ACLU OF MICHIGAN LEGAL DOCKET – 2003-2004

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 was held in this groundbreaking case in December 2003 and we are awaiting a decision. (*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 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-

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.

setting decision, a federal judge in Detroit agreed, stating that the government cannot suspend the constitution in times of crisis. 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. The Supreme Court declined to hear a similar case from New Jersey in May, 2003. *(Detroit News v. Ashcroft*; Attorneys: Lee Gelernt, Len Niehoff and Steven Shapiro).

Michigan State Police Sued for Violating Data Collection Law – The ACLU, representing former Republican governor William Milliken and a Catholic nun, sued the Michigan State Police (MSP) in August 2004 for violating a 1980 law regulating data collection on Michigan residents. The law, which was signed by Gov. Milliken, was enacted to serve as a safeguard against the abuses perpetrated by the MSP in the 60's and 70's when it spied on and kept so-called "red squad files" on hundreds of peaceful civil rights and anti-war activists. The 1980 law forbids the MSP from participating in an "interstate law enforcement intelligence agency" without either obtaining explicit approval of the legislature or establishing an oversight board. Nonetheless, the MSP, without implementing the required safeguards, has been sharing data about Michigan residents with a surveillance system located in Florida called "MATRIX." MATRIX contains billions of pieces and with a few strokes on the keyboard can instantly create dossiers on law-abiding citizens throughout the county. (*Milliken v. Sturdivant*; Attorneys: Kirk Tousaw and Noel Saleh).

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).

Spying on Peaceful Religious and Political Organizations – In the 1970's, in response to the widespread abuse of power by the FBI, the government adopted a policy of no longer spying on American political and religious organizations unless there was reasonable suspicion of criminal activity.

In 2002, Attorney General John Ashcroft scrapped that provision and re-opened the door to spying on organizations and individuals who are simply exercising their right to dissent. The ACLU of Michigan is preparing FOIA requests on behalf of several Muslim, Arab and anti-war organizations across the state to determine whether the FBI and local law enforcement agencies are infiltrating organizations not engaged in criminal activity. (Attorneys: William Wichers and Noel Saleh).

Challenging "Gag Rule" on Post-Trial Publicity in Terrorism Trial – After the first terrorism trial in the country was over, a federal judge in Detroit issued a broad gag order barring attorneys in the case from not only disclosing sealed and classified documents, but also from "commenting" on "confidential" information about the case. The defense attorneys did not object to the portion of the order about sealed or classified evidence, but they believed that the ban on even commenting about other information went too far. Because of the order, they were afraid to answer questions from the media about the government's failure to disclose exculpatory evidence about their clients and the lawsuit by the prosecutor against John Ashcroft. The defense attorneys appealed the gag order and the ACLU, along with the Criminal Defense Attorneys of Michigan, filed a friend-of-the-court brief on their behalf in the summer of 2004. The ACLU was primarily concerned with the weak standard the judge applied for gag rules after the trial is over and the precedent it would set for other cases. (*U.S. v. Koubriti.* Cooperating Attorney: Erwin Chemerinsky.)

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 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).

School District Reforms after so-called "KKK game" – Kyron Tryon was the only African American eighth grader at Bullock Creek Middle School near Midland. In May 2003, seven boys grabbed Kyron during recess, picked him off the ground and hit him with a belt while they chanted

"KKK." He was then pushed to the ground and kicked. Unsatisfied with the way the school district initially responded to the attack, Kyron's parents contacted the ACLU and filed a complaint with the Michigan Department of Civil Rights (MDCR). The ACLU and the school district agreed to mediate the case before the MDCR and jointly developed a comprehensive plan to create an atmosphere at the school to prevent further racist incidents. The plan, which was announced in May 2004, includes: far-reaching diversity training for administrators, faculty and students by the Bridge Center for Racial Harmony; symposiums on Martin Luther King Day; and formation of a district wide Diversity Committee to recommend other actions. Kyron's parents will be part of the Diversity Committee in addition to representatives from the staff, student body, Board of Education and Dow Chemical. Dow Chemical has also agreed to fund these programs. (Attorney: Michael J. Steinberg with assistance from law students Tiffani Smith and Daniel Scripps).

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 in 2004 that the plaintiffs were not able to prove intentional discrimination and dismissed the case. The decision has been appealed. (*Bennett v. Eastpointe*; Attorneys: Mark Finnegan, Charles Chomet, Saura Sahu, and Delphia Simpson).

Scholarship Program Fails Students – A coalition of groups led by the ACLU sued the state 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 2005. (*White v. Engler;* Attorneys: Michael Pitt, Peggy Goldberg Pitt, Judith Martin and Kary Moss).

FREEDOM OF SPEECH

Right to Display Political Yard Signs – Numerous cities throughout Michigan, such as Grosse Pointe Woods and Troy, ban election signs more than thirty days before the election even though most people make up their mind about who to vote for before that time. Some municipalities, such as Troy, prohibit more than two political signs in a yard at a time even though a resident may feel passionately about more than two political races at a time. Most of the cities with time and numerical limits on political yard signs do not have similar restrictions on commercial signs or seasonal decorations. In the months prior to the 2004 elections, the ACLU successfully sued Grosse Pointe Woods and Troy on behalf of two homeowners who were threatened with misdemeanors for displaing their political signs. One client posted a Kerry/Edwards sign and the other put up a "W" sign in support of President George W. Bush. The ACLU also was able to convince numerous municipalities -- including Allegan, St. Joseph, Lincoln Township and Chelsea -- to refrain from enforcing similar restrictions and to take steps to amend their ordinances in order to respect the free speech rights of their residents. (*Adzigian v. City of Grosse Pointe Woods* and *Fehribach v. City of Troy*; Attorneys: David R. Radtke and Michael J. Steinberg).

Banning Endorsements of Political Candidates – The student government at Michigan State University enacted a rule prohibiting student groups from endorsing a candidate for student government unless the candidate first consented in writing to the endorsement. Violators of the rule would be referred to the university's internal judicial system and could conceivably be suspended or expelled from school for making unauthorized endorsements. Both the campus Republicans and the campus Democrats asked the ACLU to represent them in a lawsuit to protect their free speech rights. After discussions with the ACLU in the spring of 2004, the student government agreed to rescind the regulation without the need for litigation. (Attorney: Mary Ellen Gurewitz, with assistance from MSU/DCL law student Andrew Banyai).

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 stop being distributed. The ACLU defended the Karhanis and U.S. District Court Judge Paul Borman, adopting the ACLU position, issued a published opinion in June 2003 reaffirming the longstanding principle that peaceful leafleting is speech that deserves the highest constitutional protection. *(Karhani v. Meijer*. Attorneys: Kenneth Mogill, Robert Sedler, Noel Saleh and Majed Moughni).

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 "suck ass Farm Bureau sons-of-bitches." Rather than helping Henning, the state responded by charging him with making "obscene" phone calls. The ACLU represented Henning on appeal in February 2004, a judge dismissed the charge because Henning's 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 and the parties settled the rest of the case shortly thereafter. The remainder of the case was settled in early 2003. (*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 thirty 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. U.S. District Judge Lawrence Zatkoff dismissed the case, but the ACLU has appealed to the U.S. Court of Appeals. (*The American-Arab Anti-Discrimination Committee v. City of Dearborn,* Attorneys: William Wertheimer, Miriam Aukerman, Cynthia Heenan, Majed Moughni and Noel Saleh).

Student Newspaper Censored – The ACLU filed a successful 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 argued 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. In October 2004, the U.S. District Court ruled in favor of Ms. Dean and ordered the school district to publish the article with an explanation that it was unconstitutionally censored. (*Dean v. Utica Public Schools*; Cooperating Attorney: Andrew Nickelhoff).

Suit Against Environmentalist Successfully Defended – Laurie Fromhart spoke at a Michigan Department of Environmental Quality Hearing against granting the corporation a permit to excavate an area large enough to create a 50-acre lake. She expressed her concerns on behalf a citizen group called Stewards of Bridgewater about the adverse impact the project would have on wetlands and on the neighboring homeowners. The MDEQ denied the permit. In May 2004, just before re-submitting its permit request, the corporation sued Fromhart and others who had spoken out against the initial project in an attempt to intimidate her from speaking out again. These types of lawsuits are often referred to as "SLAPP" suits or "strategic lawsuits against public participation." In the summer of 2004, after the ACLU agreed to represent Ms. Fromhart and filed a motion to dismiss on First Amendment groups, the corporation simply dropped the case. (*Sylvester Material Co, Inc. v. Fromhart*; Cooperating attorneys: Daniel Quick and Professor C.J. Peters).

The Middle Finger and Free Speech – Thomas Lawrence was a passenger in a car stopped at a traffic light one night when he observed a Pontiac police officer who appeared to be harassing a homeless person. When the officer realized that Lawrence was watching him, he directed the flood light from his cruiser in Lawrence's eyes. The light turned green and, as Lawrence's car was pulling away, Lawrence extended his middle finger at the officer. Within minutes, the police had pulled over the car and arrested Lawrence for disorderly conduct. The ACLU filed a motion to dismiss, which was granted in the spring of 2004. The ACLU relied on a long line of cases holding that extending one's middle finger is a form of expression which, while disrespectful, cannot serve as the basis of a criminal prosecution. (*People v. Lawrence*; Rob Shaya and Amy Neville).

Judge Dismisses Case Because of Pretrial Publicity – A Wayne County judge dismissed a sexual harassment lawsuit against Ford Motor Company because the victim and her attorneys made public statements about the case before trial. The judge took the drastic measure of dismissing the lawsuit even though he never issued a "gag order" or attempted to determine whether an impartial jury could be seated to hear the case. The ACLU, which is very concerned about both the right to a fair trial and free speech, filed a friend-of-the-court brief in the Michigan Court of Appeals, arguing that dismissal of the case was extreme, that the plaintiff and her attorneys' free speech rights were violated, and that there were other measures short of dismissing the case that the judge could have employed to ensure a fair trial. In April 2004, the Court of Appeals agreed with the ACLU and reversed the dismissal of the case. *Maldonodo v. Ford Motor Company*. Cooperating Attorney: Christine Chabot.

Charged for Complaining – A retired union member named Bruce King ran for election as 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 and the City of Dearborn charged King with "malicious annoyance by writing." The ACLU defended the case and the judge dismissed the charges in 2003. *(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 violated 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).

School Reverses Student's Suspension for Wearing Anarchy T-Shirt – Bay City Central High School suspended honor student Timothy Gies for five days for wearing a t-shirt with an anarchy symbol on it. The school also forbade Gies from wearing a sweatshirt with an upside down American flag and an anti-war quote from Albert Einstein. Even though the clothing did not cause any disruption to the school, the district thought the messages were inappropriate. The ACLU successfully appealed Gies' suspension to the superintendent's office and received assurances that Gies and other students would not be punished in the future for expressing political views on their clothing. (ttorney: Michael J. Steinberg)

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. 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).

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. When the officer appealed, the ACLU provided direct representation to Mr. Mach. In April 2004, the Court of Appeals ruled in Mr. Mach's favor, ending a seven year legal battle. (*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 statements "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, President of the Central Michigan ACLU).

The Right to Speak One's Mind at City Council Meetings – In May, 2002, the Michigan Court of Appeals issued an 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).

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. 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. However, 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 2003, 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 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.

"Unnatural" Hair Color in School – In 2003, the ACLU, in conjunction with the Student Advocacy Center (SAC), intervened on behalf of a student at Flushing Community Elementary School near Flint

and a student at Oak Valley Middle School in Oakland County. Both were being threatened with punishment for having "unnatural" hair color. The Flushing student had dyed his hair blue and the Oak Valley student, with the help of her mother, put fuchsia highlights in her hair. After the ACLU and the SAC sent letters to both districts, the Flushing Schools agreed to re-write its policy to prohibit punishment unless the hair causes a material disruption to the school. The middle school has agreed to allow the 7th-grader to continue to attend school despite her fuchsia highlights. (ACLU Cooperating Attorneys: Greg Gibbs and Elsa Shartsis).

Convicted of Being "Offensive to Manners or Morals" – A woman on the west side of the state was convicted for "indecent conduct" which was defined by the trial judge as doing something that is "grossly unseemly or offensive to manners or morals." The ACLU submitted a friend-of-the-court brief in the Michigan Court of Appeals in August 2004 arguing that this definition is unconstitutionally vague. (*People v. Sleeman*; Cooperating Attorney: Marshall Widick).

SEX DISCRIMINATION

Class Action Against Livingston County Jail Settled – In October 2003, the ACLU settled its sex discrimination class action against the Livingston County Jail after many years of litigation. The settlement includes an agreement to build a new section of the jail to 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 for attempting to evict a tenant because she was a victim of domestic violence. The lawsuit alleged that the landlord's "one-strike" rule, requiring eviction whenever a crime occurred in the tenant's apartment, discriminated 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. In 2003, 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 refusing 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. After the victory in Bay City, the ACLU emailed or mailed over 400 letters to city attorneys and general counsel at universities throughout Michigan alerting them to the decision and urging them to instruct their police chiefs to stop administering unconstitutional breath tests to pedestrians. (*Spencer v. City of Bay City*; ACLU Cooperating Attorneys: Professor David Moran and William Street).

Challenge to Mass Search Policy in Detroit Schools – The Detroit Schools have a policy of conducting mass searches of students at each of its high schools and middle schools on random, unannounced days in conjunction with the Detroit Police Department. Many of the searches, including the search of Mumford High School in February 2004, take up to two hours. Each student is lined up against the wall and required to stand in silence until it is his or her turn to walk through the metal detector, be patted down and have his or her backpack searched. The students are then placed in a

holding area in the auditorium until the searches are over. In June of 2004, the ACLU sued the Detroit Schools for conducting the intrusive, lengthy searches of each student without reasonable suspicion. (*Wells v. Detroit Schools*; Cooperating Attorney: Amos Williams with the assistance of ACLU legal intern Jennie Santos).

Man Arrested for Not Showing ID – We represented 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. He was charged with "hindering or obstructing" an officer in the line of duty. 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 sent the case back to the district court to determine whether the City of Lansing was liable. However, in the summer of 2004, the U.S. Supreme Court, in a controversial 5-4 decision, ruled in a case out of Nevada that a person does not have a right to refuse to show ID when there is a law that clearly requires the showing of ID. After the Supreme Court ruling, the ACLU and the City then negotiated a settlement of the case for $27,500 in damages and attorneys fees. East Lansing also revised its ordinance to track the Nevada law. (*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 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, which was filed in the Court of Appeals in the summer of 2004, 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).

Defending Marriage – The ACLU represented 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).

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. Despite this case, the ACLU continues to receive complaints about unconstitutional stings targeting gay men in other parts of

the state. (*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. In 2002, certain justices of the Michigan Supreme Court pressured Washtenaw County Trial Court Chief Judge 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).

Right of College Students to Present "Drag" Show – The Gay-Straight Alliance, a non-curricular club at Muskegon Community College began planning and advertising for an on-campus fundraiser- a drag show featuring transgender performers. The College President, upon hearing about the proposed show, ordered the fundraiser canceled, stating that such a show was "sexual" in nature and would offend the college community. The ACLU sent a letter to the President, stating that this violated the first amendment rights of the Gay-Straight Alliance. The President reversed his position and the drag show fundraiser was allowed to be held. (Attorney: Jay Kaplan).

RIGHT TO COUNSEL

Appointed Counsel Case Argued in U.S. Supreme Court – The ACLU of Michigan argued an important right-to-counsel case in the U.S. Supreme Court in October 2004. At issue was the constitutionality of a Michigan law that, except in limited circumstances, prohibits judges from appointing attorneys to poor people to help them appeal their sentence in cases where they plead guilty. The ACLU immediately challenged the law when it was passed in 1999 and a federal judge struck it down before it went into effect. In 2003, the entire U.S. Court of Appeals for the Sixth Circuit, in a 7-5 decision, agreed that the law was unconstitutional because the poor have the right to a meaningful first appeal of their conviction or sentence. Michigan was the first state in the country to pass such a law but other states are expected to enact similar laws if the law is upheld. The Supreme Court is expected to issue a decision by June. (*Kowalski v. Tesmer*; Cooperating Attorneys: Prof. David Moran and Michigan ACLU General Counsel Mark Granzotto).

Right to Appointed Counsel in Appeal of Misdemeanor Convictions – Many Michigan judges will not appoint an attorney to represent poor people on appeal after they are convicted of a misdemeanor. In the summer of 2004, the ACLU successfully challenged this policy on behalf of a man who was refused appellate counsel by a judge in Plymouth. We are now working to persuade the Michigan Supreme Court to clarify its court rules to make it clear that all indigent misdemeanants who are sentenced to jail are entitled to appointed counsel and free transcripts. (*People v. Kanka*; Cooperating Attorney: Ralph Simpson with assistance from ACLU interns Bryan Anderson and Melanie Sonnenborn).

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 2004 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).

DRUG POLICY

Welfare Drug Testing Halted B 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. In April, 2003, the Court of Appeals issued an order affirming the district court=s ruling. In 2004, the state agreed to settle the case, abandon suspicionless testing and pay $100,000 in attorneys fees. (*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 September, 2004, the federal case settled when the city agreed in writing not to seize cash under similar circumstances and to pay $7500 in damages and attorneys fees. (*In Re $2000 in U.S. Currency*; ACLU Cooperating Attorney: Cynthia Heenan).

DUE PROCESS

Stopping Government Seizure of Property for Private Interests – In 1981, the Michigan Supreme Court issued a decision allowing Detroit to condemn an entire low-income neighborhood called Poletown and transfer it to General Motors at a discounted rate. The ACLU filed a friend-of-the-court brief in the Michigan Supreme Court asking it to overturn the Poletown decision. The brief argued that the Poletown decision has created an inequitable policy of corporate welfare allowing wealthy and powerful interests to take other people's land for their own profit usually at the expense of the poor and unrepresented. In July 2004, the Supreme Court agreed with the ACLU and held that taking private land to be transferred to private entities is not a "public use" justifying the seizure of homeonwners' land. (*County of Wayne v. Hathcock*. ACLU Attorney: Kary Moss).

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 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).

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. In 2004, the Michigan Court of Appeals ruled that the visitation order was void after the Court of Appeals struck down the grandparent visitation law. (*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 Hanas appeared in the Genessee County Drug Court on a marijuana charge. The judge gave Hanas the choice of either being convicted of a drug offense and sentenced to jail, or going to a Pentecostal drug treatment center called the Inner City Christian Outreach Program (ICCOP). He chose the treatment center. Much to his surprise, ICCOP officials insisted that Hanas, 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, faith healing and daily church services where residents speak in tongues. When Hanas' attorney asked the drug court judge to move Hanas to a secular drug treatment program, the judge declared that Hanas failed the program and proceeded to convict him and sentence him to boot camp. The ACLU has asked the Michigan Supreme Court to reverse the conviction because the state cannot punish a person for not submitting to the dictate's of someone else's religion. After the ACLU publicized the treatment individuals receive at ICCOP, the drug court stopped sending people there. (*People v. Hanas*; Attorneys: Prof. Frank Ravitch, Greg Gibbs and Glenn Simmington).

Valedictorian's Religious Liberty Defended. Abbey Moler was the valedictorian of her class at

Utica High School. She and other high achieving students were profiled in a section of the school yearbook. As part of the profiles, students were asked to submit words of wisdom to pass on to other students. However, when the yearbook was published, Ms. Moler's entry was omitted because it contained a passage from the bible. The passage was from Jeremiah and said: "'For I know the plans I have for you,' says the Lord, 'plans to prosper you and not to harm you, plans to give you hope and a future.'" The ACLU agreed to represent Moler because once the school gave her a forum for speech, it could not constitutionally suppress her expression simply because it was religious in nature. In May, 2004, the ACLU worked out a settlement with the school district obviating the need to file a lawsuit. The district agreed to change its policy, provide in-service training to teachers on religious freedom issues and place a sticker in the yearbooks on file with the school containing Abbey's advice. (Attorneys: Michael J. Steinberg and Marshall Widick).

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 as security threats all Melanics members 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. In 2004, the U.S. Supreme Court agreed to hear a RLUIPA case from Ohio and decide whether the law is constitutional. (*The Melanic Islamic Palace of the Rising Sun v. Martin*; ACLU Cooperating Attorneys: Daniel Manville and Susanna Peters).

Graduation in Churches – In 2003, the ACLU received two complaints from students that a Detroit High School was planning to hold its commencement services inside a church. We 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 -- In 2003, an ACLU member called after seeing a newspaper article announcing that the Dearborn Public Schools adult education program was offering the Alpha Course – a course taught in churches across the country encouraging people to embrace Christianity. As soon as we explained to the director of public education the nature of the course, he agreed that it was inappropriate for public schools to offer the course and suggested that the course's teacher offer the course at a church.

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).

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. Unfortunately, in December 2003, the U.S.

Court of Appeals held that the rule was constitutional. (*Akers v. McGinnis*; ACLU of Michigan Cooperating Attorney: Paul Sher).

VOTING RIGHTS

Educating College Students on Voting Rights – In 2000, Michigan passed a law requiring that a person's driver's license address be the same as her voter registration address. That caused much confusion for college students who use their hometown address for their driver's licenses (because they moved each year on campus) but who wanted to vote in their college town in November. As a result, many students did not vote in 2000. In order to encourage students to exercise their fundamental right to vote, the ACLU developed a flyer and an online feature to educate students about their options. The flyer and web address was distributed to thousands of students throughout Michigan and publicized through press releases before the 2004 elections. (Cooperating Attorneys: Sharon Anderson Aiello and Jennifer K. Miller).

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. The case has been appealed to the U.S. Supreme Court. (*Moore v. School Reform Board of the City of Detroit*; ACLU Cooperating Attorney: Timothy Veeser).

AGE DISCRIMINATION

20-Year-Old Army Reservist Denied Hotel Room – In Michigan, numerous hotels will not allow young adults to rent a room on their own unless they are over 21 years old. The ACLU is challenging this policy on behalf of twenty-year-old Thomas Zinn and eighteen-year-old Theresa Taylor. Both Zinn and Taylor, who have been dating for several years, are college students. Zinn is also a member of the army reserves and may be called up to join other members of his unit in Iraq at any time. In August 2004, the two attended a Detroit Tigers night game. When the game was over they felt too tired to make the four-hour drive back to their home in Zeeland and looked for a hotel. They were turned away from several hotels, including the Holiday Inn, because of their age. The ACLU hopes that this case will lead to changes in discriminatory policies at hotels statewide. (*Zinn v. Holiday Inn*; Cooperating Attorney: Andrew Nickelhoff).