



ACLU

**AMERICAN CIVIL LIBERTIES UNION
of MASSACHUSETTS**

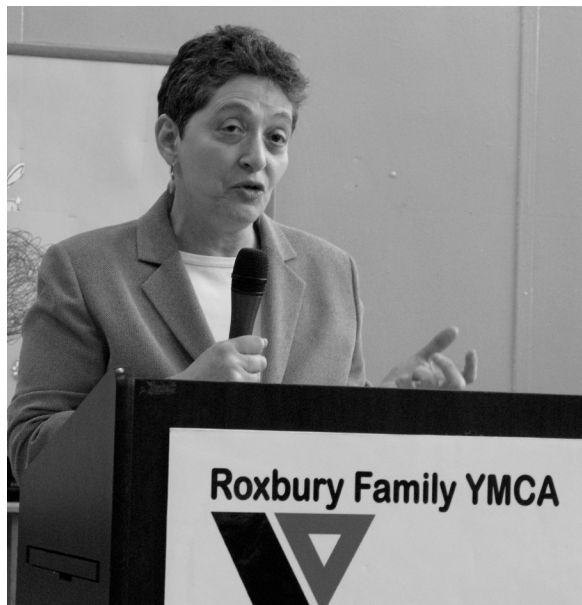


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**in which authors and actors
read works by writers
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ACLUM Staff Attorney Sarah Wunsch speaks at a town hall meeting on "Safe Homes" in March.

ACLU leads effort against warrantless police searches BPD program "tries to create an end-run around the Fourth Amendment"

"Knock, knock."
"Who's there?"
"Three Boston police officers and a member of the clergy."
This is no joke. Rather, it is the "Safe Homes" program announced last November by the Boston Police Department (BPD). The program is designed to send three plainclothes police officers, accompanied by clergy or other community leaders, to knock on doors in four Boston neighborhoods—originally Franklin Field, Grove Hall, Bowdoin/Geneva, and Egleston Square—asking for permission to search areas where they believe a person 17 or younger may be hiding a firearm. The police say they will select the homes based on tips from neighbors or others.

about constitutional rights and possible negative consequences of allowing the police to conduct warrantless searches, the ACLU and many community leaders have criticized the program and have called on the BPD to drop the plan.

"This program tries to create an end-run around the Fourth Amendment," said Carol Rose, Executive Director of the ACLU of Massachusetts. "Our concern is that people who open the door to police searches of their homes without warrants may not realize the serious consequences to themselves and to their children."

Because of strong community opposition, the police postponed the launch of the program, which finally debuted in late March in Egleston

See "Warrantless" on page 4

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Jury holds stop at Logan Airport is unlawful Case challenges illegal detention of racial profiling expert

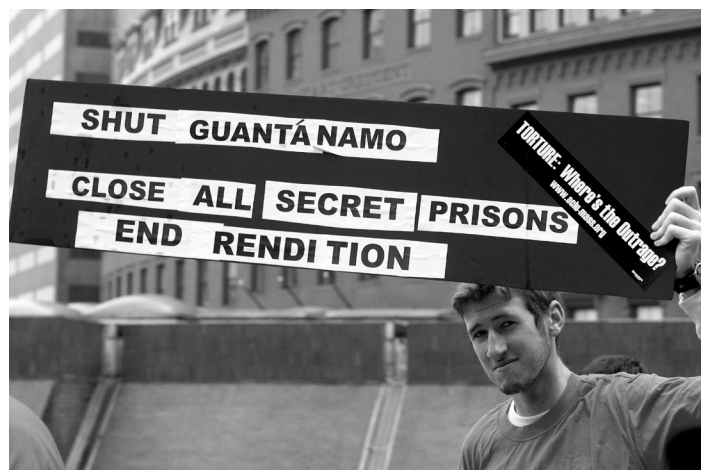
A federal jury found on December 7, 2007 that the Massachusetts State Police violated the law by detaining a national expert on racial profiling at Logan Airport without reasonable suspicion to believe he had committed any crime. The case was filed by the ACLU of Massachusetts on behalf of King Downing, National Coordinator of the ACLU's Campaign Against Racial Profiling, who was detained upon his arrival at Logan Airport in 2003 on his way to an anti-racism

meeting in Boston. The ACLU of Massachusetts argued that the only thing that would have attracted the attention of the troopers was Downing's appearance—he is an African American who wears a beard.

"There is an African saying, 'In the court of chickens the roach never gets justice,'" said Downing, upon learning of the victory. "But here a jury with no blacks found that my rights were violated. This case sends a message to blacks, and to all people, to stand up for their rights."

The case also challenged the use of the so-called Passenger Assessment Screening System (PASS), a program ostensibly designed to thwart terrorists by training police to conduct "behavioral assessments" of passersby. The ACLU argued that Downing's illegal detention resulted from reliance

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Photos by Marilyn Humphries

ACLU supporters took to the streets of Boston in January, as part of a national effort to demand the closing of Guantánamo Bay. The day marked the sixth anniversary of the arrival of the first prisoners at Guantánamo, which has become a symbol of torture, abuse, and injustice.

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"Thank you for coming into our English class to basically make us all paranoid..."

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**National Membership Conference,
Washington, DC, June 8–10—p. 8**

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Beacon Hill Updates

Massachusetts outlaws blasphemy, adultery

Laws against blasphemy, adultery, and other surprising crimes are still on the books in Massachusetts.

Sexual intercourse before marriage or with a person other than one's spouse is a crime, punishable by up to three years in jail. Anyone who "blasphemes the holy name of God by denying, cursing or contumeliously reproaching God, his creation, government or final judging of the world" can be sentenced to a year behind bars. Other crimes include begging, providing contra-

God damn! Who knew?

Find out which Massachusetts laws you may have broken:
 ► www.aclum.org/docket

ception to unmarried persons, committing "unnatural and lascivious acts," and tattooing (except by qualified physicians).

The ACLU of Massachusetts has been working for the repeal of these and other archaic laws. They should be taken off the Massachusetts law books. They're outdated and confusing. And they can be dangerous if used to target or harass individuals or organizations.

ACLU of Massachusetts backs transgender rights bill

The ACLU of Massachusetts has joined the Massachusetts Transgender Political Coalition and other advocates in efforts to pass a transgender rights bill. HB 1722 would outlaw discrimination on the basis of "gender identity or expression." Thirteen states already provide similar protections.

As part of the effort to pass HB 1722, supporters from around Massachusetts have written letters to legislators about their personal experiences with discrimination against transgender people. We've excerpted a few of them here.



Tev Monnin (top row, second from right), Liz Monnin-Browder (lower, right) with the rest of the Monnin family.

A Transgender person whether they be male or female accepts the fact that they may lose many things such as friends and family when they transition. The opportunity to earn a decent living, to have a place to live, or to be able to walk the streets without fear of being molested or killed should not be among these losses.

— Rachel Jette

For [my sibling] Tev, finding summer work in Massachusetts was a problem, and it was because he is transgender. Tev went into every business we could think of. He was usually told that the businesses weren't hiring, or he was given the run-around and told to come back later.

One day, Tev went into a business to apply for a job and was told that they weren't hiring. That same day, just a few hours later, Tev's then girlfriend—who is not transgender—went into the same business and was hired on the spot...

Ultimately, I got Tev a job at the restaurant where I worked based on my recommendation and without the manager seeing or meeting Tev first. Tev was the best host on our staff—he was always going above and beyond his duties to help co-workers, and he was friendly and professional to all of the restaurant guests.

But as soon as he started, it was obvious that Tev wasn't getting shifts—he was rarely put on the schedule, even though we had a shortage of hosts and Tev wanted to work...I still can't believe that my manager looked me in the eye and told me that he wasn't scheduling Tev to work because of the way Tev looks....

I want Massachusetts to be a state where my transgender family and friends have the opportunity to apply their skills and experience. No one who wants to work should be discriminated against because of their gender identity or expression. I encourage you to report HB 1722 favorably from your committee and to work for its successful enactment.

—Liz Monnin-Browder

My past experience has shown me that my employability lies not in my education, my work history, my publications, or any of my skills, but rather in having my legal gender match my appearance.

—Tynan Power



New Publications

The ACLU—both nationally and here in Massachusetts—produces a variety of publications, including detailed reports, reflections, and handy publications on the rights we all have. Five of the latest are:

ACLU of Massachusetts Annual Report 2007 (Nov. 2007, 17 pages)

Race & Ethnicity in America: Turning a Blind Eye to Injustice (Dec. 2007, 212 pages): A detailed report on U.S. violations of the Convention on the Elimination of All Forms of Racial Discrimination.

What's Wrong with Fusion Centers? (Dec. 2007, 27 pages): They sound like science fiction, but they're for real. Government "Fusion Centers" in Massachusetts and around the country are collecting data on all of us, and they raise the danger of identity theft and government invasions of privacy to an unprecedented level.

Roe @ 35: Reflections by Notable Champions for Choice in Massachusetts (Jan. 2008, 43 pages)

Know Your Rights When Encountering Law Enforcement (Dec. 2007, 24 pages)

Download any of these publications for free
 ► www.aclum.org/docket

From the Executive Director



ACLU of Massachusetts Executive Director Carol Rose addresses a crowd of over 400 at our 2008 activist conference. Photo by Marilyn Humphries

Lessons from Kafka

by Carol Rose, Executive Director

Somebody must have been telling lies about Joseph K., for without having done anything wrong he was arrested one fine morning.

—Franz Kafka, *The Trial*

It is human nature. Once you know you are being watched, you will alter your behavior and watch what you say. Such is the chilling effect of our rapidly growing surveillance society.

Consider this: the government issues an estimated 30,000 National Security Letters each year, demanding information from librarians, internet providers, and other businesses on what we are reading, watching, and saying to one another. That's 30,000 secret surveillance requests every year, which equates to upwards of 180,000 such National Security Letters since the passage of the Patriot Act in October of 2001.

Couple that with other government initiatives—such as efforts to create a national DNA database, warrantless searches on our subways and trains, plans to link thousands of CCTV cameras on our city streets, and the opening of the Commonwealth's "Fusion Center," a federally-funded domestic intelligence center designed to collect a stunning array of personal data about ordinary American citizens—and we can see the Fourth Amendment being strangled before our eyes.

The surveillance state does more than violate our rights to be secure in our papers and personal effects; it also weakens our First Amendment rights, for it is human nature that we will watch what we say when we know "others" are listening to our every utterance.

The end result does more than simply chill political speech. It constitutes a wholesale attack on our right to personal autonomy. A total surveillance society undermines our most fundamental liberty to express ourselves privately—and to know who is listening. Freedom of expression means nothing if we lack the fundamental privacy to think and dream, to test new ideas (even so-called "radical" ideas) without fear that the government is reading our e-mails, listening to our phone calls, or tracking our movement. The First Amendment means nothing if we lose the personal freedom to worship the gods of our choosing (or not), to decide whom we will love, to explore publicly or privately—through our writings or our conversations or our art—the ideas and beliefs we think important to our individual or collective futures.

Professor Daniel Solove of George Washing-

ton University Law School likens our current condition to Franz Kafka's disturbing novel, *The Trial*. The danger is not simply an Orwellian Big Brother watching us, but rather the deployment of secret databases and manufactured crimes by faceless bureaucrats who secretly undermine our lives, leaving us little ability to defend ourselves.

These are not hyperbolic musings by Professor Solove. Consider the case of Walter F. Murphy, one of the nation's foremost constitutional scholars, a professor emeritus of Princeton University, and a decorated former marine. When denied a boarding pass at Newark airport because he was on a Terrorist Watch List, Professor Murphy reported that he was asked by an airline employee: "Have you been in any peace marches? We ban a lot of people from flying because of that."

Professor Murphy replied that he had not attended such marches, but had given a televised lecture that was "highly critical of George Bush for his many violations of the Constitution."

"That'll do it," the man said.

Or consider the case of Professor Adam Habib, vice-chancellor of the University of Johannesburg and a world-renowned scholar of democratic movements—and now a client of the ACLU. Professor Habib has been a vocal critic of the war in Iraq. He has also repeatedly condemned terrorist organizations. But in October of 2006, Professor Habib's visa was suddenly revoked without explanation. He had lived in America for a number of years, and had never experienced any trouble

entering the U.S. prior to his criticisms of the Iraq war. The revocation of Professor Habib's visa prevented him from contributing to a series of meetings, including appointments with the National Institutes of Health, the Center for Disease Control and Prevention, the World Bank, Columbia University, and the Gates Foundation. Yet, like Joseph K, the character in Kafka's *The Trial*, Professor Habib does not know why he has been targeted or what it means. The ACLU has filed suit on behalf of Professor Habib's right to speak as well as the American citizens who wish to hear his ideas.

And it's not just individuals the government is targeting. In recent years, the ACLU has challenged government efforts to create "free speech zones" at political conventions and public rallies, including the 2004 Democratic and Republican conventions. At issue is not simply the right to speak, but whether dissenting organizations will be heard by their intended audience. Relogating dissenters to a protest pen underneath a highway and surrounded by barbed wire not only violates their right to speak, but the right to have that speech heard by the intended audience who may benefit from hearing what they had to say.

Free speech and dissent are being eroded not only by direct government attacks, but also by the chilling effect of a surveillance society in which our private speech and daily movements are monitored without our knowledge, where individuals are secretly targeted by our government for reasons that they are never told, and when our access to new ideas is simply shut down.

ACLU fights FISA cave-in—and wins, for now

After revelations that the National Security Agency (NSA) had been conducting illegal warrantless spying on Americans, we launched our statewide campaign to "Restore the Rule of Law" in early 2006.

At a series of emergency town meetings across the Commonwealth, thousands of residents urged members of the Massachusetts Congressional delegation to investigate and roll back NSA domestic spying. Our representatives responded by saying they needed a chance to be part of the majority party in Congress.

Well, the Democratic Party got its chance in the elections of November 2006, and, at least at first, they blew it. We got the appalling "Protect America Act of 2007," which permitted the NSA to continue warrantless surveillance without any investigation of what it has been doing.

But finally, in March 2008, we got what the ACLU has been campaigning for. The House of Representatives stood up against "war on terror" demagoguery and said NO to the Administration. Members left for their recess without adding immunity to their Protect America Act fix. As we go to press, that is where things still stand.

This may not seem like a big victory, since the legislation passed by the House—which will eventually need to be reconciled with the Senate legislation—does not safeguard our civil liberties by including the requirement that there must be individualized warrants before Americans are wiretapped when one end of a communication is abroad. Furthermore, it enables telecoms to make their case in secret, about why they should not be held liable.

But in the words of Caroline Frederickson, director of the ACLU's Washington Legislative Office, this represents a "sea change," with members of Congress finally awake to the fact that the American public cares about civil liberties.

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Carol Rose



Photos by Cody Rank

Worcester ACLUM Defends Free Speech for Animal Rights Protestors

In these photos, Massachusetts State Police arrest Allison Vasallo and Andrew "Drew" Wilson a few minutes into a protest in which they tied a banner reading "Have a Heart, Boycott KFC" on a bridge overlooking Route 290.

The two Worcester Polytechnic Institute students were protesting what they see as cruel treatment of animals by the KFC Corporation, and Vasallo wore a bright yellow chicken suit. Police charged Vasallo and Wilson with disturbing the peace and defacing public property.

The ACLU of Massachusetts sees this as a free speech issue, and cooperating attorneys Hector Pineiro and Robin Scott have come to the students' defense. Flags, wreaths, and signs can be found on the fences of other overpasses throughout the state, but are not removed, which suggests selective enforcement based on the content of the signs.

"Warrantless" from page 1

Square alone, instead of the four neighborhoods originally planned.

Informed consent or coercion?

The Fourth Amendment prohibits unreasonable searches and seizures and in most cases requires that the police obtain a warrant before searching a home. While this requirement can be waived, consent to a search must be knowing and voluntary. Being confronted by three police officers and a clergyman at one's front door is almost inherently coercive and intimidating.

Furthermore, while the police have promised not to bring criminal charges for illegal possession of firearms found during a "safe homes" search, they have not promised immunity from criminal charges for other offenses, including drug possession. Nor have they given any guarantee that information obtained during these searches will absolutely not be conveyed to landlords, public housing authorities, federal prosecutors, or schools.

The ACLU of Massachusetts has especially strong concerns about school-based police officers reporting information about the results of "safe homes" searches to school officials who may suspend or expel students, thus exacerbating the problem of the "school to prison pipeline," and the overrepresentation of minority youth in the juvenile justice system in Massachusetts.

Community education ongoing

ACLUM has produced a briefing paper which discusses the problems with the Safe Homes program and suggests alternative measures to deal with youth violence in Boston. It is available at www.aclum.org/docket.

In addition, we have provided speakers at many community meetings, distributed flyers in affected neighborhoods, testified before the Boston City Council, and are continuing our organizing and coalition efforts to stop a program that the community does not want.



ACLU of Massachusetts hosts "Race & Ethnicity in America" events

Boston City Councilor Chuck Turner (center) speaks at a December discussion with community leaders, sponsored by the ACLU of Massachusetts. The meeting coincided with a press conference earlier that morning for the release of the national ACLU's 212-page report, *Race & Ethnicity in America: Turning a Blind Eye to Injustice*, about U.S. violations of the Convention on the Elimination of all forms of Racial Discrimination (CERD).

Race & Ethnicity in America is a response to a U.S. report to the United Nations Committee on the Elimination of Racial Discrimination (CERD), released earlier in 2007. The ACLU report contains information about the ongoing impact of racism in the Commonwealth of Massachusetts and across the country. The U.S. report, which the ACLU called a "whitewash," swept under the rug the dramatic effects of widespread racial and ethnic discrimination in this country.

"The America we believe in is one where people are treated fairly regard-

Court again upholds Lexington schools teaching on diverse families

On January 31, 2008, the U.S. Court of Appeals for the First Circuit ruled that a Massachusetts elementary school can continue using books that show families headed by same-sex couples. The Court rejected the claims of four parents that their religious freedom had been violated because the school refused to give them prior notice and the right to opt out of the use of these books for their children.

The ACLU of Massachusetts cheered the ruling after having joined with Lexington parents, teachers, and religious groups in a friend of the court brief urging the court to reject the claims.

Two families filed suit in 2006 after the Lexington School Superintendent explained the school district's position that it would not provide parental notification for "discussions, activities, or materials that simply reference same-gender parents or that otherwise recognize the existence of differences in sexual orientation." The lawsuit was thrown out by U.S. District Judge Mark Wolf in 2007. The First Circuit ruling affirmed the dismissal of the case, finding that there was no cognizable burden of constitutional significance placed on the free exercise of religion simply because children saw or heard storybooks containing ideas at odds with a parent's religious views.



Congratulations to Eben Krim, an attorney for Proskauer Rose LLP, who has been named a Pro Bono Golden Gavel Award winner for his exceptional work on this case. Eben played a key role in drafting ACLU federal court briefs in support of the right of Lexington schools to teach about diverse families, including some headed by same-sex parents.

"Many courts have rightfully found that parents can't control which books are used in public school just because the books conflict with personal religious beliefs," said Sarah Wunsch, ACLU of Massachusetts Staff Attorney. "School administrators and teachers should take heart from this ruling and not be afraid to use materials that show diverse families just because a handful of parents might object." The books at issue in the case were *Molly's Family*, *King and King*, and *Who's In A Family?*

"The ACLU supports the rights of parents to religious freedom, which includes the right to talk to their children about what they are learning in school, giving them alternative materials, and conveying their values and beliefs," said Wunsch. "Ultimately, if parents object to public education, they also have a constitutional right to send their children to private schools, to home school them, and to lobby their local school officials for changes in the curriculum. But they do not have a federal constitutional right to control the material that is taught to all students."

The ACLU of Massachusetts amicus brief in *Parker v. Hurley* was joined by Lexington CARES, Lexington Education Association, Massachusetts Teachers Association, and Respecting Differences, a Lexington religious coalition. Boston attorneys Eben Krim and Mark Batten of Proskauer Rose worked on the brief, along with Ken Choe of the ACLU national LGBT Project.

less of their race and ethnicity. But, unfortunately, as this report makes clear, the country and the Commonwealth are not living up to our ideals," said Nancy Murray, Director of Education at the ACLU of Massachusetts.

Download the CERD report and find out more
 ➤ www.aclum.org/docket

ACLUM knocks Brandeis Univ. for undermining academic freedom

The ACLU of Massachusetts joined with other free-speech advocates and the Brandeis University faculty union in January, criticizing the school for reportedly punishing political science professor Donald Hindley for use of the word "wetbacks" in his class.

Hindley asserts that he used the term to demonstrate a pejorative word that has been and continues to be used to describe some immigrants to the U.S. The faculty union condemned the university's investigation, which failed to provide adequate notice to the professor about the accusations against him, to interview many witnesses, or to provide a process for appeal.

The ACLU of Massachusetts supports the right of all students to equal educational opportunity. Severe, pervasive, or targeted harassment of a student based on race, national origin, or ethnicity can interfere with the ability of students to obtain an education and would violate our state and federal civil rights laws. However, incidental comments by a professor in class, even if offensive to some, do not constitute illegal harassment under the law, and imposing punishment

on a faculty member for occasional comments significantly jeopardizes freedom of thought and academic freedom which are so integral to a university and the quality of education that students will receive there.

Students have the right to complain about a professor, to raise their complaints with a pro-

fessor, organize with others to discuss with the professor their objections, and debate what has gone on. However, faculty members also have the right to a fair process when they have been accused of wrongdoing, and Brandeis appears to have denied that process to Professor Hindley.

New staff



Susan Corcoran

Susan Corcoran joined us in November as our new part-time Intake Attorney, assisting in managing the approximately 2,000 civil liberties complaints that we field each year. Susan attended law school at

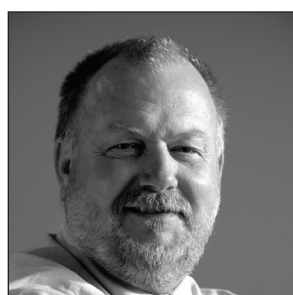
Washington University and was an associate at Thompson Coburn in St. Louis. She graduated from Swarthmore College, holds a Master of Public Health, and brings experience as a Peace Corps volunteer and development director for Planned Parenthood of St. Louis. Susan also volunteers as family law staff attorney at Community Legal Services and Counseling Center.



Kerry Walsh

Kerry Walsh is our new Legal Assistant, who helps with intake, opens and closes case files, maintains our library, and provides secretarial support for our attorneys. She grew up in Weymouth and graduated from Suffolk University in 1997 with

a Bachelors of Science in Criminology & Law. She has worked as a secretary in various law firms throughout Boston and the South Shore. Kerry says that even though she's only been here a few months, she already feels like she's actually helped people—and that's a great feeling.



Jim Wolken

Jim Wolken has joined the ACLU of Massachusetts as Senior Director of Development, Marketing and Communications, and will work to build integration between fundraising and communications

efforts. Prior to joining us, Jim filled a similar role at Suffolk University, where he launched an award-winning magazine. From 1994 to 2003 Jim was CEO of Skinner-James Communications, a 42-person strategic marketing company in Watertown. "I feel privileged to be at the ACLU," says Wolken. "I think the ACLU is doing some of the most important work in the country today, defending our Constitution, so I am thrilled to be a small part of that."

From the ACLU blog: www.massrightsblog.org

Driving While Immigrant: Immigrants in Central Massachusetts Share Their Experience with Local Police

by Anjali Waikar, Equal Justice Works Fellow

"Do you have T.B.?"

This is what Jorge's son was asked when his car was pulled over by a local police officer in Milford, Massachusetts. Jorge said that his son didn't know why he was pulled over; the officer decided not to tell him.

"Do the police have the right to question us like this?" asked Jorge, a small-framed man from Ecuador who spoke only in Spanish. Jorge was among the forty or so community members I met on Saturday afternoon who came to express their concerns that they are being targeted by the police. I could see several other men in the audience nodding as Jorge spoke, as if to say that they, too, had had similar encounters with law enforcement.

Another man, Luis, raised his hand and stood up to speak. Luis was stopped while driving his truck in Holliston, he explained in Spanish. But Luis wasn't told why he was stopped. The officer instead ordered him out of the driver's seat and told him to walk to the back of his truck. The officer then pulled out a camera. He snapped a picture of Luis' face. Luis doesn't know what ever happened to his picture.

These are a few examples of the stories community members shared with me and other organizers on a Saturday afternoon in a small town church basement in Central Massachusetts. A couple of community members organized the event to address concerns that the immigrant communities in their towns are being targeted by the police. They asked me to speak about their rights and about what they can do as a community to address these issues. Most of the audience members were men who had fled their indigenous communities in Ecuador to work as roofers and construction workers in Massachusetts in order to support their families.

Do the police have the right to question us like this?

This question rang in my head the entire afternoon, like it has for the past year and a half. As a matter of law, um, well it depends, I thought to myself. As a matter of human dignity, NO, I wanted to scream. I put on my lawyer hat and thought, how can we prove that people are being targeted?...What was the basis for the stop?... Did the officer have reasonable suspicion?... Did these men even have the legal authority to drive in Massachusetts? And then a moment of honest frustration swept over me as I thought, aren't some of these men lucky that they weren't transferred to immigration custody like so many other people in other parts of the state?

But what these stories reveal is that this isn't just about illegal drivers in Massachusetts. And this certainly isn't just about illegal immigration. Even immigrants who are here in full compliance with the law seem to be suffering under efforts to target anyone who "looks foreign."

Later in the afternoon, for example, another man pulled me aside to say that he heard of two people who hold green cards and Massachusetts driver's licenses. When they were picked up by the police for allegedly committing minor traffic violations, the officers didn't believe their licenses were real. Both of them had their licenses confiscated and their cars were towed.

For the past year and half, I have been listening to peoples' stories. From what I have seen and heard, the theme in Massachusetts is far too pervasive: if you're a brown-skinned immigrant, you are presumed illegal until you prove otherwise.



Photo by Marilyn Humphries

Anjali Waikar

Join the discussions

➤ www.massrightsblog.org

Listen to our "Blogging for Civil Liberties" podcast to get started

➤ www.aclum.org/docket

Do you think you or someone you know were treated differently at the RMV because of your immigration status?

In December 2006, the ACLU of Massachusetts, along with other immigrant rights groups, brought a lawsuit against the Registry of Motor Vehicles for denying or delaying licenses, permits, renewals, and IDs to lawful immigrants. The lawsuit is still ongoing. We are interested in hearing from people who were denied a license by the RMV for failing to provide sufficient documentation concerning immigration status. For example, did you present an expired I-94 card even though you are validly authorized to work in the United States? Were you told that you have to present a green card even though you have been granted asylum by an immigration judge?

We want to hear from you if you think you have been improperly denied a drivers license or treated differently because of your lawful immigration status. Call us at (617) 482-3170.

"Logan" from page 1

on the PASS program, and thus raised important questions about how—and against whom—such discretionary security measures are applied.

"The police are going to find suspicious behavior where they look for it," said Carol Rose, Executive Director of the ACLU of Massachusetts. "Experience teaches us that they are more likely to look for it among people of color or a particular ethnicity.



King Downing

"If Mr. Downing, a Harvard-educated lawyer who knows his constitutional rights, could not prevent his own unlawful detention, then what chance do other citizens have in a situation in which they, too, are mistakenly identified as a security threat?" she asked.

The PASS program, put into effect at Logan Airport just weeks prior to Downing's detention in 2003, has now been adopted at dozens of airports around the country.

Although the jury declined to link Downing's detention directly to the PASS program, it nonetheless held that the police had unlawfully detained him because they had done so without reasonable suspicion to believe he had committed any crime. In so doing, the jury rejected security officials' argument that Downing was free to simply walk away from state troopers who had surrounded him during the 30–40-minute encounter outside the airport security area.

"This jury verdict put the state police on notice that its programs, including the Passenger Assessment Screening Program, must assure in the future that voluntary encounters between troopers and members of the traveling public do not become the type of unlawful detention that

Mr. Downing experienced," said attorney Peter B. Krupp, of the firm Lurie & Krupp LLP, who represented Downing as a cooperating attorney for the ACLU of Massachusetts.

Downing testified that he was stopped for questioning by state police troopers after using a pay phone on his way out of Logan Airport on the morning of October 16, 2003. Ironically, Downing had traveled to Boston to participate in a meeting about ways to combat racial profiling. Police demanded to see Downing's identification and travel documents, which he was under no obligation to provide. After initially being told that he must leave the airport, which he intended to do anyway, five state troopers surrounded Downing and said he was under arrest. Although the police had no reason to stop him, Downing was detained until he finally acceded to police de-

mands for his identification and travel papers.

"We will all be safer if security personnel base their investigations on evidence, not simply racial characteristics," said Rose. "The use of behavioral characteristics, like those that were kept secret in this case, does not justify the detention of someone in a non-secure area."

"This jury verdict upheld an important principle," she added. "In the United States, people should not be stopped by police without cause or be required

to produce identification and papers proving that they have a right to be in a particular place. 'Your papers please' is an approach to law enforcement that brings to mind authoritarian regimes. It has no place in a free society."

Ironically, Downing had traveled to Boston to participate in a meeting about ways to combat racial profiling.

ACLU continues fight for equal pension benefits

Each day that goes by before the gender neutral annuity bill becomes law, increasing numbers of women face discrimination in their retirement income.

As more employers opt for 401(K) and similar plans in place of the traditional defined benefit plans—which must be gender neutral under federal law—more women purchase annuities that pay lower monthly benefits than are paid men who purchase policies with the same amount of money.

This is the same kind of discrimination by immutable group characteristic—gender—that was outlawed long ago in annuities for other characteristics such as race or religion. Eighty-five percent of men and women die at the same ages anyway, and those who are not the norm—the 7.5 percent of men who die early including in wars and other violence and the 7.5 percent of women who live longer—should not determine the policies of the vast majority.

Last session the House passed it 116-40, but the Senate did not get to it before midnight of the last day of the session. Because this bill was filed in the Senate by Senate President Therese Murray, we expect a better fate this year.

85%

of men and women live to the same age—and even for those who don't, discrimination on the basis of immutable characteristics has rightly been outlawed

Dear Mr. Newman...

Bill Newman, director of our western Massachusetts legal office, regularly guest-teaches at area high schools and colleges. Yearly since 2002, he has been invited to Northampton High School to guest-teach an English class on George Orwell's novel *1984*, to which he draws parallels with warrantless government surveillance today. Here are excerpts from letters Newman received after this year's class.

First, I must apologize. At first, I thought you were some crackpot talking about government surveillance and control... However... until we discussed the topic in class, I did not realize how easy it would be for the government to track down anyone that they really wanted to. In my life, I have not done anything to attract government attention so I am not paranoid, but you made me realize how much control our government has on us in return for a false sense of security. For this, I thank you and I really do appreciate you opening my eyes.

—Matthew

Thank you for coming into our English class to basically make us all paranoid because of how the government keeps records of everything we say, do, where we go and what we buy... I am absolutely astonished by the fact that the government which displays our country as free, does so many things that most people think are an invasion of privacy... Thanks to your attention-grabbing demonstration, I and probably most other member of my class do not look at the title "public/guest speaker" as they used to.

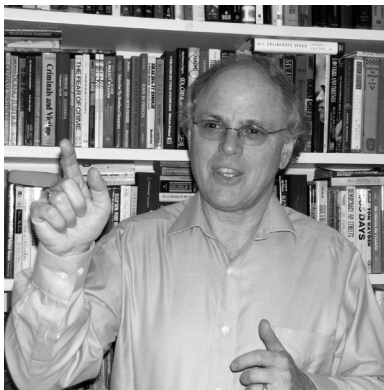
—Ben

I do not worry very much about this, as it just doesn't bother me to have the government know where I am and what I am up to.

—Erin

While reading Orwell's book [*1984*], I never thought that any kind of control to an extent like that would ever be able to exist in America. Maybe a few hundred years from now, but never in my lifetime. Your talk with us put two and two together for me.

—Chelsea



Bill Newman



ACLU

**AMERICAN CIVIL LIBERTIES UNION
of MASSACHUSETTS**

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VOLUME 38, NUMBER 1 | APRIL 2008

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THE DOCKET is published twice a year

Our thanks to Stephen Mindich, the Phoenix, and Mass Web Printing for printing The Docket.

Candidate Statements for Election to ACLU of Massachusetts Board Class of 2011

The Nominating Committee offers the following slate for election for a 3-year term on the ACLUM Board of Directors.

Nominated New Members

Rashmi Dyal-Chand is an Associate Professor at Northeastern University Law School. Her research and teaching focus on property law, poverty and economic development. Her recent projects have examined strategies for economic development (such as microlending, credit card lending, and property formalization) using a comparative perspective. Prior to joining the law school faculty in 2002, Rashmi served as an associate general counsel of The Community Builders, Inc. (a nonprofit affordable housing developer), an associate in the Boston office of Foley Hoag, a Public Interest Fellow at the Los Angeles law firm of Hall & Associates, and a law clerk to the Hon. Warren J. Ferguson of the US Court of Appeals for the Ninth Circuit. She is delighted about the possibility of serving on the Board of the American Civil Liberties Union of Massachusetts.

Mitch Kaplan: I am a lawyer, first admitted to practice in 1977, and have spent nearly all my career with the firm of Choate, Hall & Stewart. While principally engaged in commercial litigation, I have also tried to devote some of my time to issues involving social justice. I became a panel attorney for the Volunteer Lawyers Project shortly after it was established and have chaired Choate Hall's pro bono program for almost twenty years. I served on the Board of the Lawyers Committee for Civil Rights of the Boston Bar Association for many years and co-counseled two cases with LCCR staff attorneys. I also serve on the Board of Greater Boston Legal Services and recently chaired the Delivery of Legal Services section of the Boston Bar Association. I am very enthusiastic about the opportunity to continue to address important issues of social justice and the protection of civil liberties through service to the ACLU.

Kim Markkand is a partner at Mintz, Levin, Cohn, Ferris, Glovsky and Popeo P.C., a member of the Litigation Section and chairs the firm's Insurance/Reinsurance Practice Group and the firm's Insurance Bankruptcy Group. Kim's special expertise is representing and advising insurers and reinsurers on the business and legal implications of a variety of complex coverage issues. Prior to practicing law, Kim was a licensed social worker who worked with families and their children in the juvenile justice system. Kim founded the CASA (Court Appointed Special Advocates) Program in 1982 in Boston Juvenile Court with Judge Francis G. Poitras with a goal of providing children enmeshed in the juvenile justice system with their own independent special advocate. Kim is member of the Board of Greater Boston Legal Services.

Laura R. Studen is Co-Chair of the Business Litigation Group at Burns & Levinson LLP and a partner in the firm's Labor, Employment and Employee Benefits Group and Divorce and Family Group. Prior to joining Burns & Levinson in 2001, Ms. Studen was a Senior Partner at Lane, Altman & Owens LLP where she was the Chair of the Employment Practice Group. She concentrates her practice in employment law, business litigation, family and probate law, and she counsels companies as well as individuals. She taught Employment Law and Family Law as an adjunct faculty member at the New England School of Law. Ms. Studen is past president of the Massachusetts Association of Women Lawyers, a former member of the Board of Governors of the Massachusetts Academy of Trial Attorneys, and a Fellow of the Massachusetts Bar Foundation. Ms. Studen frequently participates as faculty for Massachusetts

Continuing Legal Education, the Massachusetts Academy of Trial Attorneys, and other groups on employment law and family law continuing education topics. In 2006 and 2007, Ms. Studen was selected by Best Lawyers in America as a leader in her field. She would like to make the ACLU a priority in her life and career because she believes in our mission and the impact of our work on issues of the times.

Marjorie Suisman is an attorney at Davis, Malm & D'Agostine, P.C. and practices in the Trust and Individual Client Group. She concentrates her practice in the areas of estate planning, estate and gift taxation, and trust and estate administration. Her practice also includes succession planning for privately held businesses, estate planning for nontraditional families and the disabled, as well as serving as a professional trustee and as a consultant in the structuring of personal injury awards.

Marjorie is a frequent lecturer and writer on all aspects of estate planning and taxation. Marjorie also has lectured and written on estate planning for non-traditional families and is serving on a bar association task force studying the implications of the Goodridge vs. Dept. of Public Health decision on estate and tax planning. Marjorie is an active member of the ACLU's Development Committee.

Incumbents

Martin M. Fantozzi: A current ACLUM Board member and member of the Executive Committee. I am also currently serving as Treasurer of the Board. I am an attorney in private practice in Boston concentrating in litigation. As part of my practice, I have counseled non-profit organizations, particularly affordable housing providers, in litigation matters. I have acted as a cooperating attorney on free speech matters. I seek to continue to advocate for civil liberties in the criminal justice system and other traditional contexts, and to help preserve our rights in a new century in which the boundaries of liberty will be increasingly redefined by technology.

Ellen Fisher: I have served on the ACLU board since the spring of 2007. I have had considerable experience in non-profit organization, management, and board affairs and a life-long commitment to civil liberties. I currently serve on the Executive Committee of the ACLU and on the ad hoc committee on the use of aversive therapies. In the 1970s and 80s I was active in town affairs in Concord, Mass., serving as president of the League of Women Voters, a trustee of the library, and president of the Community Chest. I was a member of the transportation committee and for 8 years was the town's representative to the MBTA Advisory Board, serving on its finance and executive committees. I was the chair of the Concord Finance Committee. In 1988 upon moving to Cambridge I volunteered at Planned Parenthood, serving as a telephone counselor, board member, and coordinator of volunteer escorts for 14 years. I currently serve on the Board and Executive committee of NARAL Pro-choice Massachusetts. For 9 years I was an intake interviewer in the Asylum Project at the International Institute. In the year that I have been on the ACLU board I feel that I have come home to the organization which shares my concerns and enthusiasms.

Mala Rafik: Ms. Rafik is a civil litigation attorney at Rosenfeld & Rafik, P.C. Ms. Rafik specializes in health and disability benefits law, with a particular emphasis on ERISA. Her practice is focused upon representing individuals with chronic illnesses and disabilities for whom she has successfully secured health insurance coverage, long-term disability insurance and related benefits

during the internal process and through litigation. She is a member of the Boston and Massachusetts Bar Associations, the Chair of the Civil Rights and Civil Liberties Section of the Boston Bar Association, and a member of the Board of Directors of the Massachusetts Advocates for Children, American Civil Liberties Union of Massachusetts and Massachusetts Correctional Legal Services.

Arnie Reisman: I strongly believe that the existence and the work of the ACLU right now are more important than ever. Our Constitution is being used as a doormat, dirtied by the boots of the power elite. We are now living in an America run by one of the most secretive governments in our history. We must speak out and oppose the corruption of our rights and laws, ever more so at a time when the voice of the loyal opposition appears to be silenced by fear and complacency. I am a media person who wants to help the ACLU deal with the media at a time when more communication sources are being absorbed by conservative ownership, when paid shills masquerade as reporters and commentators, when even PBS kowtows to zealots' tactics. Our media is on a wobbly foundation. Our media offers news flavored with entertainment. In short, what we have here is Jello Journalism. I hope to help the ACLU cut through it and see that the opponents of civil liberties receive their just desserts.

Byron Rushing: A community organizer in the '60s, director of the Museum of Afro-American History in the '70s, Byron Rushing was elected to the Massachusetts House of Representatives in 1982. He represents the South End, Fenway, and Lower Roxbury neighborhoods in Boston and the western campus of MIT in Cambridge. He is a leading advocate for civil liberties and civil and human rights in the legislature, and a recognized leader of progressive members of the House. He was a lead sponsor of the gay rights law, and the prime marriage bill. He chaired the Committee on Insurance from 1995-1997, and was the sponsor of the public school gay/lesbian student rights law, and the Burma human rights law. He had previously chaired the committees on Public Service, on Local Affairs and on Counties. He was Vice Chair of the Legislative Redistricting Committee. He ran for Speaker of the House against Tom Finneran in January 2003. After Finneran's resignation, he was appointed this year to the position of Second Assistant Majority Leader. During all his time in Boston, Byron has worked for and with community-based organizations—for greater political participation and against neighborhood debilitation. He serves in his office with an understanding of the history of poor and working class people and with a belief in democratic citizen control.

Lisa Thureau-Gray is a graduate of Barnard College, and has a Masters degree in Anthropology from Columbia University. She graduated from Benjamin N. Cardozo School of Law of Yeshiva University in 1991. Before becoming an attorney, Lisa worked as a researcher and advocate for reform and improvement of

the public education system in New York City. After law school and two years in the litigation department of an international law firm, Lisa became Executive Director from 1993 to 1997 of an advocacy organization dedicated to maintaining separation of church and state in public schools. At the Juvenile Justice Center she monitors juveniles' civil rights issues, tracking trends in the Center's cases, monitoring and challenging legislation, and undertakes special projects ranging from improving defender relations with the media to challenging institutional abuse of youth.

Inez Friedman-Boyce is a partner at Goodwin Procter LLP in Boston, where her practice focuses on securities litigation, SEC enforcement, and mergers and acquisitions-related litigation. Ms. Friedman-Boyce is the immediate past co-chair of the Class Actions Committee of the Litigation Section of the Boston Bar Association, has spoken and published widely on securities litigation and corporate governance topics, and lectures on class actions at Suffolk University Law School. She is a member of her firm's pro bono committee, an alumna of the Lead-Boston Class of 2002, and a member of the executive committee and board of directors of the Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association. She has acted as counsel in numerous pro bono matters, including a prominent class action lawsuit involving racial violence in Boston public housing. She has served as a special assistant district attorney for Middlesex County, Massachusetts, where she conducted numerous criminal jury and bench trials. Ms. Friedman-Boyce is a graduate of Amherst College and Georgetown University Law Center. She lives in Newton with her husband Ray Boyce and their two young children, Walter (5) and Rory (1).

Hope Lewis: I am honored to join the ACLUM board because of the organization's legacy and current work for social justice and the civil rights and civil liberties that support it. My commitment to human rights and social justice in international perspective began as I was growing up in Brooklyn, NY as the daughter of immigrants. It seemed then, as now, that national and other borders prevent us from seeing the commonalities among different cultures; they also keep us from recognizing what is uniquely valuable in each. After law school I worked with TransAfrica in the U.S. anti-apartheid and Third World feminist struggles. The divestment and corporate social responsibility efforts of the 1980s increased my curiosity about the workings of the financial markets, especially as they affect individuals. This led to my work as an attorney with the SEC. Since 1991, I have been a professor at Northeastern University School of Law, where I helped found and build its human rights program and continue to promote the deep commitment and contributions of our students and faculty to human rights and social justice at home and abroad.

2008 ACLU of Massachusetts Board Ballot

Vote for 13 or fewer

- Two spaces are provided for joint members. One can vote using the first box and the other using the second.
- Ballots must be received in the ACLU of Massachusetts office, 211 Congress St., Boston, MA 02110 by May 15.
- For information on the ACLU of Massachusetts nominating and voting procedures for the Board of Directors, go to www.aclum.org/about.
- | | | | |
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| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Rashmi Dyal-Chand |
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| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Marjorie Suisman |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Lisa Thureau-Gray |

2008 Activist Conferences



Norma Shapiro, ACLU of Massachusetts Legislative Director, and Gary Buseck, Legal Director of GLAD, talk about "Next Steps for LGBT Rights" at our 2008 Conference.



ACLU Policy Counsel and former FBI Special Agent Mike German speaks on "Confronting the Surveillance Society: Real ID, NSA Spying, Warrantless Wiretapping, and Fusion Centers."



Members of Boston University's ACLU group pose with Daniel Ellsberg at our 2008 membership conference. For information about student groups, join the "ACLU of Massachusetts" group on Facebook.



Susan Yanow, Founder of the Abortion Access Project and ACLU Board Member, speaks on "Ensuring Reproductive Freedom."



Merrie Najimy, President of the American-Arab Anti-Discrimination Committee of Massachusetts, speaks about immigrant rights.



SAVE THE DATE: JUNE 8-10, 2008

Nearly 400 ACLU of Massachusetts members gathered at Bentley College on Jan. 26 for the Massachusetts 2008 statewide conference. Now we invite you to the national ACLU Membership Conference in Washington, DC, June 8-10.

ACLU members from throughout the U.S. will come to our nation's capital for three days of advocacy, leadership discussions, Capitol Hill meetings and hands-on activist training. Elected officials, celebrities, and renowned experts, along with some of the ACLU's most inspiring clients, will join us to stand up for freedom.

This conference is for both new members and long-term members. If you are committed to letting this administration know that it must stop the abuses of power, then gather with us June 8-10, 2008 to make your voice heard.

Find out more and register
➤ www.aclum.org/docket



At our 2008 Conference, held Jan. 26, 2008, at Bentley College, closing keynote speaker Rachel Maddow spontaneously auctioned an ACLU of Massachusetts t-shirt which she and keynote speaker Daniel Ellsberg signed. Left, Board President Nancy Ryan (left) and Maddow (right) watch as the bidding heats up. Right, auction winner Marianne Smith, a Worcester Advisory Council Member, stands holding her new shirt with Maddow (left) and Ellsberg (right). The on-the-fly auction raised \$800 for the ACLU of Massachusetts. Photos this page by Marilyn Humphries.

ACLU launches "Wonk" podcast series

Why even try to deny it? We're wonks—and it's because we care about and want to know what's going on in this country.

If you do, too, download our new *Wonk* podcasts. *Wonk* makes available recordings from ACLU of Massachusetts events, such as speeches and conference workshops, as well as interviews with staff, volunteers, and experts on civil liberties issues.

You can listen to *Wonk* podcasts on any MP3 player, including the iPod. Our first offerings cover topics from our 2008 activist conference, including:

- Confronting the Surveillance Society
- Freedom of Speech and Association in the Post-9/11 World
- Moving Beyond the War on Drugs
- Next Steps for LGBT Rights
- Racial, Ethnic, and Religious Profiling in the Post-9/11 World
- Torture, Rendition, Guantánamo
- The Roberts Court

That's just the beginning, and we'll be adding more content regularly.



➤ www.aclum.org/podcasts