

True Believer

By O. Casey Corr

Photography by Inye Wokoma

Aaron Caplan, champion of justice and home-brewer extraordinaire, took his fifth-grade civics lessons to heart

Shawn Nyman had pretty much given up on lawyers till she met Aaron Caplan.

Going through a bitter divorce and its aftermath, the Longview woman complained to attorneys, cops, domestic-violence agencies and others about what she called harassment by her ex-husband. "People dismissed me as a 'Looney Tunes,'" she says.

Because her former husband was a cop, she figured this was just life in a small town. Then came a shock: A judge, responding to an anti-harassment suit by her ex-husband, who denied her claims, issued an order threatening *her* with punishment if she made more complaints that would "annoy" her ex-husband. She sent a letter in 2000 to the Seattle office of the American Civil Liberties Union, where it landed on the desk of staff lawyer Caplan.

By chance, her case had gone to one of Washington's most respected civil rights attorneys. "He's one of the ACLU's great natural resources," says Steven Shapiro, the ACLU's national legal director.

By appearances, Caplan was not an obvious choice to challenge the system. If trial lawyers tend to be high-wattage personalities, Caplan is an energy saver. The voice heard by Nyman that day

was gentle and precise, almost a monotone. Later, in person, Caplan looked less like a litigator than a classics scholar, his bespectacled face ringed by an Amish-style beard—sans mustache—and lips that always seem close to forming a smile. He might be the guy who does research, she figured, not the courtroom tiger Nyman needed.

But as she soon learned, there is a toughness about Caplan that is easy to miss. Caplan focused on the free-speech issue, fighting the anti-harassment order all the way to the state Supreme Court, where it was argued in 2004.

"Aaron encouraged me to not give up. He was awesome," says Nyman, who has since remarried. (The case was filed under her previous name, Shawn Suggs.) "Nobody was going to scare him off." They won. In a unanimous decision that made headlines around the country, the court called the anti-harassment order an overly broad, unconstitutional restraint of speech, saying such actions could have a chilling effect on victims' rights to speak out. (The court did say a more tailored order against Nyman might have passed muster.)

Score another victory for Caplan, 44, who plays a remarkable, and largely unsung, role in civil rights cases here and nationally. Pick almost any recent high-profile civil-rights issue and Caplan has been involved: Seattle's handling of protesters during the World Trade Organization meeting in 1999; health care for prison inmates; death-penalty appeals; drug testing of student athletes; same-sex marriage equality; the trial of Army Lt. Ehren Watada, an Iraq war protester; student free speech, and even a case in which the city of Yelm banned any mention of the topic of Wal-Mart at public hearings.

Caplan worked on the nation's first major challenge to the federal government's "no-fly" list, a case involving John F. Shaw, a retired Sammamish minister who got stopped, searched and interrogated nearly every time he tried to board a plane. The publicity prompted Congress to pass a law in 2004 requiring the government

to change its listing system and create an avenue of appeal for those wrongly placed on the lists. David Blair-Loy, legal director for the ACLU in San Diego, says of Caplan: "His fingerprints are on practically every civil liberties case that's come out of Washington state."

HE LISTENED IN CLASS

Maybe destiny had something to do with it.

As a boy, Caplan visited the Statue of Liberty with his grandfather, a Lithuanian immigrant who landed on Ellis Island just prior to World War I, escaping poverty and the persecution of Jews. "I actually believe the things they taught us in civics class in fifth grade about how our government is supposed to work and how American democracy is supposed to be the model for the world," says Caplan.

Those principles are constantly under assault. Internet technology, for example, has opened new questions about student speech. Caplan handled one case involving Kent students who were punished for creating a satirical Web site featuring mock obituaries of students. He filed suit in federal court and won an injunction against the school district. "Censorship is not part of a well-functioning society. It's important that people have the ability to question authority," Caplan says. "If we don't allow young people to do that, they will grow up thinking that it's not okay, and then we're in big trouble."

Caplan is in his ninth year with the ACLU. Dave Burman of Perkins Coie, who donates many hours of pro bono services to the ACLU, has worked with Caplan on a variety of cases. "Sometimes people as smart as Aaron can get lost in the trees," says Burman, "because everything is an issue and they want to talk about that, but he always knows what to keep the focus on."

Praise comes from the other side as well. Ted Buck, of Stafford Frey Cooper in Seattle, spent years opposing Caplan and other lawyers over the constitutionality of arrests made during the WTO protests in 1999. The city ultimately settled with two protesters represented by Caplan, paying \$62,500 to one and \$12,500 to the other. Buck says some civil rights lawyers go for the loud-voices approach. Not Caplan. Buck tells a story of how, consumed by another case, he failed to answer letters from Caplan on the WTO lawsuit. Eventually, Caplan called and prodded—but in the nicest



Caplan poses on a "World War II poster" for a music CD he put together for friends.

way, asking, "Is there a chance I could hear back from you?" Buck laughs at the memory, a contrast to how many lawyers might have handled it. "It was such a gentlemanly way to approach me," says Buck. "He's very professional. I like Aaron. I wouldn't mind working with him or working against him in the future." Caplan admits that, once in a while, the other side in a case does something that really upsets him. In those cases, he'll get up and walk around the office. But there's little to be gained by playing the gladiator, he says. "Nobody cares how much testosterone I have."

KEEPING A SENSE OF HUMOR

Walking into Caplan's office is like stepping into the den of an intellectual with a taste for screwball humor, the lingering effect of a childhood devotion to *Mad* magazine. His office is ringed by a collection of silly stuff, such as Yugoslavian movie posters and LP album covers of dubious distinction (*Music to Read James Bond By... Teach Your Bird to Talk... Twist at the Space Needle with KAYO*). Caplan lives in Seattle's Fremont neighborhood, where he brews his own beer. (One batch came labeled as the "Beer of the King," honoring Elvis and spoofing Budweiser.) "I try not to drink too much on the job," he jokes. Beer is donated to auctions and events for various groups. "It's great. It's consumed by all, and heartily," says Cathie Caldwell, program manager for the King County Bar Association's Neighborhood Legal Clinics. In addition to donating beer, Caplan is on the group's board and volunteers regularly at the Greenwood clinic.

PATH TO JUSTICE

Caplan was born in Iowa City in 1963 to a physician father and librarian mother. He graduated summa cum laude from the University of Pennsylvania in 1986. His path to Seattle began at the University of Michigan Law School, where a teacher who was a former clerk of Betty Fletcher—judge on the U.S. Court of Appeals for the Ninth Circuit—recommended Caplan to her. Fletcher was impressed and hired him as a clerk. "In chambers, he was always hard-working, well prepared, and very concerned about all of our cases," recalls Fletcher. Clerkships last just one year, but Caplan made a lasting impression, she says, especially because of his compassion for others, including a fellow clerk who needed moral support as she underwent chemotherapy. "His humanity is very sincere," says Fletcher.

From his clerkship, Caplan went to Perkins Coie in Seattle, where he did business litigation and some pro bono work on cases involving immigration law, the death penalty and physician-assisted suicide. Caplan was content, but he jumped at the opportunity when the ACLU in Seattle found funding for a staff lawyer. The job posting called for an attorney with five years' experience. "I thought, 'I've got five years and two months. I can apply!'" laughs Caplan.

Today, the Seattle ACLU office has four



In Caplan's line of work, it helps to have a sense of humor.

staff attorneys, handling about 40 cases a year. In some, Caplan is the lead attorney. In others, he supports the work of experienced volunteer attorneys. Blair-Loy, an attorney formerly with the Center for Justice in Spokane, worked with Caplan on a case involving efforts by the Spokane Transit Authority to restrict people from making speeches and handing out leaflets at a downtown bus station. Caplan played a major role in getting the authority to modify its rules. "He's got an encyclopedic knowledge," says Blair-Loy. "There wasn't a question you could ask for which he hadn't an answer.

He had thought about it, researched it, written a brief or digested the relevant case law. He was a joy and a delight to work with."

Another lasting effect can be felt back in Longview, where Shawn Nyman says Caplan changed her opinion of lawyers, or at least of what a good one can do. Now 47, Nyman says her youngest child is close to finishing high school, causing her to think about going back to school. One possibility: becoming a lawyer. "If I go into law, it would be as a lawyer like him—not necessarily making a lot of money, but making a lot of difference." L&P