

March/April 2006

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Genesee County Bar Association



Anticipating Spring

The Tone at the Top: What Message is Your Organization Sending?

Contractors Beware: Personal Liability Under the Michigan Builder's Trust Fund Act

The Engaging Mr. Hart

A Tribute to Ivor "Rovi" Jones

Dessert Without Calories

by Richard Barron

Local lawyers and judges may wonder what it is that motivates over 60 of their colleagues, once a month, to leave work at five o'clock, after a long day wrestling with legal problems, and head to Grand Blanc for a meeting devoted primarily to analyzing difficult legal problems. Part of the motivation for Inn of Court members, to be sure, is the ability to wine and dine with their professional colleagues in a cordial and relaxed social setting. Yet, as any Inn member will tell you, the heart of any Inn of Court meeting is its program.

At every Centennial Inn of Court meeting, after dinner, the designated pupillage team, under the oversight of a team master, presents a legal education program designed to illuminate some particularly challenging aspect of the practice of law. The general topic has been selected by the program committee, but the format and subject matter of the program are left up to each team, which typically contains six or seven members, most of whom have very different legal backgrounds. The two main principles are scholarship, along with creativity and interesting presentation.

The programs typically involve an introduction, role-play, audience discussion, and a background legal sources handout. Programs normally last between 45 minutes and one hour. In recent years, the Inn has featured a panel discussion by various circuit court judges, as well as a holiday party hosted by one of the judges. Most programming is oriented to litigation in Michigan courts, but the Inn has presented programs on professionalism, bankruptcy, trust accounts, criminal

law, and collection of attorney fees. In addition to the monthly program, the Centennial Inn has periodically hosted a banquet for distinguished guests such as then Attorney General Jennifer Granholm, Justice Michael Cavanagh, and National Inn of Court Foundation President Justice Randy Holland. On February 28, the Inn hosted a well attended retirement reception for the Honorable Allen J. Nelson.

Some of the most memorable Centennial Inn programs would certainly include the program "Sex, Lies and Corporate Ties," which dealt with gender discrimination but veered off-course to hunting out west. Most members vividly recall a long-time, hard-working circuit judge playing the role of a

timid divorcing wife who was pleading with "her attorney" to "don't let them make me go down to that courthouse again!"

There was also a "Legal Jeopardy" program that got out of control when some Inn members in the audience "appealed" the disallowance of certain creative answers, and a "Follywood Squares" evening with nine comedic celebrities. A unique program two years ago involved bringing in former circuit court jurors and quizzing them about their jury experience and their take on the lawyers in the cases. A few years ago, the Inn used one automobile negligence action as the basis for the various aspects of trial practice at each meeting that year.



Inn Member Carl Bekofske presents Judge Nelson with a plaque in honor of his retirement

(l-r) Judge Nelson, his wife Mary, and daughters Kelly Nelson and Meghan Nelson-Tracey



(l-r) Donald Rockwell, L. David Lawson, Sandra Carlson, Brenda Bendall, James Trembley, and Patrick Allen, seated, at the February 2006 monthly meeting

Inn President Kathleen Buckley-O'Neill



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- ❖ **Publications**—"Private Mediation," *Bar Beat*, July 1995; "Facilitative Mediation," April 1996 and "Michigan Mediation Update," June 2004, *Michigan Lawyers Weekly*

Spring 2006

by H. William Reising, President

Where is spring? As I have been fond of saying for the last several weeks, "spring is around the corner." The distance to that corner has become shorter and shorter, and we are now there. It is only a matter of time before spring is upon us with its opening day for the Tigers and its training opportunities for all those avid runners getting into top form for the upcoming GCBA Motion Day 5K race. This year the race will include a post-race party to allow those stalwarts to celebrate their personal victories. I look forward to seeing all of you at both the race and the post-race celebration.

Looking back at the "dog days of winter," one of the bright spots was the GCBA reception at the Flint Institute of Arts on February 23. The expanded FIA is a spectacular facility, and FIA Director John Henry and his staff bent over backwards to provide us with an exciting evening. I can only hope that we can return in 2007 to enjoy an even better FIA experience.

The second highlight in the month of February was the retirement celebration at the Flint Golf Club for Probate Judge Allen Nelson. Judge Nelson served the residents of this county in an exceptional way during his long tenure on the bench and set a very high standard for what was expected of any attorney who appeared before him. Anything less than total preparation was unacceptable. As a consequence, Judge Nelson had the reputation of running a "no nonsense" courtroom. On behalf of the membership of the Genesee County Bar Association, I wish him well in his "new adventure" of retirement.

On behalf of the GCBA, I wish to extend congratulations to both Michael Theile and Jennie Barkey for their recent appointments to the Fam-

ily Court and Probate Court, respectively. I am certain they will both do excellent jobs.

Of course, the month of March always has embedded in it one of the best days of the year, March 17, at least according to certain members of the Genesee County Bar Association who take special pleasure in celebrating that date. The hearty celebrants of that day also participate in the St. Patrick's Day Road Race, and that automatically gives them a good excuse to celebrate. From my own perspective, I do that to carry on the memory of Jerry O'Rourke and my father-in-law. Both were dedicated to making St. Pat's Day special.

On a more serious note, the coming of spring is the ideal time to give consideration to participating in Access to Justice. Our own Francine Cullari, a State Bar of Michigan Commissioner, is in charge of building the momentum for funding for Access to Justice. As she will explain on asking, the actual cost is far less than the \$300 contribution, with a tax credit from the state of Michigan and a federal income tax deduction. After Francine explains the process to you, you might well come away from that circumstance thinking you are almost "making" money as opposed to making a contribution. If possible, make the \$300 contribution, which is the Supreme Court-recommended level for members of the bar association. For those who can afford it, consider a contribution over \$300. Without contributions to the fund, the ability of indigent individuals to secure adequate legal representation is even further compromised.

March 31, 2006 was the deadline for submitting names to be considered as nominees for the Genesee County Bar Association Board of Directors, including the positions of vice president, treasurer, and secretary. The positions



H. William Reising

are for one year, and the director terms (of which there are four available) are for three years. The Genesee County Board of Directors is a critical component to the continued viability of the association. I thank all members who gave serious consideration to nominating candidates to GCBA by the deadline. If you have any questions about that process, please feel free to contact me, Past President Susan Preketes (who now chairs the Nominating Committee), or Executive Director Ramona Sain. We would be happy to supply you with any information you need in order to allow you to participate in the process.

Last, for those who are interested, I have again signed up to run the Chicago Marathon in October 2006. I am looking for a running partner. Please contact me at (810) 342 7001 or wreising@plunkettcooney.com if you are interested.

Michigan Legal Milestone

Otis M. Smith

African American trailblazer Otis M. Smith (1922-1994) will be honored June 21 as the subject of the State Bar's next Michigan Legal Milestone program. A dedication ceremony in Flint with notable speakers and a plaque unveiling will take place from 11 a.m. to 2 p.m. An outdoor ceremony is planned at Willson Park, located downtown on the campus of the University of Michigan-Flint. A luncheon will be served after the dedication at the nearby Harding Mott University Center. For more information please call 517-367-6428.

Grant Awarded

by Ramona Sain, Executive Director

I am pleased to announce that the GCBA has recently been awarded a grant from Quota International. For those unfamiliar with Quota, it is an international service club that supports charitable causes for underprivileged women and children and the hearing and visually impaired. The Flint chapter is very active and has attorneys Jean Carl, Susan Schneberger, and Carolyn Boegner as members.

The grant covers the cost of the purchase and installation of a D-link camera, USB computer port, and other peripherals necessary to facilitate video remote interpretive services for the hearing impaired. The equipment will be installed in the GCBA Neithercut Conference Room and will be available for use by our members.

This video remote service is quick, easy, and less expensive than traditional services, which often are slow and cumbersome. Traditional services include TTY, a relay system in which the hearing impaired and the hearing communicate by teletype equipment installed at both locations; Michigan Relay, where a speaking person communicates with the hearing impaired through a third party telephone relay; and one-to-one on-site interpreter. One-to-one interpreters are hired at an hourly rate of between \$50 and 75, with a two-hour minimum, excluding travel expenses.

With the implementation of a video remote system, many obstacles are eliminated. Attorneys will be able to meet hearing-impaired clients at the GCBA, where it has already been arranged for an interpreter to "call in" to the office at a designated time. The interpreter (certified in the law) appears on the office television screen and communicates directly and instantaneously with the client and attorney. Costs are reduced since travel time is

eliminated, and charges are accrued by the minute, as opposed to one-hour blocks.

As LindaLee Massoud wrote in a *Bar Beat* article last spring about the Americans with Disabilities Act, the settlement of *U. S. v. Tirone* clarifies appropriate modes of communicating with the hearing impaired. (To reread her article, go to our website and open *Bar Beat* Jan/Feb 2005).

The American Bar Association has also published advice on communicating with the hearing impaired as it relates to LRIS programs. One article stated, "... the critical question is not whether a disabled person received high quality legal services, but whether he or she is given a comparable opportunity (relative to non-disabled persons) to ask questions and understand the options. . . . For this reason, keyboard and other forms of written communication are not adequate for accommodating hearing

impaired clients. Replacing direct communication with typing or writing does not serve deaf clients well. Many persons, deaf or not, do not have keyboard skills. In addition, written notes tend to avoid detail in order to save time. Most important, ASL is a separate language with its own special grammar and syntax, and the keyboard method offers no protection against miscommunication due to differences in grammar. In a legal setting, this can be disastrous."

It was this article, and a greater understanding of *U. S. v. Tirone*, that prompted the GCBA to seek a better way to help our members communicate more effectively with their clients, saving time and money.



Ramona Sain

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The Tone at the Top: What Message is Your Organization Sending?

by Peggy Jury and Debbie Redding

Make no mistake about it—employees are keenly aware of the practices and rules followed by senior management and owners. Business owners and managers affect an organization's ethical culture by implementing practices, policies, and procedures and, equally important, by following them. Properly setting "the tone at the top" of a business can help send a clear message, reinforcing the owners' and managers' commitment to integrity and ethical values.

The Reaction to Unethical Behavior

The federal government and the accounting industry have responded to the erosion of public trust in the accuracy of financial reporting results by enacting legislation and standards that specifically address management's responsibilities. The Sarbanes-Oxley Act of 2002 (SOX) addresses publicly-held entities and identifies the CEO and CFO as the primary parties responsible for "setting the tone at the top" of an organization; moreover, it holds them personally accountable for accurate financial reporting and discovering and disclosing fraudulent behavior. In addition, the AICPA Statement on Auditing Standards (SAS) No. 99 tasks auditors with evaluating an organization's internal control environment and assessing the "tone at the top." While following these regulations will not guarantee the complete honesty and integrity of an organization, they do clearly outline the business owners' and managers' responsibilities for maintaining an effective internal control environment. Legislative and regulatory bodies agree: management's actions dictate the effectiveness of the internal control environment.

Into Action

Establishing (and continually reviewing) a code of conduct, ethics policy, or statement of business principles identifies and documents exactly what behaviors

are acceptable within an organization. Implementing human resources (HR) policies related to hiring, training, and promoting staff can keep unethical individuals from joining an organization or obtaining a position of trust. Effective HR policies include:

- Pre-employment background checks of education, employment history, and personal references;
- Periodic training about the organization's core values, including what constitutes unethical behavior, the employee's responsibility to report unethical behavior, and how to report unethical behavior;
- Performance reviews that include discussions of an employee's contribution toward creating the appropriate workplace environment;
- Continuous evaluation of compliance with the organization's values;
- Confirmation, including an understanding of the organization's expectations, compliance with the organization's code of conduct, and a listing of known violations or statement of no known violation.

While these measures are proactive in nature, organizations also need to focus on reactive measures to unethical behavior. The expectation that an act will be discovered can serve as a deterrent to unethical behavior. The way an organization responds to incidents or suspected incidents may help to reduce future occurrences. In addition, it's important to foster an environment where individuals are comfortable voicing their concerns.

To send the right message when something unethical is detected, an organization should:

- conduct a thorough investigation;

- consistently take action against violators;
- assess related controls and functional areas and recommend improvements;
- clearly communicate the organization's values and consequences of violations.

Important Considerations

According to the Association of Certified Fraud Examiners' 2004 *Report to the Nation on Occupational Fraud and Abuse*, the typical organization loses 6 percent of its annual revenues to occupational fraud. If multiplied by the U.S. Gross Domestic Product, which in 2003 totaled just under \$11 trillion, it would translate into \$660 billion in annual fraud losses. All organizations regardless of industry, size, and location are vulnerable. Companies that set the appropriate tone at the top send a clear message: that they're committed to integrity and ethical values.



Peggy Jury

Peggy Jury is a partner with Plante & Moran's Assurance practice. She has 30 years of experience in public accounting and financial advisory services, specializing in strategic planning and agreed-upon procedures.



Debbie Redding

Debbie Redding is a manager with Plante & Moran's Manufacturing Consulting Solutions practice. She has 16 years of experience in public accounting and financial services consulting, specializing in operational reviews and management assessments and reviews.

Contractors Beware: Personal Liability Under the Michigan Builder's Trust Fund Act

by Craig Fiederlein



Craig Fiederlein

The Michigan Builder's Trust Fund Act¹ (MBTFA) is a legal tool to assert personal liability against corporate officers of building companies on behalf of material suppliers and subcontractors in construction cases.

In a recent case on point, *Trustees of the Michigan Regional Council of Carpenters Employee Benefits Fund, et al. v Accura Concrete Walls Inc and Brian Jousma*, 2005 WL 1838372 (ED Mich 2005), U.S. District Court Judge Cohn granted summary judgment in favor of the Carpenters Union against the contractor Accura and Jousma, president of Accura, individually, for violation of the MBTFA.

The U.S. District Court relied on the seminal case of *Diponio Constr Co Inc v Rosati Masonry Co Inc*, 246 Mich App 43, 631 NW2d 59 (2001), stating that the prima facie elements for a civil cause of action under the MBTFA include:

- The defendant is a contractor or subcontractor engaged in the building construction industry;
- A person paid the contractor or subcontractor for labor or materials provided on a construction project;
- The defendant retained or used those funds, or any part of those funds,
- for any purpose other than to first pay laborers, subcontractors, and material men,
- who were engaged by the defendant to perform labor or furnish material for the specific project.

In *DiPonio*, the Court of Appeals stated that the MBTFA is remedial in nature and therefore should be liberally construed for the advancement of the remedy.² The statute of limitations for the civil cause of action under the MBTFA is six years.

The courts have been clear that the burden of proof is on the defendant to prove that no violation of the MBTFA occurred.³ Section 3 of the MBTFA provides: "[t]he appropriation by a contractor or any subcontractor of any moneys paid to him for building operations before payment by him of all moneys due or so to become due laborers, subcontractors, material men or others entitled to payment, shall be evidence of intend to defraud."⁴ The reason is the contractor is deemed a trustee of the funds held for the payment of subcontractors, material men and laborers.

As a practical matter, to avoid personal civil liability under the MBTFA, the contractor must submit a complete accounting per job. The payment of car expenses, office space, etc. is not a defense to personal civil liability under the MBTFA. The Act further imposes criminal liability which, upon conviction, imposes a fine between \$100 and \$500 and/or between six months and three years imprisonment.

Attorney Craig R. Fiederlein, of the law firm of Harry, McMillen & Fiederlein, L.L.P., is a member of the GCBA and the Centennial Inn of Court. He concentrates his practice in real estate, business, and probate/estate planning. He currently has a residential builder's license and will be seeking his real estate broker's license with Mr. Christenson.

Endnotes

- 1 *The Michigan Builders Trust Fund Act, MCLA 570.151 et seq.*
- 2 *Diponio, supra at 50. See Weathervane Window, Inc v White Lake Constr Co, 192 Mich App 316, 325, 480 NW 2d 337 (1991); People v Miller, 78 Mich App 336, 343 (1977)*
- 3 *See In re Little, 163 BR 497 (E D Mich 1994); In re Hickey, 1999 WL 3313133 E D Mich 1999, But see James Lumber Co. Inc v J & S Construction, Inc, 107 Mich App 793, 309 NW 2d 925 (1981).*
- 4 *Trustees of the Michigan Reg. Council of Carpenters, supra at p 2 citing MBTFA Section 3, MCL 570.151.*

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The Engaging Mr. Hart

by Randolph P. Piper



You probably don't know this, but your esteemed editor of *Bar Beat* has a sadistic streak. She has asked me, for the good of our little magazine and for the greater good of the Genesee County Bar Association community in general, to chronicle the life and times of another lawyer—a very engaging lawyer—but sadly, another lawyer with whom I never agree. In fact, we more than disagree. Many times our disagreements are not even in the same ballpark. I say “up”; he says “cold”; I say “hot”; he says “down”. It makes no sense.

Of course, I write of Clifford H. Hart, former president of our illustrious association, alumnus of the University of Michigan undergraduate and law schools, Association of Trial Lawyers of America board member, President of the Genesee County Bar Foundation and owner of a résumé with more pages than this magazine.

My father said that people in polite company should never talk about religion or politics. Apparently, Cliff never met my father or is never in polite company. Cliff loves politics and has no qualms about talking religion. He has an opinion on everything, because he cares about everything. If you don't have a care, by the time you're done talking with Cliff you'll care plenty. What's more, if you don't have an opinion, he'll give you one, or even tell you what you meant to say. Frequently, he'll just give up and speak for you. No doubt about it, Cliff is fully engaged in his way of life.

For Cliff, political liberalism is not just his way of life. For him it is the only way of life. He has never come across a problem that a government program can't solve. He loves democrats—unless they are from the South. (I don't know how he explains Joe Lieberman

of Connecticut.) He loves high taxes, big welfare, bigger government, and onerous regulations. But he can't stand republicans—unless they've been out of office for at least 20 years and dead for 5. Woe unto you if you are a republican from Michigan State!

Yet, there is something engaging about Professor Hart. He lunches frequently at the Bailiwick Restaurant in Flint, and I've noticed that when he holds class there, the dining lawyers linger longer than when he is not there. I think they just want to hear what he is going to say next! Nevertheless, people actually do seem to listen to what he says. Maybe it's because, his wacky politics, notwithstanding, everyone knows that he is a family man. His wife, Alice, makes him think he actually runs the house, and their three children, Michael, David, and Steven, are all attorneys. Having a child follow a parent into the legal profession is not only a tribute to the parent but also to the profession. What a compliment! Cliff understands that and was able to inculcate the majesty of our profession into not just one child, but into all three of his sons.

That should be no surprise, for Cliff does not believe in the law as a business. To him it is a profession. Cliff has said, “I believe that professionalism is the most important attribute and requirement of a lawyer.” Lawyers cannot be motivated by the “bottom line.” Professionalism is the core of his philosophy as an attorney. He says, “Profit motive should not be a factor. This does not mean that lawyers should not enjoy

a good living...if they act professionally, a good living will follow.”

William Wumkes said, “Always root for the underdog—particularly if it doesn't cost you anything!” Cliff would modify that a little bit: “Always root for the underdog—even if it does cost you something!” That is why Cliff is a favorite go-to guy for the local legal aid office. Cliff is always willing to help find justice for the little guy, the injured, or the needy. No profit motive—no profit. Just help out.

Cliff is engaged. He has a meaningful life: family, friends, profession, religion, and politics. Morrie Schwartz told Mitch Albom in the book *Tuesdays With Morrie*, “Remember what I said about a meaningful life? I wrote it down, but now I can recite it: Devote yourself to loving others, devote yourself to your community around you, and devote yourself to creating something that gives you purpose and meaning.... You notice there's nothing in there about a salary.”

Cliff Hart is my Morrie Schwartz, except for me, every day is Tuesday.

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A Tribute to Ivor "Rovi" Jones

by Honorable Robert M. Ransom



He dubbed himself "Rovi Senoj" in 1983 when signing a card to my wife, Lynne—Ivor Jones spelled backward. Thereafter, he was always "Rovi" to me and the group of criminal defense attorneys that he mentored.

The name seemed so appropriate for a guy with such energy and excitement for life. To share highlights of "Rovi's" life's journey in the *Bar Beat* word allotment is a daunting task.

Ivor Reginald Jones

Born: March 9, 1922—Wales, U.K.

Died: December 2, 2005—Hale, MI

Sound unusual? It's what happened in between that made Rovi unique.

The Jones family immigrated to Johnstown, Pennsylvania in 1927. Joining the U.S. Army in 1942, Ivor served with the 2nd Ranger Battalion. "Like waves crashing on the shore, hundreds of men poured out of landing crafts on Omaha Beach 06-06-44." Ivor was one of them. He scaled the 300-foot cliffs despite being wounded, and survived when many did not.

After graduating from Penn State University, he and his wife, Jenny, moved to Michigan, where he attended the U of M and graduated from the University of Detroit Law School while working as a claims adjuster for Ohio Casualty.

His family, which included children, Kurt, Kerri and Kristi, eventually settled in Flint, where he began a legal career in the Genesee County Prosecutor's office. Private law practice and appointment as special attorney general followed.

Ivor really left his mark on Flint's legal community when he was appointed Genesee County's first Defender Administrator. In that role, Judy Tanner served as Ivor's secretary and captured his essence in a letter to the family that

became part of the eulogy at his memorial service:

"As Defender Administrator, Ivor was responsible for the appointment of legal representation for anyone charged with a criminal offense in Genesee County who could not afford an attorney. If any attorney appointment could not be made quickly enough, Ivor would represent a defendant himself. He would often be required to appear in several courts on any given day, representing people he had just met, with limited information available in their court files. 'Hectic' cannot begin to describe each of Ivor's days. . . .

"Working for Ivor was equivalent to being caught in a 50 mile-an-hour wind in a rainstorm on the end of a pier with six-foot waves crashing over the rocks. He very seldom stood still. He frequently lost paperwork. He'd forget which defendant was in whose court at what time, and 'What is that guy charged with, honey?' was frequently heard

"For those of you who did not work with or know Ivor during his years of working within the criminal justice system in Genesee County, you may feel that I'm being disrespectful. Quite the contrary. Those of us who worked with him when he was a prosecutor, private attorney, and Defender Administrator have nothing but the utmost respect for him. This was demonstrated when he retired and the entire legal community attended his retirement party. One of the main events at the party was an Ivor Fashion Show. Several attorneys modeled clothing from Ivor's actual wardrobe: shirts and pants with mismatched patterns; pairs of shoes, one brown and one blue; unzipped trousers with shirttails caught in the zipper. And smiles of affection and sounds of laughter. He gave us that. The ability to be

serious, professional, and still laugh.

"Ivor was a damn good attorney. He took his job seriously. He respected his clients and the attorneys who worked with them and took them seriously. He was seriously ethical, honest, and forthright. He was without pretense and guile. He never forgot a kindness or a friend. He was irascible. When necessary, he could be serious.

"The only thing that Ivor did not take seriously was himself. He lived each moment to the fullest. He was the most joyful individual I have ever met. Once, I asked him why it was that he was always so much fun. 'Honey,' he said, 'after surviving the invasion of Normandy, every day since then is a gift.'"

It literally took two attorneys to replace Ivor upon his retirement.

Retirement took Ivor to Hale, Michigan where he met and married his wife, Joyce. For 13 years thereafter, Ivor served as Director of the Bass Lake Criminal Defense Symposium. Annually, his following of criminal defense attorneys and several Genesee County judges attended this auspicious educational outing. At the same time, he remained very active with the WW II Rangers Battalion Association.

In 2004, Ivor, and his son, attorney Kurt Jones, traveled to Normandy, for the 60th anniversary of D-Day, where he suffered a stroke. While in a French hospital, problems developed securing Blue Cross payments of Ivor's medical expenses. When attempting a conference call between Blue Cross and the hospital administration, Kurt was informed there would be no bill. The hospital board of directors concluded that was the least they could do for Ivor's service to their country. Ivor was truly a hero in France and Europe. "Rovi" will always be a hero to me!

The Winegarden Letter

by J. Dallas Winegarden, Jr.



J. Dallas Winegarden, Jr.

Some readers may think I am extreme in my views, but that is not the case. I am a constitutionalist and believe this country can only survive if we maintain its tradition of liberty. It is challenging to be vigilant but even more important to do so in times our safety is threatened than when we are snug in our beds. Consider the following act of President Bush and the FBI.

President Bush has flatly broken the law in my opinion, secretly authorizing the NSA to spy on Americans here at home. We said Nixon was not above the law, and the same should hold true for W.

Bush acknowledged the secret authorization to allow eavesdropping on phone calls and e-mails from Ameri-

cans and other U.S. residents. When done without a court order, wiretapping is both unconstitutional and illegal under the Foreign Intelligence Surveillance Act.

In addition to suspected "terrorists," over 150 domestic political and religious groups in 20 states are being monitored. The government is using its counterterrorism resources to infiltrate activist groups such as People for the Ethical Treatment of Animals, Greenpeace and United for Peace and Justice. The FBI has reverted to its stance in the 1960s to include under surveillance, now in the guise of anti-terrorism, citizens and groups that participate in lawful protests or civil disobedience.

It is the responsibility of Congress to decide if oaths of office were broken or federal laws were violated. Congress should appoint special counsel now, to preserve our system of checks and balances, if American democracy is to survive. Before the holidays in December, there was a glimmer of hope as democrats and republicans in the Senate blocked reauthorization of the Patriot Act because it failed to protect civil liberties. Perhaps the farther away we get from the horror of 9/11, the more clearly we will see the need to protect the constitution.

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