

FREE FOR ALL



State legislature passes bill to automatically seal some criminal records — page 6

FALL 2018

TELLING THE STORY OF CIVIL LIBERTIES



By Reginald T. Shuford
Executive Director

When two Black men were arrested at a Starbucks coffee shop in Philadelphia in April, it came as no surprise to those of us at the ACLU of Pennsylvania. Infuriating, sure. But not surprising.

For seven years, ACLU-PA has been party to a consent decree with the city over the Philadelphia Police Department's practice of stop-and-frisk, a type of pedestrian stop the police used excessively for years without justification against people of color. After we sued the city and the police department in 2010, the city agreed to increased data collection and enforcement mechanisms to diminish racial disparities and unwarranted, unconstitutional stops.

The neighborhood where Donte Robinson and Rashon Nelson were arrested for Waiting While Black has some of the highest racial disparities in pedestrian stops in Philadelphia. In a neighborhood with a Black population of three percent, 67 percent of the pedestrian stops in the first six months of 2017 were of African-Americans. The arrests of Robinson and Nelson—while not exactly the textbook definition of a pedestrian stop—brought the data on stop-and-frisk to life in a very real and personal way.

It was a reminder to me of the importance of personal stories, of centering the experiences of impacted communities in our work, and of supporting the leadership of people who are most affected by the issues we care about. For seven years, we have released the latest data collected by the city on how police are using stop-and-frisk. (To find those reports, visit aclupa.org/bailey.) And every year, the reports get a smattering of coverage, maybe a day or two of news stories in the local

press and maybe a couple of opinion pieces.

But what happened at Starbucks captured imaginations around the country in a way that our annual release of statistics simply could not, in part because it was so personal and in part because it was documented on video.

In recent years, we at the ACLU of Pennsylvania have sought to ensure that impacted people are driving the priorities and the strategy on the issues that we care about. Equity is not simply a numbers game. It's an organization-wide commitment to center the perspectives and expertise of people whose daily lives are affected by social inequalities guide the work that we do.

That commitment means that we have hired directly impacted people to lead our Campaign for Smart Justice and our Transgender Education and Advocacy Program. That commitment has also meant that the organization continues to wrestle with how it balances the defense of free speech with the pursuit of racial justice, with the tragedy in Charlottesville, Virginia, in 2017, as just one example. To get where we want to go, the people who live our issues daily have to play meaningful roles in driving our advocacy.

Donte Robinson and Rashon Nelson were just two guys trying to go about their business. Their mere presence was perceived as a threat by a Starbucks employee and the Philadelphia police. That incident told the story of racial profiling in a way that statistics never could. And that's why ACLU-PA is firmly committed to telling the complete story of civil liberties.

Onward,

Reggie Shuford, Executive Director
ACLU of Pennsylvania



ACLU-PA Senior Field Organizer Terrell Thomas takes questions from reporters at the launch of the Campaign for Smart Justice in July.

ACLU-PA LAUNCHES CAMPAIGN FOR SMART JUSTICE

At the age of 24, Terrell Thomas faced an impossible choice, pressed on him by law enforcement officers. A friend and a relative had been arrested, and detectives insisted that Terrell testify against them or go to prison himself as part of a conspiracy.

Terrell refused and was convicted. At his sentencing, the presiding judge told Terrell that, while he disagreed with the length of the sentence, his hands were tied by mandatory minimum sentencing laws.

Today, Terrell is the senior field organizer for ACLU-PA's Campaign for Smart Justice, which officially launched in July at a press conference with several allies at the Allegheny County Courthouse in Pittsburgh.

The ACLU-PA's Campaign for Smart Justice is part of a nationwide effort by the ACLU to cut the incarcerated population in half and combat racial disparities that are rampant in the

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FROM THE PRESIDENT



Dear ACLU-PA supporter,

In 1931, nine African-American teenagers were unfairly and unjustly accused of rape by two white women whom they had encountered

while traveling on a freight train through Alabama. A mob surrounded the county jail where they were held, forcing the National Guard to protect them from lynching, and all but one were sentenced to death at their first trial barely a week later.

Known as the Scottsboro Boys, the young men's case was argued at the United States Supreme Court by an ACLU volunteer attorney named Walter Pollak in 1932, in a case that established for the first time a federal constitutional right to meaningful counsel in state capital trials. After an unsuccessful retrial, the ACLU again appealed to the Supreme Court, this time—in 1935—winning another constitutional precedent against racial exclusions from jury service.

The Scottsboro case lit the flame for the burgeoning civil rights movement, and the ACLU's commitment to fairness and equity in the criminal justice system—tied intimately to our passion for racial justice—was born.

Today, the ACLU of Pennsylvania is dedicating a great deal of our financial resources and staff time to the Campaign for Smart Justice, for good reason. The criminal justice system in Pennsylvania and around the country is plagued by racial disparities, the incarceration of people simply because they are poor, and bloated budgets that steal from public education and other social services. A smart justice system in the commonwealth is long overdue.

Consider: Pennsylvania has the highest rate of incarceration in the Northeast; nearly half of our incarcerated population is Black, while African-Americans make up only about ten percent of the commonwealth's overall population; and Pennsylvania has the third-highest rate in the country of people under criminal justice supervision, such as parole or probation.

As a defense attorney who has been practicing for many years, I have seen the abuses and the unfairness in the criminal justice system up close. People in my profession do our best to serve our individual clients. But I also know that systemic change can only happen by building the political and cultural will to do so.

I'm proud that the ACLU has taken on this task. We have ambitious goals for change, as discussed elsewhere in this newsletter. Success will not come easily or quickly. But it is necessary that we end mass incarceration if we are to fulfill that aspirational phrase "with liberty and justice for all."

Peter Goldberger
President, ACLU-PA

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criminal justice system. To get there, we are pursuing various policy initiatives, including ending cash bail for pre-trial detention, probation and parole reforms, prosecutorial reform, and reducing extreme sentencing.

Mass incarceration is a serious problem in Pennsylvania. The commonwealth has the highest per capita rate of adult incarceration in the Northeast and the third-highest per capita rate in the country of adults on community supervision, like parole and probation. (More data about Pennsylvania's criminal justice system can be found in a new report, the Smart Justice 50-State Blueprint at bit.ly/PABlueprint.)

It took years of bad decisions by policymakers to create the mass incarceration crisis we have today. Unfortunately, there are no easy fixes. We need to work at the county and state level to institute real reform and to convince stakeholders and elected officials that there are better ways.

The ACLU and our partners are ready to face the challenge head on and win smart criminal justice reform in Pennsylvania and across the country. If you'd like to support the work of the Campaign for Smart Justice or you are part of an organization that would like to join us as a partner, visit aclupa.org/smartjustice. ■

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FAYETTE COUNTY PRISON IS A RELIC OF A BYGONE ERA. SO WE SUED.

Fayette County Prison in southwestern Pennsylvania is a 19th century jail that is still housing people in the 21st century. Built in 1889, the jail is literally hazardous to the health of the people who are incarcerated and those who work there. According to prisoners and guards, pest infestations are common, including rats and cockroaches. The jail has exposed wiring and black mold. Sometimes, sewage backs up into cells, and there is often a lack of running water.

In June, ACLU-PA decided to do something about it, joining with the Pennsylvania Institutional Law Project and volunteer attorneys from Blank Rome LLP to file a class-action

lawsuit against Fayette County. Our lawsuit asks a federal court to compel the county to build a new prison and revamp the current jail so that it is inhabitable during construction.

The need for a new jail was not news to elected officials in Fayette County. The county has twice hired companies to assess the situation. The most recent assessment, in May 2017, found the prison to be “dangerous to staff and inmates” and noted “many maintenance issues in the prison, including plumbing, electrical and HVAC problems.” Ultimately, the assessment concluded that the “prison is of such poor design and condition, it should no longer be used for the housing of inmates.”

Later that year, in September, the jail’s main sewage pipe collapsed, flooding raw sewage into the basement, where prisoners work and are housed and where the medical facility is located.

In 2016, the union that represents the guards filed a complaint with the Department of Justice. In 2014, the county had a plan in process to build a new jail but abandoned it before construction started.

Our lawsuit was filed in the United States Federal District Court in Pittsburgh. More information, including related legal documents, is available at aclupa.org/Arison. ■

VOLUNTEER PROFILE



Name: Melissa Farr

Local ACLU-PA chapter: South Central

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

I am the President of the ACLU-PA South Central Chapter, which includes ten counties (Adams, Cumberland, Dauphin, Franklin, Fulton, Juniata, Lancaster, Lebanon, Perry, York). In this position, I identify opportunities for member outreach and public education, such as holding speaking events, film screenings, and information tables. I also look for ways in which ACLU-PA can collaborate with other local groups who are working on civil liberties issues in the region.

How long have you volunteered with the ACLU of Pennsylvania?

I initially became involved about ten years ago, but it wasn't until I joined the first national People Power campaign in March 2017 that I realized I was ready to make a more serious commitment. I was excited to be able to transition my grassroots organizing work with People Power into a role volunteering directly with the ACLU of Pennsylvania.

How did you first hear about the ACLU of Pennsylvania?

I was fortunate to grow up in a household that encouraged my interest in social justice issues at an early age.

Considering the important role the ACLU has played in nearly every civil rights movement I learned about when I was young, it feels like the ACLU has always been present in my life.

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

My goal is to make ACLU-PA's presence visible and accessible on the ground, not only to help build support for the organization but to also empower communities with the resources and information they need to protect and advocate for their constitutional rights. I love when I am able to connect with members who had not realized before that there are opportunities for them to be active with the ACLU locally.

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

I try to focus on the issues that are having the most impact on the communities I serve. Our region is home to a large immigrant and refugee population, so defending their rights is an urgent priority right now. I am also passionate about advancing LGBTQ equality. Finally, I have learned so much about mass incarceration through the ACLU-PA Campaign for Smart Justice, and I am looking forward to working with the Smart Justice team to fight for criminal justice reform in Pennsylvania. ■

VOLUNTEERS MAKE THE ACLU-PA GO 'ROUND!



Shannon Parris, ACLU-PA's volunteer coordinator in Pittsburgh, leads orientation for new volunteers in August.

While the staff of the ACLU of Pennsylvania works hard every day, the defense of civil liberties has to include volunteers. As we've increased our capacity over the last two years, we've improved our ability to support our volunteers, and we now have staff in our Philadelphia, Pittsburgh, and Harrisburg offices who work directly with and train people who are able to donate their time to ACLU-PA.

The needs are great. ACLU-PA volunteers are often our contacts in local communities, our researchers, our photographers, and our editors. If you like what we do and want to help, visit aclupa.org/volunteer for more information and to sign up. ■

NEW WEBSITE IS ONE-STOP SHOP ON TRANSGENDER RIGHTS



This fall, the ACLU of Pennsylvania launched a new website, TransformationPA.org, to provide im-

portant information about the civil rights of transgender people and to center their personal journeys.

At the site, users can hear and read the words of transgender Pennsylvanians in the "our stories" section. The site also includes a

"Know Your Rights" section with information about schools, dress codes, discrimination, legal documents such as birth certificates and drivers' licenses, and more. Finally, anyone motivated to get active can find ways to be involved in the work for transgender equality.

TransformationPA.org is a project of ACLU-PA's Transgender Education and Advocacy Program (TEAP), which is a collaborative initiative with national ACLU. ■

STUDY CONFIRMS SYSTEMIC PROBLEMS WITH PENNSYLVANIA'S DEATH PENALTY

A long-awaited analysis of Pennsylvania's system of capital punishment was released in June and confirmed what legal advocates have said for years: The death penalty in the commonwealth is systemically flawed and in need of an overhaul. While the study fell short of recommending repeal of capital punishment—the position of the ACLU of Pennsylvania—its authors suggested major reforms.

In 2011, the Pennsylvania Senate passed a resolution that established the study commission, consisting of four sitting state senators and an advisory committee of key stakeholders. The resolution charged the commission with analyzing 17 points of interest. ACLU-PA Executive Director Reggie Shuford and Marshall Dayan, the president of ACLU-PA's Greater Pittsburgh Chapter, were among the more than 30 members of the advisory committee, which included judges,



Marshall Dayan, president of ACLU-PA's Greater Pittsburgh Chapter, was a member of the advisory committee that analyzed capital punishment in Pennsylvania.

prosecutors, defense lawyers, victims' advocates, and civil rights advocates.

The study found numerous flaws in the administration of capital punishment, including the risk of executing an innocent person, geographical disparities, a lack of adequate representation for poor defendants, racial disparities based on the race of the victim, and high costs to taxpayers. The advisory committee recommended the establish-

ment of a statewide capital defender office to bolster legal representation for people in capital trials, regardless of their ability to afford an attorney. It was one of more than a dozen recommendations in the report.

Since the reinstatement of the death penalty in 1978, following a brief moratorium imposed by the U.S. Supreme Court, 170 death sentences and/or convictions in Pennsylvania have been overturned by federal or state courts, largely due to ineffective assistance of counsel. Three people who waived their rights to appeal were executed in the 1990s, the last in 1999.

In 2015, Governor Wolf exercised his constitutional power of reprieve to implement a moratorium on executions, which continues as of this writing.

Marshall Dayan discussed the study in episode 7 of ACLU-PA's new podcast, *Speaking Freely*, which is available at aclupa.org/podcast. ■

17-YEAR-OLD BOY KILLED BY POLICE IN ALLEGHENY COUNTY

In June, the epidemic of police violence touched Allegheny County again when 17-year-old Antwon Rose was shot and killed by a police officer in the borough of East Pittsburgh while fleeing a traffic stop. Officer Michael Rosfeld has been charged with criminal homicide for Rose's death.

In the days that followed, ACLU-PA staff and volunteers provided legal observers and documented on social media several of the protests under the leadership of residents of the county. Episode 6 of our podcast *Speaking Freely* includes audio from one protest and is available at aclupa.org/podcast.

Antwon's death was a reminder to the Coalition for Smart Justice in Allegheny County of the importance of district



Approximately 1,000 people gathered in front of the Allegheny County Courthouse two days after Antwon Rose was killed by Officer Michael Rosfeld.

attorney accountability. A district attorney is the person who has the power to hold police officers accountable for abusive behavior.

ACLU-PA Legislative Director Elizabeth Randol also testified at a legislative hearing dedicated to police training and accountability. ■

PENNSYLVANIA TAKES THE NEXT STEP IN SEALING CRIMINAL RECORDS

The joke around the state capitol in Harrisburg is that Pennsylvania never does anything first. But this summer, the General Assembly defied the joke and did it in a way that lowers barriers for people with criminal records.

In June, the legislature passed and Governor Wolf signed the Clean Slate Act, a first-of-its-kind law that automatically seals from public view criminal records for summary offenses and many misdemeanors. A person who has a conviction for one of the qualifying offenses will no longer have to ask a court to have their record expunged or sealed. It will simply vanish from public view in the Pennsylvania State Police database, as long as the person has not been convicted of another offense after ten years and if they have paid all of their court fees and fines.

Automatic sealing will begin in July



ACLU-PA Legislative Director Elizabeth Randol testifies at a legislative hearing in Pittsburgh in July.

2020. The bill also expanded the offenses for which a person can petition a court to have their record sealed. That section of the law takes effect in 2019.

The ACLU of Pennsylvania was proud to play a supporting role in the advocacy for the bill, following the lead of our allies at Community Legal

Services of Philadelphia and the Center for American Progress. The legislation was also supported by The Players Coalition, a recently formed group of socially active professional athletes, who lobbied for the bill during a visit to the state capitol with ACLU-PA in 2017.

Clean Slate is another incremental step as the legislature considers ways to alleviate burdens for people caught up in the criminal and civil court system. The General Assembly is also considering a bill to repeal the existing suspension of a person's driver's license for criminal offenses that are unrelated to impaired driving, such as nonviolent drug offenses, and another bill to provide clear guidance to courts to consider a person's indigence before jailing them for failure to pay fines and fees. Our hope is that Clean Slate is merely another step forward with more to come soon. ■

APPEALS COURT RULES IN FAVOR OF SCHOOL'S TRANSGENDER-AFFIRMING PRACTICE

Transgender students in the Boyertown Area School District in Berks County keep winning.

In May, a three-judge panel at the United States Court of Appeals for the Third Circuit in Philadelphia upheld a lower court's decision in favor of the district's practice of allowing trans students to use restrooms and locker rooms consistent with their gender identity. The district is defending itself against a lawsuit brought by students and parents represented by the Alliance Defending Freedom, an anti-LGBQ&T legal group that refuses to even acknowledge trans students as transgender in their court filings.

In July, the appeals court affirmed its earlier decision, after the plaintiffs asked for reconsideration.

The plaintiffs have offered a novel

legal argument that no court has endorsed—that cisgender students' privacy rights are violated when transgender girls are in the girls restrooms and locker rooms and when transgender boys are in the boys restrooms and locker rooms. The school, for its part, has made private changing areas and single-person restrooms available for any student who prefers more privacy.

This case is the first of its kind to be heard by a federal appeals court.

The ACLU of Pennsylvania, national ACLU's LGBT and HIV Project, and cooperating counsel from Cozen O'Connor intervened in the case on behalf of the Pennsylvania Youth Congress (PYC), an LGBQ&T youth advocacy group that has members at Boyertown Area Senior High School who would be harmed if the plaintiffs



Our legal team and clients pause outside the Third Circuit Court of Appeals in May.

succeed in stopping the school's practice.

By intervening in the case, our lawyers were able to argue in court on behalf of PYC's members.

The plaintiffs who are suing the school still have a few legal maneuvers they can deploy. For the latest updates, check out aclupa.org/Boyertown. ■

NEW STAFF AT THE ACLU OF PENNSYLVANIA

Since July, ACLU-PA has welcomed four new staff members to our team.



Cambriae Bates joined the ACLU of Pennsylvania staff in July as the communications associate and works in the Philadelphia office. A Philadelphia native, Cambriae worked as the development special events coordinator for AIDS Services of Austin in Austin, Texas, prior to joining the ACLU of Pennsylvania. Preceding her work in Austin, she was the marketing and development coordinator for the Philadelphia youth center Spring Garden Academy. Cambriae earned her bachelor's degree in media studies and production from Temple University and is scheduled to finish her master's degree in communications through an online program with Syracuse University this fall.



Hayden Nelson-Major is ACLU-PA's latest Independence Foundation Fellow, working on reforms to the bail system. Hayden is a 2014 graduate of the Temple University Beasley School of Law and has an undergraduate degree from Vassar College. After graduating law school, she clerked for a federal district court judge for three years. Prior to law school, Hayden worked at the National Clearinghouse for the Defense of Battered Women and the Capital Habeas Unit of the Federal Community Defender Office. Hayden works in our Philadelphia office.



Vanessa Stine joined the ACLU of Pennsylvania in September 2018 as the immigrants' rights legal fellow. Prior to joining ACLU-PA, Vanessa was a staff attorney at Justice at Work (formerly Friends of Farmworkers), where she represented immigrant workers in employment and immigration matters. Vanessa started her legal career with a two-year Equal Justice Works Fellowship to provide free civil legal aid to victims of immigration services fraud through Justice at Work. She graduated Order of the Coif from Villanova University School of Law, where she was a Public Interest Scholar. Vanessa also holds a bachelor's degree in sociology/anthropology from Lewis & Clark College.



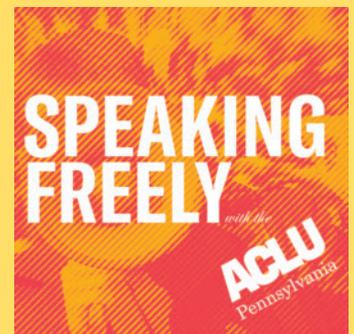
Mica L. Williams is the policy program associate for ACLU-PA's new project on school policing in Allegheny County. Mica recently completed a prestigious fellowship, the If/When/How Reproductive Justice Fellowship, and she is a graduate of the University of California, Hastings College of the Law. There, she focused her studies on the histories and legal needs of vulnerable populations and collaborated on several education and journalism projects with current and former prisoners out of San Quentin State Prison. Prior to law school, Mica received her B.A. in English and rhetoric magna cum laude from the University of California, Berkeley in 2012.

GET SPEAKING FREELY WHEREVER YOU GET YOUR PODCASTS

The ACLU of Pennsylvania expanded its multimedia platforms in April with the launch of Speaking Freely With the ACLU-PA, a new biweekly podcast.

Speaking Freely is the podcast that tells the story of civil liberties through the voices of our staff, our clients, and our allies. Previous episodes have covered immigration, free speech, smart justice, transgender equality, and students' rights, among others.

You can listen to every episode of Speaking Freely at aclupa.org/podcast or on your podcast app of choice. ■



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ETERNAL VIGILANCE, EVEN IN THE SUMMER



Above: ACLU-PA supported and participated in Families Belong Together actions in June in Allentown, Harrisburg, Lancaster, Philadelphia (pictured), Pittsburgh, Scranton, State College Wilkes-Barre, and York to protest the Trump administration's policy of separating children from their parents and family detention in immigration enforcement.

Top left: Several thousand ACLU members from across the country gathered in Washington, D.C., in June for our first member conference in a decade. At the conference, ACLU-PA's Reggie Shuford (left) moderated the panel discussion "Talking About Race."

Bottom left: The ACLU of Pennsylvania showed up at pride festivals across the commonwealth to show our support for the LGBTQ&T community, including in Philadelphia in June.