



**DAYS AFTER STUNNING REVELATIONS  
ABOUT NSA SPYING, THE ACLU SUED TO  
CHALLENGE ITS CONSTITUTIONALITY**

*See p. 6 for details*

## The People v. Surveillance

The People v. Surveillance is not a lawsuit. It's a movement in Washington and on Beacon Hill, in legislatures, courts and executive offices around the nation.

The movement is growing. It's fueled by dramatic revelations of the National Security Agency's massive, indiscriminate spying on millions of Americans and by the realization that 21st century technology makes it all too easy for our government—including state and local law enforcement—to secretly monitor our everyday activities like never before.

The ACLU, with your help, can bring this movement front and center in Massachusetts, urging lawmakers to protect our privacy against a rising tide of unchecked surveillance.

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*Clockwise from top: James Esseks, director of the ACLU Lesbian Gay Bisexual Transgender & AIDS Project, anticipates the Supreme Court ruling with his client Edie Windsor. Crowds gather at Cambridge City Hall, where the first same-sex marriage in Massachusetts took place in 2004, to celebrate DOMA's demise. Supporters marched with the ACLU at Prides across the state.*

## Victory!

### Supreme Court rules for ACLU client Edie Windsor's challenge to "Defense of Marriage Act"

The U.S. Supreme Court in June ruled 5-4 in favor of the ACLU's challenge to the "Defense of Marriage Act" (DOMA), declaring the law unconstitutional as a deprivation of equal liberty protected by the Fifth Amendment.

The overturn of the law, which was enacted in 1996 and defined marriage as between one man and one woman, gave an estimated 130,000 married gay and lesbian couples in the nation immediate access to the more than 1,100 federal benefits they had previously been denied, including eligibility for family medical leave, Social Security survivor's benefits, access to health care for a spouse and the ability to sponsor a spouse for citizenship.

ACLU client Edie Windsor (pictured in top photo) was forced to pay more than \$363,000 in federal estate taxes after the death of her spouse, Thea Spyer, because their marriage was not recognized under federal law.

Windsor and Spyer shared their lives together as a couple in New York City for 44 years. After a 40-year engagement they were married in Canada in 2007. Two years later, Spyer, who had lived for decades with multiple sclerosis, passed away.

"DOMA was the last federal law on the books that mandates discrimination against gay people by the federal government simply because they are gay, and the Windsor decision takes down its core," said ACLU of Massachusetts executive director Carol Rose.

The historic ruling came on the last day of this year's Court session, on the same day as California's Proposition 8 case *Hollingsworth v. Perry* was decided, restoring marriage equality to California, and as cities around the nation celebrated Pride. ■

*See p. 5 for more Supreme Court cases in which the ACLU was direct or co-counsel*

## Federal government wrongly incarcerates dozens in Massachusetts jails under "mandatory detention" provision

In August, the ACLU of Massachusetts filed a class action lawsuit challenging the government's overbroad interpretation of a "mandatory" immigration detention provision. Noncitizens subjected to this provision are detained without bond hearings during their immigration removal proceedings.

The ACLU argues that the government is misapplying the provision, unlawfully subjecting 50 or more people in Massachusetts alone to detention without the possibility of release on bond, even though months or years have passed since they were released from criminal custody in connection with one of a long list of offenses that can trigger mandatory detention. Many of these people, if given the opportunity of a bond hearing, would be able to reunite with their families while they await the conclusion of their immigration proceedings.

Our client, Clayton Richard Gordon, was re-arrested in June 2013 and held in mandatory immigration detention on the basis of a 2008 drug offense that he spent less than a day in jail for. Since that original arrest, Mr. Gordon had restarted his life. He and his fiancée purchased their first home and had a son, now three years old. Gordon ran his own contracting business. Committed to giving back to his community, he was renovating a property in an economically depressed area into a transitional home for single mothers coming out of incarceration—a project

*Continues on p. 2*



*ACLU client Clayton Richard Gordon poses with his son. Gordon is being detained without the possibility of bond based on a minor charge from 2008.*

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## MORE LEGISLATIVE AND LEGAL NEWS

### State Supreme Judicial Court limits GPS tracking

In February, the Massachusetts Supreme Judicial Court held in *Commonwealth v. Rousseau* that individuals have a constitutionally protected expectation that the government will not use GPS monitoring to conduct extended electronic surveillance of their movements. As a result, the Court ruled that the government cannot track someone for an extended period of time using GPS surveillance unless they secure judicial oversight and make a showing of probable cause. The ACLU of Massachusetts, along with the Committee for Public Counsel Services, submitted a friend-of-the-court brief in *Rousseau* and hailed the ruling as a victory for everyone who does not want the government to track their movements. ■

### Protecting your privacy

*Continued from p. 1*

Here's what we're doing to protect your privacy and how you can help.

#### Take action online

We—and you—must continue to educate legislators that protecting privacy is a top priority for Massachusetts voters. Already, we've sent more than 14,000 emails, gathered nearly 4,000 signatures on pro-privacy petitions, and made hundreds of phone calls. Our elected representatives are hearing that message. Let's keep the spotlight on this urgent civil liberties crisis.

*Take action: [aclum.org/action](http://aclum.org/action)*

#### Work in the Legislature

In January, we worked to develop and gather support for bills to protect our privacy from unchecked monitoring by law enforcement. They include safeguards against warrantless snooping in our electronic communications records, protections against tracking where we drive, clear limits on police surveillance of constitutionally protected political and religious expression, and regulation of now completely unregulated domestic drones.

*See: [aclum.org/privacy\\_agenda](http://aclum.org/privacy_agenda)*

#### Organize, organize, organize

We showed up in force for a July legislative committee hearing to make the case that lawmakers must protect privacy in the Commonwealth. The ACLU brought together advocates such as the Electronic Frontier Foundation, Veterans for Peace, Harvard's Berkman Center for Internet & Society and others to unite behind a single message: "Protect Privacy; Stop Surveillance."

*Testimony at: [aclum.org/privacy\\_agenda](http://aclum.org/privacy_agenda)*

This campaign is just the beginning and will continue to grow. Americans should not accept unwarranted government tracking as a necessary evil nor a guarantee of



*This is how hard we're working to protect your privacy. Starting July 9, ACLU experts and allies testified throughout a jammed, day-long hearing of the state Judiciary Committee. But long after the crowds had left, our legislative director Ann Lambert delivered our final testimony just past midnight on July 10.*

safety. We know that the foundational principles of the First and Fourth amendments—freedom of expression, freedom of religion, freedom of assembly, freedom from unreasonable search and seizure—must be renewed in every age, including our own.

A free people cannot live if each of us is being continuously shadowed by a personal undercover police officer. In a surveillance society, people begin to self-censor. Creativity flows less freely. Dissent becomes more risky and rare. That's not constitutional democracy.

In the 21st century, our laws should reflect, not forsake, long-standing values. The ACLU is working to restore traditional checks and balances—warrants based on probable cause, judicial oversight, government transparency and accountability—and to ensure that law enforcement focuses on real criminal activity and protects the privacy of law-abiding people. ■

*Get involved! Sign up for action alerts at: [aclum.org/alert](http://aclum.org/alert)*

### Massachusetts Trust Act seeks to limit impact of controversial "Secure Communities" deportation program

The ACLU of Massachusetts, a member of the Massachusetts Trust Act Coalition, continues to advocate for the Trust Act, a bill that, if passed, would diminish the negative effects of the controversial deportation program "Secure Communities" (S-Comm) in the state. The Trust Act promises fairer and more humane treatment of immigrants in the Commonwealth. If passed into law, it would set clear standards for when local police may submit to burdensome requests from Immigration and Customs Enforcement (ICE) to further detain people who have been arrested but ordered released by the courts, just because they may be deportable. The bill would prevent prolonged detention except in unusual cases.

Since the implementation of S-Comm in 2008, more than 1,000 immigrants have been deported from Massachusetts. The majority had never been convicted of any crimes. In the meantime, the program has created an atmosphere of fear and mistrust among immigrant communities and their local police.

The ACLU of Massachusetts will continue to work with other organizations that support immigrant rights as well as law enforcement officials and our legislators to pass the Trust Act, helping to restore the broken relationships between law enforcement officials and immigrant communities. ■

### "Mandatory detention" program

*Continued from p. 1*

that he started and that, without him, is on hold.

The ACLU of Massachusetts is working with the national ACLU Immigrants' Rights Project and the Political Asylum / Immigration Representation Project on the case, *Gordon v. Napolitano*.

The class action is not our first case on this issue. In June, federal Judge William G. Young agreed that Leticia Castaneda was not properly subject to mandatory detention, and had to receive a bond hearing. We were an amicus in her case, *Castaneda v. Souza*. Again in *Forero-Caicedo v. Tompkins*, Judge Young agreed that our client was not properly subject to mandatory detention, and ordered that he receive a bond hearing. Both Ms. Castaneda and Mr. Forero have been released.

Another class action raising the same issue was filed in August by the national ACLU and its partners in Washington state. ■

## FROM THE EXECUTIVE DIRECTOR

### The ACLU: On the barricades of history

By Carol Rose

The ACLU, as an organization that promotes civil rights and defends civil liberties, is just where it should be at this moment in American history: on the barricades.

Let's start with the good news. We celebrated a historic equal marriage victory in the U.S. Supreme Court with the defeat of DOMA (the so-called "Defense of Marriage Act") in the ACLU's case, *Windsor v. U.S.* The death knell of DOMA lifts a huge boulder from the road to equal marriage rights in America. But the real work of freedom—in the hard-to-win states—is still ahead.

Fortunately, the work of equal marriage is joyful work, and the ACLU, with offices in every state and major cities, is uniquely positioned to play a leadership role in the movement to enable all people to marry the person they love with equal protection of our laws.

Sadly, however, the same Supreme Court that struck a chord for liberty in the *Windsor* case weakened equal

rights for people based on race in two other cases. The Court narrowed the ability of college and university admissions offices to build a diverse study body in *Fisher v. University of Texas*. And it stripped the Voting Rights Act of its key enforcement mechanism, Section 5, in *Shelby v. Holder*. Among other things, the ruling limits the power of the Department of Justice to challenge rigged voting systems in traditional centers of racial discrimination. On this 50th anniversary of the March on Washington, therefore, the ACLU is once again refocusing on protecting voting rights here in Massachusetts and nationwide.

On the privacy and civil liberties front, meanwhile, former National Security Agency contractor Edward Snowden leaked previously secret documents that prove our Executive Branch has built a massive surveillance system without our knowledge. Worse, elected officials have already turned their spy system on all of us—the ordinary Americans who elected them to positions of public trust. The Obama administration responded to the leaks by redoubling its prosecution of whistle-blowers and journalists, and by trying to focus public attention on whether Mr. Snowden is a hero or villain (he's neither, if you ask me). In so doing, the administration has sought to distract attention from the fact that the American people have been the victims of a Big Lie, told by top leaders over at least two administrations. In so doing, these leaders threaten to dismantle the system of checks-and-balances that has kept our nation free for over 200 years.

In Massachusetts, meanwhile, we have lived through a fear-inducing bombing at the Boston Marathon, the

At the end of June, we celebrated a historic victory for the freedom to marry in the U.S. Supreme Court with the defeat of the "Defense of Marriage Act" in the ACLU case *Windsor v. U.S.*

trial of notorious mobster Whitey Bulger for murders committed while under FBI protection, and secrecy surrounding the shooting death—while in FBI and Massachusetts State Police custody!—of perhaps the only guy who might have shed light on an unsolved triple homicide that authorities reportedly now link to the also-dead Boston Marathon bomber, Tamerlan Tsarnaev.

Finally—please, let's not forget—the fate of as many as 190,000 cases in Massachusetts have been tainted by the scandal at the notorious Hinton drug lab, home of chemist Annie Dookhan. I'm pleased to report that the ACLU of Massachusetts won round one in the Massachusetts Supreme Judicial Court, which held that prisoners can be freed while they challenge tainted convictions. But there is still much work to be done. We must focus on systemic solutions to this massive injustice.

So, how do we, ACLU members and lovers-of-liberty, respond with so many grave challenges on the civil liberties front? We take action.

The ACLU of Massachusetts has launched two new initiatives to effectively champion both civil liberties and civil rights. Our "Technology for Liberty" project currently is working to pass both federal and state legislation to require that officials get a warrant before they scoop up our private information and track our every move. But we need you—as ACLU members and patriotic Americans—to sign our petitions, write letters, make phone calls and mobilize your friends to let our elected officials know that privacy is not dead. In fact, privacy is popular. Privacy is control. But privacy can't protect itself—it needs you. Check out how you can get involved at [aclum.org/action](http://aclum.org/action).

At the same time, our "Justice for All" project is advocating equal rights for everybody. Our most recent

Sadly, the same Supreme Court that struck a chord for liberty in the *Windsor* case weakened equal rights for people based on race in two other cases.

work includes legal challenges to voter suppression efforts, notably in Worcester and Springfield. And we're championing the repeal of mandatory sentencing laws that indiscriminately lock people away. We're also challenging the overuse of school-based expulsions and arrests for nonviolent misbehavior, which ominously is prevalent in traditionally underserved communities. Our goal is to ensure that more kids stay in school and fewer go to prison. That's the best way to build safe and healthy communities.

At this moment in history, ACLU members don't have time for despair. Our work creates hope for our nation, our Commonwealth, our communities and future generations. Because freedom can't protect itself. ■

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#### CELEBRATING DR. NANCY MURRAY



Photo by Marilyn Humphries.

Dr. Nancy Murray recently celebrated what she termed her "graduation" from the ACLU of Massachusetts after 25 years as the organization's education director and first director of the ACLU of Massachusetts' Bill of Rights Education Project.

Colleagues, lay leaders, community leaders and friends gathered in July to bid her "fare forward" as she embarked on her next life adventure (in Spain) and to thank her for her years of service to civil rights and civil liberties.

"Nancy Murray has a rare combination of brilliance, eloquence, dedication and activism," said ACLU of Massachusetts executive director Carol Rose. "We are all the beneficiaries of this remarkable defender of civil rights and civil liberties."

Nancy came to the ACLU of Massachusetts (then "CLUM") in 1987 with a B.A. from Harvard University, and a B.Phil. and Ph.D. in Modern History from Oxford University, as well as considerable experience as a teacher, scholar and social activist in Great Britain, Kenya and the United States. She had taught for seven years at the University of Nairobi and then directed a nationwide program to combat racism in the media at London's Institute of Race Relations.

"We thought we had a great vision for the Bill of Rights Education Project (getting into schools and involving students in the defense of their rights), but Nancy came on staff in 1987 as its first director with an even broader, more creative vision, including instilling in students the kind of activism that made the project not only the crown jewel of the entire ACLU, but a national model for the wider educational community," said John Roberts, former executive director of the ACLU of Massachusetts.

During her tenure at the ACLU, Nancy was the first director of the ACLU of Massachusetts' Bill of Rights



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### New staff: Jessie Rossman and Carl Williams



**Jessie Rossman** joined the ACLU of Massachusetts as a staff attorney in June 2013. She litigates on a broad range of civil rights and civil liberties issues, including privacy and technology, free speech, poverty, gender discrimination and religious freedoms. Jessie graduated *magna cum laude* from both Yale University and Harvard Law School. Following law school, Jessie served as a law clerk to Judge Raymond C. Fisher of the U.S. Court of Appeals for the Ninth Circuit. Jessie was previously a legal fellow at the Natural Resources Defense Council and a staff attorney at the ACLU of Michigan. In addition to Massachusetts, she is admitted to practice law in Michigan and Illinois. ■

**Carl Williams** will become an ACLU staff attorney in September 2013. Prior to that, he was a criminal defense attorney with the Roxbury Defenders Unit of the Committee for Public Counsel Services. Carl is a graduate of the University of Rhode Island and the University of Wisconsin Law School. A long-time resident of Boston's Roxbury neighborhood, he has been an activist and organizer on issues of war, immigrants' rights, LGBT rights, racial justice and Palestinian self-determination. Carl is a member of the National Lawyers Guild and has served on its Massachusetts board of directors. During the Occupy Boston movement, he was part of its legal defense and support team, which provided nearly 24-hour support to the participants. More recently, Carl was a Givelber Distinguished Lecturer on Public Interest Law at Northeastern University School of Law, where he taught a class on social justice movements and the law. ■



**ACLU IN THE U.S. SUPREME COURT AND ACROSS THE NATION** [Learn more at: aclu.org/scotus](http://aclu.org/scotus)

During the 2012-13 term, the ACLU was direct counsel or co-counsel in an unprecedented six cases before the U.S. Supreme Court and submitted briefs in over a dozen others. Overall, the ACLU participated as direct counsel or amicus curiae in nearly a quarter of the Court's 77 cases this term.

**VICTORY**

**Windsor v. United States**

**ACLU case strikes down "Defense of Marriage Act" as violation of equal protection**

The Supreme Court in June ruled 5-4 in favor of the ACLU's challenge to the "Defense of Marriage Act" (DOMA), declaring the law unconstitutional as a deprivation of equal liberty protected by the Fifth Amendment. Following the favorable ruling, the ACLU announced its goal of securing the freedom to marry in every state, including the more than two dozen with anti-marriage-equality provisions written into their constitutions.

[Learn more at: aclu.org/out-freedom](http://aclu.org/out-freedom) ■

**VICTORY**

**Association for Molecular Pathology v. Myriad Genetics**

**Defending your right to your own genes**

In June, in a 9-0 ruling, the U.S. Supreme Court invalidated patents on two genes associated with hereditary breast and ovarian cancer in response to a lawsuit filed by the ACLU and the Public Patent Foundation (PUBPAT) on behalf of members of the medical community, medical professional associations, health groups and patients—including Lisbeth Ceriani of Newton, Massachusetts. ■

**VICTORY**

**Missouri v. McNeely**

**Police may not force people to submit to a blood test without consent and without a warrant**

In April, the Supreme Court, in a 5-4 ruling, upheld the Fourth Amendment's privacy protections by rejecting the proposition that states may routinely compel drivers to submit to a blood test in drunk-driving cases without consent and without a warrant. ■



**VICTORY**

**Arizona v. InterTribal Council of Arizona**

**ACLU challenges Arizona voter ID law**

In June, in a 7-2 ruling, the Supreme Court struck down Arizona's burdensome voter registration requirement. ■

**TEMPORARY SETBACK**

**Shelby County v. Holder**

**ACLU defends Section 5 of the Voting Rights Act**

In June, the Supreme Court, in a 5-4 ruling, struck down the coverage formula of Section 5 of the Voting Rights Act, a civil rights law that, since 1965, had protected people from rigged voting systems in traditional centers of racial discrimination.

The Voting Rights Act required that certain jurisdictions with a history of discriminatory voting practices get advance approval from the federal government before changing their election laws. ■

**ACLU calls on state officials to launch independent investigations into FBI shooting death of Ibragim Todashev**

In July, the ACLU of Massachusetts and the ACLU of Florida called on state officials to launch independent investigations into the death of Ibragim Todashev, the man linked to Boston Marathon suspect Tamerlan Tsarnaev and a 2011 Waltham triple homicide.

"If Massachusetts state officials have the authority to send law enforcement officers out of state to investigate crimes, then it's unclear why state officials wouldn't have the authority to investigate what those officers do," said Carol Rose, executive director of the ACLU of Massachusetts. "After all, the governing principle of this state isn't 'what happens in Vegas stays in Vegas.'" ■

**TEMPORARY SETBACK**

**Amnesty et al. v. Clapper**

**ACLU challenges Foreign Intelligence Surveillance Act (FISA) Amendments as unconstitutional**

In a 5-4 ruling handed down in February, the Supreme Court held that the ACLU plaintiffs don't have standing to challenge the constitutionality of the warrantless wire-tapping program.

In June 2013, days after details of the National Security Agency's massive surveillance program were leaked by Edward Snowden, the ACLU filed a new constitutional challenge to the program and argued that it violates the First Amendment rights of free speech and association as well as the right of privacy protected by the Fourth Amendment. The complaint also charged that the dragnet program exceeds the authority that Congress provided through the Patriot Act. ■

[See p.6 for full story](#)

## ACLU ACROSS THE COMMONWEALTH

### CAMBRIDGE

#### Court orders end to Cambridge jail overcrowding

Responding to lawsuits filed by the ACLU of Massachusetts and other organizations, a Massachusetts judge in June ordered the Sheriff of Middlesex County to end unconstitutional overcrowding in the Middlesex County Jail within 30 days, ordering that no more than 230 people be held in a jail that in recent years has frequently housed more than 400. The facility, which houses people who are awaiting trial, was built for only 160, and the resulting overcrowding forced individuals to sleep on the floor in plastic “boats” and deprived them of adequate toilet and shower facilities, according to findings issued by Judge Bruce R. Henry. ■

### EVERETT

#### ACLU joins PTA to oppose data-mining of students

The ACLU of Massachusetts has joined with an array of child and parent advocacy groups to oppose inBloom, a private company whose business model is built on acquiring, packaging and sharing extremely sensitive student data from public schools. The company, which has aggressively promoted itself to school districts nationwide, has shown interest in launching pilot programs in Massachusetts.

With a coalition of like-minded organizations, we sent a letter to the Department of Education, expressing concern about student privacy and external data sharing. Simultaneously, we submitted testimony in support of legislative reforms to add statutory protections for pupils across Massachusetts. ■

### WORCESTER

#### ACLU files federal suit to overturn anti-panhandling ordinances in Worcester

In May, the ACLU of Massachusetts filed suit in federal court in Worcester on behalf of three Worcester residents to block anti-panhandling ordinances enacted by the City of Worcester, claiming the ordinances are an unconstitutional violation of free speech.

One of the new anti-begging ordinances prevents people from doing such things as holding a sign asking for help starting a half-hour before sunset, or performing music while having a hat or cup for donations, or soliciting donations for any cause if they are within 20 feet of the entrance to a bus stop, theater, ATM machine or any other “place of public assembly.”

The second ordinance prohibits standing on traffic islands, a location favored for years by people soliciting donations and engaging in protected speech, including many Worcester-area politicians and their supporters, various churches, the Salvation Army and firefighter organizations raising funds for charity. ■

### SHIRLEY

#### ACLU successfully defends free speech of Shirley town official

The Town of Shirley has agreed to settle the ACLU’s civil rights lawsuit on behalf of Robert Schuler, a town official who had been banned indefinitely from town property as a result of statements he made during a committee meeting. The suit alleged that the ban was retaliation for Mr. Schuler’s public criticisms of the Shirley Selectmen, and that it deprived him of constitutionally protected rights to free speech, to petition the government, and to due process. ■

### JAMAICA PLAIN

#### State drug lab scandal update: an “important first step”

The ACLU of Massachusetts won an important first case in its efforts to secure justice for the tens of thousands of people whose convictions were tainted by misconduct in the Hinton drug lab. In July, the Massachusetts Supreme Judicial Court rejected the argument that defendants in cases tainted by the Hinton drug lab scandal cannot have their sentences put on hold.

“This is an important first step toward securing justice for people who appear to have been convicted by fraud perpetrated against them by a state employee,” said Matthew Segal, legal director of the ACLU of Massachusetts.

In August, Boston defense attorney David Meier, hired by Governor Deval Patrick to determine the extent of the scandal, released findings from his review, including that the cases of more than 40,000 people may have been affected.

The ACLU of Massachusetts, which estimates that the number of affected cases is much higher, repeated its call for justice.

“David Meier’s announcement confirms that we are no closer to solving this problem,” said Segal. “There are at least 40,000 people whose convictions have been potentially tainted and the vast majority of them haven’t had a day in court. Merely identifying them isn’t justice.” ■

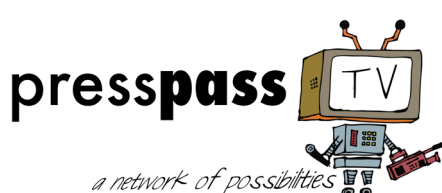
### BOSTON

#### ACLU successfully challenges airport seizure of laptop belonging to supporter of Wikileaks source

Three years after Department of Homeland Security agents stopped David House at a Chicago airport and confiscated his laptop, camera and USB drive, the government in May agreed to destroy all data it obtained from his electronics.

House, who was then working with the Bradley Manning Support Network, an organization created to raise funds for the legal defense of the soldier now known as Chelsea Manning, charged in the lawsuit that the seizure violated House’s Fourth Amendment rights by subjecting him to unreasonable search and seizure, and violated his First Amendment right to freedom of association. ■

## AWARDS AND ACCOLADES FOR THE ACLU OF MASSACHUSETTS



The ACLU of Massachusetts received Press Pass TV’s **Nellie Bly Investigative Media Award**, which recognizes a community member who has investigated serious wrong, for our “Policing Dissent” report. Published in October 2012, the report found that officers assigned to the Boston Regional Intelligence Center at the Boston Police Department have been collecting and keeping information about constitutionally protected speech and political activity. Previously, this award has been received by former *Phoenix* reporter Chris Faraone and WBUR reporter David Boeri. [Read the report at: aclum.org/policing\\_dissent](http://aclum.org/policing_dissent)



Our staff attorney Sarah Wunsch received the **Kivie Kaplan Award** from the Boston branch of the National Association for the Advancement of Colored People (NAACP). The award is presented to those who, like its namesake, have worked tirelessly in the areas of social justice, civil rights and addressing incidents of discrimination. ■

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## National ACLU challenges constitutionality of NSA phone spying program

The ACLU says unchecked, secret government data collection violates First and Fourth Amendment rights

The American Civil Liberties Union and the New York Civil Liberties Union (NYCLU) in June filed a constitutional challenge to a surveillance program under which the National Security Agency (NSA) vacuums up information about every phone call placed within, from or to the United States. The lawsuit argues that the program violates the First Amendment rights of free speech and association as well as the right of privacy protected by the Fourth Amendment. The complaint also charges that the dragnet program exceeds the authority that Congress provided through the Patriot Act.

"This dragnet program is surely one of the largest surveillance efforts ever launched by a democratic government against its own citizens," said Jameel Jaffer, ACLU deputy legal director. "It is the equivalent of requiring every American to file a daily report with the government of every location they visited, every person they talked to on the phone, the time of each call and the length of every conversation. The program goes far beyond even the permissive limits set by the Patriot Act and represents a gross infringement of the freedom of association and the right to privacy."

The ACLU is a customer of Verizon Business Network Services, which was the recipient of a secret Foreign Intelligence Surveillance Act (FISA) Court order published by *The Guardian* in June. The order required the company to "turn over on 'an ongoing daily basis'

phone call details" such as who calls are placed to and from, and when those calls are made. The lawsuit argues that the government's blanket seizure of and ability to search the ACLU's phone records compromise sensitive information about its work, undermining the organiza-



tion's ability to engage in legitimate communications with clients, journalists, advocacy partners and others.

"The crux of the government's justification for the program is the chilling logic that it can collect everyone's data now and ask questions later," said Alex Abdo, a staff attorney for the ACLU's National Security Project. "The Constitution does not permit the suspicionless surveillance of every person in the country."

The ACLU's 2008 lawsuit *Amnesty et al. v. Clapper*

challenging the constitutionality of the FISA Amendments Act, which authorized the so-called "warrantless wiretapping program," was dismissed 5-4 by the Supreme Court in February on the grounds that the plaintiffs could not prove that they had been monitored. ACLU attorneys working on the complaint said they do not expect the issue of standing to be a problem in the new case because of the recently revealed FISA Court order.

Also in June, the ACLU and Yale Law School's Media Freedom and Information Access Clinic filed a motion with the FISA Court, requesting that it publish its opinions on the meaning, scope and constitutionality of Patriot Act Section 215. The ACLU is currently litigating a Freedom of Information Act lawsuit, filed in October 2011, demanding that the Justice Department release information about the government's use and interpretation of Section 215.

"There needs to be a bright line on where intelligence gathering stops," said NYCLU executive director Donna Lieberman. "If we don't say this is too far, when is too far?"

Attorneys on the case are Jaffer and Abdo along with Brett Max Kaufman and Patrick Toomey of the ACLU, and Arthur N. Eisenberg and Christopher T. Dunn of the NYCLU. ■

For resources and the latest updates, go to: [aclu.org/nsa-surveillance](http://aclu.org/nsa-surveillance)

## Celebrating Dr. Nancy Murray (cont.)

Left to right: John Roberts, former executive director of the ACLU of Massachusetts; Dr. Nancy Murray, former director of education of the ACLU of Massachusetts; Dr. Ruth Hubbard Wald; and Kathy Roberts attended the 2008 annual Bill of Rights Dinner. Photo by Marilyn Humphries.



Dr. Nancy Murray addressed a crowd of supporters, gathered at the State House, to protest "Secure Communities," anti-immigrant dragnet of the U.S. Immigration and Customs Enforcement.



Project HIP-HOP, co-founded and directed by Dr. Nancy Murray, took Boston-area students to the American South and South Africa to explore the history of the civil rights movement and the role of young people in it.



Continued from p. 3

Education Project. In that role, she encouraged teachers, students and the general public to think critically about the difficult issues being debated in society and the courts, and to work for a future in which civil liberties and civil rights will be safeguarded and enlarged. She also co-founded and directed Project HIP-HOP (Highways into the Past: History, Organizing and Power), and over an eight-year period took students to the American South and to South Africa to explore the history of the civil rights movement and struggle against apartheid, and the role young people have played in movements for racial justice.

"Nancy changed my life and the lives of many young people in this state," said Mariama White-Hammond, who became the executive director of Project HIP-HOP when it spun off from the ACLU of Massachusetts in

**"Nancy changed my life... She brought the history of the civil rights movement alive and made it relevant to our lives today."**

2001. "She brought the history of the civil rights movement alive and made it relevant to our lives today. She taught us the power of stepping up, but also the importance of knowing when to step back."

After 9/11, Nancy worked through the ACLU of Massachusetts' Civil Liberties Task Force to build a new movement for civil liberties and civil rights across the Commonwealth. Among other things, she helped to win passage of resolutions against the USA PATRIOT Act in dozens of cities and towns in Massachusetts. She also organized countless marches, rallies and protests for ACLU members in the Commonwealth.

"We often tease Nancy that she only organizes public protests on the coldest day of the year or else in the sweltering heat," said Rose. "In reality, she organizes year-round."

In addition to her teaching and activism, Nancy is a scholar and prolific writer. Her publications include an innovative curriculum for schools, "Rights Matter: the Story of the Bill of Rights" ([rightsmatter.org](http://rightsmatter.org), 2006); "Violence, Nonviolence, and the Lessons of History: Project HIP-HOP Journeys South," *Harvard Educational Review*, reprinted in *Humanizing Education: Critical Alternatives to Reform*, Harvard Education Press, March 2010; "Sharing the Story of the Movement: The Project HIP-HOP Experience," in *Putting the Movement Back into Civil Rights Teaching* (Teaching for Change, 2004); "Profiled: Arabs, Muslims, and the Post-9/11 Hunt for the 'Enemy Within'" in the award-winning book edited by Elaine Hagopian, *Civil Rights in Peril: The Targeting of Arabs and Muslims* (Haymarket Books, Pluto Press, 2004); and "Profiling in the Age of Total Information Awareness," *Race & Class*, October 2010. In September 2011, she authored a 10-part series for the online publication *Truthout* entitled "Ten Years Later: Surveillance in the 'Homeland.'" ■

We will miss Nancy and wish her well. ■

**ACLU IN THE NEWS**

Excerpts from editorials around the state cite and support ACLU of Massachusetts work...



### **Our Opinion: Citizens need to watch out for who's watching them**

We understand and respect that the responsibilities of law enforcement personnel are many and that their main priority is public safety. But in the wrong hands, such information can destroy lives. Paramount is the Constitution. It's the framework upon which this country exists. Without it, America will fail.

We support the Fourth Amendment. ... We expect the Legislature to support it as well.

*The Patriot Ledger* (Quincy), July 11, 2013, in support of ACLU-backed privacy bills

### **Independent probe of FBI shooting needed**

The only investigation [into the shooting of Ibragim Todashev] is being done by the FBI and history shows that when the FBI investigates its own agents, the FBI finds itself innocent. ....

For that reason, the American Civil Liberties Union chapters in Massachusetts and Florida have called on their state attorneys general to launch an independent investigation into the shooting of Todashev.

"FBI shooting investigations, even when carried out with ostensible oversight of both the Justice Department's inspector general and the Civil Rights Division, virtually always clear the agency of wrongdoing," said Carol Rose, executive director of the ACLU of Massachusetts.

*MetroWest Daily News* (Framingham), July 24, 2013

### **Our View: An unbalanced wiretapping act**

The new legislation would expand law enforcement's ability to spy on many more people—and for a longer period of time. The Massachusetts chapter of the American Civil Liberties Union warns that the Act Updating the Wire Interception Law is actually "a broad expansion of the wiretap law to allow law enforcement to listen in to private conversations for virtually any investigative purpose." It's troubling that this legislation is being sold to the public under the guise of keeping up with modern technology when the existing statute already does.

*Taunton Daily Gazette*, June 27, 2013

### **Mass. officials must investigate Todashev death**

[T]his isn't a question about the rights of a Russian national during questioning by the FBI. It's not a question of whether Todashev was a bad guy. It's a question about the rights of American citizens to know what really happened in that Orlando apartment and why. ....

"When something goes wrong during an operation involving Massachusetts law enforcement officers, Massachusetts residents deserve a thorough and transparent investigation by Massachusetts officials," wrote Carol Rose, executive director of the ACLU of Massachusetts, in her letter to [Attorney General Martha] Coakley.

Columnist Joan Vennoch in *The Boston Globe*, August 11, 2013

### **ACLU: End the destructive enforcement of marijuana possession laws**

According to a study by the American Civil Liberties Union, there is a substantial racial disparity in the arrests for marijuana possession across the country. In 2010, the arrest rate for possession by blacks was 714 per 100,000. The rate for whites was only 192 per 100,000. ....

The ACLU study concludes quite persuasively that the war on drugs "has needlessly ensnared hundreds of thousands of people in the criminal justice system, had a staggeringly disproportionate impact on African Americans, and comes at a tremendous human and financial cost." The ACLU recommends, therefore, "that marijuana be legalized for persons 21 or older through a system of taxation, licensing and regulation."

Justice requires that Americans support the ACLU conclusion.

*Bay State Banner* (Boston), June 12, 2013

## **After overwhelming voter support, medical marijuana law goes into effect**

On Election Day in November 2012, Massachusetts voters overwhelmingly supported (60% YES) seriously ill patients' access to medical marijuana. The passage of An Initiative Petition for a Law for the Humanitarian Medical Use of Marijuana established the legal framework to protect doctors and patients who wish to discuss the possible use of medical marijuana in their treatment plan, created a registration process for patients who have been approved for medical marijuana by their doctors and required the creation of a state-supervised dispensary system to allow patients safe access to their medicine.

As the 18th state to pass a medical marijuana law, Massachusetts was able to look at the best and worst from other states to ensure that we establish the safest and most secure program in the country. One of the largest problems in other states has been the lack of required, timely statewide regulations on the production, sale, use and safety oversight for medical marijuana. The Massachusetts law created a timeline for the Department of Public Health (DPH) to promulgate regulations and to establish licensing and public safety procedures for patients and dispensaries.

From January through May 2013, advocacy staff at the ACLU of Massachusetts worked with patient and medical organizations and met with DPH management and staff to ensure that the final regulations represented proven best practices and were produced on the law's timetable. After a series of public hearings across the state, DPH released comprehensive program regulations several weeks before the deadline.

We are very pleased overall with the regulations and the good work of DPH staff in considering both patients' and doctors' needs and public safety matters. Our main concerns have been ensuring that medical decisions are made between doctors and patients—not by the state—and that dispensaries meet patients' needs as responsible members of our communities.

On August 2, 2013, DPH released Phase 1 of the application process for medical marijuana dispensaries, an important action that continues to keep the law's implementation moving ahead and on track. The ACLU of Massachusetts will continue our oversight of the implementation process to ensure the needs of patients, doctors and communities are met. ■

## Faces of the ACLU



1-3/ Kathleen Turner performed a piece from "Red Hot Patriot," in which she portrayed journalist Molly Ivins; activist Lilly Ledbetter received the 2013 Roger Baldwin Award; and Boston City Councilor Ayanna Pressley introduced Ledbetter at this year's annual Bill of Rights Dinner, attended by over 700 guests. *Photos by Marilyn Humphries.*

4/ From left at table: ACLU of Massachusetts staff attorney Sarah Wunsch, outgoing board member Susan Akram and incoming board member Shannon Irwin presented a "Know Your Rights" workshop at Chelsea's Al Huda Society. *Photo courtesy of Al Huda Society.*

5/ The ACLU marched in Pride celebrations across the state, including this one in Boston, honoring ACLU client Edie Windsor's successful challenge to DOMA. *Photo by David Graves.*

6/ Ellery Schempp celebrated the 50th anniversary of a case, in which he was the primary student involved, that challenged Bible reading in public schools. The Supreme Court ruled in his favor, declaring that required, public school-sanctioned Bible readings are unconstitutional. Schempp spoke about the case to an ACLU audience in Boston in July. *Thanks to photographer Gary Langley and Ellery Schempp for permission to print this photo.*

7/ James Esseks, co-counsel to ACLU client Edie Windsor in her challenge to the "Defense of Marriage Act" and the director of the ACLU Lesbian Gay Bisexual Transgender & AIDS Project, discussed the future of LGBT rights and marriage equality with ACLU of Massachusetts supporters just weeks before the Supreme Court struck DOMA down. *Photo by Marilyn Humphries.*