



# THE TORCH

The Newsletter of the American Civil Liberties Union of New Mexico

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## ACLU Sues DEA, Police Officers for Roughing Up Amtrak Passengers

A drug enforcement agent and two police officers illegally searched and roughed up an Armenian couple as the couple's Amtrak train stopped in Albuquerque on the afternoon of August 17, 2005. During the search, one agent pulled bras and underwear from a personal bag belonging to Diana Arutinova, smiling lasciviously as the accompanying agents laughed and made coarse jokes. Arutinova and her partner, Edgar Manukian, told the three agents they had nothing illegal in their bags and to stop searching. The officers ignored their wishes.

The American Civil Liberties Union (ACLU) of New Mexico sued the officers on the couple's behalf, claiming multiple violations of both Arutinova's and Manukian's civil rights.

"This was a gross abuse power," said ACLU executive director Peter Simonson. "The agents had Arutinova and Manukian at their mercy and they used the opportunity to entertain themselves and to terrorize the couple."

Things went from bad to worse after the illegal search. Manukian asked the officers for their names and badge numbers. Agent Jay Perry pushed Manukian toward the train door and said, "You want my name? What are you gonna do about it, ---hole?"

Fearing for her husband's safety, Arutinova stepped in between the two men, but Perry grabbed her roughly by the arm and shook her so hard that her head struck the wall. Perry then dragged Arutinova by the arm back down the hall toward the couple's roomette, striking her head against the wall two or three more times. He stopped only when Arutinova began to scream.

Manukian took photos of the departing agents, but one officer noticed the camera and the agents returned. Perry grabbed Manukian's arm and yelled, "What the hell are you doing taking pictures of us? Give me that camera!" The agents seized the camera and walked away.

Simonson said, "Clearly the officers were trying to cover their tracks by seizing the camera. The act was as cowardly as it was illegal."

Zachary Ives and Martha Mulvany of Freidman, Boyd, Daniel, Hollander and Goldberg, PA are litigating the case for the ACLU along with ACLU staff attorney George Bach and ACLU Legal Director Phil Davis. The case was filed in federal district court.

The counts against the officers include retaliation for protected speech, excessive use of force, and unreasonable search and seizure. The plaintiffs seek compensatory and punitive damages.

*Clearly the officers were trying to cover their tracks by seizing the camera. The act was as cowardly as it was illegal.*

## NMSU Coach Sued for Religious Discrimination

Three Muslim athletes accused New Mexico State University head football coach, Hal Mumme, of discharging them from the NMSU football team in 2005 because of their religious beliefs. Mu-Ammar Ali played on athletic scholarship for the team for three consecutive seasons, and Anthony and Vincent Thompson joined the team on red-shirt status in 2004. The American Civil Liberties Union (ACLU) of New Mexico sued Mumme; NMSU president, William Flores, and the NMSU board of regents for religious discrimination and violations of the athletes' right to freely exercise their religion.

"Universities are supposed to be places of evolved thinking and reason, not of base intolerance and bigotry," said ACLU Executive Director Peter Simonson. "They are supposed to rise above the knee-jerk prejudices that sometimes afflict our society. In this case, the university failed its purpose, and a coach indulged in those prejudices to assert his own religious preferences over the players and the team."

When Mumme took over the NMSU program in spring, 2005, he established a practice of having players lead the Lord's Prayer after each practice and before each game. Ali and the Thompsons claim that the practice made them feel like outcasts and caused them to pray separately from the other players.

Not long after Mumme learned that Ali and Thompson were Muslim, he prohibited the Thompsons from attending the spring 2005 training camp and questioned Ali about his attitudes towards Al-Qaeda.

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Save the Date!

*Bill of  
Rights  
Dinner*

**November 11, 2006**  
ACLU National Legal Director,  
**Steven Shapiro**  
to be Keynote Speaker

*See page 3 for details...*



### Want to File a Civil Rights Complaint?

Visit our website at [www.aclu-nm.org](http://www.aclu-nm.org) and download a complaint form, or send a detailed letter with your contact info to ACLU, PO Box 566, Albuquerque NM 87103.



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NEWSLETTER  
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Membership is \$20 and up

## Executive Director's Report

# An Unwilling Combatant in the "Culture War"

*Peter Simonson, Executive Director*

The lawsuit we recently filed against a New Mexico State University head football coach for discriminating against three players on the basis of their Muslim faith has attracted widespread attention from national media. For the first time that I can remember the ESPN website featured news about an ACLU lawsuit!

One media outlet that took particular interest in the case was Focus on the Family Radio, run by fundamentalist minister James Dobson. My first interview with their reporter Josh Montez focused on the facts of the case and a couple of choice quotes, as it would with any reporter from mainstream news. Montez asked open and unbiased questions.

When Montez called a second time, he asked if I would respond, on tape, to accusations by an Alliance Defense Fund spokesperson that the ACLU "never defends the rights of Christians" and only looks out for Muslims, Wiccans, and other minority religions.

Nothing could be farther from the truth, I said, and I ran down a list of cases that ACLU affiliates have litigated in recent years on behalf of Christians, protecting their ability to publicly express their faith. I highlighted our defense last year of a street preacher who was thrown in jail for "disturbing the peace" with his sermons on Portales street corners.

Now, I am not naïve to the ideological slant of an organization like Focus on the Family, nor did I expect that they would cast our lawsuit in the best of lights. However, Montez' balanced approach held out the promise that he would at least report our side of the story. And one always hopes that a carefully reasoned response can reach the mainstream listeners of such a program and at least plant a seed of doubt in their assumptions about the ACLU.

'Surprise' doesn't capture my reaction when I finally read the web version of the Focus on Family radio

report. "ACLU Attacks Christian Prayer at Football Game," read the headline.

Our lawsuit had nothing to do with attacking Christian prayer. It challenged racism and discrimination.

The article skimmed over the facts of the litigation before turning to a lengthy screed about the ACLU's "search and destroy mission" regarding Christian prayer and its "outright hostility towards people of... Christian faith." None of my examples regarding our defense of Christians made it into the story.

I won't bore you with the details of my outraged phone call to Montez. His justification for distorting the story was the feeble claim that, for all the examples I gave of the ACLU's defense of Christian beliefs, none of them specifically defended an act of Christian prayer.

The strategy of Focus on the Family is simple: manipulate the facts of ACLU cases to create the illusion that America is beset by a "culture war" and persuade Christians to unite behind organizations like Focus on the Family to fend off supposed threats to their faith. The phenomenal growth of the right-wing Christian media empire attests to the strategy's effectiveness. Like cartoon versions of modern-day weapons dealers, Dobson and others have made millions, perhaps billions off of fabricating war.

And they do it all in the name of God.

Next time you hear a news analyst lament the growing political polarization in our country, as if it were an unfortunate byproduct of our cultural evolution, don't buy it. Listen to both sides of the conflict and I bet you'll only hear one that's crying for a fight.

## Oppose REAL ID!

The Real ID Act was signed into law by President Bush in May 2005. If it is accepted and carried out by the states, REAL ID will turn state driver's licenses into national identity cards and impose numerous burdens on taxpayers, citizens, immigrants, and state governments. As a result, it is stirring intense opposition from many groups across the political spectrum. Fortunately, its acceptance in the states is not yet assured. States have until 2008 to comply, or their citizens' driver's licenses will no longer be accepted for federal purposes such as boarding aircraft and entering federal facilities.

Congress neglected to authorize any funding to help states undertake the sweeping changes required under REAL ID. Washington state officials place the 5-year cost for implementing REAL ID in their state at \$251 million. Virginia officials estimate \$232 million. Based on these estimates, REAL ID figures to cost the state of New Mexico \$60 million over the next 5 years. The logistical difficulties of servicing a state as large and sparsely populated as New Mexico may push these costs even higher.

For more information on this important issue and how to take action, please visit [aclu-nm.org](http://aclu-nm.org).

## Religious Discrimination

*Continued from page 1*

The Thompsons were discharged on September 2, 2005, allegedly because they moved their belongings to an unapproved locker and were labeled "trouble-makers."

On October 9, 2005, Mumme left Ali a message on his home answering machine that his jersey was being pulled and that he was discharged from the NMSU football team.

Simonson said, "Being coach doesn't give someone the right to make a football team into a religious brotherhood. University coaches are tax-paid role models. The public has a right to expect that they are going to model behaviors that we endorse as a society. Religious intolerance is not one of those behaviors."

Plaintiffs seek compensatory and punitive damages. Attorneys for ACLU-NM are Joleen Youngers and ACLU-NM Staff Attorney, George Bach.

## ACLU National Legal Director Steven Shapiro to be Keynote Speaker at 2006 Bill of Rights Dinner

The ACLU of New Mexico is honored to have Steven R. Shapiro, Legal Director of the American Civil Liberties Union, as our keynote speaker at the annual Bill of Rights Dinner. The 2006 Bill of Rights Dinner will be held on Saturday, November 11, at the Hotel Albuquerque.

Mr. Shapiro directs a staff of approximately 90 full-time lawyers who maintain a large and active docket of civil liberties cases around the country. Those cases cover a broad range of issues, including: free speech, racial justice, religious freedom, due process, privacy, reproductive and women's rights, immigrant's rights, gay rights, voting rights, prisoner's rights, and the death penalty.

Shapiro has been the ACLU's Legal Director since 1993, and served as Associate Legal Director from 1987-1993. During that time, he has appeared as

counsel or co-counsel on more than 200 ACLU briefs submitted to the United States Supreme Court.

Shapiro is also an adjunct professor of constitutional law at Columbia Law School, and a frequent speaker and writer on civil liberties issues.

After graduating from Harvard Law School and spending one year as law clerk to Judge J. Edward Lumbard of the U.S. Court of Appeals for the Second Circuit, Shapiro joined the New York Civil Liberties Union in 1976. He is a member of the Board of Directors of Human Rights First and the Policy Committee of Human Rights Watch, as well as the Advisory Committees of the U.S. Program and Asia Program of Human Rights Watch.

Tickets for the 2006 Bill of Rights Dinner are available for members and friends. Please call (505) 266-5915.



Steven R. Shapiro, Legal Director of the ACLU will be the Keynote speaker at the Bill of Rights Dinner on November 11, 2006.

## ACLU in the Courts

### Fall 2006 Legal Report

*George Bach, Staff Attorney*

#### DEA – Amtrak

Cooperating attorney Zach Ives and staff attorney George Bach filed a lawsuit in August 2006 on behalf of two Los Angeles residents of Armenian origin who were assaulted by DEA agents searching their luggage at a stop here in Albuquerque. It is also suspected that the couple was profiled based on their last name. When the man protested the agent's handling of the luggage, the agent allegedly roughed up the couple. DEA agents also allegedly confiscated the man's camera after he photographed his wife's injuries.

The DEA Office of Professional Responsibility is also investigating the matter.

#### New Mexico State Football

ACLU-NM represents three Muslim football players against NMSU football coach Hal Mumme, all of whom allege they were terminated from the team because of their religion. Cooperating attorney Joleen Youngers is working with George on the case, along with San Francisco sports lawyer Richard Minkoff. A complaint for violations of equal protection and Title VI was filed against Mumme and NMSU in August 2006.

#### Grants Women's Prison Overcrowding

On April 4, 2006, ACLU-NM Co-Legal Director Maureen Sanders and George filed a lawsuit asking the Court to issue a writ of mandamus ordering the Secretary of the New Mexico Department of Corrections to comply with his duty to convene the Population Control Commission. When a state prison is overcrowded for more than sixty days, the Secretary is obligated to call the Commission, which reviews the files of inmates who are within 180 days of their release date, determining whether some may be released early. The Secretary of Corrections had refused to do so, despite the fact that Grants Women's Prison had been overcrowded by at least fifty inmates for over a year. The New Mexico Women's Justice Project and State Representative Mimi Stewart are plaintiffs in the lawsuit. Maureen and George inspected the prison in March and found unsanitary conditions directly related to the overcrowding.

After a victory at the lower court and a contentious legal battle that included ACLU-NM seeking a contempt order against Secretary Williams, the case settled with an agreement to convene the Population Control Commission three times before June 30, 2007, and to produce statute-mandated reports on prison population issues. The agreement also provides for monthly reports from the Department on population and capacity statistics.

#### Cibola County Sheriff's Deputies

Cooperating attorneys Bryan Davis and Kip Purcell of the Rodey Law Firm filed a complaint on behalf of a Guatemalan national who was stopped without apparent probable cause and "shaken down" for most of the money in his possession by a Cibola County Sheriff's deputy. The complaint alleges Fourth Amendment, Due Process, and Equal Protection violations along with state law tort claims.

#### Albuquerque DWI Seizure Ordinance

In September 2005, the City of Albuquerque filed a Notice of Appeal to the New Mexico Court of Appeals regarding the DWI Vehicle Seizure Ordinance. The ordinance would have permitted Albuquerque Police to seize and forfeit vehicles upon first arrest (not conviction) for DWI. After ACLU-NM sued, State District Judge Theresa Baca declared the ordinance unconstitutional in August 2005. The appeal has been fully briefed and the parties await a decision from the appellate court.

#### Buck et al., v. City of Albuquerque

[War Protest Case]

This case arose out of Albuquerque police actions against protesters on March 20, 2003, the beginning of the war in Iraq. The cooperating attorneys (Mary Lou Boelcke, Larry Kronen, David Stotts, Peter Schoenburg, Cammie Nichols, Cindy Marrs, and Co-Legal Director Phil Davis) have completed discovery and Plaintiffs' summary judgment responses. The trial will be set for October or November 2006. ACLU-NM summer law clerk Peter Steadman did some stellar work drafting jury instructions for this case.

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## LOS ALAMOS EDUCATIONAL MEETING

Presented by the  
ACLU Northern New Mexico  
Chapter

*Defending Liberty in Dangerous Times: Who the ACLU Is and What We Do*

Wednesday, September 20, 2006  
5:30 - 9:00 PM

Unitarian Church of Los Alamos, NM  
Robinson Hall  
1738 North Sage Street  
(near the corner of 15<sup>th</sup>)

**Special Guests:**  
ACLU-NM Executive Director,  
Peter Simonson  
ACLU-NM Staff Attorney,  
George Bach

On Wednesday evening, September 20, ACLU-NM Northern New Mexico Chapter will host an informational and membership recruitment meeting at the Unitarian Church in Los Alamos. ACLU-NM Executive Director, Peter Simonson, and Staff Attorney, George Bach, will explain ACLU-NM's programs and answer questions. ACLU information will be available as well as a table for voter registration. ACLU's Freedom Files half-hour film, "Voting Rights," by Robert Greenwald, will be shown at the end of the meeting. Informal socializing and pizza (for sale) will be available. Los Alamos and Espanola Valley residents are particularly encouraged to attend and join with ACLU-NM's efforts to preserve civil right in New Mexico. Bring a friend!

ADMISSION IS FREE - PLEASE JOIN US!

## ACLU in the Courts

Continued from page 3

### Santa Fe Veterans for Peace

ACLU-NM sued the Santa Fe National Cemetery for failing to allow the Veterans for Peace to hold a solemn memorial service at the cemetery. The case against the Cemetery is before U.S. District Judge Judith Herrera. A settlement conference was held before U.S. Magistrate Judge Richard L. Puglisi on July 27, 2006. A tentative settlement was reached by the parties that would enable the Veterans for Peace to hold a memorial service within the Cemetery. The parties are working on finalizing the terms of the agreement.

### Farmington and Deming Local Labor Ordinances

In September 2005, cooperating attorney Justin Lesky filed a First Amendment lawsuit against Deming and Farmington regarding unconstitutional provisions within their labor-management relations ordinance. The ordinances prohibit protected picketing and keep the public employee unions from endorsing issues and candidates. The plaintiffs are two firefighter local unions. Senior District Judge James Parker has been assigned to this case.

### Albuquerque Voter I.D.

Cooperating attorneys Jim Scarantino, Joe Kennedy, Shannon Oliver, and Scott Cameron filed suit against the City of Albuquerque regarding the new Voter I.D. ordinance that passed during the October 4 municipal elections. The new ordinance requires I.D. at the polls, but not for absentee ballots, and will most likely have a disparate impact on people of color in violation of the Voting Rights Act. Plaintiffs include the League of Women Voters, NM Coalition against Homelessness, SAGE Council, and former district judge Anne Kass.

### McKinley County Detention Center Sex Abuse

Cooperating attorney Kari Morrissey, George, Co-Legal Director Phil Davis, and ACLU-national attorney Stephen Pevar filed suit on behalf of two female inmates at the McKinley County Jail who were sexually abused by a corrections officer. The officer has also been charged by the McKinley County district attorney.

The case was re-assigned from U.S. District Judge Robert Brack to U.S. District Judge "Chip" Johnson. An initial scheduling conference was held May 22, 2006 before U.S. Magistrate Judge Karen Molzen and the discovery period is ongoing.

### Department of Health Employee Anti-war Postings

Cooperating attorney Julie Sakura of Lopez, Sakura & Boyd in Santa Fe and George filed a First Amendment lawsuit against Department of Health after an employee was forced to remove anti-war postings on her office window that faced a public atrium. A settlement conference was held before U.S. Magistrate Richard L. Puglisi on June 19, 2006. An agreement was reached which gave Ms. Harmon access to a bulletin board (with better public viewing) on which she and other employees could post items of public interest, such as her anti-war documents. Defendants also agreed to pay \$6000 in attorneys' fees and costs.

### SPRINGER/CYFD

The superb team of cooperating attorneys continue to monitor Children Youth and Families Department actions and facilities pursuant to the settlement agreement reached earlier this year. The attorneys include Dan Yohalem, Peter Cubra, Phil Davis, Lee Hunt, Scott Cameron, and Larry Kronen.

### Libertarian Party

Cooperating attorney Jesse Boyd (son of John) is local counsel for the ACLU National Voting Rights Project

in litigation challenging the state's two-tiered petition system for minor parties to get their candidates on the ballot.

### State v. Rodarte

ACLU-NM filed an amicus brief with the New Mexico Supreme Court in a case which will clarify whether, under the state constitution, an individual can be arrested for a crime for which there is no possibility of incarceration upon conviction. The Court of Appeals recently ruled that police could *not* execute such an arrest, and the State appealed. Phil Davis was of counsel with George on the brief. After all briefs were submitted, the New Mexico Supreme Court dismissed the State's appeal from the lower appellate court, stating that its earlier decision to so do was "improvidently granted."

### Santa Fe Ban on Street Performer Solicitations

On behalf of the Santa Fe Buskers ["street performers"] Alliance, Cooperating Attorney Scott Cameron and George requested that the City of Santa Fe repeal its unconstitutional ordinance which imposes a blanket ban on solicitation of money on public property. The ordinance also unlawfully exempts religious organizations from the ban.

At a Santa Fe City Council meeting held August 9, 2006, the Council agreed to the Buskers proposal that the ordinance not be enforced against them while the parties develop regulations governing street performers. Kudos to the Buskers the new administration of Santa Fe Mayor David Coss, and the City Council.

### NEW LAW CLERK!

ACLU-NM welcomes UNM Law student Brendan Egan to the staff as our new law clerk! Brendan, in his second year of law school, joins ACLU-NM with a demonstrated commitment to civil liberties issues. He will work with George on a daily basis on all facets of the legal docket.

## NANCY HOLLANDER to Speak at ACLU-CNM Fall Event

**Liberty Lost is Never Recovered:  
What You Don't Know About Our Government Really *Can* Hurt You**

October 17, 2006, 7:00 PM  
University of New Mexico School of Law  
1117 Stanford NE, Room 2402

Preceding Ms. Hollander's talk Albuquerque's Gaggle of Raging Grannies will sing songs appropriate to the topic

Well-known Albuquerque attorney, Nancy Hollander, will give an eye-opening talk about her on-going experiences with the National Security Agency's illegal, warrantless spying activities. Ms. Hollander is a member and past president of the National Association of Criminal Defense Lawyers (NACDL), which is one of the plaintiffs in the ACLU's warrantless spying lawsuit against the government. She served as Executive Director of the ACLU-NM from 1971-75.

Hollander is a partner in, Freedman, Boyd, Daniels, Hollander & Goldberg, P.A. She was named as one of America's top fifty litigators in 2001, and, among many other honors, she received the Distinguished Achievement Award from the University of New Mexico School of Law Alumni Association.

Hollander will include how the government has succeeded in chilling her own First Amendment rights as well as jeopardizing her clients' First, Fourth, Fifth, and Sixth Amendment rights!

Take advantage of this opportunity to get a first-hand account of the continuing invasiveness of our government and how the lives of ordinary citizens are being illegally and profoundly disrupted and damaged.

For further information or directions to the Law School:  
call 255-1978; 255-2537; 856-1427.

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*If it weren't for ACLU-NM, New Mexico and its people would be less free, less diverse, and less empowered to exercise the promises of the Bill of Rights.  
Thank you for supporting our efforts!*