ACLU OF MICHIGAN LEGAL DOCKET – 2002-2003

POST 9 / 11 CASES

First Challenge to the Patriot Act -- The ACLU Fund of Michigan and the National ACLU filed the first direct challenge in the country to the USA PATRIOT Act – the law passed in the wake of 9-11 that vastly expands the power of the government to spy on ordinary people. We are challenging Section 215 of the law that allows the FBI to secretly obtain private information about a person even though it does not suspect the person of doing anything wrong. All the FBI must do to is certify to a secret court judge (a "FISA judge") that the information is "sought for" a terrorism investigation and the court must order any person – including librarians, Internet service providers, doctors and employers – to hand over records or other things sought by the FBI. Moreover, the person who receives the order is forever gagged from telling anyone that she or he received the secret court order. We are representing six national and local organizations that serve Arab and Muslim people and we argue that the law violates constitutional protections against unlawful searches as well as the First Amendment and Due Process Clause. A hearing is set in this groundbreaking case on December 3, 2003. (*Muslim Community Association of Ann Arbor v. John Ashcroft*; Attorneys: Ann Beeson, Jameel Jaffer, Noel Saleh and Kary Moss).[1]

Precedent-Setting Case to Open up Immigration Court Hearings – In the wake of September 11, the U.S. Attorney General and the Chief U.S. Immigration Judge issued a memo directing judges to close all immigration court hearings to the press and the public in hundreds of immigration cases involving Middle Eastern and Arab men. The ACLU challenged the directive on behalf of Congressman John Conyers, the Detroit News and the Metro Times – all of whom were denied access to the deportation proceeding of a popular Muslim leader from Ann Arbor named Rabih Haddad. The ACLU argued that secret justice was contrary to the First Amendment right of the public and press to observe administrative court proceedings. While portions

[1] ACLU Fund of Michigan Legal Director Michael J. Steinberg worked on almost all of the cases discussed in this docket, but will not be listed as an attorney after each case.

of some proceedings could be closed if the government proved to the judge that it was necessary to protect national security, the ACLU argued that a blanket order closing all hearings to the public and press was unconstitutional. In a precedent-setting decision, a federal judge in Detroit agreed, stating that the government cannot suspend the constitution in times of crisis. Then, in September, 2002, a unanimous 3-judge panel of the U.S. Court of Appeals affirmed. Judge Damon Keith, writing for the court, warned "democracies die behind closed doors." This lawsuit was the first federal, post 9-11 case successfully challenging an attempt by Attorney General John Ashcroft to roll back civil liberties. *(Detroit News v. Ashcroft*; Attorneys: Lee Gelernt, Len Niehoff and Steven Shapiro).

Spying without Judicial Warrants – Ordinarily, before the government may tap the phone lines or intercept Internet communications of a person living in the United States, it must obtain a search warrant from a judge after proving that there is "probable cause" to believe that the person is engaged in criminal activity. There is an exception to the probable cause and search warrant rules when the purpose of the government surveillance is to gather "foreign intelligence information." However, now the Attorney General wants the power to engage in surveillance without probable cause or a warrant even when the government's primary or exclusive purpose is to gather evidence of criminal activity. The normally secretive Foreign Intelligence Surveillance Court issued a unanimous, published opinion rejecting the Attorney General's proposal; however, in November, 2002, the three judges on the FISA Court of Review – who were handpicked by Chief Justice Rhenquist – approved the new rules. The National ACLU and the Michigan ACLU filed a brief in the Supreme Court on behalf of the American Arab Anti-Discrimination League and ACCESS arguing that the new FISA was unconstitutional. Unfortunately, in March, 2003, the Supreme Court declined to hear the case. (Michigan ACLU Attorneys: Noel Saleh and Nabih Ayad).

Know-Your-Rights Pamphlets and Forums – The ACLU of Michigan distributed thousands of the popular Know-Your-Rights pamphlets at Islamic Centers and throughout the Arab communities in the state. At the end of Ramadan in 2002, we were invited to set up a table and distribute pamphlets at a mosque where nearly 5000 people came to worship. ACLU attorneys were also asked to speak during numerous forums in Dearborn and throughout the state http://www.aclumich.org/about the rights of the innocent men targeted for questioning.

Protecting Attorney-Client Privilege – Following the anthrax scare in Florida and Washington, D.C., the Michigan Department of Corrections

instituted a new policy of opening prison mail outside of the prison. However, 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. In May, 2002, a federal judge agreed with the ACLU and subsequently a new policy was implemented that protects both constitutional rights, while ensuring the safety of inmates and prison employees. (*Hadix v. Johnson*; ACLU Attorney: Elizabeth Alexander).

Racial Profiling of People of Arab Descent – We have received complaints of discrimination against people of Arab descent across the state at airports, schools, work and apartment complexes. We are investigating potential lawsuits.

RACIAL JUSTICE

Affirmative Action Victory – In one of the most important civil rights victories this decade, the U.S. Supreme Court ruled in June, 2003, that the University of Michigan may use affirmative action in admissions in order to create a diverse student body and enhance the learning environment for all students. The ACLU, NAACP Legal Defense Fund, MALDEF, and Citizens for Affirmative Action's Preservation had intervened in the case filed against U-M's undergraduate school on behalf of 17 African American and Latino High School students who wanted to attend U-M. We argued that affirmative action is a necessary and constitutional means to address past and present discrimination at the U-M as well as to create a diverse learning environment. (*Gratz v. Bollinger;* ACLU Attorneys: Prof. Brent Simmons, Chris Hansen and Vincent Warren).

Scholarship Program Fails Students – A coalition of groups led by the ACLU sued the state in June 2000 for discrimination against minority and poor students by awarding Michigan Merit Scholarships based solely on Michigan Educational Assessment Program (MEAP) test scores. The MEAP test was designed to measure how well school districts teach the optional model Michigan curriculum, not individual student merit. By misusing the MEAP test as a measure of student merit, the state denies $2,500 scholarships to thousands of outstanding minority students and students from poor school districts who do not fare as well on the MEAP test as majority students from wealthy districts. The coalition seeks an injunction requiring the state to discontinue use of the MEAP as the sole criterion for awarding scholarships, and revise the criteria to include a fairer means of

assessing student achievement. The ACLU is working with the Mexican American Legal Defense and Education Fund, the Michigan State Conference of the NAACP, and Trial Lawyers for Public Justice on this case. The trial is likely to be held in the Spring of 2004. (*White v. Engler;* Attorneys: Michael Pitt, Peggy Goldberg Pitt, Judith Martin and Kary Moss).

Bicycling While Black – The ACLU is representing 21 young African-American men from Detroit who were stopped by the police while riding their bikes on the other side of Eight Mile Road in Eastpointe. The ACLU argues that the bicyclists were stopped in this predominantly white suburb because of their race. In a 1996 memorandum to the Eastpointe City Manager, the former police chief stated that he instructed his officers to investigate any black youths riding through Eastpointe subdivisions. The police searched several of the young men and in some cases seized and later sold their bicycles. While acknowledging that the Eastpointe police said and did things that were racially insensitive, the trial judge held that the plaintiffs were not able to prove intentional discrimination and dismissed the case. The decision has been appealed. (*Bennett v. Eastpointe*; Attorneys: Charles Chomet, Saura Sahu, and Delphia Simpson).

Swimming While Black – The ACLU represented six African American children who were victims of racial profiling at an Ann Arbor pool in the summer of 2000. As they left the pool, a white patron reported that his cell phone and pager were stolen. Although nobody saw the African American children near the man's belongings, the pool manager singled them out and ordered them to stay until the police came. When the officer arrived, the white patron, at the suggestion of the management, searched the African American children's bags for the items, but did not find anything. No white children were searched. The ACLU helped plan a demonstration against racial profiling at the pool that drew approximately 250 protesters. After the protest we worked with city officials to (1) finalize and implement an affirmative action plan, (2) ensure that the City provides more regular diversity training for its employees, and (3) create a program to educate teenagers about their constitutional rights. In June, 2002, the City agreed to pay each of the children $20,000 to compensate them for their humiliation. (ACLU Cooperating Attorneys: Richard Soble and John Shea).

Fighting Racial Profiling – The Western Michigan ACLU filed a friend-of-the court brief in high-profile case involving the arrest of three African American men in Grand Rapids. The arrests were made after a woman told a police officer that she was afraid because a black man had approached her. She could not describe the man or the car that he had been driving. The police then circled the block and eventually found three African

American men sitting in a car. Although an officer testified that there was no sign the men were engaged in suspicious activity, he put on the cruiser's lights and ordered the men out of their car at gunpoint. As the driver exited his car, he called out to the neighbors for help because he was afraid of police brutality. The men were arrested for "resisting and opposing a police officer." The ACLU argued that there was no reason to activate the cruiser lights and "seize" the men. In November, 2002, the judge agreed and dismissed the case. (*People v. Jones*; Cooperating Attorneys: Miriam Aukerman and Gary Gershon).

FREEDOM OF SPEECH

Student's Political Speech Defended – Bretton Barber, a junior at Dearborn High School, wore a t-shirt to school which displayed a photograph of George W. Bush with the caption, "International Terrorist." Although the t-shirt did not disrupt the functioning of the school, the principal sent Bretton home and told him not to wear the shirt to school again. After the school district denied our request to permit the student to return to school wearing the shirt, we filed suit arguing that the student has a First Amendment right to express his political views. In October, 2003, Judge Patrick J. Duggan ruled in a published decision that the school must permit Bretton to wear the shirt because the message on the shirt is protected speech. (*Barber v. Dearborn Public Schools*, Cooperating Attorney: Andrew Nickelhoff).

Meijer Flyer Case – The ACLU successfully defeated Meijer Corporation's attempt to prevent the distribution of flyers within the Arab community. The flyers asserted that a gas station clerk initially refused to serve two Arab customers, Bilal and Mohammed Karhani, and then shouted, "You Arabs get out of here, we don't want to serve you guys, we don't have to serve you. Go back to your country . . . Dirty Arabs." Meijer claimed that the flyers were misleading and were hurting business and, on that basis, asked a judge to order that they the stop being distributed. The ACLU defended the Karhanis and U.S. District Court Judge Paul Borman, adopting the ACLU position, issued a published opinion reaffirming the longstanding principle that peaceful leafleting is speech that deserves the highest constitutional protection. *(Karhani v. Meijer.* Attorneys: Kenneth Mogill, Robert Sedler and Noel Saleh).

State Charges Frustrated Farmer for Complaining – Gerald Henning is an 82-year-old farmer in Lenawee County whose property is surrounded on three sides by a huge agribusiness. Contrary to state regulations, the agribusiness sprays liquid manure on its property without incorporating it

into the soil. The liquid manure emits a sickening smell. Henning called a complaint hotline set up by the Michigan Department of Agriculture (MDA) and left voicemail messages complaining about the stench and asking for help. When his pleas went unheeded, he left messages with stronger language. At times he referred to the MDA as the "suck ass Farm Bureau sons-of-bitches." Rather than helping Henning, the state responded by charging him with making "obscene" phone calls. The ACLU is representing Henning on appeal and argues that the charge against him must be dismissed because his speech was protected by the First Amendment. *(People v. Henning.* Attorney: Sarah Zearfoss).

Gag on Firefighters Removed – We filed a lawsuit in federal district court on behalf of the Frenchtown Township firefighters' union challenging the constitutionality of the township ordinance that makes it a crime for firefighters to speak to the news media about any "fire department matters." The ordinance was passed after a firefighter expressed that low staffing levels in the department were creating safety problems. In December 2002, the court issued a published decision protecting firefighters' rights to speak out on matters of public concern. (*International Association of Firefighters Local 3233 v. Frenchtown Charter Township*; Cooperating Attorneys: David Radtke, Sarah Zearfoss, and Alison Paton).

Students Punished for Distributing Underground Newspaper – Two juniors at South Lyon High School, Josh Woodcock and Dan Schaefer, wrote and published a newspaper at home called *The First Amendment*. The articles addressed a wide variety of school issues and were, 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 they have a First Amendment right to distribute the newspaper as long as it does not substantially disrupt the functioning of the school. The case settled in March, 2003, when the school agreed to adopt new rules permitting the distribution of underground newspapers and rescinded the students' suspensions. (*Woodcock v. South Lyon Community Schools*; ACLU Cooperating Attorney: Andrew Nickelhoff with assistance from ACLU Legal Intern Steven Blackburn).

30-Day Waiting Period for Protesters in Dearborn – The ACLU is challenging a Dearborn ordinance in federal court on behalf of the American-Arab Anti-Discrimination Committee (ADC), and Imad Chammout, a Dearborn resident and business owner. The ordinance forbids the issuance of a protest permit unless the sponsors of a demonstration apply for a

permit at least 30 days in advance of the event. ADC did not believe it was reasonable to have to wait a month to march against the U.S. invasion of Iraq. Chammout had been criminally prosecuted under the ordinance because of his participation in a march to protest Israeli policies a few days after Israeli soldiers entered into a Palestinian refugee camp in Jenin. (*The American-Arab Anti-Discrimination Committee v. City of Dearborn,* Attorneys: William Wertheimer, Cynthia Heenan, Majed Moughni and Noel Saleh).

Student Newspaper Censored – The ACLU filed a federal case on behalf of Katy Dean, a Utica High School student who serves as the managing editor for her school-sponsored newspaper, the *Arrow*. Ms. Dean wrote an article for the *Arrow* about a lawsuit filed against Utica Community Schools. Although the subject of the article was approved by a faculty advisor, the principal prohibited it from being published. The ACLU argues that school administrators cannot censor school-sponsored student newspapers where there is no legitimate educational reason for doing so and that the principal censored Ms. Dean's article only because it could embarrass the district. (*Dean v. Utica Public Schools*; Cooperating Attorney: Andrew Nickelhoff).

Charged for Complaining. A retired union member named Bruce King for president of his local, but lost what he believed to be a corrupt election. King then wrote numerous letters to union officials complaining about the election and criticizing them for failure to investigate. Instead of investigating the matter, the union officials called the police the City of Dearborn charged King with "malicious annoyance by writing." The ACLU defended the case and the judge dismissed the charges. *(City of Dearborn v. King*; Cooperating Attorney: Mark Krieger).

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.taubmansucks.com. It is the first appellate case in the country to address whether a cybergripe site may adopt a domain name that includes the name of a corporation and a disparaging word. The ACLU argued that a judge's order to close down the site violates the First Amendment and the Court of Appeals agreed. In an opinion published in February, 2003, the Court wrote that citizens can express opinions through a domain name as long as the name is not commercially misleading. Relying on the *Taubman* case, the Michigan ACLU was able to help a woman who was threatened with legal action by Nextel for her website, Nextelsucks.com. (*Taubman Company v. Webfeats*; ACLU Cooperating Attorney: Ann Beeson).

19th Century Speech Law Struck Down – The ACLU won a victory for freedom of speech in May, 2002, when the Michigan Court of Appeals ruled that an 1897 law prohibiting indecent, immoral, vulgar or insulting language in the presence or hearing of women or children was vague, and violated the First Amendment freedom. Timothy Boomer, dubbed "the cussing canoeist" by the media, was convicted in August 1998 for swearing after he fell out of his canoe on the Rifle River. The ACLU also represented a junior varsity volleyball coach who was prosecuted under the same law when he swore at the athletic director in the presence of a female coach after being fired by the athletic director. In April, 2003, the prosecutor finally agreed to dismiss the case after the ACLU pointed out that the Court of Appeals had struck down the law. (*People v. Boomer;* ACLU Cooperating Attorneys: Cori Beckwith, Paul Denenfeld and William Street; *People v. Clevenger*; Cooperating Attorney: William Street).

Challenging Zero Tolerance Rules – Alex Smith, an A-student at Mt. Pleasant High School, wrote a parody while at home criticizing his school's new tardy policy and making fun of his principal and teachers for instituting the rule. The next day, he read the parody to some friends at school during lunch time. When the principal learned of the critique, she suspended Alex under the school's "verbal assault" rule. The rule requires the suspension of students who "assault the dignity of a person." The ACLU challenged the rule on First Amendment grounds. In October, 2003, U.S. District Court Judge David Lawson struck down the Mt. Pleasant policy as well as the state law requiring each school district to adopt a "verbal assault" rule without defining the meaning of "verbal assault." *(Smith v. Mt. Pleasant School District*; ACLU Cooperating Attorneys: Richard Landau and Bradley Smith).

Challenge to the Michigan Anti-Mask Law – During the demonstration against the Organization of American States in Detroit in the summer of 2001, over 10 protestors were arrested and jailed for wearing Lone Ranger masks. They were charged under a 1931 Michigan law prohibiting anyone who marches or assembles from concealing part of his or her face. The law contains exceptions if the masks are worn during minstrel shows and other entertainment, during Halloween or masquerade parties, or during parades of an educational, religious or historical character. There is no exception for political expression. The ACLU, with the National Lawyers Guild, was able to secure the dismissal of the criminal charges. The ACLU and NLG then filed a federal lawsuit seeking an injunction to prevent the police from ever using the unconstitutional law to harass protesters again. In December, 2002, the federal case was settled when the state agreed to amend the law to protect

free speech. (*Miller v. City of Detroit*; ACLU Cooperating Attorneys: Kenneth Mogill, David Radtke, Cynthia Heenan and Marshall Widick).

Protection for Therapists who Complain about the Police – A psychologist who believed that he was mistreated by an aggressive police officer wrote to the Flint Police Chief about the officer stating, among other things, that the officer would benefit from therapy. The officer sued the psychologist for defamation. The ACLU filed a friend-of-the-court brief at the trial level arguing that complaints against governmental officials are protected by the First Amendment except in extraordinary circumstances. The trial judge, agreeing with the ACLU, dismissed the lawsuit. The officer appealed to the Michigan Court of Appeals and the ACLU is representing the psychologist on appeal. *(Allen v. Mach.* Attorney: Daniel Quick.)

Protection for People Who Complain about Therapists – A woman complained about a therapist to the National Board of Certified Counselors (NBCC), a professional organization to which the therapist belonged. NBCC investigated the complaint, found the allegations to be valid and reprimanded the therapist. The therapist responded by suing the woman for defamation. The trial judge held that the woman's complaint to NBCC was protected by a "qualified privilege" and that she could not be liable unless she knowingly made false statements or unless she made statement "with reckless disregard" about whether they were true. On appeal, the ACLU has filed a friend-of-the-court brief in the Michigan Court of Appeals on behalf of NBCC in support of the woman who complained because if a qualified privilege did not exist, clients would be afraid to speak out against therapist misconduct for fear of being sued. In April, 2003, the Court of Appeals issued an opinion agreeing with the ACLU. (*Schuitmaker v. Krieger*; Cooperating Attorney: Mark R. Bendure).

Criminalizing Expression on Cable T.V. – The ACLU is representing a man on appeal who was convicted of indecent exposure for a short comedy skit on community access television. The skit involved "locker room humor" and was not sexual in nature. The ACLU argues that the indecent exposure statute was intended to apply only to in-person nudity, not televised nudity. Moreover, the ACLU asserts that televised nudity, and that non-obscene nudity on cable television is protected speech; otherwise, it would be a crime to broadcast award-winning movies such as *Schindler's List* on cable television. (*People v. Huffman*; ACLU Cooperating Attorneys: Peter Armstrong, Ralph Simpson and Gary Gershon).

ACLU Protects Church's Free Speech Rights – During the Iraq War in the spring of 2003, Rev. Eric Stone erected a large sign on the lawn of the

Wesley Foundation in Mt. Pleasant stating, "We Value All Life; End the Cycle of Violence." Claiming that the church violated the city sign ordinance, the city demanded that the sign be taken down. Working with Rev. Stone, the Central Michigan Branch of the ACLU reviewed the ordinance and, in a letter to Mt. Pleasant, pointed out that the ordinance was unconstitutional because it did not allow for political signs. The city agreed with the ACLU's position, allowed Rev. Stone to keep the sign up and stated that it would review the ordinance. (Letter written by John Scalise, Vice-President of the Central Michigan ACLU).

The Right to Hold a Conference on Campus – The ACLU filed a friend-of-the-court brief opposing a lawsuit filed by two students asking the court to stop a conference at the University of Michigan about the Palestinian solidarity movement. The two students alleged that the speakers might incite violence. The ACLU argued that stopping the conference would constitute an unlawful prior restraint on speech. In October, 2002, the judge dismissed the lawsuit and the conference was held as planned. (*Dorfman v. Coleman*; ACLU Attorneys: Richard Soble and Kary Moss).

The Right to Speak One's Mind at City Council Meetings – In May, 2002, the Michigan Court of Appeals issued an important First Amendment opinion protecting speakers at city council meetings from being sued for defamation unless the speaker knows that the statements made are false or is acting in "reckless disregard" of whether the statement is true or false. The ACLU was concerned that the standard used by the trial judge would have a chilling effect on would-be speakers at council meetings and filed a friend-of-the-court brief in the case. Unfortunately, in April, 2003, the Michigan Supreme Court reversed the Court of Appeals decision, and now individuals may be held liable for negligent statements made at council meetings. The union has asked the U.S. Supreme Court to review the case. (*J & J Construction v. Bricklayers and Allied Craftsman, Local 1*; ACLU Cooperating Attorneys: Prof. Christopher Peters and Richard McHugh).

Protecting Political Speech – In the fall of 2002, the Oakland County ACLU defeated proposed changes to the West Bloomfield sign ordinance that would have, among other things, required candidates and residents to obtain permission and a sticker from the township before putting up a political candidate sign on their lawn. (Cooperating Attorney: Robert Shaya).

Paying to Protest – The Detroit Chapter of Women's Actions for New Directions (WAND), wanted to hold a small press conference in front of the Royal Oak post office on April 15, 2003 (Tax Day), to protest the federal government's spending priorities. However, the Royal Oak police

department contacted the chapter's president a couple of days before the event to say that the organization could not protest without a million dollar insurance policy. At WAND's request, the ACLU intervened and the organization was permitted to protest without paying.

Armbands to Protest the War – A group of 8th graders at Carter Middle School, in Clio, felt uncomfortable about the school's "Red, White and Blue Days," where students were encouraged each Friday to wear the colors of the flag in support of the war in Iraq. When some of the students decided that they wished, instead, to express opposition to the war, by distributing anti-war literature and wearing white armbands -- a means of protest used by students during the Viet Nam War -- they were told by the principal that although an accommodation would be made for the devotion of class time to making posters supporting and opposing the war, the wearing of the armbands would result in suspension. One of the 8th grade teachers, on behalf of the students, then contacted the Flint Area Branch of the ACLU for help. In April, 2002, the ACLU was able to persuade the school district to permit the students to wear the armbands. (Cooperating Attorney: Glenn Simmington).

Student Punished for Refusing to Stand for the National Anthem – Because of her opposition to U.S. policies, a student has refused to stand during the playing of the National Anthem every morning at Wright High School in Ironwood. The principal told the student that she needed parental permission if she was not going to stand and that if she obtained parental permission, she must leave the room during the song. In April, 2003, at the family's request, the ACLU wrote a letter to the principal stating that he cannot constitutionally punish a student by making her leave the room on the ground that she, as a matter of conscience, remains seated during the National Anthem. The letter also states that the constitution protects student expression whether or not the student has parental permission to express herself.

SEX DISCRIMINATION

Class Action Against Livingston County Jail Settled – The October, 2003, the ACLU settled its sex discrimination class action against the Livingston County Jail after many years of litigation. The settlement will ensure that women will now have equal access to the county's "work release" programs – a program that allows inmates to work at their jobs during the day and serve their sentences on evenings and weekends. Livingston County also agreed to policy changes and changes in the structure of the jail that will address the problem of sexual harassment by

male guards and the lack of privacy for women inmates when they dress, shower, and use the toilet. Finally, Livingston County will pay the class of women inmates who suffered under the jail's former policies approximately $850,000. (*Cox v. Homan;* ACLU Cooperating Attorneys: Michael Pitt, Peggy Goldberg Pitt, Deborah LaBelle, Prof. Roderick Hills and Kim Easter).

Evicting Victims of Domestic Violence – The ACLU of Michigan filed a lawsuit against the Ypsilanti Housing Commission in February, 2002, for attempting to evict a tenant because she was a victim of domestic violence. The lawsuit alleged that the landlord's "one-strike" rule,

which required eviction whenever crime occurred in the tenant's apartment, discriminates against women if applied to victims of domestic violence. In October, 2003, the case was settled when the housing commission agreed to refrain from punishing tenants who are victims of domestic violence and to pay damages to the tenant. The ACLU worked on the lawsuit with the Fair Housing Center of Washtenaw County. (*Warren v. Ypsilanti Housing Commission*; ACLU Cooperating Attorneys: Deborah McCullogh, William Thatcher and Michael Honeycut).

Stopping Sexual Abuse of Inmates – For years there has been a persistent and well-documented problem in women's prisons of male guards raping and sexually harassing women and then retaliating against any women who complain about such treatment. In order to address this problem and to settle a class action lawsuit on behalf of women inmates, the Michigan Department of Corrections agreed to assign only female corrections officers in the area where women dress, shower and use the toilet. In response, certain guards sued the MDOC for sex discrimination in employment. The ACLU submitted a friend-of-the-court brief on appeal, arguing that, while gender-specific assignments should be legal only under rare circumstances, those circumstances existed in this case because: (1) the MDOC did not impose a blanket ban on employing men in women's facilities; (2) there is not an adequate gender-neutral alternative to protect inmates' safety and privacy; and (3) same sex supervision in intimate settings is necessary for the women inmates' rehabilitation given their history of cross-gender sexual abuse both before and during incarceration. The ACLU also argued that in order to accommodate both workers' and prisoners' rights, the trial court should have ordered the MDOC to ensure that none of the male guards who were moved would lose security or pay and promotion opportunities. (*Everson v. MDOC*; ACLU Cooperating Attorney: Professor Roderick Hills).

PROTECTION AGAINST UNREASONABLE SEARCHES AND SEIZURES

Law Forcing Pedestrians to Submit to Breathalyzer Tests – The ACLU of Michigan filed a federal lawsuit in October, 2002, challenging a widespread police practice of forcing pedestrians under age 21 to take a Breathalyzer test without first obtaining a search warrant. The case was filed against the City of Bay City on behalf of Jamie Spencer, a 20-year-old woman who was forced by an officer to take a breath test or pay a $100 fine even though she had not been drinking alcohol. The ACLU charged that penalizing citizens who are not driving for

refuse to consent to a search violates the Fourth Amendment prohibition against searches without search warrants. In November, 2003, Judge David Lawson issued an opinion striking down the ordinance. The Bay City ordinance is identical to the state law and the case is expected to have a statewide impact. (*Spencer v. City of Bay City*; ACLU Cooperating Attorneys: Professor David Moran and William Street).

Man Arrested for Not Showing ID – We are representing Travis Risbridger, who was arrested while walking down an East Lansing street and jailed overnight because he declined to show identification to a police officer. In 2000, U.S. District Court Judge Gordon J. Quist, in a published opinion, ruled that the arrest violated Risbridger's due process rights and his right against unreasonable searches and seizures. In 2002, the U.S. Court of Appeals held that the police officer was immune from damages and the case has been remanded back to the district court to determine whether the City of Lansing is liable. The holding that it is illegal to arrest a person for failing to show identification should have an impact statewide. We have received complaints about police from across the state that have arrested, or threatened to arrest, students and other pedestrians for declining to show ID. (*Risbridger v. City of East Lansing*; ACLU Attorneys: Dorean Koenig, Bryan Waldman).

Stripped of their Rights – We are representing eight Whitmore Lake High School students in a suit against the Whitmore Lake School District. In the spring of 2000, the school strip-searched all members of a gym class in an unsuccessful attempt to find money that was reported stolen. The boys were forced to pull down their pants and underwear while they were examined by a teacher. The girls were forced to stand in a circle and pull up their shirts and pull down their shorts. In June, 2003, a federal judge ruled that the officials who conducted the strip search are not immune from liability and the school district has appealed. (*Beard v. Whitmore Lake School District*; ACLU Cooperating Attorneys: Richard Soble and Matthew Krichbaum).

GAY, LESBIAN, BISEXUAL AND TRANSGENDER RIGHTS

Michigan Dept. of Corrections (MDOC) Agrees to Stop Identifying Prisoners as Gay – For years, the Michigan Department of Corrections has identified inmates' sexual orientation on numerous forms and records. As a result, guards and other prisoners would "out" GLBT inmates and GLBT inmates would become the target of

harassment and physical abuse. Both the ACLU of Michigan GLBT Project and the Northwest Michigan Branch ACLU Branch wrote letters to the MDOC requesting that inmates' sexual orientation no longer be identified on prison forms. The letters stressed that while it is important for security reasons to identify which inmates are sexual predators, an inmate's sexual orientation is irrelevant. Based on the letters, the MDOC conducted a review of the policy and, in an April, 2003 letter to the ACLU, announced that it would change its policy. (ACLU Attorneys: Al Quick, Steve Morse, Jay Kaplan, and Deborah LaBelle).

Protecting Benefits for Gay and Lesbian Families – The ACLU filed a friend-of-the-court brief on behalf of the Washtenaw Medical Society, the Women Lawyers of Michigan and itself in a dubious lawsuit filed against the Ann Arbor Schools by the conservative Thomas More Law Center. In an inhumane attempt to take away health insurance from same sex partners of school employees, the Thomas More Law Center argues that somehow the Michigan marriage laws precludes the granting of same sex benefits. The ACLU's brief points out that the marriage laws, while limiting marriage to a union between a man and a woman, have absolutely nothing to do with an employer's ability to grant benefits to whomever it pleases. The brief also emphasizes that domestic partnership health benefits are not only critical to the public health of a community but they are also good for business because they help attract the best job candidates. (Rhodes v. Ann Arbor Schools; Attorneys: Kara Jennings and Jay Kaplan).

Detroit Sting Operation Against Gay Men Stopped – In the summer of 2002, the ACLU of Michigan reached a settlement agreement with the City of Detroit in a constitutional challenge of the undercover sting operations in Rouge Park that targeted gay men or men perceived to be gay. In the operation, undercover officers would approach men they perceived to be gay and try to elicit a look, gesture, or conversation that the officers deemed to have sexual connotations. The officers would then arrest the men under the city's "Annoying Persons" misdemeanor ordinance, and their vehicles would be impounded, forcing them to pay over $900 for their return. Under the settlement, the unconstitutional ordinance used to charge the men will be repealed; the plaintiffs' arrest records, including their fingerprints, will be purged from the police department's computer and records system; and the officers in the Sixth Precinct will undergo sensitivity training related to gay, lesbian, bisexual and transgender issues. The City has also agreed to pay $170,000 in damages and attorneys fees in the settlement of the lawsuit filed by the ACLU on

behalf of six men and the Triangle Foundation. (*Triangle Foundation v. City of Detroit*; Attorneys: Deborah LaBelle, Jay Kaplan, Michael Steinberg, and Kary Moss).

Children's Right to Two Parents – 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 separate. 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 of granting these adoptions. 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, argued that Judge Brown should disqualify himself from hearing the cases because of bias or appearance of bias, but in June, 2002, Judge Brown rejected the ACLU argument and insisted on keeping the cases. (ACLU Attorneys: Constance Jones, Molly Reno and Jay Kaplan).

Defending Marriage – The ACLU is representing the wife of a transgendered (male to female) person who receives disability benefits. The couple has been married for 39 years. After the husband underwent sexual reassignment surgery in 1997, his birth certificate was changed to reflect the sex change. The Social Security Administration initially granted spousal benefits to the wife for more than a year. However, it then terminated the spousal benefits on the ground that she is no longer married to a person of the opposite gender. The wife appealed the overpayment notice. In October, 2003, we successfully argued on behalf of the couple at an administrative hearing that the Social Security Administration had no authority to declare a valid marriage void and deny benefits on that basis. *(In re Kikue Lidigk*; ACLU Attorney: Jay Kaplan).

No "Special Rights" for the Boy Scouts – The Boy Scouts of America fought for their ability to discriminate against gays and lesbians all the way to the U.S. Supreme Court in 2001, arguing that sexual orientation discrimination was a core value of the organization. Yet, many public schools still give the Boy Scouts advantages that other outside organizations do not have – including the ability to set

up displays in schools and send recruiting flyers home in students' folders and backpacks. In 2001 and 2002, the ACLU worked with gay and lesbian rights groups in Ann Arbor and other parts of the state to ensure that the schools refrain from granting "special rights" to this homophobic organization. We were also successful in encouraging several Parent/Teacher Organizations to stop sponsoring or chartering BSA troops until the BSA rescinds its discriminatory policies. (ACLU Cooperating Attorney: Nicholas Roumel).

RIGHT TO COUNSEL

Appointed Counsel for the Poor in Criminal Appeals – In 2000, the ACLU filed a federal lawsuit challenging a Michigan law that prohibited judges from appointing counsel to poor people who pled guilty to help them appeal their sentence or conviction. The U.S. District Court struck down the law as unconstitutional and in June, 2003 the U.S. Court of Appeals for the Sixth Circuit affirmed in a 7-5 decision. The state has asked the U.S. Supreme Court to hear the case. (*Tesmer v. Granholm*; ACLU Cooperating Attorneys: Prof. David Moran, Mark Granzotto, Jeanice Dagher-Margosian and Sarah Zearfoss).

Imprisonment without Attorneys – In May 2002, the Supreme Court ruled in *Alabama v. Shelton* that it was unconstitutional for the state to sentence a person to jail for violating his or her probation if the person had never been appointed a lawyer in the original criminal proceeding. Two days later the ACLU of Michigan sent a letter to all district court judges in the state asking them to identify and release all inmates that were unconstitutionally incarcerated without an attorney. (ACLU Attorneys: Kary Moss and David Moran).

PRISONERS' RIGHTS

State Prisons Fail to Stop Spread of Hepatitis C – In February 2003, the ACLU and the clinical law program of the University of Michigan Law School filed a federal class action against the state prison system in response to its failure to adequately test, identify and treat inmates with Hepatitis C. The case was dismissed on a technicality. As we were preparing to re-file the case, the Michigan Department of Corrections, to its credit, adopted a protocol to address Hepatitis C that was very close to the protocol we proposed in the lawsuit. We will be monitoring the MDOC to make sure that the protocol is followed. (*Thompson v. Overton*; Attorneys: David Santacroce and Daniel Manville).

Challenging Unfair Visitation Policies – The ACLU submitted a friend-of-the-court brief in the U.S. Supreme Court in an important prison visitation case. The ACLU argued that the Michigan prison rule barring minors from visiting all inmates except incarcerated parents and grandparents violates the right to familial association. Decisions of whether it is in the best interest of minors to visit with sisters, uncles or non-relatives are best left to the parents, not the MDOC. The ACLU further argued that the draconian rule permanently barring any visitation with inmates who have used drugs in prison more than once violates due process. Although the visitation rules were struck down in the trial court and the U.S. Court of Appeals, the Supreme Court issued an unfavorable opinion in June cutting back on the right of inmates and their loved ones. Fortunately, it is unlikely that the MDOC will reinstate the rules. (*Bazetta v. MDOC*; Attorneys: Professor Roderick Hills and Elizabeth Alexander).

Civil Rights for Prisoners – The ACLU and the Michigan Protection and Advocacy Service filed a joint friend-of-the-court brief in the Michigan Court of Appeals on the question of whether the Michigan civil rights acts were originally intended to apply to inmates. In March, 2002, a superpanel of the Court issued an opinion agreeing with the ACLU that prisons must follow civil rights laws. A few days later, a class action on behalf of women's prisoners settled for $3.7 million. The Michigan legislature has since amended the law to specifically strip inmates of civil rights protections. (*Doe v. MDOC*; ACLU Cooperating Attorney: Gayle Rosen).

DRUG POLICY

Welfare Drug Testing Halted – In 2000, a U.S. District Court judge halted enforcement of a Michigan law requiring mandatory drug testing for all welfare applicants and recipients regardless of whether there was reason to suspect that they were abusing drugs. The court agreed with the ACLU that the law violates the Fourth Amendment and, if permitted, would set a dangerous precedent by opening up the door to permitting drug testing of all people who benefit from a government program -- whether it be small business loans, student grants or tax deductions for home mortgage payments. A 3-judge panel of the Court of Appeals reversed the district court decision but the panel decision was vacated when the entire Sixth Circuit Court of Appeals agreed to hear the case. In April, 2003, the Court of Appeals issued an order affirming the district court's ruling putting an end to the program. (*Marchwinski v. Howard;* Attorneys: Prof. Robert Sedler, Graham Boyd, David Getto and Cameron Getto).

Freedom From Random Drug Tests – Grand Blanc High School was the first Michigan school to require random drug testing of high school athletes, whether or not there is any reason to suspect that an athlete is using drugs. In 2000, the ACLU filed a lawsuit on behalf of Micah White challenging the policy. White, a member of the National Honor Society, refused to sign an agreement for random drug testing in order to be on the school's wrestling team. We argued that the policy violated the Michigan Constitution's privacy protection. In May, 2003, the trial judge ruled that while administrators could not constitutionally require drug testing of students as a condition of attending school, random drug testing of student athletes did not violate the Michigan Constitution. *(White v. Grand Blanc School District;* ACLU Cooperating Attorneys: Greg Gibbs and Mark Granzotto).

Fighting Abuse of Forfeiture Laws – Fred Lipke took $2000 in cash to the City of Wayne police department to bail out his friend. The police took the bail money and showed it to a drug-sniffing dog. Between 70% and 95% of money that has been in circulation has traces of drugs on it and, not surprisingly, the dog alerted on Mr. Lipke's money. The police then seized the money and initiated forfeiture proceedings. In January, 2002, when the ACLU became involved, the prosecutor agreed to dismiss the case and return the $2000 plus the $250 bond that Lipke had to post to challenge the seizure. The ACLU then filed a federal lawsuit to ensure that the city of Wayne would no longer seize bail money based on a dog alert. (*In Re $2000 in U.S. Currency*; ACLU Cooperating Attorney: Cynthia Heenan).

BALLOT ACCESS

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 members. Unfortunately, the U.S. Court of Appeals did not agree, and upheld the takeover in a June, 2002, opinion. (*Moore v. School Reform Board of the City of Detroit*; ACLU Cooperating Attorney: Timothy Veeser).

DUE PROCESS

Parents' Rights – The ACLU filed a friend-of-the-court brief in the Michigan Supreme Court arguing that the Michigan grandparent visitation law is unconstitutional because it conflicts with the constitutional presumption that parents will make decisions in the best interest of their children. The ACLU argued that the state may interfere with the parents' fundamental right to care for their children in extraordinary circumstances. In July, 2003, the Supreme Court issued an opinion agreeing with the ACLU position. (*DeRose v. DeRose;* ACLU Cooperating Attorney: Robert Sedler; ACLU Staff Attorney: Jay Kaplan).

Lack of Criminal Intent Targeted in Driving Statute – In December, 2002, the ACLU of Michigan filed a friend-of-the-court brief in Macomb Circuit Court challenging a statute that makes it a 15-year felony to cause the death of a road construction worker whether or not the driver had any criminal intent. Stacey Bettcher was attempting to merge with traffic in a construction zone when she accidentally hit a sign, which fell onto a construction worker and killed him. The ACLU argued that while it is constitutional to sentence drunk or reckless drivers to long prison terms, it violates due process to charge someone with a 15-year felony when there is a lack of criminal intent. The trial court declined to strike down the statute and the ACLU did not have the opportunity to appeal because Ms. Bettcher was acquitted at trial. (*People v. Bettcher*; ACLU of Michigan Cooperating Attorney: David Moran).

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 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, a Michigan judge ordered White to return to Michigan. When White returned in the spring of 2002, 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;* ACLU Cooperating Attorney: Peter Armstrong along with Lorray Brown of the Michigan Poverty Law Program).

SEPARATION OF CHURCH/STATE & RELIGIOUS FREEDOM

Religious Discrimination by Drug Court – Joe Hannas appeared in Genessee County Drug Court on a marijuana charge. The judge gave Hannas the choice of either being convicted of a drug offense and sentenced to jail, or going to a faith-based drug treatment center called the Inner City Christian Outreach Program (ICCOP). The man chose the treatment center. Much to his surprise, ICCOP officials insisted that Hannas, who is Catholic, give up his rosaries and refrain from seeing a priest because they claimed that Catholicism is witchcraft. The officials also demanded that he participate in Bible reading, daily church services where residents speak in tongues, and faith healing. When he refused, ICCOP officials kicked him out of the program. The judge then convicted him and sent him to boot camp. The ACLU filed a friend-of-the-court brief objecting to the state punishing a person for not participating in religion and for not providing secular drug treatment programs. After the ACLU drew attention to the tactics of ICCOP, the drug court stopped sending people there. (*People v. Hannas*; Attorneys: Greg Gibbs and Glenn Simmington).

The Right To Be Baptized in Public – Until recently, the Michigan Department of Natural Resources had a rule for use of state parks that allowed groups to seek permits for large group activities, but prohibited church services unless they were "interdenominational." The Rev. William Stein of Baptism USA Ministries came to the ACLU for assistance when the DNR, relying on this rule, refused to issue him a permit to perform baptisms at Fort Custer Recreation Center near Battle Creek. After the ACLU wrote a letter to the DNR explaining that it could not discriminate against speech or expression because it is religious in nature, Rev. Stein was permitted to perform his baptisms at the park. The ACLU pointed out in a second letter that the DNR rule

prohibiting religious people from passing out flyers or proselytizing in state parks without a permit and without wearing identification badges violated the constitutional right to express oneself while remaining anonymous. After meeting with DNR officials in September, 2002, the DNR agreed to rescind all of its rules governing religious activities in state parks. (Cooperating Attorney: James Rodbard with assistance from ACLU Legal Intern Nathan Livingston).

Religious Freedom Behind Bars – The ACLU filed a class action lawsuit challenging the Michigan Department of Corrections' rule prohibiting members of the Melanic Islamic Palace of the Rising Sun to practice their religion in prison. Regardless of their disciplinary records, the MDOC designated all members of the Melanics security threats and has placed them in administrative segregation until they renounce their religion. Prison officials also confiscated all Melanic religious materials. In September, 2002, the judge issued one of the first opinions in the country upholding the constitutionality of a new federal law upon which the ACLU relies – the Religious Land Use and Institutionalized Persons Act (RLUIPA). RLUIPA makes it much easier for inmates to prove that their religious freedom has been violated. (*The Melanic Islamic Palace of the Rising Sun v. Martin*; ACLU Cooperating Attorneys: Daniel Manville and Susanna Peters).

Gideon Bibles Tossed Out of Public Schools – The principals of a North Branch school, a Wayland school and a school in Western Michigan were permitting the Gideons to pass out bibles during classes. When concerned parents from the respective schools contacted our Greater Flint ACLU Branch, Southwest Michigan Branch and our Western Michigan Branch, we wrote letters to the principals. In response to the letters, all three school districts agreed to stop the unconstitutional practice. (ACLU Cooperating Attorneys: Greg Gibbs and James Rodbard).

Graduation in Churches – After receiving two complaints from students that a Detroit High School held its commencement services inside a church, the ACLU contacted the Detroit Schools' attorneys and explained how such a practice is not only divisive but violates the principle of separation of church and state. The Detroit Schools agreed not to hold commencement in a church in the future. Similarly, the Northwest Michigan ACLU Branch was successful in convincing a local college to move its graduation from a church to a secular building. (Attorneys: Ralph Simpson, Al Quick and Steve Morse).

Religion in the Public Schools – ACLU branches across the state have been responding to complaints from students, parents, and teachers about various public schools promoting religion. After the Lansing Area Branch contacted officials at Everett High School about a planned mandatory assembly featuring "Megaforce Ministries," the school canceled the assembly. The Flint Area Branch is investigating a school Chaplin program in the Linden schools and a "one church, one school" program in Clio. The ACLU also contacted a school in the U.P. about how prayer at graduation and school participation in the distribution of "religious survival kits" would violate the constitutional requirement of separation between church and state. (Flint ACLU Cooperating Attorneys: Gregory Gibbs and Glenn Simmington with assistance from ACLU Law Intern Richard Gallagher).

DISABILITY RIGHTS

Mackinac Island Violates ADA – The ACLU represented Donald Bertrand, a Mackinac Island resident who, because of multiple sclerosis, is unable to ride a two-wheeled bicycle. His doctor suggested that he ride a quiet, 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 refused to waive its no-motorized-vehicle rule for Bertrand, even though the Island makes exceptions for snowmobiles and Amigo scooters. The ACLU sued the city for refusing to accommodate Bertrand's disability as required by the Americans with Disabilities Act. In March, 2002, the Michigan Court of Appeals issued a published opinion ruling in Bertrand's favor. The City asked the Michigan Supreme Court to review the case, but the court denied the city's application in October, 2003. (*Bertrand v. City of Mackinac Island*; ACLU Cooperating Attorney: Stewart Hakola with assistance from ACLU Law Interns Justin Weyerhauser and Jay Lee).

Access to Polling Booths – Liina Paasuke, who is confined to a wheelchair, had decided to stop voting at her local polling place in the basement of Ann Arbor's Slauson Middle School because it was difficult and dangerous for her to maneuver down a very narrow and steep sidewalk to the basement entrance. She contacted the ACLU, who worked with the Ann Arbor clerk's office to ensure that signs were posted at the 2002 election pointing voters with disabilities to the accessible entrance on the main floor and to the elevator leading to the basement. (ACLU Law Student: Stephen Blackburn).

FREEDOM OF ASSOCIATION

Broad Restrictions on MDOC Employees – The ACLU of Michigan filed a friend-of-the-court brief in a challenge to a Michigan Department of Corrections' rule prohibiting contact between all employees and the family members of prisoners, parolees and probationers. The ACLU argued that the rule is overbroad and has absurd effects upon employees and family members of Department clients far beyond the need or purpose of the rule. For example, the rule would prohibit MDOC employees from participating in a PTA meeting or a praying in a church if there are other people present who happen to be related to an inmate or someone on probation or parole. (*Akers v. McGinnis*; ACLU of Michigan Cooperating Attorney: Paul Sher).