

National ACLU board president Susan Herman's new book about the war on terror arrives in late September. Hear Herman speak at the Harvard Book Store on Sept. 27. See aclum.org/events for details.

Looking back on 9/11, and to the future

Ten years after the attacks of Sept. 11, 2001, the ACLU joined all Americans in remembering the losses suffered on that terrible day. The ten-year mark of the 9/11 attacks, however, also provides an opportunity to reflect on the turbulent decade behind us, and to recommit ourselves to values that define our nation, including justice, due process, and the rule of law. Our choice is not between safety and freedom—in fact, our fundamental values are the very foundation of our strength and security.

We lost our way when, instead of addressing the challenge of terrorism in a way that is consistent with our values, our government chose the path of torture and targeted killing, of Guantánamo and military commissions, of warrantless government spying and the entrenchment of a national surveillance state, all of which now define the post-9/11-era. The ACLU believes that is not who we are or who we want to be.

The way forward lies in decisively turning our backs on the policies and practices that violate our greatest strength: our Constitution and the commitment it embodies to the rule of law. That strength is the best response our nation has to violence and those who advocate it.

See pages 2–3 and 6–7 for more reflection and analysis on the ten years since 9/11.



In a major First Amendment victory, judges ruled in August that Simon Glik (above) broke no law when he used his cell phone to record police officers' use of force against another man on Boston Common.

US Court of Appeals unanimously affirms right to videotape police

The US Court of Appeals for the First Circuit ruled unanimously on Aug. 26, 2011 that Simon Glik had a right to videotape police in action on Boston Common. Mr. Glik sued three police officers and the City of Boston for violating his civil rights after police arrested him and charged him with illegal wiretapping, aiding the escape of a prisoner, and disturbing the peace—all for merely holding up his cell phone and openly recording Boston police officers who were using force against another man on Boston Common in October 2007.

As a defense, the police argued the law was not clear, but the Court decisively rejected their claim of immunity from being sued.

"This is a resounding victory for the First Amendment right to record police officers carrying out their duties in a public place," said Sarah Wunsch, ACLU of Massachusetts staff attorney. "It will be influential around the country in other cases where people have been arrested for videotaping the conduct of the police."

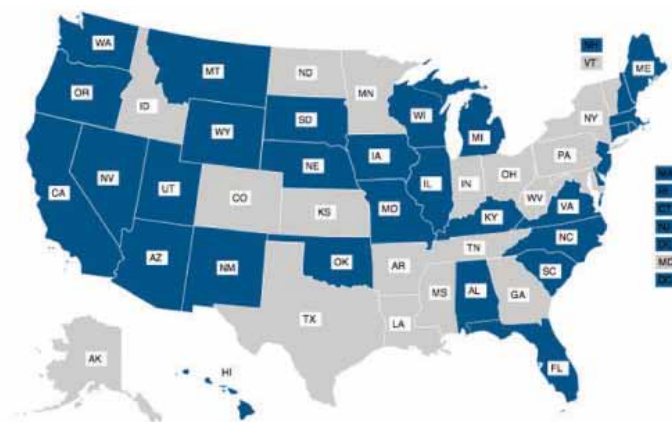
Learn more and watch video that Simon Glik recorded > aclum.org/glik

ACLU seeks details on government phone tracking in massive nationwide information request

In a massive, coordinated information-seeking campaign, ACLU affiliates across the nation sent requests in August to 379 local law enforcement agencies—including 11 in Massachusetts—demanding to know when, why, and how they are using cell phone location data to track Americans. The campaign is one of the largest coordinated information act requests in American history.

"The ability to access cell phone location data is an incredibly powerful tool and its use is shrouded in secrecy," said Catherine Crump, staff attorney for the ACLU Speech, Privacy & Technology Project. "The public has a right to know how and under what circumstances their location information is being accessed by the government."

In Massachusetts, the ACLU is seeking information from the State Police, along with police departments in Springfield, Worcester, Pittsfield, New Bedford, Fall River, Lawrence, Lowell, Barnstable, Brockton, and Newton.



ACLU affiliates in 31 states have demanded information about cell phone location data being used by law enforcement agencies.

Learn more > aclu.org/locationtracking



ACLU supporters have rallied against S-Comm across the state, including this spring protest in Chelsea.

As more communities oppose S-Comm, ICE changes course and says it doesn't need local approval

After Gov. Patrick announced in June that he would not sign an agreement with Immigration and Customs Enforcement (ICE) to implement the S-Comm anti-immigrant dragnet in Massachusetts—and after Mayor Menino told ICE that Boston needs answers before the city would continue participating—ICE abruptly announced on Aug. 5 that it plans to proceed without cooperation.

"After months of misleading the public with negotiations, community forums, and meetings with advocates, ICE now says it can do whatever it wants anyway," said Laura Rótolo, ACLU of Massachusetts staff attorney. "It is time for cities and states to stand up to this rogue federal agency."

Learn more > aclum.org/s-comm

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Kim V. Marrkand
ACLU OF MASSACHUSETTS, PRESIDENT

Ron Ansin
ACLU FOUNDATION OF MASSACHUSETTS, CHAIR

Carol Rose
EXECUTIVE DIRECTOR

Legal Staff

Sarah Wunsch
STAFF ATTORNEY AND ACTING INTERIM LEGAL DIRECTOR

John Reinstein
SENIOR LEGAL COUNSEL

William Newman
DIRECTOR, WESTERN MASSACHUSETTS LEGAL OFFICE

Laura Rótolo
STAFF ATTORNEY

Susan Corcoran
INTAKE ATTORNEY

Alexia De Vincentis
Ben Jacobs
LEGAL FELLOWS

Kerry Walsh
LEGAL ASSISTANT

Legislative Staff

Ann Lambert
LEGISLATIVE DIRECTOR

Gavi Wolfe
LEGISLATIVE COUNSEL

Public Education Staff

Nancy Murray
EDUCATION DIRECTOR

Kade Crockford
PRIVACY RIGHTS COORDINATOR

Field Staff

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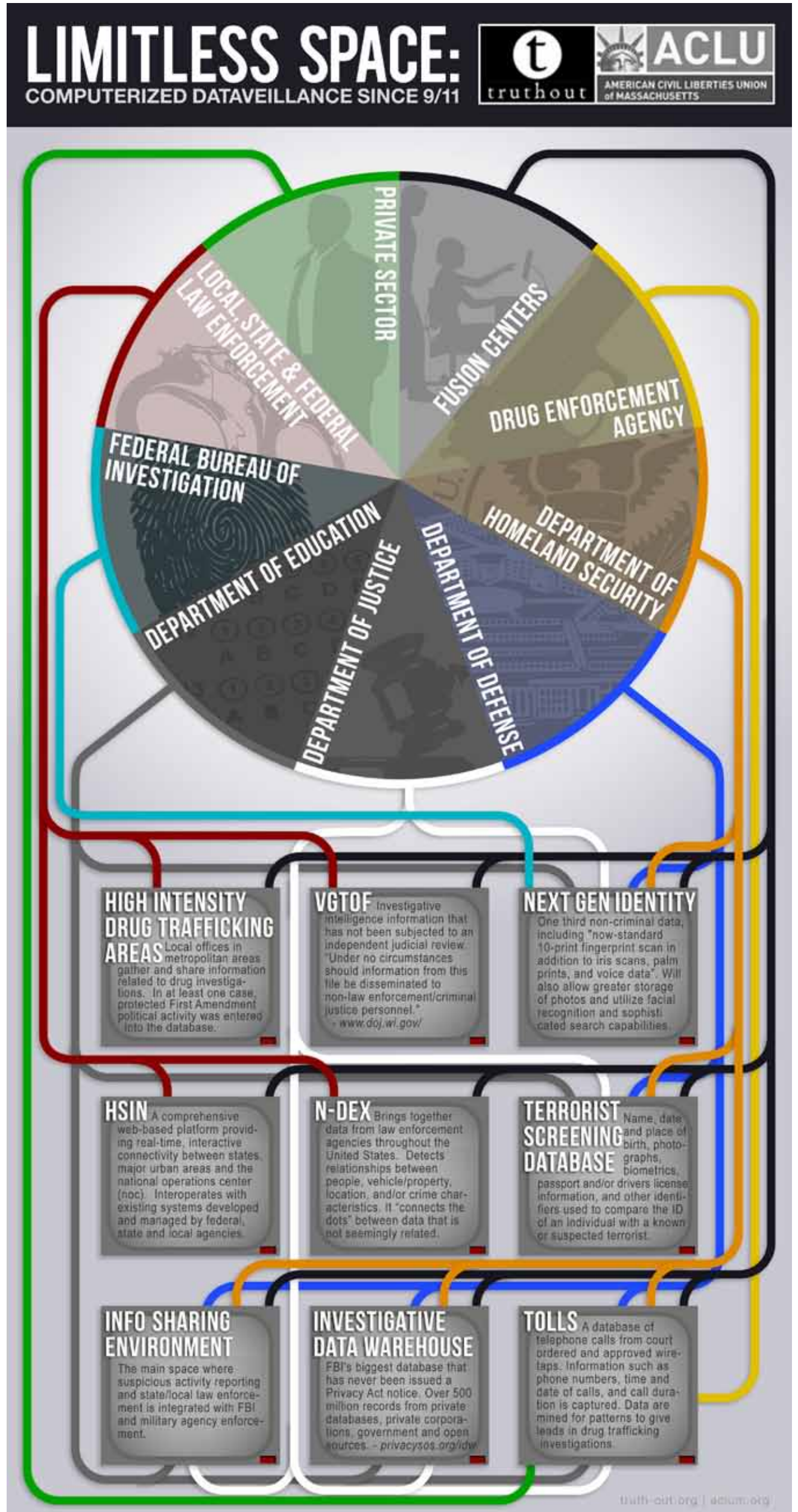
Mahtowin Munro
OFFICE MANAGER & EXECUTIVE ASSISTANT

The Docket is published twice a year by the American Civil Liberties Union of Massachusetts.

211 Congress Street, Boston, MA 02110-2410
Tel. (617) 482-3170, www.aclum.org

9/11 TEN YEARS LATER: SURVEILLANCE IN THE HOMELAND

Hundreds of state, local, and federal databases clog our nation's digital infrastructure, collecting, sharing, and hoarding inconceivable amounts of information about ordinary people. Shown below is a tiny sampling of the many hundreds of government databases that form the digital backbone of the surveillance state in the US.



See pages 6-7 for more 9/11 Ten Years Later: "What a Difference a Decade Makes", and "Little Brothers Are Watching: The Example of Massachusetts"

FROM THE EXECUTIVE DIRECTOR**Ten years after 9/11, Americans are starting to return to core constitutional values**

By Carol Rose

Over the past decade, we have come perilously close to transforming America from the “promised land” it once was into a national security “homeland.”

Widespread fear following 9/11 gave politicians and the national security establishment an opportunity to create a permanent state of emergency in the United States, where claims of “homeland security” were allowed to trump core American values.

For too long, we have permitted the fear of terrorism to dominate our political and legal discourse. It is time to restore America as a land that is both safe and free.

Under the guise of a rhetorical “war on terror,” US politicians launched wars in Iraq and Afghanistan that have taken the lives of thousands of US service men and women, drained our public coffers, and spawned more jihadists than our enemies could have dreamed possible. They passed laws permitting our government to declare people from other countries as enemy combatants, to hold them secretly and indefinitely, to torture them, or to assassinate them—so long as our president declares it in our national interest.

These same politicians and bureaucrats conjured up the specter of an “enemy within” to erect a vast, secret, domestic spying infrastructure aimed at ordinary Americans.

Today, the national surveillance industrial complex includes more than 22 agencies and nearly 200,000 employees (not including the FBI and CIA). It churns out 50,000 intelligence reports annually and adds 1,600 names to the FBI’s Terrorist-Screening Database each day. There are more than a dozen separate terrorism watch lists and databases. And while it takes only a tip to get your name mistakenly placed on such a list, it’s nearly impossible to get it off.

Meanwhile, in our cities and towns, “community policing” based on trust between police and local residents has been replaced by “pre-crime” or “predictive policing” by Joint Terrorism Task Forces (JTTFs). Led by the FBI, these JTTFs deputize local police to act as federal agents in order to monitor the very people they are hired to serve and



protect. Some 800,000 local and state operatives, and 17,000 law enforcement agencies (including the Boston Police Department), now file reports on everyday behaviors. Definitions of “suspicious” behaviors include looking through binoculars, taking pictures of buildings, taking notes in public and espousing “radical” beliefs.

Recent targets of domestic government surveillance include environmentalists, animal rights groups, student groups, anti-death penalty organizations, Muslim organizations, Ron Paul supporters, the ACLU, Amnesty International, and traditionally black colleges and universities. In effect, the government is searching for potential terrorists by building an ever-larger haystack of information about everyone. We are perilously close to replacing our transparent democracy, in which the people watch their government, with a national security

homeland, in which government bureaucrats are granted virtually unchecked power to watch us.

There are other costs as well. Our government now spends more annually on civilian and military intelligence than the rest of the world combined—\$80 billion is a conservative figure, in addition to the \$42 billion allocated to the Department

On Liberty

Read more on Carol Rose’s boston.com blog, “On Liberty”

> aclum.org/onliberty

Recent topics have included:

- Victory for liberty and the right to videotape public officials
- Civil rights groups file suit to shed sunlight on police surveillance
- ICE goes rogue on S-Comm

of Homeland Security each year, and the more than \$1.2 trillion spent on wars in Iraq and Afghanistan to date. Imagine how strong America could be if we

It is time to restore America as a land that is both safe and free.

Our government now spends more annually on civilian and military intelligence than the rest of the world combined.

Imagine how strong America could be if we instead invested those tax dollars to create jobs, improve schools, repair crumbling roads and bridges, develop alternatives to fossil fuels, ensure health care for all, or pay down the national debt.

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Fortunately, a growing number of Americans are joining together through churches, advocacy organizations, city councils, and town meetings to restore America to its core values. As a result of state and local collective efforts, government schemes to require everyone to carry national identity papers have been put on hold, communities have voted to limit the role of local police officers in federal Homeland Security initiatives, and the Massachusetts state legislature will soon vote on a bill to require privacy protections for data on ordinary Americans that is collected and stored by the government.

These and similar efforts show that the American people are starting to overcome the fear that followed 9/11 and to return to core constitutional values that have kept our nation free and strong for more than 200 years. That is the promise of America, and the challenge for its citizens in the decade ahead.

Save the dates for these upcoming ACLU events!**ACLU of Massachusetts’ Worcester County Chapter Annual Dinner**

Thursday, October 27, 2011
5:30pm Reception • 6:30–9:00pm Awards Dinner

College of the Holy Cross • Henry M. Hogan Campus Center
1 College Street, Worcester

Annual Bill of Rights Dinner

May 2012
Check in early spring for details:
www.aclum.org/dinner

ACLU of Massachusetts Roger Baldwin Series on Martha’s Vineyard

July 2012
Chilmark Community Center
Check online after Memorial Day for details:
www.aclum.org/vineyard

To RSVP for any event, please email rsvp@aclum.org or email Monica Hinojos, events & outreach manager, at mhinojos@aclum.org.



Demonstrators opposed S-Comm in Northampton in August. Photo by David Reid, courtesy of Northampton Media.

Leaders in Northampton, Springfield join opposition to S-Comm

In July, the Springfield City Council passed a resolution urging Mayor Sarno to refuse to participate in the federal S-Comm anti-immigrant dragnet, and on Sept. 1, the Northampton City Council voted unanimously to pass a resolution expressing the city's desire to opt out as well. The ACLU worked with the American Friends Service Committee and the Bill of Rights Defense Committee on the campaign.

Gov. Patrick announced in June that he would not sign an agreement with Immigration and Customs Enforcement (ICE) to implement S-Comm, and Mayor Menino of Boston told ICE that the city needs answers before Boston would continue participating. The program's future remains unclear.

The ACLU of Massachusetts opposes S-Comm for three main reasons:

- S-Comm, also known as "Secure Communities," doesn't do what it says it will—in fact, it makes us less secure.
- Violent criminals already get deported. S-Comm, instead, rounds up people who haven't been convicted of any crime. It clogs jails and diverts resources from solving or stopping violent crime.
- S-Comm undermines community trust in police. When any interaction with a local police officer can get you deported, it makes witnesses and crime victims from immigrant communities afraid to come forward—and that's why many police say they oppose it.

[Learn more > aclum.org/s-comm](http://aclum.org/s-comm)

Springfield passes first language-access ordinance in Massachusetts

In May, the City of Springfield enacted a language-access ordinance to ensure that police, fire, emergency medical, and 911 dispatchers can serve non-English speakers. With support from the ACLU of Massachusetts, the Pioneer Valley Project (PVP), a faith-based organizing project in Springfield, led an 18-month campaign of education and negotiations with the Springfield City Council and Springfield Police Department.

Supporters of the measure cited the fact that close to one-third of Springfield's population does not speak English at home, which leads to serious communication problems in emergency situations. In one case, an English-speaking police officer failed to protect a Spanish-speaking victim because he was only able to communicate with the English-speaking assailant. In another, an immigrant called 911 and couldn't get help because no one spoke her language. And even English speakers suffer if non-English speakers are unable to report crimes, fires, or medical emergencies.

"Springfield is leading the way by passing this ordinance," said Bill Newman, director of the ACLU's Western Massachusetts Legal Office. "It creates a mandate for meeting the safety needs of non-English speakers. Other cities could use this as a model."

Worcester County Chapter members observe special election in Sixth District

Members of the Worcester County Chapter took part as observers in a special election for state representative held Tues., May 10th, 2011, in the Sixth Worcester District.

Although the ACLU is a non-partisan organization and does not comment on candidates, we do support equal access to the ballot and oppose voter intimidation.

ACLU observers participated to ensure that other observers were not using the voter-challenge process to intimidate Latino voters, after advertising suggested that ID was required to vote. ACLU members observed the election in East Brookfield, Oxford, Spencer, and Southbridge.

ACLU supports bills to address students' access to educational services, exclusion from school

Massachusetts schools continue to face huge civil liberties challenges. Rigid "zero tolerance" rules, expulsions and suspensions from school, discipline procedures, rising dropout rates, and the Commonwealth's responsibility to provide all students with a constitutionally adequate education have long been ACLU concerns.

Especially in light of data demonstrating racial disparities and the existence of what has come to be known as the school-to-prison-pipeline, the ACLU has joined with other advocates to work for legislative changes to school discipline procedures. You can read about the bills we're supporting, both filed by Rep. Alice Wolf (D-Cambridge), here: aclum.org/news_7.20.11

Both bills are scheduled to be heard by the Joint Committee on Education at the State House in Boston on Tuesday, Sept. 27 at 10am, in Gardner Auditorium.

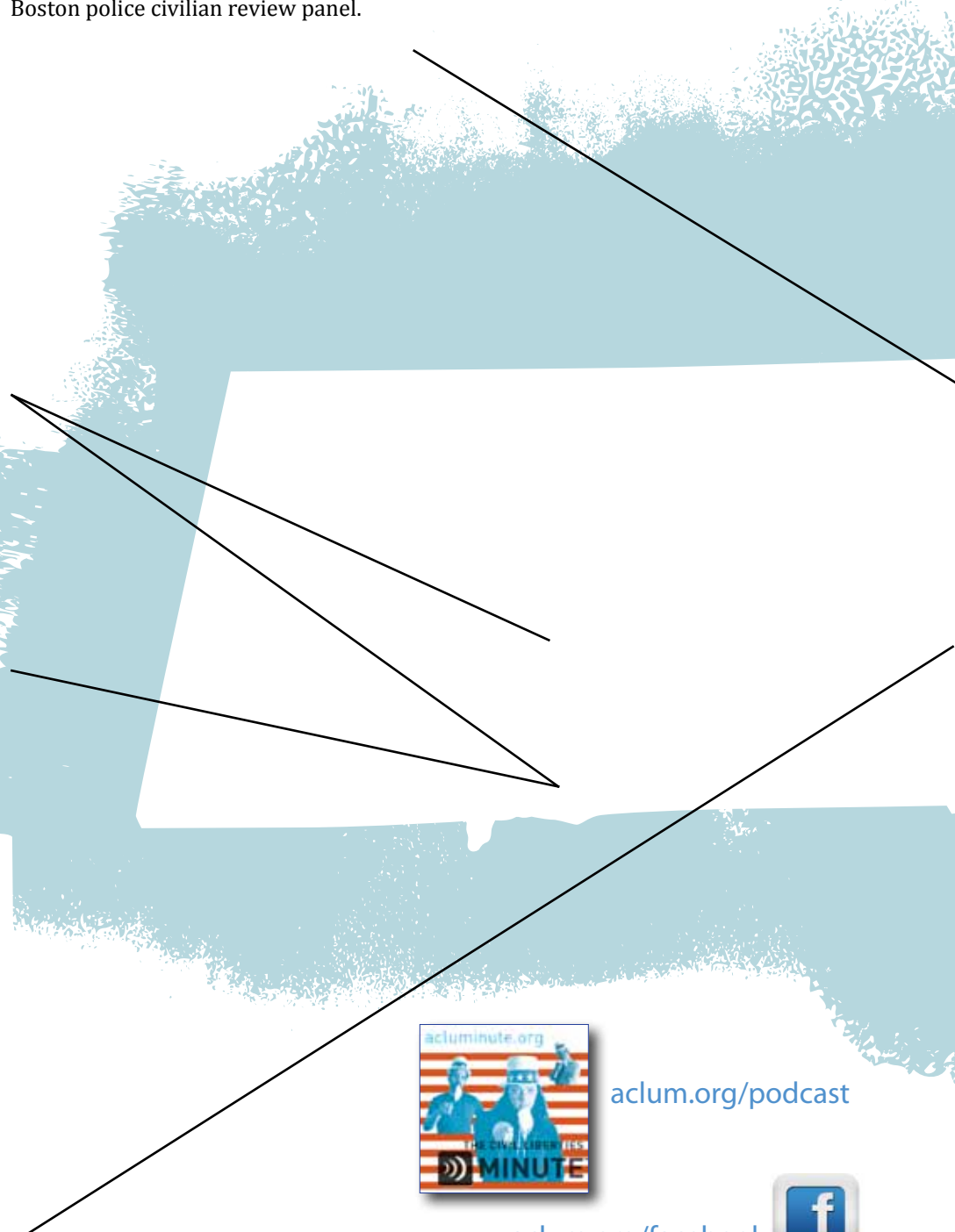
Civil rights groups challenge Boston Mayor on ailing police civilian review agency

Four civil rights organizations joined together in June to write a letter to Boston Mayor Thomas Menino, asking him to make significant changes in the Community Ombudsman Oversight Panel (COOP). The COOP, created by the mayor to provide civilian oversight of the Boston police, had been allowed to languish and was virtually defunct.

The organizations—the ACLU of Massachusetts, the Lawyers' Committee for Civil Rights Under Law-Boston, the National Police Accountability Project, and the National Lawyers Guild-Massachusetts Chapter—noted that more than a year had passed without filling a position vacated when one of the three members of the COOP, former Northeastern Law Dean David Hall, resigned, and the terms of the other two members of the panel expired. As a result, the COOP no longer met.

"It is disappointing that useful recommendations made by the COOP in its annual reports have not all been implemented," said Nancy Murray, education director for the ACLU of Massachusetts. "And it's clear that little has been done to give Boston residents the sense that if they do file a complaint, it will be taken seriously."

In July, Mayor Menino announced the appointment of three new members to the Boston police civilian review panel.



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Pittsfield-based tattoo artist Stephan Lanphear (above) speaks about his participation in the 2001 ACLU case that legalized tattooing in Massachusetts. Until then, only physicians were allowed to give tattoos. Lanphear is an award-winning tattoo artist who wanted to do business in Massachusetts. Another plaintiff, John R. Parkinson, was a Massachusetts resident who wanted to receive tattoos from Lanphear without leaving the state. Superior Court Judge Barbara J. Rouse ruled that the state's restrictions on tattooing violated the First Amendment to the US Constitution and the Massachusetts Declaration of Rights.

[Watch our tenth-anniversary video about this ruling: aclum.org/tattoos](http://aclum.org/tattoos)

Massachusetts high court says evidence of non-criminal marijuana possession does not authorize police searches

In April, the Massachusetts Supreme Judicial Court ruled in *Commonwealth v. Cruz*, an ACLU case, that the mere smell of marijuana no longer justifies a search or seizure, because the possession of a small quantity of marijuana is no longer criminal in Massachusetts.

Massachusetts voters in November 2008 approved Question 2, which decriminalized the possession of an ounce or less of marijuana. In its ruling, the Court said, "Ferretting out decriminalized behavior with the same fervor associated with the pursuit of serious criminal conduct is neither desired by the public, nor in accord with the plain language of the statute."

"Today's ruling is a strong statement that police cannot treat decriminalized conduct as if it were a serious crime," said Scott Michelman, staff attorney with the ACLU Criminal Law Reform Project. "Heavy-handed police enforcement in the face of minor drug infractions not only wastes public resources but disproportionately affects communities of color."

"Ultimately, the question in this case was whether the decision of Massachusetts voters in favor of marijuana decriminalization will have practical meaning, or whether we'll go on with business as usual," said John Reinstein, legal director of the ACLU of Massachusetts. "The courts have now said we have to give meaning to the new language of the statute."

Brookline considers privacy before accepting grant for license-plate scanners

The ACLU discovered last year that the Massachusetts Executive Office of Public Safety and Security (EOPSS) received a \$300,000 grant from the federal Department of Transportation for the purchase of Automatic License Plate Recognition (ALPR) systems. Through a public records request, we also learned that 43 towns and the State Police received grants to buy the machines.

Police say this technology enables them to catch people with expired registrations, outstanding warrants, or unpaid traffic fines. But without privacy-protecting data policies, which most agencies lack, ALPR becomes a dangerous tracking technology, enabling law enforcement to follow ordinary people going about their lives in their cars. ALPR captures not only license plate numbers, but also a photograph of each car, its GPS location, and the time and date.

Residents of Brookline, one of the towns that received ALPR grant money, brought these concerns to their Board of Selectmen. They said they didn't want Brookline residents' movements being tracked by their own police, or worse, by other local or even federal government officials who will have access to the data once it is shared with the state. The ACLU worked with residents and members of Brookline PAX to encourage people to testify at a public hearing in opposition. At press time, the Board of Selectmen and the Brookline Police Department are in talks to purchase an ALPR system without grant monies, so that they can maintain control over ALPR data and safeguard the privacy rights of local residents.

The ACLU is also voicing concerns about data retention and sharing as EOPSS writes its data policy—and we are eager to work with people in other parts of the state to investigate whether ALPR is being used where you live.

[Learn more and get involved! > privacysos.org/ALPR](http://privacysos.org/ALPR)



Join us in Worcester!

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College of the Holy Cross • Henry M. Hogan Campus Center
1 College Street, Worcester

To RSVP, please email rsvp@aclum.org or contact events & outreach manager Monica Hinojos, mhinojos@aclum.org.

Ousted Falmouth conservation commissioner challenges removal after questioning lease of town land

The ACLU of Massachusetts filed a civil rights lawsuit in US District Court in June on behalf of Peter Waasdorp, who served on the Falmouth Conservation Commission until the Board of Selectmen removed him in 2009. Waasdorp had been critical of the town's proposed lease of bogs to a cranberry grower and the way the approval was rushed through without time for adequate review.

"Mr. Waasdorp kept raising questions about the bog lease," said ACLU of Massachusetts staff attorney Sarah Wunsch. "We think his outspokenness was protected by the First Amendment. His persistence may have annoyed some, but that is not a basis to remove an appointed official from his position, especially when outside agencies confirmed the merits of his criticisms."

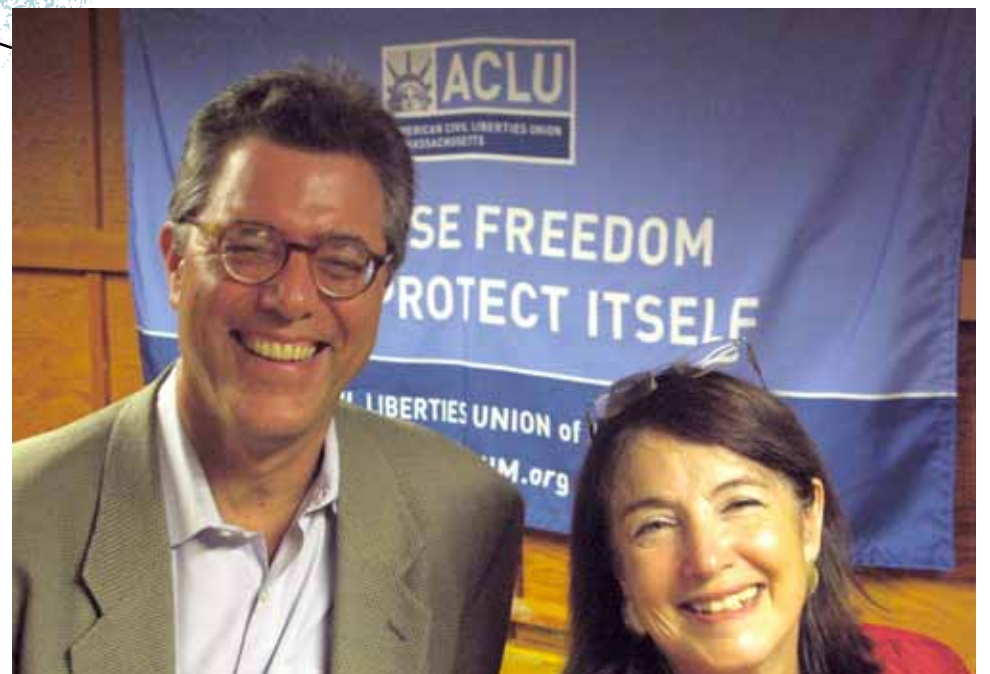
State Appeals Court rules challenge to retention of DNA profile may proceed

Overturing a lower court's dismissal, the state Appeals Court ruled unanimously on August 25, 2011 that a lawsuit on behalf of Mark Amato—a Cape resident who voluntarily provided a DNA sample in 2002 as part of the investigation into the murder of fashion writer Christa Worthington—can go forward.

Authorities cleared Amato and convicted another man of the crime years ago, and Amato has simply asked the state to destroy the genetic information it collected from his sample—as law enforcement assured him it would when Amato voluntarily provided his DNA sample. Authorities returned Amato's sample in 2008, but retain his genetic profile.

The ACLU believes that the right to genetic privacy is important not only to each of us as individuals, but to members of our families. Our genes can reveal current and future health concerns about blood relatives, since close relations share much of the same genetic code. Additionally, in a time in which government agencies are compiling more and more data about ordinary Americans in the name of security, the significance of Amato's challenge goes beyond DNA, to the government's retention of records of any kind about ordinary, innocent people.

Like so many rights and liberties, privacy and control over something as basic as our own genes can't easily be gotten back—and that is why it is so critical that we not lose this control or casually give up fundamental rights.



National ACLU Legal Director Steve Shapiro (left) and recently retired Federal Judge Nancy Gertner (right) spoke at an ACLU event on Martha's Vineyard on July 28, called "The Pursuit of Justice: Perspectives on Civil Liberties from Two Sides of the Bench." The event took place at the Chilmark Community Center, which sits on land donated to the town by Roger Baldwin, the founder of the American Civil Liberties Union.

9/11 TEN YEARS LATER: SURVEILLANCE IN THE HOMELAND

By Nancy Murray and Kade Crockford

truth-out.org is running this ten-part series in full (with links to references and related material) throughout the month of September. We are reprinting part one of the series here, "What a Difference a Decade Makes," along with part five, "Little Brothers Are Watching: The Example of Massachusetts."

What a Difference a Decade Makes

On Aug. 5, 2002 President George Bush declared, "We're fighting... to secure freedom in the homeland." Strikingly, he did not use the word nation, or Republic—he adopted a term with Germanic overtones of blood, roots, and loyalty going back generations for a country that was not the ancestral home of most of its citizens.

Soon after, the Homeland Security Act of 2002 created the massive Department of Homeland Security (DHS), an amalgam of 22 agencies and nearly 200,000 employees. The FBI and CIA remained outside DHS, while the military in October 2002 established its own Northern Command (NORTHCOM) to defend the "homeland."

In the years since then, the full weight of government has been bent on ensuring "homeland security"—a term rarely heard before the 2001 attacks. Over the decade, the government's powers of surveillance have expanded dramatically. They are directed not just at people suspected of wrongdoing, but at all of us. Our phone calls, emails and website visits, financial records, travel itineraries, and our digital images captured on powerful surveillance cameras are swelling the mountain of data that is being mined for suspicious patterns and associations.

It doesn't take much to come to the attention of the watchers, as 13-year-old Vito LaPinta discovered earlier this year. Members of the Secret Service came to his Tacoma, Wash., middle school to question him about his Facebook posting urging President Obama to be aware of the danger from suicide bombers in the wake of bin Laden's assassination.

The ACLU of Tennessee was no less surprised to find itself listed by the Tennessee Fusion Center on an internet map of "Terrorism Events and other Suspicious Activity." Why? The organization had carried out a "suspicious activity" by sending a letter to the state's school superintendents encouraging them to be supportive of all religions during the holiday system.

While the government has gained more and more power to watch us, we are being kept in the dark about

what it is doing. A new architecture of mass surveillance has been erected and we know very little about it.

Surveillance in what we term the "age of Total Information Awareness" is the subject of our Truthout postings. After providing an overview of 20th century surveillance, we will examine the intelligence failures that opened the door to the attacks of September 11, 2001 and the government's response. Rather than fix the obvious problems and hold specific individuals and institutions accountable, the government embarked on a radical shift in how intelligence and law enforcement agencies interact and do their work, and a rapid expansion of their powers.

It is our hope that this series will help stimulate a broader debate about whether we are on the right track in the "war against terrorism." In the decade since 9/11 there has been no sustained national attempt to probe root causes behind the September 11th attacks and subsequent plots. The federal government has yet to come up with a single definition of "terrorism", and there is not

even a public agreement about what constitutes a "terrorist" attack.

Amid all these ambiguities, a new surveillance network has been steadily constructed in the shadows with the help of DHS grants. Among the questions that should be asked is this: What happens to actual public safety when "homeland security" commands the li-

on's share of federal funds to fight the "terrorist" threat?

The statistics suggest skewed priorities. According to the FBI, terrorist incidents in the US accounted for 3,178 deaths in the period 1980–2005. Apart from those killed in the 1995 Oklahoma City bombing and the Sept. 11, 2001 attacks, 48 people lost their lives to terrorism in this period. During the same 25-year period, 500,000 people were murdered in the United States. Being listed on a terrorist watch list might keep someone from getting on an airplane—and could conceivably land an American citizen on a government assassination list, but it will not prevent that person from legally buying a weapon—or several!—at a local gun store.

What kind of "homeland" will we become if we do not demand that secretive domestic surveillance operations are brought in line with long-standing principles of liberty and the Constitution?

Since 9/11, the government's surveillance powers have expanded dramatically—and they are directed not just at people suspected of wrongdoing, but at all of us.

Little Brothers Are Watching: the Example of Massachusetts

Early in the morning on March 13, 2008, Australian-born Peter Watchorn, one of the world's foremost harp-sichordists, stood on a subway platform in Cambridge, Mass., with a professional cellist from Australia who had his instrument with him. They were on their way to Logan International Airport to catch a plane.

After going a few stops, all the trains in the MBTA subway system were brought to a halt while sniffer dogs searched theirs. They thought they still could make their plane when their train started up again and they made it to the connecting bus. But before they reached their terminal, they were hauled off the bus and subjected to an abusive search by eight officers, during which the cello, valued at \$250,000, was nearly tipped out of its case.

After being interrogated for a further 30 minutes, one state trooper told them they had been overheard at the Cambridge station "having conversations we were not supposed to be having." They missed their plane and never got any kind of apology from the police. The incident left Peter Watchorn wondering whether he had done the right thing becoming an American citizen.

On the basis of an anonymous tip—possibly a hoax, or maybe just an overreaction from a well-intentioned "if you see something, say something" citizen spy—the MBTA police decided that these travelers posed a "credible threat." The MBTA had been preparing for years to disrupt such threats by creating a robust intelligence unit that partners with the fusion center, Joint Terrorism Task Force, numerous other state and federal agencies including ICE and the DEA, and the MTA Interagency Counterterrorism Task Force in New York City. By 2005, the unit was maintaining 14 stand-alone databases to track all suspicious activity and crime, information which was forwarded directly to the JTTF. It had a weekly nationwide bulletin, *Reporting on Terrorism-Related Activity*, and it was working with Raytheon and Draper Labs to develop special software to track people since the facial recognition software available at that time was not effective in the subways.

The MBTA had also introduced a "Security Inspection Program" to search passengers on a random basis at the time of the 2004 Democratic National Convention and made it permanent in October 2006. Even as the subway infrastructure deteriorated and the MBTA ran out of funds to pay injury and damage claims, groups of four or five transit officers were paid to "deter terrorists" by

privacySOS.org
SUNLIGHT ON SURVEILLANCE

A new, multimedia website exposing the development of the surveillance state in Massachusetts and the nation, providing avenues and tools to take action and fight back. *Because the rights you save may be your own.*

9/11 TEN YEARS LATER: SURVEILLANCE IN THE HOMELAND



inspecting the bags of randomly selected passengers at various stations on a rotating basis—activity that security expert Bruce Schneier calls “security theater.” The MBTA also announced the deployment of “behavior recognition teams” with the authority to stop anyone anywhere for unspecified reasons.

The airport to which the musicians were heading piloted such teams shortly after two of the planes involved in the 9/11 attacks took off from its runways. The ACLU challenged the precursor of SPOT (Screening of Passengers by Observation Techniques) when the head of its national Campaign against Racial Profiling—a tall African-American with a beard—was spotted behaving “suspiciously” by talking on a pay phone after getting off an airplane. A jury agreed that he had been wrongly detained.

Evidence that “behavioral profiling” is just another term for “racial profiling” did not prevent SPOT from being rolled out at other airports at a cost of some \$400 million. In a 2010 report, the GAO claimed the program had no scientific validity and caught no terrorists, despite the fact that some 16 individuals alleged to be involved in terrorist plots (including the would-be Times Square bomber, Faisal Shahzad) moved through airports deploying SPOT on at least 23 occasions. Nevertheless, a further \$1 billion was designated for the next version of SPOT that was unveiled at Logan beginning in August 2011.

What are the chances that Peter Watchorn and his fellow musician now have a permanent record of being regarded as “credible threats”? Given what the ACLU of Massachusetts has been able to discover through its multiple public records requests, this seems quite likely. For Massachusetts, which has received at least \$170 million from the DHS for surveillance-related programs, has been at the forefront of efforts to build the new data-hungry intelligence apparatus, thanks to the efforts of its governor from 2003–2007, Mitt Romney.

As lead on homeland security issues at the National Governors Association and a member of the DHS Advisory Council, Romney was ardent about enlisting the public “to be on the lookout for information which may be useful” and expanding surveillance: “Are we wiretapping, are we following what’s going on, are we seeing who’s coming in, who’s coming out, are we eavesdropping, carrying out surveillance on those individuals that are coming from places that have sponsored domestic terror?”

It is not therefore surprising that Massachusetts had two of the earliest fusion centers in the country. The Commonwealth Fusion Center (CFC) was established under the supervision of the State Police in 2004 without any public notice or legislative process, with the Boston Regional Intelligence Center (BRIC) set up the following year, also under cover of official silence.

Under CFC Standard Operating procedures, police officers attached to the CFC behave more like FBI agents than local cops. They are permitted to conduct “preliminary inquiries” during which “all lawful investigative techniques may be used” (including use of undercover operatives or informants) without reasonable suspicion that a target is involved in criminal activity. If they go undercover “to attend meetings that are open to the public for purpose of observing and documenting events,” they are not required to identify themselves or leave if it is requested that police officers make themselves known, and they don’t have to leave the room if legal advice is being given.

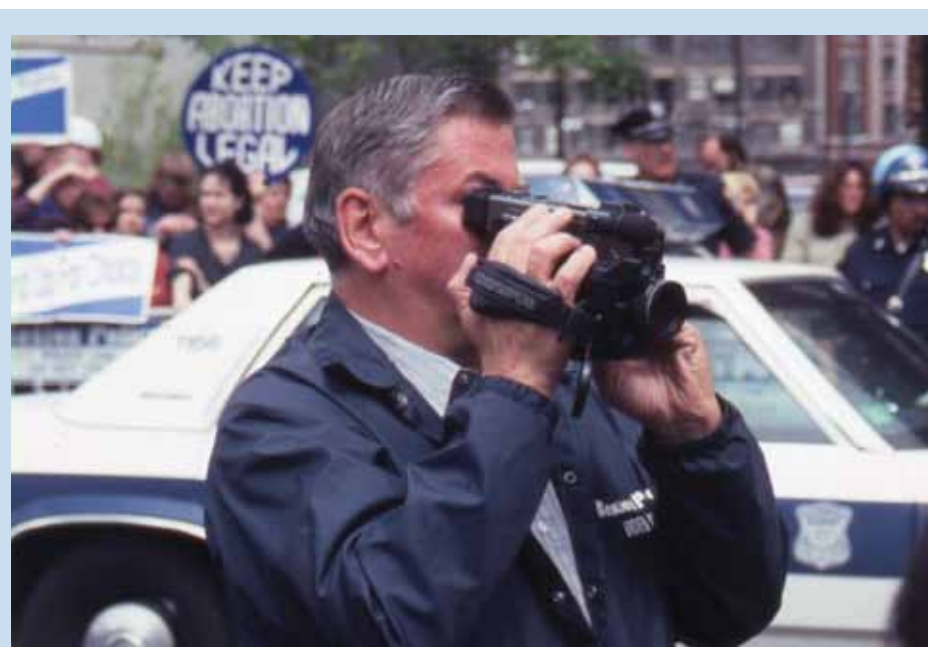
The CFC shares data with local police departments, with state police in other states, with various state agencies, and through the national Information Sharing Environment, with federal and state agencies around the country. Its personnel have been granted clearance by the DHS and FBI to access classified information.

BRIC is under the supervision of the Boston police, and staffed by the MBTA transit police, employees from various local police departments, the Suffolk County Sheriff’s Office, and various business interests. A pioneer of Suspicious Activity Reporting, the Boston Police Department through BRIC shares information with the CFC and the FBI, and has entered into information-sharing agreements with agencies as far away as Orange County, California via COPLINK, police information-sharing software designed to “generate leads” and “perform crime analysis.”

As the CFC and BRIC steadily expand the number of public and private sources from which they collect information and the mountain of data grows ever larger, accessing agencies have less knowledge about the kind and quality of information that they retrieve. The CFC disclaims any responsibility for the accuracy of the data it collects and shares. Its privacy policy does more to shield its operations from public scrutiny than it does to protect individual privacy, and creates no enforceable rights. Without any independent oversight mechanism or public reporting, Massachusetts’ fusion centers have been left to police themselves—even though they have every incentive—as well as the stated intention—to sidestep laws they find inconvenient.

The public is not just being left in the dark about the operation of fusion centers. It has little solid information about the network of DHS-funded surveillance cameras that has been installed through the Greater Boston “Urban Area Security Initiative.” These powerful cameras have the capacity to pan, tilt and zoom, rotate 360 degrees in a fraction of a second and “see” for a mile. They could eventually be fitted with facial recognition software, eye scans, radio frequency identification tags and other forms of software, and connected to large law enforcement databases—if they are not already.

Like other states and cities, Massachusetts and Boston law enforcement officials



For years, the Boston Police Department has monitored political groups and activities, such as by shooting video at legal, peaceful demonstrations—but has been withholding information from the public about its expanding surveillance operations.

Civil rights groups file suit to shed sunlight on police surveillance operations

The ACLU of Massachusetts and the National Lawyers Guild of Massachusetts filed suit Aug. 17, 2011 on behalf of eight Boston-area political groups and four individual activists, seeking public disclosure of records detailing the BPD’s practice of monitoring political organizations and activists.

The suit, filed under the Massachusetts Public Records law, seeks disclosure of BPD records regarding the Department’s surveillance and recording of protest activities and assemblies, the monitoring of political groups and activists, as well as records relating to the collection and sharing of information with the Department of Homeland Security and other government agencies.

“We brought this suit,” said ACLU of Massachusetts staff attorney Laura Rótolo, “because we believe the public should know what information is being collected about political activities, how it is being used, and what policies, if any, are in place to protect privacy and individual liberty.”

have received federal funding for a broad range of other surveillance-related technologies. Some at first glance may seem sensible policing tools. For instance, automatic license plate readers (ALPRs)—provided to state and local police through a federal Department of Transportation grant—can help police spot stolen cars and parking violators.

But they also capture digital images of thousands of license plates per minute and store this information in databases, along with travel information indicating the time and place a particular vehicle was “pinged.” In Massachusetts, this information

is required to be submitted to the state’s criminal justice information services database, which can be freely accessed by other states and federal law enforcement. Absent a formal policy on data retention and sharing—which the state does not have—the personal travel information of millions of Massachusetts residents can be shared with agencies throughout the nation.

Massachusetts police may soon have an even more powerful tool at their disposal—if they do not already. Imagine a database containing billions of data entries on millions of people, including (but not limited to) their bank and telephone records, email correspondence, biometric data like face and iris scans, web habits, and travel patterns. Imagine this information being packaged “to produce meaningful intelligence reports” and accessible via a web browser from a handheld mobile or police laptop.

In 2003, the Massachusetts State Police put out a request for proposals to create just such an “Information Management System” (IMS). In May 2005, they awarded a \$2.2 million contract to Raytheon to build, install, troubleshoot, and maintain the IMS.

Welcome to policing in the age of total information awareness.

Nancy Murray is education director at the ACLU of Massachusetts. Kade Crockford is privacy rights coordinator.



Watch our video interview with Australian musician Peter Watchorn about his interrogation by MBTA police > privacysos.org/multimedia/video

Faces of the ACLU



1/ The ACLU of Massachusetts named Caroline McHeffey its “Miz Liberty” for the 2011 Boston Pride parade in June. We chose McHeffey on the basis of an inspiring essay she wrote about her time as a Boston street canvasser for the ACLU, which you can read at aclum.org/news_6.13.11 Photo by David Graves.

2, 4, 5/ Despite heavy rain, dozens of spirited marchers donned Liberty crowns and took to the streets with the ACLU of Massachusetts for the 2011 Boston Pride parade. This year’s official ACLU shirts for marchers, in hot pink, said “Equality. No More. No Less.” Photos by David Graves.

3, 6 / ACLU supporters turned out for Pride celebrations in Northampton as well!

7/ ACLU of Massachusetts board president Kim V. Marrkand (left), board member and State Rep. Byron Rushing (second from left), and executive director Carol Rose (right) greeted recently retired Massachusetts Supreme Judicial Court Chief Justice Margaret Marshall (left of plaque) and keynote speaker Glenn Greenwald (right of plaque) at the 2011 Bill of Rights Dinner in May. Marshall received the Roger Baldwin Award, the ACLU of Massachusetts’ highest honor, for her lifetime of work for justice and equality. Greenwald is a *New York Times* bestselling author and columnist for *Salon.com* Photo by Marilyn Humphries.

8/ Comedian Baratunde Thurston (center) of *The Onion* had a laugh with Bill of Rights Dinner guests including ACLU of Massachusetts board member Derege Demissie (left). Photo by Marilyn Humphries.

Video and audio of talks at the Bill of Rights Dinner by Chief Justice Marshall, Glenn Greenwald, and Baratunde Thurston are available online:

> aclum.org/marshall aclum.org/greenwald aclum.org/baratunde