

STAND

FOR
PASSIONATE
GUARDIANS
OF INDIVIDUAL
RIGHTS AND
LIBERTIES

SUMMER 2015

ACTOR & ACTIVIST

**Marlee
Matlin:**

EQUAL OPPORTUNITIES
FOR PEOPLE
WITH DISABILITIES

**BEYOND
MARRIAGE**

THE FIGHT FOR FULL
LGBT EQUALITY



ACLU.ORG



EXTREME POLICING

PRACTICES THAT SET LAW ENFORCEMENT AGAINST
COMMUNITIES—AND THE ACLU'S PUSH FOR REFORM

WHY I'M AN ACLU MEMBER

WE ASKED MEMBERS TO EXPLAIN WHY THE ACLU IS SUCH AN IMPORTANT PART OF THEIR LIVES. HERE ARE A FEW OF THE RESPONSES WE RECEIVED. THEY SPEAK VOLUMES.

FEATURED MEMBERS

JERRY NEWTON & DAVID WEINBERG
CHICAGO, IL



JERRY NEWTON,
ACTIVIST

“Deciding to have and raise a child is probably the most important decision a woman can make, and that **decision should be hers alone, not to be made by others.** Thank you, ACLU, for helping to protect this right.”



DAVID WEINBERG,
GALLERY OWNER

“The ACLU is one of the foremost organizations devoted to **improving the lives of people who are suffering injustice.**”

Chicago residents Jerry Newton and her husband, David Weinberg, have been members of the ACLU for decades and have devoted their lives to promoting civil liberties. Jerry has been involved in many civil rights issues, including the fight for reproductive rights, and David promotes civil liberties through the arts.

About a year ago, David refocused the work in his Chicago gallery, David Weinberg Photography, to center on social justice issues—currently, youth in prison. He is partnering with the ACLU to use his gallery for a variety of events.

“I want my daughters to be who they want to be, **love who they want to love, and live in a world that treats them with the respect that they deserve.**”

DERWOOD STEVENS
VIA FACEBOOK

“ALONE WE FEEL POWERLESS AND OUT-NUMBERED, BUT KNOWING THE ACLU IS THERE, WE FEEL EMPOWERED AND HOPEFUL.”

MARTHA & ROGER CROTTY
ASHEBORO, NC

“I believe in the U.S. Constitution. **Nobody fights for it like the ACLU.**”

EVE MAJOR, VIA FACEBOOK

The Issue

THE AMERICAN CIVIL LIBERTIES UNION



PROTECT THE CHILDREN, PRESERVE THE TRIBE, PAGE 24 Rochelle Walking Eagle's children, Andreanne and Issac (pictured with their father Andrew Ironshell), were taken away from their family in direct violation of the Indian Child Welfare Act.

features

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STUDENT RIGHTS, WRONGED

The freedoms of our young people continue to be stripped away as they walk through the schoolhouse door. We take you back to school as we discuss the ACLU's work to protect the civil liberties of students.

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BAD LAWS, BAD LAW ENFORCEMENT

Ill-considered policies have resulted in adversarial relationships between police and the communities they are sworn to serve—with each side resenting and fearing the other. But thanks to the ACLU and other groups, there are signs of improvement.

24

PROTECT THE CHILDREN, PRESERVE THE TRIBE

Despite federal laws designed to protect the integrity of Indian tribes and their families, Indian children are removed from their families at high rates after shockingly short court hearings. The ACLU is fighting to end these practices.

my stand

- 10** Why Did the ACLU Hire a Technologist? **Daniel Kahn Gillmor** on the ACLU's work to ensure the law and tech work for you.
- 34** End Discrimination Against Pregnant Workers ACLU President **Susan N. Herman** shares the progress to end workplace inequity.
- 36** Why I'm an Ally Republican political strategist **Steve Schmidt** shares his thoughts on the freedom to marry—and why he developed an alliance with the ACLU.

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STAND FOR THE MOST VULNERABLE

“SO LONG AS WE HAVE ENOUGH PEOPLE IN THIS country willing to fight for their rights, we’ll be called a democracy.”

I often think back to this quote from Roger Baldwin because it gets to the very core of why he and a small group of likeminded idealists founded the ACLU 95 years ago—and it remains the foundation of our work today.

The ACLU is about people like you and me coming together to beat back threats to our liberties and to seize opportunities to advance our rights, especially for the most vulnerable in our society.

In this issue of *STAND* you’ll read about our work to address the injustices faced by the poor and communities of color as a result of reckless police practices (“Bad Laws, Bad Law Enforcement,” page 18). We also take you back to school to highlight our work to defend students’ rights, which continue to be denied in areas such as free speech, treatment of LGBT students and

the separation of church and state (“Student Rights, Wronged,” page 11).

What I hope you see throughout these stories is that the victories we are fighting for aren’t just about changing the lives of individual clients—they are about ensuring that our victories impact the lives of people all across the country.

You can read about a case in South Dakota that grew out of the experiences of three Indian families who had their children removed from their homes in clear violation of a federal law that was created almost 40 years ago (“Protect the Children, Preserve the Tribe,” page 24). In a precedent-setting victory, the court ruled in favor of the plaintiffs in March and made it clear that, “Indian children, parents and tribes deserve better.”

And, as we

continue to advance Baldwin’s vision, we often take our fight far beyond the courtroom in order to have the greatest impact. We’re working with unlikely allies such as Republican political strategist and former McCain for President campaign manager Steve Schmidt (“Why I’m an Ally,” page 36) and helping to shape future technologies so they take privacy and speech rights into account (“Why Did the ACLU Hire a Technologist?” page 10).

The work that the ACLU does today reaches far and wide, and none of it would be possible without supporters like you.

Anthony D. Romero
EXECUTIVE DIRECTOR



ABOUT US: Founded in 1920, the American Civil Liberties Union (ACLU) is our nation’s guardian of liberty, working daily in courts, legislatures and communities to defend and preserve the rights and liberties that the Constitution and laws of the United States guarantee everyone in this country. Our critical work in the courts and in legislatures across the country is possible only because of the generosity of our members. Please give at aclu.org/donate.

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Contributors



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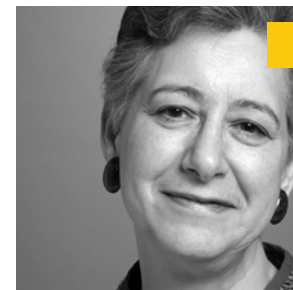
SUZETTE BREWER SPECIALIZES IN FEDERAL INDIAN LAW and has written extensively on the Indian Child Welfare Act for *Indian Country Today Media Network*. Her published books include *Sovereign: An Oral History of Indian Gaming in America* (Ipanema Literatures, 2009). She is a member of the Cherokee Nation and is from Stilwell, Oklahoma. *Protect the Children, Preserve the Tribe*, page 24

DAVID BROWN

WIDELY PUBLISHED under the pseudonym D.B. Grady, David Brown is the coauthor of *Deep State: Inside the Government Secrecy Industry* (Wiley, 2013) and *The Command: Deep Inside the President’s Secret Army* (Wiley, 2012). He is a contributor to *The Atlantic* and *The Week* and is a regular television and radio commentator. *Bad Laws, Bad Law Enforcement*, page 18



PHYLLIS ECKHAUS



PHYLLIS ECKHAUS, ACLU MANAGER OF FOUNDATION RELATIONS, has written for *Newsday*, *The Nation* and *In These Times*, where she was a contributing editor. Co-founder of an ACLU chapter in her book-banning Connecticut hometown, she’s also a lawyer who devoted years to wresting short-lived reforms from the New York City schools. *Student Rights, Wronged*, page 11

In Brief Contributors

ADAM RAWNSLEY is a Washington, D.C.-based reporter covering the intersection of technology and national security.

MATT STROUD is a reporter covering law enforcement.

KATHLEEN GEIER is a journalist and policy researcher who writes about women’s reproductive rights.

ANNAMARYA SCACCIA is a New York-based journalist who has reported extensively on domestic violence.

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“ THANK YOU FOR PROMOTING JUSTICE AND FOR MAKING YOUR READERS AWARE OF THE MANY DEFECTS IN OUR SOCIETY IN NEED OF REMEDY. ”

— David Quintero, Monrovia, California



Plaudits

I'M IMPRESSED and depressed [by STAND]. Impressed by the range of your coverage and what you are doing. Depressed by so many issues and uninformed citizens. Good thing there is an envelope included so I can help out.

Willi Meisinger
Arlington, MA

WONDERFUL PUBLICATION! I just received my first copy and wanted you to know how much I like it. I look forward to the next edition.

Terezia Bohrer
San Francisco, CA

Card Carrier

IT WAS GOOD TO SEE the article by Michael Dukakis, and it reminded me that he made me a card-carrying member of the ACLU (“Why I’m a Member,” Winter 2015). I became a member long before I ever heard of him—almost 50 years ago—but I never carried

my card because no one ever asked to see it, and it didn’t seem to get me any special perks. Then in the 1988 presidential campaign, George H.W. Bush attacked Dukakis as a “card-carrying ACLU member.” I decided then and there that I was obligated to carry my ACLU card in my wallet. I have done so ever since.

John L. Hammond
New York, NY

Equality for All?

REMEMBER WHEN APARTHEID was the law of the land in South Africa, and the white masters assembled formidable police forces throughout the country to protect themselves against unarmed blacks?

Although well camouflaged by the farcical disguise of “equality for all” here in the United States, that same architecture of racial bigotry remains firmly entrenched in our own society.

What other reason can account for the deployment of military weapons to police squads that are patrolling our cities’ streets—where multitudes of blacks live in hopeless poverty, where schools are underfunded, and government officials continue to ignore the plight of black people?

Thank you for promoting justice and for making your readers aware of the many defects in our society in need of remedy.

David Quintero
Monrovia, CA

On Guardianship

AS PARENTS OF TWO ADULT SONS with profound physical and mental disabilities, my husband and I have been through a number of guardianship hearings. For both of our sons, the judge has asked them directly if they were in agreement with having us as guardians, to which they were unable to respond, nor did they have any idea they were being asked a question. That’s why guardianship for them is so necessary. In your article “Challenging Guardianship” (Winter 2015), Jenny Hatch ended up with guardians for at least a year. The celebration over this case seems to be less about Jenny’s civil rights and more about the judge taking into consideration Jenny’s clearly expressed desires, an occurrence that is not all that unusual in guardianship cases.

Jill Barker
Ann Arbor, MI

ACLU: Our article is not intended as a criticism of parents who have been given no options but to put their children under guardianship. Instead, the article is trying to illustrate the dangers of guardianship broadly, and to celebrate the fact that Jenny Hatch now has a legally recognized right to have a say in her own life. For Jenny, guardianship was imposed with no regard to her obvious abilities and desire to live

independently. For many others, guardianship is imposed with little regard for where the individual has capacity to make decisions. Guardianship has been used as a one-size-fits-all tool to prohibit people from working, from expressing their sexual orientation, and from seeing loved ones. We need options that respect the capacities and interests of the individual.

Corrections:

► In “ACLU Moment: Tinker v. Des Moines” (Winter 2015), we neglected to mention that Mary Beth Tinker’s brother, John, was equally involved in the case, as was Christopher Eckhardt.

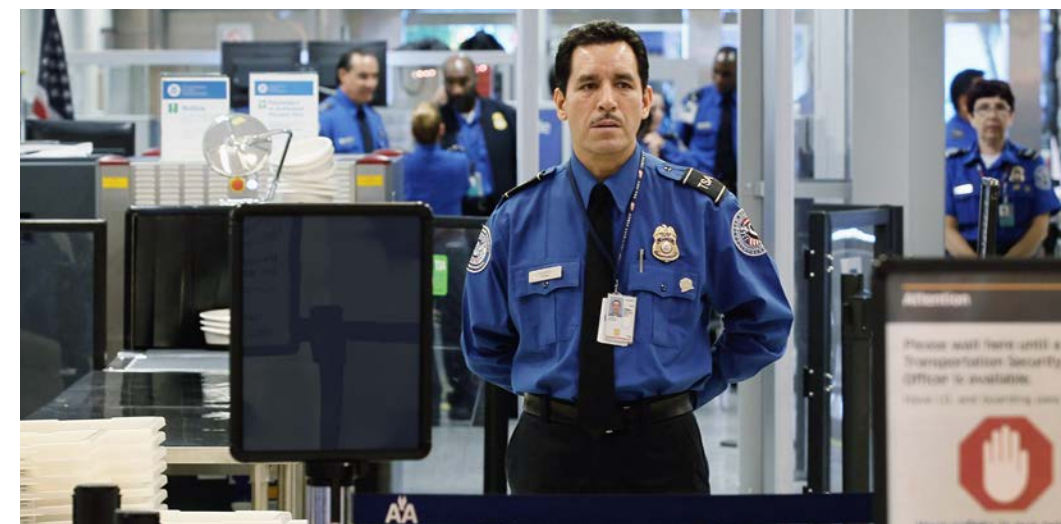
► In “Know Your Rights: Photography” (Winter 2015), we said that, “Private-property owners can decide whether, how and where others may photograph or take video of their property.” But, as some readers pointed out, we should have said, “Private-property owners can decide whether, how and where you may photograph or take video of their property when you are physically present on their property. But, if you are lawfully present in a public space and there is private property in plain sight, you may photograph or video that property as you see fit.”

YOUR STAND

We love your feedback! Let us know what you think about this issue at stand@aclu.org.

In Brief

WHAT’S HAPPENING, WHAT’S NEXT



FLIERS GROUNDED NO MORE

Lawsuit challenges the constitutionality of the government’s secret No Fly List.

WHEN THE GOVERNMENT PUT 13 AMERICANS ON THE NO FLY LIST, which bans individuals from air travel based on vague criteria, it took away their ability to travel to visit with family, find employment and receive proper medical care. And it did so without any meaningful process to clear their names.

Now, thanks to the ACLU’s groundbreaking five-year-long lawsuit, a federal court has recognized the freedom to travel by air is a fundamental right—and the secrecy surrounding the process is crumbling.

Last October, the federal government notified seven ACLU clients who had been barred from flying that they are not currently on the No Fly List.

The notification is an about-face for the government. Previously, it would neither confirm nor deny an individual’s presence on the list or offer

any justification that could be held up to scrutiny. In June 2014, the suit prompted a federal judge to rule that Americans had a constitutional right to air travel and that the government needed to notify the ACLU’s clients on the No Fly List of their inclusion and provide both a justification and a fair process to challenge it.

“Once the court made its constitutional ruling in our case, the continued existence of the system as the government would like to have it became untenable,” says Hina Shamsi, the Director of the ACLU’s National Security Project.

The government’s new process for contesting No Fly List inclusions has not followed the court’s instructions, and the case is proceeding. But for the first time, the secretive bureaucracy that has governed the denial of Americans’ right to air travel has become more open. **BY ADAM RAWNSLEY**

“Once the court made its constitutional ruling, the continued existence of the system as the government would like to have it became untenable.”

KNOW YOUR RIGHTS: TRAVELING

1. Although you’re allowed to decline a response when questioned about your destination, be aware that this may result in extra screening.
2. You may opt out of passing

through a body scanner, but that will most likely also result in extra screening in the form of a pat-down.

3. U.S. Customs and Border Protection can search and con-

fiscate electronic devices. Exercise your right to have the search conducted in front of a supervisor and obtain a receipt for anything taken.

Immigration Impact

HERE IS A LOOK AT THE IMPACT OF SOME OF THE ACLU’S IMMIGRATION REFORM WORK.

105,747 DREAMers immediately eligible for driver’s licenses

with more becoming eligible every day—thanks in part to ACLU litigation and advocacy around the Deferred Action for Childhood Arrivals program, instituted in 2012.

1,134 People released from U.S. Immigration and Customs Enforcement detention

in the Los Angeles area alone, plus several hundred more across the western United States, after the ACLU won them bond hearings.

Over 300 localities and five states with policies protecting individuals

from being held in local jails or state facilities for immigration purposes, thanks to the ACLU’s efforts.

Approximately 1 million Latino Phoenix-area

residents free from the fear of being racially profiled as undocumented immigrants, thanks to the ACLU’s victory against Sheriff Joe Arpaio.



➔ **In Good Company**

A LONG HISTORY of passionate visionaries have helped make the ACLU what it is today. Did you know that these civil liberties champions—along with many others—have contributed to the ACLU's success?

HELEN KELLER co-founded the ACLU in 1920. A leading



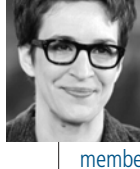
humanitarian, author and educator of the 20th century, Keller spoke out for the rights of people with disabilities, as well as laborers, women and African-Americans.

Before becoming a U.S. Supreme Court Justice, **RUTH BADER GINSBURG** co-founded the ACLU Women's Rights Project and

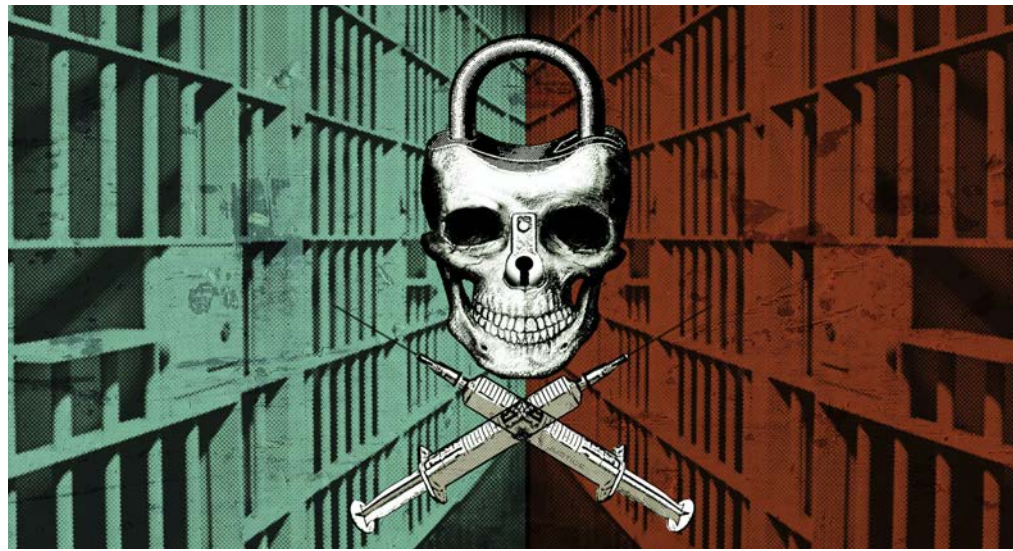


authored the ACLU's 1971 brief in *Reed v. Reed*, which challenged the automatic preference for men over women as administrators of estates. The ACLU won the case, and the Court extended the Constitution's equal protection guarantee to women for the first time.

Long before she scored her popular political talk show on MSNBC,



RACHEL MADDOW fought for the rights of prisoners with HIV in the U.S. As a staff member with the ACLU's National Prison Project, Maddow persuaded Mississippi officials to discontinue segregating HIV-positive prisoners.



LETHAL INJECTION FACTS

THE FIRST AMENDMENT guarantees the press's right to report on government proceedings—including executions. It is crucial that this powerful exercise of authority is transparent. Yet, as the death penalty's flaws are exposed, states have sought secrecy instead of reform.

Last year, Oklahoma executed Clayton Lockett. During the procedure, when Lockett should

have been unconscious, he began to groan and writhe. His execution was officially halted, but minutes later Lockett died.

Despite an Oklahoma law requiring executions to have public witnesses, the state shut the viewing window when it was clear that the execution was botched—and when oversight was most crucial.

The ACLU filed suit, arguing that the state cannot censor access to

executions. In response, Oklahoma actually claimed that the "press or public access to executions does not play any particularly positive role."

"More states are passing legislation to shroud the execution process in secrecy," says Lee Rowland, Staff Attorney with the ACLU's Speech, Privacy and Technology Project. "We will fight against attempts to keep the death penalty in the shadows." **BY MATT STROUD**

REJECTING PERSONHOOD MEASURES

The ACLU leads the fight against threats to reproductive freedom.

IN RECENT YEARS, ANTI-CHOICE ACTIVISTS have launched a new assault on reproductive rights: "personhood" measures that legally define the moment of conception as the beginning of life. These measures are intended to outlaw abortion and can also threaten in vitro fertilization, stem cell research and, in some instances, contraception.

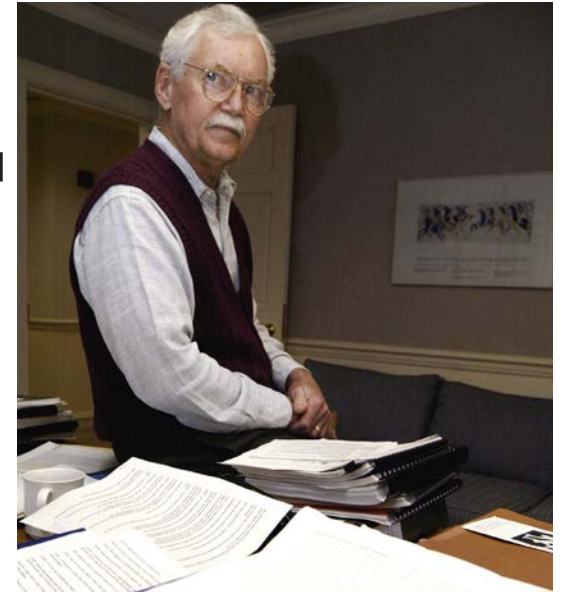
In election after election, voters have decisively repudiated these laws and made it clear that they do not want these measures in their states. In November, personhood advocates once again suffered bruising defeats, as voters in Colorado and North Dakota rejected personhood bills by nearly a 2-to-1 margin. In fact, personhood measures have failed every time they've been on the ballot, even in the most deeply conservative states, like Mississippi.

Yet, anti-choice advocates aren't giving up. In November, activists announced the next phase of their campaign: putting personhood on the ballot in cities and counties. But the ACLU has proven successful in thwarting attempts to limit abortion access at the local level. For example, along with Planned Parenthood and local advocacy groups, the ACLU scored a victory against an abortion ban in Albuquerque, New Mexico—inspiring confidence that they will prevail in similar local campaigns.

"This new emphasis on local ordinances will require even more vigilance to discover and defeat these measures," says Jennifer Dalven, Director of the ACLU's Reproductive Freedom Project. "That is why it is so important to have the ACLU, which has affiliates on the ground in every state, involved in the fight." **BY KATHLEEN GEIER**

Q&A ONE PERSON, ONE VOTE

DALE HO, DIRECTOR OF THE ACLU'S VOTING RIGHTS PROJECT, TALKS WITH THE PROJECT'S DIRECTOR EMERITUS, **LAUGHLIN MCDONALD**, ABOUT THE STATE OF VOTING RIGHTS IN THE U.S.—PAST, PRESENT AND FUTURE.



Laughlin McDonald joined the ACLU in 1967 and has been a leader in the fight for voting rights ever since.

DH: What made you decide to start working on voting rights?

LM: I grew up in a quintessential Southern town, and racism and segregation were facts of life. The more I experienced it, the more I wanted it to end. I eventually became a lawyer and came to work for the ACLU in Atlanta in 1967. The office had two main litigation projects—to desegregate prisons, jails and juries in Southern states, which it did, and to fight for the voting rights of minorities. The success of our desegregation litigation left a lot to be done for voting rights, and I've been working on it ever since.

DH: What do you think have been some of the greatest improvements for voting rights?

LM: I think making the electoral process more accessible to minority communities—and therefore giving minorities in this country the opportunity to elect representatives of

their choice to public office—has been hugely important. If you can't elect representatives of your choice, you're not only denied benefits, but you become a victim of the government.

DH: I think what a lot of people don't understand is that it wasn't just enough to give people the ability to cast a ballot. When we got rid of literacy tests and poll taxes—which was an important step forward—recalcitrant counties and cities adopted other kinds of devices and manipulated district lines so that, even if every African-American could vote, they'd still lose the election. We needed reforms to make sure that voters of color could actually elect candidates from their own communities.

If you look at the composition of local and state governments, minority communities are now better represented—but it took decades and there is still much to be done.

LM: The passage of the Voting Rights Act in 1965 had a huge impact. It abolished tests and other schemes that were expressly designed to discriminate against racial minorities and keep them from the polls. It also allowed for federal oversight of places with a history of repressive voting tactics. In 1975, the Act was expanded to cover American Indians, Asian Americans, Alaskan natives and those of Spanish heritage, and it required that voting registration, instructions and ballots be available in languages other than English. Taken together, these efforts helped to increase participation in voting and office-holding by previously unrepresented communities.

DH: What do you think are some of the biggest voting challenges we face today?

LM: In 2013, the Supreme Court invalidated one of the key provisions of the Voting Rights Act—Section 5. Jurisdictions that were previously subject to federal review and approval of changes to voting laws are no longer required to get that preclearance. As a result, many have now adopted retrogressive redistricting plans and other voter-suppression measures, which can be implemented without having to prove that they have no discriminatory impact on minority voters.

DH: How has the ACLU helped make progress on the voting rights front?

LM: The ACLU has accomplished some great work in recent years, but the establishment of the Voting Rights Project in the 1960s gave us a consistent voice and role advocating for the voting rights of racial minorities—in the South and around the entire country. We have a long history of challenging discriminatory election practices and educating the public about voting rights, but our work is far from over.

“If you can't elect representatives of your choice, you're not only denied benefits, but you become a victim of the government.”

QUIZ
BANNED BOOKS

Over the years, state governments and local school districts have attempted to ban many iconic books.

Can you match these literary masterpieces with the reason they were banned?

1 One of the most challenged books of all time, this work was alleged to be “racially insensitive” and “oppressive.”

2 Challenged for explicit language, frequent use of racial slurs, promotion of white supremacy and use of adult themes.

3 This poetic work was banned for its raw imagery and openly sexual content.

4 Banned in the entire United States by customs censors for its potential to inspire “impure and lustful thoughts.”

5 Common complaints against this book included characters’ sexual behavior and “contempt for religion, marriage and family.”

A. *Brave New World*, Aldous Huxley, 1932

B. *To Kill a Mockingbird*, Harper Lee, 1960

C. *Ulysses*, James Joyce, 1922

D. *The Adventures of Huckleberry Finn*, Mark Twain, 1884

E. *Howl*, Allen Ginsberg, 1956

ANSWERS

1: D, 2: B, 3: E, 4: C, 5: A



Lakisha Briggs

VICTIMS AREN'T NUISANCES

The ACLU leads the charge to combat so-called nuisance ordinances that punish victims of crime for calling the police and puts their housing security at risk.

IN JUNE 2012, LAKISHA BRIGGS'S ABUSIVE EX-BOYFRIEND came to her apartment in Norristown, Pennsylvania. Briggs was faced with a terrible decision. If he stayed, she feared that he would hurt her or her 3-year-old daughter. If she called the police to force him to leave, she knew that it could count as a final strike under the local “nuisance” ordinance, which encourages landlords to evict tenants when the police are called to a property three times in four months.

That night, Briggs’s ex-boyfriend brutally assaulted her, stabbing her in the neck. A neighbor called the police. Briggs was airlifted to a hospital.

Despite the circumstances surrounding the call, Norristown officials considered this visit from the police to be the last straw, and three days later, Briggs’s landlord told her she had 10 days to vacate her home.

The ACLU intervened, insisting Norristown revoke its ordinance—which it did, only to replace it with another version. In response, the

ACLU filed a federal lawsuit in April 2013, claiming the ordinance violated “the First Amendment right to petition the government, the right to live free from discrimination and the right to due process,” said Sandra Park of the ACLU Women’s Rights Project.

The lawsuit helped expose the disproportionate impact of nuisance ordinances on victims of domestic violence, who account for a significant number of police calls. By effectively punishing victims for their own abuse, the ordinances inhibit tenants from requesting emergency services—“basic governmental operations,” Park says.

The Norristown ordinance was permanently repealed last year. The ACLU also helped pass a bill in Pennsylvania to protect victims of crime who request police assistance, and have successfully intervened in other cities and states. They also launched the “I Am Not a Nuisance” campaign to track similar ordinances nationwide and push for legislative change.

BY ANNAMARYA SCACCIA



Get in Gear!

The ACLU’s new online store is your destination for the latest goods from the country’s preeminent defender of civil liberties. From shirts and umbrellas to smartphone cases and more, the ACLU store has everything you need to show where you STAND. CHECK IT OUT TODAY AT aclu.org/store.

BEYOND MARRIAGE

The ACLU works case by case, state by state, for an America free of discrimination based on sexual orientation and gender identity. Despite recent gains in rights and protections, we have a long way to go.

EMPLOYMENT

28 STATES HAVE NO LAWS BARRING EMPLOYERS FROM FIRING PEOPLE BASED ON THEIR SEXUAL ORIENTATION.

32 STATES HAVE NO LAWS BARRING EMPLOYERS FROM FIRING PEOPLE BASED ON THEIR GENDER IDENTITY.



TRANSGENDER RIGHTS

28% OF TRANSGENDER OR GENDER NONCONFORMING PEOPLE HAVE EXPERIENCED HARASSMENT IN MEDICAL SETTINGS.

16

states have introduced broad “religious exemption” bills this year alone, aimed at granting a “license to discriminate.”

LAW ENFORCEMENT

22% OF LGBT PEOPLE who have in-person contact with police report experiencing at least one type of MISCONDUCT OR HARASSMENT.

Transgender WOMEN are routinely PLACED IN MEN’S PRISONS and jails. In custody, transgender people are 13 times more likely to experience sexual violence than non-transgender prisoners.



YOUTH IN SCHOOLS

56% of LGBT students have EXPERIENCED DISCRIMINATORY SCHOOL POLICIES, including being prevented from forming a Gay-Straight Alliance or attending a dance with a same-gender date.

LGBT YOUTH, ESPECIALLY GENDER NONCONFORMING GIRLS, ARE **3 times more likely** TO EXPERIENCE HARSH DISCIPLINARY TREATMENT AT SCHOOL, LEADING THEM INTO THE SCHOOL-TO-PRISON PIPELINE.

19% have been refused medical treatment based on their gender identity.

ONLY 21% OF TRANSGENDER PEOPLE HAVE BEEN ABLE TO UPDATE ALL THEIR I.D.s AND RECORDS, AND **33%** HAVE UPDATED NONE, INCREASING THE RISK OF DISCRIMINATION OR HARASSMENT ANYTIME AN I.D. IS REQUIRED.



WHY DID THE ACLU HIRE A TECHNOLOGIST?

AN ACLU STAFFER TALKS ABOUT THE **ORGANIZATION'S GROUNDBREAKING WORK** TO ENSURE THAT FUTURE TECHNOLOGY PROTECTS CIVIL LIBERTIES.

FOR NEARLY A CENTURY, the ACLU has led the fight to preserve our rights to free expression, free association, privacy and a functioning free press. But as the technology that enables our speech increasingly moves online—and as the revelations about massive surveillance by intelligence agencies and breaches by criminals from around the world illustrate—the current law alone isn't enough to guarantee these rights.

When the government uses secret law or ignores the law entirely to conduct surveillance, defending your privacy and security takes on a new

dimension, broadening from a legal fight to include a technological one that pits the government's eavesdropping software against your email, phone calls, text messages and social media. When trying to protect yourself from criminals, technology is all that stands between them and your data.

We need laws forbidding the government from reading your communications at will, but we also need technology that makes sure they can't.

Technology, working hand in hand with the law, can provide a layered defense against government abuse and help build a society that is both safer and freer.

As an Internet Infrastructure Technologist for the ACLU, I'm working on both of these layers. On the legal side, ACLU lawyers and lobbyists strenuously argue for our speech and privacy rights, and I help them understand the technical aspects of their legal advocacy. On the technology side, I'm working to build the protocols and tools that can protect your speech and privacy from the onset.

For starters, it's imperative that we design strong civil liberties protections into the communications protocols we use. That's why I'm working with the groups who document the "rules of the road" for the technologies we will all use in the next few decades. These standards will determine the levels of privacy and confidentiality possible in all our communications. And getting them right will require not only solid engineering but also broad social consensus. (It's not very useful to know a secure communications protocol if no one else is using it.)

At the same time, the software we use to talk to each other needs to be up to the technical challenge of protecting us. And so I work to develop free software that

any of us can use to ensure our privacy and speech. Some of that includes developing encryption and anonymization tools. Strong encryption—which takes your messages and renders them into gibberish incomprehensible to anyone who doesn't have the "key" to unlock them—can prevent eavesdroppers from reading your messages.

If enough people and communications services use software with security features like strong encryption and anonymization built into them, we can make the kind of dragnet spying practiced by the NSA impossible, or at least prohibitively difficult.

The ACLU's lawyers and lobbyists are always ready to fight back against the overreach of government surveillance. Often, however, that legal fight can begin only after the abuse has already taken place and been exposed. Developing and deploying strong protocols and software help to stop the abuse before it happens, so that we're not left trying to curb a surveillance or criminal campaign that already has our data in hand.

Weaknesses in our communication systems have enabled the erosion of civil rights and civil liberties since 9/11. But here at the ACLU, we're helping to change the nature of advocacy in the 21st century to make sure the law and technology start working together for you.

DANIEL KAHN GILLMOR
is an Internet Infrastructure Technologist for the ACLU.

“ Technology, working hand in hand with the law, can provide a layered defense against government abuse and help build a society that is both safer and freer. ”

STUDENT RIGHTS, WRONGED

Students continue to face threats to their rights in schools nationwide—including widespread discrimination based on religion, sexual orientation and gender identity. The **ACLU** remains a bulwark for preserving and restoring their **freedom**.

BY PHYLLIS ECKHAUS

BY THE TIME 12-YEAR-OLD JORDAN ANDERSON APPROACHED

THE ACLU FOR HELP, HE'D HAD ENOUGH OF HIS PUBLIC SCHOOL'S CAMPAIGN OF ENDLESS, OPPRESSIVE PROSELYTIZING. THE MIDDLE SCHOOL HE ATTENDED IN JEFFERSON, SOUTH CAROLINA, INCORPORATED BIBLICAL SCRIPTURE INTO LESSON PLANS, PRAYED

and proselytized at nearly every school event and prominently displayed religious iconography—including the Ten Commandments—on its walls.

Still, in 2011, when Principal Larry Stinson held a worship rally during the school day, and sent those few who chose to opt-out to in-school suspension, even the evangelical minister in charge of the rally was moved to ask him, “How are you getting away with this?”

Replied Stinson, “I’m not ... I want these kids to know that eternal life is real, and I don’t care what happens to me, they’re going to hear it today.”

The videotaped rally—featuring Christian

forced to attend that school rally was the last straw. Jordan, together with his dad, sought help from the ACLU.

The Andersons recognized that students do not “shed their constitutional rights at the schoolhouse gate,” as U.S. Supreme Court Justice Abe Fortas observed in 1969, in *Tinker v. Des Moines*, the landmark ACLU case affirming that the First Amendment applies to public school students. Famously, student Mary Beth Tinker, her brother, and others in their Des Moines, Iowa, school district had faced censorship when they sought to wear black armbands and peace symbols in protest of the Vietnam War.



rapper B-SHOC, whose “passion is to show people that praising God can be so much fun”—culminated in celebration of the 324 sixth-, seventh- and eighth-graders who signed pledge cards making “a decision for Jesus Christ.”

For Jordan, who arrived at his atheist convictions after exploring multiple faiths, being

In the years and decades since *Tinker*, defending student rights has been of paramount importance to the ACLU. Not only are kids in school vulnerable—school authorities exercise power and control over students for most of their waking hours—but public schools are the institutions we designate to inculcate American values in our youth.

When schools violate the Constitution, they don’t just hurt a handful of kids. They renege on their crucial role to prep students for responsible citizenry.

Attorneys from the ACLU of South Carolina and the national ACLU’s Program on Freedom of Religion and Belief immediately joined forces to file suit on the Andersons’ behalf. In 2012, the ACLU won a consent decree, and the school promised to change its ways.

Yet the Andersons’ ordeal was not over. Jordan told the local paper he got death threats. Neighbors drove past their house to stop, honk their

tigation suggests an entrenched culture that disregards the law and turns religious intolerance into official policy.”

THE FIRST LINE OF DEFENSE

While the ACLU’s national reputation and expertise readily strike fear into school districts that fail to respect kids’ rights, it’s ACLU affiliates’ on-the-ground work that builds a bulwark against such intolerance.

And that work gets intense. ACLU of Oklahoma Executive Director Ryan Kiesel notes, “At the



horns and curse at them. The landscape business owned by Jordan’s dad went under because no one in town would hire him. The family’s two boxers suddenly became violently ill, suspected victims of poison. One died.

Years after the case settled, still unable to find community acceptance, the Andersons left town to start a new life on the West Coast.

The ACLU, however, remains present and vigilant in South Carolina, having filed public records requests with every district in the state in an effort to discover just how bad the public school proselytizing is throughout the state.

And the answer? Pretty bad. Follow-up to the ACLU’s requests showed violations of the separation of church and state in every one of the state’s school districts, ranging from official prayers at school events to official partnerships with Christian ministries providing “cultural enrichment” to students.

Several school districts changed their practices after being contacted by the ACLU. But, as Heather Weaver of the ACLU’s Program on Religion and Belief observes, “the sheer number of violations we discovered through limited inves-

beginning of every semester, our phone starts to ring off the hook. We get emails and complaints from parents, students, and sometimes teachers and administrators.”

Last year, the ACLU helped defeat a proposed Bible curriculum for the public schools of Mustang County. The Bible curriculum had been funded and touted by the local beneficent born-again Baptist billionaire, Steve Green, president of the Hobby Lobby chain, which has its corporate headquarters in Oklahoma City. Speaking before the National Bible Association, Green had described the course as conveying the Bible’s literal truth and the consequences when people disobey God. Green’s representative expressed the desire to implement it in thousands of public schools throughout Oklahoma and the nation by 2017.

The Mustang County school board has remained undeterred, fiercely determined to educate kids against sin.

In early 2015, the board sought to launch a pastor-led program, Kids Eagerly Endorsing Purity (KEEP). The program promotes saying no to alcohol and drugs for life and abstinence

until marriage (Oklahoma is second only to New Mexico in its numbers of births to teens 15 to 19 years old).

Kiesel was alerted by a parent who emailed a copy of the opt-out form. Upon receiving it, Kiesel snapped a photo of it and posted it to the ACLU of Oklahoma's Facebook page, saying "Guess which school is getting a call from the ACLU tomorrow?" He also asked, "Would you like to call them, too?" and gave the school board's phone number.

"We think we shut down the switchboards," Kiesel reports. Furthermore, that one Facebook post went viral, garnering almost 30,000 views.

By spurring coverage and conversation—and calling out absurd and outrageous school practices—Kiesel sees the ACLU as creating a safe space for dissenting Oklahomans, parents and kids to find each other.

LGBT RIGHTS IN SCHOOLS

This past winter, a worried teacher called the ACLU's national hotline supporting lesbian, gay, bisexual and transgender (LGBT) youth, urgently seeking advice from Chris Hampton, the ACLU's Youth and Program Strategist for LGBT issues.

The teacher was privy to a potential family catastrophe in the making, set in motion by a kiss before class.

For Cindy and Sue (we've changed their names to protect their privacy) that smooch in a high

school hallway would upend their lives. The assistant principal saw Cindy and Sue kiss. And he—along with the principal—was not only a public school authority, he was also an elder in the local church, which condemns LGBT people.

At a service at the church a few days later, the

assistant principal refused to let Cindy lead a prayer. Her parents wanted to know why, so he outed Cindy.

Most galling to Hampton, the assistant principal knew that Cindy's parents had been previously investigated for child abuse. And that the danger to Cindy was real. Earlier, the principal had proudly outed another girl to her family—and she promptly became homeless because her folks threw her out.

Hampton gave the teacher some information on student privacy, and he approached the school's superintendent. And while the superintendent was suitably enraged by the school administrators' conduct, it may be too late to remedy the risks to Cindy and Sue at school and at home.

Despite progress in popular culture and some pockets of the country, LGBT kids often endure a far from gleeful public school experience. Hampton gets more than 160 calls a year on behalf of LGBT students backed up against a school wall.

She pulls out a photo of Simone (not her real name), a male-to-female transgender third-grader from Texas and exclaims over what an adorable girl she is. "You can see why little boys were like, 'What are you doing in our bathroom?'"

Alas, the principal was not as enlightened as his young charges. He insisted Simone use the boys' bathroom and be addressed as Simon. Simone had also been harassed for wearing nail polish and sent home for wearing a dress.

Simone would come home from school every day in tears, begging not to return. Her desperate

mom called the school's superintendent—who was also the Title IX coordinator responsible for ensuring gender equity. He took a week to call her back, and then dragged his feet.

So Simone's mom called Hampton and the ACLU came to Simone's rescue. The school "is

now treating her right," Hampton says.

In Hampton's 12 years on the job, she's seen progress. Today, she gets many calls from parents, who are increasingly accepting and protective of their LGBT kids.

And sometimes the ACLU has to remind schools of legal principles that were settled long ago. In 2009, 40 years after *Tinker* established students' right to free expression, the ACLU brought suit to ensure that student free speech would be understood to encompass students' vocal support of gay rights.

A Florida panhandle school district claimed that symbols and slogans as innocuous as a rainbow flag or "I support my gay friends" were nefarious signs that students were enlisted in a secret or illegal organization.

Even more absurd, the principal of Ponce de Leon High School testified that rainbows on T-shirts would make students automatically picture people having gay sex, and thus must be banned—though he was fine

with kids wearing Confederate flag insignia.

Heather Gillman stepped forward after another student reported to school officials that she was being harassed for being a lesbian. In response, the principal launched a campaign of intimidation and censorship against all the kids who'd attempted

to support their bullied classmate, including suspending 11 students five days each for participating in the "gay pride movement."

Mary Beth Tinker herself, now on the board of the Nation's Capital ACLU affiliate, appreciates how

Gillman carried on Tinker's legacy by daring to sue the censorious school board.

By taking action, Tinker notes, "history is made." And indeed, *Gillman v. Holmes County School District* continues to be widely cited



MARY BETH TINKER HOLDS A PHOTO OF HERSELF AND HER BROTHER, JOHN, EACH POSING WITH THEIR BLACK ARMBANDS.

A FOUNDATION FOR STUDENT SPEECH

IN 1965 MARY BETH

TINKER, her brother and three other students wore black armbands to school in Des Moines, Iowa, to protest U.S. involvement in Vietnam. School officials hastily banned armbands. The students proceeded with their protest anyway and were suspended.

"We had no idea that our small actions were going to have such big conse-

quences," Tinker recounts. "We were following that natural drive that so many kids have had of wanting to express our feelings about the issues of our world and our lives."

Represented by the ACLU, the students' parents sued. Four years later the Supreme Court found that students do not "shed their constitutional rights to freedom of speech

or expression at the school-house gate."

The ruling led to what has become known as the Tinker Standard: For speech to be subject to school control, there needs to be a real and likely chance it would substantially disrupt school activities.

The decision has been cited in nearly 6,000 cases and provides a broadly used measure to protect

student speech in schools.

"I always thought that we would lose," Tinker confesses. "I thought if you're a child and you break a rule, you're going to get in trouble. It's not possible that some big important judge could stand up for me over my math teacher.

And that's the beautiful thing about the involvement of the ACLU. It leveled the playing field."

against schools that equate any reference to LGBT people—let alone LGBT students—as an invitation to chaos and transgression.

While resistance from schools and school districts remains stubborn, it has shifted to devious rather than openly homophobic.

Witness the experience of Johnny Walker, thwarted in 2014 when he first tried to start a

By taking action, Tinker notes, "history is made."

Gay-Straight Alliance (GSA) at his Columbus, Georgia, high school.

The principal called Walker into his office and interrogated him, demanding, "Why do you feel the need to tell people about your sexuality?"

Walker countered by pulling up the federal Equal Access Act on his phone. The principal pored over the Act, pausing at the last clause, "Nothing in this subchapter shall be construed to limit the authority of the school, its agents or employees, to maintain order and discipline on

the premises.” Triumphant—and wrongly—the principal declared, “This is my out!”

A fed-up Walker called the ACLU. Attempts to negotiate led to months of further stalling—but three weeks after the ACLU threatened litigation, the GSA was approved. The first meeting last fall was packed, and membership continues to grow.

A FORCE TO BE RECKONED WITH

ACLU affiliates have cultivated multiple strategies to protect students’ rights. The ACLU of Tennessee, for example, publishes a students’ rights handbook, now in its fourth edition. “Our goal is for the students to become their own advocates,” says Hedy Weinberg, Executive Director of the ACLU of Tennessee.

Memphis, Tennessee student leader Kemario

The ACLU, Kiesel says, “is a force to be reckoned with. Our ability to help students and their parents is directly tied to our perceived strength and gravitas in the state.”

jobs are really difficult, and they are really busy, and they often don’t know this stuff is going on.” A recent complaint—about a teacher who used the religious cartoon series *VeggieTales* in class and directed students to pray for President Obama’s soul—was resolved with a phone call to the school district.

That said, the ACLU’s highly public role in defending student rights is powerful and catalytic. The ACLU, Kiesel says, “is a force to be reckoned with. Our ability to help students and their parents is directly tied to our perceived strength and gravitas in the state.”

And the ACLU’s solid and principled local presence is a source of courage and moral sup-



Davis carefully deployed the handbook before launching a multi-issue protest at his Carver City High School, educating himself and his fellow students. “We made sure we understood the rules,” he says.

And their self-education paid off. Not only did they begin to draw attention to conditions at their school—where administrative errors threatened kids’ ability to graduate and the lack of air conditioning made for sweltering classrooms—they ultimately took their protest city-wide, successfully challenging the closure of 20 schools in their community. Davis recently advised the ACLU of Tennessee on a forthcoming youth activism guide.

Kiesel from the ACLU of Oklahoma notes that the affiliate is sometimes the school district’s eyes and ears. “School administrators’

port. In 2013, in Murfreesboro, Tennessee, social studies teacher Allen Nichols and his students banded together to fight a school board pronouncement that Nichols remove anti-bullying posters that identified his classroom as a safe space for LGBT students.

Once Nichols involved the ACLU, he says, his students “could see there were [well-trained] professionals who had a record of standing up for the First Amendment, and it ... gave the students backbone in a way we never could do in the classroom.”

“If it had not been for the ACLU, I don’t think the students would have felt that feeling of empowerment to go out and advance the cause,” Nichols notes. And what better lesson can the public schools teach? ■

Bill Fitzgerald contributed to this article.

INEQUALITY

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FROM THE **WAR ON DRUGS** TO THE **WAR ON TERROR**,
RECKLESS POLICIES HAVE TOO OFTEN **SET THE**
POLICE AGAINST MINORITIES AND THE POOR.



BAD LAWS

BAD LAW ENFORCEMENT

THE POLICE SHOOTING AND KILLING of an unarmed black teenager named Michael Brown sparked civil unrest in his hometown of Ferguson, Missouri, last August. The weeks that followed brought to a national audience shocking stories of inequity suffered by Ferguson residents at the hands of local law enforcement. The fundamental brokenness of the system seemed to be confirmed when a grand jury refused to indict the police officer who shot Brown. Meanwhile, to suppress public demonstrations, police equipped themselves like an occupying force, treating protestors as an insurgency to be stomped out.

The casual employment of tear gas, armored vehicles and open antagonism by law enforcement are outgrowths of a system whose overaggression and empathy are, too often, inversely related. According to Ezekiel Edwards, Director of the ACLU's Criminal Law Reform Project: "Ferguson is really the symptom of an illness that is quite serious and has really permeated many different police-community rela-

tionships around the country. While you can always see isolated incidents and think they're just that—isolated—that would be a big mistake. The killings and the shootings that we have seen around the country are actually not particularly new. They're getting a lot of media attention, but unarmed people—particularly people of color in poorer communities—bearing the brunt of excessive and sometimes fatal force on behalf of overaggressive police departments, often over transgressions or disputes that are quite minor, is a problem that we've had in this country for a very long time."

This problem meshes with the complicated racial, social and cultural history of the United States, and was enshrined with the onset of the so-called war on drugs. In 1971 President Richard Nixon called drug abuse "public enemy number one," and in prepared remarks declared, "In order to fight and defeat this enemy, it is necessary to wage a new, all-out offensive." This prompted a shift in the way police operate, creating new funding streams that financially empowered law enforcement, jails and prisons, and focused them in the local public-safety paradigm.

“[Police] were going to operate more like paramilitary forces fighting a wartime enemy,” Edwards says, “and less like community-oriented, problem-solving, public-health-driven police departments looking to figure out how to work with the community and other stakeholders to help people who have drug addictions and people in poverty seeking improved schools and job opportunities and viable alternatives to the black market, and thinking of intelligent long-term responses to drug use and sale.”

Compounding these problems, federal and state policymakers passed draconian and often mandatory sentencing laws that severely punished people convicted of violating drug laws, resulting in decades-long and sometimes life-without-parole sentences. These punitive and ultimately ineffectual incarceration efforts exacerbated the fraying of relationships between police and their communities.

Meanwhile, many state and local law enforcement agencies, often as part of the performance metrics required when receiving federal funding, used simple arrest figures to measure the success of their drug enforcement efforts. The use of such metrics permeated the local culture of policing, resulting in internal performance goals that likewise focused heavily on high numbers of arrests, as opposed to measuring public safety, the number of arrests resulting in successful prosecutions, assessing community satisfaction with the police, and the state of community-police relationships, among others. This incentivized officers to prioritize arrests for low-level offenses, which are easy to make and easy to count.

According to Edwards, the problem intensified in the 1980s and 1990s, as poorly managed and largely unaccountable “task force” crime units were established to patrol city streets with a particular emphasis on drug law enforcement. The political response to the terrorist attacks in 2001 made things worse and provided justification, however specious and misplaced, for local police departments to build or expand SWAT teams and purchase surplus military hardware to carry out domestic law enforcement duties.

Many of these ill-considered policies have resulted not in increased trust, partnership and respect between law enforcement and the residents of communities they are sworn to serve, but in increasingly adversarial relationships, with both sides resenting and fearing the other.

It's the daily indignity of thousands of police encounters that degrades the relationships between communities and police.

OVERLY AGGRESSIVE POLICING is often justified by police and politicians because of violence associated with the drug war or communities of color. Seema Sadanandan, Policy and Advocacy Director for the ACLU of the Nation's Capital in Washington, D.C., says the reality is much different. For starters, assaults and felony killings of police officers in the United States are down sharply over the past two decades, she says. Furthermore, while the pattern of violence communities of color face from police is a real problem, “the vast majority of aggressive police encounters—particularly in black and brown communities—do not result in someone getting shot and killed,” she says. Rather, “it’s the daily indignity of thousands of police encounters that degrades the relationships between communities and police and makes our communities less safe overall.” Consequently, it’s not simply a matter of taking tanks away from police.

Washington, Sadanandan says, is a perfect example of this. “D.C. is largely held up across the country as a model of so-called community policing,” she says, “and oftentimes when you hear about incidents like what happened in Ferguson or with Eric Garner in New York, it’s justified by citing black-on-black violence.” However, she adds, when you look at the actual policing of communities, the majority of policing is focused on the aggressive enforcement of low-level offenses. For example, in D.C., 96 percent of more than 45,000 arrests every year are for nonviolent offenses. “Yet when you question aggressive policing of black communities, oftentimes they use the justification of black-on-black violence,” she says.

This misrepresentation by hyperaggressive law enforcement and its tragic resonance with the wider public has shaped the way the ACLU approaches the issue and works for reform. The ACLU, Sadanandan says, “focuses on the way in which inequity is reproduced by institutions. So we’ve had to change and shift those systems, and that’s why we have to use so many different strategies. That’s why we have to use policy and advocacy and public education and litigation. We’re looking at system change.”

Part of such a change includes shattering the “war on drugs” rhetoric that has wrongly distorted public perceptions of crime and punishment.

“As a society we have centralized the use of the criminal justice system as our primary instrument for addressing social issues,” Sadanandan says. “A kid acts up in school? Call the police. You’re having an issue in your local community?”

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GRENADING A BABY'S CRIB

When Habersham County, Georgia, sheriff's deputies disastrously raided a house in May 2014, they claimed to have no way of knowing that children were present. This despite the plethora of children's toys strewn about the front yard, and a minivan in the driveway with family decals of four children, a mom and a dad.

Besides missing such obvious clues, the person the deputies were attempting to subdue was not even at the house at the time—indeed, he didn't even live there. Instead, police stormed the home of a sleeping, totally innocent family. They found no weapons, no drugs and no suspects.

Sadly, the feckless-

ness of the raid—which even by the sheriff's department's own admission was fraught with gross tactical failures—left more than emotional scars. One of their deployed “flashbang” grenades—designed for use by commandos in combat zones—landed in a baby's crib. It detonated next to Bounkham Phonesavanh, a 1-year-old boy. Bou Bou, as the child is called, had his chest ripped open, his body covered in burns, one of his lungs collapsed, and his face disfigured.

Doctors still don't know the extent of the damage to the child's brain. All this happened because law enforcement wrongly suspected someone in the house



Alecia and Bounkham Phonesavanh attend a prayer vigil for their toddler son, Bou Bou, who was critically injured by a SWAT team.

had participated in a \$50 drug sale.

To save baby Bou Bou's life and give him some measurable standard of living, the Phonesavanh family has incurred over a million dollars in medical expenses. Shockingly, Habersham County went to court to fight having to contribute to the family's paying off the debt.

The ACLU has taken up the cause of the Phonesavanh family, elevating their story

so people understand the often-tragic consequences of overly aggressive policing. Since the ACLU became involved, Senator Dick Durbin of Illinois has held congressional hearings on policing and criminal justice. Now that Congress is actively looking into the problem, the ACLU has made it a priority to help lawmakers understand how police militarization can destroy individuals, families and communities.



GUILTY UNTIL PROVEN INNOCENT

“STOP-AND-FRISK” IS A POLICING TACTIC in which law enforcement officers can, without probable cause, briefly detain an individual, ask questions, and search for weapons. If contraband is discovered, the cops may arrest the detainee. The program has been proven to target minority communities disproportionately. Since 2002, of the 5 million stops in New York City alone, 90 percent of those stopped were non-whites, mostly black or Latino; 88 percent were completely innocent.

The New York Civil Liberties Union (NYCLU) has launched Communities United for Police Reform (CPR), a multifaceted effort to change the broken policies that result in programs such as stop-and-frisk. CPR researches discriminatory police practices, helps educate and organize the public, and works with policymakers to end racial profiling and bring police departments to account. The NYCLU also has filed federal lawsuits aimed at halting stop-and-frisk and other practices that violate privacy rights and the freedom to assemble.

Additionally, the NYCLU has created a smartphone application called Stop and Frisk Watch that allows New Yorkers to alert each other of law enforcement abuses and video-record ongoing incidents.

Police were going to operate more like paramilitary forces fighting a wartime enemy and less like community-oriented, problem-solving, public-health-driven police departments.

4 BAD POLICIES THAT LEAD

1033 PROGRAM

The 1033 program allows the Pentagon to give surplus military equipment to civilian law enforcement agencies. When police officers carry tools of war, they often adopt combat tactics, escalating situations and alienating the public.

STOP-AND-FRISK

Nine out of 10 people subjected to stop-and-frisk are proven to be innocent of wrongdoing, and no data suggests that stop-and-frisk reduces crime. In fact, cities without such policies have seen steeper declines in violent crime.

TO OVER-POLICING

INTRUSIVE SURVEILLANCE

Police departments sometimes use surveillance technology developed for spy agencies. In Florida, police used “stingray” devices that simulate telecommunications towers to collect information about mobile devices—and they did so without probable-cause warrants.

JUMP-OUT STOPS

Some law enforcement agencies use a tactic called “jump-out stops,” in which police spot someone allegedly loitering or jaywalking and use it as a pretense to demand identification and perform a search. Communities of color are the most affected.



continued from page 20

Call the police. Young people are out on the corner smoking marijuana? Call the police. The criminal justice system is really a blunt instrument when it comes to dealing with all these social problems.

“This is the legacy of the war on drugs, which itself arose from the legacy of criminalizing and marginalizing black and brown communities and immigrant communities. It has to do with structures from top to bottom, and it has to do with the values that have been strengthened through the war on drugs.”

Those values include punishment as a deterrent, and justice equals revenge. But when you thoughtfully explore these issues with victims of crime, you find most victims aren’t actually looking for revenge, Sadanandan says. In fact, the group of people who are most susceptible to victimization by violent crime in America is young black men—the same people who are being incarcerated. “So the line between victim and so-called offender is very thin and gray, and more often than not the groups are made of the same people. In our thinking about public safety, we need a shift to include people of color and the poor in our metrics about what strategies are making communities safer.”

The ACLU also seeks to ensure that the public doesn’t see the police as the enemy. As ACLU Executive Director Anthony Romero put it, “Good policing is essential to strong and safe communities. The police are not our enemy—police abuse and brutality are. If we do our best to address police abuse, brutality and impunity, we must also double down on our efforts to ensure that we not demonize all police and the essential role they play.”

IN THE GRIM SHADOW OF THE DRUG WAR, one area of promise in public safety is the adoption of body cameras, which attach to the uniforms of law enforce-

Good policing is essential to strong and safe communities. The police are not our enemy—police abuse and brutality are.

ment officers and record encounters between police and the public. These devices help clarify events for internal review and legal proceedings. They are beneficial on both sides of the lens, providing an uneasy public with a new tool to hold police accountable while giving the police a way of showing when they have used force reasonably.

Dennis Parker, the Director of the ACLU’s Racial Justice Program, considers police departments’ increasing acceptance of body cameras to be a first step.

“It is at least a reflection that more and more police departments are recognizing that there is a problem,” he says. “Whether or not that’s going to be the answer remains to be seen—there are studies that go both ways—but it’s at least an acknowledgement that there’s something wrong with too many police-civilian interactions.”

Along those lines, Parker says, police need to do a much better job of collecting and examining data, and using it to determine when and where bias exists.

“They need to make clear that it is a priority that treatment has to be fair,” he says. “The use of force has to be fair and justified. And police should be held accountable, which is perhaps the biggest thing that’s missing now.”

There are signs of improvement. Alongside the adoption of body cameras are early attempts at improving training and data collection. Meanwhile, a number of police departments across the country are beginning to focus on ways in which they might mend the frayed bonds between themselves and the communities they are charged with protecting.

Parker says he is hopeful that such efforts will proliferate. “Improving relations between police and communities of color is a necessary step that is ultimately even more important than technological improvements like body cameras.” There is a long road ahead, and much work to be done. ■



4 FRONTS IN A NATIONWIDE EFFORT

IN COURTROOMS AND TOWN HALLS, THE ACLU LEADS A NUMBER OF ADVOCACY AND REFORM EFFORTS TO HELP REIN IN OVERLY AGGRESSIVE POLICE TACTICS. HERE ARE SOME EXAMPLES.

WASHINGTON, D.C. Racial profiling, routine stop-and-frisks and jump-out stops plague the nation’s capital. In response, the ACLU is forcing daylight on the police, organizing hearings so victims of abuse by law enforcement can tell their stories to the D.C. city council. ACLU efforts also include pushing for D.C. police to document their searches so oversight methods might be implemented.

BOSTON According to a study of 200,000 police-civilian encounters from 2007–2010, African-Americans made up 63 percent of encounters between city police and the populace, despite constituting less than one-quarter of the city’s population. The police justification for three-quarters of these encounters was “investigate person.” ACLU efforts in Boston include pushing for police body cameras, regular data reporting by law enforcement agencies, and receipts to be provided to citizens after a stop or search.

NEWARK In response to the ACLU of New Jersey’s advocacy and documentation of misconduct by the Newark Police Department, including stop-and-frisk abuses, the United

States Department of Justice released a scathing report last year citing widespread civil rights and civil liberties violations by New Jersey’s largest police force. The ACLU has since launched a new coalition, Newark Communities for Accountable Policing, to create permanent changes in Newark policing, and is on the verge of winning the creation of the nation’s strongest police-civilian oversight system, charged with holding police officers accountable and identifying patterns of misconduct.

MARICOPA COUNTY, ARIZONA Over the course of a two-week federal trial, the ACLU proved that the Maricopa County Sheriff’s Office, led by the notorious Sheriff Joe Arpaio, was unlawfully targeting and detaining Latinos without valid legal justification. The department is now implementing sweeping reforms ordered by the judge, including training on constitutional policing, body cameras that will record interactions with the public, and extensive data collection. A court-appointed monitor, a community board and the ACLU are overseeing the changes to ensure the agency doesn’t return to racial profiling.



A New York Police Department officer demonstrates how to operate a body camera, which records the officer’s interactions.

POLICE PARTNERS

SUCCESSES IN THE STRUGGLE AGAINST ABUSIVE POLICE PRACTICES

REVERSING THE TREND TOWARD MILITARIZED LAW ENFORCEMENT will take a very long time and will involve policy shifts, new legislation and cultural changes in police departments across the country. Though there is still work to be done, the ACLU and state affiliates have been active in each area and have achieved early successes.

REFORMING THE NATION’S SECOND LARGEST POLICE DEPARTMENT

During a six-month investigation of policing practices in Puerto Rico, the ACLU discovered systematic abuses, including the unjustified use of lethal force against unarmed citizens, severe beatings of handcuffed individuals and civilians beaten and left for dead in the streets. After the ACLU’s findings were released, the Department of Justice and Puerto Rico entered into a consent decree mandating urgent changes to the commonwealth’s police department. The agreement reforms everything from training to organization and mandates an independent monitor to ensure changes are carried out.

SMART DEPLOYMENT OF POLICE BODY CAMERAS

Not long after the ACLU issued its white paper on police body cameras, the shooting death of Michael Brown by a Ferguson, Missouri, police officer

exemplified how such cameras could have been helpful in understanding events. Later, when a grand jury declined to indict a New York City police officer for the choking death of Eric Garner, video footage captured by a mobile phone revealed not only the tragic events, but also helped the public better understand what was at stake. In December 2014, the Obama administration issued a proposal to spend \$75 million on 50,000 police body cameras.

“At the national level, the ACLU has shaped the conversation on the militarization of policing.”

SHIFTING THE NATIONAL CONVERSATION

Not every victory is won at the ballot box or in a courtroom. A large part of any successful movement involves education and shaping the public’s understanding of an issue. Overly aggressive policing is no different. As former ACLU counsel Kara Dansky explains: “At the national level, the ACLU has shaped the conversation on the militarization of policing. We have made it very clear that the militarization of policing is not only about MRAPs [Mine-Resistant Ambush Protected vehicles] on Main Street, although that is important. We also work to ensure that people understand that, for decades, policing has been unnecessarily and dangerously militarized in communities of color. The militarization of policing is not an isolated problem; it is a systemic problem.”

In our thinking about public safety, we need a shift to include people of color and the poor in our metrics about what strategies are making communities safer.

SHOT ON CAMERA: JUSTICE FOR LEVAR EDWARD JONES

THE SHOOTING OF LEVAR EDWARD JONES illustrates how law enforcement officers can harbor an “enemy” mentality as a result of bad public policy.

On September 4, 2014, Jones was at a gas station, outside his car, when a South Carolina state trooper drove up and

asked for his ID. Jones, who is African-American, reached into his vehicle to get it. The trooper immediately opened fire on him. Shot and bleeding on the ground, Jones apologized profusely, asking “What did I do, sir?” The incident was recorded on a dashboard-mounted camera in the police car.

Jones survived and the troop-

er was fired and later charged with felony assault and battery.

The incident touches on many of the ACLU’s awareness-raising issues. It took only three seconds for the trooper to open fire after asking for Jones’ license, indicating the trooper seemed to be in a default mode of expecting violence. Rather than serve a community, he enforced

authority. And critically, because the incident was recorded, the ambiguity of possibly conflicting stories was eliminated, and a process was initiated to bring the trooper to account. The video produced by such cameras, and those that affix to police uniforms, might help adjudicate other such incidents.

Protect THE Children, Preserve THE **Tribe**

STATES ACROSS THE COUNTRY CONTINUE TO SEIZE INDIAN CHILDREN
FROM THEIR HOMES AND COMMUNITIES AT HIGH RATES, DESPITE FEDERAL
STATUTES DESIGNED TO PREVENT SUCH REMOVALS.

STORY BY SUZETTE BREWER | PHOTOGRAPHY BY DENNIS WELSH



INDIAN CHILDREN SUCH AS ANDREANNE AND ISSAC (PICTURED HERE
AT THEIR HOME ON THE PINE RIDGE RESERVATION) HAVE BEEN TAKEN
FROM THEIR FAMILIES, IN DIRECT VIOLATION OF THE LAW.

Imagine hiring a babysitter who you have every reason to trust to watch your toddler while you are at work. One day you return to pick up your child and you're told that she has been taken into custody by the police because the babysitter became inebriated during the day. Fortunately, your child is fine and you are ready to take her home. But, instead, you learn that the police have turned your daughter over to Social Services, and the caseworker refuses to return her to you. You explain the situation, but it makes no difference.

The county prosecutor then files a petition for temporary custody against you. Two days later, a judge refuses to allow you to present any evidence or to testify on your own behalf, and won't let you ask the caseworker any questions. You aren't even given a copy of the petition that was filed against you. Based exclusively on that secret petition, the judge grants custody to Social Services and places your child in a foster home for over a month.

This kind of nightmare scenario is the unfortunate reality for Indians in South Dakota. Social workers and the courts place their children into non-Indian foster homes—sometimes through hearings that last less than 60 seconds—resulting in thousands of fragmented families and a widespread diaspora of Indian children disconnected from their cultures.

All of this is happening in spite of the Indian Child Welfare Act (ICWA), which was passed in 1978 to ensure the integrity of Indian tribes and families. ICWA was created to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture,” according to Congress.

In response to the growing outrage of the Native community and Indian Child Welfare advocates across the country, the ACLU is fighting against the unwarranted and unconstitutional removals of Indian children.

STAGGERING STATISTICS

Before ICWA was enacted, a study by the Association on American Indian Affairs revealed that 85 percent of Indian children in state custody were being placed in non-Indian homes or institutions. (The ACLU uses the term “Indian” in accordance with the language used by Indian tribes and the federal government.) The rate of per capita removals of Indian children from their parents was so high that Congress was prompted to seek

legislation to halt the systematic breakdown and devastation of tribal life in America.

Yet, despite passage of this law, Indian children represent approximately 13 percent of the total number of children in South Dakota today but comprise nearly 53 percent of all children in foster care. With approximately 750 seizures a year in that state, Indian children are 11 times more likely to be taken into foster care than their white peers, displacing thousands of Indian children and destroying the fabric of families and tribes.

Additionally, since January 2010, following hearings that happen within 48 hours of a child being removed from a home and in which no witness testified and no documents were offered during the hearing as evidence, it has been the standard practice for the judges of South Dakota's Seventh Circuit:

- To make “findings of fact” that the Department of Social Services (DSS) is making active efforts to avoid removing children from their families
- To state that foster care placement is the least restrictive available alternative
- To say that returning custody to the parents would likely result in serious emotional or physical harm to the children—without providing any explanation or evidence during the hearing that supports their findings.

Sadly, the seizure of Indian children is not exclusive to South Dakota. In some regions of Alaska, for example, Indian children comprise a staggering 90 percent of the total number of children in foster care.

Represented by ACLU Senior Staff Attorney Stephen Pevar and Rapid City attorney Dana Hanna, three individual Indian plaintiffs—Rochelle Walking Eagle, Madonna Pappan and Lisa Young—together with their tribes, the Oglala Sioux and the Rosebud Sioux, filed an historic suit in federal court against the State of South Dakota. Their aim: to ensure that fair hearings are held in ac-



ABOVE: Juanita Scherich, a social worker for the Pine Ridge Indian reservation in South Dakota, works to reunify Indian children with their families following foster care stays. Scherich herself was removed from her parents at age 9. RIGHT: Rochelle Walking Eagle's daughter, Andreeanne, supports her as she reads a statement following the announcement of the *Oglala Sioux Tribe v. Van Hunnik* case in South Dakota. ACLU attorney Stephen Pevar looks on.

cordance with the rules of ICWA in an effort to stop the unwarranted and lengthy removals of their children.

Through this case, *Oglala Sioux Tribe v. Luann Van Hunnik*, the plaintiffs sought to protect their families and strengthen their communities by addressing the continued defiance of ICWA, as well as the duty required by the Constitution to provide fair notice and a fair hearing to parents in Pennington County, South Dakota. Enforcing the law would mean that Indian families and tribes facing the removal of their children would be afforded the procedural protections guaranteed by ICWA and the Constitution. Beyond that, these protections could put an end to the traumatic impact that these hearings and their aftermath have on Indian families and children for years afterward.

The outcome could potentially affect hundreds of tribes and thousands of Indian families across the country who are locked in a bitter tug-of-war over their children with state courts and social service agencies that have ignored duties and procedures required by ICWA.

AN END TO RUBBER-STAMPING

State law requires that a hearing be provided to parents within 48 hours of a child being removed from the home, at which time a state judge will determine whether to return the child.

The initial 48-hour hearings are the most time-sensitive and crucial phase in the process for reunifying children and their parents in a timely fashion. But according to Pevar, attorneys, social workers and judges routinely “rubber-stamp” removals.

“The defendants are violating federal law in seven different respects during the 48-hour hearings, by not ordering state officials to return Indian children to their homes as quickly as ICWA requires,” says Pevar. “In addition, the defendants are violating the Constitution by not ensuring that Indian parents in 48-hour hearings are given adequate notice of the complaints against them, an opportunity to present evidence, to cross-examine the state's witnesses, to be represented by an attorney during the hearing, and to receive a written decision based on the evidence presented in the hearing. All of these safeguards will help ensure that once the state removes Indian children from their homes, the state will not keep these children separated from their parents unless absolutely necessary to protect their physical safety, which is the standard created by ICWA.”

Significantly, the *Oglala* case also addressed the coercive tactics used by judges to intimidate defendants—many of whom are poor—into waiving their right to counsel. These tactics include threatening to foreclose on parents' homes or file liens on

Andreeanne and Issac, children of Rochelle Walking Eagle and Andrew Ironshell, were taken from their parents twice following short, perfunctory hearings. They were sent to live in foster care for months in violation of the Indian Child Welfare Act (ICWA). Sadly, Walking Eagle passed away in 2014 and will not see the resolution of the case she bravely championed.



their property and assets if they exercise their right to receive federally mandated counsel when they cannot afford to hire an attorney. Additionally, it is not uncommon for a judge to imply that parents can get their kids back in less time if they waive their right to counsel and voluntarily agree to work “informally” with the South Dakota DSS.

But the reality for many Indian parents in South Dakota is that waiving their rights often makes it take longer to get their children back. Plaintiffs Rochelle Walking Eagle and Madonna Pappan both lost their children due to the actions of others and through no fault of their own. But by putting themselves at the mercy of a system with endless roadblocks and requirements in an exasperating approach to reunification, their children were unnecessarily kept in state custody for months.

“This case is significant because it will have long-term impacts for tribes across the country,” says Pevar. “The scope is unprecedented. It's the first time a tribe has filed suit seeking

to protect its collective rights under ICWA. It's the first time parents have filed a class-action lawsuit seeking to protect the rights of all Indian parents. And it's the first time that tribes or parents have filed suit seeking to halt systemic violations of ICWA and the Due Process Clause.”

A PERFECT STORM

Rochelle Walking Eagle, a member of the Rosebud Sioux Tribe, had lost her children twice within two years. Each instance followed short, perfunctory hearings in which the judge asked few questions and barely looked up from the bench to acknowledge her presence in the courtroom. Each time, she and her children were subjected to months of agonizing separation while she worked to complete a long checklist of required classes and counseling.

Similarly, Madonna Pappan's two children were taken from school by social workers following her husband's DUI arrest—even though she was not present at the time of the incident. After a hearing that lasted less than two minutes, Pappan's two small children were kept in foster care for two long months while she fought to get them back.

Pevar and Hanna learned of the child-removal cases separately. In fact, Hanna was actually in the courtroom waiting for one of his cases to go before the judge when he witnessed Pappan and her husband lose their children. The two attorneys joined together in 2011 to begin strategizing a way to seek redress for the tribes and their families. As Hanna began locating individual plaintiffs, he also met with tribal officials from the Rosebud Sioux and Oglala Sioux Tribes to present the idea of having the tribes sue under the principle of *parens patriae*—a legal term which means “parent of the nation.” Under this legal doctrine, the tribes sued on behalf of their tribal members—an

Madonna Pappan with her children, Charlotte and Dakota, at their Rapid City, South Dakota home. Charlotte and Dakota were taken from school by social workers following Pappan's husband's DUI arrest. Pappan was not present at the time of the incident. The children were kept in foster care for two months while Pappan fought to get them back—all after a hearing that lasted less than two minutes.



approach that had never been attempted before under ICWA and one which the judge in this case permitted.

Because of these numerous violations, the individual plaintiffs also sued on behalf of all other Indian parents in a similar situation both now and in the future.

FIGHT FOR THE FUTURE

In March 2013, *Oglala Sioux Tribe v. Van Humnik* was filed in the United States District Court for the District of South Dakota. That day, Walking Eagle, Pappan, Young, their tribal chairmen, ICWA advocates, and at least a hundred tribal members gathered at a Rapid City hotel to announce their historic lawsuit, which claimed that officials in the state were violating federal law in eight respects.

They were not seeking monetary compensation or a reversal of any previous rulings. They wanted wholesale, systemic change in the way the state conducts its 48-hour hearings that result in the removal of Indian children from their families and communities without affording fair procedures.

On March 30, 2015, in a precedent-setting victory, the court ruled in favor of the plaintiffs on seven claims, and the eighth claim is pending. The court found, among other things, that state officials were violating the rights of Indian children and their parents and tribes to:

- Adequate notice prior to emergency removal hearings
- Testify at those hearings and present evidence
- Confront and cross-examine the state's witnesses
- Receive assistance from an attorney in the removal proceedings.

Noting systemic failures and rampant abuses within the system, the court made it clear that, "Indian children, parents and tribes deserve better."

Sadly, Walking Eagle did not see the resolution of the case. She passed away in 2014.

The court has now directed both sides in this case to submit proposals for fixing these violations, and a remedial order is expected soon. The ACLU, along with the Oglala Sioux Tribe, the Rosebud Sioux Tribe and all other plaintiffs in the case, will then make certain that state officials fully implement that order.

For the plaintiffs in *Oglala*, the struggle for justice and due process has taken a critical step forward toward achieving the goals of ICWA—maintaining the integrity and cultural heritage of America's Indian tribes, and preserving the rights and protections of Indian parents and children today and into the future. ■

WHY ICWA MATTERS TO TRIBAL PRESERVATION

THE INDIAN CHILD WELFARE ACT (ICWA) was passed in 1978 to end the systematic removal of Indian children from their families. The formal policies of the U.S. government toward Indian people included forcibly assimilating their children into mainstream American life, with the intended objective that the tribes would eventually cease to exist.

These policies continued into the latter half of the 20th century, as state courts and social service agencies removed Indian

children from their homes based on murky evidence and placed them in non-Indian foster and adoptive homes with no regard for family bonds or continued tribal existence.

In the late 1970s, then U.S. Senator James Abourezk, the first chairman of the Senate Committee on Indian Affairs and chairman of the American Indian Policy Review Commission, authored ICWA. The enactment of specific legislation targeting Native families, he

said, became necessary because of cultural and racial discrimination toward Indian people that resulted in the high rate of state-sanctioned seizures of Indian children.

To help strengthen tribal communities and to reinforce the federal government's obligations to the tribes, ICWA established minimum federal standards that apply to state child-custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe. Congress

affirmed that, "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children."

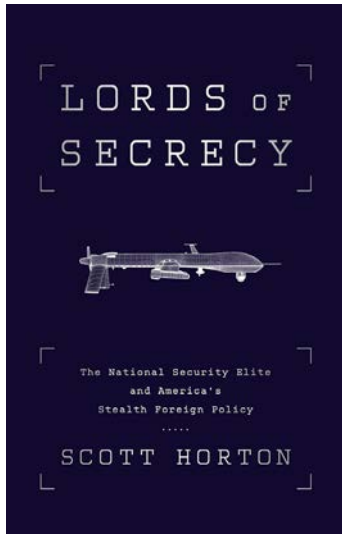
"Back then, white social service workers abused the system and took the kids into custody," says Abourezk. "They didn't care what it did to Indian families—and unfortunately, they're still doing it. They scream when someone breaks the law, but when the state breaks the law, they look the other way. We know that long-term outcomes

for Indian kids show that they are better off staying with their families of origin, rather than being placed with non-Natives. ICWA is a good law and it needs to be enforced."

The ACLU's Stephen Pevar recently spoke to former Senator Abourezk and mentioned that he was his hero for creating ICWA. Abourezk returned the compliment, saying Pevar was *his* hero because, while he may have created ICWA, Pevar and the ACLU are actually making it work.

The Guide

ARTS & CULTURE



PAGES (2015, *Nation Books*)

LORDS OF SECRECY

» **By Mason Kortz**

WHEN ALL YOU HAVE IS A HAMMER, everything looks like a nail. When all you have are secrets, everything looks like a

prosecuted as spies. The result is an intelligence community with an army of drones and private security forces, waging wars under secret legal doctrines with no government or public oversight.

Where *Lords of Secrecy* truly shines, though, is in its historical and sociological analysis of secrecy's corrosive effects on democratic institutions. Horton not only opposes secrecy on ideological and practical grounds but also provides a robust theoretical argument linking the rise of secrecy with the decline of public participation in questions of national security, war and peace. Examples from history, ranging from Athens to the Enlightenment to modern Europe, show that public knowledge has been the foundation of democracy, and secrecy the weapon of autocrats. Modern sociological research demonstrates how bureaucracies, left unchecked, naturally tend towards excessive and illegitimate classification of information.

Horton's conclusion: Secrecy is not only harmful to America but is also antithetical to the entire democratic tradition to which we so proudly lay claim.

security crisis—or can be made into one. This is the lesson Scott Horton teaches in *Lords of Secrecy: The National Security Elite and America's Stealth Foreign Policy*.

Focusing on the years between the first Iraq war and the present, Horton recounts how American intelligence agencies have used secrecy to consolidate power, embarrass political rivals and avoid accountability. Those agencies have classified information to cut off Congress and the public, precluding any meaningful review or public discourse.

Internally, the culture of secrecy allows the most ambitious agents to rise through the ranks, while conscientious whistleblowers are persecuted, and even

PAGES

PRO: Reclaiming Abortion Rights (2014, *Picador*)

» **By Jaime Hansen**

IN HER LATEST BOOK, *PRO: RECLAIMING ABORTION RIGHTS*,

Katha Pollitt presents the seemingly radical notion that women are sexual beings that deserve to be treated as human in political and social realms—specifically in regards to their reproductive freedom. Pollitt begins her narrative by targeting the reader, urging “you” to become a part of the conversation. She makes it clear that the mortality rate for abortions in America (.67 per 100,000) is significantly less than the mortality rate for Viagra (5 per 100,000) and then goes on to correct other commonly held myths from anti-abortion activists. You'll likely find yourself nodding along in agreement.

With horrifying examples—like the fact that a rapist who impregnates his victim can sue for child custody or visitation in 31 states—Pollitt underscores how our society condones male dominance over women and their bodies. Pollitt also discusses the barriers for women of color and poor women to access abortions and encourages legislators to allow all women the right to choose their reproductive future.

Pollitt ultimately reframes abortion as an accepted part of a woman's reproductive life and forces us to consider how we can get the truth into the hands of the anti-choice advocates.

PAGES

THE SHORT AND TRAGIC LIFE OF ROBERT PEACE (2014, *Scribner*)

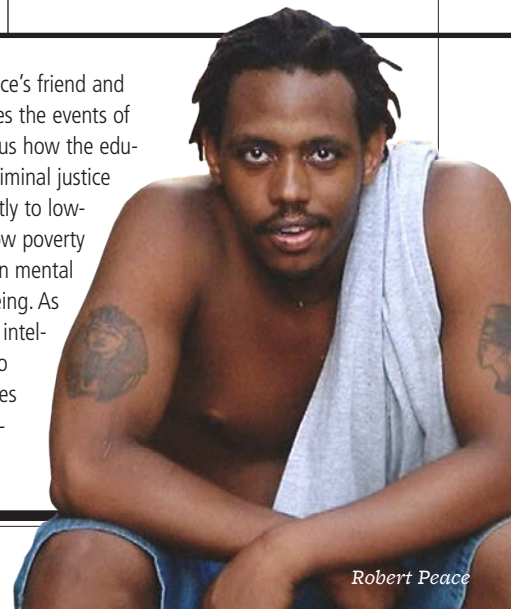
» **By Aisha Springer**

THE RECESSION may have caused people to question the notion of a college degree as the ticket to success, but another true barrier is often forgotten. In his book, *The Short and Tragic Life of Robert Peace*, Jeff Hobbs shows that the effects of growing up in a poor, violent neighborhood

run much deeper than what can be solved by any degree.

Peace was raised in East Orange, New Jersey, by a mother who struggled financially. When Peace was a child, his father was sent to prison. Despite these challenges, Peace excelled in school and attended Yale University. But the drive to provide for those in his life followed him through college and well after graduation. He sold marijuana off and on throughout the years and at age 30, was shot dead.

Hobbs (who was Peace's friend and college roommate) uses the events of Peace's life to remind us how the education, housing and criminal justice systems apply differently to low-income people and how poverty has insidious effects on mental and emotional well-being. As brilliant as Peace was, intellect was not enough to overcome the influences that ultimately contributed to his death.



THROUGH THE AFRICAN AMERICAN LENS

» By Dennis Parker

MOVIES, TELEVISION AND TEXTBOOKS could easily lead you to conclude blacks were wholly extrinsic to American life, as if the crayon box used to draw the nation's portrait removed black and brown.

The National Museum of African American History and Culture's forthcoming exhibit, "Through the African American Lens," is an important recognition of the central role African-Americans have played in this country. It features items belonging to freedom fighter Harriet Tubman, sports and entertainment legends, and more. Significantly, the exhibit documents the lives of everyday people, including Pullman train car porters, who pulled many black families into the middle class, as well as a desk from a Rosenwald Foundation-funded school, which provided many Southern black students their first access to meaningful education.

Taken together, the exhibit demonstrates the vibrancy, persistence and talent of the black community—and returns all the colors to the box.

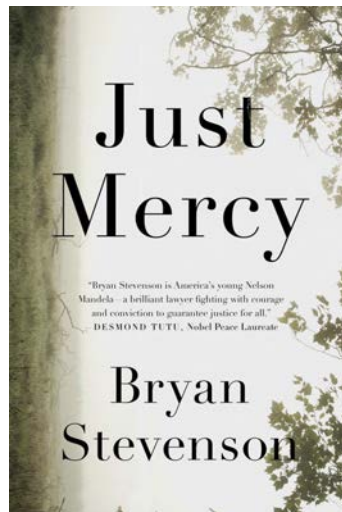
PAGES *Just Mercy (Random House, 2014)*

DESPERATE FOR JUSTICE

» By Dorothy Ehrlich

I HAD KNOWN BRYAN STEVENSON, the legendary lawyer of the Deep South, for more than a decade before I had an opportunity to hear him speak in 1999 at a special ACLU donor briefing in Washington, D.C. Stevenson, whom Desmond Tutu called "America's young Nelson Mandela," deeply moved the participants. He didn't dwell on the landmark litigation he was bringing in Alabama or recite the data that help us weigh issues on the scales of injustice. Rather, he told stories about the lives of real people. Many were the clients he relentlessly defended in a race to prevent their executions; others were the loving family or community members courageously pursuing the quest for truth and having to face the agony of its denial. Each story was etched from the pain of grief and violence, and yet somehow we left the briefing inspired with hope, and the feeling Stevenson describes as being "desperate for justice."

Stevenson's new book, *Just Mercy*, takes what we had a glimpse of that day and expands it into a profoundly significant and impressive book that deepens our own desperate yearning for justice. Stevenson allows us to share in his experience as a vulnerable young lawyer who discovers his



unshakable voice for justice and mercy directly through his clients, whom he treats with dignity and compassion. He makes a compelling case for how "each of us is more than the worst thing we've ever done," and how mercy is most potent when it is least expected. "When you experience mercy ... you begin to recognize the humanity that resides in each of us," he writes.

Stevenson's compelling stories illustrate the human cost of racism and oppression, which he deftly examines in the political, social and historical context of such injustice.

He also validates the importance of building our own organization. He speaks directly about the need to strengthen institutions like the ACLU and the importance of growing the size and scale of staff and programs in order to bring about justice.

In the end, *Just Mercy* is a transformative book about perseverance and redemption in the fight for justice. And for those of us engaged in the work that Stevenson heroically champions—to end mass incarceration, to stop the death penalty, to secure justice for juveniles and to fight against racial oppression—this book should be required reading.

from her own experiences as the child of a transgender parent to develop Maura's character (played by Jeffrey Tambor). Flashback sequences show how Maura struggled over decades to understand and make peace with her transgender identity, as well as the roots of each child's difficulties forming relationships and facing the world head-on.

Although the show has sparked controversy for casting Tambor rather than a transgen-

der woman as Maura, and some have criticized it as yet another Hollywood portrayal of privileged people behaving badly, I found many of its scenes mocking L.A. self-centeredness hilariously spot-on. Season two promises more answers to Maura's rhetorical question, "How did I raise three such selfish kids?" and more glimmers of hope that each Pfefferman will eventually be able to hold on to dignity, love and joy.

TELEVISION

Transparent

» By Amanda Goad

AMAZON'S GOLDEN GLOBE-WINNING "DRAMEDY" centers on Maura Pfefferman's coming out as a transgender woman, and the rifts and new bonds that process generates between Maura and her three adult children, each of whom is also struggling toward self-acceptance. Series creator Jill Soloway drew

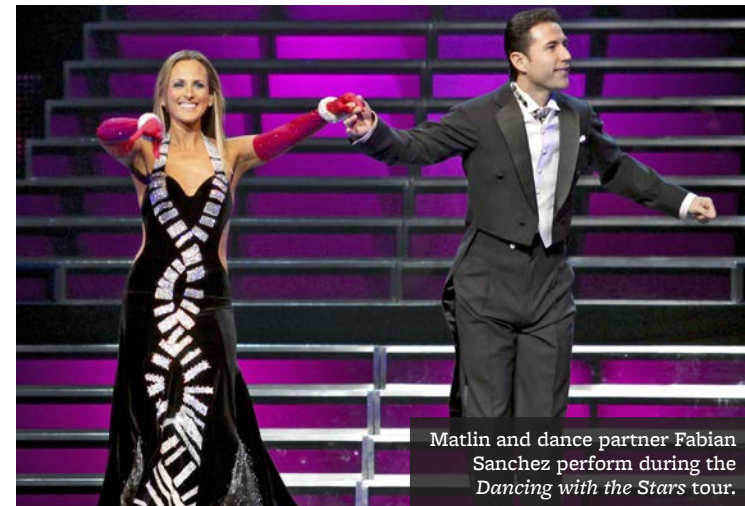


Amy Landecker and Jeffrey Tambor

CREATIVE LIBERTY



Matlin on the set of her television show, *Switched at Birth*.



Matlin and dance partner Fabian Sanchez perform during the *Dancing with the Stars* tour.

IN HER WORDS: ACTOR MARLEE MATLIN

STATS

personal

Actor, writer, producer

Age 49

Married to police officer Kevin Grandalski

4 children

career highlights

- Academy Award (Best Actress) for *Children of a Lesser God* (1987)
- Golden Globe (Best Actress in a Drama) for *Children of a Lesser God* (1987)
- 4 Emmy nominations
- Hollywood Walk of Fame star (2009)
- Author of *Deaf Child Crossing*, *Nobody's Perfect* (with Doug Cooney), *Leading Ladies* (with Doug Cooney) and *I'll Scream Later*
- "Marlee Signs" ASL mobile app
- Currently appearing in *Switched at Birth* on ABC Family.



THE **ACADEMY AWARD-WINNING ACTOR** ON HER CAREER, THE IMPORTANCE OF EQUAL RIGHTS—AND HER **ACLU AMBASSADORSHIP**.

I got involved with the ACLU the same way I became an actress. I was asked, and when I was asked, I realized I had a passion for the work they do because it's about equality and justice. Simple as that!

I began acting when I was 7. During one summer at camp, I was asked at the last minute to join some young girls on stage to sign a rendition of "John Brown's Body" or something like that. I loved the attention, and the chance to go beyond myself in a character.

Attitudes are the greatest barriers for those who are differently abled. As I've always said, the greatest handicap of being deaf does not lie in the ear—it lies in the mind.

I worked very hard to ensure that all television broadcasts are closed-captioned, and continued my efforts when programs moved from TVs to computers. But there is still much more that needs to be done, and I am constantly speaking up about it, whether it's the lack of captions in movie theaters, on airplanes, or in public spaces where announcements are made; whether it's about a hearing actor hired to play a deaf role when there are so many able deaf actors; whether it's about knowing our rights, and making sure others know we are entitled to them.

There is still a lack of understanding when it comes to interpreters, particularly in emergency situations or hospitals. Deaf people still are unable to call 911 via text in many places. And don't get me started on the lack of equality and access for the millions upon millions who are deaf and hard of hearing outside the United States, where there are no laws like the Americans with Disabilities Act.

Until we are seen as people and not our "disability" or "handicap," we cannot stand equally with our peers.

I decided to participate in the ACLU's "Know Your Rights" video about deaf and police interaction because I am the wife of a police officer and a person who happens to be deaf. I had the benefit of understanding both sides of when a deaf person is stopped by the police. It was important to me because I know of so many situations where a deaf person has been left in the dark because they were unaware of the procedure when stopped by a law enforcement officer, or what to do when an officer doesn't respond in a manner a deaf person is accustomed to.

I would like people to think, talk, appreciate and understand the many years of marginalization that people who are deaf have had to face. But we aren't to be pitied or lauded. There is still discrimination, but all we ask is for an equal opportunity to step up to the plate and show what we've got.

THE ACLU IS THE ONLY CIVIL LIBERTIES ORGANIZATION IN THE COUNTRY WITH **A PRESENCE IN EVERY STATE**, AS WELL AS THE DISTRICT OF COLUMBIA AND PUERTO RICO, HANDLING REQUESTS FOR **LEGAL ASSISTANCE**, **LOBBYING STATE LEGISLATURES AND HOSTING PUBLIC FORUMS**. HERE ARE **HIGHLIGHTS OF SOME CASES AND PROJECTS** HAPPENING AROUND THE U.S.

Delaware: RACIAL JUSTICE Every student deserves equal access to a quality education. But in Delaware, the state's charter-school law and policies have led to a situation where **students of color, low-income students and students with disabilities have limited access to high-performing schools.**

With requirements that include essays written by parents to explain why a school is a good match for their child, annual activity fees, mandatory parental involvement, high-cost uniforms and a lack of transportation support, disadvantaged children are being shut out.

The ACLU's research has shown that high-performing schools in the state are overwhelmingly filled with white students, while low-income students and students with disabilities are disproportionately represented in low-performing charter schools or segregated traditional public schools. The ACLU of Delaware is standing up to challenge this law, arguing that it is discriminatory and has significantly contributed to a resegregation of Delaware public schools.

Iowa: VOTING RIGHTS The ACLU of Iowa has filed a lawsuit on behalf of Kelli Jo

Griffin, a **small-town Iowa mom who was arrested for voter fraud.** In 2008, Griffin was convicted of a low-level nonviolent drug offense. She was told, correctly at the time, that she could vote once she completed probation. But by the time her probation was complete in 2013, the policy had changed.

Unfortunately, this information was not widely disseminated, and after Griffin proudly went to cast her vote, she was charged with voter fraud and arrested. A jury acquitted her in just 40 minutes, but she still can't vote under Iowa law. Now the ACLU is pushing to restore Griffin's voting rights and strike down the state law that keeps her and others convicted of lower-level felonies from voting.

Kentucky: CAPITAL PUNISHMENT The ACLU of Kentucky is partnering with death row exonerees to



Kelli Jo Griffin (left) receives support from a local nun after learning that she was acquitted of voter fraud.

educate the public about the death penalty and encourage its abolition.

Kirk Bloodsworth, a former Marine with no prior record, was once on death row and later sentenced to two life terms, all for rape and murder charges that were overturned with DNA evidence. Sabrina Butler was convicted and sentenced to death for her son's murder until it was revealed that he died of natural causes. The two have visited Kentucky churches, colleges and civic clubs with other exonerees to prompt thought and conversation on the harms of the death penalty.

Massachusetts: FREE SPEECH Free speech should mean just that—freedom from government interference, free of charge. The ACLU of Massachusetts stepped in when police in Westford asked the Board of Selectmen to require 11-year-old Margaleet "Leetka" Katzenblickstein to pay for a police detail in order to hold a rally against police-involved shootings of people of color. **"Requiring people to pay several hundred dollars to hold a small and peaceful Black Lives Matter demonstration on**

a town common violates the rights to freedom of speech and assembly," said ACLU of Massachusetts Deputy Legal Director Sarah Wunsch.

The Selectmen decided to issue the permit without any police fee and on January 5, Leetka, joined by dozens of supporters, demonstrated for racial justice.



Jennifer, a transgender Army veteran.

New Jersey: TRANSGENDER RIGHTS The Army—and most branches of the military—has had a long-standing policy of not changing the names that appear on discharge documents, resulting in **lasting hardship for transgender veterans like Jennifer, who served in the Army for 30 years,** and Nicolas, who served in the Army National Guard for nine years. All of their other credentials reflected their legal name change, but every time they were asked to produce the discharge form, they had to explain the discrepancy, opening themselves up to discrimination and harassment.

The ACLU of New Jersey filed petitions to change both Jennifer's and Nicolas's forms, and last November,

the requests were granted, with recognition that this was a burden all transgender veterans face. Since then, the Navy has followed suit. "This is about much more than a change on a piece of paper," Jennifer said. "This is about the relief of knowing that when I apply for a job, or a home loan, or anything where my veteran status is relevant, I can do so as myself."

Ohio: FREE SPEECH Last August, the Green Local Board of Education



Keith Allison was removed as an educator in Ohio after he expressed his thoughts about the treatment of dairy cattle.

removed Keith Allison from his position as an educator working with at-risk students when—on his own computer, during nonwork hours—he **posted on Facebook his personal beliefs about the treatment of animals on dairy farms.** The ACLU of Ohio challenged Allison's removal as a violation of free speech. He is now back at work.

This is a big step in the right direction, but not all the issues have been resolved. The ACLU will continue to fight for Allison and all teachers who choose to exercise their right

to free speech. "I think it is very important that we each use our voice to stand up for what we believe in, even when others disagree, as we work together to try to make positive changes in the world," Allison said.

Texas: KNOW YOUR RIGHTS In addition to defending rights in courtrooms, the **ACLU has a long history of educating people about their rights** and what to do when those rights are denied. The ACLU of Texas has taken this work



San Diego: RAPPER BRANDON DUNCAN at a news conference held after "gang conspiracy" charges were dismissed against him.

CRIMINAL LAW REFORM

RAPPER BRANDON DUNCAN, LIKE SO MANY MUSICIANS, draws on his past experience to inspire his music. As he says, he is "just painting a picture of urban street life." But after a series of alleged gang shootings in 2013 and 2014, the San Diego District Attorney's office decided that Duncan's lyrics were much more than that. Duncan was charged with "promoting" or "benefiting" from the shootings by talking about them in his music. As the prosecutor admitted, he wouldn't be charged if he sang "love songs."

Duncan wasn't at the scene of the crimes, and prosecutors had no evidence linking him to the shootings. He didn't have a criminal record and made it clear that he had no knowledge of the crimes. But the district attorney charged him all the same.

The prosecution's theory violated the First Amendment by punishing Duncan for the content of his speech. The government can punish crime, but it can't punish speech about crime, even by proven criminals about their own crimes, much less an artist like Duncan.

Duncan faced a potential life sentence, punishment as severe as if he had committed the alleged crimes himself. The ACLU of San Diego has intervened on his behalf. After spending eight months in jail, Duncan was freed on bail, and in March, a judge finally dismissed gang conspiracy charges against him.



END DISCRIMINATION AGAINST PREGNANT WORKERS

THE ACLU'S PRESIDENT ON HOW **COMPANIES ROUTINELY DENY** TEMPORARY LIGHT-DUTY **ACCOMMODATIONS TO PREGNANT WORKERS**—AND THE ORGANIZATION'S FIGHT AGAINST THIS KIND OF DISCRIMINATION.

MORE THAN 35 YEARS AFTER THE ACLU'S RUTH BADER GINSBURG LED THE FIGHT to pass the federal Pregnancy Discrimination Act, some employers still force pregnant women to choose between their jobs and a healthy pregnancy.

The Pregnancy Discrimination Act of 1978 required companies to provide pregnant workers the same temporary accommodations offered to workers who sustain physical injuries. But the law has been undermined by the persistence of paternalistic assumptions and outdated stereotypes—including the notion that the only proper place for a pregnant woman is at home. Too many companies still force women off the job when they need simple, temporary accommodations like the ability to avoid heavy lifting, sit down, or keep a water bottle nearby.

Pushing women out of the workplace just when they need the income to prepare for a new child can send families into financial crisis. Over the long term, this form of discrimination contributes to the stubborn gender pay and wealth gaps. To realize the promise of Ginsburg's 1978 legislative success, the ACLU

has once again taken the lead in the fight against pregnancy discrimination.

ACLU client Julie Desantis-Mayer had worked at UPS for 10 years. When she became pregnant, she requested temporary light duty on the advice of her doctor so she would not have to lift packages weighing up to 75 pounds. UPS refused and instead forced her onto unpaid leave, meaning she would have no income or benefits for the remainder of her pregnancy. We took her complaint to the U.S.

And in a major breakthrough, Peggy Young, another UPS driver who was denied a temporary accommodation before the EEOC guidance was issued, won an important victory at the U.S. Supreme Court in March. The Court ruled that employers cannot impose a "significant" and unjustified "burden" on pregnant workers by denying them accommodations while

12 states and five cities had passed laws requiring employers to provide at least some degree of accommodation to pregnant workers.

Many more states and municipalities are considering similar laws.

The momentum is clearly going our way.

Employers, courts and government agencies, like the EEOC, have begun to get

“ Over the long term, this form of **discrimination contributes to the stubborn gender pay and wealth gaps.** ”

Equal Employment Opportunity Commission (EEOC).

In 2014, the EEOC issued its first enforcement guidance on pregnancy discrimination since the passage of the Pregnancy Discrimination Act, stating that actions like those taken by UPS aren't just wrong, they are illegal.

After this guidance was issued, UPS announced it would start treating pregnant workers the same as those who request light duty due to an injury or disability. We settled the case on behalf of Desantis-Mayer last December.

providing accommodations to a large percentage of non-pregnant workers. The ACLU wrote an amicus brief on her behalf.

In addition to working on particular cases like these, the ACLU is fighting to strengthen existing federal and local laws, and to pass new laws to make it impossible for employers to justify their irrational discrimination against pregnant women.

Last year alone, we helped pass pregnant-worker fairness bills in four states and three cities. By the end of 2014,

the message: Firing a worker or sending her home for several months with no pay or health insurance because she's pregnant is not only an inordinate hardship—one that can send low-income families into a spiral of poverty—it's as unfair and unlawful today as Congress declared it to be in 1978.

SUSAN N. HERMAN is the ACLU's president and also holds a chair as Centennial Professor of Law at Brooklyn Law School. She teaches courses in Constitutional Law and Criminal Procedure.

Q



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WHY I'M AN ALLY

THE **REPUBLICAN POLITICAL STRATEGIST** SPEAKS ABOUT HIS **STANCE ON THE FREEDOM TO MARRY** AND HIS **WORK WITH THE ACLU**.

AT ITS BEST, AMERICAN POLITICS RISES ABOVE ITSELF. After all, we don't think of the civil rights movement or the fight for women's suffrage as Republican or Democratic issues. At our pivotal moments, when our basic rights are on the line, party politics are trumped by more fundamental questions. What are our core American values? How will we define ourselves? What is right, and what is wrong?

The battle for equal marriage rights—for each and every American to love whom we choose, how we choose and under equal protection

of the law—is one of those fights. It is also the issue that brought me, a Republican, to join with the ACLU and work for a larger cause.

I have no illusions about where the GOP has been on this issue. But it would be revisionist history to suggest that either major party has been a champion of LGBT rights. Let's not forget that President Bill Clinton signed the Defense of Marriage Act and instituted "Don't Ask,

Don't Tell." Or that prior to the 2012 election, President Barack Obama was still evolving on the issue. For years, it was difficult to find a national politician of either party who stood for the freedom to marry. Today, our political class is finally catching up with voters.

Many prominent conservatives have unquestionably joined the cause of marriage equality. In early 2013, 75 Republicans (myself included) filed an amicus brief in federal court to help defeat California's Proposition 8. The group included former Governors Jon Huntsman, Meg Whitman, Christine Todd Whitman and Bill Weld, as well as former Republican National Committee Chairman Ken Mehlman, himself a gay man. Former Vice President Dick Cheney supports equal rights (his daughter, Mary Cheney, married her long-time partner, Heather Poe, in 2012), as does former Secretary of State Colin Powell. In 2012, the Republican-controlled New Hampshire state legislature easily defeated a bill to repeal the Live-Free-or-Die state's legal marriage law.

Public polling reveals an even starker reality: A majority of Republicans under the age of 44 favor marriage equality. The party is not monolithic, and its

future is clear: Today's young Republicans will be tomorrow's establishment. In the GOP, as in America as a whole, the issue is effectively settled.

The Republican Party, the Party of Lincoln, was founded in 1854 for the explicit cause of human dignity—the abolition of slavery. Marriage equality is consistent not just with that heritage and those principles, but also with the cause of expanding freedom as a whole. This commitment is evident on several issues. Criminal justice reform, to name one, is now a conservative cause on Capitol Hill. These battles will never be won without bipartisan support, because if the cause for civil liberties and civil rights becomes the purview of one political party, the cause dies.

I am passionate about politics, and I couldn't imagine myself in a different career. I also can't imagine this country without the ACLU. This organization exists for the sole purpose of defending our constitutional principles, and in our defining moments, the ACLU fights on the right side of history. In Supreme Court cases that ensured progress prevailed over fear—working on behalf of Oliver Brown, Fred Korematsu or Edie Windsor—the ACLU reminds us what it means to be American. I'm proud to join this fight, and I have no doubt that together we will prevail.

STEVE SCHMIDT is a political campaign strategist. In 2013, he partnered with the ACLU in the fight for the freedom to marry.



LOVING V. VIRGINIA

FEW CASES WERE MORE APTLY NAMED THAN **LOVING V. VIRGINIA**, which pitted an interracial couple—17-year-old Mildred Jeter, who was black, and her childhood sweetheart, 23-year-old white construction worker Richard Loving—against Virginia's "miscegenation" laws banning marriage between blacks and whites.

After marrying in Washington, D.C., and returning to their home state in 1958, the Lovings were charged with unlawful cohabitation and were jailed. The judge sentenced them to a year in prison, to be suspended

if they agreed to leave the state for the next 25 years.

The Lovings did leave Virginia. But when they returned to visit five years later, they were arrested for traveling together—and Mildred Loving fought back. She wrote to Attorney General Robert F. Kennedy, who referred her to the ACLU. The ACLU represented the Lovings in their case all the way to the U.S. Supreme Court.

On June 12, 1967, the justices ruled unanimously that state bans on interracial marriage were unconstitutional.

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