

THE DEFENDER



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JANUARY 2011

GOVERNMENT TRANSPARENCY

The ACLU-VT was recently asked what changes the new Shumlin administration could make to ensure “open

government.” We provided a list of five things we’d like to see the new administration, working with the Legislature, change.

1. Make mandatory the awarding of fees and costs to plaintiffs who prevail in public records and open meeting cases. Lawsuits by citizens or watchdog groups are the only way public access laws get enforced. But even if you win, the judge may — but is not required to — order that your fees and costs be reimbursed. Few judges order such awards. The result? You’re left with a big bill. That’s not right.

2. Review the state’s public records law. The 200-plus exemptions that shield government records from public view work against transparency. The exemption that perhaps creates the most secrecy is the police records provision. Records should be open unless their release could harm an investigation.



3. Provide effective police oversight. The ACLU receives numerous complaints alleging police misconduct. Public confidence in public officials requires independent oversight. Right now we don’t have that for law enforcement. Police officers

should be licensed the way that members of nearly every other profession in the state are licensed.

4. Make clear that inquests cannot be used in lieu of probable cause hearings before a judge. Inquests are secret proceedings whose legal origins lie in medieval times. Through litigation, the ACLU has learned that the state is currently using inquests to sidestep warrant requirements. Unchecked, the government can go on fishing expeditions for information on anyone.

5. Strengthen campaign finance disclosure laws. Vermont earns failing grades from national watchdog groups that analyze states’ campaign finance laws. Citizens need better access to campaign finance reports. Personal financial statements should be required of candidates. Data collected should be available online in a searchable database.

ACLU AT WORK



(From left) WCAX news reporter Kristin Carlson, Sen. Jeanette White, and Secretary of State Deb Markowitz were among the panelists at the ACLU-VT’s open government conference Nov. 18 at Saint Michael’s College.



David Goodman spoke on data aggregation at the ACLU-VT’s annual meeting Oct. 30 in Montpelier.



Vermont authors read from banned books at the ACLU-VT’s second annual Evening Without presentation, this year in Brattleboro. The Vermont Library Association was co-sponsor.

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FROM THE EXECUTIVE DIRECTOR

Allen Gilbert, Executive Director

It sounds like a carbon copy of the Henry Louis Gates' racial profiling case of last summer, only this time here in Vermont.

Police in Hartford respond to a call from a cleaning service about a suspected burglary at a townhouse. When police arrive, they enter the unit, find an African-American man sitting on a bathroom toilet, naked and dazed. The officers say he resists arrest. He is pepper-sprayed, struck with a baton, handcuffed, wrapped in a blanket, and dragged down the stairs out of the townhouse.

The truth is there has been no robbery — only a mess created when the man slipped into a semi-conscious state because of a chronic blood-sugar imbalance.

Fortunately, EMTs arrive,

recognize the man as a local athletic trainer and Dartmouth grad, and take him to Dartmouth Hitchcock Hospital. The blood sugar problem is addressed, and doctors stitch up cuts caused by the handcuffs.

Was this racial profiling? Would Hartford police have treated a white man the same way?

In the Gates case in Cambridge, Mass., city officials convene a panel of law enforcement and legal experts to look into whether police acted properly.

In the Hartford case, police stonewall reporters' requests for information. Then the chief announces he has asked the Vermont State Police — his former employer — to investigate the incident for any criminal conduct.

No outside panel will look

into the matter, much less the public.

The state attorney general receives the investigation report. He finds no wrongdoing by police. He denies a request for a copy of the investigation report.

By contrast, the Gates review panel of outside experts offers 10 recommendations to make sure a similar situation doesn't happen again. It finds both the police and Professor Gates were at fault.

Racial profiling has been a flashpoint issue in Vermont for many years. We need to get to the truth of what's happening — even if it's uncomfortable.

support for the organization he loved so much.

His support didn't end at his death in 2007, for Bern left a bequest to continue the work of the ACLU.

In celebrating the first 90 years of the ACLU, it's fitting to honor Bern and the hundreds of thousands of other people who have supported its work.

So here's to the ACLU's first 90 years of defending and enhancing civil liberties, and to all of you who've made that possible. And here's to the next 90 years and your continued support.



90 YEARS OF THE ACLU

This year marks the 90th anniversary of the ACLU's founding.

Some of you knew Bern Friedelson, whose lifelong love for the ACLU started only 18 years after the ACLU began.

Bern liked to recall that both he and the ACLU were teenagers when he and some fellow students were thrown out of high school in New York City in 1938. Their offense? They published a piece in a literary journal that included the word "ass." Bern noted that "in those halcyon, pre-inflation days,

you could be expelled for a *three-letter* word."

Bern and his friends didn't run home to tell their parents what had happened; instead, they got on the subway and headed for the ACLU, which took their case. They were back in school days later.

Bern spent decades as an ACLU activist before moving to Vermont in the mid-'70s. That was less than 10 years after the ACLU-Vermont's founding. He went on to serve as our president, treasurer, and national board representative, and solicited financial

2011 LEGISLATIVE PREVIEW



This is the start of a new legislative bien-nium. Legislators face a “clean plate” when they gather at the Statehouse in January.

The line-up of Democratic control of the governorship and both chambers of the Legislature will change the dynamics of legislating. Legislation not considered before because of the possibility of a gubernatorial veto may now move forward.

But like the last two sessions, the 2011 session will likely see a major focus on the state’s financial situation. A gap of more than \$100 million between revenue and expenses is projected.

Money problems can have an effect on civil liberties issues, as happened last year when the education funding system was about to be

changed in a way that cut into equity. We’ll be watching again this year to ensure school equity is maintained

Here are other areas where we anticipate legislation with civil liberties implications:

Open government. The public records law will be reviewed, particularly its 220-plus exemptions that keep records secret. We would like to see the police records exemption changed so records are open unless their disclosure would harm an investigation. We also would like to see reimbursement of fees and costs for plaintiffs who bring successful lawsuits to enforce the public records and open meeting laws.

Campaign finance. Past efforts to enact a new campaign finance bill were

stymied by gubernatorial vetoes. A new governor means a bill will likely move. Our focus will be on better access to campaign reports, more frequent reporting, and greater candidate disclosure.

Marijuana. The new governor favors reform of marijuana laws, so bills may finally emerge in this area. We support decriminalization of small amounts of marijuana. We also support creation of a dispensary system for patients on the medical marijuana registry.

Mental health. State mental health officials continue to search for ways to deal with commitment and involuntary treatment issues as the state hospital prepares to close.

BOOK REVIEW



The Lacuna, by Barbara Kingsolver, Harper, 2009

Have you read *The Lacuna*? It’s fiction, laced with history. Here’s a taste of why this novel might appeal to “the civil rights crowd”:

...You know we can't tell you that. If we allowed all the accused to confront their accusers, we would have no informants left. It would infringe on our ability to investigate...

...But I was thinking of what you said about confronting my accuser. I thought the Constitution gave me the right to know the charges against me. And who was bringing them...

Whenever I hear this kind of thing...a person speaking

about constitutional rights, free speech, and so forth, I think, 'How can he be such a sap? Now I can be sure that man is a Red.' A word to the wise, Mr. Shepherd. We just do not hear a real American speaking in that manner.

The Mr. Shepherd in question is a gentle and pure soul who in the end runs afoul of the FBI and HUAC. He has survived careless parents and a number of educators not deserving of the name. He has become a renowned author, first cherished but ultimately reviled. He has shared a portion of his life with Leon Trotsky, Diego Rivera, and Frida Kahlo. Implausible?

Well, maybe... but it doesn't matter once you are “one” with this book.

There is the interplay of truth and lies, of both individuals and the populace eager to believe the worst, blind and deaf to fact. There are people of integrity, of strong intellect and strong spine destroyed by others devoid of conscience or any sense of justice.

Pick it up. *The Lacuna* is well worth your time. I hope that it speaks to you as intensely as it did to me. I finished it awhile ago and still think about it ... a lot.

— Reviewer Maida Townsend is an ACLU-VT board member.

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Subscribe to our legislative e-updates; e-mail info@acluvt.org with message “Subscribe to e-updates.”

Read the “Civil Liberties Journal” feature on our Web site, www.acluvt.org.

Follow us on Facebook (ACLU-Vermont) and on Twitter (ACLU_VT).

BOARD ELECTION RESULTS

Elected in October to the ACLU-VT Board of Directors were:

- Douglas Clifton of Weybridge
- Karen Handy Luneau of Saint Albans
- Lisa Shelkrot of Burlington

Reelected to the board were incumbents:

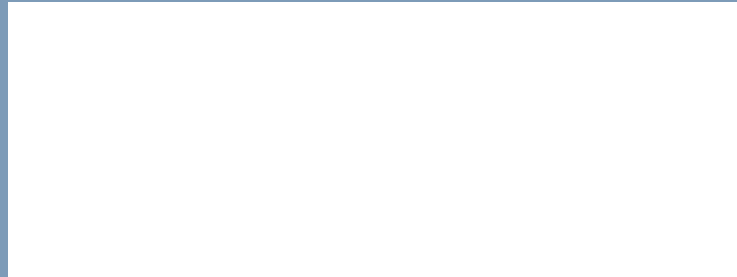
- David Borgendale of Montpelier
- Richard Saudek of East Montpelier
- Virginia Lindauer Simmon of Colchester



Keynote speaker Fred Lane at the October Bill of Rights 101 conference held for Rutland High School seniors.

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OPPOSING CAPITAL PUNISHMENT

During the Donald Fell trial in 2005, the ACLU-VT joined other capital punishment opponents and formed the coalition Vermonters Against the Death Penalty. If you'd like to be part of efforts this year protesting the death penalty and advocating its abolition, contact the ACLU-VT at info@aclvt.org.

DEATH PENALTY TRIAL LOOMS

The second death penalty trial in Vermont in this century is set to begin later this year in Burlington — despite the fact that Vermont outlawed the death penalty in 1987.

Michael Jacques will be tried for the kidnap and murder of his niece in 2008. The crime took place entirely in Vermont, yet federal prosecutors have taken up the case and have announced they will seek the death penalty. Federal law permits executions, regardless of an individual state's position on capital punishment.

The case is believed to be the first federal death penalty case in an "abolition" state prosecuted during the Obama administration. Federal insis-

tence on a capital punishment sentence in the Donald Fell murder case in 2005 was seen as part of a strategy of the Bush administration to bring death penalty cases to "abolition" states. It was the first death penalty trial in Vermont in 43 years.

By taking up the Jacques case and pursuing the death sentence, the Obama administration has signaled its willingness to continue that practice.

Federal jurisdiction is being asserted because Jacques allegedly used the Internet to send messages connected to the crimes. A recent federal law makes any crime committed with the use of the Internet a federal crime, on the grounds that the Internet is an interstate system.

Jacques' attorneys have said they will challenge the constitutionality of the federal law. Nonetheless, Jacques' trial is set to begin in September 2011.

The ACLU has long opposed the death penalty. We believe it to be an inherently cruel and unusual punishment. Legal representation for defendants is often inadequate. Mistakes are made, and the innocent are sometimes convicted. Race plays a role in deciding, ultimately, whether a defendant is executed. Executions are more costly than life sentences.

More information on capital punishment can be found in our "Focus: Death Penalty" publication on the Web at www.aclvt.org.