

January 16, 2010

A decade later, 'Curfew Kids' stand by their day in court



Courtesy photo

Photographed last summer playing banjo at the Appalachian String Band Festival at Clifftop, curfew protester Katelyn Kimmons says the idea that officers can detain young people "for no other reason other than they are hanging out" still rankles her sense of fairness.

By **Sandy Wells**

Staff writer

CHARLESTON, W.Va. -- "She was opinionated as soon as she could talk," her mother said. "She questioned everything. She was not an easy kid to raise."

Ten years ago, in February 2000, a large photo of Katelyn Kimmons appeared in Teen People magazine. The accompanying story mentioned her confrontation with a junior high teacher who told her to stop reading a book in class, her decision at age 6 to wear nothing but black, how she failed gym for refusing to wear white socks.

"She was very experienced at spitting in the eye of authority," said her mother, Rebecca Kimmons. "She had an incredible spirit. That's a gift. You don't want to crush it, but you need to channel it."

In 1997, Katelyn Kimmons channeled her audacious spirit into a cause that landed in the lap of the state Supreme Court.

Kimmons and two classmates at George Washington High School, Anna Sale and Lealah Pollack, filed a discrimination lawsuit against the city of Charleston to protest a new curfew imposed on those under 18.

"Some mothers go to dance and piano recitals," Rebecca Kimmons said. "I go to court."

The case brought the trio instant notoriety as "the curfew kids." They had to testify in court. Their names appeared constantly in the newspapers. They spurned offers to appear on national television, rejecting even a booking on "The Montel Williams Show."

"They refused everything because they didn't want to be exploited," Kimmons said of her daughter and her two courtroom cohorts. "A lot of girls would have had their heads turned. 'They're going to fly us to New York? Wow!' Not these girls."

For them, this was serious business, not a publicity stunt.

The law, called the "Youth Protection Ordinance," banned those under 18 from public places after 10 p.m. on weeknights and midnight on weekends unless they had parental permission or were attending school, cultural or religious events.

The three students, Pollack's mother, Carol Freas, and the state chapter of the American Civil Liberties Union challenged the law in Kanawha Circuit Court.

Represented by Jason Huber, the students claimed the curfew unfairly targeted teenagers, violated their Fourth Amendment Rights against unreasonable search and seizure, and usurped the rights of parents to make child-rearing decisions.

In 1999, Kanawha Circuit Judge Charlie King upheld the ordinance. In 2000, the state Supreme Court rejected an appeal by a 4-1 vote. Citing a U.S. Supreme Court decision denying juveniles the right to freedom of movement, state justices decided that "juveniles do not have a fundamental right to be on the streets at night without adult supervision."

A decade later, "the curfew kids" look back with untarnished conviction on their 15 minutes of judiciary fame.

"It was definitely worth it to me," Kimmons said in a phone interview from San Francisco. "There is winning the whole thing and winning small pieces. We did limit the control the police chief had over curfew waivers."

In the original ordinance, she said, the police chief could decide whether to grant waivers submitted by parents. Judge King ruled that part of the ordinance unconstitutional.

A small but significant victory, Kimmons said.

The principle of the curfew still irks her. "What's the goal of a curfew? Is it because there's been a rash of violence against teenagers and they want to make them safer? Or is it to give police a reason to stop anyone on the street at night who looks young? I think the latter is the answer.

"I don't think it's appropriate to detain someone for no other reason other than they are hanging out on the street," she said.

"We knew we weren't the ones who would be most affected by the curfew," Lealah Pollack explained in an e-mail. She's in Lima, Peru, taking a year's break from medical school to learn Spanish. "We knew that African-American youth in the East End and on the West Side would receive an unequal share of the ... arrests and detentions.

"At 17, I had very firm ideas of what was right and wrong, and this was unjust."

Kimmons said if she had it to do over, she would put more emphasis on her conviction that parents, not the state, have the right to determine the whereabouts of their children.

The experience "forced me to look critically at my community and how it was governed and showed me constructive ways to effect change," she said.

Like Kimmons, Pollack was outspoken and politically active in high school. She walked in the AIDS march in Washington, D.C., and bought badges and stickers to promote her pro-choice, anti-domestic violence beliefs. "I'd never really thought about the possibility of defending my viewpoints within the legal forum of a courtroom," she said.

Anna Sale was a 17-year-old junior in high school when she got the legal ball rolling through the

ACLU. "I was doing volunteer work for them and heard them talk about the ordinance and how they were considering challenging it," she said over the phone from New York City. "They were looking for potential plaintiffs, and they asked me."

In turn, she recruited two of her classmates.

The ordinance apparently passed city council with little fanfare, she said. "A lot of people didn't know about it. It was like it came out of nowhere."

Something about the premise just didn't seem right, she said. She worked evenings then at Taylor Books and got off past the curfew time.

"It felt strange that it would be illegal for me to be out, although there was language that allowed it if I could prove I was employed. I didn't like the feeling that I could be stalked [by the police] walking to my car after work."

She hasn't forgotten the fear that gripped her in the courtroom. "I was terrified to testify. We were all at the table with our lawyer, Jason Huber, and I was the first one. I remember being back home years later and seeing one of the city attorneys at Kroger and he still made me feel nervous."

Despite losing the case, she believes in the worthiness of the cause. "Looking back on it, what I'm proud of is that it caused the city to pause and talk about the ordinance and debate it. What exactly is this thing? How are we going to enforce it? I liked causing people to pause and scrutinize."

"For me, the legacy is sparking the conversation."

Championing the cause meant more than winning or losing, Huber said. Contacted by phone in Charlotte, N.C., Huber said the case underlined the mission of the ACLU.

"One of the most important things the ACLU and its clients and attorneys do is defend the rights and liberties of all groups, and one of the most important is defending the rights of young people."

"The result isn't what we'd hoped for, but the victory in that case was in the struggle to defend the Constitution."

He still disagrees with the opinion, he said.

"Judge Starcher dissented very eloquently that curfews are politically easy but practically, they are of little consequence in dealing with the issues of young people," he said.

The best part of the case, he said, was the "intellect and maturity" the three students exhibited on the witness stand. "It was rewarding for them, and it was a wonderful case for the ACLU."

Huber left Charleston in 2007 for a two-year clinical teaching fellowship at the University of Chicago Law School. In August, he accepted a teaching position at the Charlotte School of Law.

By the time the curfew case reached the state Supreme Court, Sale was majoring in history at Stanford University. She moved back home, worked for West Virginia Public Radio and married Jon Matthews. "Before I knew him, he was a law student and worked on our case," she said.

They moved recently to New York City. He's a film student at New York University, and she works for a morning radio news show "The Takeaway," aired on more than 50 stations nationwide.

Kimmons went on to Beloit College, majored in comparative religion and received a certification in teaching. Eventually, she moved to San Francisco where she works as an accountant for a nonprofit affordable-housing developer. She plans to return to school for her MBA.

Inspired by her role in the court case here, the feeling that she could effect change through political involvement, Pollack continues to concentrate largely on adolescent and social justice issues. At Brown University, she worked on a project about adolescent pregnancy. In medical

school in California, she wrote a thesis about transgender youth. Now, at a Peruvian university, she's focusing on transgender identity and HIV.

The curfew apparently works well for the Charleston Police Department. Deputy Police Chief Jason Beckett views the curfew mainly as a safety device.

"If we find someone out underage, the curfew gives us a tool to make sure they get home safely," he said. "If some kids are creating problems, we can use the curfew for that, too, but arresting every kid who's out after hours was never the intention."

"The idea is to protect juveniles from being victimized, not to catch them up," said Sgt. Autumn Davis, assistant chief of detectives and family services commander.

"If we see young people out at 2 a.m., we're going to check on them and detain them until they are released into the custody of a responsible adult."

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