

ANDREY TKACHENKO
OCTOBER 18

CODY BELGARD
NOVEMBER 9

LIBERTY REPORTER

SPRING 2019

DELOREAN PIKYAVIT
APRIL 18

SPECIAL REPORT

Why did so many
Utahns die in police
shootings last year?

ELIJAH SMITH
APRIL 8

JASON WHITTLE
OCTOBER 22

JAMES LYLE KUEHN
OCTOBER 17

RICHARD GALVAN
NOVEMBER 30

ZANE JAMES
MAY 29

ACLU
Utah

At a time when words like “invasion” and “crisis” dominate the immigration discussion, why does the ACLU use the Statue of Liberty to represent its mission and values?



Brittney Nystrom, Executive Director

“The Statue of Liberty is a powerful icon across the world. For immigrants arriving to New York City in the early 1900s, to people crossing our borders today, Lady Liberty’s torch symbolizes freedom and opportunity. There is an American tendency to fondly remember earlier immigrants, while fearing current immigrants who are pursuing the same dreams. The ACLU protects the liberties and freedoms enshrined in our Constitution and laws for everyone no matter the headlines or attitudes of the moment. The Statue of Liberty endures, lighting the way for the huddled masses, as we push to achieve liberty and justice for all.”



Danielle Hawkes, Board President

“Despite the importance of the U.S. Constitution, our nation’s founding document remains almost unapproachable, a faded piece of parchment hidden behind glass. So when the ACLU sought a symbol to represent freedom and equality, the Statue of Liberty stood tall as the embodiment of our nation’s best ideals. Calmly facing outward to welcome generations of immigrants and refugees to our shores, Lady Liberty and her torch have been the symbol of the ACLU since the 1930s. Today, when immigrants and people of color are constantly under attack, the enduring symbolism of the Statue of Liberty, who has witnessed other trials in our nation’s history, is both strong and comforting.”



ACLU of Utah staff - January 2019

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

Staff

- Brittney Nystrom, Executive Director
- Marina Baginsky Lowe, Legislative & Policy Counsel
- John Mejia, Legal Director
- Leah Farrell, Senior Staff Attorney
- Cassie Taylor, Development Director
- Jessica Andrews, Director of Finance & Administration
- Rachel Appel, Community Outreach Fellow
- Angelica Guzman, Office Manager
- Jason Groth, Smart Justice Coordinator
- Margie Nash, Paralegal
- Sydni Makemo, Southern Utah Community Outreach Coordinator
- Jason Stevenson, Communications Manager
- Niki Venugopal, Development & Finance Assistant

Board of Directors

- Danielle Hawkes, President
- Heidi Chamorro, Vice President
- Bill Orchow, Treasurer
- Suresh Venkatasubramanian, Secretary
- Richard Van Wagoner, Legal Panel Liaison
- Roni Jo Draper, National ACLU Board Rep.
- Brian King, Governance Committee Chair
- Chelsie Acosta, Stephanie Burdick, Gina Cornia, Christine Arthur, Michael Aguilar, Forrest Crawford, Kass Harstad, Kathryn Lindquist, Robert Wood

Legal Panel

- David Reymann, Chair
- Richard Van Wagoner, Board Representative
- Jensie Anderson, Ruth-Arlene W. Howe, David Dolowitz, Stewart Gollan, Nubia Peña, Kristina Ruedas, Karen Stam, Aaron Tarin, Shane Marx, Mary Woodhead

Interns and Volunteers

- Claire Smith, Kamryn Broschinsky, Masami Kanegae, John Soltis, Pedro Padilla-Martinez, Audrey Meyer, Clara Bachman, Kimber Parry, Richa Bijani, Emmanuel Mutoka Amirikau

See You in Court, Again

The ACLU and Planned Parenthood join forces to protect reproductive rights in Utah.

Twenty-eight years after we filed a lawsuit to stop an unconstitutional abortion ban, we did it again.

On Wednesday, April 10, the ACLU of Utah Foundation joined with the Planned Parenthood Association of Utah (PPAU) to announce a lawsuit against H.B. 136, the 18-week abortion ban passed by the Utah

Legislature and signed by Governor Herbert earlier this year. Backed by dozens of supporters holding bright pink signs reading “Trust Women,” speakers from both organizations pledged to maintain the right for Utah women to access safe and legal abortion.

“We are here today because our legislature has decided once again to attempt to curb important reproductive rights,” Leah Farrell, Senior Staff Attorney for the ACLU of Utah, told the activists and reporters assembled for the event. “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, lawyers from Planned Parenthood and the ACLU of Utah secured a preliminary injunction against State defendants to prevent enforcement of

the 18-week abortion ban. This means there will be no disruption in care for Utah women seeking abortion services at or after 18 weeks while litigation proceeds in the courts. The injunction is the first positive result from our efforts to show, as many courts have already concluded, that attempts to restrict abortion before viability are clearly unconstitutional.

April’s legal action comes almost three decades after the ACLU and Planned Parenthood sued then-Governor Norm Bangerter to invalidate a 1991 Utah law that banned nearly all abortions. After

a series of federal courts held that the law violated a woman’s right to end a pregnancy, that ban never took effect.

The current lawsuit asserts that H.B. 136, like the 1991 law, interferes with a woman’s most personal medical decisions and violates fundamental constitutional principles that courts have repeatedly affirmed. The Utah Legislature’s recent 18-week ban adds to the long list of restrictive abortion policies already enacted in Utah. For example, Utah requires people seeking abortion health care to complete a state-mandated online module and a consultation session designed to discourage them from pursuing this option, and then wait 72 hours before receiving abortion care.

“Our Utah lawmakers decided they couldn’t be left out of this trend to attempt to chip away at *Roe v. Wade*,” Karrie Galloway, President and CEO of PPAU, explained at the press conference. “They are willing to waste hard-earned taxpayer dollars to control the private medical decisions of Utah women. All while doing nearly nothing to actually improve the health of Utahns.”

The costs of defending against a lawsuit are not insignificant. States that enact unconstitutional laws to restrict abortion access can be required to pay attorneys’ fees

“[The injunction] means there will be no disruption in care for Utah women seeking abortion services at or after 18 weeks.”



photo by Madeline Gardner

ACLU of Utah Senior Staff Attorney Leah Farrell explains the lawsuit against the 18-week abortion ban during a press conference on April 10.

for health providers and patients forced to defend their constitutional rights in court. In this case, the Utah Attorney General’s office estimates that responding to a lawsuit could cost Utah taxpayers \$2 million or more. While the case moves through the courts, the ACLU and Planned Parenthood will bear the cost of the litigation. However, access to safe and legal abortion care is a fundamental right, and defending constitutional freedoms is a battle we are always willing to fight.

IN THIS ISSUE

- 3 ACLU Files Abortion Lawsuit
- 4 San Juan County Votes
- 4 ACLU: Let DACA Recipients Practice Law
- 5 Smart Justice Takes on Parole Reform
- 5 Troubleshooting the Midterm Election
- 6 2019 Legislative Recap
- 8 COVER STORY: Police Shootings
- 10 Meet Angelica Guzman, Office Manager

STAY INFORMED

Follow the legal developments and public events related to the lawsuit, *Planned Parenthood Association of Utah v. Miner*, at this website:

www.acluutah.org/legal-work



Voting for a Change

Strong voter turnout and better ballot access leads to historic election results in San Juan County.

One of the ACLU's unofficial mottos is "Vote like your rights depend on it."

But what if you can't exercise that right?

Last November's midterm election was the first major vote in San Juan County since the ACLU of Utah reached a positive settlement with the county to provide in-person voter assistance and non-English translation services at polling places on the Navajo Nation. The settlement came after we sued the county in 2016 over its decision to switch to an exclusive vote-by-mail system and reduce in-person voting to only one location located far from many Native American communities.

Now that the spotlight has shifted from the courtroom to the ballot box, the ACLU of Utah sent two staffers to San Juan County to ensure that the settlement provisions were being followed during the midterm election. After spending several days at multiple locations in the county, the ACLU's impressions were generally positive. Turnout was high—a thousand more people voted in 2018 than during the last midterm in 2014—while feedback from Native American residents indicated that voting was easier this time. In addition, two Native Americans were elected to the county's three-person commission, giving the county's majority Native American population proportionate representation in local government for the first



San Juan County residents line up to vote at Monument Valley on November 6, 2018.

time in history. Despite these positive signs, our team also noted several areas that needed more work, including better training for poll workers, more education about voter ID requirements, and increased ballot security. The impressive voter turnout in San Juan County's midterm election would not have been possible without the newly-formed Rural Utah Project (RUP). Not only did RUP register 1,600 San Juan County residents to vote prior to the election, they also increased turnout by correcting voter lists, buying radio ads to promote the election, and driving residents to the polls. This summer, RUP is partnering with Google to assign rural houses in San Juan County—which often lack a

street address—a geo-located "Plus Code" address to assist with voting, mail delivery, and emergency services. More information about RUP's work can be found at www.ruralutahproject.org.

RUP is part of a coalition of more than a dozen groups convened by the ACLU of Utah to improve voting access and education across the state. Representatives from these organizations attended the coalition's first meeting this April and pledged to coordinate their efforts ahead of the 2020 election. Going forward, we plan to take the best practices we learned in San Juan County and leverage them to every corner of the state, so that all Utahns can "Vote like their rights depend on it."

Open the Bar

Undocumented immigrants qualified to practice law should be admitted to the Utah State Bar.

Should beneficiaries of the Deferred Action for Childhood Arrivals (DACA) program be admitted to the Utah State Bar, and does the Utah Supreme Court have the power to admit them? These were the key questions raised in a petition to the Court by two DACA recipients seeking to become licensed attorneys in Utah. DACA is a program that grants protection from deportation as well as work authorization to qualified undocumented immigrants who

came to the United States as children. To answer the questions, the Court invited the ACLU and others to weigh in as amicus curiae, or "friends of the court." Ultimately, about a dozen organizations and individuals submitted briefs, including law professors, local law firms, the Utah Legislature, and the U.S. Department of Justice.

In a brief the ACLU of Utah and the ACLU Immigrants' Rights Project submitted to the Court in late March, we replied to both

questions with an emphatic "yes." We believe that the state's judicial branch has the power to make this decision and that undocumented immigrants who meet the rigorous criteria for admission can and should be admitted to the Utah State Bar. We also noted that several other states already permit undocumented attorneys to join the bar.

Currently, attorneys who lack immigration status are not being admitted to the Utah

Continued on page 11

New Focus on Reentry Reform

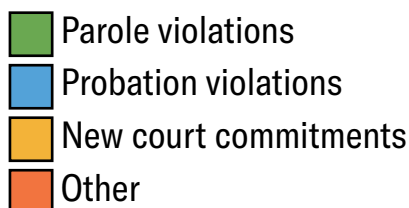
If we want to reduce mass incarceration, we also need to fix probation and parole.

The latest state corrections data indicates that mass incarceration is increasingly driven by people returning to prison for probation and parole violations, not for committing new crimes. With this trend in mind, Utah's Campaign for Smart Justice will focus more attention in 2019 on reforming Utah's probation and parole process.

In 2017, parole violations made up 51 percent of all admissions to prison in Utah, while probation violations accounted for another 25 percent of admissions—meaning that these

people with terminal illness, dementia, and other health concerns can have family members or attorneys request release to community supervision when remaining in prison no longer meets the ends of justice. The proposed guidelines will be made available for public comment before implementation this summer. Lastly, we filed a “friend of the court” brief to the Utah Supreme Court calling for increased due process protections during parole rescission hearings, a meeting where the parole board

Utah Prison Admissions (2017) by type of admission



Source: Utah Commission on Criminal and Juvenile Justice, Utah Justice Reinvestment Initiative (JRI): 2017 Annual Report (October 2017); Figure 20; Page 20; Note: refers to fiscal years.

community supervision violations accounted for three-fourths of all prison admissions. Many of these people return to prison for technical violations, which means that they broke a parole or probation rule—like missing a meeting or curfew—but they did not commit a new crime. Another study tracking groups of parolees showed that 46 percent of one cohort returned to prison within a year of release due to technical parole violations.

To address these issues, the ACLU of Utah and community partners created an inmate handbook to help people in prison navigate the parole system once they are released. Everyone entering prison will receive a copy so they can better prepare for reentry into the community. Supporting incarcerated persons before they're out of prison is crucial to reentry reform and to reducing the recidivism rate.

We have also advocated for improved compassionate release guidelines so that

can postpone or repeal previously-granted parole or release decisions.

Looking ahead in 2019, the Campaign for Smart Justice will continue our efforts to reduce Utah's prison population by, 1) Promoting legislation to improve probation and parole reentry programming, 2) Pushing Utah's Board of Pardons and Parole to improve evidence-based parole decisions, and 3) Examining potential due process violations in the decisions to revoke probation and parole. We believe we can continue to reduce mass incarceration in Utah by focusing our work on these priorities.



2018 ELECTION

Campaign Mode

We launched a dozen efforts to make it easier for Utahns to vote in 2018. Here are three examples of how we made a difference.

(1) Eight days before the election, we learned that Utah was one of two states where Uber and Lyft weren't offering discounted rides to the polls due to confusion about a state law against bribing people to vote. After we called the State Elections Office and a reporter at FOX13, a state attorney quickly declared that free rides to the polls were not illegal in Utah, resulting in new publicity about the availability of this helpful service.

(2) As Utahns received their mail-in ballots, we launched a “No Stamp? No Problem” social media campaign to inform voters living in the 18 Utah counties without pre-paid return postage—including Utah and Weber counties—that the U.S. Postal Service would still deliver their unstamped ballots. By targeting younger voters who often don't own or use stamps, our goal was to remove a crucial barrier to voting. We received media attention and responses from across the state, with one Facebook post (see image at right) shared 143 times to reach 12,497 people.



(3) After conducting a phone survey of county clerks about Election Day Registration, we sent out a press release warning that many counties in Utah were unprepared for this new statewide initiative allowing people to register to vote and cast a ballot on Election Day. We also highlighted other problems, including one county website that hadn't updated dates and deadlines since the 2016 election. A half-dozen media outlets—from the *Salt Lake Tribune* to the *Cache Valley Daily*—reported our concerns, resulting in last-minute updates to county websites and extra training for poll workers.

Our team tracked 100+ bills during the 2019 Utah Legislative Session, while focusing on these nine ACLU of Utah priorities.

#1. Protecting Digital Privacy

H.B. 57 Electronic Information or Data Privacy

This landmark bill makes Utah the first state to add warrant protections for digital information stored by third parties like cell phone carriers and cloud-based servers. This means police need a warrant to search data stored on a remotely-located Google Drive or Dropbox account, just like they would for a computer in your home. This innovative law builds on the U.S. Supreme Court's 2018 decision in *Carpenter v. U.S.*, an ACLU case which required warrants for location-based data. H.B. 57, however, goes further to protect personal data stored on third-party servers.

#2. Standing Firm on Reproductive Freedom

H.B. 136 Abortion Amendments

H.B. 166 Down Syndrome Nondiscrimination Abortion Act

This year the Utah Legislature passed two anti-abortion bills. However, we are confident that neither bill will become law. To stop H.B. 136, we joined the Planned Parenthood Association of Utah to file a lawsuit on April 10 in federal district court to prevent the bill's 18-week abortion ban from taking effect (see, "See You in Court, Again," page 3). Laws that ban abortion prior to viability clearly violate a person's constitutionally protected right

to an abortion. When the Utah Legislature passed a similar law in the early 1990s that banned abortions after 20 weeks, the U.S. Court of Appeals for the Tenth Circuit ruled it unconstitutional. No lawsuit is needed to block H.B. 166 because its block on abortions solely due to a Down Syndrome diagnosis won't take effect until a higher court like the U.S. Supreme Court or the Tenth Circuit specifically allows it.

#3. Fixing Immigrant Justice... One Day at a Time

H.B. 244 Misdemeanor Sentencing Timeline Clarifications

Sometimes a small change can make a dramatic difference. H.B. 244 did exactly that by reducing the maximum possible sentence for a misdemeanor in Utah by a single day—from 365 days to 364 days. The loss of one day protects Utah immigrants and refugees from federal immigration laws that consider misdemeanor crimes with 365 days of potential jail time the same as a felony,

triggering automatic deportation for a crime as minor as shoplifting. Working closely with our partners at the Refugee Justice League, we met with multiple legislators to explain the positive impact of this bill, enabling it to pass the House and Senate unanimously. Ranked as one of our top victories in 2019, H.B. 244 closes a gap in the complex web of immigration policy that will improve the lives of thousands of Utah residents.

#4. Passing Automatic Expungement

H.B. 431 Expungement Act Amendments

Years after someone completes a jail sentence or parole, their criminal record could rise up again to deny them housing, a job, or a chance to earn a degree. This bill alleviates these roadblocks by creating a pathway for automatic erasure of low-level criminal records after a set amount of time. This simple fix, championed by criminal justice advocates across the political spectrum, acknowledges the rehabilitative goal of the criminal justice system and also aligns with Utah's 2015 Justice Reinvestment Initiative.

#5. Holding the Line on Voting Rights

H.B. 133 Initiative Amendments

Before the Legislative Session, the ACLU of Utah ranked "protecting ballot access" as our

Talking Points: How We Delivered Our Message



Jason Groth

"This bill removes local authority from city and county governments to address policing needs and community feedback situated in a unique local context."

Testimony against H.B. 415 (Local Law Enforcement Structure and Governance Amendments), which restricted civilian review boards



Marina Lowe

"In addition to being completely out of step with science, medicine, and respect for basic human dignity, Rep. Nelson's bill is unconstitutional."

Press release on H.B. 153 (Utah Vital Statistics Act Amendments)



Marina Lowe, Jason Groth, and Jason Stevenson in action at the Utah Capitol.



“[this] new law is just the opposite—a nuanced piece of legislation that spans the twin chasms of criminal justice and immigration reform, while improving the lives of thousands of Utah residents.”

Op-ed on H.B. 244 (Misdemeanor Sentencing Timeline Clarifications)



Jason Stevenson



John Mejia

“Even as we recognize the harm done by hate crimes and the role for some government efforts to confront them, our unvarnished view of the criminal justice system cautions us against supporting lengthier prison or jail sentences to punish hate crimes.”

Blog post on S.B. 103 (Victim Targeting Penalty Enhancements)

top legislative priority. Fortunately, lawmakers did not meddle with Election Day Registration (EDR), a 2018 law that contributed to a substantial increase in voter turnout in last year’s midterm elections. Legislators also sidestepped a direct repeal of Proposition #4, the anti-gerrymandering ballot initiative supported by the ACLU of Utah. However, the legislature did pass several bills that will increase barriers to the ballot initiative process, including H.B. 133, which delays the implementation of future voter-approved initiatives for many months after an election. We will continue to monitor legislative efforts to repeal Proposition #4 in future sessions.

#6. Protecting Due Process for Students

H.B. 120 Student and School Safety Assessment

H.B. 373 Student Support Amendments

Proposed as a response to recent school shootings, H.B. 120 entered the session with strong support to fund security infrastructure and increased staffing. But the ACLU of Utah and the Disability Law Center raised concerns that the bill’s poorly-defined and regulated “threat assessment” teams would widen the school-to-prison pipeline to pull in more students of color and those with disabilities. By the end of the session, we had stripped away the most dangerous aspects of this bill, while increasing funding in H.B. 373 to pay for more mental health providers serving Utah students.

#7 Being Smart About Justice

H.B. 293 Plea in Abeyance Amendments

H.B. 189 Theft Amendments

We defeated two bills that sought to permanently dangle the threat of enhanced punishments over the heads of people pleading guilty to, or convicted of, low-level crimes. Using his experience as a public defender, Jason Groth, the ACLU of Utah’s Smart Justice Coordinator, testified in committee hearings about how these bills reinforced the antiquated idea that the purpose

of justice is to extend retribution for years after a person completes a sentence. Groth also explained how these bills weakened the tools prosecutors can use to resolve low-level cases, leading to higher court costs and incarceration rates.

#8. Standing up for Transgender Utahns

H.B. 153 Utah Vital Statistics Act Amendments

We used in-person lobbying and social media to derail this legislation that would have denied transgender Utahns the ability to change their sex on a birth certificate. Comparing H.B. 153 to North Carolina’s infamous “bathroom bill,” we explained how it deliberately and unnecessarily targeted transgender, non-binary and intersex individuals. Citing recent court decisions from Idaho and Puerto Rico, we also flagged it as unconstitutional. When the bill was assigned to a committee hearing, our team was prepared to intensify our opposition—including a joint social media campaign with the National ACLU—before the pressure by our lobbyists and other groups convinced the sponsor to pull the bill. Next session we hope to support legislation making it easier—not impossible—to change gender on Utah birth certificates.

#9. Walking the Line on Hate Crimes

S.B. 103 Victim Targeting Penalty Enhancements

Many people were surprised to learn the ACLU of Utah took a neutral position on this year’s high-profile—and ultimately successful—hate crimes bill. Due to our long-standing opposition to mass incarceration, and our belief that racial bias embedded in the criminal justice system results in uneven prosecutions, we could not support enhanced punishments for specific crimes. When asked by the Senate sponsor to testify on the bill, Marina Lowe noted these concerns, but also indicated our support of the accompanying resolution that protected unrelated free speech from being used as evidence of a hate crime. We know that hate and racism exist in our society, and we condemn crimes that strike at the sense of security and equality of all members of the targeted group. But lengthier jail sentences will not reduce or prevent crimes motivated by hate.

Watch all seven videos of “ACLU on the Hill”—our weekly recap of Marina Lowe’s lobbying efforts during the 2019 Legislative Session.



www.youtube.com/ACLUofUtah

The Deadliest Year

Officer-involved shootings increased three-fold in Utah in 2018, but why?

A cell phone.

A silver pellet gun.

A screwdriver.

A .45-caliber handgun.

These were the objects found with the bodies of four of the 19 people killed by law enforcement officers in Utah last year. In each case, officers fearing for their lives or the lives of others, shot and killed the person holding the item. After the shootings, the objects were recovered, cataloged, and more details about them emerged. A screwdriver was “modified.” A knife was 10 inches long. Sometimes, the investigations revealed how police misidentified non-lethal objects as dangerous weapons. A perceived gun was actually a cell phone. What looked like a rifle became a realistic-looking BB gun. When violence occurs and someone dies, every detail is important to try to understand what happened. These objects, both lethal and harmless, joined the complex narrative that grows around each shooting, which police departments call Officer-Involved Critical Incidents (OICI). Add in body camera footage, witness interviews, and social media commentary, and the events become tragic, self-contained stories unfolding on lawns, sidewalks, and parking lots across Utah. Some people refuse to watch, but many others tune in to form their own opinions and debate the details. Almost always, one question looms over these incidents: “Did it have to end this way?”

A record year

The cycle of fatal shooting, investigation, and public reaction repeated 19 times in Utah in 2018, the deadliest year in the 15 years of records kept by the *Salt Lake Tribune*. For comparison, six Utahns were killed by law enforcement in 2017. But after the count reset to zero on January 1, 2019, the public seemed to move on. The first four months of 2019 saw only one fatal police shooting in Utah. Perhaps last year’s 19 deaths were an anomaly. Maybe there is nothing we need to change.

Except we shouldn’t move on, and we do need to change our reaction and response.

Moving on is not easy for the families of the deceased. They continue to deal with the grief and anger of losing their loved one, along with many unanswered questions. If they decide to seek information beyond the official investigations, they may face entrenched resistance. Marvin Oliveros, whose brother Cody Belgard was shot and killed in Salt Lake City on November 9, says his family has received little support or transparency from the police departments investigating the incident. “After we made public records requests and asked for more bodycam footage, we stopped getting calls back,” he said. “At some point, we felt like we were being hung up on.” Nor is it possible for many of the officers involved to move on. Although police officers often witness traumatic events, treating mental health is a new priority in many departments that must overcome decades of resistance. Recent studies indicate that police officers suffer post-traumatic stress disorder (PTSD) at rates much higher than the general population, a factor that could influence their response to stressful situations.

Finally, our society shouldn’t move on. If we don’t examine why 19 people died in police-involved shootings in 2018, we won’t know how to respond if the trend starts to repeat in future years.

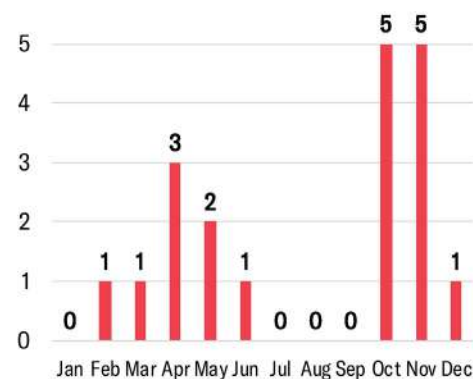
Utah’s reaction to a surge in county jail deaths should serve as an example. In late 2016, when newspapers like the *Ogden Standard-Examiner* began to note that record numbers of inmates were dying in Utah jails, both reporters and state officials realized that recordkeeping was spotty and explanations were lacking. As Utah earned the dubious honor of having the nation’s highest per capita jail death rate, lawmakers and advocates scrambled to investigate and address the problem. If jail deaths are too important for Utah to ignore, shouldn’t we devote the same energy to understanding last year’s three-fold increase in fatal OICIs? Plus, unlike jail deaths, the data on police shootings is available. Each incident is covered in the media, and follow-up investigations generate more records and attention. The first step to

uncover what made 2018 such a deadly year is to ask uncomfortable questions, starting with the most basic one: why?

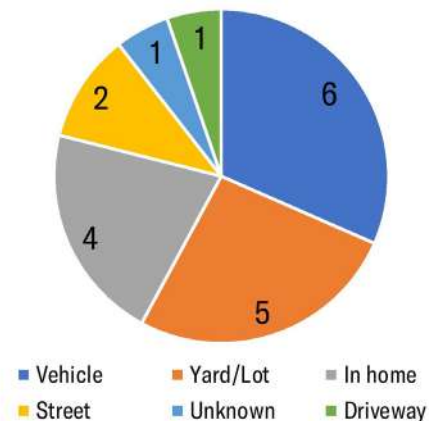
Seeking explanations

As soon as fatal police shootings set a record in 2018, explanations abounded. Some in law enforcement blamed it on the aggressive behavior of the people killed. “We are reacting to other people’s actions,” explained Salt Lake City Police Sgt. Brandon Shearer. “And there seems to be a shift in society of more people wanting to fight and oppose the police.” He said officers are encountering more individuals with mental health and substance use issues who don’t respond to verbal commands or non-lethal methods like batons and Tasers. Others claimed the number of shootings each year is random and shouldn’t be examined for any meaning. But any 200 percent increase is statistically important, even if the reasons are unknown. Salt Lake City Police Chief Mike

Incidents by month



Incidents by location



Brown admitted that no one knows why 2018 was such a deadly year. “A lot of people are scratching their heads as to what the cause is. We just don’t know,” he said.

Last year’s high number is also not a problem that can be pinned on one location or department. Although 13 of the 19 fatalities occurred in Salt Lake County, those incidents involved officers from 10 agencies. This scattering of incidents also means that each law enforcement team can point to its own low number of fatal shootings even though the statewide total set a record. Another challenge is that follow-up investigations usually focus on a single incident with less attention given to patterns appearing across multiple cases. In short, no one is reviewing the bigger picture even though data indicates that something is terribly wrong with that picture.

Reducing conflict

When Chief Brown joined the Salt Lake City Police Department (SLCPD) in the early 1990s, he said the “warrior cop” culture was

in full operation. “We were going home at the end of the day, no matter what,” he explained. But today, he claims, police culture is focused more on diminishing conflict. Officers are trained to maintain distance, which both reduces tension and generates more time to react. “We are taught that more time gives you more options,” said Sgt. Shearer. He added that officers sometimes have a fraction of a second to respond to hostile intent. Letting down their guard can be fatal. In November 2018, Officer David Romrell of the South Salt Lake Police Department was hit and killed by a car—the sole Utah officer to die in the line of duty last year. The driver of the car was later shot dead by responding officers. To prepare officers for unpredictable situations, many departments now offer training in de-escalation tactics and use realistic simulators. Others, like Salt Lake City’s police force, also give awards to officers who defuse tense confrontations. Chief Brown said his department has distributed de-escalation medals for more than 25 encounters since 2016. “In each of these incidents, officers would have been authorized to use deadly force, but they didn’t,” he said.

When de-escalation fails

Body camera footage from several fatal shootings last year appears to show Utah officers advancing quickly, reducing the space between them and their target, and shouting conflicting instructions—tactics that escalated the situations. When West Jordan police responded to a domestic violence call last October, three officers confronted Diamonte Riviere in a small apartment. Within 35 seconds of entering the cramped space, one officer fired two shots, killing Riviere, who had barricaded himself in a bathroom and threatened officers with a knife. The body camera footage shows officers removing a woman and child from the apartment and trying to use a Taser on Riviere before the fatal shots were fired. During a press conference on April 25, Salt Lake County District Attorney Sim Gill announced his office’s conclusion that officers were justified in using deadly force against Riviere. But he also acknowledged

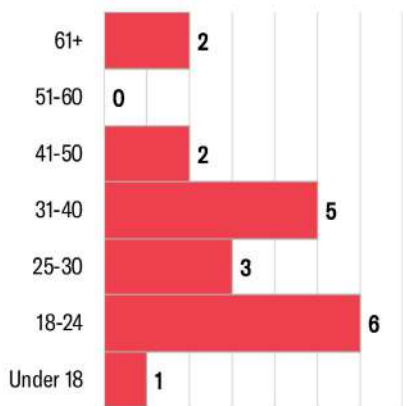
that public questions about police shootings were valid and important, including those asserting the officers’ response contributed to a fatal encounter. Gill’s official report suggested police should review these cases to determine if their reactions “narrowed the range of possible effective options to resolve the situation.”

Body camera footage of the April 18 fatal shooting of Delorean Pikyavit in a Salt Lake City neighborhood also raised questions about how police confront people suffering from mental illness and suicidal behavior. As Pikyavit, holding a knife and a broken pair of scissors, stood on a porch facing a SWAT team on the sidewalk, several officers can be heard telling him to drop his weapons and sit down. But seven times during the 90-second clip released by SLCPD, one officer can be heard telling another officer to stop shouting over the designated negotiator. When Pikyavit, who had dropped one of his blades, stepped off the porch, officers immediately shot him with a 40mm rubber bullet and a rifle round. Did Pikyavit leave the porch to sit down or to advance on the officers? It’s impossible to tell from the video, but confusing commands from multiple, shouting voices could make it difficult for someone suffering from mental illness to respond. “We see people on their worst days,” admitted Chief Brown. As a result, law enforcement should adapt their communication tactics to defuse encounters with people who can’t do it themselves. This is especially true when people call police to assist a family member experiencing a mental health crisis, and don’t realize the call could result in their relative being shot.

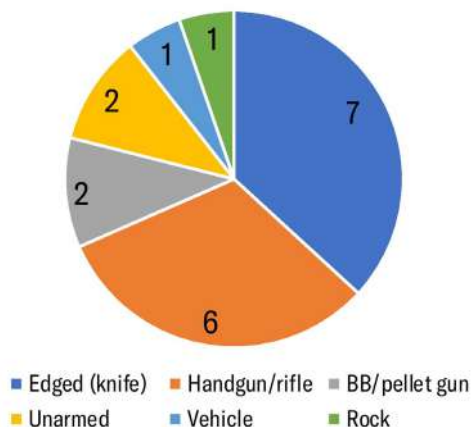
The role of accountability

If de-escalation training is the front-end of reducing fatal police encounters, then accountability is the backstop. Critics of law enforcement’s role in the rise of fatal shootings blame a lack of consequences for officers who are too quick to use deadly force and don’t follow policies. Utah Against Police Brutality (UAPB) has organized protests over several of 2018’s officer-involved shootings. UAPB member Jacob Jensen explained

Age of deceased



Weapon found at scene



Continued on page 11

Meet Angelica Guzman, the ACLU of Utah's Office Manager

With degrees in political science and human rights law, Angelica is committed to social justice work.

The ACLU of Utah's newest staff member, Angelica Guzman, is a force to be reckoned with. Driven by a "Don't tell me I can't do it, because I can and I will," attitude, Angelica has already put her considerable knowledge of immigrant and refugee-specific issues and her fluency in Spanish to good use.

"A big part of my wanting to join this incredible team was my desire to do more for underrepresented communities," she said. "And to use my knowledge of immigrant and refugee justice, as well as my training in human rights law, to help the ACLU in any way possible."

A native of Mexico, Angelica earned an undergraduate degree in political science and international studies from the University of Utah and later completed a Master of Laws in Saarland, Germany, in the field of International and Human Rights



Angelica Guzman, our new Office Manager

Law. Prior to the ACLU, she worked as a data manager and administrative assistant at the English Skills Learning Center in Salt Lake City. Angelica also interned at Catholic Community Services in the refugee

resettlement and housing departments.

While the ACLU of Utah has members, friends, and allies in every corner of the state—Angelica is seeking to bridge the gaps that remain with the diverse communities of Utah. For example, she is increasing our connections to popular Spanish-language newsletters, websites and social media pages—reaching crucial audiences for our busy immigration and voting rights work.

When she's not keeping the office and staff moving efficiently, she enjoys spending time with her family and friends, or reading and listening to music.

Recognizing Angelica's past nonprofit and educational experiences, as well as her demonstrated desire to use her skills to assist others, we are glad to welcome her to the ACLU of Utah team.

Voting is Fundamental

A new staff position and statewide campaign underscore our commitment to voting rights in Utah.

Last summer, the ACLU of Utah staff gathered for an all-day retreat to select our top goal for the coming two years. After considering the many civil rights and individual freedoms currently under threat, a clear leader emerged: the protection and promotion of voting rights.

By adopting this goal, we aim to build on our recent victories in voting rights, including the passage of legislation in 2018—after a decade of trying—that made Election Day Registration (EDR) permanent and statewide. During the November 2018 midterms, the first major election where all Utahns could register to vote and cast a ballot on Election Day, more than 34,000 people were added to the voter rolls using this common sense approach to expand access to the ballot box. The best part: These new voters are already registered for the next election.

Our advocacy also includes collaborating

with Lt. Governor Spencer Cox and the State Elections Office to reduce obstacles to voting and overcome barriers that arise. After we fielded a dozen voting complaints during the most recent election, we were fortunate to have the effective cooperation of the Elections Office staff to resolve each problem and to develop new policies to prevent their reoccurrence. Lastly, our goal of improved voting rights in Utah is about to take a bold step forward. This summer we will hire a full-time Voting Rights Coordinator—supported by a special grant—to create and implement a statewide Voting Rights Campaign to inform Utahns about their voting options



and ensure the 2020 election is free from interference. This campaign includes continuing our election monitoring in San Juan County (see "Voting for a Change," page 4) to ensure that voters on the Navajo Nation are not disenfranchised, as well as

empowering voters who may mistakenly believe a prior criminal conviction renders them unable to vote. We will be sharing much more information about our Voting Rights Campaign in the months leading up to the 2020 election.

Apply to be our new Voting Rights Coordinator:
www.acluutah.org/blog/item/1527

DEADLIEST, continued from page 8

that more accountability is needed to alter law enforcement behavior. “You won’t change anything if you lacquer on a layer of de-escalation training to a system that says, ‘Here’s a gun, go solve a problem.’” Jensen explained his point with an analogy: Imagine if all restaurants were required to have food-handling permits, he says, but no restaurant was ever inspected or shut down for bad hygiene. Without accountability, the permit is useless because the restaurants lack an incentive to stay clean. The same is true with police departments, he says: Without real accountability, de-escalation training and medals won’t change ingrained behavior. In response to Jensen’s criticism, officers at the SLCPD claim they are held accountable in multiple ways, including outside investigations by a separate police department to avoid a conflict of interest. But Marvin Oliveros dismissed the idea that police agencies can adequately investigate each other: “You can’t say you’re unbiased when you work with other officers day-to-day, sharing information, and pursuing suspects.” Whether these outside reviews are truly independent or not, the investigations have determined that officers were justified in using deadly force in every 2018 shooting incident reviewed so far. Jensen cites that trend as evidence the legal standards being used to clear police shootings are off. “All they have to say is that they feared for their lives and it’s justified,” he said. “Just because a person can’t be found guilty in a court of law, doesn’t mean that they are a

police officer we want in our community.” One new element of police accountability that was recently rejected was the independent authority of civilian review boards—appointed groups that provide oversight of OICs and complaints against law enforcement agencies. Reacting to calls from UAPB to strengthen these boards, the Utah Legislature passed a law earlier this year that blocks civilian review boards from any independent authority over hiring staff, setting budgets, or reviewing police rules or policies. Jensen, who lobbied unsuccessfully against the bill, H.B. 415, said it was a logical response from lawmakers who feared the impact of increased oversight. “They were afraid that police weren’t going to get a free lunch anymore for protecting their abusive officers,” concluded Jensen. Ironically, Utah lawmakers passed another bill this year, H.B. 406, that expanded the scope of encounters that can be investigated as OICs—including the use of a police car to injure someone, or an incident that occurs while someone is escaping custody.

More than protest

The shooting death of Cody Belgard on November 9, 2018 in Salt Lake City represents what is both tragic and correctable about last year’s record tally. After fleeing in a car from a police encounter, Belgard was tracked to a Rose Park neighborhood and approached by multiple officers. The grainy body camera footage of the nighttime confrontation is jerky and streaked by blue and red siren

lights. As officers yell at Belgard to get on the ground, his barely-visible body casts a long shadow against a nearby house. Belgard doesn’t comply with their orders as his body twists and sways. Then, officers in separate locations call out “he’s got a gun,” and “he’s pointing,” followed by “drop it” a fraction of a second before five of them start firing. Later, officers searching for a gun at the scene found only Belgard’s cell phone. Oliveros said he has watched the video of his younger brother’s death “hundreds of times,” using it to develop a timeline of the encounter that he says raises more questions. “They knew Cody was non-violent and not the original guy they were searching for, they knew he was unarmed, they had a K9 team around the corner, an officer opens fire 30 seconds after he gets there, and they shot him in the back,” said Oliveros. “They had many opportunities to prevent this outcome, but they were so amped up they couldn’t back down.” Oliveros, along with other family members, and groups like UAPB and the Rose Park Brown Berets, have organized rallies to memorialize Belgard and to demand meetings with city officials. They’ve also made public records requests for additional body camera footage, the autopsy report, and medical examiner reports. “The police don’t expect that people will do what we’re doing,” explained Oliveros. “No one expects to deal with something like this, but you learn how.”

By continuing to ask questions and seek answers, Oliveros is not only honoring his brother, but also identifying many of the troubling patterns that arose in last year’s officer-involved shootings. These include decisions by officers to avoid or abandon non-lethal force; the aggressive mentality of some officers; ineffective communication among officers; conflicting and confusing instructions for people to surrender; and how officers arriving late to a scene can upset the existing dynamic. Each of these questions not only applies to Belgard’s death, but also to many of the other officer-involved shootings in 2018. Families, law enforcement, elected leaders—and all of us—should continue to ask these hard questions to find new and better answers to keep more people in Utah alive.

BAR, continued from page 4

State Bar, a process controlled by the Utah Supreme Court. This situation has created a barrier to employment for law school graduates who have satisfied every other requirement to practice law in the state. When a reporter covering the issue for KUTV interviewed Ciriac Alvarez, a DACA recipient who has been accepted at several law schools, Alvarez explained her hesitancy to matriculate unless she can be admitted to practice law. “There’s no point in going to a firm and saying that yes, I am technically a lawyer, but I haven’t taken the bar [exam] yet.”

“We support the ability of Dreamers to reach their professional goals to continue making important contributions to our society,” explains John Mejia, Legal Director of the ACLU of Utah. “Because the Utah Supreme Court governs access to the Utah State Bar, we believe that the Court can and should grant admission to DACA recipients and other qualified immigrants.” The Utah Supreme Court is expected to issue a decision later this year.

Track the ACLU of Utah’s legal docket online:
www.acluutah.org/legal-work

ACLU

Utah

355 North 300 West
Salt Lake City, UT 84103
Phone: (801) 521-9862
Fax: (801) 532-2850
aclu@acluutah.org
www.acluutah.org

NON-PROFIT
U.S. POSTAGE
PAID
Permit No. 2578
Salt Lake City, UT

ACLU Community Block Party Utah

& AWARDS CEREMONY

May 16, 2019

**Torch of
Freedom
Award**



Ermiya Fanaeian

**Mickey
Duncan
Awards**



Leonard Gorman



Lauren J. Bernally

Navajo Nation Human Rights Commission

**2019
Youth
Activist
Scholarships**



Asha Pruitt



Jeniel Zimmerman



Sofia Catalina
Negrete-Retamales



Saida Dahir