



Fair is Fair Tour Takes Montana

by Ninia Baehr, LGBT Advocacy Coordinator

Ten days, seven cities and 1,300 miles – the Fair is Fair Tour traveled Montana much of September, spreading the word about the need for domestic partnerships for loving, committed same-sex couples.

Co-sponsored by the ACLU of Montana and Truth in Progress (a multi-media project promoting cross-cultural understanding of the intersections between religion, race and sexuality) the tour brought together divergent people interested in justice and fairness.

That was exactly the idea. Truth in Progress works from a similar baseline. Marilyn Bennett, a white lesbian author from Helena, and Rev. Gil Caldwell, a heterosexual African-American veteran of the Black civil rights movement founded the project. The two don't appear to have much in common on the surface, but underneath their passion for equality and respect transcends their differences.

Fair is Fair Tour presenters and participants discussed two key questions: Can the movement for LGBT equality be compared to the Black civil rights movement? What is the role of faith communities?

The first question arose because some people refer to the LGBT equality movement as the civil rights movement of today. Others find this comparison offensive. First, the



Montana Human Rights Network LGBT Organizer Jamee Greer, Rev. Gil Caldwell, Marilyn Bennett and ACLU of Montana LGBT Advocacy Coordinator Ninia Baehr speak about the importance of respect in faith communities in Helena.

struggle for racial justice continues today. And second, the very phrase “civil rights movement” has come to specifically describe the struggle of African Americans to gain equality in this country. Rev. Caldwell emphasized that the two movements cannot be equated but that focusing on the common experience of discrimination can help all people who have experienced, or been concerned about, discrimination understand one another.

Rev. Caldwell pointed out several differences and similarities between the struggle for racial equality and work for fairness for lesbian, gay, bisexual and transgender people.

- Ancestors of most contemporary African Americans were forcibly brought to this country on slave ships, legally owned by white people, and subjected to Jim Crow laws, all of which contributed to a legacy of historical trauma that is linked to the fact that African Americans today experience disproportionately high unemployment, low incomes and high incarceration rates. There is no equivalent generational history among LGBT (lesbian, gay, bisexual, transgender) people.
- As was once the case for African Americans, it is still legal in Mon-

ISSUE HIGHLIGHTS

<i>Traveling Hopefully</i>	2	<i>Death Penalty Update</i>	6
<i>President's Reflections</i>	3	<i>You Are Our Life Blood</i>	7
<i>New Chapter for Legal Program</i>	4	<i>Montana Prison Project</i>	8
<i>Public Defender System</i>	5	<i>ACLU Appeals Donaldson Case</i>	10

Board of Directors & Staff

Officers:

- Sheila Bonnard**
President, *Bozeman*
- Nancy Nicholson**
Vice President, *Helena*
- Joe Howell**
Treasurer, *Billings*
- Bill Strizich**
Secretary, *Great Falls*
- Brigitte Tuller**
National Board Rep., *Three Forks*

Board Members

- Margaret Abbott**, *Poplar*
- Jamee Greer**, *Helena*
- Judy Hart**, *Helena*
- Jim Heckel**, *Great Falls*
- Josh Hemsath**, *Billings*
- Helia Jazayeri**, *Missoula*
- Michelle Kulstad**, *Missoula*
- John Masterson**, *Missoula*
- Mary Sheehy Moe**, *Great Falls*
- Brady Minow Smith**, *Law School Rep.*
- Ed Stickney**, *Billings*
- Amy Sings in the Timber**, *Missoula*
- Dennis M. Taylor**, *Helena*
- Tom Welch**, *Butte*

Staff

- Scott Crichton**: *Executive Director*
- Claudia Montagne**: *Development Dir.*
- Jen Giuttari**: *Interim Legal Dir.*
- Niki Zupanic**: *Public Policy Dir.*
- Amy Cannata**: *Communications Dir.*
- Katy Heitstuman**: *Operations Mgr.*
- Ninia Baehr**: *LGBT Advocacy Coord.*
- Denver Henderson**: *Abolition Coord.*
- Liz Welch**: *LGBT Organizer*
- Krystal Pickens**: *Intake Coord./Paralegal*

**American Civil Liberties Union
of Montana**
P.O. Box 1317
Helena, MT 59624
Phone: (406) 443-8590
Fax: (406) 457-5484
www.aclumontana.org

This newsletter is published
three times a year.

Scott Crichton, Publisher
Amy Cannata, Editor
Beth Satre, Layout & Design

ACLU may well be the largest public interest law firm anywhere in the world. With lawyers in 53 affiliates and national staff lawyers in New York (headquarters), Washington, DC (legislative), Atlanta (voting rights) and Raleigh (capital punishment), the ACLU has nearly 200 lawyers across the country working diligently on a daily basis to defend civil liberties.

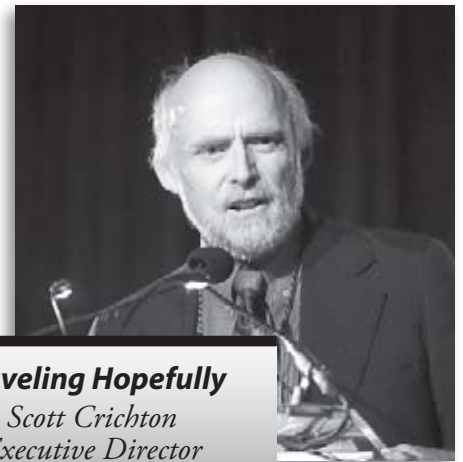
While it is laudable that we have developed such a cadre of dedicated attorneys, what oftentimes goes unnoticed and underappreciated is the vast network of volunteer cooperating attorneys who pull at the oars and do the heavy lifting in concert with these ACLU staff lawyers.

They are clearly not in it for the money. They do the work pro bono to be part of a great tradition that dates back to 1925 when Clarence Darrow defended a Tennessee school teacher. Formally known as *The State of Tennessee vs. John Thomas Scopes* and informally known as the Scopes Monkey Trial—this was the landmark American legal case in which high school biology teacher, John Scopes was accused of violating Tennessee’s Butler Act which made it unlawful to teach evolution.

ACLU cooperating attorneys volunteer because they understand their roles and obligations as officers of the court and are firm believers in the fundamental rule of law. It is at one time both inspiring and humbling to work with such exemplary practitioners. We are indeed fortunate to have cooperating attorneys donate their services to help ACLU defend freedom here in Montana and across our nation.

When I think about our successes in Montana, I immediately think about the cooperating attorneys who have given of themselves - their time and talent - to shoulder the legal responsibilities associated with defending the Bill of Rights in state and federal courts.

In the 1980s we had no attorney on staff and accordingly relied on a volunteer legal director to help us respond to requests for legal assistance. We managed to take on some cases, but it was frustrating for all involved. In the early 1990s, it became clear that for us to fulfill our mission, we needed a full-time attorney on staff. We did ambitious fundraising, and, gratefully, a few significant Montana



Traveling Hopefully
Scott Crichton
Executive Director

donors saw the need and stepped forward making us the first small affiliate to have a lawyer on staff.

From that humble beginning, we slowly, progressively developed our legal program. We hired Beth Brenneman in 1997. Fresh out of law school but mature beyond her years, Beth immediately began to make her mark as our first Jean Anderson chair. She worked closely with a legal panel of volunteer veteran attorneys with a variety of expertise from which she could draw. It made such a difference.

We soon found out that one nice thing about having a full-time attorney on staff was that even in cases where we could not find a cooperating attorney with whom to partner, we were still able to actively engage in demanding legal challenges.

During her seven-year tenure, Beth handled numerous cases on her own. But the two largest class action cases involving Indian voting rights and indigent defense were handled with additional help from cooperating attorneys and our national ACLU staff attorneys. The collaboration and teamwork of paid staff and volunteer cooperating attorneys time and again delivers the goods and allows us to embrace a wide ranging docket that covers the legal waterfront -- from fighting for the right to due process of law, the right to counsel, the right to vote, the right to be free from cruel and unusual punishment, the right to equal protection, freedom of religion, the right to be free from unreasonable searches, the right to free expression and much more.

And under the five-plus years of outgoing Legal Director Betsy Griffing’s leader

Traveling Hopefully, cont. on page 9

Too Dangerous for the Big Sky?

What does Juliet Clutton-Brock's book for children, *Horse*, have in common with *Rolling Stone Magazine* and A. B. Guthrie's *The Big Sky*?

Each of these titles has been subject to an attempt to remove it from a library collection or a school curriculum in Montana. *Horse* was challenged in a Helena elementary school library because it included an illustration about the evolution of the horse. *Rolling Stone Magazine* has been removed from two school libraries over claims that the magazine glorified sex and drug use. In 1992, *The Big Sky*'s use in a high school class on frontier literature was challenged because a community member said it contained vulgar language and portrayed immorality.

According to Robert P. Doyle's *Banned Books Week 2010 Resource Guide* (published by the American Library Association), books continue to be challenged in the Internet age because of the permanence of the print book format. Because books continue to be challenged and sometimes banned, libraries, teachers and booksellers around the country celebrate Banned Books Week every fall as a way to highlight the fact that challenges to books in libraries and schools continue to take place. This year's event took place from September 26 to October 2. During 2010, the American Library Association (ALA) documented 348 challenges (and ALA's Office for Intellectual Freedom estimates that only 20-25 percent of book challenges are reported). Most challenges take place in public schools, either over a book in the curriculum or a book in the school library, but public libraries also see challenges as do academic libraries, though rarely.

Banned Books Week may be marked at the end of September, but these challenges can come at any time of the year, and we all must be ready to speak up for our First Amendment right to free speech when challenges occur.

It was so heartening to see the Helena community's response to a challenge to Sherman Alexie's *The Absolutely True Diary of a Part-Time Indian*, the last book to be challenged in Montana. A parent did not want to see Sherman Alexie's award-winning book (National Book Award for Young People's Literature in 2007) used in the curriculum or kept in the library at Helena High School. Even though an alternate book was available for her child to read, she did not want any student to read the book.

More than 200 people

attended the hearing on the challenge, the vast majority in favor of retaining the book. Many students testified and one was quoted in the *Helena Independent Record* as saying "You can't present real life without presenting real life." In this case, the challenge was defeated and the book remained in both the classroom and the school library.

The First Amendment protects our right to free speech. If certain people have the power to restrict what others read, then the right to free speech and thought is gone. When someone challenges a book, this censorship attempt infringes on the right to make independent decisions about what we and our families read. In schools, it degrades the expertise of teachers and librarians who have been trained to select materials for the classroom and library.

Societies which have banned books, such as Nazi Germany, often tread on many other freedoms and rights. In Montana's history, the Sedition Act that was passed against Germany and Germans during World War I resulted in the outlawing of the German language. Books such as *Deutsche Lieder* (a German songbook) were supposed to be pulled from all schools and libraries. In Lewistown, this resulted in books being burned in the street. (To read more about this time in Mon-



President's Reflections

Sheila Bonnard

BANNED BOOKS QUIZ

Banned Books, cont. on page 10

To test your banned/challenged books knowledge, take this Montana banned books quiz (see answers on page 10):

1. What book has faced the most challenges in Montana?
2. What entity is responsible for removing the most books from Montana libraries and classrooms?
3. What Montana library has seen two challenges to the same book?
4. What author has been most challenged in Montana?



Glacier High School librarians in Kalispell erected a display for Banned Books Week 2011. ACLU of Montana Communications Director Amy Cannata spoke to students there, and also to people in Great Falls, Helena and Butte about intellectual freedom.

Legal Director Leaves ACLU of Montana Lasting Legacy

by Betsy Griffing, Former ACLU of Montana Legal Director



I am very sorry to say that I will have left the ACLU of Montana by the time this newsletter is circulated. I have enjoyed very much working as legal director of the ACLU of Montana for more than five years.

When I started here, all I had was a laptop, a folding chair and a card table. Today, the ACLU of Montana has a fully functional legal office in Missoula with two attorneys and a full-time paralegal/intake officer.

We established a close tie to the University of Montana Law School through a new clinical program, and started a strong internship program. We made some significant strides in civil liberties, from assuring that the Border Patrol does not engage in wrongful detention and racial profiling, to establishing free speech rights at U.S. Forest Service meetings, to

recognizing same-sex parenting rights and advocating for humane treatment of inmates in our jails and prisons.

The ACLU of Montana will continue the battles we have started, including challenges to the lethal injection procedure used in death penalty cases, monitoring the new public defender system, advocating for reproductive freedom and privacy rights, and limiting the use of solitary confinement in the Montana prisons.

I have been most grateful for the confidence and trust that was placed in me to develop the legal program.

I am very thankful to the people at in the ACLU's national office who have been integral in encouraging and supporting the development of Montana's legal program. Al Bronstein and Geri Rozanski at the Affiliate Support Department, Leslie Cooper, Rose Saxe and Elizabeth Gill with the LGBT Project, Eric Balaban and David Fahti with the National Prison Project, and Laughlin McDonald at the Voting Rights Project, have all provided invaluable help and advice.

I must also recognize our outstanding cooperating attorneys. Ron Waterman gives so much to the ACLU. Without his valuable expertise, time and advice, we could not have brought nearly half of our cases. I am grateful for the passion of Andree Larose in protecting the rights of children and the mentally ill in the prison system, and to Susan Ridgeway for her doggedness in the Kulstad case about same-sex parenting rights. I will never forget the help of these people in developing cases that have achieved national significance in reform of our criminal justice system and our fight for equality.

Lastly, I stand in awe and admiration of the courage of our plaintiffs in the *Donaldson* case seeking legal relationship recognition for same-sex couples. One only has to read the affidavit of Christine Kaufman to understand the full depth and scope of discrimination against the LGBT community in this state and their courage in stepping forward.

I have attempted to create a legal team at the ACLU of Montana that is cohesive and well-oiled. Respect and trust are integral to team building and I am hopeful we have that among our legal team. I am so grateful to Staff Attorney Jennifer Giuttari for her dedication and tenacity and to Paralegal Krystal Pickens (aka Holden) for her organizational skills and firm resolve. Their skills have made building a legal program a joy and they will carry the ACLU through the transition to a new legal director.

New Chapter for ACLU's Legal Program

by Scott Crichton

After more than five years in "The Jean Anderson Chair", Betsy Griffing stepped down in October as the legal director for the ACLU of Montana. The position was initially made possible in large measure thanks to the generosity of Jean Anderson who was an exemplary civic leader and a long time ACLU supporter.

Everyone agrees that Betsy did an admirable job in taking our legal program to a new level. Under her leadership, we established a legal office in Missoula. Three years ago we hired Jen Giuttari as a second full-time staff attorney whose efforts almost exclusively focus on addressing jail and prison issues. Earlier this year, our half-time intake position became full-time and is now very capably staffed by Krystal Pickens, who also works as our paralegal to bolster the legal program in a myriad of ways.

Betsy actively improved our link to the University of Montana School of Law. Since Betsy taught Montana constitutional law as an adjunct professor, it was natural for our office to engage students as summer interns and legal clinic participants. And thanks to a generous gift in memory of Herman Warsh, we are able to provide stipends for those summer interns who will become the next generation of civil liberties lawyers. Not only do the interns get to learn firsthand about the practice of public interest law, but they also provide us a huge benefit with their research, investigations, legal memos and help with case preparation.

The case law legacy during Betsy's tenure is considerable. Drawing on her knowledge of constitutional law, she provided numerous friend of the court briefs to help the Montana Supreme Court better understand the issues before them. I will always remember watching her compellingly argue before a packed audience on behalf of the rights of children to have access to both parents in our Kulstad case. The Court ruled in her favor 6-1.

While we carry on a nationwide search for the new Jean Anderson Chair, Jen Giuttari, staff attorney and director of the Montana Prison Project will serve as interim legal director.

Thank you, Jean, for making a full-time ACLU of Montana legal director possible. Thank you, Betsy, for taking our legal program to a new level.

Public Defender System Still Needs Improvement *by Niki Zupanic*

This past July, the Office of the State Public Defender reached an important milestone when it marked five years of operation. Now we need to ensure that it is operating in the best possible way to ensure adequate defense.

The office opened its doors after the state legislature responded to an ACLU lawsuit (*White v. Martz*) that challenged the gross disparities in the quality of indigent defense existing under the county-by-county system.

Our lawsuit sought to reform the state's public defense system and to ensure that all indigent defendants facing the threat of incarceration received constitutionally adequate legal representation. The lawsuit was ultimately settled when the Attorney General's office collaborated with us on successful legislation to create a statewide system.

Of course, creating the statutory framework for the new state agency, with 11 regional offices and hundreds of employees, was just the starting point for remedying the inequities and deficiencies that we found in the old system. Adequate supervision, oversight, resources and data collection were just a handful of the items critical to making sure that the new agency was well-functioning and that indigent defendants were receiving adequate representation.

As the system got up and running, however, signs emerged that showed that the full potential of the office was not being reached. In 2009, a team of evaluators from American University studied the nascent system and made several recommendations for its improvement. It was difficult for some within the system to acknowledge the shortcomings identified in the American University report, much less make meaningful changes to address them.

Yet, we at the ACLU continued to press for those recommendations to be taken seriously and

implemented. Throughout 2010 and 2011 the agency took steps to mitigate conflict-of-interest issues involving the appellate office and cases involving multiple defendants. And stepped-up efforts to collect case management data resulted in more information than had been previously available (though, comprehensive data collection and reporting still remained a struggle).

Two years after the American University report, we decided to re-assess the system and evaluate the agency's effectiveness in providing client services. Throughout June, July and August, members of the ACLU legal team interviewed more than 50 people, including regional directors, managing attorneys, staff attorneys, legal assistants, investigators, private attorneys and clients. Our interviews provided a revealing picture of the current system.

On balance, the provision of public defense services has greatly improved in Montana. However, serious and on-going problems in the areas of central administration, oversight and supervision, and management continue to plague

the system and have contributed to a failure to collect essential data, wide disparities between regions and even among offices within regions, and poor staff morale. Most importantly there is also evidence that these shortcomings have adversely affected client representation in some places. Some clients report a lack of communication or access to counsel (often due to staff attorneys being overworked).

In October, we shared our report with the Public Defender Commission. Our findings were especially timely, as the Chief Public Defender had recently resigned her post and the Commission is now in the process of recruiting a new head for the agency. We have urged the Commission to take this opportunity to learn from the agency's initial growing pains, and to make the institutional and management changes necessary to move the agency forward.



Niki Zupanic
ACLU of Montana
Public Policy Director

ACLU of Montana Seeks Details on Government Phone Tracking

The American Civil Liberties Union of Montana sent letters in August 2011 to the state of Montana and to local law enforcement in Cascade, Yellowstone, Missoula, Gallatin, Flathead and Butte-Silver Bow counties.

We want to assure that privacy protections keep pace with technological advances. We believe that right of privacy also protects location information law enforcement can get from every person's cell phone.

Law enforcement agencies were asked for the following:

- Statistics on how frequently they obtain cell phone location data;
- The use of cell phone location records to identify users at a particular location or within "communities of interest;"

- Policies and procedures for obtaining cell phone location records; and
- Other policies and procedures related to mobile phone location data.

The ACLU of Montana's requests were part of a massive coordinated information-seeking campaign, in which 34 ACLU affiliates in 31 states sent similar requests to more than 370 law enforcement agencies – one of the largest coordinated information act requests in American history.

We have received responses from all the agencies and are currently reviewing them. Stay tuned for more information in the coming months.

Requests filed in Montana are available at www.aclumontana.org. More information about requests in other states can be found at www.aclu.org/locationtracking.



Delbert Tibbs talks about his harrowing years on death row for a crime he did not commit.



Diana (Weezee) Cote speaks about her daughter's murder and why she opposes the death penalty.

Working to End the Montana Death Penalty in 2013

by Denver Henderson, ACLU of Montana Death Penalty Abolition Organizer

Summer was a time of the Montana Abolition Coalition strengthening our supporter base and reaching out to new audiences in key communities across the state. We've built strong relationships with faith leaders through our partner organizations, hosted a speaking tour in eastern Montana featuring Delbert Tibbs, a death row exoneree from Florida, and Montana's own Diana "Weezee" Cote, who lost her daughter to murder just four years ago.

But as the days grow shorter, you might also notice a shift in the political winds. The presidential debates have brought the death penalty issue to the forefront in the most callous of ways. We were all saddened and sickened to see an issue as important as capital punishment used to score political points. Despite the applause lines, most people, when given a choice between the death penalty and life without parole, lean our direction.

A second event of national importance provided the very proof of why capital punishment is wrong. On Sept 21, after sitting on death row for 20 years, Troy Davis was executed by the state of Georgia. In abolition circles, his name had become synonymous with the phrase "wrongful

conviction." There was not a shred of physical evidence linking him to the crime scene – only the testimony of a handful of people, many of whom have since recanted their statements. Many people thought that justice was

just taking its sweet time and that Troy would eventually be freed. Overwhelming support from hundreds of thousands of citizens – including death row exonerees, faith and civil rights leaders and high profile political figures across the country – was not enough to keep the state from killing Troy. The tragic execution of a man with such strong claims of innocence reminds us all of how badly the criminal justice system is flawed and why the time for abolition is now.

While it's too early to read the tea leaves on what's in store for abolition efforts in Montana, it's not too early to start working toward victory in the next legislative session. In fact, the work we do right now during the interim will determine our success or failure in 2013. Specifically there are two races that will have a significant impact on our efforts in the legislature. The race for Montana governor has become increasingly crowded, and whoever wins will hold extraordinary influence over the legislature; he will command the bully pulpit and wield the veto pen. Similarly the attorney general's race is important for our cause because the attorney general is the top prosecutor in Montana. The way the candidates talk about the death penalty can shape and be shaped by public opinion.

If you have a chance to attend a political fundraiser for any of these candidates, it's a good opportunity to let them know that, as a Montana voter, you support abolishing the death penalty. Better yet, if you don't have time to rub elbows with politicians, write them a letter, and, in your own words, tell them why the death penalty is wrong for Montana.

Materials for writing a letter along with mailing addresses for statewide candidates can be found at www.mtabolitionco.org. Please take five minutes today and help us shape the future in 2013. Together we can make sure Montana is never faced with the execution of a Troy Davis.

We're turning 40!

The ACLU of Montana marks 40 years as an approved ACLU affiliate on December 4, and 40 years of work in Montana in 2012. We couldn't have done it without our members and we want you to celebrate with us.

We're looking for longtime members and supporters – those who have been with us for decades, maybe even all 40 years – to honor at our annual meeting in March.

If you have been a continuous member or donor to the ACLU of Montana for 20 years or more, please contact Communications Director Amy Cannata at 443-8590 or amyc@aclumontana.org.

State's New Execution Protocol Misses the Point

It does not require sufficient training or ensure prisoners won't suffer

A lethal injection protocol revised by the Montana Department of Corrections and reissued on Aug. 12, 2011 remains insufficient in terms of training, qualifications and procedures, and fails to meet the legal requirement that it ensure the execution of prisoners is free from cruel and unusual punishment.

Procedures and training are covered in vague terms that leave too much up to chance and the discretion of a single person – the prison warden.

In 2008, Ron Waterman and Julie Johnson of Gough, Shanahan, Johnson and Waterman, in cooperation with the American Civil Liberties Union of Montana, filed the lawsuit *Smith v. Ferriter* on behalf of death row inmate Ronald Allen Smith, challenging the lethal injection procedure in Montana. Smith's execution has been stayed pending the outcome of this lawsuit.

Under state law and in the updated protocol the prison warden has sole discretion to choose who executes

prisoners. Executioners need not even be trained physicians or nurses. The consequences if that protocol is improperly administered are grave. A prisoner could be fully conscious and in excruciating pain. Such a situation clearly violates the Constitutional right to be free from cruel or unusual punishment.

"Past rulings show that courts have approved the death penalty and protocol only when the procedure is detailed and explicit and is performed by people with the necessary qualifications, training and experience to carry out an execution without inflicting pain and suffering," Waterman said. "Montana's new protocol contains none of these safeguards. We intend to continue our challenge."

You are the Lifblood of the ACLU

by Claudia Montagne, ACLU of Montana Development Director

Thank you all for your loyalty during this year. Your responses to our conversations, calls, emails and letters asking you to join, donate and act in defense of civil liberties are an inspiration. With 1,700 members and donors, the ACLU of Montana makes a powerful difference.

I ask that you continue to keep the ACLU a priority as you finalize your year-end charitable giving plans. Your financial support funds an experienced 11-member team in Montana that responds to well-organized and well-funded attacks on our country's founding tenets of liberty, equality and justice for all.

We are meeting these battles head on – here and across the country – and we have been doing so for nearly a century. As the Montana affiliate enters its 41st year in 2012, please help us sustain our vigilance – be it in the courts, the legislature or local policy arenas – and maintain our record of success.

There are many ways to give. You can give online at www.aclumontana.org by clicking on the "Donate" button. You can use the enclosed envelope to send us your check or credit card information. You can also become a regular sustainer of our work by completing the form below for automatic withdrawals from your bank account.

Whichever method you choose, I hope we can depend on you to help us be your voice – the strongest voice possible – whenever civil liberties are in jeopardy.

Why I Donate



What is happening to the basic human rights of many persons in our country, and even our state, is very scary to me. As a very elderly person, I agonize about my inability to really help make things better, so I get great comfort in knowing that there are organizations which are working hard on those issues which concern so much.

The ACLU is one of the oldest and most important of these, especially as it works to help those most disadvantaged in our society and who often find it most difficult to find help. I count on the ACLU to keep doing this, and that is why I support it financially to the best of my ability.

Margaret Ping is a retired social worker. She lives in Billings.



ACLU

AMERICAN CIVIL LIBERTIES UNION
of MONTANA

ACLU of Montana Foundation • ACH Electronic Withdrawal Authorization Form

This authorizes ACLU of Montana to withdraw electronically or by any other commercially accepted method from my (our) account indicated and from other accounts I (we) identify in the future. This authorizes the financial institution holding the account to post all such entries. This authorization will be in effect for the duration selected.

Type of Account (check one)

Checking Savings

Amount \$ _____

Frequency (check one)

Monthly Quarterly Yearly

Day of Month for Withdrawal (check one)

2nd 25th

Duration (check one)

1 Year 2 Years 3 years

Other (please specify) _____

Printed Name _____

Signature _____ Date _____

Please include a VOIDED CHECK with this form.

Donations to the ACLU of Montana Foundation are tax deductible

Prison English-Only Policy Violates First Amendment Rights

by Jennifer A. Giuttari, Interim Legal Director

This past quarter has been busy for the Montana Prison Project. In late June, we took on representation of William Diaz-Wassmer and his efforts to fight Montana State Prison's English-only policy for inmate mail.

Mr. Diaz-Wassmer is currently serving a life sentence at Montana State Prison. He and his family are originally from Guatemala, and while Mr. Diaz-Wassmer is fluent in English, his family has varying degrees of English fluency.

For a significant portion of his incarceration, Mr. Diaz-Wassmer

was housed in solitary confinement. This means that he lived alone in a cell with little to no human interaction. The letters Mr. Diaz-Wassmer received from his family and loved ones serve as a lifeline to the outside world. However when the prison stopped allowing him to receive or send any letters written in Spanish, Mr. Diaz-Wassmer decided in December 2010 to file a complaint on his own, without legal representation.

This past June, we filed an amended complaint on Mr. Diaz-Wassmer's behalf. The complaint alleges that the Montana Department

of Corrections and Montana State Prison policies that prohibit mail that is written in a "code or foreign language" violate Mr. Diaz-Wassmer's First Amendment Right to freedom of speech and expression, and his Fourteenth Amendment Right to equal protection.

Loss of freedom is a consequence of a prison sentence, but inmates do not give up all their rights when they are imprisoned. The First Amendment right to free speech is one which they retain and one for which the ACLU of Montana will continue to fight.

Court Orders Prison to Keep ACLU Client Out Of Solitary

The summer of 2011 brought good news for our teenage plaintiff, Raistlen Katka.

District Court Judge Jeffrey Sherlock ordered the Montana Department of Corrections to refrain from

Sherlock in his decision, adding that he has concerns that Raistlen could suffer irreparable harm (up to suicide) if placed in solitary confinement again.

Since we were able to secure his release from solitary confinement last year and get him mental health treatment, Raistlen's condition has improved. He earned his GED and is receiving vocational training. He had been prohibited from receiving real educational instruction in solitary confinement.

The ACLU of Montana filed a lawsuit against the state of Montana and the Montana Department of Corrections in 2009 over the illegal, inhumane and degrading treatment Raistlen was subjected to by being placed in solitary confinement when he was a juvenile and when it exacerbated his mental illness. Those conditions violated the Montana Constitution's right to human dignity, and were particularly objectionable because they were imposed on a minor child with mental illness.

Raistlen was Tasered, pepper-sprayed, deprived of human contact,

punished by torturous "behavior management plans," stripped in view of other inmates and traumatized to the point of attempting multiple times to kill himself.

The ACLU was finally able to secure Raistlen's release from solitary confinement, mental health treatment and a return to the general population after several more suicide attempts.

Though the most pressing goal of the ACLU's litigation – to ensure that Raistlen would be removed from inhumane conditions – has been achieved, the lawsuit will continue.

"This lawsuit is for Raistlen, but it's also for all the other adolescent and mentally ill prisoners subjected to these harsh, punitive conditions. MSP's use of solitary confinement and BMP's violates contemporary correctional practices as well as Montana's constitutional guarantees," said ACLU cooperating attorney Andree Larose. "As a society, we must be concerned not only about whether the treatment of inmates is humane, but also about what long-term effects such inhumane treatment has on these prisoners. When we ignore the core humanity of a prisoner, we not only violate the Montana Constitution, we make our community less safe in the long run."



Raistlen Katka confers with ACLU of Montana cooperating attorney Andree Larose. Photo courtesy of Eliza Wiley, Helena Independent Record.

placing teenage prisoner Raistlen Katka in administrative isolation and from imposing behavior modification plans on him until his release or his February 2012 trial.

"The Court does this for a couple reasons. First, it is clear that Plaintiff is doing well under the current specialized treatment plan," wrote

Waterman Receives Jeannette Rankin Award

Ron Waterman is the recipient of the 2011 Jeannette Rankin Civil Liberties Award. Since 1991, the ACLU has presented this annual award to individuals and organizations who demonstrate the strength of character and commitment to principles embodied in ACLU's mission and vision. The Rankin Awards are named to honor the memory of Jeannette Rankin, who, 90 years ago, served as first vice president of the national ACLU.

Early in his career, Ron clerked for the Honorable W.J. Jameson, U.S. District Judge for the District of Montana. He remembers observing that the ACLU had brought so many significant constitutional cases. Judge Jameson responded that the organization was one of the best to defend and preserve the constitutional rights of the American people. In the decades since, Ron has given of his time and talent as an ACLU cooperating attorney on a variety of issues.

Ron played a key role in civil liberties litigation after the 1991 riot at Montana State Prison. He offered his firm as a clearing house and provided a dedicated paralegal to help sort through the myriad cases stemming from the "Riot at Max."

An outspoken opponent of the death penalty, Ron has been actively engaged in trying to stop it in Montana at least as far back to his representation of Duncan McKenzie in 1995. As an ACLU cooperating attorney he is actively engaged in challenging the state's lethal injection protocol (see page 7) and

has testified before the Montana House and Senate judiciary committees on how the state's apparatus for state-sanctioned murder is flawed beyond repair.

Ron led the legal team assembled in *White vs. Martz*, challenging the state's woefully inadequate delivery of legal services for indigent defense. He actively lobbied for the legislation that created the Office of Public Defender and again to help secure adequate funding for the newly established statewide public defender system.

He also represented Jimmy Ray Bromgard, a Billings man wrongfully convicted of raping an 8-year-old girl in 1987. Bromgard served 15 years in prison before genetic evidence exonerated him. Ron helped Bromgard sue the state and Yellowstone County.

Part of a great tradition of pro bono civil liberties legal work that dates back to 1925 when Clarence Darrow defended a Tennessee school teacher named John Scopes, Ron remains engaged as an ACLU cooperating attorney on several additional matters currently before the court.

Friends and supporters are invited to honor Ron on Saturday, Nov. 19 from 5-7 p.m. at Nancy and Alan Nicholson's home. To RSVP, call the ACLU of Montana at 406-443-8590 or email katyh@aclumontana.org.



Ron Waterman

Travelling Hopefully

continued from page 2

ship (see story page 4) our legal program grew to its current make-up of two staff attorneys and a full-time paralegal. This is a dramatic improvement for sure, but clearly and practically speaking, even with an increase in legal staff, our legal program will continue to depend on the cooperating attorneys who work hand-in-hand with ACLU attorneys.

Hats off to those men and women who help the ACLU defend the Bill of Rights. They are one of the strongest reasons for civil libertarians to travel hopefully. Without them, we'd only be able to accomplish a fraction of what we have taken on thus far. There are many more challenges to face and many more battles to be won.



I'm A Card-Carrying Member – AJ Otjen

In my wallet are two membership cards, one for the Montana Republicans and one for the ACLU.

It might be hard for most Republicans to think of

themselves as card-carrying members of the ACLU, but for me it is the most consistent thing in the world. Republicans shout out freedom and Constitution everywhere they meet. The whole purpose of the ACLU is to defend the Constitution and our freedoms.

Every American has the right to life, liberty and the pursuit of happiness. Every meeting that I have been to of the Republican Party, this is preached with the highest voice. Does this not include gay Americans? Does this not include women? And yet, when Republicans speak of "family values," it is code for anti-choice and anti-gay. Family values should mean pro-education, pro-environment and all around good citizenship.

If every Republican joined the ACLU, we would feel secure in our Constitution, and then focus our attention on world issues of the future.

ACLU appeals Donaldson case to Montana Supreme Court

Opinion polling shows support for same-sex domestic partnerships.

The American Civil Liberties Union in August appealed a Montana District Court decision dismissing the same-sex domestic partnership case, *Donaldson and Guggenheim v. State of Montana*, to the Montana Supreme Court.



ACLU Domestic partnership case plaintiff Jan Donaldson marches in the 2011 Pride parade in Bozeman with three of her grandchildren.

The Montana Constitution guarantees that all people, including gay and lesbian couples, should be treated equally and fairly, and this case presents fundamental issues of privacy and equal protection that need to be resolved by Montana’s highest court.

Though civil liberties aren’t based on popular opinion or majority rule, we were heartened over the summer when a poll of Montana voters showed a majority favor allowing gay and lesbian couples to enter into domestic partnerships.

That poll, conducted by Greenberg Quinlan Rosner Research for the American Civil Liberties Union, found that 53 percent of Montanans support same-sex domestic partnerships which include the same rights given to married couples. Only 40 percent oppose such partnerships.

The poll shows that Montanans understand that the lack of legal recognition of same-sex relationships leaves couples and their families extremely vulnerable – which is precisely what the evidence presented to the district court in our case shows.

One plaintiff was denied bereavement leave when her partner’s father died, and another lost her home because she was ineligible for worker’s compensation death benefits when her partner was killed in an accident.

Numbers from the 2010 U.S. Census show 2,295 Montana same-sex households – a 54 percent jump since 2000. All are at risk without the legal protection of domestic partnerships, and the ACLU of Montana is committed to continuing to fight for their rights.

Introducing the Newest ACLU of Montana Employee



LGBT Organizer Liz Welch

The ACLU of Montana is pleased to have hired an LGBT organizer for our Fair is Fair campaign to advance the rights of lesbian, gay, bisexual and transgender people across the state and educate Montanans about the need for domestic partnerships for same-sex couples.

Liz Welch has a background in sales and political organizing. She is very experienced in online marketing.

“After 20 years of sales in the corporate world, I decided to make the jump and follow my passion into political organizing and public persuasion for an issue I feel deeply about, with an organization that I have long admired,” says Liz. “I believe that same-sex couples should have the same rights to equality in housing, employment, and relationship recognition. It’s a simple value: fairness for all. And I am blessed to be able to spend my days working toward this goal.”

Liz’s position with the ACLU was made possible by a generous grant from the Gill Foundation’s State Equality Fund.

Banned Books

continued from page 3

tana history, see Clemens P. Work’s book *Darkest before Dawn: Sedition and Free Speech in the American West*.

Please defend the right of free people to read freely. Be prepared to fight censorship and oppose challenges should they occur in your community. For more information on this issue, go to ACLU of Montana’s website www.aclumontana.org (click on “Public Education”) and the American Library Association’s page at www.ala.org (click on “issues”). For information on Banned Books Week, see www.bannedbooksweek.org.

QUIZ ANSWERS

1. *Fool’s Crow* by James Welch (3 challenges)
2. School superintendents
3. Lewis & Clark Library in Helena (2 challenges to the *Joy of Gay Sex*)
4. Judy Blume because of two challenges, both requesting that all of her books be removed from the school library.

African Visitors Briefed on our Work to Protect the Constitution

by Katy Heitstuman, ACLU of Montana Operations Manager

Early this fall I gave a presentation to nine men and women from different African nations who are visiting the United States on a tour to learn about accountability in government. The ACLU of Montana was asked by the Office of International Visitors if we could speak to this group on the issue and our work surrounding it. The presentation that I gave was a general overview of the work that the ACLU does both here in Montana and nationally to hold government to its own standard; the Constitution.

The questions I received while giving the presentation centered on reproductive choice and how a government provides for it; medical marijuana and the conflict between federal and state legal concerns; and freedom of religion for minority groups. It is easy to see how these would be especially interesting con-

cepts for people who are not from the United States. Reproductive freedom for example is not something that all countries protect in their laws, and in fact, access to abortion services is much more restricted in the countries where these men and women live.

Freedom of religion for minority groups is often something that is just a goal in countries around the world. The group discussed the ACLU of Montana case, *Knows His Gun v. Crossroads Correctional Center* about the rights of Native American inmates to participate meaningfully in sweat lodge worship services without undue burdens beyond those placed on inmates participating in other religious worship services. The protection of the rights of Native Americans was a concept the group had a particular interest in.

I discussed with the group all the ways that the ACLU and the ACLU

of Montana work to hold the government accountable. From litigation to public education to public policy advocacy, the ACLU works to hold the government to a set of principles that are unique to American law. It is important that we not take the protections afforded by the Constitution for granted. In many parts of the world freedom of religion, reproductive freedom, protections for LGBT people and so many other protections that we have fought hard to attain are still just goals on the horizon.

We should be proud of how far the United States and the ACLU have come in protecting constitutional rights, but we should also be wary of allowing anything to chip away at these rights, lest they become just goals on the horizon.

Fighting for Fairness, continued from page 1

tana to deny someone service in a restaurant or accommodations in a hotel or even to fire someone because he or she is gay, lesbian, bisexual or transgender.

- Many LGBT people can “pass” as straight, and while some consider this a mixed blessing, it is an option available to very few Black people.
- African Americans are not typically ostracized from their families and churches on the basis of race, but LGBT people frequently run the risk of losing these sources of support.
- Like Black people before them and today, LGBT people have reason to worry about personal safety from violence motivated by bigotry.

Rev. Caldwell explained that just as he continues to work for fairness for Black people, he is also committed to working for fairness for all people, including LGBT individuals and same-sex couples.

As part of our strategy of connecting across cultures through examining the shared experience of discrimination, the core Fair is Fair team was joined in three cities by guest co-presenters including Dr. Walter Fleming, Head of the Native American Studies Department at Montana State University, and David Herrera and Steven Barrios,

Board members of the Montana Two-Spirit Society. These presenters described

a history in which, in many tribes, there was traditionally a place for everyone, regardless of where they fell along the spectrum of sexual orientation and gender identity/expression. In fact, two spirit people often occupied specific roles within their communities and were accorded a high status. As part of colonization, different Christian traditions were brought to the various reservations in Montana. A common result was the loss of a more inclusive approach to tribal members now considered sexual minorities.

Though speakers and audience members described ways that the LGBT community has been harmed by religious institutions, most of our time was spent on the ways that churches can and are working for fairness. To date, 82 clergy have signed a clergy statement of support for our domestic partnership case. By popular demand from people who attended Fair is Fair Tour events, the ACLU has also launched a laypeople of faith statement of support. You can find more information about both on our website at www.aclumontana.org.

FAIR is FAIR
in Montana
www.fairisfairmontana.org



P.O. Box 1317
Helena, Montana 59624
www.aclumontana.org

Nonprofit Org.
US Postage
PAID
Helena, MT
Permit No. 221

Stay In Touch!

- “Like” the ACLU of Montana on Facebook
- Follow [aclumt](https://twitter.com/aclumt) on Twitter
- Visit our website www.aclumontana.org

Autumn 2011

Save the Date!

Jeannette Rankin Award

Saturday, November 19 from 5-7p.m.
Home of Nancy and Alan Nicholson, Helena
Celebrate honoree Ron Waterman’s commitment to civil liberties for all Montanans (see story page 9)

Butte Member Reception

Saturday, December 3 from 6:30-8 p.m.
Finlen Hotel, 100 East Broadway Street, Butte
Join us for an evening of food, drink, an update on the ACLU of Montana’s work and the kickoff to our 40th birthday celebration.

2012 Annual Meeting

Saturday, March 10
Hilton Garden Inn, 2465 Grant Road, Billings
ACLU National Legal Director Steve Shapiro will be the keynote speaker at our annual meeting. Hear the latest about civil liberties issues and celebrate the ACLU of Montana’s 40th birthday.

For more information or to RSVP for any of these events, call 443-8590 and speak to Katy.



ACLU National Legal Director Steve Shapiro
ACLU of Montana 2012 Annual Meeting Key Note Speaker