



A BOND FORGED IN STRUGGLE

THE AMERICAN CIVIL LIBERTIES UNION'S HISTORIC ALLIANCE
WITH AFRICAN-AMERICANS IN THE QUEST FOR RACIAL JUSTICE

The ACLU is our nation's guardian of liberty, working daily in courts, legislatures and communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country.

The ACLU is nonpartisan.


Membership has grown from a roomful of civil liberties activists at its founding in 1920 to an organization of more than 500,000 members and supporters, with local offices that cover every state in the nation.

Front cover: In March of 1965, civil rights demonstrators set off on three separate marches between Selma and Montgomery, Alabama. The most widely known of these marches occurred on "Bloody Sunday," March 7, 1965, when 600 activists were attacked by state and local police. Only the third and last march successfully made it to Montgomery.

On the launch of his groundbreaking 1903 treatise *The Souls of Black Folk*, W.E.B. DuBois famously remarked that **“the problem of the twentieth century is the problem of the color-line.”** There is no doubt that his words rang true then; yet,

at the dawn of the twenty-first century, the persistence of that line became undeniably apparent in the aftermath of Hurricane Katrina.

In the late summer of 2005, stark images of the racial disparities that prompted DuBois to utter those words more than 100 years ago were broadcast to a national audience that was inundated with photographs and videos of poor black Americans and others cast aside in the storm. While significant achievements have been won over the past century, Katrina made it clear that the deeply entrenched, systemic problems of racism in America have endured, and that the linkage between race and poverty remains strong. A few salient statistics support the story.



- **In 2004, 24.7% of blacks lived below the national poverty line in America, up from 22.5% in 2000. That is nearly double the rate of 12.7% for all Americans.**

- **In 2004, African-American households had the lowest median income of any racial group, down a full percentage point from the year before.**

- **The current unemployment rate for African-Americans is more than double the rate for white Americans.**

The persistence of these disparities over such a long period of American history makes it clear that the ACLU's civil rights work is as crucial as ever.

Since the first whispers of a national civil rights movement could be heard in the 1930s, with the prosecution of the Scottsboro Boys in Alabama, the ACLU has been intensely involved in the struggle for racial equality. From the time of our founding, we have worked to protect the civil liberties of those who have traditionally been denied their basic rights, and our commitment to racial equality and justice has been a centerpiece of our litigation, advocacy and public education work ever since.

In this ground-breaking report, *A Bond Forged in Struggle: The American Civil Liberties Union's Historic Alliance with African-Americans in the Quest for Racial Justice*, we describe the ACLU's efforts toward racial equality in America. The ACLU's decades-long racial justice docket has included victories in many important areas, from discrimination in housing, education and access to public services, to racial profiling and prisoners' rights. Significant progress has been made, to be sure. But after Katrina's rains subsided, no one could deny that there was still much left to be done.

The moral urgency and outrage that followed the Scottsboro Boys trials and eventually fueled the civil rights era should be as pervasive today as it was then. The ACLU is in a unique position, with our 53 affiliates nationwide and our historical commitment to issues of racial justice, to continue to lead the battle for a more just and equal society. Katrina's stark exposure of the sizable divide that continues to exist across our nation's color-line confirms why the ACLU's commitment to racial justice is far more than just a legal strategy. It stems directly from our mission, and it permeates all of the work that we do.

Anthony D. Romero, executive director of the ACLU

Throughout our history, the American Civil Liberties Union has championed the rights of people who are marginalized in society. The ACLU mounts epic struggles to ensure everyone in America gets to enjoy the rights, freedoms and liberties that our Constitution and Bill of Rights guarantee. A lot of the causes the ACLU has taken up over the years have been with and on behalf of African-Americans. We have shared arduous, enduring, sometimes challengingly complicated, and often, ultimately, successful causes. Since Roger Baldwin and like-minded activists formed the ACLU in 1920, we have been involved in all aspects of the struggle for racial justice in America.

“The real question is whether you mean to make good to us the promises of your Constitution.”

– Frederick Douglas speaking at the Republican National Convention of 1876

At the turn of the 20th century, African-Americans had been emancipated from slavery for almost 40 years but knew no real freedom. Besides unrelenting economic shackles, Southern trees often bore strange fruit as white Americans made the lynching of black Americans common sport. In the 48 years preceding 1931, whites lynched 3,555 black Americans. The ACLU, in *Black Justice*, a comprehensive 1931 report on the denial of rights to African-Americans, wrote that: "The fear of lynching dominates large sections of the rural and small-town South. ... It is a weapon of the white men to terrorize Negroes in order to keep them in their place as a servile working-class. Scores of the victims are known to have been innocent of the crimes charged against them."

It was the first report on racial discrimination in America by a predominantly white advocacy group in the nation. In the ten states of the Deep South, according to *Black Justice*, "the Negro may not vote. The Negro may not marry according to his choice. The Negro must accept separate accommodations in public schools and on public conveyances."

In addition, the entire machinery of criminal justice system served the racist status quo.

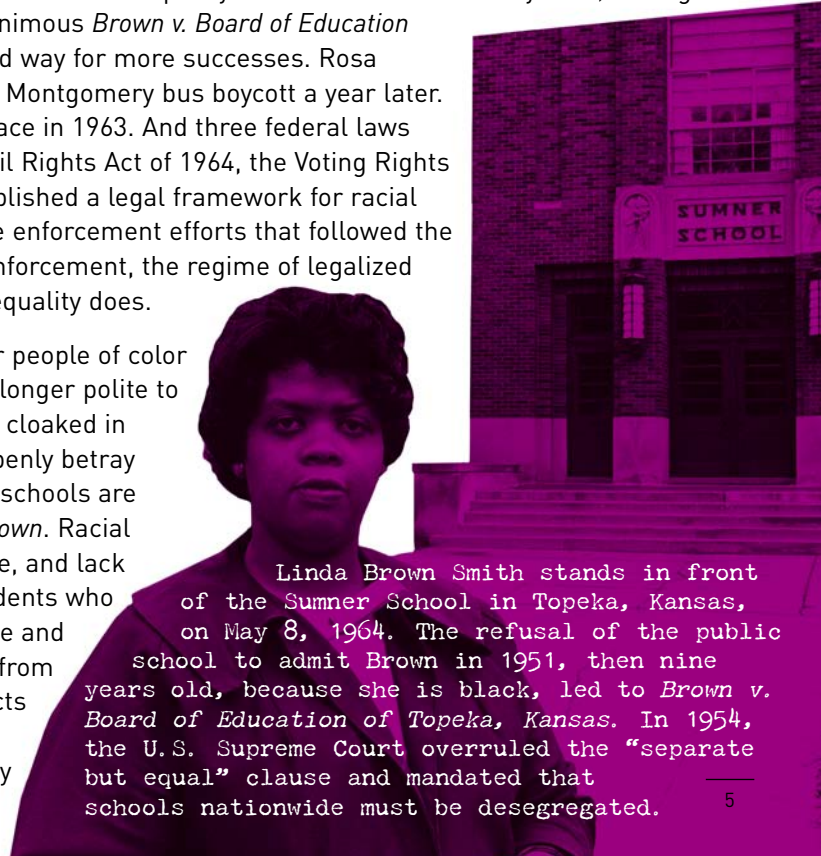
This legalized subjugation was the major target of the modern civil rights movement, a revolutionary and heroic undertaking that succeeded to a remarkable degree. Over intense, often violent, opposition, with much courage and more than a little bloodshed, the civil rights movement succeeded by 1968 in dismantling the legal infrastructure of Jim Crow and replacing it with a legal infrastructure designed to ensure legal equality and remedy both individual and systemic instances of discrimination. Of course, schools were not actually desegregated in the South until the 1970s and 1980s. Prisons and jails remained segregated into the 1970s, and exclusion of blacks from juries continued into the 1970s. There

Linda Brown Smith, 9, is shown in this 1952 photo. Smith was a third grader when her father started a class-action suit in 1951 *Brown v. Board of Education of Topeka, Kansas*, which led to the U.S. Supreme Court's 1954 landmark decision against school segregation.



is no question, however, that the Supreme Court's *Brown* decision and the Civil Rights Acts of 1957 and 1960, but especially the Civil Rights Act of 1964 and Voting Rights Act of 1965 tolled the death knell of Jim Crow. The ACLU was one of the first predominantly white organizations to champion the cause of racial equality in the 1920s and 1930s. By 1929, civil rights topped the ACLU agenda. The U.S. Supreme Court's unanimous *Brown v. Board of Education* ruling in 1954 was the watershed achievement that paved way for more successes. Rosa Parks's refusal to move to the back of a bus sparked the Montgomery bus boycott a year later. The March on Washington for Jobs and Freedom took place in 1963. And three federal laws were passed in an exhilarating five-year period — the Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Fair Housing Act of 1968 — that established a legal framework for racial justice. Despite the enormous difficulties inherent in the enforcement efforts that followed the passage of these laws and the much-too-slow pace of enforcement, the regime of legalized racial discrimination no longer exists and formal, legal equality does.

Despite enormous progress, fair and equal treatment for people of color remains frustratingly elusive. Noxious racism, while no longer polite to express openly, is harder to fight because it is now often cloaked in decorous manners and insidious language that do not openly betray ongoing discrimination. In some parts of the nation, our schools are more segregated and profoundly unequal than before *Brown*. Racial isolation, poverty, unemployment, inadequate health care, and lack of opportunity hamper the achievements of minority students who are increasingly found in school districts beset with these and other social ills. Equal, adequate public education is far from a reality in the United States, with minority school districts having substantially fewer resources than white public schools in every area from teacher qualification to money



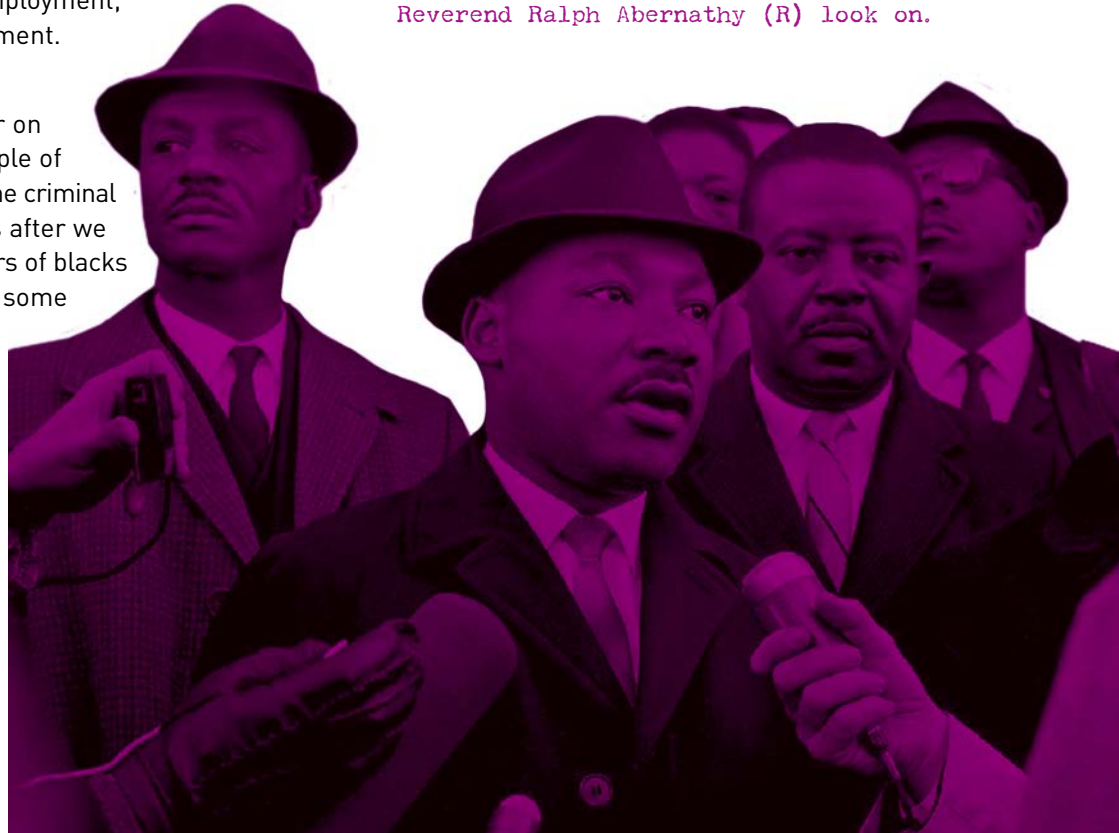
Linda Brown Smith stands in front of the Sumner School in Topeka, Kansas, on May 8, 1964. The refusal of the public school to admit Brown in 1951, then nine years old, because she is black, led to *Brown v. Board of Education of Topeka, Kansas*. In 1954, the U.S. Supreme Court overruled the “separate but equal” clause and mandated that schools nationwide must be desegregated.

spent on schoolbooks. The establishment of formal, legal equality has not led to the elimination of unjust differences based on skin color: major disproportions persist in education, housing, imprisonment, family structure, unemployment, wealth and opportunities for advancement.

OTHER SIGNS OF INEQUALITY

- The so-called war on drugs and war on crime disproportionately target people of color, feeding them into the maw of the criminal justice system. More than 140 years after we abolished slavery, significant numbers of blacks either remain in or are destined for some form of bondage in our society: a third of all black men in their 20s are either behind bars or on parole. Given current trends, one of every three (32%) black males born today can expect to go to prison in his lifetime. Little more than 50 years after *Brown*, almost 900,000 of the more than 2.1 million people in prison are black, or 48% of the total prison population — four times their portion of the general population.

At a voter registration drive in Selma, Alabama, the Reverend Dr. Martin Luther King, Jr. (C) speaks with reporters as the Reverend Fred Shuttlesworth (L) and the Reverend Ralph Abernathy (R) look on.



- On highways and in communities across the country, people are regularly subjected to stop-and-search procedures based on racially biased “drug courier profiles.”
- Congress has voided voting districts created to provide equal electoral opportunity and fair representation.
- Segregation and discrimination in housing opportunity sustain what the 1968 Kerner Commission described as “two societies, separate and unequal.” Our nation’s poor neighborhoods — overwhelmingly populated by people of color — are wracked with poverty, violence and police brutality.

Further, a backlash against affirmative action increasingly slams the door of opportunity in the faces of those who need it most. America has come a long way since Jim Crow ruled the South, but deeply entrenched discrimination, subjugation, subordination, and racial violence are still pervasive.

DIVIDED BY RACE

The moral urgency that fueled the civil rights era is just as imperative today as it was one or two generations ago. That is why the ACLU’s commitment to racial justice is much more than a legal, advocacy or educational strategy: it permeates all of the work that we do. We walked with African-Americans in the civil rights movement. But, although we had prominent blacks on our executive board, we remained for a long time a white organization assisting blacks. And some of our principles — our First Amendment and church/state positions, to pick two examples — on which we would not waiver sometimes proved a problem in our relationship with African-Americans. Many of the most effective African-American leaders, a long line exemplified by Dr. King, come from the clergy. And many institutions that look out for the interests of African-Americans are rooted in places of worship. Even in those early days, all the top ACLU lawyers — Art Hays, Morris Ernst, Osmond Fraenkel — refused to join the American Bar Association because it would not admit blacks as members. Today, the ACLU is a highly diverse organization that constantly examines how to broaden our appeal to all the communities that we are privileged to serve.

Despite generations of gains in civil rights and civil liberties, ours remains a culture and society deeply divided by race. To be of African descent in America is still to be undermined by race and to have the substance of one's life deeply infected by racism, injustice and inequality. Today, whether it is women's rights, the campaign against racial profiling, prisoner rights, capital punishment, voting rights, or workplace rights, much of the work done by ACLU national projects often addresses specific civil liberties issues confronting African-Americans today. Also, the ACLU's many African-American lawyers and staffs around the nation are now integral part of the team whenever we take up the causes of liberty and justice.

With creative lawyers thinking of new, innovative ways to do racial justice litigation and advocacy, the ACLU embarked on significant racial justice campaigns, publishing literature, lobbying legislatures and government agencies, holding workshops, and making other efforts to educate the public, initiating and supporting efforts to end all forms of racial profiling, including what has become known as "driving while black."

One of our core priorities is the elimination of all forms of racial injustice. We currently work on a broad range of issues, particularly in criminal justice, education, and voting rights.

In the area of criminal justice, the ACLU is fighting racial profiling, challenging inadequate indigent defense systems, targeting disproportionate minority confinement, and advocating for juvenile justice reforms. The ACLU is also challenging race-based drug sweeps and other forms of racial discrimination in the enforcement of drug laws. In addition, the ACLU is the national leader in litigating the inhumane and unconstitutional conditions of confinement in American prisons. In education, the ACLU seeks to improve the educational prospects for poor and minority children, and protect affirmative action programs in higher education. In the voting rights arena, the ACLU works to remove structural barriers to minority political participation. Because racial injustice remains one of the most significant civil rights problems facing our society today, we designed and are implementing a multifaceted strategy to promote the ACLU's racial

justice agenda through litigation, public education, and community outreach. We continue to work with the NAACP, the Congressional Black Caucus, the Leadership Conference on Civil Rights, and the Rainbow-PUSH Coalition, among many others. As part of the outreach, the ACLU recently established the Ira Glasser Racial Justice Fellows Program, named after the former ACLU executive director, to continue actively implementing the principles of affirmative action internally while advocating vigorously for racial justice on every front externally.

Unlike most American institutions of the day, the ACLU was an early partner with African-Americans in the struggle for civil rights and tenaciously persisted in the quest for racial justice in America. Although the modern civil rights movement, in the form of a broad-based coalition, did not coalesce until the 1940s, the ACLU established a close working relationship with the National Association for the Advancement of Colored People at the outset. Formed in 1909, the NAACP was the preeminent African-American civil rights organization of the day. Beginning with James Weldon Johnson, ACLU founder Roger Baldwin made sure a high-ranking NAACP official always sat on the ACLU Executive Committee. Thurgood Marshall of the NAACP Legal Defense Fund, who would later become the first African-American to serve on the United States Supreme Court, served on the board. While the NAACP in those days handled most of the civil rights cases, there has always been close cooperation between the two organizations.

FREE SPEECH

In the early days, the ACLU was small and particularly weak in the South. We concentrated our efforts on publicizing civil liberties and condemning the Ku Klux Klan violence that was rampant in the early 1920s, with 64 reported lynchings in 1921 and an untold number of assaults on blacks. Almost from the beginning of the organizations' partnership, NAACP officials questioned what they saw as the ACLU's apparent absolutism on free speech, especially our persistent defense of the Klan's right to march. And it was not just the NAACP that took issue with our defense of this principle. Other ACLU allies were fighting for and winning prohibitions against hate speech as practiced by the Klan. Our allies wanted to know why we would defend an abhorrent, virulently racist organization such as the Ku Klux Klan, which, in its goals, its activities and its every utterance, was against the ACLU and its staff, members, and allies. Increasingly, the ACLU found it needed to define its stance on free speech.

"Original sin" – The Constitution and Bill of Rights legitimize slavery, counting a slave as 3/5 of a person, upholding the slave trade and guaranteeing return of all fugitive slaves to their owners. By 1860, slavery hits its highest numbers, with more than four million people living in bondage.

Although the *Thirteenth Amendment* abolishes slavery, southern states find a loophole, reviving slavetime codes to create unattainable prerequisites for blacks to live, work or participate in society. The following year, the first *Civil Rights Act* invalidates these Black Codes, conferring the "rights of citizenship" on all black people.

Supreme Court, in *Plessy v. Ferguson* decision, upholds Jim Crow, creating a legal sanction for the "separate but equal" rule, immediately resulting in a separate and unequal standard for black people. Segregation and terrorism against blacks becomes rampant in the South, and elsewhere. Discrimination is widespread.

1856 >

1857 >

1863 >

1865 >

1868 >

1870 >

1875 >

1883 >

1896 >

1909 >

In *Dred Scott* decision, Supreme Court denies citizenship to black people, who, whether enslaved or free, have no constitutional rights because they are "subordinate, inferior beings." The Civil War erupts in 1861.

Fourteenth Amendment grants citizenship to all persons born in the U.S., forbids states from denying "life, liberty or prosperity" without due process of law, and guarantees equal protection under the law.

Second Civil Rights Act guarantees equal access to public accommodations to all people regardless of race or color. Two years later, President Hayes agrees, in "Compromise of 1877," to withdraw federal troops from the south, leaving southern blacks at the mercy of state rule.


National Association for the Advancement of Colored People (NAACP) is formed, demanding equality in education and an end to segregation. By 1921, the NAACP will have 400 branches nationwide.

Emancipation Proclamation issued by President Lincoln frees all slaves.

Fifteenth Amendment gives freedmen the right to vote. In the wake of Reconstruction-era reform in the South, white supremacist groups embark upon a campaign of terror against blacks and their white supporters.

In the "*Civil Rights Cases*" the U.S. Supreme Court invalidates the 1875 Civil Rights Act, setting the stage for discrimination and segregation in privately owned businesses and facilities. The Jim Crow era begins. Between 1884 and 1914, 3,600 black lynchings will take place.

Just after he asked the Governor of Alabama to pardon the nine youths held in the Scottsboro case, Samuel Leibowitz, New York attorney, conferred with seven of the defendants, May 1, 1935, at the Scottsboro jail. The youths were charged with an attack on two white women on March 25, 1931.



The American Civil Liberties Union is formed to ensure everyone in America gets to enjoy the rights, freedoms and liberties that the Constitution and Bill of Rights guarantee.

1920 >

The ACLU publishes *Black Justice*, a comprehensive survey outlining institutionalized racism in America.

1931 >

Powell v. Alabama.
An appeal by the "Scottsboro Boys" — eight African-American men wrongfully accused of raping two white women — was the first time constitutional standards were applied to state criminal proceedings. The poor performance of their lawyers at the trial deprived them of their 6th Amendment right to effective counsel.

1932 >

Patterson v. Alabama.
A second "Scottsboro Boys" decision held that the exclusion of African-Americans from the jury list denied defendants a fair trial.

1935 >

Roger Baldwin, co-founder of the ACLU, establishes the national *Committee Against Racial Discrimination*.

1942 >

McNabb v. U.S.
The conviction of an African-American moonshiner in Tennessee overturned because his confession was obtained during the course of an unlawfully long detention.

1943 >

Smith v. Allwright.
An early civil rights victory that invalidated Texas' "white primary" as a violation of the right to vote under the 15th Amendment.

1944 >

Roger Baldwin, co-founder of the ACLU, convenes the National Emergency Civil Rights Mobilization Committee, which lobbied for a federal anti-lynching law, abolition of the poll tax, integration of the armed services and more effective civil rights enforcement.

1947 >

1947 – Morris Ernst, General Counsel for the ACLU and influential member of the Truman administration's Civil Rights Committee (established in 1947), calls for an end to all forms of discrimination based on "race, color, creed or national origin" and helps establish a national consensus on racial equality. (Walker, 238)

Shelley v. Kraemer.
A major civil rights victory invalidating restrictive covenants, or contractual agreements among white homeowners to sell their homes only to other whites.

Brown v. Board of Education.
One of the century's most significant Court decisions, declaring racially segregated schools unconstitutional and quashing the "separate but equal" doctrine announced in the infamous *Plessy v. Ferguson* decision of 1896.

The ACLU establishes its *Southern Regional Office*, through which countless civil rights suits were launched in opposition to racial discrimination and institutionalized segregation in the South. The office became home to the Voting Rights Project, which was directly responsible for the passing of the 1965 Voting Rights Act and, consequently, the election of numerous African-American officials throughout the South.

1965 Voting Rights Act
The most far-reaching *Civil Rights Act* passes, outlawing discrimination in privately owned facilities, as well as in federally funded programs and in employment. One year later, President Johnson uses the term "affirmative action" to describe new policies for redressing discrimination in education and employment. The following year, the Voting Rights Act finally enforces the Fifteenth Amendment.

Whitus v. Georgia.
Successful challenge to the systematic exclusion of African-Americans from grand and petit juries. In the county in question, no African-American had ever served on a jury in spite of the fact that 45% of the population was black.

1954 >

1960s >

1963 >

1964 >

1964 >

1964 >

1964 >

1966 >

1967 >

1967 >

Lunch counter *sit-in protests* take place in Greensboro, North Carolina in 1960; Mississippi Freedom Summer takes place in the summer of 1964. Protesters are generally met with mob assault and police violence.

ACLU executive director Jack Pemberton organizes the Lawyers Constitutional Defense Committee (LCDC), a coalition of the most significant civil rights organizations operating at the time. The LCDC solicited like minded lawyers to travel south and provide volunteer legal representation for civil rights workers or work on a specific civil rights case. In 1967, the ACLU adopted the LCDC as one of its own projects.

Reynolds v. Sims.
Landmark Supreme Court decision holds that state legislative districts have to be apportioned on the basis of population ("one person, one vote").

Loving v. Virginia.
Historic Supreme Court ruling invalidating as unconstitutional laws in Virginia and 15 other states that criminalize marriages on the basis of race.

In 1963, NAACP leader Medgar Evers is murdered; one month later, 250,000 people gather in Washington, D.C. in our nation's largest ever protest demonstration, to urge support for civil rights legislation, and hear Dr. King's historic "I Have a Dream" speech.

White v. Crook.
A civil rights decision ruling the exclusion of women and African-Americans from juries unconstitutional.

Washington v. Lee. Alabama statutes requiring racial segregation in the state's prisons and jails were declared unconstitutional under the Fourteenth Amendment.

The nation's first open-housing law, the *Fair Housing Act* passes.

Supreme Court and Congress embark on a decade-long reversal of many discriminatory laws and practices that had prevailed for two centuries. Dr. Martin Luther King, Jr. is assassinated in November.

The ACLU launches "*Driving While Black*," a campaign to raise the public's awareness to the pervasiveness of racial profiling in America.

The U.S. Sentencing Commission recommends Congress end the 100-to-1 disparity in sentencing between crack and powder cocaine, with crack offenders receiving far longer prison sentences. Although most of the nation's crack users are white, 88 percent of those convicted of federal crack offenses are African-American. It is the first time Congress rejects the Commission's recommendation.

Grutter v. Bollinger/Gratz v. Bollinger. Providing a strong endorsement of affirmative action in higher education, the Court held that public universities have a compelling interest in creating a diverse student body and that race may be treated as a "plus" factor in the admissions process.

1968 >

1971 >

1982 >

1990s >

1992 >

1995 >

1999 >

2003 >

2004 >

The Nixon administration's attempt to pass a constitutional amendment to ban busing as a means of achieving desegregation marks the rising of a new anti-civil rights and anti-affirmative action backlash.

The ACLU lobbies successfully for the reauthorization of the *1965 Voting Rights Act*.

L.A. jury acquits four police officers in the videotaped beating of Rodney King, leading to the biggest race riots in almost twenty-five years in California, and in other locations throughout the country.

Chicago v. Morales. A court decision striking down Chicago's anti-gang loitering law, which disproportionately targeted African-American and Latino youths who were not engaged in criminal activity, and resulted in the arrest of 45,000 innocent people.

Williams v. California. A landmark civil rights case brought by Eliezer Williams, which challenged the state to ensure quality learning conditions for millions of low-income, African-American students.

A throng at Penn Station greeted two of the five Scottsboro boys recently freed, upon their arrival in New York July 26, 1937. Officers are shown escorting Olen Montgomery, center, wearing glasses, and Eugene Williams, wearing suspenders, through the crowd.

Did the First Amendment guarantee free speech for racists?

Was the Klan a political organization, or a secret criminal conspiracy?

Did the First Amendment protect anti-democratic groups such as the KKK?

Defending speech and ideas that not only society at large but which the ACLU itself found abhorrent posed a genuine quandary for the organization in those early days. But, painful as they were, conflicts between the ACLU and allies such as the NAACP helped hone our position on free speech. In 1920, when the NAACP asked the Postal Service to ban KKK literature from the mail, the ACLU's Albert DeSilver told the NAACP's James Weldon Johnson it was "a great mistake."

"We do not think it's ever good policy for an organization interested in human liberty to invoke repressive measures against any of its antagonists," DeSilver said. "By doing so, it creates a danger of making a precedent against itself."

Conflicts over free speech and the Klan continue even today as ACLU lawyers, some of them African-American, have fought for the rights of the Klan to march and speak. Congresswoman Eleanor Holmes Norton (D-DC) started out her career carrying on the ACLU tradition of defending one's avowed enemy in the name of principle. Defending the free speech rights of racists, for example. She became ACLU assistant legal director in 1964 and was appointed chair of the ACLU National Advisory Council twenty years later. In one of her very first cases, she defended George Wallace's right to hold a meeting in New York's Shea Stadium. Liberal New York City Mayor John Lindsay banned the meeting under pressure from civil rights groups. Norton would later be introduced to great applause as "the sister George Wallace needed!" The ACLU also detested the Klan's secrecy, bullying, and its masked anarchy, but the proper remedy for that, we felt, was exposure and ridicule. The ACLU drew the line between word and deed. Violent acts, not words or political association, should be prohibited. This principle on the free speech aspect of the First Amendment, which may sometimes help the virulently racist, has been crucial in civil rights advocacy over the years.

Take Julian Bond. Bond, when he was elected to the Georgia legislature in the fall of 1965, immediately outraged members of the legislature by delivering a speech in support of draft resisters. “We are in sympathy with, and support, the men in this country who are unwilling to respond to a military draft which would compel them to contribute their lives to United States aggression in Vietnam in the name of the freedom we find so false in this country,” Bond said. His fellow legislators refused to seat him. That a legislative body that long harbored racists and other retrogrades would now deny Bond his seat on that body because he exercised his freedom to speak his mind underscores the ACLU’s

position on free speech. If you ban free speech, it is not the Klan’s right to advocate that would end up being curtailed.

It would be a Julian Bond. The ACLU jumped to Bond’s defense. The Supreme Court, in *Bond v. Floyd*, ordered the Georgia legislature to seat Bond. The ruling had important freedom of speech implications, with the Court holding that “legislators have an obligation to take positions on controversial questions so that their constituents can be fully informed by them.” Julian Bond went on to have a distinguished public service career, including as chairman of the NAACP.



Three students at Clinton High School picket their school as it became the first state-supported school in Tennessee to integrate, August 27, 1956. The boys are, from left, Buddy Trammell, Max Stiles and Tommy Sanders. Trammell and Sanders later discarded the pro-segregation signs and reported to classes.

PUBLIC EDUCATION

The ACLU, a friend-of-the-court participant in *Brown*, picked up the mantle of enforcing that landmark ruling in later years, first in Topeka, Kansas, on behalf of the children of Linda Brown, and then later in places like California and Connecticut. ACLU Senior Staff Attorney Chris Hansen was lead counsel in the reopened *Brown v. Board Education* case, which in the 1980s and 1990s forced Kansas to honor the U.S. Supreme Court mandate to desegregate its public schools. The goals of integration and of a more just society that inspired that earlier generation of reformers and civil rights activist continues to this day, as the ACLU fights to preserve the integration remedies that were the result of *Brown*.

Civil rights lawyers began to change strategy in the mid-1980s as desegregation cases became harder to win and previous victories became harder to preserve. In an initiative led by John Powell, ACLU Legal Director at the time, and his Associate Legal Director, Helen Hershkoff, the ACLU formulated and implemented an innovative non-race-based strategy of bringing what are called “equity and adequacy” cases, which nevertheless address the racial imbalance in public education dollars and resources. Equity cases look at “inputs” — the per-pupil expenditures in a predominantly minority school compared to a white school. For instance, an equity case might compare how much is spent per student in New York City compared with how much is spent in Westchester County. Adequacy cases look at “outputs” — whether student performance (as measured by test scores, graduation rates, etc.,) indicate that the State has indeed provided the level of education required in state constitutions.

Under Powell and Hershkoff, the ACLU national office and its affiliate offices around the nation brought cases — such as *Bradford v. Maryland State Board of Education*, originally filed in 1994, on behalf of poor and at-risk students in Baltimore, and the landmark *Sheff v. O’Neill* case, filed in 1989, in the ultimately successful effort to desegregate Hartford, Connecticut, schools — to remedy racial isolation in public schools.

Bradford v. Maryland State Board of Education is an example of the kind of long-term impact possible through this type of litigation.

The initial consent decree in the case ultimately required the State to pay hundreds of millions of additional dollars to the City school system and reformed the management structure of the failing Baltimore school system. From 1997 to 2002, as part of the original settlement of the suit, over \$300 million additional dollars flowed to Baltimore schools. And the case continues to yield resources to the state's public school students. In 2002, the court ruled that the state was constitutionally obligated to give the school system an additional \$2,000 to \$2,600 annually per child (\$200 to \$260 million total). This led to passage of a law changing the entire state funding formula, with \$1.3 billion to be added to the schools annually by 2008. Similarly, the ACLU participated in the Michigan affirmative action cases, which affirmed that race and ethnicity could be considered as factors in college admissions.

GROWTH & CHANGING TIMES

At ACLU's 25th anniversary celebration, some participants noted the momentum of the emerging civil rights movement and wanted to get to work immediately. The ACLU called for federal and state fair employment practices laws, federal legislation to outlaw the poll tax, and an end to housing discrimination. And four years before the historic *Brown* ruling, the ACLU asked the Supreme Court to overrule the 1896 *Plessy* decision that established the "separate but equal" doctrine. A black federal employee named Elmer Henderson had taken a trip from Washington, D.C., to Birmingham, Alabama, to investigate race discrimination in the war industries. Henderson was unable to eat dinner because an overflow of white passengers had filled the two tables set aside for blacks. The ACLU joined Henderson's complaint with the Interstate Commerce Commission.

The civil rights movement had a profound effect on American society. Institutional segregation was being eradicated and African-Americans joined the national political discourse. The Supreme Court forged new constitutional doctrines

“All Hell Breaking Loose”

William Kunstler’s phone rang at 6 a.m. on June 15, 1961. ACLU legal director Rowland Watts was on the other end of the line.

“All hell is breaking loose in Jackson, Mississippi,” Watts told Kunstler. Cops were arresting Freedom Riders en masse. Could Kunstler go to Jackson for the ACLU? Watts wanted to know. “Just introduce yourself to [Jack] Young and tell him that the American Civil Liberties Union is ready to help in any way it can.”

Kunstler left immediately, a move that he later recalled “was to alter my life radically.”

Flames for this leg of the great civil rights struggle were lit 17 months earlier.

On February 1, 1960, Franklin McCain, Joseph McNeil, David Richmond and Exel Blair, black North Carolina A & T University students, sat in at the segregated

Woolworth’s lunch counter in Greensboro, North Carolina, and asked to be served.

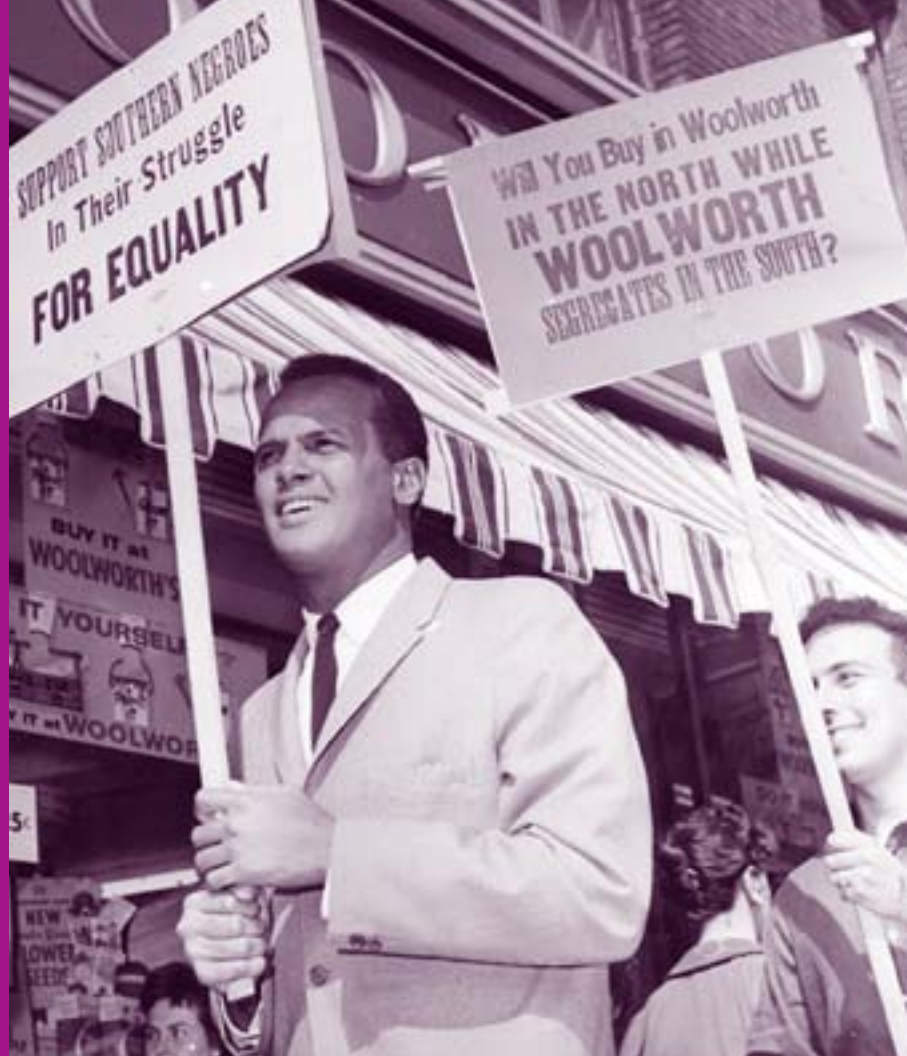
That act ignited a movement — and opened up a turbulent era in American history — that nearly consumed a nation.

The civil rights movement was a heroic struggle that inspired new protest movements and created a new body of free speech law.

The ACLU was at the forefront of these movements. Its lawyers, for instance, rushed to aid the first wave of sit-ins. Millions of people were denied the most basic rights at the hands of the police, the public schools, the prisons, and mental institutions. This spurred the ACLU anew to come up with ways to fulfill the promise of the Bill of Rights.

continued on page 21

Singer Harry Belafonte leads a line of pickets from Harvard and surrounding colleges in protest against lunch counter segregation in the South. Students picketed the Woolworth store in Harvard Square, Cambridge, Massachusetts, April 21, 1960.



A 17-year-old civil rights demonstrator, defying an anti-parade ordinance of Birmingham, Alabama, is attacked by a police dog on May 3, 1963. On the afternoon of May 4, 1963, during a meeting at the White House with members of a political group, President Kennedy discussed this photo, which had appeared on the front page of that day's *New York Times*.





As the early 1960 sit-ins spread, Watts and assistant ACLU legal director Mel Wulf scrambled to arrange legal assistance. The ACLU got the state supreme court to overturn the convictions of 41 black students for demonstrating in front of Woolworth's in Raleigh, North Carolina. The Florida ACLU represented 11 students arrested for a sit-in in Tallahassee, and in New Orleans the ACLU represented 16 students expelled from Southern University for off-campus sit-ins. By 1961, the ACLU was involved in appeals in Virginia, Alabama, Kentucky, and Texas. Some 70,000 people, most of them black students, participated in sit-ins in that first year, with over 3,600 arrested. The Southern Regional Council estimated that "at least 141 students and 58 faculty members were dismissed by southern colleges and universities." Such problems were not confined to the South. The Michigan ACLU intervened when Wayne State University tried to prevent students from engaging in sympathy demonstrations. The Northern California ACLU fought restrictions on political activities at Berkeley, setting the stage for the 1964 Free Speech Movement.

Each year brought a new confrontation: the 1961 freedom rides and the 1962 integration of the University of Mississippi. Televised images of Alabama cops setting dogs on demonstrators in Birmingham in 1963 were a turning point that aroused the conscience of many whites. In the Supreme Court, the NAACP handled the principal sit-in cases, scoring an almost unbroken string of victories that overturned breach-of-the-peace and trespassing convictions between 1961 and 1964, at which point the new civil rights law outlawed segregation in public accommodations.

Supreme Court decisions meant little in the backwoods of the Deep South, however. The state of Mississippi, for example, was in the grip of a reign of terror at a time when SNCC, the Student Nonviolent Coordinating Committee, planned to bring a thousand white college student volunteers there. Hundreds of arrests were certain. Many feared violence and possible deaths.

The ACLU made its greatest contribution to the entire civil rights movement by providing lawyers to handle the huge number of cases, averting a serious crisis in legal representation. Mel Wulf, the ACLU's legal director at the time, searched the South for cooperating attorneys. He found that "those working for civil rights do so in an underground atmosphere." ACLU Executive Director Jack Pemberton decided the ACLU should step into the breach.

The Lawyers Constitutional Defense Committee (LCDC) was formed and became the main instrument of the ACLU's activities. Henry Schwarzschild, its director, kept a desk at the ACLU office and from there recruited lawyers and raised money. LCDC's call for volunteers brought an extraordinary response from across the country. Lawyers from the most prestigious firms signed up: Ralph Temple and Richard Sobol from Arnold, Fortas and Porter; Armand Derfner from Covington and Burling; and several from Millbank, Tweed, Hadley and McCloy. Public officials volunteered. An assistant county attorney from St. Paul, two assistant attorneys general from Washington State, and a legal officer with the U.S. Coast Guard. Future New York Congressman and mayor Ed Koch volunteered.

The Mississippi summer was even more violent than anyone had expected. Klansmen, led by Deputy Sheriff Cecil Price, murdered civil rights workers James Chaney, Andrew Goodman, and Michael Schwerner.

In the end there had been nearly one thousand arrests and thirty-five shooting incidents, with three people injured. Thirty homes or churches had been bombed and another 35 burned. Eighty civil rights workers were attacked and beaten. LCDC volunteers had their hands full with arrests for disorderly conduct, vagrancy, and other trumped-up charges. In a typical case in Madison, Mississippi, a civil rights worker was charged with improper parking. When he objected, a police officer said: "Don't keep talking to me or I'll drag you out of that car and beat your damn brains out."

The town constable and jailer in Magnolia, Mississippi beat Al Bronstein as he sought bail for 42 people arrested for a voter registration demonstration. Bronstein, who later founded the ACLU's National Prison Project, was a life-long ACLU lawyer. By late 1965, the LCDC docket in Jackson listed 238 cases. LCDC maintained offices in New Orleans, Tallahassee, and Atlanta, with the Southern California ACLU office in the Los Angeles Watts section also under the LCDC. The LCDC experience transformed the lives of many volunteers who, after this firsthand contact with the depth of racism and poverty in Mississippi, dropped their conventional law careers and became full-time civil rights lawyers. Many of them "went South for two weeks and never returned," said the director of the program.

By 1965, the ACLU had two legal teams in the South: the LCDC and the Southern Regional Office. Both teams had more than enough work to go around. The LCDC concentrated on defending civil rights workers while the Southern Regional Office launched affirmative suits attacking institutionalized segregation. Chuck Morgan,

director of the ACLU Southern Regional Office for eight years, challenged the Georgia election law in the U.S. Supreme Court. Earlier, he got a federal court to throw out a state law forbidding anyone from assisting more than one illiterate person at the polls — a pertinent issue in a state in which 25% of the voters were illiterate.

In a series of suits challenging Alabama's election procedures, Morgan helped elect the first black officials in Sumter, Marengo, and Greene counties. Another of his Supreme Court cases ordered black candidates in Sumter and Marengo counties to "be treated as duly elected" and ordered new elections in Greene County. In July, the black majority of Greene County elected its candidates and assumed control of the county commission and the school board.

Across the South, voting rights suits were paving the way for a political revolution.

on equal protection, the First Amendment, and due process. A series of cases involving the NAACP produced a new concept of freedom of association, and the fate of black suspects in the hands of the police spurred a revolution in due process of law that reshaped the entire criminal justice system. And in the 1960s, sit-ins defined a new style of political activism.

The ACLU started the tumultuous decade with 52,000 members and doubled the number by decade's end.

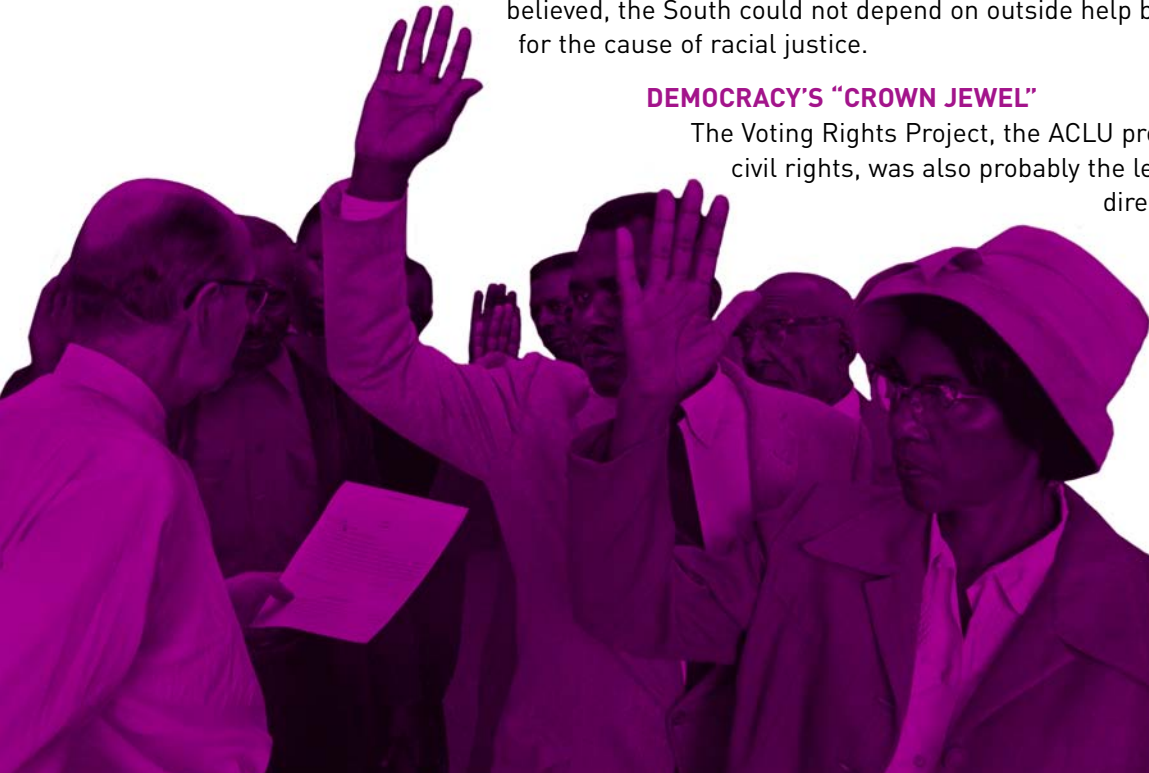
In 1960, the ACLU had seven staffed affiliates, but with no presence in the Deep South, the Great Plains, and most small states. By 1974, ACLU had affiliates in all but four states. ACLU lawyers abandoned their traditional reliance on *amicus* briefs in favor of direct representation. The ACLU created projects devoted to prisoners' rights and other new civil liberties areas. For instance, in 1968, Chuck Morgan of the ACLU argued and won a Supreme Court case ending segregation in the Alabama prison system.

In a case that combined race with religious freedom, Morgan and the ACLU assisted world heavyweight champion Muhammad Ali in the toughest battle of his career, fighting conscription into the United States Armed Forces during the Vietnam War. Ali, a leader in every great social movement of his time, was a controversial champion whose early embrace of the Nation of Islam and his insistence on rejecting his "slave name," Cassius Clay, heralded a new era in black pride. He opposed the war in Vietnam and refused on religious grounds induction into the army, which led to his being stripped of his World Heavyweight title and prosecuted for draft evasion in 1967. It was, of course, a natural case for the ACLU: ACLU's founder, Roger N. Baldwin, served a year in prison as a conscientious objector in World War I. Ali's case went all the way to the Supreme Court, where the justices reversed his conviction in 1971, finding Ali's conscientious objector claim to have been "religiously based and sincerely held."

Morgan, director of the ACLU's Southern Regional Office during its first eight years, also contributed significantly to the integration of the legal profession, carrying the civil liberties message to southern law schools and encouraging private foundations to fund scholarships for black law students at southern law schools. Soon there were 31 black law students at the University of Mississippi under a Ford Foundation grant and 28 at Emory University under a Field Foundation grant. This was another reflection of his faith in the South. In the long run, Morgan believed, the South could not depend on outside help but had to find its own resources for the cause of racial justice.

DEMOCRACY'S "CROWN JEWEL"

The Voting Rights Project, the ACLU project with the greatest impact on civil rights, was also probably the least well known. The project was directly responsible for the election of



Johnnie Carr (R) and members of the Montgomery Improvement Association (MIA) register to vote in Montgomery, Alabama. MIA was founded in 1955 after Rosa Parks refused to give up her seat on a segregated bus. Carr, a longtime friend of Parks, became president of MIA in 1968.

countless black officials in the South and, as a result, had profound impact on local, state, and national politics. Laughlin McDonald inherited the project from Chuck Morgan in 1972. From the passage of the 1965 Voting Rights Act through the late 1980s, The ACLU Voting Rights Project “shouldered most of the burden of private voting rights enforcement.” By 1988, McDonald estimated that he had filed a total of 157 lawsuits against 180 jurisdictions. He had 15 to 20 lawsuits going at any given moment, especially as Ronald Reagan’s Justice Department abandoned its voting rights enforcement responsibilities under the law.

Today, the generation bred by the Voting Rights Acts and other important civil rights gains by the ACLU are members of the Congressional Black Caucus who have, in turn, done more to expand civil liberties and are the staunchest supporters of civil liberties than any other identifiable group in the United States Congress.

As each generation has posed new civil liberties challenges, so has ours, starting with Reagan’s election in 1980.

Reagan was committed to reversing the gains of the civil rights movement, was opposed to renewal of the Voting Rights Act, and was hostile to affirmative action.



In Contempt of Congress and the Courts, a 1984 ACLU critique of the Reagan administration's systemic dismantling of civil rights, concluded that in four years the administration achieved many of its goals, primarily by gutting civil rights laws from within, through non-enforcement. The effect of this "radical and shameful assault on law enforcement in the United States," the report's authors wrote, "is a drastic curtailment of civil rights protection for millions of Americans and the undermining of the Constitution and the rule of law."

The civil rights coalition fought back, led by the Leadership Conference on Civil Rights and with the ACLU's Washington office as the largest single lobbying presence. The civil rights coalition's first great legislative victory over the Reagan administration was the reenactment of the Voting Rights Act in 1982. Congress not only reenacted the law but also strengthened it. And Reagan not only signed it into law in a big ceremony in the Rose Garden, he described the right to vote as the crown jewel of American democracy. The coalition scored a number of important victories, proving that the commitment to civil rights was still alive in Congress.

The struggle for justice never ends, and our commitment to the civil rights and civil liberties of African-Americans will never waver. Who would have believed that more than a generation after civil rights laws were passed, after the triumph and exhilaration of dismantling Jim Crow's infrastructure of institutionalized and legalized racial discrimination, our society would remain as stratified, as inequitable, and as unjust as it is today? Although the ACLU's historic and current work on race is not sufficiently known and, when known, is sometimes misperceived among racial minorities, public opinion research shows African-Americans, more so than most groups, are better disposed toward the ACLU. One lesson of our nation's history is that we cannot relax our vigilance in the cause for freedom, justice and liberty.

The African-American community, our traditional ally in this cause, will be crucial in the efforts to tackle existing and future challenges. The threats to our liberty are great. The government, for instance, used the 9/11 terrorist attacks to gain new powers that go far beyond fighting and protecting us from terrorism, powers that allow it to invade the privacy of U.S. citizens who are not accused of breaking any laws, routinely deny due process of law and use broad powers in routine criminal investigations. History tells us that long after fears of terrorism have abated, these new laws will remain to terrorize us.

Since African-Americans bear the brunt of the effects of the criminal justice system, it is not far-fetched to expect that these laws will eventually weigh disproportionately on African-Americans.

Who among us, after all, is not aware of how the federal government, through the Federal Bureau of Investigation and the Central Intelligence Agency, illegally undermined and spied on the civil rights and black power movements in the 1950s, 1960s and 1970s? Take the case of the Rev. Martin Luther King, Jr., who changed history and galvanized Americans to fight against injustice. His advocacy for equality, the rights of the poor and peace, besides earning him world renown, brought him the enmity of our government. As Dr. King worked for social justice, the FBI was orchestrating a campaign to ruin him. The ACLU maintains its outreach to African-Americans because we will not and must not allow the sorry history of federal and local police abuse and racial discrimination to repeat itself. We need to come to terms with the

potentially disastrous implications of a government that refuses to abide by the Constitution and the Bill of Rights — two documents that protect the rights and liberties of African-Americans and other vulnerable minorities in the United States.

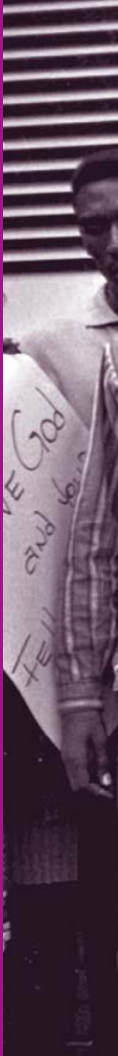
Help us roll back the attack on our civil rights and liberties by speaking and writing to your elected officials, by supporting local government resolutions denouncing provisions of the USA PATRIOT Act, by voting for candidates who will safeguard our rights, by staying informed, and by joining the ACLU.

Note: *A Bond Forged in Struggle* is based in part on *In Defense of American Liberties: A History of the ACLU* (2nd Edition) by Samuel Walker, published in 1999 by Southern Illinois University Press, Carbondale and Edwardsville.



May 15, 1961: The Rev. Shuttleworth and Freedom Riders discuss plans at Birmingham Greyhound Terminal after drivers refused to carry them farther. The day before, one of the buses was bombed in Anniston and passengers on a second bus were beaten.

Opposite page:
May 3-9, 1963 Civil rights leaders disagreed on whether to use students as part of the movement, but public perception changed after photographs showed the children being arrested, sprayed by fire hoses and dodging police dogs.





Credits: Photographs on the front cover, inside back cover, and pages 6, 25, 30 and 31 are published here courtesy of the Birmingham News.

The ACLU's *A Bond Forged In Struggle* is among the first publications to feature these photographs, which were lost for more than 30 years. Tom Self, who retired in 1998 as chief photographer for the News, took the photographs during the civil rights struggles in Alabama from 1950 through 1965. The previously unpublished collection of more than 5,000 photographs was recently discovered in the back of an equipment closet packed in a cardboard box marked "Keep. Do Not Sell."

The newspaper featured some of the images in "Unseen. Unforgotten," a special section earlier this year. The Birmingham Civil Rights Institute has also mounted a special exhibit of the photographs.



Demonstrators take part in the 1966
“March Against Fear” led by James Meredith.



“Katrina’s stark exposure of the sizable divide that continues to exist across our nation’s color line confirms why the ACLU’s commitment to racial justice is far more than just a legal strategy. It stems directly from our mission, and it permeates all of the work that we do.” -Anthony D. Romero, executive director of the ACLU