

LIBERTY REPORTER

FALL 2019



WHY UTAH
Should Opt Out
of the Surveillance
State



PERSPECTIVES

How do you balance the benefits of new technology with the loss of privacy it can bring?



Brittney Nystrom, Executive Director

“I have concerns about how the screens we use at work and home harm our privacy. But will I give up my smartphone or social media accounts? No. Or rather, not yet. Still, I place a sticker over my laptop’s camera when I’m not using it. I also hesitated before purchasing an “Alexa” device for my home. Ultimately, I decided that fun and convenience could overrule my privacy concerns, and Alexa has joined our household. But the research I did before making a decision showed me that we need more reliable information about privacy impacts. I am hopeful this debate increases public understanding about the hidden costs of technology we claim we can’t live without.”



Danielle Hawkes, Board President

“I know I share too much about myself and my family online, but at least I can admit it. To learn more about these issues (and reduce my social media exposure), I am educating myself through a campaign of personal reading and conversations with friends and colleagues. Recently, several members of the ACLU of Utah Board of Directors read Safiya Noble’s *Algorithms of Oppression*, a book that explains how technology reinforces racist and bigoted systems. As I learn about these threats and biases, I am glad that the ACLU of Utah is focusing more attention on educating us, and teaching us how to fight back.”



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CALLING ALL ACLU MEMBERS! Vote in the annual ACLU of Utah Board Elections

Board members are volunteers and receive no financial remuneration for their service. Candidates are nominated by the ACLU of Utah Governance Committee. Board terms are three years and Board Members typically serve two terms.

You may find the 2019 Board Ballot that includes biographical information about the candidates and instructions on voting online at: www.acluutah.org/board-elections

Candidates for the 2020-2022 term are: Charlene Lui, Sarah Vaughn, Sophia Hawes-Tingey, Judge Mark DeCaria, Nasir Khan



THE ACLU OF UTAH

The ACLU of Utah, chartered in 1958, operates through public education, legal advocacy, litigation, and lobbying at both the state and local levels to ensure the constitutional rights and freedoms of everyone living in or visiting Utah.

Our Mission is to defend and promote the fundamental principles and values embodied in the Bill of Rights and the U.S. Constitution, including the freedom of speech and religion, and the right to privacy, equality, and due process for all Utahns.

To learn more about the ACLU of Utah and our priorities, please visit www.acluutah.org

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Dixie State Aids Immigrants

A new fingerprinting service helps Washington County immigrants secure driving privilege cards.

In June, Dixie State University's (DSU) campus police began offering fingerprinting services to immigrants seeking a Utah driving privilege card after the ACLU of Utah noticed the service was not offered anywhere in Washington County. Driving privilege cards (DPC) allow immigrants to maintain and operate a vehicle regardless of their legal status, including recipients of the

Deferred Action for Childhood Arrivals (DACA) program. At a time when immigration headlines are often discouraging and focused outside of Utah, this decision by the DSU Police Department to offer this simple but

important service will benefit hundreds of immigrants living in Southern Utah. Prior to this change, Washington County residents had to travel to Cedar City, where the county sheriff's fingerprinting facility had very limited hours, or drive 300 miles to a state office in Taylorsville.

"When we realized there was a gap in fingerprinting services for residents of Washington County, we looked for

local partners to fill it," explained Sydni Makemo, the ACLU of Utah's Southern Utah Community Outreach Coordinator. "We thought it was ironic that people had to drive hundreds of miles to acquire the fingerprint scans they need for a driving privilege card."

Sydni began calling law enforcement agencies in Washington County to see if they could provide the fingerprinting required to apply for a DPC. After multiple rejections, Sydni received an enthusiastic "yes" from Dixie State, which happens to be where she attended college. "We said there is absolutely no reason for us not to provide this service,"

DSU Police Chief Blair Barfuss told the St. George Spectrum. "We're all about providing the resource to anyone at any time," he added. The fingerprint scans cost \$20 per person and can be used for multiple applications, including professional licenses. To acquire a DPC, immigrants must pass a vision test, complete a driver's education course, and acquire car insurance. A 2006 state audit determined that holders

“ We thought it was ironic that people had to drive hundreds of miles to acquire the fingerprint scans they need for a driving privilege card.”

Sydni Makemo, ACLU of Utah

NEWS

Apply for a Driving Privilege Card

About DPCs: www.dld.utah.gov/license-permit-icard/

Fingerprint Locations: www.dld.utah.gov/dpc-fingerprint-agencies

Washington County Location:

Dixie State University Police
225 South 700 East
St. George, Utah 84770
Web: www.publicsafety.dixie.edu
Email: dsusecurity@dixie.edu
Phone: 435-236-4000
Hours: Mon.-Fri.; 10 a.m. to 4 p.m.

of Utah DPCs insured their cars at similar rates as those who held a regular state driver's license.

Last month, Chief Barfuss told Sydni that his department's fingerprinting service is already extremely popular, with entire families taking advantage of it. When Barfuss mentioned that his office occasionally lacked a Spanish-speaking staff member, we suggested they inform applicants who are scheduling an appointment that they can bring their own translator if needed. To build on this success in St. George, the ACLU of Utah is currently working with the Moab Police Department to offer a similar fingerprinting service in southeastern Utah.

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ACLU of Utah staff celebrate at our June 2019 Community Block Party at Rico Cocina y Tequila Bar.

Making Voting Easier

Helping more Utahns vote is the goal of our new full-time colleague, Niki Venugopal.

Voting is a fundamental right, no matter where you live. To realize that goal, the ACLU of Utah's new Voting Rights Coordinator, Niki Venugopal, is launching an 18-month campaign to ensure equal and adequate access to the ballot box across the state.

1,082,972 Utah voters went to the polls in 2018—a record number for a midterm election—and this campaign is designed to maintain that momentum in 2020. From mobilizing door-to-door volunteer educators in Logan, to fighting voter discrimination in San Juan County, Niki's goal is to empower and offer resources to under-represented communities and reduce obstacles to voting. Here are the key takeaways from her Voting Rights Campaign Action Plan:

- **Voter Education:** Reduce the confusion about voting ID requirements and early voting by launching social media campaigns and community trainings to ensure Utahns know how, when, and where to vote.
- **Community Volunteer Teams:** Offer resources, training and support to civil rights activists across the state to organize volunteers able to reach new and reluctant voters in their neighborhoods.

- **Poll Monitoring:** Observe and implement the legal settlement we reached with San Juan County in 2018 to provide better translation and language assistance for Navajo-speaking voters, plus conduct poll monitoring in two other counties.
- **Election Information:** Work with county clerks—who run elections in Utah—to provide accurate details about voter registration and polling locations. Why? Because a 2018 ACLU of Utah survey determined that many county clerks posted wrong and misleading information about voting on their websites—or no details at all.
- **Voter Registration in Jails:** U.S. citizens in Utah jails awaiting a trial or serving time for a misdemeanor (unless convicted of a voting-related offense) can still vote. We will work with Black Lives Matter, Indivisible, and Voterise to expand voter registration and education programs to rural jails and educate individuals with prior convictions about their right to vote.
- **Voters' Rights:** Protect voting reforms that make it easier for

Utahns to cast a ballot—like Election Day Registration—that allowed 34,000 people to register and vote in 2018. Plus, defend Proposition 4 to create an independent redistricting commission as supported by the electorate.

These goals will keep us busy, but they only represent a part of the work Niki has planned between now and November 2020. For this campaign to be successful, we need your help. To get involved, sign up to be a **Voting Rights Volunteer** by completing a short application at www.acluutah.org/votingvolunteer. Join our effort, and we will provide the training you can use to make a difference in your own community.



“We Will See You in Court”

Six months ago we filed a lawsuit to stop the state's 18-week abortion ban. Here's where it stands.

On Wednesday, April 10, the ACLU of Utah Foundation joined with the Planned Parenthood Association of Utah to file a lawsuit in federal court to block H.B. 136—the state's 18-week abortion ban passed during the 2019 legislative session. At the press conference at the Utah Capitol announcing the lawsuit, ACLU of Utah

Senior Staff Attorney Leah Farrell reminded the audience that we successfully challenged a similar 22-week ban in the 1990s, adding “And once again we are standing up to hold the line and to say, ‘we will see you in court.’” A week later on April 18, a federal district court in Utah entered a preliminary injunction to stop the 18-week ban from taking effect—

ensuring that Utahns could continue to seek the abortion health care they need while the lawsuit is progressing. This legal step was vital in keeping access to abortion unchanged in Utah, and it followed the same pattern playing out in a half dozen other states facing similar legislative attempts to ban abortion, including Missouri, Georgia, and Ohio. But after this early flurry of activity in the lawsuit, the pace slowed during the summer,

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Follow the latest legal developments in this lawsuit, *Planned Parenthood Association of Utah v. Miner*, at www.acluutah.org/abortionlawsuit — where you can also sign up for email alerts.

Data-Driven Justice

Criminal justice reform won't happen unless we learn what's going on inside the system.

Even for insiders, the grinding gears of the criminal justice system can be as mysterious as a secret machine. That is why the Campaign for Smart Justice in Utah has been demanding more data collection, transparency, and accountability since we launched our effort in 2018. This is a summary of the progress we have made so far.

First, in mid-August we published an op-ed in the *Salt Lake Tribune* calling for greater openness in our criminal justice system. This article caught the eye of Rep. Marsha Judkins (R-Provo), a first-term lawmaker and math professor at Utah Valley University. After speaking with Campaign Coordinator Jason

Groth about prosecutor transparency and potential legislation, Rep. Judkins testified on September 18 in front of the Utah Legislature's Judiciary Interim Committee about a prosecutor transparency bill she is developing for the 2020 Legislative Session. Her testimony included many talking points pulled from our op-ed, as well as the National ACLU's report about prosecutor transparency and model legislation. Her fellow lawmakers on the committee responded favorably to her presentation, noting that such legislation is necessary to help make evidence-based decisions. With Rep. Judkin's leadership, we are optimistic that our advocacy for prosecutorial accountability and transparency

will be grounded in state code by next year. Second, our mission to collect and analyze data is extending to how people move between jails and courts. With a new initiative codenamed "The Habeas Project," we are partnering with programmers and data analysts at the University of Utah to understand systemic



Rep. Marsha Judkins (right) advocates for greater transparency for prosecutors at the Utah Legislature in September 2019.

issues around unlawful detentions in county jails. These detentions lead to unnecessary costs for taxpayers, wasted resources for law enforcement, and, most importantly, needless deprivations of people's liberty.

After our team crunches the data on thousands of jail and court interactions, we will develop advocacy, policy, and litigation strategies to end future

unlawful detentions. We anticipate completing our initial data analysis by December 2019 and recommending new strategies in early 2020 to end unlawful detentions.

Third, we are seeing evidence that data can drive reform-based decisions in the courts as well as in policy. Case in point: During recent oral arguments at the Utah Supreme Court, several justices mentioned that decisions made by the Board of Pardons and Parole (BOPP) could be better understood by analyzing data points about the results. This suggests that the Court is open to data-driven arguments that could show more due process protections are needed for individuals at parole hearings.

As the Campaign for Smart Justice in Utah concludes its second year, we will continue to engage with policy makers, prosecutors, courts, and other stakeholders in the criminal justice system to collect more data to guide better decisions for their agencies and our communities. We still have much work to do, but as we add more data and insights, the criminal justice machine will run smoother.

Rio Grande Endgame

As the police sweeps wind down, addressing the long-term damage they caused is just beginning.

Last October, the ACLU of Utah published *Calculating the Real Cost of Operation Rio Grande*, a critical analysis of the first 14 months of the intensive law-enforcement sweep of homeless populations in Salt Lake City's Rio Grande neighborhood. The report disrupted the self-congratulatory narrative of success pushed by backers of Operation Rio Grande (ORG) by questioning its methods and outcomes. Specifically, we highlighted the law enforcement dominance of the operation that failed to target "the worst of the worst," and ended up arresting and jailing thousands of people for low-level crimes and infractions. We also noted the belated and lopsided lack of focus and funding to address root causes of homelessness such as mental health and substance use treatment.

A year later, we are releasing a follow-up report titled *Endgame for Operation Rio Grande* that examines the lingering collateral consequences for people impacted by this operation. This new report builds on our initial analysis by examining how crime statistics have changed throughout the city during the years before and after ORG. It also addresses the long-term barriers created by criminalizing people experiencing homelessness and suggests how activists and policymakers can apply the lessons learned from ORG to improve the rollout of the new homeless resource centers. We are releasing *Endgame* now because the landscape for managing homeless services is shifting as politicians exit the stage while social service agencies and committees take over. Our goal is to show that using the criminal justice system as the main filter to address issues related to homelessness leads to unreasonable expectations and unintended consequences for law enforcement, service providers, and our communities. *Endgame for Operation Rio Grande* is available at the link below and paper copies are available upon request.

Download *Endgame for Operation Rio Grande*
www.acluutah.org/endgame

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www.smartjusticeutah.org

State of Surveillance

To protect our right to privacy, we first need to realize what we might lose.

Imagine two streets in a Utah city.

On the first street, the neighbors know each other and talk often. They share tools, care for each other's pets, and watch out for children playing in the street. No security cameras scan the sidewalks, and people speak freely without fear of being recorded. In the evening, families go for walks to visit on front porches and talk about ways to improve their neighborhood.

But on the second street, people don't know their neighbors and never visit each other. Every house is ringed by a network of security cameras linked to a government database, and "No Trespassing" signs are planted in every yard. A police surveillance camera on a telephone pole scans passers-by with facial recognition software, while watchful eyes behind curtained windows report every strange car and person to the authorities.

Which of these streets is safer?

Which of these streets is more connected?

Which street would you prefer to live on?

"More surveillance makes us more secure."

This imagined view of two streets isn't far-fetched. The reality of the second street—where overlapping camera systems crowd out human interaction and erode privacy—could become a reality in more Utah cities if law enforcement is given permission to acquire new and more invasive surveillance systems. And in case you think cameras that can recognize your face, scanners that can see inside your clothes, and artificial intelligence software that can mine your social media posts for certain phrases are still science fiction, you should know that these systems are already here (see sidebar, *Under Scrutiny*).

One argument frequently made in favor of adding security cameras and giving law enforcement greater leeway to spy on people is that "more surveillance makes us more secure." But is that true?

The former East Germany—where one in six residents was an informer for the Stasi secret police—was one of the most surveilled nations in history. The Stasi placed hidden cameras, bugged phones, and intercepted mail to

spy on its citizens. But did the East Germans feel more secure in their homes and neighborhoods, and especially in their freedom of thought and expression? One answer loudly claiming 'no' is the 5,000 people who risked their lives to escape East Germany over the Berlin Wall. In fact, the Stasi's police state more closely resembles the oppressed atmosphere of the second street in the example above. As Chad Marlow, a senior advocacy and policy counsel at the ACLU, puts it, "The real threat to public safety today is increased surveillance."

Invisible right

Of all of your civil liberties, your right to privacy is the most elusive. You can't hold it like a newspaper, invoke it like your right to a lawyer, or mark it like an election ballot. Privacy is so intangible that you often don't know when it has been violated. And that's a problem, because it is now clear that state and local law enforcement agencies in Utah have been working on new and intrusive ways to violate our privacy over the last several years. This includes the recent revelation that Utah's Department of Public Safety scanned every Utah driver's license photo thousands of times between 2015 and 2017 with facial recognition software at the request of the FBI, ICE, and out-of-state police agencies. The nature of privacy violations is that the public often doesn't learn about them—like the NSA's warrantless wiretapping revealed by Edward Snowden—until long after they started. Which also means there are likely more invasions of our collective privacy of which we are still unaware.

Fortunately, Utahns can work to reclaim their privacy from encroachment by mass surveillance. Organizations like the ACLU of Utah and the libertarian-leaning Libertas Institute are pushing back against law enforcement's demand for new and invasive technology. Joining this effort is a bipartisan team of lawmakers concerned that rapid advances in surveillance and analysis are leapfrogging the existing state codes, requiring the creation of new and better laws to regulate them. But

Under Scrutiny

Several high-profile controversies have raised warnings about increasing surveillance in Utah.

3D Body Scanners

March-May 2019

Utah's Attorney General Sean Reyes signed an agreement with Liberty Defense Technologies to allow testing of Hexwave millimeter wave body scanners at sporting events, schools, places of worship, and festivals in Utah. Press releases touted Hexwave's artificial intelligence abilities to detect weapons and explosives obscured by clothing, while AG Reyes claimed it will "push the perimeter out further" to help reveal threats. When the agreement became public in May, gun rights advocates, libertarian groups, and ACLU of Utah raised privacy concerns.

Facial Recognition Searches

July 2019

State officials went on the defensive and lawmakers expressed concerns after the *Washington Post* reported that Utah's Department of Public Safety (DPS) allowed thousands of scans of Utah driver's license and other photos with facial recognition software at the request of local and outside law enforcement. Legislative hearings in September determined the scans, overseen by Utah's Statewide Information and Analysis Center (SIAC), were conducted using outdated software, operated without legislative authority, and included images of children. New limits on facial recognition scans are expected to be introduced during Utah's 2020 legislative session.

Data Mining

August 2019

Technology start-up company Banjo faced skepticism from Utah lawmakers when it requested \$2.2 million in ongoing funding to expand its Live Time Intelligence platform—an AI platform that "ingests, synthesizes, and analyzes thousands of unique data signals simultaneously" from public and government data sources, including traffic and security cameras, alarms, social media posts, and weather data. State law enforcement agencies backed the proposal, but a bipartisan group of lawmakers and civil liberties groups worried about potential abuse.

before we can enact new policies to protect our privacy, more Utahns need to understand what we lose when our right to be left alone is threatened.

No crime, no problem.

Why should you care that your local police want to spy on you? After all, if you're not breaking the law, why worry about surveillance cameras with facial recognition software or 3D body-scanners hidden in benches outside a sports stadium?

No crime, no problem. Right?

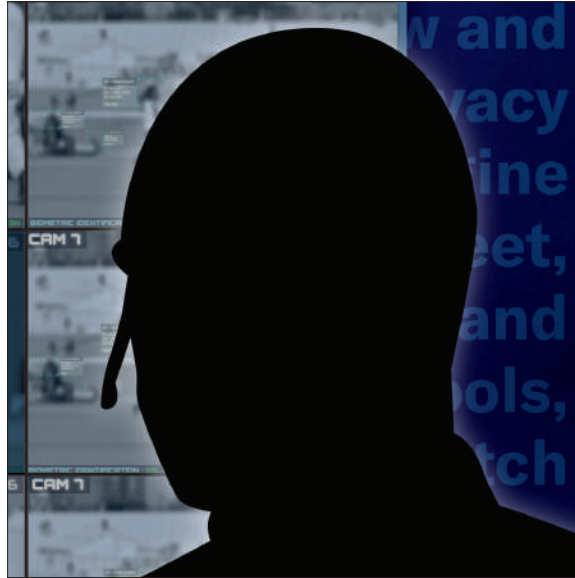
It's a fair question, and to answer it we need to examine the troubling philosophy behind the government's seeming desire to watch everyone all the time. The problem with mass surveillance is that it presumes everyone is a criminal or is about to commit a crime. Cameras with facial recognition software don't just scan and track people breaking the law.

They target everyone with a face: adults, kids, and grandparents. An analogy to mass surveillance is like having a police car follow your vehicle at all times. Most of the time you're not breaking the law when you drive. But what happens when you roll through a red light a few seconds too late? Suddenly, the lights and sirens switch on behind you and you've got a ticket. Imagine a police car constantly shadowing you during a typical day, and you'll realize what it's like to live in a state of constant surveillance.

Mass surveillance also broadens the ability for police to track people's movements and activities over distance and time. Instead of a police officer sitting in an unmarked car staking out a suspicious residence, a single, well-placed camera can accomplish the same task for a dozen houses—suspicious or not—around the clock without ever needing a cup of coffee or a bathroom break. Apply facial recognition software to the camera images, and the police can determine who is coming and going from any house at any time.

Finally, new surveillance technology promises to accelerate the pace of solving crimes by replacing human work with machine learning. For example, a traditional criminal

investigation to identify a suspect might require days of police work to scan fingerprints, review license plates, interview witnesses, and stake out a house. But with facial recognition software able to match camera images to a database holding millions of driver's



license photos, a computer algorithm can spit out a name and last known addresses in a few seconds. This increased efficiency is one reason why police are always requesting more surveillance. These devices save law enforce-

ment time and effort by making it faster and easier to identify suspects. And their argument would make sense if the high-tech tools they used worked as reliably as advertised.

False positives

To justify their acquisition of new surveillance technology, law enforcement agencies often claim these tools are more accurate and less intrusive than prior methods. But independent test results reveal these products regularly overpromise and underdeliver. The oldest and most commonplace of these systems, airport body-scanners, routinely fail to function accurately for people who aren't white and male or people with unique clothing or hair styles. And even the most advanced facial recognition algorithms are rife with systematic errors against minority populations. A 2018 test by the ACLU demonstrated how Amazon's Rekognition software, a popular facial recognition program used by law enforcement, wrongly matched photos of 28 Members of Congress to mugshots of people who had been previously arrested, falsely tagging people of color at higher rates. Plus, earlier this year, body-camera maker Axon rejected adding

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Key Definitions

Artificial Intelligence (AI): Computer software that analyzes camera images to identify people, vehicles, objects, and weapons. Higher-level AI software can be programmed to “learn” from past experiences to reduce errors, increase accuracy, and predict future behavior.

Biometrics: Identifiable characteristics based on physical attributes like fingerprints, facial features, voice, DNA, and body dimensions.

Facial Recognition: Software that measures facial textures and dimensions, such as the gap between the eyes and the distance from forehead to chin, to match camera images to a database of known facial profiles—confirming a person's “faceprint.”

Fourth Amendment: An amendment to the U.S. Constitution ratified in 1791 as part of the Bill of Rights that prohibits unreasonable

searches and seizures of property by the government, including law enforcement. It forbids arrests without probable cause, and regulates the use of search warrants, wiretaps, and other forms of surveillance.

Rap Back: An FBI service that continually reviews a person's criminal history without requiring repeated background checks. Originally designed to monitor records for teachers, daycare workers, and other people in positions of trust, Rap Back is now used by state and local authorities within Utah to constantly scan for criminal record updates for people in government databases.

Statewide Information and Analysis Center (SIAC): The division of Utah's Department of Public Safety (DPS) that collects and analyzes images from multiple databases, including driver's licenses, state IDs, and booking photos, using facial recognition software.

A Day in the Life of a Community Outreach Coordinator

Ever since Sydni Makemo talked her way into a job at the ACLU of Utah in 2018, we knew she was a go-getter. As the first ACLU staff member based in Southern Utah (she lives with her husband, Hilkihah, and two children in St. George), Sydni is responsible for introducing the ACLU to hundreds of new supporters and allies. How does she do it? Let's examine a typical day for Sydni.

5:00 a.m.: Wake up and go for a quick run or do CrossFit depending on the day.

6:45 a.m.: Check my email and daily calendar as my kids and husband start to stir in the house around me.

7:30 a.m.: Shower, get dressed, and drink my greens—a surprisingly tasty blend of dandelion leaves, spinach, kale, beet leaves, avocado, and a banana—before rushing out the door with a car full of kids heading to school at 8:15 a.m.

9:00 am: Park at Affogato West (undisputed best coffee shop in St. George) to take advantage of free Wifi to make last-minute edits to a meeting agenda.

9:30 a.m.: Dial in to the ACLU of Utah's staff meeting, where I explain everything happening in Southern Utah in five minutes while learning about all the work my colleagues are doing.

11:30 a.m.: Lunch with the owner of a new brewery to discuss hosting a fundraiser for local nonprofits.

1:00 p.m.: Get ready for upcoming events. Draft a speech on immigration policy for Pizza & Politics at Dixie State University. Design a "Know Your Rights" presentation on interactions with police for a Moab event.

4:00 p.m.: Work-life balance gets complicated as kids come home from school. Solution—phone meetings! While my daughter gets a haircut, I step outside to call the Anti-Defamation League about bringing a K-12 anti-racism program called

"No Place For Hate" to the Washington County public schools.

5:00 p.m.: While at my son's soccer practice, I call Niki, the ACLU of Utah's new Voting Rights Coordinator, to plan our upcoming trip to Moab. When she offers to book the motel room, I sigh in relief. One less item on my expense report.

6:30 p.m.: Back at home, and time for dinner. But also a chance to check my phone for any local news stories I missed.

7 p.m.: Eat. Breathe. Make eye contact with my family. Rotate laundry.

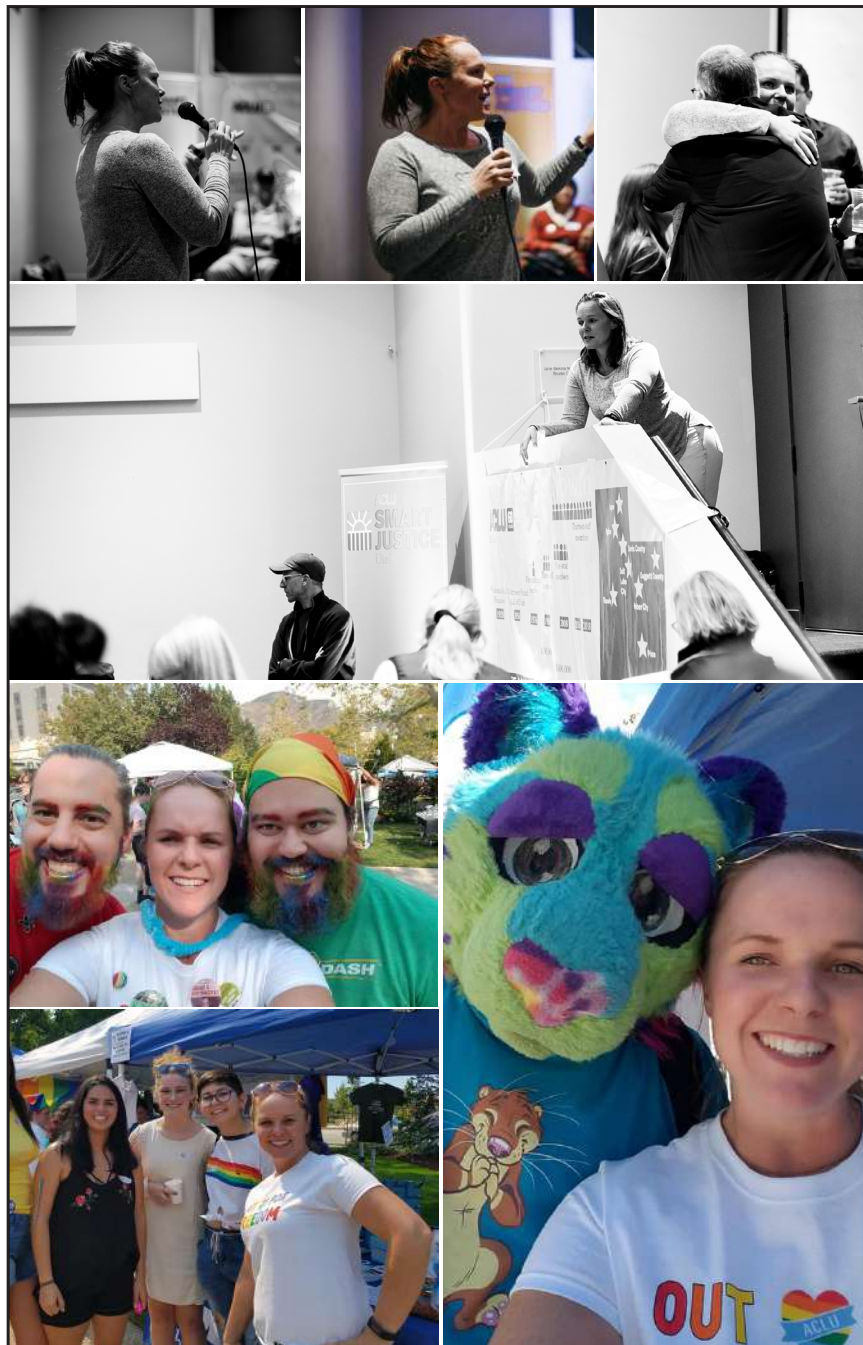
7:30 p.m.: Respond to the handful of emails I missed during the day. Confirm the next day's meetings.

8:30 p.m.: I'm done. I literally cannot do anymore. I shut my laptop and plug it in to recharge overnight. Time to get the kids ready for bed, sign homework, and help them prepare for the next day.

9:00 p.m.: Bruno, my mixed-breed rescue dog, reminds me it's time for his evening walk. I also make sure to get the rest of my steps for the day.

9:30 p.m.: Time for bed. But before turning in, I pick up Sapiens, by Yuval Noah Harari, and read for a half hour to fall asleep.

10:00 p.m.: Goodnight Southern Utah. Stay out of my dreams and I'll see you in the morning.



2020 Legislative Preview

Prepare for next year's legislative session with the ACLU of Utah's chief lobbyist.

With only 45 days to make laws, Utah's lawmakers and lobbyists rely on months of prep time to focus priorities and hone talking points. To find out what to expect when the next legislative session begins on January 28, 2020, we sat down with Marina Lowe, the ACLU of Utah's Legislative & Policy Counsel and long-time lobbyist.

Q: Can you tell us about a new issue we'll see debated in the next session?

Marina Lowe: I think we will see legislation to create new restrictions on how law enforcement can use facial recognition software. These limits are a direct response to recent headlines on how police have been secretly using facial recognition to aid criminal investigations. Now both advocates and lawmakers want to create guardrails to regulate use of this surveillance technology.

Q: Who are the ACLU of Utah's main partners in promoting privacy legislation?

ML: The answer might surprise you. During a legislative hearing last month on limiting facial recognition scans, some lawmakers were shocked to see the ACLU working with groups from the opposite side of the political spectrum, including the Libertas Institute and Eagle Forum. These groups share our concerns about the erosion of privacy, and we will stand with them on this issue. Our ability to look beyond political divides is one reason why we are successful at influencing legislation.

Q: Last year the ACLU of Utah opposed several bills limiting the right of women in Utah to access abortion healthcare. Will there be more in 2020?

ML: Unfortunately, yes. Even though the state is already fighting the lawsuit we filed



Marina Lowe (left) testifies with Rep. Jennifer Dailey-Provost earlier this year.

alongside Planned Parenthood against the legislature's 18-week abortion ban, they won't sit still. We are hearing rumors about additional anti-abortion legislation next year. If the legislature passes more unconstitutional laws, we will see them in court—again.

Q: How long have you been lobbying for the ACLU of Utah?

ML: I've been working at the ACLU of Utah since 2007, so 2020 will be my 12th legislative session.

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Unblocking the First Amendment

Announcing a new toolkit to help Utahns regain access to government social media pages.

Clicking the “block” button on social media pages is now much more perilous for Utah politicians and government agencies. Not only have more courts ruled that silencing online critics violates the First Amendment, but the ACLU of Utah has released a new toolkit to help people regain access to official government social media pages. Over the last few years, we've noticed an increase in complaints from people blocked from governmental Twitter and Facebook pages due to the content of their comments. During election season, we receive on average one complaint a week and recognize that many other violations go unreported. As the issue has heated up, our response has evolved. In August 2017, we sent letters to Utah's Congressional representatives, warning them that blocking people created

an “unconstitutional restriction on their right to free speech under the First Amendment.” In January 2018, we published a “Know Your Rights” pamphlet on the topic, explaining the legal background to First Amendment protections on social media. Our latest addition, released this month, is an online toolkit with updates on the latest court decisions, plus step-by-step advice on how to evaluate each blocking situation and take corrective action to restore First Amendment rights on social media.

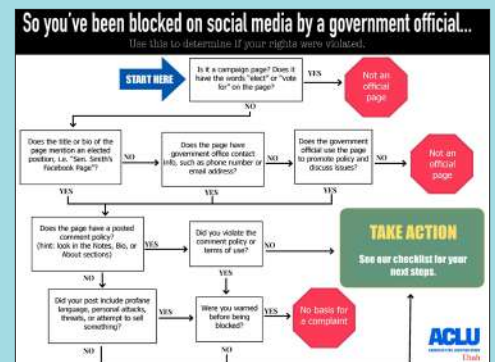
The toolkit contains:

1. A flowchart to determine if free speech rights were violated.
2. A checklist of next steps.

Download the new Social Media Blocking Toolkit:
www.acluutah.org/blockingtoolkit

3. A one-page explanation of the First Amendment's protection for social media discourse.
4. Two “Demand Letters” to download, customize, and send to the person(s) or organization(s) who blocked access.

Access the toolkit at the link below.



The new toolkit includes this flowchart.

Jails Deserve Justice

Sara Wolovick returns to the ACLU of Utah for a two-year fellowship focused on jail reforms.

Who says you can't go back?

When Sara Wolovick left the ACLU of Utah in 2017 at the end of a summer legal internship, she returned to Georgetown Law School to finish her degree. And now, as a newly minted J.D., Sara is returning to the ACLU as an Equal Justice Works Fellow to address the injustices and abuses within Utah's jail and prison system that she researched as an intern.

Sara's two-year fellowship is funded by an anonymous donor, giving our organization increased capacity to address the many challenges facing Utah's county jails, which led the nation in per-capita inmate deaths in recent years. Plus, with the likely release of Davis County's jail standards, inspection reports, and audits (following a protracted public records and legal challenge by the ACLU of Utah and others) Sara is arriving at



Sara Wolovick, Equal Justice Works Fellow

just the right time to make a difference. "I went to law school because I wanted to be better equipped to advocate for social justice and human dignity," Sara said. "I'm

grateful for the opportunity to contribute to an organization like the ACLU of Utah that works to protect and advance those interests through civil rights work."

Another bonus is Sara's law school experience working at the Georgetown Center on Privacy and Technology, a key partner currently helping us identify the rapid spread of surveillance technology across Utah that threatens our right to privacy (see page 6). Outside of her legal work, Sara appreciates art, both wandering through local museums and creating her own using watercolors and ceramics.

As she begins her new (but familiar) role at the ACLU of Utah, Sara looks forward to meeting community partners, diving into the jail standards and reports, and working to protect the civil rights of people held in Utah's jails and prisons.



SLC Rotary Club 24



9th and 9th Street Festival



Stop the Bans Rally



Protest at WVC ICE Office



Bears Ears Summer Gathering



2019 Pride Parade

ABORTION, continued from page 4

causing some of our supporters to forget that Utah is embroiled in a legal battle to keep abortion safe and accessible. Our attorneys have been very busy, however. On June 20, the court granted the state defendants' request for discovery, a legal process where both sides seek documents and other information related to the case. Both the ACLU of Utah and Planned Parenthood opposed the state's request for discovery because it would unnecessarily delay the resolution of the lawsuit. Although the court granted the state's



request for partial discovery, the judge stressed that the decision did not reflect how he would ultimately rule in the case. Since that time, our attorneys have been engaged in gathering documents and other discovery actions, which has lengthened the lawsuit by several months. However, by February 2020, we expect to be able to ask the court for summary judgment—making our case for a final ruling that Utah's 18-week abortion ban is unconstitutional.

SURVEILLANCE, continued from page 7

facial recognition features to their devices, citing “evidence of unequal and unreliable performance across races, ethnicities, genders and other identity groups.” Closer to home, Liberty Defense Technologies, the Massachusetts company that partnered with Attorney General Sean Reyes to test Hexwave 3D body scanners in Utah, warned potential partners “to use caution and not rely in any way on the correct functioning, effectiveness or performance of Hexwave.” Their warning is even more alarming when combined with the fact that these scanners are designed to be hidden in public places, allowing, as Reyes stated, “to potentially push the perimeter out further.” This wide-open approach to surveillance in and near public places should not only alarm the 260,000 Utahns with concealed firearm permits, but also anyone with a wearable or implanted medical device, because most scanners can't distinguish between a gun and a colostomy bag. For instance, a man who a body scanner identifies as acting erratically with a suspicious bulge at his waist might be a diabetic with a malfunctioning insulin pump. If security guards trust that the artificial intelligence running the scanner is accurate, they could target this person as an armed threat when he is actually suffering from a medical emergency. Lastly, law enforcement backers of increased surveillance often assert these tools will speed the resolution of kidnappings, terrorist attacks, and other high-profile but

rare crimes. And while these claims may be true, policymakers need to balance these exceptional situations with the widespread privacy violations that cameras on every street corner inflict on the whole population all the time. For obvious reasons, it's not wise to create policies dependent solely on extreme scenarios, otherwise our building codes would be based on asteroid impacts.

Our role

Utah is currently experiencing a surveillance revolution led by intrusive body scanners, more security cameras, facial recognition software, and artificial intelligence algorithms that link them all together. Recent headlines demonstrate that these systems are already at work in our communities, whether we know it or not. But Utah can also join a different revolution that is pushing back against a surveillance state. We can demand new regulations and limits on how deeply the government can peer into our private lives. We can start a new and broad discussion about the need to balance security, due process, and privacy rights. And when state and local police departments propose new and truly invasive surveillance systems, we can make sure the process is transparent, that our privacy is protected, and that the shiny new technology actually works. Otherwise, we will end up living under the dome of surveillance on the second street mentioned at the start of this article, thinking we are safe, but actually feeling very insecure.

PREVIEW, continued from page 9

Q: What bill are you most excited about working on next year?

ML: Criminal justice bills are always exciting because of the opportunities to collaborate with diverse partners, as well as the potential to change people's lives for the better. I am also keen to work on several bills focused on gender equality. These bills will ensure that women who are incarcerated have access to vital medications, create paid family leave policies, and promote a Constitutional amendment that elevates the rights of women in our state to an equal footing.

Q: Why does the ACLU lobby the legislature?

ML: From an efficiency standpoint, it makes more sense to improve a bill as it moves through the legislative process rather than wait until it becomes law and challenge it in court. Plus, the courts are not the best place to promote positive legislation—like the limits on facial recognition we will seek next session.

Q: How is the second session of a two-year term different from the first one?

ML: On one hand, lawmakers are more likely to propose legislation during this second session because they know the system better and have closer relationships with their

colleagues. But on the flip side, 2020 is an election year—with all the perils that brings.

Q: What advice would you give to someone who wants to follow the 2020 session?

ML: The Utah legislature is known for being accessible and easy to follow, starting with the award-winning website (www.le.utah.gov) that makes it easy to track legislation and hearings. But our part-time legislators are also approachable, and most are very happy to hear from their constituents. Right now, before the session begins in January, is an excellent time to contact your representatives and tell them what's on your mind.



Utah

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2019 Members Meeting

Learn about our new and ongoing work, discover fresh ways to get involved, and meet fellow civil liberty advocates.

Food and drink will be provided.



ACLU
Utah

Thursday - October 24, 2019

5:30 p.m. – 8 p.m.

Wasatch Retreat and Conference Center
75 S 200 E, Salt Lake City, UT 84111

To RSVP
for this event, send an email to Hannah at hnerone@acluutah.org

This is a free event open to all ACLU of Utah members and supporters. Non-members can attend and sign up to become a member at the door.