



LAWYERS OF THE YEAR

MASSACHUSETTS
LAWYERS WEEKLY



PHOTO BY MERRILL SHEA

MATTHEW SEGAL

ACLU OF MASSACHUSETTS

Don't hold it against Matthew Segal if he succumbs to the temptation of taking a few victory laps over last year's accomplishments by his legal team at the ACLU of Massachusetts.

Whether as lead counsel or lending support with amicus briefs, Segal and his colleagues have had a hand in protecting the rights of seemingly everyone in the state, from Facebook users, to panhandlers on the streets of Lowell and Worcester, to defendants impacted by a crime lab disaster of historic proportions.

So it's no exaggeration when the organization's legal director proclaims, "2015 has been a truly outstanding year for civil rights and civil liberties in Massachusetts."

Perhaps the crowning achievement of the year was the ACLU's success in convincing the Supreme Judicial Court in *Commonwealth v. Bridgeman* to ensure meaningful remedies to thousands of defendants whose convictions were tainted by the Annie Dookhan crime lab scandal. Segal, who argued *Bridgeman* on behalf of the petitioners, is quick to share the credit with the ACLU's litigation partners in the case — the Committee for Public Counsel Services and the Boston law firm Foley Hoag.

Meanwhile, amicus efforts under the auspices of the ACLU's Technology for Liberty Project paid off in a pair of SJC decisions in September. In *Commonwealth v. Estabrook*, the court made clear that police must get a warrant to obtain anything more than six hours of cell site location information from a cellphone provider. And in *Commonwealth v. Walters*, the court found that a defendant's Facebook posting could not be the basis for a stalking conviction.

The year concluded with a pair of victories on the free speech front in cases filed to protect the First Amendment rights of an often voiceless segment of society. In separate cases, the ACLU convinced federal judges to strike down anti-panhandling ordinances in Lowell and Worcester.

Heading into 2016, Segal expects to continue advocating for legislation ending mandatory minimum sentences for drug offenses.

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Q. Are you satisfied with the result in the Dookhan-related case, *Bridgeman*?

A. It's a great result because it caps the sentence and charge exposure of defendants, meaning that people can now challenge their tainted convictions without fear that doing so will yield even harsher punishment. That's true for defendants who now choose to go to trial, even though they previously pled guilty. So it's a powerful remedy.

Also, it started a process for prosecutors, defense attorneys and the courts to identify and develop a plan for notifying the thousands or tens of thousands of people who may have been wrongfully convicted. That process did not exist before we filed this lawsuit.

Q. What was the ACLU's involvement in *Walters*, the Facebook case?

A. We filed an amicus brief with Ropes & Gray. That case was about the First Amendment protections for online speech. For us, being involved in this kind of case is integral for what we call our "Technology for Liberty Project." We try to make sure that, as technology develops, it enhances liberty instead of takes away from liberty.

The first big case for us as part of this project was *Commonwealth v. Augustine* from 2014, in which the SJC became just the second state supreme court in the country to hold that cellphone location information is protected by the state constitution, even though it's held by cellphone providers rather than cellphone users. What we've done since *Augustine* in *Estabrook*

and other cases is to make sure we continue to help the law to develop in a way that protects people who use the latest technology instead of exposing them to risk for using the latest technology.

Q. *Estabrook* clarified *Augustine*, correct?

A. That's exactly right. In *Augustine*, the court held that the amount of cell site location information that was obtained in that case, which was two weeks, required a warrant. But it left open the possibility that some smaller amount of information might not require a warrant. In *Estabrook*, the court said that anything more than six hours' worth of location information is going to require a warrant.

Q. What's at the heart of the ACLU's argument against mandatory minimum sentences?

A. It drives mass incarceration. They are not often directed at the worst criminals, and they take discretion away from judges to fashion sentences that are actually appropriate to the people sitting before them in judgment. What they are really used for is not to target the worst of the worst, but to give prosecutors leverage to extract guilty pleas from people who face pressure to plead guilty to a lesser offense rather than to go to trial and risk being absolutely hammered with a severe mandatory minimum. They are not tools of justice; they are bargaining chips.

Q. Why should people be concerned about local laws that restrict panhandling?

A. We see these cases as hugely important because they're about whether there are going to be two First Amendments: one for the rich and one for the poor. People sometimes have strong views on campaign finance, but the law is clear that people who express themselves by spending millions of dollars are protected by the First Amendment. Our question in these cases has been: "How can the First Amendment possibly fail to protect people who ask for one dollar?"

— PAT MURPHY