



## ACLU of Montana Presents Case on Parental Rights to Montana Supreme Court

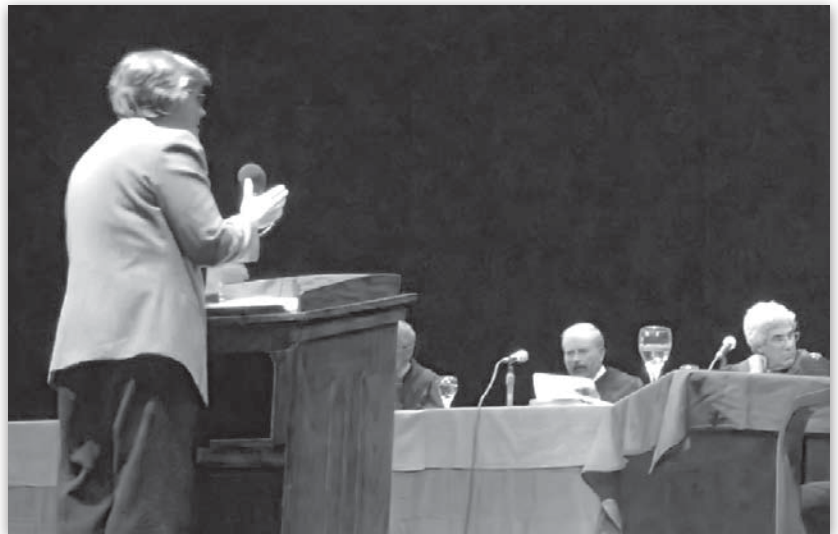
Missoula parent Michelle Kulstad sat surrounded by supporters as ACLU of Montana Legal Director Betsy Griffing argued in April in front of the Montana Supreme Court for Kulstad's right to continue to parent the two children she had been raising with her former partner, Barbara Maniaci.

"It would be cruel to these children if they were barred from spending time with Michelle and from continuing to receive the love and support she has shown them since they entered her home," said Griffing. "We hope this case establishes a precedent that a biological or adoptive parent cannot shut out a co-parent's relationship with the children simply because it has become inconvenient."

In addition to being represented by the ACLU of Montana, Kulstad was also represented by Missoula attorney Susan Ridgeway, California attorney Kevin Lewis and Rose Saxe, a staff attorney with the National ACLU.

Maniaci, who has married since her split with Kulstad, was represented by the Alliance Defense Fund, a national organization that was formed in part to fight the ACLU on issues of lesbian and gay rights.

The Montana District Court ruled last fall that Kulstad was



*ACLU of Montana Legal Director Betsy Griffing tells the Montana Supreme Court why Michelle Kulstad and her children have the legal right to maintain their relationship. The Court chose the same-sex custody case to hear in April at the University of Montana.*

entitled to joint custody of the two children she raised with Maniaci. Maniaci appealed the decision, bringing the case to the Supreme Court, which will likely not rule on the case until this fall.

Montana's top court picked the case as the only one to hear in front of University of Montana School of Law students in Missoula. The auditorium was packed with students, faculty, attorneys and members of

the community interested in hearing oral arguments in what could be a precedent-setting case.

In the district court trial, an expert appointed by the Court to do a parenting evaluation of Kulstad and Maniaci described the strong parental bonds between the children and Kulstad. The expert also testified that the children could be mentally and emotionally harmed if Maniaci were permitted to sever their relationship with Kulstad.

Montana law recognizes the importance of maintaining a parent-child relationship, and that such a relationship arises not only through the birth or documented adoption of a child, but also when certain strict criteria are met by clear and convincing evidence. The court recognizes a person as a parent when:

*Kulstad, cont. on page 7*

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**The Right to Life, Liberty and  
the Pursuit of Happiness**

On occasion, the ACLU is the topic of informed debate. At other times, we are the target of smears rooted in legend rather than reality. One such smear, a letter that ran in the *Missoulian* on May 18, was frightfully amusing. Titled, “ACLU: Organization has brought anarchy,” it began, “As the elegantly misnamed, anti-faith American Civil Liberty Union sinks into an increasingly squalid pit of disrepute, perhaps there needs to be an up-to-date review of its legalistic hanky-panky.”

Are we elegantly misnamed? We certainly are not anti-faith. And “a squalid pit of disrepute?” Argh!

Regarding faith, let’s be clear: the ACLU vigorously defends the right to practice any religion—or no religion—as among the most fundamental of the freedoms guaranteed by the Bill of Rights. But because the ACLU is often better known for preventing the government from promoting and funding selected religious activities, people like our misguided letter writer wrongly assume that the ACLU does not zealously defend the rights of religious believers, including Christians, to practice their faith.

Even a quick glance at the history and actions of ACLU would show just how mistaken and misguided those assumptions are. In dozens—perhaps hundreds—of cases across the nation, the ACLU has defended the rights of believers to practice and promote religion, and has even defended their right to condemn homosexuality or abortion. (We even defend the right to write factually inaccurate letters to the local newspaper.)

But if we want to look at “truth in naming” or even “elegant misnaming,” how about looking at “Right to Life”—the organization and the movement. They’ve hijacked the word life, transforming and reshaping—and confusing—the entire debate.

It would be more apt to refer to RTL folks as a fetus rights organization. Clearly they are not concerned about the life, the rights, or the “right to life” of the child-bearer.

A large slice of the RTL movement is adamant that sex be engaged in only for the purpose of procreation. Anyone who



**Executive Director  
Reflections**  
*Scott Crichton*

sees sex as a broader part of life must, in the RTL mindset, be denied access to any family planning options including birth control and abortion. Kids, they argue, should learn only abstinence and should pay a high price if they choose to be sexually active. Of course they are welcome to preach and practice these beliefs, imposing these private religious beliefs, practices and restrictions on others, as a matter of law, runs counter to public health and general welfare.

And yet, this religiously driven minority calls the tune. During the legislative session they harangued committees for hours on end, supporting bills they knew had no chance of passage, simply to grandstand for their political base. The spectacle of male legislators pontificating about what laws they would like to impose on women’s bodies should convince anyone of the need to keep the state out of private medical decisions.

RTL has different meanings, even to people who define themselves as RTL. Former members of the RTL Montana, apparently disappointed with that group’s moderate stance, recently founded the Montana Pro-Life Coalition in the Flathead. One source of bickering is that RTL Montana along with the Montana Catholic Conference refused to support the Coalition’s proposed ballot measures to enshrine fetal rights.

Were these forces to unite, they might be formidable. And were they willing to extend their concern beyond the rights of the unborn, they could breathe fresh air into the political atmosphere by supporting things that go with a quality of life—child

**A**lmost all ethical systems in history—be they of religious or humanist origin—emphasize service to and protection of those in society who are least able to provide for and protect themselves from the slings and arrows of outrageous fortune. Translation: From the power-mongers of the world.

Perhaps then it would please all of us to realize that the ACLU, both on the national and the state level is doing just that.

On the national level, the ACLU is bringing pressure to bear on the Obama Administration with lawsuits on behalf of accused terrorists and lobbying for the closure of Guantanamo. Also important, though more controversial, is the pressure to release photos of prisoner abuse. The ACLU is demanding an end to the double standard for torture crimes and pushing for accountability. The Justice Department has admitted that the top torture prosecutor has not indicted any civilians.

On the state level, for years our affiliate did not have the staff to mount an aggressive program to investigate abuses of prisoners in state prisons and local jails. Now, however, Betsy Griffing, our legal director,

Jen Giuttari, our staff attorney, and Kim Leighton, our intake coordinator, have made possible a vigorous investigation of such abuses and sued to protect prisoners' rights.

Perhaps even more important than filing suits is the whole process of gentle persuasion—as Theodore Roosevelt said, “Speak softly, but carry a big stick.” Often, just the fact that the ACLU is aware of inequities and abuses in the handling of prisoners is enough to cause local authorities to instigate appropriate reforms.

All of this makes me proud to be part of an organization which is so important to the preservation of our civil liberties as expressed in the Bill of Rights. We like to say that the ACLU is the most conservative organization in our country—acting to conserve our most important values!



**President's  
Patter**

Ed Stickney

## Why the ACLU is in Our Will



**Bob and Marilyn Thaden • Miles City, Montana**

*Bob retired early as a UCC pastor to care for his and Marilyn's mothers, who live with them, and to establish a vineyard with a winery slated to open in Miles City next year. Marilyn is a speech therapist. They have two adult children.*

**I first became involved directly with the ACLU of Montana when they came to my support regarding the staging of a play I'd written about teenage suicide. The ACLU, more than any other organization, has worked hard to safeguard our Constitutional rights.**

**Joining the Board of the ACLU of Montana gave me an opportunity to see even more clearly how important the work of this organization is, both here in Montana and all around the country. Fighting for the rights of LGBT persons, suing the federal government to force documents out in the open, challenging schools and communities that violate the separation of church and state, fighting for access to birth control, establishing a strong public defender system in Montana, protecting the rights of immigrants, fighting the death penalty—these are just a few of the important issues our ACLU has taken on for all of us.**

**Marilyn and I reflected on the historic importance of so many ACLU battles and decided we wanted to continue to support this fight for Constitutional rights after we're gone.**



**Legal Notes**

Betsy Griffing  
 Legal Director  
*The Jean Anderson Chair*

## Protecting the Right to Die With Dignity

One of the most rewarding aspects of doing legal work for the ACLU of Montana is the opportunity to protect our most fundamental rights—those rights that define our sense of humanity. I recently submitted an amicus brief to the Montana Supreme Court in *Baxter et alia v. the State of Montana*, the “death with dignity” case.

Last December District Court Judge Dorothy McCarter in Helena issued a thoughtful and compelling decision in the *Baxter* case, holding that Montana’s

homicide statute was unconstitutional in not allowing a mentally competent, terminally ill person to die with dignity. As part of this right to die with dignity, Judge McCarter held such patients may choose to end their lives through use of a prescription provided by a physician, and that physician would be protected from liability.

The ACLU has always stood for fundamental principles of privacy and autonomy, and held that government has no place interfering with those rights. Government certainly has no right to insist that the terminally ill must continue to suffer, and it has no right to punish those who honor the request of the terminally ill by allowing them to end their agony.

While the United States Supreme Court rejected this argument in *Washington v. Glucksberg*, Judge McCarter’s decision is grounded in the Montana Constitution’s broad-sweeping protection of not only the right of privacy but also the right of human dignity. The Montana Supreme Court has properly held many times in the past that the express right of privacy in Montana provides greater protection than does the United States Constitution.

In *Gryzscan v. State of Montana*, the Court recognized that the right of self-determination includes the right to decide the most intimate and personal of choices—those with whom we have sexual relations. Similarly, in *Armstrong v. State*, the Montana Supreme Court held that the right to decide your own medical care and who will provide that care is a fundamental right.

This expansive right of personal autonomy has been bolstered yet further in its protections by another provision in the Montana Constitution—the right of human dignity. That right, while included in the section on equal protection, has been used by the Court to interpret the application and scope of other individual rights. In *Armstrong*, it was the right of human dignity that reinforced the concept of personal autonomy and self-determination. The Court stated in *Armstrong*:

“Respect for the dignity of each individual—a fundamental right, protected by Article II, Section 4 of the Montana Constitution—demands that people have for themselves the moral right and moral responsibility to confront the most fundamental questions of life in general, answering to their own consciences and convictions.”

The right of human dignity under the Montana Constitution maintains that each of us has the right to make decisions about our health and “bodily integrity.” The state may only infringe upon our fundamental rights in the case of a “compelling state interest,” and clearly, the state’s interest in preserving life cannot justify interference with a person’s attempt to relieve his or her own pain and suffering.

Another “compelling interest” presented by the state is that the medical profession cannot be compromised by hastening or facilitating the death of a patient. But certainly it is the responsibility of the medical community, not the state, to determine if it is being compromised. And, for that matter, it’s not the physician who makes the decision, but the patient who decides whether or not to take the prescription provided by the physician. The state then, by stepping in, would not be regulating medical care as much as it would be interfering with the patient-physician relationship—a special relationship, as recognized in *Armstrong*, that is protected by the patient’s constitutional rights of privacy and human dignity.



Jennifer Giuttari

## Montana Prison Project

by Jennifer A. Giuttari, Staff Attorney

The Montana Prison Project has been busy this last quarter. Along with working on current litigation and preparing several cases in anticipation of litigation, I have been working on many intake complaints from prisoners and pre-trial detainees.

In one disturbing complaint last year, an inmate described deplorable, unsanitary conditions at Montana State Prison. Specifically, the inmate said that he was forced to remain in a cell with feces smeared on the walls, in the air vents and around the sprinklers, and that he was forced to sleep on a mattress smelling of urine. We wrote Warden Mike Mahoney, requesting he look into the situation, but never received any response.

We received a similar complaint this spring. Another inmate wrote to us about the room—known as “the hole”—used for solitary confinement. He wrote that the room is covered in fecal matter and blood, lacks running water, and has a hole in the ground for a toilet. We again wrote the warden, requesting he look into sanitary conditions at the prison. You can view a copy of this letter on our webpage.

No one—regardless of his crime—should be forced to live under the conditions these inmates described, and the Montana Prison Project is working hard to ensure that being locked up in Montana doesn’t mean losing one’s status as a human being.

## End of Legislative Session Brings New Public Policy Work

The Montana Legislature adjourned its regular session at the end of April, bringing to an end a very busy four months of lobbying for the ACLU of Montana. Of the more than 300 bill requests we tracked this session, we testified on 52 bills and resolutions before various committees of both chambers.

We were generally successful. In the areas of reproductive rights and immigration, every bill that we opposed failed, including two constitutional amendments that would have dangerously restricted a woman's right to privacy. The Legislature also rejected many other bills we opposed, bills that would have curtailed the rights of the accused, expanded random drug testing as a condition of employment, funneled tax dollars to private schools and limited voters' access to same-day registration and polling places on election day.

Bills we supported, however, achieved mixed results. We backed successful bills to create a jury duty exemption for breastfeeding mothers and other primary caregivers, protect residential displays of political speech, and require that one of the members of the Board of Parole and Pardons be of American Indian descent. Unfortunately, other bills we supported died in committee—ambitious measures to increase insurance coverage of and access to contraceptives, to decriminalize possession of small amounts of marijuana and to include sexual orientation and gender identity in the state's antidiscrimination statutes. Please visit the legislature section of our website to view a full report of our work during this session.

Our public policy work didn't end with the final gavel, though. The very day after the session ended, we joined other members of the Montana Abolition Coalition to begin our work for the 2011 session.

In May the same anti-choice forces we defeated before the Legislature were back with a proposed initiative that would allow the government to step in and regulate every aspect of

conception, pregnancy and birth.

Like previous measures, including the failed CI-100 proposal, this new measure would amend the Montana Constitution to define "person" to include fertilized eggs. From conception to birth, every decision made by a pregnant woman could be subject to government review and approval—prenatal care, diet, exercise, and birthing options would all be second-guessed. In what may be a sign of internal struggles, the proponents have already withdrawn their first proposal, but are expected to submit another draft within weeks. The anti-choice lobby is still months away from being able to circulate any petitions, but we are already planning for ways

to protect the right of privacy for all Montanans.

We must also ensure that patients have the right to reach the end of their lives with dignity, comfort and in peace. While an appeal of the lower court decision recognizing the right to a physician's assistance in making end-of-life decisions is pending before the Montana Supreme Court, we will continue our campaign to educate patients, providers and policymakers about this integral facet of our right to make private, autonomous medical decisions.



**Niki Zupanic**  
ACLU of Montana  
Public Policy Director

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## Working to End the Death Penalty Montana Advocates set their sights on 2011

Members and staff of the Montana Abolition Coalition (ABCO) are pushing forward with their work to end capital punishment in Montana.

We were disappointed that we just missed our goal this past legislative session, but we are optimistic about 2011. Our legislation this year, shepherded by Missoula Sen. Dave Wanzonried, passed in the Senate and was within two votes in committee in the Montana House of Representatives. We've never been so close to victory.

There is good reason to expect a win in two years, and much of the staff that has worked on the campaign over the past two years remains in place.

Montana Abolition Coordinator Jennifer Kirby says that the group is committed to grassroots organizing, fundraising and reaching out to key groups. The coalition successfully applied for a grant from Funders for Alternatives to the Death Penalty, which

is optimistic about anti-death penalty efforts in Montana. Still, they have asked the coalition to raise

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more money within the state, so ABCO staff and member organizations are hard at work soliciting donations.

Although the next session is two years away, that time will go quickly, and we must continue to educate the public and move the hearts and minds of Montanans on this important issue.

Because the Missoula Action Group was so successful in getting out letters, calls and e-mails to legislators, coordinating letter-to-

*Death Penalty, cont. on page 7*

## Marijuana Reform Advancing Despite Stalemate in 2009 Session

The 2009 session of the Montana Legislature featured more cannabis-related legislation than all the state's prior sessions combined. Marijuana policy remained fundamentally unchanged, but reform advocates scored a series of achievements they say have paved the way to success at the next session, in 2011.

"We actually exceeded our goals," said Tom Daubert, founder and director of Patients & Families United (PFU). "We killed the draconian proposals and kept progressive reform bills moving through the process in a highly visible, positive light throughout the session."

Proposals that might have been

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**"We actually exceeded our goals. We killed the draconian proposals and kept progressive reform bills moving through the process in a highly visible, positive light throughout the session."**

— Tom Daubert  
Patients & Families United

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*Legislators got the chance to see live marijuana plants during the Cannabis at the Capitol event.*

"dead on arrival" two years ago were taken seriously, and an ambitious medical bill almost passed.

While marijuana-specific bills failed, the Legislature did overwhelmingly approve a "joint" resolution calling on the state's congressional delegation to cosponsor and promote legalization of industrial hemp production.

Meanwhile, the first proposal in more than 25 years to decriminalize possession of up to one ounce of marijuana deadlocked in a House committee on a tied, party-line vote (with no Republicans supporting it). Angela Goodhope, director of Citizens for Responsible Crime Policy, who lobbied with Daubert for PFU, said the bill probably would have passed out of committee and possibly even passed the House if it hadn't been for the fact that last year's elections produced a Democratic-controlled House with no voting majority. "With all its committees containing equal numbers of Republicans and Democrats, the House became a killing field for virtually every bill containing controversy," she explained, "including, but not limited to, marijuana."

Goodhope said it became clear over the course of the session that "more legislators than ever now understand a lot of the nuances involved in the medical marijuana issue, and a fast-growing number are starting to support outright decriminalization." She said legislators now committed to progressive reform include Republicans who "would come out of the closet a little more" except for the fact that the party's current leadership strongly opposes drug law reform.

As a highlight of the three-month session, Patients & Families United packed the capitol's grand rotunda with hundreds of supporters at an all-day event featuring exhibits and information about medical marijuana, marijuana prohibition and hemp. Displays included mature, flowering (and legal) medical marijuana plants whose fragrance filled the capitol building and which became the focal

point for one-on-one, direct-to-legislator education.

Many legislators had never actually seen a marijuana plant (or flower) in person. Nor had they heard a rally speaker like retired Denver policeman Tony Ryan of Law Enforcement Against Prohibition, whom PFU had brought in to meet with legislators and others. Dr. Edwin Stickney, a past president of the Montana Medical Association and president of the ACLU of Montana Board of Directors, who has recommended marijuana to patients, also spoke at the rally. The following morning, the Republican-controlled Senate passed an ambitious medical marijuana bill by a single vote. The bill went on to deadlock in the House.

The medical improvement bill, SB 326, would have added a number of medical conditions to those qualifying a patient for medical marijuana relief under current Montana law. It would also have greatly expanded the plant and possession limits for patients and their caregivers. PFU and its statewide network killed two bills brought by opponents of medical marijuana. One would have banned anyone with a drug felony record from ever being a medical marijuana patient, regardless of medical circumstances. Another would have required blood testing of any patient or caregiver believed to be driving under the influence of marijuana.

### Patients and Families United

Founded in early 2007 by leading participants in the state's 2004 medical marijuana initiative campaign, and supported by the ACLU of Montana, PFU conducts public education and provides support services for the state's medical marijuana patients as well as for pain patients, whether they use marijuana or not. The group is now developing aggressive and newly refined plans for continued organizing and public education, Daubert says. Anyone interested in learning more or participating can start by emailing the group via its website, [www.mt pfu.org](http://www.mt pfu.org).

## Public Has a Right to Know Executioners' Qualifications

Transparency in government is crucial to understanding whether officials are properly doing their jobs and acting in the public's best interest. Nowhere is this truer than in matters of life and death.

Attorneys for death row inmate Ronald Allen Smith, in cooperation with the American Civil Liberties Union of Montana, filed a motion in April calling for the release of information about the selection of Montana executioners, their qualifications and training.

Under state law the prison warden chooses executioners, who need not even be trained physicians or nurses. That means a warden could select anyone—even someone with no medical training whatsoever—to conduct the complicated three-drug lethal injection protocol.

The consequences, if that protocol is improperly administered, are grave. Should the fast-acting barbiturate be improperly prepared or administered, a prisoner could be fully conscious and in excruciating pain when the paralytic agent is injected. A recent execution in Tennessee exposed witnesses to an execution death which lasted over 20 minutes as an inmate suffocated due to misapplication of a lethal injection procedure.

Such a situation clearly violates the Constitutional right to be free from cruel or unusual punishment.

The lethal injection lawsuit,

filed in Montana First Judicial District Court, asks the court to declare Section 46-19-103(5), MCA, prohibiting the release of information about those employed by the state to execute people, as unconstitutional on its face because it violates the public's right to know how the state is choosing people to administer lethal injections and if those executioners are qualified to do so.

"Montana's Constitution guarantees transparency by assuring the public has the right to know all of the details of government operations, including how the State proceeds to execute people," said attorney Ron Waterman. "The State cannot hide critical facts absent a showing of individual privacy concerns, totally absent from this statute."

The suit does not seek the identities of Montana executioners, only information about how they are selected, their qualifications and the training they receive to administer lethal injections.

A bill to abolish the death penalty and replace it with life in prison without the possibility of parole passed in the Montana Senate but did not make it out of the Montana House Judiciary Committee. If Montana continues to participate in state-endorsed executions, the State must open that process to public scrutiny.

Two prisoners are currently on Montana's death row.



*The legal dream team: ACLU of Montana Legal Director Betsy Griffing, California Attorney Kevin Lewis, Missoula Attorney Susan Ridgeway and client Michelle Kulstad.*

## Kulstad, continued from page 1

- The person shows that he or she provided for the day-to-day physical and emotional needs of a child by providing food, shelter, clothing, care, education and discipline;
- The child's adoptive/birth parent allowed and intended for the parent-child relationship to develop; and
- It is in the child's best interests to recognize and continue the parent-child relationship.

Though Michelle Kulstad is not listed on the children's adoption papers, she clearly meets all these requirements. During oral arguments, Griffing described how the two women told adoption caseworkers that they would be raising the children together, and that those workers approved the adoptions with the understanding that both women would be parents to the children.

Griffing also argued for the rights of the children. "We are feeling optimistic that the Montana Supreme Court will agree that it is in the children's best interests to maintain their relationship with Michelle," Griffing said.

## Death Penalty, continued from page 5

the-editor campaigns and organizing local events, ABCO hopes to create action groups in other Montana cities, beginning with Bozeman and Billings. The goal is to have eight action groups in place before the 2011 session.

Work is also underway to reach out to key constituencies—murder

victims' families, the law enforcement community and Native Americans.

ABCO member organizations include the ACLU of Montana, the Montana Catholic Conference, the Montana Human Rights Network and the Montana Association of Churches, among others.

Senators returning for the 2011 session are overwhelmingly opposed to the death penalty, and most of our opponents in both houses are term-limited out. Those who remain are largely our supporters.

We've got momentum, friends, energy and hope—and truth—on our side, so here's to success in 2011.

## UM Law Students Learning about Civil Rights Law with ACLU

The ACLU of Montana's Missoula legal office is bursting at the seams with the addition of three summer employees who will be assisting our two staff attorneys with their cases.

The two interns and one clinic

**"I knew that working with the ACLU would allow me to gain invaluable experience as well as make a real impact in Montana."**

— Andrew Gorder  
ACLU of Montana Legal Intern

student are all law students at the University of Montana School of Law, and were selected from an impressive list of applicants.

Andrew Gorder is a second-year law student from Rapid City, South Dakota. Gorder earned his bachelor's degree in journalism from the University of Wyoming, and worked for two years as a reporter and editor at the *Rapid City Journal* before deciding to go to law school.

This summer he will assist ACLU of Montana Staff Attorney Jennifer Giuttari with her Montana Prison Project work by conducting prisoner interviews, writing legal memos and doing legal research.

"I was immediately drawn to the internship with the ACLU because I have a strong interest in constitutional issues and a lot of respect for the organization as a whole. I knew that working with the ACLU would allow me to gain invaluable experience as well as make a real impact in Montana," Gorder said.

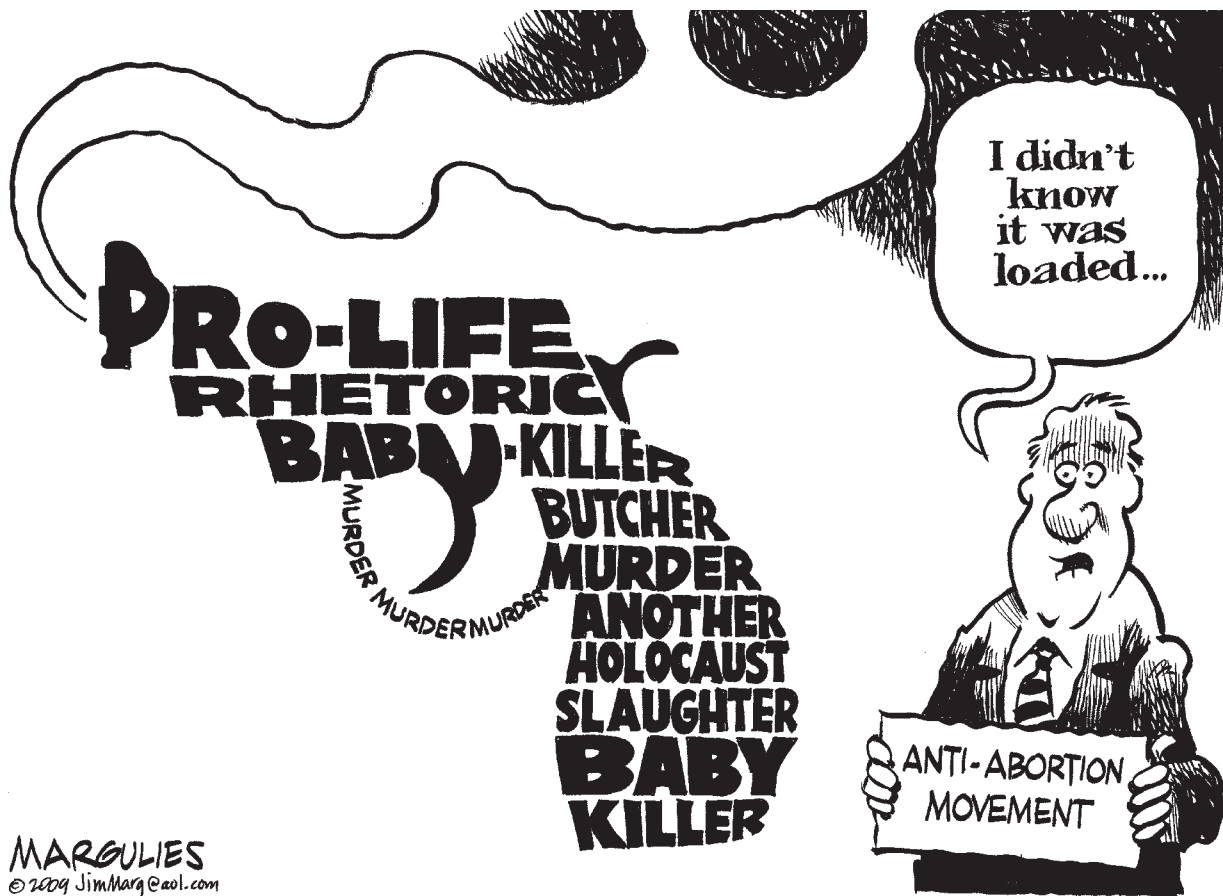
The other intern working this summer for the ACLU of Montana is Erin Kraft. She graduated from the University of Montana with a bachelor's degree in political science and has done work for Montana Legal Services.

Kraft is from Cut Bank. She will primarily be working this summer on cases involving the Second Amendment in relation to privacy rights and on voting rights.

Clinic student Sarah Rossi will earn credit for the work she does for the ACLU of Montana on LGBT and reproductive rights issues.

Rossi is from Illinois, and earned her undergraduate degree at the University of Colorado.

"I requested the ACLU clinic position so I could gain experience in LGBT law and assist with the push for gay rights in Montana," she said.



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## ACLU Shows Pride in Montana's LGBT Community

Lady Liberty held her torch high as she marched in the 2009 Montana Pride Celebration parade in Kalispell in front of the banner of the ACLU of Montana.

She joined about 550 others who marched in the parade, which was a highlight of the June weekend of events to celebrate Montana's lesbian, gay, bisexual and transgender community. It was Lady Liberty's second appearance at Pride on behalf of the ACLU of Montana. This year,

**"It's time to level the playing field and give [the LGBT Community] the same rights and protections we give to everyone else."**

— **Scott Crichton, E.D.**  
**ACLU of Montana**

ACLU of Montana Operations Manager Katy Heitstuman, a recent graduate of Carroll College, portrayed Lady Liberty.

The event drew people from across the state, including churches, health organizations and many who just wanted to have a good time.

The parade also drew a few protestors, but the supporters along the parade route, who shouted encouragement to those marching, outnumbered opponents.

The message of Pride is an important one—everyone has a right to be who they are—gay, straight or bisexual. "You Have the Right to Be Yourself" was the message printed on the T-shirts, fans and stickers provided by ACLU's national LGBT Project, and handed out at the Pride festival in Depot Park.

The LGBT community is still fighting for equal rights in Montana. They have no legal protection against discrimination.

"That needs to be remedied," ACLU of Montana Executive Director Scott Crichton told

the *Missoulian* newspaper. "They're equal players. They're friends and neighbors. They're fellow taxpayers. It's time to level the playing field and give them the same rights and protections we give to everyone else."

That includes protection from workplace discrimination, the freedom to marry and inclusion of sexual orientation in hate crimes law.

The atmosphere at Pride was overwhelmingly optimistic.

"There are people here from all over the state, from both sides of the Divide," Crichton said. "And hopefully, this will lessen the divide. This is all walks of life, all faiths marching together."



*Lady Liberty (ACLU of Montana Operations Manager Katy Heitstuman) stood up for the freedom to be yourself at the Pride event in Kalispell. Her siblings, Kristine Heitstuman and Richard Heitstuman, also carried the message.*

### E.D. Reflections continued from page 2

nutrition, day care, pre-school and child health care. Shouldn't the right to life also mean the right to live free from fear, to live with a sense of safety, dignity and well-being? The vision of the ACLU of Montana is simple and straightforward: We envision a world where dignity, freedom and civil liberties are a reality for each individual. Clearly, we want a world where everyone has the right to a life.

This Montana legislative session seemed to have more rhetoric about God in government than any I can recall in my 20 years in this job. There was a real disconnect between the energy of hope and reform on the national level and the politics of fear and loathing used to legislate morality—a hybrid sectarian/born again/Old Testament mosaic morality not receptive to reason.

We must find ways to respect the rights of all without diminishing the rights of any. That is a tall order, but that is exactly where the balance between rights and responsibilities comes into consideration.

The future challenges us to live up to our name. We at the American Civil Liberties Union want to see an America we can be proud of. We intend to work on a campaign to restore fundamental rights to America. For that to succeed, we will need your help as an active member of ACLU.

How to help? Go online and sign up for our e-activist list. Not online? Drop us a note or give us a call and let us know that you're willing to get involved, to help shape the future of Montana and the world we all want.

## State Investigation Confirms Mistreatment of Native Americans at Crossroads Prison

When Native American prisoners at the privately run Crossroads Correctional Center needed help to stop group strip searches and harassment, they turned to the ACLU of Montana. And when the ACLU complained to prison officials, the state listened and launched an investigation.

Helena attorney Ron Waterman is working on the complaint for the ACLU of Montana.

Private prison company Corrections Corporation of America operates the Crossroads facility.

Beginning in mid-August 2008, all inmates attending sweat lodge ceremonies were stripped and searched before and after the ceremonies. The

strip searches were conducted in the hallway of the recreation area where they could be observed by other inmates, and on at least one occasion, in view of prison cameras monitored by female guards.

The complaint

also alleges guards made racially disparaging remarks during the ceremonies, and prison staff refused to supply the cured tobacco and other materials essential to the sweat lodge ceremony. When a prisoner complained about the material provided for the pipe, he was stripped of his position as pipe carrier and put into solitary confinement after he encouraged other inmates to ask that he be reinstated as pipe carrier.

And while other religious services are offered each week, sweat lodge ceremonies are only available to prisoners every other week, denying them equal access to practice their faith.

### Report findings

According to the DOC's own investigation:

- Guards conducted group strip searches without any credible evidence that contraband was being smuggled during sweat lodge ceremonies.
- Grievances were improperly handled and not investigated for arbitrary reasons, including

simple grammatical errors. In all, CCC addressed just 14 of 220 formal grievances filed in the past year.

- Guards made racially disparaging remarks during sweat lodge ceremonies.
- A mass write-up of Native American inmates occurred immediately after the ACLU of Montana visited the facility to conduct interviews. While investigators stopped short of saying this was done in retaliation for speaking to the ACLU, the timing is suspect and the reasons given for the mass write-up were unreasonable.
- Inmates were not given proper tobacco for their ceremonies.

### Accountability also an Issue

In addition, the report exposes a clear breakdown in communication between CCC staff and DOC officials, and demonstrates a lack of accountability for CCC staff. CCC staff told investigators that they were instructed not to speak with DOC officials. This speaks to the broader issue of how problematic it can be to contract with a private company to operate a state prison.

"While we appreciate the Department of Corrections investigation, the report is somewhat incomplete and does not identify how to deal with the lack of understanding of the Native American culture by CCC officials at Shelby," said Waterman. "We look forward to actions which may come from the Human Rights Bureau and the courts to address and remedy these serious violations of the rights of Montana citizens."

### For more information

A link to the entire investigative report as well as the ACLU of Montana's complaint on behalf of the prisoners is available on our website, [www.aclumontana.org](http://www.aclumontana.org).

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**"While we appreciate the Department of Corrections investigation, the report is somewhat incomplete and does not identify how to deal with the lack of understanding of the Native American culture by CCC officials at Shelby."**

**—Ron Waterman, Helena Attorney**

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### DOC Report Uncovers Unfair Treatment

The Montana Department of Corrections report completed in May substantiates Native American prisoners' complaints that they were improperly searched and disciplined at Crossroads Correctional Center in Shelby, Montana, and that grievances about their treatment were not properly addressed.

"We appreciate the Montana Department of Corrections taking these allegations seriously, and conducting this investigation," said American Civil Liberties Union of Montana Legal Director Betsy Griffing. "Their report confirms there are serious problems at Crossroads Correctional Center."

The ACLU of Montana filed a discrimination complaint in April against the State of Montana, the Montana Department of Corrections, Crossroads Correctional Center, Corrections Corporation of America, Montana State Prison Warden Mike Mahoney and Crossroads Warden Sam Law on behalf of Native American prisoners at Crossroads Correctional Center.

### Bozeman Ends Privacy Invading Hiring Policy

The city of Bozeman did the right thing in June by ending a hiring policy that invaded job seekers' privacy by requiring them to submit social networking site user names and passwords with their applications.

The policy came to light when a job applicant alerted a local television station. After that station's news report was aired, Bozeman became the center of worldwide controversy.

The ACLU of Montana, along with others, stepped forward early to condemn the policy as a violation of privacy rights. To page through job applicants' personal Facebook, MySpace, YouTube accounts and view lists of networked friends, photos and e-mails steps over the privacy line.

For many young people, use of those sites is their way of communicating with a list of approved friends and relatives—the same as writing letters or making phone calls.

ACLU of Montana Executive Director Scott Crichton was interviewed about Bozeman's policy by

numerous news outlets seeking ACLU's expert opinion on the policy's legality.

Though the ACLU has never fully researched it, such a policy walks on shaky legal ground, Crichton noted. Both Montana's state Constitution and the United States Constitution offer citizens strong privacy rights.

In addition, policy agreements on many online sites prohibit users from disclosing passwords.

Reaction from the Bozeman City Commission was swift. Members voted out the policy during their first meeting after its public revelation, noting that they had not previously known it existed. They also demanded to be included in future hiring policy decisions.

It was a vivid demonstration of how much people value their right to privacy, and how they will speak out to protect it.

### 2009 Annual Giving Campaign Underway



Many of you have received calls from our volunteers—current and past board members—offering you the opportunity to meet with them and make your annual pledge or gift to the ACLU of Montana Foundation.

When it comes time to fight for the right to privacy, the right to make our own medical decisions, the right to live free of discrimination, the right to live the life of liberty promised in the Constitution, IT IS ONLY WITH YOUR HELP THAT THE ACLU of Montana CAN BE THERE. Thank you.

**Please sign me up \_\_\_\_\_  
to be a card-carrying member of the ACLU and the ACLU Montana Affiliate!**

**Name:** \_\_\_\_\_ **Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_ **Home ph:** ( ) \_\_\_\_\_

**Office ph:** ( ) \_\_\_\_\_

**E-mail:** \_\_\_\_\_ **(for ACLU/MT E-Alerts)**

**Enclosed is my check to the ACLU for...**

**Individual \$20**    **Joint \$35**    **\$50\***    **\$75**    **\$100**    **\$250**    **Other** \_\_\_\_\_

**\* Please give this amount or more if you possibly can.**

**You can also join online at [www.aclumontana.org](http://www.aclumontana.org) using your credit card.  
Your Membership dues support lobbying activities and are not tax-deductible**



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**DON'T MISS**

*Drug Law Reform Leader  
Ethan Nadelmann  
September in Bozeman*

See below for more information.

Summer 2009

## Drug Law Reform Leader Ethan Nadelmann

Coming to Bozeman in September

Ethan Nadelmann, founder and director of the Drug Policy Alliance, will be the guest of the ACLU of Montana and Patients & Families United the weekend of September 19.

Nadelmann is an undisputed expert on the failings of the War on Drugs and why drug prohibition must end.



Watch [www.aclumontana.org](http://www.aclumontana.org) for upcoming details about this not-to-be missed event.