

FREE FOR ALL



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SPRING 2019

WRESTLING WITH THE CULTURE OF THE ACLU



By **Reginald T. Shuford**
Executive Director

In February, ACLU staff from around the country gathered in Houston for our semi-annual conference, which provides a chance for staff from all of the affiliates and from the national office to gather, share ideas, learn, and commiserate about the

challenges we collectively face. The chance for ACLU staff to spend time together in person—and not just by phone or by email—is always reenergizing for those who attend.

At each conference, there are mixers for affinity groups, for people from particular communities to connect and talk about their unique challenges working for our 99-year-old organization. I'm proud that the staff of the ACLU is so representative of our nation that we can even have these sessions.

This year, I had the privilege of leading the discussion with the dozens of Black men who are part of the ACLU team. It was inspiring to connect with these men, whose numbers have grown substantially in recent years as the organization has dedicated itself to equity.

But I was also troubled by the thought that many of these men were in this space because they have had experience with the criminal justice system. Many of them are working as organizers for the ACLU's Campaign for Smart Justice, a critical area of our work that has been a long-time coming.

I applaud everyone at the ACLU who has embraced the importance of centering the voices of people who are directly impacted by the issues that make up our work. But meeting with

these men who had been through the criminal justice system was a reminder to me that we have to do better.

Our country has to do better in ending mass incarceration and the racial disparities that plague the criminal justice system. The numbers don't lie—people of color are disproportionately the victims of the carceral state, which is the result of policies and practices that have criminalized Black and brown bodies.

And we at the ACLU have to do better. Real equity, a value we are increasingly prioritizing at the ACLU, means that all staff—no matter their identity—has a meaningful opportunity to serve in any role within the organization.

At this year's staff conference, we had some tough conversations about the culture of the ACLU. As a group, we wrestled with the continued fallout from the 2017 protest in Charlottesville, with a culture that some perceive as valuing certain voices over others based on their job or education or race or gender, with pay equity, and with the unconscious ways that white supremacy impacts our work, as it does all American institutions.

These conversations are not easy, and sometimes they're uncomfortable. We all value this organization, which is doing some of the most important civil rights work in the country.

But by having the discussion, we make the ACLU better. We're striving toward being an organization that not only preaches its values but also lives them. Difficult or not, it's an essential conversation that I welcome.

Onward,

Reggie Shuford, Executive Director
ACLU of Pennsylvania



Vic Walczak of ACLU-PA (left) and Bret Grote of Abolitionist Law Center (center) talk with reporters outside the federal courtroom in Harrisburg.

SETTLED: PA DEPARTMENT OF CORRECTIONS AGREES TO STOP COPYING AND STORING LEGAL MAIL

After one day of a projected six-day federal court trial in February, the ACLU of Pennsylvania and our partners settled a lawsuit challenging the Pennsylvania Department of Corrections' new policy of copying and storing mail between lawyers and their imprisoned clients.

The department claimed the first-in-the-nation policy of copying legal mail was necessary to stop drugs from entering the prisons. But the department never provided credible evidence that legal mail was a substantial source of narcotics flowing into the prisons.

From its inception last fall, the new practice raised significant confidentiality concerns. Legal ethicists advised attorneys, including the ACLU, that the new system failed to protect attorney-client confidentiality, and, thus, attorneys should not send privileged communications via mail. Telephone calls were an inadequate substitute because they do not afford lawyers a way to share documents with clients,

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FROM THE PRESIDENT



Dear ACLU-PA supporter,

Next year, the American Civil Liberties Union turns 100. We at ACLU-PA are ready to celebrate. The achievements of our first century of

work are many.

But while we celebrate, we maintain our steely resolve. Roger Baldwin, one of the founders of the ACLU, famously declared that “no fight for civil liberties ever stays won.” He was right. Like most of our founders, Baldwin had himself been arrested for exercising his right to freedom of speech during the repressive World War I era.

At the ACLU’s birth in 1920, immigrants were being terrorized by lawless federal agencies. The ACLU fought back. Sound familiar?

By the early 1930s, the ACLU had been to the Supreme Court twice to fight and win cases challenging inadequate counsel and racial bias in the criminal justice system. We continue to fight those battles today, in Pennsylvania and nationally.

Of course, we have made great progress in the 99 years since that small group of organizers and activists—and, yes, even a few lawyers—got together to force the United States to live up to (and our courts, for the first time, to enforce) the promises in its founding document. The need to repeat the fights of decades past reminds us that democracy is fragile and that a watchdog is necessary to keep our precious rights in place—and to enhance them.

Several of the 2020 presidential candidates have already been forced to take strong positions in favor of reforming the criminal justice system. Some have had to come to terms with past actions that compounded mass incarceration. From immigration to transgender equality to reproductive justice, the candidates know that they don’t want to be on the wrong side of civil liberties—or of the ACLU.

Over the next year, we’ll have plenty of opportunities to celebrate a century of achievements, including a traveling history exhibit in May 2019 and a major fundraising gala in the first half of 2020. But behind the celebrations will be an organization of people who are as strong and as determined as we’ve ever been, fighting for the same, consistent principles, but facing up to new challenges, as we find inspiration in our history for the battles ahead in our second century.

Peter Goldberger
President, ACLU-PA

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and visits are time consuming and costly.

ACLU-PA joined the Abolitionist Law Center, Amistad Law Project, Pennsylvania Institutional Law Project, and volunteer counsel from the law firm Schnader Harrison Segal & Lewis LLP in challenging the policy through two lawsuits, one on behalf of the four organizations and the other on behalf of a prisoner who was working with lawyers on ongoing litigation. The lawsuits claimed the new policy violated the First Amendment, which protects prisoners’ right to communicate confidentially with attorneys.

At the federal court hearing in Harrisburg, four attorneys, including ACLU-PA Deputy Legal Director Mary

Catherine Roper, and the prisoner testified on the impact of the policy. A capital unit federal public defender testified that the new process had a “stifling” effect on their ability to represent clients.

Under the court-approved settlement agreement, the department agreed to stop copying and storing legal mail by April 6, it will bolster drug interdiction measures in ways that will not jeopardize attorney confidentiality, and the ACLU and partners will monitor the new process for at least two years to ensure respect for prisoners’ First Amendment right to communicate confidentially with their attorneys.

You can learn more about this case at aclupa.org/PILP. ■

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PENNSYLVANIA JUDGE CALLED ICE ON COUPLE'S WEDDING DAY

May 23, 2017, should have been the best day of Alex Parker and Krisha Schmick's lives. It was the day they were getting married.

Unfortunately, when they showed up at the courthouse, things took a distressing detour. Magisterial District Judge Elizabeth Beckley refused to accept Alex's identification and summoned federal Immigration and Customs Enforcement officers to her office.

Alex was born in Guatemala, and, as a baby, he came to the U.S. based on a prospective adoption by an American family. Ever since he came to the United States, Alex has had federal immigration status as a lawful permanent resident. Krisha is a U.S. citizen, and the couple had received a marriage license from nearby Perry County, using the only identification that Alex had at the time—an ID from the Guatemalan consulate.

The day of the ceremony went awry after Alex and Krisha arrived at



Alex and Krisha Parker on their wedding day.

Judge Beckley's courtroom in Camp Hill, a suburb outside of Harrisburg. Instead of conducting the ceremony as expected, Judge Beckley had a court officer detain Alex, she inquired into Alex's immigration status herself, she refused to accept Alex's answers about having lawful status, and immigration officers subsequently arrived at the courthouse.

Alex and Krisha were panicked. They worried that not only would they not be able to get married but that Alex could be arrested and even deported.

When immigration officers arrived, they confirmed Alex's lawful status by scanning his fingerprints with a mobile device. Afterward, Alex and Krisha awkwardly went forward with the marriage ceremony before Judge Beckley, in part because they had already paid a fee for it.

On Valentine's Day, we filed a federal civil rights lawsuit on Alex's behalf against Beckley and the court officer. Their actions that day were unlawful. They illegally detained and discriminated against Alex on the basis of his national origin and ethnicity, and Judge Beckley unlawfully interfered with his fundamental right to marry.

Local law-enforcement officials and local court personnel don't have authority to enforce civil immigration laws. When they try to do so, they throw people's lives into upheaval and chill other community members from engaging with law enforcement and courts.

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

PENNSYLVANIA'S ABSENTEE BALLOT DEADLINE DISENFRANCHISES VOTERS

Pennsylvania has one of the earliest deadlines for returning completed absentee ballots in the nation. While all but three states accept absentee ballots until Election Day or even later, if they're post-marked by Election Day, state law in Pennsylvania requires that a person's absentee ballot is received by their home county by 5 p.m. on the Friday before the election.

Combined with the deadline for submitting an application for an absentee ballot, which is 5 p.m. on the Tuesday before the election, Pennsylvania's early absentee ballot return deadline means that thousands of people in every election don't have their votes counted

because their home county did not receive their completed ballot by the Friday deadline.

In November, one week after the general election, the ACLU of Pennsylvania and a team of public interest organizations and volunteer attorneys filed a lawsuit in state court challenging the deadline as unconstitutional, under the state constitution's voting rights protection, which guarantees "free and equal" elections, and the equal protection clause.

In the lawsuit, ACLU-PA represents nine voters from all over the state and from different walks of life. Our clients include students

with permanent addresses in Pennsylvania, traveling professionals who are frequently away from home, and an emergency medical tech who works long shifts that prevent him from voting.

Learn more about this case at aclupa.org/AdamsJones.

Changing the deadline for absentee ballots is one part of a much larger portfolio of reforms that are necessary to modernize Pennsylvania's elections. ACLU-PA is a member of a coalition called Keystone Votes, which is advocating to update election law in the commonwealth. View the Keystone Votes platform of priority issues at KeystoneVotes.org. ■

MEMBER PROFILE: DOV HASELKORN



What made you decide to reach out to the ACLU of Pennsylvania in 2018? What civil liberty issue(s) concern you most?

Although I have strong opinions on political topics, I'm embarrassed to admit that I'm not much of an activist. What pushed me to reach out was the issue of voting rights. Seeing the impact that redistricting had on PA and many other states in the midterms and seeing other mechanisms of voter suppression already in place or being considered drove me over the edge.

As a process-oriented person, with a bit of a libertarian lean, I can accept if our democratic process yields results

with which I disagree. But I cannot accept our democratic process being subverted and citizens not being allowed to vote or not having their vote count for as much as the system design intends.

The ACLU is about to turn 100! What does this mean to you and your support of the ACLU?

It's an impressive achievement, and I can't imagine all that the organization has achieved over the past century! I didn't know about this ACLU milestone when I reached out to offer support—but I'm glad I did, and the fact of the centennial convinced me to join the event planning committee.

As a parent, why is it important to fight for civil liberties today? Who would you tell your children is your civil liberties hero and why?

It's important for me on two levels: first, as a role model to my kids to play an active role in creating the world you want to see, and, second, to protect the country and the world in which my children will grow up. I truly believe that without a strong and free democracy in America, the entire world will be worse off.

My civil liberties role model would have to be MLK Jr. My birthday is near MLK Day, so I felt a certain affinity from a very young age. I see him as accomplishing so much for so many and truly personifying American values in the way in which he went about his fight for truth, justice, and equal liberty for all. ■

MEET CALEB CHRIST, THE 2018-19 FRANKEL ADAIR SCHOLAR

What were the most important events or influences that brought you to where you are today?

My lived experience as both a queer person and a transgender man motivated my pursuing a second undergraduate degree in the field of nursing. Interning at the Allentown Women's Center and having the opportunity to help develop and implement their transgender health program sparked my passion for healthcare. I have been an advocate for people accessing transition-related healthcare, navigating insurance hurdles, and breaking down barriers to care. I would not be where I am today if I had not been able to access affirming, transition-related healthcare that allows me to live as my authentic self.



What do you see as the critical issues facing the LGBTQ&T community at this time?

Access to expert healthcare for LGB and especially transgender communities is critical, along with health insurance that meets the unique needs of these communities. We

also must address the ways that racism, class, and incarceration create barriers to healthcare, housing, and employment.

Do you envision your own career having an impact on concerns of the LGBTQ&T community?

Healthcare as a whole has been slow to implement the level of training necessary to provide truly affirming care for transgender patients. I hope to advocate for LGBTQ&T patients through the care I provide, through research and policy, and through clinical excellence.

The Frankel-Adair scholarship provides \$1,500 in support of post-secondary education to an LGBTQ&T student residing in the greater Philadelphia area. ■

IT'S TIME TO REFORM PENNSYLVANIA'S PROBATION SYSTEM

On any given day, there are upwards of 300,000 people on probation or parole in Pennsylvania. While these systems of state supervision appear to be alternatives to being in jail or prison, too often probation and parole actually end up driving mass incarceration by keeping people under constant control of the state, trapped in a system full of pitfalls that can land a person back in jail.

And it's common for a person to go through that revolving door between the community and jail for "technical violations"—actions that are not crimes at all and that wouldn't warrant a punishment if the person weren't under government control.

In February, a bipartisan group of state senators announced the reintroduction of legislation to reform probation sentencing, a sanction given to people in lieu of, or sometimes in addition to, jail or prison time.

Senate Bill 14, which is supported by the ACLU of Pennsylvania, would significantly reform the probation



system in the commonwealth. Incredibly, Pennsylvania has no limits on how long probation sentences can be. The commonwealth is one of just eight states with no maximum probation sentence. If enacted, SB 14 would limit

those sentences to five years for a felony and three years for a misdemeanor.

SB 14 would also give a person on probation the opportunity to end their sentence after 18 months if they have not committed any violations; would ban courts from jailing a person because they are too poor to pay restitution, fees, or fines; and would restrict when a person can be incarcerated for violating the terms of their probation without committing a new crime.

Finally, the proposed legislation would provide immediate relief by enacting these reforms retroactively for people currently serving probation and for anyone who has been incarcerated or sentenced to more than a year in jail for a technical violation.

ACLU-PA has prioritized supporting the passage of SB 14, which is currently before the state Senate Judiciary Committee. Connect with us on social media and sign up for our email list at aclupa.org to stay updated on the bill's progress. ■

PROPOSED CONSTITUTIONAL AMENDMENT THREATENS THE RIGHTS OF THE ACCUSED

A proposal before the General Assembly—and maybe soon before all Pennsylvania voters—could create a sea change in state constitutional law. It would be a change for the worse for people who are accused of crimes, and the ACLU of Pennsylvania is working hard in opposition to it.

Known as Marsy's Law, House Bill 276 is a proposed amendment to the Pennsylvania Constitution that would establish constitutional rights for crime victims, many of which—and more—already exist in statute. Supporters of the idea say they believe that victims' rights should be "equal" to the rights of people who are accused.

But the supporters of Marsy's Law fail to understand why constitutional protections exist for defendants in criminal proceedings. Each protection under our Bill of Rights is intended to limit the government's power. This is most critical when a person charged with a crime faces the full power of the state as it attempts to deprive that person of their liberty and possibly their life. The founders wisely restricted the power of the government to do so without robust protections for the accused.

Marsy's Law will make it more difficult for a person to defend themselves. The bill allows the alleged victim to deny information requested by the defense, depriving the accused person of the ability to build their case. A person's freedom is on the line, and another person could deny them information that could prove their innocence.

The bill also includes the constitutional right "to proceedings free from unreasonable delay and a prompt and final conclusion of the case and any related post-conviction proceedings." This language could prevent a defendant from having the adequate time needed to present a defense or from the opportunity to have their case heard in the appeals process, which is guaranteed under the constitution.

It's reasonable for lawmakers to ensure protections and support for victims of crime. But elevating this language into the state constitution as guaranteed rights gives the government even more power over a person who has been accused of a crime or who is appealing a conviction, increasing the likelihood of a miscarriage of justice. ■

PENNSYLVANIA'S UNCONSTITUTIONAL DEATH PENALTY

In a country that continues to embrace the depravity of capital punishment, Pennsylvania has earned an extraordinary distinction: it is the only state in the nation that does not provide any state funding towards the representation of defendants who are too poor to pay for private attorneys.

For indigent defendants who face the most serious charges, this lack of funding can literally mean the difference between life or death.

Since 1979, fully one-third of Pennsylvania's death sentences have been reversed on the basis of poor lawyering alone. A series of court-appointed committees and task forces have examined the use of the death penalty in the commonwealth since 1989, but the issues highlighted and

recommendations have been ignored by the legislature.

In February, the ACLU of Pennsylvania filed a friend-of-the-court brief asking the state Supreme Court to hold that Pennsylvania's capital punishment system violates the state constitution. The brief was filed in support of two people who have been sentenced to death who are represented by the Capital Habeas Unit of the Federal Community Defender Office and are asking the Supreme Court to hear arguments that the death penalty in Pennsylvania is unconstitutional.

People of color make up more than half of the state's death row population while 80 percent of people charged with a crime in Pennsylvania

cannot afford to fund their own defense.

Stories from the brief filed with the Supreme Court defy belief. These include stories of defendants who were represented by lawyers who were drunk, extremely overburdened, or otherwise ill-equipped to defend capital cases. One anecdote cites a civil lawyer with no experience on capital cases who didn't even realize that capital punishment was a potential outcome until the trial was well underway.

As we await arguments in the case and then the court's decision, ACLU-PA will continue to fight against the criminalization of the poor and against the racial disparities that underpin our criminal justice system. ■

MONEY BAIL CRIMINALIZES POVERTY IN PHILADELPHIA

"G.T." was arrested in Philadelphia on March 4, 2019. Fifty two years old and suffering from chronic pain from a 2014 injury, G.T. is a recipient of food stamps and was living in a car with all of his possessions in the weeks before he was arrested, as he sought an affordable apartment.

At his bail hearing, despite stating that he was currently unemployed and homeless, the judge set G.T.'s bail at \$250,000, meaning G.T. would have to come up with \$25,010 to secure his release until his trial.

This is a common problem in Philadelphia, a problem that the ACLU of Pennsylvania chronicled by observing more than 2,000 bail hearings in recent months. These judges, known as arraignment court magistrates, are flaunting Pennsylvania's Rules of Criminal Procedure, which dictate that no person should be held pretrial simply because they are unable to afford bail.

But in Philadelphia, ACLU-PA volunteers and staff observed the magistrates relying almost exclusively on cash bail requirements for the people before them. They issued cash bail orders to people who were homeless like G.T., people on disability and other forms of public assistance, and people who were unemployed.

Effectively, Philadelphia's court system is criminalizing poverty. People are being held in Philadelphia's jails simply because they do not have the money to buy their freedom, despite the rules explicitly forbidding this practice.



ACLU-PA Executive Director Reggie Shuford announces the Philly bail lawsuit at a press conference in March.

So, in March, the ACLU of Pennsylvania and the law firm Arnold & Porter Kaye Scholer LLP filed a lawsuit against the magistrates, claiming that the Philadelphia courts are failing to follow the rules. The lawsuit was filed in the Pennsylvania Supreme Court on behalf of ten people who are incarcerated and two organizations that support people who are held before their trials, the Philadelphia Community Bail Fund and the Youth Art and Self-empowerment Project.

The lawsuit asks the Supreme Court to enforce the rules and make the Philadelphia courts follow them. You can learn more about this case at aclupa.org/PhillyBail. ■

NEW STAFF AT THE ACLU OF PENNSYLVANIA

The ACLU of Pennsylvania has welcomed three new staff members to our team in recent months.



Andrea C. Anastasi serves as the legal intake manager at the ACLU of Pennsylvania, where she oversees all of the organization's legal intake, which includes coordinating a phenomenal team of intake volunteers, screening requests from Pennsylvanians for legal assistance, identifying cases suitable for legal action, and supporting ACLU-PA's legal department with case preparation. Prior to joining the ACLU, Andrea worked at both the policy level and in direct legal services advocating with and on behalf of underrepresented individuals and communities. Andrea obtained her law degree from Temple University Beasley School of Law in 2014 and her undergraduate degree from the University of Pennsylvania in 2010. She has received several distinctions for her commitment to public interest law. Andrea works in ACLU-PA's Philadelphia office.



Samantha Jeune joined the ACLU of Pennsylvania in November as the development operations coordinator and data analyst and works in the Philadelphia office. Prior to joining the ACLU of Pennsylvania, Samantha was the development and events coordinator at Maternity Care Coalition, and she has a background in research, program/volunteer management, donor services, and working with vulnerable populations. Samantha graduated from West Chester University with a bachelor's degree in women's and gender studies and a minor in peace and conflict studies. She currently serves as a mentor with Big Brothers Big Sisters and is a member of the Womanist Working Collective and the Young Women's Initiative at Women's Way.



Ghadah Makoshi joined the ACLU in February as a community advocate focusing on school policing reform and works in ACLU-PA's Pittsburgh office. She brings over five years of experience advocating for inclusive, quality education for all students, as well as an end to overly punitive discipline practices that push students out of school and into the juvenile justice system. She has served on the planning committee for the Pittsburgh Racial Justice Summit and Racial Justice Town Hall since 2016, which works to bring diverse communities together to develop alliances for justice and to eliminate human oppression. Ghadah has a bachelor's degree in English literature, an MBA in marketing, and a master's in international management.

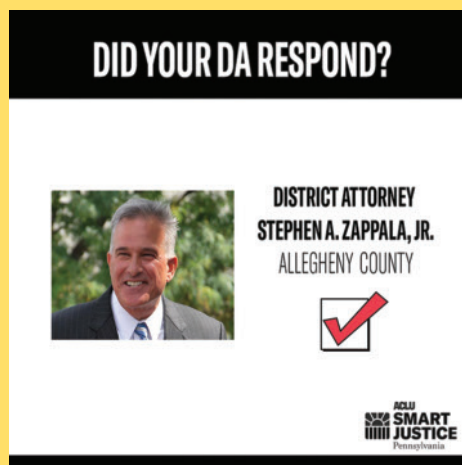
BETTER KNOW A DISTRICT ATTORNEY

As part of the Campaign for Smart Justice, the ACLU of Pennsylvania launched a new website in December, KnowYourDAinPA.org. Part education tool, part action center, the site articulates why a district attorney is the most powerful person in the criminal justice system and gives visitors the opportunity for constituent outreach to their own DA.

Before the launch of the site, ACLU-PA sent a survey to all 67 DAs in the commonwealth that asked a series of questions about their positions on issues and the operations of their offices. The survey included questions about

transparent practices, dishonest police officers, mandatory minimum

sentences, cash bail, the death penalty, and immigration.



Some DAs responded; some did not. From the site, a visitor can view their district attorney's response and send them an email about their answers, or lack thereof.

From charging, to plea bargains, to recommending sentences after convictions, district attorneys are the most powerful people in the criminal justice system. As such, prosecutorial accountability is a crucial element of the Campaign for Smart Justice. We encourage you to check out the site at KnowYourDAinPA.org.

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Above left: LaToya Livingston (right) represented ACLU-PA at the Women's March in Washington in January. LaToya is a volunteer in our Philadelphia office.

Above right: ACLU-PA members gathered in February for the annual Show the Constitution Some Love event in Philadelphia.

Left: ACLU-PA joined other prison reform advocates outside Governor Wolf's Philadelphia office in December to protest the Department of Corrections' mail policies.