



THE TORCH

The Newsletter of the American Civil Liberties Union of New Mexico

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Interview with Rachel Maddow, Keynote Speaker for the Annual BILL OF RIGHTS DINNER

The American Civil Liberties Union of New Mexico cordially invites you to attend the annual Bill of Rights Dinner on **Saturday December 1st, 2007** to celebrate this year's success in defending our most cherished freedoms guaranteed by the Constitution and the Bill of Rights.

To purchase tickets, visit aclu-nm.org/BORD2007 or call (505) 266-6915 ext. 1001.

Rachel Maddow, keynote speaker for the dinner, is best known for hosting her own show on *Air America Radio* and regular appearances on *MSNBC*, *CNN*, *LOGO*, and other television outlets.

The "Rachel Maddow Show," is funny, fast-paced news program that focuses on "the headlines and the politics behind the headlines." Her show airs in more than 40 markets nationwide. Maddow's style is "learned, enthusiastic and affable." She has a doctorate in political science (she was a Rhodes Scholar) and a background in HIV/AIDS activism and prison reform. She worked with the ACLU National Prison Project and is an avid supporter of the ACLU.

Rachel Maddow spoke with ACLU of New Mexico Executive Director Peter Simonson about her views on contemporary media, and the kind of person we need to take over the job of President of the United States.

PS: You represent a political perspective that many Americans feel is lacking in today's mainstream media. Some would call it "progressive," others "liberal." How would you describe your personal political views?

RM: Good question. I'm almost never asked to describe them. I think of myself as an old-school liberal. I am a really patriotic person who gets weepy when I read parts of the Constitution and righteous Federal court decisions. I am a real civics geek. I think that drives me. I don't have any liberal heroes. I don't see myself in any particular school of American partisan thought.

I am a person who feels personally aggrieved by people who undermine our Constitutional republic. That makes me passionate about all sorts of things—freedom of religion and freedom from religion, through

civil liberties, I think the 4th amendment is personally wired into my DNA. My politics are strongly rooted in Constitutional defense, and I am not just saying this because you are the ED of the ACLU in your state! I'm saying this because the ACLU is the most fundamental expression of where my politics lie.

Growing up as a gay kid and having political roots in the AIDS movement, I am inflected by identity politics too and the need to protect the rights of minorities in the country. For me that's about maximizing the potential of us as a country.

I believe our Constitutional framework gives us the potential to be a beacon unto the world. But only if we harness the talents of everyone in the country. And we cannot do that as a discriminatory, hegemonic country. Because of our experience as minorities in this country we have a lot to offer—an understanding of what it means to be American and what is important in terms of our Constitutional protections.

PS: I am curious what it's like to go on shows like *MSNBC's* "Hardball" and face off against more extreme conservative pundits like Pat Buchanan. How do you prepare yourself for those sorts of moments?

RM: I don't prepare in terms of anticipating what they are going to say. I generally prepare for what position I want to put forward. I don't feel like I am coming from a partisan wing of the American polity, I feel like a centrist. I feel like a moderate and try and call them as I see them. I try and take a respectful, traditionalist, moderate take on things. In the broader media world that makes me a raving liberal.

The thing that is most frustrating to me is that I go up against Pat Buchanan and he's billed as "MSNBC News Analyst Pat Buchanan" and I'm billed as "Raving Left-Wing Lunatic Rachel Maddow." I think Pat is a lot more extreme than I am, but he gets to be a "news analyst." You have people who have staked their claim on the right who are really conservative people. And they get to present their view on the world without being rebutted. Whereas anybody who is identified openly as being from the left has to have somebody on the right rebutting them. I cannot be allowed to say what I think about something without having somebody there to give an opposite perspective.

PS: And yet you do it with such grace and good humor. Is that one of the keys to being effective in those



Keynote Speaker
Rachel Maddow

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Executive Director's Message

ACLU Strengthens Civil Liberties through Deft Legal Work

ACLU lawsuits do more than just vindicate the rights of the specific individuals we represent. If our litigation results in a formal ruling, it has the possibility of setting a civil-liberties-friendly legal precedent for similar cases that follow.

It has the possibility of strengthening civil rights in New Mexico.

Take, for example, our case challenging a police investigation that took place during the frenzied manhunt for suspected murderer, Michael Astorga, in March of 2006. Astorga was believed to have shot and killed a Bernalillo County Sheriff's deputy in an incident that dominated local press for weeks.

Two days after the murder, Bernalillo County officers descended upon the home of Rick and Cindy Poolaw, parents of Marcella Poolaw, who was Astorga's wife and pregnant with his child. The deputies ordered the Poolaws out of their home and, armed with a warrant, searched the house.

Ironically, Mr. Poolaw had been a state police officer for 25 years and already was cooperating with the police investigation. Sheriff's deputies based their application for the search warrant on the logic that Marcella's marriage to Astorga made it probable that they would find evidence of the murder in the Poolaw house.

In a ruling just last August, a federal judge rejected that argument. Marriage to a criminal suspect alone does not establish probable cause and justify a search warrant. U.S. District Judge Bruce Black found that the Poolaws "were...entitled to be secure in their

home...until there were actual facts justifying the intervention of law enforcement officials into their privacy."

Another favorable decision came down this summer in a case that the ACLU brought on behalf of several women who alleged sexual harassment and violations of the federal Civil Rights Act by the New Mexico Scorpions ice hockey team and its managers.

Although we lost our claims at the trial court level, the Tenth Circuit reversed the lower court's refusal to allow a jury to decide a claim that management retaliated against one of the employees for filing a complaint with the Equal Employment Opportunity Commission (EEOC). Management threatened to ruin the employee's marriage by spreading false rumors, and then offered to drop their objections to her application for unemployment benefits if she dropped her EEOC claim.

The Tenth Circuit's opinion clarified a recent Supreme Court decision that retaliatory action is not limited to consequences in the employment context itself.

All of these cases, like many ACLU lawsuits that have gone before them, will have long-term consequences for civil rights law in New Mexico. Our impact normally is positive, but it means exercising extreme caution in choosing which cases to accept.



Maddow interview

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moments when you are debating someone like Buchanan?

RM: I always think when it comes to a screaming match, there is always going to be someone who can scream louder than me. And frankly, I think I am unattractive when I scream. If I go right to the outrage and hollering I think that is a weak place from which to argue. Keeping your knees loose, maintaining a sense of humor and refusing to take seriously the more outrageous assertions by your opponent I think, is a good strategy for winning a debate. Seeming reasonable has always seemed to me to be a good way to win rather than seeming adamant. That's also just my personality, that's how I approach stuff.

PS: What do you feel has been the impact of *Air America*? Has it provided an effective counterpoint to Fox News and the Rush Limbaughs of the world?

RM: Certainly not quantitatively. Fox News is the incredibly dominant voice in cable news. In talk radio we are still in a humongously right wing universe. We are a niche. That would be really hard for one start-up organization [*Air America*] to change in a few years. But we did cram our foot in the door and cause consternation along the right. Both on talk radio and in the partisan right wing television media. I am glad for that. But in terms of whether or not we've tilted the playing field so it's level—no way! Not even close.

PS: If we see a Democrat elected to the presidency in '08, and Democrats retain control of both chambers, how

do you suppose things will change, if at all, on the issues that most concern ACLU members? Say for example, the NSA wiretapping program and the suspension of habeas rights for foreign detainees.

RM: That's the existential question facing the Democratic Party right now: whether or not they are going to take a strong, overt, non-partisan pro-Constitutional stand. The reason I think it's a question for the Democrats and not a forgone conclusion is because what is driving the Constitutional crisis you are talking about is an executive branch power grab.

I think executive power expands like an old rubber band: you can keep pulling it and it gets longer but at a certain point it stops snapping back. It takes a really noble politico to say I am going to dial back my own power. It's viewed as a sign of weakness in an executive to do that. But it's going to have to be done if we are going to restore the executive branch to its rightful place in our government. It's a lot to ask of a political party and of a single politician, but I think that's what Constitutionalists are going to have to insist on.

You cannot have an attorney general who believes that the president can break the law; you cannot have an office of legal council whose job it is to explain why the president doesn't have to obey the laws passed by the congress; you can't have secret memos that justify torture and retroactively insulate people from being prosecuted in violation of our War Crimes Act. You just cannot do that. But in order to undo that, you have to be incredibly high-minded and noble about our Constitution. It's going to take some real political bravery.



PETER SIMONSON

Fall 2007 Legal Report



The ACLU of New Mexico's Legal Department undertakes litigation that advances and defends constitutional rights in New Mexico with an emphasis on cases that

have a broad policy impact. We represent ordinary people who have experienced an injustice and have decided to reclaim their rights. The following report provides information on many of our cases. For more information and updates on the ACLU of New Mexico's legal docket, please visit aclu-nm.org.

NEW ACTIONS

Bush Visit Protest

Josh Hsu and Catherine Crump from the National ACLU are working with the ACLU of New Mexico to develop litigation regarding disparate treatment of spectators during a presidential visit to Los Ranchos de Albuquerque in September 2007. War protesters were pushed back out of sight of the President's motorcade, while supporters were permitted to stand on the curbside.

Farmington GSA

Controversy over the creation of a Gay-Straight Alliance (GSA) club at Piedra Vista High School in Farmington prompted the intervention of the ACLU. In a letter to Piedra Vista Principal Ann Gattis, and subsequent letters to the members of the school board the ACLU affirmed the school's legal obligation to permit the GSA to form, despite religious objections by some parents in the community.

Recognizing that the club could not be banned under current policy, the school board met on October 11, 2007 to consider abolishing all non-curricular clubs. This decision would have affected the entire school district. The school board decided to uphold its current policy, "which allows all student-initiated clubs to form" and to form a committee to review administrative policies regarding non-curricular clubs.

Cooperating Attorney Julie Sakura, the ACLU of New Mexico, and the ACLU LGBT Rights Project will continue to monitor the situation.

Anastasio A. Prieto

ACLU of New Mexico Cooperating Attorney Cid Lopez and Staff Attorney George Bach filed suit on behalf of this trucker whose \$23,000 was seized by State Police and Drug Enforcement Administration (DEA) agents on August 8, 2007. In response, the DEA and local U.S. attorney's office expedited the forfeiture-contest process and returned the money that the DEA had taken. The ACLU of New Mexico will pursue the claims against the state agents who initiated the seizure.

Otero County Immigration Raids

On September 16-18, 2007, Bach, ACLU of New Mexico Law Clerk Brendan Egan, and UNM Law student Maria Martinez traveled to Chaparral, New Mexico to assist with a community meeting regarding the recent immigration raids conducted by the Otero County Sheriff's Department. Bach, Egan, Martinez and ACLU of New Mexico Southern Regional Office & Border Rights Project Director Maria Nape interviewed and signed up clients in Chaparral and Juarez, Mexico. Bach and Nape and Administrative Secretary Susanna

George Bach, Staff Attorney, ACLU of New Mexico

Casillas later returned to Chaparral to interview more victims of the raids.

On October 17, 2007 the ACLU of New Mexico and the Mexican American Legal Defense and Educational Fund (MALDEF) filed a lawsuit against the Otero County Sheriff's Department for civil rights violations committed during immigration raids. On behalf of five Latino families, MALDEF and the ACLU of New Mexico charged sheriff's deputies with raiding homes without search warrants, interrogating families without evidence of criminal activity, and targeting households on the basis of race and ethnicity. The groups seek monetary damages and guarantees that the sheriff's department will refrain from immigration raids in the future.

Roswell Soccer Player

In August 2007, Bach sent a demand letter to the New Mexico Activities Association (NMAA) on behalf of a Mexican immigrant and Roswell High School soccer player who was being prohibited from playing because of a residency requirement. In response, the NMAA agreed to expedite the player's certification to play, if the player had his temporary guardianship papers finalized in court in Roswell (his family remains in Mexico). Bach assisted the player by filing the papers for him, enabling him to play in a state tournament in early September.

PENDING LITIGATION

Virgil Beagles v. Rod Adair

In May 2007, Cooperating Attorney Mike Hart, Co-legal Director Phil Davis, and Bach filed suit on behalf of this Roswell man who was prohibited from accessing the New Mexico Senate by Senator Rod Adair. Beagles has long been a vocal critic of Senator Adair and was at the Senate working on bills relating to his personal business matters. Attorney Mark Jarmie represents Senator Adair. The discovery period has begun.

To'hajiilee Basketball

In July 2007, Co-legal Directors Jane Gagne and Phil Davis, and Bach filed suit on behalf of members of the To'hajiilee High School basketball team and their parents. During a tournament last year, State Police unlawfully searched the players and their bus when another team alleged it had had items stolen from the locker room. The ACLU of New Mexico believes the To'hajiilee players were searched because they are Native American. The discovery period has begun.

Reserve School District

In July 2007, Bach and Cooperating Attorney Scott Cameron filed suit against the Reserve High School Principal for prohibiting Plaintiff Jonathan Cooke from attending his senior prom, allegedly because his Asian suit was too informal. Formal attire at the event was "optional" and other students attended in jeans and short-sleeve sport shirts. The ACLU of New Mexico contends the principal did not like Cooke or his family and her actions were driven by animus against them. The discovery period has begun.

Segway Case in the Las Cruces Mall

Cooperating Attorney Joleen Youngers filed this case with Bach against a Las Cruces mall that was prohibiting a disabled man from utilizing a "Segway" motorized device to access the mall. A court-ordered, but

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THE TORCH FALL 2007 VOLUME 42, NUMBER 3

Published quarterly by the American Civil Liberties Union of New Mexico. Please send any comments, questions or article submissions to Whitney Potter, Editor and Communications Manager.

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Printed in the United States.

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Nacha in her Lady Liberty head piece. She is one of our favorite civil liberties guard dogs!

ACLU STAFF EXPANDS



Susana Casillas joined our staff in September as Administrative Secretary of the Southern Regional Office and is an invaluable addition to our team. She brings her experience as a victims advocate from a local domestic violence shelter where she prepared immigration petitions for VAWA clients. In addition, Susana brings a vast knowledge of advocacy groups and nonprofits in the Las Cruces area. She's from an immigrant family herself and understands the challenges faced by this community.

Fully bilingual, Susana was instrumental in communicating with clients and witnesses in the Chaparral area in preparation for recent litigation. She "dropped everything" to help legal staff in Albuquerque to get signatures, to translate or to deliver a message.

We're thrilled Susana has joined us and want to give her a warm welcome!

-MARIA NAPE

Legal Report

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non-binding, "summary jury trial" was held July 20, 2007, in which a jury awarded Funk punitive damages. The summary trial is a settlement technique that courts order to help resolve litigation; the parties currently continue to negotiate a settlement, while the discovery process moves forward.

McClendon

Cooperating Attorney Peter Cubra filed a motion with the U.S. district court asking the Court to clarify that inmates held at RCC in Albuquerque are covered by the *McClendon* consent decree. The initial *McClendon* litigation initially addressed conditions at the jail facility when it housed city and county inmates. The recent spat of complaints about conditions for immigrant detainees has revived the *McClendon* issues.

Unlawful Search and Seizure Resulting from Astorga Search

Co-legal Director Jane Gagne won a slam-dunk motion for summary judgment against Defendants in this Fourth Amendment lawsuit regarding in-laws of Michael Astorga who were unlawfully searched and detained during Bernalillo County Sheriff's scorched-earth hunt for Astorga. The in-laws were in fact cooperating in the search when they were detained and their home was searched. U.S. District Judge Bruce Black held that familial association alone was insufficient grounds for the search and seizures.

Farmington Local Labor ordinance

In May 2007, Senior U.S. District Judge James Parker denied Defendant City of Farmington's motion to dismiss this case, which challenges the City's restrictions of labor union's free speech rights. Bach and Cooperating Attorney Justin Lesky have filed a motion asking the court for summary judgement. Bach will attend a settlement conference in November 2007.

Albuquerque Voter I.D.

Andy Schultz and Kip Purcell of the Rodey Law firm are handling the appellate briefing for the ACLU of New Mexico, after the City appealed after losing in the district court.

Domestic Partnership Retiree Health Care Benefits

Sanders, Bach, and the ACLU LGBT Rights Project filed suit against the State of New Mexico for denying health care benefits to same-sex domestic partners of retired state employees. Defendants filed a motion to dismiss because none of the current plaintiffs are retired.

DEA - Amtrak

Cooperating Attorney Zach Ives, Alexandra Freedman Smith, Phil Davis and Bach filed suit on behalf of two Los Angeles residents of Armenian origin who were assaulted by DEA agents searching their luggage at a stop in Albuquerque. In August 2007, the case settled for \$35,000.

OTHER ACTIONS

Funding of private schools

After Northern Regional Director Diane Wood raised the issues, Bach and Egan sent letters to the State Public Education Department (PED) and Department of Finance and Administration protesting three money allocations to private schools. The first provides \$2.5 million to private schools of a certain size for unspecified technology; the only school systems that are sufficiently large enough to benefit are systems owned and operated by the Catholic Church. The second and third allocations were \$10,000 grants directly to two Catholic schools for unspecified reasons.

In September 2007, the Secretary of State PED wrote the ACLU of New Mexico and confirmed that, because of the issues we raised, they will not be disbursing the money.

MVD regulations

The ACLU sent a demand letter to the director of the New Mexico MVD asking the department to revise their policies so that individuals with religious headwear (not covering facial features) will not be required to remove such headwear in I.D. photographs.

LGBT/Race Discrimination in Housing

Cooperating Attorney Julie Sakura successfully settled this Human Rights Act claim against an apartment complex in Roswell where a man was discriminated against by the complex personnel because of his sexual orientation and race (Hawaiian).

COUNTY JAILS

Dona Ana

Attorneys Nancy Koenisberg and Rosemary Bauman, of Protection and Advocacy System, Cooperating Attorney Peter Cubra, and Bach are preparing to file a lawsuit against Dona Ana County Detention Center for failing to provide adequate mental health screening.



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