



Because Freedom Can't Protect Itself

NEWSLETTER

South Carolina National Office

August 2009

Protecting Civil Liberties in South Carolina and the Nation A Message from Susan Herman



*Susan Herman
President of the ACLU*

This has been a year of remarkable initiatives and victories for the ACLU. We continue to break ground with litigation that is in the vanguard of defining and defending constitutional rights.

The recent Supreme Court decision in the case of Savana Redding, who was strip-searched as a 13-year old student in a fruitless search for prescription-strength Ibuprofen, was an extraordinary victory for the privacy rights of minors. ACLU lawyers persuaded eight Supreme Court Justices that school officials should be required to exercise some self-restraint and respect the constitutional rights of their students.

In another ground-breaking case, the ACLU challenged patents on breast cancer genes, as those patents prevent scientists from researching better methods of screening for cancer and prevent women from seeking second opinions.

Knowledge about our bodies and making decisions about our health care are among our most personal and fundamental rights. In granting private entities control over genes, the government limits scientific research

and the free flow of information and violates the First Amendment.

Keeping America Safe and Free

Our work to restore civil liberties eroded in the name of national security has brought significant success. We called for President Obama to end the practice of torture and to close Guantánamo, he issued executive orders on his first day in office agreeing to do so.

Change is often not so simple. Recent news reports show that the Obama administration is considering reviving the Guantanamo military commissions and creating a regime of indefinite detention without charge or trial.

The administration has continued to invoke the 'state secrets privilege' and other legal doctrines aimed at preventing ACLU clients who were injured by government actions – like victims of the 'extraordinary rendition' program who were kidnapped and tortured – from getting their day in court. To roll back these assaults on our Constitution, we continue to need your support and help.

In South Carolina, we also have reason to celebrate a year's worth of accomplishments, starting with the launch of the ACLU National Office in Charleston in July 2008.

This new organization is building on a proud history of civil liberties achievements in the state. Our new ACLU presence will promote and defend civil liberties and will be a more powerful advocate for members' views and interests.

The new office will communicate more directly with members, and it will be

geared toward promoting activism within member communities. When the Office moves toward affiliate status, as we hope it soon will, ACLU members in South Carolina will once again have their customary and appropriate voice in electing board members and shaping policy.

The Charleston office has shaped a proactive strategy to defend constitutional rights across the state. Our agenda is based on feedback we received from our summer 2008 listening tour, web survey, and focus groups about the issues that matter most to our members.

Heeding Your Input

South Carolinians care passionately about First Amendment issues, notably free speech and separation of church and state.

You want us to fight for justice for all by seeking reforms in the criminal justice system, including working against punitive drug laws and disproportional sentencing, racial profiling, and denials of due process.

And you want us to contest government-imposed morality in the areas of reproductive freedom, privacy of personal information, and civil rights for the gay and lesbian community.

To do all this, we need your strong support. We are grateful for the loyalty you have consistently shown to the ACLU in our work to preserve constitutional rights and values. We seek your help in advancing these rights in South Carolina, under the new leadership of our dedicated and able team in Charleston.

Everyone Has a Favorite Amendment

Victoria Middleton, Executive Director

There are many challenges to freedom, and we need your support and energy to meet them.

In meeting with ACLU members and allies around the state, I've learned that many of us have a favorite Bill of Rights amendment. For many, it's the First: separation of church and state. People of faith and non-believers are worried when the government becomes involved in religious practice or promotes one belief system over another.



Ron Romine, ACLU member from Spartanburg, and Victoria Middleton

For others, the right of expression in free speech or peaceful protest is paramount. The right to vote may be considered to be the democratic right that protects all others. Some are concerned about the encroachment on personal privacy by technological innovations that outstrip our controls and invite abuses.

Still others are most passionate about violations of the right to due process that our Constitution affords to *all persons* in our country. When local law enforcement monitors or stops 'foreign-looking' people, and when the federal government claims, in the name of national security, the right to detain suspects indefinitely without charging them, many of us are alarmed.

We want to channel your concern into constructive energy, and we are currently exploring models for organizing supporters and building a statewide community of activists united by commitment and passion. Here are ways you can help:

- Be alert to local issues that present civil liberties violations, and let our office know about them.
- Work with us to undertake outreach activities in your community such as staffing a booth at a street fair or marching in a parade. This helps raise public awareness of the ACLU and build relationships with others who share our agenda.
- Encourage people to join and support the ACLU.
- Volunteer your time or donate services to help our office organize public events and programs in your community on civil liberties projects.
- Respond to our calls to let your elected officials, in Columbia and in Washington, D.C., know where the ACLU stands on key issues. To find contact information for your local, state and federal elected officials, visit: www.sciway.net/gov/. If you do not have internet access, you can call your local election/voter's registration office for this information.

It's not necessary to agree on all the issues. We have long defended the right of people to speak freely even if we disagree with them or find what they say offensive. As the national ACLU's Executive Director Anthony Romero says, our tent is large enough to hold all passionate advocates of constitutional liberties.

There are plenty of challenges to freedom, and we need your support and energy to meet them. What we share, I believe, is a profound sense that, in the words of Clarence Darrow, "You can protect your liberties in this world only by protecting (everyone's) freedom. You can be free only if I am free."

Tell us about your favorite amendment among the Bill of Rights, and we'll try to print some of your responses in our next newsletter.

Legislative Update

Threats to Civil Liberties

The 2008-9 legislative session saw a number of challenges to civil liberties proposed in the General Assembly. We engaged vigorously on many, including proposals to:

- authorize warrantless searches of juveniles and persons on probation and parole
- abolish probation and parole
- require a woman to wait 24 hours after having a mandatory ultrasound test before terminating a pregnancy
- expand tax credits for private and religious school education at the expense of public schools
- require registered voters to present a photo ID in order to vote.

We anticipate bills like these will surface in the next legislative session. Please help us block their passage.

An Opportunity for Reform

Did you know that one person in 38 in South Carolina is in prison or on probation or parole? Did you know that we spend \$1 on prisons for every 6¢ spent on probation and parole?

We all have a stake in fixing our broken criminal justice system. We are petitioning the General Assembly mandated Sentencing Reform Commission (SRC) to focus on increasing public safety while protecting civil liberties.

The SRC should look at factors that drive over-population in SC prisons and send too many non-violent people, including juveniles, to jail.

- We recommend the SRC eliminate mandatory minimum sentences and divert non-violent drug offenders into alternatives to incarceration.
- We oppose 'three strikes' rules that take away flexibility in sentencing.
- We support alternatives to incarceration, such as residential drug treatment, community reporting, house arrest, and half-way houses. These are cheaper and more effective remedies than time spent behind bars. (continued, page 3)

(An opportunity for reform – continued)

- We believe prisoners should be allowed to participate in work release and education programs, to prepare them for re-integration into communities.

We need your help to ensure passage of fair and comprehensive justice reforms and to block legislation that threatens the constitutional rights of our citizens.

Watch for more calls to action in the next legislative session.

From the Legal Docket

Susan Dunn, Staff Attorney

We are actively building our legal program, with a view toward urgent civil liberties challenges and our overarching goals. The following summary highlights some of the cases in which we have intervened.

Criminal Justice

Fair treatment for confined

juveniles: On July 13, we received responses from the Department of Juvenile Justice to a comprehensive FOIA request which sought to document the condition of juveniles held in secure confinement.

We are working in collaboration with the National ACLU and South Carolina Protection and Advocacy to analyze this data and to formulate a strategy to advocate for treatment of juveniles that will meet constitutional standards.

Segregation in 2009? The South Carolina Department of Corrections (DOC), in response to a FOIA request, supplied information in June which documents that HIV-positive prisoners are segregated from the general prison population, are housed in maximum security facilities without regard to their classification, and are not participating in work release and other work opportunities available to other prisoners.

South Carolina is one of four states that segregate HIV-positive inmates. We will partner with the ACLU National

Watch to expose the inequities of our current system and to propose modifications that will improve the plight of HIV-positive prisoners.

Safe and Free

Cops stopped from checking social security numbers: When the Horry County Police office who had stopped Keith Roy at the Myrtle Beach airport for a seat belt violation demanded that Roy provide his social security number, Roy had a feeling something was wrong. Threatened with arrest if he did not provide the number, Roy provided it under protest.

Research revealed that in 2006 a local magistrate had issued a memo mandating that officers record social security numbers on all traffic tickets.

After meeting with the ACLU, the Horry County Police Department issued a memo instructing all of its officers not to demand social security numbers during routine traffic stops.

Our client's social security number was redacted from his records. A demand letter has been sent requesting that the magistrate withdraw his memorandum.

Banned from the books: James Greer was issued a criminal trespass notice barring him from the Landrum Branch of the Spartanburg County Public Library, and he was forced to surrender his library card. At no point was Greer afforded any notice or opportunity to be heard.

A letter has been sent to the library demanding the restoration of Greer's right of access to his public library.



Staff attorney Susan Dunn (center) works with law school pro bono interns Robert Blain, 2nd year student at USC, and Donna Murphy, 3rd year student at Charleston School of Law.

First Amendment

Free expression for graduates:

On June 1, 2009, the day the ACLU was prepared to file suit, Horry County Schools agreed to allow vocational students the right to wear their honor cords in the graduation ceremony at Conway High School. The principal had mandated that only academic honor cords could be displayed and had threatened to bar from the ceremony any of the vocational students who dared to display their non-academic honors.

Injecting religion into 5th grade: All 5th graders at Hampton Elementary School were presented New Testaments in class. Prayers are recited daily at Brunson Elementary School. Graduation ceremonies include sectarian prayer. A demand letter has been submitted to the superintendent of the county's schools demanding that the district comply with the requirements of the First Amendment.

Reproductive Freedom

Too quick to condemn parents:

The Department of Social Services continues to use unconfirmed drug tests to justify intrusion into homes where parents are caring for healthy children. Our office has submitted an amicus brief in this action which raises issues of the constitutionality of a presumption of parental unfitness based upon a single unconfirmed positive drug screen.

Discrimination

Transgender person crosses the

finish line: A.M.P.'s attorney thought it would be a simple matter to finalize her client's gender re-assignment by obtaining an order from the Family Court changing her client's name and gender. Then the judge continued the hearing because she doubted she had the jurisdiction to grant the requested relief.

The attorney sought the assistance of our office. Exhaustive research produced legal authority that convinced the judge to grant the relief. A.M.P.'s transition from female to male was finally complete.

2009 ACLU Programs and Events in South Carolina

SUMMER – The Response

In August, we hosted screenings of *The Response* in Greenville and Spartanburg. And, in June, in recognition of Torture Awareness Month, the ACLU and Amnesty International co-hosted a screening in Charleston. This 30-minute, critically acclaimed courtroom drama is based on the actual transcripts of the Guantánamo Bay military tribunals.

The Charleston screening was followed with a talk by noted Charleston defense attorney Andy Savage. Andy has been co-counsel on the case of Ali Al-Marri with Jon Hafetz of ACLU's National Security Project.

MAY – Grassroots Activism

Over 50 enthusiastic ACLU supporters took part in our grassroots activism training held at The Citadel in Charleston. Jeani Murray, National Field Director, and Cyndi Lucas, Regional Organizer, from the ACLU Legislative Office in Washington, D.C., conducted the full-day, hands-on session designed to help individuals bring about positive change on important civil liberties and civil rights issues.

The Political Science and Criminal Justice Department at The Citadel co-sponsored the workshop, which focused on media outreach and advocacy skills. We look forward to bringing the workshop to other cities in our state.

“On May 16, 2009, I attended the ACLU activist training at the Citadel. I was astonished by the turnout and diversity of those attending the training. The training was a blueprint for action. The ACLU provided me with tools to accomplish change and the event provided me with the relationships to become involved in my area.” Nicol Spann, ACLU Member



Cyndi Lucas, 2nd from right, leads a group discussion. Amy Wyland, center back, became a volunteer after the session.

MARCH – Religion in the Public Square

Dr. Jeremy Gunn, Director of the ACLU Freedom of Religion and Belief Program, spoke at the College of Charleston and the University of South Carolina School of Law on “Religion in the Public Square.” Following Dr. Gunn’s talk in Charleston, Adam Parker of the Post and Courier led a panel discussion with Dr. Gunn and local religious experts.

FEBRUARY – Unlawful Detention

Jonathan Hafetz, senior attorney with the ACLU National Security Project, spoke at Charleston School of Law and the University of South Carolina School of Law. His talks highlighted the unlawful detention case of Ali Al-Marri.

Mr. Hafetz focuses on post-September 11 detention issues, government secrecy and immigrant’s rights. Currently he is one of Mohammed Jawad’s civilian attorneys. Jawad, who was captured in Afghanistan when he was in his early teens, has been illegally detained in Guantánamo for over seven years.

Jonathan Hafetz



Please Join us on September 12

The SC National Office of the ACLU will be in Columbia to
March with Pride

We will have an information table at the festival in Finlay Park following the parade that will be staffed from 1-6PM. We are seeking ACLU volunteers for one-hour time slots. If you wish to march or volunteer with the ACLU, please contact Jan Landry at jlandry@aclu.org or 843-720-1423.

Let's Get Acquainted

Reflections from South Carolina's ACLU Staff

"Every day I get to be a lawyer whose job is to love the Constitution."

Susan Dunn, Staff Attorney

Last June my dear friend Harriet Johnson died suddenly. She was an accomplished attorney, a skilled writer and a persistent rabble rouser for the disabled and disenfranchised who used her talents in focused and effective ways. Her death forced me to take stock.

I had been practicing law in Charleston for three decades, honing my legal skills and cultivating a motley crew of loyal friends. While I was fiercely devoted to justice, equality, and a respect for human dignity, my private practice of divorce cases, wills, and automobile accidents tapped that devotion in random and haphazard ways.

One steamy day last summer, I walked down East Bay Street to the historic Exchange Building to witness the ribbon cutting for the new ACLU office in Charleston. That day I learned that a search would soon begin for a staff attorney. A voice in my head started whispering, "Now that is a job you are ready to do." A few weeks later, I submitted my application.

I was offered the job and began work in January. Every day I get to be a lawyer whose job is to love the Constitution. When I have questions, a national team of experts is only an email or telephone call away. I now have an encore career that focuses a lifetime of experience on work that honors the values I hold most dear. How lucky am I!

Jan Landry, left, and Trina Walker with her son Miles Owen-Walker (future member) talk about the ACLU.

*Photo of Victoria Middleton – page 2
Photo of Susan Dunn – page 3*



"Being 'different' in our country can bring discrimination, subtle or otherwise."

Jan Landry, Office Manager

Growing up in the south in a time of school and social segregation, the Vietnam War, and same-sex education, I learned firsthand how important the ACLU was in my life.

I was committed to change in those early years, but protests gave way to careers and family commitments, including a trip to China to bring our baby daughter home.

China marked the early beginnings of my "wake up call." Walking with our daughter through the gates of the U.S. Consulate in Guangzhou, where hopeful immigrants called out "lucky baby," and standing in immigration lines with other excited and exhausted newcomers (our daughter was, after all, a Chinese citizen), I realized how lucky we are and how much others envy our freedoms. But, I have also seen how being 'different' in our country can bring discrimination, subtle or otherwise.

When the opportunity arose to join ACLU's National Office in South Carolina, I immediately applied for the position of office manager and was hired on my birthday!

It is a privilege to use my skills – accounting, data base management, communications and business administration – to help the ACLU protect our constitutional freedoms and ensure they will be honored for all people who live in our country.

"I realized that what we promote overseas – protection of individual civil liberties against government incursion – needs vigilant protection at home."

***Victoria Middleton,
Executive Director***

Just a year ago, I was fighting human rights abuses by police and paramilitary units in Mexico and criticizing the Burmese junta for locking up journalists and protestors who dared to test its oppressive regime.

During my service with the U.S. State Department on 3 continents, I witnessed what the absence of constitutional rights meant to people in countries that are undemocratic, unstable or newly democratic.

While supporting freedom of the press, free and fair elections, transparency in government, and the rule of law, I came to cherish the priceless heritage we Americans have in our Constitution and Bill of Rights. At the same time, I realized that what we promote overseas – protection of individual civil liberties against government incursion – needs vigilant protection at home.

It was worthwhile work, but I was thinking about making a life change that would enable me to "give back" in my own country, after 20 years of defending human rights overseas.

My stepdaughter sent me a link to an advertisement for the position of Executive Director of the ACLU in South Carolina, with the note, "This would be perfect for you." She was right. I jumped at the opportunity to use my public diplomacy experience to defend civil liberties in South Carolina.

This is the best job I've ever had, and I've been lucky to have had many wonderful opportunities to serve.

Though a newcomer, I am like many other citizens who have flocked to our state in recent decades, bringing new passion to correct injustices, new experience, and new ideas that are at the service of all people in South Carolina who love freedom.

Why I am a Member of the ACLU – Armand Derfner



I am a card-carrying member of the ACLU because the ACLU will defend my constitutional rights no matter how unpopular or difficult that is. Whether it is my right to speak, demonstrate, pray, or vote, or my freedom from discrimination, government surveillance or other government intrusion, or a host of other freedoms we all take for granted, the ACLU has staked out the ground around the Constitution.

Whenever any of us gets to thinking that we don't need this protection, that's usually the time we learn how wrong we are.

It is not just "them," the unpopular or unorthodox ones, who wind up on the wrong side of the government or on the wrong side of popular opinion. At various times in our history, we were singled out if we were Catholics (especially here in South Carolina), or Jews, or Masons, or anti-Masons, or African-Americans, or left-handed, or socialists. The ACLU stood for us.

Now we may be singled out if we are gay, or Klan members, or evangelicals, or women seeking abortions, or immigrants. The ACLU will be there for us, too, not because the ACLU takes sides in those debates or culture wars, but because the ACLU wants to make sure that we are all free to chart our own lives and exercise our fundamental rights under the Constitution.

And for those of us who have encounters with the police and the criminal justice system, we have no idea how important due process is until we need it after we are arrested.

So don't ever think it's just for someone else. The ACLU is for you and me and all of us.

Armand Derfner is a civil rights attorney in South Carolina. He has served on the National Board of the ACLU.

**South Carolina National Office of the ACLU
P.O. Box 20998
Charleston, SC 29403**

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