



ANNUAL REPORT

2015

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2015 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

I've been a member of the ACLU for 51 years, a board member for 15, president for six. I love this organization. It prospers because of your

dedication and support.

An old cartoon pictures a man standing over a cat and its litter box. In a stern voice the man tells his cat: "Never, ever think outside the box!"

Lately, I've been thinking about a matter of social justice that may be outside the civil liberties box.

I'm thinking about a Guaranteed Basic Income (GBI, for short). Say, \$25,000 a year, beginning at age 19 – for all, regardless of "need."

Our so-called "safety net" has evolved for 75 years. Hundreds of programs have been enacted, implemented, and evaluated. But they've made little economic difference. And they've created disincentives to seek work in the open market, stigmatized their recipients, and promoted divisions among us.

Hundreds of thousands of Vermonters have been left in unacceptable and hopeless circumstances. Circumstances that lead to illness, a lack of parenting, crime, academic failure, low voting rates. To a lack of access to courts, bail, higher education, housing, transportation, fuel, childcare, medical, dental, and mental health care. To opportunity itself. We could go on and on.

Although these programs differ from one another – from block grants to free school lunches – they have one thing in common: they are all conditional.

A person or family can get support only by meeting conditions set in law. When a beneficiary – through study or

hard work – earns more than the law allows, he loses benefits, either abruptly or gradually.

By contrast, a GBI is unconditional, simple, and requires little bureaucracy.

Other initiatives to boost incomes derive from one or more flawed theories:

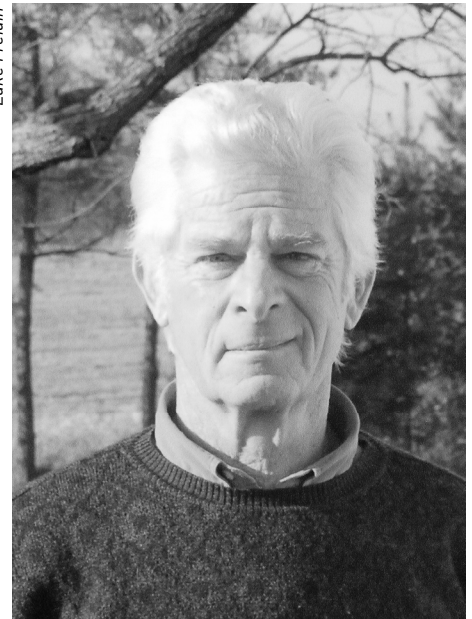
Economic growth is supposed to increase the demand for labor and thus raise wages. While growth can help, historically, it has never eliminated poverty, and, as we now see, it can also do little to improve middle-class incomes. Many economists expect future demands for labor to be met by robotics and automation, not workers.

Workfare is designed to get single parents into the workforce. It assumes its beneficiaries must be compelled to work, because they lack a work ethic or adequate skills. Neoclassical economists predict that, if workfare does move more people into the job market, it will actually lower wages. Keynesians predict new workers won't find work anyway.

Minimum wage laws help low-wage workers, but do little for others.

Guaranteed Public Employment comes closest to GBI. Like GBI it would replace many expensive programs, such as TANF, unemployment insurance, food stamps, and housing vouchers. But it has a fundamental flaw: enormous overhead – administrators, supervisors, offices, factories, materials, and planning. Due to these expenses, jobs programs cost much more than the wages their

Luke Freidin



workers receive. And, of course, they do nothing for the unemployable.

In short, a GBI is the most efficient and effective way to raise incomes. It puts its money directly into everyone's pocket, thereby increasing all incomes regardless of cause. Everyone is assured of an income that can pay for basic needs. Everyone is free to seek better-paid work, devote more time to their families, continue their education, start their own businesses, or expand their roles as citizens. Finally, everyone would be part of the community, not of a demeaned group.

If we fail to implement an unconditional, universal income support system, then economic and political power, educational opportunity, nurturing families, and entrepreneurial ambition will become the exclusive domain of an oligarchy. The oligarchs will soon realize that civil liberties are inconvenient, and nearly everyone else will be tempted to sacrifice their rights for the chance of a higher income.

Who then will think outside the box?

EXECUTIVE DIRECTOR'S REPORT

By Allen Gilbert, executive director

It would be hard to say that 2015 began and ended a jubilant year. The apprehension and unease that seemed to hang over the country as 2014 ended

pervaded much of 2015. The clock was turned back on state legislative issues such as education funding equity and asset forfeiture laws. Shootings in Paris, Colorado, and California echoed the terror the nation felt in 2001, after the 9/11 attacks in New York and Washington and led to xenophobic rants by demagogic political candidates. Police abuse seemed rampant in the country, with persistent allegations of profiling of African-Americans.

Yet on other fronts there was cause for celebration. Marriage equality arrived through the U.S. Supreme Court's *Obergefell* decision. (It was a stunning victory for equal treatment under the law; the ACLU played a key part in the fight.) Bulk collection by the National Security Agency of Americans' phone records was halted. (Again, the ACLU played a key role in the fight through lawsuits and support of Edward Snowden's work.) Here in Vermont, we won a court ruling that government work outsourced to private vendors is still subject to the state's public records law (see Legal Docket for details).

A lot changed here at the ACLU-VT. Our staff attorney of nearly seven years, Dan Barrett, took a new job as legal director at the ACLU of Connecticut. His successors, Jay Diaz and Lia Ernst, were hired as part of a revamping of how we approach civil liberties work. Both are attorneys, but they are also skilled in promoting civil liberties issues through non-litigation

means. They are our first staff attorneys/public advocates.

Joining them in our new staff line-up is Kate Connizzo. Kate is director of philanthropy, succeeding Dorie Wilsnack. Kate will be working closely with the National ACLU development office as we ramp up fundraising for the organization's nationwide Centennial Campaign, which continues through 2020, the ACLU's 100th birthday.

On the advocacy front, we continued our work with the Vermonters for Criminal Justice Reform coalition, a broad mix of advocacy organizations, community justice centers, service providers, state corrections officials, and individuals. Our goal, like that of the National ACLU's Campaign for Smart Justice, is to reduce the number of people in our jails. Vermont's inmate population did drop in 2015, but the state continues to send several hundred inmates to out-of-state jails. We hope to end such placements.

Privacy issues remained a focus of our work in 2015, specifically around electronic communications, drones, automated license plate readers, and e-medical records. The collection by government and private companies of vast amounts of information about our phone conversations and e-mails, our travels, our interests, and our health has become routine. We at the ACLU are fighting the easy acceptance of the role "big data" plays in our lives. The reason for our concern is simple: Our privacy is at stake.



Our annual meeting featured an engaging program on profiling. We asked our panelists to move beyond problems that may be specific to police and discuss the "implicit bias" that we all carry because of our country's difficult history of race relations. Our culture subtly teaches all sorts of bias; recognizing that fact helps in avoiding the mistakes one makes in drawing race-based conclusions.

We lost some devoted, long-time supporters this year, including former board members Beal Hyde and Marion Kellogg. We also lost Leslie Williams, who was executive director from 1988 to 2000.

Each of these people recognized that the ACLU exists solely because private citizens feel that protecting civil liberties is key to the democracy in which we live.

Thank you for the support that you give us. This is a strong, healthy organization of which every member can be immensely proud.

A SUMMARY OF MAJOR LEGAL ACTIONS DURING 2015

All filings available at acluvt.org/docket

SEARCH AND SEIZURE

Zullo v. Vermont: When Vermont 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 people probably thought that police would stop harassing people about suspected low-level marijuana possession.

In March 2014, Rutland resident Greg Zullo found otherwise. A state trooper pulled him over, claiming that the small white validation sticker on the car’s rear license plate was touched by snow – even though there was 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 he was driving under the influence.

Over the next hour, the trooper separated Greg from his car and repeatedly tried to convince him to waive his right to privacy and allow a search of the car. Greg repeatedly refused, prompting the trooper to have Greg’s car towed to a state police barracks about a dozen miles away. The trooper refused Greg a ride home although he had no coat or hat and it was a cold day. Back at the barracks, the trooper searched the car, found what he claimed to be marijuana residue, and made Greg pay \$150 for the towing fee. No charges were filed.

In September 2014, cooperating attorney Tony Pyle and staff attorney Dan Barrett brought suit on Greg’s behalf, claiming that the trooper’s

actions violated the search and seizure protections of Article Eleven of the Vermont Constitution. The case survived a motion to dismiss and is currently in discovery.

This summer, cooperating attorney Emily Tredeau and staff attorneys Jay Diaz and Lia Ernst took over the case. At deposition, the state put forth a witness who, before deposition, reviewed the confidential internal affairs records of the trooper who searched Greg. The state then refused to share these records or disclose any information contained therein, claiming they were confidential by law. We argued that any alleged confidentiality was waived when the witness was allowed to see the internal affairs records.

The police have long argued that such records are always confidential, even when a private citizen is wronged by a particular officer. To pierce this privilege on behalf of our client would be a victory for police transparency and accountability. The matter is still pending as the case inches forward.

Cooperating attorneys: Emily Tredeau (Office of the Defender General, Montpelier), Antonio D. Pyle (Law Offices of Antonio D. Pyle, Stowe)

Staff attorneys: Dan Barrett, Jay Diaz, Lia Ernst

OPEN RECORDS

Prison Legal News v. Corrections Corporation of America: For eight years beginning in 2007, Vermont contracted with the Corrections Corporation of America (CCA), a private, for-profit prison operator, to

house hundreds of Vermont’s prisoners, most in a facility it owns in Kentucky. We successfully represented Prison Legal News (PLN) – a national publication that reports on prison issues – in its bid to force CCA to turn over records related to lawsuits brought against it by Vermont prisoners held in its jails.

CCA contended that, as a private entity, it was not subject to the state’s Public Records Act. We disagreed, arguing that, when a private entity performs a governmental function, it must follow PRA requirements. Superior Court Judge Robert Bent agreed with our position, finding that CCA was the functional equivalent of a public agency, and CCA eventually turned over all of the records that PLN sought.

We then litigated the issue of whether the law mandating the awarding of fees and costs to plaintiffs who prevail in public records litigation applied to this case. Ultimately, we reached a settlement that provided most of the fees and costs PLN and the ACLU-VT requested.

Cooperating attorney: Abigail Hartman (Law Office of Abigail A. Hartman Esq., PLC, Montpelier)
Staff attorneys: Dan Barrett, Lia Ernst

JUVENILE JUSTICE

D.C. v. Schatz: The Woodside Juvenile Rehabilitation Center is a secure confinement facility – for all intents and purposes, a prison – where the Department for Children and Families (DCF) houses certain children in its custody.

DCF contends, as legal guardian, it can decide to house a child in “juvie jail” without notice to the child or the child’s lawyer, or approval from a judge.

The Defender General’s office sees this process as providing vulnerable children less procedural protection than adult probationers or parolees would receive if they were to be returned to jail. Their office sued on behalf of minor D.C. because D.C. was unilaterally sent to Woodside by DCF and confined there for months even though everyone involved agreed that he should be housed in a less-restrictive setting.

Along with Vermonters for Criminal Justice Reform, we filed an amicus brief in the Vermont Supreme Court arguing that DCF’s procedures for effectively sending children to jail without any meaningful process violate their constitutional right to due process. Because children are more vulnerable to negative influences and outside pressures and more capable of reform than adults, and because secure confinement inflicts grievous short- and long-term harm on children, we argued that due process requires that children receive heightened procedural protections before they can be deprived of their liberty.

Staff attorneys: Jay Diaz, Lia Ernst

PERSONAL PRIVACY

Investigation into Vermont Electric Utilities’ Use of Smart Metering and Time-Based Rates in Re Opt-Out, Privacy and Cyber Security: In this long-running administrative proceeding before the Public Service Board, Vermont’s electric utilities lay out their switch to networked, electronic utility meters (“smart meters”); a goal is to be able to adjust

electricity charges throughout the day based on usage.

Smart meters capture real-time electricity usage, giving utilities the ability to see power demand and power outages nearly instantaneously. Because this information can paint a detailed picture of residents’ activity in their homes, we intervened in the proceeding to urge the board to prohibit release of smart meter data to police or prosecutors absent a warrant or the customer’s permission. Four years after briefing was completed, we still await a decision.

Staff attorneys: Dan Barrett, Jay Diaz

On the Horizon...

Free Expression

In early November, in a well-publicized incident, the Burlington police detained two individuals at an anti-KKK rally because they were wearing so-called Guy Fawkes masks.

Earlier in the year, Burlington police forced a group of artists to remove their theatrical head coverings at the city’s annual Mardi Gras parade.

Both instances represent a violation of individuals’ First Amendment rights to free expression.

The law that police were acting under is a 53-year-old ordinance that bans any person over the age of 21 from wearing a facial covering to conceal his or her identity or “for any other purpose.”

After communicating with a potential plaintiff, and in an effort to prevent unnecessary litigation, we wrote a letter to City of Burlington officials asking that they agree to stop enforcing the ordinance and take steps to revise the ordinance so that it doesn’t infringe on individuals’ free speech rights. The matter is pending.

Racial Profiling

The ACLU of Vermont continues to receive complaints of racial profiling and discrimination by police departments across the state. We investigate these complaints by seeking records and video evidence from the police departments in question. If there is evidence of profiling, we take action to ensure Vermont is fulfilling its promise of bias-free and impartial policing.

In addition, we are representing an undocumented Vermonter who was denied a driver’s privilege card and entrapped by Department of Motor Vehicles (DMV) investigators into immigration detention.

In 2014, Governor Shumlin signed legislation allowing undocumented Vermonters to obtain driver’s privilege cards, a version of a driver’s license. Our client was treated hostilely when applying for a privilege card, was denied a permanent privilege card, and was unnecessarily investigated for application fraud.

DMV investigators then asked him to meet with them to talk about his privilege card; however, unbeknownst to him, DMV had arranged for federal Immigration and Customs Enforcement (ICE) agents to be there to arrest him. Entrapment is exactly the type of situation that the law was designed to prevent.

Our client has won a ruling from the Vermont Human Rights Commission stating that there are reasonable grounds to believe that the DMV has discriminated against him. We are moving forward to negotiate a settlement that fixes the systemic problems at the DMV that caused the discrimination, and collaborating with the client’s immigration attorney to prevent his deportation.

ACLU-VT and ACLUF-VT STATEMENT OF ACTIVITIES, FY 2015*

	ACLU	ACLU Foundation
Support and Revenues		
Memberships.....	\$ 41,021	
Revenue-sharing		\$ 208,862
Gifts:		
Annual campaign		63,263
Memorials/Honorarium		4,567
Foundation		2,000
Bequests		35,921
Donated items and services		61,075
Events.....		10,182
Fee awards.....		83,998
Gross Vermont share, National-raised income		73,030
Interest and dividends	18	57,349
Unrealized gain (loss) on investments		(46,024)
Realized gain (loss) on investments		30,278
Miscellaneous.....	998	1,095
<i>Total support and revenues.....</i>	<u>\$ 42,037</u>	<u>\$ 585,596</u>
Expenses		
Program services		
Legal.....		\$ 112,554
Public education		41,709
Legislation.....	<u>\$ 22,227</u>	
<i>Total program services</i>	<u>\$ 22,227</u>	<u>\$ 154,263</u>
Supporting services		
Fundraising.....	\$ 2,540	\$ 53,142
Management and general	<u>17,476</u>	<u>205,172</u>
<i>Total supporting services</i>	<u>\$ 20,016</u>	<u>\$ 258,313</u>
<i>Total expenses</i>	<u>\$ 42,243</u>	<u>\$ 412,576</u>
NET CHANGE IN NET ASSETS	\$ (206)	\$ 173,020
NET ASSETS – BEGINNING.....	<u>\$ 92,637</u>	<u>\$ 1,920,540</u>
NET ASSETS – ENDING	<u>\$ 92,431</u>	<u>\$ 2,093,560</u>

*These statements of activities cover the fiscal year beginning April 1, 2014 and ending on March 31, 2015, and were prepared by ACLU staff based on an annual audit report by outside independent auditors.

PREDICTIVE ANALYTICS

By Allen Gilbert, executive director

The hiring of a new police chief in Burlington created quite a stir this summer because of an article the top candidate had written a dozen years ago on racial profiling.

In the article, the candidate had suggested it might be appropriate in some circumstances for police to profile by race. At his confirmation hearing this summer, he said he's learned a lot about policing since the time he wrote the article. There's no place for racial profiling in police work, he said, and promised to work against any form of it if he became chief.

He survived the criticism and won appointment.

At the heart of the profiling debate is the question whether correlations rather than case-specific evidence are justification for making a certain decision.

A general suspicion that you've done something wrong isn't enough to justify deprivation of your rights. What's needed are facts from which police can reasonably conclude that you likely committed a crime.

Correlations enjoy a robust role in the digital world. Increasingly they are relied on to explain human behavior. Such use of data is sometimes called "predictive analytics." Marketers use this tool all the time, to decide whether to market a Subaru or a Mercedes to you as you cruise the web. If you're middle-income and live in a cold climate, you may favor the former. If you're wealthy and live in a more temperate climate, you may lean

towards the latter. These associations help to sharpen placement of ads before potential customers.

Using probability to market cars seems a far cry from a police officer's using it to make a decision whether to detain someone. Yet "predictive analytics" is sometimes an officer's tool of choice, and the approach is becoming a bigger and bigger factor in how all sorts of decisions are made.

The dust-jacket promo of a recent book on the subject states that predictive analytics "unleashes the power of data. With this technology, the computer literally learns from data how to predict the future behavior of individuals." Analytics hold the "power to Predict Who Will Click, Buy, Lie, or Die."

Data is also being used in other ways in the criminal justice system.

This fall Vermont's defender general – his office handles about three-quarters of all criminal cases in the state's courts – told a legislative committee examining a privacy bill that he'd like more data captured by police to be kept on file.

The specific issue was retention of license plate data captured through automated license plate readers, or "ALPRs." Police use these systems to search for cars registered to drivers wanted on outstanding warrants, holding an invalid license or registration, and similar infractions.

The Senate Judiciary Committee had been discussing whether data collected by ALPRs should be retained 24 hours – as proposed by the ACLU – or 18

months (as in current law). Senators had, until the defender general's testimony, been focusing on a compromise of 90 days.

The defender general's comments, however, had the immediate effect of committee members' moving the dial back to the current 18 months and musing that maybe in their final bill they'll extend retention even longer.

The basis for the defender general's pitch centers on what's called "exculpatory evidence," meaning evidence that points to the innocence of someone charged with committing a crime. Criminal defendants are entitled to view any evidence held by government that might suggest their innocence.

That could include ALPR data, the defender general said, because ALPRs function like a surveillance system. By searching for all the "reads" of someone's plate over time, it's possible to see where the car has been. The more data the better, he argued – it could point to the innocence of one of his clients.

While broad sets of data could point to someone's innocence, the collection and retention by government of vast information about our movements exact a high price.

A society in which government holds information that citizens must rely on to prove their innocence is what George Orwell had in mind in his dystopian novel, *1984*, when he introduced the world to "Big Brother."

And predictive analytics form the basis for the "Pre-Crime" police department in the 2002 dystopian film, *Minority Report*. That department's goal is to apprehend criminals before they commit crimes.

Fiction is becoming reality as the new century moves on.

HOW YOU CAN SUPPORT THE ACLU

Yes, I will stand with the ACLUF of Vermont in defense of civil liberties in Vermont and throughout the nation.



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

Name(s): _____

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

☐ I/We prefer to remain anonymous.

☐ I would like to learn more about how to include the ACLU Foundation of Vermont in my will.

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.

You may also make your gift online at www.acluvt.org/donate

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.



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF VERMONT
137 Elm Street
Montpelier, Vermont 05602
(802) 223-6304

info@aclvt.org
www.aclvt.org

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