



ACLU Defends Religious Freedom of Logan Screener

EEOC judge rules TSA order requiring Josue Brissot to conceal long dreadlocks worn for religious reasons was unreasonable. ACLU says incident showed more concern for appearance than safety.

An administrative judge of the U.S. Equal Employment Opportunity Commission (EEOC) ruled in November that the Transportation Security Administration (TSA) violated the rights of Logan baggage screener Josue Brissot when managers threatened to fire him over agency policy requiring hair to be short.

From the time he was hired by TSA in October 2002, Brissot wore his hair in long dreadlocks in accordance with his Rastafarian religion, believing that long hair shows devotion to God and that the longer the hair, the closer one is to God.

Brissot, a highly regarded screener, had been assured when hired that the agency had no problems with the way he wore his hair for religious reasons. Yet by 2004, after continually being passed over for raises and promotions, Brissot began to ask questions and was told his hair was not in compliance with agency policy. In August 2005, managers threatened him with loss of his job, and he came to the ACLU of Massachusetts for help.

"The irony of this case," said Sarah Wunsch, ACLU of Massachusetts staff attorney, "is that the so-called 'faith-based administration,' the Bush

Administration, was willing to fire an excellent, highly trained screener because he wore his hair long for religious reasons. They showed no respect for his religious needs and apparently cared more about appearances than safety."

Boston attorney Jonathan Margolis, co-counsel in the case, noted that the law requires employers to make accommodation to employees' religious needs, unless to do so would impose an undue burden on the employer. "We made many proposals to TSA on how to reasonably accommodate Josue's religion," Margolis said, "and they literally told him to stuff it, to stuff his long thick dreads inside his shirt collar. The judge said that was unreasonable and, indeed, it was."

With the ACLU's backing, Brissot was not fired in 2005, but it took years to get the judge's recent decision supporting his discrimination claim. The EEOC administrative judge, Erin M. Stimp, has scheduled a hearing for February 2010, on the remainder of Brissot's case, an assessment of damages to compensate him for violation of the federal law prohibiting employment discrimination based on religion.



In 2005, the TSA told highly regarded Logan baggage screener Josue Brissot—who wears his hair in long dreadlocks in accordance with the Rastafarian religion—that he could lose his job because his hair was not in compliance with agency policy.

FREE SPEECH



ACLU of Massachusetts staff attorney Sarah Wunsch spoke at a 2009 free speech rally at Boston College. The ACLU spoke up for freedom of expression during a number of campus controversies last year. See pp. 4-5. Photo by Marilyn Humphries

Privacy, Intelligence Experts Join ACLU Call for Oversight of Domestic Surveillance

Experts including a former FBI agent, the whistleblower who disclosed military surveillance of civilian political activity in the 1970s, and a leading national privacy authority urged swift action last fall on Senate Bill 931, a measure before the state legislature's Joint Committee on Public Safety and Homeland Security.

The bill, filed by State Senator Harriette L. Chandler of Worcester and known as "An Act Regarding the Commonwealth Fusion Center and Other Intelligence Data Centers," aims to prevent surveillance abuses and ensure that intelligence operations in the state do not violate privacy and First Amendment rights.

In 2004, then-Governor Romney established the Commonwealth Fusion Center, putting Mas-

sachusetts on the front line of a national effort to centralize and expand the government's ability to collect and retain personal information on ordinary people, in the name of preventing terrorism.

Today, however, the Fusion Center operates with virtually no independent oversight, with inadequate privacy protections, and without quality controls. Public records requests by the American Civil Liberties Union of Massachusetts over the last four years have shown that the Fusion Center collects and compiles information from an array of public and private electronic sources and shares that data, without adequate and independent oversight or assurances of quality control. See www.aclum.org/fusion for more information.

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RESTORING THE RULE OF LAW

**Promise and Practice:
The Obama Administration So Far**

When President Obama on his first day in office signed executive orders pledging to open government and close Guantánamo, the nation appeared poised to turn away from the nefarious policies of the previous eight years and embrace transparency, accountability, and the rule of law. But after nearly one year, it is now clear that it will take more than a change of administration and the party in control of Congress to bring sunlight to government secrecy.

Within weeks of the inauguration, the new beginning appeared less bright. On February 9, the Obama Justice Department invoked “state secrets privilege” in an ACLU case involving extraordinary rendition and urged Britain to block the release of evidence about rendition and torture. On February 20, the administration invoked “state secrets privilege” for a second time in an effort to terminate a lawsuit into domestic warrantless wiretapping.

On the same day, it sided with the Bush administration and declared that detainees in Bagram prison in Afghanistan should not be able to challenge their detention in U.S. courts. Like the detainees in Guantánamo, many Bagram prisoners had been picked up in countries far from any battlefield and are being held in legal limbo. The President seemed prepared to make Bagram the new Guantánamo.

President Obama signed an executive order suspending the widely discredited military commissions for 120 days, and then announced on May 15 that the commissions would be revived after their rules had been revised. In the words of Anthony Romero, ACLU executive director, “Tweaking the rules of these failed tribunals so that they provide ‘more due process’ is absurd;

there is no such thing as ‘due process light.’”

Against a background of fear-mongering by people such as the former vice president, Fox commentators, and others, the administration has sought common ground with a national security apparatus that has a vested interest in secrecy. What has emerged is a pattern of promising rhetoric and disappointing practice that the ACLU of Massachusetts is documenting in its regularly updated “Restoring the Rule of Law Scorecard” (see www.aclum.org/scorecard).

Can we move forward as a nation, as the President wants, without first looking back and knowing what has been done in our name?

The ACLU has been in the very forefront of the struggle for accountability and the rule of law. ACLU of Massachusetts members have vigorously pushed the Justice Department to appoint an independent prosecutor and lobbied Members of Congress to pass House Resolution 383. This resolution, which does not require Senate passage, would establish a bipartisan select committee with subpoena

power to review national security laws, policies, and practices and make legislative recommendations based on its findings.

If we are to be a nation of laws, we must act now to ensure that the government lives up to its rhetoric, and puts meaningful reforms in place. If successive Republican and Democratic administrations entrench secretive practices at odds with our values and the Constitution, we will find it very difficult to ever reverse course.

To get involved with the ACLU’s campaign for transparency and accountability, make sure you are on our email list at www.aclum.org/email, and attend our statewide conference on February 6. See www.aclum.org/2010 for details.



Civil liberties so far:
> www.aclum.org/scorecard

Immigrants’ treatment violates human rights, ACLU of Massachusetts tells Organization of American States

Violations of basic human rights occur when Immigration and Customs Enforcement (ICE) arrests people in Massachusetts and transfers them to remote detention centers in other states. That is what the ACLU of Massachusetts told the Inter-American Commission on Human Rights (IACHR) in testimony submitted during the agency’s visit to the United States last year.

The IACHR, which is the human rights monitoring body for the Organization of American States, toured some of the country’s largest immigration detention facilities in Arizona and Texas. The ACLU of Massachusetts submitted testimony documenting the impact on thousands of immigrants are arrested in our state and sent to those facilities every year.

The clearest example resulted from the raid on the Michael Bianco factory in New Bedford in 2007, when ICE transferred approximately 200

of the immigrants it arrested to detention centers in Texas and New Mexico within 48 hours.

The ACLU of Massachusetts’ December 2008 report *Detention and Deportation in the Age of ICE* (www.aclum.org/ice) also found that ICE transferred detainees when they spoke up about detention conditions or abuse at any facility. The report found that these retaliatory transfers silence complaints and punish those who assert their rights. Additionally, transfers have a devastating effect on immigrants who lose access to their families, lawyers, and needed resources to fight their court cases.

The IACHR will investigate and issue a report analyzing whether the United States is in compliance with its obligations under the Charter of the Organization of American States and the American Convention on Human Rights.

LETTER FROM THE EXECUTIVE DIRECTOR

Turning Up the Pressure for Freedom

By Carol Rose

As Congress and the state legislature go back to work in 2010, defending civil rights and civil liberties needs to be back on the political agenda nationally and in Massachusetts.

This year marks the ACLU's 90th Anniversary of leading freedom forward, both nationwide and here in Massachusetts. As the first and oldest ACLU affiliate in the nation, we in Massachusetts have a special role to play in defending liberty, equality and justice for all, especially now.

Our mission has never been more critical and the role of our members more important. Our nation is at war abroad and in an economic crisis at home. And while history shows that politically-driven retreats from civil liberties promises are nothing new, for years now, our elected leaders have failed to defend basic freedoms for fear of being labeled "soft" on terrorism—fears that the thwarted airline attack on Christmas Day may only renew. Who among us hasn't heard some version of the tired cliché that we must sacrifice a few freedoms (usually someone else's!) to feel safer?

ACLU members know better. We know that a democracy worth defending requires fundamental protection for even the most vulnerable among us. We understand that our nation is strengthened, not weakened, by our commitment to the principles of equality and fairness, due process and free speech. And we know that events like December's thwarted airline attack, in which valuable intelligence wasn't acted on, show that when you are looking for a needle in a haystack, the last thing to do is make the haystack bigger. We need more deft use of the intelligence our government gathers legitimately, not ever-expanding new ways of collecting more.

As ACLU members, we also know that economic security doesn't come when Federal stimulus dollars are directed at underwriting domestic surveillance by local police departments or filling our prisons with troubled youth, as is happening in Massachusetts. That's pretend security, or worse.

In these uncertain economic times, we must



demand that our leaders make smart choices that keep us both safe and free.

True safety is far better achieved by investing scarce public resources in public education and after-school programs rather than expanding juvenile lock-ups; in creating jobs and hiring more social workers to reach out to troubled families rather than double-bunking more and more people in our jails and prisons, knowing that many will emerge without hope of a job or education.

As ACLU members, we realize that scientific discoveries and technological innovations must be harnessed in ways that promote rather than diminish our freedom. We need more streetlights and fewer surveillance cameras; more money invested in repairing broken-down MBTA train tracks and less money spent on silly and useless "random searches" of ordinary commuters, and certainly less public money spent hassling TSA screeners because of their religion and hairstyles (see our story on p.1). Our nation once learned the lesson that McCarthy-style guilt by association doesn't strengthen our nation—let's not relive that painful episode by targeting people based on their race, ethnicity, motto, or creed.

Finally, as ACLU members in Massachusetts, we understand that many of the most impor-

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tant battles of the new year will be fought at the state level. Massachusetts has always stood on the front lines of defending liberty. As a beacon to others throughout the nation, Massachusetts must hold the line against escalating nationwide assaults on reproductive freedom, religious liberty, and marriage equality. We've come too far to turn back the clock on these fundamental freedoms.

As we celebrate 90 years of this remarkable American institution called the ACLU, let us remind ourselves and our fellow patriots of the importance of being led by our values and not by our fears.

So here's to you, ACLU members. Here's to meeting the challenges of a New Year by rededicating ourselves to the fundamental principles of liberty, equality and justice for all. And here's to 90 more years of leading freedom forward.

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Inconsistent School Policing Policies Feed Criminal Justice System

Allowing police officers to patrol school campuses without specific guidelines outlining their roles and responsibilities can create an adversarial environment that unnecessarily pushes students out of school and into the criminal justice system, according to research by the ACLU released in August.

According to the ACLU paper, the number of children arrested or to court for minor disciplinary infractions is on the rise. In Worcester, for example, the most common offense resulting in arrest was “disturbing school assembly.”

The ACLU paper aims to ensure that police officers deployed to schools are given the tools necessary for maintaining safe school environments while respecting the rights of students and the overall school climate. It provides specific recommendations for designing policies governing the use of police in schools.

ACLU Calls on UMass Amherst, Gov. Patrick to Respect First Amendment

In November, the First Amendment took a rollercoaster ride at the University of Massachusetts Amherst, after the invitation of Raymond Luc Levasseur, a radical who served 18 years in federal prison for serious crimes, to speak on the 20th anniversary of his and his co-defendants’ acquittal of sedition conspiracy in Springfield.

The UMass Amherst Library, which sponsored the colloquium, succumbed to pressure from the Governor and others to cancel Levasseur’s talk. In response, the ACLU of Massachusetts protested, then represented the academic departments that reinvited Levasseur to support free speech.

The U.S. Parole Commission, also under pressure, rescinded Levasseur’s routine inter-state travel pass, but the event went forward as scheduled. Defense lawyers, jurors, and Levasseur’s ex-wife and former co-defendant, Patricia Levasseur, discussed the trial. ACLU attorney Bill Newman moderated, and noted that although the prohibition on Levasseur’s attendance was a loss for free speech, the event itself and the standing-room-only audience was a victory.

Canvassers Arrested in Worcester

The ACLU has agreed to take on the defense of two canvassers for the group Clean Water Action, arrested by a Worcester police officer who told them they would have to stop. The canvassers had properly registered and were entitled to go door-to-door. Police charged one with disorderly conduct and the other with resisting arrest.

Federal Court Upholds Libertarian Candidates’ Place on 2008 Ballot

As a result of a suit brought by the ACLU of Massachusetts, Libertarian presidential candidate Bob Barr and running mate Wayne A. Root were allowed to be substituted for the names of the candidates whose names appeared on the nominating petitions circulated by their party prior to the convention. The Massachusetts Election Division had asked the Libertarian Party to re-gather thousands of signatures in order to make the substitution. U.S. District Judge Nathaniel M. Gorton entered a final judgment in the case in September 2009.

“U.S. District Judge Nathaniel M. Gorton’s ruling is a win for smaller political parties, but also for all the voters of the Commonwealth,” said Carol Rose, executive director of the ACLU of Massachusetts. “This case was a challenge to requirements that place a significant and burdensome expense on smaller parties, and thus serve as a barrier to their full participation in the electoral process.”

ACLU Demands Answers About Prison Double-Bunking

A plan to move hundreds of additional prisoners to the Souza Baranowski Correctional Center in Shirley, Mass., has caused tension, fear, and violence among prisoners doubled up in cells originally used for one, according to a suit filed by the ACLU of Massachusetts, on behalf of Massachusetts Correctional Legal Services (MCLS).

As a result of double-bunking at the maximum security prison, prisoners report fear of being placed in a cell with a known enemy or someone else who might attack them. Of special concern are several hundred prisoners classified as medium-security, waiting to be transferred to other prisons when medium-security beds open up.

When the ACLU requested a document the Department of Correction was using to decide how to assign cellmates, the DOC refused, so the ACLU took them to court. A Superior Court judge ruled that the document was public and must be disclosed, but the DOC appealed. The ACLU filed its response in court in November and seeks expedited consideration of the matter, which the government has opposed, adding months of delay to the process.

ACLU Questions Cuts in Genocide Teaching Guide

In October, the ACLU of Massachusetts filed a friend-of-the-court brief in the U.S. Court of Appeals in Boston in *Griswold v. Driscoll*, a case questioning the constitutionality of the state’s removal of materials from a public school teaching guide about genocide and human rights.

The Massachusetts legislature enacted a law calling on the state board of education to create a resource guide on topics such as “the period of the transatlantic slave trade and the middle passage, the great hunger period in Ireland, the Armenian genocide, the holocaust and the Mussolini fascist regime and other recognized human rights violations and genocides.”

The plaintiffs in the lawsuit—teachers, parents, and students—allege that materials included by educators were removed from the resource guide based on political pressure, not educational suitability, and that this violated the First Amendment.

After the U.S. District Court rejected this claim and dismissed the case, the plaintiffs appealed to the First Circuit Court of Appeals, which is likely to hear the appeal early in 2010.

ACLU Speaks Up for Free Speech at Clark, Boston College

Last year, Boston College canceled a lecture by University of Illinois education professor and former Weather Underground leader Professor William Ayers. Soon thereafter, Clark University in Worcester cancelled a talk by Dr. Norman Finkelstein, a controversial scholar of the Holocaust and the Israeli-Palestinian conflict.

The ACLU protested these decisions to the presidents of both schools and supported student and faculty efforts to keep these campuses open to the marketplace of ideas. Clark University’s president later permitted Dr. Finkelstein to speak on campus, and, after Boston College students and faculty came together in support for freedom of speech, Ayers was ultimately able to speak through a campus radio interview.

MASSACHUSETTS CIVIL LIBERTIES

SJC Considers Broad Search Power

In November, the Massachusetts Supreme Judicial Court heard two cases in which it is being asked to overrule a 1991 decision giving the police extensive power to search.

The original case involves interpretation of the U.S. Supreme Court’s decision in *Terry v. Ohio*, holding that police are entitled to stop someone for questioning where they have reasonable suspicion that the person is involved in criminal activity, and—if there is reason to believe that the suspect is armed and dangerous—to conduct a search for weapons. In the 1991 case, *Commonwealth v. Fraser*, the state’s high court expanded this authority, holding that police could conduct a “protective search” even where there is no basis for a lawful stop, effectively permitting a search anytime an officer could identify a concern for safety.

The ACLU argues in a friend-of-the-court brief joined by the Charles Hamilton Houston Institute that such searches, conducted in the absence of a lawful stop, violate the Fourth Amendment of the U.S. Constitution and Article 14 of the Massachusetts Constitution.

Police have claimed, in both cases, that the search was justified because it took place in a “high crime area.” Reliance on the fact that an incident took place in a high-crime area has historically been used to justify more extensive authority to search in minority neighborhoods.

SJC Strikes Down Criminal Provisions of Lowell Juvenile Curfew

The Supreme Judicial Court in September struck down the part of a City of Lowell ordinance that made it a crime for youth under 17 to be out between 11 p.m. and 5 a.m. The law allowed police to arrest youth who were out late, even if they were not doing anything wrong. The youth could then be found delinquent, leading to confinement at the Department of Youth Services and a juvenile criminal record.

The ACLU of Massachusetts, along with a coalition of community and juvenile justice groups, filed friend-of-the-court briefs in the case of two children arrested under the law, arguing that the law was unconstitutional and only made the problem of juvenile crime worse.

While the curfew remains in place, Lowell youth will no longer be subject to arrest for violating it. Instead, police may contact the parents or impose a fine. The Court recognized for the first time that “the Massachusetts Declaration of Rights guarantees a fundamental right to move freely within the Commonwealth” and that this right applies to minors and adults alike.

ACLU Suit Charges Lawrence Police with Arrestee’s Inhumane Treatment

Lawrence police beat and choked an Essex County resident after his arrest, then forced him to strip naked and placed him in a small cell with another detainee, according to a civil rights suit filed last year by the ACLU of Massachusetts.

The suit seeks damages on behalf of Juan Figueroa against the City of Lawrence and officers Alberto Inostroza and Thadeus Czarnecki, who arrested him in Lawrence in 2006. With Figueroa in custody and under control, the complaint alleges that Inostroza repeatedly slammed him into the door of the station and punched him several times in the face. It further alleges that Czarnecki grabbed and choked Figueroa.

The suit also alleges that in order to punish and humiliate Figueroa, the officers claimed, without factual basis, that Figueroa was “suicidal” and, in accordance with official city policy, stripped him, and then locked him in a cell with another detainee. Later, the two officers allegedly forced Figueroa’s cellmate to strip as well, and locked them together without clothing, blankets, or any other covering.

Brookline Rejects DHS Surveillance

Last June, Brookline Town Meeting voted by a large majority to adopt a resolution against the use of surveillance cameras provided by the Department of Homeland Security (DHS). The resolution called on the Board of Selectmen to halt a trial of the cameras and take them down.

With the vote of the representative town meeting, comprised of more than two hundred members, Brookline joined Cambridge, where the City Council voted 9-0 in February 2009 to oppose the installation of DHS surveillance cameras. Brookline’s Board of Selectmen has stalled on complying with the Town Meeting vote, adopting instead a plan to install covers over the cameras and opening the covers from 10 p.m. to 6 a.m. and in emergencies. The ACLU of Massachusetts worked with Brookline PAX to educate the community about increasing government surveillance of lawful activities and the creation of government databases on vast numbers of Americans. The cameras are intended to form part of a network funded with a \$4.6 million DHS grant linking nine Greater Boston communities.

ACLU Joins Defense of Journalist and Activist Sued for Defamation

The Supreme Judicial Court of Massachusetts heard an appeal in November by journalist and neighborhood activist Fredda Hollander, sued by a developer claiming she defamed him in statements for news articles about government review of his activities in Boston’s North End.

The ACLU of Massachusetts joined with the Citizen Media Law Project and Lawyers Committee for Civil Rights of the Boston Bar Association in filing a friend-of-the-court brief supporting Hollander, urging the SJC to throw out the case.

ACLU, CPCS Challenge Barnstable Sex-Offender Ordinance

The ACLU of Massachusetts and Committee for Public Counsel Services (CPCS) filed a lawsuit in Barnstable Superior Court in August, challenging a Town of Barnstable ordinance limiting where sex offenders may live. The ordinance is so restrictive that it leaves no housing available.

The plaintiff in the suit is classified as a Level 2 sex offender in Massachusetts solely on the basis of a California conviction dating back eighteen years. The conviction resulted from the fact that the plaintiff, then 16 years old, had sex with his 13-year-old girlfriend. The Barnstable ordinance will effectively banish him from the town and result in homelessness.

CORI and Sentencing Reforms Pass State Senate

In November, Senate Bill 2220 passed the Massachusetts Senate with the help of hundreds of ACLU activists who contacted their senators. See www.aclum.org/docket for a link to how your state senator voted.

The ACLU hopes the House will take up the bill in January. SB2220 would make critically necessary changes to Massachusetts’ overly harsh sentencing and criminal record laws.

The ACLU maintains that locking up drug offenders to serve long mandatory sentences without opportunities for program participation or parole, and insisting that people’s past mistakes follow them forever, costs too much—both in raw dollars and human potential. We need to change laws that deny people any opportunity to improve their lives and contribute to society.

SJC Hears Arguments on Shelter Search

The Supreme Judicial Court of Massachusetts heard oral arguments in September on *Commonwealth v. Porter P.*, in a case centered on whether residents of homeless shelters enjoy the same constitutional protections against unreasonable searches and seizures as others.

The case involves the prosecution of a juvenile based on evidence obtained through a warrantless search of a room in a homeless shelter where he resided with his mother. The Appeals Court held that the family, even though they were long-term residents of the shelter, had no expectation of privacy in the room where they had been required to agree that the shelter manager could enter their room for purposes of inspection, and the shelter manager consented to the police search.

After oral argument, the SJC took the unusual step of requesting supplemental briefs on a question the ACLU raised as amicus in an earlier stage of the case but had not briefed. The question is whether, under the state constitution, the police may rely on the apparent authority of a third party to consent to a search and whether the doctrine of apparent authority would allow a search based on a mistake of law by the officers.

ACLU Represents “Survivor” Hatch

In August, the ACLU of Massachusetts filed a habeas corpus petition asking a federal court to release Richard Hatch from jail in Barnstable County. Hatch gained notoriety for having won the first season of the television show “Survivor,” and for an ensuing legal battle over his taxes.

Hatch, who was serving the last few months of his sentence under home confinement, made public comments on television and radio that were critical of the prosecutor on his case. Immediately after these public comments, the Bureau of Prisons had Hatch taken back to jail in Barnstable County for having “unauthorized contact with the public,” which they said violated their rules about contacting the media.

“The First Amendment protects people’s right to publicly criticize the government—even when they are incarcerated or serving a sentence. The Supreme Court has held that security needs inside a prison may justify limitations on media access, but those security concerns did not apply to Richard Hatch while inside his home,” said Laura Rótolo, ACLU staff attorney.

The federal District Court and Court of Appeal that heard the habeas petition made disappointing rulings, holding that the Bureau of Prisons could return Hatch to jail as punishment for speaking to the media.

ROUNDUP

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INTERVIEW: CAPTAIN JAMES YEE

Faith Under Fire

Captain James J. Yee is a former U.S. Army Captain who served as the Muslim Chaplain for the U.S. prison camp in Guantánamo Bay, Cuba. While ministering to prisoners, Captain Yee was arrested and imprisoned in a naval brig for 76 days, falsely accused of spying, espionage, and aiding prisoners. He was held in solitary confinement and subjected to the same sensory deprivation techniques that were being used against the prisoners in Cuba to whom he had been ministering. After months of government investigations, all criminal charges were dropped.

Capt. Yee gave this interview on the night he received the 2009 Roger Baldwin award from the ACLU of Massachusetts—our highest honor.

When did you join the Army and what was your career path?

A: I joined the Army when I entered the United States Military Academy at West Point, and that was in 1986. But when I graduated in 1990, I was a commissioned officer. I was air defense artillery, Patriot missiles. I served in Desert Storm, and I left active duty actually in the summer of 1993 and pursued traditional religious studies after converting to Islam.

When did you convert?

1991. And I came back on active duty in January of 2001 as a Muslim chaplain.

Had you always intended to come back?

No, but I was very much aware of the need for proper representation of American Muslims in the U.S. military. I mean, we had Jewish chaplains and Christian chaplains, but when I left active duty in 1993, there weren't any Muslim chaplains. By the time I came back in 2001, there were a few in all three armed services.

What happened after 9/11?

I immediately became a point person for media interviews. Journalists wanted to cover the story of what it was like being an American Muslim serving in the military. I gained some notoriety and some recognition for handling that, and that's probably what landed me the assignment in Guantánamo, arriving there in November of 2002. [The first prisoners arrived on Jan. 11, 2002.]

Did you know what you were getting into?

Well, as a dedicated Army officer, I was up for the challenge. Certainly I understood it would be a unique assignment, and I certainly knew there was a need to educate the command and the guard force and others down in Guantánamo about Islam and the Muslim culture—but no one could have known ahead of time what a Muslim chaplain down in Guantánamo was going to find.

What did you find?

Immediately I found the hostility towards all Muslims, not only the Muslim prisoners, but towards Muslim Americans down in Guantánamo, of which there are many because they handle predominantly the linguistic needs of the prison operation, being translators. You have military personnel and civilian contracted employees working down in Guantánamo as translators, and most of the translators are American Muslims. So American Muslims felt the hostility that prisoners also felt with regard to religion.

What did your work consist of?

My role was being a chaplain to all the Muslim prisoners and American Muslims in Guantánamo, and I was also an advisor to the detention command on religion and how that might affect the detention of the prisoners. But first and foremost as a chaplain, my role consisted of accommodating religion and protecting the constitutional right to religious freedom, free exercise of religion.

Did you feel that you were able to do that?

In that role there were things I was able to accomplish with regard to accommodating religious practices, like ensuring the Muslim call to prayer is made five times a day for the Muslim prisoners, and adjusting meal schedules during the month of Ramadan to accommodate the religious fasting from dawn till sunset. However, on the other hand, I noted how religion in other aspects of the operation—both in the detention and interrogation operation—was being used as a weapon to persecute and humiliate the prisoners. That ranged from Muslims having their beards forcefully shaven, to being subjected to sexual humiliation by female interrogators, to the Koran being desecrated.

How did your arrest unfold?

Well, I was given R&R, which allowed me to go home after serving 10 months in Guantánamo, to visit my family, but as soon as I got back on U.S. soil, they arrested me in secret, making spurious claims that I had taken classified documents from Guantánamo, and then I was carted away a week later to a super-maximum security prison in Charleston, South Carolina, alongside individuals who were declared U.S. citizen enemy combatants.

Did your family have any idea what was happening to you?

For my family, it was like I had disappeared in America, and they actually learned of where I was from the news when it broke 10 days after my arrest.

What happened to you while you were held?

I was held for a total of 76 days in isolation and subjected to very harsh treatment, and to this day

I have never even been given the justification for how I was treated—the sensory deprivation, the isolation, maximum security, [being held] incommunicado, things like that.

Did they interrogate you?

I was interrogated the first day I was arrested, but I refused to give them any information because I questioned whether or not they legitimately had what's known as "need to know" access to any of the information I had about Guantánamo.

What happened after your detention?

After 76 days, I was suddenly released. I was never actually officially charged with capital crimes, but I was charged with two lesser offenses which they called essentially violating an order by mishandling classified information, and they attempted to court martial me, meaning bring me to trial in a military court. And after months of further government investigation into my life and personal affairs, my banking records and all of that, all the charges were dropped, and then I was reinstated, after which I resigned my commission from the U.S. Army and left in January of 2005 with an

honorable discharge.

Why did you resign?

Initially I had attempted to put everything behind me and move on and continue to make the positive contributions I had always made as an officer. However, I was still put under an enormous amount of scrutiny by the command. So I saw that as an obstacle to my role as a chaplain and to provide religious support to members of the military. And there was a bigger story that needed to be told publicly about what goes on in Guantánamo.

What is the story to tell about what goes on in Guantánamo?

The abuse of prisoners, the cruel, inhuman, and degrading treatment, the torturous tactics that are carried out, and the legal black hole that has tarnished the nation's reputation as a leader for human rights and an upholder of the rule of law.

What is the broader significance of what happened to you?

My story is a scary reminder that history often repeats itself, and in the 9/11 aftermath, out of fear and misplaced emotions, I was profiled, discriminated against, and labeled a terrorist spy.

What do you think should be done with Guantánamo and the prisoners there?

There's no doubt that Guantánamo should be closed, immediately, and President Obama should fulfill his promises to ban torture without exception, to adhere to the Geneva Conventions, and to reject the military commissions.

Capt. Yee shares more of his story in his 2005 book For God and Country: Faith and Patriotism Under Fire.

Join our email list at aclum.org/email for details about the 2010 Bill of Rights Dinner.



Capt. James Yee, recipient of the 2009 Roger Baldwin Award—the ACLU of Massachusetts' highest honor—addresses the 28th annual Bill of Rights Dinner in Boston. *Photo by Marilyn Humphries*

Faces of the ACLU



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1/ More than 40 supporters donned ACLU t-shirts and Lady Liberty crowns to march in the Boston Pride Parade last June. Marchers handed out hundreds of ACLU "Freedom Doesn't Protect Itself" stickers to cheering spectators. More than a dozen people became new members of the ACLU on the spot, and more than 200 signed a postcard to their legislators in support of passing a Massachusetts transgender rights bill. *Photo by Russell Graves*

2/ John and Holly Thomas (left, center) announce their \$100,000 challenge match at the 2009 Bill of Rights Dinner. *Photo by Marilyn Humphries.*

3/ ACLU supporters took part in a 2009 rally for immigrant rights at Boston City Hall Plaza.

4/ ACLU members and supporters lobbied members of the Massachusetts Congressional delegation throughout summer and fall 2009, such as in this meeting in the office of Rep. Niki Tsongas.

5/ Comedian & writer Baratunde Thurston entertains the crowd at the 2009 Bill of Rights Dinner. *Photo by Marilyn Humphries.*

6/ Longtime friends and former law partners Harvey Silverglate, Nancy Gertner, and Tom Shapiro celebrate the release of Harvey's book *Three Felonies a Day* at an ACLU Amicus luncheon in October.



6

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“We make a living by what we get,
we make a life by what we give.”

— Sir Winston Churchill

BINGHAM

From our blog...

News about a major ACLU victory in November, in the case of a respected Transportation Security Administration baggage screener at Logan Airport who was discriminated against on religious grounds, elicited this comment on our blog, from a coworker who helped bring the case to the attention of the ACLU of Massachusetts.

Become an ACLU blogger, or comment on others' blogs!

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Victory in Major TSA Case

Tuesday, November 17, 2009

AJ Castilla said...

As a co-worker of TSO Josue Brissot and American Federation of Government Employees TSO Local union leader working at Logan International Airport, I contacted the A.C.L.U. of MA office seeking help on Brissot's case. I thought your organization was the perfect fit so to speak, because the A.C.L.U. of MD both defended and won a similar case on behalf of a Baltimore Police Officer.

The fact that our wonderful co-worker, Josue, had the necessary faith and will to follow-up with your office and defend his religion from attack, enduring the lengthy stressful process that any E.E.O.C. case involves, is incredible.

My TSA Officer colleagues and our union members cannot thank the A.C.L.U. of MA and the ever determined Jonathan Margolis enough for helping our co-worker "GiGi" stand up for himself. Especially, in the face of the most anti-employee rights and protections TSA leadership ever suffered under.

Little undermines employee morale and distracts us from our important national security mission than being TSA forced to work for a bunch bullies lacking the commonsense to not only violate Josue's Freedom of Religion, but, these senior Boston TSA officials also wasted tens of thousands of taxpayer dollars defending a frivolous case that never should have been. Maybe TSA HQs under new TSA Administrator to be, Erroll G. Southers, will finally do the right thing and come up here and clean house.

Congratulations Josue!!!

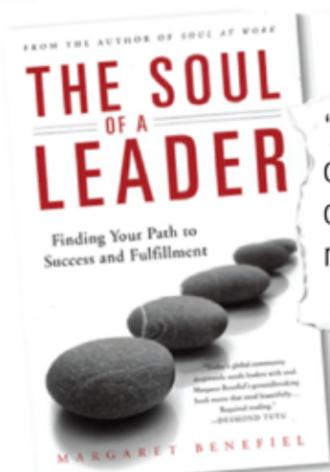
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