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Laura Berg: VA nurse charged with sedition

Evan Schultz
Torch Editor

Most US citizens don't expect a letter to the editor to earn a charge of "sedition."

Yet this is exactly what happened last September to Veterans Affairs nurse and Albuquerque resident Laura Berg when she wrote a letter to Albuquerque's *Weekly Alibi* last September criticizing the current administration.

Berg's letter expressed her concern for the Bush administration's policies regarding Hurricane Katrina and the war in Iraq. Berg's firsthand experience in treating soldiers gave her a unique perspective on the war. "As a VA nurse working with returning OIF vets, I know the public has no sense of the additional devastating human and financial costs of post-traumatic stress disorder," her letter reads.

She also urged readers to "act forcefully to remove a government administration playing games of smoke and mirrors and vicious deceit."

Shortly after the letter was published, VA Information Security employees seized Berg's computer at work, claiming that Berg had used government property inappropriately in drafting the letter. There was, however, absolutely no evidence to support the accusation that Berg had used her work

computer to write the letter.

VA Human Resources Chief Mel Hooker followed the seizure of the computer with a November 9th memorandum stating that, while there was no evidence found to suggest that Berg had composed the letter on VA time or VA equipment, "[the] Agency is bound by law to investigate and pursue any act which potentially represents sedition."

The strong accusations of sedition in a clear case of an exercise of First Amendment rights quickly led to the involvement of ACLU-NM.

"The VA had no reason to suspect that Laura Berg used government resources to produce her editorial," says ACLU-NM Executive Director Peter Simonson. "She signed the letter as a private individual. From all appearances, the seizure of her work computer was an act of retaliation and a hardball attempt to scare Laura into silence."

ACLU staff attorney George Bach and cooperating attorney Larry Kronen decided to represent Berg. Bach and Kronen demanded an apology from Hooker and submitted a request to the VA for the complete

See "Nurse" on page 2

Laura Berg's letter to the *Weekly Alibi*, which criticized the Bush administration, generated controversy and discussion throughout the state. Photo courtesy of the *Weekly Alibi*

FACES of the ACLU

Harold Folley: Challenger of an unjust medical form

Julie Miller
Administrative Manager

In his long career as a litigator, Albuquerque resident Harold Folley was familiar with legal cases involving violations of individual rights. Now retired, Folley found himself in the position of realizing his own rights were being stepped on, when he went to New Mexico Orthopedics for a medical procedure and read the clinic's medical authorization form.

The clinic, managed by Dallas-based corporation United Surgical Partners International (USPI), requires patients to sign off on authorization forms to permit medical procedures, a commonplace practice in the medical world. However, as Folley perused his intake form prior to treatment, he noticed some disturbing language requiring his approval. In brief, the clinic form stated they would not honor any patient's living will or advance directive, something that made Folley "furious," in his words.

"I was incredulous that anyone would put this in a document for the public to sign. Especially since it was put in there without any [verbal] warning or discussion" from the staff, he says.

Rather than abandon his medical treatment at NMO, Folley crossed out the advance directive language and signed the form, knowing that it was "a meaningless gesture," he says.

He asked some of the clinic staff about the language on the form but was told "that's just the way it is." Requests for further information from the management yielded equally fruitless results.

At this point Folley decided to consult the ACLU. Staff Attorney George Bach met with Folley and agreed there was a major privacy issue at stake. After talking with Bach, Folley wrote a formal letter to NMO requesting an explanation but never received a response.

Weeks later he decided, with the ACLU, to file suit. Folley knew some of the physicians at the NMO clinic and was reluctant, based upon his high regard of them, to file the suit. But his determination to right a wrong prevailed.

"I was very pleasantly surprised at how quickly George and the ACLU responded, and their keen interest and willingness to champion my cause," Folley

says. "Because I've been retired for ten years, my (legal) expertise has diminished and I could not really do a good job of handling litigation like this. The bottom line is that this experience certainly made me appreciate the fact that there is a group in our community, the ACLU, who are there to help people who need help. This time, I was the one who needed help, and it meant a great deal to me."

The result of ACLU's suit was New Mexico Orthopedics eventually agreed to eliminate the advance directive language from the intake forms. Folley

was very pleased with their decision. "I believe, particularly today, the ACLU is more important than ever. We're in a period of religious reactionism that will destroy our system of government," he says, "if we don't do something about it. The ACLU is really doing something."

The ACLU is really doing something.

—Harold Folley

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VA Nurse charged with sedition

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set of documents on Berg's case.

The controversy soon caught the eye of New Mexico Senator Jeff Bingaman. Bingaman wrote a letter to R. James Nicholson, national VA Secretary, outlining the situation and urging for resolution. Nicholson responded with a letter that ended the VA investigation and vindicated Berg.

"Let me be clear," he wrote, "her letter to the newspaper did not amount to sedition . . . The use of the word 'sedition' was not appropriate."

Nicholson verified that unspecified "appropriate action" has been taken against Mr. Hooker, and that he remains the Albuquerque VA Chief of Human Resources.

Overall, the accusations shocked Simonson. He commented, "Is the government so jealous of its power, so fearful of dissent that it needs to threaten people who openly oppose its policies with charges of 'sedition'?"

Hooker claimed that he reported Berg to the FBI, but the legitimacy of this claim is debatable. Bach and Kronen are currently awaiting any documentation that the FBI may have to shed light on their involvement.

Berg is relieved that the situation has ended after many months of accusations and investigations. She chooses, however, to look at the situation from a variety of perspectives, both positive and negative. "The most important thing was getting [the word] out to the public that VA employees have a right to free speech," she says.

Torch guest editor Evan Schultz

This issue of the Torch was edited and designed by Albuquerque Academy Senior Evan Schultz, as part of his four week-long Senior Project. Schultz is the Vice-President of ACLU-NM's Youth Advisory, Activism, and Advocacy Board and the Editor and Cartoonist for the student newspaper at the Academy, *The Advocate*.

Northern Chapter Film Series

ACLU-NM Northern Chapter has kicked off a civil rights film festival running throughout the summer in Santa Fe. Scheduled dates and titles are as follows:

Monday, June 26:

Religious Freedom and Dissent- Religious Freedom is part of the ACLU Freedom Files TV series.

Monday, July 10:

Unconstitutional: The War on Civil Liberties
An award-winning film from Robert Greenwald on post-PATRIOT Act America.

Mondays, July 24 and 31, August 7:

The Power of Nightmares-A fascinating history of the rise of the neo-con philosophy and its influence in American governance.

For information on screening locations, or if you're interested in showing these films to your group, please call the ACLU office in Albuquerque at 266-5915.

Dr. Jeremy Gunn shares insights on religious freedom

Guest speaker at annual meeting discusses national identity, religious "culture wars"

Evan Schultz
Torch Editor

Dr. Jeremy Gunn, leader of the ACLU program on Religious Freedom and Belief, spoke at the Annual Membership meeting in April. He shared his observations on the religious atmosphere of the United States, using his travels around the world and extensive historical knowledge to place the American environment in an international context.

Dr. Gunn pointed out that many social and political problems in the United States arise from the deeply religious atmosphere that permeates our society. "If you look



Dr. Jeremy Gunn addresses the ACLU-NM Annual Meeting. Photo courtesy of Ossie Werner

at almost any public opinion poll, particularly those that compare the United States with other developed countries, the United States comes out always being the most self-defined religious country of any developed country in the world," he says.

From an international point of view, the percentage of Americans who claim a firm belief in God is very high. However, Gunn points out that numbers obtained from public opinion polls may be slightly skewed, due to societal preconceptions. "I think in the United States there's a tendency to overstate the answer [of a religious poll] because it is part of the cultural *milieu*," he says. "To be a good American, to be a good citizen is to be religious."

Gunn emphasized that religion is primarily an identity issue. According to Gunn, the individual identities of Americans and the identity of their country are closely tied to how religion is practiced and presented. For some Americans, it is important for the United States—a country founded on religious principles—to maintain a strong religious community. Those who oppose this perspective feel that it is wrong for a country to dictate values. The metaphor Gunn uses to express this conflict is the debate over placing a statue of the Ten Commandments in front of a courthouse. These fundamental differences in the presentation of religion creates what Gunn refers to as a "culture war."

The term "culture war" was made famous—though not invented—by Republican Presidential nominee Pat Buchanan, who, in a 1992 speech, proclaimed that the United States was engaged in a culture war that was polarizing Americans into certain identities and value systems.

The culture war is persistent in many aspects of American society, but is perhaps most evident in the debate over religious expression and religious freedom. According to Gunn, there are only two groups involved in the culture

war: those who oppose it and those who support it, but these groups do not fall neatly across party lines or socioeconomic groups. "Culture warriors" are the citizens who wish to impose their beliefs on others.

Ironically, those who strongly support a culture war, such as a religious political leader who wishes to keep a statue of the Ten Commandments on the steps of a courthouse, often believe that there is a lack of religious freedom. Gunn tells a story in which he had dinner with a prominent leader of the Christian community. Gunn has an interesting strategy for confronting the argument that the United States lacks religious freedom. Gunn says, "I asked him in the dinner, 'in which other country in the world do you think there is more religious freedom than the United States?'" He couldn't come up with another country. I said, 'which country do you think is best for Evangelical Christians? You name one other country in the world that is better for Evangelical Christians than the United States of America. Name it for me.' And he couldn't do it."

Even though many culture warriors may believe that there is a lack of freedom, the truth, Gunn says, is exactly the opposite, "If we talk about religious freedom—that is, the ability to practice religion basically unfettered by the government, basically supported by the social system, I think the United States comes across better than any other country."

Gunn deeply opposes culture wars and hopes that others realize how important it is to promote an environment of freedom without a dominating voice that dictates belief. "I think the culture wars are harmful for civil discourse. They are harmful for civil liberties," Gunn says. "I think it's harmful in the long run for religious freedom, so those promoting culture war to advance religious freedom are doing exactly the wrong thing."

Executive Director's Report

ACLU-NM Opens New Offices to Better Serve New Mexico

Peter Simonson
Executive Director

The American Civil Liberties Union of New Mexico (ACLU-NM) is pleased to announce that it is expanding to address anticipated civil rights problems on the US-Mexico border and to increase its civil liberties programs in northern New Mexico. Over the next eighteen months, the ACLU-NM will open offices in Las Cruces and Santa Fe, doubling the size of its current five-person staff. The National ACLU is making the expansion possible with an investment of \$1.3 million over the next four years. Local fundraising will continue to sustain existing programs.

This investment is a response to our past success in defending civil liberties, the exceptional quality of our board and staff leadership, and the strategic importance of our state. Only four other ACLU affiliates are currently targeted for this kind of growth. It's an opportunity to create a statewide infrastructure that can transform our ideal vision for civil liberties in New Mexico into a reality.

The office planned for Las Cruces will carry out a regional mission of defending rights, especially of immigrants, in the border zone, rather than being limited to just the state. It will support the efforts of the Arizona and Texas ACLU affiliates and coordinate closely with the

National ACLU Immigrant Rights Project. Creating an ACLU presence on the border is becoming imperative.

Any time you combine intensified law enforcement with the racial differences and economic disparities which characterize the border, you have the makings for an upsurge in civil rights abuse. The vigilante groups now organized on the border are an accident waiting to happen. In the coming years, we expect to see more cases of unlawful arrest and unlawful searches, of racial profiling, and of excessive use of force. Our work is cut out for us, but we're going to rise to the challenge.

The new ACLU-NM office in Santa Fe will support advocacy efforts in the state legislature and provide a launch pad for new public education and membership activities in northern New Mexico.

The passion for civil liberties is strong in places like Santa Fe, Taos, and Los Alamos. We've just never had the staff resources to nurture membership in those communities in the way that we would like. With this expansion, we expect to offer northern New Mexicans more opportunities to learn about civil liberties and to actively contribute to the making of a better, freer New Mexico.



ACLU in the courts: Summer 2006 report

George Bach
Staff Attorney

Grants Women's Prison Overcrowding

On April 4, 2006, Co-Legal Director Maureen Sanders and Staff Attorney George filed a lawsuit asking the Court to order the Secretary of the New Mexico Department of Corrections to comply with his duty to convene the Overpopulation 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. Sanders and Bach inspected the prison in March and found unsanitary conditions directly related to the overcrowding.

On April 25, 2006, State District Judge James Hall granted ACLU-NM's petition, ordering the Department to convene the Commission.

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, Marc Lowry, Cammie Nichols, Cindy Marrs, and Co-Legal Director Phil Davis) have completed the discovery phase and the trial is scheduled for August 2006 before Judge James A. Parker.

Hobbs Police Chief Ken Bohn

In August 2005, cooperating attorney Justin Lesky and Bach filed suit against the City of Hobbs, the Mayor, and the City Manager for firing Bohn, alleging violations of his First Amendment rights. A settlement was reached that awarded Bohn \$70,000 (inclusive of attorney fees and costs approximating \$16,000).

Farmington and Deming Local Labor Ordinances

In September 2005, cooperating attorney Justin Lesky and Bach 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.

Albuquerque Voter I.D.

Cooperating attorneys Jim Scarantino, Joe Kennedy, and Shannon Oliver and staff attorney George Bach 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. Similar litigation is pending in Georgia and Indiana and a preliminary injunction was issued against the I.D. law in Georgia, and subsequently upheld by the Eleventh Circuit Court of Appeals.

McKinley County Detention Center Sex Abuse

Cooperating attorney Kari Morrissey, George Bach, 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, Russell Brian Orr. The officer has also been charged by the McKinley County district attorney.

Department of Health Employee Anti-war Postings

Cooperating attorney Julie Sakura of Lopez, Sakura & Boyd in Santa Fe and Bach have filed a First Amendment lawsuit against DOH after an employee was forced to remove anti-war postings on her office window that faced a public atrium. The case is assigned to federal Judge Jim Browning. Attorney Michael Cadigan represents the Department. Depositions were taken of Ms. Harmon and her two supervisors. Discovery is complete and both sides filed summary judgment motions in May 2006.

Safe Surrender Program

Safe Surrender is a program whereby court proceedings are set up in a church to attract "fugitives" with outstanding warrants into surrendering. The program was conducted at a Baptist church in Cleveland and is planned for a Baptist church in Phoenix. ACLU-NM was recently notified of the proposal to implement the program in Albuquerque this summer. Bach and cooperating attorney Andy Schultz issued a letter to the U.S. Marshal's office protesting the program, and sent a Freedom of Information Act request to obtain any and all information on the program. Schultz and Peter Simonson met with the U.S. Marshal in May 2006 in an effort to begin to resolve ACLU-NM objections to the program.

County Jails

ACLU-NM, along with Nancy Koenisberg of Protection and Advocacy, the New Mexico Criminal Defense Lawyers Association, and attorneys Peter Cubra and Scott Cameron, has begun addressing healthcare and mental health issues in county detention facilities. The attorneys are stepping up investigations of Dona Ana County Detention Center and San Juan County Detention Center.

Bloomfield High School

ACLU-NM sent a demand letter on April 17, 2006 to Bloomfield High School after two Navajo students complained about the ban on clothing with the words "Native Pride" or "Brown Pride." The school claimed the ban was a response to gang activity in the area. The school responded by agreeing to rescind the demand.

DEA - Amtrak

Cooperating attorney Zach Ives and Bach filed a Federal Tort Claims Act notice on behalf of two Los Angeles residents of Armenian origin who were assaulted by DEA agents searching their luggage at an Amtrak train stop in Albuquerque. It is 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 stole the man's camera after he photographed his wife's injuries. A six-month waiting period must run after the filing of the notice before litigation can commence. 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. Although the internal NMSU investigation cleared Mumme, the U.S. Department of Justice and the New Mexico NAACP have since expressed interest in the litigation. Cooperating attorney Joleen Youngers is working with Bach on the case, along with San Francisco sports lawyer Richard Minkoff. Plaintiffs expect to file in May 2006.

CYFD Juvenile Detention - Springer/YDDC

Cooperating Attorneys Tara Ford, Peter Cubra, Larry

Continued on Page 4

Legal report continued from Page 3

Kronen, Lee Hunt, Dan Yohalem, and Phil Davis negotiated an incredible settlement agreement with CYFD to resolve the lawsuit that the attorneys were preparing to file for mistreatment and neglect of juvenile detainees. The agreement, which includes the closing of the Springer facility, also provides funds for ACLU-NM monitoring for several years.

Party Patrol

Co-Legal Director Jane Gagne and Bach reached an agreement with the City of Albuquerque whereby: a) The Party Patrol is no longer issuing citations to minors who are present at parties simply because alcohol is present unless the minor is in actual possession of alcohol, or is visibly intoxicated; b) Party Patrol officers will not enter homes without consent, or some other exception to the Fourth Amendment requirement for entry; c) the Party Patrol is now using a new "Underage Drinking Enforcement Offense Report" for citations issued, which requires more specific information than the incident report former used as to (1) the grounds for a citation issued, (2) whether consent is given for entry,

and if so, by whom. Additionally, the consent will be taped, and the tape marked into evidence; d) the City will draft a new ordinance, and after that, a new SOP. Whether "constructive possession" will be included in the ordinance is still unclear, but in any case, APD will not issue citations unless the minor is in actual possession of alcohol, or exhibits signs of intoxication. The City will also provide more detailed training as to the legal requirements for the Party Patrol issues of citations and entry into homes; e) Parties will only be broken up if they are out of control, with no likelihood that the person responsible for the party can get the party under control, whether minors are present or not.

Abstinence Only Education

Cooperating Attorneys Tara Ford and Jane Wishner, along with co-legal director Maureen Sanders, continue their excellent work with APS, Rio Rancho Public Schools and the Department of Health to address issues about their abstinence only curricula. Tara and Jane have tackled a Herculean investigative effort and have accomplished much toward ensuring that scientific

ally accurate curricula are developed and adhered to in New Mexico.

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. ACLU- Phil Davis is of counsel with Bach on the brief.

Want to File a Civil Rights Complaint?

Visit our website at 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.

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, December 9 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 will be available for members and friends in the fall.



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