



ACLU

AMERICAN CIVIL LIBERTIES UNION
of SOUTH CAROLINA

Because Freedom Can't Protect Itself

NEWSLETTER

Fall 2013

American Civil Liberties Union of South Carolina Foundation

Justice Delayed

Victoria Middleton, Executive Director

On October 5, while Congress was on paid leave, we were calling for reform of our broken immigration system. Real people are being hurt, and real families are being torn apart—right here in South Carolina. At the national day of action for comprehensive immigration reform rally in Goose Creek, we met one such family.

Shannon C. and her two young children are separated from their husband and father because of bureaucratic requirements they did not know about, despite their best efforts to fulfill the letter of the law.

To keep her family together, Shannon may have to give up the tenure she has achieved after 15 years of teaching in the Lowcountry, and her children may have to leave their home to rejoin their father in an unfamiliar country where the murder rate is among the world's highest.

Shannon's story is not uncommon in South Carolina, but unlike Shannon, few people feel they can risk telling their stories to their members of Congress and plead for change.



Shannon C. (left) and Victoria Middleton, Executive Director of the ACLU of South Carolina (2nd from left) at the national day of action for comprehensive immigration reform in Goose Creek.

The SAFE Act would turn local law enforcement into de facto immigration agents, take police off urgent crime-fighting duties, and expand the massive, wastefully expensive immigration jail system.

What you can do: Tell Congress that you want comprehensive reform that includes a path to citizenship. The current system—which emphasizes removal at all costs—erodes civil liberties, as federal, state and local officials engage in racial profiling and unlawful detentions.

Join us at our grassroots advocacy workshops to learn how to advocate for progress on immigration reform, women's health, equal treatment for the LGBT community, and voting rights. Trainings will be held in Columbia, Greenville and Charleston.

See page 4 for details and registration

Justice Denied

Tanya Greene, ACLU Advocacy & Policy Counsel



"You can only protect your liberties in this world by protecting the other man's freedom."

Clarence Darrow, 1920

2013 is the 50th anniversary of the landmark Supreme Court case *Gideon v Wainwright*, in which the high Court held that a poor person facing criminal charges is entitled to counsel provided by the state.

The American Civil Liberties Union supported Mr. Gideon by filing a friend of the court brief and working closely with Abe Fortas, a future Supreme Court Justice who argued the case.

In 50 years, we have certainly made some strides, but the true promise of Gideon is far from being fulfilled. Regrettably, today, 80% of criminal defendants nationwide cannot afford their own lawyer and must rely on the government to protect them from itself.

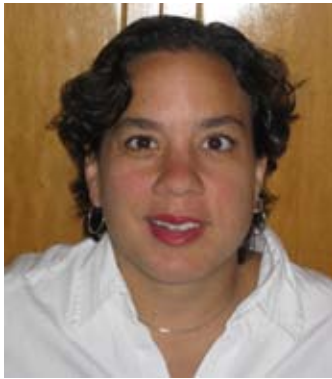
The right to counsel has been so twisted and shredded in many jurisdictions across the country, it has become almost unrecognizable. The two primary causes of this crisis are too little funding and too many cases.

Under-funding prevents states from providing effective assistance of counsel, not to mention investigators and experts, and compounds the difficulty of attracting qualified public defenders.

Excessive caseloads are in part a consequence of over-criminalization of low-level, non-violent activity. According to the National Center for State Courts, approximately 80% of state cases are misdemeanors.

(Continued on page 2)

Justice Denied (Continued from page 1)



Tanya Greene

In many states, appointed defense lawyers are overworked and underpaid, carrying hundreds more cases than national caseload standards contemplate, and forcing defense attorneys to "meet 'em and plead 'em" at a record pace. In some states, lawyers without specialized training and knowledge of complicated cases are assigned to represent those clients anyway.

Much of the country continues to provide indigent defense at the local level. This crazy quilt system has few standards and little accountability. South Carolina is one of only 24 states that have statewide public defender systems.

Unfortunately, the statewide system does not provide for representation in municipal or magistrate court. Each of those courts makes, or fails to make, its own provisions for indigent defense. All of the providers of indigent defense are chronically underfunded.

All of this leaves the client out in the cold. The average defendant stands little chance without a well-resourced, experienced defense attorney.

Prison sentences are 636% (7 times) higher now than in 1963, when Clarence Gideon was sentenced to 2 years for stealing drinks and cash from a pool hall.

Today, one in 34 U.S. adults is under some form of correctional control.

There are more black people in prison today than were enslaved in this country in 1850. In fact, to this day, African Americans are incarcerated at nearly six times the rate of whites.

The ACLU is working nation-wide to ensure that states and the federal government uphold the constitutional principles "established to achieve a fair system of justice" that Clarence Gideon fought for, and the Supreme Court confirmed, 50 years ago.

Invest in Positive Change for South Carolina

The rights you save may be your own

Your generous financial support makes possible our defense of civil liberties in South Carolina.

Please use the enclosed envelope to contribute to the ACLU of South Carolina Foundation.

From the President
Joseph Darby

The Charleston office of the ACLU of South Carolina is celebrating its 5th anniversary as we go to press.



Joseph Darby

Of course, the ACLU is decades-old in our state, and 2013 is the 93rd year that the national organization has been in existence.

But this local milestone is an opportunity to consider how much our affiliate has accomplished in the past few years. It has tirelessly advocated for drug law reform and sentencing reform, against government interference in women's health decisions and racial profiling, and on behalf of voters' rights.

Through litigation, it has moderated the worst effects of bad laws—the voter photo ID statute and the anti-immigrant 'show me your papers' law, to name two. Our affiliate has won clear-cut victories in First Amendment cases where prisoners were denied any reading matter save for Bibles and where young students were proselytized to the point of bullying by school officials.

And it convinced the Department of Corrections, the last in the U.S., to abandon its discriminatory, outmoded policy of segregating HIV-positive inmates.

The ACLU of South Carolina's robust program of public education, advocacy and litigation would not be possible without your commitment and generous support.

Board members commit their expertise and passion to providing a strategic vision of civil liberties in South Carolina.

Volunteers at events and rallies raise our profile around the state. Dedicated interns help process requests for assistance, and cooperating attorneys are critical partners to our legal program.

Your financial contributions make it possible for the ACLU of South Carolina to protect the civil liberties of the most vulnerable South Carolinians and to insure that our advocacy, public education, legislative and pro-bono litigation programs will continue to protect all of us.



ACLU of South Carolina Board members at work.

Justice for the poor goes begging

Susan Dunn, Legal Director

Fifty years after *Gideon v Wainwright*, too many people in our state are jailed without benefit of legal representation. The ACLU in South Carolina is pushing for reforms in how our courts handle appointment of counsel in criminal cases and in certain civil cases.

Two years ago, in *Turner v Rogers*, the Supreme Court told South Carolina it must not continue to put poor parents in jail for getting behind in child support without improving the fairness of the enforcement system. While the Court did not require the state to provide lawyers to represent these parents, it did issue instructions to put in place "substitute procedural safeguards" to insure that parents are not put in jail when they do not have the ability to pay.

Regrettably, the state has done very little in the last two years to improve its system.



On October 4, 56 of the 335 jailed in the Sumter-Lee Detention Center were behind bars for failure to pay child support. In August, the unemployment rate in Lee County was 10.4% and in Sumter County 9.3%. Clearly, the recession is not over in this area of the state.

16% of these inmates have not committed, or been accused of, a crime.

One father has been in jail since April for failure to pay \$40,000 in support. A mother has been held since June for failure to pay \$4,764. No procedure is in place to review contempt incarcerations to insure that people without the ability to pay are not being held in jail. None of the incarcerated had lawyers to advocate on their behalf.

Sumter County provides some limited representation for poor defendants. Lee County has no attorneys available for poor people in these courts. According to the SC Commission on indigent defense, only 3 of the 300+ municipal courts provide public defenders. No clear standards exist for indigent defense in municipal or magistrate court in South Carolina.

The promise of the Gideon decision is an empty one for most defendants facing charges in these lower courts.



Clarence Gideon

On March 18, 2013, the 50th anniversary of the *Gideon v Wainwright* decision, we sent letters to every magistrate and municipal court encouraging each to review its procedures and to take remedial action to provide adequate legal defense for poor defendants.

We have filed amicus briefs supporting the request for the appointment of an attorney by unrepresented defendants in several cases. We advocate for a systemic change with the SC Commission of Indigent Defense, with Court Administration and with the SC Bar Access to Justice Committee.

If advocacy is not enough, litigation is not off the table.

Also see **Justice Denied** on page 1 and information on the special screening of the HBO award-winning documentary **Gideon's Army** on page 5.

From the legal docket



Susan Dunn, (far right) with Charleston School of Law professors Debra Gammons and Jorge Roig at the AFFA panel discussion, "After DOMA...What it Means to You."

LBGT Freedom to Marry after Windsor After the June victory in the Windsor case, many people are eager to test the constitutionality of the SC marriage restriction amendment.

With SC allies such as SC Equality, we have formed a legal advisory team that will work to put in place a coherent legal strategy for this state.

HIV Segregation in SC Prisons On July 10, the SC Department of Corrections, in response to demands from the ACLU of SC, confirmed that it had voluntarily agreed to end its policy of segregating all prisoners who test positive of HIV.

SC was the last state to end this inhumane policy. Alabama continues to be embroiled in litigation over its outdated policy.



After the US Supreme Court eviscerated the Voting Rights Act in the *Shelby County* decision, the burden has shifted to civil rights groups to be the watchdogs for election integrity.

Our office trained volunteers who observed at all 35 voting location for the primary on August 13 for the special election for Senate seat 42. We provided a non-partisan telephone hotline for the run-off on August 27 and for the October 1 election.

ACLU of SC has monitored certification hearings in local elections since January 2013, when SC's Voter photo ID law went into effect.

We will continue to monitor as many certification hearings as possible in future elections to ensure that no votes are improperly challenged.

Homeless in Columbia and Myrtle Beach The City Council in Columbia has embarked upon a policy that attempts to remove the homeless from downtown Columbia. We have raised and will

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From the Legal Docket *(continued from page 3)*

continue to raise questions about the constitutionality of this policy, which forces the homeless into a particular faith-based shelter and limits the location of services available for homeless people.

In Myrtle Beach, we are defending a representative of a community group that was ticketed for feeding the homeless in a public park. This case is now on appeal.

Public Forum Protection, City of Charleston: After our office identified potential plaintiffs to challenge the City of Charleston statute that is being used to arrest individuals who peacefully panhandle, street musicians, and artisans who make and sell palmetto roses, we asked to meet with senior attorneys for the city.

Following that meeting the city acknowledged that the ordinance in question had serious deficiencies and agreed to modify it. Draft modification should be ready for our review by the end of end of the year.



Policing in Schools: We are assisting the Hon. Judge Daniel Martin, Jr. in seeking to have Charleston County selected as a pilot project for the National Council of Juvenile and Family Court Judges. The project is designed to reduce juvenile court referrals from school and encourage best practices in school discipline.

Religious Freedom Goes to School: Last summer in conjunction with the National ACLU Program on Freedom of Religion and Belief, we began a statewide campaign to promote freedom from proselytizing and free exercise of religion in public schools by requesting records from every school district in the state.

Most districts made a good faith effort to respond with information about their policies and practices governing religious freedom in schools. We submitted a demand letter to the Greenville School district. We are now in conversation with that district concerning actions that the district can take to remedy violations we have identified.

On August 24, our legal director was a keynote speaker for the annual School Law Conference sponsored by the SC School Board Association, encouraging school officials to understand and protect the First Amendment.



For more information on our statewide program, visit our website: aclusouthcarolina.org



Jan Landry (left), Office & Program Manager and Ebony Prioleau (right), Charleston School of Law intern, consult on plans for public education events.

Disparate Impact of Marijuana Arrests: The National ACLU recently produced a nation-wide report which exposed the disparate impact on minorities of low level marijuana arrests. The report used data from 2010.

In an attempt to make a more current assessment of key jurisdictions in SC, we have submitted FOIA requests to North Charleston, Mt. Pleasant and Saluda. After analyzing those responses, we should be able to report on the disparate impact, if any, of the policing in those jurisdictions.



BILLIONS OF DOLLARS WASTED ON RACIALLY BIASED ARRESTS

Visit the [Resources page](#) on our website to access the full report: aclusouthcarolina.org

Anti-Immigration Litigation: Along with the National ACLU Immigrant Rights Project and other civil rights groups, we initiated a law suit seeking to block enforcement of SC's anti-immigrant legislation. The 4th Circuit affirmed the injunction in that case and sent the case back to the US District Court in Charleston for trial.

We have submitted FOIA requests to all of the sheriffs and several other law enforcement agencies in SC requesting information that will help us determine how the portions of the legislation that were not enjoined are being enforced.

Choice of Name after Marriage: During the summer of 2009, Naomi married Ericka in Iowa. They chose to share the same last name after marriage.

Naomi took her original marriage certificate and her Social Security card to the Department of Motor Vehicles to request a new license in her chosen name. She was instructed to get a court order.

A party to a heterosexual marriage is allowed to request a name change to his or her chosen name upon presentation of an original marriage license. Our office sent a letter outlining the constitutional problems with the policy denying Naomi her chosen name last month.

DMV has requested additional time to respond to our letter.

Advocacy & Education – Coming Soon



*"You have the right to remain silent. You have the right to an attorney...
If you cannot afford one, one will be provided for you at no cost to you."*

Please join us for a special screening of the award-winning HBO documentary **Gideon's Army** that exposes the seriousness of our country's public defense crisis and tells the stories of three young lawyers as they fight to revolutionize the way America thinks about public defense and to make "justice for all" a reality.

November 7 • 6:00 PM

Avery Center for African American History and Culture • 125 Bull Street

ADVOCACY. Real change starts with you.

Statewide Citizen Lobbyist Advocacy Training

Saturday, November 9, 10am-3pm
USC School of Law, Rm. 231
701 Main Street, Columbia

Saturday, November 16, 10am-3pm
The Hughes Main Library
25 Heritage Green Place, Greenville

Saturday, December 7, noon-5pm
Charleston YWCA
106 Coming Street, Charleston

Hear from state representatives about how you can have an impact in state policy-making by getting involved in the legislative process. Learn how to get your message across to elected officials about issues like women's health, immigrants' rights, ethics in politics, and equality for members of our LGBT community, among others.

Free and open to the public. A light lunch will be provided. Reserve your space at aclusouthcarolina.org.

Recent Advocacy & Education

July 1 South Carolinians celebrated with ACLU client Edie Windsor and Americans across the nation when the Supreme Court struck down section three of the Defense of Marriage Act (DOMA). Following the decision, Victoria Middleton, Executive Director, and Susan Dunn, Legal Director, participated in a panel discussion, *After DOMA...What It Means to You*. The Charleston event was sponsored by the Alliance for Full Acceptance (AFA).

August 11 ACLU of SC and leading civil rights attorney Armand Derfner trained Election Protection non-partisan, volunteer poll monitors for the District 42 Senate Primary election on August 13.

August 24 Susan Dunn, Legal Director, was keynote speaker for the annual School Law Conference sponsored by the SC School Board Association.

October 5 ACLU of SC rallied for Comprehensive Immigration Reform on the national day of action. (See *Justice Delayed on page 1*.)

October 14 Screening and panel discussion of the HBO documentary **Gideon's Army** was held at USC School of Law in Columbia. Next screening will be held on Thursday, November 7, in Charleston. See Advocacy & Education above.



PRIDE in South Carolina We continued our celebration of the Edie Windsor/ACLU victory over DOMA by marching and rallying with Charleston Pride on August 3, Upstate Pride (Spartanburg) on September 14 and SC Pride (Columbia) on September 28.

We also welcomed new members, signed up volunteers for our e-advocacy network and handed out ACLU information along the parade routes and at the rallies.

Katie Tumbleston, ACLU of SC Development Associate (left), and Krisztina Szabo, recent graduate of Charleston School of Law (right), marched in the Charleston Pride Parade and staffed our information booth.

Save the Date

Annual General Membership Meeting

February 1, 2013 • 10AM

Arnold Hall • College of Charleston

66 George Street • Charleston



We are pleased to announce that Jay Stanley, Senior Policy Analyst with the American Civil Liberties Union's Speech, Privacy and Technology Project will be our keynote speaker.

Jay has authored and co-authored a variety of influential ACLU reports, including "Protecting Privacy from Aerial Surveillance" (with co-author Catherine Crump, 2011), which helped bring the privacy issues surrounding domestic surveillance drones to public awareness and "The Crisis in Fourth Amendment Jurisprudence" (2010), an Issue Brief published by the American Constitution Society.

He has also served as a communications strategist for the ACLU on technology issues and is an experienced media spokesperson who regularly appears on and is quoted in major broadcast and print outlets.