



ISSUE 2, VOLUME 48, SUMMER 2012

PRIVACY R/EVOLUTION



LET'S START A PRIVACY R/EVOLUTION IN OREGON!

Protecting Civil Liberties in the Digital Age

Privacy is a fundamental human right specifically recognized in the UN Declaration of Human Rights and inferred (and much argued about) in our Bill of Rights. The ACLU has worked for decades to protect individual privacy because privacy underpins human dignity and other key values such as freedom of association and freedom of speech.

Privacy has become one of the most important human rights issues of the modern age not because our value of privacy has changed but because the ways in which our privacy can be compromised have radically changed in the digital age.

The constant stream of *revolutionary* new technologies is eroding existing protections and, the fact is, privacy laws have failed to *evolve* with emerging technologies. This is why the ACLU has launched the Protecting Civil Liberties in the Digital Age initiative to ensure that expressive, associational, and privacy rights are strengthened rather than compromised by new technology, and to protect these core democratic rights against intrusive corporate and government practices that rely on new technology to invade these rights.

What can we do, in Oregon, to protect privacy? Lots! In this newsletter issue we are featuring digital privacy. Throughout the issue you will learn facts about privacy, be invited to a free privacy workshop, read updates on the ACLU of Oregon's work on surveillance technology, and find out ways you can become a privacy advocate. We're even planning a fun dance party with a privacy theme!

PRIVACY NEWS IN THIS ISSUE:

Update our Privacy Laws, page 3
Plenty to Hide, page 4
Annual Membership Meeting, page 9
GPS Tracking, page 11
Automatic License Plate Readers, page 14
Drones, page 15
Police Surveillance Cameras, page 15

EQUAL TREATMENT FOR ALL...OR JUST A FEW?

Article I, section 20, the privileges and immunities clause of the Oregon Constitution, has long been construed to guarantee all Oregonians equal treatment by our government, but the Oregon Attorney General's office recently asked the Oregon Supreme Court to reconsider this interpretation in *State v. Savastano*. The State is arguing that Article I, section 20 only prohibits the state from engaging in economic favoritism and does not apply to government discrimination based on race, national origin, gender or other classifications.

We have filed an *amicus* brief in the case arguing that adopting the State's interpretation of Article I, section 20 would represent a radical departure from decades of cases that correctly concluded that Oregon's equal treatment guarantee prohibits both invidious discrimination against disfavored minorities and standardless and unequal application of the law.

For example, in 1949, the Oregon Supreme Court held in *Namba v. McCourt* that discrimination based on race and national origin was "repugnant" to this clause and overturned the state prohibition on Japanese immigrants owning land in Oregon. In *Hewitt v. SAIF* (1982), the Court held that gender discrimination was "inherently suspect" under Article I, section 20 and expanded a law that provided "widow's" benefits to the wives of men killed on the job, but denied the same benefits to a man with children whose wife died in the workplace.

In *Tanner v. OSHU* (1998), the Oregon Court of Appeals found that discrimination based on sexual orientation was also prohibited by this clause. That case granted health insurance and other benefits to the domestic partners of lesbian and gay employees.

A second line of appellate cases that interpreted the equality guarantee to also prohibit unbridled discretion by prosecutors and other government officials. For example, in *State v.*

CONTINUED ON PAGE 12

BOARD OF DIRECTORS

Candace Morgan
President

William J. Rainey
Vice President
Policy

Steven Wilker
Vice President
Legal Affairs

Joyce Cohen
Vice President
Legislation

Jim Curtis
Vice President
Education

Jennifer Middleton
Secretary

Cary Jackson
Treasurer

Hank C. Miggins
National Board
Representative

Directors

Laura Berg
Stasia Brownell
Michael Cartwright
Alec Esquivel
Cate Hartzell
Greg Hazarabedian
Annabelle Jaramillo
Graham Kroese
Stella K. Manabe
Bobby Mauger
Keane McGee
Robert Melnick
Harriet Merrick
Fred Roy Neal III
William Patton
Nancy Ross
P.K. Runkles-Pearson
Surinder Bobbin Singh
Erin Snyder
Celine Swenson-Harris

Staff

David Fidanque
Executive Director

Gail Anderson, CFRE
Development Director

Sarah Armstrong
Outreach & Office
Coordinator

Jann Carson
Associate Director

Kevin Díaz
Legal Director

Teresa Domka
Development &
Communications
Associate

Emily Garber
Temporary Staff Attorney

Bonnie Souza
Program Associate
for Racial Justice

Rebecca J. Straus
Legislative Director/
Counsel

Stephanie Van Zuiden
Fiscal Manager

CONTACT INFORMATION

P.O. Box 40585
Portland, OR 97240
t/503.227.3186

P.O. Box 50426
Eugene, OR 97405
t/541.345.6162

www.aclu-or.org • info@aclu-or.org



**AMERICAN CIVIL LIBERTIES UNION
of OREGON**

IMMIGRATION ENFORCEMENT: OREGON TAKES A BETTER PATH

FROM THE EXECUTIVE DIRECTOR



David Fidanque

When the U.S. Supreme Court ruled in June on Arizona's SB 1070, we used it as an opportunity to remind the public about why Oregon long has traveled down a different – and better – path. With SB 1070, Arizona's Legislature told its state and local police that they must challenge any person they "reasonably" suspect may be an immigrant to show documents proving she or he is a lawful resident of the U.S.

This "show me your papers" law requires police to engage in racial and ethnic profiling and such profiling undermines community safety rather than promoting it.

Since 1987, Oregon has prohibited such discriminatory treatment of immigrants. ORS 181.850 prohibits state or local police agencies from using any "...agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship residing in the United States in violation of federal immigration laws."

This law has been essential in helping Oregon police reach out to immigrant communities to encourage them to come forward to report crimes that occur in their neighborhoods and also to be willing to seek police help when they are victims of crime.

Regardless of whether immigrants have already become U.S. citizens or aspire to be citizens, most have no trust in U.S. immigration authorities because of personal experiences they and their families have had at the hands of immigration agents. State and local police have more than enough work to do enforcing Oregon criminal laws without also trying to do the federal government's job.

We are watching for any attempts to weaken or repeal Oregon's ban on immigration enforcement in next year's legislative session. The last time a serious effort was made to undermine this law, in 2003, we built a statewide coalition of more than 65 organizations to successfully safeguard this important protection against ethnic and racial profiling.

In the meantime, the National ACLU and the ACLU of Arizona are continuing the struggle to overturn Arizona's "show me your papers" law. Despite what most news outlets reported in June, the U.S. Supreme Court did not "uphold" the law; the Court merely held that it was not necessarily preempted by federal law.

Before the U.S. Justice Department filed its challenge – which is the case that went to the Supreme Court – the ACLU already had a separate legal challenge pending arguing the law violates the equal protection guarantees of the Fourteenth Amendment and the protections against unlawful search and seizure guaranteed by the Fourth Amendment.

The ACLU's challenge to SB 1070 has now taken center stage. On July 17, the ACLU and our coalition partners asked a federal judge in Arizona to issue an injunction to prevent the "papers" provision of SB 1070 from taking effect.

We are pleased that the ACLU's lead attorney in the Arizona challenge, Cecilia Wang, will be the keynote speaker at our Third Annual ACLU NW Civil Liberties Conference at Lewis & Clark Law School on September 14 (see page 8). Cecilia is the Director of the ACLU Immigrants' Rights Project and spearheads the ACLU's efforts to stop Arizona-type laws where ever they may crop up in the U.S.

Thanks again for all of your support for the ACLU's work to defend civil liberties and civil rights.

IT'S TIME TO UPDATE OUR PRIVACY LAWS

The primary law defining privacy in the digital age is the Electronic Communications Privacy Act (ECPA). Enacted 26 years ago in the pre-Internet era of Atari and the floppy disc, the ECPA has become hopelessly outdated and ill-equipped for the age of cloud computing, social media, and smart phones.

The ACLU of Oregon will host "Party Like It's 1986" on Saturday, October 20 in Portland, to highlight just how out-of-date privacy laws have become. By inviting party-goers to dress in '80s clothing, reminisce about cell phones the size of large bricks, and play Duck Hunt on the big screen, we will draw attention to the ways technology has changed how we think of privacy. New technologies continue to evolve and create new gray areas when it comes to law enforcement accessing location services, off-site digital storage, and social media, and it's time for Congress to install an update of the law.

Nearly everyone in America is affected by the ECPA. Government agencies gain access to information such as call logs, e-mails, and location data stored on companies' servers without judicial review or oversight. Moreover, there are no clear guidelines when it comes to using GPS location data to track citizens or create profiles. There is always the danger that government agencies could make mistakes and over-include people on their lists, much like with the No-Fly List.

Just because you don't have anything to hide does not mean you have nothing to worry about - privacy is about more than hiding things. It is about the distinction between your

public behaviors and your private life spent with friends and family (*see page 4*).

The ACLU believes the following changes are needed to modernize ECPA:

Robustly Protect All Personal Electronic Information. Current loopholes in our privacy laws must be closed to ensure that electronic information, including most transactional communications, receives full warrant protection regardless of its age or nature.

Safeguard Location Information. Location as transmitted by a cell phone is clearly personal information. Government officials should have to obtain a warrant based on probable cause before accessing it.

Institute Appropriate Oversight and Reporting Requirements. Existing reporting requirements for wiretap orders must be extended to all types of law enforcement surveillance requests.

Require a Suppression Remedy. The same rules should apply for electronic and non-electronic information; if it's illegally obtained it should not be used against an individual in court.

Craft Reasonable Exceptions. Records should only be viewed in a true emergency or with informed consent and proper notice.

Privacy law doesn't auto-update! Join us at our "Party Like It's 1986" event or visit www.aclu.org/ecpa to learn more and to ask Congress to update the ECPA.



Party Like It's 1986, Demand Privacy Like It's 2012.

**It's the opposite of awesome for electronic privacy law to be older than the web
- written back in the digital dark ages of 1986.**

That's right, the federal law that is supposed to protect our personal information was written 26 years ago. It's as outdated as a mobile phone the size of your head. So, break out your legwarmers and high tops, your walkmans and mixtapes and join us!

10/20/2012 - 9:00 PM - 12:00 AM
BACKSPACE - 115 NW 5TH AVE, PORTLAND - \$5 DONATION, ALL AGES

PLENTY TO HIDE

We've all heard the retort "If you aren't doing anything illegal why would you care if someone captures your [fill in the blank:] photo, license plate number, location, etc.?"

And the ACLU member counters: "If I'm not doing anything illegal, why do the police need to record my [fill in the blank:] photo, license plate number, location, etc.?"

It's a great response. In essence, it points to our civilization's core principle that the government is not supposed to look over our shoulder unless it has particularized suspicion that we are involved in wrongdoing.

But this frequent refrain, "Why should I care about surveillance if I have nothing to hide," needs more of a response. In an essay published on the ACLU of Oregon website, Marvin Gordon-Lickey, member of the ACLU of Oregon Education Committee, has written an engaging and thought provoking essay titled: *Do we still want privacy in the information age?* In his piece, Marvin explores this question of why we should continue to care about our privacy in the face of technological advances. We encourage you to read his essay online at: www.aclu-or.org. If you would like us to mail you a copy of the essay, please send a self-addressed, stamped envelope to: Privacy Essay, ACLU of Oregon, P.O. Box 40585, Portland, OR 97240.

In the meantime, when you need a quick response for the next person who says, "I have nothing to hide," we've started a list of responses for you to try. And we welcome your ideas, as well. Send them to info@aclu-or.org – and use the subject line: Privacy Wanted.

Everyone should want privacy protections because:

1. **No one is a saint. Some people do have something to hide, but not something that the government ought to gain the power to reveal.** People hide many things from even their closest friends and family: the fact that they

are gay, the fact that they are sick, the fact that they are pregnant, the fact that they are in love with someone else. Even though *your* private life may be especially straightforward, that should not lead you to support policies that would intrude on the more complicated lives of others. There's a reason we call it *private* life.

2. **One word: errors. You may not have anything to hide, but the government may *think* you do.** If we allow the government to start looking over our shoulders *just in case* we might be involved in wrongdoing – mistakes will be made. You may not think you have anything to hide, but still might end up in the crosshairs of a government investigation, or entered into some government database, or worse. The experience with terrorist watch lists over the past 10 years has shown that the government is highly prone to errors, and tends to be sloppily over-inclusive in those it decides to flag as possibly dangerous.
3. **Are you *sure* you have nothing to hide?** There are a lot of laws on the books – a lot of *very complicated* laws on the books – and prosecutors and the police have a lot of discretion to interpret those laws. And if they decide to declare you public enemy #1, and they have the ability to go through your life with a fine-tooth comb because your privacy has been destroyed, they *will* find something you'll wish you could hide. Why might the government go after you? The answers can involve muddy combinations of things such as abuse of power, mindless bureaucratic prosecutorial careerism, and political retaliation. On this point a quotation attributed to Cardinal Richelieu is often invoked: "Give me six lines written by the hand of the most honest man, and I'll find something in them to hang him by."

MEASURE 80 –DECRIMINALIZE MARIJUANA

One of two marijuana-related initiative petitions has officially qualified for the November 2012 ballot. Measure 80, if approved by voters, would decriminalize the possession and use of marijuana by adults (age 21 and older). It would also amend Oregon law to regulate commercial marijuana cultivation and sale to adults through state-licensed dispensaries. Funds generated from licensing and sale would be directed, in part, to the state general fund and drug education and treatment.

The ACLU has long advocated for the decriminalization of the use, possession, cultivation, manufacture and distribution of drugs, including marijuana. Criminal laws against marijuana impose arbitrary, often harsh, and cruel penalties for private conduct for which no criminal penalty is appropriate. These laws are selectively enforced and, when enforced, often rely on entrapment, illegal searches, or other means that violate civil liberties. They divert scarce law enforcement resources from serious crimes and true public safety threats.

Consistent with this policy, we see Measure 80 as a step in the right direction for Oregon.

4. **It's none of their damn business. Everybody hides many things even though they're not wrong.** The ultimate example is the fact that most people don't want to be seen naked in public. Nudity also makes a good metaphor for a whole category of privacy concerns: just because we want to keep things private doesn't mean we've done anything wrong. And, it can be hard to give rational reasons why we feel that way – even those of us who feel most comfortable with our bodies. True, some people may be perfectly happy posting nude pictures of themselves online, but other people do not like to show even a bare ankle – and they should have that right. In the same way, there may not be anything particularly embarrassing about other details of our lives – but they are *our* details. The list of all the groceries you have purchased in the past year may contain nothing damaging, but you might not want a stranger looking over that either, because of that same difficult-to-articulate feeling that it would just be, somehow, *invasive* and *none of their damned business*.
5. **Your data can cost you. You may not care about hiding it, but you may still be discriminated against because of it.** Beyond the government, there are many commercial interests in data mining. And as a result, people are often denied benefits or given worse deals because some company decides that some behavior – entirely innocent and legal – might suggest they are a poor risk. For example, credit card companies sometimes lower a customer's credit limit based on the repayment history of the *other customers* of stores where a person shops.
6. **Knowledge is power. But knowledge about you is power over you.** Face it – we all have enemies, as well as friends, competitors as well as teammates. People, with the right information about us, might take advantage of us. To have control over the flow of information about yourself is to have privacy.
7. **Just trust me. The more people you are open with, the more people you must trust.** In an ideal world we would trust everyone to use the information they have about us in benevolent ways. In such a world we would have no worries about privacy or reputation.
8. **Tyranny or Liberty.** Do we have to worry about who is reading our e-mail, knows how much credit we have, what we said to our psychiatrist, what political party we support? Worries like these are the burdens of tyranny. Their absence is what we call liberty.
9. **Privacy is about much broader values than just "hiding things."** Although many people will want more specific answers to the question such as the above, ultimately the fullest retort to the "nothing to hide" impulse is a richer philosophical defense of privacy that articulates its importance to human life – the human need for a refuge from the eye of the community, and from the self-monitoring that living with others entails; the need for space in which to play and to try out new ideas, identities, and behaviors without lasting consequences; and the importance of maintaining the balance of power between individuals and the state.

Many thanks to Marvin Gordon-Lickey and Jay Stanley, Public Education Director of the ACLU's Technology and Liberty Project, for their insightful writings about privacy. We borrowed from their writings to create this list of responses as to why we deserve privacy.

intentionally left blank

ANTI-CHOICE MEASURE FAILS TO QUALIFY FOR 2012 BALLOT

On July 6, Oregonians learned that Initiative Petition 25 (IP 25), a dangerous anti-choice constitutional amendment, failed to qualify for the November ballot. Reporting only 70,000 signatures gathered over the last several months, proponents of the measure fell far short of the legally required 116,000 valid signatures.

Initiative Petition 25 (IP 25) would have amended the Oregon Constitution to prohibit access to medically necessary abortion coverage for low-income women. With no exception for the health of the woman, it would not only have denied many Oregon women access to the comprehensive health care they currently have, it would have denied services to women facing terrible health issues like cancer and severe fetal abnormalities.

Back in December, 2011, the ACLU of Oregon and our Pro-Choice Coalition partners challenged the ballot title

that had been drafted for IP 25 by the Attorney General's office. We successfully convinced the AG that the proposed amendment used many terms that were ambiguous and voters needed to be alerted to the potentially broad impact the measure could have if adopted. As a result of our coalition's advocacy efforts, the certified ballot title read: *Constitutional Amendment: Bans "use" (undefined) of "public funds" (undefined) for "abortion" (undefined) coverage, services, certain exceptions.*

Oregonians have spoken very clearly on the matter of women's health care again and again, and this was no exception. Every single initiative threatening reproductive freedom and protections for women's health that has gone to a vote has been defeated. The fact that this measure could not garner enough support to qualify for the ballot demonstrates this commitment is still strong among Oregonians.

ACLU HELPS FORM EDUCATION EQUITY ALLIANCE

The ACLU of Oregon is a founding member of a new coalition that is working to eliminate racial and ethnic disparities in Oregon's public schools. The Oregon Alliance for Education Equity (OAE) includes many organizations that have advocated on behalf of communities of color and English language learners for many years. For the first time, these organizations are now joining together to speak with a unified voice to state officials who are designing and implementing the latest wave of education reforms.

Many of our coalition partners began working together last year in connection with the ACLU's work to highlight Oregon's School-to-Prison Pipeline. In 2010, we published a report that detailed significant statewide racial and ethnic disparities in public school discipline. At that time we urged the Oregon Department of Education (ODE) to annually publish the discipline data it collects from every school district in the state. After we reached out to coalition partners to join us in that effort, State Superintendent of Public Instruction Susan Castillo approved our request.

Thanks to that joint effort, and the coalition's cooperative work with ODE, the discipline data for every school district in the state, broken out by race and ethnicity, is now publicly available on ODE's website at: <http://www.educationdataexplorer.com/>.

The ACLU's work with the Oregon Alliance for Education Equity is now focusing on the implementation of recent federal guidelines governing how the race and ethnicity of students are identified. In Oregon, this has resulted in the misidentification of many students of color, including Native Americans, Latinos, African Americans and Pacific Islanders.

Save the Date! Saturday, March 2, 2013 Liberty Dinner at the Oregon Convention Center



Glenn Greenwald, civil rights attorney, author of three *NY Times* bestsellers, former blogger/columnist for *Salon.com* and now a featured writer with the *Guardian*, will be our keynote speaker.

Also, we hope you will join us in honoring David Fidanque as we celebrate his 20 years as executive director and the beginning of his 31st year defending and promoting civil liberties in Oregon and nationwide. David will be presented with the E.B. MacNaughton Civil Liberties Award at the dinner.

Sponsorships and printed program tributes are available.

Contact Gail Anderson at 503.552.2101 or ganderson@aclu-or.org for information

**Become an e-activist.
Go to www.aclu-or.org.**

LANE COUNTY CHAPTER LAUNCHES CIVIL CONVERSATION SERIES

Second Tuesdays of July, August & September

The Lane County chapter held its first Civil Conversation on July 10, 2012 with an overflow attendance at a local Café Yumm. The issue discussed was the downtown public safety zone in Eugene. Exclusion zones have been hotly debated in Portland, Eugene, and Ashland. Attendees raised concerns about how homeless people are being affected due to the ordinance and whether adequate due process is afforded when someone is excluded. Various strategies for influencing the governmental policy makers were considered and examined civilly. Heather Marek presented the issue and kept the group on topic.

The ACLU of Oregon believes people have the right to move freely through our public sphere, to access the public library, transit station and other public spaces. Those who break the law should be held accountable. However, individuals should not be subjected to banishment based solely on an accusation that they have committed a crime. That is what is happening now in Eugene's downtown under the exclusion program that was created in 2008. We have continually opposed the ordinance, as we did with Portland's long time "drug free" and "prostitution free" exclusion zones, believing any limitations on travel should come from a court after a conviction. (In 2007, Portland finally ended its exclusion zones because of evidence of racial disparities in those targeted for exclusion.)

The focus of the August Second Tuesday Civil Conversation on Freedom of Religion: "What does separation of church and state mean to you?" was moderated by Dan Bryant, Senior Minister of the First Christian Church (Disciples of Christ) in Eugene. On September 11, the topic will be the Patriot Act and the National Defense Authorization Act: Are We Safe and Free? Greg Hazarabedian, Executive Director of Public Defender Services of Lane County and an ACLU of Oregon board member will moderate the discussion.

The Lane County Chapter has had a busy summer. In addition to the Civil Conversation series, it made sure ACLU of Oregon had a vibrant presence at Eugene Pride and at the Eugene Celebration and Parade. The chapter's activities are posted on the chapter's page on the ACLU of Oregon website (aclu-or.org/lanecounty).

**For breaking news on civil liberties in
Oregon and across the nation,
please find us on Facebook or Twitter.**



facebook.com/ACLUofOregon



twitter.com/ACLU_OR

Upcoming ACLU Events

ASTORIA

North Coast ACLU Meet & Greet

September 8, 2012 1 p.m. – 4 p.m.
Shively Park, Astoria – *rain or shine*

Mix and mingle with your fellow North Coast civil libertarians at this a casual potluck picnic.
To RSVP email info@aclu-or.org or call 503.227.3186.

EUGENE

Second Tuesday Civil Conversations Patriot Act & National Defense Authorization Act: Are We Safe and Free?

September 11, 2012 5:30 p.m. to 7 p.m.
Café Yumm, 730 E. Broadway, Eugene

The Lane County ACLU Chapter invites the community to discuss civil liberties issues. *See article for more details.*

PORTLAND

2012 ACLU NW Civil Liberties Conference & Annual Membership Meeting

September 14-15, 2012
Lewis & Clark Law School,
10015 SW Terwilliger Blvd., Portland

ACLU members, law students, and legal professionals from around the region gather to explore current civil liberties issues. *See pages 8 & 9 for details.*

Banned Books Reading at Powell's

Sunday, October 7, 2012
Powell's City of Books, 1005 W Burnside, Portland

Back by popular demand!
Powell's Books and the ACLU of Oregon will present an evening of readings of our favorite banned and challenged books featuring local authors and artists.

Party Like It's 1986!

Saturday, October 20 9 p.m. - midnight
Backspace, 115 NW 5th Ave, Portland
\$5 donation, all ages

"Party Like it's 1986" to help us tell Congress it's time to modernize the laws that are supposed to protect our privacy in the digital age.

STATEWIDE

Banned Books Week 2012

September 30 – October 6

Celebrate the freedom to read and the First Amendment! Libraries, schools, and bookstores across the state participate in this annual event.

Visit www.aclu-or.org/bannedbooks
for more information.



**For more information about any of these events,
please visit our website at aclu-or.org
or call our office at 503.227.3186.**



2012 ACLU NW CIVIL LIBERTIES CONFERENCE & ANNUAL MEMBERSHIP MEETING

*Presented by the ACLU of Oregon, the Lewis & Clark Law School
ACLU Student Group, and the Oregon Justice Resource Center.*

**All events will be held at Lewis & Clark Law School,
10015 S.W. Terwilliger Boulevard, Portland**

The third annual conference brings together law students, legal professionals and civil libertarians from around the region to explore current civil liberties issues. This year's conference also includes a free workshop on Saturday with a focus on privacy and technology (as part of the ACLU of Oregon's annual membership meeting).

Friday, September 14, 2012

PAID registration required - 6.25 continuing legal education (CLE) credits pending (including 2.5 Access to Justice credits)

Keynote – Separate and Unequal: Race, Justice, and Immigration

9 - 9:45 a.m.

Cecillia Wang, Director of the ACLU Immigrants' Rights Project

Cecillia began her career as a civil rights lawyer with a fellowship at the Immigrants' Rights Project in 1997-98 and rejoined the project in 2004, first as a staff attorney, and then as a senior staff attorney and as managing attorney for the Project's California office. Her practice centers on issues at the intersection of immigration and criminal law, including state anti-immigrant laws, racial profiling and other unlawful police practices.



Cecillia Wang

Panels

10 - 11:45 a.m. – **LGBTQ Rights**

1:15 - 3 p.m. – **Death Penalty: Death is Different**

3:15 - 5 p.m. – **First Amendment and Protest: A Year After Occupy**

To register for the Friday CLE Conference, go online to aclu-or.org/2012nwconference

Registration fee includes meals.

Attorneys – \$150

Public Interest Attorneys, Non-attorneys – \$100

Students (ID required) – \$25

The ACLU NW Civil Liberties Conference is sponsored in part by:

James Gang Publishing • Morel Ink

Ransom Blackman LLP • Tonkon Torp LLP

Oregon Lawyer Chapter of the American Constitution Society (ACS)

Design: Mac Barett Printing: ColorHaus PrintCo

Saturday, September 15, 2012

**FREE and OPEN to conference attendees,
all ACLU of Oregon members and the general public.**

Space is limited - Please RSVP at aclu-or.org/2012nwconference



Free 1.75 continuing legal education (CLE) credits pending

ACLU members and supporters are invited to attend a free workshop during the **ACLU Northwest Civil Liberties Conference**. After the workshop, we are hosting a BBQ with live music and experts on hand for one-on-one advice on your digital privacy. *What information are your cell phone apps sharing? Which boxes should you check to keep your Facebook profile more private?* Bring your devices along for personalized recommendations.

Workshop - Privacy R/evolution - Protecting Civil Liberties in the Digital Age

10 - 11:45 a.m.

**Featuring Chris Conley, Technology and Civil Liberties Policy Attorney
at the ACLU of Northern California**

Efforts at the federal level to pass laws like the Stop Online Piracy Act (SOPA) and the Cyber Intelligence Sharing and Protection Act (CISPA) have attracted widespread attention and criticism, and rightly so. But Washington D.C. is far from the only place that officials are making decisions that impact the privacy and free speech rights. State and local officials are jumping into the fray as well, passing laws or creating policies that have immediate impact without the spotlight that accompanies federal action. The fact is privacy laws have failed to keep up with emerging technologies.

In this workshop, we will survey several areas where state and local officials have recently been active, including **warrantless location tracking, searches of student and employee devices and online accounts, automated license plate recognition, and DNA collection**. Keeping an eye on – and even taking time to educate – your local city council or state legislature may be just as important as protecting your freedoms at the national level. See what the ACLU is doing in this area and learn how you can help.

***Chris Conley's mission** is to ensure that emerging technology bolsters rather than erodes individual privacy and free speech rights. Prior to joining the ACLU, Chris was a Fellow with the Berkman Center for Internet & Society at Harvard University, where he led research efforts on international Internet surveillance.*



Chris Conley

11:45 a.m. - Noon - **ACLU of Oregon update**

Noon - 2 p.m. - **BBQ and music with Walkfast and Jesiah (DJ)**

ACLU Settles Public Records Case With Jackson County Sheriff

Public records requests are a vital part of our democratic process, and an integral part of the ACLU's work. The ACLU's recent settlement with Jackson County, following a favorable circuit court decision by Judge Daniel Harris, vindicated the right of the ACLU, as well as all Oregonians, to access public documents.

In September of 2010, the ACLU filed a request with Jackson County to obtain records about the use of force and other conditions in the Jackson County Jail. In response, Jackson County refused to produce any records until the ACLU paid Jackson County a staggering \$4,574, an amount completely without connection to its actual expenses, and which ignored the fact that the ACLU would use the information in order to further the public interest. In May 2011, the ACLU filed suit to resolve this issue.

After a full trial, in February 2012, Circuit Court Judge Daniel Harris found Jackson County's demand for \$4,574 (which it reduced to \$2892.05 at trial) was objectively unreasonable, and the County "abused its discretion in refusing to substantially reduce the cost of providing copies of the requested records." Judge Harris further found that there was no reason Jackson County needed to use such a highly-paid employee, and that therefore a reasonable fee for the records was \$500. Lastly, the Court held that providing the requested records to the ACLU was in the public interest and benefited a legitimate public purpose as described in Oregon law. The County subsequently appealed that decision to the Oregon Court of Appeals.

In May, the ACLU settled its case with Jackson County. In exchange for the County dropping its appeal, the ACLU agreed to pay \$675 for the jail records. In turn, Jackson County agreed to produce the records and pay \$16,988.63 of the ACLU's attorney fees within 30 days. This settlement, in which Jackson County paid the ACLU over 25 times more than the ultimate fee for the records, is ample proof that obstruction of the public's right to access public documents doesn't pay.

Cooperating attorneys on this case were Charles F. Hinkle of Stoel Rives LLP and Allen G. Drescher.

Jail Mail Policies Unconstitutional

On June 6, 2012, the ACLU of Oregon filed suit in federal court to challenge the Jackson County Jail's unconstitutional inmate mail policy. The U.S. and Oregon Constitutions protect the free speech rights of inmates and those who wish to communicate with them. However, over the past two years a number of Oregon counties have adopted policies that severely restrict inmate mail. These policies have limited acceptable mail to postcards and have negatively impacted prisoners by forcing inmates to either expose private information such as

passwords, bank records, intimate correspondence between spouses, and other sensitive content, or else forgo written communication on those important subjects. Even inmates who have not been convicted of any crime are subject to these restrictions during pre-trial detention. In a case brought by Prison Legal News, U.S. District Court Judge Michael Simon held that the Columbia County Jail's "postcard only" policy violated the First Amendment, finding that limiting correspondence to and from jails to postcards was not rationally related to a legitimate and neutral governmental objective because it did nothing to increase jail security.

Jackson County's legal mail policy, which allowed only the "attorney of record" for an inmate to send or receive legal mail in an envelope, is a further constitutional infringement of inmates' right to secure legal assistance, which requires access to confidential attorney correspondence. Until 2010, Jackson County Jail's inmate mail policy allowed the ACLU to send and receive legal mail using envelopes. However, in December of 2010, Jackson County Sheriff Michael Winters amended the jail policy's definitions to specifically target the ACLU of Oregon's legal mail. Jackson County has since rejected legal mail from the ACLU, on the basis that the ACLU is not the "attorney of record" for those inmates.

Jackson County appears to have made this policy change in response to inmate surveys conducted by the ACLU of Oregon investigating the general conditions of confinement in the Jackson County Jail. The County's restrictive mail policy does not serve any public purpose, and in light of the recent success of challenges to similarly unconstitutional inmate mail policies, the ACLU of Oregon is confident that the legal mail policy of Jackson County will be struck down.

On June 21, 2012, the Medford Mail-Tribune reported that Jackson County Sheriff Winters has reversed the jail's mail policy and will once again treat ACLU mail to and from inmates as the privileged mail that it is. This is welcome news but we aren't dismissing our lawsuit just yet. We look forward to learning more specifics about the Sheriff's plan to change the jail mail policy.

Cooperating attorneys are Bruce Campbell, Elisa Dozono, and Jesús Miguel Palomares of Miller Nash LLP.

Ninth Circuit Gives ACLU's No Fly List Clients Their Day in Court

On July 26, a three judge panel of the Ninth Circuit Court of Appeals unanimously ruled that the ACLU's lawsuit challenging the U.S. government's secretive No Fly List should go forward. This decision marked a first and important step towards putting a check on the government's ability to blacklist its citizens without due process.

More than two years ago, 15 U.S. citizens and permanent residents, including four military veterans, were denied

Many thanks to the 2012 ACLU summer legal interns

Diana Winther, Lewis & Clark J.D. candidate '14; David Schor, Lewis & Clark J.D. candidate '13; and Lauren Eldridge, University of Oregon J.D. candidate '14.

The 10-week, full-time legal intern program is open to exemplary law school students with a passion for civil liberties and civil rights.



boarding on planes. None of them know why this happened, and no government authority has ever given them an explanation or a fair chance to clear their names.

In June 2010, the ACLU National Security Project and several ACLU state affiliates, including the ACLU of Oregon, filed a federal lawsuit in Portland on their behalf. The ACLU sued the FBI and its subagency, the Terrorist Screening Center, which creates and controls the No Fly List. But, in May 2011, the trial court in Portland dismissed the case for lack of jurisdiction, ruling that the ACLU should have sued the Transportation Security Administration, which administers the redress process for travelers denied boarding on planes. The ACLU appealed to the Ninth Circuit.

At the oral arguments in May, ACLU National Security Project Staff Attorney Nusrat Choudhury argued that the district court decision was wrong because TSA doesn't have the power to put people on, or take them off, the No Fly List—that's the job of the FBI and TSC. She also argued that placing people on the No Fly List without providing them any opportunity to confront and rebut the "evidence" against them is unconstitutional.

The Ninth Circuit reversed the district court and permitted the ACLU's lawsuit to go forward. It recognized that the government failed to provide a good answer to a question of tremendous importance to our clients and all Americans: "What should United States citizens and legal permanent residents do if they believe they have been wrongly included on the No-Fly List?" The Ninth Circuit reached the right answer: federal district courts can adjudicate citizens' and permanent residents' challenges to their placement on the No Fly List and their demand for a fair redress process.

This decision means that a court may soon consider whether a secret government watch list that denies Americans the ability to fly without giving them an explanation or

fair chance to clear their names violates the Constitution. All Americans are waiting for an answer to that question. Unfortunately, we expect the Justice Department is likely to appeal this decision.

Our cooperating attorney on this case is Steven Wilker of Tonkon Torp LLP.

Warrant Requirement for GPS Tracking Still Not Settled

In April, the national ACLU and ACLU of Oregon filed an amicus brief in *United States v. Pineda-Moreno* in the Ninth Circuit Court of Appeals. In 2007, Drug Enforcement Administration (DEA) agents in Oregon, without a warrant, placed a GPS tracking device on the silver Jeep owned by Juan Pineda-Moreno while it was parked in his driveway. Pineda-Moreno was suspected of growing marijuana.

The Ninth Circuit initially ruled against Pineda-Moreno in 2010. It said that tracking someone's movements by attaching a GPS device to their car did not implicate the Fourth Amendment at all, concluding that law enforcement agents could attach GPS devices to anyone's car for any reason whatsoever without violating the Constitution.

The U.S. Supreme Court, in another case involving GPS tracking, came to a different conclusion. In *United States v. Jones*, the Supreme Court held unanimously that attaching a GPS device to a car and tracking its movements is a search under the Fourth Amendment. However, the court did not address whether it's the sort of search that requires a warrant.

Following the *Jones* decision, the Ninth Circuit took a new look at the *Pineda-Moreno* case. The ACLU took this opportunity to explain to the Ninth Circuit why holding police to a probable cause standard is necessary to provide adequate protection for individuals' reasonable privacy interests. In early August, the Ninth Circuit issued a disappointing but

EQUAL TREATMENT FOR ALL..., CONTINUED FROM PAGE 1

Freeland (1983), the Oregon Supreme Court held that while prosecutors could choose whether to pursue a felony indictment against a criminal defendant before a grand jury or through a preliminary hearing in open court, prosecutors cannot make such decisions on an *ad hoc* and haphazard basis. The Court held that prosecutors must have consistent policies and practices for decisions that impact other substantial rights of the accused.

The State now argues that Article I, section 20 should be limited to what the framers intended in 1857 when they wrote the Oregon Bill of Rights. That would mean that Oregon's privileges and immunities clause would only prevent the Legislature from passing laws that give special treatment to individuals or groups which result in economic favoritism.

It is undeniable that Oregon's original Constitution – and laws – included numerous provisions that perpetuated the racist and sexist practices of the era prior to the Civil War. Indeed, Oregon's first Constitution included provisions that:

- a) Prohibited freed slaves from emigrating to Oregon;
- b) Permitted only White males to vote in elections; and
- c) Specifically prohibited voting by “Negroes, Chinamen and mulattoes.”

The ACLU's *amicus* brief defends all of the existing precedents interpreting Article I, section 20 as being most appropriate in our evolving society.

The brief also points out that reverting to the 1857 in-

terpretation would break faith with voters, who relied on the clause's current broad interpretation when they rejected the addition of an explicit equal protection clause to the state Constitution in 1994. To change now would mean that voters who put their faith in the way the Courts have construed its meaning would be punished by having their right to be free from all discriminatory laws taken away.

We also argue that the Court has correctly ruled for decades that Article I, section 20 is not limited to the framers' idea of equality; to hold otherwise would mean only white men were protected from discriminatory laws. The language of Article I, section 20 does not put such a restriction on the clause's reach; the framers chose to say “all citizens” because they understood the Constitution should not be limited to the legal and moral principles of their time. The brief concludes with a solid legal reason for why the current interpretation of the privileges and immunities clause is correct: precedent. A court can invalidate its previous rulings if those rulings are proven to be in error because they cause harm or are unjust. In this case, the State is asking our Supreme Court to reconsider its interpretation in a way that will not correct an existing harm, but rather would create many harms.

Since the case has not yet been scheduled for oral argument, the Oregon Supreme Court is not likely to issue its decision before next year.

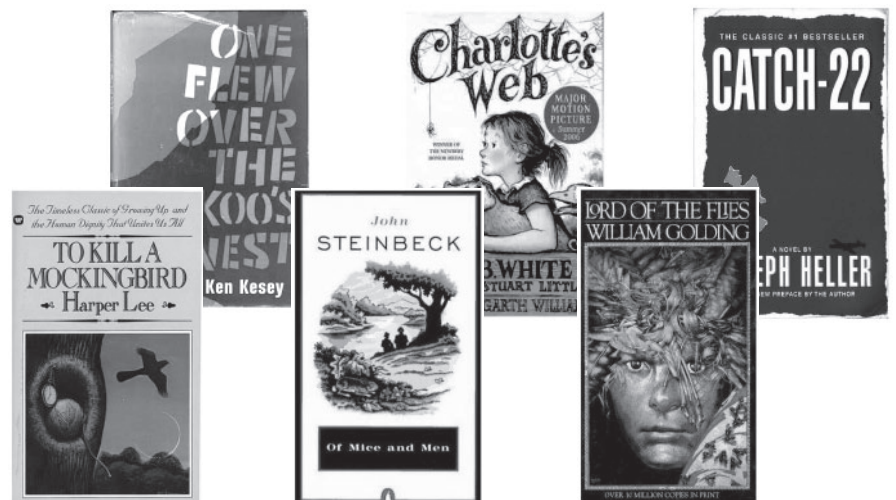
Our cooperating attorney on this case is Charles Hinkle of Stael Rives LLP.

LEGAL BRIEFS, CONTINUED FROM PAGE 11

fortunately narrow decision in the *Pineda-Moreno* case. Because the GPS tracking had occurred prior to the Supreme Court's ruling in *Jones*, the Ninth Circuit panel, under what's known as the “good faith” exception, refused to exclude GPS tracking evidence gathered against Pineda-Moreno ruling that when the tracking took place, law enforcement agents reasonably relied on binding precedent in concluding that no warrant was necessary.

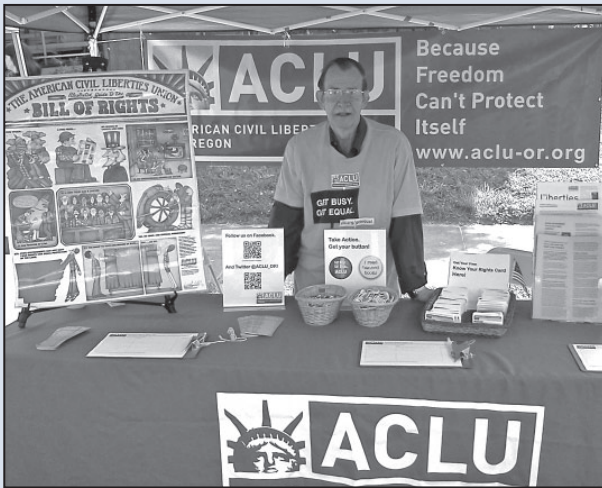
It is important to note that the court did not rule on whether, going forward, the government needs a warrant based on probable cause to attach a GPS device to a car. Given the privacy-invasive nature of location tracking, the ACLU strongly believes a warrant is the constitutionally-required minimum and we will continue to advocate that civil liberties values do not change, even as the ways government can capture information about us changes.

**WHAT DO ALL
THESE BOOKS
HAVE IN
COMMON
?**





ACLU of Oregon volunteers helped us spread the word about civil liberties in Oregon at Pride NW, Good in the Hood, Mississippi Street Fair, Eugene/Springfield Pride, and the Eugene Celebration! At each of the events we gave out free Know Your Rights wallet-cards and signed folks up for our email Action Alerts.



They have all been banned or challenged.

Oregonians have repeatedly said they do not want government deciding what they can read, see or hear. Banned Books Week, September 30 – October 6, 2012, celebrates the freedom to read and the importance of the First Amendment. It is the perfect opportunity to exercise two of our most fundamental rights under the U.S. and Oregon Constitutions: the freedom of speech and expression, and the right to assemble. Visit our website to find out more information about Banned Books Week including events in Oregon, a list of challenged books, and ideas on how you can celebrate in your community.

www.aclu-or.org/bannedbooks

Automatic License Plate Readers: A Threat To Privacy

The ACLU's Nationwide Public Records Request

On July 30th, ACLU affiliates in 38 states, including Oregon, sent requests to local police departments and state agencies that demand information on how they use automatic license plate readers (ALPR) to track and record Americans' movements. As part of this effort, the ACLU of Oregon sent requests to 54 Oregon jurisdictions seeking information as to whether and how law enforcement agencies are using the ALPR technology.

On the same day, the ACLU filed federal Freedom of Information Act requests with the Departments of Justice, Homeland Security, and Transportation to learn how the federal government funds ALPR expansion nationwide and uses the technology itself.

What's The Problem?

When used in a narrow and carefully regulated way, ALPR can help police recover stolen cars and arrest people with outstanding warrants.

The biggest problem with ALPR systems is the creation of databases with location information on every motorist who encounters the system, not just those whom the government suspects of criminal activity. Police departments nationwide are using ALPR to quietly accumulate millions of plate records, storing them in databases. While we don't know the full extent of this problem, we know that responsible deletion of data is the exception, not the norm.

In Oregon, we've learned that the Portland Police Bureau has four ALPR cameras and that data collected will be held by police for up to four years. PPB began using the technology in 2011 and it has been primarily used to look for stolen and abandoned cars, though it has also been used to find vehicles used in crimes. So far, only a limited number of officers have access to the ALPR database and the data system records who logs in and the searches they conduct. However, the ALPR system does not make a distinction between plates that gener-

ate "hits" related to criminal activity and plates of innocent people; it tracks everyone.

As license plate location data accumulates, the system ceases to be simply a mechanism enabling efficient police work and becomes a warrantless tracking tool, enabling retro-active surveillance of millions of people. In public testimony, ACLU of Oregon Legislative Director Becky Straus alerted the Portland City Council to our privacy concerns. We want to see ordinances or policies put in place to protect the privacy of those whose information is captured and stored by the system because location information can reveal deeply sensitive and intimate details of our lives, such as visits to doctor's offices, clinics, churches, and addiction counseling meetings, among other places.

We will keep you posted on what we find out from our public records request regarding how this technology is being used and regulated in Oregon and across the country.

What are ALPR?

ALPR are cameras mounted on stationary objects (telephone poles, the underside of bridges, etc.) or on patrol cars. The cameras snap a photograph of every license plate that passes them by – capturing information on up to 3,000 cars per minute. The devices convert each license plate number into machine-readable text and check them against agency-selected databases or manually-entered license plate numbers, providing an alert to a patrol officer whenever a match or "hit" appears. ALPR systems also meta-tag each file with the GPS location and the time and date showing where and when the photograph was snapped. Often, the photograph – not just the plate number – is also stored.



It's a bird, it's a plane, ...it's a drone!

Protecting Privacy from Aerial Surveillance

Unmanned aircraft carrying cameras raise the prospect of a significant new avenue for the surveillance of American life. Many Americans have heard of these aircraft, commonly called "drones," because of their use overseas in places like Afghanistan and Yemen. But drones are coming to America, and the ACLU strenuously believes protections must be put in place to guard our privacy.

As technology is quickly becoming cheaper and more powerful, and interest in deploying drones among police departments is increasing around the country, our privacy laws are not strong enough to ensure that the new technology will be used responsibly and consistent with democratic values.

Earlier this year, ACLU and the Electronic Privacy Information Center (EPIC) urged the Federal Aviation Administration, which has the authority to regulate domestic drones, to undertake rulemaking that safeguards privacy. In December 2011, the ACLU issued a report that outlines a set of protec-

tions that would help protect Americans' privacy in the coming world of domestic drones.

Drones in Oregon

So far, no Oregon agencies have received approval from the FAA to use drones but we expect that could change. The Clackamas County Sheriff's Office has publicly expressed desire to integrate use of drones and policing – though at least for now it has stated that they would be used only for search and rescue and not for other aerial surveillance.

Others have an economic interest in any increased use of drones in Oregon – including drone manufacturers like Initu in Hood River and a group of organizations in Central Oregon hoping to allow for a new drone testing site near Bend.

Discussion of whether legislators in Salem might take up the issue of domestic drones and privacy protections in the 2013 session is already underway. Count on the ACLU of Oregon to continue to closely monitor these conversations to ensure that privacy rights of Oregonians are not undermined by other interests.

ACLU URGES PORTLAND POLICE BUREAU TO NARROW SURVEILLANCE CAMERA POLICY

In June, the Portland City Council approved a proposal that enables the Portland Police Bureau (PPB) to install police-owned cameras on private buildings. This opens the door to more cameras and more public spaces in Portland that will be under police surveillance. Commissioner Fritz voted no on the proposal, citing concerns that unless the rest of the Council would join her in adopting an amendment to the proposal that would require annual reporting on the

use of surveillance cameras by the Portland Police, she could not support their increased use. We continue to advocate for the Portland Police Bureau to revise their video surveillance policy in accordance with our privacy concerns. The ACLU of Oregon joined allies, such as Portland Copwatch, to object to this proposal. In a nutshell, the PPB policy is too broad and too vague to provide much, if any, privacy protection.

Photo by Kevin Harker



Stasia Brownell
Utility Partnership Manager, 3Degrees


I took the Legacy Challenge!

Now the ACLU will receive a matching gift of \$2,500 this year. I simply designated the ACLU of Oregon as beneficiary of a portion of my employer sponsored life insurance policy. Even though I may have life events that change my future estate planning (don't we all?), I am thrilled to have brought about this generous gift that I otherwise could not afford.

The ACLU works on ALL the issues I care deeply about such as free speech, reproductive freedom and marriage equality. Rather than diluting my gift among many organizations, I choose to give to the ACLU because I know it will have an impact on all these issues.

I am challenging all ACLU supporters to take the Legacy Challenge offered by the LuEster T. Mertz Charitable Trust. It's so easy and brings much needed dollars to Oregon this year! Contact Gail Anderson at 503.552.2101 or ganderson@aclu-or.org and she will provide you with all the information you need.

AMERICAN CIVIL
LIBERTIES UNION
OF OREGON
P.O. BOX 40585
PORTLAND, OR 97240-0585

 Printed on recycled paper

NONPROFIT ORG
US POSTAGE
PAID
PORTLAND OR
PERMIT NO 1887

WWW.ACLU-OR.ORG

16
Summer 2012

PRIVACY R/EVOLUTION

Protecting Civil Liberties in the Digital Age

2012 ACLU OF OREGON ANNUAL MEMBERSHIP MEETING

SATURDAY, September 15, 2012

Lewis & Clark Law School
10015 S.W. Terwilliger Boulevard, Portland

FREE and open to the public. Please RSVP-space is limited.

10 a.m. – Noon

Noon – 2 p.m. **BBQ and music** with **Walkfast** and **Jesiah (DJ)**

www.aclu-or.org