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## ACLU calls for dismissal of cases tainted by state drug lab scandal

The ACLU of Massachusetts has used the state drug lab scandal—in which alleged misconduct by chemist Annie Dookhan may have tainted tens of thousands of cases—to call for a fundamental reexamination of the Commonwealth's war on drugs.

Beginning just weeks after the scandal came to light, the ACLU of Massachusetts began publicly calling for the dismissal of certain compromised cases—such as those involving nonviolent drug offenses or misconduct by prosecutors—in order to save state dollars and restore faith in the criminal justice system.

In October, we also worked with other bar leaders to ask the state Attorney General to relinquish control of the investigation to an independent agency. The Attorney General did precisely that, and the Inspector General has been called upon to investigate.

Our efforts aim to assure a just response to this scandal. To learn more about our work on this issue, see our page [aclum.org/drug\\_lab](http://aclum.org/drug_lab) or follow us @ACLU\_Mass on Twitter.



ACLU client Windsor (top right, lower left)  
and spouse Thea Spyer (top left, lower right).

## Supreme Court to hear ACLU challenge to Defense of Marriage Act

The U.S. Supreme Court agreed in December to hear a challenge to the constitutionality of the Defense of Marriage Act (DOMA) brought by the ACLU and law firm Paul Weiss on behalf of Edith "Edie" Windsor.

Windsor, 83, was forced to pay more than \$363,000 in federal estate taxes after the death of her spouse, Thea Spyer, because their marriage was not recognized under federal law. If Spyer had married a man instead of a woman, no estate tax would have been owed.

"When Thea and I met nearly 50 years ago, we never could have dreamed that the story of our life together would be before the Supreme Court as an example of why gay married couples should be treated equally, and not like second-class citizens," said Windsor, who sued the government after Spyer's death in 2009. "While Thea is no longer alive, I know how proud she would have been to see this day. The truth is, I never expected any less from my country."

Windsor is represented by attorneys from Paul Weiss, Rifkind, Wharton & Garrison LLP; the American Civil Liberties Union; the New York Civil Liberties Union and the Stanford Law School Supreme Court Litigation Clinic.

Windsor, who achieved the highest technical rank as a software programmer at IBM, and Spyer, a clinical psychologist, met in the 1960s and lived together for more than four decades in New York City. They were engaged in 1967, despite there being no foreseeable prospect of their being able to marry at the time. In 1977, Spyer was diagnosed with progressive multiple sclerosis, and Windsor helped her through her long battle with that disease, which eventually resulted in Spyer's paralysis. The couple was finally legally married in 2007.

The Supreme Court will hear arguments in the case in early 2013.

## Help make privacy a priority in Massachusetts!

Electronic privacy tops ACLU of Massachusetts priorities in the 2013-14 legislative session which just began. We hope you will join us in supporting four new bills to renew protections for fundamental freedoms in the digital age.

1. *The Electronic Privacy Act* would require law enforcement to obtain a search warrant in court in order to access our personal information—such as details of our telephone use, our contacts, our location and our email and other communication—from the telecommunications companies we pay for phone and internet services. It would bring long-standing Massachusetts law and practices governing search warrants into the digital age.

2. *The Free Speech Act* would end surveillance of political activity. Police should not monitor and track people's First Amendment-protected activity, or amass "intelligence" about their speech and associations in discredited "fusion centers." This bill would prohibit law enforcement from collecting information about individuals' political and religious views, associations or activities—unless it relates directly to a criminal investigation based on reasonable suspicion of criminal conduct.

3. *The License Plate Privacy Act* would regulate use of automatic license plate readers. Automatic license plate readers—an increasingly common technology for identifying vehicles associated with outstanding warrants, registration violations, and parking enforcement—should remain a tool for reading license plates for legitimate purposes, not tracking innocent motorists. This bill identifies appropriate uses for ALPR technology and protects drivers' privacy by restricting government retention of license plate location information beyond those specified uses.

4. *The Password Protection Act* would keep social media accounts safe from snooping employers. A growing number of employers are demanding that job applicants

See "Privacy" on p. 7



## Carol Rose's 10th ACLU anniversary



Executive director Carol Rose addresses a State House rally against warrantless wiretapping. See pp. 2-3 for highlights from Carol Rose's 10 years leading the ACLU of Massachusetts. Photo by Marilyn Humphries.

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## EXECUTIVE DIRECTOR ANNIVERSARY

Carol Rose marks 10-year milestone at the helm of the ACLU of Massachusetts. Technology for Liberty, Justice for All campaigns are organization's focus for the next decade.

In her decade leading the ACLU of Massachusetts, executive director Carol Rose has transformed the organization into a civil rights and civil liberties innovation hub for the 21st century.

But she didn't do it alone. Membership in the ACLU of Massachusetts has doubled, and staff has tripled, in the last decade, giving us increasing clout on critical issues in the Commonwealth and nationwide.

"New threats to civil rights and civil liberties have emerged in the last decade, forcing the ACLU to innovate as well," says Rose. "There's never been a more exciting or important time to do this work."

### Integrated advocacy

A journalist and attorney prior to her stint at the ACLU, Rose combines a reporter's instinct for government transparency with an attorney's appetite for social justice, politics and law reform. Whether speaking at a university, testifying before the legislature, posting her "On Liberty" blog for *Boston.com*, or coordinating the ACLU's advocacy strategy, Rose's energy is contagious.

Her blueprint for maximizing ACLU effectiveness has been "integrated advocacy:" coordinating the organization's legal, legislative, field, public education and communications strategies for maximum impact.

"We maximize civic engagement by using a range of tools—law, technology, social media, traditional communications and the arts—to reach new communities," says Rose. "When people are empowered to understand and exercise their rights, lawmakers will follow suit."

The success of this approach has been extraordinary.

The ACLU of Massachusetts over the last decade has played a key role in countless civil liberties victories: defending equal marriage in the state legislature, winning the right to openly video-record police officers engaged in misconduct, achieving alternatives to imprisonment for juveniles, upholding the right to counsel, defending the rights of immigrants, and helping Occupy Boston to stay at Dewey Square long enough to have its message heard.

"Our top priorities right now are promoting technology in the service of liberty and equal justice for all," says Rose. "It's a two-fold focus on dismantling the architecture of oppression while simultaneously empowering people to exercise their right to equality under the law."

### Technology for Liberty

In late 2011, the ACLU of Massachusetts launched its Technology for Liberty Project and site *privacySOS.org*, to engage the high-tech and scientific communities in

Massachusetts in understanding how surveillance structures and technologies can both threaten and enhance our freedoms. This collaboration led to recent campaigns against cell phone tracking and automatic license

plate readers, which are used to track ordinary people going about their lives. Both campaigns have been replicated by other ACLU affiliates in states across the country.

"Serving a state distinguished by its high-tech industry and universities gives us a tremendous advantage as well as an obligation to focus on the implications of new technologies," says Rose. "Technology should advance liberty, not the reverse."

The ACLU of



"There is nothing more satisfying than seeing the impact that the ACLU's work has on the lives of real people." – Carol Rose

Massachusetts also has challenged warrantless seizure of laptops and other electric equipment at the nation's borders, while defending the right to anonymous internet speech. Last October, the organization released an exposé, *Policing Dissent* ([aclum.org/policing-dissent](http://aclum.org/policing-dissent), and please see excerpt on p. 6), detailing how Boston police spy on anti-war and other political protesters in violation of both internal privacy policies and the Constitution. The Boston Police attributed the abuses of power to "computer errors."

"I was delighted to see the police admit that their databases and privacy protections are flawed," says Rose, laughing. "It's a no-brainer that domestic surveillance and watch-lists don't keep us safe. Instead, they become tools for local police to harass people whose political views, skin color or religion are different than their own."

### Justice for All

Last August, the ACLU of Massachusetts also earned front-page Sunday *New York Times* coverage and sparked an investigation when it represented a group of TSA whistleblowers who sought ACLU protection to anonymously report that management policies promote racial profiling at Logan airport.

"It takes tremendous courage to challenge government abuses of power, especially at a time of growing government secrecy and surveillance or when your job is on the line," says Rose. "The ACLU is here to ensure that people can do this without fear of reprisal."

Integrated advocacy has also advanced the organi-





## of Massachusetts t decade—and beyond

Photos in Rose profile except top right by Marilyn Humphries

zation's Justice for All agenda. Building on its historic strength in the racial justice arena, the ACLU of Massachusetts legal department and education and field staff joined forces to induce the Boston police to abandon a program of warrantless searches in communities of color under the misnomer "Safe Homes."

As part of its efforts to promote education over incarceration, the ACLU of Massachusetts recently issued a study, *Arrested Futures* ([aclum.org/arrested\\_futures](http://aclum.org/arrested_futures)), documenting the negative impact of deploying uniformed police in public schools. The report sent a shockwave through Springfield, where ACLU staff members are now working with a coalition of neighborhood and parent-teacher groups to keep kids out of prison and in school.

"There is nothing more satisfying than seeing the impact that the ACLU's work has on the lives of real people," says Rose. "Our society needs to invest in education rather than continuing to fill our prisons."

Working closely with immigrant communities, the ACLU of Massachusetts also has helped lead statewide opposition to so-called "Secure Communities" dragnets to round up people who have overstayed their visas. In addition, the organization has joined with other ACLU affiliates nationwide to launch a Spanish-language site, [miaclu.org](http://miaclu.org).

### Embracing the arts

"ACLU members are the eyes, the ears and the voice of civil rights and civil liberties in Massachusetts," says Rose. "They are the activists, cooperating attorneys, bloggers, artists, technologists, whistle-blowers and business people who raise their voices in defense of basic liberties."

Rose has enlisted artists, writers, musicians and actors to collaborate with the ACLU of Massachusetts to reach a larger audience with its civil liberties message. To educate the public about the dangers of the PATRIOT Act, for example, the ACLU of Massachusetts partnered with artists Jo Ann Rothschild and Linda Price-Sneddon to create a 50-foot long mural honoring the Bill of Rights. The ACLU also joined forces with artist Shepherd Fairey to create an original iconic poster of Lady Liberty to honor the organization's 90th anniversary in 2010.

On stage, the ACLU of Massachusetts brought together

prominent writers such as Andre Dubus III, Tom Perotta, Mameve Medwed, Martín Espada and others in a series of staged readings from the works of novelists and poets who had through the 20th century been prevented from entering the US because of their perceived political beliefs. The resulting production, "Evening Without... Giving Voice to the Excluded," was presented to enthusiastic audiences in Boston, Northampton, Wellfleet and on Martha's Vineyard. Simultaneously, ACLU lawyers filed a successful challenge on behalf of University of Johannesburg vice-chancellor Adam Habib, who had been kept out of the country due to his political opposition to the US war in Iraq. Professor Habib later spoke at an event hosted at Harvard Law School.

"The transformative power of the arts, when combined with our traditional legal advocacy, gives meaning and potency to our work," says Rose. "The ACLU doesn't simply defend freedom of expression; we collaborate with artists, writers, musicians and free thinkers to envision and realize a world in which equality and freedom are celebrated as core human values."

Last September, the ACLU of Massachusetts partnered with the Fiddlehead Theatre Company to promote the musical "Ragtime" at the Strand Theater in Dorchester, highlighting the organization's work promoting racial and economic justice.

"Massachusetts is the perfect place to incubate new advocacy approaches," says Rose. "This is the birthplace of liberty as well as a center of learning and innovation, complete with a vibrant arts scene and strong fourth estate."

"It's a breeding ground for principled free-thinkers, artists, activists and high-tech innovators—archetypical ACLU members.

"And while our advocacy strategies have evolved, the ACLU's core principles haven't wavered," she adds. "They are grounded in deeply held American values: due process, privacy, equality and the freedom to dissent.

"The job of the ACLU is to help our members press their collective shoulders on the arc of history," she says. "Together, we can bend it toward justice."



### With thanks...

Ten years ago, my predecessor, long-time ACLU of Massachusetts executive director John Roberts, told me that I was about to assume one of the most rewarding jobs in the world.

He was right.

What made this prediction true is that I haven't walked the path alone. John remains a dear friend and mentor to me. And, of course, in his remarkable 33-year tenure, John built on the work of his predecessor Luther Macnair (executive director for 20 years), who built on the work of the founding (and, yes, unpaid) "Executive Secretary"

Margaret Shurcliff, who started the ACLU of Massachusetts in the living room of her home on Beacon Hill in 1920.

Over these more than 90 years, the ACLU of Massachusetts has retained its principles and integrity. In so doing, we have attracted and benefited from an extraordinary group of leaders who have served as Trustees, Directors, staff, cooperating attorneys, volunteers, kibitzers, hecklers and members of the ACLU of Massachusetts

Just think: since the ACLU started, we've gone through 17 presidents and 25 governors. Elected officials hold power for a temporary period. The ACLU works to create liberty and equality regardless of who is in power. And we will be doing this for years to come.

Each of us today not only stands on the shoulders of giants, we continue to walk side-by-side with many of them, and shoulder-to-shoulder with all liberty-loving people. Most important, we are cultivating a new generation of advocates who, in turn, will become the civil liberties giants—and ACLU members—of their era.

Just as my generation is the beneficiary of changes set in motion years ago, our advocacy today is putting into place momentum for social justice that we strive to realize in our lifetimes—and bequeath to future generations.

—Carol Rose



In 2008, former executive director John Roberts and Carol Rose interviewed Louise Macnair, widow of their predecessor Luther Macnair, about the earliest years of the ACLU of Massachusetts.



## ACLU OF MASSACHUSETTS 2013 Bill of Rights Dinner

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Size of ACLU email list in Massachusetts:

**24,193**

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**WORCESTER**

**ACLU honors WBUR's David Boeri**

At an October reception, the ACLU of Massachusetts honored WBUR senior reporter David Boeri with the Defender of Civil Liberties Award for his series on the Worcester Police Department's forced confession of 16-year-old Nga Truong. You can listen to Boeri's reporting at [aclum.org/boeri](http://aclum.org/boeri).

Over his long career, Boeri has received Edward R. Murrow awards, Emmy awards, Radio and Television News Directors Association awards, Society of Professional Journalists awards and has been named Boston's Best Political Reporter.

**Massachusetts voters pass ACLU-backed medical marijuana law**

The ACLU of Massachusetts proudly played a leadership role in the campaigns for two measures on our state ballot in November. Unfortunately, voters rejected the Death with Dignity act narrowly (51-49%), but voted nearly two to one to approve medical use of marijuana.

The medical marijuana law goes into effect in 2013, and was carefully crafted from the best practices of 17 other states that have passed similar laws since 1996. The Massachusetts law will make patients safer and more secure, and will spare those who are already seriously ill from having to deal with a black market to get a medication that helps them. Additionally, it gives doctors the right to speak openly with patients about this valuable treatment option. See [aclum.org/medical\\_marijuana\\_initiative](http://aclum.org/medical_marijuana_initiative) to learn more.

**BOSTON, SPRINGFIELD AND WORCESTER**

**Three Massachusetts cities overuse arrests at schools, says *Arrested Futures* report**

Students in Massachusetts are handcuffed, booked and sent to court for behavior once handled by schools and parents, including swearing, slamming doors or banging lockers, failing to follow directions, or being disruptive in hallways, a report released in May by the ACLU of Massachusetts and Citizens for Juvenile Justice found.

The report, *Arrested Futures: The Criminalization of School Discipline in Massachusetts's Three Largest School Districts*, reviewed arrest data from the 2007-08, 2008-09 and 2009-10 school years, from Boston, Springfield and Worcester schools. In all three districts, arrests for disruptive but otherwise relatively minor misbehavior made up a substantial percentage of all school-based arrests. Springfield, the only district of the three with armed, uniformed police from the local police department stationed in schools throughout the school day, had the largest percentage of such arrests.

African-American students and students with disabilities were more likely to be arrested and to be arrested for minor offenses than were other students, with the result that these students were disproportionately harmed by school officials handing over responsibility for school discipline to police officers.

**SPRINGFIELD AND WORCESTER**

**ACLU joins statewide voter-protection efforts**

As a member of the statewide Voter Protection Coalition—working with the League of Women Voters, MassVOTE, the Lawyers Committee on Civil Rights and Economic Justice, Common Cause and others—the ACLU of Massachusetts spearheaded the coordination of over 100 volunteer poll observers in Worcester and Springfield on Election Day to protect voters' rights. Both Worcester and Springfield have had historic problems with meeting election law requirements and have faced charges of organized voter intimidation. Volunteers were placed at polling stations that have been trouble spots in the past and prepared to address issues of language barriers and politically motivated voter intimidation schemes. On Election Day, volunteers ensured that the historic problems and illegal activity did not take place and were able to spot and report new issues that led to long lines and the lack of ballots at many polling places.

**SPRINGFIELD**

**City settles Melvin Jones police brutality case**

In September, two years after filing a lawsuit alleging race-based civil rights violations, assault and battery by an officer and complicity by other officers at the scene, Melvin Jones achieved a settlement from the City of Springfield for \$575,000. Jones, an African-American resident of the city, was brutally beaten by the police during a 2009 traffic stop. The incident was recorded on a cell phone camera and posted on the internet.

The ACLU of Massachusetts and Attorney Shawn Allyn of Allyn & Ball, P.C., in Holyoke represented Jones. Bill Newman, director of the Western Massachusetts Legal Office of the ACLU of Massachusetts, highlighted the case's illustration of the importance of the First Amendment right to openly record police officers in their public duties: "The answer to the question of who watches the watchmen often must be 'we the people.'"

**HOLYOKE**

**Judge refuses to shut down needle-exchange program**

In November, a Hampden County Superior Court judge denied the Holyoke City Council's request to shut down the city's needle exchange program, operated by Tapestry Health Systems, Inc.

Bill Newman—director of the Western Massachusetts Legal Office of the ACLU, and who represented Tapestry Health—argued that allowing the preliminary injunction to shutter the program would cause irreparable harm to the program, its clients and the City. Newman, along with the City Solicitor, also argued that Mayor Alex Morse, who supported needle exchange, and the city's Board of Health, which unanimously recommended it, had the authority to approve the program without action by the City Council.

Newman called the ruling "a vindication of the importance of needle exchange programs to public health."

Tapestry's program has been in operation in Holyoke since the summer and aims, in part, to curb the spread of HIV among intravenous drug users. In western Massachusetts, injection drug use accounts for about 30 percent of HIV cases, compared to 12 percent throughout the state.

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## State high court rules against prolonged solitary confinement without due process

The Massachusetts Supreme Judicial Court in November reaffirmed, in the case of *LaChance v. Commissioner of Correction*, that the use of solitary confinement is a harsh punishment that must be balanced with firm legal protections. The Court held that placing a prisoner in solitary without due process for over 90 days is unlawful, and ordered the Department of Corrections to issue regulations that will assure adequate process in the future.

The ACLU of Massachusetts submitted a friend-of-the-court brief in *LaChance* and hailed the ruling for its significance both in Massachusetts and across the country.

Mr. LaChance was held in solitary confinement for 10 months at the Souza-Baranowski Correctional Center following an incident in which he threw pudding at another inmate. In solitary, Mr. LaChance was limited to two brief “non-contact” visits per week, with restricted access to books, the prison canteen, and educational, religious and other programming. He then brought suit, alleging violations of his constitutional due process rights and of state statutes and regulations.

### BOSTON

## ACLU responds to Dewey Square mural controversy

“The Giant of Boston” (at right), painted by Brazilian artists Os Gemeos in Dewey Square, provoked a range of responses at its summer unveiling, including many that associated the mural’s subject with Islam and terrorism because of his head coverings.

Carol Rose, executive director of the ACLU of Massachusetts, weighed in on the controversy in August: “Such racist reactions, while themselves protected speech, are nonetheless troubling, particularly after the shooting at a Sikh temple in Wisconsin, in which someone may have passed judgment on others based simply on who they are or how they dress. We welcome the ICA’s exhibition for sparking an important discussion in Boston on the ease with which many people fall prey to misguided cultural stereotypes.”



### BRISTOL, ESSEX AND PLYMOUTH

## 27 organizations say no to expanding ICE presence in Massachusetts

In December, over two dozen organizations and six law school immigration professors sent a letter to Governor Deval Patrick and the sheriffs of Bristol, Essex and Plymouth Counties, urging them not to participate in a program that would use local officers to enforce federal immigration laws, at local expense.

Known as “287(g),” this program allows the federal government to train and authorize local officials to do the work of immigration agents—investigating immigration status, filing deportation papers and even transporting immigrants to federal detention centers. In effect, the program turns local officers into immigration agents, yet the county pays for the officers’ salaries and other costs.

Immigration and Customs Enforcement (ICE) considered five new 287(g) contracts in Massachusetts. Worcester County Sheriff Lewis Evangelidis told media outlets that while he had considered signing the contract in the past, he no longer wished to do so because of existing deportation programs. Sheriff Koutoujian of Middlesex County also declined to join the program.

### MIDDLEBOROUGH

## Bylaws on public profanity and disorderly conduct violate First Amendment

In June, Middleborough attracted attention by approving a proposed bylaw that would have allowed police officers to issue fines for several existing bylaws, including a 1968 bylaw banning public profanity. The following month, the ACLU of Massachusetts submitted a letter to the Attorney General arguing that three of those existing bylaws—the profanity ban and disorderly conduct bylaws adopted in 1927 and 1972—were unconstitutional, at least in part. In October, the Municipal Law Unit agreed, concluding that specific portions of those provisions should be “repealed or amended” and explaining that attempting to enforce these provisions would be improper.

### PLAINVILLE

## “Right to petition” victory: Superior Court dismisses defamation case against opponent of racetrack gambling

In December, Judge Patrick Brady of the Norfolk Superior Court dismissed a lawsuit brought by Plainridge Racecourse against TJ Keen, who publicly opposed the expansion of gambling at the racetrack. The racetrack claimed it was defamed by Facebook postings and statements on a website Keen helped to set up, which contained information about the relationship between gambling and crime.

The ACLU of Massachusetts represented Keen, arguing in his defense that the lawsuit aimed to silence critics of the plan and that Keen’s speech was protected. Under the state’s “anti-SLAPP” law (strategic lawsuit against public participation), the racetrack will be required to pay Keen’s reasonable attorneys’ fees. Jeff Pyle from Prince Lobel LLP was our cooperating attorney.

### FALL RIVER

## US Department of Education investigates out-of-school suspensions at Fall River Public Schools

In December, the U.S. Department of Education’s Office for Civil Rights (OCR) announced that it will investigate out-of-school suspension practices in Fall River Public Schools (FRPS), following up on a complaint filed in June by the ACLU of Massachusetts and the Center for Civil Rights Remedies at the Civil Rights Project of UCLA.

The complaint charged that the district’s frequent use of out-of-school suspension disproportionately harms students of color and students with disabilities, violating the U.S. Department of Education’s regulations interpreting Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. The OCR has stated that it will investigate potential violations of both laws.



## REPORT: POLICING DISSENT

### Police Surveillance of Lawful Political Activity in Boston

*Documents and video recordings obtained by the ACLU of Massachusetts and National Lawyers Guild's Massachusetts Chapter show Boston police collect and keep information about constitutionally protected speech and political activity. This excerpt is from our Policing Dissent report released in October.*

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

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

#### A system without accountability or success

These revelations come on the heels of a report by a bipartisan US Senate subcommittee, which found that the federal government’s work with state and local fusion centers—among them the BRIC—“has not produced useful intelligence to support Federal counterterrorism efforts.” “Fusion centers” were created in the aftermath of 9/11, ostensibly so the federal government could “share terrorism-related information with states and localities.” One of two “intelligence fusion centers” in Massachusetts, the BRIC was created in 2005 as “a way to further integrate the intelligence capabilities of Boston, local, state and federal law enforcement partners.” Since then, it has received millions of dollars in federal funding and operated entirely absent independent public oversight or accountability.

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

#### When activism is considered a civil disturbance

That shoddy intelligence gathering does not just waste taxpayer money. It undermines our most cherished democratic values and at times violates the law. The Code of Federal Regulations provides that federally funded surveillance projects may collect and maintain information on individuals “only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity.” The regulations also state that surveillance teams “shall not collect or maintain criminal intelligence information about the political, religious or social views, associations, or activities of any individual or any group . . . unless such information directly relates to criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity.” The BRIC’s own guidelines, also released at the request of the ACLU and NLG, expressly include the same mandate—to investigate crimes rather than speech.

Those rules are vitally important because they create a dividing line between the permissible investigation of crimes and the impermissible investigation of people based on their ideas and beliefs. As the Senate subcommittee report on fusion centers explained, monitoring ordinary people is a “sensitive task” that can interfere with “individuals’ rights to associate, worship, speak, and protest without being spied on by their own government.” The records we received from the BPD show that officers at

the BRIC are not managing that “sensitive task” appropriately.

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

In one “intelligence report,” officers describe plans for a talk on March 23, 2007 at the Central Congregational

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

Worse still, the BPD’s inappropriate intelligence collection about peaceful activists in the City of Boston may contribute to improper storage of information about them at the federal level. The documents we received from the Boston Police Department provide evidence that local officers and federal law enforcement agents exchange information about Boston area activists. (That information sharing is unsurprising given that facilitating information sharing among different levels of government is part of the BRIC’s mission.) One report refers to an FBI source who provided information to the Boston police on protesters’ plans to “pass out fliers promoting their cause.” The documents also describe communications between municipal police departments concerning First Amendment expression. Another report references a phone call between officers from BRIC and the Metro DC Intelligence Section during which the officials discuss how many activists from the Northeast attended a Washington, DC peace rally.

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

#### The scope of the problem

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

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

Nevertheless, in response to our lawsuit, the BRIC produced “intelligence reports” that did not reference any criminal activity dating back as far as 2007. These reports were retained for years when they should have been destroyed after 90 days, pursuant to the BRIC’s own rules. We do not know how pervasive is this violation of the Center’s retention limits, but the documents we received highlight the fact that abuse occurs absent appropriate oversight and accountability. Had the ACLU and the National Lawyers Guild not sued to recover these documents, the public—and perhaps even

The BRIC’s political surveillance constitutes both a waste of public resources and a threat to our democracy.



*Read the full report at [aclum.org/policing\\_dissent](http://aclum.org/policing_dissent)*



the BRIC—may never have known these files were retained in violation of the department’s guidelines.

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

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

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

When law enforcement officers start investigating protected ideas rather than crimes, they threaten our right to free expression and assembly protected by the First Amendment to the Constitution and Article 16 of the Massachusetts Declaration of Rights. The unchecked political surveillance our lawsuit uncovered undermines our core values by chilling the speech of people who wish to participate in our democracy, which is a laudable exercise that our government should encourage and promote. It would weaken the First Amendment if would-be speakers were to remain silent out of fear that they would be falsely labeled an “Extremist” or potential threat in a secret government database. Upon learning that the police had intelligence files containing information about him, one of our clients, peace activist Richard Colbath-Hess, said, “People are scared...If the police are monitoring us, who wants to take a risk?”

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

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

## Privacy

*Continued from p. 1*

and employees hand over the passwords to their private social media accounts, such as Facebook. Other employers are requiring employees to “friend” their supervisors, or to disclose the private contents of their social media accounts. This bill would prohibit coercive access to employees’ and applicants’ social media.

Today, with increasingly sophisticated technology central to our daily lives, the need is greater than ever. We need the laws that protect our liberties to keep pace with our technology.

Please follow this important work on our site [privacySOS.org](http://privacySOS.org), at [aclum.org/facebook](http://aclum.org/facebook), or @ACLU\_Mass on Twitter.

## STATEWIDE AND NATIONAL NEWS

### ACLU argues in federal appeals court in Boston against religious restrictions on federal dollars for human-trafficking victims

The national ACLU and the ACLU of Massachusetts told a federal appeals court in December that the US Department of Health and Human Services (HHS) violated the Constitution when it allowed the US Conference of Catholic Bishops (USCCB) to impose religious restrictions on a federal program to provide services for victims of human trafficking. The appeal was brought by the government and the Bishops after the ACLU won a ruling last March from US District Court Judge Richard Stearns that a religious institution does not have the right to use federal money to impose its beliefs on others and that the ACLU of Massachusetts had “taxpayer standing” to challenge this violation of the Establishment Clause of the First Amendment.

The ACLU sued HHS for choosing the USCCB to distribute funds under the Trafficking Victims Protection Act, knowing that the USCCB would prohibit subcontractors from using any federal funds to provide or refer for contraception and abortion services solely because of USCCB’s religious beliefs.

### ACLU sues federal agencies over license-plate reader information

The ACLU of Massachusetts and the national ACLU in September filed suit in federal court against the Department of Justice and the Department of Homeland Security seeking records about the federal government’s use of automatic license plate readers (ALPRs).

These devices, mounted on police cars or stationary objects, can read and process thousands of license plates per minute, allowing police to track ordinary citizens going about their lives like never before. The devices read license plates and search databases for stolen vehicles, wanted individuals, expired registrations, warrants and more. However, they also record the time and location of every license plate they read, creating huge databases that can track potentially millions of people who have not done anything wrong.

Despite their widespread use by federal law enforcement across the state and country, the public has little information about how ALPRs are used to track motorists’ movements, including how long the data collected is stored, with whom it is shared, how it is secured or whether police departments pool this information in state, regional or national databases.

### Gov. Patrick signs ACLU-backed reforms to school discipline

Sustained ACLU work to shut down the “school to prison pipeline” and help keep kids in school paid off: on August 6, Governor Patrick signed into law “An Act Relative to Students’ Access to Educational Services and Exclusion From School.”

The ACLU of Massachusetts and our allies have supported and worked for years for reforms to turn schools away from wrong-headed “zero tolerance” policies that have resulted in too many kids being pushed out of classrooms, instead of encouraged to engage and learn. The new law is a great victory for fairness and access to education for all students in Massachusetts.

### New Massachusetts crime and sentencing law “should’ve been better, could’ve been worse”

In July, Gov. Patrick signed a bill that the ACLU of Massachusetts had opposed because, as executive director Carol Rose said, “It takes our justice system in the wrong direction, expanding unjust, wasteful mandatory sentencing and depriving judges of the ability to depart from required mandatory maximum sentences for so-called ‘habitual offenders.’ This bill will put more people in prison and keep them there longer—at a price tag of nearly \$50,000 per prisoner each year.”

The ACLU of Massachusetts did, however, support some of the provisions in the new law: reduced mandatory minimum sentences for some drug offenses; permitting drug offenders in prison to become eligible for parole and work release and to earn “good time” sentence reductions; more “good time” for participation in prison programs; reducing the “school zone” for drug offenses and limiting the hours of its operation; and a “Good Samaritan” law to protect people who help in drug overdose situations.

## IN MEMORIAM

**Hugo Adam Bedau (1926–2012)** made enormous contributions, over decades, to the scholarship and practical workings of the movement to abolish the death penalty, and the ACLU of Massachusetts recognizes him as a champion of the most fundamental rights and liberties. He saw capital punishment as an intolerable denial of civil liberties, and he pioneered the study of miscarriages of justice in death penalty cases. His testimony at legislative hearings in Massachusetts pointed out the folly of any claim that the death penalty can be made fool-proof or error-free.

**Gerry Berlin (1919–2012)** was a founder and long-time leader of the ACLU Foundation of Massachusetts, serving as president of the organization through critical civil rights and civil liberties victories over many years. Executive director Carol Rose told the *Boston Globe*, “Mr. Berlin’s leadership at a critical time in Massachusetts history helped to transform the ACLU of Massachusetts into a powerful and dynamic civil rights and civil liberties organization. He laid a foundation for the defense of freedom for this and future generations.”



## Faces of the ACLU



1/ Harry Belafonte—winner of the Roger Baldwin Award, the ACLU of Massachusetts' highest honor—with Board member and prior Baldwin award-winner Norma Shapiro, at the 2012 Bill of Rights Dinner. See [aclum.org/dinner](http://aclum.org/dinner) for details about the 2013 Bill of Rights dinner. *Photo by Marilyn Humphries.*

2/ ACLU supporters marched in every Pride celebration in the state last year, including this one in Boston. Join us for Pride in 2013! Follow us at [aclum.org/facebook](http://aclum.org/facebook) or @ACLU\_Mass on Twitter for details. *Photo by David Graves.*

3/ More than 750 guests at last year's Bill of Rights Dinner heard Amy Goodman's call to support independent journalism and to reject convenient untruths. *Photo by Marilyn Humphries.*

4/ Terrence McNally (center)—co-creator of the Tony Award-winning musical *Ragtime*—accepted the ACLU of Massachusetts' Beacon of Liberty award at a Boston gala in September. Shown here with McNally are ACLU of Massachusetts executive director Carol Rose (right) and Meg Fofonoff (left), artistic director of the Fiddlehead Theatre Company, which put on *Ragtime* at Boston's historic Strand Theatre in Dorchester last fall. *Photo courtesy Matt McKee Photography.*

5/ Damian Norfleet (left) as Coalhouse Walker and Jared Dixon (right) as Booker T. Washington, discussing Walker's desire for revenge after racially motivated attacks, in the production of *Ragtime* last fall by the Fiddlehead Theatre Company, in conjunction with the ACLU of Massachusetts. *Photo courtesy Matt McKee Photography.*

6/ Executive director Carol Rose (right) introduces Joshua Boger, who, with his wife Amy, made a \$100,000 challenge grant to the ACLU of Massachusetts last year, matching, doubling or tripling gifts of \$100 or more, \$500 or more or \$1500 or more. ACLU supporters met the challenge within a matter of days. *Photo by Marilyn Humphries.*