

ANNUAL REPORT 2013













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COVER ART

Cover art, clockwise from upper right: Drone flyover of Statehouse (Allen Gilbert photo); Keynote by William Arkin at Surveillance on the Northern Border conference (Allen Gilbert photo); Panel discussion on racial profiling with (l-to-r) filmmaker DeWolfe Morrow, Migrant Justice field worker Natalia Fajardo with Migrant Justice member, Young Writers Project essay winner Luna Skeet-Browning, and board member Traci Griffith (Geoff Brumbaugh photo); Student Bill of Rights 101 conference (Andrea Warnke photo); Whiteboard video frame (Amy Manock art); Center: Bess O'Brien reads from censored classic at Banned Books Week event (Geoff Brumbaugh photo)

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2013 ANNUAL REPORT OF THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VERMONT, INC.

CONTENTS

President's ReportPage 2	Awards
Executive Director's ReportPage 3	
Legal DocketPage 4	How You Can Support the ACLU Page 12
Staying Informed About Civil Liberties IssuesPage 5	Board of Directors, Committees, and Staff Inside front cove
Financial StatementPage 6	
2013 In PerspectivePage 7	

WHAT IS THE ACLU?

he American Civil Liberties Union of Vermont is an organization of Vermonters dedicated to the defense of individual liberties guaranteed by both the U.S. and Vermont constitutions. The American Civil Liberties Union Foundation of Vermont is the legal and educational arm of the ACLU, and goes to court in defense of these essential liberties.

Both the American Civil Liberties Union of Vermont and its foundation are affiliated with the national ACLU, which was formed more than 90 years ago.

The principles guiding the ACLU are simple and clear:

- The right to free expression above all, the freedom to dissent from the official view and majority opinion.
- The right to equal treatment regardless of race, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

 The right to be left alone – to be secure from spying, from the promiscuous and unwarranted collection of personal information, and from interference in our private lives.

These guarantees of liberty are not self-enforcing. Those with power often undermine the rights of individuals and groups who lack the political influence, the numerical strength, or the money to secure their birthright of freedom. That is why ACLU programs – in the courts, in the legislature, and in the public forum – have most often been on behalf of people with the special vulnerability of the powerless.

We are all vulnerable. No group or person is permanently protected. That is why the ACLU accepts, as a first principle, the truth – validated by experience – that the rights of each person are secure only if those of the weakest are assured. The ACLU stands on this ground; if it fails to do so, it and liberty may perish.

"The ACLU has stood four-square against the recurring tides of hysteria that from time to time threaten freedoms everywhere. . . . Indeed, it is difficult to appreciate how far our freedoms might have eroded had it not been for the Union's valiant representation in the courts of the constitutional rights of all people of all persuasions, no matter how unpopular or even despised by the majority they were at the time."

By John S. Freidin, president

want to describe the countless, quiet initiatives our staff and board members take to advance the civil liberties of Vermonters. These unheralded efforts,

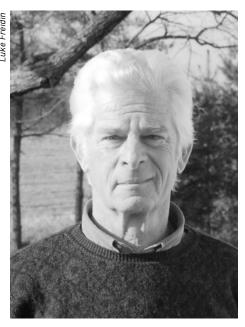
as much as the publicized ones, are what make your ACLU robust and its work enduring.

In the past 12 months:

- Executive Director Allen Gilbert has written 5,432 e-mails, fielding 496 queries from Vermonters, advocates, clients, and board members, plus another 314 from the press.
- ACLU-VT was mentioned in 163 radio, newspaper, and TV stories, editorials, op-eds, and cartoons.
- ACLU-VT, with the help of private attorneys, put on two "Bill of Rights 101" conferences. Over the past nine years these conferences have reached more than 800 high school students.
- Staff Attorney Dan Barrett spent 1,100 hours processing and litigating civil liberties claims, handled 375 complaints, spent 42 hours assisting attorneys on civil liberties issues, and spent 38 hours preparing and making speeches.
- Allen served on 10 civil liberties committees.
- We hosted a March luncheon in Montpelier to brief legislators and lawyers on recent court decisions affecting civil liberties in Vermont.
- House parties were hosted by former board member Maida Townsend, as well as by co-hosts Julie Kalish (a current board member) and Giavanna Munafo, with more than 70 attending. I hope you will come to one in 2014.
- Allen, board members Euan Bear, Traci Griffith, Julie Kalish, Jim Morse, and I attended the two-day National ACLU Leadership Confer-

ence in Detroit.

- Volunteer Zach Williams redesigned our blog, making it crisper and easier to search.
- ACLU-VT hosted the six New England ACLU executive directors at their annual summer meeting.
- Allen and others held a press conference to mark the one-year anniversary of the police Tasing death of Macadam Mason.
- We reported that between 2001 and 2010 African-Americans were four times more likely to be arrested in Vermont for marijuana possession than whites despite roughly equal rates of marijuana use.
- Seven Days did a wonderful cover story on Allen and his ACLU work.
- We presented our 5th annual "Evening Without" reading of censored works during Banned Books Week, this time in St. Johnsbury.
- Allen briefed the Vermont press corps on Vermont's public records and open meeting laws, and the inaccessibility of Vermont police records.
- To celebrate Constitution Day on September 17, we released our report, "Surveillance on the Northern Border," co-sponsored with the Young Writers Project a student writing competition on civil liberties, and phoned donors to thank them for their support. Thank you for yours.
- In October, we hosted a surveillance conference, featuring internationally renowned national security expert William Arkin. Seventy-five lawyers, journalists, and other citizens attended.



- Allen lectured at Union College in Schenectady, New York, on the privacy impacts of smart meters. He's one of the few experts on this issue in the East.
- Our board revised our investment policy, invited 11 investment advisory firms to make proposals for the management of our endowment, and hired a new firm. Our portfolio has grown 7.8 percent in the first eight months since the change.
- Board members Robert Appel and Jeff Dworkin were presenters and Allen was a panelist at a daylong meeting on Tasers, sponsored by the Attorney General's Office.
- I testified at a public hearing of the Senate Health & Welfare Committee on the "Death with Dignity" bill.
- Allen joined Rep. Peter Welch to announce the Congressman's introduction of a bill to regulate the use of drones by police and private parties.
- And this list omits lobbying, testifying before legislative committees, and counseling public officials, as well as writing our blog, legislative e-updates, Web site, newsletter, and op-eds.

We welcome your suggestions for other efforts we might make.

By Allen Gilbert, executive director

his was my 10th year serving as ACLU-VT executive director. It's been the busiest, and possibly also one of the most successful, for the

organization. Partnering with others was key to our success. But against the successes must be weighed disappointments and frustrations.

The successes. We won significant revision of the law governing access to police investigation records. We published a comprehensive report on surveillance in Vermont, along the way releasing an explanatory white-board video, logging the first drone flyover of the Statehouse in Montpelier, and hosting a conference that featured an internationally known expert on security and military issues.

With help from the Young Writers Project, we co-sponsored a Constitution Day writing contest for middle and high school students. Working with other advocates, we drew attention to the need to regulate police use of electric stun guns ("Tasers").

Listening with the rest of the world, we learned that the concerns we expressed in 2006 about National Security Agency phone records collection had been legitimate and that the reality of the NSA's dragnet surveillance was worse than imagined.

We cheered when the U.S. Supreme Court overturned key provisions of the federal Defense of Marriage Act in a case brought by the National ACLU.

Vermont joined other states in decriminalizing marijuana. Patients with terminal illnesses were assured the opportunity to make choices about how their lives would end. Migrant workers gained the right to drive from the dairy farms where they work to

medical appointments, the grocery store, school events, or simply to visit with friends.

We led discussions after plays, after movies, and in coffee shops. We helped nearly 200 high school students learn about civil liberties at this year's Bill of Rights conferences. We hosted a panel of notable authors reading from banned books.

Disappointments came because of what we weren't able to accomplish or because of what we learned about civil liberties violations.

Profiling of certain populations in the state persists, with new evidence showing that African-Americans are much more likely to be arrested for certain crimes than whites. The mentally ill and troubled are increasingly the targets of deadly police force. The legislature found it necessary to pass an equal pay act, 50 years after pay inequity between men and women was outlawed by federal law.

I was asked to speak with school officials from around the state about the legacy of the Vermont Supreme Court's 1997 *Brigham* decision. That decision, the result of ACLU litigation, led to equity in school funding. But now the system that provides that equity is under scrutiny. Again, there is a worry that legislators will conclude that not all kids count equally when it comes to education opportunity and that a new law will return us to unfair distribution of resources.

We have pushed in the Statehouse, the press, meeting rooms, and the Web



for greater police professionalism through greater accountability of officers' actions. The unwillingness of political leaders to speak out on police shootings (some fatal) of innocent Vermonters, to ask simply, "What can we do to make sure this doesn't happen again?" has been the sorest disappointment of this year. Each injury or death is an indictment of a system meant to serve and protect citizens – not harm them.

And the most aching frustration of the year has been that it took a young, principled tech worker, Edward Snowden, to tell us how pervasive the surveillance reach of the NSA has become. Snowden has done this at great peril to himself. How much better – how much more like a democracy – it would have been had we been able in 2006 to use public records requests, administrative complaint procedures, and litigation to legally obtain the information Snowden was forced to swipe. (See 2013 in Perspective for more about Snowden.)

When I started my work here at the ACLU, someone long active in the organization wished me well by saying, "May you live in interesting times." About that, there has been no disappointment.

A SUMMARY OF MAJOR LEGAL ACTIONS DURING 2013

All filings available at actuvt.org/docket

PERSONAL PRIVACY

Smart Meters: Electrical smart meters are small computers that replace the electric meter on the side of houses. The meters are very sensitive, and some are even able to tell which appliances are in use at any given time. As part of its approval process for smart metering, Vermont's Public Service Board is investigating what kind of privacy rules should be placed upon smart meter usage. We are urging the Board to mandate that smart meter data not be released without either a warrant or the customer's permission.

Staff attorney: Dan Barrett

OPEN RECORDS

Prison Legal News v. Corrections
Corp. of America: We represent Prison
Legal News – the nation's leading
periodical on prison conditions,
prisoners' rights, and prison litigation
– in its quest for records about settlements between injured prisoners and
the private prison operator that houses
about one-third of Vermont's prison
population. We contend that a private
corporation acting as the government's
jailer should be treated as the equivalent of the government when it comes
to granting the public access to records
showing how prisoners are treated.

FREEDOM OF EXPRESSION

Cyr v. Addison Rutland Supervisory Union: Rutland County resident Marcel Cyr began attending school board meetings to observe the proceedings and voice criticism of the

board during the public comment portion of each meeting. In April 2012, the school supervisory union barred Cyr from all school property without explanation, depriving him of his ability to attend board meetings and speak during them. Worse, it refused to give him a way to contest the ban. We have brought suit alleging that the ban violates Cyr's First and Fourteenth Amendment rights.

Attorney: Ted Hobson (Law Offices of Edwin Hobson, Burlington)

Staff attorney: Dan Barrett

MacIver v. Lawton: Late one evening in December 2012, Rod MacIver drove through a yellow light on Route 7 in Shelburne directly in front of a local police officer who had an unobstructed view of the intersection. The police officer followed MacIver for a few miles before pulling him over, claiming that MacIver had run the red light. When MacIver told the officer in unvarnished language that he had not run a red light, the officer wrote him a ticket and noted on it that MacIver had "requested" to be ticketed. Later, MacIver filed a complaint with the Shelburne Police Department about the officer. He received an e-mail from the officer's supervisor excoriating MacIver for complaining, and misstating what a video of the incident showed. Months later, at the traffic court hearing on the ticket, the officer testified under oath that MacIver had run a red light. After MacIver showed the video of the incident, the officer admitted under questioning from the hearing officer

that he had known prior to the hearing that MacIver had not broken the law. We have brought suit against the officer, contending that he illegally seized MacIver during the traffic stop and retaliated against him for exercising his First Amendment free speech right to tell a police officer that s/he is mistaken.

Cooperating attorney: Stephen Saltonstall (Law Offices of Stephen Saltonstall, Manchester) Staff attorney: Dan Barrett

COMPLAINT RESOLUTION

We received approximately 400 requests for assistance in 2013. Although our small size means that we cannot give assistance to everyone who contacts us, we respond to each request. A number of requests were resolved by working to resolve disputes without litigation. Everyone sending us a complaint receives information or referrals to organizations that we hope can help them resolve the difficulty they're facing.

There would be no way to keep track of the flood of paperwork without David Abbott, who donates time each week to manage our intake. We cannot thank him enough for his generous assistance.

o you read our Civil Liberties Blog? We report frequently on new developments and analyze the implications of topical issues. You can find our blog on our Web site or Facebook page or subscribe for automatic feeds when new posts are published. See the box below for details.

What might you find on our blog? Here's a sampling of posts from 2013.

What's Wrong with ALPRs?

Jan. 24, 2013

ALPRs – automated license plate readers – may not have been intended to be sophisticated surveillance tools, but that's how they can be used. And that's why the ACLU is concerned about their proliferation in Vermont.

Regulate Stun Gun Weapons

Feb. 12, 2013

For the last eight months since Macadam Mason died after being shot with a Taser by a Vermont state trooper, we as a state have been faced with one essential question. What are we going to do to make sure that such an unnecessary death doesn't happen again?

Drones in the Air

April 30, 2013

Within five years after federal approval of drone access to U.S. airspace, up to 7,500 non-military unmanned devices will be flying overhead, predicts the Federal Aviation Administration. The high-tech devices no longer seem like science fiction.

Drug Arrest Data Shows Profiling

June 4, 2013

African-Americans were four times more likely to be arrested for

marijuana possession than white people in Vermont during the 10 years from 2001 to 2010, according to data from a new report by the American Civil Liberties Union.

> aclu-vt litigation aclu national litigation ALPR ALPRs annual meeting campaign finance cell phone

tracking criminal law data

warehousing DNA

drones elections end-of-life choices equal protection

excessive force

facial recognition software freedom of expression freedom of movement freedom of

thought government
accountability
government
oversight legislation
Macadam Mason
marriage equality
medical records national id card
national security
nondiscrimination

police accountability prescription drugs privacy public

records racial profiling

rule of law search and seizure social media surveillance

Tasers tax law torture

transparency u.s. supreme court USA PATRIOT Act vermont law wayne

Snowden Is NSA Whistleblower

June 10, 2013

Edward Snowden, an NSA contract worker, has stepped forward as the person leaking secret NSA documents.

You Are Being Tracked

July 17, 2013

The National ACLU has released the results of its analysis of more than 26,000 pages of documents from police departments in cities and towns across the country, obtained through freedom of information requests by ACLU affiliates in 38 states (including Vermont) and Washington, D.C. It's becoming increasingly clear we are living in an era of mass surveillance.

Border Checkpoints Not at Border

Sept. 24, 2013

The U.S. government has prepared a detailed study of sites on which to build permanent Border Patrol checkpoints as many as 100 miles from the Canadian border along north-south Interstate highways in New England.

Police Discipline Records Public

Oct. 11, 2013

In an important ruling for government transparency and accountability, the Vermont Supreme Court said the public has the right to see internal investigations of police officers suspected of misconduct.

Nat'l ID Card Coming to Vermont

Nov. 26, 2013

"REAL ID," a super-charged driver's license also meant to serve as a national identification card, has been panned by 24 states and dissed by privacy advocates. But Vermont's embracing it.

FOLLOW OUR BLOG:

- On the Web: www.acluvt.org
- On Facebook: ACLU-Vermont
- Subscribe: acluvt.org/blog/feed/

ACLU-VT and ACLUF-VT STATEMENT OF ACTIVITIES, FY 2013*

Support and Revenues		ACLU	ACLU Foundation
Memberships	\$	40,842	
Revenue-sharing			\$ 211,192
Gifts:			
Annual campaign			47,977
Memorials/Honorarium			6,515
Foundation			6,000
Donated Items and Services			10,842
Events			8,948
Fee Awards			1,111
Net National Shared Income			46,334
Interest and Dividends		35	21,089
Unrealized gain (loss) on investments			(18,362)
Realized gain (loss) on investments			18,425
Miscellaneous		1,450	 152
Total support and revenues	<u>\$</u>	42,327	\$ 360,223
Expenses Program services			
Legal			\$ 109,313
Public Education			40,127
Legislation	\$	20,193	
Total program services	\$	20,193	\$ 149,440
Supporting services			
Fundraising	\$	2,307	\$ 51,018
Management and General		16,453	 141,917
Total supporting services	\$	18,760	\$ 192,935
Total expenses	\$	38,953	\$ 342,375
NET CHANGE IN NET ASSETS	\$	3,374	\$ 17,848
NET ASSETS – BEGINNING	\$	85,754	\$ 1,678,507
NET ASSETS – ENDING	\$	89,128	\$ 1,696,355

^{*}These statements of activities cover the fiscal year beginning April 1, 2012 and ending on March 31, 2013, and were prepared by ACLU staff based on an annual audit report by outside independent auditors.

THE YEAR OF EDWARD SNOWDEN

By Allen Gilbert, executive director

mention surveillance in my executive director's report as an area where the ACLU-VT did extensive work in 2013. I wanted to speak more about this because I believe 2013 will be seen as a critical juncture for not just the United States, but for many other countries, in thinking about government collection of information about citizens.

One man is responsible for this turning – Edward Snowden. The young tech worker's leaks of documents proving extensive U.S. government surveillance have forced us to ask not only the rhetorical question, "Can they do that?", but the more cogent question, "Should they do that?"

These questions are not new to us here at the ACLU-VT. We grappled with them in 2006, when we filed a complaint with the Vermont Public Service Board about collection of Vermonters' phone records. Our complaint alleged violations of the consumer privacy policies of two phone companies operating in Vermont – Verizon and AT&T. These companies had, according to published reports, provided "metadata" phone information to the NSA.

The PSB agreed to take up our complaint. But before the inquiry could begin, the federal government sued in U.S. District Court in Burlington to stop the proceeding. The government said the program was a state secret; even the existence of the program could not be discussed.

Similar privacy violation complaints

were filed by other ACLU affiliates around the country. And similar court actions were taken by the federal government to block those inquiries.

The various actions were consolidated into one case and transferred to a federal court in California. They were eventually dismissed after Congress in 2008 absolved the phone companies of any possible liability.

That congressional action brought a storm of protest, with critics pointing out that not only had Americans' privacy likely been violated but that the congressional action made it impossible to learn more about the breadth and scope of the NSA's surveillance of Americans.

Edward Snowden changed all that. He pulled back the curtain of secrecy, giving Americans, and the rest of the world, a detailed picture of the NSA's surveillance activities – not just millions of phone records logged, but billions, over an extended period of time, and covering not just Americans but foreigners in their own countries, and not just everyday foreigners, but heads of state.

And it now appears the NSA may be sweeping up other information as well – e-mails, videos, and documents we send to one another.

The scope and breadth of the surveillance are breathtaking – so much so that U.S. public officials could no longer sit back and assert our privacy was being protected by the secret Foreign Intelligence
Surveillance Court or select

congressional committees receiving secret briefings about the NSA's programs.

The impact of NSA surveillance on Vermont extends beyond specific information the government has about our daily activities. The NSA approach – collect whatever data you can with whatever technology you can buy, and hold on to that data just in case you may need it someday – has been embraced by state and local police agencies in Vermont.

Vermont agencies' operation of automated license plate readers (ALPRs) mirrors the NSA's bulk information collection programs.

Vermont police use high-tech ALPR systems to gather information about all Vermont drivers, regardless of whether we are suspected of criminal activity. The data that's collected is then sent to Vermont's "fusion" center, where analysts have access to it (and other information about us), and can even provide that information to law enforcement agencies in other parts of the country.

The trend is troubling: Just as the NSA has been storing records of all of our phone calls "just in case," Vermont databases with information about where we've been driving are being built "just in case."

The good news? The year ended with a federal court ruling that the NSA's bulk, suspicionless collection of Americans' phone records is likely unconstitutional (another court disagreed). Vermont Sen. Patrick Leahy and others introduced a bill to rein in the NSA. An independent panel advising the president recommended significant changes to NSA programs.

None of this would have happened without Edward Snowden. 2013 was his year.



Members of Migrant Justice with field coordinator Natalia Fajardo accept the Curtis Award.

The American Civil Liberties Union of Vermont presented its 30th Annual David W. Curtis Civil Liberties Award to Migrant Justice (Justicia Migrante) for advocating for the core rights of all who live in Vermont, especially the rights of association and movement.

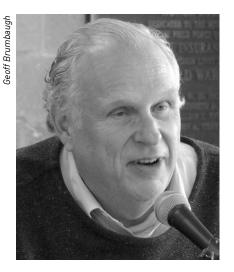
The economic plight of Vermont dairy farms opened a window of understanding that the group Migrant Justice has used to bring a measure of justice to workers who live in our state and sustain a key industry yet are often denied the most basic of rights. Many of Vermont's dairy farm workers come from outside the country, particularly Mexico and Central American countries. They work long days, do back-breaking labor, and face isolation not only from Vermonters in cities and neighboring towns but from friends and acquaintances. Migrant Justice has skillfully built successful advocacy campaigns to fight racial profiling and to ensure migrant farm workers can obtain Vermont drivers' licenses to travel freely in the state. While other states criminalize and dehumanize migrant communities, Migrant Justice has shown Vermont how core freedoms can enhance the dignity of all in our state. It is with gratitude that we present Migrant Justice with this year's David W. Curtis Civil Liberties Award.



Addressing racial profiling as part of a panel at the annual meeting.



Award presentation by Executive Director Allen Gilbert.



Bill Schubart

The American Civil Liberties Union of Vermont presented its 24th annual Development Award to Bill Schubart in recognition of his dedicated and energetic work in ensuring that the American Civil Liberties Union of Vermont has the financial resources needed to accomplish its work.

Bill Schubart has advanced the work of the ACLU by sharing his fundraising knowledge, encouragement, and enthusiasm with fellow members of the ACLU board. He has taken the initiative to approach his wide circle of friends and colleagues and to provide opportunities for them to learn more about the work of the ACLU – forging new connections and broadening the financial base needed to support our civil liberties efforts. From asking for donations to co-hosting receptions to donating delightful dinners and other items to our annual auction, he – often with the help of his wife, Kate – has cheerfully taken on a wide range of development tasks. Our organization is the richer, in energy and dollars, because of his service.

TIMMY BOURNE AWARD FOR EXCEPTIONAL VOLUNTEER SERVICE

The American Civil Liberties Union of Vermont presented its 26th annual Timmy Bourne Award for exceptional volunteer service to Mark Kolter in recognition of his contribution of time and energy to the American Civil Liberties Union of Vermont.

Building a sense of the importance of civil liberties in our society is one of the most important tasks of the ACLU. Most compelling of all is the need to make sure that each new generation understands why protecting constitutional rights matters. Since 2010 Mark Kolter has willingly and eagerly participated in our Bill of Rights 101 conferences, helping high school students learn about constitutional issues. Along with other lawyers, Mark has generously given of his time to lead interesting and energetic small group discussions with hundreds of high school seniors. For many students, this is their first contact with a practicing attorney skilled in legal issues and procedures. Because of volunteer attorneys like Mark, students leave the day with a deeper and richer understanding of the Constitution and its relevance to their daily lives. We are grateful to Mark for his ongoing interest in, and commitment to, civil liberties and the work of the ACLU.



Mark Kolter

I want to support the vital work of Vermont's American Civil Liberties Union Foundation.				
Enclosed is my contribution of: \$\square\$ \$500 \$\square\$ \$100 \$\square\$ \$25 \$\square\$ Other: \$\square\$				
Contributions will be recognized in the next annual report, but only with your permission.				
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Clip and return to: American Civil Liberties Union Foundation of Vermont, 137 Elm Street, Montpelier, Vermont 05602.				
Your support is deeply appreciated.				

By including the ACLU in your will, you can leave a legacy of liberty for generations to come.

Thousands of passionate civil libertarians have stepped forward and expressed their most cherished values by making a deeply meaningful gift to the ACLU in their estate plans.

We invite you to remember the ACLU in your will and become part of this special group of ACLU supporters who have made freedom, justice, and equality a personal legacy.

To learn more or to take advantage of our estate planning resources, visit www.aclu.org/legacy or call toll-free 877-867-1025.



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2013 Annual Report

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