



ACLU

**AMERICAN CIVIL LIBERTIES UNION
of MINNESOTA**

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ACLU-MN hosts event to discuss racial disparity

The ACLU of Minnesota, Greater Minnesota Racial Justice Project of Bemidji, and the White Earth Band of Ojibwe sponsored a conference at the Shooting Star Casino on Tuesday, June 5th, 2007. The conference was called *Coming Together: A Discussion on Reducing Racial Disparity*.

In preparation for the conference, a video was produced by Jeremy Hell, a GMRJP-ACLU summer intern. Jeremy interviewed persons from the Native American communities and began by asking the question, "The ACLU-MN, Greater MN Racial Justice Project has been in Northern Minnesota for over three years, and we have observed a larger number of Native Americans in our court systems – why do you think that is?" Jeremy then followed up by asking them if they had any possible solutions to the issue. The film "How We See It" was shown at the conference and is now available by contacting GMRJP-ACLU (218-444-2285).

Those who attended the conference were asked similar questions and then formed small discussion groups to discuss the issues. The main focus of the discussions in the small groups was on education or lack thereof. The session concluded with tables brainstorming possible solutions.

ACLU-MN travels to Washington DC for day of action

The ACLU of Minnesota traveled to Washington DC in June to attend a National Day of Action to Restore Law & Justice. This is an account of trip participant, Jeremy Hell from Bemidji, Minnesota:

When I woke up on Sunday June 24th, I was filled with excitement of not knowing what lay ahead for me as I headed out on my journey to Washington, DC with the ACLU-MN. As I was driving, I began to think of why I was embarking on such a journey, why was I driving three and a half hours to St. Paul and then getting on another bus with 20 other Minnesotans and taking the 24 ½ hour drive to Washington DC? Why was I doing this? I knew my journey down was not going to be a comfortable one, 20 people paired up like sardines is not my ideal trip. As I drove to St. Paul my head was swimming with these thoughts. Then it hit me as we sat like sardines, I am going to let my voice be heard, I am going to ensure that my right and your rights as humans not only US citizens are protected.

I was going to fight for the restoration of Habeas Corpus and Due Process and to ask our President to close down Guantanamo Bay. I was going because I want my actions to speak louder than my words.

As we arrived in Washington, reality hit me, it was not what I had seen in my history books. The books painted a pretty picture, the reality was poverty, ridden streets with block after block of the homeless.

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From the President

Therese Marso



About time

One of the greatest assets held by the ACLU of Minnesota is the strong support of Minnesota's legal community. Since the inception of the organization, a diverse army of excellent volunteer attorneys have handled many of the cases, with volunteers handling every case since 1972. In gratitude and celebration of the wonderful volunteer attorneys in our state, the ACLU of Minnesota created the Earl Larson Award 11 years ago to annually honor a leader in the legal community.

The award is named after the late Earl Larson, a revered United States District Judge for the District of Minnesota. In 1952, in the heart of the Cold War and McCarthyism, Earl Larson and a few of his friends founded the ACLU of Minnesota at his kitchen table in Kenwood. Nearly 50 years later, Judge Larson honored the work of the organization he founded by allowing the ACLU of Minnesota to create an award in his respected name. The Earl Larson Award is a kind of lifetime achievement award for Minnesota attorneys who have worked to advance the cause of civil liberties. Appropriately, the first recipient of the Earl Larson Award in 1997 was then-retired Judge Earl Larson. The succeeding recipients have been Mike Goldner, Jack Davies, Doug Hall, Rosalie Wahl, Walter Mondale, Dr. James Shannon, Leonard Lindquist, Lynn Castner, and Peter Dorsey.

On November 8, the ACLU of Minnesota will award the

2007 Earl Larson Award to Ken Tilsen. His legal career spanning 1950 to 1994, Ken is well-known for his tireless commitment to social justice and civil rights. For most of his career he represented Native Americans, African-Americans, farmers, workers, and peace and social justice activists. He shared his knowledge with students at Hamline Law School and directed the school's Public Interest Law Clinic. Ken was a leader in defending draft resisters, and based on that experience and additional scholarship, he authored the book, Judging the Judges, an analysis of discrepancies in treatment of Vietnam draft resisters by four Minnesota federal judges.

Congratulations to Ken Tilsen, and thank you to the many, fantastic volunteer attorneys and supporters who carry on Judge Larson's commitment to the Constitution.

The 2007 Earl Larson Award will be presented to Ken Tilsen at a reception in his honor on November 8, 2007, from 5:30 to 7:00 p.m. at the Minneapolis Club, 8th Street and 2nd Avenue South in Minneapolis. \$100 Donation is suggested and can be donated in advance (to reserve a spot) or at the door; proceeds support the ACLU of Minnesota Foundation and is tax deductible. For more information, please contact Molly Miller at 651.645.4097; extension 127.

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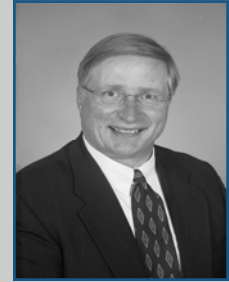
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From the Executive Director

Charles “Chuck” Samuelson



Community support

The ACLU of Minnesota's primary means of support are the generous contributions from residents of the State of Minnesota. We neither solicit nor accept grants from outside the state, nor do we accept grants from any governmental organization. More than 10,000 Minnesotans are members and donors to the ACLU of Minnesota, and their support is approximately \$600,000 per year.

Our budget of \$600,000 allows us to do a great many things. We develop and distribute curriculum to school teachers throughout Minnesota – at no charge to the teachers or to the schools. We also distribute copies of the US Constitution to anyone in Minnesota who requests one – at no charge. We participate in county fairs (and the state fair if they'd let us in!) and union conventions. We also provide speakers for civic groups – at no charge to the groups involved. We print and mail educational materials for kids across the state. This information helps teenagers to understand their rights.

Our membership revenue pays for our work at the legislature where we hold an annual meeting of the membership with legislators. Membership revenues also pay for this newsletter and other member functions.

In the case of the ACLU litigation work, the situation is different. Of course our members and donors pay the direct costs of litigation. However, attorney's time is the largest share of litigation costs. Most non-ACLU clients pay for the time their attorney spends on their case, and they pay for the time that other attorneys and paralegals spend researching and investigating their case. For the past 50 years, the ACLU of Minnesota has always depended on volunteer attorneys in order to take our cases to court.

Last year, 21 different firms represented ACLU of Minnesota clients in cases in Federal and State courts. They represented ACLU-MN clients in issues of racism and gay rights and traffic lights. And they represented ACLU of Minnesota clients before various boards and commissions. These lawyers and their firms donated hundreds of thou-

sands of dollars in legal services in the cause of civil liberties.

In addition to the tremendous support the ACLU-MN receives from the Twin Cities legal community, dozens of law students annually donate their time and talents to the cause of civil liberties. These students handle all the intake letters and they also work on legal research for some of our long running legal issues. For example law students are conducting research on the use of tasers around the state and help to frame the legal issues the ACLU-MN works on.

In addition to these very generous donations, the ACLU of Minnesota Foundation spent almost \$100,000 last year on our legal program. Teresa Nelson is our only staff attorney. She supervises all of the law student interns and manages all of our cases. In addition she staffs the board policy committee.

When critics of the ACLU-MN claim that we are an elitist group you will be able to tell him that thousands of people support the ACLU-MN with their time, their treasures, and their talents.

Changing of the Guard

We want to welcome a new change in leadership at the ACLU of Minnesota. After serving her two-year term as president, Susan Jacobson has stepped aside and will serve as president emeritus for the next year.

Therese Marso assumes office as the President of the ACLU of Minnesota for the next two years. She has been a long time member of the ACLU and is an attorney who graduated from the University of Minnesota Law School. She was a partner in the St. Paul firm, Winthrop and Weinstine. She has been on the ACLU of Minnesota board for the past 5 years.

Please welcome Therese and wish her well.

Legal update

Berg v. DEA

The American Civil Liberties Union of Minnesota is pleased to announce that a financial settlement has been reached in their long-running “flying while black” lawsuit against the federal Drug Enforcement Agency. Ms. Bonita Rhodes Berg, represented by the ACLU-MN, was awarded \$20,000 for being unjustly singled out for an unwarranted search by DEA Special Agent Tammy Key. Ms. Rhodes Berg was stopped when she arrived in Minneapolis-St. Paul International Airport on an early morning flight from Los Angeles in February 2001. The search of Ms. Berg’s handbag revealed her Bible study materials, diet and cosmetics items. The settlement also required that DEA release data they had collected regarding Agent Key’s stops of other airport travelers. Berg’s settlement is believed to be the first of its kind involving the DEA.

Here are Ms. Rhodes Berg’s comments about her experience: “This has been a long and stressful process and I am glad that this part of the process is over. I thank God that I had my attorneys, the ACLU of Minnesota, the support of my two sons, granddaughter and members of my church, at St. Peter’s AME, along with friends and former co-workers at BNSF- RR in St. Paul, I give credit, that this was settled in my favor. The true test for me will be my return trip back to Minneapolis, upon my return from my visit from seeing my son in Los Angeles. It has been six years since my last visit. Having been stopped by the DEA has made me afraid to fly and being stopped again. But now, if this was to happen to me again, I now have the knowledge that I have the right not to answer questions regarding a cold drug stop by the DEA, I can say with confidence, No!, and just walk away.”

Minneapolis Attorney Tim Branson, who was part of the team of volunteer lawyers who represented Ms. Rhodes Berg, commented about the settlement: “the evidence – specifically the data that the DEA itself had collected in response to a Presidential directive by then President Clinton – proved that Ms. Berg’s allegations of racial profiling were well-founded.” In his February 2, 2007 order denying the DEA’s motion to dismiss or deny Berg’s claims, Federal District Court Judge Michael J. Davis wrote: “the data the DEA had begun to collect in 2000 showed that 88percent of the individuals “cold” stopped by Agent Key at the Minneapolis-St. Paul Air-

port during the first 12 months of data collection were minorities.”

Judge Davis determined that a “cold” stop is when a member of the traveling public is stopped based solely on the DEA agent’s observation of the traveling person; by contrast, a “hot” stop is where an individual is stopped based on a tip of other investigative information received before the stop. The disclosed data also showed that none of the individuals cold-stopped by Agent Key were white males, and that none of the overwhelmingly minority persons cold-stopped by Agent Key were found to be carrying drugs or drug money.

The written reasons Agent Key listed for her cold stops of Ms. Rhodes Berg and other African-American travelers varied from that they were traveling from drug “source” cities such as Los Angeles or Detroit, and carrying no bags, carrying little baggage, or only a computer bag, or a small carry-on bag, or a medium-sized heavy carry-on bag. The federal court found those innocuous reasons strongly suggests that they were really a pretext for racial profiling. As Judge Davis ruled, “common sense suggests that the ‘no bags,’ ‘little bags,’ ‘computer bags,’ ‘heavy bags,’ and other innocuous criteria upon which Key based her suspicions must apply equally to people of all races who deplane from source cities.”

The settlement is also significant because it highlights the failure of the DEA and the Justice Department to follow through and analyze the statistical evidence that the DEA itself had collected. The evidence uncovered in the litigation regarding the Minneapolis’ office DEA cold stops policy presented a stark picture of racial profiling.

As part of the settlement, Ms. Berg and the ACLU-MN also secured the public release of certain data collected by the DEA, as well as information regarding the DEA’s actions and inactions to remedy racial profiling. The release of this information could prove useful for others who might want to pursue the DEA for additional racial profiling data. The ACLU-MN intends to share this information with the Council on Crime and Justice and with others upon request.

ACLU-MN Cooperating Attorneys in this matter are Timothy Branson, Dorsey & Whitney; and Albert Goins, Goins Law Offices.

SAGE v. Maple Grove Sr. High School (Direct)

On July 2, 2007 the ACLU-MN filed a motion with the District Court asking for a Partial Summary Judgment in this lawsuit to protect the rights of a high school Gay-Straight Alliance called Straights and Gays for Equality. The motion asks the court to rule that the group's rights under the Federal Equal Access Act and First Amendment were violated, and to make permanent our hard-fought preliminary injunction. A hearing on our motion is scheduled for September 14, 2007.

The ACLU-MN filed the lawsuit in September 2005 following nearly two years of discussions with the school district over its policy toward the student group. We succeeded in obtaining a preliminary injunction requiring the school to treat SAGE the same as other non-curricular groups such as Cheerleading and Synchronized Swimming. The injunction was upheld by the Eighth Circuit Court of Appeals.

The volunteer attorneys in the case are Tom Kayser, Dave Pinto and Genevieve Zimmerman of the law firm Robins, Kaplan, Miller & Ciresi, L.L.P.

Minnesota Supreme Court invalidates photo cop (Direct)

The Minnesota Supreme Court upheld a Court of Appeals decision and ruled that the Minneapolis "Photo Cop" ordinance is invalid because it conflicts with state law. The Court found that the provision of the ordinance that imposes liability on the vehicle owner instead of the actual driver who ran the red light is not authorized by, and conflicts with, state law. In our challenge to the ordinance, we argued that the shift in liability violates the constitutional right to due process; however, the Court did not rule on the constitutional issue. After the ruling, the City of Minneapolis lobbied the Legislature to get a change in the law that would have nullified the Court's decision. Although the bill made some progress, it ultimately died in committee.

The volunteer attorney on the case is Howard Bass, The Bass Law Firm, P.L.L.C., Burnsville, MN.

Continued on page 7

Minneapolis' Loring Park was home to the annual Twin Cities Pride Festival this June, and the ACLU-MN was there to promote our continuing support of GLBT rights. A string of willing and helpful volunteers staffed our ACLU tent, handing out pamphlets on civil liberties and educating people on our mission. Besides informing countless members of the GLBT community of our ongoing legal efforts in regards to gender and sexuality, we managed to raise over four hundred dollars and welcomed new members from all walks of life.

Although it was certainly pleasing to welcome our neighbors into the fight for civil liberties, it was perhaps more gratifying to watch the steady parade of festival goers who shouted out support for our organization and declared that they were card-carrying members, too. Among those who were as yet unfamiliar with the ACLU, pleased surprise at our legislative action and a very impressed approval of our GLBT record were common responses.

Expect to see us at next year's Pride Festival, as our bond with the GLBT community continues to grow.

Written by Tom Phelan, volunteer

Trip to DC continued..

(Continued from page 1)

The streets were trashed and the buildings marked up with gang logos warning rival gangs of who's block was who's. As we moved closer to the White House, it was like the poverty vanished and the pictures I saw in my history books were in front of me when we arrived at the capital. As we headed for the rally, people from all over came pouring around the capital. The ACLU was hoping for a turnout of 2,500, instead there was over 4,000 people of all ages and persuasions. . As I stood there with a sign in my hand and looking around I saw my action speaking louder than just words, I was a part of history in the making.

Written by Jeremy Hell, GMRJP intern & Day of Action participant

Welcome new board members

CLE on protecting the freedom of speech at political conventions

We would like to welcome the following persons to the ACLU of Minnesota's Board of Directors. Welcome aboard, we are glad to have you.

Vivian Mason

Retired Minneapolis Park and Recreation Board Commissioner representing the 4th Park District, was appointed in March 1997 to complete term of deceased commissioner and then re-elected twice, until 2005. She also serves on the Concordia Language Villages National Advisory Board, is the Vice President as well as a Board Member of the Eloise Butler Wildflower Garden and is very active in the Girl Scout Council of Greater Minneapolis serving as past president, board member and a five time national delegate.

Nate Dybvig

Nate Dybvig founded Minnesota Media Service Inc. in 2005, following four years as a partner in the venerable firm Media Service Inc. Cutting his teeth in the newsrooms of rural northern Minnesota, Dybvig was the recipient of several prestigious journalism awards, including the Associated Press "Freedom Information" Award. He describes himself as a "a generation X vagabond who is living off his trustworthy pen, quick wit and love of the outdoors to carve out a niche for myself in society." Dybvig has been assisting the ACLU of Minnesota with its communications and press outreach since last year.

Mike Goldner

Michael will be returning the board after previously serving on the board. When he was President of the ACLU-MN Board of Directors, Goldner reintroduced the organization to the Twin Cities legal community, increased its funding, expanded its legal program and implemented a series of governance reforms that lead the organization into the 21st Century as a strong force for civil liberties. As current chair of the ACLU-MN Foundation Board, Goldner has continued his work of strengthening and expanding the organization. He has also served on numerous community boards including the Guthrie Theater Foundation, the Saint Paul Port Authority, the Saint Paul Riverfront Corporation, and the Saint Paul Chamber Orchestra to name a few.

On July 19th, the ACLU-MN presented a Continuing Legal Education program focusing on free speech at political conventions. Attendees first learned some First Amendment basics from Berkeley Law Professor Dan Farber. Farber literally "wrote the book" on the First Amendment (*The First Amendment*, 2ND Edition, Foundation Press, 2003). Dan provided a great foundation to help participants understand the fundamental free speech jurisprudence. He also talked about some of the free speech cases that have dealt with security zones around large-scale events like the WTO meeting in Seattle.

Next up was Art Eisenberg, Legal Director for the New York Civil Liberties Union and adjunct law professor at the U of M Law School. Eisenberg talked about the litigation and legal issues that NY-CLU handled in connection with the 2004 RNC convention in New York City. Eisenberg's session provided participants with valuable information about what issues may arise in St. Paul during the 2008 RNC convention and how to address the free speech rights of convention demonstrators.

The third speaker of the day was retired criminal defense attorney and adjunct law professor Peter Thompson. Thompson's session dealt with legal ethics issues that might arise when advising demonstrators and representing people charged with criminal offenses for engaging in civil disobedience. Thompson told some compelling stories about his work advising and representing demonstrators here in Minnesota and at the School of the Americas in Georgia.

The program wrapped up with a panel discussion on what to expect during the 2008 RNC convention in St. Paul. Assistant City Attorney John Kelly kicked off the discussion by talking about the City's work to get ready for the convention. Farber, Eisenberg and Thompson joined Kelly on the panel and all four answered questions from the audience.

The CLE program was approved for two and a half CLE credits and one Ethics CLE credit. The event was videotaped, and we plan to make the tape available to people who are interested in the program but unable to attend.

You can now donate online! Visit our website at www.aclu-mn.org

The ACLU of Minnesota is now selling Bill of Rights T-Shirts, check them out in our online store.

In April 2007, the ACLU of Minnesota hosted their first ever Day at the Hill. Over 20 ACLU activists gathered on Capitol Hill to learn how to be citizen lobbyists, and meet with their legislators.

The ACLU citizen lobbyists talked to their Representatives and Senators about three main subject areas:

Women's Health: including comprehensive sex-education reform & access to emergency contraception in the emergency room.

GLBT Rights: giving domestic partner benefits to certain state and city employees

Criminal Justice: including eliminating racial bias in the criminal justice system, reducing barriers to people who have an arrest on their record (but no conviction) by making it easier to have that record expunged.

While not many of the bills passed that we lobbied for, we think we made a great first impression on Capitol Hill overall. Next year, we can't wait to make it bigger and better!

Legislative wrap up '07

Of the approximately 200 bills we tracked, 43 percent were favorable to civil liberties, 37 percent were negative towards civil liberties, and 20 percent were neutral but had the potential to escalate into amendments or hearings where civil liberties could be at risk. The neutral category also included omnibus bills. Of these bills, 25 bills became law, either independently, or as part of an omnibus bill. Of these, 14 were good, six were bad, and five were neutral.

We testified a handful of times at the Capitol. We testified in reaction to a bill making seat belt violations a primary offense, another against the photo cop legislation (which died), and a third time in support of a rejecting the "Real ID" Act (which died). We believed that this piece of legislation would likely result in increased incidences of racial profiling, magnifying the racial disparities that already exist in our criminal justice system. That bill was defeated.

Written by Carolyn Jackson, volunteer attorney

State v. Jones (Amicus)

The ACLU-MN filed an amicus brief in the Court of Appeals involving a criminal prosecution against Mr. Jones, for violating Min. Stat. §152.023, third degree sale of a controlled substance. Jones challenged the prosecution on the grounds that the statute violates the right to Equal Protection because it prohibits the identical conduct as the offense of fourth degree sale of a controlled substance; however it imposes a harsher sentence. The District Court agreed that the statute violates the right to Equal Protection and dismissed the charges.

State v. Jones is one of several cases in which the Hennepin County District Court has held that Minn. Stat. §152.023 is unconstitutional. The State appealed all of the cases and Jones' case was combined with several others for the appeal.

In our brief we argued that the Minnesota statutory scheme which provides criminal penalties for the sale of controlled substances violates the right to equal protection because, allowing substantially greater penalties for identical conduct gives prosecutors unbridled and arbitrary discretion to classify similarly situated defendants with offenses that have substantially different penalties. We contended that particular vigilance is warranted because the unequal application of the law can serve to aggravate the racial disparities that have already been identified in the criminal justice system.

Unfortunately, the Minnesota Court of Appeals did not agree and the District Court ruling was reversed. As of this writing, it is not clear whether the decision will be appealed to the Minnesota Supreme Court.

In memory of Jeanne and Gayle Miller

~Joyce Chalupsky

Civil Liberties News

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