

The American Civil Liberties Union: How It Thwarts Freedom of Religion

By Cheryl K. Chumley

*Summary: The ACLU inspires both admiration and hostility, but no one doubts its effectiveness, especially in pursuing cases concerning religious freedom. The ACLU says it defends freedom of religion. But critics note that it has become zealous in defending freedom **from** religion.*

It happens like clockwork: every December the American Civil Liberties Union complains about how we celebrate Christmas. An ACLU affiliate files a lawsuit against a city that puts up a religious display, or it represents atheist parents who don't want their children involved in a school pageant that makes reference to God. There's always something.

Sure enough, this past December was no exception. The ACLU sent a letter to 137 public school superintendents in Tennessee reminding them that they must refrain from endorsing any particular religion. The reminder was an implicit threat that ACLU attorneys would make legal trouble for schools that violated the U.S. Constitution—as the attorneys understood it.

In her letter, Tennessee ACLU executive director Hedy Weinberg observed, “We welcome holiday celebrations that teach children about a variety of holidays. We believe, however, that holiday celebrations that focus primarily on one religious holiday



Hedy Weinberg (above), executive director of the Tennessee ACLU, crusaded against schools for daring to celebrate Christmas.

can result in indoctrination as well as a sense within students who do not share that religion of being outsiders to the school.” Noting that the upcoming holiday season was a time for celebrating “Christmas, Hanukkah, Bodhi Day, Kwanzaa, Eid al Adha, Winter Solstice, Christmas and New Years,” Weinberg observed, “Similarly, we welcome holiday celebrations that share secular symbols such as Santa Claus or dreidels but we believe that holiday celebrations that focus on religious

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symbols can likewise result in indoctrination and the exclusion of students.”

Weinberg said the Supreme Court had rules that focusing on religious symbols in public school holiday celebrations was prohibited by law.

“[E]ndorsing religious doctrine or sponsoring religious activities is unconstitutional,” she asserted, referring to two cases decided by the high court: *Abington School District v. Schempp* (1963) and *Edwards v. Aguillard* (1987).

You don’t have to be a lawyer to read between the lines of the ACLU letter: You can invite Santa to celebrate Christmas in school. But invite Baby Jesus and the ACLU will sue you.

That didn’t sit well with lawyers at Liberty Counsel, a Lynchburg, Va., law firm that specializes in defending freedom of religion. It rejected the ACLU’s interpretation of the First Amendment. In response to Weinberg’s

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letter to the school superintendents, Liberty Counsel founder and chairman Mathew Staver wrote one of his own. It was addressed to all Tennessee school superintendents, school board members, school faculty and staff.

“This letter seeks to offer accurate information about Christmas and holiday celebrations,” Staver wrote. “These [ACLU] letters wrongly assert that parties which commemorate Christmas and religious holiday symbols are inappropriate in public schools.” On the contrary, Staver warned that if public schools prohibited the display of religious symbols they could be in violation of the U.S. Constitution: “If the district censors religious expression from holiday celebrations, as the ACLU suggests, the district may actually violate the constitutional rights of teachers, students and parents.”

Staver added, “One must consider the entire Christmas display, not simply the religious symbol,” and he noted that the U.S. Supreme Court had ruled that it was lawful to display religious symbols as long as they are accompanied by secular symbols. For instance, a nativity scene could be placed alongside a Christmas tree and a Santa scene. Stavers cited Supreme Court decisions in *Lemon v. Kurtzman* (1971) and *County of Allegheny v. ACLU* (1989) to support his legal opinion.

So who’s right?

What Does the ACLU Really Want?

On its website the ACLU declares forthrightly that “the right to practice religion, or no religion at all, is among the most fundamental of the freedoms guaranteed by the Bill of Rights.” In practice, however, ACLU attorneys frequently make legal arguments *against* religious freedom whenever Christian symbols are introduced in a public place. Whether it’s a student wearing a cross in school or a minister invoking Jesus’s

name during a pre-meeting prayer at a local government office, some ACLU lawyer is apt to argue a case for suppressing the public expression of religious belief.

Critics have noted that ACLU lawyers typically become involved in cases that seek to prohibit, not protect, the public display of religion. Rather than uphold the First Amendment, these legal cases undermine it. ACLU’s critics conclude that the organization is not really committed to freedom of religion. It is committed to freedom *from* religion.

The ACLU claims to have more than 500,000 “members and supporters.” It has staffed offices in all 50 states, Puerto Rico and the District of Columbia, and has almost 200 staff attorneys and about 2,000 volunteer attorneys who handle thousands of cases each year, often at no cost (“pro bono”). ACLU staff members engage in litigating, lobbying and advocacy campaigns in courtrooms, legislative chambers and in the media. They represent clients on a variety of issues ranging from capital punishment and the rights of prisoners and illegal immigrants to challenges of American national security policy. Last month the ACLU went to court to hold former defense secretary Donald Rumsfeld liable for the detention of terror suspect Jose Padilla. It also lobbied the Montana legislature to pass a bill legalizing assisted suicide.

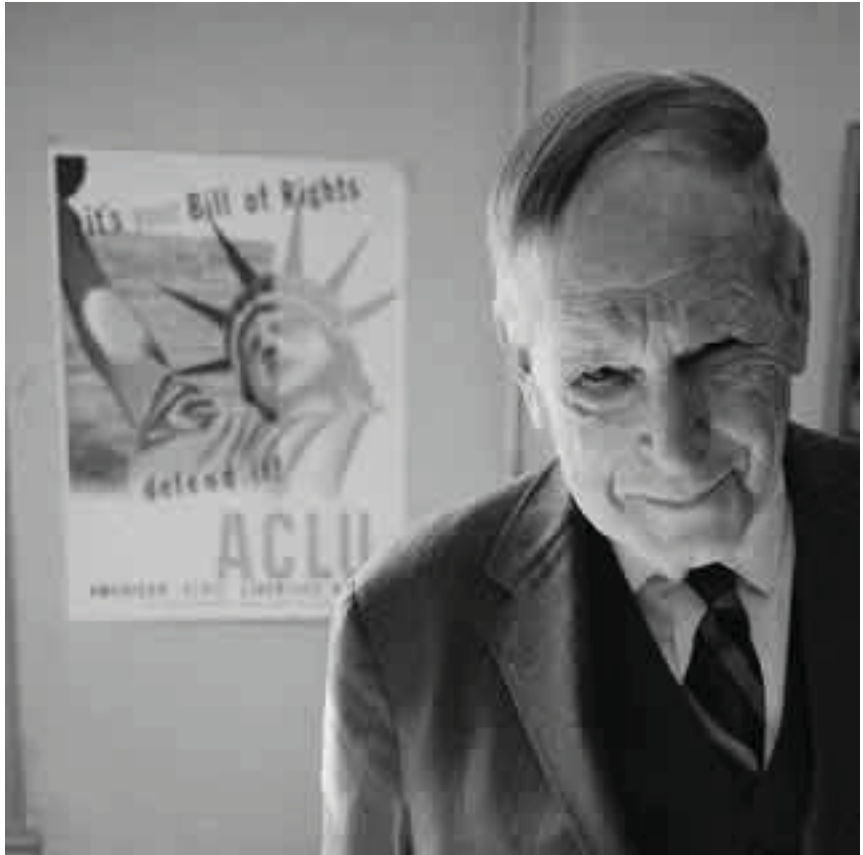
However, the ACLU is perhaps best known for its assaults on the public expression of religion. “The ACLU is the greatest censor of religion in our nation today,” says Joseph Infranco, a senior attorney with the Alliance Defense Fund, a non-profit legal group that takes many First Amendment religious freedom cases. “They selectively take a few cases [defending the right to Christian belief]. But even a broken clock is correct twice a day.”

Infranco says the ACLU has an agenda that is not at all committed to religious freedom. An extraordinary example of that agenda was on display last year when the ACLU won its lawsuit against the city of San Diego for violating the separation of church and state. Since 1957 San Diego had maintained an exclusive agreement with the Boy Scouts of America that allowed the Scouts to lease (for \$1 a year) 18 acres of city-owned parkland for annual scouting events. In return, the Scouts maintained the park facilities it used and made improvements to them. But activists wanted to kick the Scouts out of the park because it had a longstanding policy that excluded atheists and homosexuals. They got ACLU attorneys to argue that the city was violating its own municipal ordinances in prohibiting discrimination against gays when it renewed its lease with the Scouts. In addition, the ACLU claimed that by not putting the lease out to competitive bid the city had given a preference to a religious organization that requires its members to take an oath to do their “duty to God” and to be “reverent.”

No one had objected when the San Diego Gay Pride Festival was held in the park. But the ACLU wanted to ban the Boy Scouts, as columnist Deroy Murdock has written, because it requires belief in God and is “an organization that tries to turn boys into men, with sex alien to the process.” Amazingly, the ACLU prevailed in court. Last May the U.S. Supreme Court refused to hear an appeal by the Boy Scouts, which was forced to abandon a park at which it had held scouting events since 1918.

Alan Sears is president of the Alliance Defense Fund, which he founded in 1994 to defend religious freedom. He says the average American doesn’t appreciate how the ACLU manipulates the legal system to wage a cultural war on Americans. In his book *The*

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Roger Baldwin (1884 - 1981) was a co-founder of the ACLU.

ACLU vs. America: Exposing the Agenda to Redefine Moral Values (Alliance Defense Fund, 2005, 240 pp.), Sears quotes newspaper columnist Don Feder who explains:

When it comes to removing religion from our public life, the Left (commanded by the ACLU, Americans United for the Separation of Church and State, and People for the American Way) marches triumphantly from victory to victory. In the past 40 years, it has banned school prayer (including silent meditation), eliminated graduation invocations, driven crèches and menorahs from public parks, taken carols out of school assemblies, purged Ten Commandments monuments, and now has called God into question in the Pledge of Allegiance.

Defender of Religious Freedom?

The ACLU says it defends religious freedom. On its website it says that because it “is often better known for its work preventing the government from promoting and funding selected religious activities, it is sometimes wrongly assumed that the ACLU does not zealously defend the rights of all religious believers to practice their faith.” To support its assertion, the website highlights more than 100 cases it has pursued “on behalf of self-identified Christians” and those of “minority faiths.”

For instance, the ACLU points to its support of Russian Old Believer families. In 2010 the ACLU of Alaska asked the state’s Department of Education to set alternative dates for high school graduation tests that did not conflict with the church’s Holy Week. Also in 2010, the Maryland ACLU defended a Muslim woman who was denied a foster

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care license because she wouldn't permit pork in her home even though she allowed the children in her care to worship according to their own religions.

In 2009, the Maryland ACLU defended a Christian ministry denied the right to provide the homeless with food, showers, job training and religious services at its church facility. Elkton, Maryland city officials refused to recognize the religious character of the ministry and said its activities violated a local zoning law. The ACLU helped settle the case to the ministry's benefit.

In New Jersey ACLU attorneys filed a lawsuit on behalf of a prisoner who is an ordained Pentecostal minister. After ten years of holding religious services he was told he could no longer preach to fellow inmates. In Tennessee ACLU lawyers are defending a student group stopped by city Parks and Recreation officials from conducting church services for the homeless in a public park. In Florida ACLU attorneys are suing school officials who want to prohibit children from wearing tee-shirts that proclaim "Islam is of the devil." The ACLU argues that the school has no consistent policy regarding words that appear on student clothing.

"The ACLU is fully engaged in defending a broad range of constitutional rights, including rights related to freedom of religion and belief," asserts Jeremy Gunn, director of the ACLU Program on Freedom of Religion and Belief. Gunn has compiled a list of what he considers religious freedom cases undertaken by the ACLU over the past decade. (See www.aclu.org/fightsforchristians.com.) He is eager to rebut the Alliance Defense Fund charge that the ACLU censors religious expression. He writes, "It is sometimes wrongly imagined that the ACLU does not vigorously protect rights of freedom of religion, particularly of

Christians. [These] cases illustrate just how wrong these misconceptions are."

Or Censor of Religious Expression?

Don't be fooled by the ACLU's handful of cases that the group holds out as proof that it is a solid defender of the First Amendment, says Greg Scott, media relations director for the Alliance Defense Fund. Scott emailed this response to a reporter's question:

"The tiny number of cases in which the ACLU represents a Christian is a flimsy veil in the context of its complete body of work. A few dozen examples is a thin record for a 90-year-old organization that claims to be involved in 6,000 cases per year."

Indeed, the ACLU record is replete with attacks on the public expression of Christian belief.

* In 2010 the ACLU distributed pamphlets to Virginia state police chaplains warning them against invoking the name of Jesus at public events. It offered legal representation to state troopers offended by sectarian prayer.

* The ACLU has petitioned a federal appeals court to stop suburban Atlanta county officials from citing Jesus's name during public meetings.

* It made a similar demand of Lancaster, Pennsylvania city council members who used Jesus's name during pre-meeting prayers. The ACLU called the practice "clearly unconstitutional."

Moreover, the historical record shows that while the ACLU uses the law to suppress the public display of religious expression,

it jumps to the defense of terror suspects. For instance, it opposes the State Department practice of denying visas to foreign nationals who are considered complicit in acts of overseas terrorism. It also cheered the Supreme Court's 5-4 decision overturning the Military Commissions Act of 2006, which gave the president the power to detain enemy combatants after a military review.

"Just as a leopard cannot change its spots, nor a zebra its stripes, an organization whose founder admired the 'ideals' of the hammer and sickle can never really abandon those destructive beginnings," Sears wrote in a 2007 column for Townhall.com. "More than a quarter century after his death, the 'legacy' of founder Roger Baldwin – a self-professed fan of Soviet communism and of Joseph Stalin – is still going strong."

Sears was referring to Roger Baldwin (1884-1981), the first executive director of the American Civil Liberties Union, who served from 1917 to 1950. A radical activist inspired by the Bolshevik Revolution, Baldwin said in 1928: "I am for socialism, disarmament, and ultimately for abolishing the state itself as an instrument of violence and compulsion. I seek social ownership of all property, the abolition of the propertied class, and sole control by those who produce wealth. Communism is the goal."

Like many on the Left, Baldwin would grow disillusioned with Soviet Communism. But he retained his hostility toward American society (even though President Jimmy Carter awarded him the Presidential Medal of Freedom shortly before he died at age 97 in 1981). That hostility continues to inspire the ACLU, so much so that the ACLU even defends ideologies that are radically at odds with its own left-wing secular politics and with the civil libertarian values it professes.

What If A Religion Harbors Political Violence?

In an article for *Townhall* magazine, Capital Research Center's Matthew Vadum notes that the ACLU defends Islamic charitable groups with known or suspected ties to terrorist causes. The ACLU represented Abdel-Jabbar Hamdan, a man whom federal prosecutors accused of directing millions of dollars to Hamas, the Palestinian terrorist group. ACLU also has defended the Coalition on American-Islamic Relations (CAIR), a nonprofit linked to Wahhabism, the radical form of Islam prominent in Saudi Arabia. (CAIR was profiled by Daniel Pipes and Sharon Chadha in the August 2005 issue of *Organization Trends*.)

When federal authorities question the religious beliefs and attitudes of those entering the United States the ACLU is quick to challenge their authority. Last December ACLU officials joined the president of the group Muslim Advocates in writing a letter that criticized border and customs agents of the Department of Homeland Security for questioning five American Muslims returning home to the United States. In the letter to Richard Skinner, inspector general at the U.S. Department of Homeland Security, ACLU Washington legislative director Laura Murphy, Hina Shamsi, director of the ACLU's National Security Project, and Farhana Khera, president of Muslim Advocates, wrote:

We write to request that you investigate a troubling practice that has come to the attention of the ACLU and Muslim Advocates: without individualized suspicion of wrongdoing based on credible evidence, U.S. Department of Homeland Security Customs and Border Protection officers are questioning U.S.



citizens and legal residents who are Muslim, or appear to be Muslim, about their religious and political beliefs, associations, and religious practices and charitable activities protected by the First Amendment and federal law.

The letter inquires whether U.S. Customs and Border Protection (CBP) has established a policy for asking such questions as “what mosque they attend, how often they pray, their religious charitable giving and their views on U.S. military engagement in Iraq and Afghanistan.” The five individuals named—Aun Hasan Ali, Shareef Alshinnawi, Lawrence Ho, Ali Uddin Malik and Hassan Shibly—are Muslims and American citizens, according to the letter, and have been subject to repeated questioning during trips taken between 2004 and 2010. One was returning from a spiritual retreat in Yemen; another

from a religious pilgrimage in the Middle East. Responding to the complaints of Lawrence Ho—who was stopped with an expired passport while trying to drive across the U.S. border from Canada—customs agents said they were only doing their job.

“In 2001, the U.S. was attacked by Islamist extremists,” the CBP wrote in an e-mail to Mr. Ho. “If a CBP officer inquires as to a person’s religious beliefs in order to uncover signs of extremist tendencies, that officer is well within his authority.”

Not so, say the ACLU and Muslim Advocates officials, whose letter claims the CBP’s treatment of the five men is “representative of a systematic problem: the targeting of Muslim travelers.” It seems unlikely that the five complaints represent ‘systematic’ Targeting. But according to Infranco of the Alliance Defense Fund, the ACLU response

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is typical. He notes that the ACLU is outraged by innocuous public expressions of religious faith—school prayer, graduation invocations, and Christmas carols—but professes deep concern about protecting freedom of religion concerning beliefs that are potentially dangerous to the American public.

Where does the ACLU draw the line if religious freedom is to be upheld without compromising other civil rights? According to the Alliance Defense Fund's Infranco:

They claim to support religious protections, but if it's something like a right of conscience, (e.g. nurses and doctors who have religious objections to performing abortions), then the ACLU sides on the right to abort rather than the right to stand by religious belief. But if it's religious expression in a public university or an issue that deals with something like homosexual behavior, then the ACLU is nowhere to be found.

Infranco is right. In January 2011, the ACLU in Washington, D.C., condemned a bill introduced by Indiana Republican Mike Pence to prohibit giving federal funds to any abortion provider, including Planned Parenthood. While many Americans support the Pence bill for specifically religious reasons, it remains a prerogative of Congress to decide

for whatever reason where it will spend the taxpayer's money. But to the ACLU's Laura Murphy, any constraint on funding is unconstitutional because it "prevent[s] the exercise of a woman's legally protected right to an abortion." In this case, the ACLU would require lawmakers to disregard their own religious beliefs in order to fund a nonprofit the ACLU supports. So much for religious freedom.

The Company the ACLU Keeps

Despite its frequent protests that it supports freedom of expression for all religious beliefs, the ACLU can best be judged by its ties and affiliations. While it claims to uphold the First Amendment right to freedom of religious expression, time and again the ACLU partners with left-wing special interest advocacy groups that are hostile to religious expression.

According to its most recently available tax returns, the ACLU Inc. received more than \$30 million in contributions and grants between April 2008 and March 2009. As a 501(c)(4) legislative and lobbying nonprofit, the ACLU made many grants to its state affiliates, which file most ACLU lawsuits and conduct lobbying activities.

* The ACLU also made a \$50,000 grant to a South Dakota nonprofit called the Campaign for Healthy Families. The group's mission? To collaborate with grassroots groups and individuals in South Dakota to "fight attempts to ban abortion in our state."

* The ACLU paid nearly a half-million dollars to a Washington, D.C.-based group called OMP, Inc. that bills itself as a "full-service fundraising and communications agency that serves leading causes in the United States." A look at its client list shows that OMP's past and present clients include the Planned Parenthood Federation of America, Cuomo 2010, Friends for Harry Reid, and the Foundation for National Progress, the California-based nonprofit that publishes the leftist Mother Jones magazine.

* The ACLU paid \$2 million to Grassroots Campaign, Inc., a Boston organization with a staff of 2,000 and offices in 40 cities. Its mission: "knocking on doors and talking to voters on behalf of the Democratic National Committee." In 2004, the group partnered with MoveOn.org's political action committee to bring an additional 50,000 volunteers to a canvassing effort on behalf of Democrats in 17 states.



ACLU

AMERICAN CIVIL LIBERTIES UNION

The separately incorporated 501(c)(3) ACLU Foundation is the litigation and outreach arm. It received \$62 million in 2008, according to its tax return.

* It gave \$560,380 to a Washington, D.C., public research and communications firm called Belden Russonello & Stewart. Look at that firm's client list: it's a who's who of left-wing groups, including the Planned Parenthood Federation of America, NAACP Legal Defense Fund, National Organization for Women Legal Defense and Education Fund, and George Soros's Open Society Institute.

Where does the ACLU receive its money? In 2011 the ACLU celebrated the culmination of its three-year Leading Freedom Forward fundraising campaign, which raised \$407 million in outright and planned gifts. San Diego philanthropists were honored at a February 9 luncheon for raising \$17 million. (\$13 million of the sum was contributed by Qualcomm CEO Irwin Jacobs and his wife Joan.)

Much of ACLU's funding comes from liberal foundations. Since 1999, major funders of the ACLU and its affiliates include contributions from the foundations of living donors such as the Robert W. Wilson Charitable Trust (2009 assets: \$95 million; total ACLU contributions: \$8,555,019), the Sandler Foundation of banking tycoons Herb and Marion Sandler (2009 assets: \$871 million, total contributions: \$5 million), Yellow Chair Foundation founded by David Filo, a co-founder of Yahoo (2009 assets: \$124 million; total contributions: \$1,950,000), the Arcus Foundation of Michigan billionaire John Stryker (2009 assets of \$137 million; total contributions: 980,000) and George Soros's Open Society

Institute (2008 assets: \$1.9 billion; total contributions: \$185,000).

Contributions from other large foundation donors include the William & Flora Hewlett Foundation (2009 assets: \$6.2 billion; total contributions: \$740,000), Annie E. Casey Foundation (2008 assets: \$2.3 billion; total contributions: \$600,000), San Francisco Foundation (2009 assets: \$889 million; total contributions: \$598,000), Tides Foundation (2009 assets: \$169 million; total contributions: \$454,026), Lewis B. & Dorothy Cullman Foundation Inc. (2009 assets: \$12 million; total contributions: \$250,000), Hilda Mullen Foundation (2009 assets: \$12.3 million, total contributions: \$1,305,000).

No one doubts the effectiveness of the American Civil Liberties Union. But the ACLU has a clear agenda. In First Amendment cases involving freedom of religion the ACLU would rather curtail than uphold the rights of those who profess religious faith.

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Cheryl Chumley is an award-winning reporter in Northern Virginia who spent a year researching land rights and National Heritage Areas as a 2008-09 journalism fellow with the Phillips Foundation. Her findings were published by the Heartland Institute, the American Enterprise Institute's American magazine, and Townhall magazine.

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Many thanks.

Terrence Scanlon
President

Briefly Noted

ACORN operative **Patrick Gaspard**, who was political director in the **Obama** White House, has become executive director of the **Democratic National Committee**. Is this a demotion for Gaspard? Should election officials nationwide brace themselves for unprecedented voter fraud in 2012? We'll see. One thing's for sure: Having a professional Alinskyite agitator running the DNC should worry Americans who care about the democratic process.

As the remnants of ACORN regroup in order to bring chaos to the 2012 election cycle, ACORN's renamed New York chapter is teeming with activity. The successor organization, called **New York Communities for Change** (NYCC), operates out of the same office in Brooklyn that is home to ACORN and its partisan arm, the socialist **Working Families Party** of New York. Longtime ACORN leader **Jon Kest** is executive director of NYCC. Kest is the brother of **Steve Kest**, former executive director of ACORN, who has joined fellow radical community organizer **Van Jones** as a senior fellow at the **Center for American Progress**, a liberal think tank that functions as a public relations firm for the Obama administration. The "new" ACORN group has already held a glittering fund-raiser featuring "Sex in the City" actress **Cynthia Nixon** and has been waging war against **Wal-Mart** which is hoping to open a store in Brooklyn.

And so the misleadingly named **Center for Constitutional Rights**, friend of America's terrorist enemies, shows its true colors. (CCR was profiled in the September 2006 *Organization Trends*.) The anti-American public interest law firm is demanding **Glenn Beck** be shut up because he is enlightening the American public about the Marxist activist **Frances Fox Piven** who has long called for a violent uprising against the U.S. government. CCR sent a letter to Fox News president **Roger Ailes** demanding Beck be fired because some individuals have allegedly been threatening Piven (she has refused to hand over the threats she claimed to receive). This insincere plea comes from the totalitarian left. CCR president **Michael Ratner** wrote a book praising mass murderer **Che Guevara**. CCR defends convicted terrorist **Lynne Stewart** who openly advocates the use of force to overthrow the U.S. government.

A **George Soros**-funded **Media Matters for America** videographer committed journalistic fraud and malfeasance when he interviewed conservative actress **Victoria Jackson** at the 2011 Conservative Political Action Conference (CPAC) last month on camera about Fox News. The videographer can be heard on the video saying, "How important is Fox News for getting out *our* message?" as if he were a conservative. Proof that Media Matters is as unethical as it claims its conservative targets are.

Andrew Breitbart's newest website, **Big Peace**, says **Code Pink** is raising money to support violent insurrection in Egypt. Donations to Code Pink are tax deductible so American leftists can even get a tax break for supporting Islamic jihad. That doesn't sound right, does it? For background on Code Pink read the article Professor **John J. Tierney** of the **Institute of World Politics** wrote for us in the December 2006 *Organization Trends*.