



# Mountain Torch

## “Always Free?”

FRANK CRABTREE



Hardly. The pursuit of freedom, or more aptly the preservation of freedom, is costly.

On both state and national levels your ACLU must remain alert for abusive police practices, race-gender-sexual orientation discrimination, and the never-ceasing war on women where government attempts to inject itself in personal reproductive decisions (let's hear it for voters in Mississippi!).

Right here at home we are routinely reminding school boards and others of our constitutionally guaranteed separation of

church and state. When necessary we use litigation to preserve our Fourth Amendment freedom from warrantless, suspicionless searches -- such as random drug testing proposals which often target members of our society with no political clout.

Simply put, preserving freedom requires a big stick (a/k/a money and personnel resources) and the ability to use it strategically.

Sometimes you can make a great deal of difference with just a phone call to a legislative office.

Sometimes you protect freedoms by volunteering your time as a legal observer, as a board member, or by just showing up for ACLU-WV events.

Sometimes, however, we must come to you, as we do now, and ask you to support the ACLU's brand of social justice with your checkbook or credit card (envelope enclosed for your convenience).

It is your support which enables us to defend the victims of racial profiling, or to effect policy which requires every law enforcement officer in West Virginia to successfully complete racial profiling avoidance training.

It is your support which has empowered ACLU-WV to raise bullying awareness to the state policy level, so all students can participate in an education without fear, free to live their true identities and to pursue their aspirations in a learning, fostering environment.

It is with your continued support that we are seeking comprehensive sex education in a public school system with the nation's highest rate of teen pregnancies.

And it will be with your support that we are launching a most challenging campaign -- to convince the public, and policymakers, that there are more just, efficient ways to spend tax dollars than to build another prison to warehouse a prison population of mostly non-violent offenders.

These battles can be bruising, and most often we are the voice of the voiceless. Nonetheless they require a rapid robust response by ACLU-WV and every civil libertarian we can motivate to let their voice be heard. As the premier guardian of the Bill of Rights in West Virginia we have assumed a profound responsibility. It is your monetary, moral, and in-kind support which makes this sustained effort possible.

In terms of civil liberties advocacy across-the-board in this state, we are what there is. Please begin or renew your commitment to ACLU-WV *today* by sending a check to **ACLU-WV Foundation**, and mailing it in the enclosed envelope. If you prefer to have us automatically deduct a monthly donation (my personal preference), please call Nancy at 304-345-9246 or visit our website – [www.acluww.org](http://www.acluww.org). For those interested in receiving our e-mail alerts you may sign up via our website.

It is our honor to work with you for social justice and progressive reform in the Mountain State, where we will continue the struggle to be “Always Free”.

Brother Cornel West may have said it best: “(j)ustice is what love looks like in public.” Peace.

# Get Geared Up: 2012 Legislative Overview

ALYSON CLEMENTS

While many of you are preparing for your holiday season, we here at the ACLU are gearing up for our favorite time of year: Legislative Session! As always it will be a battle requiring strength in both our offensive and defensive efforts. Here's a look at what we are up against:

## THE PUSH FOR PRISON REFORM



For long-time members, this issue may sound familiar. In 2009, then-Governor Manchin commissioned a study on prison overcrowding as our prisons were reaching their boiling point. From that study, the commission made a host of 13 alternative reform suggestions and a 14th recommendation suggesting a new prison facility be constructed.

Fast forward to 2011 and we are back at it again. Only this time, the building of a new prison is taking precedence after an increase in prison violence spurred by housing more inmates than facilities are equipped to hold. The ACLU of West Virginia refuses to stand for this. Aside from the fact that our justice system is predicated on an unjust, racially and socially biased system, we aren't going to idly ignore the underlying issues and slap on a \$20 million dollar tax-payer funded Band-Aid. After all, in the end we're the ones who are left hurting.

In our fight for alternative reforms, we will also be proposing the authorization of a long overdue state opt-out pertaining to food stamp and family assistance for post-conviction drug offenders. Currently, drug felons are the only category of offense ineligible for such services. That's right, if you murder your neighbor, you're eligible for assistance, but if you are used drugs: no dice. We agree with you, such a policy is simply illogical.

## CAMPAIGN FOR LGBT EQUALITY



While the fight against Employment and Housing Discrimination continues to be a priority for ACLU of West Virginia, this year we are adding another issue to the equality agenda: protections against school bullying.

As many of you are aware, We are pleased to announce the state's Department of Education has included a provision, which includes LGBT students as an additional protected class in its draft model policy. While this is incredible progress, this session we will be pushing for a similar provision to add to the existing bullying statute to legally codify school based LGBT harassment as unacceptable and actionable.

## WOMEN'S RIGHT TO REPRODUCTIVE FREEDOM



No doubt after the close call on Mississippi's Fetal Personhood initiative, reproductive rights are sure to be on the chopping block in West Virginia. While there is always some question as to what legislation our opponents may introduce, restrictions on access to birth control and abortion care are sure to be proposed.

And we will continue to lobby in partnership with our colleagues to gain insurance fairness for women.

While we are thrilled to have the responsibility of representing you at the legislature, remember that our true strength is drawn from you, the membership of ACLU of WV. This year we will be teaming up with other non-profits to amplify our presence at the Capitol. February 8th we will be collaborating for the first ever Progressive Lobby Day! Come represent ACLU of WV to keep West Virginia always free.

**SAVE THE DATE**

Wednesday, February 8th, 2012

**Progressive Lobby Day**

Represent ACLU of WV as we unite with other statewide non-profits to make your voice heard.

Updated information can be found @ [acluwv.org](http://acluwv.org) under Events.

# Legal Update

## **Racial Profiling Case**

The ACLU of WV Foundation is challenging the illegal search of an African American student's vehicle. The student called local police after another driver rear-ended his vehicle. When the police arrived, officers harassed the student and searched his car without probable cause or reasonable suspicion. The ACLU-WV is preparing to address the incident through negotiation or litigation. Todd Phillips and David Grunau are the cooperating attorneys.

## **Inwood Racial Profiling Investigation**

The ACLU-WV and the ACLU of Pennsylvania are investigating an incident involving several individuals, who were stopped by law enforcement officers in West Virginia, questioned about their citizenship and detained in Pennsylvania by Immigration and Customs Enforcement (ICE). The ACLU-PA is representing several of the detained individuals. The ACLU-PA and the ACLU-WV have both sent multiple Freedom of Information Act requests (FOIAs), requesting information, such as internal police records of biased-based profiling and all arrest reports from the incident in question. More information on this investigation is available on the National ACLU Blog, at <http://www.aclu.org/blog/tag/ICE>.

## **Conley v. Nichols.**

This case challenges a warrantless night-time arrest, based on unfounded charges. In the process of arresting Ms. Conley at her home, transporting her and incarcerating her, State Police willfully exposed her breasts and refused to let her cover herself or obtain suitable clothing. The charges, relating to an alleged theft by the Plaintiff's daughter's boyfriend, included obstruction, receiving stolen property, and providing false information – all of which were later dropped and dismissed upon motion by the state. The case seeks damages for deprivation of Ms. Conley's rights under state and federal constitutions, including her right to privacy and to be free from unreasonable search and seizure. Georgia Lee Gates is the cooperating attorney.

## **Stanley v. Rubenstein.**

Complainant, a prisoner, was granted parole in June 2005. He asked to be paroled to his fiancée's home. His request was denied because parolees must agree that they will "not violate any municipal ordinances or laws of this state, any other state, or the United States" and W.Va. Code Section 61-8-4 prohibits cohabitation. Five months later, he was finally released to a six-month program at a rescue mission. There, the rules required him to attend scheduled classes and complete quizzes in Bible-related subjects, to own and use his own Bible, to go to a church service most mornings, and to attend a memory class (Bible verses), and Bible study.

The challenge to complainant's coerced participation in religious exercises and to the constitutionality of W.Va. Code Section 61-8-4, was filed in the Circuit Court of Kanawha County on September 18,

2006. Defendant's motion to dismiss without prejudice was granted and plaintiff's petition for appeal was denied. The case was refiled in the Circuit Court of Kanawha County on February 22, 2008. A hearing on defendant's motion to dismiss and/or for summary judgment took place on August 13, 2008. On March 27, 2009 the court denied the motion to dismiss. Discovery is complete and dispositive motions are pending. E. Lavoyd Morgan is the ACLU cooperating attorney.

## **Evans v. Security America, Inc.**

This case involves an employer's refusal to accommodate an employee's religious beliefs and retaliation for reporting sexual harassment. When complainant was hired, she told her employer her religion prohibits women from wearing men's clothing. She was asked for a copy of the church's teachings, which she provided. She was told that she could wear a skirt instead of uniform trousers. She did so without a problem for about six weeks. Then she was transferred to a position where she sat in a booth and answered phones.

At the new work site, she was subjected to sexual harassment. She reported this to her employer, but the employer took no steps to deal with the harassment. Shortly after she complained and was told that she would be terminated if she did not wear uniform trousers. She offered to pay for a uniform skirt, or have one made to match the uniforms. When she reported for work wearing a skirt, she was dismissed.

A lawsuit alleging discrimination based on religion and gender, and retaliatory discharge, was filed in the Circuit Court of Boone County on May 29, 2007. Defendant answered on July 16, 2007. Discovery is under way. Bradley J. Pyles is the cooperating attorney.

## **Hutchinson v. Lemmon.**

Plaintiff was taking a shower when law enforcement officers arrived at her home to execute a search warrant. Officers burst into the bathroom and refused to let her cover herself even after it was evident that she was not armed, dragged her into the living room by her hair, and forced her to lie naked on the floor for about 30 minutes in the presence of her father, brother, boyfriend, and approximately ten armed and masked male officers.

The complaint was filed in the United States District Court for the Southern District of West Virginia in Huntington alleging failure to train the officers involved and violation of plaintiff's Fourth Amendment right to be free of unlawful search and seizure and her right to privacy. At a pretrial conference on July 26, 2010, the court generally denied defendants' motion for summary judgment. A Memorandum Opinion and Order was issued on August 5, 2010. The Court held that the defendants in their individual capacities were not entitled to qualified immunity. Defendants appealed the ruling as to qualified immunity to the Fourth Circuit Court of Appeals, and on June 30, 2011, the Fourth Circuit affirmed the District Court's holding. The next stage of this case will either be settlement or trial. Georgia Gates is the cooperating attorney.

# To All Those Who Attended our 2011 Bill of Rights Dinner, Here's to You!



# Calling All Voters: ACLU-WV Board of Directors Election

Are you an avid ACLU supporter with ideas on how to help the organization grow? We want you! It's that time again, time for Board of Director elections. We are looking for members in good standing who not only support the ACLU, but who are excited about promoting civil liberties in their community. Curious as to what you are getting yourself into?

As an elected individual you serve three year terms on both ACLU of West Virginia and the ACLU of West Virginia Foundation's Board of Directors. The simple difference between these two entities is that the Foundation collects and utilizes all tax-deductible gifts that support our legal and public education campaigns. The Union, on the other hand, is our membership organization, which lobbies and recruits membership. While the membership of these boards are nearly identical, they function individually having separate agendas and budgets.

Once elected you will serve on both boards. As members of the Union's board, you will work to recruit new members and approve of the ACLU's legislative agenda. As members of the Foundation's board, you are actively involved in fundraising including our primary campaign, the Fund for Justice. Were you thinking about applying until you heard that gut-wrenching word fundraising? Don't shy away just because your background isn't in fundraising, our Board Retreat will teach you everything you ever needed to know about fundraising techniques, so there is no reason for pause.

The election for the Board of Directors of the ACLU of West Virginia will be by mail-in ballot this January. Five Board positions are up for election. These positions are for three-year terms starting in February 2011. To qualify for Board membership, you must be a member in good standing with the ACLU, be willing to participate in fundraising for the ACLU of WV Foundation as both a donor and solicitor, and be able to attend meetings every two months. Meetings are held on Saturdays at various sites around the state..

**Members interested in serving on the Board should send a 200-word biography to the ACLU of WV or they may be e-mailed to [mail@acluwv.org](mailto:mail@acluwv.org). The biography should emphasize why you wish to serve on the Board of Directors and should also demonstrate your commitment to civil liberties. The letter or e-mail containing the biography must be postmarked no later than December 19th, 2011.**

Once biographies have been submitted, a ballot will be compiled and mailed, so watch your mailbox for details on when ballots are due. Elected individuals will begin their term at the February Board Meeting.



## Welcome Sarah Rogers

Sarah Rogers, the ACLU of WV Foundation's new Staff Attorney\*, first became involved with the ACLU when she worked as a legal intern for the ACLU of Colorado during the 2008 Democratic National Convention litigation. As a law student at the Ohio State University Moritz College of Law, Sarah

published an article in the Ohio State Journal on Dispute Resolution, addressing mediation options for victims of gender-based violence. She also served as an active member of the Public Interest Law Foundation, and the Ohio State University recognized Sarah as a Public Service Fellow upon graduation. After graduating from law school in 2009, Sarah worked with several non profit organizations, advocating on behalf of underrepresented groups, including people with disabilities, indigent criminal defendants, and children. Sarah volunteered for the past 6 months with the ACLU of Pennsylvania in Pittsburgh, where she was also involved in a local Reproductive Rights Action Committee and the Allegheny County Bar Association's Women in the Law Division. As an undergraduate, Sarah completed a sociological field study on the abuse of underage domestic workers in Salvador, Bahia, Brazil, an experience that inspired her to embark upon a career in social justice. Sarah has a passion for promoting civil rights in the Appalachian regions of the country, as she grew up in a rural town in Southern Ohio. Sarah enjoys hiking, yoga, and bluegrass music, and is honored to be part of the West Virginia affiliate of the ACLU.

\*pending WV licensure



## MORGANTOWN CIVIL LIBERTIES RECEPTION

Our gratitude goes out to all those who celebrated the hiring of our new staff attorney, Sarah Rogers, at the Morgantown civil liberties reception hosted by Bruce and Judith Schreiman. If you are interested in hosting a civil liberties reception in your town please call Nancy Hill at (304) 345-9246.

ABOVE from left to right: West Virginia University (WVU) Professor Bob Bastress, Sarah Rogers, Cooperating Attorney Todd Phillips, and WVU Law Professor Marjorie McDiarmid.



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**Take A Stand For Your Freedom**

Please fill out the form below, cut out, and include with your donation in the enclosed envelope. Please make all checks payable to the ACLU of WV FOUNDATION. If you prefer, call our office at (304) 345-9246 to set up monthly donations using your checking account. All contributions to the ACLU of WV FOUNDATION are tax deductible to the extent permitted by IRS code 501(c) 3.

Please bill my credit card monthly for a gift to ACLU-WV FOUNDATION for \$10 \_\_\_ \$20 \_\_\_ \$50 \_\_\_ \$100 \_\_\_ or \$ \_\_\_  
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Please mail this form to: ACLU of WV Foundation, P.O. Box 3952, Charleston, WV 25339-3952. Thank You.

If making a donation to ACLU-WV FOUNDATION via check: A check is enclosed for \$ \_\_\_\_\_

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