



Our client Richard Gordon plays with his son after the ACLU won his release on bond from immigration detention. Photo by Paul Shoul.

JUSTICE FOR ALL VICTORY!

ACLU reunites family, in broader challenge to immigration detention

After spending nearly five months in jail without the opportunity to post bond while fighting deportation, ACLU client Richard Gordon reunited with his fiancée and their young son in November.

The government subjected Gordon to so-called “mandatory” immigration detention without bond in June, which a United States District Judge found unlawful months later.

“Rather than being stuck in a costly immigration lock-up, Mr. Gordon can now continue being a father, provider, and productive member of his community while he fights for his ability to remain in the United States and waits for a decision on his case,” said Adriana Lafaille, the ACLU’s lead attorney on the case. Lafaille is an Equal Justice Works legal fellow at the ACLU of Massachusetts, whose fellowship Greenberg Traurig, LLP sponsors.

The ACLU litigation that resulted in Gordon’s release continues. Some 50 other noncitizens in Massachusetts alone face “mandatory,” no-bond immigration detention based on the same unlawful detention practice. In March, a federal judge certified the effort as a class action, and indicated he will rule in favor of the opportunity of other similarly situated detainees to seek release from detention. Learn more: aclum.org/mandatory_detention ■

JUSTICE FOR ALL VICTORY!

State Supreme Judicial Court sets ACLU-backed ground rules for tainted drug lab convictions

One day after the state inspector general reported that supervisors actually covered up misconduct at the Hinton state drug lab, the Massachusetts Supreme Judicial Court went further. In a half-dozen cases stemming from the scandal, the Court ruled in March that every conviction in which convicted chemist Annie Dookhan served as a chemist must be considered suspect.

Recognizing the impossibility of retesting samples due to the lab’s disarray, the Court also barred prosecutors from arguing that they simply would have retested the supposed drugs if defendants had known about Dookhan’s misconduct at the time. It would be unreasonable to expect defendants to accept the same pleas they did before they knew what Annie Dookhan had done, our legal director Matthew Segal explained to reporters after the ruling.

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TECH FOR LIBERTY VICTORY!

Massachusetts high court rules local and state authorities need warrant to track your cell phone

In a groundbreaking privacy decision on an ACLU case, the state Supreme Judicial Court ruled in February that Massachusetts state and local police typically need warrants before tracking people by cell phone.

The ACLU argued in *Commonwealth v. Augustine* that people have a constitutionally protected interest in the location data generated automatically whenever they make or receive cell phone calls. Authorities can use this data to reconstruct a person’s movements over time.

Fortunately, the Court ruled that warrantless tracking “was more than sufficient to intrude upon [an] expectation of privacy” safeguarded by the state Declaration of Rights. It makes no difference, the Court ruled, that the data belonged to a third party: the defendant’s cellular service provider.

“This ruling means Massachusetts is leading the way in dealing with the privacy implications of the digital age,” said ACLU of Massachusetts legal director Matthew Segal, who argued the case. “Simply turning on a cell phone should not justify warrantless surveillance of when, where and how you use it.”

The ACLU of Massachusetts hopes the ruling inspires state lawmakers to act, too, by passing ACLU-backed bills limiting the use of both automatic license plate readers and drones. See page 2 for more on the ACLU of Massachusetts legislative agenda.

Learn more: aclum.org/cslr ■



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LEGISLATIVE ACTION

JUSTICE FOR ALL VICTORY!

ACLU applauds unanimous state votes to end shackling of pregnant prisoners

The Massachusetts Senate and House both voted unanimously in March to end the shackling of pregnant women in the state's prisons and jails—legislation that Governor Patrick intends to sign. The ACLU and other organizations fighting for reproductive rights and prisoners' rights have worked for years to pass the bill, originally filed by Representative Kay Khan (D-Newton) and State Senator Karen Spilka (D-Framingham).

The new law will ban shackling during labor and delivery altogether, and dramatically restrict the use of restraints during transportation and postpartum recovery by prohibiting the use of demeaning and dangerous leg irons and belly chains. In addition, it will ensure that incarcerated women receive appropriate prenatal care.

"This issue hits people at a gut level," said Gavi Wolfe, legislative counsel at the ACLU of Massachusetts. "Everyone agrees shackling pregnant women is barbaric, and Massachusetts has now joined 18 other states in ending it once and for all. It's gratifying to see the Commonwealth finally focus on the important task of providing safe and healthy care for pregnant women in prison." ■

ACLU calls for Massachusetts moratorium on license plate readers, passage of License Plate Privacy Act

Following a *Boston Globe* exposé on the Boston Police Department's license plate reader program, the ACLU called for a statewide moratorium on the controversial scanners, and now leads the charge for regulation from Beacon Hill.

Contrary to officials' claims about why police need license plate scanners, the *Globe* found that officers routinely ignore live 'hits' alerting them to stolen cars. As the ACLU feared, this suggests the program is simply filling a huge database with location data that can be used to warrantlessly track innocent motorists.

Currently, the state police and more than 60 cities and towns in Massachusetts deploy license plate scanners, which snap photographs of each license plate they encounter, noting the time, date and location—but none of the Massachusetts programs have outside oversight.

"We applaud the Boston police decision to suspend this program in light of these revelations," said Kade Crockford, director of the Technology for Liberty project at the ACLU of Massachusetts. "We need uniform statewide rules for use of plate readers, and no police department in the state should use this technology until the legislature passes the License Plate Privacy Act." ■



Learn more: aclum.org/lppa

ACLU supports online registration and other voting-rights reforms

After years of trying, a Massachusetts voting-rights breakthrough has finally come within reach.

In November, the Massachusetts House passed a bill to allow online voter registration and early voting. In January, an ACLU-backed version in the state Senate went further, with measures including: a permanent-registration system to keep people "active" by default (that is, not kicked off the rolls when they move), letting 16-year-olds pre-register to vote when they apply for drivers' licenses, and allowing voter registration on Election Day itself—a reform proven in other states to increase voter turnout by 5-10 percent.

Massachusetts lags behind other states that have already passed similar reforms. At press time, a legislative panel was at work to reconcile these two versions. ■

ACLU backs comprehensive reform of state public records law

In March, a state legislative committee advanced an ACLU-backed bill to reform and strengthen Massachusetts public records law.

Today, unfortunately, even when information is supposed to be public, members of the public often face significant obstacles to getting it. Agencies don't always treat records requests seriously, knowing they probably face no consequences for withholding information. And when they do respond, the law allows them to charge an arm and a leg for copies.

Reform would streamline the handling of requests for records, rationalize and reduce the cost of accessing public information (fees can be as high as a dollar a page for black and white copies), promote the sharing of information in electronic rather than paper form, and create incentives for government agencies to embrace the presumption of openness at the heart of a law that hasn't been meaningfully updated since the mid-1970s. It would also put teeth into the law by directing courts to award attorney's fees to those who have been wrongly denied public records, and to establish a commission to identify ways to increase information about the legislative process and make it more accessible and meaningful to the general public. ■



Go to aclum.org/email to make sure you get ACLU alerts when the chance to take action comes!

FROM THE EXECUTIVE DIRECTOR



What can whistle-blowing do?

By Carol Rose

Whistle-blowers have been prominent in the news this year, particularly NSA whistle-blower Edward Snowden. Many of you know that the ACLU is legal advisor to Mr. Snowden. But did you know that defending whistle-blowers is a patriotic American tradition that dates back to the founding of our nation?

In 1777, just months after the signing of the Declaration of Independence, a group of sailors and marines blew the whistle on Commodore Esek Hopkins, the powerful commander-in-chief of the Continental Navy, for treating prisoners “in the most inhumane and barbarous manner.” When Hopkins was suspended from his post as a result, he retaliated by filing a criminal libel suit against the whistle-blowers. Within a month, the Continental Congress passed America’s first whistle-blower-protection law, establishing the defense of whistle-blowers as a cornerstone of our democracy.

Nearly two hundreds years later, in 1971, another whistle-blower—Daniel Ellsberg—released the Pentagon Papers. This year, the ACLU of Massachusetts will honor Ellsberg and other patriotic whistle-blowers at our annual Bill of Rights Dinner on May 12, 2014.

Ellsberg (for those not old enough to remember) was a senior military analyst who spent time in Vietnam in the 1960s and worked on a “top-secret” study of the U.S. war there. Four decades ago, in a profound act of conscience and courage, Ellsberg released 7,000 pages of these documents to the American people. *The New York Times* began publishing them as the now-famous Pentagon Papers, revealing how four presidential administrations (Truman, Eisenhower, Kennedy, Johnson) had covered up the failing war and secret escalation of U.S. troops in Vietnam, while lying to the American people by assuring them that victory was near.

Ellsberg faced 115 years in prison for violating the Espionage Act and other laws. And he would have gone down, too, but for the crass overreaching of the fifth consecutive President to mislead the public on Vietnam, Richard Nixon.

First, the Nixon administration sought to restrain *The New York Times* with an injunction, only to be outflanked by Ellsberg, who leaked the Pentagon Papers to *The Washington Post*, *The Boston Globe* and other newspapers across the country—a proud moment for the Fourth Estate, which played its critical role in defending democracy.

Next, Nixon directed his operatives to break into the office of Ellsberg’s psychiatrist, in an attempt to obtain information to discredit him, but they got caught. This crime so corrupted the administration’s case that Ellsberg went free, and it contributed to Nixon leaving office in disgrace.

What can whistle-blowing do? End a war and bring down a corrupt president.

There’s a striking parallel between the Pentagon Papers and the Snowden revelations. Both Ellsberg and Snowden worked “inside the system,” which gave them access to the very information that sparked their crises of conscience. Both men worked for and believed in their government, trying in vain to raise concerns internally. Ultimately, they sacrificed their careers and risked their freedom for the public good. Their cause? Exposing elected representatives and government agencies acting outside the law and lying to or misleading the public to cover up their misdeeds.

With the distance of time and the perspective of history, it is clear to almost all now that the United States would have been far worse off had Daniel Ellsberg served his life in prison, instead of living free as an activist, fighting for democracy and human rights.

In that context, thank goodness we have the ACLU working to ensure that Mr. Snowden might at least stand a chance at fair treatment and due process if and when he returns to this country.

Of course, not all whistle-blowers become infamous—or even famous.

What can whistle-blowing do? Stop waste and abuse, and expose invasions of privacy.

Consider Tom Drake, a former senior official of the National Security Agency (NSA). Drake faced prosecution under the Espionage Act for revealing a costly, overreaching data-collection program that threatened Americans’ privacy rights. For this, Drake incurred 10 felony counts and risked 35 years in jail, before a combination of legal advocacy and media outrage resulted in a deal: no jail time, no fine. Case closed.

One more example: Cathy Harris worked as a senior inspector for the U.S. Customs Service at the Atlanta airport when she disclosed to the media the Custom Service’s practice of discriminatory racial profiling, namely, targeting women of African descent for abusive pat-downs and prolonged detentions. A damning Government Accountability Office (GAO) report affirmed Harris’s revelations, and led to adoption of federal laws against these demeaning and unconstitutional practices.

What can whistle-blowing do?

End racial profiling.

What links all of these people—and the ACLU—is a common belief that openness is the best antidote to abuses of power, and our shared view that one person can make a difference. In this era of government secrecy and mass surveillance, the ACLU is fighting for government transparency and individual privacy rights. A healthy democracy requires both. And that’s why the ACLU of Massachusetts will honor Mr. Ellsberg, Mr. Drake and Ms. Harris at our annual Bill of Rights dinner gala on Monday, May 12.

Come to the Bill of Rights dinner to honor them and to hear why these people took enormous personal risks so the rest of us could learn about serious abuses by our government. ■

Their cause? To alert the rest of us that our elected representatives were acting outside of the law.

See aclum.org/dinner for event details and to buy tickets.

INTERVIEW WITH “THE MOST DANGEROUS MAN IN AMERICA”: DANIEL ELLSBERG



Daniel Ellsberg

In September 2010, Bill Newman, director of the ACLU of Massachusetts’ Western Regional Office, spoke with Pentagon Papers whistle-blower Daniel Ellsberg (left) about whistle-blowing, surveillance and the future of civil liberties.

Ellsberg’s whistle-blowing helped end the Vietnam

War, and earned him the title “the most dangerous man in America,” according to Secretary of State Henry Kissinger.

WHMP carried this interview, which is excerpted here.

Bill Newman: What was it like to face 115 years in prison?

Daniel Ellsberg: In a situation where a citizen has some possibility of affecting events here and actually shortening a war, it seemed to me that people should be willing to take some risk, even with their lives and certainly with their freedom.

That’s why I’m very impressed by [Chelsea, formerly Bradley] Manning, who is accused of being the source of a number of documents to Wikileaks—90,000 reports and possibly a quarter million cables. [S]he said to someone [s]he mistakenly trusted, ‘I’m prepared to go to prison for

life or even be executed to get this out.’ When I read that, I thought, ‘Now there’s someone who’s in the same state of mind I was in,’ and I haven’t actually heard anything like that in 40 years, and I’ve been puzzled as to why not.

It’s puzzled me always that there’s been almost no one, because, as I say, physical courage in combat is very common. And yet many of these same people who were veterans of combat, like General Powell who became Secretary of State, come back and put on civilian clothes and seem to have forgotten that there ever could be any reason to take any risk, whether it could be worthwhile.

The government made claims at the time of the Pentagon Papers’ publication that they’re making now: that national security is terribly jeopardized, that leaks are terribly dangerous, regrettable and must be stopped and punished. They say that about every leak, without exception.

BN: What was the tipping point in your life—either politically or personally—that made you say, ‘I have to turn over the Pentagon Papers’?

DE: I realized I had been wrong in thinking that leaks were totally disloyal and that I’d been neglecting my own responsibilities to the public, which had called on me to tell the truth—which I hadn’t done—about what our policy was.

BN: What will happen if there’s another 9/11?

DE: I’m not sure they can do any more surveillance than they’re doing now, but if they can, they will. And privacy,

free association will be out the window. And I think the surveillance that’s going on right now gives them the ability to blackmail people—and I mean Congresspeople and journalists and sources and lawyers and defense lawyers.

‘I’m not sure they can do any more surveillance than they’re doing now.’

The ability to blackmail—they were looking for that when Nixon went into my former psychoanalyst’s office. They wanted information they could blackmail me with.

Now, they can go into a psychoanalyst’s office without a warrant legally. They don’t have to keep that quiet as Nixon did. It’s under the Patriot Act. Sneak-and-peek operations without a warrant are acceptable. I’m afraid right now our National Security Agency has abilities that the East German Stasi, their secret police, could only dream of.

BN: In the 40 years since the release of the Pentagon Papers, has America made progress or slid backwards in its approach to national security, privacy and honesty with the electorate?

DE: Nothing is to be taken as the last word or believed on faith for any government in the world—democrat, socialist, communist, fascist. All government officials lie or they mislead all the time. And that really hasn’t changed very much. What’s ingenious about our system is the chance to discover, more than other systems, what lies behind what our government officials are saying or what the truth is, to investigate, to question, to look for information and to publish it. ■

Listen to the full interview at aclum.org/dinner#interview

ACLU ACROSS THE NATION AND COMMONWEALTH...

JUSTICE FOR ALL VICTORY!

WORCESTER

Jury awards \$15,000 to ACLU client Cocroft in wrongful arrest suit

A Worcester jury in federal district court awarded \$15,000 in March to ACLU client Wakeelah Cocroft, in a suit stemming from a 2007 incident in which Worcester Police Officer Jeremy Smith pulled over Cocroft's sister, Clytheia Mwangi of Worcester, for speeding.

At trial, Cocroft testified that the officer aggressively approached the car to scream at Ms. Mwangi, then at Ms. Cocroft when she returned from paying for gas. When Cocroft told Officer Smith that he had no right to speak to her in that manner, he grabbed her from behind, pulled her away from the car, and wrestled her to the ground, slamming her face against concrete. She explained that he knelt on her back until a second officer arrived in response to a 911 call by Ms. Mwangi.

The jury found Smith violated Ms. Cocroft's rights under the Fourth Amendment and the Massachusetts Civil Rights Act, which forbid police officers from arresting people without probable cause to believe they have committed a crime.

"This is a long-overdue vindication for Ms. Cocroft and an important victory for civil rights in Worcester," said Carl Williams, staff attorney with the ACLU of Massachusetts, who tried the case along with attorney Beverly Chorbajian.

"This ruling should spur much-needed reform in the Worcester Police Department," said Chorbajian. "The jury's message is loud and clear, and we hope it is received."

Cocroft's legal team includes Carl Williams, Miriam Mack, Kirsten Blume and Matthew Segal of the ACLU of Massachusetts as well as attorneys Beverly Chorbajian and Michael Altman. ■



Wakeelah Cocroft (left) gathered with her husband Reginald Aldridge and her sister Clytheia Mwangi outside the federal court house in Worcester, just after a jury awarded her \$15,000 in a wrongful arrest suit against a Worcester police officer.

ORLANDO AND BOSTON

Florida report claims FBI justified in Todashev killing—but raises new questions about role of Massachusetts state troopers

A Florida state attorney in March released his report on the lethal shooting of Ibragim Todashev, the associate of Tamerlan Tsarnaev also implicated in a Waltham triple murder, during an interrogation by FBI agents and Massachusetts State Police officers last May in Orlando. The report claimed FBI agents were justified in using lethal force, but details provided in the report raised even more questions about the role Massachusetts troopers played and the recordings they made.

"The Florida state attorney's report confirmed reports that two Massachusetts State Police officers took part in an interrogation that ended the life of a witness who might have provided critical information about the 2011 Waltham triple murder and the Boston Marathon bombing suspects," said ACLU of Massachusetts executive director Carol Rose. "The Massachusetts Attorney General has the authority and responsibility to oversee and investigate law enforcement when issues of misconduct, lack of protocol or illegal activity arise."

"We welcomed this report as an important step in the right direction for transparency about this deeply troubling incident, but the questions that report raised make it clear that our own capable state Attorney General must investigate on behalf of the people of Massachusetts," Rose said. "What happened in Florida bears on matters of serious concern in Massachusetts: an unsolved triple murder and last year's attack on the Boston Marathon. Mr. Todashev might have had critical information about both of these events. The people of the Commonwealth deserve answers about the role of Massachusetts law enforcement officials from our own Attorney General, instead of relying on another state to do this important work."

Go to aclum.org/todashev_petition to sign a petition asking Massachusetts Attorney General Martha Coakley to investigate. ■

BOSTON

ACLU v. FBI

The ACLU of Massachusetts in April sued the FBI and U.S. Attorney Carmen Ortiz for the release of documents about the Commonwealth's participation in secretive teams known as Joint Terrorism Task Forces (JTTFs), and about their role in the investigation of Ibragim Todashev, the associate of Tamerlan Tsarnaev killed in May 2013 while being interrogated by a Boston FBI agent and two Massachusetts State Police officers.

JTTFs have broad powers to investigate people and groups, yet little is known about how they function and to whom they are accountable. Recent reports about the Todashev killing also raised questions about how our state collaborates with federal agencies and who is in charge when something goes wrong.

In order to better understand JTTFs, the ACLU of Massachusetts requested government documents under the Freedom of Information Act in December 2013. These requests sought information about the task forces' structure, the number and types of investigations done by the Boston FBI field office, and the Todashev investigation. The FBI denied the Todashev request and has yet to provide records responsive to the ACLU's other requests. U.S. Attorney Ortiz has not responded at all.

"The attack on the Boston Marathon and its aftermath have highlighted the need for the people of Massachusetts to know more about how federal agents and state and local police work together, and whether these collaborations are efficient and effective," said ACLU of Massachusetts staff attorney Jessie Rossman. "The thousands of investigations conducted by the so-called Joint Terrorism Task Force failed to thwart last year's attack on the Boston Marathon, and a joint interrogation by Massachusetts State Police and the FBI resulted in the death of Ibragim Todashev, who might have had critical information about both the bombing and a Waltham triple murder. The fact that the FBI and U.S. Attorney Ortiz have not responded to our requests for these public records left us no choice but to file this lawsuit." Learn more at aclum.org/jttf ■

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JUSTICE FOR ALL VICTORY!

NORTHAMPTON

Northampton special prosecutor dismisses charges against Jonas Correia

In a First Amendment victory, a Northampton special prosecutor has dismissed the remaining charge against ACLU client Jonas Correia, who in March attempted to video-record a Northampton police officer questioning three men of color.

Police officers pepper-sprayed Mr. Correia after he tried to record them, then tackled him to the ground and charged Mr. Correia with resisting arrest.

"A person exercising his First Amendment right to videotape the police should not risk being arrested or charged with a crime," said Bill Newman, Mr. Correia's ACLU of Massachusetts attorney. ■

BOSTON

ACLU presses for remedies to racial profiling at Logan airport

The ACLU continues to advocate on behalf of TSA employees who blew the whistle about racial, ethnic and religious profiling in the "behavior detection" program at Logan Airport. Our efforts led to a *New York Times* exposé and pushed the Department of Homeland Security to investigate the employees' claims.

Unfortunately, a shoddy investigation resulted in an official report claiming to find no evidence of racial profiling. In response, ACLU of Massachusetts staff attorney Sarah Wunsch wrote a letter to the Massachusetts Congressional delegation and the chairman and ranking member of the House Homeland Security Committee in November, asking them to investigate, demand details from the TSA, and examine data and written employee statements attesting to the problem. Some members of the Massachusetts delegation are pursuing the issue with us. ■

WORCESTER AND LOWELL

Peaceful begging under attack

The ACLU of Massachusetts has challenged two city ordinances that criminalize peaceful panhandling under the guise of banning "aggressive" solicitation.

We sued the City of Worcester last May and have appealed the U.S. District Court's denial of our request for a preliminary injunction against enforcement of the Worcester law. Meanwhile, the City of Lowell jumped on the bandwagon and banned panhandling in the entire "Downtown Lowell Historic District," which is essentially the main downtown of Lowell. Our request for a preliminary injunction against that ordinance was heard in April. Attorneys at Goodwin Procter are handling both cases for the ACLU, and argue that these restrictions on peaceful panhandling violate the First Amendment's free speech guarantee. ■

FREE SPEECH VICTORY!

WESTFIELD

Federal court rules Westfield's Mayor violated political opponents' First Amendment rights

Federal District Court Judge Michael Ponsor has ruled that Westfield Mayor Daniel Knapik violated the First Amendment rights of City Councilor David Flaherty and Municipal Light Board Member Jane Wensley. The day before a municipal election in November 2011, Knapik ordered the city's Department of Public Works to remove campaign signs placed across the street from his home. David Costa, a Westfield property owner, had given the candidates permission to place their signs there. Fewer than 30 votes decided the races. ■

HOLYOKE

Holyoke racial profiling victims file complaint with Massachusetts Attorney General

On behalf of immigrants-rights group Just Communities/Comunidades Justas, the ACLU of Massachusetts in December filed a request with Attorney General Martha Coakley's Office asking for investigation and action on a racial profiling incident in which two Holyoke police officers interrogated four individuals whom the officers assumed were immigrants.

The interrogations consisted of implications of criminal wrongdoing, demands for proof of immigration status, and throwing driver's licenses back at these individuals when they produced them, according to witness and victim statements. ■

TECH FOR LIBERTY VICTORY!

D.C. AND MASSACHUSETTS

Entire Massachusetts Congressional delegation backs USA FREEDOM Act!

Prompted by outreach from the ACLU and urging from hundreds of ACLU of Massachusetts supporters, the state's entire Congressional delegation co-sponsored the USA FREEDOM Act, an effort to rein in government surveillance.

The legislation would end the bulk collection of Americans' records shared with third parties and limit Patriot Act powers targeted at people in the country, among other privacy protections.

Unanimous support of the USA FREEDOM Act wasn't the first stand for privacy that members of the delegation have taken since Edward Snowden's revelations.

In December, Senator Edward Markey released data showing that cell phone companies handed law enforcement detailed records about their customers' calls or locations more than a million times in 2012 alone—many without a warrant.

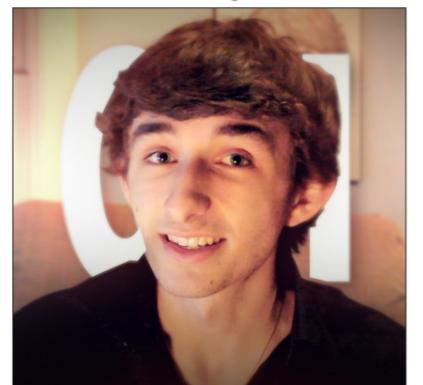
"Senator Markey's important work to uncover this information shows that now is the time for real surveillance reform," said ACLU of Massachusetts executive director Carol Rose. ■

NORTH ATTLEBORO

ACLU defends student's free speech

When North Attleboro High School punished senior Nick Barbieri for using language it didn't like in an evening tweet on his personal Twitter account, the ACLU of Massachusetts responded to Barbieri's request for help. The school quickly reversed course, revoking the detentions it issued Barbieri and removing the incident from his record.

The ACLU appreciates the school's responsiveness because, as our attorney Sarah Wunsch argued in her letter to the principal and vice principal, schools must teach students about "important free speech principles...by word and deed." ■



Nick Barbieri

BOSTON

ACLU joins Mayor Walsh's transition team advisors, applauds decision to oppose "Secure Communities"

Weeks after his victory in November, Boston mayor-elect Marty Walsh invited ACLU of Massachusetts executive director Carol Rose, who brings expertise on issues such as public safety policies, to join his transition team advisors. Boston's first new mayor in 20 years signaled early that he, like former Mayor Tom Menino, opposes the so-called "Secure Communities" (S-Comm) federal anti-immigrant dragnet.

In November, Walsh cited concerns about S-Comm detention for non-violent offenses. The program automatically sends names, fingerprints and other information, gathered during every arrest in the state—including wrongful arrests and those for misdemeanors—to Immigration and Customs Enforcement (ICE).

The ACLU and other immigrant rights' groups welcomed Walsh's stance, reiterating that S-Comm is a roundup that drives people underground and makes the city less safe. ■

JUSTICE FOR ALL VICTORY!

State Supreme Judicial Court sets ACLU-backed ground rules for tainted convictions from Hinton state drug lab scandal

Continued from p. 1

just as it would be to expect someone to pay the same price for a used car after discovering the dealer had rolled back the odometer.

The SJC ruling, consistent with recommendations the ACLU has offered ever since Dookhan's misconduct became public in 2012, points a way forward for dealing with a scandal that has tainted the convictions of 40,323 people—yet which has already dragged on for years.

Prosecutors have insisted that tainted Dookhan convictions must be challenged one by one, then possibly re-tried. The ACLU countered that—apart from the staggering expense of this approach—victims of the Hinton lab scandal and cover-up should not have to wait even longer for justice. Instead, we argue, the burden should be shifted to prosecutors from those convicted with tainted evidence.

In a pending case, the ACLU of Massachusetts has asked the Court to require prosecutors to decide which convictions they think can be upheld, rather than putting an unfair burden on defendants to show



the role of tainted Hinton Lab evidence that prosecutors used against them.

We have also asked the Court to protect defendants from being penalized with harsher sentences than the ones they originally received, simply for exercising their right to challenge tainted convictions. That would violate both due process and common sense.

“Massachusetts’ highest court seems to have grasped an essential truth about this scandal: it is now impossible for anyone to claim, with any seriousness, that any Dookhan defendants got due process when they were convicted,” Segal said. “We can either implement a comprehensive resolution of these cases, or we can spend many years and hundreds of millions of taxpayer dollars trying to unscramble these broken eggs. This isn’t about letting dangerous people out of jail—it’s about restoring integrity to our criminal justice system.” ■

Learn more at aclum.org/tainted_convictions

Can the government force you to decrypt data?

This October, the ACLU filed a friend-of-the-court brief in *Commonwealth v. Gelfgatt*, a case about the control individuals have over their personal information that is now before the Massachusetts Supreme Judicial Court. The central question in *Gelfgatt* is whether the government can force a defendant to decrypt their electronic files. Along with Harvard’s Berkman Center for Internet & Society and the Electronic Frontier Foundation, the ACLU says no.

Our attorneys argue that decrypting electronic data is not like opening a door or providing a combination to a safe. That is because decrypting files does not simply unlock information; it creates something new. It also reveals information about the possession of, access to and control over the files.

“Encrypted data is like a document that has been shredded,” ACLU of Massachusetts staff attorney Jessie Rossman explains. “Even if the government can make a defendant turn over the shreds, it can’t make the defendant reassemble them.” Because encryption protects all of our rights to privacy and democracy in the digital age, the ACLU of Massachusetts urges the Court to hold that forced decryption implicates the constitutional protections against self-incrimination. ■



Protect your privacy with encryption

When asked what ordinary people can do right away to protect our privacy online, Edward Snowden replied without hesitation in a recent interview: encrypt! While no process is 100 percent foolproof, digital self-defense tools that enable encryption and anonymous browsing offer our best hope of making mass surveillance impossible for agencies like the NSA and FBI, and for securing our information.

If you want to learn how to encrypt your emails, chats and texts, and browse the internet securely, check out our guide to the best resources: aclum.org/encrypt ■

JUSTICE FOR ALL VICTORY!

ACLU backs expansion of juvenile court jurisdiction, SJC strikes down juvenile life without parole

A new law and a recent Supreme Judicial Court ruling mark major gains for fairness for juveniles in the Massachusetts justice system. The ACLU supported and worked for these advances, both based on the fact that adolescent children are fundamentally different from mature adults, so our legal system must treat them differently.

In September 2013, Governor Patrick signed into law an expansion of juvenile court jurisdiction so that young people under 18 can receive age-appropriate treatment in those courts with the expertise to address their needs and circumstances. The new statute to “raise the age” for juveniles from 17 to 18 means that 17-year-olds will no longer be treated automatically as adults—held in adult jails, charged criminally and tried as adults, sentenced to adult prisons and burdened

with adult criminal records. Instead, they’ll be tried in juvenile court, where judges and staff have training and experience to deal with adolescents, where parents and families are involved in the proceedings, and where sentencing can include education and rehabilitative services to help young people become healthy and successful adults.

In December 2013, the state SJC struck down juvenile life without parole sentences as unconstitutional, in the *Diatchenko* and *Brown* cases. The Court found such sentences to be “cruel or unusual punishment,” in violation of Article 26 of the Massachusetts Declaration of Rights. Sentencing young people to die in prison is fundamentally unfair because it does not allow any judicial consideration of children’s immaturity—adolescent brains are still in the process of development—and

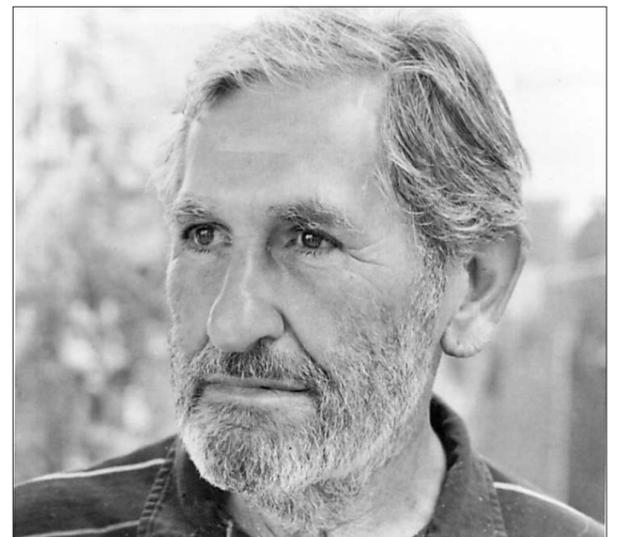
their potential for positive change. The ACLU of Massachusetts joined an amicus brief authored by the law firm Goodwin Procter in the *Diatchenko* and *Brown* cases.

The state high court ruling, based on our state constitution, came after a 2012 United States Supreme Court ruling, in *Miller v. Alabama*, that mandatory life without parole sentences for juveniles violate the federal constitution. ■

IN MEMORIAM

Attorney Tony Winsor (left) passed away in November. Shown here at a 1981 ACLU of Massachusetts event, Winsor served on the ACLU of Massachusetts board for nearly 50 years and founded and co-chaired our privacy committee.

Sidney Cheresh (right) of Lexington passed away at the age of 98 in March. Cheresh was a devoted volunteer and supporter of the ACLU from the early 1980s to the early 2000s. ■



2014

ACLU of
Massachusetts
Board Ballot

The ACLU of Massachusetts annual meeting where new board members are announced will be held on June 16, 2014. For information, call 617-482-3170.

Two check boxes are provided for joint members. One can vote using the first box and the other using the second.

Please cut out and mail this ballot. Ballots must be received in the ACLU of Massachusetts office, 211 Congress Street, Boston, MA 02110 by May 23, 2014.

For more information on the ACLU of Massachusetts nominating and voting procedures for the Board of Directors, go to aclum.org/board.

Vote for 13 or fewer

- | | | | | | |
|--------------------------|--------------------------|------------------|--------------------------|--------------------------|-------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | Gabriel Camacho | <input type="checkbox"/> | <input type="checkbox"/> | Kevin Prussia |
| <input type="checkbox"/> | <input type="checkbox"/> | Jack Cushman | <input type="checkbox"/> | <input type="checkbox"/> | John Regier |
| <input type="checkbox"/> | <input type="checkbox"/> | Peter J. Epstein | <input type="checkbox"/> | <input type="checkbox"/> | Michael Schneider |
| <input type="checkbox"/> | <input type="checkbox"/> | Martin Fantozzi | <input type="checkbox"/> | <input type="checkbox"/> | Charu Verma |
| <input type="checkbox"/> | <input type="checkbox"/> | Holly Gunner | <input type="checkbox"/> | <input type="checkbox"/> | Daryl Wiesen |
| <input type="checkbox"/> | <input type="checkbox"/> | Adam Kessel | <input type="checkbox"/> | <input type="checkbox"/> | Harmony Wu |
| <input type="checkbox"/> | <input type="checkbox"/> | Kim M. McLaurin | | | |

The Nominating Committee offers the following slate for election to a three-year term on the ACLU of Massachusetts Board of Directors.

CANDIDATES' STATEMENTS

Gabriel Camacho (nominated for a 2nd term). I would be honored to serve a second term on the Board of the ACLUM. As a professional dedicated to defending the rights of immigrants in Massachusetts, I have fought daily to prevent the "heavy hand" of the law to once again abuse yet another vulnerable population. I also have a history of labor organizing both as a rank and file union activist and as a union organizer and business agent of two decades. Currently, I am the New England Immigration Program Director for the American Friends Service Committee. As an ACLUM board member it has been a learning experience. Often times I'm amazed at cutting edge work that is being done at the ACLUM. I'm looking forward to explore collaborations in the areas of immigration, racial justice, "big data", and surveillance.

Jack Cushman (nominated for a 1st term) is an appellate litigator at the firm of Stern, Shapiro, Weissberg & Garin. His work on constitutional cases includes *Finch v. Commonwealth Health Insurance Connector Authority*, which struck down a discriminatory law blocking 38,000 immigrants from health care coverage, and *Commonwealth v. Walczak*, which required prosecutors for the first time in Massachusetts to instruct grand juries about the elements of certain crimes. Mr. Cushman is a Fellow at the Harvard Law Library Innovation Lab, where he works as a legal advisor and computer programmer on the citation preservation website *Perma.cc*. He serves as Social Media Chair for the American Constitution Society Boston Chapter. He clerked at the Supreme Judicial Court for Justice Margot Botsford, and graduated from Northeastern University School of Law in 2008. Mr. Cushman's civil liberties priorities include the reform of government surveillance agencies; redesign of computer software and hardware to protect individual privacy; reduction of incarceration rates to pre-Drug-War levels; and adoption of a modernized, non-partisan electoral system.

Peter J. Epstein (nominated for a 2nd term) is an attorney with Epstein & August, LLP in downtown Boston. He specializes in telecommunications law for municipalities. He also represents non-profit organizations that program local cable television channels, something that frequently involves First Amendment and other legal matters. He is a graduate of George Washington University and Suffolk University Law School. Peter was an elected member of the Board of Trustees of the Brookline Public Library for many years, including serving as its Chairman and Treasurer. He was on the Board of Directors of GLAD (Gay & Lesbian Advocates & Defenders), including serving as its Clerk and on the planned giving campaign. He is on the Honorary Board of the Point Foundation, a national non-profit organization that raises money and awards scholarships for LGBT students to attend college and graduate school; he chairs its Mentoring Committee. Peter

is also on the Board of Visitors of the Fenway Community Health Center.

Martin Fantozzi (nominated for a 1st term following rotation off the Board). A current member of the ACLUM Trustees of the Foundation, I served as the immediate past President of the Board. I am an attorney in private practice in Boston concentrating in litigation. As part of my practice, I have counseled individuals, businesses and non-profit organizations in a range of litigation matters. I have acted as an ACLU cooperating attorney on free speech, establishment and other matters. I seek to continue to advocate for civil liberties in the criminal justice system and other traditional contexts, and to help preserve our rights in a new century in which the boundaries of liberty will be increasingly redefined by technology.

Holly Gunner (nominated for a 2nd term). An ACLUM member since 1974, I came to the board in 1998 because of my LGBT Rights activism and grassroots work to shine light on the stealthy 1990's Massachusetts organizing activities of the Religious Right. During our fight for marriage equality here, I represented ACLUM on MassEquality's board and was deeply involved in field work and lobbying. An ACLUM Board member for all but one year from 1998-2014, my professional background as a management consultant and Harvard MBA were soon tapped to help our affiliate address managerial issues, including strategy, governance, financial and investment management, marketing and membership development, fundraising and organization structure. I have served for the past two years as the Treasurer. Returning to the board, I would bring prior experience from several board committees: Executive (13 years), Nominating (Chair), Development and Major Gifts, Investment (Chair), Audit, Speakers Bureau, Membership, Governance, Trustees, Strategic Initiative. I hold a B.A. in English from Barnard College.

Adam Kessel (nominated for a 1st term). Professionally, I am an IP litigator. My practice centers around software and Internet disputes, mainly but not exclusively patent cases. Personally, I was born in Boston, been back here for about fifteen years, and have lived in Roslindale for the past ten. I'm married to an ordained Unitarian minister and we have two girls ages 6 and 8. I studied chemistry at Princeton and worked for a nonprofit environmental organization and a labor union local before attending Northeastern Law School. I was actively involved in civil liberties issues during law school, including a co-op at the Electronic Privacy Information Center, and have worked nearly continuously on pro bono cases during my ten years of practice, including handling several cases for the ACLU and the Electronic Frontier Foundation. My top priorities include Internet free speech and online privacy. I also spent six months as a Suffolk County prosecutor and am interested in reform of the criminal justice system.

Kim M. McLaurin (nominated for a 1st term) is Associate Clinical Professor of Law at Suffolk University Law School. Professor McLaurin teaches the Juvenile Defender Clinic in which she supervises law students as they represent juveniles charged with acts of delinquency, and Marshall Brennan Constitutional Literacy, where she and a colleague teach constitutional law in local schools as applied to high schools and adolescents. In July, 2013, she became an Assistant Dean for Community and External Affairs, where she develops pipeline programming, co-chairs the faculty Diversity Committee, engages with alumni, and assists with development and fundraising efforts. Prior to joining faculty at Suffolk Law School, Professor McLaurin worked in New York City with the Legal Aid Society in the Juvenile Rights Division, culminating with the position of Attorney in Charge of the Queens Office. Professor McLaurin supervised an interdisciplinary forty-person office that represented children involved in juvenile delinquency and child protective matters. Professor McLaurin received her undergraduate degree from Hampton University and is a graduate of Brooklyn Law School. She is admitted to the United States Supreme Court, to the bar of New York State, and to the bar of Commonwealth of Massachusetts.

Kevin Prussia (nominated for a 2nd term) is a Counsel in the IP litigation group at WilmerHale. He is a member of the Executive and Legal Committees of the ACLUM and is the Chair of the Amicus Organizing Committee. Although Kevin specializes in patent litigation, pro bono representation is an important part of his practice. In 2013, Kevin and other members of his firm represented the Massachusetts Association of Criminal Defense Lawyers (MACDL) as amicus in the groundbreaking case *Commonwealth v. Augustine*, in which the Massachusetts Supreme Judicial Court (SJC) held that the Massachusetts Constitution required police to secure a warrant before obtaining location information transmitted by a citizen's cellular phone. Kevin also represented ACLUM in an amicus submission to the SJC challenging a precedent that permitted police officers to conduct warrantless and suspicionless pat-frisks of persons in so-called "high crime" areas. The May 2010 decision of the SJC abrogated that erroneous precedent and adopted several of ACLUM's positions. Kevin was subjected to a similarly unlawful pat-frisk while an undergraduate at New York University. He is working with

ACLUM to investigate the stop-and-frisk practices of the Boston Police Department.

John Regier (nominated for a 1st term) is a long-time partner at Mintz Levin, where he has spent his entire legal career. He specializes in public finance and bond counsel work. He wrote Mintz Levin's pro bono policy and served as the first chair of its pro bono committee in the 1980's. A native of Oklahoma, he is a graduate of the University of Kansas (1971) and Yale Law School (1976). He is a former chair of the Boston Lawyers' Committee for Civil Rights, a former chair of the WGBH Community Advisory Board, and a former vice-chair of the Massachusetts Bible Society. He is currently serving on the boards of the Massachusetts Taxpayers Foundation, the United Methodist Foundation of New England, and Christians for Fair Witness on the Middle East. He is an active member of Harvard-Epworth United Methodist Church in Cambridge. John is a resident of Belmont. His civil liberties priorities include a particular interest in GLBT rights, transgender rights, prisoners' rights, voting rights, reproductive freedom, and freedom of expression/religious liberty.

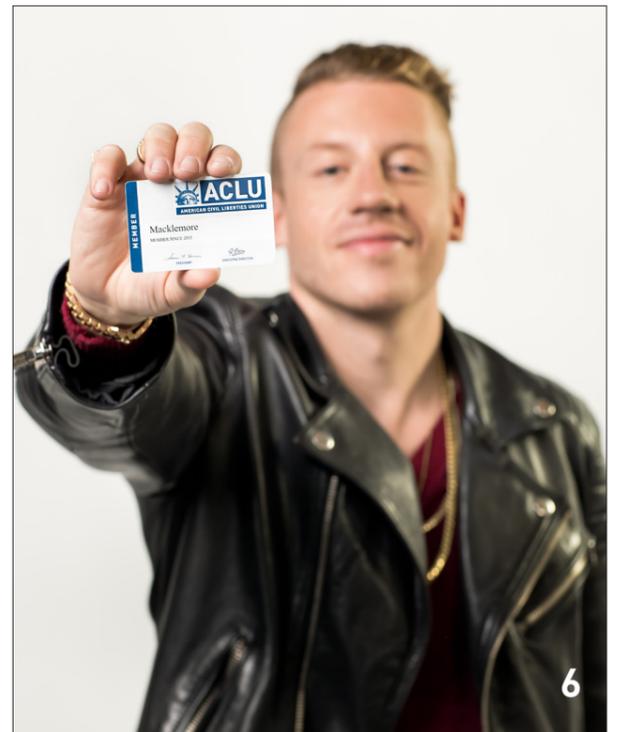
Michael Schneider (nominated for a 2nd term). I am a partner in the law firm of Good Schneider Cormier, and have been a criminal defense lawyer for my entire career. I also teach a seminar on "Wrongful Convictions and the US Criminal Justice System" at BU Law School. I have been on the board of the ACLU of Massachusetts since June 2011, and was elected by the MA board to serve as the affiliate representative to the ACLU National Board since June 2012. Like most ACLU members, while not always agreeing with every position the organization has taken, I am always impressed by the ACLU's commitment to individual rights and civil liberties, even when the causes championed are difficult and unpopular. At a time when constitutional fundamentalists are pressing a constricted view of the Constitution, the ACLU must continue to take stances and litigate cases that educate the public about the evolution of the Constitution and its meaning in the 21st century. I look forward to working with the board and the staff to develop the affiliate's strategic plan for the coming years.

Charu Verma (nominated for a 1st term) works for the Committee for Public Counsel Services representing indigent criminal defendants in Middlesex County. In 1999, she participated in the WTO protests in Seattle and witnessed significant police brutality. This motivated her to attend law school to defend the rights of those underrepresented in the system. She holds a BA and MA from the University of Washington. In 2011, Ms. Verma earned a J.D. from Suffolk Law School. Since graduating, she has spoken at the ABA and Rhode Island Bar Association annual meetings on the burden of debt facing new attorneys. Presently, she serves on the newly formed ACLUM Engagement and Outreach Committee. Ms. Verma is a first generation American, and has lived throughout the United States, Asia and Europe. Civil liberties priorities are rooted in my deep respect for the 1st and 4th Amendments and include surveillance and privacy protections, campaign finance reform and the right to free speech and protest. I am acutely aware of need to address the intersections between race and criminal justice, drug law reform, police practices and search and seizure.

Daryl Wiesen (nominated for a 1st term). A current member of the Amicus Club, I am a litigation partner at Goodwin Procter LLP in Boston. While my paying work focuses on patent litigation, mainly in the pharmaceutical space, I have maintained a busy pro bono practice throughout my career and have a general interest in civil rights and First Amendment issues. I started doing prisoners' rights work in law school, and recently represented a group of prisoners who were mistreated during a shakedown at MCI Shirley. Before that, I spent the first ten years of my career representing a wrongly convicted death row inmate in Ohio, participating as a member of a team that successfully obtained a habeas petition from the Sixth Circuit (and celebrating with our client on the day he walked out of prison a free man). I have also worked on Establishment Clause issues since law school, when I was a summer intern at Americans United for Separation of Church and State.

Harmony Wu (nominated for a 1st term) Harmony Wu is a latecomer to political action and grassroots organizing, motivated to action in 2008 by the Bush II administration and her conviction that citizen activism is imperative to changing our politics. She is a 2011 graduate of the Emerge Massachusetts program, which provides training to prospective women candidates for office. Harmony is a founding member of Progressive Massachusetts (progressivemass.com), and currently serves on its board. In 2013, she was named "Activist of the Year" by the Young Democrats of Massachusetts. A fervent admirer of the ACLU since childhood, Harmony has served on the Bill of Rights Dinner Committee since 2012. Despite a 90's flirtation with Southern California, where she earned her doctorate in media studies, Harmony has lived most of her life in Massachusetts, now residing in Needham with her husband, Jason, and twins, Hazel and Oscar.

Faces of the ACLU



1/ The Boston Branch of the NAACP gave ACLU of Massachusetts staff attorney Sarah Wunsch the Kivie Kaplan Humanitarian Award at its Freedom Fund Dinner in September. The award honors those who, like its namesake, have worked for social justice, civil rights, and to address incidents of discrimination. Photo by Marilyn Humphries.

2/ In collaboration with the ACLU and other groups, Grammy Award-winning jazz bassist, composer, and singer Esperanza Spalding in November released “We Are America,” a music video (online at vimeo.com/79294714) protesting prolonged indefinite detention at Guantánamo.

3/ *Slate* senior editor Emily Bazelon spoke on “Why I’m Worried About NSA Surveillance—and Why You Should Be, Too” as part of the ACLU of Massachusetts Amicus Speakers Series. See aclum.org/amicus for details.

4/ Carl Williams (third from left), staff attorney with the ACLU of Massachusetts—shown here with panelists Sunni Ali, Criminal Justice Committee organizer at the Boston Workers Alliance, and Supreme Richardson of the Boston Branch of the NAACP, along with student organizers and faculty—discussed the impact of the war on drugs and felon disenfranchisement at Tufts University in December. Photo courtesy Zobella Vinik.

5/ ACLU of Massachusetts Technology for Liberty project director Kade Crockford testified at the State House in March in support of bills to safeguard privacy from license-plate scanners, cell phone location tracking and drones. See aclum.org/1984 for details.

6/ Rap star Macklemore, who won 2014 Grammy Awards for Best Rap Song, Best Rap Performance and Best Rap Album, told fans in a November video, “If you like being free like me, get the ACLU card today.” Photo courtesy ACLU of Washington.

7/ Rabbi Joseph Berman of Jewish Voice for Peace spoke at this March rally decrying Northeastern University’s suspension of Students for Justice in Palestine. The ACLU of Massachusetts joined in opposing censorship on campus at the rally. Photo by Bryan MacCormack.