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A Conversation with Susan Herman



Susan Herman is the newly elected president of the national ACLU board of directors. Susan is also a Centennial Professor of Law at Brooklyn Law School and a widely regarded expert on the Supreme Court, particularly in the area of criminal procedure.

Prior to joining the Brooklyn Law School faculty in 1980, Susan was a staff attorney and Associate Director of Prisoners' Legal Services of New York, and was the Pro Se Law Clerk to the United States Court of Appeals for the Second Circuit.

In preparation for her upcoming visit for the Bill of Rights Benefit Celebration, Peter Simonson, Executive Director of the ACLU of New Mexico, sat down with Susan Herman to talk about issues facing the ACLU in this new and exciting era. You can listen to the full interview by visiting our website at: www.aclu-nm.org.

PETER: Why did you wish to become president of the ACLU? It's pretty clear that you have a busy professional life outside of the ACLU.

SUSAN: (Laughs) I was not feeling a lack of having something to do. I've been on the board of the ACLU for twenty years now, and that's because I feel that the ACLU is the most important organization in the country. We often say that our client is the Bill of Rights and the Constitution to me is really the foundation of our country; those are our guiding principles and our guide stars. I want to do whatever I can

to ensure that the ACLU is a permanent fixture on the American landscape and that we do an effective a job at this very important mission.

PS: So, how would you sum up President Obama's performance thus far?

SH: Well, one thing I would say is that President Obama has been learning that the ACLU really is non-partisan. Many people, I think, had assumed that ACLU criticisms of George Bush's policies were criticisms of Bush, and, there-

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Bill of Rights Celebration: A New Approach

Kate Ferlic, ACLU-NM Board Member from Santa Fe, is the chairperson of the Development Committee. She spoke with us about upcoming changes to the annual Bill of Rights Celebration.



THE TORCH: This year the Bill of Rights Dinner, which is usually held in December, will be replaced by the Bill of Rights Benefit Celebration on September 26th. Why the change?

KATE: Congress ratified the Bill of Rights on December 15, 1791. Many ACLU affiliates host an annual event to honor that and to capture end-of-year giving. For many people, however, the holiday season is both expensive and busy.

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“The Union does not criticize public officials except when they follow a course of action in violation of civil liberties.”

- From the ACLU Policy Guide

fore, if Bush was no longer in the White House then everything would be fine. To us it's not that simple. One thing I think that is important regarding Obama is that we are neither for him nor against him. As your mom used to say, we look at his conduct.

In terms of his conduct so far, he *did* on his first day on the job issue an executive order saying he did want to close down Guantanamo, and he *did* want to forswear torture, and he *did* want to have a more open and less secret government. I regard all those things as a tremendous advance. However, every president is a politician. I don't think there's ever been a president where the ACLU agreed with a hundred percent of what they've done, and I think what we're seeing since day one is that Obama's not going to follow through on all of the things he talked about in his campaign unless people and groups like the ACLU push him.

PS: *What do you see as the biggest challenges that face the ACLU in the post-Bush era?*

SH: There was concern about whether or not ACLU members would say, “Well, we don't need an ACLU anymore now that President Bush is no longer in office,” but I think most of our members have been sticking with us. They understand that it wasn't just an exception, something that happened and will never happen again. We continue to have challenges as we try to get the federal government to restore our constitutional rights and draw a better balance in what they're doing.

There always have been, and probably always will be, serious civil rights violations occurring in the states. I think that one of our challenges right now is to gracefully redirect our energy to where the problems are, to see the places where we can work with the federal government instead of just opposing them and to make sure that we're nimble enough to be reallocating our resources to state battles that need to be had. So a number of our recent campaigns, such as the Leading Freedom Forward campaign, are to strengthen the ACLU affiliates because that's where the core of ACLU work is done.

PS: *Susan, what goals did you come into the presidency with for the organization? What kinds of things do you hope to accomplish within the ACLU while you are president?*

SH: One thing I would like to do internally is to make sure that the ACLU is structurally sound. You know, whatever I can do to make sure that we are able to do both the policy making work of the board and the work that the staff does so well. I guess the second part comes down to communications; communicating with ACLU members, donors and the general public to make sure people better understand what we are doing. I find that when I'm out speaking and people have a knee-jerk reaction against the ACLU, it is usually because they don't understand what we are doing. If you get a chance to really explain to people our perspective, people really seem to get it.

PS: *One of the other things you have expressed along those lines is your hope to reach out to groups that have traditionally been wary of the ACLU, especially religious groups and African Americans, and I wonder how you think the ACLU can best appeal to those sorts of groups?*

SH: I think a lot of that, again, is a matter of communication because I think a lot of that is misunderstanding. I got a letter the other day from a gentleman who was complaining that the ACLU was anti-Christian. Responding to his letter, I told him

that it is possible that statistically our work may involve representing Muslims, Jews and Buddhists more often than Christians because this is a Christian country. It's just not as likely that Christians will come complaining to the ACLU that they need help in exercising their religion. I think people can get a misimpression. We're not favoring one religion over another; we're responding to the people who come to our door saying that they need help because they don't have the same opportunities to exercise their religion as their neighbors do. I think, again, if you can show people the facts —can you change everybody's mind? No. But at least you can get more truth and accuracy out there.

People I think had assumed that our criticisms of George Bush's policies were criticisms of Bush, and therefore if Bush was no longer in the White House then everything would be fine.

Bill of Rights Celebration

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We think September—between summer travel and the holidays—is a perfect time to host a fundraiser where supporters can gather, network, have fun and honor the bill of rights.

TT: *How will the event be different this year?*

KF: The development committee and board of directors are excited about the new approach. The Bill of Rights Benefit Celebration will be more festive and social than in the past with great food, an open bar, awards, live music and a fundraising goal of \$75,000. Foundation board members have provided initial pledges of over \$35,000 to get the proverbial fundraising ball rolling. We plan to reach our goal by asking supporters to underwrite the cost of the event and for individuals to make a minimum donation of \$100 to attend. We are counting on some supporters to contribute over the minimum suggested donation.

TT: *This emphasis on fundraising seems to be a new approach.*

KF: Before we decided to try this, we analyzed the costs and returns of our traditional hotel dinner format. We discovered that our costs almost equaled the ticket sales. On top of that, staff time to process tickets was significant and could be used more effectively elsewhere. And while supporters believed the Bill of Rights Dinner was a fundraiser, the organization was actually taking a loss in order to host the event. In these challenging economic times, we thought we had a responsibility to turn that equation around.

TT: *Will there be awards recognizing people who made significant contributions to civil liberties?*

KF: The awards portion of the event is one of the most important because the community of supporters can honor those who have been on the frontlines of civil liberties work. This year, we'll give a Cooperating Attorney Award as well as a number of Guardian of Liberty Awards and a First Amendment Award. There are so many people in all corners of the state working to protect and expand civil liberties, and we want to make every effort to recognize some of that work each year.

Live in Santa Fe?

Reserve a seat on the shuttle to Albuquerque for the Bill of Rights Benefit Celebration.

(505) 982-8181

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Bill of Rights Benefit Celebration

Saturday, September 26th 6 pm - 9 pm
Albuquerque International Balloon Museum
Food, drink and live music by Le Chat Lunatique!

Join us as we honor outstanding civil libertarians:

Susan Herman, *National ACLU President*

Guest of Honor

Charles "Kip" Purcell
Attorney, Rodey Law Firm

Cooperating Attorney Award

The Weekly Alibi

First Amendment Award

Dr. Curtis Boyd, M.D.

Guardian of Liberty Award

Dr. Bruce Ferguson, M.D.

*for outstanding work in
reproductive freedom.*



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THE TORCH

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Money wields too much influence in politics, no doubt. But when states pass broadly-worded laws that force organizations to register as PACs—Political Action Committees—because they criticize political candidates for their voting behavior, the best of intentions pave a road to hellish conclusions. New Mexico recently got a taste of what I mean.

Months before last year's primary elections, the Albuquerque non-profit Center for Civic Policy sent mailers to constituents in key legislative districts criticizing the voting records of several incumbent legislators and accusing them of pandering to oil and gas interests and the health insurance lobby. Three of the legislators—long-time Democratic Senators Shannon Robinson, James Taylor, and Dan Silva—subsequently lost in their primaries, and their progressive opponents went on to win in the general election. The shake-up sent shockwaves through the political establishment of both major parties. How dare that upstart non-profit stir the waters of public opinion with such bold attacks!

The backlash was fierce. Responding to a complaint filed by Shannon Robinson, Attorney General (AG) Gary King ruled that the mailers amounted to electioneering speech and insisted that the Center register as a "political committee" under the New Mexico Campaign Reporting Act. Democratic leaders of the House and Senate introduced bills requiring non-profit groups to publicly disclose the names and addresses of their donors if they sent out any communications—mailers, radio broadcast, etc.—that referred to a specific elected official

When Good Laws Go Bad

A Message from

Executive Director

Peter Simonson

or candidate for office in any context during the greater part of an election cycle.

The AG's ruling and the legislation both flouted well-established federal law on the constitutional protections surrounding political speech. The US Supreme Court has ruled that communications only qualify as electioneering when they make a clear appeal to vote for or against a political candidate.¹ Organizations cannot be regulated as political committees unless their "major purpose" is to nominate or elect a candidate. Neither of these conditions applied to the Center for Civic Policy.

Still, with a broadly-worded campaign reporting law on New Mexico's books, the AG's office was able to make plenty of mischief for the Center. And lawmakers were happy to use the rhetoric of election reform to justify their effort to legislate non-profits out of the public debate on the performance of elected officials.

Fortunately, justice prevailed in the end. In July US District Court Judge Judith Herrera, ruling on a civil rights complaint filed by the Center, declared the AG's actions unconstitutional. Even though the Center's mailers "could be seen as attacking the targeted legislators," Herrera opined, "where the First Amendment is implicated, the tie goes to the speaker, not the censor."

Now a new non-profit of highly conservative bent, the Southwest Citizens Coalition, has begun using attack ads to challenge the voting records of newly-elected congressional delegates. Let them have at it! The proper response to disagreeable speech is not to increase regulation, but to broadcast more, better speech.

¹ See *Buckley v. Valeo* and *Federal Election Commission v. Wisconsin Right to Life, Inc.*

ACLU-NM Sues Department of Public Safety for Racial Profiling

Recently President Obama made the following statement:

“What I think we know... is that there is a long history in this country of African-Americans and Latinos being stopped by law enforcement disproportionately, and that’s just a fact.”

Unfortunately, this statement is all too easily corroborated here in New Mexico.

On August 15, 2008, Motor Transportation Division (MTD) officers—members of the New Mexico State Police—stopped long-haul truck driver Curtis Blackwell at the Lordsburg Point of Entry (POE) in Hidalgo County. Blackwell, an African-American, was ordered by an MTD officer to pull his truck into an inspection area where—after an extended and unnecessary delay—the officer performed an inspection of his vehicle. In the course of the inspection the officer found one unopened package of beer and an unopened bottle of liquor in the side box of the cab, a compartment which is only accessible from outside the vehicle.

The officer placed Blackwell’s vehicle out of service for 24 hours for violating a rarely enforced standard, accused Blackwell of being under the influence of drugs and alcohol and forced Blackwell to submit to several sobriety tests—all of which indicated no substance use. When he could find no further evidence of wrongdoing, the officer coerced Blackwell, under threat of immediate incarceration, to sign a citation. Intimidated and confused, Blackwell signed

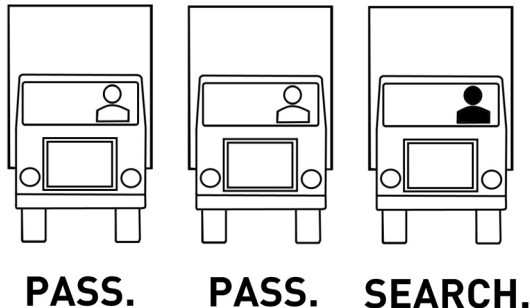
the citation unaware that it could be contested without arrest and incarceration.

This incident illustrates a pattern of racial profiling that is evident at the Lordsburg POE. Records show that from April 2005 through March 2008, 2,232 individuals were booked into Hidalgo County Detention Center. Though the MTD is responsible for just 19% of those bookings, they are responsible for 75% of all bookings of African-Americans in the county during the same period. The Federal Public Defender’s office in Las Cruces reports that virtually every truck driver criminally charged in federal court who was arrested by an MTD officer stationed in Lordsburg is African-American.

“For years we’ve suspected that race played an improper role in vehicle inspections at the Lordsburg station,” says Michael Lilley, ACLU-NM cooperating attorney. “Mr.

Blackwell’s experience confirmed our suspicions and gave us reason to look into the matter in depth. What we discovered was a clear and consistent pattern of racial disparity favoring the booking of African American truck drivers.”

This sort of racially biased policing is ineffective, unconstitutional and harmful to society, breeding widespread resentment and mistrust towards law enforcement officials. In response, the ACLU of New Mexico, along with cooperating attorneys Michael Lilley and Michael Stout, filed suit on April 20, 2009 against the officer involved, his supervisors and the New Mexico Department of Public Safety.



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ACLU-NM Awarded Grant for Human Rights Abuse Database

In late June, ACLU-NM was awarded a grant of \$95,000 from the Four Freedoms Fund (FFF) to develop an on-line human rights abuse documentation system. Under the grant, ACLU-NM staff in Las Cruces at the Regional Center for Border Rights (RCBR) will work with a broad

range of immigrant rights groups from the U.S. and Mexico to develop a standardized process to track human and civil rights abuses. The second phase of the project will create an on-line database accessible to advocates on both

Continued on next page >>

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sides of the border to record abuse.

A comprehensive, online system will allow data on human and civil rights violations to be aggregated and compiled into reports, which can then influence policy change and impact both the public and political arenas. RCBR Director

Vicki Gaubeca is coordinating the efforts of the regional group comprised of ACLU border affiliate staff and Mexican and U.S. immigration advocates to develop system specifications and hire a consultant to implement the system within a 12-month period.

Legal Highlights

Fourth Amendment Violation Resulting from Astorga Search

ACLU-NM Co-Legal Director Jane Gagne won an important victory against the Defendants in this Fourth Amendment lawsuit involving the former in-laws of double-homicide suspect Michael Astorga, who were unlawfully searched and detained during Bernalillo County Sheriff's frenzied hunt for Mr. 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. The county appealed the case to the Tenth Circuit Court of Appeals in Denver where it was argued by Managing Attorney George Bach.

The Tenth Circuit, in a 2-1 opinion, sided with our clients in May 2009, prompting the County to file a motion to have the case reconsidered by the entire appeals court. On July 23, 2009, the Tenth Circuit refused to rehear the case. Having won on the legal issues, the only remaining issue for trial is the amount of damages to be awarded to the clients.

ACLU v CYFD

In an attempt to avoid a major class action lawsuit, Children Youth and Families Department (CYFD) entered into contract with the ACLU

in 2006, agreeing to improve security, mental health programming and rehabilitation services in its juvenile detention facilities across the state. The agreement served as a must-do list for the state agency to bring its provision of services to troubled youth within constitutional bounds and set forth a detailed timeline in which to complete each prescribed goal. However, little if any progress had been made during an 18 month period to meet the terms of the contract. As a result, ACLU and Youth Law Center of San Francisco proceeded to file suit in state court in 2007, alleging that CYFD breached its contract to provide safety and services to the youth in its custody. The suit also seeks court orders requiring CYFD comply with its contractual obligations. The parties extensively mediated the case in 2008 without success; litigation is ongoing. Counsels are Daniel Yohalem, Peter Cubra, Simon Tuck, Lee Hunt, Cooperating Attorneys, and Phil Davis, Co-Legal Director.

Northeast New Mexico Detention Facility

On June 17, 2009, ACLU-NM filed suit on behalf of seven inmates who were locked, mostly naked, in a shower for five hours, taunted, videotaped by a guard and forced to crawl out through a small, filthy hole in the wall. The lawsuit was filed in federal court.

Dispatches

3.17.09 Santa Fe Talks Relationship Recognition

The LewAllen Gallery of Santa Fe generously opened its doors to ACLU-NM this spring to host a meeting on relationship recognition. Special guest Nora Ranney, Legislative and Field Director for the National ACLU LGBT Project, spoke about advances on LGBT rights throughout the country and gave an update on domestic partnership legislation in New Mexico. Thank you to everyone at the LewAllen Gallery for their support!

6.03.09 Las Vegas Talks Police Abuse

Over 100 local residents crowded the Veterans of Foreign Wars Hall in Las Vegas, NM to talk about purported police misconduct that continues to cause local tension. Local officials, including Assistant District Attorney Tom Clayton and city council members Andrew Feldman and Diane Moore, hosted the forum and addressed community concerns. ACLU-NM Policy Director Diane Wood and President of the ACLU Northern Chapter Frank Susman also spoke at the event. They provided information about how to

file a civil rights complaint and supplied *Know Your Rights* pamphlets. The debate on the creation of a Police Oversight Review Committee will be continued at a follow-up meeting in the fall.

6.7.09 Nááts'ílid Pride at UNM-Gallup

Pride celebrations kicked off this year for the first time in Gallup, New Mexico. Close to 50 attendees gathered at the inaugural picnic and community fair held at UNM's Gallup campus; later, over 100 people packed into the El Morro Theatre to celebrate the seminal event with song and dance. Among participating groups were: ACLU-NM; Equality New Mexico; New Mexico Coalition Against Domestic Violence; Stop Tobacco on My People; Parents, Family, & Friends of Lesbians and Gays; NM Depart-

ment of Health; and Navajo AIDS Network, Inc. ACLU-NM also participated in Pride events in Albuquerque, Santa Fe and Las Cruces.

7.9.09 An Evening with Oscar Wilde

The benefit performance of *Gross Indecency: The Three Trials of Oscar Wilde* was a huge success and played to a sold-out crowd at the Vortex Theatre. The court-room drama, written by Moises Kaufman and directed by Hal Simons, recounted the trials faced by literary icon Oscar Wilde for the crime of gay sexual activity. A panel discussion, hosted by ACLU-NM Managing Attorney George Bach, allowed the audience to pose questions and engage with the show's cast. Thank you to all of the Vortex Theatre volunteers who created and supported this triumphant event.

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Member Profile: Renaldo Chapman



“With my life experiences, including being discriminated against, I am honored to be a member of the ACLU and I stand with them in their fight for the rights of all people and for their belief in the democratic process. I share my knowledge about the ACLU with my community and help them understand their rights, especially those given to them in the Great State of New Mexico.”

After graduating from Gallup High, Renaldo Chapman, a Gallup native and Diné Navaho community activist, lived in Oklahoma, Georgia and Alaska while serving in the U.S. Army. Upon receiving an honorable discharge, Renaldo returned to live in Alaska where he attended his first LGBT Pridefest. It was there that he first found the confidence he needed to be a proud and open member of the LGBT community.

In 2005, Renaldo returned to New Mexico to begin his undergraduate studies and to embark upon a unique journey. His grandfather, a Diné hataali (singer), had asked Renaldo to become his apprentice and share in the learning of the Diné Windway Ceremony, a rare Navajo healing ceremony. He admits he is still mastering the ceremony techniques, but sees this challenge as a chance to help people find their spiritual, mental and physical harmony.

But that's not all Renaldo wants to help people find. He feels equally passionate about helping

locals find support for what was once considered the “anonymous” LGBT community in his hometown. In 2008, Renaldo started the Gay Straight Alliance at Western New Mexico University and was overwhelmed by the response and turnout of interested participants. Students and faculty alike voiced their excitement over forming an official student group, and, in March of 2009, the group banded together to launch Gallup's first annual Nááts'ílid LGBT Pridefest to showcase their unity. Thrilled with the involvement he received from local non-profits and the funding assistance he received from the Navajo Aids Network, Inc., Renaldo is determined to make this event an ongoing tradition.

When Renaldo is not busy pursuing his studies in social work or community organizing for the Gay Straight Alliance, he enjoys time spent with his three sons and his husband Demetri.



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Yes! I would like to attend the
Bill of Rights Benefit Celebration

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for
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September 26th
at the
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International
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6 pm - 9 pm