



ISSUE 1, VOLUME 49, WINTER/SPRING 2013

DAVID FIDANQUE TO RECEIVE ACLU OF OREGON'S HIGHEST CIVIL LIBERTIES HONOR



David Fidanque

The E.B. MacNaughton Civil Liberties Award was created in 1962 to honor an individual or organization that, by particular deed or long record of service, has made outstanding contributions to civil liberties or civil rights in Oregon. Without question, David Fidanque meets the criteria for the MacNaughton Award with his long and impressive record of protecting and defending the civil liberties and civil rights of Oregonians. In several instances, his work has helped transform civil liberties in our state.

Many people are surprised to learn that Dave is not a lawyer because his knowledge of the law, legal procedures and case law is vast. Over the years, David has worked closely with many of ACLU's cooperating attorneys to develop legal strategies for advancing civil liberties through the courts.

Equally important, for much of his 31 years with the ACLU of Oregon, David has been the primary spokesperson for the organization explaining the significance of cases to the general public. He has spoken to countless audiences, given thousands of interviews and written numerous articles and statements; all with the purpose of furthering a better understanding of civil liberties and civil rights values in Oregon.

Beginning in the 1980s, Oregon was held hostage to an initiative process that was used increasingly, to put basic rights up for a popular vote, such as the numerous efforts to diminish a woman's reproductive rights, debase and devalue gay and lesbian people, roll back our free speech gains, and strip fundamental due process rights from individuals accused of crimes. David and the ACLU of Oregon became experts in every aspect of the initiative process. He led the organization's successful efforts to seek new strategies and solutions to the relentless initiative attacks on the Oregon Bill of Rights.

David is a respected ally and collaborator who has developed lasting relationships between the ACLU and many individuals and organizations throughout Oregon. When allies (or foes) disagree with the ACLU, they invariably respect the ACLU's position because David has delivered our message with clarity, forthrightness and principle.

Under his leadership, the ACLU of Oregon has grown in size, effectiveness and influence throughout Oregon. He has contributed to the nationwide ACLU, most notably when he was selected by his fellow Executive Directors of ACLU state affiliates to chair their council. It is a testament to David's intelligence and strategic thinking that his advice is sought by many who seek to improve civil liberties and civil rights in Oregon and beyond.

For these, and many other reasons, the ACLU Foundation of Oregon Board of Directors unanimously selected David Fidanque to receive the MacNaughton Award at our Liberty Dinner this year which also commemorates his 20th Anniversary as Executive Director. For information on how to purchase a ticket go to www.aclu-or.org/LibertyDinner. If you'd like to purchase a tribute to David, call 503.552.2101.

STOP DISCRIMINATION AGAINST IMMIGRANTS

As President Obama and Congress take up immigration reform, the ACLU urges policymakers to stop discrimination against immigrants. Immigration reform must:

- create a welcoming roadmap to citizenship for aspiring Americans living in and contributing to the U.S.;
- not create a national ID system or include measures that harm fundamental privacy rights;
- end state and local intrusions into immigration policy and enforcement, as well as ban racial profiling at all levels of government;
- address systemic due process problems with immigration detention and deportation;
- transform border enforcement, which has grown wastefully and abusively without regard to genuine public safety needs;
- address immigration enforcement's contribution to America's mass incarceration problem; and
- include the ability of committed and loving couples in same-sex relationships to sponsor their spouse or permanent-partner in the same way opposite-sex couples have long been able to under current immigration law.

Read more about ACLU's immigration reform principles at aclu.org.

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AN INTERVIEW WITH THE EXECUTIVE DIRECTOR

This year marks David Fidanque's 20th Anniversary as Executive Director of the ACLU of Oregon and 31 years since he joined the affiliate's staff. Under David's leadership and management, the ACLU of Oregon has grown and adapted to meet the challenges of the times. To mark this milestone, Associate Director Jann Carson sat down with David to talk about his years with the ACLU. This interview has been edited for length.

JC: Why have you stayed with the ACLU for so long?

DF: [Chuckles] The truth is that working for the ACLU really is fun. And it's challenging. There is so much compelling work to do, always. That's the thing about the ACLU – the work never goes away. The job of the ACLU is to never let down our guard against attempts to weaken civil liberties and the Bill of Rights. At the same time we look for opportunities to advance civil liberties and civil rights. That's what keeps me going, what keeps us all going.



David Fidanque

JC: Does human nature mean that every generation needs to learn its own civil liberties lessons?

DF: Freedom is not something that can be taught or that can be fully understood by anyone without having to fight for it. The battles to protect and advance freedoms are not always fought against people who are evil. To paraphrase Justice Brandeis, the greatest danger to liberty comes from people who are well meaning, but without understanding. So yeah, I think there's a critical event that awakens people's appreciation for freedom in every generation, usually, in every decade.

JC: There are lots of organizations that focus on a single issue but ACLU covers so many issues. Is that a strength or a weakness for the organization?

DF: The breadth of ACLU work is definitely one of its strengths. We see, and help others see, how civil liberties issues are all connected. The ACLU is very good at what it does. In Oregon and nationwide, we bring value to every civil liberties struggle.

JC: What is one thing you wish supporters better understood about the organization?

DF: We don't blow our own horn as much as we should. Much of our work goes unnoticed because we do it behind the scenes. Too often we're so busy doing the work, we don't have the time to stop and let our supporters know that we just accomplished something that will pay big dividends down the road. And that's because we're a very lean organization, not just in Oregon but nationwide. The public has an image of ACLU that somehow we're unstoppable; that all it takes is for the ACLU to file a lawsuit and achieve lasting victory. Well, I wish it were that easy. The courts are much more hostile to civil liberties than they were 20 or 30 years ago. No victory we win in court is ever secure. And even when we win in the legislative arena, unless the public has some understanding of the principle - unless we can make it relevant to them – then we can't protect those victories.

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ACLU FILES IN COURT TO PROTECT PRIVACY OF DRUG PRESCRIPTIONS

ACLU Challenging Government Efforts to Access Confidential Records Without a Warrant

Last month, the American Civil Liberties Union and the ACLU of Oregon filed a complaint in court challenging the federal Drug Enforcement Administration's claim that it can access Oregonians' private prescription records in a state database without a warrant. In November, the State of Oregon sued the DEA in federal court to prevent the agency from circumventing a state law requiring a warrant for such access. The ACLU filed a motion to intervene in the case on behalf of several patients and a doctor whose prescription records are in the database.

In 2009, Oregon enacted legislation to create the Oregon Prescription Drug Monitoring Program (PDMP), which records information on millions of prescriptions for Oregon patients. The database tracks prescriptions needed to treat chronic and acute pain, anxiety and panic disorders, weight loss associated with AIDS, Attention Deficit Hyperactivity Disorder, and other conditions.

In order to safeguard the privacy and security of these records, the Oregon law includes a prohibition against PDMP releasing records to any federal, state or local law enforcement official without a warrant based on probable cause. However, the DEA has been issuing the PDMP administrative subpoenas, which do not involve a judge, seeking prescription records of patients and physicians. The State of Oregon believes that complying with the subpoenas will put the PDMP in the position of violating Oregon law, so it has asked a federal judge to clarify whether the federal regulation used by the DEA preempts state law.

"Oregon law and the U.S. Constitution clearly require the DEA to get a warrant just like any other law enforcement agency," said David Fidanque, Executive Director of the ACLU of Oregon. "The ACLU opposed the creation of the Oregon prescription database precisely because we are concerned with protecting the privacy of patients and doctors who have done nothing wrong. The Legislature agreed to add the search warrant requirement to partially address that concern."



The ACLU clients seeking to intervene in the state's lawsuit include the ACLU of Oregon, on behalf of the patients and physicians among its approximately 11,000 members whose prescription records are contained within the PDMP and who object to the DEA accessing those records without a warrant. The

ACLU also represents four patients and one physician who are using pseudonyms in the lawsuit to protect their privacy. Each of the patient-clients takes medications prescribed by their physicians that are appropriate for their medical conditions and are schedule II, III or IV drugs under the Controlled Substance Act. The physician-client specializes in internal medicine, geriatrics, and hospice care.

The case is *Oregon PDMP v. U.S. DEA* in the U.S. District Court for the District of Oregon. The attorneys in the case are Ben Wizner and Nathan Wessler of the ACLU Speech, Privacy and Technology Project, and Kevin Díaz of the ACLU Foundation of Oregon.

The ACLU's complaint and motion for intervention can be read at: www.aclu-or.org

Glenn Greenwald Guest Speaker at March 2nd Liberty Dinner



Civil Rights and National Security columnist and author of three *New York Times* Bestsellers, Glenn Greenwald has been named one of the 25 most influential political commentators in the nation by *The Atlantic*. His newest book, *With Liberty and Justice for Some* (available at our Liberty Dinner), exposes America's burgeoning two-tiered system of justice, granting special rights to the political and financial elite while imprisoning greater and greater numbers of the economically powerless.

TICKETS AVAILABLE AT www.aclu-or.org/LibertyDinner or call 503.552.2101

PRIVACY, DISCRIMINATION AGAINST IMMIGRANTS, AND PUBLIC SAFETY REFORM TOP 2013 LEGISLATIVE AGENDA

Oregon's 77th Legislative Session is underway. This session presents exciting opportunities to make positive advancements in each of ACLU of Oregon's strategic priority areas, as well as defend civil liberties from encroachment.

Privacy & Technology

Advancements in electronic and digital communication and surveillance technology continue to race ahead, making our long-outdated privacy laws inadequate tools to protect our fundamental rights. This session we will prioritize work in this area, urging the Legislature to consistently apply constitutional principles to this changing technology.

With Representative Margaret Doherty (D-Tigard), we will introduce the Social Media Privacy Act that would prohibit employers and schools from requiring or requesting disclosure of passwords of any password-protected accounts. A growing number of employers and schools are demanding that job applicants, employees and students hand over the passwords to their private social networking accounts such as Facebook. These demands are a clear invasion of privacy. Private activities that would never be intruded upon offline should not receive less privacy protection simply because they take place online.

With Representative John Huffman (R-The Dalles), we will introduce a bill that will provide guidance to law enforcement as to how to protect privacy in the use of drones. In April the Federal Aviation Administration gave approval to several law-enforcement agencies nationwide to use unmanned aerial vehicles, or "drones," in their local airspace. No Oregon agencies received approval, but that status should be no indication of their interest or intent to use them in the future. Our bill will clarify that drones should never be used for indiscriminate mass surveillance of Oregonians, that any surveillance should be kept secure and destroyed promptly after it is no longer needed, and that domestic drones should never have the capability to carry or discharge weapons.

In addition to these two priority bills, we will focus our efforts this session on educating all legislators about the importance of privacy rights in the digital age. Advancements in the amount and types of data that can be collected and stored about us – whether it be medical records in electronic for-

mat, prescription drug records through the Prescription Drug Monitoring Program, biometric data collected through facial recognition cameras, or anything in between – invite government into our private lives in unprecedented ways. It is critical that privacy laws keep pace.

Discrimination Against Immigrants

The fundamental constitutional protections of due process and equal protection embodied in our Constitution and Bill of

Rights apply to *every* person, regardless of immigration status. When the government has the power to deny certain rights or process to one vulnerable group, the rights of all of us are threatened. We will work this session to fend off any efforts to add new, discriminatory policies into Oregon law and we will collaborate with co-



alition partners to advance these two affirmative bills:

We anticipate that Governor Kitzhaber, Oregon business leaders and a broad coalition of community organizations will propose legislation to restore access to Oregon driver licenses for all Oregon residents, regardless of their ability to provide proof of lawful presence in the country. The purpose of a driver license is to ensure that only qualified drivers get behind the wheel, not to utilize our state's transportation agency as a kind

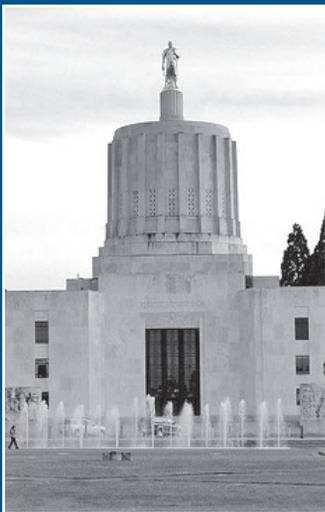
of de facto extension of federal immigrant enforcement. Driver license restoration is a needed correction to Oregon law that will be good for business, public safety, and the community at large.

Private activities that would never be intruded upon offline should not receive less privacy protection simply because they take place online.

Similarly, the Tuition Equity Bill would ensure that every Oregonian has fair access to quality and affordable higher education. It would make it possible for all Oregon students, regardless of citizenship status, to be able to pay in-state tuition if they (1) have attended an Oregon high school for at least three years, (2) have graduated from an Oregon high school, (3) have been admitted to an Oregon University System institution, and (4) they are working towards residency. This bill passed the Senate in 2011 but failed in the House. We are hopeful that we have the support we need this session to get the bill to the Governor's desk for signature.

Criminal Justice and Police Practices

Since it was first created by the Governor in July 2011, we have been following closely the work of the Commission on Public Safety. Charged with developing policy recommen-



GET INVOLVED: Bill of Rights Action Network Webinar

Friday, March 15

Noon – 1 p.m.

Free

No need to travel to Salem to support ACLU's work in the state legislature! Legislative Director Becky Straus will host a free, web-based information session for ACLU members and supporters. The webinar will provide an overview of our work in the legislative session, updates on our priority bills, and information on how you can get involved in the fight to protect civil liberties in Oregon.

To reserve a space, please email Sarah Armstrong, sarmstrong@aclu-or.org.

datations that would slow the rapid growth in Oregon's prison population and the public safety budget, the Commission forwarded a list of options to the Governor in December and is prepared to engage with the Legislature throughout the session to encourage their passage.

The list of options from the Commission, whose twelve members collectively represented key stakeholders at all points of the criminal justice spectrum, recognize that accountability is critical for criminal offenders and as is crime prevention. Our system needs to be more effective at breaking the cycle of crime and focusing public safety resources where they are needed most. Judges should have the discretion to determine appropriate sentences for some offenses that are currently subject to mandatory minimum sentences and the Department of Corrections should have the authority to provide incentives for participation in treatment programs, and to determine if prisoners are better suited to transfer from prison to mandatory supervision by a parole officer.

Oregon is ready to join the growing list of states committing to justice re-investment. With our coalition partners, including business leaders, human services advocates, labor unions, and a long list of others, we will dedicate much of our energy this session toward smart reform of our public safety system.

Protecting Civil Liberties

The Oregon Constitution allows the legislature to stay in session through July 13 (five-day extensions are permitted if each chamber approves by a two-thirds vote), but legislators are hoping and planning for adjournment on June 28th. Undoubtedly, this long session will bring discussions on countless other topics and we will be working hard to protect civil liberties not only in the context of our priority bills but relating to free speech, reproductive freedom, LGBT rights, religious

freedom, drug policies, voting rights, women's rights, prisoner rights, death penalty, national security issues, and more. If you want to stay informed and be notified of important civil liberties issues in the legislature we encourage supporters to sign-up for our email Action Alerts by clicking the TAKE ACTION button on our home page: aclu-or.org.

With a Single Sentence, You Can Defend Freedom Now and Forever.

Right now, by adding the ACLU to your will, you can leave a legacy of liberty for generations to come and defend our freedom today.

Name the ACLU in your estate plans and the LuEsther T. Mertz Charitable Trust will make a cash matching contribution of up to \$10,000 to the ACLU today, while matching funds are available.

For simple bequest language to include in your will and for information on other gifts that qualify for the Legacy Challenge, visit www.aclu.org/legacy or call toll-free 877-867-1025.

AMERICAN CIVIL LIBERTIES UNION
LEGACY
CHALLENGE



GASQUE V. CITY OF PORTLAND

Vindication in “Know Your Rights” Case

On November 7, 2012, nearly three years to the day after he was arrested in Old Town in downtown Portland for refusing to consent to a Portland police officer’s request to search him without probable cause, José Gasque received justice in a Multnomah County courtroom.

Late on the night of November 14, 2009, José Gasque and Mike Be Dell were enjoying the music and bar scene in Old Town Portland. In between establishments, Mr. Gasque and Mr. Be Dell stopped for a cigarette in what they thought was an alley between NW Couch and Burnside on the property of the abandoned Burger King. While Mr. Be Dell finished his cigarette and Mr. Gasque sat on a curb, a Portland police cruiser drove onto the property shining a light on the men. Officer Tequila Thurman asked the men for identification and what they were doing. Both men cooperated and the records check of their identification showed no outstanding warrants, arrests or convictions for either man.

Rather than asking the men to move on, Officer Thurman told the men she wanted to search them. Mr. Gasque produced his ACLU “Know Your Rights” wallet card and respectfully told the officer that he was invoking his Fourth Amendment rights and declined to consent to a search. The officer made it clear that if they did not consent to a search she would arrest them. Mike Be Dell consented, was searched and allowed to leave the premises. José Gasque again declined to give up his Fourth Amendment right believing he had done nothing to warrant this intrusion. The officer arrested Mr. Gasque for criminal trespass, searched him incident to the arrest, handcuffed and transported him to the Multnomah County jail where he was booked, photographed, fingerprinted and held for approximately five hours.

Soon after this event, Mr. Gasque contacted the ACLU of Oregon. It did not seem right to him that he was arrested for invoking his constitutional right to be free from an unreasonable search of his person. The ACLU agreed. The ACLU of Oregon agreed to defend Mr. Gasque in his criminal case and to bring the subsequent civil case against the Portland Police Department for violating his rights. Months after the arrest the District Attorney, after reviewing the evidence in Mr. Gasque’s defense, dropped the criminal charges moments



José Gasque (2nd from left) with his ACLU Legal Team: Emily Garber, Bronson James and ACLU of Oregon Legal Director Kevin Díaz.

before the violation hearing was set to begin. Next the ACLU of Oregon brought a civil lawsuit against the city of Portland for violation of Mr. Gasque’s constitutional rights. Finally, after a three day jury trial, José Gasque was vindicated.

Multnomah County Circuit Court Judge Kathleen Dailey held that as a rule of law, the property where Mr. Gasque and Mr. Be Dell were confronted by police was open to the public. Therefore the parties agreed there was no probable cause for Officer Thurman to arrest Mr. Gasque for criminal trespass. Judge Dailey then instructed the jury to return a directed verdict finding that Mr. Gasque succeeded on his claims of false arrest, assault and battery. Based on these findings the jury awarded Mr. Gasque \$11,250 to compensate him for damages stemming from the violation of his constitutional rights.

We extend our thanks to ACLU cooperating attorneys Tiffany Harris and Ben Anderson of Pacific Law Group who defended Mr. Gasque at the violation hearing and worked on the initial stages of the civil lawsuit. A special thanks goes to Bronson James of JDL Attorneys who was the lead trial attorney for Mr. Gasque’s claims against City of Portland. Our appreciation and congratulations also goes to ACLU of Oregon Legal Fellow Emily Garber who second chaired the trial.

The IRA Charitable Rollover extended for 2013

Bill of Rights defenders who are 70 ½ and older can transfer (or “rollover”) up to \$100,000 from their IRAs directly to the ACLU Foundation of Oregon, without having to recognize the transfer as income. Donors should consult their tax advisors about their specific situations. Question: call 503.552.2101.

Follow us on Facebook and Twitter for more photos, event postings, and breaking news:



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Stay informed about civil liberties in Oregon at www.aclu-or.org

VOLUNTEER SPOTLIGHT: KIMBERLY MCCULLOUGH

How long have you volunteered with ACLU?

I first volunteered for the ACLU of Oregon in September of 2010, at the Uncensored Celebration. Since then, I have volunteered at the ACLU information table at various events, volunteered at the ACLU of Oregon doing client intake work during the summer of 2011, and worked as the Volunteer Coordinator and then the Conference Coordinator for the ACLU Northwest Civil Liberties Conference. I have also served on the board of the Lewis & Clark Law School ACLU Student Group for the past two years.

Why do you volunteer with ACLU?

I believe, with my whole heart, in the equality of all people, the importance of free expression, the value of privacy, and the right to fair treatment by the government. Over the years, I have been continuously impressed and inspired by the ACLU's dedication to those very things. The ACLU has done so much to protect our precious rights and liberties. Joining the ACLU as a volunteer has given me the opportunity to connect with an incredible community and to find my own way to contribute to this very important work. I am proud to be a part of such a wonderful organization!

What is your favorite ACLU volunteer memory?

Last summer I volunteered at the ACLU table at Portland Pride. On more than one occasion that day, I was approached by teenagers asking what the ACLU was. Each time, as I explained the history of the organization and the various liberties the ACLU works to protect, I watched their eyes light up as they realized there was an amazing legal organization fighting for their rights. The experience brought me back to my own memories of high school. As a young person, I was often dismayed by inequality and injustice in the world. Then, when I first learned about the ACLU, about 20 years ago, my angst



Kimberly tabling at Portland Pride.

was replaced with hope and determination. At Pride, it felt terrific to pass a bit of that feeling along to the next generation. And it made me want to do more...

Kimberly McCullough is starting her final semester at Lewis & Clark Law School. She is currently the Submissions Editor of the Lewis & Clark Law Review, and previously worked as a Teaching Assistant in Lewis & Clark's Legal Writing Department and as a Research Assistant to Professor John Parry. She also worked as a summer associate at Davis Wright & Tremaine LLP this last summer. She grew up in Seattle and attended the University of Washington, graduating with a degree in English with an emphasis in Creative Writing. In her spare time, she loves to dance, make arts & crafts, DJ, and spend time with friends.

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2013 SLATE OF NOMINEES FOR THE AC

Each of the following nominees, for three-year terms, is an incumbent running for a new term of office on the Board. Term limits allow individuals to serve two, three-year terms and require a full year off the board before becoming eligible to serve on the board again.

Stasia Brownell (Portland)



As a long-time volunteer for the ACLU-OR, I am dedicated to increasing awareness of the important work that the ACLU does across Oregon and increasing organizational engagement of the next generation of ACLU supporters. I have contributed to the success of events like the Annual Liberty Dinner, Banned Books readings, Uncensored

Celebrations, speaking engagements with college students and community members, and numerous educational events. I find that my professional career in marketing allows me to see opportunities for the ACLU of Oregon to reach a broader audience, efficiently engage with them, and retain their membership and awareness.

Michael Cartwright (Dallas, Polk County)



While advocating for the safety of people with developmental disabilities, I investigated, trained and supervised 70 abuse investigators statewide to investigate allegations of abuse involving people with developmental disabilities living in group homes, and adult foster homes. In Oklahoma, I worked with County District Attorneys' offices, and administered a drug and alcohol diversion program. I advocated for deferred sentencing in order for the defendant to participate in a recovery program, instead of being convicted and sent to prison. I served on the board for the Oregon Assembly for Black Affairs (OABA). The purpose of the OABA is to improve the political, educational, social, legal, and economic status of Blacks in Oregon. I have a Masters in Criminal Justice Management and Administration.

We would like to introduce you to the nominees for the ACLU of Oregon Board of Directors. There are eight at-large positions to be filled in 2013. The Nominating Committee of the Board has several criteria to balance as it seeks candidates to run for election to the board. For example, ACLU policy requires that we strive to meet affirmative action goals for gender and racial/ethnic representation on the board in proportion to Oregon's population, as well as representation from people who self-identify as a person with disabilities or as lesbian, gay, bisexual or transgender.

In addition to our affirmative action goals, the Nominating Committee also seeks candidates who will provide geographic, age and experience diversity. The committee also asks each candidate to commit to several expectations, such

Harriet Merrick (Eugene)



Over the years, I have served on the ACLU of Oregon Board of Directors approximately nine years. During that time, I also served on the Development Committee, Capital Campaign, Nominations, Legislative, Executive, Budget, Development, Education, Field Review committee and a number of events. I bring 32 years of University business

management, executive and board chair experience from ACLU coalition partners Basic Rights Oregon and Planned Parenthood of SW Oregon. As an ACLU client in a successful legal challenge, I know first-hand the ACLU's dedication and persistence to justice, defense of our constitution, the Bill of Rights and issues valued by the ACLU. I hope to continue to serve this marvelous organization with your vote.

Jennifer Middleton (Eugene)



I am a shareholder at Johnson, Johnson, Larson, Schaller, PC, in Eugene, where I represent plaintiffs in employment and civil rights cases. Before I moved to Eugene in 2006, I served as a staff attorney at the national headquarters of the ACLU in New York in its Lesbian & Gay Rights Project, and as a senior attorney at Lambda Legal Defense &

Education Fund. I have dedicated my legal career to advancing civil rights and economic justice, building on work I did before law school as a community and labor organizer.

ACLU OF OREGON BOARD OF DIRECTORS

as attendance at the six bimonthly meetings of the board and to actively participate in the financial stewardship of the organization, including fundraising duties.

This year, members will vote on 8 of the 24 at-large board positions. Ballots will be mailed to all current statewide members in early April and are due in the Portland office no later than 5 p.m. on May 6.

Additional nominees may be made by a petition of any 50 members. A petition shall state the term for which a candidate is nominated; it shall also include the candidate's background and qualifications and a signed statement expressing the nominee's willingness to serve if elected. Such a petition must be received in the Portland office no later than 5 p.m. on March 25, 2013.

Henry "Hank" Miggins (Portland)



Hank currently serves on the Board of Directors of the National ACLU representing the Oregon Affiliate and is President of the Board for Airway Science for Kids. Most recently he served on the Portland Independent Police Review/Citizen Review Committee and Portland Charter Commission. He retired from active duty in the United States Air Force, where we was a Certified Internal Auditor; served as Vice President of financial affairs at Ft. Wright College in Spokane, Wash.; as Multnomah County Deputy Auditor, as Executive Assistant to Multnomah County Chair Gladys McCoy, and as Chair of the Multnomah County Board of Commissioners after McCoy's death; as City Manager for the City of Spokane, Wash.; and as the public member on the Oregon State Board of Bar Governors.

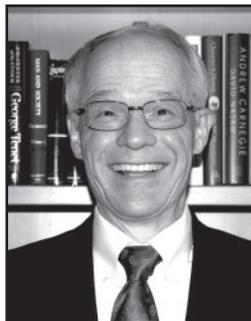
Fred Neal (Portland)



Currently serves on ACLU-OR Legislative and Liberty Dinner Committees; Former ACLU-OR representative to National Board; former National Affiliate Affirmative Action Officer (NAAAO) for National Board; Former Chair, National Board Special Nominating Committee. Member of ACLU of Oregon Board 1987-1993 and 2000-2003. Recipient, 1992 Oregon ACLU Civil Liberties Award. Retired attorney, lobbyist and bureaucrat. Vice-Chair, Oregon

State Capitol Foundation. Former board member, National Association of Counties, Oregon Agri-Business Council, and Right to Privacy PAC.

William J. Rainey (Sisters)



Bill Rainey grew up in Oregon and Washington. He earned a BA from Harvard University and a JD from University of Michigan Law School. Bill served as General Counsel for various Fortune 500 companies in various parts of the U.S. He has served on many nonprofit boards and currently is a Board member of the American Red Cross Oregon

Trail Chapter (Portland) and Chair of the Deschutes County Planning Commission. He is a member of the ABA's Section of Individual Rights and Responsibilities and has actively promoted the interests of minorities and women in the corporate workplace.

P.K. Runkles-Pearson (Portland)



I recently became Assistant General Counsel at Portland State University, after ten years of private practice in employment law, constitutional law, and appeals. I am honored to be nominated to the ACLU board for a second term. It has been my pleasure to serve on the Board and the Lawyers' Committee and to act as a cooperating attorney

in several cases, including the ACLU's victory for civil rights in *Powells Books v. Kroger*. During my service, my belief in the ACLU's mission has only deepened. It is essential that we continue our vigilant defense of civil liberties.

**ACLU of Oregon 2013
ballots will be mailed to
all members in early April.
Has your membership
expired? Renew today at
www.aclu-or.org.**

JUSTICE DEPARTMENT FORCES MOVEMENT ON POLICE REFORM IN PORTLAND

A September report from the U.S. Department of Justice (DOJ) confirmed what Portland police reform advocates have been talking about for decades: the Portland Police Bureau has engaged in systemic overuse of force, particularly against persons with mental illness, and the City's processes meant to hold officers accountable are tangled, weak, and ineffective.

The City of Portland, the Portland Police Bureau (PPB), and DOJ proceeded into lengthy negotiations, resulting in a 74-page proposed settlement agreement that outlined a laundry list of reforms that the Bureau committed to undertake.

The parties boasted a high level of community involvement in the development of the Agreement, but in reality the detailed written recommendations from community stakeholders and oral testimony from the public over two City Council sessions resulted only in modest tweaks to the original draft.

ACLU's advocacy, in particular, urged the parties to install an independent monitor function with the authority to bring the case back to court if the Bureau failed to meet its obligations. Similar agreements with police bureaus in places like New Orleans and Seattle set up an independent monitor, but Portland refused to do so.

It is clear that these reforms are long overdue and that the proposed agreement does not go far enough in addressing the need for a Bureau-wide culture-shift in the way that our public safety officers engage with people of diverse backgrounds. That said, the proposal does provide a great opportunity for Portland to make some significant strides forward. We have committed to the parties to do all that we can to hold them accountable to the agreement and to work for the success of ongoing reforms to the Bureau.

Here's an overview of the changes required by the Agreement:

- **New PPB policies.** The agreement requires that PPB revise its policies on use of force, training, community-based mental health services, crisis intervention, employee information system, officer accountability, and community engagement. In comments submitted October 19th to the parties, we offered detailed suggestions for revisions to Bureau policies on the Use of Force, including the use of deadly force and the use of Tasers.

The changes we suggested would bring greater clarity to

the current policies by underscoring that PPB policies are, and should be, more restrictive than what is technically permissible under Oregon law and the U.S. Constitution. We argued that officers should use only the least amount of force necessary in each instance.

Similarly, our comment on the proposed Taser policy urged PPB to abandon the "active resistance" standard, which currently permits an officer to use a Taser on someone who simply tenses his or her muscles in response to an officer's order. The principal justification for deploying a Taser is to

prevent a situation from otherwise spiraling out of control to the point that an officer may need to resort to the use of deadly force. With such high stakes involved in deploying a weapon as dangerous as a Taser, authority for its use should be limited to, at the very least, a situation

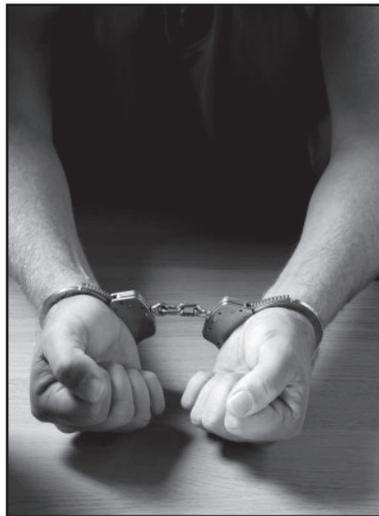
when a subject is displaying "active aggression." In no circumstances should a Taser be used on someone exhibiting only passive or minor resistance.

Approval of the proposed agreement is now pending in federal court, where the case is assigned to U.S. District Judge Michael Simon. Unlike in other cities where similar settlement agreements between DOJ and local police agencies essentially have been rubber-stamped, Judge Simon has committed to thoroughly reviewing the issues, the terms of the Agreement, and hearing perspectives from all sides – including anyone from the community who wishes to comment. Judge Simon announced that he will hold a fairness hearing on the proposal, which will allow the public an opportunity to voice – either in person or in writing – any concerns about approval of the agreement. The ACLU will focus our comments on educating the court about the lack of an accountability structure in the agreement. We will urge Judge Simon to appoint an independent monitor with court authority to oversee implementation of the Agreement.

Here are some of the other requirements of the proposed settlement agreement:

- **Improved mental health services infrastructure.** The Agreement requires that PPB create a new Addictions and Behavioral Health Unit (ABHU) that will oversee the Bureau's Crisis Intervention Team, Mobile Crisis Prevention Team, and

...[T]he proposed agreement does not go far enough in addressing the need for a Bureau-wide culture-shift in the way...officers engage with people of diverse backgrounds.



Chief Reese Accepts ACLU Revisions to Use of Force Policies

Recognizing that the current use of force policies ought to be clearer and more restrictive in regard to when use of force by an officer is authorized and appropriate, Portland Police Chief Mike Reese made key revisions to two Bureau policies based on detailed recommendations from the ACLU of Oregon submitted on October 19, 2012.

The first policy covers the use of force in all instances, regardless of the specifics of the encounter. Although it is never permissible for an officer to use more force on a subject than the Constitution allows, we argued that the Bureau's policy is more restrictive than what is constitutionally permissible and should state that more clearly. The Chief accepted this feedback and modified the policy so that there will no longer be any ambiguity; the Constitution is a floor rather than a ceiling for authorized use of force.



We are also pleased that revisions we proposed to further limit Taser use were accepted by the Chief. Before receiving our input, the Taser policy authorized officers to use a Taser on a person displaying only "active resistance," which was defined very broadly as "physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody."

Hundreds of unintended deaths have been associated with the use of Tasers, and any policy authorizing their use must acknowledge this risk. For this reason, we believe the principal justification for deploying a Taser is to prevent a situation from spiraling out of control to the point that the officer or another person may face an imminent risk of serious physical injury – and therefore need to resort to the use of deadly force. After consideration of our input, the Bureau narrowed authorization for use of a Taser to use on persons displaying "active aggression," defined as "a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent."

The proposed DOJ settlement agreement directs the Bureau to revise many of its policies, including those around the use of force, generally, and the use of Tasers in particular. As of this writing, the policies have yet to be finalized pending the outcome of objections from the Portland Police Association and ongoing proceedings in federal court to finalize the settlement agreement. We are hopeful that the policies, when finalized, will preserve the changes we recommended.

Service Coordination Team. At least one more drop off center for people in mental health crisis is expected to open as a result of the Agreement.

- **Expedited timelines for officer misconduct investigations.** Over the objection of volunteers on the investigative bodies, the Agreement calls for officer misconduct investigations to be completed within 180 days. Other changes to the officer account-

ability system include the addition of a member of the Citizen Review Committee to the Police Review Board (the PRB is highly influential in officer discipline cases), additional staff for the City's Independent Police Review office, and two new members on the Citizen Review Committee. These and other

changes are a step in the right direction, but do not go nearly far enough to fix what even DOJ called a "self-defeating" accountability system.

These...changes are a step in the right direction, but do not go nearly far enough to fix...a 'self-defeating' accountability system.

• **Oversight of implementation of the Agreement.** A new 15-member Community Oversight Advisory Board (COAB), made up of community members and mental health experts, will track implementation of the Agreement and recommendations to the City and PPB throughout the process. The Compliance Officer Community Liaison (COCL) position will work with the COAB to track all details relating to implementation, analyzing PPB data and reporting to the City and DOJ on compliance.

JC: Are you ever concerned the ACLU is too far ahead of public opinion on an issue?

DF: The ACLU is often ahead of public opinion, but that's okay. On many issues, sooner or later, the public comes to agree with us. This work is not about the ACLU winning a popularity contest. I remember when we won the *Armatta* case (which held that the "so-called victim's rights" contained too many amendments to the Oregon Bill of Rights), there was outrage from the folks who were putting forward anti-civil liberties ballot measures. At that point in time the initiative process was seen as sacrosanct by most voters, but the ACLU of Oregon Board had come to understand that the whole point of the Bill of Rights is to put some liberties beyond the reach of the majority, including the electorate. If there is a danger to those liberties, from any source, then it's the ACLU's job to point that out. In fact, people are much more wary about amending the Oregon constitution now than they were 30 years ago. I think that's a good thing, even when it's inconvenient for our efforts to advance liberty, such as to gain marriage equality or repeal the death penalty. Yes, it makes our work harder, but those other provisions of the constitution that guarantee liberty are also more secure.

JC: How has the ACLU evolved over the past 30 years?

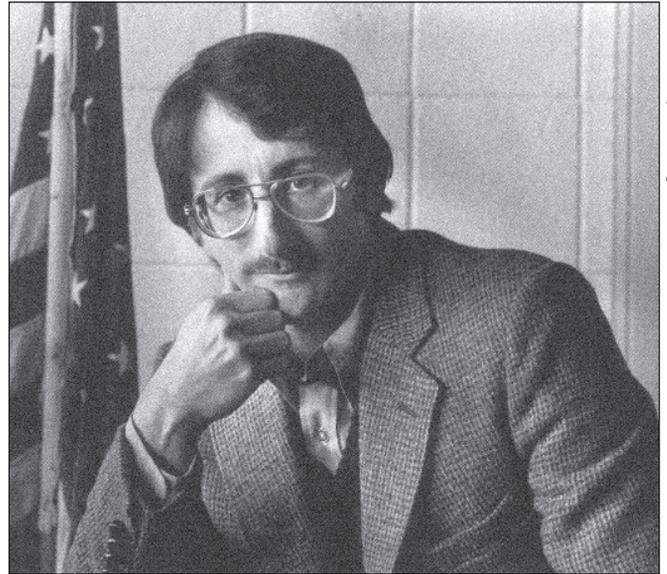
DF: When I started with the ACLU in 1982, a lot of the work was done by volunteers. Even though we still rely on volunteers in Oregon and nationwide, the ACLU, more and more, has to have a professional staff because every day we're up against professionals who are trying to roll back civil liberties or prevent civil liberties from advancing. The opponents of civil liberties spend billions of dollars every year hiring and training professionals to undermine civil liberties and civil rights. If the ACLU and our allies aren't just as well funded and just as professional in the way we do the work, we will lose. So yes, the ACLU does need more resources for the 21st century.

JC: What's been some of the most meaningful work to you personally?

DF: I'm glad you didn't ask me to rank my favorite issues because that would be impossible. Let me just roll through a few things chronologically.

One highlight of 1980s was helping to breathe life into the Oregon Bill of Rights. Thanks to the Oregon Supreme Court's mandate that lower courts consider and decide state constitutional issues, we had an opportunity to bring cases that could become landmark opinions. As a non-lawyer, to be able to help put together those cases, from the ground up, to advance civil liberties for a very, very, long time was just amazing.

Then we moved into the fight for LGBTQ rights which led to the backlash from the Oregon Citizens Alliance and all of their anti-gay ballot measures. The ACLU of Oregon led the effort in the 1987 legislative session to seek passage of an



David Fidanque, circa 1982

Photo courtesy of the Register-Guard

omnibus bill to prohibit sexual orientation discrimination. The bill didn't get passed then (or for another 20 years).

But then-Governor Goldschmidt issued an Executive Order prohibiting sexual orientation discrimination in state government and that led to the first Oregon Citizens Alliance (OCA) anti-gay ballot measure in 1988. And we were off to the races; every two years there was an OCA initiative filed that was either attacking gay rights or reproductive freedom for the next 12 years. Thank goodness, all of them didn't make the ballot, in part because of ACLU's work. During that period, it became very clear to thousands of Oregonians how important the ACLU was when we were up against the OCA. For a number of years, the ACLU was very much in the forefront of that struggle.

Obviously, today we're still fighting for equal rights. Basic Rights Oregon (BRO) didn't exist when I became Executive Director; but the ACLU of Oregon is still an important part of the struggle for LGBT equality – and we will continue working with BRO to achieve marriage equality.

Since the attacks of 9/11/2001, the ACLU has consistently and effectively resisted actions by the Executive branch to undermine the fundamental underpinnings of our constitutional form of government – the balance of power between the three branches of government. To a large extent, the Bush Administration succeeded in usurping much of the power of Congress and the Courts in the national security arena. We are still being frustrated, at every turn, in trying to get Congress to shine a light on what is becoming the routine surveillance of millions of law-abiding Americans and visitors to this country and a greatly expanded shadow government that operates in complete secrecy. The ACLU cannot allow these practices to become normalized and permanent because, if they are, we will have lost a great deal of our freedom and privacy without most Americans understanding what they have given up.

CONTINUED ON NEXT PAGE ...

ACLU SUPPORTS GOVERNOR'S MORATORIUM IN DEATH PENALTY CASE

The ACLU Foundation of Oregon has filed a friend of the court (amicus) brief with the Oregon Supreme Court urging it to state that a death-row prisoner's acceptance is not required for the Governor's reprieve of his death sentence to become effective.

In May 2007, Gary Haugen received the death penalty for his crimes. In 2011, he chose not to pursue his remaining appeals and asked for his sentence of death to be carried out. His death warrant was issued by the Marion County Circuit Court with his execution scheduled for December 6, 2011.

At that time, the ACLU of Oregon joined with three other organizations to petition Governor John Kitzhaber to stop Mr. Haugen's execution by using the governor's constitutional power to grant a reprieve. Nearly 1,000 ACLU supporters contacted the governor's office in support of our petition. On November 22, 2011, Governor Kitzhaber issued a reprieve for Mr. Haugen, stating that he would not allow any executions to occur while he is Governor based on his belief that the current system is broken.

Mr. Haugen rejected the Governor's reprieve and sued to have the death sentence carried out. In August, 2012, a circuit court judge declared the reprieve invalid as it applied to Mr. Haugen, concluding that because of past rulings by the state Supreme Court interpreting the Oregon Constitution a prisoner must accept a reprieve in order for it to be valid. The Governor has appealed the trial court's decision to the Oregon Supreme Court and is being represented by the Attorney General's office. The Governor has argued that acceptance is never required for an unconditional pardon, commutation or reprieve.

In our amicus brief, we have limited our argument to say that acceptance by the prisoner is not required in a death-penalty case because the death penalty is very different from other types of punishment.

There are two competing interpretations of the constitutional power of clemency: the acceptance theory and the public welfare theory. Under the acceptance theory, exercise of the clemency power is viewed as a private "act of grace," which requires acceptance in order to be valid. Oregon courts have applied the acceptance theory in a few cases in Oregon history. But a reprieve granted to an Oregon prisoner facing the death sentence has never before been challenged by an inmate. The other theory of clemency power, the public welfare theory, is viewed as a tool for the Executive branch to exercise for the public welfare.

We have argued that the public-welfare theory is more consistent with the intent of the framers of the Oregon Constitution. Specifically related to death penalty cases, we believe Governor Kitzhaber has clearly stated a public welfare reason for his reprieve: to allow the citizens of this state to reexamine a "compromised and inequitable system." Because the death penalty, if imposed, is irreversible, the ACLU of Oregon argues it is distinct from any other sentence the state can deliver. Therefore, Mr. Haugen alone does not and should not have the power to force the Governor and the State to carry out his execution. The Governor should have the power to grant either a temporary reprieve or commutation regardless of the inmate's wishes – especially when doing so is designed to prompt Oregonians to review the fairness of a death penalty system that has only executed two volunteers since it was reenacted in 1984.

The Oregon Justice Resource Center and the Oregon Capital Resource Center joined the ACLU of Oregon as amici. To read the entire amicus brief go to the ACLU of Oregon website: www.aclu-or.org. The ACLU cooperating attorneys are Bruce Campbell, Elisa Dozono and Alexander Naito from the Portland law firm Miller Nash LLP.

INTERVIEW, CONTINUED FROM PAGE 12

JC: What are some of the ACLU's priorities going forward?

DF: Obviously there is a lot of unfinished work to do. In Oregon and nationwide, ACLU has identified several strategic priorities: criminal justice reform, privacy, racial justice, immigrant rights, marriage equality, police practices, free speech, religious liberty. Most of all, the ACLU has to be strong enough and flexible enough to make, or take advantage of, opportunities to advance civil liberties yet also be ready to turn on a dime when events require ACLU to respond to new threats to freedom.

Two things I try to keep in mind going forward: 1) the ACLU's vision for liberty and justice is an evolving vision

that improves with each generation; and 2) Protecting and advancing freedom takes a hell of a lot of work, but that work doesn't have to be grim; it can be fun and it should be fun.

Protecting freedom takes a hell of a lot of work, but...it can be fun.

Every time the late Molly Ivins spoke to an audience, she reminded them that if you're not having fun while you're trying to protect and advance civil liberties, you're going to burn out and you'll lose the struggle. I have done my best to make sure that anyone who works with the ACLU, whether they're on staff or volunteers, has as much fun as possible as we do this work. If we can keep that up, the ACLU will be around for many more decades doing great work.

PARTY LIKE IT'S 1986!

Photos by Kate Horton



ACLU supporters gathered on the 26th birthday of the out-dated Electronic Communications Privacy Act (ECPA) to let legislators know that technology should not be used as a tool of suppression – or as a way for the government to snoop on law-abiding people.

Photo by David Tilchin



ACLU of Oregon 2012 Annual Membership meeting at Lewis & Clark Law School. Chris Conley, ACLU of Northern California's Technology & Civil Liberties Policy Attorney speaks at our Privacy R/evolution Workshop about the need to protect civil liberties in the digital age.

Cecillia Wang, Director of ACLU's Immigrant Rights Project, (center) was the keynote speaker at our 3rd Annual ACLU NW Civil Liberties Conference. Cecillia is pictured with Erin McKee, co-chair of the conference (right of Cecillia) and other Lewis & Clark Law Students who attended the conference.



Photo by Jules Garza

ACLU CHALLENGES MULTNOMAH COUNTY SHERIFF'S OFFICE FOR UNLAWFUL IMPRISONMENT

We filed a lawsuit, in September 2012, against the Multnomah County Sheriff's Office for unlawfully detaining a Portland resident at the request of federal immigration officers despite a judge's order releasing him on his state charges.

The ACLU's lawsuit claims the Sheriff's detention policy on immigration-related requests violates Oregon law – which prohibits the use of state and local resources to detain people suspected only of violating civil immigration restrictions – and the Oregon Constitution.

“The reason that Oregon law prohibits state and local law enforcement agencies from doing the job of federal immigration agents is that it promotes public safety,” said David Fidanque, Executive Director of the ACLU of Oregon. “Local police need everyone who is a victim of crime or a witness to feel safe coming forward if our communities are going to be safe places to live. If immigrants think that calling police will mean they will be thrown in jail until they can prove they are in the country lawfully, they won't report crimes.”

Longtime Portland resident Miguel Cabrera Cruz was arrested by Portland police officers on a Friday afternoon in October of 2011. He had been dropped off after work on Grand Avenue, an area known as a gathering place for laborers to seek and offer short term or day labor projects. At that time, he spotted a familiar vehicle, that of a man that had hired him in the past for a project. Though Cabrera had completed the job, the man had refused to pay him. When Cabrera saw the vehicle, he approached it and demanded the wages he was owed. When the man started the engine to leave, Cabrera jumped into the bed of the truck to stop him. The man then called the police.

After accepting Cabrera's identification and finding no outstanding warrants in his record, the police arrested Cabrera. The officers took Cabrera to the Multnomah County Jail, indicating that he was likely to be released in an about an hour. Days later on October 17, 2011, after a short court hearing, a judge reduced Cabrera's two nonviolent misdemeanor charges to violations and ordered him released on the charges.

However, the Sheriff's Office chose to detain Mr. Cabrera because, on October 14, Immigration and Customs Enforcement (ICE) had sent the jail an administrative notice that it was investigating whether Cabrera was in violation of civil immigration laws. An immigration detainer requests that a jail hold a particular detainee for up to 48 hours (excluding weekends and holidays) so ICE agents can determine whether to take the detainee into federal custody. Mr. Cabrera was held until October 19, 2011, when he was taken into ICE custody, transported to Tacoma, Washington, and shortly thereafter released.

“Unlike an arrest warrant, most federal immigration detainers are voluntary civil requests and are not based on probable cause or reviewed by a judge,” said Jennifer Middleton, ACLU cooperating attorney. “Once the minor charges against our client were reduced to violations, the Sheriff's staff should have released him. Instead, the Sheriff's Office chose to jail him for another two days without any lawful authority.”

Upcoming ACLU Events

STATEWIDE

ACLU Foundation Liberty Dinner

Saturday, March 2

7 p.m.

Oregon Convention Center, Portland

\$125, advance purchase required

Our annual fundraising dinner will honor David Fidanque and feature a keynote from Glenn Greenwald. Purchase tickets online at aclu-or.org/LibertyDinner.

Bill of Rights Action Network Webinar

Friday, March 15

Noon – 1 p.m.

Free

Legislative Director Becky Straus is hosting a web-based information session for ACLU members and supporters.

The webinar will provide an overview of our work in the legislative session, updates on our priority bills, and information on how to get involved. To reserve a spot, please email Sarah Armstrong, sarmstrong@aclu-or.org.

LANE COUNTY

The Lane County Chapter of the ACLU of Oregon is pleased to host a discussion series called Civil Conversations—an open dialogue of current civil liberties issues affecting our community.

Civil Conversation:

How to resolve the gun rights conflict?

Wednesday, February 13

5:30 p.m. – 7 p.m.

Davis' Restaurant, Eugene

Free and open to the public

Facilitator: Professor Margie Paris, former Dean Law School, University of Oregon

Civil Conversation:

Wither Women's Health Rights?

Wednesday, March 20

5:30 p.m. – 7 p.m.

Planned Parenthood, Springfield

Facilitator: Harriet Merrick, Former Board Chair, Planned Parenthood Southwest Oregon, ACLU Affiliate Board Member

For more information about any of our upcoming events please visit our website at acluor.org or call our office at 503.227.3186.

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Go to www.aclu-or.org.**

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16
Winter/Spring 2013

**SATURDAY
MARCH 2**



ACLU FOUNDATION
OF OREGON
**LIBERTY
DINNER**
*** 2013 ***



**OREGON
CONVENTION
CENTER**

Join us for our annual benefit with featured guest Glenn Greenwald

7 pm - Dinner and program in the Oregon Ballroom

Glenn Greenwald worked as a constitutional and civil rights litigator before becoming a columnist and blogger to Salon.com and then *The Guardian*, where he focuses on political and legal topics.

Celebrating **David Fidanque's** 20th anniversary as the Executive Director of the ACLU of Oregon and honoring his 31 years of enhancing and protecting civil liberties in Oregon.

**Please join us!
We promise to engage, educate and entertain.
Liberty... it's worth supporting.**

For more info or to register, go to www.aclu-or.org/libertydinner

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