

Delaware's Next Attorney General Could Change the Criminal Justice System for Good

We need to elect an AG committed to reducing mass incarceration.

The people have spoken: it's time for fundamental change in the way our nation's prosecutorial systems work. A recent ACLU poll found that the majority of Americans support reforming the criminal justice system, starting with the prosecutor. In Delaware, the person who can make this kind of significant change happen is the elected Attorney General (AG).

Delaware's AG is our state's only elected law enforcement official and, arguably, the most powerful person in our criminal justice system. As chief prosecutor, the AG's job is to seek justice in criminal cases, work to prevent crime and serve as a leader to the diverse communities he or she represents.

Prosecutors have a difficult and important job, but they must also take a great deal of responsibility for our mass incarceration problem.

- They decide who to send to diversion programs, such as drug treatment or mental health treatment, instead of prison.
- They decide who gets charged, what the charges are, and—in most cases—have significant influence on how long a prison sentence will be served.
- They can reduce racial disparities in charging,



HAVE YOU SEEN OUR "POWER OF THE PROSECUTOR" VIDEO WITH KATE PARKER (DELAWARE CENTER FOR JUSTICE), EUGENE YOUNG (METROPOLITAN WILMINGTON URBAN LEAGUE) AND TAMARA FAIR (WILMINGTON HOPE COMMISSION)? CHECK IT OUT ON YOUTUBE!

plea bargain deals and other areas, using data tracking and analysis disaggregated by race.

- They can educate police officers on constitutional behavior and hold police accountable for misconduct.

The Delaware AG also wields significant influence over legislation that affects criminal justice policy, from mandatory minimum sentences to the circumstances under which children are charged as adults.

Too many prosecutors measure their success based on convictions and cases processed. We need a different way to measure what success looks like.

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Executive Director's Notes

The ACLU's Political Power

The ACLU both nationally and locally is becoming a more political organization. Not partisan—it's not about D's or R's. It's about our principles and issues. And it's about building political power, so that we can more effectively promote the rights of everyone and use the democratic process as a tool for social change.

Throughout our history, the ACLU has been a legal powerhouse. We have battled in the courts and won. Our work has helped make the promises of the U.S. Constitution more of a reality. But a litigation strategy is by its nature a defensive strategy. We fight in court to force the government to live up to its promises and obligations. But as we look to increase our influence and successfully expand the civil rights and freedoms of “We the People,” we must also build our legislative prowess. That means being more directly involved in the electoral process.

The lead story in this edition of *Connections* is about our work surrounding the primary race for attorney general. ACLU affiliates across the country have realized that if we are truly going to challenge mass incarceration, we must recognize the power of the prosecutor and confront it head on. Here in Delaware that means getting specific reform commitments from the AG candidates in advance of their election, so that we can work with

them and also hold them accountable once they are in office.

It also means electing candidates up and down state who will vote for reforms and new, progressive social policies that benefit everyone. We can no longer sit on the sidelines. As an organization, we must raise up our issues and influence the debate in ways similar to what we did with repeal of the death penalty.

But we must also take it a step further. We must mobilize people to vote. We must educate them about candidates' positions and voting histories very directly. Don't be surprised if you see us put out an internet ad or send a mailing documenting a candidate's position on criminal justice reform, reproductive rights or access to the ballot box.

Litigation will always be at the core of the ACLU's expertise and strategy. Now we must become expert and influential in the political process as well. Ultimately, we aim to make the democratic process fairer and stronger so that it can truly reflect the will of the people.

In Solidarity,

Kathleen MacRae



The ACLU Fights to Reunite Families

The family separation crisis isn't over yet.

Photo Illustration: doondevil/Twenty20

In April 2018, Attorney General Jeff Sessions announced a zero-tolerance policy for asylum seekers. Very quickly, pictures and video of infants and children being torn from their parents and held in cages were everywhere. Headlines across every media platform in the world were condemning the Trump administration's family separation policy.

The moral and political backlash was so extreme that President Trump quickly relented and on June 20 signed an executive order declaring that the U.S. government would no longer separate families. But the damage was done, and had been underway since much earlier in the Trump administration.

In December 2017, then-Secretary of Homeland Security John Kelley began talking about family separation as a deterrent policy. The ACLU was paying attention.

The ACLU Immigrants' Rights Project was aware early in the Trump administration that families were being separated. We were looking to file a lawsuit and finally identified a woman from the Congo who had entered the country seeking asylum through Mexico. When she was first in the country, “Ms. L” and her seven-year-old daughter were held together in San Diego. Four days later, her daughter was taken from her for no apparent reason and transported to Chicago.

In February 2018, we filed *Ms. L v. ICE* in U.S. District Court claiming that the due process clause of the U.S. Constitution does not permit a child being removed from her mother without justification or even a hearing. By March 2018 we identified a second plaintiff and amended

“...but the damage was done, and had been underway since much earlier in the Trump administration.”

the complaint to a class action on behalf of all families separated by the administration.

Ms. L v. ICE was proceeding through normal channels when the ICE family separation actions accelerated. So on June 25, ACLU lawyers asked for an immediate injunction to stop the separation of families and to force their reunification. U.S District Judge Dana Sabraw granted that injunction on June 26.

In total, 2,654 children had been separated from their parents before the judge took action; 103 of them were under five years old. In its ruling, the court said that all children must be reunited within 30 days; children under five within 14 days; and all parents must be able to speak with their children within 10 days. The court also prohibited any deportation of parents without their children, absent a knowing waiver, and said that in the future no child could be separated unless it was genuinely in the child's

ATTORNEY GENERAL RACE, CONT. FROM PAGE 1

If prosecutors use their power to promote better approaches, we could dramatically reform our criminal justice system. On November 6, 2018, we have the opportunity to elect an AG who can help lower incarceration rates and challenge the racial bias in the criminal justice system.

Campaign for Smart Justice & The Next Attorney General

For the better part of this year, ACLU-DE shone a spotlight on the race for AG. We launched the www.VoteSmartJusticeDE.org website that informs voters about what the AG does and why it matters.

We also presented our Smart Justice platform to the candidates running for AG. The platform outlines our recommended reforms:

- Expand use of alternatives to prison
- Send fewer people to prison with shorter sentences
- End money bail
- End racial bias and disparities in prosecution
- Let the public judge your performance
- Listen to community needs

The core principles of the Smart Justice platform are community safety, fair justice practices, transparency and accountability. You can read the full Smart Justice platform on our #VoteSmartJusticeDE website.

At the beginning of the summer, we sent a questionnaire to the AG primary candidates to find out where they stand on criminal justice reform. We participated in several forums and debates for the AG candidates and used their own words to create targeted questions when we held our forum right before the primary election.

Our hard work paid off. Over the last few months, we've seen a fundamental shift in the way that people are talking about the criminal justice system. We watched as most of the AG candidates moved their positions more in line with our Smart Justice platform. We asked them hard questions about criminal justice reform,



KATHY JENNINGS (LEFT) WILL NOW FACE BERNARD PEPUKAYI (RIGHT) FOR THE ATTORNEY GENERAL SEAT IN NOVEMBER'S ELECTION.

and they gave us answers that would allow us to hold them accountable if elected.

Now the primary is over, and we're headed to the general election with just two candidates for Attorney General: [Kathy Jennings](#) (D) and [Bernard Pepukayi](#) (R).

At the forums sponsored throughout the primary campaign, Kathy committed to making policies and practices in the Department of Justice more transparent, including expanding access to data that can be used to transform the criminal justice system and establishing a Community Accountability Committee.

She also committed to support proposals to reduce mandatory minimum sentences, to eliminate consecutive sentencing that results in unnecessary jail time and to oppose reinstatement of the death penalty. These commitments are important to reducing mass incarceration in Delaware, and we intend to find out if Bernard Pepukayi will make them, too.

The Fight Continues

Delawareans have chosen to put criminal justice reform at the top of the ballot in November. Leading up to the November 6th general election we will be updating our #VoteSmartJusticeDE website

to reflect the positions of the Democrat and Republican candidates for AG and for the General Assembly. We will continue to ask candidates to commit to criminal justice reform so that we can hold them accountable after they are elected. We will also continue our voter registration, education and mobilization efforts.

When 51% of Delaware's prison population is African American, 96% of cases are being decided by plea-bargain and people are incarcerated awaiting trial simply because they can't afford bail, we know that the system is not working. By voting for reform-minded candidates, we can end mass incarceration and challenge racial bias in the criminal justice system. ■

CARRY MY OWN VOTE

We know criminal justice reform is important, but we can't make change happen without everyday citizens getting out there and voting for reform-minded candidates. That's why we launched the Carry My Own Vote initiative through the Campaign for Smart Justice.



The goal of Carry My Own Vote is to get people to the polls who historically don't vote or don't vote in off-year elections—people from low-income communities and people whose lives are directly impacted by the criminal justice system.

Carry My Own Vote is educating folks about their voting rights, how to register, how to check registration status, polling information and election dates. If you have a loved-one in prison or have a criminal record you need to **VOTE** in our federal, state and local elections.

Only through voting can we reform Delaware's criminal justice system, end mass incarceration and address racial bias.

To learn more about getting involved in the Carry My Own Vote initiative, please email Campaign for Smart Justice Organizer Dubard McGriff at dmcgriff@aclu-de.org.

VOTER REGISTRATION & ELECTION INFORMATION

Delaware's Department of Elections has done a great job of putting all your voter registration and election information in one place: www.iVote.de.gov.

To register, just head over to the website above and click on "How do I register to vote or update my registration (address, party affiliation, name, etc.)?"

The voter registration deadline for the general election is Saturday, October 13, 2018.

Once you're registered to vote, explore the rest of the tools that this hub has to offer like registration application status, polling place information, absentee voter services, sample ballots and more.

You can vote. Even if you have a felony.

Once you've completed your sentence, you become eligible to vote again.*

All you have to do is make sure you're registered.

Register to vote before the October 13 deadline:

www.iVote.DE.Gov

*People with most felony convictions are able to register to vote after completion of their prison sentence and probation. People who are convicted of certain disqualifying felonies—including murder or manslaughter, some offenses against public administration including bribery, and felony sexual offenses—are permanently disenfranchised unless they receive a pardon from the governor.

ACLU SMART JUSTICE Delaware

FAMILY SEPARATION CRISIS, CONT. FROM PAGE 3

best interest.

The deadlines of July 10 for reuniting children under five and July 26 for all other children loomed, but the Trump administration was in such chaos that they did not meet the deadline. They also defied the court order and deported at least 300 of the parents waiting for reunification, making the process more complicated and in some cases impossible.

The most recent status update, jointly filed by the ACLU and government lawyers on September 6, 2018, reports that 473 children, 19 of them under age five, still remain in the custody of the Office of Refugee Resettlement.

The Trump administration is dragging its feet and has made it clear that family reunification is not a priority. However, the ACLU and other national organizations are working together to make sure every child is returned to their family.

Now it is up to us. We need you in this fight. Learn how you can get involved and stay updated on the family separation crisis at aclu.org/families-belong-together.



PHOTO BY: ILANA PANICH LINSMAN

“Racial Justice: Past, Present and Future”

You can’t talk about reaching racial justice without owning the history of injustice that brought us here.

On April 26, 2018, we teamed up with other Delaware civil rights organizations to host “Racial Justice: Past, Present and Future” in Sussex County. This event was a combined effort to introduce our Campaign for Smart Justice to Sussex County residents.

Speakers like Dr. Angela Winand, head of Delaware Historical Society’s Mitchell Center for African American Heritage, and Joanne Cabry of the Progressives of Sussex County spoke about the implications of Delaware’s history as a slave state on modern racial justice issues.

Dubard McGriff, our Smart Justice Organizer and Kathleen MacRae, our Executive Director, talked about the current state of mass incarceration and what we can do to make the criminal justice system more fair and effective.

This event was held in solidarity with the grand opening of the National Memorial for Peace and Justice in Montgomery, Alabama—a memorial dedicated to over 4,400 victims of racial terror lynching. The memorial project was spearheaded by Delaware native Bryan Stevenson in his role as executive director of the Equal Justice Initiative. Bryan has said, “I don’t think slavery ended in 1865, it just evolved.”



Kandler Memorial Awards Dinner
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Former ACLU President Visits Delaware

Ms. Strossen takes on hate speech with the first amendment in her latest book.

In the age of Trump it’s hard to ignore the tension between free speech and hate speech.

On August 4, ACLU National Past President and noted civil liberties expert Nadine Strossen addressed that tension to a room full of ACLU supporters at the Lewes Public Library. In her new book *HATE: Why We Should Resist It With Free Speech, Not Censorship*, she makes the argument for using “counterspeech” against hate.

University of Washington Law Professor (and Lewes resident) Ron Collins interviewed Nadine on her book and a variety of other civil liberties topics, followed by a lively “Q&A” session with the audience.

Nadine is the John Marshall Harlan II Professor of Law at New York Law School and served as the national ACLU’s first woman president from 1991



to 2008. She is the author of over 300 published works. Professor Strossen is currently a member of the ACLU’s National Advisory Council, as well as the Advisory Boards of the Electronic Privacy Information Center, the Foundation for Individual Rights in Education, and the Heterodox Academy.



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Kandler Memorial Awards Dinner

Courage & Vision:
CHAMPIONS OF LIBERTY

Honoring



STEVE ELKINS



MARIA MATOS



KEVIN O'CONNELL

Wednesday, October 17, 2018
Chase Center on the Riverfront

More Info: bit.ly/Kandler2018 or dbever@aclu-de.org