

IN THIS ISSUE

MAKING HISTORY
Continued p.2

STANDING UP TO THE MAN
Continued p.6

THE UGLY RESURGENCE OF
BORDER VIGILANTISM
p.3

FIGHTING DISCRIMINATION IN
PUBLIC SCHOOLS
p.4

INTERVIEW WITH JORDAN
MCDOWELL
p.8

THE TORCH

The Newsletter of the American Civil Liberties Union of New Mexico

Vol. 54 | No. 1 | Spring 2019



VISIT [ACLU-NM.ORG](http://aclu-nm.org) TO LEARN
MORE ABOUT OUR WORK!



MAKING HISTORY

*A high water mark legislative session
for freedom and justice in New Mexico*

By Micah McCoy, Communications Director

A Once in a Generation Opportunity

One of the axiomatic truths of the legislative session is that it's really hard to pass a good law. Believe us, we know. The ACLU of New Mexico has worked tirelessly year after year to advance legislation that makes our state a more just, free, and safe place to live and raise families, but year after year we see most of our priority bills fall victim to a torturous legislative process filled with a myriad of pitfalls, minefields, and political quagmire.

It was especially tough during the past eight years of the Martinez administration. Throughout her tenure as governor, Susana Martinez's legislative agenda included doubling down on mass incarceration, vetoing digital privacy bills, implementing voter suppression schemes, working to restrict abortion access, and demonizing immigrant communities.

"The previous administration was a disaster for civil liberties in New Mexico," recalls Steven Robert Allen, the ACLU of New Mexico's Director of Public Policy. "We were forced to spend most of our time and energy desperately fighting back bad bills. Aside from notable exceptions like signing a ban on civil asset forfeiture in 2015, Governor Martinez vetoed every single piece of civil liberties legislation we managed to pass."

But last year, all that changed. The 2018 elections brought a new governor into the Roundhouse and fresh blood into the legislature, creating for the first time in over a decade a discernible path for progressive legislation to become law. It was a once in a generation opportunity to break the log jam and advance the cause of freedom and fairness in New Mexico. We weren't about to let the opportunity pass us by.

As an organization, we identified three key strategic areas of work: reproductive freedom, immigrants' rights, and criminal justice reform as our top priorities for proactive work in New Mexico. With an eye towards advancing legislation in each of these key areas, the ACLU of New Mexico began expanding its capacity by hiring organizers, policy experts, and communications staff, coordinating strategies in coalition with allied organizations, and building power in communities directly affected by these issue areas.

Continued on page 2

NON PROFIT
ORGANIZATION
U.S. POSTAGE
PAID
ALBUQUERQUE, NM
PERMIT NO. 59

STANDING UP TO THE MAN

How three female attorneys fought back against rampant sexism at a New Mexico district attorney's office

By Katie Hoepfner, Lead Writer

"The future is female."

"Feminism is for everybody." (bell hooks)

"No mansplaining."

Signs with messages like these used to hang on the doors of three prominent female prosecutors in the Third Judicial District Attorney's Office. They were denunciations of sexism. They were declarations of solidarity with female survivors of violence they'd advocated for. They were messages of hope for achieving gender equity.

But for some men in power at the DA's Office, these signs represented only one thing: *insubordination*.

In June of 2018, Chief Deputy Attorney Gerald Byers ordered Rebecca Duffin, Cass Brulotte, and Kelly Rossi to remove their "No Mansplaining" signs from their doors, claiming the statement was "sexist against men" and violated office policy.

It didn't matter that the term "no mansplaining" is in fact a rebuke of sexism and a humorous way of reminding men to respect women's expertise. It didn't matter that just a day before the elected District Attorney, Mark D'Antonio, had complimented Rossi on her "proud displays of feminism." And it didn't matter

Continued on page 6

AMERICAN CIVIL LIBERTIES UNION
OF NEW MEXICO FOUNDATION
P. O. BOX 566
ALBUQUERQUE, NM 87103
T/505-266-5915
WWW.ACLU-NM.ORG

ACLU OF NEW MEXICO STAFF

Peter G. Simonson
Executive Director

Kathryn Turnipseed
Deputy Director

ADMINISTRATION & FINANCE

Jackie Cronin
Office Administrator

DEVELOPMENT

Julie Bernard
Director of Philanthropy

Christine Vigil
Development Strategist

POLICY AND ADVOCACY

Steven Robert Allen
Director of Public Policy

Paul Haidle
Senior Policy Strategist

Barron Jones
Smart Justice Coordinator

Mary Ann Maestas
Field Organizer

Osmani Ochoa
Field Organizer

Stephanie Corte
*Immigrant Rights Campaign
Strategist*

COMMUNICATIONS

Micah McCoy
Communications Director

Katie Hoepfner
Lead Writer

Raychel Sanner
*Digital Communications
Strategist*

LEGAL

Leon Howard
Legal Director

Maria Martinez Sanchez
Staff Attorney

Ellie Rushforth
Reproductive Rights Attorney

Kristen Love
Staff Attorney

Tiffany McCree
Paralegal

Lalita Moskowicz
*Equal Justice Works
Legal Fellow*

Elsa Goosen
Legal Assistant

SOUTHERN OFFICE

Nia Rucker
*Policy Counsel and
Regional Manager*

Jorge Rodriguez
Field Organizer

Maria Coronado
Field Organizer

MAKING HISTORY

Continued from page 1

These investments paid off in a big way. By the end of the 2019 legislative session, the ACLU of New Mexico had eight bills in its three strategic priority areas passed by the legislature and signed by the governor - more than any legislative session in the ACLU of New Mexico's nearly 60 year history.

A Wave of Reform for New Mexico's Criminal Legal System



PHOTO: Smart Justice Coordinator Barron Jones with Justice Advisory Board member Kelly Garcia at the criminal justice reform lobby day.

The most overwhelming area of success was in the area of criminal law reform, accounting for more than half of the bills the ACLU of New Mexico helped pass this session. Over the past three decades, New Mexico's prison population has grown a staggering 481 percent as lawmakers imposed increasingly harsh sentences as part of the War on Drugs. Rather than increasing public safety, these so-called "tough on crime" sentencing laws have torn thousands of families apart and disproportionately affected women and people of color.

"Our state has been held back for a generation because of this outdated and ineffective approach to public safety," said Barron Jones, Smart Justice Coordinator for the ACLU of New Mexico. "We set ambitious goals this legislative session to reform our criminal justice system, prioritize people over prisons, and implement real public safety solutions that tackle the underlying causes of crime, not just the symptoms."

Part of the key theory of change on this issue has been centering people who have been personally impacted by the criminal legal system, including formerly incarcerated people, family members, and survivors of crime. The ACLU of New Mexico formed a Smart Justice Advisory Board led by community members to drive the work, and invested countless hours organizing and training activists. These efforts culminated in a lobby day at the legislature where dozens of Smart Justice volunteers made personal appeals to legislators on why New Mexico needs criminal law reform.

"The biggest victory in my eyes was the way we were able to get the community to show up and help fight for legislation," said Jones. "It was major to see folks really engaged in the process and eager to speak truth to power. Many folks weren't aware that they could be involved in the process."

The personal experiences that the Smart Justice volunteers were able to share with legislators and influencers helped humanize criminal justice issues and change the conversation around reform. Formerly incarcerated people could speak personally about how criminal record expungement and banning questions about prior arrests and convictions on initial employment would help them move on with their lives and successfully reintegrate into society. Crime survivors could speak powerfully about their desire for a justice system that prioritizes treatment and rehabilitation over incarceration. When we advocated for reforming the brutal practice of solitary confinement in New Mexico correctional facilities, Justice Advisory

Board Member Kelly Garcia was able to speak from personal experience about what it is like to spend years on end locked in isolation in a cell the size of a parking lot.

"To this day I'm still tormented," remembered Garcia as she struggled through tears to share her story before a bank of TV cameras at a press conference during the session. "There are times that I just wanted to jump out of my skin and run. If I've got to tell my story a thousand times to help just one person, then I'm going to do it, because solitary confinement is real."

Because of brave advocacy from Garcia and others, solitary confinement reform passed this session, along with bills that expunge criminal records, reduce employment discrimination against the formerly incarcerated, decriminalize marijuana possession, and a myriad of other reforms.

Expanding Access to Reproductive Healthcare



PHOTO: Reproductive rights lobbying day at the Roundhouse

As Trump continues to pack the U.S. Supreme Court with anti-abortion justices, reproductive rights nationwide are threatened in a way not seen for a generation. New Mexico is fortunate in that we have been able to fend off many of the restrictions placed on abortion in other states, but the future of reproductive healthcare access nationwide is very much in peril. Looking into this uncertain future, we worked with allies in the reproductive health and justice communities to put forward a legislative agenda to make New Mexico a place that continues to respect women's reproductive decisions no matter what.

This legislative session we scored a significant victory when Governor Lujan Grisham signed a bill we helped craft that greatly expands contraception access for New Mexicans. Not only does the new law require insurance companies to cover, without out of pocket costs, an expanded range of contraception for both men and women, as well as cover over the counter methods without a prescription, it allows for the dispensing of up to a six month supply of contraception at once. The expanded supply greatly reduces barriers New Mexicans face accessing contraceptive care, especially for people living in rural parts of the state where the nearest pharmacy may be many miles away.

Unfortunately, we weren't able to get our second priority bill across the finish line. HB 51, a bill that would have removed a dangerous and outdated pre-*Roe v. Wade* law from the 1960s that criminalizes abortion care in New Mexico, was voted down on the Senate floor after passing the House and Senate committees. By removing the criminal abortion statute from our law books, we would ensure that no one is criminalized for seeking health care in New Mexico and secure uninterrupted access to abortion care if the U.S. Supreme Court to reverses *Roe v. Wade*.

Continued on page 3.

THE UGLY RESURGENCE OF BORDER VIGILANTISM

By Peter Simonson, Executive Director

In late April, the ACLU of New Mexico sent letters to federal, state and local authorities urging them to criminally investigate a group calling itself the United Constitutional Patriots (UCP) that has been illegally arresting immigrant families at gunpoint in southern New Mexico and turning them over to Border Patrol. Videos that the UCP posted online show masked men in military camouflage surrounding hundreds of men, women and young children huddled. Some of the men carry military-style weapons. In one of the videos, a vigilante shines a flashlight on two immigrant men and muses, “The only problem is if we shoot on the hill it will be an international crisis . . . It would save some time though, wouldn’t it?”

The situation was, and still is, a disaster waiting to happen. Our immediate concern is to protect the safety of families crossing the border. But the UCP’s activities signal a deeper shift in our political culture that should have Americans across the ideological spectrum deeply worried.

This isn’t the first time that groups like the UCP have mobilized to stop immigrants from crossing the border. The KKK did it in 1977, as did groups calling themselves the “Minutemen” in the early 2000s. But neither of those efforts went so far as to directly engage with immigrants, opting instead to alert Border Patrol of illegal crossings. That the UCP is willing to take such extreme measures suggests that they feel empowered in ways that few militia movements before them have.

Self-assurance also shows up in the way the vigilantes publicize their activities. Their own videos offer hard-to-refute evidence that the group is not only illegally kidnapping immigrants, but also violating laws against impersonating a federal officer. Many of the vigilantes wear official-looking badges. Some of the videos show them announcing themselves as “United States Border Patrol” or as “policia” to the families they approach.

And yet the UCP has posted over a dozen hours of video proudly displaying their illegal activity as if their alleged patriotism shields them from any accountability. And they might be right. Although the FBI arrested the UCP leader, Larry Mitchell Hopkins, the charges against him stem from a 2017 offense that is entirely unrelated to the UCP’s hostage-taking activities. No further charges have materialized, despite ample evidence of felonious criminal activity.

Contrast this to the reaction of federal authorities toward good Samaritans who provided humanitarian



PHOTO: UCP vigilante who calls himself “Viper” standing at the border fence near Sunland Park, NM.

aid to immigrants crossing through the Arizona desert. Initially they charged No More Deaths activist Scott Warren with felony littering for stashing jugs of water in one of the most desolate stretches of the border. Now he is facing a possible prison sentence of 20 years for providing immigrants with food, water, clean clothes, and a place to sleep over three days.

And yet armed, masked men taking families hostage at gunpoint, with scads of video evidence to document their illegal behavior, go uninvestigated.

After news broke about the UCP’s illegal arrests, the Border Patrol put out a statement saying that it does not condone the group’s activities. But the UCP’s videos show Border Patrol actively collaborating with the vigilantes, responding to their call whenever the UCP has immigrant families to turn over. One of the UCP’s videos shows two mounted Border Patrol agents amiably posing with a UCP vigilante, even though the man is masked and wearing a fake badge.

In our letter to authorities, we described the UCP as a “fascist” organization. To some that might sound like hyperbole. But when paramilitary groups begin taking the law into their own hands with the tacit approval of federal officials, we have surely reached an extreme iteration of right-wing authoritarianism. And we are only one Tweet away from the highest officer in the nation making the government’s approval official.

The UCP is a canary in a coal mine. If groups like theirs are not held accountable, the threat is much larger than the danger to dozens of immigrant families. The foundations of our democracy are at stake.

“It was a big disappointment to see HB 51 fail on the Senate floor, but the fight is far from over,” said ACLU of New Mexico Reproductive Rights Attorney Ellie Rushforth. “The simple truth is that abortion is healthcare, and healthcare isn’t a crime. The governor has been outspoken in her support for protecting access to reproductive healthcare, as have many legislators. We’re confident that we’ll have another opportunity to remove this offensive and harmful language from our laws.”

Fighting for the Dignity and Safety of Immigrant Communities

One of our top priorities heading into legislative session was to promote laws that would make New Mexico a place where immigrants could live in safety and dignity. Immigrants have been an integral part



PHOTO: ACLU-NM Field Organizer Maria Coronado speaks at the Immigrant Day of Action at the Roundhouse in Santa Fe.

ACLU OF NEW MEXICO BOARD OF DIRECTORS

- Gary Mitchell, *President*
- Molly Molloy, *Vice President*
- Ross Chaney, *Secretary*
- Beth Mohr, *Treasurer-Foundation*
- John Salamack, *Treasurer-Union*
- Revathi A-Davidson
- Michelle Brown-Yazzie
- Bill Hudson
- Tova Indritz
- Paulina Iñigo
- Peter Ossorio
- Joe Sackett
- Andrew G. Schultz
- Trish Steindler
- Frank Susman
- Leola Tsinnajinnie

ACLU OF NEW MEXICO LEGAL PANEL

- George Bach
- Reber Boulton
- Phil Davis
- Laura Schauer Ives
- Maureen Sanders
- Alexandra Freedman Smith
- David Urias
- Jane Gagne

Continued on page 4



HB 370, the Criminal Record Ex-pungement Act, which allows some conviction records to be sealed providing better access to safe housing, employment, and educational opportunities - all proven factors in reducing recidivism.



HB 342, a comprehensive criminal justice reform bill focusing on accountability and treatment to both prevent crime and successfully reintegrate people back into society.



HB 364, a bill that limits the use of solitary confinement on juveniles, people living with mental illness, and pregnant women.



SB 96, “ban the box” legislation that prohibits employers from requiring applicants to disclose their conviction history on the initial job application.



SB 323, a bill that decriminalizes marijuana by reducing penalty for possession of small quantities to a 50 dollar fine with no jail time.



SB 199, the Electronic Communications Privacy Act, which requires law enforcement to obtain a warrant before viewing sensitive information held on personal electronic devices.



HB 89, which improves access to contraception by requiring insurance companies to cover a full range of options for men and women, and provide up to a six-month supply of contraception at once.



SB 278, a bill that reduces unnecessary barriers for New Mexicans seeking to obtain a driver’s license, including eliminating a pointless fingerprinting requirement.

MAKING HISTORY

Continued from page 3

of New Mexico’s story for hundreds of years and immigrant families continue to be valued members of our communities today. Unfortunately, Trump’s administration has been ramping up its racist and xenophobic rhetoric while implementing anti-immigrant policies designed to tear apart families and deport as many people as possible.

To fight back against Trump’s deportation machine, the ACLU of New Mexico joined a coalition of immigrant rights organizations to advocate for SB 196, a bill that would prohibit any state law enforcement resources from being used to enforce federal immigration laws, as well as limit jails’ authority to hold federal immigration detainees. Several cities and counties in New Mexico have already implemented similar policies to ensure that immigrants who are victims or witnesses to crimes do not fear calling the police when they need help.

To mobilize support for SB 196, the ACLU of New Mexico joined a massive organizing effort to reach immigrant communities in every corner of the state. Staff from the Albuquerque office worked with the ACLU of New Mexico Regional Center for Border Rights in Las Cruces to hold a series of trainings to equip hundreds of local activists with tools to help them lobby their legislators in support of immigrant rights bills, as well as bills in our other priority issue areas. In late January, the freshly trained army of activists joined hundreds of other community members at the state capitol for the Immigrant Day of Action, one of the largest lobby days to ever occur at the Roundhouse.

“We had over 800 people from all over New Mexico at the rally itself,” said Stephanie Corte, the ACLU of New Mexico Immigrants’ Rights Campaign Strategist. “It was really incredible to see how community members,

regardless of whether they were personally impacted or not, came together in support of immigrant families.”

Unfortunately, despite the strong show of community support, the legislature failed to prioritize SB 196 and it died in committee. Though disappointing, it won’t be the end. Our efforts helped send an unmistakable message that New Mexico values and welcomes immigrants, and built critical momentum that will help move us closer to passing a “no resources” bill in subsequent sessions.

We did however, manage to pass our other priority immigrants’ rights bill, SB 278, which fixes New Mexico’s driver’s license law by removing stigma from the current two tiered system and eliminating the fingerprinting requirement that deterred undocumented people from applying for a license.

A Giant Leap Forward

All together, these legislative achievements constitute a giant leap forward for civil liberties in New Mexico. Moreover, these victories stand as a testament to the power and spirit of the New Mexican people. Our state has never been the largest or the richest, and we’ve always struggled with our share of problems. But the hundreds of ACLU volunteers who came out this session to help fight for more fair and just policies demonstrated that we have an abiding love for our communities and a dedication to improving the lives of all New Mexicans.

As our politics at the national level become increasingly ugly, hateful, and violent, New Mexico made bold strides in the opposite direction. In the policies and laws that bind us together as a society, we chose compassion over hate. We chose to give second chances to people swept up by the criminal legal system. We expanded critical healthcare for all New Mexicans. We extended a hand of welcome to immigrant families. Together, we moved New Mexico, and by extension all of America, a little bit closer to the ideals of freedom and fairness wherein our nation’s true greatness lies.

FIGHTING RACIAL DISCRIMINATION IN SCHOOLS

By Micah McCoy, Communications Director

It started out as a day she was excited for. It was Halloween and McKenzie Johnson, a junior at Cibola High School in Albuquerque, had her costume picked out and ready to wear. She put on a red cape to go as Little Red Riding Hood, added special effects makeup to her face to create gruesome claw marks from the Big Bad Wolf, and headed to school.

As McKenzie walked through the halls, heading towards her first class, she spotted something that caused her temper to flare. There, walking down the hall, was one of her classmates dressed up in a “Indian” costume, complete with fringed skirt, war paint, and a cheap feathered headband. McKenzie, who is Navajo, takes a lot of pride in her native identity, and it hurt to see her peers disrespect her culture by treating it as a disposable costume.

Still fuming, she arrived at her first period English class where she and her classmates were met with a bizarre scene. Her teacher, Ms. Eastin, had blacked out the windows and lit the room with candles. Ms. Eastin, who was dressed as the historical voodoo priestess Marie Laveau, welcomed the students in character and informed them that today they would be playing a game. She proceeded to quiz the class on a poem they had read, and told them that those who answered correctly would be rewarded with marshmallows and those who gave the wrong answers would be forced to eat dog food.



PHOTO: McKenzie and Shannon Johnson

One by one, she shined a flashlight in students’ faces as she asked the questions, and dispensed dog food to the students who answered incorrectly. When one of the students refused to eat the dog food, she brandished a box-cutter with blade extended. Next she came to a Native American girl with long hair fixed in braids sitting in the back of the class and demanded answers to the comprehension quiz. When the student failed to provide a satisfactory answer, Ms. Eastin gestured towards her braids with the box cutter and asked her if she liked them.

When the girl affirmed that she did like her braids, Ms. Eastin replaced her box cutter with a pair of scissors, grabbed one of the girl's braids and cut three inches off the end, scattering the hair on the desk in front of her.

"We couldn't believe what just happened," said McKenzie. "She cut it really slowly. She had thick hair so you could hear the scissors cutting through every strand. Everybody was looking around at each other like, 'Was that real? Did that really just happen?'"

Ms. Eastin left the girl to sweep up her hair from the desk with her hands while holding back tears and continued administering quizzes as if nothing was amiss, calling on students and distributing treats and dog food. As she called upon students, if they were dressed in a costume, she would inquire what they were dressed as. When she came to McKenzie, she shined the light on her face and, seeing her makeup, asked, "What are you supposed to be? A bloody Indian?"

"I was just in shock," said McKenzie. "You could hear the whole class gasp, and they all looked at me waiting for my reaction."

Ms. Eastin, registering the students' shock, asked "What? She's bloody and she's an..." stopping short of finishing her sentence, allowing her racist comments to linger.

After the class was dismissed, McKenzie sought out the other Native American student whose hair Ms. Eastin cut to see if she was okay, but she had already fled to the bathroom to cry.

News of the incident quickly spread to the school's Native American student club sponsor, who gathered McKenzie and the second student to report the teacher's actions to the school administration. After hearing McKenzie's account of what transpired, the principal placed Ms. Eastin on administrative leave while they investigated her actions.

McKenzie's mother Shannon was incredulous when the principal called her to inform her about the incident.

"This is still happening in this day and age?," said Shannon. "It was unbelievable. I had thought we had surpassed that. You know, this is my baby. We thought she was going to graduate without incident. To hear this about a teacher treating a child like this, it was maddening."

This incident was especially painful given the historical and cultural context of the teacher's actions. In most Native American cultures, hair is considered sacred and non consensual cutting of hair is an especially humiliating violation. Through much of the 20th century, the U.S. government routinely tore Native children away from their parents and placed them in boarding schools where their hair was cut as part of a campaign of forced assimilation and cultural erasure. It was doubly painful when a large portion of McKenzie's classmates and community demonstrated a stunning level of ignorance of these issues, failing to recognize the seriousness of Eastin's racist remarks and physical assault. In the ensuing weeks, McKenzie and other Native students were bombarded on social media with angry messages from their peers.

"There was a whole bunch of backlash," said McKenzie. "A lot of the people I knew since middle school were calling me, saying 'Why did you have to speak out over such a little bit of hair, just because she called you a name?' It was a lot of loss of trust and friendship at that time. I felt really isolated, like everyone was talking about me."

Despite the backlash, McKenzie didn't allow herself to be deterred from standing up for herself and other Native students. Drawing strength from her family, community, and spiritual tradition, she and her mother stood face to face with the administration and school board to demand a formal apology from the teacher, a safety plan for her and the other affected student,

and an enhanced school curriculum that better covers Native American culture and history. In open meetings before the school board, local community members packed the room to express their support and outrage, echoing the Johnsons' demands for improved cultural competency training for Albuquerque Public Schools (APS) staff.

Strong feelings from the community were driven in part by the fact that the incident at Cibola High School was not isolated, but rather part of a pattern of systemic racism in the district spanning decades. In one especially egregious incident from the previous year, two Volcano Vista High School students racially harassed their African American classmates by posting a doctored photo to social media that superimposed Ku Klux Klan hoods over a photo of everyone in the class but the African American students.

A concerned family member of another Native American student at Cibola reached out to the ACLU of New Mexico and made the connection with the Johnson family. After learning more details about the incident, the ACLU of New Mexico offered to represent them. The ACLU of New Mexico organized a meeting with the Johnsons, along with other community members concerned with how Native Americans and other students of color have been treated by APS. The group raised a number of concerns including APS' failure to properly recognize Native American Heritage Month and ensure that teachers do not assign reading materials with derogatory references to Native Americans without contextualizing them within the nation's history of racism or violent displacement of Native Americans.

In response to the community's concerns, the ACLU of New Mexico sent a letter to the APS superintendent demanding that, in addition to taking immediate action by issuing a formal apology and creating a safety plan for McKenzie and the other native student involved, APS implement new policies and procedures to ensure that students can attend school in a safe environment where they are treated with dignity and respect, free from all forms of violence and discrimination. Furthermore, the ACLU of New Mexico demanded that APS implement broader recognition of Native American Heritage Month, cultural competency training for all APS administrators, teachers, and staff, and anti-oppression curricula for middle school and high school students addressing the harm of racism.

"New Mexico is home to 23 Native American tribes, all of which remain a vibrant part of our state's culture, economy, and collective spirit," said ACLU of New Mexico Legal Director Leon Howard. "The City of Albuquerque is bounded by two pueblos to its north and south, and our schools are built upon Native land. We absolutely must ensure that Native American students not only feel safe at school, but are confident that their culture, history, and personal dignity are valued and respected by the schools they attend."

Shortly following the ACLU's letter and the public protests at school board meetings, APS announced that it had "severed" its relationship with Ms. Eastin, but allowed her to remain on the school's payroll to exhaust her paid leave before retiring. By the time of this article's publication, the ACLU of New Mexico will have also filed a legal complaint with the New Mexico Human Rights Bureau asking for a determination that public school students are protected from discrimination under the New Mexico Human Rights Act.

"These incidents not only prevent students from receiving an equal education; they're dehumanizing and life altering," said Howard. "They send a message to students of color that their lives don't matter and that their schools will not protect them. We're fighting to establish a clear precedent that our state anti-discrimination protections extend to students in public schools. We're putting schools everywhere in our state on notice that they have an obligation to create safe and equitable learning environments for Native students and other students of color."



A photo of McKenzie's costume taken the morning of the incident.

STANDING UP TO THE MAN

Continued from page 5

that prior to the incident, all three women had endured and raised concrete instances of harassment and sexism to Human Resources. All that mattered was that Byers wanted the signs removed at once.

“One of the other signs I had was a Margaret Atwood quote ‘men are afraid women will laugh at them; women are afraid men will kill them.’ I’ve had that quote in every office I have worked in, for as long as I’ve been an attorney, because I’ve always worked with domestic violence victims,” said Brulotte. “I explained to Mr. Byers how important I thought the signs were for women as a symbol of support. He told me they violated office policy—though he would not tell me what policy they violated—and that they had to go.”



PHOTO: Close up of Kelly Rossi’s office door at the Third Judicial District Attorney’s Office.

By this time, all three women had already endured rampant sexism, harassment, and retaliation. They weren’t about to give up their First Amendment right to speak out against it.

In each of their meetings with Byers, they asked to speak with D’Antonio about their signs. Rather than allowing them to do so, Byers informed them that he was taking the request as a refusal to comply with his instruction and immediately suspended them.

More Work, Less Pay

The sexism that came to define their everyday experiences at the office began on day one with unequal pay.

In July 2016, Rossi was hired as a trial attorney and quickly began to handle challenging, high profile cases. Within just a short while she was carrying the caseload of a typical senior trial attorney and handling more cases than most of her male colleagues. But Rossi earned less money than almost all of them.

“It’s demoralizing when you know that you’re putting forward superior work on difficult projects and not getting the same recognition or pay as male colleagues,” said Rossi. “Certainly I was capable of handling the cases and that’s why they were assigned to me, but there was a reluctance to treat me as an equal.”

Rossi raised the issue of unequal pay with two separate supervisors in 2017 and again in 2018 to no avail. Even after D’Antonio nominated her for the District Attorney Association’s Wayne Johnson Jurisprudence Award (which she later won) in recognition of her superior work, he did not promote her. Rossi had to submit a formal request for a promotion, citing a job advertisement for senior trial attorney sent to every member of the state bar, before she finally received one.

Brulotte joined the district attorney’s office with six years of litigation experience. Yet the salary she was offered was five thousand dollars less than four other men who had substantially less experience than her and who were hired around the same time for parallel positions. She had to negotiate to receive the salary the men were offered automatically.

Within just a few short months, she earned a reputation as a fierce litigator and champion for women and children. But her hard work was not rewarded. When a district court attorney position became available, management offered it to one of her subordinates, who had less than a year of experience. Knowing he didn’t have the requisite experience to handle the additional responsibilities that came with the position, he turned it down. Management then offered the promotion to another male subordinate with even less experience.

“I was furious,” said Brulotte. “I called the only female deputy DA and I said to her, ‘you say I’m a great attorney, you say I’m doing great work, so what is the reason I am being passed over for a promotion if it’s not sexism?’”

Duffin received public recognition for her expertise and dedication to her work as well. When the State Bar of New Mexico named her Domestic Violence Prosecutor of the Year in 2015, D’Antonio said in a public statement he was proud that “her hard work and dedication” on extremely difficult cases had such “a huge impact on the well-being of our children, our families, and our community.”

Even after her achievement, Duffin continued to earn less money than her male colleagues, though she handled substantially more cases and supervisory duties.

Pay discrimination was one of the reasons many members of the staff decided to form the first ever union at a district attorney’s office in the state in November 2017. For Brulotte, Rossi, and Duffin it was an easy decision to vote in favor.

Harassment and Retaliation

Receiving less money than male counterparts for the same work was disheartening for all three attorneys, but it was the toxic culture of harassment and retaliation that brought them to a breaking point.

For Rossi, one of the worst experiences occurred in April 2017 when D’Antonio and Byers called her into a meeting and told her they needed a “pretty young prosecutor” at the table during a highly publicized murder trial, explaining they feared an attractive attorney at the defense counsel’s table might steal the jury’s attention.

“I worked extremely hard to get a law degree from a very well-respected school so that I could pursue my passion of litigating crimes involving women and children,” said Rossi. “Their request made me feel like my contributions weren’t noticed or didn’t matter.”

During the trial, Rossi provided advice on jury selection and litigation strategy, but the men ignored her. The only witness they allowed her to question was the victim’s wife because they thought it would look more “sympathetic” for a woman to talk to her.

“My role was circumscribed to being the pretty lady at the table and then the sweet, nurturing female attorney to elicit emotional testimony from a grieving widow,”

said Rossi. “Everyone at the office knew and as a joke they started calling me ‘Ms. Third Judicial District Attorney.’ It was humiliating.”

Brulotte knows all too well what it’s like to be told she must embrace and obey sexist stereotypes in order to succeed at work. In June 2018, even as she suffered constant harassment from a male colleague who would call her lewd sexual names and insist she must wear skirts to win her cases, her direct supervisor formally disciplined her for not smiling enough, especially to her male colleagues, and accused her of contributing to “low office morale.”

“We had endemic sexism at the office, but somehow I was accused of causing low office morale,” said Brulotte. “I didn’t walk around smiling all of the time because I was dealing with gender discrimination and 400 domestic violence and sexual assault cases, many of which were extremely upsetting.”

Brulotte’s supervisor told her she had to “come outside of her comfort zone,” and start smiling and saying hi to each and every person she passed as she entered and left the office. Yet, management never expected the same from male staff or held them accountable for sexist actions.

Even after an incident where Byers became so irate with Duffin in a staff meeting that he slammed his notebook on the table, threw a pen in her direction, and stormed out of the room, he never faced any consequences. Instead, after Duffin raised concerns about his conduct in a Human Resources complaint, Byers retaliated by nearly doubling her caseload.

In the end, management not only signaled to female staff that their only value was in their appearance or how they made the men in the office feel, they also sent a clear signal to the women that if they spoke up they would be punished.

Taking a Stand

Less than a month after Brulotte and Duffin were suspended, the DA’s Office fired them. No longer able to work in such toxic conditions, Rossi resigned.

By July, three exceptional attorneys had been forced out of their jobs after years of dedicated service to their office and community, all on account of their gender and their refusal to be silenced on matters of personal and

public concern.

“They felt confident enough to fire all of the female line attorneys at once without cause because they have been treating women this way for years, and have been getting away with it,” said Brulotte. “We’re not the first women this has happened to at that office.”

Their careers as prosecutors in Doña Ana County may be over, but their fight for justice isn’t.

The ACLU of New Mexico and cooperating attorney Rachel Higgins agreed to represent Brulotte, Duffin, and Rossi, and on April 29, we filed a lawsuit against the Third Judicial District Attorney’s Office for violating the Fair Pay for Women Act, the Whistleblower Protection Act, and the New Mexico Constitution’s Free Speech Clause.

“As arms of law enforcement, state prosecutors are tasked with the responsibility of promoting safety and wellbeing in our communities,” said ACLU of New Mexico staff attorney María Martínez Sánchez. “When those who have been entrusted with the power to prosecute our fellow citizens are the very ones inflicting harm, the damage to society is severe and lasting. We must hold the office accountable for abusing its power.”

The ACLU is fighting to obtain justice for Brulotte, Duffin, and Rossi at a critical moment as our country reckons with the reality of enduring and pervasive sexism and sexual abuse in the workplace. In a 2016 survey by the Center for Work Life Law at UC Hastings College of the Law, one quarter of female lawyers said they encountered unwelcome sexual encounters or harassment at work, and 70% of female lawyers said they’ve dealt with sexist comments, stories, and jokes.

This kind of sexism, harassment, and abuse is not confined to the legal field, but rather a common experience for women across all walks of life, including the very women that Brulotte, Rossi, and Duffin have all worked to protect in their careers as attorneys.

“We’re bringing this lawsuit not just because of the injustice we faced, but for the community of Doña Ana County,” said Rossi. “If the DA’s office can inflict so much harm on its own female staff members, how can we trust it to obtain justice for the countless female victims of domestic and sexual violence the office serves? The community deserves to be represented by attorneys who respect and value women and who are passionate about promoting gender equity and justice.”



“

My role was circumscribed to being the pretty lady at the table and then the sweet, nurturing female attorney...It was humiliating.

”

PHOTO: Kelly Rossi at the Las Cruces Women’s March.

LET’S STAY TOGETHER
HAS YOUR MEMBERSHIP LAPSED?
RENEW YOUR MEMBERSHIP BY MAY 31ST AND ENTER TO WIN AN ACLU SWAG BAG.

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 article submissions to Micah McCoy, Editor and Communications Director at: mmccoy@aclu-nm.org

Printed in Santa Fe, NM.

WWW.ACLU-NM.ORG

American Civil Liberties Union of New Mexico
PO BOX 566
Albuquerque, NM 87103
info@aclu-nm.org
Tel: (505) 266-5915
Fax: (505) 266-5916

SOUTHERN OFFICE
Las Cruces, NM
Tel: (575) 527-0664
Fax: (575) 527-0111



“MY VOICE IS THE MOST POWERFUL THING I HAVE”

ACLU-NM client Jordan McDowell speaks out about racial discrimination at Allsup's



When pre-med student Jordan McDowell walked into a Santa Fe Allsup's while on a school trip last August, he expected to purchase some snacks and get on his way. But after a store clerk called 911 to request McDowell be removed from the store for being “arrogant” and “black,” he began to fear that an ordinary shopping trip might quickly turn into a dangerous encounter.

His experience was just the latest in a series of racial profiling incidents to make headlines that year. McDowell, like dozens of others who've spoken out about their experiences, refused to be silent about the discrimination he faced. In December 2018, the ACLU of New Mexico and cooperating attorney Richard Rosenstock filed a complaint with the New Mexico Human Rights Bureau on McDowell's behalf. Together, we're fighting to ensure that all people in our state can enter a storefront without fear that they will be discriminated against or endangered because of the color of their skin.

The Torch: What happened when you went to Allsup's in Santa Fe on August 3, 2018?

Jordan McDowell: I was there taking a brand new course, which involved exploring pueblo lands and learning about Native American culture. We were there for about 2 weeks so I went to Allsup's to get snacks and drinks — things that would last me for the rest of the time that I would be there. Once I got in, I walked around for nine minutes and after nine minutes one of the store clerks stopped me and said I was looking “sneaky” and “suspicious.” I told her there were other people in the store who were there just as long as me. And I asked, “Why aren't you telling anybody else that?” Then another store clerk, who was watching me the whole time I was in there, came around and just started watching as we continued to talk back and forth. And that store clerk tells me, “you need to go, you need to go.” So I asked her, “Why do I need to go?” And she said, “Ok, you know what, I'm just calling the police.” And that's when she told the dispatcher she wanted me out because I was “arrogant.” Because I was “black”.

The Torch: The police actually came. How did they handle the situation?

Jordan McDowell: They came, but they said “well, we weren't going to come, we weren't taking this seriously. This was just on the way, so we just stopped by and you came up to us,” which I did. As the car pulled up in the parking lot and parked, I walked up to the police car myself.

The Torch: Do you think it was an appropriate response?

Jordan McDowell: The appropriate response for me would be just not coming in the first place because for me it was a traumatic experience — not just dealing with racism but getting the police called on me and thinking, “Okay they're really coming and going to remove me from this store for being black.” I think just not responding to racial profiling instances would be the best bet.

The Torch: There are a lot of experiences like yours that have made news headlines in the last year. Do you feel like the discrimination you faced is similar to some of these other stories?

Jordan McDowell: Oh yes, most definitely. I did a interview for the university I go to in New Orleans and that's one of the reasons I gave for why I'm so willing to speak up and speak out. I was always taught that my voice is the the most powerful thing that I have and nobody can take it from me. I have to speak up because there are people like Trayvon Martin and Tamir Rice who were racially profiled and didn't live to tell their side of the story. I have to tell my side of the story and I have to let the public know that not only is this not okay, it never will be okay.

The Torch: How has this experience affected you personally?

Jordan McDowell: It really opened my eyes up to the world. I mean I always knew it, but this incident really showed me there's still a lot of racism in this country. It's one thing to see it and it's another thing to actually deal with it and go through it. I think for the rest of my life this experience is going to be with me.

The Torch: What would justice look like to you?

Jordan McDowell: I want to see that this type of situation doesn't happen ever again to African Americans where they go into a store and walk out feeling the way I felt, really questioning did I do something wrong? You should never question if being African American in this country is wrong. You should never be made to feel like you did something wrong because of your skin color. I want this to be a stepping stone for people to understand this will never be tolerated and it's never right. And for all African Americans out there going through this, your voice is the most powerful thing that you have and just like me you have to use it.