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ACLU sues Condoleezza Rice, Michael Chertoff *Democracy scholar ideologically barred from U.S.*

Adam Habib, a renowned scholar from South Africa, used to travel frequently to the United States to give invited lectures. But in October 2006, the U.S. government revoked Habib's visa. They gave no explanation, but we believe it is because Habib is a vocal critic of the Iraq war and certain U.S. terrorism-related policies.

On Sept. 25, the national ACLU and the ACLU of Massachusetts filed a lawsuit seeking the immediate processing of Professor Habib's new and pending visa application and a declaration that his exclusion violates the First Amendment

rights of U.S. organizations, citizens, and residents, who have a right to hear him speak in the U.S. for face-to-face discussions.

"Immigration officials should not be blocking our borders to people with political views they don't like," says Sarah Wunsch, Staff Attorney with the ACLU of Massachusetts. "Silencing critics and forbidding Americans the right to hear dissenting voices harms academic and political freedom in the United States."

See "ACLU sues Rice, Chertoff" on page 7



ACLU client Adam Habib

ACLUM challenges role of police in immigration enforcement

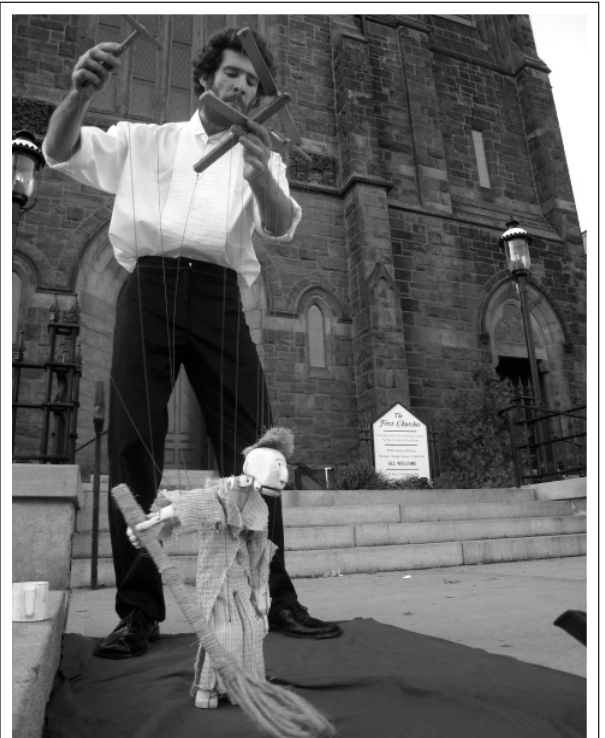
The ACLU of Massachusetts, along with other immigrant rights groups, has begun advocating with authorities at the Executive Office of Public Safety (EOPS) to address ongoing reports that immigrant motorists who are stopped for minor traffic violations are being transferred to federal immigration custody to face deportation.

"The question of whether local police have the authority to enforce federal immigration laws has been a hotly contested issue in the context of immigration debates," says Anjali Waikar, Equal Justice Works Fellow for the ACLU of Massachusetts. Waikar has been working with community groups and advocates throughout the state to document the extent to which people are being questioned about their immigration status during traffic stops. They argue that local police should not ordinarily be in the practice of demanding proof of immigration status.

Reports of problems began surfacing shortly after Gov. Deval Patrick rescinded an order that would have authorized Massachusetts State Troopers to enforce federal immigration laws. The agreement, entered into by former Gov. Mitt Romney shortly before leaving office, was made pursuant to § 287(g) of the Immigration and Nationality Act. The federal law says that the United States Attorney General may enter into agreements with states or local entities to authorize local officers to enforce federal immigration laws. Gov. Patrick rescinded the agreement within one week of taking office.

Even after Patrick rescinded the agreement, however, ACLUM continued to receive reports from service providers in the western part of the state that people were still being stopped and arrested for minor traffic violations, such as ex-

See "Immigration Enforcement" on page 6



Page 8: ACLU involvement expands rights for Northampton performers.
Photo by Emma Olivia Chandler

John Lennon was a target of ideological exclusion too. Listen to an expert discussion online

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Thousands join "Day of Action" rally with ACLU in D.C.

On June 26, 2007, thousands of activists from all 50 states joined advocates and lawmakers in Washington, D.C., for a "Day of Action to Restore Law and Justice." The ACLU joined with Amnesty International, the Leadership Conference on Civil Rights, and the National Religious Campaign Against Torture to organize this historic gathering.

Thousands rallied at the foot of the Capitol, demanding that Congress restore habeas corpus, fix the Military Commissions Act, end torture and rendition, and restore our constitutional rights. The crowd heard rousing speeches from leaders from the Senate and the House, including Sens. Ben Cardin, Christopher Dodd, Tom Harkin, and Patrick Leahy, along with Reps. Dennis Kucinich and Jerrold Nadler.

Other speakers expressed the breadth of support for restoring the Constitution, including Rev. Lennox Yearwood of the Hip Hop Caucus; Larry Cox, Executive Director of Amnesty International USA; David Keene, Chairman of the American Conservative Union; Rev. Rich Killmer, Execu-

tive Director of the National Religious Campaign Against Torture; Dr. Ingrid Matson of the Islamic Society of North America; Rabbi Gerrald Serotta of Temple Shalom; and Bishop Walter Sullivan of the Catholic Diocese of Richmond.

Delegations from every state met with Members of Congress to deliver our message loud, clear, and in person. In addition to the rally, attendees at the Day of Action delivered over 250,000 petition signatures to Washington lawmakers, urging them to:

1. Restore habeas corpus and due process.
2. Pass the Restoring the Constitution Act of 2007.
3. End torture and abuse in secret prisons.
4. Stop extraordinary rendition (the process of secretly kidnapping people and sending them to countries that torture).
5. Close the detention center at Guantánamo Bay and give those held access to justice.
6. Investigate wrongdoing and ensure those who broke the law are held accountable.
7. Return to the rule of law.

The ACLU of Massachusetts was well represented, with more than 100 people traveling overnight on buses from Boston, Providence, and Hartford. The entire contingent met with key staff members of Sens. Kerry and Kennedy, as well as meeting with four of our U.S. Representatives in person, and with staff of four more.

Within two days of our visits, Rep. Bill Delahunt signed on as a cosponsor of H.R. 1415—the "Restoring the Constitution Act" to restore habeas corpus rights and fix the Military Commissions Act. Sen. Kerry also came out strongly against the Real ID national identity card.

For more on the Day of Action, see page 4



Katherine Herold and other Day of Action participants in D.C. walk from a rally to meetings with Congressional representatives.

Save the Date | 2008 Bill of Rights Dinner | May 28, 2008

Featuring former White House Counsel John Dean and humorist Kate Clinton

For sponsorship and ticket information, please contact Nancy Haverstock at nhaverstock@aclum.org

Beacon Hill Update

Marriage equality wins at ConCon

Equal marriage rights topped our legislative agenda this year, and no one is happier than the ACLU of Massachusetts about the outcome at the June 14 Constitutional Convention.

The proposed constitutional amendment to define marriage as only “one-man-and-one-woman” unions was overwhelmingly rejected by legislators: 151 Nays and 45 Yeas. That was a truly great day for our Commonwealth and for our Constitution! As a founding member of the victorious **MassEquality** coalition, we wholeheartedly agreed that it’s wrong to put anyone’s rights to a popular vote.

Now, after the ConCon and the summer recess, Sep-

tember began a packed season of public hearings on bills, and more intensive work on bills in committees. The deadline for committees’ reporting on legislation has been extended to March, so we are working to have some proposals “reported out” of committees significantly before that deadline so that they can be moved on to the House or Senate floor for earlier action, before the clogging that always develops nearer the end of the session.

Access to **DNA and other forensic evidence** that could exonerate already convicted prisoners is not guaranteed under Massachusetts law. It should be. We have worked for several sessions to bring forward legislation that would create a fair, sensible procedure for assuring that prisoners have access to crucial DNA and other potentially exculpatory material. This year both the Senate and House Chairs (Sen. Robert S. Crendon, Jr., of Brockton and Rep. Gene O’Flaherty of Chelsea) of the Joint Committee on the Judiciary, which will consider the matter, have sponsored that legislation.

On another criminal justice front, we are preparing for committee hearings on the resubmission of ex-Governor Romney’s bill to **reinstate the death penalty** in Massachusetts. While we are highly optimistic on that matter—very significant majorities in both the House and the Senate and also our new Governor oppose capital punishment and recognize the horrors of any “system” to implement it—we are working with the coalition of organizations, especially Massachusetts Citizens Against the Death Penalty, to bring forward strong presentations at the hearing.

In the arena of **individual privacy rights**, we are working to increase protections for personal health information collected by state agencies. Private medical data is among the most sensitive personal information, and electronic medical recordkeeping makes it especially vulnerable. Consequently, ACLUM is supporting legislation to direct state agencies to collect only non-identifiable medical data, as a rule (with limited exceptions for legitimate public health purposes), limit access to personal information to those who have a particular need for it, and keep personal health data physically and technologically secure.

Disclosure of private medical information can have dramatic, harmful consequences—including devastating effects on relationships, home life, and work. Massachusetts agencies have an

obligation to do their utmost to protect people’s most sensitive data from accidental or deliberate disclosure, as well as from invasion by computer hackers. Sound legislation will help the Commonwealth fulfill that duty.

Comprehensive health education required in Massachusetts public schools is the goal of one bill we hope will see some movement. The health education envisioned would follow state curriculum frameworks and provide great preventive health and safety information that is medically accurate and encourages healthy choices. It would be a great victory, following on the heels of the Governor’s veto of dangerous

financed benefit plans from their employers. Often, upon retirement, they buy annuities—although other investments might be wiser—because of the security of a guaranteed monthly payment.

In this new legislative session, we are also supporting a bill with a new approach to **preventing abuse of disabled children** with electric shocks for behavior modification. In a longtime, sordid practice, the Judge Rotenberg Center has used a belt device strapped onto children, most of them autistic, to shock them for even minor misdeeds, over a long period of time, and primarily administered by untrained employees.

For almost two decades, ACLUM has joined with the disability community to oppose this so-called **aversive therapy**. Each time we submit legislation, however, there has also been counter testimony by parents who proclaim that their children have been saved by this program, when all else failed. This year, rather than supporting an out-



Tension turned to joy for Norma Shapiro, ACLUM’s Legislative Director, Holly Gunner, Board Member (both in center foreground), and others at the State House for the historic 151-45 vote to preserve marriage equality at the Constitutional Convention on June 14, 2007. Photos by Marilyn Humphries

abstinence-only program funds in the budget.

As another long-term effort on behalf of students, we have been working to help amend legislation intended to **prevent bullying and harassment** in schools, by making the bill reflect the best practices for creating an atmosphere where bullying is dealt with by teachers and administrators in ways that educate children to modify their behavior, and where the free speech rights of students are also respected. This remains a work in progress, especially now that legislators have begun to talk about whether and how to deal with the latest and publicized variant—“cyber-bullying.” An anti-bullying bill is expected to move this year.

Also expected to move this year, at last, is the **gender neutral annuities** bill, which would allow women to pay the same for annuities as men, and get the same benefits. This bill becomes more important by the day, as more and more women have 401(k) plans for retirement and fewer de-

right ban on such methods, we support a new bill that would carefully define a category of patients whose dangerous self-destructive behavior can or does cause real physical harm. When a patient acts in such a dangerous way, the bill would allow that he or she could be administered aversive treatment that is limited in scope and time, and could be applied only by staff with appropriate and required training.

The ACLU of Massachusetts follows many other pieces of legislation, but we have chosen to focus on these items that are most likely to move ahead this session. We work to keep our members and activists informed about important and timely legislative issues, so please keep posted by joining our action alert list.

Join our action alert list

► www.aclum.org/docket

You may have seen the mailings or even read the ACLU’s “Legacy of Liberty” brochure. The news that a major donor in New York had offered to make a cash donation of up to 10 percent of any bequest to the ACLU Foundation included in or added to a will during 2005 and 2006 caused quite a stir.

As a result, 59 generous ACLU donors here in Massachusetts notified us to say they were leaving more than \$4.9 million to the ACLU Foundation through planned gifts. This meant the ACLU received over \$235,000 in matching donations—funds that were put to immediate use—from the Robert W. Wilson Charitable Trust.

We would like to extend our heartfelt thanks to every member, here in Massachusetts, who joined in that effort. Their foresight in planning for a future gift has helped to ensure that the ACLU will always be able to defend the Constitution and the Bill of Rights. What’s more, in providing for future support of the ACLU, each of those individuals enabled us to receive a matching gift that we put to work right away.

The news gets better: We are thrilled to report that the Legacy Challenge has been renewed for another two years, with a retroactive start date of June 1, 2007. Now, when a donor notifies us for the first time that they’ve established a planned gift, the Robert W. Wilson Charitable Trust will once again make a cash donation of up to 10 percent of the future gift’s value, with a maximum match of \$10,000. How does it work?

1. Complete your bequest provision for the ACLU Foundation in your will or trust.
2. Tell us about it. (Matching forms are available from our office and online.)
3. A cash donation of up to \$10,000 will be made by the Robert W. Wilson Charitable Trust.

For answers to any questions you may have, please call or email our Gift Planning Officers. They can provide you with all the information you need for choosing the gift that is right for you. Or, if you prefer, visit www.legacy.aclu.org for estate planning checklists, gift calculators, how-to’s, articles, and more information about the Legacy Challenge itself.

To reach the ACLU Planned Giving staff, please e-mail legacy@aclu.org or dial toll-free: 877-867-1025.

THE LEGACY CHALLENGE
DEFEND FREEDOM TODAY
WITH YOUR GIFT FOR THE FUTURE

From the Executive Director

Freedom over fear

by Carol Rose, Executive Director

Massachusetts has a proud history of people standing up for freedom over fear. It was Massachusetts leaders who threw tea into the Boston Harbor to protest tyrannical rule by the British crown.

Massachusetts was home to the abolitionist movement to end slavery. It was John F. Kennedy who urged Americans to "pay any price, bear any burden... in order to ensure the survival and success of liberty." And just this year, it was the Massachusetts legislature—

urged on by ACLU of Massachusetts members and coalition partners—who stood firm in defense of equal marriage rights for gay and lesbian couples.

As we enter the final year of the Bush administration, we in Massachusetts have the opportunity yet again to stand up for freedom. This time, our country's system of checks and balances is at stake.

For seven years, the Bush administration has repeatedly violated the Constitution and taken away basic American rights. They have used illegal government eavesdropping, secret government detention, and denial of free speech. Even worse, Congress has let it happen.

We simply can't wait until 2009 to roll back these abuses of power.

When thousands of Massachusetts residents turned out for a series of ACLU "emergency town meetings" with members of the Massachusetts Congressional delegation last year, our Congressional leaders promised that if the Democrats could win control of Congress in the 2006 election, they would be in key leadership positions to defend and protect our civil liberties.

They have had ample time to keep that promise. Instead, on August 3 of this year, the 110th Congress—the one controlled by Democrats—passed the "Protect America Act," expanding government surveillance powers without a court order, and at the time we went to press, they appeared ready to make further compromises on warrantless spying.

In addition, Congress has failed to roll back the "Real ID Act," a law forcing states to fund a



budget-busting national identity card. Unless we stop it now, Real ID will force all of us to carry an internal passport that will hold our Social Security numbers and other valuable personal information, and will link to a national database that tracks our movement and activities.

Congress also has yet to repeal the Military Commissions Act of 2006, which stripped the right to habeas corpus from detainees, gave immunity to civilians who authorize torture, and set up military commissions that can order executions based on secret evidence obtained under torture. Nor has this Congress fixed the PATRIOT Act, despite extensive evidence of government abuse of secret "national security letters" to conduct searches of our homes, libraries, and communications without court order or oversight.

What can we do to help restore habeas corpus, stop the use of torture as a tool of US government policy, protect our privacy, stop government secrecy, and roll back Real ID?

First, find out how your elected representatives are voting on key civil liberties issues by going to the ACLU of Massachusetts' "Congressional Scorecard" on abuse of powers issues (see www.aclum.org/docket). Go ahead—thank them if they are showing true leadership by sponsoring key civil liberties legislation! Let them know that you are paying attention and appreciate their efforts to stop the abuse of power. And then urge them to pressure their colleagues, notably House Speaker Nancy Pelosi and Senate leader Harry Reid, to do the same.

Second, tell your elected representative that it's time to roll back Real ID. Senator Kennedy, in particular, has yet to voice his opposition to a law that will require states to create and fund an internal passport system similar to the ones used by former regimes in East Germany and South Africa. And

while you are at it, urge Governor Deval Patrick to take a national leadership position on civil liberties by publicly announcing that Massachusetts will join the 17 other states that have made clear their refusal to cooperate in the federal Real ID scheme (find out more at www.aclum.org/docket).

Finally, stay engaged! Sign up for e-alerts from the ACLU of Massachusetts so that you can take action when key legislation is coming to a vote. And please join us for the first-ever ACLU of Massachusetts **membership conference** on Saturday, January 26, 2008, to stay up to date on civil liberties and join with others at the forefront of efforts to bring back the rule of law (for details, see www.aclum.org/docket).

We have an extraordinary civil liberties agenda before us. But we in Massachusetts have never taken liberty for granted. And we won't wait until '08 to restore the basic freedoms guaranteed by our Constitution and Bill of Rights.

Bill of Rights Dinner 2007

The Bill of Rights dinner held at the Boston Park Plaza Hotel on May 31, 2007, was a huge success. Attended by more than 700 guests, it was the ACLU Foundation of Massachusetts' largest Bill of Rights dinner ever.

The evening honored Lt. Commander Charles Swift and Georgetown Law Professor Neal Katyal, lead counsel in the groundbreaking U.S. Supreme Court case *Hamdan v. Rumsfeld*. Keith Olbermann, of the MSNBC show "Countdown with Keith Olbermann," spoke, and humorist Roy Blount, Jr., contributed his wit to the festivities.

The **2008 Bill of Rights Dinner** will take place May 28, 2008, and will feature former White House Counsel John Dean and humorist Kate Clinton

For sponsorship and ticket information, please contact Nancy Haverstock at nhaverstock@aclum.org



Frank and Ellen Fisher offered a \$50,000 Challenge Match at the 2007 Bill of Rights Dinner, which was quickly met by the end of the evening. Photo by Marilyn Humphries.

ACLU of Massachusetts works to stop 'Real ID' internal passport

Radio ads, website, bumper sticker spread the word

Already, 17 states have passed legislation to reject or block Real ID, the electronic internal passport. The ACLU of Massachusetts has done four main things to help make Massachusetts the next to take action:

1. Thanks to support from our national office, the ACLU of Massachusetts ran a two-week campaign of radio ads on KISS FM, the largest radio station in the greater Boston area. The ads ran between Aug. 26 and Sept. 9, 2007. We designed the ad campaign to reach more than 500,000 adults an average of four times, making it the largest effort to date to educate the public about Real ID in Massachusetts.
2. We've created a website, dumprealid.org, with an overview of Real ID and Massachusetts-specific ways of getting involved.
3. We've emailed our members and supporters, asking them to contact lawmakers and the Governor about taking a stand to stop Real ID. Are you already on our email list? If not, make sure you don't miss a chance to get involved. Go to dumprealid.org to sign up.
4. We've created a "Don't Track Me — Stop Real ID" bumper sticker, which you can request free online.

Real ID means bureaucratic hassles, long lines, and repeat trips to the RMV. You'll need to provide more documentation to prove who you are, such as birth certificates, bank statements, pay stubs, utility bills, immigration documents, and others, every time you get or renew your driver's license.

Real ID raises the risk of identity theft by creating huge databases of personal information, including Social Security numbers. A serious security breach could compromise nearly everyone in the country.

Real ID could cost as much as \$23 billion nationwide, which Congress hasn't provided. Security experts also believe it won't stop terrorism.



**DON'T TRACK ME
STOP "REAL ID"**
www.aclum.org

Get your free bumper sticker
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ACLU demands due process in immigration raids

The ACLU of Massachusetts continues its fight against the unjust and inhumane way in which Immigration and Customs Enforcement (ICE) conducts large-scale immigration raids in Massachusetts.

In March, the ACLU, along with other lawyers and community groups, filed a class action lawsuit, named *Aguilar v. ICE*, on behalf of the more than 350 immigrant workers arrested in New Bedford at a raid on the Michael Bianco, Inc., factory. The lawsuit alleges the raid was carried out in an unlawful way and violated workers' constitutional and legal rights to due process.

The workers were rounded up at the Bianco factory early in the morning on March 6. They were handcuffed and chained in groups of three, and transported to a converted military base at Fort Devens, over 100 miles away. ACLUM joined a group of lawyers who went to Fort Devens the night of the raid to see the detained workers, but who were stalled and allowed to see only a handful before they were flown out of Massachusetts. The majority of the workers were taken to federal detention facilities in Texas, two thousand miles away from their families and with little access to lawyers.

The lawsuit alleged that ICE agents mistreated the workers at every step of the operation. One worker told the court that at Fort Devens:

Around me the armed officers were screaming very loudly. Among other things, I saw one man with a very bloody nose and a cut hand. I saw another individual named Susanna; she was dirty, as if she had been brutally dragged. She was crying. I remember feeling great fear, both for myself and my fellow workers. We were being treated like the worst criminals in the world.

Others said ICE agents would not take off the women's handcuffs to allow them to go to the bathroom. Women reported feeling humiliated as agents pulled down their pants for them.

At the Texas centers, the detained immigrants

reported that they were coerced into signing things they didn't understand. Lawyers who interviewed 75 of them in Texas found that 54 had involuntarily waived their rights. As one person told the court:

I was told to sign documents that were written in English. The officers did not read these documents to me in Spanish. The officer told me that I had to sign this paper, and that it related to my getting a lawyer. I now understand that what I signed was a documenting [sic] requesting an expedited hearing, waiving my right to a 10 day period before appearing before an Immigration Judge. I did not know this at that time, and would not have signed this document had I known what it was.

On May 7, 2007, Judge Stearns of the U.S. District Court for the District of Massachusetts dismissed the case, ruling that there was no "constitutional or statutory violation that is ripe for review" and that the immigrants could only bring their complaints in their administrative immigration hearings.

The ACLU and other lawyers appealed to the First Circuit, explaining that the administrative hearings have a very limited jurisdiction and are not able to address the broad "pattern and practice" of violations by ICE during the raid. In fact, whenever immigration lawyers have tried to bring up these issues in the workers' individual hearings, the immigration judges have told them they cannot address anything outside of whether the person is or is not deportable. The First Circuit has not yet ruled on the case.

Despite public outcry, the raids have not stopped. In August, we criticized a raid that took place in Chelsea, East Boston, and Somerville as part of an operation meant to target members of the Salvadoran gang MS-13. During the raid, immigrants who were not part of any gang and who were here legally were also swept up and arrested.

Immigrant advocates have reacted by stepping

up their "Know Your Rights" trainings, teaching immigrants that law enforcement officials cannot come into their homes without a warrant—even if the residents are in the country illegally—and that everyone has the right not to answer any questions from police or ICE agents.

And the ACLU of Massachusetts is not alone. Around the country, lawyers and advocates are

Get the ACLU's "Know Your Rights" materials

► www.aclum.org/docket

bringing lawsuits and demanding a change. In many states, immigration raids are devastating communities. People go underground. Children stop going to school. Immigrants move away, leaving crops unharvested and virtual ghost towns where business centers once thrived.

In New York, Nassau County officials demanded that the Department of Homeland Security conduct an investigation into a recent raid. The raid was supposed to target gang members, but it swept up many legal immigrants and at least one U.S. citizen. At one point, ICE agents, some of whom wore cowboy hats for the operation, drew guns on Nassau officers. County officials said that ICE raided the wrong addresses, after refusing repeated invitations to check their information against Nassau's up-to-date gang database. Nassau says that ICE caught only six of the 96 people they were looking for.

These raids are an inhumane and inefficient way to enforce immigration laws. Raids employ thousands of federal and local law enforcement officials in costly operations that, in the end, deport only a handful of immigrants. In the process, raids catch legal immigrants and U.S. citizens in their broad net and deny others the due process guaranteed by law. In addition, raids terrorize communities and interfere with the trust that local police have built. For all these reasons, the ACLU of Massachusetts will continue to demand basic respect for human rights.

Day of Action, June 26, 2007: Sweating for the rule of law on the Freedom Trail

On June 26, the action being coordinated by the ACLU of Massachusetts was not all in Washington, D.C. In Boston, on a day in which the temperature nearly reached 100 degrees, some 60 people gave up their lunch hour to walk the streets of the city in orange jump suits, gags, and black hoods, to represent the methods being used against suspects in the "war on terror."

Some carried coffins symbolizing the loss of habeas corpus and the rule of law. Others carried a "Torture Air" rendition airplane, to symbolize the practice of "rendering," or kidnapping terrorism suspects to other countries where they can be held without charge or trial under extreme conditions and tortured. Still others hoisted mirrors fronted by cell bars and signs bearing the words of Martin Niemoller's poem about remaining silent on the loss of others' liberties until "there was no one left to speak for me."



Photo by Pat Westwater-Jong

The procession was led by two men in black robes—former ACLU of Massachusetts Executive Director John Roberts, and Amnesty International Executive Director Josh Rubenstein—who carried an orange jumpsuit stretched on a frame that bore the sign: "We have them in your size too." Everyone paused at various "stations of the Constitution," to remember the freedoms that were fought for at those sites. Pedestrians were able to read the Niemoller poem and see their own faces in the mirrors beyond the bars.

The first "station" was the site where Massachusetts delegates signed the U.S. Constitution in February 1788, now commemorated by a plaque on the side of a giant Bank of America building. A Wackenhut guard barked out that it was private property and people should leave immediately.

As the group moved through the streets, bystanders were more supportive. Many clapped. Some cheered. No one jeered. Some said how happy they were to see people giving public expression to what many felt.

The next "station" was across the street from the Old South Meeting House, where the Sons of Liberty used to meet and the Boston Tea Party was organized. These streets have seen their share of symbolic protests over the years.

The group moved on, to the front of the Old State House where the Declaration of Independence was first read to citizens of the Commonwealth, and then up the street to the seat of federal power. Outside the JFK Federal Building, there were speeches and spirited chants. One group continued on to Senator Kerry's office to ask him to sign on to the Restoring the Constitution Act, while the rest chanted their way back to the ACLU office.

By the end of the Day of Action, Senator Kerry and Representative Lynch were the only Massachusetts Members of Congress who had not become co-sponsors of the Restoring the Constitution Act. This critically important legislation restores habeas corpus and fixes the worst

aspects of the unconstitutional Military Commissions Act.

The entire Massachusetts delegation, with the exception of Sen. Kerry and Rep. Delahunt, who were not present to vote, rejected the disastrous "Protect America Act" which was passed by the 110th Congress on the day before the summer recess. It gives the Congressional stamp of approval to warrantless domestic wiretapping by the National Security Agency.

ACLU monitors police abuse in Lawrence

The ACLU of Massachusetts has begun monitoring accusations of police abuse in Lawrence. Since April, one of the officers accused of abusing residents was suspended and then fired.

Members of our Legal and Field Organizing teams, Anjali Waikar and Brian Corr, attended a community meeting in April to discuss ongoing allegations of police misconduct. Reports of police misconduct had prompted Persio Acevedo, an ACLUM member and local community activist, to organize the event. Acevedo told us that community members had been frightened to come forward to report abuse allegations.

But with ACLU involvement, more than 120 people turned out for a meeting hosted by a local community organization, Casa Dominica, and organized by Acevedo. State Rep. William Lantigua and six of nine members of the Lawrence City Council attended.

A dozen people—mostly Latino, but including one African-American and one Caucasian—made allegations and presented evidence of racial profiling and harassment, including serious physical abuse at the hands of police. They stated police have refused to let them file complaints.

At the end of the meeting, people asked for help in forming a task force to address these issues, which they call the “Lawrence Community Task Force of the ACLU of Massachusetts.”

ACLUM is providing the task force with support and materials, such as “Know Your Rights” information and forms to collect complaints, and translating materials into Spanish as needed. ACLUM also submitted a public records request to the Lawrence Police Department requesting documents on the department’s internal affairs procedures and complaints processes.

ACLU challenge to “behavioral assessment” at Logan appears headed to trial

An ACLU challenge to the “behavioral assessment screening system” (BASS) used at Logan Airport appears likely to go to trial in December, despite government efforts to deflect the court’s consideration of the program’s constitutionality.

In arguments heard in federal court at the end of September, lawyers for the Massachusetts Port Authority and the state police argued that the police officers who had been trained in behavioral assessment techniques were nevertheless not using them when they stopped King Downing as he was leaving Logan in October 2003.

Downing—who ironically is the National Coordinator of the national ACLU’s Campaign Against Racial Profiling—was detained after he exited an airplane that had brought him to Boston for a meeting with Massachusetts law enforcement officials about ways to combat racial profiling.

Downing, who is African American, was on a public telephone in a non-secure area of the airport when a state police trooper approached him and demanded that he show identification. Downing refused and was ordered to leave the airport. As he attempted to leave, however, the trooper called for backup. Five uniformed state police troopers surrounded Downing and again demanded identification and travel documents.

After being detained for some time and threatened with arrest, Downing agreed to turn over the documents, despite law that clearly states that citizens do not need to show identification when asked to do so by police officers.

“This case illustrates the danger of giving law enforcement officers unfettered discretion to detain people,” said ACLUM cooperating attorney Peter Krupp. “It is a clear case of unconstitutional racial profiling. Mr. Downing did nothing suspicious—unless you consider having dark skin and a beard evidence of suspicious behavior.”

Ironically, such screening programs have been justified as an alternative to racial profiling.

Constitution Day focuses on abuse of power

On Sept. 18, the ACLU of Massachusetts held a Constitution Day event at Boston Public Library featuring three speakers from the front lines of the battle against abuses of power.

“Standing Up to the PATRIOT Act, Rolling Back Real ID: How Can We Reclaim Our Civil Liberties?” assessed progress made by the 110th Congress to restore checks and balances since we convened last year’s statewide “Emergency Town Meetings” with members of Congress.

The record is not encouraging. In early August, Congress endorsed domestic spying on Americans without Foreign Intelligence Surveillance Act (FISA) court oversight, by passing the so-called Protect America Act. But there has been some positive activity from the courts.

Ten days before our event, District Court Judge Victor Marrero struck down the reauthorized PATRIOT Act’s National Security Letter provision in the ACLU case *Doe v. Gonzales*. A National Security Letter (NSL) is essentially a way for government agencies such as the FBI to demand access to records and data, but without requiring a search warrant or judicial oversight. Recipients are forbidden to discuss the letters or the information they seek.

This court ruling was particularly meaningful to our first speaker, Connecticut Librarian **Barbara Bailey**, who is one of only four people in the country allowed to talk about what it is like to be served with an NSL. The FBI has issued well over 150,000 NSLs to obtain the records of businesses, gagging recipients in the process.

When an NSL was presented to the “Library Connection” in Connecticut, Barbara Bailey—then president—and three of her colleagues refused to comply, believing it unconstitutional. In a secret case, they sought to have the gag order removed in time to testify before Congress on the reauthorization of the USA PATRIOT Act. The gag was finally removed—but only after the Act had been reauthorized by Congress.

Our second speaker, **Mike German**, brought a unique personal perspective to his critique of “war on terror” methods that he believes are making us less safe, not more, and shredding the Constitution to boot. A 16-year veteran of the FBI where he worked as a Special Agent focused on domestic terrorism and covert operations, German had twice infiltrated neo-Nazi groups enabling prosecutions to be brought that prevented terrorist attacks. He left the FBI to make Congress and the public aware of its deficiencies. He joined the staff of the ACLU where he now works as a Policy Counsel.

The final speaker, **Tim Sparapani**, is a privacy expert with the national ACLU’s Washington Legislative office. He has been in the forefront of work against warrantless spying and Real ID.

If Congress has, to date, been unable to restore habeas corpus and roll back the worst features of the Military Commissions Act—and has also given the president what he wanted on domestic spying—it has shown a little more civil liberties backbone when it comes to Real ID.

In late July the Senate refused to adopt an amendment that would increase funding to implement the Real ID national identity card from the current \$50 to \$300 million across the states. The actual cost is estimated to be \$23 billion over 10 years.

Tim Sparapani and other Real ID opponents hope this failure to increase funding will highlight the range of problems with what is essentially our country’s first internal passport. Real ID poses serious threats to privacy and our whole notion of what it means to live in a “free” country.

In addition to the lively presentations and give-and-take with the audience, the Constitution Day forum contained two “firsts”: the release of the first Congressional Scorecard compiled by the ACLU of Massachusetts, and the first public screening in the nation of “Freedom from Government Spying—Surveillance,” from the second series of the ACLU *Freedom Files* documentaries.

If you would like to show one of the *Freedom Files* in your community, contact our Field Organizer and Public Education Coordinator, Brian Corr, at bcorr@aclum.org.

“The problem with BASS is that the targeted behavioral characteristics are going to be ‘found’ where you look for them,” said John Reinstein, Legal Director of the ACLU of Massachusetts. “The fact remains that Muslims and people who appear to be of Middle Eastern descent are going to be perceived a particular threat, so it is highly likely that those people will be scrutinized based on their race, and the screening thus will be used in a racially discriminatory matter.”

Beyond that, Reinstein noted, Downing was detained while trying to leave the airport—not while boarding an airplane.

“Whatever the legality in screening passengers who are trying to board an airplane, this should not serve as a basis for expanding those police powers outside of secure areas of the airport,” he said.

In court, lawyers for the state attempted to deflect review of the BASS program by arguing that there was no explicit proof that the troopers were

acting in accordance with the behavioral profiling training they had received. However, the record in the case shows that the troopers’ actions were consistent with BASS training, including the specific demand for identification and travel papers. In addition, the screening program specifically authorizes detention of people, like Downing, who refuse to comply with those demands.

“This screening program allows police to stop anyone, any time, for any reason.”

—John Reinstein, ACLUM Legal Director

Other BASS training procedures, however, remain classified as “sensitive security information” by the Transportation Security Administration, making it harder to challenge the constitutionality of the program.

“This case raises serious concerns about both government secrecy and racial profiling,” said Reinstein. “This screening program allows the police to stop anyone, any time, for any reason. It is yet another unfortunate example of the extent to which we are being asked to surrender basic freedoms in the name of security.”



Bailey, Sparapani, German

Get our Congressional Scorecard

➤ www.aclum.org/docket

ACLU adds staff

■ **Nan Haverstock** joined the ACLU of Massachusetts in August as our Director of Development. She succeeds Bliss Austin Spooner, who now serves as Capital Campaign Director.

Haverstock brings 25 years of nonprofit development experience, having worked for organizations including Northeastern Univ., Bryant Univ., Framingham State College, Wheelock College, the New England College of Optometry, and the Episcopal Divinity School.

Originally from Indiana, Haverstock first came to Massachusetts in 1972 while an undergraduate at Indiana State Univ. She worked at Falmouth's Highfield Theatre, where she sang in a summer opera company. She returned the following summer and worked for several more years as a singer and actress in Massachusetts. "I just fell in love with the area," she says.

In 1977, Haverstock went back to school for a Master's in Mass Communication from Emerson College. She moved directly to development work at Northeastern after graduating. Haverstock says she loves the work's variety.

"It's part public relations, advertising, and fundraising. There's never a dull moment, and the people you meet in this work are committed and dynamic. It just makes the job a pleasure."

Haverstock said she long admired the ACLU and "leapt at the chance to work here—I really did. Civil liberties issues are just critical, and I wanted to be a part of that."

■ **Mahtowin Munro** joined our staff in April as Office Manager and Executive Assistant. She has extensive experience in law firms and has also worked in shelters for battered women and homeless families. She has also been involved for years with the campaign to free Native political prisoner Leonard Peltier.

Notably, Munro is a former ACLU client, as co-leader of United American Indians of New England. Legal Director John Reinstein and co-operating attorney Michael Altman represented the organization after 25 members were arrested in Plymouth after a peaceful protest and march in 1997. John Roberts, former ACLU of Massachusetts Executive Director, also took part.

Munro says, "This is a great place to work, especially because my co-workers are smart, congenial, and really committed to our mission." She adds, "One of the best things about my job is that I get to work extensively with our wonderful volunteers," who serve vital roles in the organization's daily work.

Munro says all the different issues the ACLU works on are critical, but she feels "especially strongly about defending the rights of those who are least able to defend themselves, particularly prisoners and undocumented immigrant workers and their families." She attended the Univ. of Pittsburgh and has 8-year-old twins.

"Immigration Enforcement" from page 1

pired inspection stickers or speeding tickets, and then transferred to federal immigration custody. In response to these reports, ACLUM wrote a letter outlining the types of reports we have received and, with other advocacy groups, met with members of the Executive Office of Public Safety in July to discuss the problem.

"What we are concerned about is that a large number of troopers had in fact received limited training in immigration laws pursuant to Romney's order, before it was rescinded. Now the problem appears that they have no further guidance or direction from the state regarding their roles in such matters," Waikar says.

To address this issue, ACLUM wrote a seven-page letter, signed by other immigration advocates, outlining guidelines for appropriate questioning regarding immigration status and handling of information on the FBI's main criminal database, called the National Crime Information Center. After 9/11, the federal government began adding many civil immigration matters to the database, which is checked by police during traffic stops. This database is subject to ongoing litigation in other parts of the country.

ACLU attorneys argue that without an affirmative grant of authority from Congress, state police lack the legal authority to enforce immigration laws. EOPS recently announced that a new policy will be issued in the near future.

ACLU's advocacy with the State Police is part of our ongoing advocacy efforts for immigrant rights. These efforts are also part of a broader discussion about the requirements for driver's licenses in Massachusetts, as states begin making preparations to comply with the controversial Real ID Act, which will essentially create an internal passport by 2009. An ACLU lawsuit against the Registry of Motor Vehicles for denying driver's licenses to lawful immigrants is pending.



Nan Haverstock



Gavi Wolfe



Amy Reichbach

■ **Amy Reichbach** is the newest addition to our legal department, as Racial Justice Advocate.

Reichbach has clerked for Massachusetts Supreme Judicial Court Chief Justice Margaret H. Marshall and Judge Reginald C. Lindsay of the U.S. District Court for the District of Massachusetts. She has extensive experience as a juvenile rights advocate and a teacher in urban public schools, and has authored two law review articles on education and the law.

Reichbach will focus on the "school to prison pipeline," and the trend to involve police and the criminal justice system in school-based behaviors. The impact this has on youth, particularly poor youth of color, is devastating. "Schools are overwhelmed by issues that students bring with them," she says. "Some schools, especially those without resources, push the more complex situations out the door and into the court system instead of trying to address the full range of a child's concerns, such as mental health, educational deficits or family problems."

Reichbach is a graduate of Brown Univ. (B.A.), the Univ. of Pennsylvania (M.S. in Secondary Education), and Boston College Law School (J.D.).

Reichbach says the reasons she went to law school were the same as those that challenged her as a teacher. Her students came to her high school, which had an 18 percent graduation rate, with enormous odds already stacked against them. Even though they were "smart, interested, and cared about the world around them, they believed they were more likely to become involved with the criminal justice system than to graduate from high school." Reichbach decided to attend law school to become a more effective advocate.

■ Legislative Specialist **Gavi Wolfe** joined us in September to lobby on a range of issues related to individual rights and equal treatment under the law, including medical privacy, racial profiling, and reproductive freedom.

A lifelong resident of Massachusetts, Wolfe has been active in the civil rights community for the past decade. Between 1998 and 2004, he worked at Gay & Lesbian Advocates

& Defenders (GLAD), first as a bilingual client advocate, promoting the legal rights of people with HIV in communities of color and language-minority communities, and later as the organization's Public Education Director. In that role, he engaged in coalition building and political advocacy, and managed the organization's legal information hotline, legal publications, and website. Wolfe also championed the issue of equal marriage rights, managing GLAD's public education efforts and helping to build the MassEquality coalition.

Wolfe also served as a member of the Board of Directors for the Greater Boston Chapter of the National Organization for Women (NOW), from 2001-2003, and served as a co-Chair of the Greater Boston Civil Rights Coalition. He and his wife Vicky Steinberg met while working with NOW, and got married this fall.

A 1997 Brown Univ. graduate, Wolfe returned to school in 2004 to pursue a law degree from Boston College Law School, where he recently graduated. He was active in the Black Law Students Association, joined the Boston College Third World Law Journal, and helped establish an annual retreat for students pursuing public interest careers.

Wolfe went to law school with a zeal for constitutional rights, social justice, and legal policy. When a position with ACLUM opened up, "It was the perfect fit," Wolfe says. "I am thrilled to be back in the political fray, working to guarantee the promises of the Bill of Rights. There are lofty ideals at stake here, but they play out as basic aspects of our everyday lives."



ACLU

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“ACLU Sues Rice, Chertoff,” from p. 1

The ACLU filed the suit in U.S. District Court for the District of Massachusetts on behalf of organizations that have invited Professor Habib to speak in the U.S. in the near future, including the American Sociological Association (ASA), the American Association of University Professors (AAUP), the American-Arab Anti-Discrimination Committee (ADC), and the Boston Coalition for Palestinian Rights (BCPR). The lawsuit names Secretary of State Condoleezza Rice and Secretary of Homeland Security Michael Chertoff as defendants.

Habib is a renowned scholar, a sought-after analyst, and Deputy Vice-Chancellor of Research, Innovation and Advancement at the University of Johannesburg. He is also a Muslim who has criticized both the war in Iraq and the U.S. approach to terrorism since 9/11.

Until the government suddenly revoked his visa last October without explanation, Habib never experienced any trouble entering the U.S. In fact, Habib lived in New York for years while earning his PhD in Political Science from the City University of New York.

The revocation of Professor Habib’s visa prevented him from attending a series of meetings with representatives from institutions such as the National Institutes of Health, the Centers for Disease Control and Prevention, the World Bank, Columbia University, and the Gates Foundation.

Seven hours of interrogation

When he landed, Habib was detained for seven hours and interrogated about his associations and political views. Armed guards eventually escorted him to a plane and deported him back to South Africa. The State Department later revoked the visas of Professor Habib’s wife and two small children—again, without explanation.

“I find it profoundly disturbing that the U.S. government continues to deny me the opportunity to participate in the kind of robust academic and political debate that is central to the American democratic system,” says Habib. “Now more than ever, people from around the world recognize the consequences of American isolation within the global community. By letting in outsiders who represent ideological diversity, the U.S. can make good on its democratic ideals.”

In May, Habib applied for a new visa that would allow him to travel to the U.S. to attend speaking engagements, including the annual meeting of the American Sociological Association in August 2007. However, on the eve of his scheduled departure to New York, the State Department informed Habib that his visa application would not be processed in time for the meeting. As a result of the State Department’s unexplained visa denial, Habib was prevented from speaking to the ASA and its members.

Unfortunately, Habib’s visa application continues to languish. The next meeting of the American Sociological Association will be held in Boston next August, and we want to make sure that Professor Habib is allowed into the country to speak at that meeting, as well as to other groups here who have invited him to address their organizations.

Professor Habib’s exclusion is part of a larger pattern. Over the past few

Court rejects challenge to mandatory DNA testing

In a decision that was more disappointing than surprising, the U.S. Court of Appeals in Boston has upheld the requirement that individuals convicted of certain federal crimes provide a DNA sample to be included in the national DNA database maintained by the Dept. of Justice.

Holding that mandatory DNA testing did not violate the Fourth Amendment’s prohibition of unreasonable searches, the court reversed a ruling by U.S. District Court Judge Robert Keeton that DNA testing was a law enforcement search which required a warrant. The appellate court, however, left open the issue of whether the government could retain the defendant’s DNA profile in its database once released from custody and the term of supervised release had expired.

The issue before the court was whether the DNA testing should be reviewed under the “special needs” test, which allows warrantless searches when they are justified by special needs beyond the ordinary interests in law enforcement, or under a more permissive standard taking into account the totality of the circumstances, including the state’s general interest in supervising parolees, preventing crime, and the parolee’s diminished expectation of privacy.

In an amicus brief written by Professor Tracey Maclin of Boston University Law School, the ACLU of Massachusetts argued as amicus that the special need tests was the appropriate standard because the principal purpose of the DNA database is the detection and prosecution of crime.

In leaving the way open for a subsequent challenge to the retention of DNA profiles, the

court noted that different interests would be involved when an individual was no longer under supervision. The individual would have a more substantial privacy interest, and it would be appropriate to consider, among other things, the potential uses of DNA samples and profiles in the future. Nevertheless, the court declined to consider that issue.

This decision was unfortunately not unexpected, since every other federal circuit court which has considered the issue has ruled in the government’s favor.

“These cases are very difficult,” says John Reinstein, Legal Director of the ACLU of Massachusetts. “Because DNA has come to be viewed as a silver bullet—the best evidence in a crimi-

nal case—there is enormous pressure to expand the collection of DNA information about individuals. Nobody wants to stand in the way of catching the bad guys, but in the process, the basic protections of the Fourth Amendment are being diluted.”

Judge Norman Stahl dissented from the decision of the court. Quoting Edmund Burke, he wrote, “‘The true danger is when liberty is nibbled away, for expedients, and by parts.’ I cannot, in good conscience, sign on to a decision that I believe provides the legal rationale for an enormous expansion of state intrusion into the most private of realms, without warrant, probable cause, or even suspicion.”



‘Evening Without’ highlights ideological exclusion

Over the past two years, the ACLU of Massachusetts has highlighted the history of ideological exclusion and the growing list of people who have been banned from entering the United States since 9/11 in two productions of “An Evening Without... Giving Voice to the Excluded.”

Following the program’s Boston inauguration in Sept. 2006, the First Churches in Northampton was the setting on March 13, 2007 for a second “Evening Without” (pictured above), featuring Cathi Hanauer, Daniel Jones, Elinor Lipman, Leslea Newman, Roland Merullo, Pat Schneider, Suzanne Strempek Shea, Barry Werth, Floyd Patterson II, and Jane Yolen, with Charles Coe and Martín Espada participating again.

The enthusiastic audience response at both venues—more than 350 attended in Boston, and more than 500 in Northampton—is a measure of public concern over how the First Amendment has been subverted and the “marketplace of ideas” diminished through the exclusion of persons whose ideas the government does not like. *Photo by Paul Shoul*

years, numerous foreign scholars, human rights activists, and writers—all vocal critics of U.S. policy—have been barred from the U.S. without explanation or on unspecified national security grounds.

In 2006, the ACLU filed a similar lawsuit on behalf of U.S. academic groups and Professor Tariq Ramadan, a widely respected Swiss scholar of the Muslim world. The government’s revocation of his visa in 2004 prevented Professor Ramadan from assuming a tenured teaching position at the University of Notre Dame. The Ramadan lawsuit challenges the legality of his exclusion and the constitutionality of the Patriot Act provision under which he was initially excluded. Ramadan remains excluded today, and we are awaiting the ruling of the federal court in his case.



The **Worcester County Chapter** of the ACLU Foundation of Massachusetts held its annual banquet Oct. 13. Chapter Director Ron Madnick (left) stands with Congressman James McGovern (center) and chapter Treasurer Bernard Kingsley (right). Attorney Neil McGaraghan of the firm of Bingham McCutchen spoke on “The Abuse of (Our) Power Through the Looking Glass of Guantanamo Bay.” Sarah Assefa, a Clark University graduate student, received the chapter’s annual Civil Liberties Award.

ACLU of Massachusetts victories

ACLUM expands Northampton performer rights

In July, the Northampton Board of Public Works adopted a policy that allows mimes, musicians, jugglers, puppeteers, marionette masters, comedians, magicians, singers, and dancers to perform on the sidewalks of Northampton. The resident who prompted the change is puppeteer Madison J. Cripps. Here is his story.

I wanted to sell the marionettes I make on the sidewalks of my hometown of Northampton—but the Board of Public Works denied me a permit as a fine art vendor because the BPW said my puppets are not fine art.

My first solution: I proposed to sell drawings of the puppets, and the BPW said fine. So I got to sell drawings.

To advertise my drawings I started to perform with the puppets, and after awhile I got quite good. One night a small crowd formed to watch, and at the end of the performance a police officer approached me and asked for my permit. I showed him, but he told me it wasn't the correct one.

So I went back up the hill to the BPW and requested a musician's permit, but the DPW said I didn't qualify for that either because my puppets weren't instruments. I said, I sing too. "You don't need a permit to sing," was the reply. I suggested that they could give me a permit because I used strings, but they apparently were the wrong kind.

The next evening I attended the BPW meeting, where my issue was put on the agenda. I brought a puppet to show the Board what I do. But tied down by out-of-date regulations, the Board couldn't allow me to perform. I proposed they change the rules about musician's permits to include a more diverse group of performers. I drew up a petition.

Enter ACLU of Massachusetts counsel Bill Newman. I was gathering signatures, and Mr. Newman walked by in full stride and said I could perform. I got his number, and after telling him what I had been up to, he met me at the next series of meetings before the BPW. He and I went to three months of meetings, a total of six, and by mid-July at long last I was able to pay \$25, sign some papers, and perform on the street.

I felt so supported by Bill during the meetings. If he had not come along that day, I might still be attending meetings at the Board of Public Works.

Thanks so much,
Madison J. Cripps



Cripps

Dept. of Education required to pay \$155,000 for censoring test critic

In May, Middlesex Superior Court Judge Hiller Zobel ordered the Mass. Dept. of Education to pay \$155,000 in attorneys fees and costs for violating the First Amendment when it coerced an education conference to cancel the keynote speech of Alfie Kohn, a well-known critic of high-stakes high school graduation exams like the MCAS.

In response, Kohn said, "It's too bad that the Department of Education was so committed to its agenda of high-stakes testing that it would violate the Constitution to silence those who disagree."

Zobel previously ruled in Aug. 2006 that DOE officials had forced the cancellation of Kohn's speech because they did not like his views. They thus violated his rights, as well as the rights of a school principal, a counselor, and a parent who had wanted to hear Kohn speak.

In May's ruling, Zobel put the 2006 decision into a final judgment, awarded the fees, and issued an injunction prohibiting the DOE from denying future grant monies for any conference unless the topic of a speaker was clearly unrelated to the subject of the conference.

In response, the DOE filed a notice of appeal to the Mass. Appeals Court, leading the ACLU of Massachusetts to file a notice of cross-appeal on certain issues relating to the attorney's fees. To avoid the appeal process, the parties agreed to participate in a mediation before retired Justice Rudolph Kass. We have reached an agreement with the DOE to resolve the case with some changes to the judgment, subject to Judge Zobel's approval.

Kohn and the other plaintiffs have been represented throughout the litigation since 2001 by attorneys Michael Rader and Michael Albert of Boston's Wolf, Greenfield & Sacks, and ACLU of Massachusetts attorneys Sarah Wunsch and Bill Newman.

Taunton schools cancel 'Lunch Bytes'

Following pressure from ACLUM and local parents, the Taunton School Committee canceled the controversial "Lunch Bytes" program in April. Under the \$40,000 plan, students in Taunton would have had their fingerprints scanned

and stored in a database to identify them in the lunch line, with other uses being contemplated.

Complementing a vigorous "Ban the Scan" effort by local parents, Sarah Wunsch, our Staff Attorney, sent a letter to Taunton's Superintendent of Schools in February, writing: "Used properly, biometric data might help to improve security—but the last thing we should do is teach parents and their children, starting from a young age, to be casual about turning over biometric data for the sake of convenience."

Security breaches, such as the massive loss of consumer data at the TJX companies, have shown the dangers of identity theft. The ACLU believes we should carefully examine programs that could further erode people's privacy. The data captured and stored by these systems can be an attractive target for theft and misuse, and once security has been breached, it might be impossible to go back.

ACLU wins in Worcester "nanny-cam" case

In 2006, the ACLU of Massachusetts took up the case of Mary T. Jean, a Worcester political activist who posted online video of a warrantless police search captured by a "nanny-cam" in the home being searched. This June, the U.S. Court of Appeals for the First Circuit upheld her right to do so.

The "nanny-cam" system happened to capture video and audio of an unlawful search of a home by State Police. The owner of the home made the recordings available to activist Mary T. Jean, who posted them on her website, which was devoted to criticizing the performance of Worcester District Attorney John Conte.

As of Oct. 2007, the video was still available online: see www.aclum.org/docket for link.

In Feb. 2006, the Massachusetts State Police sent Jean a letter threatening prosecution unless she took it down. With help from the ACLU of Massachusetts, Jean fought back, arguing she had a First Amendment right to show the video.

In April 2006, the District Court issued a preliminary injunction upholding Jean's right to publish the material, saying it related to a "matter of public concern."

Finally, in June 2007, the U.S. Court of Appeals for the First Circuit upheld that decision.



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