EXHIBITS

1. *Policing Dissent: Police Surveillance of Lawful Political Activity in Boston*, ACLU of Massachusetts & National Lawyers Guild, Massachusetts Chapter, Oct., 2012.

2. *Locking Up Our Children: The Secure Detention of Massachusetts Youth After Arraignment and Before Adjudication*, American Civil Liberties Union & ACLU of Massachusetts, May 2008.

3. *Robin J. Dahlberg, Arrested Futures: The Criminalization of School Discipline in Massachusetts' Three Largest School Districts*, American Civil Liberties Union, Citizens for Juvenile Justice, ACLU of Massachusetts, Spring 2012.

4. *The Docket,* ACLU of Massachusetts, Fall 2013.

5. ACLU of Massachusetts homepage, http://aclum.org/ (Dec. 3, 2013).

6. Privacy SOS homepage, http://privacysos.org/ (Dec. 3, 2013).

7. Privacy SOS blog, http://privacysos.org/blog (Dec. 3, 2013).

8. *Shirley Town Official Settles Lawsuit Alleging Constitutional Violations*, ACLU of Massachusetts, Aug. 28, 2013.

9. *ACLU and Other Organizations Demand Records on FBI Collection of Racial and Ethnic Data*, ACLU of Massachusetts, July 27, 2010.

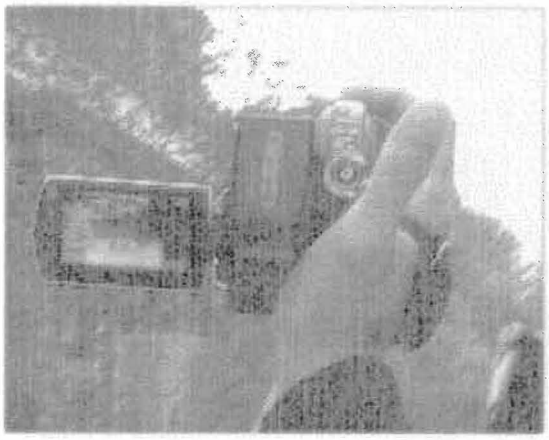
10. *Court Orders End to Cambridge Jail Overcrowding*, ACLU of Massachusetts, June 18, 2013.

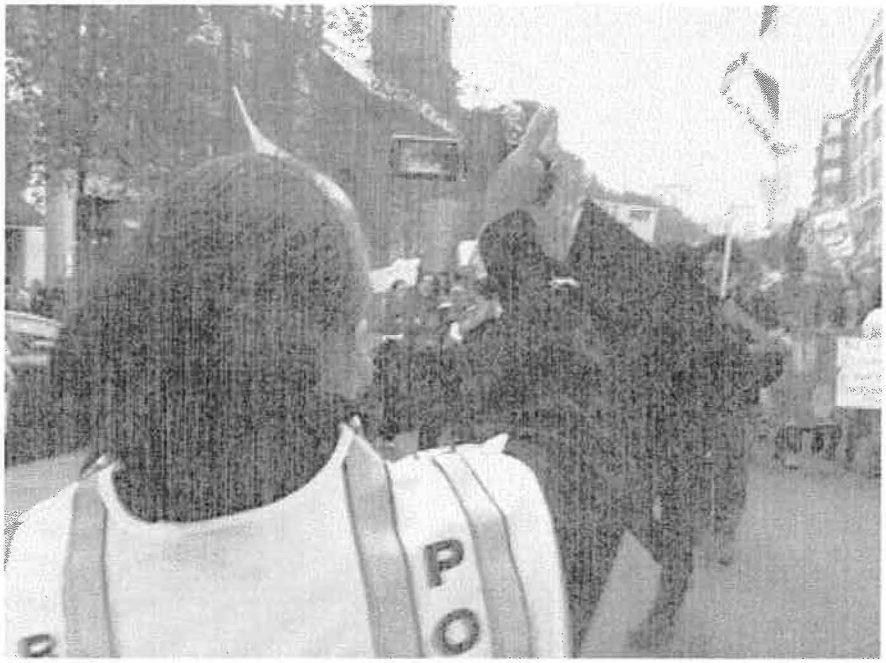
11. *You Are Being Tracked. How License Plate Readers Are Being Used To Record Americans' Movements*, website homepage https://www.aclu.org/alpr, American Civil Liberties Union. (last accessed Dec. 3, 2013).

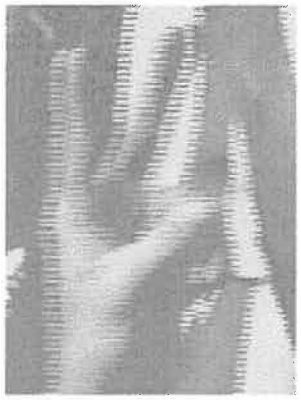
12. FBI Letter Allowing ACLU of Massachusetts' Fee Waiver Request, Apr. 17, 2012.

13. FBI Letter Allowing American Civil Liberties Union's Fee Waiver Request, Dec. 17, 2012.

Exhibit 1





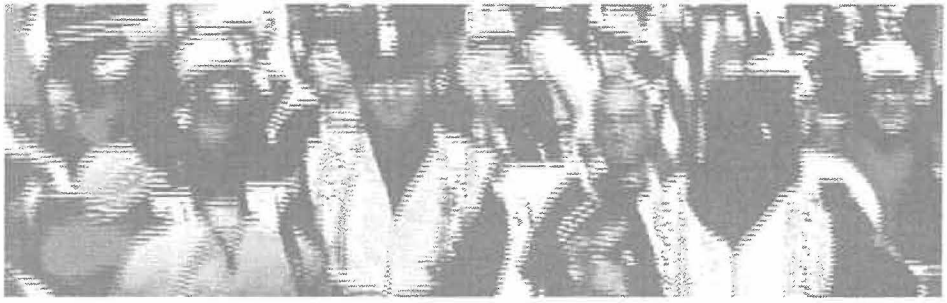


POLICING DISSENT:

Police Surveillance of Lawful Political Activity in Boston

10/2012

ACLU OF MASSACHUSETTS
NATIONAL LAWYERS GUILD,
MASSACHUSETTS CHAPTER



POLICING DISSENT:

Police Surveillance of Lawful Political Activity in Boston

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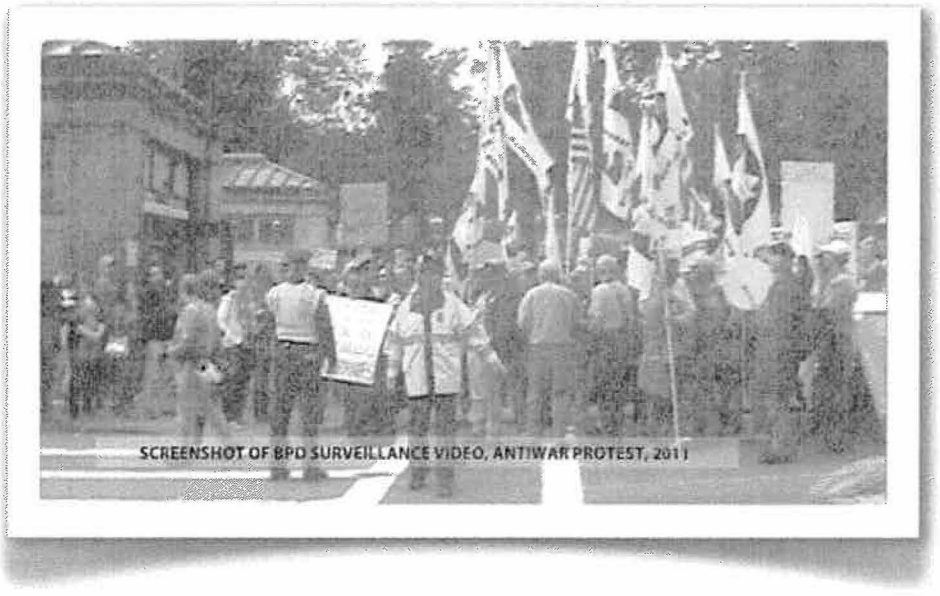

SCREENSHOT OF BPD SURVEILLANCE VIDEO, ANTIWAR PROTEST, 2011

ACLU
AMERICAN CIVIL LIBERTIES UNION of MASSACHUSETTS

NATIONAL LAWYERS GUILD
NLG
Est. 1937
MASSACHUSETTS CHAPTER

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The First Amendment to the U.S. Constitution

The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this commonwealth. The right of free speech shall not be abridged.

Article 16 of the Massachusetts Declaration of Rights

I. OVERVIEW

The Boston Police Department (BPD) and its fusion spying center, the Boston Regional Intelligence Center (BRIC), have for years been tracking and creating criminal "intelligence reports" on the lawful political activity of peace groups and local leaders, including a former Boston City Councilor and the late Boston University Professor Howard Zinn, according to documents obtained by the ACLU of Massachusetts and the National Lawyers Guild, Massachusetts Chapter (NLG). Officers monitor demonstrations, track the beliefs and internal dynamics of activist groups, and document this information with misleading criminal labels in searchable and possibly widely-shared electronic reports. This collection and retention of data regarding people's constitutionally protected speech and beliefs — with no link to terrorism or a crime — violates federal privacy regulations and the BRIC's own privacy policies.

Documents and video surveillance tapes obtained by the ACLU and the NLG — after suing for access on behalf of six groups and four activists[1] — show that officers assigned to the BRIC are collecting and keeping information about constitutionally protected speech and political activity. The documents provide the public with its first glimpse into the political surveillance practices of the Boston Police Department. They show that police officers assigned to the BRIC create and retain "intelligence reports" detailing purely non-criminal political acts — such as handing out flyers and attending anti-war rallies — by well-known peace groups, including Veterans for Peace, Stop the Wars Coalition and CodePink. The videotapes, which include hours of footage of peaceful protests, confirm that police are often watching when members of the public speak their minds.

These revelations come on the heels of a report by a bipartisan US Senate subcommittee, which found that the federal government's work with state and local fusion centers — among them the BRIC — "has not produced useful intelligence to support Federal counterterrorism efforts."[2] "Fusion centers" were created in the aftermath of 9/11, ostensibly so the federal government could "share terrorism-related information with states and localities."[3] One of two "intelligence fusion centers" in Massachusetts,[4] the BRIC

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[1] CodePink of Greater Boston; Veterans for Peace – Chapter 9 Smedley D. Butler Brigade; Greater Boston Stop the Wars Coalition; Boston Coalition for Palestinian Rights; Political Research Associates; United for Justice with Peace; Susan Barney, Ridgely Fuller, Patrick Keaney and Richard Colbath-Hess.

[2] Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, Majority and Minority Staff Report, "Federal Support for and Involvement in State and Local Fusion Centers," at 2, Oct. 3, 2012, at http://www.hsgac.senate.gov/download/report_federal-support-for-and-involvement-in-state-and-local-fusions-centers (herein "Congressional Fusion Centers Report").

[3] *Id.* at 5.

[4] The other center is the Commonwealth Fusion Center in Maynard, Massachusetts, which is operated by the Executive Office of Public Safety and the Massachusetts State Police. For more information, see here and "When We Are All Suspects."

was created in 2005 as "a way to further integrate the intelligence capabilities of Boston, local, state and federal law enforcement partners."[5] Since then, it has received millions of dollars in federal funding and operated entirely absent independent public oversight or accountability.[6]

According to the Senate subcommittee report released earlier this month, the lack of accountability at fusion centers nationwide has translated into poor results: the report found that the millions of dollars poured into centers like the BRIC have failed to uncover a single terrorist plot.[7] Instead, fusion centers have "forwarded 'intelligence' of uneven quality — often times shoddy, rarely timely, sometimes endangering citizens' civil liberties and Privacy Act protections, occasionally taken from already-published public sources, and more often than not unrelated to terrorism."[8] When they were related to terrorism, intelligence reports produced by fusion centers "duplicated a faster, more efficient information-sharing process already in place between local police and the FBI-led Terrorist Screening Center."[9] One Department of Homeland Security (DHS) official told investigators that fusion centers produce "a lot of... predominately useless information," and at times, said another, "a bunch of crap."[10]

That shoddy intelligence gathering does not just waste taxpayer money. It undermines our most cherished democratic values and at times violates the law. The Code of Federal Regulations provides that federally-funded surveillance projects may collect and maintain information on individuals "only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity."[11] The regulations also state that surveillance teams "shall not collect or maintain criminal intelligence information about the political, religious or social views, associations, or activities of any individual or any group . . . unless such information directly relates to

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[5] Boston Police Department, 2005 Annual Report, at 9. According to the BPD's 2005 Annual Report, the BRIC's membership expanded within its first year to include "the MA State Police, the MA Transit Police, the MA Department of Correction, the Suffolk County Sheriff's Office and the Brookline and Cambridge Police Departments" as well as a private sector liaison with the business community. It later grew to include Chelsea and Revere and a daily telephone call with nine cities and towns in what is known as the Urban Areas Security Initiative.

[6] For example, in 2009, the BRIC received $1.29 million in a federal grant to hire ten analysts at the BRIC, including two analysts who specialize in "social network analysis intelligence." City of Boston, "Boston Receives Nearly $2 million in Federal Funding for Public Safety," Sept. 11, 2009, at http://www.cityofboston.gov/news/default.aspx?id=4477; BRIC also receives funding from the state's Homeland Security Grant Program, which is funded by the Federal Emergency Management Agency, at http://www.cityofboston.gov/oem/about/homelandsecurity.asp

[7] Congressional Fusion Centers Report, at 2.

[8] Congressional Fusion Centers Report, *supra* n.2, at 1.

[9] Congressional Fusion Centers Report, at 42.

[10] Congressional Fusion Centers Report, at 3.

[11] Department of Justice, 28 C.F.R. § 23.20(a) (2011). (Note: These federal regulations have the force of law. 42 U.S.C. §§ 3782(a), 3789g(c). Under the Privacy Act of 1974, federal agencies are subject to similar restrictions. 5 U.S.C. § 552a(e)(7).)

criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity."[12] The BRIC's own guidelines, also released at the request of the ACLU and NLG, expressly include the same mandate — to investigate crimes rather than speech.[13]

Those rules are vitally important because they create a dividing line between the permissible investigation of crimes and the impermissible investigation of people based on their ideas and beliefs. As the Senate subcommittee report on fusion centers explained, monitoring ordinary people is a "sensitive task" that can interfere with "individuals' rights to associate, worship, speak, and protest without being spied on by their own government."[14] The records we received from the BPD show that officers at the BRIC are not managing that "sensitive task" appropriately.

The documents show that surveillance officers from the BRIC, local and state police, and the FBI have worked together to monitor and record the non-criminal activities of Boston-area peace groups and activists. Officers created and retained electronic "intelligence reports" on groups and individuals where there is no demonstrated link to crime or terrorism. The BRIC files list the non-violent actions of peace groups and activists under the heading "Criminal Act," with labels such as "Extremists," "Civil Disturbance," and "HomeSec-Domestic" in reports that track groups and people who are not engaged in crime but are merely exercising their constitutional right to peaceful dissent.

In one "intelligence report," officers describe plans for a talk on March 23, 2007 at the Central Congregational Church in Jamaica Plain, writing that "this engagement was arranged by Boston City Councilor Felix Arroyo [Sr.]" The report notes that a "BU professor emeritus/activist" — it was the late Howard Zinn, although his name is blacked out in the document — and Cindy Sheehan, a member of Gold Star Families for Peace whose son was killed in Iraq, "will be speaking at the March 24 demonstration." Although nothing in the report suggests even a fleeting connection to criminal activity, it nonetheless labels the March 23rd presentation and subsequent anti-war rally as a "Criminal Act" with the sub-heading "Groups-Extremists," and creates searchable links to the individuals and peace groups discussed therein.

Worse still, the BPD's inappropriate intelligence collection about peaceful activists in the City of Boston may contribute to improper storage of information about them at the federal level. The documents we received from the Boston Police Department provide evidence that local officers and federal law

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[12] *Id.* § 23.20(b).

[13] "The BRIC will not seek or retain and originating agencies will agree to not submit information about individuals or organizations solely on the basis of their religious, political, or social views or activities; their participation in a particular noncriminal organization or lawful event; or their races, ethnicities, citizenship, places of origin, ages, disabilities, genders, or sexual orientation." *BRIC Privacy, Civil Rights, and Civil Liberties Protection Policy*, Fall 2010, §E2.

[14] Congressional Fusion Centers Report, *supra* n.2, at 28.

enforcement agents exchange information about Boston area activists. (That information sharing is unsurprising given that facilitating information sharing among different levels of government is part of the BRIC's mission.) One report refers to an FBI source who provided information to the Boston police on protesters' plans to "pass out fliers promoting their cause."The documents also describe communications between municipal police departments concerning First Amendment expression. Another report references a phone call between officers from BRIC and the Metro DC Intelligence Section during which the officials discuss how many activists from the Northeast attended a Washington, DC peace rally.

Due to the secretive nature of the BRIC's operations, we don't know precisely how Boston Police "intelligence reports" are shared with outside entities. We know that the BRIC is involved in several federally-managed reporting schemes, including the Suspicious Activity Reporting Initiative[15] and Homeland Intelligence Reports,[16] but we don't know what other means the Center has at its disposal to transfer information from local officers to shared government or private databases.

We therefore cannot easily trace the way "intelligence reports" like those describing our clients' First Amendment activity move through "intelligence" databases. Even if we had access to a complete list of those databases and information sharing systems, it may remain impossible to determine exactly where information generated at the BRIC ends up because the systems are difficult to audit. Therefore, erroneous information filed in reports crafted in Boston could find its way into untold numbers of further reports in departments and agencies nationwide. It is difficult to imagine a mechanism that could reel in errors in a locally-generated report because that report could end up in a police database 3,000 miles away, simply at the click of a button. Exacerbating the problem, the BRIC does not possess appropriate accountability mechanisms that would ensure the purging of inaccuracies or outdated information in its own files.[17]

That lack of functional oversight has resulted in predictable abuse, the released records show. While BRIC guidelines state that officers may create "interim reports" about an anticipated event or incident with potential for criminal conduct, they further require the destruction of those interim reports within 90 days if no criminal conduct occurs.

Nevertheless, in response to our lawsuit, the BRIC produced "intelligence reports" that did not reference any criminal activity dating back as far as 2007. These reports were retained for years when they

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[15] Boston is one of twelve pilot cities in the federal Suspicious Activity Reporting (SAR) Initiative.

[16] These reports are "the primary method DHS uses to publish and distribute the raw intelligence it gathers [from local fusion centers] to federal intelligence and law enforcement agencies." Congressional Fusion Centers Report, *supra* n.2, at 18.

[17] Worse still, BRIC guidelines state it will not confirm the existence of a Suspicious Activity Report if asked.

should have been destroyed after 90 days, pursuant to the BRIC's own rules.[18] We do not know how pervasive is this violation of the Center's retention limits, but the documents we received highlight the fact that abuse occurs absent appropriate oversight and accountability. Had the ACLU and the National Lawyers Guild not sued to recover these documents, the public — and perhaps even the BRIC — may never have known these files were retained in violation of the department's guidelines.

The BRIC admits that these "intelligence reports" were kept for too long. But they shouldn't have been written in the first place. The lack of effective oversight and accountability with regard to the BRIC's surveillance operations created an environment in which there was no meaningful check on the monitoring that led officers to create the unlawful reports about our clients.

These abuses demonstrate what can happen when policing procedures are shrouded in secrecy. It seems clear that despite having implemented rules designed to prevent abuses, the BRIC cannot effectively police itself. We are unaware of any officers facing discipline for violating the BRIC's own policies and putting our clients — and other innocent people — at risk of continued government surveillance or worse forms of harassment.

Political spying absent a nexus to criminal activity undermines effective law enforcement by wasting scarce tax dollars. The City of Boston faces real threats to public safety and shouldn't waste precious police resources investigating peace rallies. The Senate subcommittee report on fusion centers found that DHS may have allocated over a billion dollars towards the construction of offices like the BRIC nationwide. Its investigation also found that the states spent four times what the federal government contributed towards the development of these "fusion centers." Scarce police resources would be better allocated towards building community trust and solving actual crimes than intimidating and harassing petitioners for change in government policy.

When law enforcement officers start investigating protected ideas rather than crimes, they threaten our right to free expression and assembly protected by the First Amendment to the Constitution and Article 16 of the Massachusetts Declaration of Rights. The unchecked political surveillance our lawsuit uncovered undermines our core values by chilling the speech of people who wish to participate in our democracy, which is a laudable exercise that our government should encourage and promote. It would weaken the First Amendment if would-be speakers were to remain silent out of fear that they would be falsely labeled an "Extremist" or potential threat in a secret government database. Upon learning that the police had

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[18] The Boston Police attribute this particular impropriety to a computer glitch. In a letter to the ACLU, the BPD's lawyer explained that, "of the thirteen reports provided, approximately eleven of them should have been purged from the Department's database prior to your request. However, an error in the Department's software prevented this from occurring. That software error has since been corrected." Without an independent system of auditing and accountability, there is no way to know if the BRIC continues to keep interim reports longer than 90 days.

intelligence files containing information about him, one of our clients, peace activist Richard Colbath-Hess, said, "People are scared...If the police are monitoring us, who wants to take a risk?"

The organizations and individuals involved in the lawsuit against the Boston Police Department release these records to shine a light on counterproductive surveillance practices in our city. We call on the Boston Police Department to cease its political surveillance operations. The BRIC's political surveillance constitutes both a waste of public resources and a threat to our democracy. Rapidly advancing technologies enable government databases to log, store and share information — including false information — about people accused of no crime. Massachusetts should lead the nation and implement binding accountability, transparency and oversight mechanisms to ensure that police practices remain firmly within the confines of the law and the Constitution.

There is no room in a democracy for the policing of dissent.

II. DOCUMENTS AND FINDINGS

A police presence is commonplace at political rallies and events, where officers are called on to keep order, help marchers get through the Boston streets and ensure public safety. Documents released by the BPD reveal that, in at least three ways, police now do much more than that.

First, officers actively monitor and videotape events and demonstrations, retaining the footage, and writing the "intelligence reports" on peaceful protesters. Second, officers investigate the beliefs and communications of peaceful demonstrators, giving them labels like "extremists" even when the officers could not plausibly suspect them of any crime. Third, the BPD and the BRIC improperly retained this information for years, even though it never should have been collected.

A. The documents reveal that police surveillance teams have been monitoring and tracking Boston activists for years.

Videos taped at public demonstrations and "intelligence reports" written by officers assigned to the BRIC show pervasive monitoring of peaceful demonstrations. Nine out of the 13 reports obtained by the ACLU and NLG discuss only political activity, never mentioning criminal or even potentially criminal acts; two reference non-violent civil disobedience. Nonetheless, all of the reports include the category "Criminal Act" and use labels such as "Extremist," "Civil Disturbance" or "HomSec-Domestic."

Exhibit 2

LOCKING UP OUR CHILDREN

The Secure Detention of Massachusetts Youth After Arraignment and Before Adjudication

ACLU

AMERICAN CIVIL LIBERTIES UNION

LOCKING UP OUR CHILDREN

The Secure Detention of Massachusetts Youth

After Arraignment and Before Adjudication

Locking Up Our Children:
The Secure Detention of Massachusetts Youth After Arraignment and Before Adjudication

Published May 2008

Written by:
Robin L. Dahlberg
ACLU Senior Staff Attorney
Racial Justice Project/National Legal Staff

Cover: But Eyes To See Through by S., age 16.

The art work in this report and on the front cover was created by girls participating in H.U.M.A.N. (Hear Us Make Artistic Noise), an art and entrepreneurship program of Boston College Law School's Juvenile Rights Advocacy Project. H.U.M.A.N. assists girls between the ages of 13-18 who have been involved in the juvenile justice system in using visual arts to document and communicate their life experiences. Through the creation of a visual autobiography and the exhibition and marketing of their artwork, these young women learn to: 1) follow a complex project through to fruition; 2) have their voices heard through a visual medium; and 3) participate in a collaborative project with other young women and teachers. During the last year, the artwork of girls involved in H.U.M.A.N. has been exhibited at the Massachusetts State House and The Cloud Foundation on Boylston Street in Boston.

Learn more about H.U.M.A.N. by visiting its website at http://www.human-design-online.com or by contacting H.U.M.A.N.'s Art Educator, Kate Jellinghaus, at kate_jellinghaus@yahoo.com, or H.U.M.A.N.'s Founder and Director, Francine Sherman, at shermanf@bc.edu.

Acknowledgements: The author wishes to acknowledge the many individuals who assisted with this report including, Amy Reichbach, Rachel Karnovsky, Andre Segura, David Blanding and Jared Davidson. Special thanks go to Arlene Kohn Gilbert and Anjali Waikar, who conducted many of the interviews.

The author also wishes to thank those individuals who gave so generously of their time and agreed to be interviewed for the report.

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I. Introduction And Executive Summary

The United States Constitution mandates that state juvenile justice systems treat similarly situated children equally, regardless of their race or national origin. Systems in which youth of color are overrepresented are often viewed as failing to adhere to this mandate. That perception not only undermines public confidence in the system's fairness but also impedes the system's ability to work with the families and children who need its help.

For each of the last ten years, minority youth have accounted for approximately 20% of the Commonwealth of Massachusetts's juvenile population, but nearly 60% of the young people securely detained after arraignment and before adjudication, and 60% of those committed to the Commonwealth's Department of Youth Services (DYS) after an adjudication of delinquency. Although the federal Juvenile Justice and Delinquency Prevention Act requires that the Commonwealth determine why youth of color are overrepresented and develop and implement a plan to reduce that overrepresentation, Massachusetts has done neither.

In 2003, the Racial Justice Program of the National Legal Department of the American Civil Liberties Union and the American Civil Liberties Union of Massachusetts (collectively, the ACLU) published a report documenting the Commonwealth's failure to comply with its federal legal obligations. After the report's publication, the Commonwealth hired a Disproportionate Minority Contact Reduction Specialist to educate others about the overrepresentation of youth of color; increased the compensation of and training opportunities for attorneys who represent indigent youth; funded an alternative-to-detention pilot project in Dorchester to supervise children who would have been detained if such supervision had not been available; and began to work with the Juvenile Detention Alternatives Initiative (JDAI) of the Annie E. Casey Foundation to create alternatives to detention in Boston and Worcester.

Although the number of youth detained and committed decreased, the extent to which youth of color are disproportionately confined did not. In 2007, minority youth were overrepresented in the Commonwealth's detention and correctional (treatment) facilities to the same extent that they had been in 1998.

Efforts to determine the causes of the disproportionality have been stymied by a lack of data. Many local police departments do not maintain juvenile arrest statistics and those that do frequently do not disaggregate that data by race or ethnicity. The Massachusetts Juvenile Court only tracks the filing of delinquency complaints and youthful offender indictments and requests for jury trials. Although the Court contends that the Office of the Commissioner of Probation maintains relevant data, the Office has refused to make that data public. A bill introduced during each of the last 2 legislative sessions would have required government agencies involved in the juvenile justice system to collect and report data. It has yet to pass.

In 2006, the ACLU began to examine various decision-making points within the juvenile justice system to determine whether we could identify the reasons for the overrepresentation of minority youth. Specifically, we looked at arrest

and detention after arraignment but prior to a formal adjudication of delinquency.

We selected arrest to determine whether the disproportionate confinement of youth of color resulted from the disproportionate arrest of youth of color. Some inner-city public schools with a significant number of minority students rely heavily on the juvenile justice system to address school disciplinary problems. In 2006, for example, 82% of the students enrolled in Springfield's public schools were youth of color. During the same year, a reported 40% of all juvenile arrests in that city were made by the police officers assigned to patrol the schools. A lack of reliable state-wide juvenile arrest data, however, ultimately forced us to abandon arrest.

We chose detention because Massachusetts had one of the higher rates of secure pre-adjudication detention in the nation. In 2003, the most recent year for which nationwide data is available, the rate at which Massachusetts committed youth to DYS after an adjudication of delinquency was significantly below the national average. Yet the rate at which it detained youth prior to a determination of guilt or innocence was above the national average. Eight states committed youth at a lower rate than Massachusetts, but 33 states detained youth at a lower rate.

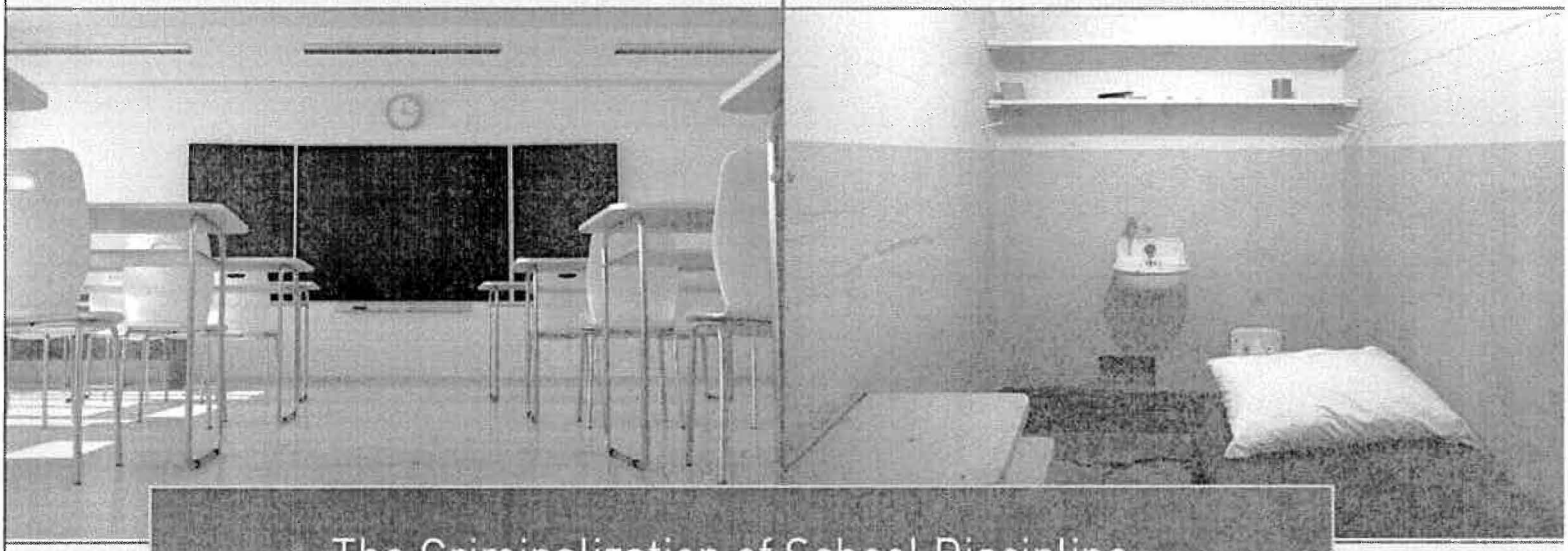
In addition, available data indicated that Massachusetts' pre-adjudication detention practices were at odds with its own bail statute and national and international standards. The bail statute presumes that all youth charged with delinquent behavior shall remain in the custody of a parent or guardian prior to adjudication. It limits the use of secure detention to those youth who are at high risk of flight or have been deemed dangers to their community after an evidentiary hearing. National and international standards recommend that the use of secure detention be similarly limited.

A large percentage of the children detained by Massachusetts, however, did not appear to be flight risks or dangerous. In 2006, for example, 45% of the 5438 youth detained had been charged with misdemeanors. There was no publicly available evidence that any of these children had histories of failing to appear or were the subject of "dangerousness" hearings. In fact, at least 80% of all detained youth were released into their communities once their cases were resolved.

To examine detention practices, we obtained hundreds of documents on the demographics of detained youth from DYS, the state agency that administers or oversees the administration of all juvenile detention facilities. In addition, we interviewed over 100 state officials, justices, prosecutors, defense attorneys and advocates by telephone and in-person in 9 different locations throughout the Commonwealth. The Massachusetts Office of the Commissioner of Probation was the single state agency that refused to permit regional and local employees to speak to us.

Exhibit 3

ARRESTED FUTURES



The Criminalization of School Discipline in Massachusetts' Three Largest School Districts

Principal Author: Robin L. Dahlberg

SPRING 2012

ACLU AMERICAN CIVIL LIBERTIES UNION

CfJJ Citizens for Juvenile Justice

ACLU AMERICAN CIVIL LIBERTIES UNION of MASSACHUSETTS

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Cover Photos:
Left: istockphoto/evirgen; Right: istockphoto/Daniel Stein

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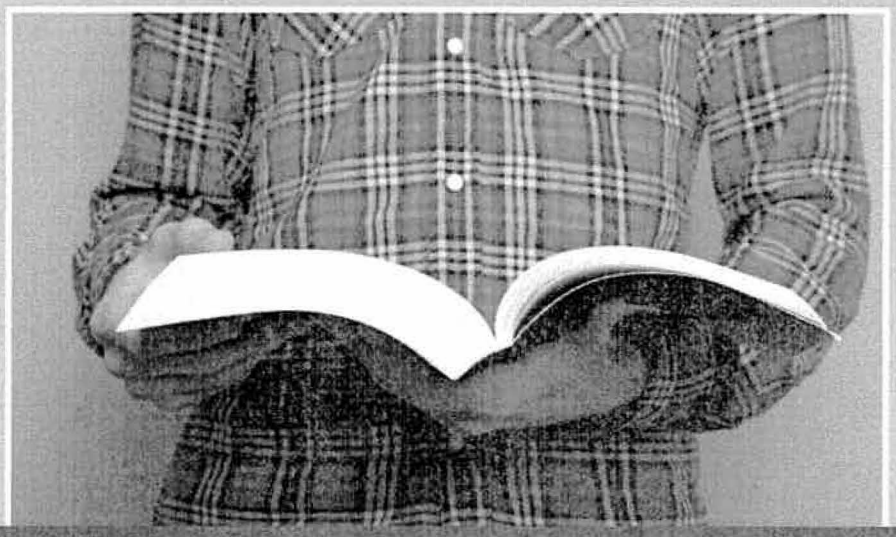
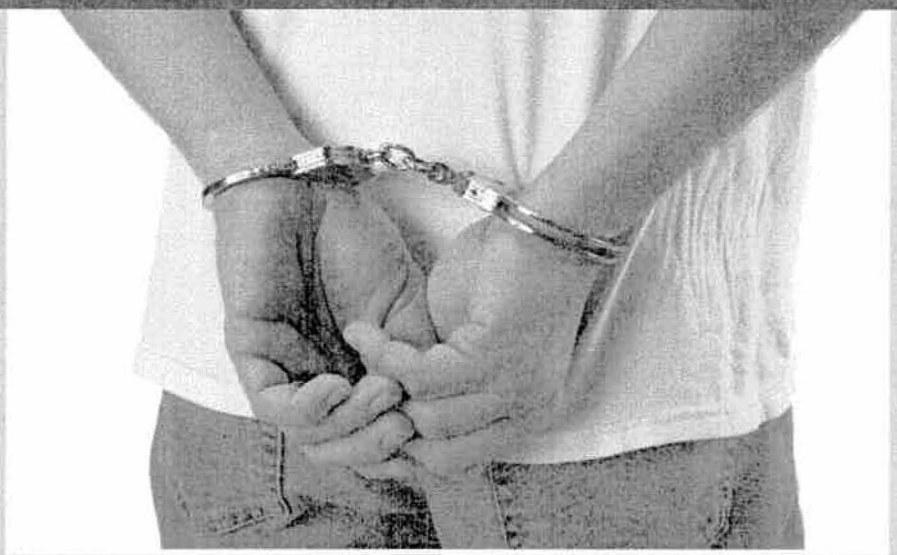


"I believe that education is the civil rights issue of our generation... And if you care about promoting opportunity and reducing inequality, the classroom is the place to start."

—SECRETARY OF EDUCATION ARNE DUNCAN, OCTOBER 9, 2009



Top: istockphoto/mattjeacock; Bottom: istockphoto/Scott Hirko

I. EXECUTIVE SUMMARY

On October 23, 2007, a 14-year-old boy at the Kennedy Middle School in Springfield, Massachusetts, was arrested after he refused to walk with a teacher to her office and instead returned to his classroom. According to the police report, he yelled at the teacher, bounced a basketball in a school hallway, failed to respond to a police officer's request to go with the teacher and slammed his classroom door shut. He was subsequently taken into police custody, handcuffed, transported to the police station and charged with "disturbing a lawful assembly."

This incident illustrates a matter of growing concern to educators, parents and advocates: the extent to which the permanent on-site presence of police officers in public schools results in the criminalization of disruptive behavior. While other research has focused on zero-tolerance policies and the overuse of out-of-school suspension and expulsion as significant factors in feeding the "School-to-Prison Pipeline,"[1] this report focuses on the additional problem of arrest, in particular the use of arrest to address behavior that would likely be handled in the school by school staff if not for the presence of on-site officers.

While some school districts use on-site officers to apprehend students who pose a real and immediate threat to the physical safety of those around them, others predominantly use these officers to enforce their code of student conduct. In such districts, officers are encouraged to arrest, in many cases using public order offenses as a justification, students who are unruly, disrespectful, use profanity, or show "attitude."

Schools have every right to hold disruptive youth accountable for their actions. However, criminalizing those actions and diverting kids away from school and into the juvenile or adult[2] criminal justice system are harmful to everyone. Students who are arrested at school are three times more likely to drop out than those who are not.[3] Students who drop out are eight times more likely to end up in the criminal justice system than those who remain in school and graduate,[4] and the cost of housing, feeding and caring for prison inmates is nearly three times that of educating public school students.[5]

Using police officers to maintain order and address student behavior is also costly, and an imprudent use of taxpayer dollars in these difficult economic times. Evidence-based school disciplinary programs that are designed to improve overall school climate, and that can be implemented by teachers and administrators, are not only cheaper but more effective at keeping schools safe and orderly. Among other things, such programs train teachers on how best to manage their classrooms and permit schools to more accurately identify those students who may need additional supports and services or a different type of educational program to function in the classroom.

In this report, the Racial Justice Program of the American Civil Liberties Union's National Legal Department and the American Civil Liberties Union of Massachusetts (collectively, the "ACLU"), in partnership with Citizens for Juvenile Justice, examine the rate at which Massachusetts' three

largest school districts—Boston, Springfield and Worcester—arrest students for public order offenses that occur at school during the school day and the extent to which school-based policing influences arrest rates.

While police and school officials in the three districts were not particularly receptive to this inquiry (initially refusing to provide the information or denying that it existed, and then demanding tens of thousands of dollars to produce it),[6] we eventually obtained sufficient information from the 2007-08, 2008-09 and 2009-10 school years to conclude the following:

- **In all three districts, there were numerous arrests at school during the school day ("school-based arrests") based on misbehavior that could have been addressed more appropriately by teachers and school staff, and with significantly less harm to students.** These arrests were often justified using catch-all public order offenses (such as "disturbing a lawful assembly").

- **While all three districts appear to overuse "public order" offenses as a justification for arrests, Springfield had significantly more such arrests than Boston or Worcester, as well as a much higher overall arrest rate than either of the other two districts.** Although the number of public order arrests fell during the three years covered by our study, they fell the least in Springfield and remain unacceptably high.

- **While there are undoubtedly many reasons why there are more public order arrests in Springfield than in Boston or Worcester, it appears that the manner in which Springfield deploys police officers in its public schools is a contributing factor.** Springfield is the only district that has armed, uniformed police officers from the local police department stationed in selected schools for the entire duration of the school day. These officers report to the Chief of the Springfield Police Department, not the Springfield school district. Although Boston has officers stationed in selected schools, these officers are employed by the Boston Public Schools, are answerable to the Public Schools' superintendent, and are unarmed. Worcester does not have any officers with arresting authority permanently stationed in its schools.

- **Youth of color were disproportionately affected by the policing practices in all three districts.** This disproportionality was greatest in Boston. Although African-American students accounted for approximately one-third of Boston's student body during the 2008-09 and 2009-10 school years, two-thirds of all Boston arrests during that period were of African-American students. Seventy percent of those arrested for public order offenses were African-American.

- **Youth with behavioral and learning disabilities were disproportionately affected by the policing practices in Boston and Springfield.** The schools with the highest rates of arrest (arrests per 1000 students) in these districts were schools for students with diagnosed learning and behavioral disabilities, raising serious questions about the manner in which these schools are administered.

Exhibit 4

ACLU
AMERICAN CIVIL LIBERTIES UNION of MASSACHUSETTS

The Docket

Newsletter of the ACLU of Massachusetts Fall 2013
Because freedom can't protect itself ACLUm.org

The People v. Surveillance

The People v. Surveillance is not a lawsuit. It's a movement in Washington and on Beacon Hill, in legislatures, courts and executive offices around the nation.

The movement is growing. It's fueled by dramatic revelations of the National Security Agency's massive, indiscriminate spying on millions of Americans and by the realization that 21st century technology makes it all too easy for our government—including state and local law enforcement—to secretly monitor our everyday activities like never before.

The ACLU, with your help, can bring this movement front and center in Massachusetts, urging lawmakers to protect our privacy against a rising tide of unchecked surveillance.

Continues on p. 2

DAYS AFTER STUNNING REVELATIONS ABOUT NSA SPYING, THE ACLU SUED TO CHALLENGE ITS CONSTITUTIONALITY

See p. 6 for details

Clockwise from top: James Esseks, director of the ACLU Lesbian Gay Bisexual Transgender & AIDS Project, anticipates the Supreme Court ruling with his client Edie Windsor. Crowds gather at Cambridge City Hall, where the first same-sex marriage in Massachusetts took place in 2004, to celebrate DOMA's demise. Supporters marched with the ACLU at Prides across the state.

Victory!

Supreme Court rules for ACLU client Edie Windsor's challenge to "Defense of Marriage Act"

The U.S. Supreme Court in June ruled 5-4 in favor of the ACLU's challenge to the "Defense of Marriage Act" (DOMA), declaring the law unconstitutional as a deprivation of equal liberty protected by the Fifth Amendment.

The overturn of the law, which was enacted in 1996 and defined marriage as between one man and one woman, gave an estimated 130,000 married gay and lesbian couples in the nation immediate access to the more than 1,100 federal benefits they had previously been denied, including eligibility for family medical leave, Social Security survivor's benefits, access to health care for a spouse and the ability to sponsor a spouse for citizenship.

ACLU client Edie Windsor (pictured in top photo) was forced to pay more than $363,000 in federal estate taxes after the death of her spouse, Thea Spyer, because their marriage was not recognized under federal law.

Windsor and Spyer shared their lives together as a couple in New York City for 44 years. After a 40-year engagement they were married in Canada in 2007. Two years later, Spyer, who had lived for decades with multiple sclerosis, passed away.

"DOMA was the last federal law on the books that mandates discrimination against gay people by the federal government simply because they are gay, and the *Windsor* decision takes down its core," said ACLU of Massachusetts executive director Carol Rose.

The historic ruling came on the last day of this year's Court session, on the same day as California's Proposition 8 case *Hollingsworth v. Perry* was decided, restoring marriage equality to California, and as cities around the nation celebrated Pride. ■

See p. 5 for more Supreme Court cases in which the ACLU was direct or co-counsel

Federal government wrongly incarcerates dozens in Massachusetts jails under "mandatory detention" provision

In August, the ACLU of Massachusetts filed a class action lawsuit challenging the government's overbroad interpretation of a "mandatory" immigration detention provision. Noncitizens subjected to this provision are detained without bond hearings during their immigration removal proceedings.

The ACLU argues that the government is misapplying the provision, unlawfully subjecting 50 or more people in Massachusetts alone to detention without the possibility of release on bond, even though months or years have passed since they were released from criminal custody in connection with one of a long list of offenses that can trigger mandatory detention. Many of these people, if given the opportunity of a bond hearing, would be able to reunite with their families while they await the conclusion of their immigration proceedings.

Our client, Clayton Richard Gordon, was re-arrested in June 2013 and held in mandatory immigration detention on the basis of a 2008 drug offense that he spent less than a day in jail for. Since that original arrest, Mr. Gordon had restarted his life. He and his fiancée purchased their first home and had a son, now three years old. Gordon ran his own contracting business. Committed to giving back to his community, he was renovating a property in an economically depressed area into a transitional home for single mothers coming out of incarceration—a project

Continues on p. 2

ACLU client Clayton Richard Gordon poses with his son. Gordon is being detained without the possibility of bond based on a minor charge from 2008

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Inside

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MORE LEGISLATIVE AND LEGAL NEWS

State Supreme Judicial Court limits GPS tracking

In February, the Massachusetts Supreme Judicial Court held in *Commonwealth v. Rousseau* that individuals have a constitutionally protected expectation that the government will not use GPS monitoring to conduct extended electronic surveillance of their movements. As a result, the Court ruled that the government cannot track someone for an extended period of time using GPS surveillance unless they secure judicial oversight and make a showing of probable cause. The ACLU of Massachusetts, along with the Committee for Public Counsel Services, submitted a friend-of-the-court brief in *Rousseau* and hailed the ruling as a victory for everyone who does not want the government to track their movements. ■

Protecting your privacy

Continued from p. 1

Here's what we're doing to protect your privacy and how you can help.

Take action online

We—and you—must continue to educate legislators that protecting privacy is a top priority for Massachusetts voters. Already, we've sent more than 14,000 emails, gathered nearly 4,000 signatures on pro-privacy petitions, and made hundreds of phone calls. Our elected representatives are hearing that message. Let's keep the spotlight on this urgent civil liberties crisis.

Take action: aclum.org/action

Work in the Legislature

In January, we worked to develop and gather support for bills to protect our privacy from unchecked monitoring by law enforcement. They include safeguards against warrantless snooping in our electronic communications records, protections against tracking where we drive, clear limits on police surveillance of constitutionally protected political and religious expression, and regulation of now completely unregulated domestic drones.

See: aclum.org/privacy_agenda

Organize, organize, organize

We showed up in force for a July legislative committee hearing to make the case that lawmakers must protect privacy in the Commonwealth. The ACLU brought together advocates such as the Electronic Frontier Foundation, Veterans for Peace, Harvard's Berkman Center for Internet & Society and others to unite behind a single message: "Protect Privacy; Stop Surveillance."

Testimony at: aclum.org/privacy_agenda

This campaign is just the beginning and will continue to grow. Americans should not accept unwarranted government tracking as a necessary evil nor a guarantee of safety. We know that the foundational principles of the First and Fourth amendments—freedom of expression, freedom of religion, freedom of assembly, freedom from unreasonable search and seizure—must be renewed in every age, including our own.

A free people cannot live if each of us is being continuously shadowed by a personal undercover police officer. In a surveillance society, people begin to self-censor. Creativity flows less freely. Dissent becomes more risky and rare. That's not constitutional democracy.

In the 21st century, our laws should reflect, not forsake, long-standing values. The ACLU is working to restore traditional checks and balances—warrants based on probable cause, judicial oversight, government transparency and accountability—and to ensure that law enforcement focuses on real criminal activity and protects the privacy of law-abiding people. ■

Get involved! Sign up for action alerts at: aclum.org/alert

This is how hard we're working to protect your privacy. *Starting July 9, ACLU experts and allies testified throughout a jammed, day-long hearing of the state Judiciary Committee. But long after the crowds had left, our legislative director Ann Lambert delivered our final testimony just past midnight on July 10.*

Massachusetts Trust Act seeks to limit impact of controversial "Secure Communities" deportation program

The ACLU of Massachusetts, a member of the Massachusetts Trust Act Coalition, continues to advocate for the Trust Act, a bill that, if passed, would diminish the negative effects of the controversial deportation program "Secure Communities" (S-Comm) in the state. The Trust Act promises fairer and more humane treatment of immigrants in the Commonwealth. If passed into law, it would set clear standards for when local police may submit to burdensome requests from Immigration and Customs Enforcement (ICE) to further detain people who have been arrested but ordered released by the courts, just because they may be deportable. The bill would prevent prolonged detention except in unusual cases.

Since the implementation of S-Comm in 2008, more than 1,000 immigrants have been deported from Massachusetts. The majority had never been convicted of any crimes. In the meantime, the program has created an atmosphere of fear and mistrust among immigrant communities and their local police.

The ACLU of Massachusetts will continue to work with other organizations that support immigrant rights as well as law enforcement officials and our legislators to pass the Trust Act, helping to restore the broken relationships between law enforcement officials and immigrant communities. ■

"Mandatory detention" program

Continued from p. 1

that he started and that, without him, is on hold.

The ACLU of Massachusetts is working with the national ACLU Immigrants' Rights Project and the Political Asylum / Immigration Representation Project on the case, *Gordon v. Napolitano*.

The class action is not our first case on this issue. In June, federal Judge William G. Young agreed that Leiticia Castaneda was not properly subject to mandatory detention, and had to receive a bond hearing. We were an amicus in her case, *Castaneda v. Souza*. Again in *Forero-Cuicedo v. Tompkins*, Judge Young agreed that our client was not properly subject to mandatory detention, and ordered that he receive a bond hearing. Both Ms. Castaneda and Mr. Forero have been released.

Another class action raising the same issue was filed in August by the national ACLU and its partners in Washington state. ■

FROM THE EXECUTIVE DIRECTOR

The ACLU: On the barricades of history

By Carol Rose

The ACLU, as an organization that promotes civil rights and defends civil liberties, is just where it should be at this moment in American history: on the barricades.

Let's start with the good news. We celebrated a historic equal marriage victory in the U.S. Supreme Court with the defeat of DOMA (the so-called "Defense of Marriage Act") in the ACLU's case, *Windsor v. U.S.* The death knell of DOMA lifts a huge boulder from the road to equal marriage rights in America. But the real work of freedom—in the hard-to-win states—is still ahead.

Fortunately, the work of equal marriage is joyful work, and the ACLU, with offices in every state and major cities, is uniquely positioned to play a leadership role in the movement to enable all people to marry the person they love with equal protection of our laws.

> At the end of June, we celebrated a historic victory for the freedom to marry in the U.S. Supreme Court with the defeat of the "Defense of Marriage Act" in the ACLU case *Windsor v. U.S.*

Sadly, however, the same Supreme Court that struck a chord for liberty in the *Windsor* case weakened equal rights for people based on race in two other cases. The Court narrowed the ability of college and university admissions offices to build a diverse study body in *Fisher v. University of Texas*. And it stripped the Voting Rights Act of its key enforcement mechanism, Section 5, in *Shelby v. Holder*. Among other things, the ruling limits the power of the Department of Justice to challenge rigged voting systems in traditional centers of racial discrimination. On this 50th anniversary of the March on Washington, therefore, the ACLU is once again refocusing on protecting voting rights here in Massachusetts and nationwide.

On the privacy and civil liberties front, meanwhile, former National Security Agency contractor Edward Snowden leaked previously secret documents that prove our Executive Branch has built a massive surveillance system without our knowledge. Worse, elected officials have already turned their spy system on all of us—the ordinary Americans who elected them to positions of public trust. The Obama administration responded to the leaks by redoubling its prosecution of whistle-blowers and journalists, and by trying to focus public attention on whether Mr. Snowden is a hero or villain (he's neither, if you ask me). In so doing, the administration has sought to distract attention from the fact that the American people have been the victims of a Big Lie, told by top leaders over at least two administrations. In so doing, these leaders threaten to dismantle the system of checks-and-balances that has kept our nation free for over 200 years.

In Massachusetts, meanwhile, we have lived through a fear-inducing bombing at the Boston Marathon, the trial of notorious mobster Whitey Bulger for murders committed while under FBI protection, and secrecy surrounding the shooting death—while in FBI and Massachusetts State Police custody!—of perhaps the only guy who might have shed light on an unsolved triple homicide that authorities reportedly now link to the also-dead Boston Marathon bomber, Tamerlan Tsarnaev.

Finally—please, let's not forget—the fate of as many as 190,000 cases in Massachusetts have been tainted by the scandal at the notorious Hinton drug lab, home of chemist Annie Dookhan. I'm pleased to report that the ACLU of Massachusetts won round one in the Massachusetts Supreme Judicial Court, which held that prisoners can be freed while they challenge tainted convictions. But there is still much work to be done. We must focus on systemic solutions to this massive injustice.

So, how do we, ACLU members and lovers-of-liberty, respond with so many grave challenges on the civil liberties front? We take action.

The ACLU of Massachusetts has launched two new initiatives to effectively champion both civil liberties and civil rights. Our "Technology for Liberty" project currently is working to pass both federal and state legislation to require that officials get a warrant before they scoop up our private information and track our every move. But we need you—as ACLU members and patriotic Americans—to sign our petitions, write letters, make phone calls and mobilize your friends to let our elected officials know that privacy is not dead. In fact, privacy is popular. Privacy is control. But privacy can't protect itself—it needs you. Check out how you can get involved at *aclum.org/action*.

At the same time, our "Justice for All" project is advocating equal rights for everybody. Our most recent work includes legal challenges to voter suppression efforts, notably in Worcester and Springfield. And we're championing the repeal of mandatory sentencing laws that indiscriminately lock people away. We're also challenging the overuse of school-based expulsions and arrests for nonviolent misbehavior, which ominously is prevalent in traditionally underserved communities. Our goal is to ensure that more kids stay in school and fewer go to prison. That's the best way to build safe and healthy communities.

> Sadly, the same Supreme Court that struck a chord for liberty in the *Windsor* case weakened equal rights for people based on race in two other cases.

At this moment in history, ACLU members don't have time for despair. Our work creates hope for our nation, our Commonwealth, our communities and future generations. Because freedom can't protect itself. ■

CELEBRATING DR. NANCY MURRAY

Photo by Marilyn Humphries

Dr. Nancy Murray recently celebrated what she termed her "graduation" from the ACLU of Massachusetts after 25 years as the organization's education director and first director of the ACLU of Massachusetts' Bill of Rights Education Project.

Colleagues, lay leaders, community leaders and friends gathered in July to bid her "fare forward" as she embarked on her next life adventure (in Spain) and to thank her for her years of service to civil rights and civil liberties.

"Nancy Murray has a rare combination of brilliance, eloquence, dedication and activism," said ACLU of Massachusetts executive director Carol Rose. "We are all the beneficiaries of this remarkable defender of civil rights and civil liberties."

Nancy came to the ACLU of Massachusetts (then "CLUM") in 1987 with a B.A. from Harvard University, and a B.Phil. and Ph.D. in Modern History from Oxford University, as well as considerable experience as a teacher, scholar and social activist in Great Britain, Kenya and the United States. She had taught for seven years at the University of Nairobi and then directed a nationwide program to combat racism in the media at London's Institute of Race Relations.

"We thought we had a great vision for the Bill of Rights Education Project (getting into schools and involving students in the defense of their rights), but Nancy came on staff in 1987 as its first director with an even broader, more creative vision, including instilling in students the kind of activism that made the project not only the crown jewel of the entire ACLU, but a national model for the wider educational community," said John Roberts, former executive director of the ACLU of Massachusetts.

During her tenure at the ACLU, Nancy was the first director of the ACLU of Massachusetts' Bill of Rights

Continues on p. 6

New staff: Jessie Rossman and Carl Williams

Jessie Rossman joined the ACLU of Massachusetts as a staff attorney in June 2013. She litigates on a broad range of civil rights and civil liberties issues, including privacy and technology, free speech, poverty, gender discrimination and religious freedoms. Jessie graduated *magna cum laude* from both Yale University and Harvard Law School. Following law school, Jessie served as a law clerk to Judge Raymond C. Fisher of the U.S. Court of Appeals for the Ninth Circuit. Jessie was previously a legal fellow at the Natural Resources Defense Council and a staff attorney at the ACLU of Michigan. In addition to Massachusetts, she is admitted to practice law in Michigan and Illinois. ■

Carl Williams will become an ACLU staff attorney in September 2013. Prior to that, he was a criminal defense attorney with the Roxbury Defenders Unit of the Committee for Public Counsel Services. Carl is a graduate of the University of Rhode Island and the University of Wisconsin Law School. A long-time resident of Boston's Roxbury neighborhood, he has been an activist and organizer on issues of war, immigrants' rights, LGBT rights, racial justice and Palestinian self-determination. Carl is a member of the National Lawyers Guild and has served on its Massachusetts board of directors. During the Occupy Boston movement, he was part of its legal defense and support team, which provided nearly 24-hour support to the participants. More recently, Carl was a Givelber Distinguished Lecturer on Public Interest Law at Northeastern University School of Law, where he taught a class on social justice movements and the law. ■

ACLU IN THE U.S. SUPREME COURT AND ACROSS THE NATION

Learn more at: aclu.org/scotus

During the 2012-13 term, the ACLU was direct counsel or co-counsel in an unprecedented six cases before the U.S. Supreme Court and submitted briefs in over a dozen others. Overall, the ACLU participated as direct counsel or amicus curiae in nearly a quarter of the Court's 77 cases this term.

VICTORY

Windsor v. United States

ACLU case strikes down "Defense of Marriage Act" as violation of equal protection

The Supreme Court in June ruled 5-4 in favor of the ACLU's challenge to the "Defense of Marriage Act" (DOMA), declaring the law unconstitutional as a deprivation of equal liberty protected by the Fifth Amendment.

Following the favorable ruling, the ACLU announced its goal of securing the freedom to marry in every state, including the more than two dozen with anti-marriage-equality provisions written into their constitutions.

Learn more at aclu.org/out-freedom ■

VICTORY

Association for Molecular Pathology v. Myriad Genetics

Defending your right to your own genes

In June, in a 9-0 ruling, the U.S. Supreme Court invalidated patents on two genes associated with hereditary breast and ovarian cancer in response to a lawsuit filed by the ACLU and the Public Patent Foundation (PUBPAT) on behalf of members of the medical community, medical professional associations, health groups and patients—including Lisbeth Ceriani of Newton, Massachusetts. ■

VICTORY

Missouri v. McNeely

Police may not force people to submit to a blood test without consent and without a warrant

In April, the Supreme Court, in a 5-4 ruling, upheld the Fourth Amendment's privacy protections by rejecting the proposition that states may routinely compel drivers to submit to a blood test in drunk-driving cases without consent and without a warrant. ■

VICTORY

Arizona v. InterTribal Council of Arizona

ACLU challenges Arizona voter ID law

In June, in a 7-2 ruling, the Supreme Court struck down Arizona's burdensome voter registration requirement. ■

TEMPORARY SETBACK

Shelby County v. Holder

ACLU defends Section 5 of the Voting Rights Act

In June, the Supreme Court, in a 5-4 ruling, struck down the coverage formula of Section 5 of the Voting Rights Act, a civil rights law that, since 1965, had protected people from rigged voting systems in traditional centers of racial discrimination.

The Voting Rights Act required that certain jurisdictions with a history of discriminatory voting practices get advance approval from the federal government before changing their election laws. ■

ACLU calls on state officials to launch independent investigations into FBI shooting death of Ibragim Todashev

In July, the ACLU of Massachusetts and the ACLU of Florida called on state officials to launch independent investigations into the death of Ibragim Todashev, the man linked to Boston Marathon suspect Tamerlan Tsarnaev and a 2011 Waltham triple homicide.

"If Massachusetts state officials have the authority to send law enforcement officers out of state to investigate crimes, then it's unclear why state officials wouldn't have the authority to investigate what those officers do," said Carol Rose, executive director of the ACLU of Massachusetts. "After all, the governing principle of this state isn't 'what happens in Vegas stays in Vegas.'" ■

TEMPORARY SETBACK

Amnesty et al. v. Clapper

ACLU challenges Foreign Intelligence Surveillance Act (FISA) Amendments as unconstitutional

In a 5-4 ruling handed down in February, the Supreme Court held that the ACLU plaintiffs don't have standing to challenge the constitutionality of the warrantless wiretapping program.

In June 2013, days after details of the National Security Agency's massive surveillance program were leaked by Edward Snowden, the ACLU filed a new constitutional challenge to the program and argued that it violates the First Amendment rights of free speech and association as well as the right of privacy protected by the Fourth Amendment. The complaint also charged that the dragnet program exceeds the authority that Congress provided through the Patriot Act. ■

See p. 6 for full story

ACLU ACROSS THE COMMONWEALTH

CAMBRIDGE

Court orders end to Cambridge jail overcrowding

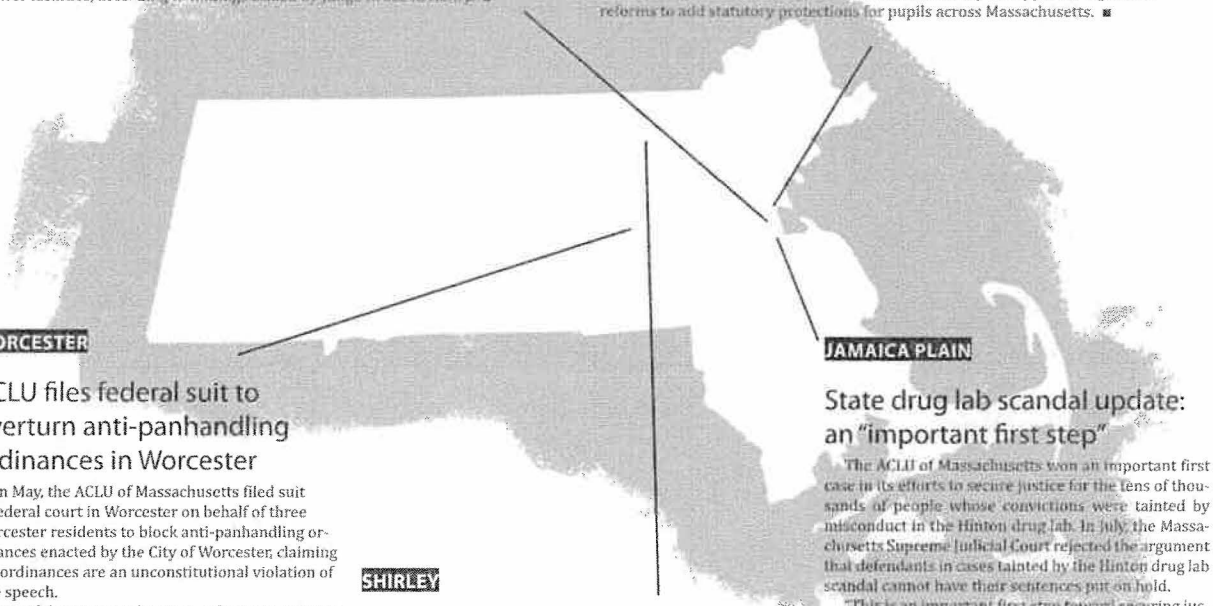
Responding to lawsuits filed by the ACLU of Massachusetts and other organizations, a Massachusetts judge in June ordered the Sheriff of Middlesex County to end unconstitutional overcrowding in the Middlesex County Jail within 30 days, ordering that no more than 230 people be held in a jail that in recent years has frequently housed more than 400. The facility, which houses people who are awaiting trial, was built for only 160, and the resulting overcrowding forced individuals to sleep on the floor in plastic "boats" and deprived them of adequate toilet and shower facilities, according to findings issued by Judge Bruce R. Henry. ■

EVERETT

ACLU joins PTA to oppose data-mining of students

The ACLU of Massachusetts has joined with an array of child and parent advocacy groups to oppose inBloom, a private company whose business model is built on acquiring, packaging and sharing extremely sensitive student data from public schools. The company, which has aggressively promoted itself to school districts nationwide, has shown interest in launching pilot programs in Massachusetts.

With a coalition of like-minded organizations, we sent a letter to the Department of Education, expressing concern about student privacy and external data sharing. Simultaneously, we submitted testimony in support of legislative reforms to add statutory protections for pupils across Massachusetts. ■



WORCESTER

ACLU files federal suit to overturn anti-panhandling ordinances in Worcester

In May, the ACLU of Massachusetts filed suit in federal court in Worcester on behalf of three Worcester residents to block anti-panhandling ordinances enacted by the City of Worcester, claiming the ordinances are an unconstitutional violation of free speech.

One of the new anti-begging ordinances prevents people from doing such things as holding a sign asking for help starting a half-hour before sunset, or performing music while having a hat or cup for donations, or soliciting donations for any cause if they are within 20 feet of the entrance to a bus stop, theater, ATM machine or any other "place of public assembly."

The second ordinance prohibits standing on traffic islands, a location favored for years by people soliciting donations and engaging in protected speech, including many Worcester-area politicians and their supporters, various churches, the Salvation Army and firefighter organizations raising funds for charity. ■

SHIRLEY

ACLU successfully defends free speech of Shirley town official

The Town of Shirley has agreed to settle the ACLU's civil rights lawsuit on behalf of Robert Schuler, a town official who had been banned indefinitely from town property as a result of statements he made during a committee meeting. The suit alleged that the ban was retaliation for Mr. Schuler's public criticisms of the Shirley Selectmen, and that it deprived him of constitutionally protected rights to free speech, to petition the government, and to due process. ■

JAMAICA PLAIN

State drug lab scandal update: an "important first step"

The ACLU of Massachusetts won an important first case in its efforts to secure justice for the tens of thousands of people whose convictions were tainted by misconduct in the Hinton drug lab. In July, the Massachusetts Supreme Judicial Court rejected the argument that defendants in cases tainted by the Hinton drug lab scandal cannot have their sentences put on hold.

"This is an important first step toward securing justice for people who appear to have been convicted by fraud perpetrated against them by a state employee," said Matthew Segal, legal director of the ACLU of Massachusetts.

In August, Boston defense attorney David Meier, hired by Governor Deval Patrick to determine the extent of the scandal, released findings from his review, including that the cases of more than 40,000 people may have been affected.

The ACLU of Massachusetts, which estimates that the number of affected cases is much higher, repeated its call for justice.

"David Meier's announcement confirms that we are no closer to solving this problem," said Segal. "There are at least 40,000 people whose convictions have been potentially tainted and the vast majority of them haven't had a day in court. Merely identifying them isn't justice." ■

BOSTON

ACLU successfully challenges airport seizure of laptop belonging to supporter of Wikileaks source

Three years after Department of Homeland Security agents stopped David House at a Chicago airport and confiscated his laptop, camera and USB drive, the government in May agreed to destroy all data it obtained from his electronics.

House, who was then working with the Bradley Manning Support Network, an organization created to raise funds for the legal defense of the soldier now known as Chelsea Manning, charged in the lawsuit that the seizure violated House's Fourth Amendment rights by subjecting him to unreasonable search and seizure, and violated his First Amendment right to freedom of association. ■

AWARDS AND ACCOLADES FOR THE ACLU OF MASSACHUSETTS

presspass TV
a network of possibilities

The ACLU of Massachusetts received Press Pass TV's **Nellie Bly Investigative Media Award**, which recognizes a community member who has investigated serious wrong, for our "Policing Dissent" report. Published in October 2012, the report found that officers assigned to the Boston Regional Intelligence Center at the Boston Police Department have been collecting and keeping information about constitutionally protected speech and political activity. Previously, this award has been received by former *Phoenix* reporter Chris Faraone and WBUR reporter David Boeri. *Read the report at: aclum.org/policing_dissent*

Our staff attorney Sarah Wunsch received the **Kivie Kaplan Award** from the Boston branch of the National Association for the Advancement of Colored People (NAACP). The award is presented to those who, like its namesake, have worked tirelessly in the areas of social justice, civil rights and addressing incidents of discrimination. ■

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National ACLU challenges constitutionality of NSA phone spying program

The ACLU says unchecked, secret government data collection violates First and Fourth Amendment rights

The American Civil Liberties Union and the New York Civil Liberties Union (NYCLU) in June filed a constitutional challenge to a surveillance program under which the National Security Agency (NSA) vacuums up information about every phone call placed within, from or to the United States. The lawsuit argues that the program violates the First Amendment rights of free speech and association as well as the right of privacy protected by the Fourth Amendment. The complaint also charges that the dragnet program exceeds the authority that Congress provided through the Patriot Act.

"This dragnet program is surely one of the largest surveillance efforts ever launched by a democratic government against its own citizens," said Jameel Jaffer, ACLU deputy legal director. "It is the equivalent of requiring every American to file a daily report with the government of every location they visited, every person they talked to on the phone, the time of each call and the length of every conversation. The program goes far beyond even the permissive limits set by the Patriot Act and represents a gross infringement of the freedom of association and the right to privacy."

The ACLU is a customer of Verizon Business Network Services, which was the recipient of a secret Foreign Intelligence Surveillance Act (FISA) Court order published by *The Guardian* in June. The order required the company to "turn over on 'an ongoing daily basis' phone call details" such as who calls are placed to and from, and when those calls are made. The lawsuit argues that the government's blanket seizure of and ability to search the ACLU's phone records compromise sensitive information about its work, undermining the organization's ability to engage in legitimate communications with clients, journalists, advocacy partners and others.

"The crux of the government's justification for the program is the chilling logic that it can collect everyone's data now and ask questions later," said Alex Abdo, a staff attorney for the ACLU's National Security Project. "The Constitution does not permit the suspicionless surveillance of every person in the country."

The ACLU's 2006 lawsuit *Amnesty et al. v. Clapper* challenging the constitutionality of the FISA Amendments Act, which authorized the so-called "warrantless wiretapping program," was dismissed 5-4 by the Supreme Court in February on the grounds that the plaintiffs could not prove that they had been monitored. ACLU attorneys working on the complaint said they do not expect the issue of standing to be a problem in the new case because of the recently revealed FISA Court order.

Also in June, the ACLU and Yale Law School's Media Freedom and Information Access Clinic filed a motion with the FISA Court, requesting that it publish its opinions on the meaning, scope and constitutionality of Patriot Act Section 215. The ACLU is currently litigating a Freedom of Information Act lawsuit, filed in October 2011, demanding that the Justice Department release information about the government's use and interpretation of Section 215.

"There needs to be a bright line on where intelligence gathering stops," said NYCLU executive director Donna Lieberman. "If we don't say this is too far, when is too far?"

Attorneys on the case are Jaffer and Abdo along with Brett Max Kaufman and Patrick Toomey of the ACLU, and Arthur N. Eisenberg and Christopher T. Dunn of the NYCLU. ■

For resources and the latest updates, go to: aclu.org/nsa-surveillance

Celebrating Dr. Nancy Murray (cont.)

Left to right: John Roberts, former executive director of the ACLU of Massachusetts; Dr. Nancy Murray, former director of education of the ACLU of Massachusetts; Dr. Ruth Hubbard Wald; and Kathy Roberts attended the 2008 annual Bill of Rights Dinner. Photo by Marilyn Humphries.

Project HIP-HOP, co-founded and directed by Dr. Nancy Murray, took Boston-area students to the American South and South Africa to explore the history of the civil rights movement and the role of young people in it

Dr. Nancy Murray addressed a crowd of supporters, gathered at the State House, to protest "Secure Communities," anti-immigrant dragnet of the U.S. Immigration and Customs Enforcement.

Continued from p. 5

Education Project. In that role, she encouraged teachers, students and the general public to think critically about the difficult issues being debated in society and the courts, and to work for a future in which civil liberties and civil rights will be safeguarded and enlarged. She also co-founded and directed Project HIP-HOP (Highways into the Past: History, Organizing and Power), and over an eight-year period took students to the American South and to South Africa to explore the history of the civil rights movement and struggle against apartheid, and the role young people have played in movements for racial justice.

> "Nancy changed my life... She brought the history of the civil rights movement alive and made it relevant to our lives today."

"Nancy changed my life and the lives of many young people in this state," said Mariama White-Hammond, who became the executive director of Project HIP-HOP when it spun off from the ACLU of Massachusetts in 2001. "She brought the history of the civil rights movement alive and made it relevant to our lives today. She taught us the power of stepping up, but also the importance of knowing when to step back."

After 9/11, Nancy worked through the ACLU of Massachusetts' Civil Liberties Task Force to build a new movement for civil liberties and civil rights across the Commonwealth. Among other things, she helped to win passage of resolutions against the USA PATRIOT Act in dozens of cities and towns in Massachusetts. She also organized countless marches, rallies and protests for ACLU members in the Commonwealth.

"We often tease Nancy that she only organizes public protests on the coldest day of the year or else in the sweltering heat," said Rose. "In reality, she organizes year-round."

In addition to her teaching and activism, Nancy is a scholar and prolific writer. Her publications include an innovative curriculum for schools, "Rights Matter: the Story of the Bill of Rights" (rightsmatter.org, 2006); "Violence, Nonviolence, and the Lessons of History: Project HIP-HOP Journeys South," *Harvard Educational Review*, reprinted in *Humanizing Education: Critical Alternatives to Reform*, Harvard Education Press, March 2010; "Sharing the Story of the Movement: The Project HIP-HOP Experience," in *Putting the Movement Back into Civil Rights Teaching* (Teaching for Change, 2004); "Profiled: Arabs, Muslims, and the Post-9/11 Hunt for the 'Enemy Within'" in the award-winning book edited by Elaine Hagopian, *Civil Rights in Peril: The Targeting of Arabs and Muslims* (Haymarket Books, Pluto Press, 2004); and "Profiling in the Age of Total Information Awareness," *Race & Class*, October 2010. In September 2011, she authored a 10-part series for the online publication *Truthout* entitled "Ten Years Later: Surveillance in the 'Homeland.'"

We will miss Nancy and wish her well. ■

ACLU IN THE NEWS

Excerpts from editorials around the state cite and support ACLU of Massachusetts work…

Our Opinion: Citizens need to watch out for who's watching them

We understand and respect that the responsibilities of law enforcement personnel are many and that their main priority is public safety. But in the wrong hands, such information can destroy lives. Paramount is the Constitution. It's the framework upon which this country exists. Without it, America will fail.

We support the Fourth Amendment. … We expect the Legislature to support it as well.

The Patriot Ledger (Quincy), July 11, 2013, in support of ACLU-backed privacy bills

Our View: An unbalanced wiretapping act

The new legislation would expand law enforcement's ability to spy on many more people – and for a longer period of time. The Massachusetts chapter of the American Civil Liberties Union warns that the Act Updating the Wire Interception Law is actually "a broad expansion of the wiretap law to allow law enforcement to listen in to private conversations for virtually any investigative purpose." It's troubling that this legislation is being sold to the public under the guise of keeping up with modern technology when the existing statute already does.

Taunton Daily Gazette, June 27, 2013

Mass. officials must investigate Todashev death

[T]his isn't a question about the rights of a Russian national during questioning by the FBI. It's not a question of whether Todashev was a bad guy. It's a question about the rights of American citizens to know what really happened in that Orlando apartment and why.

"When something goes wrong during an operation involving Massachusetts law enforcement officers, Massachusetts residents deserve a thorough and transparent investigation by Massachusetts officials," wrote Carol Rose, executive director of the ACLU of Massachusetts, in her letter to [Attorney General Martha] Coakley.

Columnist Jean Vensocchi in *The Boston Globe*, August 11, 2013

Independent probe of FBI shooting needed

The only investigation [into the shooting of Ibragim Todashev] is being done by the FBI and history shows that when the FBI investigates its own agents, the FBI finds itself innocent. …

For that reason, the American Civil Liberties Union chapters in Massachusetts and Florida have called on their state attorneys general to launch an independent investigation into the shooting of Todashev.

"FBI shooting investigations, even when carried out with ostensible oversight of both the Justice Department's inspector general and the Civil Rights Division, virtually always clear the agency of wrongdoing," said Carol Rose, executive director of the ACLU of Massachusetts.

MetroWest Daily News (Framingham), July 24, 2013

ACLU: End the destructive enforcement of marijuana possession laws

According to a study by the American Civil Liberties Union, there is a substantial racial disparity in the arrests for marijuana possession across the country. In 2010, the arrest rate for possession by blacks was 714 per 100,000. The rate for whites was only 192 per 100,000. …

The ACLU study concludes quite persuasively that the war on drugs "has needlessly ensnared hundreds of thousands of people in the criminal justice system, had a staggeringly disproportionate impact on African Americans, and comes at a tremendous human and financial cost." The ACLU recommends, therefore, "that marijuana be legalized for persons 21 or older through a system of taxation, licensing and regulation."

Justice requires that Americans support the ACLU conclusion.

Bay State Banner (Boston), June 12, 2013

After overwhelming voter support, medical marijuana law goes into effect

On Election Day in November 2012, Massachusetts voters overwhelmingly supported (60% YES) seriously ill patients' access to medical marijuana. The passage of An Initiative Petition for a Law for the Humanitarian Medical Use of Marijuana established the legal framework to protect doctors and patients who wish to discuss the possible use of medical marijuana in their treatment plan, created a registration process for patients who have been approved for medical marijuana by their doctors and required the creation of a state-supervised dispensary system to allow patients safe access to their medicine.

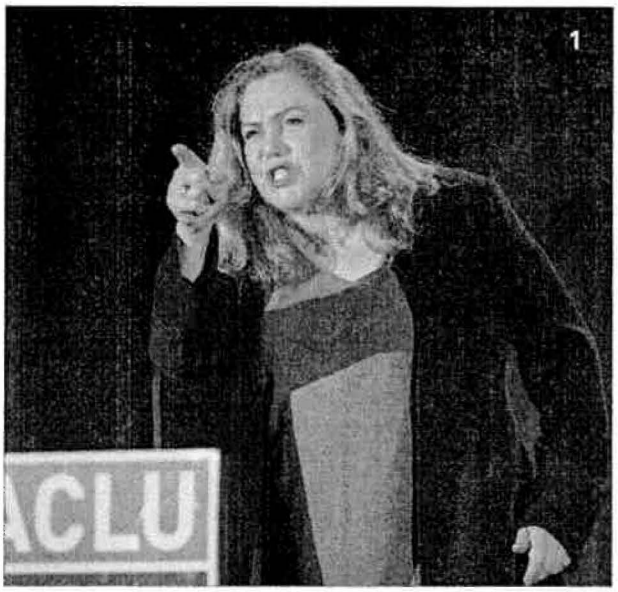
As the 18th state to pass a medical marijuana law, Massachusetts was able to look at the best and worst from other states to ensure that we establish the safest and most secure program in the country. One of the largest problems in other states has been the lack of required, timely statewide regulations on the production, sale, use and safety oversight for medical marijuana. The Massachusetts law created a timeline for the Department of Public Health (DPH) to promulgate regulations and to establish licensing and public safety procedures for patients and dispensaries.

From January through May 2013, advocacy staff at the ACLU of Massachusetts worked with patient and medical organizations and met with DPH management and staff to ensure that the final regulations represented proven best practices and were produced on the law's timetable. After a series of public hearings across the state, DPH released comprehensive program regulations several weeks before the deadline.

We are very pleased overall with the regulations and the good work of DPH staff in considering both patients' and doctors' needs and public safety matters. Our main concerns have been ensuring that medical decisions are made between doctors and patients—not by the state—and that dispensaries meet patients' needs as responsible members of our communities.

On August 2, 2013, DPH released Phase 1 of the application process for medical marijuana dispensaries, an important action that continues to keep the law's implementation moving ahead and on track. The ACLU of Massachusetts will continue our oversight of the implementation process to ensure the needs of patients, doctors and communities are met. ■

Faces of the ACLU



1-3/ Kathleen Turner performed a piece from "Red Hot Patriot," in which she portrayed journalist Molly Ivins; activist Lilly Ledbetter received the 2013 Roger Baldwin Award; and Boston City Councilor Ayanna Pressley introduced Ledbetter at this year's annual Bill of Rights Dinner, attended by over 700 guests. *Photos by Marilyn Humphries.*

4/ *From left at table:* ACLU of Massachusetts staff attorney Sarah Wunsch, outgoing board member Susan Akram and incoming board member Shannon Irwin presented a "Know Your Rights" workshop at Chelsea's Al Huda Society. *Photo courtesty of Al Huda Society.*

5/ The ACLU marched in Pride celebrations across the state, including this one in Boston, honoring ACLU client Edie Windsor's successful challenge to DOMA. *Photo by David Graves.*

6/ Ellery Schempp celebrated the 50th anniversary of a case, in which he was the primary student involved, that challenged Bible reading in public schools. The Supreme Court ruled in his favor, declaring that required, public school-sanctioned Bible readings are unconstitutional. Schempp spoke about the case to an ACLU audience in Boston in July. *Thanks to photographer Gary Langley and Ellery Schempp for permission to print this photo.*

7/ James Esseks, co-counsel to ACLU client Edie Windsor in her challenge to the "Defense of Marriage Act" and the director of the ACLU Lesbian Gay Bisexual Transgender & AIDS Project, discussed the future of LGBT rights and marriage equality with ACLU of Massachusetts supporters just weeks before the Supreme Court struck DOMA down. *Photo by Marilyn Humphries.*

Exhibit 5

Top Stories

Northampton special prosecutor dismisses charges against Jonas Correia

Submitted by Communications on Mon, 12/02/2013 - 11:24 cameras First Amendment Northampton Photographer's rights police power

Civil disorderly conduct charge against ACLU client stemmed from incident in which Correia exercised right to video-record a police officer questioning three men of color.

Mayor-elect Walsh announces opposition to "Secure Communities"

Submitted by Communications on Tue, 11/26/2013 - 15:54 immigration S-Comm

ACLU of Massachusetts praises Boston's incoming mayor for standing up to the Federal S-Comm deportation dragnet.

First Circuit Court grants partial injunction against anti-panhandling ordinance in Worcester

Submitted by Communications on Fri, 11/22/2013 - 15:48 Worcester

Ban on begging "30 minutes before dark" would have prohibited asking for money around 4pm each day during the Christmas season.

Victory! ACLU immigration client Richard Gordon reunites with his family!

Submitted by Communications on Wed, 11/20/2013 - 16:14 immigration detention victory

Weeks after a United States District Judge ruled that ACLU client Richard Gordon was unlawfully subjected to "mandatory" immigration detention since June, Mr. Gordon has returned home, free on bond.

Exhibit 6

Why PrivacySOS.org?

The closing decades of the 20th century brought something new: the potential for mass surveillance, made possible by the evolution of computer technology. When the government responded to the attacks of 9/11 by enlisting that technology in the service of national security, the potential became reality.

Since 9/11, the government has directed dramatically expanded powers of surveillance at all of us, not just people suspected of wrongdoing. Our international phone calls, our emails, our financial records, our travel itineraries, and our images captured on digital cameras now swell a mountain of data that is being collected in the name of mining for suspicious patterns and associations.

But while the government has gained more and more power to watch us, it has largely kept us in the dark about what it is doing, building a new architecture of domestic surveillance, about which we know very little.

What must we know if we want to remain a free society? "PrivacySOS" shines sunlight on surveillance (SOS) and highlights actions you can take to protect your privacy.

Why does privacy matter? Take a look at this video to find out.

'ell Your Story!

Have you been visited by the FBI? Do you believe you are a target of government surveillance because of your ethnicity, religion or policial views? Get in touch and let us know!

Recent blog posts

- Department of Justice funds 'pre-crime' and face recognition research for state and local police
- Amazon's Jeff Bezos says company will deliver packages by drone in thirty minutes or less
- Come out come out wherever you are! NSA knows what you did last night
- Whistleblower Dan Ellsberg reportedly robbed of two suitcases near EFF offices
- Coming soon to your local police department: robots?
- 'Why care about the NSA?' Video op-doc from the NYT

Exhibit 7

Privacy Matters

Department of Justice funds 'pre-crime' and face recognition research for state and local police

Submitted by sosadmin on Mon, 12/02/2013 - 17:51

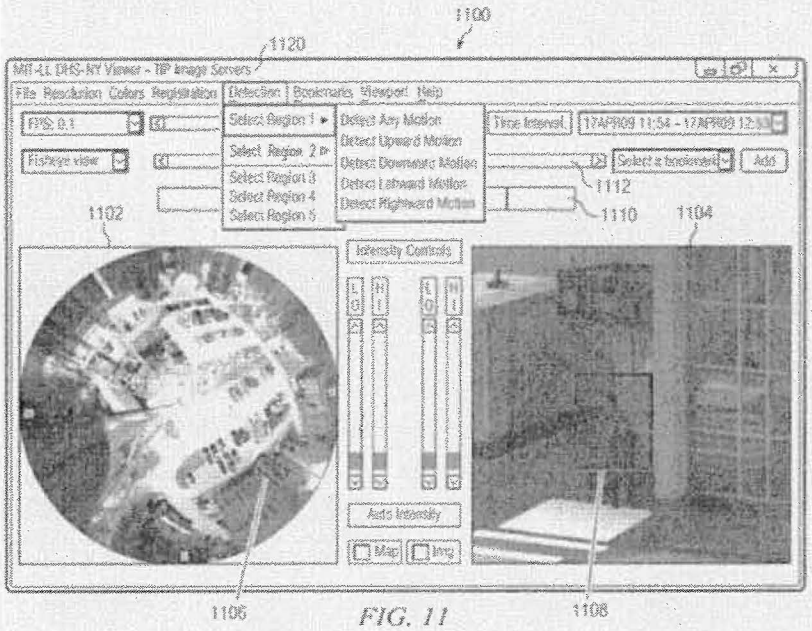
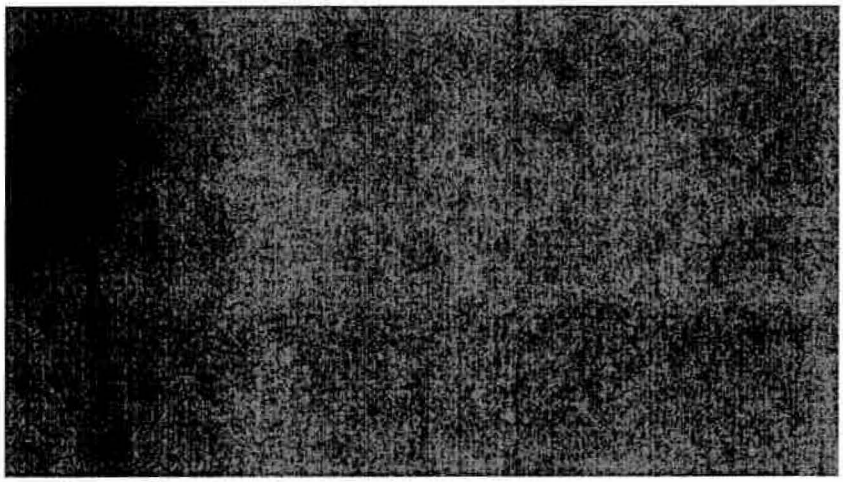


FIG. 11

Read more

Amazon's Jeff Bezos says company will deliver packages by drone in thirty minutes or less

Submitted by sosadmin on Sun, 12/01/2013 - 22:44



Please note that by playing this clip YouTube and Google will place a long term cookie on your computer.

That drone outside your window might soon bear gifts.

Recent blog posts

- Department of Justice funds 'pre-crime' and face recognition research for state and local police
- Amazon's Jeff Bezos says company will deliver packages by drone in thirty minutes or less
- Come out come out wherever you are! NSA knows what you did last night
- Whistleblower Dan Ellsberg reportedly robbed of two suitcases near EFF offices
- Coming soon to your local police department: robots?
- 'Why care about the NSA?' Video op-doc from the NYT
- Surveillance state trickle down and the urgency of now: we must support the USA Freedom Act
- 'Anyone, anytime, anywhere': the NSA's blueprint for total control
- Surveillance state fail: privacy wins out in Intelligence Squared debate
- DC lobbying firm takes issue with ACLU efforts to protect you from warrantless location tracking

more

Exhibit 8

Shirley town official settles lawsuit alleging constitutional violations

Submitted by Communications on Wed, 08/28/2013 - 09:21 First Amendment government transparency Shirley

Town of Shirley to pay $35,000; indefinite ban on entering public lands is lifted.

FOR IMMEDIATE RELEASE
Wednesday, August 28, 2013

CONTACT:
Raquel Ronzone, communications specialist, 617-482-3170 x335, rronzone@aclum.org
Christopher Ott, communications director, 617-482-3170 x322, cott@aclum.org

BOSTON -- The Town of Shirley has agreed to settle the ACLU's civil rights lawsuit on behalf of Robert Schuler, a town official who had been banned indefinitely from town property as a result of statements he made during a committee meeting. The suit alleged that the ban was retaliation for Mr. Schuler's public criticisms of the Shirley Selectmen, and that it deprived him of constitutionally protected rights to free speech, to petition the government, and to due process.

The town of Shirley paid $35,000 one month after the Selectmen lifted the ban, allowing Mr. Schuler to return to public buildings. In return, Mr. Schuler has agreed to withdraw the lawsuit.

"We are pleased that today's settlement puts an end to the Shirley Selectmen's violations of Mr. Schuler's constitutional rights, which prevented him from being an active part of his community," said Nicholas Leitzes, an ACLU of Massachusetts cooperating attorney. "The lifting of the order and the agreement to pay fees implicitly acknowledges what we have said all along--that Mr. Schuler's animated words were no threat."

The ban on entering public buildings came about after a May 2011 meeting of the town's Financial Committee, during which Mr. Schuler expressed frustration about the Shirley Selectmen's lack of action on an impending budget deadline. Using obvious hyperbole, he said that the slow pace made him want to "pull my gun out and start shooting or something." The Shirley Selectmen, who were not even present at the meeting, subsequently issued a "No Trespass Notice" prohibiting Mr. Schuler from ever setting foot onto town property--even to attend meetings of the committees on which he serves.

Since making the statements in question, Mr. Schuler has been reappointed to the Finance Committee, where he is serving his fourth term, and reelected to the town Sewer Commission, where he is serving his third term. The lifting of the notice allows him to once again attend meetings in person and carry out the responsibilities of an elected and appointed official.

The lawsuit was brought by Nicholas I. Leitzes and Kurt Wm. Hemr of the law firm Skadden, Arps, Slate, Meagher & Flom, and ACLU of Massachusetts attorneys Matt Segal and Laura Rótolo.

For more information about the case, see:
http://aclum.org/schuler

Exhibit 9

ACLU and Other Organizations Demand Records on FBI Collection of Racial and Ethnic Data

Submitted by admin on Tue, 07/27/2010 - 17:50 FBI FOIA racial justice surveillance

Claimed FBI power to track and map "behaviors" and "lifestyle characteristics" of American communities in Massachusetts and nationwide raises alarm.

FOR IMMEDIATE RELEASE
July 27, 2010

CONTACT:
Chris Ott, ACLU of Massachusetts, (617) 482-3170 x322, cott@aclum.org

Rachel Myers, ACLU national, (212) 549-2689 or 2666, media@aclu.org

BOSTON -- The American Civil Liberties Union and other civil rights and community groups today demanded that local FBI officials reveal the extent to which they are using newly revealed powers that they claim to collect and store information on the ordinary and everyday behaviors of innocent Massachusetts residents, including mapping of people's lifestyles, religious practices, cultural traditions, and even eating habits.

New guidelines, distributed to local FBI offices in 2008 but made public this year, give local agents the authority to secretly map so-called "ethnic-oriented" businesses, behaviors, lifestyle characteristics, and cultural traditions, according to a recently released FBI operations guide. In one reported instance of the FBI using a similar authority, FBI agents in California collected data on falafel sales in a failed effort to pinpoint Iranian terrorists.

"FBI surveillance and mapping based on people's religion, cultural practices, race or ethnic backgrounds raise profound civil liberties concerns," said Carol Rose, executive director of the ACLU of Massachusetts. "Targeting ordinary people based on their race and religion raises the risk of the worst sort of guilt by association. Rather than keep us safe, this kind of profiling undermines public safety by creating rifts between communities and the officials whose job it is to protect and serve all residents of the Commonwealth."

In 29 states plus the District of Columbia, the American Civil Liberties Union today filed "Freedom of Information Act" (FOIA) requests with local FBI offices, seeking records related to the agency's collection and use of data on race and ethnicity in local communities. In Massachusetts, the ACLU request was joined by the Massachusetts Immigrant and Refugee Advocacy (MIRA) Coalition; the Lawyers' Committee for Civil Rights; Public Research Associates; the Muslim American Society of Boston chapter (MAS Boston); the New England Muslim Bar Association; the American-Arab Anti-Discrimination Committee, Massachusetts Chapter; and JALSA, the Jewish Alliance for Law and Social Action.

Muslim-American and Arab-American communities expressed particular concern that they will be targeted because of the number of mosques and cultural centers each community has.

"We share concerns over the FBI's use of information on race and ethnicity in conducting investigations, because of its potential for use as a pretext for racial profiling," said Hinna Mushtaque, vice president of the New England Muslim Bar Association.

The FBI's claimed power to collect, use, and map racial and ethnic data is described in the 2008 FBI Domestic Intelligence and Operations Guide (DIOG). The FBI released the new guidelines in heavily redacted form in September 2009, but a less-censored version was made public only this year, in response to a lawsuit filed by Muslim Advocates. Although the new FBI guidelines have been in effect for more than a year and a half, very little information is available to the public about how the FBI has used this newfound authority.

"The public deserves to know about a race-based law enforcement program with such troubling implications for civil rights and civil liberties," said Melissa Goodman, staff attorney with the ACLU National Security Project. "We hope that the coordinated efforts of ACLU affiliates across the nation will finally bring this important information to light so that the American people can know the extent of the FBI's racial data gathering and mapping practices and whether the agency is abusing its authority."

In addition to Massachusetts, ACLU affiliates filed FOIA requests in Alabama, Arkansas, California (Northern, Southern and San Diego), Colorado, Connecticut, Washington, D.C., Delaware, Florida, Georgia, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont and Virginia.

The Freedom of Information Act request for Massachusetts can be found here.

Exhibit 10

Court orders end to Cambridge jail overcrowding

Submitted by Communications on Tue, 06/18/2013 - 09:14 Cambridge prisoners' rights

Prisoners' Legal Services and ACLU of Massachusetts successfully challenge unconstitutional conditions of confinement.

CONTACT:
Christopher Ott, Communications Director, 617-482-3170 x322, cott@aclum.org
Leslie Walker, 617-482-2772 X 112, lwalker@plsma.org

CAMBRIDGE -- A Massachusetts judge has ordered the Sheriff of Middlesex County to end unconstitutional overcrowding in the Middlesex County Jail within 30 days, ordering that no more than 230 pretrial detainees be held in a jail that in recent years has frequently housed more than 400. The jail houses people who are awaiting trial and thus have not been convicted of a crime.

The court order was issued in response to lawsuits filed by Prisoners' Legal Services, the ACLU of Massachusetts and private attorneys Doug Salvesen, of Yurko, Salvesen and Remz, P.C., and Kenneth Demoura of Demoura/Smith, challenging conditions at both the Jail and the Billerica House of Correction.

Although a 1990 court order previously capped the number of detainees in the jail at 200, the actual number of detainees has frequently swelled to over 400 people in a facility that was built for only 160. The resulting overcrowding forced people awaiting trial to sleep on the floor in plastic "boats" and deprived them of adequate toilet and shower facilities, according to findings issued by Judge Bruce R. Henry.

"Conditions in the Cambridge jail were both inhumane and unsafe," said Matthew R. Segal, Legal Director at the ACLU of Massachusetts. "This order will go a long way toward remedying that injustice."

The Cambridge jail occupies the top three floors of a building that previously also housed the Middlesex Superior Court and the Cambridge District Court. The courts and related government offices moved out of the building in 2008 and 2009 after the state decided the cost of removing asbestos from the building was too great.

"This is an important victory for everyone who cares about the Constitution and the rule of law," said Leslie Walker, Executive Director of Prisoners' Legal Services. "Conditions at the jail were deplorable. Judge Henry's decision will put an end to overcrowding that failed to meet minimum standards."

Under the order, many of the people previously held in the jail will be moved to the Billerica House of Correction, which houses both pretrial detainees and inmates serving out their sentences after conviction. Specifically, Judge Henry ordered the county to "take all available steps to house detainees or inmates at other county or state facilities or to make space available at the [Billerica House of Correction]," with the caveat that pretrial detainees may not be housed in the same cell as convicted inmates. However, Judge Henry also ruled that a total of no more than 1,010 prisoners can be held at the House of Correction, and set specific limits on the number of prisoners in each housing unit.

The court nominally raised the cap on the number of detainees housed at the Cambridge jail from 200 to 230, but noted that the increased cap at the Jail and the House of Correction should "constitute the ceiling and not the floor on the numbers of inmates/detainees who may be housed at those facilities." The caps may not be exceeded except temporarily in an emergency, and only with written authorization from the court.

Judge Henry also ordered that "No detainee is to sleep on the floor or on a plastic form bed on the floor. Each detainee is to have a bed."

A copy of Judge Henry's decision and order is available here:
https://www.aclum.org/sites/all/files/legal/richardson_v_mcgonigle/decis...

For more information about PLS, go to:
http://www.plsma.org

Exhibit 11

A little noticed surveillance technology, designed to track the movements of every passing driver, is fast proliferating on America's streets. **Automatic license plate readers**, mounted on police cars or on objects like road signs and bridges, use small, high-speed cameras to photograph thousands of plates per minute.

The information captured by the readers – including the license plate number, and the date, time, and location of every scan – is being collected and sometimes pooled into regional sharing systems. As a result, enormous databases of innocent motorists' location information are growing rapidly. This information is often retained for years or even indefinitely, with few or no restrictions to protect privacy rights.

Read the report: **You Are Being Tracked** »

In July 2012, ACLU affiliates in 38 states and Washington sent public records act requests to almost 600 local and state police departments, as well as other state and federal agencies, to obtain information on how these agencies use license plate readers. In response, we received 26,000 pages of documents detailing the use of the technology around the country. Click on the map icon on the right to learn how police in your state use license plate readers to track people's movements.

Learn what's happening to your location information from this interactive slideshow:

Exhibit 12

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

April 17, 2012

LAURA ROTOLO, ESQ.
ACLU OF MASSACHUSETTS
211 CONGRESS STREET
BOSTON, MA 02110

Subject: ACLU/DIOG INFORMATION
FOIPA No. 1151943- 000

Dear Ms. Rotolo:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Form OPCA-16a:

Section 552		Section 552a
☒(b)(1)	☒(b)(7)(A)	☐(d)(5)
☐(b)(2)	☐(b)(7)(B)	☐(j)(2)
☐(b)(3)_____	☒(b)(7)(C)	☐(k)(1)
_____	☐(b)(7)(D)	☐(k)(2)
_____	☒(b)(7)(E)	☐(k)(3)
_____	☐(b)(7)(F)	☐(k)(4)
☐(b)(4)	☐(b)(8)	☐(k)(5)
☐(b)(5)	☐(b)(9)	☐(k)(6)
☒(b)(6)		☐(k)(7)

951 page(s) were reviewed and **22 page(s)** are being released.

☐ Document(s) were located which originated with, or contained information concerning other Government agency(ies) [OGA]. This information has been:

- ☐ referred to the OGA for review and direct response to you.
- ☐ referred to the OGA for consultation. The FBI will correspond with you regarding this information when the consultation is finished.

☐ In accordance with standard FBI practice, this response neither confirms nor denies the existence of your subject's name on any watch lists.

☒ You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy, U.S. Department of Justice,1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Number assigned to your request so that it may be easily identified.

☐ The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown, when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

☒ See additional information which follows.

Sincerely yours,

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)

By letter dated July 27, 2010, you requested a fee waiver. Requests for fee waivers are determined on a case by case basis. See 5 U.S.C. 522(a)(4)(A)(iii). See also Nat'l Sec. Archive v. DOD, 808 F.2d 1381, 1383 (D.C. Cir. 1989). The burden is on the requester to show that the statutory requirements for a fee waiver have been met.

You have requested that search, review and duplication fees be waived because disclosure of the information sought in the above FOIA request will "significantly contribute to public understanding of the FBI's collection and mapping of racial and ethnic data in local communities." You have represented that the ACLU of Massachusetts "plans to disseminate records disclosed as a result of this FOIA request to the public." You state that the ACLU of Massachusetts disseminates information through, among other ways, a weekly electronic newsletter, published reports, news briefings, and other printed materials. The ACLU of Massachusetts also utilizes its website, www.aclum.org, for dissemination.

I have considered your request, the materials processed in response to it, and applicable law. Your request for a fee waiver is granted as to search and duplication fees. The ACLU of Massachusetts is not subject to review fees so no adjudication of that aspect of the fee request is necessary.

Exhibit 13

U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

$PrintDate

MS. CATHERINE CRUMP
STAFF ATTORNEY
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
17TH FLOOR
125 BROAD STREET
NEW YORK, NY 10004

FOIPA Request No. 1196953- 000
Subject: AUTOMATIC LICENSE PLATE READERS (ALPRS)

Dear Ms. Crump:

This is in reference to your July 30, 2012 letter, in which you requested a fee waiver for the above-referenced Freedom of Information / Privacy Acts (FOIPA) requests. Requests for fee waivers are determined on a case-by-case basis. See 5 U.S.C. 552 (a)(4)(A)(iii). The burden is on the requester to show that the statutory requirements for a fee waiver have been met.

You have requested that duplication fees be waived because disclosure of the information sought in the above FOIPA requests will "contribute significantly to public understanding of the operations or activities of the government." **[Tailor to your case]**

I have considered your request in accordance with Title 28, Code of Federal Regulations, Section 16.11(k) and agree with the reasons you have provided as to why you qualify in this instance for a fee waiver. Therefore, your request for a fee waiver is granted.

Sincerely,

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

U.S. Department of Justice
Federal Bureau of Investigation

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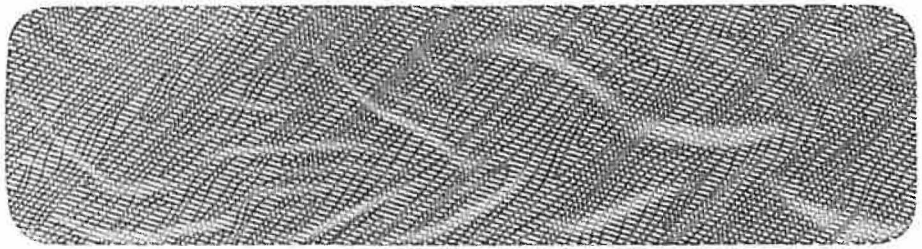

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