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# THE TORCH

The Newsletter of the American Civil Liberties Union of New Mexico

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## LONG IGNORED NAVAJO VOTERS WANT CLEAR ROAD TO FAIR REPRESENTATION

By *Leonardo Castañeda*

**E**tta Arviso didn't have running water when she first moved to her home in Bloomington in the early 1990s – it wasn't even connected to the city's water system.

So Arviso, a Navajo citizen and lifelong San Juan County resident, went to a meeting of the city's water district, demanding her home be connected to the system. "I was told, 'Why don't you just take your backhoe and dig water from the river to your house?' and I got up and I raised my hand and I said to the committee 'Don't talk to me like that,'" Arviso said. "I said 'How dare you, I like to flush my toilet like the rest of you.'"

Arviso eventually got her water connection via a direct water line. But in more than a half-dozen interviews around the large, mostly rural county, Navajo residents told the American Civil Liberties Union (ACLU) of New Mexico that their needs and priorities continue to often be ignored, minimized, and misunderstood by local officials.

Among the most basic barriers, they said, is a lack of county representation. Indigenous residents, the vast majority of whom are Navajo, are about 40 percent of San Juan County's population. That makes them the largest single racial or ethnic group in the county. The Indigenous share of the population is likely higher – the

U.S. Census Bureau has admitted Indigenous residents were severely undercounted in the 2020 decennial census.

Despite that, San Juan County commissioners approved a new redistricting plan that packs Indigenous voters into just one of the five commission districts, diluting their voting power. A map proposed by the Navajo Nation Human Rights Commission (NNHRC) would've given Indigenous voters a majority in two districts. "The current redistricting map adopted by San Juan County repeats the long and shameful history of disenfranchising Indigenous communities," ACLU of New Mexico's Indigenous Justice Attorney Preston Sanchez said. "The county is obligated under law to ensure that the redistricting process results in Indigenous voters having adequate legislative representation by candidates of their choice."

In February, the ACLU of New Mexico alongside the Lawyers' Committee for Civil Rights Under Law, the UCLA Voting Rights Project, the Navajo Nation Department of Justice, and DLA Piper sued on behalf of the NNHRC and five Navajo voters. The lawsuit seeks the implementation of a new map where Indigenous voters

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## CLIFTON WHITE DOESN'T NEED YOUR SYMPATHY

By *David Gallegos*



**C**lifton White's first stop in New Mexico after being adopted was prison.

"One of my first memories of New Mexico was going straight from the airport to the Los Lunas prison with my adoptive dad and seeing the prison yard," Clifton said. "We had to wait for him to finish working before he took us to our new home in Rio Rancho."

Clifton was seven years old when he and his sisters were adopted by the Whites, a family in Rio Rancho. His adoptive father was a high-ranking state correctional officer.

That first stop turned out to be precedent. Clifton spent years in and out of prisons, eventually becoming a "jailhouse lawyer," husband, father and finally community leader, whose activism would once again land him behind bars.

But all that was in the future. Growing up in foster care in New York City in the mid-1980s, Clifton said he just knew he had to grow up fast.

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## NAVAJO VOTERS

*Continued from page 1*

are able to elect representatives of their choice in two districts.

Debra Yazzie, vice president of the Navajo Nation's Shiprock chapter, said she was upset when she saw how the map was drawn by the commission.

"It is imperative that we have representation from our communities," she said, adding that those elected leaders can be "representing us and advocating for us at the county, state and federal levels."

### 'If you need help ... there's nothing'

Nestled in the Four Corners region of northwestern New Mexico, San Juan County's cultural and natural richness is perhaps only matched by its geological wealth. The county is home to vast oil and gas reserves, as well as coal and uranium.

It's also covered in large part by the Navajo Nation, which extends into parts of Arizona and Utah and covers part of the Navajo people's traditional homeland.

## 'Who are we going to vote for if we don't have any person in there that is going to know our concerns?'

But for many Navajo residents living in rural and semi-rural communities disconnected from running water and electricity, living on unpaved roads far from emergency services, the region's beauty belies its harshness. "There's a lot of unmet needs that we have in our communities," said Joseph Hernandez, 34, a Navajo resident of the small community of Beclabito near the Arizona border. "There's a whole bunch of layers to it that you really have to live there to truly understand it."

He said San Juan County could help provide basic infrastructure needs like paved roads and bridges that would better connect rural residents with larger towns and necessary services. They could also provide rural addresses to homes, which would help with mail service and emergency response.

"You expect to make a phone call and 911 will answer," he said. But for many Indigenous residents in San Juan County, that's not the case.

"Even if the fire department and the ambulance come, they can't find you because they're trying to locate your house because there's no rural addressing."

Those concerns were echoed by Ramona Begay, who lives in White Rock, a rural community near Chaco Culture National Historical Park. She used to work for the park, she said, but her commute involved crossing multiple washes that would be impassable during

the rainy season. She had to pack four days' worth of clothes every time she went to work, in case she'd be unable to return.

"If you need any help of some sort, there's nothing," she said.

The unpaved roads are in such bad condition, she has to go to Farmington twice a year to get new tires for her

truck, as well as replacement parts for the wear and tear. That's where she also has to go to get her groceries, as well as gas for her hours-long commute, something she said is common among rural Navajo residents.

"We're just boosting the economy of San Juan County and that's all we're good for," she said. "But none of those revenues come back to us."

Yazzie, in Shiprock, spent her childhood playing basketball in the Four Corners. She won a state basketball championship with Arizona's Window Rock High School and spent the summers playing against members of the state championship-winning Shiprock High School girls' basketball team.

Now 51, she still coaches youth basketball sometimes, among other sports, but as a first-time chapter official, she's focused on issues like a lack of waste transfer stations and dangerous speeding on US-64. The road connects Bloomfield and Farmington through Shiprock

and into Arizona and is a frequent site of car and semi-truck crashes, she said. It's also the road many school buses take to and from picking up Navajo children.

The community has been pushing for additional signs and traffic enforcement to slow down vehicles, Yazzie said, with mixed results.

"If we had people that ran from our community and were elected," she said, "then a lot of these issues would be addressed."

### 'It comes down to priorities'

All residents who spoke with the ACLU of New Mexico said many of their basic issues are complicated by San Juan County's checkerboard jurisdiction.

Parcels of land belonging to private owners, the county, state agencies, the federal government and the Navajo Nation are jumbled and interspersed throughout the region. That can make it hard at times to know which government is supposed to provide which services in any given location.

But they also highlighted how county officials could often do more to take ownership of

county responsibilities, as well as be a stronger advocate for ensuring services are provided to all county residents, regardless of jurisdiction.

"I think it comes down to priorities," Hernandez said. Hernandez first became aware of a lack of representation when he went before the district's school board



*Photo: Debra Yazzie.*



*Photo: Joseph Hernandez*

*Continued on page 4*

# FROM THE DESK OF EXECUTIVE DIRECTOR PETER SIMONSON

New Mexico has for a long time been at the forefront of the most consequential civil rights fights in the nation. We've seen that in recent years through the passage of the New Mexico Civil Rights Act, which ended qualified immunity for public officials, as well as the repeal of an old abortion ban still in state laws.

We took some more steps forward during this year's legislative session by eliminating the gross tax receipt on menstrual hygiene products that placed an unfair "pink tax" on New Mexicans, as well as legislation ensuring Indigenous communities are prioritized when Indigenous children are placed in foster care or adopted. But now, we're faced with a coordinated nationwide effort to roll back our most fundamental and hard-fought civil rights.

We're seeing the fruit of those efforts in neighboring states like Texas and Oklahoma, which have imposed draconian bans on abortion access. Texas' abortion bounty law set a dangerous precedent. Now, cases before the majority conservative U.S. Supreme Court such as *Dobbs v. Jackson* threaten the end of *Roe v. Wade* and legal access to reproductive care in the U.S. as we know it.

We're seeing people in neighboring states turn to New Mexico for abortion care. Our state must remain a safe haven for people seeking safe, compassionate, and comprehensive reproductive health care, including abortion. We will continue to work with our partners and allies to protect and advance reproductive freedom in our state in the face of these attacks.

We're also seeing vicious attacks on the very existence of trans children in Texas and Arizona. Gender-affirming care is not just medical care, it's a powerful way we show our children we love and support them for who they are. Already we've seen the frightening reality of families fleeing Texas out of fear their children will be taken away from them.

Threatening to criminalize families for loving their trans children is pointlessly cruel and hints at broader efforts to roll back the rights of LGBTQ residents in the future.

On the border, we're seeing political stunts that serve only to militarize our peaceful border community with the deployment of National Guard troops to enforce federal immigration laws. People seeking refugee and asylum, whether they're from Ukraine, Haiti, Central America or elsewhere, should be welcomed with a helping hand, not the barrel of a gun.

That's why we're continuing to push the Biden administration to rebuild our legal asylum system. The ad-



ministration took an important step towards that with the announcement of an end to the Title 42 migrant expulsion policy. The policy was the brainchild of the Trump administration's white nationalist-linked adviser Stephen Miller and has sent people seeking asylum into harm's way, either in Mexico or in their countries of origin.

We commend our Senators for opposing efforts to reimpose Title 42, and urge them to remain strong in the face of an effort to destroy asylum in the U.S. Even our democracy itself is under attack in states seeking to curtail the Constitutional right to vote. New Mexico's legislature, unfortunately, failed to make important progress in strengthening voting rights in our state this year.

But the fact remains that voting remains unconscionably difficult for many of our most vulnerable citizens, including Indigenous residents far from voting centers, those who can't afford to take time off work to cast a ballot, and people who've been previously incarcerated and are attempting to fully re-enter society.

The ACLU of New Mexico has been at the front lines of many of the most consequential battles, both in the Roundhouse and in the courthouse, to protect, expand, and advance New Mexicans' civil rights. And we're not backing down from this national onslaught of regressive and destructive laws.

Our dedicated – and growing! – staff is committed to continuing the fight to keep New Mexico a beacon of liberty and equality for all.

I hope you will continue to fight with us.

Yours in liberty,

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## BECOME A GUARDIAN OF LIBERTY

The ACLU of New Mexico fights every day – in the courts and in the streets – to protect freedom and ensure equality for every person in our state. This vital work depends on our community of monthly supporters. We need you by our side – every donation counts.

**\$10/mo**

**\$25/mo**

**\$50/mo**

**CONTACT SUPPORTUS@ACLU-NM.ORG TO SET UP YOUR MONTHLY DONATION.**



## ACLU DEPUTY LEGAL DIRECTOR WINS AWARD

ACLU of New Mexico Deputy Legal Director Maria Martinez Sanchez was recently honored at the Annual Brindis a la Mujer Celebration, winning the award in the law and policy section.

“In her capacity as an attorney at the ACLU of NM, Maria has taken on several cases to protect immigrant rights, such as preventing ICE from making arrests in and around the courts, suing Border Patrol for excessive use of force, and filing habeas petitions on behalf of vulnerable immigrant detainees amid the height of the COVID-19 pandemic,” ACLU of New Mexico Legal Director Leon Howard said. “These examples only begin to scratch the surface of her impact as a litigator at ACLU of NM and as one of only a few women of color civil rights attorneys in our legal community. Her litigation work also includes fighting for the rights of women and trans people in the workforce, holding prisons and jails accountable for the mistreatment of trans inmates, holding police accountable when they engage in the excessive use of force, and advocating for the rights of New Mexico’s homeless population”

## CLIFTON WHITE

*Continued from page 1*

“I had gone through a lot by the time I was adopted,” Clifton said. “I was taught from a young age that police aren’t for us; they aren’t here to help us. To not even talk to them, even though I was eventually adopted into a police family.”

Clifton spent the early years of his life in the foster system wanting to be what people in his neighborhood called an “OG hustler.” They were people with resources, leaders who others looked up to and who took care of their community. Born against a backdrop of family instability, he saw these figures as aspirational.

His first brush with the criminal legal system would come soon after arriving in New Mexico.

“I was 11 years old and one of my friends gave me a bike. I didn’t even know it was stolen, but not having a bike and then riding a bike around led to an investigation,” he said. “At school one day, a police officer pulled me out of class and told me I was riding around on a stolen bike. So, I went to juvenile (detention) for larceny and was placed on probation.”

### The Attack on Youth of Color in the 1990s

Selinda Guerrero, Clifton’s partner, grew up nearby, in Albuquerque, in the 1990s, when the city and nation were focusing police enforcement on kids of color.

In 1995, Albuquerque created its own version of New York’s “stop-and-frisk” policy that targeted youth as part of citywide crime prevention efforts. A key component of the New Mexico Department of Public Safety’s drug and crime control strategy was to increase funding for more police officers on the streets citing “juvenile crime and gang violence” as one of the top three crime issues facing Albuquerque.

This created a ripple effect that reverberated across communities of color in New Mexico. These early attempts at so-called “tough-on-crime” policies were rooted in racism, fueled mass incarceration, and failed to make communities any safer.

Selinda was only 12 when she started seeing kids on the street stopped and questioned by police, as well as officers storming kids’ parties.

“There was this extreme use of force happening against youth,” said Selinda. “And that perpetuated the experiences we were having as young people in Albuquerque.”

As a Black kid growing up in Albuquerque, the odds were stacked against Clifton. This proved to be true when he was arrested for a technical violation of his probation.

“I remember the probation officers used to do their rounds to check on me and sometimes they would pull up to my house or the Boys and Girls Club in Rio Rancho where I would hang out,” Clifton said. “One morning, me and my siblings were getting ready to leave the house when my (parole) officer and a police officer pull up and they had these shackles.”

The officers arrested Clifton and transported him to a detention center in Tucumcari where he was incarcerated for four days. It would not be his last time behind bars for parole violations, which send thousands of New Mexicans to prison even if they haven’t committed any new crimes.

## The Vicious Cycle of the Criminal Legal System

According to the New Mexico Legislative Finance Committee, many of the people incarcerated in the state are not behind bars for new crimes. In fiscal year 2021, the recidivism rate due to technical parole violations, such as a missed appointment or failed drug test, more than doubled compared to the previous year, from 13 percent to 30 percent.

“Clifton White is one of countless Black men in America whose life circumstances bring them into the criminal legal system,” said Leon Howard, legal director at the ACLU of New Mexico. “His story shows how every instrument of this system worked against him to keep him in an endless cycle of incarceration from the time he was just a kid riding a stolen bike, to when he was eighteen years old serving real time, and even after he completed his sentence.”

For Clifton, like many Black men caught up in the criminal legal system, it is impossible to put behind them youthful delinquent acts and move beyond governmental control of his liberty. His experience is a symptom of a much larger systemic problem that New Mexico is not immune to.

The Vera Institute reports that Black men are incarcerated at a much higher rate than others. In 2017, Black people made up 2 percent of New Mexico’s residents but 7 percent of the state’s prison population.

“Honestly, I think there is a war on Black people in New Mexico” Clifton said. “I think that if you’re not aligned with the blue, then you’re against them. You’re a target.”

### Activism is for Lovers

After years navigating the complex criminal legal system and frustrated with the lack of support, Clifton became a resource to other incarcerated people. Often referred to as a “jailhouse lawyer,” he advocated for himself and others inside and outside of prison walls.

“There were issues with my caseworkers, things kept falling through the cracks and getting messed up,” Clifton said. “I didn’t know how to read and write or spell and I had to figure out what habeas was on my own and start fighting back.”

After being released in 2008, he continued his activism and eventually met his now-wife, Selinda. She had also spent her life learning how to organize and advocate for herself and her family.

By the time she met Clifton in 2009, she had been working with local advocacy groups for years. Together, they organized efforts to rally against police brutality and other injustices felt by communities of color.

But Clifton still had to report to a parole officer, which meant their home where they live with their children was subject to random visits and searches.

In one instance, her kids got home from school while both Selinda and Clifton were at work. Clifton’s parole officer took all the kids outside for questioning, placing Selinda’s two high-school-aged sons in handcuffs and ordered them to sit and wait on the sidewalk outside the home.

“He was interrogating the kids about Clifton, trying to make them tell a story about him and was just being really violent with my children,” said Selinda. “And this is a probation and parole (officer) putting children in handcuffs right outside their home without parents



*Photo: Clifton White and Selinda Guerrero*

*Continued on page 5*

## CLIFTON WHITE

*Continued from page 4*

present.”

These experiences emboldened both Clifton and Selinda to continue their activism. They organized, marched and fought for justice for their family and for their community.

### Fighting Back

In May 2020, after the world watched as George Floyd was murdered by a Minneapolis police officer, Clifton and Selinda organized a largely peaceful protest against racism and police brutality along Central Avenue in Albuquerque.

The march, Clifton said, was a powerful experience but as the streets were emptying and the chants were dwindling at the end of the rally, Clifton and others heard about a group of teenagers being arrested. It was a risk for Clifton because of his parole, but as a protest organizer he felt a responsibility to respond to what was happening.

“There is this internal trauma being triggered for me because I’m looking at kids, 16 and 17 year olds, sur-

rounded by officers in military gear, goggles and helmets and they are screaming at these kids,” Clifton said. “That’s what upset me. Because the way they responded. It’s an opportunity for accidents to happen, you know, like they grab the gun instead of the taser or plant evidence.”

Clifton’s participation in this protest and subsequent police encounter lead to unjust retaliation. He was arrested in June 2020 for an arbitrary parole violation and placed in solitary confinement for fourteen days. He wasn’t released until October 2020, when the ACLU of New Mexico and cooperating attorneys filed a motion with the court in his original criminal case setting forth that the state was unlawfully keeping him on probation.

“As a Black man, I don’t want pity. I don’t want sympathy. I want to be able to move,” said Clifton. “A human being should be able to move and have an opportunity to make decisions in which you won’t be retaliated against for not being on the same side.”

Clifton, who is working to open a nonprofit space for young people to explore culture and political activism, has become a community leader and source of inspiration like the “OG hustlers” he grew up admiring.

“All I’ve been doing for the past 12 years is fighting for my life, my rights,” he said. “While I’m fighting for mine, I’m fighting for others in my community who are experiencing similar issues.”

by county officials who don’t even know where it is – some have incorrectly told her they can’t help her because she’s in neighboring McKinley County.

“We’re always left out our community,” she said. Dennison lived in Albuquerque for a while and since coming back, she said she spent time serving as a poll worker as well as at the community’s laundromat where she’d try to educate residents about upcoming elections. People struggle to choose between candidates they’ve never met and often have never even heard about.

“We’re voting for people who we don’t even know,” she said. “We don’t know their background, we don’t know if they’re willing to work with the community.”

Dennison said candidates from bigger cities or outside the Navajo community struggle to understand life in the small enclaves that dot San Juan County’s vast rural landscape. They almost never even campaign in places like Naschitti or do outreach to understand the needs.

“San Juan County elections, we’re not being heard, we’re not being involved, we’re not being counted,” she said. “We’re being left out, we’re just pushed aside.”

That was echoed by Yazzie, in Shiprock, who added that non-Indigenous officials are often unaware of or forget vital historical context such as the treaties between the Navajo Nation and the U.S. government.

Instead, she said, Navajo residents end up shut out of elected office. She said efforts to dilute their vote is intended to hurt Navajos’ electoral power.

Yazzie, like all the residents interviewed by the ACLU of New Mexico, is not a party to the redistricting lawsuit but said she hopes for commission lines that allow for districts representative of the community. The alternative is disenfranchisement.

“That redistricting does hurt us,” she said, “because who are we going to vote for if we don’t have any person in there that is going to know our concerns?”

## NAVAJO VOTERS

*Continued from page 2*

to advocate for his middle school as a member of the student council. There was only one Indigenous person on the school board, he said.

“There’s a limitation on representation and it’s a reality here,” he said.

That lack of representation is reflected in a lack of Navajo-speaking elected officials, he said. That can hinder communication with voters because many community members prefer the language and feel less comfortable voicing their concerns in English.



*Photo: Elvira Dennison*

“If you don’t speak the language, you’re not getting the whole picture,” he said.

Indigenous voters often don’t even get the kinds of outreach and visits from candidates during election seasons, let alone in regular years, that other parts of the county get. That’s according to Elvira Dennison, who lives in the small community of Naschitti, roughly halfway between Shiprock and Gallup.

Speaking at the Naschitti chapter house while the outside wind swirled, threatening a haboob, Dennison talked about how her community often gets overlooked

# STAFF PICK !



### Abbott Elementary

*“A group of passionate teachers at a public elementary school in Philadelphia that manages to be very explicit about the challenges while being hilarious, sweet and super charming. Watch all of season 1 on Hulu!”*

**- Devon Stern-Powell,**  
Development  
Operations Coordinator

## Indigenously

DECOLONIZING YOUR NEWSFEED

### Indigenously

*“To stay on the same topic of my main story, my staff pick is the award-winning weekly newsletter Indigenously, available at [www.indigenously.org](http://www.indigenously.org). The author, Jenni Monet (K’awaika), writes about Indigenous issues ranging from UN resolutions of Indigenous languages to sled dog racing and the role of land back campaigns on climate change. Monet, originally from the Four Corners region, used to work in Albuquerque as a CBS correspondent and is currently based in Alaska.”*

**- Leonardo Castañeda,**  
Investigative Reporter

# 2022 LEGISLATIVE SESSION RECAP

## Important victories and work left unfinished in New Mexico's 2022 legislative session.

New Mexico's legislative sessions are always a whirlwind of activity, with lawmakers, advocates and community members buzzing throughout the Roundhouse.

This year was no exception, and ACLU of New Mexico staff worked hard alongside our partners during the 30-day session to advance a more equitable and just New Mexico for all.

Not all of the bills we supported this year passed, with some important reforms to our voting rights and criminal legal system falling short because of a lack of political will and time. But we made important progress in other key areas and were also able to stop dangerous rollbacks of bail reform and constitutional protections, confronting them with facts and reality.

### Successes

- ✓ The legislature approved a \$35 million investment in the Tribal Remedy Framework, which is critical for the ongoing education of Indigenous children in our state.
- ✓ The Indian Family Protection Act will give preference to Indigenous families and communities when fostering or adopting Indigenous children, which will help protect cultural and familial ties.
- ✓ Police training requirements were strengthened as part of a broad criminal legal system bill. The state's Law Enforcement Academy's curriculum will include crisis management and intervention, de-escalation and racial sensitivity training.
- ✓ The legislature ended the "pink tax," eliminating the gross receipts tax for menstruation products.

- ✓ We helped defeat efforts to roll back New Mexico's bail reform that would have risked sending to jail innocent people despite the constitutional right to being considered innocent until proven guilty. Pretrial detention bills were introduced in both the House and Senate to automatically detain pretrial people charged with certain crimes. Right now, prosecutors have to show someone is a danger to others before a judge approves their detention before a trial. And the evidence shows this system is largely working.

### Ongoing Work

- ⚠️ Despite support from a broad coalition of victim families, advocates and community members, the Second Chance Bill that would've ended life sentences for crimes committed by children was pulled from consideration by sponsors because of amendments that would've undermined the intent of the bill. This bill remains a priority for the 2023 legislative session.
- ⚠️ A voting rights package that would've strengthened and improved access to the ballot for New Mexicans was defeated, derailing an effort to bolster our democracy at a time when it is under attack nationwide. Equitable ballot access remains a pressing need in New Mexico.

This legislative session is over but the fight for a more equitable and just New Mexico is not. With the election season ramping up, we're working hard to make sure candidates and elected officials don't scrape the bottom of the barrel for antiquated mass incarceration policies.

New Mexicans need real, evidence-based solutions that build a safer, more equitable state for all. We'll keep working for that in the coming legislative sessions and beyond.

Read Maureen Sanders' eulogy for Phil Davis by using your smart phone to scan the QR code below.

Alternatively you can navigate to [aclu-nm.org/phileulogy](https://aclu-nm.org/phileulogy) in your web browser.



"Phil had a brilliant legal mind, a passion for justice, and a tireless motor. More importantly, Phil was the ultimate family man and relished in the successes of his family and friends more so than his achievements in the courtroom. He was one of a kind, a model of integrity. The only way to cope with his loss is to aspire to carry on his legacy."

-Leon Howard, ACLU-NM Legal Director

## REMEMBERING PHIL DAVIS (1/5/53 - 1/27/22)

It is with great sorrow that the ACLU of New Mexico mourns Philip B. Davis, lovingly known as Mr. Civil Rights of New Mexico, who passed away in January. Phil spent decades championing the civil rights of New Mexicans, teaching classes to hopeful University of New Mexico law students and faithfully serving on ACLU-NM's legal panel.

"The role Phil played in building the ACLU of New Mexico cannot be overstated," said Peter Simonson, ACLU-NM Executive Director. "By the cases he litigated, the ACLU attorneys he mentored, and the wise counsel he often gave, Phil made an indelible mark on the organization, helping us become the most impactful civil rights organization in the state. It is no stretch to say that New Mexico is a freer, more justice place because of Phil Davis."

Before the ACLU-NM had any staff attorneys, Phil was the organization's de facto legal director, litigating some of our most monumental early cases. His passion for civil rights and commitment to mentoring the next generation of civil rights attorneys in New Mexico was unmatched.

"The impact Phil has had in New Mexico is immeasurable. I don't know a civil rights attorney in our state who he did not mentor or influence. I am no exception, and I don't know my legal career without him," said Leon Howard, legal director of the ACLU-NM.

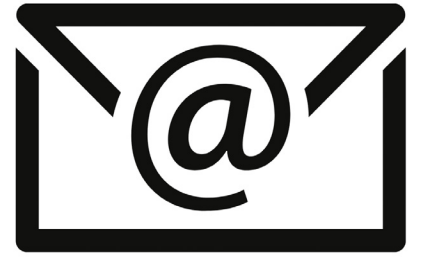
Under his leadership, the ACLU-NM fought important-cases and engaged in advocacy that:

- Helped push forward the New Mexico Civil Rights Act, which created a legal remedy for residents to bring claims for damages in state court against police officers and other public officials who violate the rights guaranteed to them under the state constitution,
- Intervened in the settlement agreement between the Department of Justice and the City of Albuquerque so that the ACLU-NM, Disability Rights New Mexico, and the Native American Voters Alliance become parties to the agreement, increasing the community's say in the future of vital police reforms in the city,
- Litigated the ACLU of New Mexico's successful challenge to an Internet obscenity law that would have broadly censored non-obscene materials on the Internet by making it a crime to use a computer communications system to disseminate expression that involved "nudity" or "sexual conduct."
- Fought against cruel and unusual punishment in state prisons,
- Defended local youth who experienced unlawful treatment at the hands of law enforcement,
- Protected a group of middle school and high school students who suffered vicious and relentless bullying at the Española Public Schools.

These are just a few of the many steps Phil helped the ACLU-NM take in the battle toward a more just New Mexico for all. He was generous with his time, talent and leadership to our organization. We will fondly remember his wholehearted compassion and his perfect combination of gruff and sweet.

# REFORM EFFORTS BACKSLIDING IN THE ALBUQUERQUE POLICE DEPARTMENT

By *Leonardo Castañeda*



Public safety and the criminal legal system were at the top of New Mexico's legislative agenda this year, while deadly police shootings continue to happen in Albuquerque alongside police killings in Las Cruces, Chaves County and elsewhere, refocusing concerns about police use of force.

That has brought additional scrutiny to reform efforts at the Albuquerque Police Department (APD) kicked off by the 2014 Court Approved Settlement Agreement (CASA) the City of Albuquerque negotiated with the U.S. Department of Justice. The federal agency found a "pattern or practice of use of excessive force" by the department, which resulted in 28 people killed by APD officers in the preceding eight years.

Now in its seventh year, the CASA remains far from ensuring constitutional, professional law enforcement for all Albuquerque residents. The agreement mandates hundreds of policy and operational reforms, as well as an independent monitor to oversee the work.

Barron Jones, senior policy strategist at the ACLU of New Mexico, talked about the status of the APD reform efforts:

## Backsliding and Missed Opportunities

The past year has not been a positive one for reform efforts at APD, Jones said, pointing at the most recent reports submitted by the department's independent monitor.

"In the past 12 months, I think what we've seen is evidence that (APD has) fallen out of compliance in areas where they had sustained compliance for numerous years," Jones said. The department, he added, seems to have "backslid a little bit."

Among the concerns is a backlog of 660 use of force investigations. This backlog resulted in the Department of Justice, the City of Albuquerque, and the Albuquerque Police Officers Association agreeing to a stipulated order that required the city to hire an outside team to complete those investigations at taxpayers' expense. The department only has 120 days to impose discipline if warranted after a use of force case, so backlogged cases will likely never result in disciplinary action regardless of the eventual findings.



Photo: *Barron Jones*

But Jones said that beyond the cost of an outside review or missed disciplinary actions, allowing the use of force incidents to go unexamined makes it harder for officers to learn important lessons.

"When they don't investigate those cases, it's missed opportunities for training and improved policing," he said. "I go back to that analogy of athletes watching the tape after a game. They watch the tape not so they can be disciplined for missing plays, but they watch the tapes so they can get better."

The fact such a large backlog was allowed to build up also suggests deeper resistance to necessary reforms among APD leadership, Jones said.

"Those cases aren't sitting around because people are just too busy to get to them," he said. "They're sitting around because there's really no will or appetite within the department to investigate officer misconduct."

## No Appetite for Reform

A common thread he's noticed from the monitoring reports and meetings with Department of Justice officials is a lack of interest from top leadership at the city and APD in enacting meaningful, court-ordered reforms.

Jones said the chief of police, for example, has presented a misleading picture of having to choose between "public safety or constitutional policing, by saying the court-approved settlement agreement is interfering with the department's ability to fight crime."

Creating that false choice can make it harder for people at all levels of the department to buy into the need for reform, which would actually improve public safety for the community.

"The mayor should embrace the idea of constitutional policing and the hard work that went into negotiating this court-approved settlement agreement," Jones said.

"That could do a lot to change the hearts and minds among the rank and file officers and help change that culture."

Leadership at the department, Jones said, should also be selected based on a proven track record of embracing needed reform.

The director leading the independent monitoring team overseeing the reform process, James Ginger, also led the reform process in Pittsburgh and New Jersey. Both those entities reached sustained compliance with the mandates of the consent decrees they had each entered into with the Department of Justice.

Ginger, who has more than three decades of experience helping reform police departments across the nation, told the judge overseeing the consent decree that APD is failing miserably.

"I've been doing this since the '90s, and we are in worse shape -- actually, we're in worse shape right now than we were when we started. And we're in worse shape than in any project I've monitored since the '90s," Ginger said. "It's significant and alarming to me, Your Honor, quite candidly."

Failure to reform has been costly, and deadly. Since fiscal year 2015, Albuquerque has paid \$49 million in APD's law enforcement liability claims, according to the city's risk management website. APD officers, Jones said, have also killed 38 people since the Department of Justice's lawsuit, more than what eventually led to the original settlement agreement.

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- **Devon Stern-Powell**,  
Development Operations Coordinator

# REPRO RIGHTS STATUS UPDATE

*In this interview, we talk with ACLU-NM Reproductive Rights Community Engagement Specialist Dakota Waterson about the state of repro rights in New Mexico.*

*By Davida Gallegos*

## THE TORCH

The Torch is a publication sent to members and supporters of the American Civil Liberties Union of New Mexico. Please send any comments, questions, or submissions to Raychel Sanner at: [rsanner@aclu-nm.org](mailto:rsanner@aclu-nm.org)

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Reproductive rights are under attack like never before across the country, with devastating consequences for pregnant people, especially those who are not able to afford to travel in search of essential health care they need. Fortunately, New Mexico has a long tradition of respecting reproductive health decisions, and our state laws are among the best in the nation when it comes to protecting access to abortion.

We sat down with ACLU-NM Community Engagement Specialist Dakota Waterson to get the run-down on reproductive rights across the country and New Mexico.

**Q: Can you tell us what's going on with reproductive rights?**

**Dakota Waterson (DW):** 2022 has already been a tough year for reproductive rights in the U.S. We have seen a record-breaking number of harmful abortion bans being introduced and passed. The future of abortion rights, and all reproductive rights, are at risk in the Supreme Court this spring.

As of March 31, 1,884 pieces of legislation around abortion have been introduced across the country. This includes some proactive legislation, but it is mostly made up of harmful measures and abortion bans.

This is a crucial moment for our rights and there is no time to lose. The movement has been working tirelessly to fight back against all the attacks and work towards living in a world where reproductive justice values are a reality.

New Mexico has a proud history of protecting and expanding access to reproductive healthcare, but we are also continually working to expand access to comprehensive and medically accurate sexual and reproductive health education, contraception, pregnancy, prenatal healthcare, and gender affirming care.

**Q: How does what's happening in neighboring states affect New Mexico?**

**DW:** New Mexico abortion clinics have seen a massive increase in patients coming from a wide variety of neighboring states and states across the country to receive reproductive healthcare.

Since Texas passed the horrendous SB8, almost all people seeking abortion care have had to travel to surrounding states such as Colorado, Oklahoma, and New Mexico. Texas Policy Evaluation Project stated that 27 percent of Texans seeking abortion care traveled to New Mexico between September and December of 2021. This study also states that 45 percent of Texans seeking abortion care traveled to Oklahoma to receive care. Now that Oklahoma has passed its newest abortion ban, Texans who were traveling to Oklahoma as well as Oklahomans will have to travel even further to states like New Mexico.

More patients coming to our state has led to increased waiting times for New Mexicans seeking abortion and reproductive health care access. Our clinics have had to expand their hours of service and hire more staff to

meet the demand.

Abortion funds in New Mexico have seen an influx of applications and people seeking help paying for their abortions, their travel, hotel rooms, and childcare.

New Mexico does not currently have harmful barriers like our neighboring states, which means our health care providers continue to be able to show up and provide high-quality care to our communities and our neighbors.

**Q: What are some good things happening in New Mexico to protect reproductive rights?**

**DW:** I'm really excited to answer this question. New Mexico has been passing proactive reproductive health, rights, and justice legislation for years.

In 2019 we worked on passing the Health Coverage for Contraception bill, which increased access to contraception for New Mexicans, which means no co-pays for contraception under the Affordable Care Act and allows for 6 months of contraception at one time. It covers hormonal contraception as well as vasectomies and condoms.

In 2020 we worked on passing the Pregnant Worker Accommodation Act which guarantees protections for pregnant workers including the right to reasonable accommodations.

In 2021, we repealed an outdated pre-Roe abortion ban that made abortion illegal in the state, protecting access in New Mexico if and when Roe is overturned.

And in 2022 we worked on removing the gross receipt tax on menstrual hygiene products. So as of July 1, New Mexicans will no longer have to pay taxes on menstrual products such as pads, tampons, and period cups. We also expanded pregnancy-related Medicaid which now covers postpartum care for a full year, from 60 days previously.

**Q: While there is so much great work happening in New Mexico to protect and expand reproductive rights, it's hard watching our neighbors in other states having to fight so hard. What can we do? How can we help?**

**DW:** Great question. Watching what's happening in the country makes me extremely motivated.

Some ways for people to help are to get involved with organizations like the ACLU, Planned Parenthood, Bold Futures, we have so many wonderful local organizations at the forefront of this fight. Attend events that these organizations are hosting and continue to educate yourself about what's happening.

The next thing is to vote! Find out where legislators stand on issues important to you. If you don't like how they voted on reproductive issues, vote them out. And, lastly, if you can, donate to abortion funds. These funds have always needed support, but they need us now more than ever before.



**Photo: Stop the bans rally in Albuquerque.**