



BOULDER COUNTY BAR ONLINE NEWSLETTER

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O C T O B E R 2 0 0 2



THE UNPATRIOTIC ACT

By Seth Benezra

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I write a column that will appear on the one year anniversary. Not of the tragedy of September 11, 2001. Others (journalists, poets, song-writers) are better equipped to memorialize that horrific event. Rather, this column will appear on or about the one year anniversary of the ironically named USA Patriot Act. I say "ironically" because I suspect that there are few true patriots who would support the Act's overly intrusive encroachment on our constitutional and civil rights.

law enforcement procedure. For example, Laura W. Murphy, Director of the American Civil Liberty Union in Washington D.C., has stated: "This law is based on the faulty assumption that safety must come at the expense of civil liberties . . . The USA Patriot Act gives law enforcement agencies nationwide extraordinary new powers unchecked by meaningful judicial review." Other organizations of lawyers and citizens have joined in condemning various provisions of the Act, including the American Immigration Lawyers Association, Arab American Institute, Asian American Legal Defense & Education Fund, Center for Democracy and Technology, DC Prisoners' Legal Services Project, Electronic Privacy Information Center, Equal Justice Program of Howard University Law School, Friends Committee on National Legislation, Lawyers Committee for Human Rights, Legal Action Center, Legal Aid Society of New York, National Association for the Advancement of Colored People, National Black Police Association, Unitarian Universalist Association of Congregations, Washington Council of Lawyers, and World Organization Against Torture.

The history of the Act and a critique of its major provisions follow:

First, although the USA Patriot Act was passed by overwhelming margins in both the Senate (98 to 1) and the House of Representatives (356 to 66), the 342-page law has been criticized by civil libertarians and constitutional rights groups as overstepping the bounds of proper

**LONGMONT
LAWYERS'
HAPPY HOUR
OCTOBER 10, 2002
SEE PAGE 10
FOR RESERVATIONS**

**ANNUAL JUDGES' DINNER
NOVEMBER 13, 2002
5:30 COCKTAILS 6:30 DINNER
THE ACADEMY, 9TH AND AURORA STREETS
RESERVATIONS ON PAGE 3**

(continued on page 3)

OCTOBER 2002 *(Details for programs on page 6)*

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1	2 Criminal Family Law	3 Natural Resources	4	5
6	7	8 Employment	9 Real Estate Family Law	10 Longmont Board Mtng.	11 Bankruptcy	12
13	14	15 Business	16 ADR/Family Law Family N/B	17 ADR/Civil Litigation	18	19
20	21	22	23 Criminal Law Tax Estate	24	25	26
27	28	29	30			

THE UNPATRIOTIC ACT *(continued from page 1)*

The Boulder City Council has also passed a resolution strongly condemning the Act. According to the Boulder City Council's resolution, the city's police department will be strongly discouraged from cooperating with federal authorities who invoke the provisions of the anti-terrorism legislation. Boulder joins with several other municipalities including Denver, Colorado; Cambridge, North Hampton, Amherst and Leverett, Massachusetts; and Carrboro, North Carolina, all of which have called the Act a potential threat to the civil rights of their citizens.

So what is causing these groups' concern? First, the provisions of the Act are far-reaching. The thrust of the Act's surveillance provisions is to provide federal agencies with more surveillance options and less judicial supervision. As federal criminal practitioners are aware, the principal statute governing electronic surveillance in criminal investigations, Title III of the Crime Control and Safe Streets Act of 1968, tried to meet concerns the Supreme Court had articulated about the constitutionality of electronic surveillance under the Fourth Amendment. It limited the scope of surveillance and provided for a judicial check. Except in certain emergency cases, applicants for

a Title III warrant must persuade a judicial officer that they have probable cause that the interception they seek may provide evidence of one of a number of listed offenses. The court order permitting surveillance, like the statute, requires investigators to submit to various forms of limitations and judicial supervision. For example, investigators are typically required to report periodically to the Court on the results of wiretaps and periodically reapply to continue surveillance. Investigators are required to "minimize" or stop recording conversations not related to alleged criminal activity. Evidence intercepted in violation of Title III's central provisions is arguably inadmissible in court.

The Foreign Intelligence Surveillance Act of 1978 (FISA), on the other hand, is intended to allow government officials access to information about the activities of foreign persons and agents (as opposed to "U.S. persons"). Judicial involvement in deciding whether to issue orders permitting this type of surveillance is minimal. Instead of requiring probable cause, surveil-

(continued on page 12)

ANNUAL JUDGES' DINNER

Wednesday, November 13, 2002

Cocktails 5:30 pm, Dinner 6:30 pm
The Academy
970 Aurora in Boulder

\$40 Per Person

Name(s) _____

My payment for _____ is enclosed.

1942 Broadway, Suite 205
Boulder, Colorado 80304

COLORADO TAXPAYERS ELIGIBILITY FOR TAX RELIEF DUE TO WEATHER-RELATED LOSSES

By Cathy A. Ziemba, C.P.A.

Weather conditions this year in Colorado have caused substantial losses to many individuals and businesses. Federal and Colorado tax laws offer those suffering economic losses some unique avenues to obtain special tax benefits not available in normal years.

Definition & Types of Losses

Damage to, destruction of, or loss of property is a casualty if it results from an identifiable event that is sudden, unexpected, or unusual. A deduction can be claimed for the uninsured portion of loss resulting from most sorts of catastrophes such as fires, floods, tornadoes, earthquakes, burglaries, vandalism, or car accidents.

A casualty loss related to personal-use property (homes, garages, cars, etc.) is limited to the lesser of: (1) the property's adjusted basis (generally its cost), or (2) its decline in value regardless whether the property is totally destroyed or merely impaired. A loss is further reduced by any insurance reimbursement and other compensation received and salvage value. On personal-use real

property, the decline in value should be measured as a whole, including improvements, and not as separate components.

Personal-use property losses are deductible to the extent they exceed \$100 (per loss) and ten percent of a taxpayer's adjusted gross income (in total) after any insurance reimbursement. Due to these limitations, many smaller losses are ineligible for deduction.

A casualty loss for business or investment property is determined using almost the same rules as for personal-use property although specific valuation rules apply. Losses on business property and income-producing property are not subject to the \$100 and ten percent limits.

Effect of Insurance and Timing of Deduction

Individuals or businesses receiving insurance or other type of reimbursement following a casualty must subtract the reimbursement when figuring their loss and no loss is allowed to the extent of reimbursement. As a general rule, casualty losses must be

reported in the tax year the casualty occurred. The timing of the casualty deduction on a tax return and when reimbursement of losses is received is an important aspect of this topic and care should be taken to carefully consider these issues.

Valuing Losses

The declination in value after a large casualty occurs should be determined by a competent appraiser. The cost of repairs to damaged property may be used to evidence the loss in value if certain conditions are met. An appraisal made for the purpose of getting a federal loan or federal loan guarantee following a presidentially-declared disaster can also be used to document the loss claimed. The IRS will generally require a certified appraiser to determine real estate values and special items such as artwork, collections, jewelry, boats, etc.

Presidentially-Declared Disasters

A presidentially-declared disaster is a disaster that occurs in an area declared by the President to be eligible for federal assistance under the

PROFESSIONALISM REFORM INITIATIVE

Being concerned about the declining respect for lawyers and the public's loss of confidence in the justice system as a whole, Laird Milburn, during his tenure as CBA president, appointed the CBA Professional Reform Task Force. The Colorado Bar Association was the first state bar association to create such a task force.

The Professionalism Reform Initiative (PRI) is a project of the National Conference of Bar Presidents. Its membership consists of judges, lawyers and non-lawyers who have adopted the following mission statement:

"To increase public trust and confidence in the justice system and maintain the relevance of the legal profession in that system by promoting and nurturing effective professional reform."

Recent surveys confirm the low regard the public has for our profession. There are many explanations for the public's low opinion of our profession, and the legal profession is hardly alone when it comes to examples of dishonest behavior. Well known journalists and historians

have admitted fabricating stories and plagiarizing their work; business leaders are falling by the dozens for misleading their stockholders; and respected college coaches have lost their positions when it is learned they have falsified their resumes. Our society rewards winners, and the temptations to shade the truth in order to win are ever-present. But, as PRI stresses, "American lawyers must have the integrity and the moral courage to rise above" these temptations because, as officers of the court and stewards of the rule of law, they have special obligations to the system and to third parties that sometimes outweigh their obligations to their clients. Thus,

[L]awyers who do not tell the truth in the course of their professional activities - whether this happens often or infrequently - have a significant negative impact on the operation of the justice system. When clients, judges, and other lawyers encounter even a few instances of dishonesty, the system rapidly descends into a spiral of mistrust and inefficiency, as every point of consequence must be double-checked rather than taken at face

value.

In order for lawyers to be fully restored to their necessary positions of trust, they must emphasize truthfulness and honesty as their stock-in-trade. That is the bold challenge implicit in PRI's first project.

The CBA PRI Task Force formed five working groups to explore the issues that may arise in several settings in which lawyer dishonesty may be observed: (1) lawyers appearing before courts and other tribunals, (2) lawyers' relationships with their clients, (3) lawyers dealing with other lawyers, (4) lawyers and the public; and (5) law schools. The full Task Force met four times, each working group meeting at least twice before issuing preliminary reports to the whole Task Force.

Conclusions of the Task Force

While there was not unanimous agreement on what constitutes "lying" or on the scope and extent of the problem, there was a broad consensus that lawyer dishonesty is a problem in our profession that should be addressed by the bar association. The working groups explored various forms of dishonesty, ranging from minor (dodging client phone calls with "white lies") to egregious examples (misrepresenting facts or law to the court, shifting blame for adverse results to judges or others, padding time records to meet billable hours targets and false and misleading advertising). We also considered more subtle forms of deception, such as half-truths, negotiating tactics and hide-the-ball approaches to discovery. The lawyer/tribunal working group, which included several

(continued on page 8)

Non-Adversarial Communication Training

For ADR professionals/attorneys who want to help difficult clients better meet their needs while increasing satisfaction -- your own and your client's!

Two-Day Workshop Dates: Friday & Saturday, November 15, 16
16 CLE credits have been awarded to the program

Facilitated By: CONNECTION PARTNERS, INC.
Arlene Brownell, Ph.D., Co-president of Boulder CCMO
Tom Bache-Wiig, Past President, Boulder CCMO

Cost \$260 (15 days prior to training date)
To register and for more information, contact Connection Partners, Inc.
303.449.2553 or www.connectionpartners.com

CALENDAR OF EVENTS

Pre-registration is required for all BCBA CLE programs. Please send a check to the Bar office at least 3 days in advance. You will be charged for your lunch if you make a reservation and do not call to cancel prior to the CLE meeting. BCBA CLE's cost \$15 per credit hour for members and \$18 for non-members unless otherwise noted.

CLE credit is \$5 per hour for members of the Young Lawyer Section practicing 3 years or less.

Materials are \$5 without CLE credit.

October 2, 2002

Criminal Law Section

Ethics and the Pautler Decision

H. Patrick Furman

12:00 Noon

Justice Center Courtroom E

1 Ethics, 1 General

October 2, 2002

Family Law Nuts and Bolts

Property, Debt, Maintenance,

Temporary Orders

Presenters: Magistrate Norma Sierra

Bev Nelson, Esq.

7-9 pm

2 General, 1.1 Ethics

See Page 10 for Registration

October 3, 2002

Natural Resources/Environmental Law Section

Substitute Supply Plans

Speaker: Michael Browning

12 Noon

Porzak, Browning & Bushong

929 Pearl Street, Suite 300

CLE \$15

Boxed Lunch \$10

(turkey, veggie or beef)

October 8, 2002

Employment Law Section

Drake v. TalMor Capital Management

Speaker: Seth Benezra or John Culver

Caplan & Earnest, LLC

12 Noon

CLE \$15, Boxed Lunch \$10

(turkey, veggie, or beef)

October 9, 2002

Family Law Nuts and Bolts

Evidence in Domestic Relations Cases

and Trial Overview:

The Judge's Perspective

Presenters: David Johnson, Esq. and

Judge Carol Glowinsky

7-9 pm

2 General, 1.1 Ethics

See Page 10 for Registration

Real Estate Law Section

Insurance Issues in

Real Estate Transactions

Speaker: David Camp

Dolan's Restaurant, Boulder

12 Noon

CLE \$15, Lunch \$13

October 10, 2002

4:00 Board Meeting

Happy Hour 5:30

See Page 10 for Registration

October 15, 2002

Business Law Section

Business Counsel Responsibilities

in the New Environment

Professor Ted Fflis, CU Law School

12 Noon

Hutchinson, Black and Cook, Boulder

CLE \$15, Boxed Lunch \$10

(turkey, veggie, or beef)

General & ethics applied for

October 16, 2002

Family Law Nuts and Bolts

Final Agreements, Mediation and ADR

The Trial and Final Preparations

Presenters: Bob Cooper, Esq.

and Christie Coates, Esq.

7-9 pm

2 General, 1.1 Ethics

See Page 10 for Registration

October 16, 2002

Family Law and ADR Sections

Collaborative Divorce

Boulder County Justice Center

Courtroom C

12 Noon Brown Bag Lunch

CLE \$15

October 17, 2002

ADR and Civil Litigation Sections

Picking the Right Mediator

for the Right Case

Speakers: Rich Kaudy, Scott Landry,

Judge Virginia Chavez, Larry Lee

and Steve Clymer

12 Noon at Dolan's

CLE \$15, Lunch \$13

October 23, 2002

Criminal Law Section

30 Ways to Win a DMV Hearing

Abe Hutt

12:00 Noon

Justice Center Courtroom E

Tax, Estate Planning & Probate Section

Drafting and Operational

Issues with FLPs

Speaker: Walter Kingsbery

12 Noon

The Academy, 970 Aurora, Boulder

CLE \$15, Buffet Lunch \$13



LAWYERS' ANNOUNCEMENTS



STEPHANIE M. SELDEN

Is pleased to announce the relocation of her office to

**1406 Pearl Street
Boulder, CO 80302**

Phone 303.444.8686

FAX: 303.444.3223

stef@sseldenlaw.com

Stephanie will continue to focus her practice on Personal Injury and Worker's Compensation.

JAMES R. GHISELLI

Is pleased to announce the formation of Ghiselli Law Offices, PC
8170 Kincross Drive
Boulder, CO 80301

Telephone: 303.378.5955

Fax: 303.530.4071

jrghiselli@attbi.com

Mr. Ghiselli's practice will continue to emphasize commercial litigation involving intellectual property, injunctive relief, business torts and contracts, shareholder and other corporate litigation and trust and estate /probate litigation.

CONGRATULATIONS DAVE!

David Kuosman, a partner in Faegre & Benson's Boulder office, was honored at the Denver Business Journal's annual "Forty Under Forty" awards luncheon on July 25, which highlights young business leaders whose professional and community contributions are shaping the future of the Denver area.

David is Co-Chair of the Boulder County Bar Real Estate Section.

WILLIAM D. MEYER

of Hutchinson, Black and Cook LLC, has been named by the ABA Board of Governors as the ABA representative to the International Legal Assistance Consortium (ILAC) based in Stockholm Sweden. ILAC is a consortium of Bar and human rights organizations intended to coordinate international assistance in post-conflict situations. Bill has just returned from Algeria for Freedom House and ABA Africa Law Initiative Council coordinating plans for future dialogue on violence issues between Islamic fundamentalists and Algerian security forces.

PROFESSIONALISM *(continued from page 5)*

trial court judges, identified many forms of lawyer misbehavior seen in their courtrooms.

The Task Force believes that all these behaviors undermine the integrity of the judicial system, diminish the public's perception of the legal profession and erode trust and confidence in our system of justice.

Some proposed actions or programs may include some or all of the following suggestions that have been made to date by the five working groups.

1. Suggestions of the lawyer/tribunal working group.

- Encourage judges and lawyers to be more proactive in curbing dishonest behavior by lawyers. One way to do so may be more aggressive reporting of lawyer dishonesty to the attorney

regulation counsel under Rule 251.4.

- Encourage, and support, judges to use their inherent powers to sanction lawyers for dishonest behavior.

- Adopt appropriate educational programs for judges and lawyers concerning their responsibilities to the system.

2. Suggestions of the lawyer/client working group.

- The current Rules of Professional Conduct are adequate, and the group agrees that "rule changes would not make honest attorneys more honest or dishonest attorneys more honest."

- Periodic and repeated publication of articles in *The Colorado Lawyer* highlighting the importance of regular, open and honest communications with clients.

- The CBA should develop templates for written or video materials for lawyers to distribute to clients

explaining relevant procedures and conventions. (This suggestion stems from the belief that many clients, under emotional stress, do not understand or hear what their lawyers tell them about what to expect in their case, and they later wrongly believe they were misled or misinformed by the lawyers.)

3. Suggestions of the lawyer/lawyer group.

- Remove all references to "zealous advocacy" from the preamble and comments to the Rules of Professional Conduct.

- Use the occasion of the removal of zealotry from the Rules for seminars and other presentations by well-respected members of the bar on the reasons for its removal and the pernicious effects of dishonesty on a lawyer's reputation, on the well-being of clients, on the public and on the profession as a whole.

- Encourage the inclusion of education in law school and in professional seminars (and in elementary, secondary and undergraduate curricula) on the corrosive effects of dishonesty.

- Encourage individual lawyers to look inward, to examine their own behaviors and to emphasize the spiritually liberating effects of honest and truthful conduct in one's own life.

4. Suggestions of the lawyer/public group.

- Limitations on misleading advertising should be explored.

- Limitations on lawyers' use of the media in connection with pending litigation should be explored.

- Expand our outreach in schools and civic activities to overcome the public perception that lawyers are rich,

(continued on page 14)

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TAX RELIEF DUE TO WEATHER-RELATED LOSSES (*continued from page 4*)

Disaster Relief and Emergency Assistance Act.

Due to the Colorado wildfires that began occurring in the state in April 2002 and subsequent months, President Bush signed a federal disaster declaration on June 19, 2002 announcing tax relief for victims in the affected areas. This declaration, initially covering 56 counties and 2 Indian reservations with three more counties added on August 1, provides relief for individuals and businesses located within the areas, as well as special rules for relief workers, firefighters and taxpayers outside these areas who were significantly affected by the fires.

The biggest relief comes in the form of having the option of claiming unreimbursed disaster-related casualty losses either on a taxpayer's 2001 or 2002 federal income tax return. Individuals or businesses can amend a 2001 return to claim a 2002 loss and receive a refund of previously paid taxes or claim the loss on their 2002 tax return. Taxpayers may want to consider amending their 2001 tax returns in order to obtain a quick refund of taxes paid in 2001 instead of waiting until 2003 to file their 2002 returns.

Eligible taxpayers also have extended times to file and pay their 2001 tax returns.

Drought

Under certain circumstances, droughts can qualify as casualty losses. Gradual and progressive deterioration over a period of years will generally exclude treatment as a casualty loss. But courts have been more lenient than the IRS in allowing losses relating to drought damage. Losses have been allowed for damage to trees and landscaping as well as damage to the foundation of a residential dwelling. Taxpayers have been successful in these cases based on the fact that drought damage became apparent in the year of the drought and were claimed as casualty losses for that year thereby meeting the suddenness requirement. Certain specific steps should be taken by the end of the year if a taxpayer has suffered a sizeable loss that can be directly attributed to this year's drought.

Farmers and ranchers who sell livestock and poultry due to a drought, flood or other weather-related condition may defer the income until the tax year following the year of sale. Sales made prior to the area being declared eligible for federal disaster assistance will also qualify if the condition causing the sale is the reason the area is later designated as eligible for federal assistance.

Colorado recently enacted legislation that allows farmers and ranchers a state income tax credit for 100% of fed-

eral income eligible to be deferred for 2002 and 2003 income tax years on the sale of livestock due to weather-related conditions. Any taxpayer eligible to defer income at the federal level is eligible for this credit.

Summary

The adjusted gross income limitations placed on personal-use casualty losses prevent many individual taxpayers from claiming deductible casualty losses. Losses related to business or investment property, however, are much more likely to be deductible costs.

Taxpayers should obtain and maintain good records to substantiate casualty loss deductions as these deductions seem to come under greater scrutiny by the IRS.

If you have clients that have suffered unrecoverable losses due to a casualty of any kind, they should consult their tax advisor to discuss the deductibility of such events.

*This article was submitted by
Cathy A. Ziembra, C.P.A.
Kingsbery Baris C.P.A.S & P.C.*

FAMILY LAW NUTS AND BOLTS SERIES

Boulder County Bar Association Family Law Section
University of Colorado School of Law
Room 157 7-9 P.M.

- Oct. 2, 2002 Property, Debt, Maintenance, Temporary Orders, 1.1 ethics, 2 general CLE credits
Magistrate Norma Sierra and Bev Nelson
- Oct. 9, 2002 Evidence and Trial Overview: The Judge's Perspective, 1.1 ethics, 2 general CLE credits
David Johnson and Judge Carol Glowinsky
- Oct. 16, 2002 Final Agreements, Mediation and ADR
The Trial and Final Preparations, 1.1 ethics, 2 general CLE credits
Bob Cooper and Christie Coates

Name _____ Address _____ Phone _____

Please register me for the following classes: Individual Class (list dates) _____

*Cost of Individual Classes: BCBA Members \$30 Non-Members \$40 BCBA Young Lawyers \$20
Send your check and registration form to BCBA, 1942 Broadway, Suite 205, Boulder, CO 80302*

LONGMONT LAWYERS



HAPPY HOUR

THURSDAY, OCTOBER 10, 2002

BOARD MEETING 4 PM

HAPPY HOUR 5:30 PM

THE PUMPHOUSE BREWERY

Name _____

Please fax to the Bar office at 303.402.6958 or mail to 1942 Broadway, Suite 205, Boulder, CO 80302



PRO BONO PAGE



Fifty-one cases were referred during the month of August. Thank you to the following attorneys.

Norm Aaronson
Tessa Alexander
Don Alspaugh
Jeff Ballas
John Barrett
Tom Beckman
Bill Benjamin
Howard Bernstein
Jim Christoph
Howard Current
Peter Enichen
Pat Furman
Lance Goff
Don Goulart
John Gstalder
Dave Harrison
Rich Irvin
George Johnson
Clinton Nash
Mike Pipis
Jeff Skovron
Ralph Strebel
Scott Tippet
Jack Wolfe
Bill Zurinkas
Students of CULAPD

Thank you to Parenting Coordinator Shirley Thomas.

Pro Se Program volunteers:
Ann Mygatt
Bev Nelson
Georgianna Scott
Barry Satlow
Wendy Stevens

Pro Bono Corner: Thank you to the law firms who recently committed to 100% firm participation! BCLS looks forward to working with you in the coming months to help you meet your goal.

Boulder County AIDS Project: Thank you to the following attorneys who accepted pro bono referrals for the Boulder County AIDS Project during the month of May and June:

Donn Alspaugh
Paul Bierbaum
Carmen Danielson
Juliet Gilbert
Ruth Irvin
Chris Leh

BCBA Professionalism Committee On-Call Schedule

Oct. 7	Bev Nelson	554-7030
Oct. 14	Christie Coates	443-8524
Oct. 21	Steve Meyrich	440-8238
Oct. 28	Bruce Fest	494-5600

THE UNPATRIOTIC ACT *(continued from page 3)*

lance orders are issued on a certification by the Attorney General that has nothing to do with probable cause. Between 1996 and 2000, out of 4,275 applications for FISA warrants, 4,275 were granted. Challenges to the legality of surveillance are not likely to arise because, among other things, the subjects may never learn that they have been under surveillance.

The USA Patriotic Act allows surveillance of U.S. citizens under FISA standards rather than Title III but allows powers permitted under Title III to be employed, even when there is no probable cause under FISA. Roving wiretaps are a good example of how the powers under Title III have been extended. A roving wiretap allows a person's conversations to be intercepted even if the person uses a cell phone or moves from one phone to another. The authority to issue an order for a roving wiretap already exists under Title III for investigations where probable cause is found by a court. The Act extends the roving wiretap authority to intelligence wiretaps that are authorized secretly and not based on probable cause. The authorization may be nationwide. Once additional telephones that a target uses are being monitored, other users of that telephone will also be subjected to continuing surveillance.

The Act also expands the government's authority to obtain trap and trace orders to personal computers. Trap and trace authority relates to a government's ability to order a telephone company to turn over a list of numbers being dialed to and from a particular telephone. This authority is extended in the Act to provide

access to "dialing, routing and signaling information" in connection with computers. This expansion of access under the Act appears to allow the government access to lists of emails sent and received as well as a list of websites visited on a particular computer. Significantly, in the telephone context, getting a pen register with its list of telephone numbers to and from which calls were made on a particular phone offered no opportunity to hear the contents of these conversations. In the computer context, the information about email addresses and websites apparently can be and is accessed simultaneously.

The Act also further increases the authority of the Attorney General to detain and deport non-citizens with little or no judicial review. The attorney general may certify that he has "reasonable grounds to believe" that a non-citizen endangers national security. The Attorney General and Secretary of State are also given the authority to designate domestic groups as terrorist organizations and deport any non-citizen who belongs to them.

The Bush Administration has also acted on its own to hold deportation hearings in secret, stating that secrecy is required because the individuals involved may have links to terrorists. The Sixth Circuit recently rejected the argument that the Bush Administration should receive blanket approval for holding deportation hearings in secret. In its opinion, the Court stated: "The First Amendment, through a free press, protects the people's right to know that their government acts fairly, lawfully and accurately in deporta-

tion proceedings. When government begins closing doors, it selectively controls information rightfully belonging to the people. Selective information is misinformation. The framers of the First Amendment did not trust any government to separate the true from the false for us. . . . A true democracy is one that operates on faith -- faith that governmental officials are forthcoming and honest and faith that informed citizens will arrive at logical conclusions. . . . Today, we reflect our commitment to those Democratic values by ensuring that our government is held accountable to the people and that First Amendment rights are not impermissibly compromised. Open proceedings, with a vigorous and scrutinizing press, serve to ensure the durability of our democracy."

In addition to collecting the various powers described above, the Attorney General has promulgated a rule that allows for eavesdropping on inmates' attorney-client conversations. Probable cause to intercept is not required and there is no judicial involvement or supervision.

As one commentator has observed, "The President has also issued an executive order declaring that he will decide when trials will take place before military commissions, rather than in civilian courts under his Commander-in-Chief powers. This decision cuts out the Article III courts, as well as Congress which has constitutional authority to 'define and punish "piracies and felonies committed on the high seas and offenses against the law of nations.'" Article I, § 8, Clause 10." See Susan Herman, *The USA Patriotic Act and the U.S. Department of*



Justice: Losing Our Balances, BROOKLYN LAW SCHOOL FORUM, Dec. 3, 2001.

Of course, one of the problems with what appears to be an ongoing and possibly indefinite war on terrorism is that American citizens may be stuck with an indefinite intrusion on civil rights and privacy represented by the Act, by the new DOJ rules abridging the attorney-client privilege, and by President Bush's executive orders.

CBA President John Moyer's September 2002 President's Column addressing issues similar to those raised here quoted Steven Rohde, author of *American Words of Freedom*, who paraphrased the words of Rev. Martin Niemöller in his famous poem concerning Nazi Germany in 1937. "First, they came for the Muslims and I didn't speak up because I wasn't a Muslim. Then, they came for the immigrants detaining them indefinitely solely upon the certification of the Attorney General and I didn't speak up because I wasn't an immigrant. Then, they came to eavesdrop on suspects consulting with their attorneys and I didn't speak up because I wasn't a suspect. Then, they came to prosecute non-citizens before secret military commissions and I didn't speak up because I wasn't a non-citizen. Then, they came to enter homes and offices for unannounced sneak and peak searches and I didn't speak up because I had nothing to hide. Then, they came to reinstate cointelpro and resume the infiltration and surveillance of domestic, religious and political groups and I didn't speak up because I no longer participated in

continued on page 14

Hiring Freeze and Mandatory Furloughs

Effective September 1, 2002, the Judicial Branch was placed under a statewide hiring freeze. This includes all positions in the State Court Administrator's Office, Supreme Court, Court of Appeals, and all judicial districts. Requests for exceptions to the freeze must be submitted to a state panel for consideration.

All classified and contract employees, magistrates, and grant and cash funded employees, will be required to take one unpaid furlough leave day per month in October, November, and January. The Colorado Constitution, Article 6, Section 18, prohibits reduction of a judge or justice's salary while in office. Therefore, judges are not included in the mandatory furlough.

Chief Justice Mary Mullarkey has given Chief Judges local discretion to determine whether Clerk's Office hours need to be reduced due to staff shortages. At this time, there is no plan to reduce Clerk's Office hours in either the Boulder or Longmont offices. If you have any questions, please call Amy Waddle, District Administrator, (303) 441-3882.

Juror Meals

According to the State of Colorado Judicial Department Fiscal Procedures, juror meal costs are allowed in specific circumstances in compliance with Chief Justice Directive 85-19, amended 7/1/97. At the discretion of the court, meals may be furnished to jurors at state expense in criminal, juvenile delin-

quency, and dependency and neglect jury trials when the jury is in actual deliberation. Meals may be furnished to jurors in civil jury trials when the jury is in actual deliberation, and shall be charged as costs against the unsuccessful party, pursuant to Section 13-71-145, 6A C.R.S.

Effective September 1, 2002, all juror meals in civil jury trials, furnished while the jury is in deliberation, will be charged to the unsuccessful party in the case. The court will pay for the meals and will then send a bill to the unsuccessful party's attorney for the meal costs. If you have any questions, please call Tina Lesniak, Staff Assistant, (303) 441-3788.

PROFESSIONALISM *(continued from page 8)*

uncaring and greedy.

5. Suggestions of the law school group.

- Encourage the law schools to develop a continuing collaborative program with the bar association to (a) invite qualified, selected practicing lawyers to meet with students and faculty to discuss "real world" ethical and professional dilemmas, (b) welcome new students during an orientation and plant the seeds of ethical and professional behavior, (c) develop teaching problems and vignettes based on real life issues and problems; (d) develop a film series of "lawyer movies" in which professionalism and ethical issues have been explored.

6. Create a standing committee of lawyers and law faculty to analyze how the bar and law schools can effectively address issues of ethics and professionalism. Such a committee might institute an annual "professionalism day" at the law schools, or it might study how the bar association could be helpful in

preventing, monitoring and resolving cases of student dishonesty such as cheating on exams and plagiarism.

The Task Force has found this to be a very challenging assignment. At times, it has seemed too broad a subject with which to come to grips, since "solutions" inevitably involve attempts to change lawyer behavior. Nevertheless, most of the active Task Force members believe that the CBA should rededicate itself to the PRI proposition that honesty and truthfulness are essential to the well-being of our profession and the public's respect for it. If we can succeed with this initiative, we should see benefits in several ways: preservation of our system of justice, increase of public respect and support for the legal profession and our own self-respect and job satisfaction.

This report was submitted to the Board of Governors of the Colorado Bar Association by the PRI Task Force. Dale Harris, Chair of the Task Force, and the Committee, prepared the remarks. The entire document can be found on the CBA's website at www.cobar.org.

THE ACT *(cont'd from page 13)*

any groups. Then, they came for anyone who objected to government policy because it only aided the terrorists and gave ammunition to America's enemies and I didn't speak up because I didn't speak up. Then, they came for me, and by that time, no one was left to speak up." Rhode, "Then They Came for Me," v. 8, No. 3 Verdict (2002).

The dangers posed by these intrusions are obvious and yet remain largely unknown by the public in part, of course, because they are either not visible or simply do not affect the vast majority of Americans. However, as John Moyer noted in his article, as lawyers, we are guardians of the "rule of law and the preservation of individual freedoms." We have an obligation to speak up and oppose this intrusive and indefinite infringement on our civil liberties. We should do so.

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