



CIVIL LIBERTIES NEWSLETTER

The American Civil Liberties of Michigan
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VOL. 6 NO. 2

July 2002



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CIVIL LIBERTIES NEWSLETTER

Wendy Wagenheim, Editor
 Published by the
**American Civil Liberties Union /
 ACLU Fund of Michigan**
60 W. Hancock
Detroit, Michigan 48201-1342
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ACLU VICTORIOUS - Immigration Hearings Open to Public

FREEDOM OF SPEECH AND FREEDOM OF THE PRESS won out when a federal district judge ruled in early April that it is unconstitutional to block public access to immigration hearings. The decision ensures that legal proceedings of detainees around the nation will not be conducted in secret unless there is a particularly pressing need for secrecy in a given case.

The lawsuit was filed by the national and state offices of the ACLU against U.S. Attorney General John Ashcroft, on behalf of Representative John Conyers, Jr., the Detroit News, and the *Metrotimes*, an alternative weekly, after the public and the press were turned away from the deportation hearings in the case of Rabih Haddad, a Muslim community leader from Ann Arbor who co-founded an Islamic charity suspected of supporting terrorist activities. Other defendants named in the suit are Michael Creppy, Chief Immigration Judge of the United States and Elizabeth Hacker, United States Immigration Judge.

In her opinion, Judge Nancy G. Edmunds wrote, "Openness is necessary for the public to maintain confidence, in the value and soundness of the Government's actions, as secrecy only breeds suspicion as to why the Government is proceeding against Haddad and aliens like him."

"Especially with the large Arab community in the Detroit area this victory is even more important," said Kary Moss, ACLU of Michigan Executive Director. "It's crucial that hearings not be conducted under a veil of secrecy."

The decision was important for reasons beyond the issue of secrecy. Lee Gelernt, ACLU Immigrants' Rights Project staff counsel, who argued the case before the Court said, "The Court properly rejected the Justice Department's contention that the Judiciary should essentially look the other way when it comes to the government's September 11 policies."

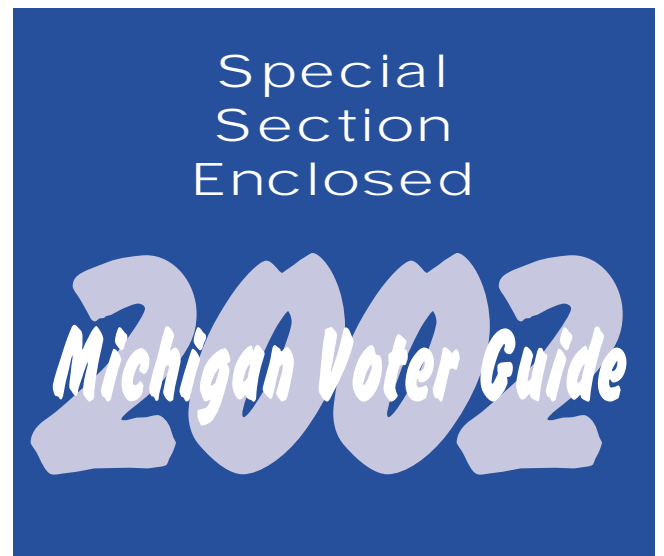
Congressman John Conyers, Jr. was elated by the judge's ruling. "This decision is a triumph for American democracy. By upholding the principle of openness in judicial proceedings, Judge Edmunds has affirmed a basic tenet of our judicial process and struck a blow

against the Bush Administration's ill-conceived policy of holding proceedings behind closed doors."

The case is *Detroit News, Inc., et al v. Ashcroft et al.*, filed in U.S. District Court in the Eastern District of Michigan, Southern Division. At issue is a policy set forth in a September 21, 2001 memo from Chief Immigration Judge Michael Creppy to all immigration judges requiring the closure of all proceedings to the public and the press, when directed by the Justice Department. That policy was apparently invoked to close all deportation proceedings in Mr. Haddad's case.

Shortly after Judge Edmund's ruling, the government appealed the decision and continued to deny access to the transcripts and documents from the previous hearings. On April 20, the 6th Circuit Court of Appeals ruled that the documents must be released. After a 2 1/2-month legal battle to keep the Haddad proceedings secret and to withhold documents related to his case, the government finally admitted that nothing in the documents would harm national security.

Mr. Haddad is still being held in detention and his deportation hearing is not likely to be held until after the 6th Circuit Court of Appeals hears oral arguments on the merits of the case on August 6.



What's Happening in the Capitol

AS THE LEGISLATURE prepares to take its summer break and begin the campaign season in earnest, several issues have made civil liberties and the ACLU the subject of a great deal of discussion and debate.

ANTI-TERRORISM BILL

This spring saw the completion and passage of the Michigan's anti-terrorism package. The ACLU had a significant impact on the final legislation. Although we would have preferred to stop the main bill altogether, that simply wasn't possible. The coalition of groups put together by the ACLU last fall significantly helped to slow the process. The bills' sponsors and supporters hoped to present a bipartisan package with a united front. As a result, the discussion between the parties gave us the time and opportunity to point out flaws that sent the bills back to the drawing board more than once.

The more time that passed between September 11th and the vote on the legislation, the more willing legislators were to question the language and even the necessity of the bills. As a result of our efforts, the language in the new Michigan Anti-Terrorism Act (SB 930, Sen. DeGrow) is a far cry from the very frightening original version we saw last fall. Further, two of the bills that were initially discussed—those denying illegal immigrants driver's licenses (HB 5497, Rep. Hager) and expanding wiretapping (SB 803, Sen. Van Regenmorter)—are no longer part of the package and are probably not going to go any further.

Though very few Representatives felt that they could publicly oppose the Act, members of both the Republican and Democratic caucuses estimated that if they were allowed to vote privately, the Act would have faced certain defeat.

REPRODUCTIVE FREEDOM

With the anti-terrorism package completed, the legislature returned to other business, including attempts to further restrict a woman's right to choose. This year the rights to health care and contraception have been under attack along with the right to an abortion. The legislature's attempt to restructure the distribution of family planning grants by moving Planned Parenthood to the back of the line was passed and signed by the Governor on May 30, 2002 (HB 4655, Rep. Jansen). Family planning grants may not be used to fund abortions and Planned Parenthood is already thoroughly audited to make sure that the grant money is not used to support abortion services. However, this made little difference to the legislature who passed the bill overwhelmingly. The



William B. Flory

law does not go into effect until sometime next March, allowing time for a challenge to be filed in court.

Sadly, passage of the bill to defund Planned Parenthood did not end the anti-choice agenda for the year. In February 2002, a U.S. District Court decision overturned the existing law prohibiting prepayment for abortions and related medical services. The decision found that the law was unconstitutional because the term "abortion related services" was not sufficiently defined to allow health care providers to know what was prohibited. Right-to-Life legislators introduced HB 5971 (Rep. Vander Roest) to change the language to "abortions and medical services" which would again prevent health care providers from collecting payment for services until the mandated 24-hour waiting period is over.

Part of the attempt to fix the constitutional flaws is positive; the bill would decriminalize violations of the abortion informed consent provisions. Unfortunately, it also reinstates and expands the waiting period for payment. A physician would be prohibited from collecting payment for any medical services until after the expiration of the 24-hour period. "Medical service" would be defined as the provision of a treatment, procedure, medication, examination, diagnostic test, assessment, or counseling, including a pregnancy test, ultrasound, pelvic examination, or an abortion. This could mean that from the time the patient inquired about obtaining an abortion or scheduled an abortion to be performed, the physician could not collect payment for anything - setting a broken leg, cosmetic surgery, prescribing medication, etc. - until the 24-hour waiting period had passed.

Another bill, SB 1323 (Sen. Bennett), started out creating a mandatory birth certificate for miscarriages. This would have meant asking the mother for a name for the "child" and other recording keeping actions usually associated with a live birth. At the hearing before the Senate Families, Mental Health and Human Services committee, the bill was changed to provide for a certificate (not a birth certificate) to be provided where miscarriages have occurred upon request by the "mother." While the bill is not perfect yet, it is significantly better than the introduced version. As the bill continues to the House we will try to make a few more changes.

SEX OFFENDER REGISTRY

Interestingly, a federal district judge declared Michigan's Sex Offender Registration Act (SORA) unconstitutional shortly after a hearing on a pair of bills (HB 5163 and 5891, by Rep McConico and Rep. Julian, respectively) that would have amended the Sex Offender Registration Act to allow a judge to determine if a juvenile offender should be publicly listed as a sex offender. The court concluded that "the sex offenders...are still entitled to due process under the Constitution: a procedure for determining the factual basis for and legality of, the governmental action designed to deprive them of their liberty interests."

The ACLU has always maintained that publication of a list without any determination that the particular offender poses a specific threat to the community was an unconstitutional violation of due process, whether the offender was 14 years old or 90 years old. The U.S. Supreme Court has agreed to hear a Connecticut case on this very issue and their decision will likely make any actions taken in the interim moot.

Another court decision rendered moot the legislature's efforts to enact a law that would parallel the language in the Federal Child Pornography Prevention Act. The Court, on a 6-3 majority, ruled that the federal definition (which was identical to the definition in the Michigan bill) was unconstitutionally over broad. The bill (HB 5496, Rep. DeRossett) has not moved since then and is likely dead.

PRISONER RIGHTS

Other good news. A Senate bill (SB 1013) proposed by Senator William Van Regenmorter, one of the most vocal and powerful proponents of increased penalties for all crimes, would allow a person who has been placed on lifetime probation to petition the court to end the probation after five years of probation. While this is not a cure-all for many of the ongoing problems created by overzealous punishment of non-violent drug crimes, it is a start.

ELECTION LAW

The ACLU supported a minor but important change to the Michigan Election Law (HB 5237, Rep. Drolet). Political parties have automatic access to the next election ballot if their "principal candidate" garners at least one percent of the total votes cast for the winner of the most recent Secretary of State election. The new law changes the definition of "principal candidate" from the party's top candidate on the ballot to the party's candidate who received the most votes. This will enhance the ability of minor parties to maintain their presence on the ballot, since smaller parties often do better the farther down the ticket you go. The prior situation often left parties having to choose between a continued presence on the ballot and running candidates for higher office. The 2000 election highlighted the inequities of this law - the Libertarian party did not qualify for access to the next election ballot because it had a presidential candidate who failed to reach the needed number of votes (even though Libertarian candidates for other offices did garner sufficient votes). On the other hand, the Reform Party qualified because they did not have presidential candidate and candidates further down the ticket drew sufficient votes to keep the Reform party's place on the ballot.

PRIMARY ELECTIONS CAN MAKE A DIFFERENCE!

During the summer, every member of the ACLU should take the time to find out not only who is running for office in your House and Senate districts, but to also to find out about your district. In many districts, only one party's candidate may have the only realistic chance at winning the election in November. In the majority of districts in Michigan, the most important race is the Primary, not the general election. It is therefore crucial for us to pay attention to and vote in the Primary elections.

Finally, it is likely that many of you will be seeing or hearing from the candidates over the summer. Take the time to examine their stances on issues that are important to you and the ACLU. If they don't indicate how they stand on our issues in their campaign literature, ask them questions. Let them know what you think is important. Most people don't express their opinions, so if we do, it can make a difference!



From the President

THANKS FOR A JOB WELL DONE!

It is not uncommon for me to meet an ACLU member who thanks me for the work of the ACLU. This has occurred with greater frequency since the terrorist attack on September 11. Members tell me how much they appreciate the work of the organization or they tell me how grateful they are that the ACLU is there at a time like this. One person told me how proud she felt to be a "card-carrying member" of the ACLU. At a statewide meeting of social studies teachers I received many compliments on the ACLU materials available for the classroom. I always respond with a polite "Thank you" but I understand that their remarks are not intended for me. The members are simply conveying their appreciation for the fine work done by our affiliate staff.

I know that the work of the organization is greatly enhanced by the vision, drive and dedication of our executive director, Kary Moss. Not only is she the voice of the ACLU of Michigan, she is the driving force behind the post 9/11 activities. Our affiliate is seen nationally as a leader in providing legal assistance to men of Middle Eastern descent and in confronting the issues of racial profiling raised by the war against terrorism.

They are also thanking me for the work of Mike Steinberg, our legal director, for cases involving free speech, racial profiling and student rights, to name a few. Our members understand how important this work is in the defense of civil liberties. The teachers thank me for the new Bill of Rights curriculum guide designed by Wendy

Wagenheim, Communications Director. The guide teaches students about the First and Fourth Amendments and has proven to be an invaluable tool for students. The thanks are also for Delphia Simpson's work on racial profiling, Jay Kaplan's work on gay and lesbian issues and Bill Flory's legislative work in Lansing. And none of this would be possible without our Development Director, Becky Bull, who pushes us all to raise the funds necessary to do all this work or Brenda Bove, the affiliate's Administrative Assistant who ensures that the office runs so smoothly.

As a volunteer, I may get the thanks, but it is our staff that deserves our praise for a job well done. Sending in an extra contribution to the ACLU of Michigan is the best way to show your appreciation and support. Why not do that today?



Jacqueline Washington

AN UNEXPECTED ENCOUNTER

By Leonard Grossman

On a beautiful spring Saturday morning, my goal was to go for a long bike ride. Instead, I went down to the new ACLU office in Detroit to meet some workmen at the building. As we were discussing what needed to be done, the cracked concrete handicapped ramp leading to the door off the parking lot caught my eye. I asked about repairing or replacing the ramp. The concrete worker, a nice looking young man, and I discussed the alternatives, deciding to replace the ramp.

After that decision had been made, Greg, the young workman, turned to me and asked if I was personally associated with the ACLU. I assured him I had been an active member for over forty years. Greg then took off the heavy gloves he was wearing and asked to shake my hand. He wanted to thank the ACLU for the work it had done on behalf of his father, a Japanese-American citizen, who had been interned during WWII in a detention camp in California. We discussed the similarity between what happened sixty years ago and what is happening today when 1,200 people were arrested after 9/11 and at least 74 people are still being held in federal custody, many without charges or bond and without the right to have an attorney represent them (*NYTimes*, Saturday June 22).

I walked away feeling good about the ACLU having "deprived" me of my Saturday morning bike ride.

Leonard Grossman is a long-time member of the State ACLU Board of Directors.

OUR THANKS TO LEONARD FOR ALL THAT HE'S DONE FOR THE ACLU!

ACLU INTERVENES AS WASHTENAW JUDGE STOPS ADOPTIONS BY UNMARRIED COUPLES

AFTER LEARNING that unmarried couples were being allowed to adopt children in Washtenaw County, the chief judge of the county's trial court, Archie C. Brown, issued a directive to judges within his district ordering those judges to not process petitions for second parent adoptions, including any petitions that are currently pending, and reassigned those petitions to himself.

The ACLU of Michigan, together with concerned attorneys, asked Chief Judge Brown to rescind his directive and to remove himself from hearing those cases. In his directive, Judge Brown admits that he arrived at his decision after being asked to do so by Michigan Supreme Court Justice Maura Corrigan and after soliciting the opinion of only one adoption specialist attorney.

ACLU Executive Director Kary Moss said: "It is completely inappropriate for a judge to interpret the law without an actual case before the court. This is law by fiat and contrary to our system of justice which depends on each judge considering the facts before hearing arguments from both sides."

It is questionable whether Judge Brown even has the authority to issue such a directive. The letter states: "The chief circuit court judge is an administrator, not a 'roaming appellate court, and cannot substitute his judgment for that of other judges in the circuit whenever he sees fit."

The ACLU and the 32 lawyers who signed the letter, believe that Judge Brown erred by not considering the best interests of children, as Michigan's Adoption law requires, but only the legal status of the parents' relationship. Because second parent adoptions are so clearly in the best interests of children, every major child welfare organization in the country supports them.

The ACLU filed eight motions on June 13, one for each pending adoption petition from an unmarried couple in the juvenile division of Washtenaw County's Family Court. The motion asked that Brown remove himself from hearing the cases and return them to Judge Donald E. Shelton, the judge that Brown pulled from the cases. On June 24, Judge Brown denied the motions, but agreed with our request to refer the matter to the State Court Administrator's Office to assign the case to another judge to hear the motions.

This issue has gained the interest of many in the Ann Arbor area. More than 200 people attended a community meeting to hear a panel of attorneys, including ACLU GLBT Project Staff Attorney Jay Kaplan, legislators and activists. And on the day that the motions were filed by the ACLU, a protest was held by more than 80 adoption rights activists and their children on the steps of the courthouse in downtown Ann Arbor.

A newly formed coalition, the Coalition of Adoption Rights Equality (CARE), has begun working with the ACLU to determine legal and political strategies that will hopefully result in the continuation of second parent adoptions.

Buddy can you spare...4 tickets to a Red Wings game?

We need donations for the silent auction at our second annual dinner on November 16, 2002

We're looking for items valued at \$25 or more. Use your imagination: donate theater or opera tickets, restaurant gift certificates, artwork, pedicures, DVD players, tickets to a Pistons' game, autographed photos, massages, etc. Just fill out the information below and send it to: ACLU of Michigan, 60 W. Hancock, Detroit, MI 48201

COMPANY NAME _____

CONTACT _____

PHONE _____ FAX _____

E-MAIL _____

ITEM(S) DONATED/VALUE (MORE THAN \$25, PLEASE)

MACKINAC ISLAND VIOLATES DISABILITY LAW

ON JUNE 7 THE AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN charged Mackinac Island officials with violating the Americans With Disabilities Act by refusing to grant a resident with multiple sclerosis his request to use an electric-assisted tricycle.

The resident, Donald Bertrand, cannot ride a bicycle – the primary form of transportation in the community – because his disability has affected his stamina and balance. To accommodate the disability, Mr. Bertrand needs an electric-assisted tricycle; on those occasions when he cannot make it up a hill, he is able to switch on the tricycle's silent motor to give him a boost. Bertrand has repeatedly asked the Island for permission to use the tricycle, but the Island has refused, citing its policy prohibiting motorized vehicles even though they

already make exceptions to the no-motorized-vehicles policy to allow the use of snowmobiles and golf carts.

ACLU of Michigan legal director, Michael J. Steinberg, argued the case in court. "Refusing to let Don Bertrand use his tricycle is both discriminatory and unjust," said Steinberg.

The ADA requires that government entities accommodate people with disabilities to promote equal enjoyment of, and access to, public services and facilities. A recent Supreme Court decision found that a case-by-case inquiry was required to determine whether an accommodation – such as the use of a golf cart for a golfer with a disability in the PGA tournament – would cause a fundamental change to the activity. The court sided with the golfer. *PGA Tour, Inc. v. Martin*.

"Riding this bicycle is absolutely essential for Mr. Bertrand," said Michigan ACLU Executive Director Kary Moss. "The Island is violating the Americans with Disabilities Act by denying him an equal opportunity to move freely in his community."

"I love Mackinac Island," said Bertrand, "but the message I'm getting is that people with disabilities are not welcome on the island." Mackinac officials have already issued tickets to other residents with disabilities for using electric-assisted bicycles.

On June 19 the ACLU received a 30-day extension of a Temporary Restraining Order. The hearing will be in mid-July. Stewart R. Hakola is the cooperating counsel for the ACLU of Michigan.



Justin Weyerhaeuser, legal intern and Michael Steinberg, legal director, with Donald Bertrand and his electric-assisted tricycle.

ACLU STANDS TALL AT ANN ARBOR PARADE



Honor someone who has inspired your dedication and devotion to civil liberties by making a donation to the ACLU Fund of Michigan.

- Thank your parents for teaching you about justice at the dinner table.
- Let John Ashcroft know his actions inspired your donation to the ACLU Fund of Michigan.
- Tell friends that their struggles have inspired your belief in liberty.
- Thank a colleague for working for equality.
- Tell Representatives John Conyers, Jr., Lynn Rivers, John Dingell and David Bonior you appreciate their vote against the U.S.A. Patriot Act.

Upon receipt of your gift, we will provide you with the card pictured here so that you can let your honoree know what an inspiration he or she has been to you.

Contact Becky Bull at (313) 578-6800 to find out how you can participate.

Dear _____
Thank you for inspiring my dedication and devotion to civil liberties. To show my appreciation, I made a donation to the ACLU Fund of Michigan in your honor.

The ACLU has been working for 40 years in Michigan to make sure that the liberties guaranteed in the U.S. Constitution apply equally to all people. This gift will ensure that they can continue to do so.

Sincerely,

O, let my land be a land where liberty
Is crowned with no false patriotic wreath.
But opportunity is real, and life is free.
Equality is in the air we breathe.

—Langston Hughes

MEMBERS, YOUR VOTE IS NEEDED!

The following individuals are being nominated for At-Large positions on the ACLU State Board of Directors. Please vote for up to eight (8) and return your ballot in the self-addressed envelope enclosed with the newsletter.

For a Three Year Term:

Mo Abdoraboh, Dearborn; Mo is an Arab-American lawyer, active with the ACLU on legal issues. He was recently named Pro Bono Attorney of the Year by the American-Arab Anti-Discrimination Committee (ADC).

Jerry Clayton, Ypsilanti; Jerry is an African-American 17-year veteran of the sheriff's department. He provides training for law enforcement agencies and has worked with the ACLU on racial profiling issues.

Eva Garza Dewaelsche, Detroit; Eva is Latina and the Executive Director of LA SED, a large social service agency serving the Hispanic community in Southwest Detroit. She has been active in ALPACT, a statewide coalition of civil rights organizations and law enforcement agencies, working on social justice issues.

For a Two Year Term:

Linda Parker, Detroit; Linda is an African-American lawyer and the Development Director of the Detroit Institute of Arts. She is currently an at-large board member.

Sharon Roepke, Kalamazoo; Sharon is the Executive Director of the Resource Center, an agency for the GLBT community. She is currently an at-large board member.

Annette E. Skinner, Lansing; Annette is a lawyer in private practice specializing on issues relating to people with disabilities and former president of the Stonewall Bar Association. She was appointed to the Open Justice Commission of the State Bar in 1999. Her publications include co-authorship and editing of several manuals for people with disabilities and advocates about legal rights related to HIV.

For a One Year Term:

Rania Emara, Troy; Rania is Arab-American and a graduate of Oakland University with a degree in political science. She is a congressional aide to U.S. Rep. Bonior. Her affiliations include the American-Arab Anti-Discrimination Committee (ADC), the Arab Community Center for Economic and Social Service (ACCESS) and American Middle Eastern and Asian Coalition.

Jeri Fishman, Southfield; Jerry is African-American and a community volunteer, active with Planned Parenthood of Southeast Michigan and NAACP Women's Committee.

By-Law Amendment

Explanation: The State Board of Directors asks that you vote to approve an amendment that creates staggered 3-year terms for our at-large members. Previously, the By-Laws provided for one-year terms of all members of the Board of Directors. This amendment, which begins with the word "except," provides for staggered three years terms for ten seats at-large. The Board of Directors has approved this amendment and submits it to the membership for vote. An envelope is enclosed.

2.2.5 The term of office of directors shall be for one year from their election until the next annual election, *except at-large directors elected by the members shall be elected for staggered three year terms so that the terms of approximately one third of the terms of at-large directors shall expire each year. To initiate this election schedule of the at-large directors first elected after the adoption of this provision, approximately one-third shall be designated as having three-year terms, one third as having two year terms, and one-third as having one-year terms. The Board of Directors shall have discretion to adopt rules and procedures to govern such elections. If an at-large director resigns or is otherwise unable to complete the term, the Board of Directors may propose one of more candidates to fill the unexpired portion of that term at the next election; if less than one year remains, the vacancy shall be filled at the next regular election.*

Please take the time to complete this ballot and return in the enclosed envelope to: The ACLU of Michigan, 60 W. Hancock, Detroit, MI 48201-1324.

Vote for up to eight of the following:

<input type="checkbox"/> Mo Abdoraboh	<input type="checkbox"/> Eva Garza Dewaelsche
<input type="checkbox"/> Jerry Clayton	<input type="checkbox"/> Linda Parker
<input type="checkbox"/> Sharon Roepke	<input type="checkbox"/> Annette E. Skinner
<input type="checkbox"/> Rania Emara	<input type="checkbox"/> Jeri Fishman

Vote for approval or disapproval of By-Law Amendment:

YES
 NO

Please return the completed ballot to:

ACLU of Michigan
60 W. Hancock
Detroit, MI 48201-1324

Planned Giving

Members of the DeSilver Society are a handful of Americans committed to the vigilant defense of the Bill of Rights for future generations. They have included the ACLU Foundation in their estate and financial plans

Because the struggle to defend individual rights never ends;

Because no single generation can secure liberty for all persons for all time;

Because each generation must do its part, in its time, to keep the promise of the Bill of Rights alive.

Do your part today.

For more information on how to include the ACLU in your estate, please cut this ad out and mail it to our office at:

**60 W. Hancock
Detroit, MI 48201-1342**

I am considering becoming a member of the DeSilver Society.

Please send information about:

- | | |
|---------------------------------------------------------------|------------------------------------------------|
| <input type="checkbox"/> Gifts that pay me income for life | <input type="checkbox"/> Gifts through my will |
| <input type="checkbox"/> Gifts of insurance and pension plans | <input type="checkbox"/> Gifts of real estate |

Name: _____

Address _____

City, State, Zip _____

GLBT PROJECT UPDATE

By Jay Kaplan

IT HAS BEEN A BUSY and exciting past three months for the GLBT Project. We are close to reaching a successful end to our challenge to the City of Detroit 6th Precinct's undercover police operation that targeted gay men and even men perceived to be gay for arrest in Rouge Park. We are currently in the process of settling for damages and are hopeful that the City will rescind and/or revise the unconstitutional local ordinances that are currently on the books.

We are also playing a leading role in response to Washtenaw County Chief Judge Archie Brown's directive that second parent adoptions by unmarried couples no longer be allowed. (See page 3) The judge's action has serious negative consequences for same-sex couples and their children in Michigan.

We have received a number of requests from Gay-Straight Student Alliances. The Project was successful in convincing the Berkley School District in Oakland County that it was legally required to recognize a GSA as a non-curricular club and to afford it the same benefits and responsibilities as other non-curricular clubs, such as advertising club meeting times in the school newspaper, a faculty advisor, and posting announcements on student bulletin boards. We have also addressed this issue in the Grand Haven School District.

In the area of transgender issues, we are currently involved with three transgender persons. A transgendered woman, denied a membership at a local health club because of her gender identity, has finally been provided a membership to use the club on female exercise days. In a strange turn of circumstances, the membership came after she had sexual reassignment surgery. We are also assisting a transgender developmentally disabled man who did not receive community mental health services to address his gender identity issues. And we intervened on behalf of a transgender male-female cosmetology student who was informed by the owner of the school that he could not dress in feminine attire while attending school.

We are pleased to announce that our newest GLBT manual, "Know Your Rights: Gay, Lesbian, Bisexual and Transgender Families and the Law," has gone to print and is now being distributed. The manual was designed for non-attorneys and offers an overview of Michigan and federal law regarding GLBT families and ways to protect and preserve family relationships.



Jay Kaplan

I continue to make presentations and provide trainings all over the state, from Port Huron to Traverse City, East Lansing to Ann Arbor. In addition, I participated in a legal debate regarding same-sex marriage at Wayne State Law School and a panel sponsored by the Lesbian Moms Coalition regarding the second parent adoption program. (See page ?) The Project also hosted a breakfast meeting for metropolitan Detroit GLBT organizations for the purposes of networking and sharing information regarding GLBT public policy issues. If you're interested in setting up a similar meeting, please let me know.

The best news of all is that the Project will continue to receive funding from the HOPE Fund of the Community Foundation for Southeastern Michigan and we also received a grant from the Kalamazoo Foundation's GLBT Fund to present a series of community trainings regarding GLBT and public policy issues. We're extremely grateful for the support that allows us to continue the vital work that needs to be done in GLBT communities across the state.

Now available for \$5 through the ACLU State Office. Please contact Brenda Bove to order your copy.

GLBT FAMILIES AND THE LAW

KNOW YOUR RIGHTS:
▼
GAY,
LESBIAN,
BISEXUAL
AND TRANSGENDER
FAMILIES AND THE LAW

WRITTEN BY Jay Kaplan, Barbara Robb
with Kary L. Moss and Wendy Wagenheim

This publication was prepared by the American Civil Liberties Union of Michigan (ACLU) Gay, Lesbian, Bisexual, Transgender Project

RACIAL JUSTICE PROJECT UPDATE

By Delphia Simpson

WHEN THE ACLU OF MICHIGAN created its Racial Justice Project, one of our major objectives was to look for ways to address the problem of racial profiling without resorting to litigation. Litigation can take an issue outside of the community, preventing other methods of resolving conflicts. With racial profiling, one of the main obstacles to stopping it is that perceptions about the severity of the problem by law enforcement agencies and communities often differ drastically. To deal with this we developed a training program to provide a forum for discussion and to provide a catalyst for the creation of an ongoing task force to really work on a long-range plan to end this practice.

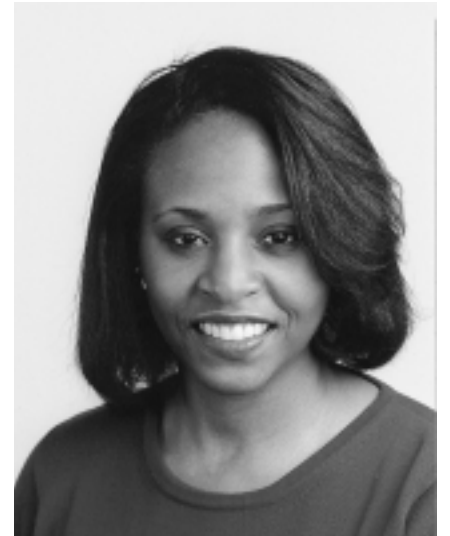
In April and May we held the first two of our "Enhancing Police and Community Trust" conferences in Washtenaw and Genesee counties. Both were enormously successful. The participants were varied and included college students, elected officials, parents, senior citizens and patrol police officers, representing all socio-economic groups, races and ethnicities.

Everyone began by watching a 12-minute video, written and produced by the ACLU of Michigan, that set the tone. WDIV News Anchor Emery King narrates the video which features testimonials by people who have been personally impacted by racial profiling. The video also includes Kary Moss, our Executive Director, Detroit Mayor Kwame Kilpatrick, Wayne County Sheriff Robert Ficano, Detroit Police Chief Jerry Oliver and Professor David Harris, a leading expert on this issue and the author of the book "Profiles in Injustice: Why Racial Profiling Cannot Work."

After viewing the video on the personal, professional and social impact of racial profiling, the law enforcement group members and the community group members worked separately with trainers to learn about the history and impact of racial profiling, share past experiences with racial profiling issues, discuss specific racial profiling issues in their community, and discuss their own perspectives.

After coming together again, the entire group developed a list of critical issues that the taskforce should address. The list included: exploring the use of citizen review boards; reviewing and improving the complaint process; examining how officers are trained formally and informally to use or not use racial profiling techniques; and discussing the impact that the new concealed weapons law will have on police/community relations.

In the next few months, the new community racial profiling task forces



Delphia T. Simpson

in Washtenaw and Genesee counties will meet. If you live in either of these counties, I urge you to become involved in this unique effort. And watch for the announcement on our website for the next conference to be held in Western Wayne County.

On another front, the ACLU of Michigan's newest publication, "Destination: Justice, Driving While Black and the Struggle to End It, A Manual for the Legal Community," is now complete. This manual examines the current evidence of racial profiling, as well as the history and current perspectives on racial profiling. Also included is a thorough discussion of the legal issues surrounding racial profiling under the Fourth Amendment, Title IV of the 1964 Civil rights act, and the Equal Protection Clause. If you are interested in obtaining a copy of the manual or the video please contact me.

In addition to the community/law enforcement conferences, the Project has also held several training sessions on racial profiling for the legal community. My thanks to Ken Mogill, Esq. for his invitation to join him and Carole M. Stanyar in a presentation to the Criminal Defense Association of Michigan. I also joined Ken, along with the former U.S. Attorney, Saul Green, for a presentation on racial profiling to the Women Lawyers Association of Michigan at their annual meeting.

There is no doubt that the training portion of the Racial Justice Project is having a tremendous impact in the community. We see each training or speaking engagement as an opportunity to not only to educate the community of their rights, but to also inform them of the important mission of the ACLU. If you are interested in having us make a presentation to a group or organization in your community, please give me a call.

From the Legal Director

THE ACLU OF MICHIGAN has scored several important legal victories since the last newsletter. Some of the victories have nationwide implications. No case is perhaps more important than our lawsuit to keep immigration court proceedings open to the press and the public (see full story on p. 1). This was the first federal case in the country to put the brakes on John Ashcroft's attempt to roll over the Bill of Rights after 9/11. Other recent highlights are listed below.

PROTECTING ATTORNEY-CLIENT PRIVILEGE AFTER 9/11

Following the anthrax scare in Florida and Washington, D.C., the Michigan Department of Corrections instituted a new policy of opening prisoners' mail. Under the new policy, corrections officers were required to skim all mail including confidential communications between attorneys and clients. The ACLU challenged the skimming policy arguing that it violated not only the attorney-client privilege, but also two court orders in an ongoing ACLU class action challenging prison conditions. A federal judge agreed with the ACLU and subsequently a new policy was implemented that protects constitutional rights, while ensuring the safety of inmates and prison employees. (*Hadix v. Johnson*. Attorney: Elizabeth Alexander).

DEFENDING THE FIRST AMENDMENT

Two juniors at South Lyon High School in Oakland County, Josh Woodcock and Dan Schaefer, wrote and published a newspaper at home called *The First Amendment*. The articles in the publication addressed a wide variety of school issues and was, at times, critical of the school administration. One of the articles referred to an assistant principal as a sadistic tyrant. When Josh and Dan attempted to distribute the underground newspaper at school, they were suspended for five days. The ACLU filed a federal lawsuit on the students' behalf, arguing that students had a First Amendment right to distribute the newspaper as long as it did not materially disrupt the functioning of the school. (*Woodcock v. South Lyon Community Schools*. Cooperating Attorney: Andrew Nickelhoff with assistance from Legal Intern Steven Blackburn).

ACLU FREES FATHER JAILED FOR VIOLATING UNCONSTITUTIONAL ORDER

When Gregory White's wife died in 2000, his late wife's parents went to court to secure visiting privileges with White's



Michael J. Steinberg

twins. The court granted visitation privileges under the Michigan grandparent visitation law. However, the law was later declared unconstitutional by the Michigan Court of Appeals because it infringed upon the fundamental right of fit parents to make decisions in the best interests of their children. After White moved to Colorado with the twins and his new wife in October, 2001, a Michigan judge ordered White to return to Michigan. When White returned, the judge jailed him for contempt of court, claiming that White violated the visitation order. White was in jail for two months until the ACLU got involved and filed a motion to rescind the unconstitutional order. Soon after the motion was argued, Gregory White was released. (*White v. Johnson*. Cooperating Attorney: Peter Armstrong along with Lorrain Brown of the Michigan Poverty Law Program).

19TH CENTURY LAW IN CUSSING CANOEIST CASE FINALLY STRUCK DOWN

Four years ago, after falling out of a canoe, Timothy Boomer was convicted of the misdemeanor of using indecent, immoral, vulgar or insulting language in the presence or hearing of women or children. In April, the conviction was finally reversed by the Michigan Court of Appeals on the ground that the 19th century law was unconstitutionally vague. The County of Arenac has asked the Michigan Supreme Court to review the case and the ACLU has filed papers opposing the request. (*People v. Boomer*. Cooperating Attorneys: Corinne Beckwith, Paul Denenfeld and William Street).

CHILDREN'S RIGHT TO TWO PARENTS (Story on p 3)

Michigan's adoption law has been interpreted by several Washtenaw County judges to permit an unmarried partner of a parent, including a same-sex partner, to adopt a child as a second parent. These adoptions are critical to the security of the child if, for example, one of the partners dies or becomes ill or if the partners split up. Recently, certain justices of the Michigan Supreme Court pressured the Chief Judge of the Washtenaw County Trial Court, Archie Brown, to put an end to the practice. Judge Brown then issued a directive to stop processing second-parent adoption petitions; however, Judge Donald Shelton refused to follow the directive, noting that a chief judge is an administrator and has no power to tell other judges how to interpret the law. Judge Brown responded by reassigning all of the second-parent adoption petitions to himself. The ACLU, representing seven couples whose adoption cases have been reassigned, has asked Judge Brown to rescind the reassignment order because a judge may not reassign a case simply because he does not like the way the original judge ruled. (Attorneys: Constance Jones and Jay Kaplan).

MACKINAC ISLAND REFUSES TO ACCOMMODATE TRICYCLIST WITH DISABILITY (Story on p 3)

The ACLU is representing Donald Bertrand, a resident of Mackinac Island who, because of multiple sclerosis, is unable to ride a two-wheel bicycle. His doctor has suggested that he ride an electric-assist tricycle to enable him to get up hills on the island when the fatigue caused by M.S. prevents him from doing so. However, Mackinac Island refuses to waive its no-motorized vehicle rule for Bertrand even though the Island makes exceptions for snow mobiles and golf carts. The ACLU is suing the city for refusing to accommodate Bertrand's disability as required by the Americans with Disabilities Act. (*Bertrand v. City of Mackinac Island*. Cooperating Attorney: Stewart Hakola with assistance from Law Interns Justin Weyerhaeuser and Jay Lee).

VISITATION RESTRICTIONS FOR KIDS FOUND UNCONSTITUTIONAL BY U.S. COURT OF APPEALS

In a case of national importance, the U.S. Court of Appeals recently struck down the Michigan Department of Corrections rule barring minors from visiting any inmates unless the inmate is the minor's parent or grandparents. The ACLU filed a friend-of-the-court brief in the case. The ACLU argued, and the court agreed, that the MDOC rule improperly stripped parents of the right to determine whether visits with other relatives, such as siblings, uncles, aunts and cousins, serve the child's best interest. The Court also

properly recognized that children were harmed, not protected, by the rule especially when the inmate is the psychological equivalent of the minor's parent. The state has asked the U.S. Supreme Court to review the case. (*Bazetta v. MDOC*. Attorney: Professor Roderick Hills.)

DETROIT SCHOOL BOARD TAKEOVER

The ACLU filed a friend-of-the-court brief in the voting rights case challenging the controversial takeover of the Detroit School Board by the Michigan legislature. The ACLU argued that the state violated the Voting Rights Act by stripping only Detroit residents and not the residents of any other school district of the right to elect their own school board member. Unfortunately, the U.S. Court of Appeals did not agree, and upheld the takeover in a June opinion. (*Moore v. School Reform Board of the City of Detroit*. Cooperating Attorney: Timothy Veaser).

DISTRIBUTION OF GIDEON BIBLES AT PUBLIC SCHOOL HALTED

A parent called the ACLU after discovering that the public schools in Wayland, Michigan were making arrangements with the Gideons to give bibles to fifth graders in class. The Southwest Michigan ACLU Branch responded by sending a letter to the superintendent explaining how promotion of religion by public schools violates the constitutional principle of separation between church and state. The superintendent immediately put an end to the practice. (Cooperating Attorney: James Rodbard).

THE RIGHT TO GRIPE ONLINE

Continuing its strong advocacy of online free speech, the ACLU filed a friend-of-the-court brief in the U.S. Court of Appeals opposing the Taubman Company's attempt to silence a critic of the development corporation. The case involves a man who was ordered to shut down a website called www.taubman-sucks.com. It is the first appellate case in the country to address whether a cyber-gripe site may adopt a domain name that includes the name of a corporation and a disparaging word. The ACLU argues that a judge's order to close down the site violates the First Amendment. The ACLU also asserts that the webmaster did not violate trademark law because there is no conceivable way that the site could be perceived as commercial or sponsored by the Taubman group. (*Taubman Company v. Webfeats*. Attorney: Ann Beeson).

From the Executive Director



Kary L. Moss, Esq.

I FOOLISHLY KEEP THINKING that our work will quiet down but I have been so wrong...

In the name of fighting terrorism, the Bush Administration and Attorney General John Ashcroft are clearly on a mission to rewrite the Constitution and dramatically expand executive powers. Fortunately, the courts are, for the time being, holding them in check. Our case representing Congressman John Conyers, Jr., the *Detroit News*, and the *MetroTimes* was the first in the country to slam an administration bent on creating two systems of justice.

As a result of our litigation and advocacy we have been awarded a grant by our national office that will allow us to create a special, one-year fellowship to hire an attorney to

help us step up our work even more in this area. We are also especially pleased to have been chosen to receive a special honor by the American Arab Anti-Discrimination Committee at their annual dinner in November.

Not only have we been ahead of the curve in responding to anti-terrorism initiatives that are harmful to our democratic system of government, but we have maintained our core program. For example, just this last week we challenged a school decision to suspend two students who published an underground student newspaper called *The First Amendment* and a Washtenaw Circuit Court judge who issued a directive, without any case before him, interpreting Michigan's adoption law to preclude second-parent adoptions.

I know that some people take on faith that a particular proposal from the administration will make us safe. I know that some people say they are willing to trade security for freedom and their civil liberties. Not all of us

believe that it needs to be that way. I see people asking hard questions, especially as we get more information about how the intelligence agencies failed in communicating with each other and in processing the information that they had gathered.

I am very proud of all the work that the ACLU of Michigan has been doing. You should be, too. To help you demonstrate that pride and to help us celebrate our 40th anniversary, we are inviting you to support our program by making a donation in honor of someone who has inspired your commitment to civil liberties. You should have recently received an invitation to do this. In response to your donation, you will get a beautiful postcard that you can personally send to the honoree. Please consider making a donation and honoring my incredible staff: Michael Steinberg, Wendy Wagenheim, Becky Bull, Jay Kaplan, Delphia Simpson, Brenda Bove, and Bill Flory.

Thank you

MARK YOUR CALENDAR! NOVEMBER 16

The ACLU of Michigan Annual Dinner will be at the Rattlesnake Club at River Place in Detroit.

Keynote Speaker – Detroit Mayor Kwame Kilpatrick

COURAGE UNDER FIRE HONOREES

Congressional Representatives John Conyers, Lynn Rivers, David Bonior and John Dingell for their vote against the U.S.A. Patriot Act.

EARLY BIRD SPECIAL!

Make your reservations by Sept. 1 and receive a 10% discount off the \$130 price. Table packages are also available.

For information, call 313-578-6815 or e-mail bbull@aclumich.org.

MAKE A DONATION TO OUR SILENT AUCTION

Our annual dinner includes a silent auction.

We need donations of political and ACLU items, tickets to sporting and cultural events, massages, pedicures and manicures and gift certificates to restaurants. To arrange a donation to our silent auction, please call 313-578-6815 or e-mail bbull@aclumich.org.

GET YOURSELF NOTICED!

Buy an ad in the ACLU Fund of Michigan Annual Dinner program book. Show your support of the ACLU.

For more information, contact Becky Bull at 313-578-6815 or bbull@aclumich.org

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