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STATE SECRETS:

The [REDACTED] struggle for [REDACTED] transparency in the [REDACTED] office of the [REDACTED] Secretary of [REDACTED] State



"If citizens want to hold a position of power, exercising control of our government, we must support a strong and enforceable Inspection of Public Records Act. A strong records law ensures that no matter who we are or what we believe, we can each be as informed and engaged as we want to be. It's important that we know our rights, and that we exercise them."

- Sarah Welsh, Executive Director of the New Mexico Foundation for Open Government

On January 1, 2011, Governor Susana Martinez sent a message to all New Mexicans that transparency and open government was a top priority for her fledgling administration. In her first official act as governor, Martinez issued an executive order that severely restricts the use of "executive privilege" to hide information from the public. The order states, "...access to public information should be the rule, and denial thereof the exception." Journalists and open-government advocates, weary of the Richardson administration's excessive use of executive

privilege to withhold public information, welcomed this news with enthusiasm. The order heralded a new age of transparency and accountability in New Mexico state government.

Not everyone boarded the transparency train with Martinez, however.

In mid-March, with time running out in the 2011 legislative session, two controversial bills backed

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AMERICAN CIVIL LIBERTIES UNION OF NEW MEXICO FOUNDATION P. O. BOX 566 ALBUQUERQUE, NM 87103 T/505-266-5915 WWW.ACLU-NM.ORG

Thou Shalt Not Endorse Religion

"Our nation was founded on these principles, if you don't like living here you can go somewhere else sir."

This is the response that Kevin Mauzy, then a councilman for Bloomfield, NM, gave when a constituent publicly questioned his scheme to erect a five-foot Ten Commandments monument on the lawn of the city hall. In other words, if you don't agree that an Abrahamic religious code is a foundational American document, your only right in the matter is to relocate to another country.

Doesn't sound very American, does it?

A little history...

The story of the Bloomfield Ten Commandments monument begins in April, 2007 when Councilor



The new Ten Commandments monument on the front lawn of the Bloomfield City Hall

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THE TORCH

The Torch is a quarterly publication sent to members and supporters of the American Civil Liberties Union of New Mexico. Please send any comments, questions or article submissions to Micah McCoy, Editor and Communications Specialist at: mmccoy@aclu-nm.org

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State Secrets, ctd.

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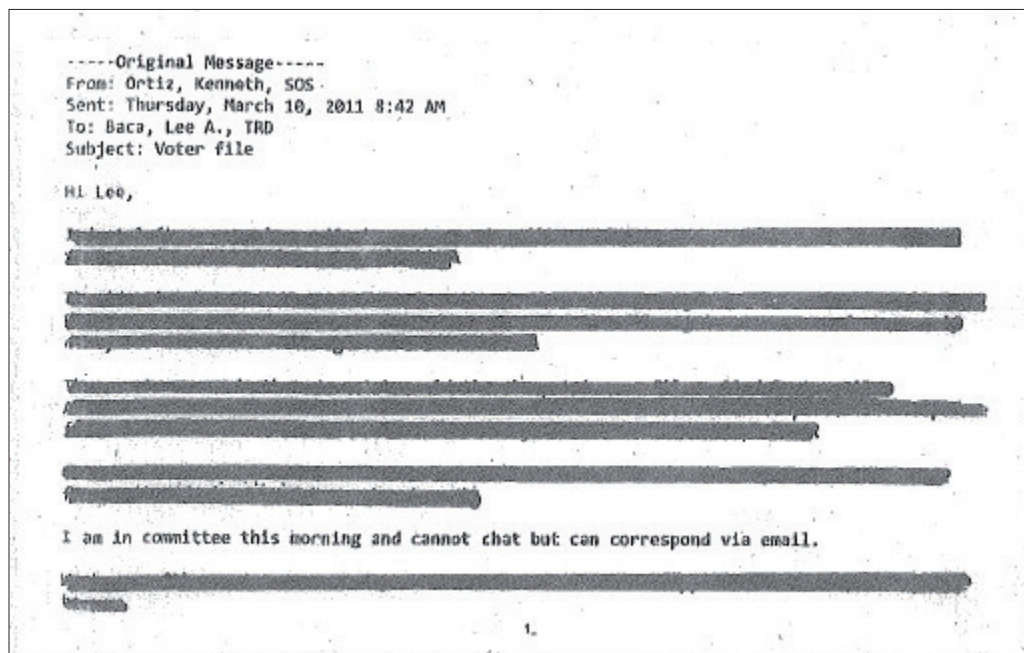
by the governor—a voter ID measure and a bill that would overturn the law that allows foreign nationals to obtain drivers’ licenses—threatened to founder in the senate. At the eleventh hour, New Mexico Secretary of State Dianna Duran made a claim that sent shockwaves through the state: her office had uncovered evidence of 117 foreign nationals registered to vote, 37 of whom voted in the last election. In other words: voter fraud.

Allegations of voter fraud are something of a perennial bloom in New Mexico, efflorescing every year or two around election season. It usually goes something like this:

- 1) Someone—usually a someone who would like to see a photo ID become a requirement for voting—makes unsupported allegations that voter fraud is rampant in New Mexico.
- 2) Cries of “voter fraud” whip up a frenzy in the news media and degrades confidence in the integrity of New Mexico elections.
- 3) Those alleging fraud fail to show a single documented instance of fraudulent voting.
- 4) Repeat step one.

In 2008, this practice of “crying wolf” got so out of hand that the ACLU of New Mexico was forced to sue key members of the Republican Party of New Mexico after they violated voters’ privacy when they released 92 unredacted voting records to the press in an attempt to show fraud. Their claims were never substantiated. Considering the seriousness of Duran’s allegations and the poor track record these sorts of claims have, the ACLU of New Mexico sought to independently verify the data. On March 16, just a day after Duran’s announcement, the ACLU of New Mexico submitted an Inspection of Public Records Act (IPRA) request to the office of the Secretary of State demanding she release the evidence.

What we got back, was nothing. Well, not quite nothing. Much of what we received from the Secretary of State’s office looked a lot like this:



Of the few documents the Secretary of State’s Office sent, many were redacted so heavily as to render them useless. The justification? Executive privilege.

Executive privilege is a rather nebulous legal precedent used by executives in the government to protect the decision-making process. The idea is that the aides and advisors government executives count on for candid advice will be unwilling to weigh in on important matters if they believe that their confidential advice might become tomorrow’s news. Therefore, the courts agree that some level of confidentiality between the executive and their advisors must be maintained.



*Secretary of State
Dianna Duran*

However, in Duran’s response to the ACLU of New Mexico’s IPRA request, her office withheld factual information and other hard data not protected under executive privilege. In direct defiance of Governor Martinez’s call for a new era of transparency and open government, Duran flatly refused to provide important information the public has a right to access.

The ACLU of New Mexico doesn’t stand alone in demanding transparency and accountability from the Secretary of State. Other open government organizations, journalists and prominent political bloggers have all attempted to obtain Duran’s alleged evidence via the Inspection of Public Records Act. And all, like the ACLU of New Mexico, have been rebuffed, fed the same trove of worthless redacted documents or sent on a wild goose-chase through the bureaucracy of the state department. Heath Haussamen, a political blogger with NMpolitics.net, decided to get creative and file an IPRA request through a back door, the state’s Taxation and Revenue Department (TRD), seeking the evidence in email correspondence between its Motor Vehicle Division and Duran’s office. Haussamen explains:

“The [email] attachments are at the heart of Duran’s claim. Using those spreadsheets and other documents from TRD, she says she compared voter registration forms with MVD’s foreign national database to come up with her assertion that at least 117 foreign nationals had registered to vote and that 37 of them had voted in New Mexico elections.

The good news? The administration of Gov. Susana Martinez, through TRD, rejected Duran’s claim that executive privilege allowed her to withhold some information I and others requested.

The bad news? Tax and Revenue found its own justification for refusing to release information. And it’s a justification the N.M. Foundation for Open Government says is questionable.”

This “questionable” justification was something called the “law enforcement exception,” which protects important evidence from disclosure during an ongoing criminal investigation. Feeling the heat, and perhaps sensing that her office could not hide the purported evidence behind the cloak of executive privilege much longer, Duran turned over the list of voters to the Department of Public Safety (DPS) in June for investigation. But the list of names Duran gave to DPS was a larger than the original 117—by about 64,000 names. The list of suspects now included anyone whose driver’s license information did not exactly match that of their voter registration card. In other words, if your driver’s license says “Timothy” and your voter registration card says “Tim,” your name was probably on that list. The Department of Public Safety, more concerned with protecting us from dangerous criminals than conducting a massive fishing expedition in a sea of typos and clerical errors, declined to investigate.

After more than three months of refusals from the Secretary of State, the ACLU of New Mexico had no option but to take the issue to court. On July 20, ACLU-NM filed a lawsuit in the Second Judicial District Court, alleging that Duran violated open records law by concealing public information that the people of New Mexico have the right to see. The ACLU of New Mexico is asking the court to force the office of the

Secretary of State to release that public information that, by the government’s own admission, they have no right to withhold.

The ACLU of New Mexico is committed to prizing this information from the Secretary of State’s grasp because this issue lies at the very foundation of our government. Without transparency, there is no accountability. Without accountability, there is no democracy. When the government takes such drastic steps to avoid conducting its business in a transparent manner, it is cause for deep concern. Making allegations that undermine the public’s confidence in the integrity of our polls, then hiding the evidence for these claims behind a veil of secrecy is not only wrong, it’s illegal. As the text of the Inspection of Public Records Act states itself, “...all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees.” Today, the Secretary of State does not live up to this promise. However, with your continued support, we will continue to fight for your ‘right to know,’ so this promise will again be made whole.

Bloomfield, ctd.

Continued from page 1

Mauzy presented plans for a monument to display the Ten Commandments (also known as the “Decalogue”) as a “historical and art display.” Mauzy claimed that the monument was not a religious statement, but rather “Rules for everyday life...just good rules to live life in general.” The council approved the proposal unanimously. In a subsequent meeting, the council moved to adopt a policy governing the placement of monuments on the city hall lawn. The policy required, among other things, that the monument be donated to the City of Bloomfield by private citizens and contain a statement that “the message communicated by the monument is that of the donor, not the City of Bloomfield.”

Most of Bloomfield’s citizens were enthusiastic about the project...but not all. On the day the council approved the monument policy, Bloomfield citizens presented a petition containing 47 signatures opposing their decision. Tracy Tucker, a local resident, also presented a letter to the council strongly disagreeing that the Decalogue was just a benign set of “Rules for everyday life.”

“You may feel that the ten commandments are a good moral compass,” wrote Tucker, “But it is not the business of the City of Bloomfield that I ‘Remember the Sabbath, to keep it holy.’”

After receiving complaints from individuals in the community, the ACLU of New Mexico legal team sent a letter to the Bloomfield City Attorney informing him that if the city followed through with the installation



A local pastor leads attendees in prayer at the monument’s dedication ceremony.

of the monument, they risked incurring a lawsuit for possible violations of the First Amendment’s prohibition against government endorsement of religion. As time progressed and Bloomfield made no move to erect the monument, the ACLU began to hope that the council reconsidered the wisdom of flirting with the line separating church and state. Unfortunately, this was not the case.

On July 4, 2011, now former councilor Kevin Mauzy presided over the dedication ceremony for the newly installed granite monument featuring the Ten Commandments on the Bloomfield City Hall lawn. It was a star spangled affair, with pinwheels, patriotic hymns, prayer and an impassioned exhortation for the government to keep its “hands off” Bloomfieldians’ religion.

The ACLU couldn’t agree more.

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Bloomfield, ctd.

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What's the big deal?

One of the most common defenses of religious displays on government property is a kissing cousin to Mauzy's "move somewhere else" solution: people often say, "What's the big deal? If people don't like it, they don't have to look at it." This is an equally offensive statement that does not even enjoy the advantage of being true. The Ten Commandments monument in Bloomfield is five feet high, two-and-a-half feet wide and guards the entrance to the City Hall. Anyone who needs to interact with the state via City Hall must look at it or "move somewhere else" entirely in their conscious senses.

These exclusionist, "We like it, too bad if you don't" arguments are a classic misapplication of the political concept of majority rule. In democracies, the majority gets to make decisions concerning the governance and welfare of their community. The majority does not, however, get to tell you the individual what to think or believe. When a government entity hosts a religious, sectarian message like the Ten Commandments on public property, it in effect speaks for all its citizens saying, "This set of beliefs is superior to all others." For Tracy Tucker and many others, this is a big problem. They, like the ACLU, believe that the government should not be in the business of deciding which religious beliefs are right, wrong or preferred.

The Courts

With the help of the ACLU and other religious freedom organizations, citizens have mounted numerous legal challenges to religious displays on government property. Out of these decisions, the Supreme Court established a three-pronged test which they judge whether a religious display violates the First Amendment:

1) **Does it have a secular purpose?** In order for a religious display on government property to be constitutional, it's purpose must be purely secular. This can sometimes be difficult to determine. For example, in 2005 the U.S. Supreme Court delivered two opposite Ten Commandments decisions in the same day. One monument, installed among 17 other historical and cultural monuments on the grounds of the Texas State Capitol, was determined to serve a secular, historical purpose. The other case involved two Kentucky court houses that hung framed copies of the Decalogue on the walls as stand-alone displays. The court determined that, absent any wider context, these displays were religious in their purpose.

2) **Is the primary effect neither advancing nor inhibiting religion?** Even if a display's purpose is purely secular, the Supreme Court has determined that it can be unconstitutional if it has the effect of endorsing religion. If an objective, reasonable observer views the display and believes it to be a government endorsement of religion, it fails this test. Recently, under circumstances strikingly similar to those in Bloomfield, the 10th Circuit Court of Appeals

ordered a Ten Commandments monument removed from the lawn of the Haskell County Courthouse in Stigler, Oklahoma because they determined that a "reasonable observer" would interpret it as an endorsement of religion.

3) **Does it result in an excessive government entanglement with religion?** If a statute or policy causes the affairs of a government institution and religious institution to become too intertwined, so that the state must pervasively monitor the religious institution, then it would be unconstitutional. This prong of the test is most often applied in questions concerning religious schools.

If a religious display on government property runs afoul of any one prong of this test, it is determined to be in violation of the Establishment Clause of the First Amendment.



Sign next to the Ten Commandments monument: "The City has intentionally opened up the lawn around City Hall as a public forum where local citizens can display monuments that reflect the City's history of law and government. Any message contained on a monument does not necessarily reflect the opinions of the City, but are statements from private citizens..."

Does Bloomfield pass the test?

How does Bloomfield's Ten Commandments monument measure up against this three pronged test? The short answer is that it's too soon to tell. Since this test was first created in the 1970s, a slough of rulings from courts high and low have created a patchwork of law concerning religious displays on government property. After Bloomfield announced its intention to follow through with their Ten Commandments monument in June, the ACLU of New Mexico filed an Inspection of Public Records Act request, seeking background documentation on the monument from inception to installation. What our investigation uncovers will determine our approach.

However, from the overtly religious nature of the dedication ceremony and lack of accompanying historical monuments, it strikes the ACLU of New Mexico that Bloomfield's characterization of the Ten Commandments monument as purely a "historical and art" display rings false. And so it does to many Bloomfield residents as well.

DID YOU KNOW THAT:

Everything you do online leaves a trail of personal information behind?

Electronic privacy laws have not been updated since 1986—*before* the invention of the world wide web?



Demand your dotRIGHTS!

Learn what you can do by visiting dotrights.org, home of the ACLU online privacy campaign.

Executive Director's Notes

Defender of All Faiths



None of the ACLU's positions generates more controversy or more misunderstanding than our efforts to protect the separation between church and state. Recently we sent a letter to the Bernalillo County Sheriff protesting his decision to hold a graduation ceremony for new deputies in his own place of worship, Legacy Church. The letter prompted a front-page story in the Albuquerque Journal, extensive TV coverage, and phone calls to our office telling us to mind our own business (although in much less charitable terms).

All in response to a simple letter. Even ACLU lawsuits challenging overzealous sex offender laws haven't generated such a stir.

No other area of the ACLU's work has made us the target of widespread false propaganda. Emails regularly circulate advertising claims that the ACLU

is challenging the right of servicemen to bow their heads in prayer or is litigating to remove crosses from gravestones in federal cemeteries. Beyond false, the emails actually contradict positions we typically take. During a recent media interview I was asked to respond to some of the questions evangelical Christians allegedly have about the ACLU. "Does the ACLU want to ban the Bible?" "Does the ACLU want to put all preachers and ministers in jail?" "Why does the ACLU want to rid public life of religion?"

Far from curtailing religion in those ways, the ACLU of New Mexico has fought to ensure that inmates have access to Bibles and other scriptures in New Mexico jails. We have defended street preachers who were jailed, in violation of their free speech rights, for "disturbing the peace."

Polls show that the United States is one of the most religiously devout nations in the world. The Constitution's prohibition on religious establishment probably underwrites that condition. The more Government is allowed to meddle in religion, the more it bends religious faith to the purpose of governing. The more religion becomes a tool of the State, the less meaning it offers and the less compelling it becomes. The ACLU stands for the proposition that government has no business in the affairs of religion. When we challenge a government official for holding a state-sponsored ceremony in the church of his choice, our purpose is not to question the legitimacy of his or her faith. It's to preserve the conditions that allow that faith, and all others, to thrive.

Compassion and Choices: *Peace at life's end. Anywhere.*



Everyone should have the right to make decisions about their own life.

compassion & choices

The non-profit advocacy organization Compassion and Choices will present a video presentation in Santa Fe, Albuquerque and Rio Rancho, publicizing legal options for peaceful dying. *Peace at Life's End. Anywhere.* aims to inform the public, the media and healthcare providers—especially assisted-living facilities—of end-of-life choices available in every state.

Compassion and Choices began this public education campaign after an Albuquerque assisted-living facility evicted an elderly couple for exercising their right to stop eating and drinking. Their son, Neil Rudolph, of Alamosa, Colorado, will co-chair the campaign.

No one should suffer when legal options exist. Options for peaceful dying already exist in every state.

THURSDAY, OCTOBER 27

SANTA FE • 12:00 Noon

Unitarian Universalist Congregation of Santa Fe
 107 West Barcelona, Santa Fe, NM 87505 (The intersection of Barcelona & Galisteo streets.)

RIO RANCHO • 6:30 PM – Rio Rancho Library, 755 Loma Colorado Boulevard NE, Rio Rancho, NM 87124

FRIDAY, OCTOBER 28

ALBUQUERQUE • 12:00 NOON

Albuquerque Main downtown library
 501 Copper Ave. NW, Albuquerque, NM 87102

ALBUQUERQUE • 6:45 PM

First Unitarian Church of Albuquerque
 3701 Carlisle Blvd NE, Albuquerque, NM 87110



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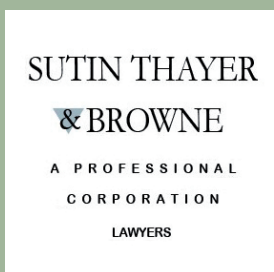
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Bill of Rights Celebration

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\$150, or \$175 after September 30
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The Bill of Rights Celebration is the ACLU of New Mexico's annual fundraiser gala, held this year on Saturday, October 22 at 6 p.m. at the National Hispanic Cultural Center. Please join us to honor this year's awardees and celebrate civil liberties with an evening of jazz from the Bill West Trio, drinks and Southwestern Cuisine from La Fonda Del Bosque.

ACLU-NM will also present a short video by Santa Fe videographer Liza Bambenek (*True Grit, No Country for Old Men, Crazy Heart*) highlighting the stories of some of the New Mexicans we've represented over the past year.

The program will last approximately 75 minutes, with time to socialize afterwards.

Help us build a strong future for fairness and equality in New Mexico by getting your ticket today!

AWARDS



MARK D. FINE, COOPERATING ATTORNEY OF THE YEAR

This year we will honor Cooperating Attorney of the Year Mark D. Fine for his work representing three female inmates who were sexually assaulted by an employee of the New Mexico Women's Correctional Facility in Grants, NM. Mark is an attorney at the Fine Law Firm



JAMES WALKER & STEVEN DE LOS SANTOS, GUARDIAN OF LIBERTY AWARD

You'll also hear from Guardian of Liberty awardees James Walker and Steven De Los Santos, two high school students who stood up against prejudice in their community to found the first-ever Gay-Straight Alliance in Clovis, NM. Now graduated, Walker is a student at UNM and De Los Santos is studying at NMSU.

See you there!

Member Profile: Lorraine Roff



You can tell a lot about a non-profit organization by the kind of volunteers it attracts. And if Lorraine Roff is any indication, the ACLU of New Mexico is in good shape. Lorraine has been volunteering for the ACLU of New Mexico for 17 years, doing everything from processing legal complaints to organizing mailings. In 1998, she was even recognized as volunteer of the year at the annual Bill of Rights Dinner.

Lorraine grew up on the East Coast, graduating from Radcliffe with a degree in English. In 1958, she moved to Albuquerque and worked for the Department of Human Services for 29 years until retirement.

An avid newspaper reader, Lorraine often saw the ACLU in the news and developed a growing sense of identification with the principles that the organization stands for. She cites the ACLU's defense of the Nazi's right to march in Skokie, IL as an "aha" moment.

"I was aware of the march in Skokie, and how disruptive that was, and how easy it was to think "No, they shouldn't be allowed to march" because you didn't agree with them," said Lorraine. "But I realized you can't do that. Things like that made me aware that I really supported the idea behind the ACLU."

Despite being a long-time supporter of the ACLU, Lorraine didn't join until 1988 when George H. W. Bush, then a candidate for the presidency, said in derision

that his opponent Michael Dukakis was a "card-carrying member of the ACLU." Lorraine, like thousands of others, immediately went out and became a card-carrying member herself. Not long after, she was spending two days a week volunteering with the New Mexico affiliate.

"After I retired in 1994, I started looking around for something to do, and I thought, 'Well, I can certainly volunteer at the ACLU office,'" said Lorraine. "I've been doing some form of volunteering for the ACLU of New Mexico ever since."

Back in 1994, the ACLU of New Mexico had only two staff members: an executive director and an administrator. Lorraine helped to lighten the load by screening every complaint that came across the ACLU's desk. Reading the complaints, she was most struck by the deplorable treatment of incarcerated people:

"The ones that were most amazing were from inmates who said that the prisons would not let them have their medication, regardless of what the outcome might be for their physical or mental health. I remember this one case where a doctor even showed up to the prison in person with the prescription in hand to tell them that a patient of his must have this medication. The prison officials said, "Absolutely not." I thought that was just *absolutely* horrifying—and still do! And it's still going on. Just because you're in prison doesn't mean that you're not a human being."

Today, Lorraine not only volunteers herself, but organizes an entire pool of volunteers to help pitch in whenever they are needed.

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Have Questions?

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Become a card-carrying member of the ACLU or renew your membership today!

You can join or renew online at aclu-nm.org or contact the Development Department at (505) 266-5915 ext. 1001 or supportus@aclu-nm.org.



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Visit us on the web:
www.aclu-nm.org

New Staff

Ed Macy, *Staff Attorney*



Ed Macy joined the staff of the ACLU of New Mexico as a staff attorney in August 2011. A native of Albuquerque, he became active in the civil rights movement as an undergraduate and at the UNM School of Law. After law school, he was elected to co-direct the operations of a national civil rights organization headquartered in San Francisco. Soon after, he was awarded a fellowship to practice civil rights litigation. He returned home to New Mexico and began representing prisoners in various cases, including actions on behalf of incarcerated Muslims, women and African-Americans.

Ed was one of the initial attorneys involved in the long-lived Duran litigation which changed the face of prisons in New Mexico. Later, he taught criminal defense at the UNM School of Law. Ed also served as an Assistant Federal Defender where he represented criminal defendants in federal courts for several years. Further diversifying his skills, he went on to practice in the civil law, representing plaintiffs in various personal injury and wrongful death actions.

Ed has been a long-time supporter of the ACLU of New Mexico, serving as both a cooperating attorney and vice-president of the board of directors.

“We are tremendously privileged to have an attorney of Ed’s stature and experience join the ACLU-NM staff,” said ACLU-NM Executive Director Peter Simonson. “Ed will be an asset to our organization as we continue fighting to protect civil liberties in New Mexico.”

Ed lives in Placitas with his wife and their two dogs, a Basset Hound and an attack poodle.

New Staff

Jaye Hobart, *Project Coordinator*



Jaye Hobart joined the ACLU of New Mexico Regional Center of Border Rights through the Border Servant Corps in August of 2011. She comes to Las Cruces, NM from Iowa City, IA with a strong passion in working towards social justice. Jaye graduated from Luther College, located in northern Iowa, with a concentration in Women and Gender Studies.

In 2009, Jaye completed a summer internship with the Urban Servant Corps (Border Servant Corps’ sister organization) in Denver, CO working as a youth group leader for a poverty-immersion program and volunteering at the Ronald McDonald House. Last summer, Jaye worked at the Domestic Violence Intervention Program as an advocate and shelter assistant. During January, she interned for the Iowa Women’s Foundation, which is a fundraising organization for developing statewide outreach programs for young girls and women.

“The Regional Center for Border rights is excited to welcome Jaye as the new Project Coordinator,” said RCBR Director Vicki Gaubeca. “Her diverse experience and passion for social justice will be invaluable over the next year.”

Jaye looks forward to an intense year of learning, leading, and advocating for civil rights as part of the Regional Center of Border Rights and hopes to earn a master’s in Social Work in the near future.