



ANNUAL REPORT

2014



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Courthouse Figure, "Justice," 19th Century
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Photo by Allen Gilbert.
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2014 ANNUAL REPORT OF THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VERMONT, INC.

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WHAT IS THE ACLU?

The 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.”

Former Chief Justice Earl Warren

By John S. Freidin, president

If you're like me, police misconduct — on TV or experienced personally — makes your blood boil.

When it happens in your neighborhood, you're outraged. Recently in Vermont, we've been outraged too often.

A number of incidents — some involving guns or Tasers, others merely traffic stops or misdemeanors — paint a picture of police abusing their power.

Let me tell you about a case ACLU-VT is now handling. At 3 p.m. on March 6, a state police trooper stopped an African-American driver on U.S. Route 7 in Wallingford. The officer claimed snow was partially obscuring the renewal sticker on the car's rear license plate. (It's not illegal to drive a car on which the renewal sticker is touched by snow or any other material.)

The trooper told the driver that he smelled marijuana, and asked the driver's consent to search the car. Because the driver knew his rights, he declined to give his consent. The officer then seized the car and had it towed to the state police barracks in Rutland, the city where the driver happened to live. But the trooper left the driver — without gloves or hat — standing beside the road to get himself home, eight miles away.

At the barracks police tore the car apart. They found no drugs (though the trooper claimed to find marijuana residue). The driver was never charged with any violation. Nevertheless he had to pay a \$150 towing charge to get his car back. Seven hours had elapsed since he was stopped.

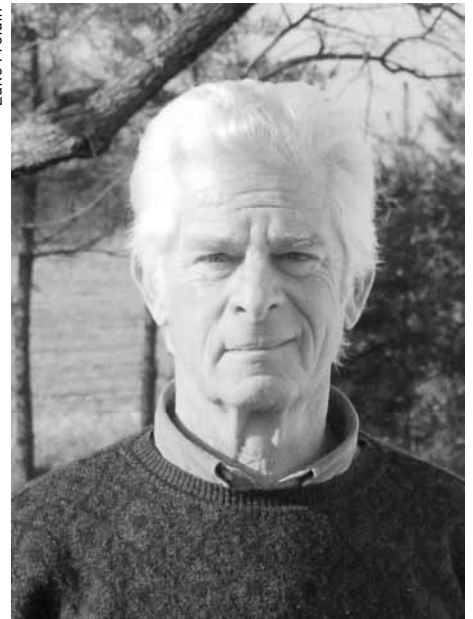
At issue in the case is not just an illegal traffic stop but whether police can continue to use a "sniff test" as evidence of a drug crime. The Vermont legislature de-criminalized small amounts (an ounce or less) of marijuana in 2013.

And at issue in general are the use, and abuse, of police powers. Police are authorized to use physical, even deadly, force. But only within legal limits. They are trained to expect threats to themselves and to master an arsenal of physical tactics and powerful weaponry. It must sometimes be difficult for them not to feel at risk of attack. And it must also be difficult for them not to use their weaponry and training to try to control every situation, even when doing so is likely to provoke a suspect. However, fear, training, or crisis does not give license to abuse power.

It's not easy to ensure that police keep their behavior within legal limits. In Vermont police officers are not licensed — as barbers and realtors are — so there is no consistent administrative means to reprimand them or take their license away. (ACLU-VT is working to change this.)

Citizens have only the rule of law at their disposal. And that is not available until long after an incident has occurred. Most persons involved in such incidents just want the charges dropped or reduced. They are seldom willing to take the time, undergo the emotional turmoil, and face potential retribution to file even a misconduct

Luke Freidin



report, to say nothing of also assuming the expense of a lawsuit. Their inaction, although understandable, encourages more misconduct.

So the responsibility falls on the ACLU. Thanks to your financial support we fulfill our responsibility in three primary ways:

(1) **Litigation** — *if we have a willing client*. Although we have a superb staff attorney, Dan Barrett, and many excellent cooperating attorneys, our resources are not unlimited. We cannot pursue every case and hence focus on the most egregious or precedent-setting.

(2) **Legislation**. Allen Gilbert, our executive director, is a ubiquitous and respected lobbyist on behalf of the ACLU in the legislature, where he combs bills for potential threats to civil liberties and promotes legislation to strengthen their protection.

(3) **Public education**, which we plan to expand beyond our current efforts, and where your letters to the editor, conversations with neighbors, and communications with public officeholders are incredibly valuable.

Please remember: Silence and inaction encourage abuse. Please help us break the silence and end police abuse.

By Allen Gilbert, executive director

We focused much of our work in 2014 in key, strategic areas. Below are highlights of activities we undertook in these areas to

protect civil liberties.

Militarization of police. Armored personnel vehicles, night vision goggles, and sniper rifles – these are some of the things sheriffs' offices, local police departments, the Vermont State Police, and Fish and Wildlife wardens requested in 2014 through the federal government's military surplus program. When police officers start getting military weapons, they begin to look more like a military force than cops on the beat. The summer's events in Ferguson, Missouri, underlined why this isn't a good idea. We obtained records detailing the military equipment that's been flowing to Vermont police and reported on what we've found.

Racial profiling. After much public pressure, some police departments – most notably the Vermont State Police – agreed to collect “stop data” so questions about profiling could be answered. Several years' data have been collected, but it hasn't all been analyzed. And we found that the little bit of data that has been analyzed may not have not been reviewed as completely as possible, masking evidence of profiling. Thanks to pressure from advocates, the legislature finally in 2014 mandated that all police departments collect and report stop data.

Taser regulation. We were successful in getting a Taser regulation bill passed in the legislature in 2014, the second state in the nation to do so. Statewide standards have been set for training and use, and reports must be

filed and made available to the public every time a Taser is used.

Public records access. The press and public generally have greater access to local and state public records thanks to initiatives we've led over four years. Frustrating, though, is the huge number of exemptions to the law, and the fact the exact number isn't known because the exemptions are laced throughout statutes, rules, policies, and directives. The large number of exemptions creates the impression, accurate or not, that government has something to hide. We've advocated for simpler, consolidated language that cuts the number of exemptions.

Digital privacy. The Fourth Amendment's protections against unreasonable search and seizure need a 21st-century upgrade. Police should have to get a warrant before they can look at someone's e-mails, text messages, Internet usage records, and cell phone tracking data – in short, an electronic communications privacy law is needed. Stricter protections to guard against unauthorized access to medical records available over statewide data exchanges are also needed. They're all on our policy agenda.

Overincarceration. The number of people in American jails is staggering – higher than any developed country anywhere in the world. Vermont has done better than many states in bucking the trend. Nonetheless, despite low crime rates, we've been putting more people behind bars,



leading to full prisons and the transfer of inmates to private prisons out-of-state. The ACLU-VT is part of a coalition, Vermonters for Criminal Justice Reform, working to change that. And the National ACLU has launched a nationwide campaign to cut America's prison population in half by 2020. Vermont shouldn't be spending more money on jails than it does on colleges.

Strategic plan. We began a review and update of our five-year organizational strategic plan in 2014. We collected information through a series of interviews with a range of stakeholders in order to assess the strengths, weaknesses, opportunities, and threats in the organizations' four main program areas – litigation, lobbying, public education, and individual assistance. Main themes are being identified and drafted into a plan reviewed first by our planning committee and then by our board. We're looking forward to our affiliate's 50th anniversary in 2017, and to the national ACLU's 100th anniversary in 2020.

A SUMMARY OF MAJOR LEGAL ACTIONS DURING 2014

All filings available at acluvt.org/docket

FREEDOM OF EXPRESSION

Cyr v. Addison Rutland Supervisory Union: In the fall of 2011, Benson parents Marcel and Veronica Cyr became concerned about their children's education at the Benson Village School. They viewed the school as not providing a good education for their son, and were alarmed by the school's failure to stop the bullying of their daughter. The Cyrs had many meetings with school staff, and eventually began attending school board meetings to stay informed about school governance and to provide feedback to their local officials.

Twice between that fall and the following spring, the school supervisory union had a police officer serve Marcel with a single-sided piece of paper stating that he was banned from all school property in the supervisory union on pain of arrest. The papers did not state why he was banned, or how he might appeal. Worse, because school board meetings were held at the Benson Village School, the bans forbade Marcel from attending public meetings.

After the first ban, Veronica attended a school board meeting to ask why Marcel was forbidden, but the school's principal said that the school did not need a reason. After the second ban, Marcel made a public records request for all documents showing the reasons for the ban. Rather than respond to his request, the supervisory union sued Marcel in state court, asking to be excused from responding to the request.

Staff attorney Dan Barrett and Burlington attorney Ted Hobson had

the suit against Marcel dismissed and obtained the records. The records showed that Marcel was banned based upon a letter from a Burlington psychologist who had never met Marcel, but claimed that her discussions with school staff suggested that Marcel could be dangerous.

Ted and Dan filed suit on Marcel's behalf in federal district court, contending that the bans violated Marcel's First Amendment right to speak to his neighbors and elected officials at public meetings, and that the lack of explanation or opportunity to appeal violated his Fourteenth Amendment right to procedural due process.

After 9,000 documents were produced and 14 witnesses deposed, the federal court handed victory to Marcel, concluding that the supervisory union had violated both the First and Fourteenth Amendments of the U.S. Constitution. The parties mediated damages in mid-December, and the case was resolved.

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

Staff attorney: Dan Barrett

MacIver v. Lawton: When Rod MacIver was stopped by a Shelburne police officer one night on U.S. Route 7, Rod knew that he hadn't done anything wrong. The police officer claimed that Rod had run a red light, but Rod told the cop in unvarnished language that the light was yellow. The police officer chastised Rod for arguing with him, and eventually wrote Rod a ticket with an annotation on it claiming that Rod requested the

ticket.

When Rod appeared at the traffic court hearing to contest the ticket, he brought with him the police officer's cruiser cam video showing that the light was yellow. That did not stop the police officer from telling the traffic court that the light was red, although the police officer later attempted to retract the statement, after admitting that he knew prior to the hearing that the light was not red.

Cooperating attorney Stephen Saltonstall and staff attorney Dan Barrett brought suit against the police officer for illegally seizing Rod during the traffic stop, and for retaliating against Rod's frank speech when issuing him the ticket.

The case settled, with the town of Shelburne agreeing to pay Rod damages, to train its police officers on motorists' right to speak their minds, to change the process for handling complaints about police officers, and to pay some of the legal fees.

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

OPEN RECORDS

Prison Legal News v. Corrections Corp. of America: Vermont has for some time incarcerated more people than it has room for in its prisons. In recent years, the state has contracted with the private, for-profit Corrections Corporation of America (CCA) to act as its substitute jailer. From 2007 to 2014, the state has paid CCA \$83.6 million to house, supervise, care for,

and offer various services to its inmates.

Prison Legal News, a nationwide monthly periodical covering prison conditions, prison litigation, and prisoners' rights, sent a public records request to CCA in 2012 seeking information on lawsuits brought by Vermont prisoners injured while in CCA's custody. CCA did not respond, and ACLU-VT filed suit against CCA, claiming that it is subject to Vermont's public records act when it stands in the shoes of the state as its jailer. CCA moved to dismiss the suit, arguing that private companies like it are not subject to the public records act.

The trial court denied the motion, agreeing with Prison Legal News that a private company acting as the state's contract jailer is effectively a state agency for purposes of the act.

After the ruling, CCA decided to voluntarily surrender most of the documents sought by Prison Legal News instead of continuing to fight. However, CCA is still withholding records that it claims are off-limits because of a contractual promise of secrecy. We have argued that the public records act forbids agreements to keep documents away from public records requesters, and await a ruling from the court.

Staff attorney: Dan Barrett

PERSONAL PRIVACY

Investigation into Vermont Electric Utilities' Use of Smart Metering and Time-Based Rates in Re Opt-Out, Privacy and Cyber Security: In a series of administrative proceedings before the Public Service Board, Vermont's electric utilities are seeking regulatory permission to (1) switch to networked, electronic utility meters

(called "smart meters") and (2) vary electricity charges to consumers throughout the day as usage changes.

In this proceeding, the Public Service Board is specifically considering the privacy implications of smart meters. Smart meters differ from traditional mechanical utility meters in that they are small computers that measure electricity usage as it occurs, and are connected to a data network operated by the utility. That network is used to gather usage information from each meter several times a minute, which gives the utility a picture of power demand and power outages almost instantaneously.

Although smart meters hold great promise for reducing Vermonters' contributions to global climate change, ACLU-VT is concerned that the detailed picture of human activity smart meter data provides will be irresistible to police and prosecutors.

We intervened in this proceeding to have the board require that smart meter data be available only by search warrant in criminal cases, and, in civil cases through a process that guarantees the utility customer a chance to appear in court and assert their privacy rights before the information is released. The briefing has been in front of the board since December 2011, and we await a decision.

Staff attorney: Dan Barrett

SEARCH AND SEIZURE

Zullo v. Vermont: When the state legislature decriminalized the possession of one ounce or less of marijuana in July 2013 and specified that a person carrying that amount "shall not be penalized or sanctioned in any manner by the State or any of its political subdivisions," most Vermonters probably thought that the

police would stop hassling small-time marijuana users.

In March, Rutland resident Greg Zullo found otherwise. A state trooper pulled Greg over, claiming that the small white validation sticker on Greg's rear license plate was touched by snow, even though there is no such traffic offense on the books. The trooper also claimed that Greg's car smelled faintly of burnt marijuana, although there was no suggestion that Greg was driving under the influence.

Over the next hour, the trooper separated Greg from his car and tried very hard to convince Greg to waive his right to privacy and allow a search of the car. When Greg refused, the trooper had Greg's car towed to the state police barracks, and refused Greg a ride home although Greg had no coat or hat and it was a cold day. The trooper later searched the car, found what he claimed to be marijuana residue, and made Greg pay \$150 for having the car towed.

Cooperating attorney Tony Pyle and staff attorney Dan Barrett brought suit on Greg's behalf in September, claiming that the trooper's actions violated Article Eleven of the Vermont Constitution. The case is in discovery.

Cooperating attorney: Antonio D. Pyle (Law Offices of Antonio D. Pyle, Stowe)

Staff attorney: Dan Barrett

ACLU-VT and ACLUF-VT STATEMENT OF ACTIVITIES, FY 2014*

	ACLU	ACLU Foundation
Support and Revenues		
Memberships.....	\$ 41,156	
Revenue-sharing		\$ 209,400
Gifts:		
Annual campaign		58,394
Memorials/Honorarium		4,180
Foundation		2,000
Donated Items and Services.....		16,216
Events		12,301
Fee Awards		13,050
Net National Shared Income.....		75,804
Interest and Dividends	3	50,385
Unrealized gain (loss) on investments		(133,382)
Realized gain (loss) on investments.....		278,875
Miscellaneous	<u>3,708</u>	<u>7,451</u>
 <i>Total support and revenues.....</i>	 <u>\$ 44,867</u>	 <u>\$ 594,674</u>
 Expenses		
Program services		
Legal		\$ 110,054
Public Education.....		40,765
Legislation	<u>\$ 21,724</u>	<u> </u>
 <i>Total program services.....</i>	 <u>\$ 21,724</u>	 <u>\$ 150,819</u>
Supporting services		
Fundraising	\$ 2,483	\$ 52,844
Management and General	<u>17,151</u>	<u>166,826</u>
 <i>Total supporting services.....</i>	 <u>\$ 19,634</u>	 <u>\$ 219,670</u>
 <i>Total expenses.....</i>	 <u>\$ 41,358</u>	 <u>\$ 370,489</u>
 NET CHANGE IN NET ASSETS.....	 \$ 3,509	 \$ 224,185
 NET ASSETS – BEGINNING	 <u>\$ 89,128</u>	 <u>\$ 1,696,355</u>
 NET ASSETS – ENDING	 <u>\$ 92,637</u>	 <u>\$ 1,920,540</u>

*These statements of activities cover the fiscal year beginning April 1, 2013 and ending on March 31, 2014, and were prepared by ACLU staff based on an annual audit report by outside independent auditors.

UNFINISHED BUSINESS

By Allen Gilbert, executive director

Some years beg to be celebrated. Others wither with a sense of unfinished business. There seemed to be lots of unfinished business in 2014, book-ended by the tension of long-simmering racial issues and by the confirmation of torture committed in our names during the first decade of the century. Both issues touch on fundamental constitutional values that form the bedrock of who we are as a democratic society.

“The past is never dead,” William Faulkner famously remarked. “It’s not even past.” He was describing the personal and historical burdens placed on the people and the region that he came from, the South.

The burden of the past is shared by the entire country when it comes to black-white racial interactions. The bygone legal sanction of unequal treatment based on skin color has never left us, remaining at times an excuse for believing that certain groups of people really are inherently better (or worse) than others.

It comes down to this: It is exceedingly difficult for us as Americans to turn away from assumptions that our minds leap to when we see someone of a skin color different from ours. We get locked into patterns of behavior, even when we don’t want to, that cause young men to die and cities to burn.

That is what happened this summer, in Ferguson, Missouri, after the fatal shooting by a white police officer of a young unarmed African-American

man. It happened in other parts of the country, too, not as copy-cat recreations of a specific incident but as common tragedies that occur frequently in many locales.

An unarmed black man in New York peddling cigarettes ended up dead following an altercation with a white police officer. A black 12-year-old in Cleveland playing with a toy gun was shot dead by white officers who mistook the toy for a real weapon. The death earlier in the year of a mentally ill black man found lying on the ground in a Milwaukee park cycled back into the news when the local district attorney failed to bring charges against the white officer who had shot the man with his revolver – 14 times.

Responsibility for racial prejudice is more collective than responsibility for torture. With the latter, an individual must use the powers of a specific government office to not just discriminate but to break the law.

The acknowledgement, through a congressional report released near the end of 2014, that this country had broken national and international laws forbidding torture was – unbelievably – vigorously defended by the man who was our vice president during the first eight years of the century, Dick Cheney.

Had a report been published about such abuses committed by a foreign country, the U.S. would have strongly criticized the lack of accountability for allowing the torture to occur and for not bringing criminal charges against the perpetrators.

Tremendous damage accrues through our failure to conduct comprehensive investigations of police shootings of citizens, or of torture of foreign individuals “rendered” to secret prisons. Our inaction contributes to the perception that police shootings and torture remain permissible policies sanctioned by us and our government. Such a perception undermines the ability of the U.S. to advocate for human rights abroad.

And tellingly, inaction compromises our faith, as Americans, in the rule of law in our own country.

We often toss off phrases such as “due process” and “equal treatment under the law.” But I worry that we understand these phrases by thinking of how we feel *we* deserve to be treated, not how we might be treating unknown others through our government’s actions.

Since 1984, the ACLU’s annual report has had as an introduction an answer to the question, “What is the ACLU?” It’s in this report, too, on Page 1. To me, the most incisive part of the answer is the observation that “the rights of each person are secure only if those of the weakest are assured.” Denial of anyone’s rights threatens everyone’s rights. “We are all vulnerable,” our introduction states. “No group or person is permanently protected.”

Nancy Waples, a Chinese-American Vermonter named a state Superior Court judge in 2014, noted much the same when appointed. “The law must work for all, or it works for none,” she said.

Did the law work for everyone in 2014? Sadly, the answer may be “no.” And perhaps that’s why 2014 felt unfinished.

Do 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 you can 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 2014.

Your Medical Records Are Already Out There

Jan. 29, 2014

With no fanfare and public notice, many Vermonters' personal medical records have already been put into electronic databases controlled by the state and soon to be accessible to physicians and others working in hospitals and medical offices.

Got Your MRAP?

Feb. 21, 2014

Vermont State Police now have what their commander calls "a platform that will help troopers get close to and help defuse a dangerous situation without exposing them to life-threatening danger." The "platform" is actually a \$500,000, 18-ton, mine-resistant, ambush-protected armored vehicle known in military lingo as an MRAP.

Victory in Bogus Traffic Stop

April 11, 2014

Motorist Rod MacIver and the town of Shelburne have agreed to settle MacIver's case against police officer Jason Lawton on terms that take police oversight one step closer to reality for all Vermonters.

Our Privacy Pushed and Pulled From Us

May 30, 2014

Long waits at the border? Get finger-



printed or iris-scanned and receive an easy-pass NEXUS card! Don't want your driver's license super-charged to a national identity REAL ID card? OK, but the Vermont DMV will take your Vermont driver's license and hand you back a Vermont Privilege Card!

Big Step for Police Accountability

June 17, 2014

The push for greater police account-

ability took a big step forward Tuesday as Gov. Peter Shumlin signed a legislative package that requires police to protect the rights of the innocent, forbids racial profiling, and mandates statewide adoption of bias-free policing policies.

ACLU-VT Files Suit Over Seizure of Motorist

Sept. 18, 2014

ACLU-VT has filed suit on behalf of a motorist who was stopped and had his car seized, leaving him stranded on the side of the road eight miles from his home in Rutland, because a state trooper said he smelled marijuana but otherwise had no evidence of a crime.

Is This Possible? Black Arrest Rates Higher in Burlington than in Ferguson?

Nov. 26, 2014

... The events [in Ferguson, MO] may seem distant, but here's a sobering fact that may make them seem a bit more immediate. Police in Burlington, VT, arrest African-Americans at a higher rate than police in Ferguson.

Too Many People In Prison

Dec. 8, 2014

The number of people in American jails is staggering – 2.2 million, or one in every 100 adults. Vermont has done better than many other states in bucking the trend. Nonetheless, despite low crime rates, we've been putting more people behind bars, leading to full prisons and the transfer of inmates to private out-of-state jails.

FOLLOW OUR BLOG:

- On the Web: www.acluvt.org
- On Facebook: [ACLU-Vermont](https://www.facebook.com/ACLU-Vermont)
- Subscribe: acluvt.org/blog/feed/

HOW YOU CAN SUPPORT THE ACLU



I want to support the vital work of Vermont's American Civil Liberties Union Foundation.

Enclosed is my contribution of: \$500 \$100 \$25 Other: \$ _____

Contributions will be recognized in the next annual report, but only with your permission.

Please list my/our name(s) as follows: _____

I prefer not to be listed.

Name(s): _____

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E-mail: _____ Phone: _____

Please make checks payable to: ACLU Foundation of Vermont. Gifts are tax-deductible to the fullest extent permitted by law.

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.

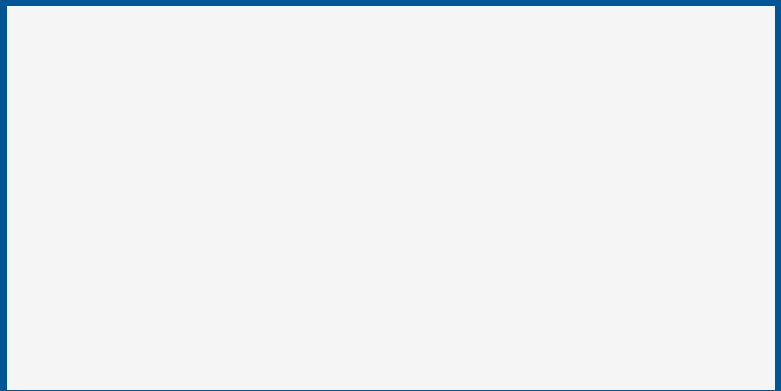


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2014 Annual Report

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