

FREE FOR ALL



It's time to vote — page 5

FALL 2020

THE NEXT 100 YEARS STARTS NOW



By Reginald T. Shuford Executive Director

On February 29, the ACLU of Pennsylvania threw a great party to celebrate the ACLU's 100th anniversary. More than 500 supporters joined us at the National Constitution Center in Philadelphia, where we had a chance to cheer our many victories and

commit ourselves to the fights that we know lie ahead. We also honored Nikole Hannah-Jones, the Pulitzer Prize-winning New York Times journalist and creator of the 1619 Project, and Players Coalition, an organization co-founded by Malcolm Jenkins, formerly of the Philadelphia Eagles, to advance social justice issues.

The event gave me the chance to reflect on this organization's storied

history, and I realized that I've been here for a quarter of that history! We have established ourselves in so many important areas of constitutional law that it's difficult to name them all.

We are known for our rigorous, no-holds-barred defense of free speech rights. But, as a member, you know well that our work goes far beyond free speech. From reproductive rights to immigration to reforming the criminal legal system to LGBTQ&T equality, the waters run deep in this noisy organization. And these issues are grounded in the constitution's promise of due process, equal protection, privacy, and prohibiting cruel and unusual punishment.

Our team at ACLU-PA has started a strategic planning process to chart where we want to go in the years ahead. We are living in an era when

events feel like they're happening at lightning speed, from the COVID-19 pandemic to the inspiring Black Lives Matter movement to an election in which anti-democratic forces are trying to make it harder for people to vote. A week feels like a month; a month feels like a year.

Still, it is imperative that we think strategically about the long-term direction of the organization, knowing that we cannot predict outside events.

As I think about both the ACLU's history and about our planning process, I am mindful that racial justice permeates everything we do. That is true both in our outward-facing work — that is, our policy and legal advocacy — and in our operations as an organization.

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DIVEST IN POLICE. INVEST IN COMMUNITIES.

Despite decades of work to end police violence and to address the systemic racism in our policing and criminal legal systems, the ACLU recognizes that the current moment demands bold new strategies to stop police violence.

Black lives matter. That's why the ACLU of Pennsylvania is calling for transformational change and pushing back on the same old business-as-usual attempts to paper over the problem. Nationwide, the ACLU is calling for public divestment from law enforcement and instead investment in communities. That means reducing the role that police play in society and the number of interactions that police have with the community. Police should not be in schools. Police should not be first responders to mental health crises. Police should not be harassing people who are unhoused or conducting wellness checks. Finally, police are not members of the military



In 2018, people from Allegheny County were in the streets to protest after a police officer in East Pittsburgh murdered Antwon Rose II.

and should not be outfitted as such.

By limiting the role of police in our communities, we will save hundreds of millions of dollars, money that can be reinvested in schools, in community and social services, and in addressing urgent issues like health care and poverty.

A few weeks after a police officer murdered George Floyd in Minneapolis — one of approximately 1,000 times that police murder people every year in the United States — the ACLU-PA joined with Black-led organizations to denounce a proposed increase to the budget of the Philadelphia Police Department. After nearly every member of city council publicly opposed the

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FROM THE PRESIDENT



Dear ACLU-PA supporter,

Early in the year 1920, a group of young radical activists who had met through their work opposing U.S.

involvement in World War I, supporting conscientious objectors, defending union organizers and immigrants, opposing lynching and police brutality, and fighting for the rights of women to vote and to access birth control, created a new organization devoted to defending the rights of all – the American Civil Liberties Union.

The ACLU-PA entered into 2019-20 excited about celebrating our centennial. But then a pandemic crisis struck our world, and all of our lives were turned upside down.

ACLU-PA's board of directors has been meeting online and via conference call to do everything we can to advise and support the staff as they adjust, with physical offices almost entirely closed, while finding ways to continue our vital work unabated. It did not require any change of direction or focus for us to demonstrate a high level of support for the defense of Black lives and for the First Amendment rights of those actively demonstrating in that cause, as well as to fight for criminal justice and police reform more generally, nor to continue on the front lines of protecting and expanding the right to vote. We believe our members and other donors and contributors will keep up their generous level of support in the coming year, no matter what economic or political winds may blow.

During the past year, the board and staff initiated a strategic planning process. We aspire to identify and envision the best path forward, under any potential scenario, for building the next five-to-ten years of the defense of civil liberties in Pennsylvania. This is a task we share with you, our members, whose continuing support we so appreciate, and which we seek every day to earn anew.

Peter Goldberger
President, ACLU-PA

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The ACLU has always been an extremely effective advocate for ending race-based discrimination and has been involved in some of the most important racial justice cases ever to reach the Supreme Court, including cases that invalidated white-only primary elections, that outlawed racially restrictive covenants requiring white homeowners to sell their homes to other whites, and that established the “one person, one vote” rule.

We need that same kind of commitment to authentic belonging, inclusion, diversity, and equity (what I've coined ABIDE) internally, too. It's a part of our operation at which we have sometimes fallen short, and during our

strategic planning, I am 100 percent committed to advancing this important part of our work. Our staff and board are, as well, knowing that it will require conversations — sometimes difficult ones — that we'll have about what that looks like in our day-to-day operations.

As always, I am incredibly grateful for the privilege of leading this history making organization and for your support. The next 100 years starts now.

Reggie Shuford, Executive Director
ACLU of Pennsylvania

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CIVIL LIBERTIES AND COVID-19: FOLLOW THE SCIENCE

When the nationwide public emergency over the novel coronavirus began in March, the staff at the ACLU-PA had a simple mantra: Follow the science. We relied on public health expertise to guide our work.

At the start, it was clear that people in jails, prisons, and immigration detention would be at great risk of the spread of the coronavirus and the disease COVID-19. By definition, people who are incarcerated are unable to physically distance from others. In the best of times, prisons and jails are hot spots for the spread of contagious diseases; in a pandemic, with a virus that is highly communicable, that risk increases dramatically.

And prisons and jails are not isolated from the outside world. Staff, lawyers and visitors, and newly admitted and newly released people go in and out of the institutions on a daily basis. Thus, prisons and jails have strong ties to their surrounding communities. When a virus is spreading in an institution, it can spread to the outside community and vice versa.



In March, the #No215Jail Coalition held a car protest outside Philadelphia City Hall, advocating for more people to be released from the city's jails. ACLU-PA is a member of the coalition.

Proving the point, the nationwide death rate from COVID-19 in carceral institutions is 39 per 100,000, exceeding the national death rate of 29 per 100,000.

So, ACLU-PA staff went to work. The legal team filed five lawsuits to release people who are at high risk of becoming seriously ill or dying from COVID-19 from immigration detention and county jails. The ACLU-PA advocacy staff partnered with ally organizations to push Governor Wolf, the General Assembly, and local governments to implement policies to diminish the populations of prisons and jails.

The result? More than 30 high-risk people were released from immigration detention as a direct result of ACLU-PA lawsuits, and more than 150 people were released from state prisons under a reprieve program that was implemented by the governor after being pressured by the ACLU-PA and our partners at Abolitionist Law Center and Amistad Law Project. Multiple counties saw deep cuts in their jail populations,

as well, on the heels of a lawsuit brought by the ACLU-PA with the Pennsylvania Prison Society to force the state Supreme Court to give clear guidance to county courts.

To be sure, public officials could have done more to diminish the threat of COVID-19 and still can. Most counties have not changed their cash bail practices. People who violate rules of probation and parole but haven't committed a new crime are still going back to county jails and state prisons. The state Parole Board, which is part of the Department of Corrections, has not altered its practices to expedite more releases nor to keep people from coming back. And while the state prison population is down more than 4,000 people since the start of the pandemic, that is largely because county courts have postponed trials.

Nevertheless, there are people who are free and at lower risk of contracting COVID-19 today because the ACLU-PA and our partners took action. To learn more about ACLU-PA's work in the pandemic, visit aclupa.org/covid-19. ■

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increase, the mayor backed down and withdrew the proposal.

Even with that small victory, shifting public dollars away from the decades-long investment in law enforcement and into community-oriented programs won't happen overnight, and more reform work will be done in the interim. When the state General Assembly took up police reform legislation this summer — after members of the Pennsylvania Legislative Black Caucus boldly occupied the Speaker's rostrum in the state House in June — the ACLU-PA called for public access to a statewide database of police employment that would prevent officers who are fired for misconduct from simply moving to another police department.

Unfortunately, despite our public call for transparency and public accountability, the legislature passed and

Governor Wolf signed the bill without a provision for public access.

The legislature is also considering a bill to create a statewide database tracking police use-of-force incidents, and the ACLU-PA has insisted that it include public access and that the information collected include race data; we know that police are more likely to inflict violence on Black and brown people than white people.

Ending police violence will require a radical reimagining of the role of police in our society. These changes won't be easy to realize, but transformational change is never easy. The place to start is a serious and meaningful conversation about what it means to divest from the police followed by swift action to reinvest in our communities. We can and must do better. ■

VICTORY! STATE SUPREME COURT RULES ON ACLU-PA MEDICAL MARIJUANA CASE

Since Pennsylvania legalized the use of medical cannabis in April 2016, tens of thousands of people suffering from chronic illnesses have registered with the commonwealth to take part in the program.

In September 2019, the Lebanon County court announced that county residents currently on probation were prohibited from participating in the state's medical marijuana program. For Lebanon County residents Melissa Gass, who uses medical marijuana to treat epilepsy and prevent seizures, and Ashley Bennett and Andrew Koch, who use medical marijuana to treat chronic pain, this news was devastating. Because all three were on probation, Lebanon County's decision meant that they could no longer legally use their medicine.

A month after Lebanon County's announcement, the ACLU-PA filed a class-action lawsuit on behalf of Ms.



ACLU-PA Legal Director Vic Walczak (center) with clients Melissa Gass (left) and Ashley Bennett (right).

Gass, Ms. Bennett, and Mr. Koch, which asked a higher court to overturn the Lebanon County court's decision to prohibit those on probation from using medical marijuana. At the time of the filing, there were more than 60 Lebanon County residents who were both on probation and registered medical marijuana card-holders.

Just a few weeks after filing the lawsuit, the Pennsylvania Supreme Court ordered that Lebanon County suspend enforcement of the rule until the court had the opportunity to hear the case. Because the ACLU-PA lawsuit was a class-action, the ruling extended to all Lebanon County residents on probation, not just the three plaintiffs.

Finally, in June of this year, the state Supreme Court ruled that Lebanon County's policy is illegal under the commonwealth's Medical Marijuana Act.

"We fought so hard for this win," said Ms. Gass after the victory. "Medical marijuana allows me to be a mom and a grandma. I had to fight for my life and for the lives of others who are helped by medical cannabis. I am incredibly grateful for this outcome."

Learn more about this case at aclupa.org/Gass. ■

AFTER THREE YEARS, ACLU-PA INCHES CLOSER TO OBTAINING STATE POLICE SOCIAL MEDIA POLICY

In a case that started in 2017, the ACLU of Pennsylvania won a significant victory in our effort to obtain the social media policy of the Pennsylvania State Police this summer when the state Supreme Court overruled an appeals court ruling that blocked our access to the policy.

In March 2017, ACLU-PA submitted a Right To Know request to the state police asking for their policy on when and how troopers can use social media for investigations. The state police responded with a nine-page document that was heavily redacted; several pages were completely blacked out.

The Office of Open Records (OOR) reviewed the unredacted policy and concluded that there would be no risk to public safety to release the document. Although the state police claimed that release would allow criminals to evade surveillance, OOR concluded that "the threats outlined in PSP's affidavit simply do not match the text of the policy."

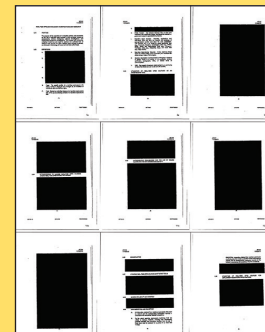
The state police then appealed to the Commonwealth Court, which reversed OOR, concluding that they did not need to look beyond the text of the state police's affidavit. In other words, the OOR should simply defer to law enforcement's conclusions without any independent evaluation.

The Commonwealth Court refused to even review the policy in private, as the OOR did.

In June, the state Supreme Court ruled that the Commonwealth Court erred in deferring to the state police's conclusion without reviewing the policy. The case now returns to the Commonwealth Court, which must review the policy and make its own determination about whether or not releasing the policy is a threat to public safety.

The public has a right to know how the state police monitors social media. We know that law enforcement can and has utilized social media to track activity protected by the First Amendment, and it is crucial that troopers are limited in spying on people's social media activity.

To learn more about this case, visit aclupa.org/PSP-socialmedia. ■



This was the Pennsylvania State Police response to ACLU-PA's open records request.

COUNSELORS, NOT COPS: A CONVERSATION WITH HAROLD JORDAN

*Harold Jordan is a senior policy advocate with the ACLU of Pennsylvania and a nationally recognized expert on civil rights in education. He recently sat down with ACLU-PA Director of Communications Andy Hoover to discuss the harm that police cause for students and how schools can minimize interactions between cops and kids for an episode of the podcast *Speaking Freely With the ACLU-PA*.*



Harold Jordan at a summit on school policing for education administrators in Harrisburg in 2018.

What harm is done by having police officers in schools?

There's abundant harm. One is that what is considered normal adolescent behavior is often dealt with in a criminal justice setting, and that's reflected in the high rates of arrests in some districts and in some states. Pennsylvania has had among the highest rates of student arrests in the country for at least a decade.

People don't talk about the threat of the use of force often enough because that is an essential component of policing, that they can threaten to use force. That has a profound impact on young people and on the

school environment.

And that harm is inflicted on particular students, right? It especially impacts students of color and students with disabilities.

I would add to that list students of limited economic means...The numbers reflect the reality that, overall, it is African-American students, to some extent Latino students, and students with disabilities, overall, who are punished at rates twice that of students without disabilities.

When the mayor of Harrisburg was pitching the idea of city police being stationed at the schools a few years ago, he said

that he wanted officers and students to build positive relationships. Why is that thinking flawed?

If that is what you think these school staff members are doing, then take away their power to arrest students. Take away their power to detain students. Take away their power to interrogate students. Take away their power to handcuff students. If you're looking for a school staff member to build positive relations with young people, let's fund those positions directly.

What are some of the goals you're hoping to achieve in ACLU-PA's work on this issue?

We want to eliminate some of the concrete harms. And we also, where possible, want to shift funds that school districts put into policing programs into other educational services that are more appropriate for working with young people.

The entirety of this conversation is available at aclupa.org/speakingfreely.

ARE YOU READY TO VOTE?

By the time you receive this newsletter, the 2020 general election will be just days away. If you plan to vote in person or have not yet submitted your mail-in or absentee ballot, here are some important things to keep in mind.

- ✓ If you have not yet submitted your mail-in or absentee ballot, do it as soon as possible. Your ballot must be postmarked by November 3, which is election day.
- ✓ If your personal circumstances allow it, consider submitting your ballot in person at your county's election office, to avoid mail delays. Every county accepts dropped off ballots at their elections office during normal business hours, Monday through Friday, and some counties have drop boxes available for off-hours delivery. If you submit your ballot in person, it must be delivered by 8 p.m. on November 3. You must submit your own ballot and cannot deliver a ballot for anyone else. You can find the contact information and location of your county's elections office at votesPA.com.
- ✓ If you're going to vote in person, plan for long lines, as turnout is expected to be high. Polls open at 7 a.m., and, if you are in line at 8 p.m. when polls close, you can still vote!

- ✓ When voting in person, mask up and keep your distance from others.
- ✓ If you have any troubles at the polls, call 866-OUR-VOTE. Nonpartisan volunteers are standing by to help voters through the process.

You can find important information about voting, including the status of your voter registration, your polling place, and the address and contact info for your county's election office, at the Pennsylvania Department of State's official voter website, votesPA.com. And find voting rights information at aclupa.org/vote.

The ACLU of Pennsylvania has spent months preparing for this election. ACLU lawyers have intervened in multiple lawsuits to protect the interests of all voters. Our legislative team has been busy advocating for legislation that makes the voting process as simple and clear as possible. And our advocacy staff and volunteers have been in communities throughout the state making sure voters have the information they need to cast their ballot.

Election Day is November 3. The time to vote is here!

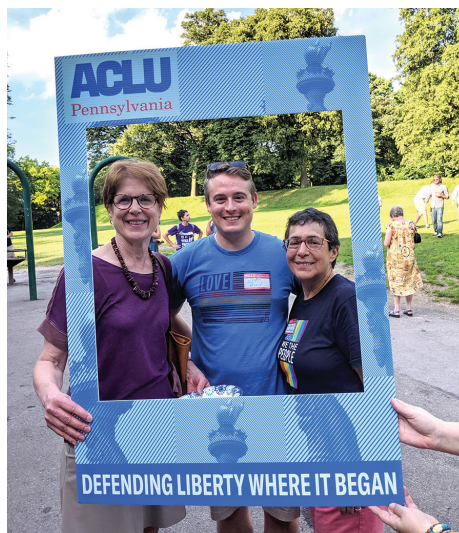
VOLUNTEER PROFILE: PAULA HARRIS

What do you do as a volunteer for ACLU-PA?

I am a vice-president on the ACLU-PA board of directors, serving on the personnel committee, and as vice president and on the development committee for the Pittsburgh chapter. I am also a legal observer at protests and demonstrations and help to train new legal observers. My most recent office volunteer engagement was digitizing closed legal files at the Pittsburgh office, which included reviewing, scanning, and organizing documents into computer files. Unfortunately, I was unable to complete the work before the office had to shut down for COVID-19.

What civil liberties issues do you care about most?

There are so many civil liberties issues that are important to me, but, right now, the Campaign for Smart Justice and its many parts — bail, probation/parole, decarceration — the right to protest, and voting rights seem most important.



Paula Harris (right) with Justin Romano of the board of directors and supporter Anne Malloy.

Why is it important to you to help the ACLU in the ways that you do?

There is no other organization that I know of that so broadly, and successfully, confronts the constitutional issues our country faces today, and has

faced in the past. My admiration for the ACLU staff, working through the pandemic and quickly responding to the continued trampling of our rights, has awed me. They are my heroes.

You're active with the Pittsburgh chapter. What are the chapter's current projects?

Right now, the Pittsburgh chapter's development committee is working on the Pittsburgh celebration for the ACLU centennial, which will be virtual. From November 16th through the 20th, we plan a week of videos, happy hours, an evening with Michael Chabon and Ayelet Waldman, discussing their recently edited book, "Fight of the Century: Writers Reflecting on 100 Years of Landmark ACLU Cases", and a performance by local artist Vanessa German. As we finalize the event, information will become available on the aclupa.org website. Ticket and sponsorship information is already on the website. I think it will be an exciting week. ■

REVISIONS TO PROBATION REFORM BILL DIMINISH THE EFFECTS OF THE LEGISLATION

For nearly two years, the ACLU of Pennsylvania has engaged with a wide array of stakeholders to advocate for reforms to the commonwealth's probation system, including state lawmakers, other nonprofit advocates, and the state association that represents probation officers.

As it currently operates, probation plays a significant role in feeding mass incarceration throughout the commonwealth. At first glance, probation can appear to be an alternative to jail or prison. But scratch below the surface and you find a system that inflicts further punishment on people, with rules and conditions so onerous that inevitably people on probation are tripped up, leading them back to jail.

And, like so much of the criminal legal system, the burden falls disproportionately on Black people. In Allegheny County, African-Americans comprise 13 percent of the population but 42 percent of those under supervision. In Philadelphia, one in 14 Black people is under supervision.

As introduced, Senate Bill 14 changed some of the worst aspects of probation. The bill capped how long a person could be on probation, as Pennsylvania is one of less than ten states that do not place limits on probation sentences; prohibited judges from issuing "stacked" sentences, which are served consecutively; and allowed people to end their probation early if they did not have any violations over a certain period of time.



When the Senate Judiciary Committee took up the legislation in June, though, all of those reforms were removed from the bill. Making matters worse, the committee's amendment created "administrative" probation, in which a person can be stuck on probation indefinitely if they have not fully paid their restitution, with no opportunity to show that they are too poor to pay it.

The amended bill passed the Senate in July and is now under consideration in the state House. The House has its own probation-related bill, House Bill 1555, with many of the same provisions as SB 14. The ACLU-PA opposes both bills, after previously supporting the unamended versions.

To learn more about the legislation, visit aclupa.org/SB14. ■

NEW STAFF AT THE ACLU OF PENNSYLVANIA

ACLU-PA has welcomed one new staff member to our team in recent months.

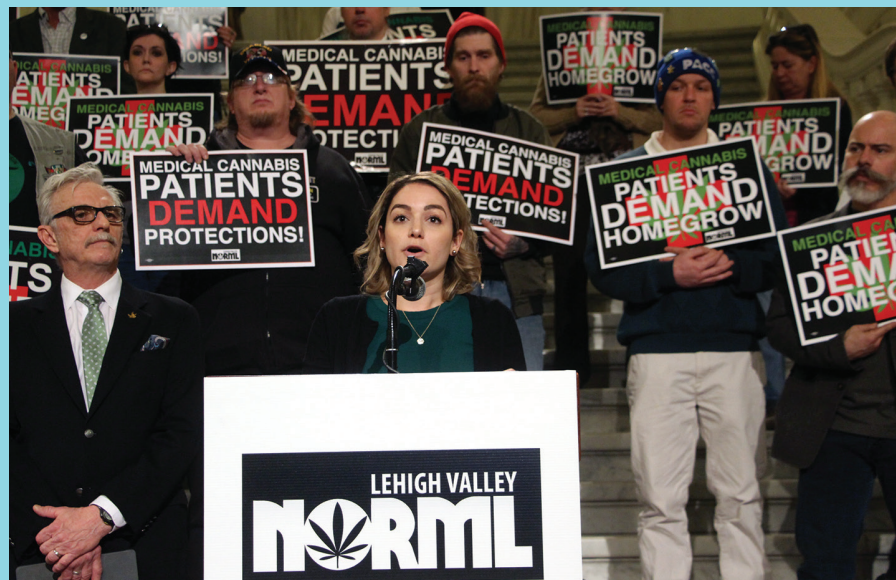


Haley Pritchard started a year-long legal fellowship with the ACLU of PA in early September. A recent graduate of the University of Pennsylvania Law School, her focus at the ACLU-PA will be on litigation that reduces pretrial and probation-related incarceration. During law school, Haley participated in the Youth Advocacy Project, a student-run pro bono project that partners with the Youth Sentencing and Reentry Project to write mitigation reports for kids charged as adults in Pennsylvania. While she was an undergraduate student at the University of North Florida, Haley worked in the research department of a local policy center focused on the rights and wellbeing of girls and young women caught up in, or at risk of becoming caught up in, the juvenile justice system via the school-to-prison pipeline and the criminalization of poverty and survival skills. Prior to law school, Haley obtained a Masters of Science in sex, gender, and violence from the University of Aberdeen in the United Kingdom. Haley is a native of Jacksonville, Florida.



In June, New Voices for Reproductive Justice led a march and action in Philadelphia to remember Black transgender people and all Black and brown people who have been victims of violence. ACLU-PA joined the march, where marchers honored the life of Dominique Rem'mie Fells, a Black trans woman who was murdered in Philadelphia in June.

ACLU-PA Legislative Associate Marianne Stein joined cannabis reform advocates from local chapters of NORML at the state capitol in February to advocate for reforms and expansions of the commonwealth's Medical Marijuana Act.



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SOMEDAY WE'LL BE TOGETHER. AGAIN.



Above left: On March 12, ACLU-PA hosted a live podcast on voting rights in Pittsburgh, with Eileen Olmsted of the League of Women Voters of PA (center) and Sara Rose (left) and Andy Hoover (right) of ACLU-PA.



Top right: Alex Domingos of ACLU-PA's Campaign for Smart Justice brews beer at Mount Gretna Craft Brewery in Lebanon County in August. ACLU-PA and MGCB teamed up as part of the nationwide Black is Beautiful campaign, in which breweries raise funds for organizations working for racial justice.



Right: On Martin Luther King Day in January, the #No215Jail Coalition hosted a community hearing on bail reform. Speakers included (left to right) Josh Glenn of Youth Art and Self-Empowerment Project, Helen Gym of Philadelphia City Council, and Philadelphia District Attorney Larry Krasner.

PHOTOS: TOP LEFT: IAN PAJER-ROGERS; TOP RIGHT, ANDY HOOVER;
BOTTOM RIGHT: CAMBRIAE W. LEE