monetary relief from a fund of $1.2 billion designated for assistance to survivors who, for excusable reasons, had not filed timely pension applications. A further attempt to obtain restitution in the late 1980s also failed.

IV. Civil Liberties

A. Abortion

Hope v. Perales, 595 N.Y.S.2d 948 (N.Y. App. Div. March 23, 1993)

This decision by the New York Supreme Court, Appellate Division, First Department invalidated, under the New York State Constitution, New York's Parental Care Assistance Program ("PCAP"). ADL's *amicus* brief argued that PCAP violates the free exercise of religion guarantee in Art. I Sec. 3 of the New York State Constitution, which is broader than that of the U.S. Constitution.

PCAP extends pregnancy-related Medicaid benefits to women with family incomes between 100% and 185% of the federal poverty line. The benefits covered by the statute range from prenatal care visits to dental care and transportation, but contain one major exception: PCAP excludes coverage of abortion. Further, the statute contains no exception for coverage in cases where pregnancy would result in extreme physical or mental health damage to the mother or in which prenatal testing, subsidized and, in some cases, required by the program, reveals severe or fatal fetal anomalies.

The New York Supreme Court (New York's trial court) held that the exclusion of coverage for medically necessary abortions violated the New York Constitution's guarantee of due process. The Commissioners of New York State's Departments of Social Services and Health appealed.

ADL's *amicus* brief relied on the state constitutional provision to argue that PCAP burdens the religious freedom of those whose religious convictions counsel consideration of abortion. Further, the brief argued that there is no state interest that justifies this burden on religious freedom. Finally, the brief asserted that the burdens of unwanted pregnancy fall entirely upon pregnant women and that the right to choose abortion is essential to the moral independence and equality of women.

As the brief explained, abortion is a matter which implicates deeply divided religious beliefs. Jewish, Protestant, and Roman Catholic teachings strongly conflict in their views about abortion and a woman's right to terminate a pregnancy. Some counsel abortions in specific situations, some absolutely prohibit it. ADL argued that the government has an obligation to remain neutral in the face of these deeply divided religious beliefs and not codify one view over the others in law. It is the view of *amici* that the lower court erred in finding that PCAP does not violate Art. I, Sec. 3 of the New York State Constitution as this law impermissibly infringes upon religious equality and freedom.

The brief also noted that New York State has a history of broad protection of religious freedom. From the First Constitutional Convention in 1777 until today, New York has played a unique role in safeguarding the religious liberties of minorities. In fact, until the advent of PCAP, New York provided greater access to funding for abortion services than the federal Medicaid program.

Previous case law in New York imposes an obligation upon the state to respect religious beliefs and actions even if such respect requires the state to expend additional funds or modify actions of state officers or agencies. The state may not burden or inhibit actions mandated by religious beliefs. Hence, PCAP is unconstitutional because this discriminatory funding scheme burdens a woman whose religious beliefs mandate abortion under some circumstances. Further, no state interest exists to justify such an impermissible burden.

The brief argued that on an ethical level, the implied condemnation of abortion in PCAP fails to take seriously the moral independence of women. Further, it disregards the emotional and spiritual health needs of pregnant women. The law also inhibits women's capacity to live as equal members of society because it denies them their freedom of reproductive choice.

The *amicus* brief was joined by Catholics for a Free Choice and signed on to by many

other religious groups, including: the American Jewish Committee, the Cathedral of St. John the Divine, United Church of Christ, the National Assembly of Religious Women, the National Coalition of American Nuns, the National Federation of Temple Sisterhoods, the Religious Coalition for Abortion Rights, the General Assembly of the Presbyterian Church (U.S.A.), the Unitarian Universalist Association, and Union Theological Seminary.

In affirming the New York Supreme Court's decision, the Appellate Division held that by providing women "with funds only in connection with prenatal and postpartum care and not otherwise," the effect of PCAP "is certainly to pressure women in the direction of giving birth, thereby limiting the reproductive freedom of those women whose family incomes are between 100 and 185 percent of the poverty level."

Noting that New York courts have consistently interpreted the State Constitution as providing broader protection than the federal Constitution, the majority asserted that PCAP burdens a fundamental right and fails strict scrutiny because it is not narrowly tailored to the state interest it purportedly advances. The Court argued that the statutory abortion exclusion has no relation to the state's interest of "advancing the cause of healthy mothers bearing healthy babies," and "has the effect of forcing needy women to give birth even when this is not medically indicated and is detrimental to their physical and mental well-being." This non-neutrality regarding the exercise of a fundamental right renders PCAP unconstitutional.

The Court, observing that New York makes Medicaid funds available for abortions for impoverished women despite the federal government's failure to reimburse the state for such expenditures, rejected the defendants' argument that PCAP is distinguishable from Medicaid in that women eligible for PCAP are not really needy. This argument fails because PCAP "was enacted precisely because the covered women were believed to warrant financial assistance with prenatal and postpartum expenses."

Finally, the Court agreed with the trial court's determination that "the constitutional defect in PCAP would best be remedied by expanding the ambit of the program to include funding for medically indicated abortions rather than voiding the law in its entirety."

B. Civil Rights Protection

***Bray v. Alexandria Women's Health Clinic*, 914 F.2d 582 (4th Cir. 1990), *rev'd*, 113 S.Ct. 753 (1993)**

In *Bray*, the Supreme Court decided that Operation Rescue's harassment of women seeking to enter a health clinic did not violate the women's civil rights under the Ku Klux Klan Act, codified at 42 U.S.C. 1985, a Reconstruction era statute.

The first clause of § 1985(3), the "deprivation" clause, provides for a civil cause of action:

> If two or more persons...conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws...

In 1989, the Alexandria Women's Health Clinic sought an injunction against Operation Rescue to stop the anti-abortion group from preventing women seeking abortions from entering the health clinic. The U.S. District Court for the Eastern District of Virginia granted a permanent injunction against Operation Rescue.

The district court found that Operation Rescue members and others had trespassed on clinic property and physically blocked access to and exit from clinics in order to prevent patients and prospective patients from receiving medical or counselling services regarding abortion. The court further found that many of these patients travel interstate to reach the clinics. On the basis of these findings, the court held that Operation Rescue had violated the rights of the patients under § 1985. The Fourth Circuit Court of Appeals affirmed this decision.

Operation Rescue appealed to the Supreme Court, arguing that women seek-

ing abortions do not constitute a valid class for purposes of proving Section 1985 class-based animus. The coalition *amicus* brief ADL joined focused on this argument.

First the brief asserted that federal appellate courts have recognized women as a protected class under § 1985. Alternatively, that class can be described as women seeking abortions, a subset of women exercising a particular fundamental constitutional right. Answering Operation Rescue's denial of overt hostility toward women, the brief also noted that gender discrimination has often resulted from a "benign" purpose. Similarly, the Supreme Court has struck down affirmative action plans which, while innocently motivated, violate the civil rights of non-minorities. The brief stated:

> Petitioners' motive may be to prevent abortion, but their avowed purpose is to prevent women and their service providers from engaging in a lawful activity that, while abhorrent to petitioners, is of unique significance to women. Petitioners cannot escape liability for the consequences of their intentional conduct by asserting they were doing the right thing in good faith.

Second, the brief argued that Operation Rescue's conspiracy interfered with the clinic patients' rights to interstate travel and to equal enjoyment of citizenship — in this case, the right to be free of unwanted physical contact and assault, intimidation and coercion.

Justice Scalia, in an opinion joined by Chief Justice Rehnquist and Justices White, Kennedy, and Thomas overturned the lower court rulings. He found that the plaintiffs failed to prove a conspiracy under § 1985(3) because they did not show that "some racial or perhaps otherwise class-based, invidiously discriminatory animus [lay] behind the conspirators actions," or "that the conspiracy 'aimed at interfering with rights' that are protected against private, as well as official encroachment.'"

The Court first held that women seeking abortions do not constitute a protected "class" for purposes of § 1985(3) protection. Furthermore, Justice Scalia concluded that even if "women in general" do constitute a protected class, the defendants actions were not aimed directly at women as a class, and therefore did not meet the "animus" requirement. He also rejected, as contrary to precedent, the argument that "since voluntary abortion is an activity engaged in only by women, to disfavor it is *ipso facto* to discriminate invidiously against women as a class."

The majority next asserted that the plaintiffs failed to show "an intent to deprive persons of a right guaranteed against private impairment." Although interstate travel may be such a right, the majority determined that the right must be "aimed at," and not merely incidentally affected. Furthermore, the Court stated that although the right to abortion was "aimed at" by the defendants, it is not a right protected against private, as well as state, interference.

The second clause of § 1985(3) covers conspiracies "preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws." Justice Scalia rejected any claim under this "hindrance" clause because it was not presented at argument or considered by the lower courts. Had such a claim been presented, however, the Court maintained that it would have suffered from the same infirmities as did the "deprivation" clause claim.

In a brief concurrence, Justice Kennedy noted that although 1985(3) offers the plaintiffs no relief, other statutory alternatives exist to obtain federal assistance "for persons who are injured or threatened by organized lawless conduct that falls within the primary jurisdiction of the States and their local governments."

Justice Souter, concurring in the judgment in part and dissenting in part, agreed that the plaintiffs did not meet the requirements necessary to invoke the protection of the "deprivation" clause, but held not only that the "hindrance" clause claim was properly before the Court, but also that such a claim did not require a class-based motivation or a conspiracy aimed at a right protected against private infringement. He asserted:

> [T]he two conditions at issue almost certainly run counter to the intention of Congress, and...have no application to the ["hindrance"] clause now before us. To extend the conditions to shorten the clause's reach would...render that clause inoperative against a conspiracy to which its terms in their plain meaning clearly should apply, a conspiracy whose perpetrators plan to overwhelm available law enforcement officers, to the point of preventing them from providing a class of victims attempting to exercise a liberty guaranteed by the Constitution with...police protection...

Therefore, Justice Souter concluded, the case should be remanded to the district court for a determination of whether plaintiffs proved a conspiracy actionable under the "hindrance" clause.

Justice Stevens, who was joined by Justice Blackmun, also dissented, finding that the majority ignored "the obvious (and entirely constitutional) congressional intent behind §1985(3) to protect this Nation's citizens from what amounts to the theft of their constitutional rights by organized and violent mobs across the country." He observed that the case "presents a striking, contemporary example of the kind of zealous, politically motivated, lawless conduct that led to the enactment of the Ku Klux Act in 1871," and accused the Court of ignoring the "history, intent, and plain language" of the statute. Justice Stevens next determined that defendants' actions constituted class-based discrimination against women, and unduly burdened the women's constitutional right of interstate travel.

Justice O'Connor, in a dissent joined by Justice Blackmun, also asserted that the majority precluded application of § 1985(3) to a case it was meant to cover. She reviewed the legislative history of § 1985(3), finding that Congress intended to "provide a federal remedy for all classes that seek to exercise their legal rights in unprotected circumstances similar to those of the victims of Klan violence." She determined that women, as a classification meriting heightened scrutiny under the Equal Protection Clause, are protected by § 1985(3), and that the statute "must reach conspiracies whose motivation is directly related to characteristics unique to that class." Any unlawful conspiracy to reach women linked by their ability to become pregnant and seek abortions would, therefore, be covered by the law.

ADL now supports federal legislation to overturn the effects of *Bray*.

C. Immigration

***Sale v. Haitian Centers Council, Inc.*, 969 F.2d 1350 (2d Cir. 1992), *rev'd*, 61 U.S.L.W. 4684 (U.S. June 21, 1993)**

This 8-1 Supreme Court decision upheld a policy, instituted by President Bush and continued under President Clinton, of forced repatriation of Haitian immigrants picked up at sea by the U.S. Coast Guard. By the terms of an Executive Order issued in May of 1992, the Coast Guard was directed to intercept vessels illegally carrying immigrants from Haiti to the U.S. and return the Haitians to their country without first determining whether they would be subject to persecution upon their return, and thus qualify for asylum in the U.S. as political refugees. The Haitian Centers Council, Inc. represented interdicted Haitians complaining that the lack of screening procedures aboard Coast Guard cutters violated their rights to apply for refugee status and avoid repatriation.

ADL filed an *amicus curiae* brief, together with the American Jewish Committee, urging the Court to affirm the federal Court of Appeals ruling that the policy of interdiction at sea violated both U.S. and international law regarding the treatment of refugees. The brief traced the history and policies of the U.S. toward refugees. Placing the difficulties of coping with fleeing Haitians in context, the brief noted that "[n]ever before has this country, no matter how grave the challenges posed by massive migration, adopted a systematic policy of direct return to the country of origin without even elementary screening to identify those who are in genuine danger."

Throughout the argument section, the

brief focused more on history and policy arguments than on legal argumentation. Recalling some painful moments in U.S. history dating back to World War II, the brief stated: "there have always been, in the United States, strains of prejudice, nativism and xenophobia. In the first half of this century, those strains were allowed to dominate our immigration policy, resulting in the refusal of the United States to open its doors to refugees from revolution and genocide." Referring to the "stunning failure of American compassion" which turned away the SS St. Louis, filled with hundreds seeking escape from Germany in 1939, the brief noted that "the will of the United States to admit refugees had been tested, and we had failed that test."

However, the brief pointed out, we have made progress since, and "much of the progress reflect[s] lessons learned from the disheartening experience of U.S. policy in the 1930s and 1940s." Haitians, however, have been consistently "hindered, deterred, and often subjected to discriminatory treatment.

The closing section of the brief asserted that "the history of U.S. response to mass refugee migrations since World War II reveals that the legal guarantees enforced by the court of appeals are entirely consistent with realism about such movements." It continued: "Amici do not minimize the dilemmas created by the sudden and unplanned appearance of large numbers of asylum seekers. But affirmance of the judgment of the court of appeals would leave the United States with numerous options for dealing with such situations."

The question presented to the Court was whether the President, in issuing and executing the Executive Order, violated §243(h)(1) of the Immigration and Nationality Act ("the Act") and Article 33 of the United Nations Convention Relating to the Status of Refugees ("the Convention")[10]. The decision turned on the Court's interpretation of the statutory language of the Act and Convention. Justice Stevens, writing for the majority, made a point of emphasizing that the Court was not passing on the wisdom of the interdiction policy, but merely deciding whether the President's actions were legal. The Court explained its analysis:

> The drafters of the Convention and...the drafters of [the Act] may not have contemplated that any nation would gather fleeing refugees and return them to the one country they had desperately sought to escape; such actions may even violate the spirit of [the Convention]; but a treaty cannot impose uncontemplated extracurricular obligations on those who ratify it through no more than its general humanitarian intent.

The majority held that the Executive Order violated neither the Act nor the Convention. Justice Stevens rejected plaintiffs' claim that §243(h)'s proscription to the Attorney General prohibited the entire executive branch from returning an alien to his homeland. Instead, he found that "Attorney General" cannot "be construed to describe either the President or the Coast Guard." Citing a "presumption that Acts of Congress do not ordinarily apply outside our borders," the Court held that the word "return," coupled with "deport," did not broaden the territorial scope of the statute. Neither, Justice Stevens held, did the 1980 deletion of the phrase "within the United States" extend the scope of the Act to beyond U.S. territorial waters. Finding no evidence of a Congressional intent that the statute apply extraterritorially, the Court noted that "[i]t would have been extraordinary for Congress to make such an important change in the law without any mention of the possible effect."

Turning to the Convention, ratified by the U.S. in 1968, the majority found no tension between President Bush's Executive

[10] §243(h)(1) of the Act, as amended in 1980, reads as follows: "The Attorney General shall not deport or return any alien (other than an alien described in section 1251(a)(4)(D) of this title) to a country if the Attorney General determines that such alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion." The 1980 amendment added the words "or return" and deleted the words "within the United States" which previously appeared after "any alien."

Article 33.1 of the Convention reads as follows: "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

Order and either the Convention's text or its negotiating history. Thus, the Court concluded that although the President's interdiction policy is certainly not mandated by the Act or Convention, neither is it incompatible with the statutory language of U.S. and international law.

In his dissent, Justice Blackmun disagreed with the majority's reading of both the Act and the Convention. He found the Convention's proscription on the "return" of endangered aliens unambiguous and without limitation, and the Court's interpretation violative of the rule that a treaty should be construed according to its ordinary meaning. The dissent also asserted that the records of the negotiating history of the Convention cited by the majority "are not entitled to deference, were never voted on or adopted, probably represent a minority view, and in any event do not address the issue in this case."

Justice Blackmun argued that the Act, too, unambiguously prohibited the return of vulnerable aliens. He concluded that the reference to the Attorney General "does not mean simply that the person who is the Attorney General at the moment is forbidden personally to deport or return any alien," but rather that her agents, which include the Coast Guard, may not do so. Furthermore, Justice Blackmun read the deletion of "within the United States" from the Act as plainly removing any territorial restriction of §243(h), and accused the majority of restoring the very language removed by Congress. He found that the statutory language implies a clear Congressional intent against limiting the section to U.S. territory, and that the majority's presumption against extraterritorial application of U.S. law was, therefore, misplaced. Justice Blackmun concluded:

> The refugees attempting to escape from Haiti do not claim a right of admission to this country. They do not even argue that the Government has no right to intercept their boats. They demand only that the United States, land of refugees and guardian of freedom, cease forcibly driving them back to detention, abuse, and death. That is a modest plea, vindicated by the Treaty and the statute. We should not close our ears to it.

In response to *Sale*, ADL called upon the Clinton administration to take stronger action to restore democratic government to Haiti. ADL's press release noted that the Court's decision makes it especially imperative that economic and political measures be taken to end the repressive military regime there, in order that Haitian refugees attempting to flee their country do not face additional persecution upon their return.

D. Voting Rights

Johnson v. De Grandy, U.S. Supreme Court No. 92-519 (case below 794 F. Supp. 1076 (1992))

This case, which is pending before the U.S. Supreme Court, deals with the legality of Florida's legislative reapportionment plans under the Voting Rights Act. ADL's *amicus* brief addresses the broad issues raised by the case without supporting either party.

Under the Voting Rights Act, which was enacted in 1965 and amended by Congress in 1982, a reapportionment plan is illegal if individuals of a particular race or color will "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. §1973. The essential point of ADL's *amicus* brief is that such a determination must be based on consideration of the "totality of the circumstances," and not merely a finding that the proposed plan fails to maximize the number of districts in which a particular racial or ethnic group constitutes the majority of the population.

ADL's brief argues that courts are not required, in evaluating reapportionment plans under the Voting Rights Act, to maximize the number of "majority-minority districts", i.e., districts in which racial or ethnic minorities constitute the majority of the voting age population. As stated in the brief:

> A methodology that fixates on providing maximum possible minority representation or mathematically

equivalent representation is flawed because the Voting Rights Act does not guarantee any racial or ethnic class either maximum feasible voting strength or proportionate representation.

Rather, reapportionment plans should only be invalidated if "based on the totality of the circumstances the State's plan would cause a minority class to have less than an equal opportunity to participate in the political process or elect candidates they support." Determination of a violation of the Act "necessitates a probing and thoughtful consideration of numerous historical, social, economic, legal and political factors."

The brief discusses the seminal Voting Rights Act case of *Thornburg v. Gingles,* 478 U.S. 30 (1986), in which the Supreme Court held that the following three conditions must exist for there to be a violation of the Voting Rights Act:

1) the minority group is sufficiently large and geographically compact to constitute a majority in a single member district;

2) the minority group is politically cohesive; and

3) the white majority votes sufficiently as a bloc to enable it – in the absence of special circumstances – to usually defeat the minority's preferred candidate.

According to ADL's brief, while the above conditions establish that a plan is *potentially* discriminatory, they do not conclusively prove that the proposed reapportionment plan is invalid.

In the final portion of the brief, a mathematical example is used to prove that reliance on the "maximization principle" could lead to the "distorted result" of a racial or ethnic minority having effective control of more than a majority of districts. By means of another mathematical example involving two politically cohesive minority classes, the brief demonstrates that the maximization principle loses its legitimacy "as the number of racial and ethnic classes increases, each demanding their own districts from the limited number available."

The brief concludes by stating that although ADL supports the basic principles behind the Voting Rights Act, the League

strongly opposes the notion that each racial and ethnic group in America has a right to electoral success in a proscribed number of seats in government... Guaranteeing proportional or maximum minority electoral success is misguided, and is a certain step down the path to racial and ethnic political separatism.

E. Freedom of Speech

Simon Wiesenthal Center for Holocaust Studies v. McCalden, No. 91-1643, cert. denied 112 S.Ct. 2306 (1992)

The U.S. Supreme Court denied *certiorari* in this case, letting stand a U.S. Court of Appeals for the Ninth Circuit decision with disturbing First Amendment implications. Although the case was subsequently settled, ADL had filed an *amicus* brief urging the Court to grant the petition for *certiorari.*

In 1984, Holocaust denier David McCalden contracted for exhibit space at a meeting of the California Library Association and announced plans to give a presentation there which he entitled "Free Speech and the Holocaust" and described as "an overview from several speakers of the severe censorship and intellectual terrorism which inhibits any objective, open discussion of this controversial subject." According to the district court's summary of the facts:

After plaintiff [McCalden] entered into the contracts with CLA and prior to the conference, defendants allegedly engaged in a series of acts designed to prevent plaintiff from presenting his proposed exhibit and oral presentation. Defendant American Jewish Committee contacted representatives of CLA and informed them that if plaintiff's contracts were not canceled, the conference would be disrupted, property would be damaged, and CLA would

> be "wiped out." Defendant City of Los Angeles acting through its City Council, passed a unanimous resolution to request that CLA remove plaintiff from the conference.... Plaintiff believes that defendants participated in a deliberate and concerted effort through the application of political pressure and threats of political sanctions to force CLA to cancel its contracts with plaintiff, and as a result of defendants' actions, CLA canceled plaintiff's exhibit and program.

McCalden's original complaint, which included allegations of contract interference and violation of his civil rights, was dismissed by the district court. However, on appeal a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit overturned that decision by a 2-1 vote, allowing McCalden to proceed. The Jewish organizations and the City of Los Angeles sought a rehearing *en banc*, but that too was rejected. However, five judges disagreed, and two of them wrote eloquent and forceful dissents. According to one: "If the defendants—operating at the core of the First Amendment—can be subjected to a lawsuit for extortion based on a handful of conclusory allegations, one wonders and worries who else can so easily be dragged into the quagmire of litigation." A petition for *certiorari* was filed by the Wiesenthal Center, the American Jewish Committee and the City of Los Angeles.

ADL's *amicus* brief in support of this petition began by stating that the decision below has significant implications for the exercise of First Amendment freedoms. "The precise constitutional question posed by this case," is "whether and under what circumstances speech negatively affecting contractual relations may be penalized by a tort." The brief then gave several examples:

> A primary institutional mission of the ADL is to oppose all forms of anti-Semitic propaganda. This mission sometimes entails the disagreeable task of informing bookstores of the anti-Semitic nature of books they have contracted to sell, or radio stations of the anti-Semitic nature of the programs they have contracted to broadcast, or concert halls of the anti-Semitic nature of the speakers they have contracted to feature. Although this speech involves matters of public concern, it is fettered and constrained by uncertainty over the reach of the tort of contractual interference. ADL is forced to "steer far wide of the unlawful zone" for fear of potential liability....The decision of the Ninth Circuit in this case will deepen this inhibition.

ADL's brief next contended that the decision of the Ninth Circuit "applies a patently incorrect First Amendment standard." The conduct which the Ninth Circuit found unprotected consists of threats to engage in demonstrations. Since demonstrations themselves, even tempestuous and unruly ones, are lawful so long as there is no incitement to imminent violence, "the Ninth Circuit is forced into the anomalous position of concluding that petitioners' 'threat' to hold such a demonstration is constitutionally less protected than the demonstration itself." According to the brief, "one must distinguish between an expression that communicates an actual threat of violence and an expression which announces an intention to engage in protected activity which an auditor fears might turn violent. The latter merits constitutional protection; the former does not."

Addressing the question of how this distinction can be made, the brief suggested that it should depend upon the intentions of the speaker. "Petitioners have a right to constitutional protection if their intent was merely to affect the relevant contractual relationship by virtue of proposed demonstrations, however volatile; but they have no such right if their intent was to affect the contract rights through threats of violence."

In this case, if the correct First Amendment standard had been followed, the claim of tortious interference with contract should have been dismissed.

> Because the speech involved in this case is concededly about matters of