

ACLU of Massachusetts helps win important case for academic freedom

Judge rescinds prior restraint ruling against MIT students who found MBTA security vulnerabilities

Freedom of speech won a major victory on August 19 when the U.S. District Court judge George O'Toole vacated a temporary restraining order prohibiting MIT students Zack Anderson, Alessandro Chiesa, and RJ Ryan and from disclosing the flaws they had discovered in the MBTA's electronic fare system.

Judge Douglas Woodlock, sitting as the emergency judge, entered the order on August 9 as the students prepared to discuss their findings at DEFCON, a national hackers conference in Las Vegas. Lawyers from the Electronic Frontier Foundation (EFF) and the ACLU of Massachusetts challenged Woodlock's order, arguing that the Computer Fraud Abuse Act (CFAA), a federal statute prohibiting attacks or damage to computers, does not apply to mere discussion of computer security vulnerabilities, and that any prior restraint on the students' right to speak is barred by the First Amendment.

At the later hearing, O'Toole agreed that the CFAA did not apply to speech and denied the MBTA's request for a preliminary injunction. The MBTA subsequently agreed to dismiss the suit with prejudice.

The most troubling aspect of the suit for the ACLU of Massachusetts and other civil libertarians was the injunction entered by Judge Woodlock prohibiting the MIT students' presentation. The prohibition of advance restrictions on speech is a core principle of the First Amendment, which has been recognized time and again by the Supreme Court. Only in the



The MBTA gagged MIT students (left to right) Alessandro Chiesa, Zack Anderson, and RJ Ryan for their work on the transit system's security vulnerabilities. Photo courtesy ericshmedi.com

most exceptional cases, involving dire and irreparable consequences, is any exception even considered.

"The MBTA actually argued that adoption of its view of the law was necessary to prevent the disclosure of sensitive information to terrorists," said John Reinstein, legal director for the ACLU of

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ACLU thwarts "Safe Homes" program

Boston Police yield to community concerns about program of warrantless searches for guns

Work by the ACLU of Massachusetts to stop the so-called "Safe Homes" program of warrantless home searches for guns in select Boston neighborhoods has paid off.

In July, Boston Police Commissioner Ed Davis responded to a Boston City Council resolution critical of "Safe Homes" by agreeing to "partially adopt" the ACLU's recommendation that police visits to homes be conducted on an informational basis only, with police leaving a phone number which parents and guardians can choose to call.

The ACLU coordinated a broad effort of community and advocacy groups against "Safe Homes," including testimony to the Boston City Council, and a speak-out at Freedom House in Dorchester with

Ronald Hampton, executive director of the National Black Police Association, who has fought a similar measure in Washington, D.C.

The ACLU also produced educational material, including a radio public service announcement, to let people know that they have the right to say "no" to warrantless police searches. **D**

"SAFE HOMES IS A MISGUIDED PROGRAM OF WARRANTLESS HOME SEARCHES."

—RONALD HAMPTON



Ronald Hampton, Executive Director of the National Black Police Association, spoke out in June against "Safe Homes" in Boston.

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UMass Boston, February 7, 2009

Congress, Massachusetts State House cave on communications privacy

FISA amendments and “Jessica’s Law” allow monitoring of phones and e-mail without warrants

Twin cave-ins at the federal and state level have opened your electronic communications to government surveillance without a warrant. Under law, what you say in an international phone call or write in an international e-mail is now no longer private. State-level officials, too, have access to your e-mail and phone records.

On July 9, the Senate completed passage of the FISA Amendments Act (FAA) of 2008, characterized by the ACLU National Security Project as the most sweeping surveillance bill ever enacted by Congress. The FAA essentially legalized the Bush administration’s warrantless wiretapping program, in which the administration illegally bypassed the FISA (Foreign Intelligence Surveillance Act) court.

Worse, the bill essentially grants retroactive immunity to the telecommunications companies that went along with the Bush administration’s illegal wiretapping plan.

Senator Russ Feingold (D-WI), who tried to lead a filibuster against the FAA, called the deal a “capitulation” by his fellow Democrats. The only good news for Massachusetts was that the entire Congressional delegation (except Sen. Kennedy, who wasn’t present) voted to oppose the cave-in. Among this year’s contenders for the presidency and vice-presidency, Senator Obama supported the bill, but Senator Biden opposed it. Senator McCain was not present for the vote.

George Bush signed the bill on July 10, and the ACLU filed a lawsuit, *Amnesty v. McConnell*, the same day to challenge its constitutionality. The ACLU filed suit on behalf of a coalition of attorneys and human rights, labor, legal, and media organizations whose work requires them to carry on sensitive and confidential phone and e-mail communications with colleagues, clients, sources and other contacts outside the United States. The suit charges that the FAA undermines the plaintiffs’ ability to

gather information, represent their clients and engage in domestic and international advocacy.

“The Fourth Amendment was meant to prohibit exactly the kinds of dragnet surveillance that the new law permits,” said Jameel Jaffer, Director of the ACLU National Security Project. The ACLU filed the first legal brief in the case on Sept. 12.

Just over a week after the FISA cave-in by Congress, the Massachusetts state legislature enacted a similar law, approving the so-called “Act to Further Protect Children,” more commonly known as “Jessica’s Law.” The bill moved forward in the name of fighting sexual predators, but one of its provisions gives unchecked power to district attorneys and the state attorney general to request records of anyone’s Internet use with no warrant, and with no notification to the person whose records are being requested. All that is required to enable prosecutors to acquire private communications records is an “administrative subpoena”—a demand letter with “reasonable grounds” to believe that the records were “relevant and material to an ongoing criminal investigation.”

The ACLU maintains that, legally, this is a low standard. Nothing in the law limits the new powers to investigations of suspected sex offenders or child abuse cases, and the legislation never defines precisely what information will be collected. It also grants blanket immunity to cooperating telecoms.

“It’s shocking that the Legislature would do this, given the unanimous vote by the Massachusetts Congressional delegation to oppose the collapse on FISA,” said Carol Rose, ACLU of Massachusetts Executive Director. “Working to roll back these concessions to executive power will be a major part of our work in 2009, as well as the theme of our 2009 statewide conference, ‘Beyond the Politics of Fear,’ to be held at UMass Boston on February 7.” **D**

Legal Briefs

ACLU action around the Commonwealth

ACLU wins fight for accurate ballots. As a result of a lawsuit brought by the ACLU of Massachusetts, on September 23, Federal Judge Nathaniel Gorton ordered the Secretary of the Commonwealth to list Bob Barr and Wayne A. Root as the Libertarian Party candidates for president and vice president on the November ballot. The Massachusetts Elections Division had previously refused, stating that the Party would need to recollect thousands of signatures to qualify for the ballot, after previously indicating that a substitution was possible.

Victory for freedom of speech and association. A long-running suit for damages against members of the North American Man-Boy Love Association (NAMBLA) was dismissed with prejudice in April.

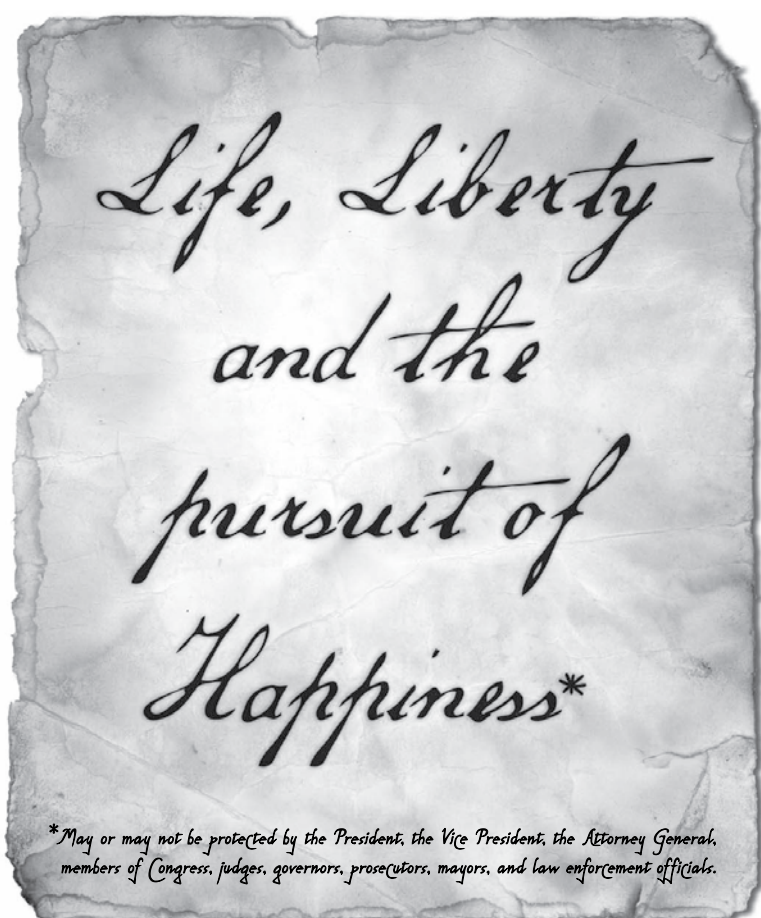
The case, filed eight years ago, sought to hold the defendants responsible for the death of Jeffrey Curley, a 10-year-old Cambridge boy who had been abducted and murdered by two men who lured him into a car. Copies of NAMBLA publications were later found in the apartment of Charles Jaynes, one of the killers, but nothing in these materials was about abduction or murder.

“This was a misguided effort to spread the blame for the horrific murder of Jeffrey Curley, to shift responsibility away from those who actually committed the crime,” said John Reinstein, Legal Director of the ACLU of Massachusetts, which represented the defendants.

Worcester ACLU stands up for Buddhist student athlete. The Massachusetts Interscholastic Athletic Association disqualified Sam Morrison, a Devens student who won a one-mile race at a track meet in May, because he wore a Buddhist string bracelet given to him during a school trip to Thailand. MIAA rules allow athletes to wear “religious medals (taped to the body and worn under the uniform),” and Morrison taped the bracelet to his arm. In a review of the matter, the MIAA’s executive director said in a letter that he “most likely” would not have reached the same decision as local officials. The ACLU of Massachusetts Worcester County Chapter has suggested that the MIAA issue a directive to local officials and coaches to prevent similar situations from happening again.

Rules discourage state workers from running for office. Responding to an ACLU inquiry, Joe Dorant, President of the Massachusetts Organization of State Engineers and Scientists (MOSES), pledged to examine rules that forced Steven W. Baer, a state employee, to withdraw from his campaign for the State Senate. One of the rules would have required Baer to take an unpaid leave of absence if he were to run for office. Instead, Baer withdrew from the race as a candidate for State Senate from the Green-Rainbow Party.

Pittsfield lifts trespass notice. In August, the City of Pittsfield lifted a trespass notice that barred a citizen activist, Alexander Blumin, from City Hall. Blumin was banned from City Hall a year earlier for asking what Bill Newman, ACLU Western Massachusetts Legal Office Director, described as “uncomfortable questions about city governance.” The decision to lift the ban followed extensive research and a letter by Newman and cooperating attorney Eric Lucentini to the city’s law department. In a letter of thanks, Blumin wrote, “Thank you so much for restoring my Civil Rights guaranteed by the U.S. Constitution! I tried several lawyers...but only you agreed to help me.”



In the United States, our rights are guaranteed by the Constitution. Yet our government often treats them as optional. By joining the ACLU, you can help defend everyone’s rights. Take a stand to protect our civil liberties. Find out more at www.aclum.org/alerts

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Learn more about these cases > www.aclum.org/docket

LETTER FROM THE EXECUTIVE DIRECTOR

2009: Beyond the Politics of Fear

By Carol Rose

A new president in the White House means a new opportunity to put our nation's civil liberties house in order.

Our country is reeling after eight years of a government that disregards laws it doesn't like, asserts a right to torture and indefinitely detain people without due process, operates in secret while spying on its own people, and doggedly works to dismantle our system of checks and balances.

It's time to strengthen our systems to check government abuse of power at both the federal and state levels. And Massachusetts is the ideal place to start.

Historically, Massachusetts has served as something of a safe haven for civil rights and civil liberties. The Boston Common was a forum for abolitionists and, later, union organizers and suffragettes. The ACLU of Massachusetts was formed here in 1919 in response to government efforts to silence antiwar dissent, and to round up and deport immigrants.

Massachusetts is the home of *Moe v. Secretary of Administration and Finance*, the 1981 ACLU case that ensures a woman's right to reproductive freedom under our state constitution, even if *Roe v. Wade* were to be overturned. More recently, Massachusetts became the first state in the nation to guarantee equal marriage rights for LGBT couples, and the ACLU of Massachusetts joined forces with key coalition allies to block attempts to strip equal rights protections from our state constitution. As a Commonwealth, we have rejected repeated efforts to impose a death penalty and have extended the vote to all citizens, except those currently in prison (in contrast to many states that disenfranchise for life anyone convicted of a crime).

Despite this record of relative freedom, Massachusetts has not been immune to eight years of federal pressure—and dollars—to build a national security state. Indeed, the trickle-down effect is evident in all 50 states, including Massachusetts.

This year, for example, the Department of Homeland Security (DHS) is funneling millions of dollars to local governments, including nine cities and towns in the Greater Boston area, to create a high-



tech video camera network to keep watch on ordinary Americans going about their daily lives.

A related initiative is the "Commonwealth Fusion Center," a multimillion-dollar government spying center based in Maynard, Massachusetts. The brainchild of Mitt Romney, funded largely by the Department of Homeland Security, and built by the Raytheon Corporation, the Commonwealth Fusion Center enables the government to feed public and private information about all of us into a giant database. Amazingly, the Fusion Center currently operates with no meaningful independent oversight to guard against abuse, misuse, or theft of sensitive information. This year, with your help, the ACLU of Massachusetts will lead the charge to get that oversight.

Consider also Real ID. Passed by Congress in 2005 without any debate, the Act mandates that every state's Registry of Motor Vehicles create a vast new database containing Americans' most personal information—from Social Security numbers and birth dates to copies of birth certificates. This information will be linked and accessible to RMV employees and others across the country. Tens of thousands of people could have access to our private information, turning Real ID into yet another one-stop shop for identity theft, and a potential avenue for government spying.

It's up to us—members of the ACLU and resi-

dents of the Commonwealth—to ensure that Massachusetts joins Maine, Nevada, and some 18 other freedom-loving states that have said "NO" to Real ID.

Massachusetts residents lost a fundamental right to privacy from government spying when the State legislature voted in July to give prosecutors the power to secretly seize telephone, and electronic communications records—without any judicial oversight and without notifying you that they have done so. Since this "administrative subpoena" law passed, local DAs and the Attorney General need only "reasonable grounds" to believe that the records they have seized are "relevant and material to an ongoing investigation"—which is a very low standard. We must impose a check on this prosecutorial spying power.

Our democracy rests on the principle that no branch of government should have unchecked power. Absent effective checks and balances, abuse is inevitable.

But restoring checks and balances requires citizen action. Government officials, regardless of political stripe, are loathe to relinquish power unless

pressed to do so by the people. And that's why the ACLU of Massachusetts is here, fighting in the courts, lobbying in the legislature, and educating the public to defend liberty and freedom.

We hope that you will join us in this fight by signing up for our e-mail action lists at www.aclum.org/alerts and attending our statewide conference at UMass Boston on February 7, 2009. Held just days after the presidential inauguration, we'll be exploring the ACLU's agenda for the new year in greater detail—and inviting your participation in it.

Massachusetts can be a safe haven for civil liberties and human rights. But we must move beyond the politics of fear and insist on concrete steps to strengthen our systems of checks and balances at both the federal and state level. It's time to end the war on civil liberties and reclaim our democracy—starting in Massachusetts. **D**

Photos this page by Marilyn Humphries

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ACLU FOUNDATION OF MASSACHUSETTS ★ BILL OF RIGHTS DINNER



LATE MAY 2009 > Join our e-alert list for details: www.aclum.org/alerts

Bill of Rights Dinner honors Shapiro, Wainright Bank

Roger Baldwin Award is ACLU of Massachusetts' highest honor

At the 27th annual Bill of Rights Dinner on May 28, the American Civil Liberties Union Foundation of Massachusetts honored Norma Shapiro with the organization's Roger Baldwin Award, and Wainwright Bank & Trust with the Beacon of Liberty Award.

Norma Shapiro serves as Legislative Director for the ACLU of Massachusetts. During her 20-year career, Shapiro's work has contributed to some of the most historic civil liberties victories in the country, including equal marriage rights, reproductive freedom, the death penalty, privacy rights, and equal opportunity and fair financing of public education.

The Roger Baldwin Award that Shapiro received

NEXT YEAR'S BILL OF RIGHTS DINNER WILL TAKE PLACE IN MAY 2009—MAKE SURE YOU ARE ON OUR E-MAIL LIST AT WWW.ACLUM.ORG/ALERTS

is named for the Massachusetts-born founder of both the ACLU of Massachusetts in 1919 and the national ACLU in 1920. Past Baldwin award recipients have included civil rights leader Rosa Parks, author Kurt Vonnegut, and *New York Times* columnist Anthony Lewis.

Wainwright Bank & Trust Company received the Beacon of Liberty Award, in recognition of its progressive social agenda on homelessness, affordable housing, HIV/AIDS rights, immigration, and gay rights. Through its lending practices, philanthropy, and advocacy, Wainwright Bank has become an important catalyst for social change here in Massachusetts. Wainwright Co-Chairman Robert A. Glassman accepted the award on behalf of the company.

Attended by more than 760 people, the evening also featured prominent national speakers, including John Dean, former White House Counsel to Richard Nixon, political humorist and entertainer Kate Clinton, and Academy Award-winning filmmaker Errol Morris.

Next year's Bill of Rights Dinner will take place in late May 2009. In order to get details as soon as they become available, make sure you are on our e-mail alert list by going to www.aclum.org/alerts. **D**



Former Nixon White House Counsel John Dean (left) with award recipients Norma Shapiro and Robert A. Glassman at the 2008 Bill of Rights Dinner.

Does this ad offend you?

ACLU preserves right to run ad showing condom, contraceptives on Pioneer Valley bus system

Does this ad offend you?

Whether it does or doesn't, the ACLU of Massachusetts helped Tapestry Health, a 35-year-old Western Massachusetts health and human services organization providing reproductive and HIV/AIDS services, exercise the right to run it on buses operated by the Pioneer Valley Transit Authority (PVTA), the only public bus line in the Pioneer Valley region.

In June, Gateway Advertising, the agency handling the PVTA's advertising at the time, told Tapestry Health that the ad could not run because it could offend bus riders. The PVTA's Director of Marketing, Jill Holliday, agreed.

The problem is that the PVTA's advertising guidelines only prohibit material that "describes, depicts or represents sexual activities or aspects of the human anatomy"—not the mere depiction of a packaged condom, or prescription contraceptives (which also have medical uses besides birth control).

ACLU of Massachusetts attorneys Bill Newman and Sarah Wunsch wrote to the PVTA in August: "[T]ransit authorities may not reject ads on the basis that someone might find them 'offensive' or 'objectionable.' These are vague standards which fail to

meet the requirements that the First Amendment imposes on government agencies, and lend themselves to decisions based on the views expressed in an ad." The PVTA relented.

"This is a great victory for free speech, and many will now learn about life-saving and life-changing services," said Leslie Tarr Laurie, President/CEO of Tapestry Health. "We give all the credit to the ACLU for the PVTA's change of heart."

Tapestry Health now plans to run the ads in late fall or early winter, placed on the interiors and exteriors of buses that run through three counties in Western Massachusetts.

The ACLU of Massachusetts has litigated similar cases before, such as *AIDS Action Committee of Massachusetts v. MBTA*, in which the MBTA initially rejected a series of ads that used an image of a condom in a wrapper with double entendres to encourage the use of condoms to stop the transmission of HIV. **D**

Learn more about this case
> www.aclum.org/docket

Ensure the Future of Freedom



"I've decided to claim all the future freedom-fighters and hell-raisers as my kin. And I hope you'll join me by making sure the ACLU is still around to defend their right to be a pain in the ass to whatever powers come to be."

"I figure freedom and justice beat having your name in marble any day."

Molly Ivins 1944–2007
Author, Activist, and ACLU Legacy Donor

Molly Ivins never wavered in her lifelong commitment to freedom, fairness, and civil liberties for all Americans, and her legacy will live on through her extraordinarily generous bequest to the ACLU.

Whatever your personal situation, you too can leave a legacy to the ACLU, and we can help you find the gift that is right for you. For more information on how to make a bequest, or for help with getting started on your estate planning, please contact Bliss Austin Spooner at (617) 482-3170, ext. 312.

Right now, if you make a bequest in your will or trust to the ACLU Foundation, your legacy gift can make an even greater impact. Through the Legacy Challenge, your gift can help us qualify for a matching donation today of up to \$10,000 from the Robert W. Wilson Charitable Trust.

Visit www.legacy.aclu.org for up-to-date information on estate planning, gift and retirement calculators, annuity rates, and the Legacy Challenge.

ACLU Faces

Members and supporters at work across the Commonwealth, and in Washington, D.C., during the summer and fall of 2008.



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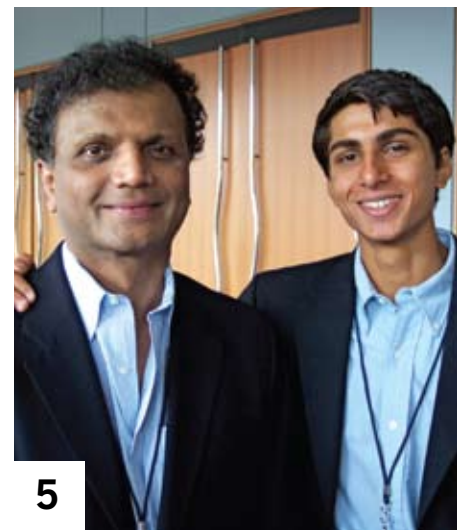
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1 > Kate Clinton speaks at the ACLU's 2008 Bill of Rights Dinner in Boston (Photo by Marilyn Humphries).
 2 and 3 > Dozens marched with the ACLU in Boston's Pride parade in June.
 4 > Volunteers Richard and Barbara Cogan, and Joan Lancourt, at the ACLU 2008 Membership Conference in Washington, D.C.
 5 > John and Shailin Thomas at the 2008 Membership Conference.
 6 > Deena Madnick and Ron Madnick, Worcester County Chapter Director, at the 2008 Membership Conference.
 7 > Writers Sean Gonsalves and Michael Lowenthal at the ACLU's "Evening Without," in Wellfleet, reading works by authors and artists banned from the United States.
 8 > ACLU of Massachusetts board members Susan Yanow and Nancy Ryan rally outside the American Psychological Association convention in Boston (Photo by Amy Hendrickson).
 9 > Ellen Hume, Eric Alterman, and Callie Crossley discuss media coverage of civil liberties at the ACLU's Constitution Day program at Boston Public Library.
 10 > A boy protests immigration raids in Lowell in August (Photo by Laura Rótoló).
 11 > Gov. Deval Patrick greets Norma Shapiro, ACLU of Massachusetts Legislative Director, at the ceremony for the repeal of a 1913 law barring out-of-state couples from marrying in Massachusetts (Photo by Marilyn Humphries).



11

State Police yield on genetic privacy

Following return of DNA samples, ACLU lawsuit continues, to end “shadow database” of DNA profiles

When fashion writer Christa Worthington was murdered at her Cape Cod home in 2002, frustrated police took the unusual tactic of asking every male in Truro to voluntarily supply a DNA sample. Men who complied were expressly told that their DNA would not be retained if their sample turned out not to match DNA evidence found at the murder scene.

Unfortunately, these promises were quickly forgotten.

“I asked the DA on several occasions to return my sample,” says Keith Amato, a Truro resident who supplied a DNA sample. “They had identified the murderer, tried, convicted, and sentenced him, but they still wouldn’t return my sample. I even contacted Attorney General Martha Coakley, who said she couldn’t help me and recommended I get myself an attorney. That’s when I called the ACLU of Massachusetts.”

The ACLU filed suit in June 2008 on behalf of Amato and approximately 100 other men who had voluntarily provided DNA samples back in 2002.

“The ACLU’s position is that the retention of these DNA samples poses a serious threat to individual privacy,” said ACLU of Massachusetts Legal Director John Reinstein, whose suit resulted in the return of Amato’s sample and the destruction of approximately 100 other samples that either didn’t match or were never tested.

However, according to Reinstein the case is not over. “We are pleased that prosecutors have finally kept their initial promise, but there’s still the question of DNA profiles being kept on government databases, and we plan to pursue this case to the end.”

Reinstein said the ACLU of Massachusetts is concerned that a DNA profile is being kept on Amato and the other men who volunteered their DNA. “Mas-

sachusetts has no procedure for the disposition of these samples, so there are no guarantees they won’t be used for other purposes.” Reinstein adds that such profiles could be used in other crime investigations, which might even expose relatives who will have similar DNA profiles.

Mark Batten, a Proskauer-Rose attorney who represented Amato on behalf of the ACLU, concurred. “People who cooperate with police investigations need to know that their DNA will not wind up in a ‘shadow’ government database,” said Batten.

“Disregarding the privacy of innocent people is bad public policy, because it discourages people from cooperating in future investigations,” Reinstein said. “The return of this DNA sample is an important first step, but the State Police Crime Lab has not returned the profile based on that test. The case will proceed because the elimination of the profile is necessary for complete relief.”

As for Keith Amato, some relief has already come. “Thank goodness for the ACLU. I was getting quite frustrated and concerned. I want to be a good citizen and cooperate with authorities. But I also want authorities to keep their word and not treat innocent people as suspects in future crimes. Having the ACLU on your side is a tremendous relief.”

Amato hopes his case will lead the Massachusetts State House to write new law governing the proper use of DNA by authorities. “It’s not just about me,” said Amato, “but also the next guy who cooperates with police. We’re Massachusetts, the biotech capital of the United States. We’re supposed to be ahead of the curve on DNA issues, not lagging behind the rest of the country.” **D**

“PEOPLE WHO COOPERATE WITH POLICE INVESTIGATIONS NEED TO KNOW THAT THEIR DNA WILL NOT WIND UP IN A ‘SHADOW’ GOVERNMENT DATABASE.”

Legal Briefs

[CONTINUED FROM PAGE 2]

Suit to stop “ideological exclusion” continues. In June, the American Civil Liberties Union and ACLU of Massachusetts presented oral arguments as part of a lawsuit to challenge the government’s refusal to grant a visa to respected South African scholar Adam Habib, a critic of U.S. policy on Iraq, torture, and indefinite detention. The State Department at first refused to act on Habib’s application, preventing him from speaking to the American Sociological Association annual meeting. Only after the ACLU filed suit did the State Department issue a ruling denying Habib a visa, allegedly because he has “engaged in terrorist activities”—a baseless and legally insufficient statement of the reasons. The ACLU awaits a ruling from the federal district court in Boston.

ACLU backs suit challenging Cuba travel restrictions. Decrying the Bush administration’s attack on families, ACLU affiliates in Massachusetts, Florida, and Vermont, along with the Center for Constitutional Rights (CCR), filed a joint friend-of-the-court brief in May, in *Vilaseca v. Paulson*, a federal lawsuit in Vermont against the Treasury Department. The lawsuit is the first challenge to increased restrictions imposed by the U.S. government in 2004 on travel to visit close family members in Cuba. James Messenger of Weil, Gotshal & Manges and a team of lawyers with him are acting as ACLU of Massachusetts cooperating attorneys. The judge hearing the case allowed Messenger to present oral argument, a highly unusual step for a “friend of the court.” **D**

[Learn more about this case > www.aclum.org/docket](http://www.aclum.org/docket)

ACLU slams misuse of juvenile pretrial detention

Organization also sues Worcester Police Department for records

In 2006, police arrested 15-year-old Maria for bringing a nail file to school. She was strip-searched upon entering a juvenile detention facility, where she was held for eight weeks awaiting trial, with youth that had drug addictions, mental illness, and more serious charges against them. Maria remained in lockup so long because she had previously been raped by a family member, and a Massachusetts Juvenile Court judge felt she could not be returned home safely.

Maria’s story is extreme, but it highlights the findings in *Locking Up Our Children*, an ACLU report released in May that focuses on pretrial detention. In the words of Amy Reichbach, Racial Justice Advocate for the ACLU of Massachusetts, “The widespread practice of locking up youth accused of minor offenses and who pose little or no danger to their communities is unfair, threatens public safety and wastes public money.”

Other findings:


- Massachusetts detains a higher percentage of youth before trial than 33 other states;
- Each year, Massachusetts detains 5,000 to 6,000 youth;
- Last year, youth spent an average of 25 days in lockup, but then more than 80 percent were released;
- Youth of color make up 20 percent of Massachusetts’ juvenile population, yet account for 60 percent of youth in detention;
- It costs taxpayers \$1,000 per day to hold a youth in secure lockup, whereas it would cost only \$1,500 to provide a child who was permitted to remain at home with 6 to 8 weeks of supervision to ensure that he returned to court and did not reoffend.

As in Maria’s case, a number of children who are detained have been arrested for school-based incidents. The ACLU is examining the criminalization of school discipline by analyzing data provided in response to public records requests to several school districts and police departments across the state. Most communities have fulfilled the requests, but in August, the ACLU sued the Worcester Police Department, claiming the agency has violated state public records law by refusing to turn over data concerning school-based arrests.

“Massachusetts should create alternatives to pretrial lockup, reserve secure detention for the relatively small number of children who truly need it, and encourage school districts to employ alternatives to court referral for minor misbehavior,” said Reichbach. “We should invest our scarce tax dollars more wisely to keep kids in school instead of in lockup. That’s what will make our communities safer in the long run.” **D**

[Find more about pre-trial detention > www.aclum.org/docket](http://www.aclum.org/docket)

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A STUDENT ACTIVIST?**



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ACLU Student Activist Scholarship Program

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The Docket is published twice a year.

Volume 38, Number 2 | November 2008

Our thanks to Stephen Mindich,
The Phoenix, and Mass Web Printing for
printing *The Docket*.

Watching the detectives

Arrests raise concerns about Harvard Police activity

Detective Thomas Karns is no stranger to political protests. The Harvard University police officer was on the job again on March 3, taking pictures of a small group holding a sidewalk vigil near Harvard Square in support of Palestinians in the Gaza Strip. As he described his mission in a written report, Karns “was conducting plain clothes surveillance on a demonstration...photographing the demonstrators for intelligence gathering.”

Things got complicated when Pat Keaney, one of the participants in the vigil, recognized the hooded figure with an expensive digital camera as the police officer who had photographed earlier protests. And when he mentioned this to Lisa Nieves, a freelance photographer, she turned her camera on Officer Karns. Karns, unfortunately, was not a believer in the adage about turnabout being fair play.

Karns went after Nieves, pursuing her into the arcade of Harvard’s Holyoke Center. And when she again attempted to photograph him, he told her that she could not take pictures on private property and that she had to produce identification. As he was wrong on both counts, she protested, and this led to her arrest for disturbing the peace. Keaney, who was standing nearby, stepped forward to object to the arrest, saying, “You might as well arrest me too. I didn’t do anything either.” Karns obliged, arresting Keaney for interfering with Nieves’ arrest.

After an independent witness came forward disputing the police account of the incident and the Harvard Police refused to make available the photographs taken by Karns, all charges were ultimately dismissed at the request of the district attorney. But ACLU of Massachusetts Legal Director John Reinstein, who represented Keaney, believes that the case raises important issues about both the practices of the Harvard University police and the absence of any meaningful oversight of its officers. “When you have police officers conducting this kind of surveillance of political activity, you have to ask ‘What’s going on here? Who authorized this? How is this information being used?’” Reinstein said. “But where the Harvard University police are involved, you are not going to get answers to those questions.”

While Harvard University police officers are authorized by law to exercise full police powers, not only on campus but in surrounding areas of Cambridge, they are not subject to the usual oversight mechanisms that lead to accountability of police actions. In 2003, the ACLU of Massachusetts filed suit on behalf of the *Harvard Crimson* under the state’s public records law to require the HUPD to disclose information about arrests made by its officers. The Massachusetts Supreme Judicial Court ruled against the ACLU, holding that HUPD, as a nongovernment agency, is not subject to the law.

As a result of the decision, the only information available to the public about the activities of the Harvard Police comes from the University’s public relations office. This has not proved helpful. When Karns’ surveillance of political demonstrations came to public attention, a university spokesman issued a statement that the university “does not have a political surveillance unit.” Reinstein challenged the adequacy of this statement. “They claim they don’t have a political surveillance ‘unit,’ but they do have a guy who goes out and takes pictures of people in peaceful demonstrations. And he stated in his report that he was there to gather intelligence. This is a situation which cries out for more accountability.” **D**



Harvard’s undercover police photographer didn’t appreciate having his own picture taken. Photo by Lisa Nieves

Win for academic freedom

[CONTINUED FROM PAGE 1]

MIT students discover vulnerabilities in MBTA fare payment systems

Massachusetts, who served as co-counsel representing the students. “This was clearly overreaching. If someone gets a free ride on the subway, the terrorists do not win. What is disturbing is the constant refrain that everything is related to national security.”

The MIT students—whose work received an “A” from renowned MIT Professor Ronald L. Rivest in a class on computer and network security—said repeatedly that they never planned to release the information needed to actually breach the MBTA fare payment systems. They withheld such details from their presentation in order to prevent malicious use of their work. They even provided a report on their findings to the MBTA and offered to help fix the flawed system.



MIT Professor Ron Rivest gave the students an “A” for their research on MBTA security vulnerabilities.

That, however, didn’t appease the MBTA, which filed suit to silence the students.

“The decision by Judge O’Toole has national significance as a victory for academic freedom and freedom of speech,” said Carol Rose, ACLU of Massachusetts Executive Director. “We welcome the Judge’s decision. We would urge the MBTA to focus on ensuring the security of its systems, and to take advantage of the brainpower that Massachusetts cultivates and attracts, rather than attempting to fight it with meritless lawsuits aimed at silencing those who discover flaws in the system.”

Reinstein concurred. “If allowed to stand, Judge Woodlock’s injunction would have had a chilling effect on academic freedom.” **D**

[Learn more about this case > www.aclum.org/docket](http://www.aclum.org/docket)

ACLU of Massachusetts Board Nomination Process

ACLU of Massachusetts bylaws state: “Nominations for At-Large Directors (other than the initial At-Large Directors) shall be made by the Nominating Committee....Such nominations may also be made by written petition of at least twenty-five (25) members submitted to the Corporation’s Executive Director, in such form and manner as may be reasonably specified by the Board of Directors, on or before the February 1 immediately preceding the election in question. Each such nominating petition shall be accompanied by the nominee’s written confirmation of willingness to serve if elected.”

BEYOND THE POLITICS OF FEAR: Reclaiming Our Civil Liberties



KEYNOTE SPEAKER:



Glenn Greenwald is a widely-read columnist at *Salon.com* and the author of two bestselling books: *How Would a Patriot Act?*, a critique of the Bush administration's use of executive power, and *A Tragic Legacy*, which examines the Bush legacy. His most recent book, *Great American Hypocrites*, examines the manipulative electoral tactics used by the GOP and propagated by the establishment press, and was released in April 2008. Prior to joining *Salon*, Mr. Greenwald was a constitutional law and civil rights litigator in New York.



Prof. Bill Strickland teaches political science at the UMass Amherst, where he is also the Director of the W.E.B. Du Bois Papers Collection. Professor Strickland is a founding member of the Institute of the Black World, an independent think tank, and was a consultant to the prize-winning documentary on the civil rights movement, *Eyes on the Prize*, and the senior consultant on the PBS documentary, *Malcolm X: Make It Plain*.

Michael "Wes" Macleod-Ball is the chief legislative and policy counsel for the ACLU's Washington Legislative Office. He manages a team of policy counsels and lobbyists who work with congressional offices on a nonpartisan basis to ensure that Americans' civil liberties are preserved and



2009 ACLU STATEWIDE CONFERENCE

February 7, 2009 › UMass Boston Campus Center
Registration begins at 12 noon

Featuring: [Glenn Greenwald](#) › [Wes Macleod-Ball](#) › [William Strickland](#) › [Nancy Murray](#) › [King Downing](#) › [Sekou](#) and [Steve Connell](#)

Join us Saturday, February 7, 2009, for our annual Statewide Conference as, together, we take an in-depth look at what the country's new president will mean for civil liberties, and what steps we as citizens must take to ensure our civil liberties and the restoration of the rule of law in America.

Salon.com columnist Glenn Greenwald will be our keynote speaker and will then join a panel of legislative and civil libertarian experts, moderated by ACLU of Massachusetts Executive Director Carol Rose, as we deep-dive into this important issue at a critical time in our nation's history.

Following our panel discussion, workshops and breakout sessions will be offered, followed by two-time National Poetry Slam champions Sekou and Steve Connell bringing the power of rhyme to liberty and civil rights, and then a definitive call-to-action for all civil libertarians by King Downing, national coordinator of the ACLU's Campaign Against Racial Profiling.

DON'T MISS OUT ON THIS INSPIRING AFTERNOON OF
FREEDOM, LIBERTY, AND ACTION!

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protected. Prior to this role, Mr. Macleod-Ball served as the executive director of the ACLU of Alaska.

Nancy Murray has been Director of Education at the ACLU of Massachusetts since 1987. During that time, she has worked closely with teachers, taken students on an annual civil rights tour of the South in the rolling classroom known as Project HIP-HOP (Highways into the Past: History, Organizing and Power), written a curriculum for schools, *Rights Matter: The Story of the Bill of Rights* (www.rightsmatter.org) and worked since 9/11 to create a new movement for civil liberties and civil rights across the Commonwealth.



Steve Connell and **Sekou (tha misfit)** are two-time champions of the National Poetry Slam Competition and have been featured on such diverse media outlets as *ABC World News*, *Good Morning America*, *MSNBC's Hardball*, *HBO's Def Poetry Jam*, *Showtime's Crossover*, *MTV's Battlegrounds*, and *BET's Lyric Café*.



King Downing is the National Coordinator of the ACLU's Campaign Against Racial Profiling. In 2007, the jury in *Downing v. Massachusetts Port Authority* found that state police had unlawfully detained Downing at Logan Airport in 2003.