

FREE FOR ALL



PA Supreme Court to investigate Philly bail practices — page 4

FALL 2019

WHERE'S THE JUSTICE IN THIS SYSTEM?



By Reginald T. Shuford
Executive Director

I have been urging the staff at ACLU-PA and all of my friends, especially my white friends, to watch *When They See Us*, Ava DuVernay's brilliant dramatization of the Central Park Five, later reclaimed as the Exonerated Five. The

four part miniseries brings to life the story of five boys—Antron McCray, Yusef Salaam, Raymond Santana, Jr., Korey Wise, and Kevin Richardson—who were falsely accused of the brutal sexual assault of Trisha Meili in New York City in 1989.

At the time, the case riveted the city and made national headlines. It was a time when fears of crime in New York and around the country were intense, egged on by politicians who understood fear as a motivating force to gain power. Like so much of American history, young African-American boys and men were being unfairly blamed for the perceived problem. It was in this atmosphere that the term

“superpredator” would be born, later to be infamously echoed by Hillary Clinton and other prominent public officials from both major political parties.

The Exonerated Five had confessions coerced out of them by a brutish New York Police Department and were convicted at trial. After 13 years in prison, they were eventually exonerated when the person who actually committed the crime, Matias Reyes, confessed to Wise during an encounter in prison, a confession that was confirmed by DNA tests of evidence from the crime scene. While NYPD focused on the five boys, Reyes was walking free and committed other rapes and one murder in the months after he assaulted Meili.

At the time, I was a student at the University of North Carolina School of Law. I distinctly remember the furor that had been whipped up about this case that even caused many people who were very familiar with these systemic injustices to presume guilt over innocence. And while I thought I knew everything there was to know about

the case, it turns out I really didn't.

DuVernay's series brings all of these issues to life in a very powerful way. It shows in dramatic fashion how the criminal legal—not “justice”—system unleashes pain on Black and brown people. In a review of *When They See Us*, blogger Odie Henderson wrote at RogerEbert.com, “This series is not going to let you forget how the justice system and the press have failed—and continue to fail—people of color.”

The story of the Exonerated Five is nearly unique for the attention and emotions it brought out, but it is not unique as a story of power and coercion, manipulation, and racism by law enforcement officials. That's why we do the work that we do and why I have asked all of my friends to share in the burden of making America live up to its ideals. As a member, you are helping the ACLU work toward our highest aspirations for our country.

Reggie Shuford, Executive Director
ACLU of Pennsylvania

PA STATE POLICE TROOPERS RACIALLY PROFILE LATINX DRIVERS

Pennsylvania State Police troopers are racially profiling Latinx drivers and passengers and illegally enforcing civil immigration law, with the tacit approval of their bosses.

That's the charge in a new lawsuit filed by ACLU-PA and a team of volunteer attorneys in June on behalf of 11 clients. The lawsuit was filed against seven troopers and the Pennsylvania State Police.

The six incidents described in the lawsuit showed remarkable similarities. All involved Latinx individuals. Five of the six incidents occurred in south central Pennsylvania, near Harrisburg and Carlisle. (The sixth incident was in Bucks County in southeastern Pennsylvania.)



ACLU-PA lawyers, clients, and allies gathered in Harrisburg in June to announce a new lawsuit against the state police.

The police interactions follow a common script: troopers focused more on everyone's immigration status than any motor vehicle violation. The troopers' rationale for the stops were typically flimsy; in one incident in

Adams County, a trooper told our client Rebecca Castro that he stopped her vehicle because it looked “suspicious.” And the troopers refused to allow our clients to leave until they had contacted federal immigration agents, sometimes holding our clients on the side of the road for hours and detaining them well beyond the time required to investigate a motor vehicle violation.

While all the incidents show unlawful and racially motivated actions by the

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FROM THE PRESIDENT



Dear ACLU-PA supporter,

In November, Pennsylvania voters will consider a Yes/No question: Should the state constitution be amended to add a “crime victims’ bill of rights”? Although it sounds good on the surface, this provision is, in fact, a disguised attack on the fundamental rights of anyone accused of a crime, which are among the core civil liberties that the ACLU defends.

Known as Marsy’s Law, this effort is yet another example of the current favorite strategy of those who oppose basic civil rights and civil liberties, suggesting that enforcing fundamental rights is somehow an infringement of the rights of others. Marsy’s Law would enshrine “victims’ rights” in the state constitution on a supposedly equal footing with the rights of the accused, but the real agenda is undermining fairness for defendants.

The ACLU defends the rights of criminal defendants because the protection of these rights is a hallmark of a democratic society. The designers of our constitutional system knew that every government has a tendency to use and abuse criminal law to expand its own power and to limit individual freedom.

The proposed amendment to our state constitution would articulate various “rights” of crime victims and mandate that these be enforced on a basis “at least equal” to the rights of defendants. Bail hearings could be delayed, while defendants sit in jail, to protect the “right” of a victim to be notified and be present. The provision promising “a prompt and final conclusion of the case” could prevent defendants from preparing for trial, from developing legitimate sentencing mitigation, and from reopening cases with later-discovered evidence of innocence.

Most fundamentally, the notion that a person can be labeled a “victim” at the outset of a case and given “rights” on that basis to affect the proceedings against the accused requires the judge to violate the defendant’s presumption of innocence.

A detailed analysis of ACLU-PA’s opposition is available at aclupa.org/MarsysLaw. I hope you will join me and the rest of ACLU-PA in opposing this ballot measure and voting “No” in November.

Peter Goldberger
President, ACLU-PA

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troopers, one is particularly illustrative. In 2017, Yancarlos Mendoza and his wife went to the state police barracks in Carlisle after their friend was detained. After hearing Mr. Mendoza speak Spanish with his wife in the lobby of the building, Trooper Luke Macke arrested him and told another trooper that he did this to “get all these [expletive] people out of our country.”

The troopers’ behavior was first revealed in an investigative story published in 2018 by ProPublica and the Philadelphia Inquirer. Throughout 2018, ACLU-PA and our partners met with officials from the state police and Governor Wolf’s office and asked that they remedy this serious problem and implement real accountability for troop-

ers who profile people based on race and ethnicity and then contact federal immigration authorities to pick them up. Unfortunately, state police leadership and the governor’s office failed to do this.

While the state police issued a policy earlier this year that put in writing the agency’s obligations under the Constitution, the policy left the door open to continued cooperation with federal immigration authorities, encouraging business-as-usual among troopers who are unfairly targeting Latinx drivers and passengers and unlawfully acting as an arm of federal immigration authorities.

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

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GOVERNMENT AGENCIES STILL TRY TO SILENCE SPEECH

Ever since the ACLU was founded in 1920, we have had to fight people in government agencies who want to stifle speech they don't like. Three ongoing cases in Pennsylvania show that the struggle is ongoing.

In September 2017, our client B.L., whom we refer to with her initials because she is a minor, vented her frustration at not making the varsity cheerleading team by posting a Snap that said “fuck cheer” on the social media platform Snapchat. B.L. was out of school on a weekend when she sent the Snap.

When her coaches at Mahanoy Area High School in Schuylkil County saw it, they expelled B.L. from the junior varsity cheer team. ACLU-PA filed a lawsuit on her behalf, and, within weeks, a federal judge issued what's called a preliminary injunction—a court order to immediately stop unlawful government behavior—saying that the school violated the free speech clause of the First Amendment. The court ordered B.L. reinstated to the cheer team.

B.L. is now in 12th grade and is still an active participant in cheerleading, now on the varsity squad. And the Mahanoy Area School District is still fighting the case. In March, a federal district court again ruled in B.L.'s favor, and in June, the district filed an appeal to the U.S. Court of Appeals for the Third Circuit.

Meanwhile, ACLU-PA is also challenging two public transit systems that have refused advertisements that they deem “controversial.” For years, the NEPA Freethought Society



B.L. outside the federal courthouse in Scranton in 2017.

Society has been trying to buy advertising on buses operated by the County of Lackawanna Transit System, or COLTS. The organization's proposed ad says “Atheists” and includes its website.

COLTS rejected the ad, saying that it violates the agency's policy on advertising that is religious in nature or that sparks public debate. ACLU-PA represents the NEPA Freethought Society in challenging that decision. As a public entity, COLTS has limited authority to prohibit speech merely because its administrators believe it is controversial.

Last year, a federal district court ruled in favor of COLTS, but in September, a federal appeals court overturned that ruling in favor of the NEPA Freethought Society, saying that the COLTS' policy discriminates based on viewpoint and, thus, violates the First Amendment.

Finally, in Philadelphia in 2018, the Southeastern Pennsylvania Transit Authority, or SEPTA, refused to accept proposed advertising from a nonprofit journalism organization, the Center for Investigative Reporting. CIR had published a series on racial disparities in mortgage lending, including in Philadelphia, and wanted to promote the series via public transit ads. SEPTA would not accept the ads, saying they violated the agency's policy banning advertising that is “political in nature” and ads that express an “opinion, position, or viewpoint on matters of public debate.”

Represented by lawyers from the ACLU and law firm co-counsel, the Center for Investigative Reporting filed a First Amendment lawsuit against SEPTA. In November 2018, a federal district court ruled that parts of SEPTA's policy are unconstitutional but also upheld the agency's decision to reject the ads from the Center for Investigative Reporting. CIR's appeal is now pending.

While our free speech rights may be far more robust than they were in 1920, people in government still have the itch to silence speech they don't like. Defending that right is as important as it's ever been. Learn more about these cases and our entire legal docket at aclupa.org/cases. ■



One of the ads that NEPA Freethought Society asked to run on COLTS vehicles.

SAVE THE DATE!

Celebrate 100 years of the ACLU on February 29, 2020, in Philadelphia. Details at aclupa.org/Centennial.



VOLUNTEER PROFILE



Name: Wendy Meyer

Hometown: Philadelphia

What do you do as a volunteer for the ACLU of Pennsylvania?

I began volunteering in the Intake Department following the 2016 election. In 2017, I joined the Philadelphia chapter board and now serve as the chair of the Centennial Planning Committee.

What do you want ACLU-PA members to know about the upcoming Centennial Celebration in February?

Everyone in the ACLU-PA family should be excited to celebrate the ACLU centennial on Saturday, February 29, 2020, in Philadelphia, the place where liberty began. It will be an inclusive evening of remembrance, food, drinks, and performances. Our venue, the National Constitution Center, couldn't be more perfect. Tickets start at \$250, individual sponsorships begin at \$3000, and corporate sponsorships begin at \$10,000. Visit aclupa.org/Centennial to reserve your tickets or to become a sponsor!

Why is volunteering with the ACLU of Pennsylvania important to you?

These are not times to stand by or remain silent. Supporting the ACLU and volunteering with such a talented, devoted group of people give me hope.

What civil liberties issue(s) are you most passionate about and why?

It's hard not being deeply affected by the Muslim ban and family border separations. Criminal justice reform remains paramount. Voting rights. Women's rights. LGBTQ rights. Freedom of speech! Seriously, did you ever think we'd be so worried about free speech in our lifetime?!?

What do you do when you're not volunteering for ACLU-PA?

My husband and I are enjoying retirement with family and friends. We are active travelers and enjoy walking, hiking, biking, and snow-shoeing. And we are devoted to voter registration. We've registered people in high schools, at community events, rallies, and recently at the conclusion of a citizenship ceremony at the immigration offices. None of this matters if we don't vote! ■

STATE SUPREME COURT TAKES ON ACLU-PA LAWSUIT OVER CASH BAIL

In the spring issue of *Free For All*, you may have read about our lawsuit against bail judges in Philadelphia, alleging that the Philly courts are improperly imposing cash bail in violation of the rules that courts are required to follow. According to those rules—known as the Rules of Criminal Procedure—courts should not impose cash bail for the purpose of detaining someone before trial. But after observing more than 2,000 bail hearings in Philadelphia, it was clear that the bail judges are relying too heavily on cash bail and not considering the individual circumstances of the people before them, effectively criminalizing poverty and

punishing people who cannot afford the cash bail orders they receive.

In July, the Supreme Court of Pennsylvania announced that it will consider our case. Using its “King’s Bench” power—a procedure the court reserves for issues that it considers “of great public importance”—the court initiated further investigation into what is happening with cash bail in Philadelphia. The investigation will be led by Judge John M. Cleland, the senior judge from McKean County, who has previously supervised other high profile inquiries, including the aftermaths of the Jerry Sandusky child sexual abuse case and the Luzerne County

“kids for cash” judicial corruption scandal.

This fall, stakeholders in the case will submit briefs to Judge Cleland, who will then write a report with recommendations to the state Supreme Court.

ACLU-PA filed the lawsuit on behalf of ten people who are incarcerated and two community groups, the Youth Art and Self-empowerment Project and the Philadelphia Community Bail Fund, with co-counsel from the law firm Arnold & Porter. More information about the case is available at aclupa.org/PhillyBail. ■

MEET ANGELIQUE GRAVELY, THE 2019-20 FRANKEL ADAIR SCHOLAR

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

My alma mater's motto "Faith, Reason, and Justice" still grounds much of my work and life today. I credit that institution with teaching me to recognize and challenge the systemic ways injustice is maintained. Realizing that university didn't always act justly towards people of color and LGBTQ+ identified people is what initially motivated me to do advocacy work. Connecting with established LGBTQ+ advocates and organizations across the country has also played a large role.

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

The most vulnerable among us are not being fully protected or served by organizations that allege to support us. Until community organizations take an intersectional approach to their work, LGBTQ+ people who are most impacted by multiple systems of oppression (e.g., Black trans women, disabled queer and trans people of color, trans Latinx immigrants) will continue to be the least likely to receive the support and resources they need to survive and thrive as their authentic selves.



Angelique Gravelly and ACLU-PA Executive Director Reggie Shuford.

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

Absolutely! I'm especially focused on using my passion for school counseling, writing, and LGBTQ+ education to establish more resources and systemic support within the public education system and Black Church for both SGL/LGBTQ+ folks and those who need training on how to best support those folks in their midst.

What other social issues motivate you?

Education equity, particularly at the K-12 level, and more diverse representation in children's and young adult books. Both of those issues intersect with LGBTQ+ issues, but I'm motivated by more than that intersection.

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

WHEN YOU VOTE FOR DA, VOTE FOR SMART JUSTICE

If you live in Pennsylvania, your county may be holding an election for district attorney in November. The majority of counties in the commonwealth will choose their top prosecutor for the next four years in this election.

District attorneys are elected officials who are accountable to their constituents, just like all other elected officials. And DAs are also the most powerful people in the criminal legal system; they make decisions every day that impact people's lives, including

what charges to bring, what sentences to seek, and whether or not to seize people's property.

ACLU-PA has sent a survey to candidates for district attorney in November's general election. When you cast your vote for DA on November 5, you should know where the candidates stand on the key issues, including probation and parole reform, mandatory minimum sentencing, police accountability, and reforming archaic drug laws.

All of the responses we've received from the candidates have been posted at KnowYourDAinPA.org. See where the candidates in your county stand and vote smart justice in November! ■



TODAY'S YOUNG ACTIVISTS CAN LEAD WITH LOVE

By Brett Schratz

Brett Schratz is a volunteer with the ACLU-PA and a senior at Villanova University.

Whether marching at the front of protests, organizing on social media, initiating national school walkouts, proposing sweeping gun reform legislation, or implementing international youth climate strikes, our country's youth are leading in the fight for change. We are motivated. We are intentional. We are the next generation of activists. But what drives us to go as far as we do in our advocacy work?

During the last week in July, I traveled to Washington, D.C., and represented the ACLU of Pennsylvania at the ACLU's inaugural Advanced Advocacy Institute. I was looking for the answers to my questions: what does advocacy mean to my generation and where is it going? I met dozens of other young activists from all over the country—all committed to working on important issues in their local



Janina Calle and Brett Schratz at the ACLU's Advocacy Institute in Washington, D.C. Janina and Brett are volunteers in ACLU-PA's Philadelphia office.

communities. Their passions aligned with what the ACLU fights to protect every day: civil rights for all. I met people passionate about protecting reproductive freedom, implementing criminal justice reforms, ensuring LGBTQ&T equality, and safeguarding immigrants' rights. While their motivations are sometimes driven by fear, resentment, despair, and even rage,

I found a common foundational core value driving all of our work: love.

During one of our workshops with the Campaign for Smart Justice, the instructors asked students to reflect upon the American philosopher Cornel West's idea that "love is justice in public." That our love for the other, the stranger, the oppressed, manifests itself as justice in the public sphere. The youth agenda derives not from a political platform nor from identity politics, but rather from a common love for one another and even for those we do not know. We share a mutual vision of a nation in which empathy and compassion dictate our rule of law. Any frustrations and discontent we experience today exist primarily because our current government, and our current society, fail to achieve our hopes for an equal and just community.

Read this piece in its entirety at medium.com/@ACLUPA. ■

EFFORT TO REFORM PA'S PROBATION SYSTEM HEATS UP IN HARRISBURG

A bill currently before the Pennsylvania Senate provides a tremendous opportunity to reform the commonwealth's broken system of probation sentencing, a form of community supervision that keeps a person under near-constant government supervision. Although probation appears on its face to be an alternative to incarceration, the requirements that a person on probation must follow are so onerous that it in fact fuels mass incarceration; one violation of the rules can land a person in jail.

The legislation supported by ACLU-PA, Senate Bill 14, provides much-needed reform to this system. Among other things, the bill sets maximum probation sentences, as

Pennsylvania is one of just seven states with no limit to how long a probation sentence can last; allows for an early end to a probation sentence if the person has no violations; ends the practice of restarting a person's probation sentence after a violation; and severely narrows the ability of courts to incarcerate a person for a technical violation, that is, a violation of the probation rules that is not a new crime.

As of this publication, that bill is before the Senate Judiciary Committee, and a vote in committee and then in the entire Senate is expected before the General Assembly recesses for the holidays in December.

You can take action by contacting your state senator today to ask them



ACLU-PA Senior Field Organizer Terrell Thomas spoke about smart justice recently at a forum hosted by state Representative Dan Miller in Allegheny County.

to support Senate Bill 14. Visit bit.ly/ProbationPA to send an email to your senator. And go to aclupa.org/SB14 to learn more about ACLU-PA's position on the legislation. ■

NEW STAFF AT THE ACLU OF PENNSYLVANIA

ACLU-PA has welcomed six new staff members to our team since the spring.



Alex Domingos is an organizer for the ACLU of Pennsylvania's Campaign for Smart Justice and works in our Harrisburg office. Alex works to reduce Pennsylvania's prison population while combating racial disparities in the criminal legal system. Prior to joining ACLU-PA, Alex advocated against institutional racial bias as an activist with This Stops Today Harrisburg. He is a founding member and the director of the Dauphin County Bail Fund, a nonprofit organization dedicated to abolishing cash bail in Dauphin County.



Jessica Li started as ACLU-PA's criminal justice investigator in August, working in our Philadelphia office. Jess is a recent graduate of Swarthmore College, where she received her B.A. with honors in philosophy and a minor in economics. This summer, Jess interned at the Charles Hamilton Houston Institute at Harvard Law School, where she conducted research into risk assessment tools, racially disparate policing, and bail practices in Boston-area courthouses. In the summer of 2018, she interned at the ACLU-PA, where she worked on ending cash bail and highlighting the expansion of the Pennsylvania Crimes Code.



Michelle Rowland joined the ACLU of Pennsylvania staff in May as human resources and operations specialist and works in the Philadelphia office. Prior to joining the ACLU-PA, Michelle was the senior administrative associate at the University of Texas at Austin, where she focused on human resources and operations. Michelle brings over six years of higher education and nonprofit operations experience. With a passion to help others, Michelle is an active member of the Philadelphia chapter of the Society for Human Resource Management, which educates HR professionals on innovative and up-to-date best practices for the workplace. Michelle graduated from the University of Saint Joseph with a B.A. in art history and a minor in business management.



Danitra Sherman joined the ACLU of Pennsylvania as campaigns director in September, working in the Philadelphia office. Before joining the ACLU-PA, Danitra served as the state field director for Planned Parenthood Pennsylvania Advocates and PAC, where she oversaw the organizing, advocacy, and electoral work for the state. She brings almost 10 years of campaign experience that includes grassroots and legislative advocacy, ballot initiative, and electoral efforts. Danitra graduated from Drexel University with a DrPH in policy and social justice. She also holds an MPH in administration and policy, as well as a B.S. in biology.



Marianne Stein joined the ACLU of Pennsylvania in July as a legislative associate in our Harrisburg office. Marianne previously worked with the Pennsylvania Commission on Sentencing as a sentencing policy specialist, where her work focused on outreach and policy-support activities and tracking legislation, and she was also a probation officer with Lancaster County Adult Probation and Parole Services. Marianne graduated from The Pennsylvania State University with a B.S. in psychology in 2011, and, in 2016, she earned an M.A. in counseling from Eastern University.



Ali Szemanski joined the ACLU-PA in September as a legal fellow in the Pittsburgh office. A former intern at ACLU-PA, Ali is a recent graduate of Harvard Law School, where she served as editor-in-chief of the Harvard Journal of Law & Gender, participated in the criminal justice appellate and employment law clinics, and worked on criminal justice and reproductive access issues for clients in the Mississippi Delta. During law school, she also gained experience in disability rights at the federal government and Disability Rights Advocates in Berkeley, CA.

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THE POWER OF THE PEOPLE



Above left: ACLU-PA's Andy Hoover, Elizabeth Randol, and Molly Tack-Hooper (left to right) hosted a live episode of our podcast Speaking Freely at the ACLU 100 traveling exhibit, which made a stop in Philadelphia in May.

Above right: ACLU-PA Trans Justice Coordinator Naiymah Sanchez (back row, right) led a group of volunteers and allies at a meeting of the board of directors of Eastern Lancaster County School District in August. The district has passed a transphobic policy prohibiting transgender students from using restrooms based on their gender identity.

Left: ACLU-PA staff and volunteers visited Pride festivals throughout the state all summer, including in Harrisburg.