

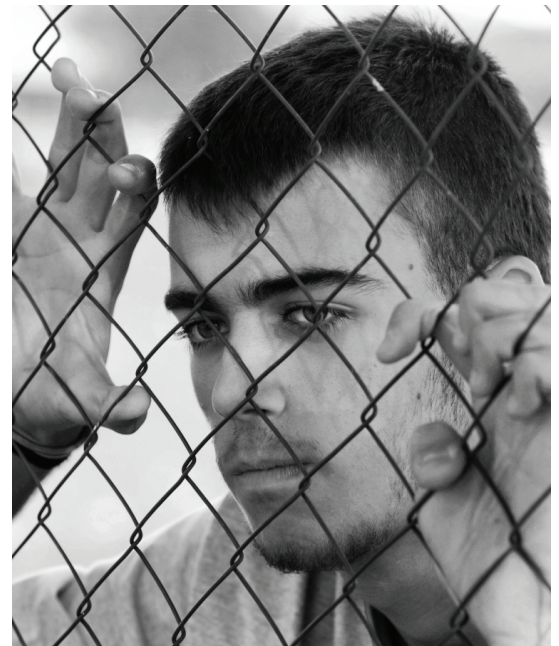


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ACLU Settles Lawsuit against CYFD

After six long years, the tenacity of the ACLU of New Mexico and the Youth Law Center has finally paid off. In early September, the New Mexico Children, Youth and Families Department (CYFD) agreed to implement substantial and long overdue improvements to essential health and safety services for youth in their custody.



The road to this landmark agreement was not easy or short. The ACLU of New Mexico and the Youth Law Center began preliminary inspections of CYFD facilities in 2003 after hearing concerning reports about the conditions and policies pervasive in the New Mexico juvenile detention system. After reviewing CYFD facilities, ACLU-NM and its partners developed a laundry list of reforms necessary to bring the facilities and services within constitutional bounds. In order to avoid a class action lawsuit, CYFD entered into contract with ACLU-NM in 2006, pledging to make these necessary changes. However, by 2007 it was clear that—while some progress had been made in implementing the required reforms—CYFD was far behind where they could and should be. Faced with no other choice, ACLU-NM filed suit against CYFD for breach of contract.

Now that the lawsuit is settled, CYFD and the ACLU of New Mexico have agreed to work

together to create a new way forward that will provide a brighter future for our state's troubled youth.

Juvenile Justice: A broken system

In the past three decades, the United States has become the world's largest incarcerator with 2.3 million prisoners as of 2007¹. This would be cause for concern enough if it were only adults who were affected, but the U.S. now holds an average of 500,000 of its youth in detention facilities². Juvenile detention centers are notoriously counterproductive in reforming youth, oftentimes serving only to further entrench the inmates in a culture of delinquency. Rather than providing a focused and earnest effort to rehabilitate its troubled youth, many facilities merely remove them from society and warehouse them in unhealthy, unsafe and developmentally stunting conditions.

Continued on the next page >>

THE TORCH

THE TORCH is sent to members and supporters of the American Civil Liberties Union of New Mexico and the ACLU of New Mexico Foundation. For information about becoming an ACLU member, please contact our Development Department (505) 266-5915 ext. 1001.

THE TORCH is published by the Communications Department.

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New Mexico's juvenile justice system has struggled with many of these same problems for years. During the inspections of CYFD facilities the ACLU discovered that behavioral and medical health services were inadequate, educational opportunities limited, facilities overcrowded and prone to outbreaks of violence, disciplinary infractions met with inappropriately harsh punishment and incidents of verbal and physical abuse by facility staff widely reported. Rehabilitation under these conditions is especially difficult, and indeed many youth's behavioral problems are further aggravated. In addition to these problems, no functional grievance system existed to give inmates an avenue to report a problem or instance of abuse or misconduct. The overall approach to rehabilitation in New Mexico needed reform in order to bring its services and facilities within constitutional bounds.

A New Approach

Under its current agreement with the ACLU of New Mexico, CYFD is obligated to shift its approach to juvenile rehabilitation toward the implementation of a model that the state of Missouri pioneered 25 years ago, emphasizing therapy-intensive, small-group environments. There is no barbed wire, no orange jump suits, and the "guards" are unarmed counselors who wear no uniforms. This more nurturing, intimate setting encourages youth to let their guard down and start working through their issues.

Another enormous advantage to this small-scale, treatment-focused approach is the comparative low cost. With fewer than eight percent of its program graduates returning to the system under the Missouri Model³, the state saves money by not having to process, house and treat the same individuals over and over again. Rather than creating a new crop of adult criminals who will drain precious resources as they languish in the overburdened prison system, this new approach to juvenile correc-

tions aims to produce youth who are equipped to become productive members of our society.

Seeing It Through

To help ensure that CYFD has the resources it needs to implement these sweeping reforms, ACLU-NM has secured Paul DeMuro, one of the nation's leading experts in juvenile justice. DeMuro, the former chief of youth prisons in Pennsylvania, will act as an independent consultant and provide CYFD with recommendations on how to improve their services and facilities. The agreement also establishes a Technical Advisory Committee to oversee and monitor CYFD's progress against the established goals and objectives of the plan. In accordance with the agreement, all reforms to the juvenile justice system are expected to be completed by December 31, 2010. The ACLU of New Mexico looks forward to moving ahead with CYFD to help ensure that our state's troubled youth have the support they need to escape the institutional cycle and build meaningful and productive lives for themselves.

Cooperating Attorneys for this case were ACLU-NM Co-legal Director Phil Davis, Daniel Yohalem, Peter Cubra, Simon Tuck, Lee Hunt and Alice Bussier and Maria Ramiu of the Youth Law Center. If you would like to learn more about the history behind the ACLU of New Mexico's case against CYFD, you can visit the newly-created background page at www.aclu-nm.org/News_Events/CYFDbackground.html featuring an interactive timeline and an interactive map showing the location of all the juvenile facilities affected by the agreement. Also available for download on the background page are the legal documents pertaining to the agreement and past ACLU-NM press releases chronicling the development of the case.

¹ Bureau of Justice Statistics

² Homan, B. & Ziedenburg, J. (2006) *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*. Washington, DC: Justice Policy Institute. P. 3.

³ Missouri Division of Youth Services

Notice of Bylaws Change

In an effort to improve our annual meeting, the ACLU-NM Board of Directors has voted to make the following amendment of the bylaws at its meeting on December 12th:

Section V MEETINGS

The annual membership meeting shall be held ~~during April~~ of each year in such place and on such a date as shall be determined by the Board of Directors. Other meetings of the membership or other public meetings may be called by the president of the Board of Directors or one-twentieth of the members. At least two weeks notice shall be given to all members of all meetings of the membership and other public meetings.

Members may submit comments on this change. They must arrive in the ACLU office no later than Dec. 11.



Every Gift Has an Impact

A Message from
Executive Director
Peter Simonson

Greetings ACLU supporters!

On a day-to-day basis, the ACLU-NM measurably improves the lives of people in our state because of your support. Over the last year, your membership dues and tax-deductible contributions have resulted in:

- securing health care benefits for same-sex domestic partners of retired state employees;
- keeping children living in state juvenile justice facilities safer and providing them access to better mental health care services;
- a lawsuit against officers of the NM Motor Transportation Division (MTD) for targeting vehicles driven by African Americans for inspections, searches and detentions at the port of entry in Lordsburg, NM; and
- winning the release of over 80 immigrants, from countries throughout the world, who were detained indefinitely by U.S. Immigration and Customs Enforcement (ICE) in the Otero Co. Detention Center.

And those are only a few examples of the impact your gifts have on this organization's work! As 2009 comes to a close, I hope you will keep the ACLU-NM in mind when you consider your end-of-year charitable giving. We plan to be even busier in 2010, and your generous support is vital to our continued success.

As we look ahead, our most pressing priorities include:

- protecting the civil rights of U.S. citizens and immigrants despite the increased militarization of the border region;
- leading the effort to pass domestic partnership legislation in early 2010 and continuing

the fight for LGBT rights in the courts until marriage equality is won;

- defending citizens from unwarranted surveillance by promoting strict oversight of so-called "fusion centers" that combine law enforcement data with private sector records, such as credit use, in order to identify "suspicious" behavior; and
- protecting religious liberty and freedom of speech in the public schools.

Never before has the ACLU-NM had the capacity to mount such systematic protection of civil liberties in our state. We must use it to continue to create openings for change—to imagine and build a future that is better than before because it is more free and equal. We invite you to be our partner in this endeavor by using the enclosed envelope to make a generous, tax-deductible gift to the ACLU-NM Foundation today.

Thank you for your support of the ACLU of New Mexico. Every gift has an impact!

More Ways to Give!

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Visit www.aclu-nm.org for more information

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ACLU-NM Clears Students of False Gang Charges

It was a late August evening after the Friday night football game when Dana and Donovan Delouth, both students at Albuquerque's Valley High School, climbed into a car with their friends and joined the long line of students and fans waiting to exit Milne Stadium. As the two brothers and their friends pulled out of the stadium parking lot onto the road, they spotted a small group of their friends and flashed "peace" and "hook-em-horns" hand signs in greeting. Their friends in the parking lot returned the greeting with identical signs, and both groups continued on their separate ways.

The following Monday morning when Dana and Donovan arrived at school, the brothers were taken to the school security office, accused of throwing gang signs after the football game and informed by the administration that they were to receive long-term suspension. The brothers—who are not, nor ever have been gang members—tried to explain that the hand signs they had made were innocent and commonplace greetings that had no connection whatsoever to gangs or gang-related activity. The school administrators still refused to drop the charges.

The ACLU-NM legal team took an immediate interest in the brothers' story. Students have a First Amendment right to communicate verbally or non-verbally on school property if their communication doesn't interfere with the educational process. Neither a "peace" nor "hook-em-horns" hand gesture after a Friday night football game can reasonably be said to interfere with the educational process. ACLU-NM also alleges that APS violated Dana and Donovan's Fourteenth Amendment right to attend public school when the brothers were suspended for ten days and not allowed to attend classes.

The incident raised an additional concern about the public school system's vague definition of gang activity. As ACLU-NM Executive Director Peter Simonson remarked, "If APS can suspend students for doing something as universally-accepted as showing a peace sign, then it can get rid of students at will, with no real evidence that the student represents a threat. Anti-gang policies might be good for school security, but not when they are enforced so arbitrarily that they deny innocent kids their right to education."

Staff Attorney Brendan Egan and Co-legal Director Jane Gagne filed a lawsuit against APS challenging the students' suspensions and APS's vague anti-gang policy. In the following weeks, the ACLU of New Mexico represented the two brothers at APS's administrative hearings where the disciplinary hearing officer cleared the brothers of the gang related charges and formally lifted their suspensions. The brothers returned to Valley High School after missing ten days of class due to the suspensions.



Although the ACLU of New Mexico was able to help Dana and Donovan Delouth, this case exemplifies a wider problem in the nation's public school system. The latitude provided in many anti-gang policies enables schools to kick out any students they might deem to be undesirable, regardless of whether they have actually done anything that merits suspension or expulsion. This arbitrary and summary removal of students from the mainstream of the public education system contributes to a "school-to-prison pipeline" that squanders students' futures and violates individual rights guaranteed under the U.S. Constitution.

Dispatches

9.19.09 ACLU-NM Hosts Award Luncheon in Gallup

ACLU-NM Policy Director Diane Wood, along with several other organizations, hosted a Saturday luncheon to recognize Senator John Pinto for his support of human rights and civil liberties in New Mexico. Two dozen advocates, including special guest Miss Navajo Nation, came together to honor and acknowledge the Senator's 32 years of service.

9.25.09 ACLU-NM Organizes CLE

Close to a hundred attorneys packed the Work Force Training Center to take part in the organization's first Continuing Legal Education course of the year. ACLU-NM's Legal panel along with several of the organization's cooperating attorneys covered the nuts and bolts of civil rights litigation, and special guest and newly-elected national ACLU President Susan Herman, spoke on the transformation of case law and impact during the 21st century.

9.30.09 RCBR Talks Immigration Reform with Delegates in D.C.

Regional Center for Border Rights (RCBR) Director Vicki Gaubeca traveled cross country late September, as part of the Border Stakeholders Delegation held in Washington, D.C. Key advocates from Texas, Arizona and California as well as members of the U.S.-Mexico Border & Immigration Task Force met with lawmakers and policy makers on Capital Hill in hopes of advancing the debate on immigration reform. The RCBR and other organizations gained critical information about the status of a draft of Comprehensive Immigration Reform (CIR) legislation, and, in turn, proposed legislative, administrative and policy recommendations that aim to balance border enforcement with civil and human rights principles and standards.

10.9.09 National Coming Out Day at NMSU

In celebration of National Coming Out Day, RCBR joined forces with New Mexico State University's Sexual Gender Diversity Resource Center and other student groups to raise awareness around LGBT issues on campus. Participating organizations hosted information tables and passed out materials to inform students of available resources and programs of support.

Legal Highlights

BCSO Abuse of Hearing-Impaired Couple

ACLU-NM filed a complaint on behalf of a hearing-impaired couple who were unfairly treated by Bernalillo County Sheriff Deputies. The woman was told by deputies that unless she admitted her boyfriend hurt her, they would take away her baby. The threat to take the baby away occurred after the woman attempted to tell the deputies that her boyfriend did not hurt her. The deputies also refused to call a sign language interpreter during the encounter after the couple requested one. Part of any resolution will incorporate an agreement by the Bernalillo County Sheriff's Office to use sign language interpreters when they encounter hearing-impaired citizens in non-emergency situations.

Poolaw Case Settled!

ACLU-NM Co-Legal Directors Jane Gagne and Phil Davis settled a lawsuit on behalf of the Poolaw family, whose home was illegally searched during the Bernalillo County Sheriff's Office's manhunt for suspected cop-killer Michael Astorga. The terms of the settlement secured \$200,000 in damages for the family.

Challenging the Military's Separation Pay under "Don't Ask Don't Tell"

The ACLU of New Mexico hopes to challenge a military policy that strips soldiers of half their separation pay if they are dismissed under Don't Ask, Don't Tell. A few years ago, Clovis NM Air Force base received reports that a staff sergeant was seen kissing his same-sex partner ten miles off base. The staff sergeant declined to fight the Don't Ask, Don't Tell discharge from the Air Force because he was three months away from finishing his ten year term of service. However, the sergeant did not know that his separation pay would be cut in half, simply because he is gay. Supporters of Don't Ask Don't Tell argue that the policy is necessary to protect troop morale in a military setting that does not provide privacy. Cutting someone's separation pay in half because of their sexual orientation does not serve this flawed argument. Law clerk Paige Duhamel is preparing this litigation along with Ken Choe of the ACLU National LGBT Rights Project.

To see a complete list of the cases ACLU-NM is litigating, read our legal report online at www.aclu-nm.org.

Upcoming ACLU-NM Events

11.12.09 Civil Liberties Begin at Home

Join us at **5:30 PM** in the Pajarito Room at the Fuller Lodge in Los Alamos for a presentation by ACLU-NM Executive Director Peter Simonson.

Fuller Lodge
2132 Central Ave.
Los Alamos, NM 87544

Light refreshments will be served after the program.

Please RSVP to Consuelo Gonzales at (505) 266-5915 Ext. 1006 or cgonzales@aclu-nm.org

11.14.09 Whitten Inn Protest March in Taos

Join the ACLU and LULAC as we march in protest against the Whitten Inn's discriminatory employment policies. Meet **11:00 AM** at Century 21 Real Estate at 829 Paseo del Pueblo Sur, Taos.

The march will be followed by a press conference in front of the hotel at 1:00 PM.

ACLU Welcomes New Board Members

ACLU Board of Directors Notice of Elections

If you desire to run for one of the seven open positions on the ACLU-NM Board of Directors, you must send to the ACLU-NM Board Administration Committee:

⇒ A 250-word statement of interest to the ACLU-NM Board Administration Committee to be considered as a Board nominee; or

⇒ A petition signed by 1% of the ACLU-NM membership (currently 4,400 members), supporting your nomination, along with a 250-word statement of interest.

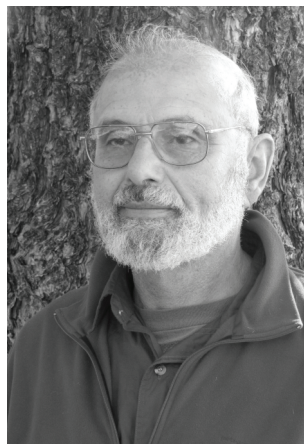
Please Note: Statements of interest must include a statement of willingness to serve, if elected.

The ACLU-NM office must receive statements of interest and signed petitions by *January 31, 2010*. Nominee's names will be placed on the election ballot and their statements will be published in the next issue of the ACLU-NM's quarterly newsletter, *The Torch*.

⇒ Please mail petitions and statements to:

Board Administration Committee c/o ACLU of New Mexico, PO BOX 566, Albuquerque, NM 87103

Ballots and statements of interest will be mailed to members at least two weeks prior to the election. The election will be held on *March 31, 2010*.



PETER M. OSSORIO

"When I attended my first board meeting, the other members—including legendary defense counsel—greeted me so warmly I felt at home. Defending our nation while adhering to the law of war and enforcing the United States criminal code while following the rules to protect people's individual rights was a constant challenge that makes me appreciate the ACLU'S unwavering advocacy for the Constitution and the contributions of other board members."

Peter M. Ossorio graduated from Washington University in St. Louis in 1965, and set out on 15 years of travel with his wife Jean, courtesy of the U.S. Army.

Peter developed an interest in the law when assigned to prosecute and defend soldiers simply because he was a commissioned officer.

In 1983, Peter graduated from the University of Missouri-Kansas School of Law and went on to serve in a two-year federal district clerkship, 18 months as an assistant county prosecutor, and, in 1987, as an Assistant U.S. Attorney. Later, Peter served for five years on a sub-committee for the Eighth Circuit and, in 1994, a six-month detail to the U.S. Sentencing Commission. In 1995 Peter and Jean moved to Las Cruces, NM, where he continued to prosecute federal drug, firearms and immigration cases until he retired from government service in 2004.

Though an ACLU member for many years, Peter did not become politically active until after retiring. Since 2004, Peter has helped protect the vote in Doña Ana County through recruitment and training of poll workers, poll watchers and challengers. He also remains a strong advocate for changes in New Mexico's Election Code to prevent disenfranchising voters, and makes it a point to help organize continuing legal education courses on civil rights issues for the New Mexico State Bar.



GENE GRANT

"The ACLU for me is the most important and effective tool available for justice in society. What we do has emotional precedence for me, thinking on how brave African Americans like Douglass, Marshall used the power of the courts to provide "correction," in whatever steps small or large. It's what sticks. Minds change. The law does not."

An Albuquerque resident since 1998, Gene is a native of Boston, where he had his start in media as a news and public affairs producer for talk radio station WBZ. A radio buff since he was young, he learned about the world in the last period of the nation's initial "broadcasting era," when news and information was the foundation of the craft, as was a sense of duty.

He is currently host of New Mexico InFocus on KNME and a columnist for *The Weekly Alibi*. Previously he was Metro section columnist for the *Albuquerque Journal*. Preceding the *Journal*, he was a columnist for the *Albuquerque Tribune*.

A film and drama buff, he writes the "Albuquerque on Film" column for *Albuquerque the Magazine* and has contributed to *Variety Magazine* on the New Mexico film industry.

Gene is also a dedicated board member of the *Vortex Theatre*, where he has staged two plays, as well as acted in a number of productions around the city.

Bill of Rights Benefit Celebration Recap

Thank you to everyone who came out for the ACLU-NM Bill of Rights Benefit Celebration at the Albuquerque International Balloon Museum this September. Your attendance and generosity made the event a huge success! The music, food, open bar and opportunity to meet Susan Herman and socialize with fellow civil libertarians made for a great evening. As a bonus, we raised over \$26,000 to support freedom and equality in New Mexico. We hope to celebrate with you again next year!



Above: Le Chat Lunatique lays down some "gypsy jazz".



Above: Board members relax in the shadow of the Sandias.



Above: National ACLU President Susan Herman, guest of honor.



Above: John Adams (AKA board member Gene Grant) makes a surprise appearance at the celebration.



Thank You Event Sponsors!

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Do you know a graduating senior who could use \$7000 for college? If this person is also a committed civil libertarian and student leader who has stood up for tolerance, free speech, or equality over the course of their high school career—encourage them to apply for this year's ACLU Youth Scholarship Award.

In addition to a \$7000 scholarship, awardees will attend our Youth Activist Leadership Institute trainings at the New York National ACLU headquarters—all expenses paid. These trainings will equip scholarship winners with the skills they need to expand their civil liberties work on campus and in their community and introduce them to a network of student activists from around the country.

While a wide variety of efforts can represent the kind of commitment to equal rights and fairness that qualify scholarship applicants, please bring this opportunity to the attention of committed senior student leaders, activists and organizers of all types. Encourage students to share their passion for civil liberties with us and give themselves the chance to build their future as a student leader.



Don't miss out!
Applications
are due by:
NOV. 30th

2010 Youth Activist Scholarship!