

Elaine Turner's Story



Elaine Turner struggled to find help for her son who has ADHD. He began to have trouble in middle school and his grades dropped. The school told Elaine that her son would receive care if she filed a petition against him in court. Unknowingly, on the advice of people she trusted, her family got caught up in the system.

The court put Elaine's son on probation, but he did not receive access to community-based mental and behavioral health services. When he violated his probation, he was placed in a DHHR-contracted private detention facility.

He was given medication that made him violent and Elaine wasn't allowed to make decisions regarding his treatment. He was also locked in solitary confinement for days on end, and at one point was placed on suicide watch.

Elaine's son was later transferred to another facility out-of-state where he spent most days locked down in his cell, at times in solitary confinement. He was not allowed to look out of his window or speak to other inmates without discipline. He rarely got the opportunity for recreation, an important treatment component for children with ADHD.

Fourteen months later, Elaine's son is back at home. After months of institutionalization, Elaine struggles to reintegrate her son back into the community. She feels that the system set her son up to fail and wastefully spent over \$120,000 to incarcerate him so that he could receive "care." If there were more options for community-based treatment that courts and state agencies could rely on, Elaine's son and thousands of other children like him could avoid this nightmare.

Juvenile Justice: Communities Can Do It Better

West Virginia recently took important first steps reforming our state's broken juvenile justice system. With overwhelming support from the state Legislature, we were able to reform harmful truancy laws that locked kids up after missing just five days of school.

Yet, West Virginia's Department of Health and Human Resources is now fast-tracking new out-of-home institutions for children with mental health needs. The proposed facility in Logan, WV—the Dazzy Vance Mountain Retreat—will hold 70 kids from ages 4 to 21.

Shockingly, Dazzy Vance will charge \$500 a day for each institutionalized child, costing taxpayers \$12.8 million dollars per year. This gross misuse of funds is troubling, especially when effective community-based treatment programs cost far less.

The U.S. Department of Justice recently issued findings that WV is in violation of the Americans with Disabilities Act and Title VI of the Civil Rights Act because it sends too many youth with mental health needs to institutions instead of providing services in their communities.

The state was projected to save \$20 million as a result of last year's reforms, but these savings won't exist if new institutions are built. Now, more than ever, we need to redirect and reinvest these savings back into our kids' futures. Community behavioral and mental health treatment, job training, mentoring, and restorative justice programs like Teen Court work if we fund them.

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Director, Eli Baumwell
2015 William Denman Youth
Activist Scholarship Recipient

The Director's Chair



2015 was a year of **progress and perseverance** at the ACLU of West Virginia. This is especially true of the work we've undertaken in our legislative and legal portfolios.

At the Capitol, we successfully led the effort to **pass a major truancy reform bill** that keeps kids in school and out of institutions. We worked alongside both parties and non-traditional allies to create a coalition committed to keeping kids in school and out of court.

Our advocacy also staved off a number of threats to the LGBTQ community, including an effort to roll back hard-fought non-discrimination protections in towns across the state. We also fought hand-in-hand with allies like you to defeat bills which would have limited access to women's healthcare. We did all of this while remaining vigilant and prepared to face **threats like the reinstatement of the death penalty, drug testing of welfare recipients, and the evisceration of your privacy rights.**

Our robust legal program assisted people throughout the state. We addressed a broad array of issues including **threats**

to privacy, challenges to free speech, questionable police practices, religious freedom, and prisoners' rights—to name a few.

We are litigating a case before the Equal Employment Opportunity Commission on behalf of a woman who was unable to put her wife on her workplace health insurance. And we know this isn't an isolated occurrence – unfortunately it's happening in places across the state.

We need your help now to prepare for 2016. The threats we face are real and we must be ready to fight efforts to restrain, restrict, and suppress our constitutional freedoms. The assaults of women's healthcare will only grow worse. And attacks on the LGBTQ community, the poor and disenfranchised, and those too young to advocate for themselves keep coming.

Whether we are defending your rights at the statehouse or defending them in court, we cannot do this work without you. Now is the time to contribute to our work. Supporting the ACLU of West Virginia Foundation ensures that the Bill of Rights and the rights guaranteed by the West Virginia Constitution are preserved for each new generation. **Thank you for all that you do!**

Message from the President



I cherished the recent demonstrations in Charleston, West Virginia, surrounding President Obama's visit to our state. The demonstrations displayed a public that holds passionate views

about health care and drug treatment, as well as employment rates and declining opportunities for careers in the coal fields. A healthy democracy provides air for these passions to breathe and to be freely expressed.

The civil liberties exercised in Charleston are provided in the First Amendment, but they are not to be taken for granted. As Rick Perlestein notes in *Nixonland*, the Vietnam era was rife with visceral disagreements over policies domestic and foreign, and sometimes the passion of those disagreements resulted in government action that denied civil liberties. In 1971, Perlestein writes, West Virginia passed a law declaring anyone who disobeyed an order of a police officer, or an order of anyone deputized as a law enforce-

ment officer, to be a "rioter." Moreover, this law declared that law enforcement officers (and their deputies) were to be held guiltless in the death of any "rioter." Clearly these state laws were a denial of the civil liberties given in the Constitution.

The ACLU of West Virginia protects this state from government infringement on the civil liberties of its citizens. Laws driven by passion, even the passions brought on by the riots of the late 1960s and early 1970s, must not impinge on the rights of the people; and yet, too often, laws driven by passion do just that. Without the ACLU, too many citizens might have their liberties taken away without recourse to an entity that will work to remind governments that they, too, must operate under the Constitution of the United States.

I am so proud of the work our organization does every day to protect the civil liberties of our citizens, and I thank you for your contributions to this great effort to keep all West Virginians free.

ACLU OF WV

The American Civil Liberties Union of West Virginia (ACLU of WV) is a non-partisan, non-profit membership organization whose mission is to ensure that the Bill of Rights and rights guaranteed by the Constitution are preserved for each new generation. The ACLU of WV accomplishes these goals through legislative advocacy, litigation, grassroots organizing, and public education. The ACLU of WV is devoted exclusively to protecting the basic civil liberties of all West Virginians. In its more than five decades of existence, the ACLU of WV has become widely recognized as the state's foremost advocate of individual rights.

For more about the ACLU of West Virginia and our priorities please visit www.acluww.org or facebook.com/ACLUWV.

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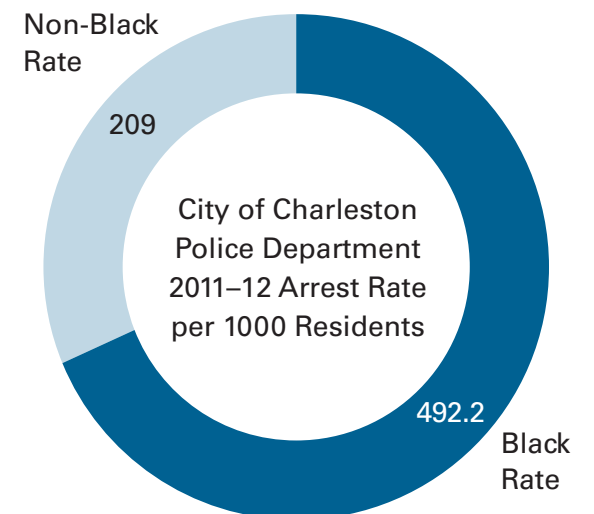
Police Practices

The ACLU-WV is committed to monitoring police practices to ensure the safety and constitutional rights of the people police encounter in their day-to-day activities. To that end, we are investigating police practices throughout West Virginia to learn more about profiling, police misconduct, and surveillance.

So far in 2015, law enforcement officers in West Virginia have killed nine people. Law enforcement officers nationwide have killed 927 people. Police officers often face dangerous situations. However, it is important to monitor the police to ensure they do not take their duties too far. We are examining use-of-force policies to determine which departments have proper policies in place and whether there are any repeat bad actors. The ACLU is also investigating how citizens are monitored throughout West Virginia. The State Police operate license plate

In Charleston, WV the arrest rate in 2011-2012 was more than twice as high for black residents than it was for white residents.

scanners that track people's movements by tracking their vehicles. These scanners are on the backs of road signs and mounted on police vehicles. Law enforcement agencies throughout the state and country then share this information with each other. As of now, however, the State Police will not release information regarding the locations or number of license plate scanners, or how exactly license plate scanner data is collected and used. New technologies such as these have the potential to cause serious privacy concerns if their use is unfettered.



First Amendment & Political Speech

The ACLU of West Virginia filed an amicus brief in the case of David Jones, a Hancock County man who is being criminally prosecuted for posts he made on Facebook in 2014.

Mr. Jones is a retired veteran who regularly engages in political speech on Facebook. Although the posts at issue in this case may be offensive, speech does not lose its constitutional protection merely because it is offensive.

Uninhibited speech on matters of public concern about must be encouraged in a

“I disapprove of what you say, but I will defend to the death your right to say it.”

-Evelyn Beatrice Hall

free society. And, speech on matters of public concern is entitled to the highest constitutional protections. We cannot criminally pros-

ecute people because what they say may be upsetting.

First Amendment jurisprudence requires careful considerations of the actual circumstances surrounding the speech. And while Mr. Jones's statements may have been in ill taste, under First Amendment principles, they are constitutionally protected political hyperbole.

Powerful speech often elicits strong emotions, and that is something that should be encouraged in a democracy.

Government Transparency

The ACLU-WV filed a lawsuit against the state Parole Board after it failed to respond to a Freedom of Information Act request despite repeated follow-ups. We are investigating claims that the Parole Board used the HIV-positive status of inmates as a basis to deny parole. Under West Virginia law, government agencies are required to respond to a FOIA request within five business days. The Parole Board did not reply for over eight months.

FOIA is a vital tool for West Virginians to remain informed about the inner workings of their state government. The ACLU-WV regularly uses FOIA to gain access to government documents on a wide variety of issues—from the inner workings of our jails, to government surveillance techniques, to the amount of money taxpayers pay for bad government behavior. When state agencies refuse to respond to such requests, they are not only breaking the law—they are also denying vital

information about how the public is being governed.

The government is accountable to the people at all times. But without the knowledge that comes from government transparency, it is difficult, if not impossible, to hold public officials accountable for their actions.

Legislative Session 2016: A Look Ahead

The 2016 session is right around the corner and the ACLU-WV is preparing for what will likely be a whirlwind sixty days. Last year our team monitored nearly 100 bills and actively lobbied on over 20 pieces of legislation. This year looks to be no different.

Issues to Watch

Women's Rights: West Virginia women need more access to health care, not less. Yet, we will likely see numerous bills introduced that will restrict a woman's constitutionally protected right to choose. For instance, bills were introduced last year to limit insurance coverage for abortion so that women would be required to purchase supplemental policies to maintain coverage for their unplanned pregnancies. The practical effect of these bills would have been to preclude coverage in West Virginia because no provider offers supplemental care.

Juvenile Justice: The ACLU-WV will introduce legislation that will capture the cost savings created from last year's juvenile justice reforms. Those savings will then be directed toward community-based programs like mental & behavioral healthcare, job training, and restorative justice programs. The "redirect & reinvest" legislation will keep kids and families out of the juvenile justice system.

Drug Testing Welfare Recipients: Drug testing is undisputedly a search under the Fourth Amendment and Supreme Court case law. Without demonstrating a special need to conduct drug tests on welfare recipients, the state must follow the standard procedure of demonstrating probable cause and producing a warrant before a drug test can be required.

Truancy Reform: Efforts to revisit the truancy reform legislation that passed last year are already underway, although the bill has been in effect for less than a year. Narrowing its application risks us unwittingly returning to the broken system we had before. We will closely monitor these efforts to ensure that the law remains intact and its application is not limited.

Voter ID: The right to vote is fundamental to our democracy. Legislation introduced last year would have required voters to provide photo identification and would have provided provisional ballots for voters without proper ID. This law would burden voters unnecessarily, especially in a time when we should be encouraging greater voter participation.

Constitutional Convention: The approval of thirty-four state legislatures is needed to call for a constitutional convention, as so far twenty-seven states have said yes. The United States hasn't had a convention since 1787. Troublingly, the participants in a constitutional convention are not by law limited to any particular subject matter, regardless of the purported original reason for calling it. The entire constitution could be amended, placing the very foundation of our system of government into question. Many legal scholars, including Justice Antonin Scalia, have cautioned against it. Scalia has called it "a horrible idea."



<https://www.flickr.com/photos/puroticorico/5069521031>

English-Only: America is, and has been since before its founding, a land of linguistic diversity. Discrimination against language minorities implicates our most basic rights of equal protection, free speech, and due process. The legislation is based on the false premise that today's immigrants will not learn English without government coercion.

Transferring Juveniles to Adult Prison: Adolescents placed in adult prison are at greater risk of sexual and physical abuse and suicide. Moreover, brain development science is clear – teenagers are different than adults. They are more amenable to rehabilitation and treatment provided in juvenile facilities. Legislation introduced last year would have required juveniles to be transferred to an adult prison if their sentence ran beyond their eighteenth birthday. Current law allows judges to determine whether transfer is appropriate.

Freedom of Religion: So-called Freedom of Conscience Protection acts would allow people to argue that their religious beliefs exempt them from complying with laws that prohibit discrimination on the basis of religion, gender, marital status, national origin and sexual orientation. Bills introduced last year were drafted so broadly that they could be used to discriminate against nearly anyone, including the LGBTQ community, unmarried couples, pregnant women and people of all religions. Freedom of religion is a cornerstone of our country and the ACLU works every day to protect people's right to religious liberty. But existing federal and state laws, including the U.S. and West Virginia Constitutions, adequately safeguard the free exercise of religion and allow individuals to follow their religious tenets without infringing on other's rights.

LGBTQ Equality: The so-called West Virginia Intrastate Commerce Improvement Act, otherwise known as the Anti-Local Liberty bill, introduced last year would have banned local cities and towns from enacting or enforcing non-discrimination ordinances, and invalidated the ordinances in the West Virginia cities that currently have them. Absent statewide protection, it is legal today to be fired or evicted for being gay or bisexual or transgendered. A growing number of city councils, from Morgantown to Thurmond to Charleston, have voted to protect people from these discriminatory and regressive actions. Discrimination should not be the policy of this state.

MARK YOUR CALENDARS

ACLU-WV Lobby Day

February 1, 2016

WV State Capitol

Guilty Property: Civil Asset Forfeiture

The government can take your property without ever charging you or convicting you of a crime.

In West Virginia, law enforcement officers can take private property using a legal mechanism called “civil asset forfeiture.” Civil asset forfeiture permits the government to take property that it alleges was used in or derived from illegal activity, without ever convicting the property owner of a crime or even criminally charging the owner.

Turning the idea of innocent until proven guilty on its head, property owners have the burden to prove that the property taken was rightfully theirs and not involved in illegal activity in order to get their property back. And property owners aren’t afforded the constitutional protections they would receive as defendants, such as strong evidentiary bur-

dens that require the government to prove its case and the right to appointed counsel. West Virginia statute permits prosecutors and police to keep the profits from forfeiture for their own budgets, meaning the very agencies entrusted with enforcing forfeiture laws have a direct financial incentive to successfully forfeit as much property as possible.

Originally designed as a tool to seize the ill-gotten fortunes of drug kingpins, civil forfeiture is increasingly used to take homes, cars, and petty cash from ordinary West Virginians. Many innocent owners rationally decide not to contest forfeitures because the costs of taking time off work and paying a lawyer to challenge a forfeiture often far exceed the value of the property at stake.

West Virginia’s forfeiture laws should be reformed to embody two core principles:

1

No property should be forfeited unless the property owner is first convicted of a crime; and

2

Law enforcement should not profit from enforcing forfeiture laws. All proceeds from forfeiture enforcement should be deposited in the state treasury for future disbursement to the counties, rather than going directly into the coffers of the police and prosecutors who make decisions about when to pursue forfeiture.

These common-sense changes realign West Virginia law to preserve criminal forfeiture as an effective law enforcement tool when a conviction exists, while safeguarding the rights of property owners.

Prisoners’ Rights

Food as Punishment

Nutraloaf is a mash of ingredients formed into a loaf that one court noted was “designed to be unappetizing.” Some litigants have argued amounts to cruel and unusual punishment under the Eighth Amendment.

Nutraloaf was the only food being served to inmates at Central Regional Jail when they were placed on suicide watch. This is unnecessary because there are many other ways to make it safe to serve food to inmates on suicide watch. And it also indicates that there may be deeper problems with the way Regional Jails deal with inmates’ mental health issues.

We contacted the Regional Jail Authority and since then all regional jails have stopped serving Nutraloaf to their prisoners.

Make a Gift to ACLU of WV

Your tax-deductible contributions keep our litigation, advocacy, and community public education programs thriving. A way to make a major impact is through sustained, or monthly, giving. Please consider making a monthly gift to support our work. Some people even consider including the ACLU of West Virginia Foundation in their wills. If you are interested in leaving a planned gift through your estate, please contact our office at 304-345-9246 and ask to speak to Doug Evans. All contributions to the ACLU of WV Foundation are tax deductible to the extent permitted by IRS code 501(c)3. Checks should be written to “The ACLU of West Virginia Foundation.”

I/We pledge a total of \$_____ to be paid as follows :

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Please mail this form to: ACLU of WV Foundation, P.O. Box 3952, Charleston, WV 25339-3952. Thank You.

Juvenile Justice by the Numbers

Statistics on Incarcerated Girls in West Virginia

West Virginia has the **2nd** highest incarceration rate of Black girls, behind Utah. Black girls are 3.2 times more likely to be incarcerated than white girls.

Nearly **47%** of West Virginia girls placed in juveniles facilities were charged with status offenses, mostly commonly for truancy and incorrigibility, or being disobedient.

9/10 voters favor diverting less serious juvenile offenders into community supervision and reinvesting savings into substance abuse treatment and other services.*

West Virginia has the **3rd** highest placement rate of girls in the country (behind only Wyoming and South Dakota).

The number of girls in out-of-home placement in West Virginia has increased from **36%** 2003 to 2013.

West Virginia has the **4th** highest incarceration rate of girls of color.

Less than **7%** of West Virginia girls placed in juvenile facilities were charged with violent offenses.

*SOURCE: <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/02/public-attitudes-toward-juvenile-justice-in-west-virginia>

Welcome to our new Policy Director, Eli Baumwell



Eli is from Pittsburgh, PA. He graduated from Cornell University in 2006 with a BA in Government. And he received his J.D. from the University of Pittsburgh School of Law in 2010, and simultaneously earned a Master's in Public and International Affairs. While In law school, Eli interned with the Citizen's Police Review Board in Pittsburgh.

His experiences working with the Citizen's Police Review Board and for disability claimants reinforced his belief in the inherent worth and dignity of all people and the need to protect individuals against government overreach.

He has spent the past 5 years representing disabled individuals in claims for Social Security Disability benefits with firms in Washington, D.C. and then in Charleston, WV. He currently lives in Charleston with his wife, a Charleston native, and triplet sons.

2015 William Denman Youth Activist Scholarship Recipient



Each year the ACLU of WV awards the William Denman Youth Activist Scholarship to a graduating high school senior who is devoted to protecting and defending civil liberties, and who has demonstrated a commitment to equal rights and fairness.

This year's recipient is Logan Bays. Logan is a freshman Biochemist at West Virginia University. He loves West Virginia, helping people, and WVU. Logan says, "No matter what the challenge may be, I have found that there are always great people and organizations to overcome any obstacle."

He plans to attend graduate school and become a surgeon.

Board Elections

ACLU of WV Board of Directors Ballot

There are five seats open for the February 2016 - January 2019 term. Please circle or write-in your choices below. Ballots should be returned immediately. To be counted, ballots must be postmarked no later than December 21, 2015. Only members in good standing may vote. You must circle the entire name or write one in. If you have a joint membership, both members may vote for up to 5 individuals each.

Naomi Cohen

Nahla-Nimeh Lewis

Chuck Smith

Write in _____

Chuck Smith

I am fortunate to participate in the work of the ACLU of West Virginia. For more than forty years we have challenged government interference with the basic human rights of religious liberty, free speech, privacy, and reproductive choice. In addition we have opposed racial profiling, the subordination of women, and racial and ethnic discrimination. Nevertheless, in the Mountain State the need to protect civil liberties persists.

I hope to continue as a member of our affiliate board. In the past I have served as the board's vice president for membership, president, and affirmative action officer; currently I am the treasurer. From 2001 until 2010 I represented our affiliate on the ACLU National Board. I ask to be reelected to ACLU-WV Board, not because of my past activities. Rather, please vote for me because I am uncompromisingly dedicated to protecting civil liberties and to strengthening the ACLU-WV as a champion of that effort. I will also take part in what some identify as the responsibility of fundraising.

Nahla Nimeh-Lewis

I am an Arab American who immigrated to the US in 1977 as an adult. My experience in living under regimes where freedom of speech was severely curtailed, spurred my interest in Civil Liberties Issues. More importantly, I do believe that under the current political climate, my personal experience is relevant.

My first exposure to the American Legal System and the importance of the courts came to me when I worked on the Committee to block the appointment of Judge Robert Bork to the US Supreme Court. I have served my community in many capacities, to name a few, as a State Coordinator for the Arab American Anti Discrimination Committee, as a Local chapter president for the National Organization for Women, the board the League of Women Voters as well as my current involvement with "Women for Peace" a group promoting peace and dialogue among women of various backgrounds

I am currently serving on the WV ACLU Affiliate Board. I have recently been elected to represent the WV Affiliate on the ACLU National board of directors. I was also elected to serve on the Biennial Committee of the ACLU national board.

Naomi Cohen

I am completing my 5th three year term on the ACLU WV Board of Directors. In principal, I believe in term limits for board members of non-profit organizations.

Note: the ACLU WV has no term limits. However, I love working for this organization as a board member. I served as Treasurer for 2 - 3 years and I have been VP for Development of the Foundation for 10 years. I am one of those strange persons who actually enjoy fundraising and asking people for money to support causes and organizations that I am passionate about. I am also passionate about and committed to working on the ACLU-WV's efforts to bring about reform of our state's juvenile justice system and end the "school to prison pipeline" which severely impacts minority youth.

I believe the threats to civil liberties here in WV and at the national level are more serious than ever. We must continue to defend our freedoms because freedom cannot defend itself. I would be honored and delighted to be elected to a 4th term on the ACLU-WV board.

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