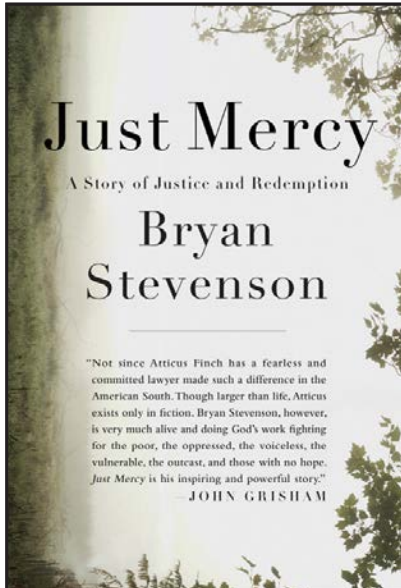


Delaware Supreme Court Reviews Constitutionality Of Death Penalty FL case raises questions regarding DE statute.



Native Delawarean and author of *Just Mercy*, Bryan Stevenson answered questions for two hours about the racially biased death penalty during the repeal debate in Legislative Hall.

for almost two hours and then led an eloquent and impassioned debate of his House colleagues the day of the vote. But in the end, repeal was defeated. Law enforcement organizations presented opposition that was too strong to overcome.

Rep. Kim Williams (D-Newport, Stanton) a staunch repeal supporter voted No on the bill as a procedural move. Her No vote allowed SB 40 to be brought up for reconsideration in March when the legislature reconvened after their six-week break. But on Monday, March 7, Rep. Lynn and Sen. Peterson announced that they were suspending legislative action on repeal the death penalty.

“The U.S. Supreme Court has put the legitimacy of Delaware’s death penalty statute into question with its decision in *Hurst v. Florida* and Superior Court President Judge Jan Jurden has issued a temporary stay of all capital murder trials and executions,” Peterson said. “It only makes sense for the General Assembly to wait for the Delaware high court to rule

Death penalty repeal supporters have been busy since the first of the year experiencing both disappointment and hope that change in the status of Delaware’s death penalty will come to fruition. In mid-January, the House Judiciary Committee unexpectedly released SB 40 — repeal the death penalty — from committee. The floor vote was scheduled for January 28.

But on January 26, Delaware Superior Court Judge Paul Wallace asked the Delaware Supreme Court to consider the constitutionality of our death penalty statute in light of the U.S. Supreme Court decision in *Hurst v. Florida*. The *Hurst* decision, which declared Florida’s death penalty unconstitutional, called into question our death penalty as well because in Florida and here the judge makes the final decision about imposing a death sentence, not the jury.

The constitutionality question was the “elephant in the room” as repeal supporters demonstrated and lobbied in the days leading up to the House vote on the 28th. Rep. Sean Lynn (D-Dover), SB 40’s House prime sponsor, questioned Delaware native and author of *Just Mercy*, Bryan Stevenson, about the racially biased, unfairly applied death penalty system

“More people have said, 'How can I help you?' in the last 14 hours of my life than they ever did in the first 19 years of my life.”
—Remarks to Stevenson from a man on death row on the day of his execution

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The newsletter of the
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Executive Director's Notes

Are some Wilmington citizens living in a police state?



Kathleen MacRae
Executive Director

Gun violence in Wilmington has the whole state disturbed and improving police-community relations is part of forming the proper response to this violence.

Mayor Williams has primarily promoted a tough-as-nails approach. Others, such as the Wilmington Public Safety Strategies Commission, which issued its report in March 2015, advocated community policing as a more effective long term response. The conversation was contentious at times, but civil. And then Jeremy ‘Bam’ McDole was shot and killed by four Wilmington police officers as he sat in his wheelchair, and the tenor of the conversation changed.

The McDole family led protests, called for the resignations of the police chief and mayor, and hired lawyers to sue the city. Lawyers from the national ACLU Criminal Law Reform Project took notice of the McDowell shooting and visited Wilmington to consult with ACLU-DE staff and community leaders to determine how we as an organization can respond. We held “know-your-rights” forums in a few of Wilmington’s crime-riddled neighborhoods to gain an on-the-ground perspective. Some of what we learned was not new—black and brown folks in the city are over-policed and underserved. What became clearer to us is the problematic role the Office of Probation and Parole plays in city policing through the “Safe Streets” program.

Safe Streets was established in 1996 as a response to gun violence in Wilmington. It enabled probation officers to team up with police officers to keep closer surveillance of men on probation and to act to return them to prison promptly

if they violated probation. Fast forward twenty years, and we must evaluate whether this program may be making things worse, not better, especially regarding community relations

Probation officers have much more latitude to search a person on probation on the street or enter their home than does a police officer, who needs a warrant, an emergency or permission from the subject. But if probation officers are stopping and searching people on the street on a daily basis or opening doors, which they walk through with a police officer in tow, it is no wonder that police-community relations are at such a low point.

We must ask—are probable cause standards being maintained at all? Has a law enforcement culture been built over twenty years that disregards civil rights? Is the black community in Wilmington actually living in a police state?

The ACLU of Delaware is going to find out. We are continuing to meet with groups in the community, requesting data through FOIA, and meeting with officials, including Probation and Parole. We expect that as a result of this work, civil rights protections for residents of Wilmington will be strengthened significantly.

Want to learn more about surveillance in Delaware? Go to aclu-de.org to keep up with this issue, and more.



News From The Floor

It's time to abolish civil asset forfeiture.

Every year, law enforcement takes over a million dollars in cash, cars and homes from people in Delaware and never give it back. These people have not been convicted of a crime. Some haven't even been arrested. Instead, officials need only allege that the property was in some way connected to a drug crime for them to make the confiscation. If property owners want their assets back, they must spend thousands of dollars to hire a lawyer or wage a complicated and time-consuming legal battle on their own.

If an individual challenging an erroneous seizure makes it through the many hurdles involved, including a non-refundable \$75 fee and attendance at multiple hearings, the burden is ultimately on them to prove that the assets were not connected to a crime — the reverse of the ordinary evidentiary burdens!

Arrayed against the rights of property owners, is an incredible incentive for police to make as many seizures as possible: they get to keep the money.

Forfeiture laws were originally passed in the '70s and '80s as a way to cripple drug kingpins and organized crime syndicates by diverting their resources. But today in Delaware, police departments, with the cooperation of the Attorney General's Office, use forfeiture to benefit their bottom lines. Delaware should require that the property owner be convicted of a crime before assets can be seized. We will pursue legislation to accomplish that before the end of this General Assembly.

Bills We Will Support Or Oppose This Session:

We expect significant legislation that has not yet been introduced, including expungement of juvenile convictions, videotaping of interrogations, reducing the collateral consequences of conviction, and ending out-of-school suspensions for low-level offenses. It will be a busy session!

- SB 12 (Oppose): We oppose the expansion of mandatory minimum sentences of any kind, especially ones involving juvenile conduct.
- SB 147 (Oppose): We should not lengthen the list of non-violent crimes that are nevertheless deemed "violent felonies."
- SB 163 (Wait-and-see): We support reform of the three strikes law, but want to see more significant reform than this small step.
- HB 62 (Support): We support extending pre-trial diversionary drug programs to juvenile court.
- HB 105 (Support): We support eliminating barriers to absentee voting.
- HB 211 (Support): We support limiting the use of shackles and other physical restraints on children in juvenile proceedings.
- HB 260 (Support): We support requiring Board of Education meetings to be held when parents and teachers can attend.
- HB 255 (Support): We support expanding probation-before-judgment to county and municipal offenses.
- HB 265 (oppose): We oppose the expansion of Delaware's sex offender residency restrictions; they are already overbroad and counter-productive.

2016 Elections

Important information and deadlines.

There are several upcoming deadlines that are important for both the 2016 Presidential Election and local elections:

- April 2: Deadline to register to vote before the Presidential Primary
- April 11: Deadline for Military and Overseas Citizens to register to vote before the Presidential Primary
- April 26: Presidential Primary Election; polls open 7:00 a.m. to 8:00 p.m. Only registered voters from participating parties may vote.
- May 10: School Board Elections; polls open 10:00 a.m. to 8:00 p.m.
- May 28: Deadline to change party affiliation before Primary Election

Important facts to remember:

- If you do not know where to vote, call the Department of Elections (302-577-3464) or go to ivote.de.gov.
- You will not be allowed to use your cell phone in the polling place because the noise interferes with poll workers and distracts voters.
- You may not wear items about any candidate in the polling place.
- Individuals convicted of a felony are ineligible to vote while incarcerated, on parole, or on probation. Most ex-felons can regain the right to vote immediately after completion of their full sentence and the payment of fines and fees. However, people convicted of certain felonies — such as murder, manslaughter, bribery or public corruption, and sex offenses — are barred from voting unless they receive a formal pardon from the governor.

**your VOTE
is your VOICE**

Case Docket



Solitary Confinement of the Mentally Ill. Our suit challenging Delaware's holding of mentally ill prisoners in solitary confinement and its failure to provide them with adequate mental health care is proceeding nicely. Our expert consultants, the Chief of Psychiatry for a Midwestern state's department of correction, and the former Commissioner of Correction of Washington State, have toured the Delaware prisons, interviewing inmates and staff. They are now preparing reports outlining the changes needed to bring Delaware in line with the Eighth Amendment and modern correctional practices. Delaware's Department of Correction may agree to accept the changes we propose. If not, our case is scheduled for a federal court trial in January 2017.

GPS monitoring. Discovery has been completed in our case challenging the Delaware statute requiring all Tier III registered sex offenders on probation or parole to wear GPS transmitters 24/7. The statute applies across the board, regardless of whether there is any reason to believe a specific individual presents a danger that would be reduced by such monitoring, and without regard to whether the person was convicted before or after the legislature adopted the law. We seek a ruling that this law is unconstitutional. At the close of discovery, the state agreed that there are no material facts in dispute — apparently deciding not to challenge our expert in sex offender policy, who testified that the policy is counterproductive because it causes the state to put GPS devices on people who do not present a risk and ignore those who do present one. The case is scheduled for final argument in May.

Continued on page 5

Donor Spotlight: Dr. Dariel Janarette Why I give to the ACLU.



Practicing attorney and educator Dr. Dariel Janerette has been involved with the ACLU of Delaware for more than a quarter century, beginning her work for the organization as a first-year law clerk. Under the tutelage of then Executive Director Judy Mellen, Dr. Janerette learned to distinguish her personal opinions from an individual's civil rights and liberties guaranteed by the U.S. Constitution. A member of the ACLU-DE board of directors, Dr. Janerette is currently the Affirmative Action Officer for the board.

"I support the ACLU and the ACLU Foundation of Delaware, because the ACLU stands up for issues that are near and dear to my heart — the school-to-prison pipeline, voting rights, racial profiling, mass incarceration, and capital punishment," she said. "The ACLU is on the forefront of civil rights issues-often leading the charge for social justice. I am proud to say I have been a card carrying member of the ACLU for 25 years!"

Join Dariel and others who support our cause to ensure civil liberties are available to everyone! Make a generous contribution today!

Want Exclusive Access To ACLU-DE Legal Work?

Join the Amicus Society to learn about filings and briefs first.

The Amicus Society of the ACLU of Delaware was established in 2014 for Delaware lawyers and others dedicated to protecting and expanding our freedoms enshrined in the Bill of Rights. Named for the "friend of the court" briefs that provide legal opinion on a case, Amicus Society members enjoy:

- Direct access to information on the most critical local and national civil liberties issues of the day.
- An annual breakfast meeting with a national expert on topics ranging from privacy in the digital age and transgender rights to systemic racial discrimination.
- Emails about just filed legal briefs and upcoming ACLU actions — throughout the year.

Amicus Society membership directly supports the ACLU-DE's expanded legal department. Please consider joining today.

Contact Director of Donor Engagement Lisa Chase at lchase@aclu-de.org, or 302-654-3689, x100 or Executive Director Kathleen MacRae at kmacrae@aclu-de.org, or 302-654-3689, x102 for more information.

Fundraising at ACLU-DE

Guest Bartending at the BBC a big hit!

Thank you to all our guest bartenders and supporters who came out to the BBC Grill and Tavern in Greenville on March 2. You helped us raise over \$7,000 to continue the fight for freedom and equality in Delaware! There was some fierce competition, and the final winners were:

- First place: Brendan O'Neill
- Second place: Drew Fennell
- Third Place: Tom Foley

We hope you all enjoyed the night out and thanks again for your support!



Case Docket, cont'd from page 4

Fair elections. ACLU-DE strongly supports more funding for education. But giving up fair elections in order to get more education funding would not be progress, so we are moving forward in our suit challenging the result of last year's Red Clay Consolidated School District tax referendum. The case seeks to require Red Clay to win a fairly conducted referendum if it wants to keep the increased taxes. The school district won the tax referendum by vigorously publicizing it only to the community that was expected to support the increase, and by drawing favorable voters to parent-child events at the schools when they were being used as polling places, while at the same time making it difficult for the elderly and others with mobility problems to vote. The Court of Chancery rejected the district's effort to have our case tossed out of court, and a trial is scheduled for the fall.

Transgender rights. We recently aided a woman who was shuttled from court to court in an effort to obtain the judicial certification needed to change her birth certificate to accurately reflect her gender identity — an option permitted by Office of Vital Statistics regulations. We obtained a reversal of a Court of Common Pleas decision that it lacked jurisdiction to make the certification. In a separate transgender matter, one of our cooperating attorneys successfully pushed the Department of Correction to authorize hormone treatments for a transgender man incarcerated in the women's prison.

Computer privacy. The Delaware Supreme Court accepted our argument urging it to hold prosecutors and trial courts accountable to Fourth Amendment principles when the police seek to search our computers, reversing a conviction obtained through the use of information obtained through a clearly unjustified computer search. The Court's opinion, which freed a man who had been convicted of reprehensible conduct, was directly in line with Justice Felix Frankfurter's important but gentle observation that "it is a fair summary of history to say that the safeguards of liberty have frequently been forged in controversies involving not very nice people."

Local Organizations Partner For Achievement Center Toy Drive



This past holiday season, the Achievement Center celebrated its inaugural Winter Celebration, giving men who participate in its programs an opportunity to celebrate being fathers and productive members of the community.

Children enjoyed decorating cookies and choosing gifts from the vast array of toys that were donated by members of the Wilmington HOPE Commission's board of directors, ACLU of Delaware members, and others. The Metropolitan Wilmington Urban League Young Professionals generously donated hats and gloves to all the children.

The Achievement Center thanks everyone who helped make the event a huge success! The toy drive was a perfect demonstration of how the community can come together to assist the Achievement Center meet the needs of individuals leaving prison, and the needs of their families and loved ones who are equally impacted by the corrosive effect of incarceration and recidivism. Thank you!

The Achievement Center seeks to eliminate all barriers to people reaching their fullest potential and to returning to their community as law-abiding and productive citizens. Founded upon the most effective solutions to date, we provide re-entry oriented services and supports demonstrated through empirical research to promote successful re-entry, all under one roof.

Greetings From New Office Manager & Communications Coordinator, Mindy Bogue

Mindy has been working in the nonprofit world of Greater Philadelphia for most of the last 10 years. Most recently she was the Communications Manager who wore many hats at the Pennsylvania Prison Society, where she traveled to some local prisons and was in daily communication (via mail) with prisoners throughout the country.

Mindy believes that all individuals should be treated fairly and equally, that a fair defense should not be dependent upon wealth, and that kindness and attempts at understanding allow for more progress than hatred and fear.

ACLU-DE is pleased to have her on our team. If you have questions about membership or our events, don't hesitate to contact Mindy at 302-654-5326 x101 or mbogue@aclu-de.org.



cont'd from page 1

before we decide on further action.”

On February 29, the Public Defenders Office filed a brief claiming that Delaware's death penalty was unconstitutional. The ACLU, a Harvard University institute and a Philadelphia capital defense organization all submitted amicus “friend of the court” briefs making the same claim. Hopes run high that the Delaware Supreme Court will agree. If it does, the death penalty battle will most likely continue in the General Assembly to fix or not fix the death penalty statute in Delaware.

WESTT Makes Strides In Improving Wilmington Schools

Wilmington Education Strategic Think Tank collective presenting legislation.

The ACLU of Delaware identifies school funding reform as a strategic priority and advocacy focus. While most will agree change is needed, it's deemed an uphill battle requiring legislative action and potential tax increases. Delaware is one of only five states still using the unit count funding system. More progressive states now base funding according to student needs. This process helps to ensure that students with special needs, including limited English proficiency, low income backgrounds, and mental or physical challenges, have access to additional support services.

For over a year, the ACLU-DE has participated in Wilmington Education Strategic Think Tank (WESTT), a collective of concerned city leaders from the non-profit, government and business sectors who are focused on systemic improvements for students of Wilmington.

WESTT developed specific goals for the benefit of Wilmington students: the reduction of districts that serve the city; the development of an equitable, weighted funding formula addressing student need; and the establishment of an authoritative role for Wilmington in the continuous improvement of the education of its residents.

In February 2015, the members of WESTT retained Dr. Marguerite Roza of the Georgetown University Edunomics Lab to conduct a study of Delaware's education finance system and to provide recommendations. The report was completed in June 2015 and has been shared with a number of stakeholders, including superintendents, principals and the Delaware State Education Association (DSEA) to receive their feedback.

The study found that the current funding structure drives inequities both across districts and, most strikingly, within districts across schools — often less is spent on our urban schools with high need students. Another finding was the weak connection between school expenditures and performance outcomes, even when the demographics were similar. The conclusion is that not only are resources unevenly distributed among schools, but they are not being used in an effective manner.

Currently, WESTT is preparing legislation to establish a weighted student funding formula for Delaware schools and students. The legislation will be presented to the General Assembly this session.



Morris Nichols
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Save the Date!

31st Annual Kandler Dinner

October 19, 2016

Chase Center at the Riverfront

Board Elections are coming up!

We are excited about the diversity of our new board prospects! We are finalizing the slate, and voting members should expect to receive ballots by mid-April.

Stay tuned.



Annual Meeting

**Wednesday
May 18, 2016**

**5:30 p.m.
Registration/Networking**

**6:30 p.m.
Meeting**

**7:00 p.m. - 8:00 p.m.
Criminal Justice Debate**

Retired Judge Charles H. Toliver and U.D. Professor Yasser Payne return to debate the issue of criminal justice and race.

**RSVP to mbogue@aclu-de.org or
302-654-5326, x101.**

