ACLU OF MICHIGAN LEGAL DOCKET – 2005-2007

POST 9/11 CASES

Wiretapping Americans Without Warrants – In perhaps the most important civil liberties case in the nation, the Michigan ACLU and the National ACLU challenged the Bush Administration program of monitoring the international phone and email conversations of Americans without court approval. In August 2006, U.S. District Court Judge Ann Diggs Taylor issued a powerful ruling holding that the program violates Americans' rights to free speech and privacy under the First and Fourth Amendments of the Constitution. She also held that the program violates the Foreign Intelligence Surveillance Act (FISA) which requires the executive branch to obtain a warrant when engaging in any electronic surveillance of Americans. Judge Taylor rejected the Bush Administration's argument that it has "inherent" power to ignore the constitution or FISA, writing that "there are no hereditary Kings in America and no powers not created by the Constitution." Judge Taylor also rejected the government's argument that the case could not proceed because of state secrets, saying that facts about NSA wiretapping have already been conceded by the government. Unfortunately, the U.S. Court of Appeals, in a 2-1 decision, reversed Judge Taylor in July 2007. The majority held that our clients could not challenge the wiretapping program because, while they had good reason to believe that they have been wiretapped, they could not prove it and the documents they needed to prove it were state secrets. In October 2007 we petitioned the U.S. Supreme Court to hear the case. *ACLU v. NSA.* Attorneys: Ann Beeson, Jameel Jaffer, Melissa Goodman and Kary Moss.[1]

Harassment of Arab-Americans at the Border – Since November of 2002, Dr. Elie Ramzi Khoury, a 68-year-old naturalized American citizen, and his wife, Farideh, have been detained seven separate times when returning to this country from vacations in Europe, South America and Canada. Although permitted to fly without any problems, they have been detained for numerous hours upon return to the U.S., separated from their grandchildren, and interrogated like terrorists and made to urinate in front of government officials. In June 2006, the Khourys and the ACLU of Michigan joined a national class action filed in Chicago challenging the repeated harassment of individuals who are cleared of terrorist ties during the first detention and should not be repeatedly subjected to humiliation and harassment on subsequent flights. (*Rahman, et al. v. Chertoff, et al.;* Michigan ACLU Cooperating Attorney: Noel J. Saleh).

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

Phone Companies Voluntarily Give All Customers' Records to Government – In May 2006, *USA Today* revealed that certain telecommunications companies, including AT&T and Verizon, were voluntarily providing information to the NSA about millions of Americans' phone calls such as the number called, time of call and length of call. In June 2006, the ACLU filed a consumer fraud complaint against AT&T and Verizon in front of the Michigan Public Service Commission, charging that they violated the privacy provisions of their customer contracts, which bar disclosure of such information without a warrant or subpoena. The ACLU won two motions to dismiss their complaints, but then the judge ruled that because of national security issues, the phone companies did not have to reveal whether they voluntarily handed over private information to the National Security Administration. In 2007, the ACLU dismissed its case without prejudice and will re-file if the courts in California considering "multi-district litigation" decide that the phone companies cannot hide what their practice is. (*In the Matter of ACLU of Michigan*; Cooperating Attorney: Thomas Wieder).

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 challenged Section 215 of the law which permits the FBI to secretly obtain private information about a person even though it does not suspect the person of doing anything wrong. Under the law as originally passed, all the FBI has to do is certify to a secret court judge ("FISA judge") that it sought information for a terrorism investigation and the court was required to order any person – including librarians, Internet service providers, doctors and employers – to hand over records or other items sought by the FBI. Nobody could challenge a secret court order and the recipient was forever gagged from even telling anyone that she or he had received one. In October 2006, U.S. District Court Judge Denise Page Hood rejected the government's motion to dismiss the case, noting that the law had harmed the First Amendment rights of the Arab and Muslim organizations and individuals we represented. When Congress made changes to Section 215 in response to a grassroots effort to fix the Patriot Act, the ACLU voluntarily withdrew its "facial challenge" to the law. We still stand ready to challenge abuses of Section 215 orders on a case by case basis. (*Muslim Community Association of Ann Arbor v. John Ashcroft*; Attorneys: Ann Beeson, Jameel Jaffer, Noel Saleh and Kary Moss).

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, shared data about

Michigan residents with a surveillance system located in Florida called "MATRIX." MATRIX contains billions of pieces of personal information and with a few strokes on the keyboard can instantly create dossiers on law-abiding citizens throughout the country. In May 2005, soon after a Wayne County judge denied the state's motion to dismiss the ACLU case, the MSP dropped out of MATRIX. (*Milliken v. Sturdivant*; Attorneys: Satyam Talati, Kary Moss, Kirk Tousaw and Noel Saleh).

Post 9/11 Spy Files – After 9/11, Attorney General John Ashcroft announced that the FBI would be free to spy on activist and religious groups even when there was no reason to believe that they were violating the law. Concerned about this development, the ACLU sent Freedom of Information Act requests to the FBI and the Michigan State Police (MSP) on behalf of several anti-war, political and religious groups in Michigan. In July 2005, in response to the request, we received the notes of an FBI agent who attended a "Domestic Terrorism Symposium" organized by the MSP. The stated purpose of the meeting was to "keep the local, state and federal law enforcement agencies apprised of the activities of the various groups and individuals within the state of Michigan who are thought to be involved in terrorist activities." The ACLU was shocked to discover that among the groups discussed at the terrorism symposium were Direct Action, a peace and justice organization in the Lansing area, and BAMN, a national organization dedicated to defending affirmative action and building a new civil rights movement. After this document came to light, the MSP issued a press release denying that Direct Action or BAMN were terrorist groups, yet it refused to provide any information to the ACLU in response to its FOIA request. (Cooperating Attorney: William Wichers).

ACLU Frees Innocent Man from Military Detention in Iraq – Kalamazoo resident Numan Al Kaby escaped Iraq and the brutal regime of Saddam Hussein during the first Gulf War and obtained permanent residency status in the United States. He returned to Iraq after the second Gulf War to work for an American contractor and to reunite with his family. The U.S. military, however, detained him in Iraq in April of 2005. In July of 2005 at a military tribunal, the government cleared him of all wrongdoing but refused to release him or allow him to see a lawyer. The Michigan ACLU, working with other ACLU affiliates and national ACLU staff, filed suit on behalf of Mr. Al Kaby eight weeks after he had been declared innocent. A few days later, in response to the lawsuit, the government freed him. (*Al Kaby v. Rumsfeld.* Michigan ACLU attorney: Kary Moss).

RACIAL JUSTICE

Fighting to Save Affirmative Action – A coalition of civil rights organizations, led by the ACLU, filed a federal lawsuit in December 2006 to preserve affirmative action in university admissions in the wake of Proposal 2. The ACLU represents 19 African American, Latino,

Native American and white applicants, current students and faculty who want to ensure that they are able to learn and teach within a diverse environment. We argue that the initiative violates equal protection by making it more difficult for people of color to affect the admission process than nearly any other group. In other words, nearly any group wanting a characteristic to be considered as a plus factor in U-M admissions – whether it be legacy status, athletic ability or having a home in an obscure part of the state – need only lobby the University. In contrast, in order for underrepresented racial minorities to urge the University to employ affirmative action, they must first amend the Michigan Constitution through a ballot initiative. The U.S. Supreme Court has struck down similar voter initiatives that make it more difficult for people of color and for the gay community to seek change than others. *Cantrell, et al. v. Granholm.* Attorneys (partial list): Mark Rosenbaum, Kary Moss, Catherine Lhamon, Mark Fancher, Dennis Parker (ACLU), Melvin Butch Howell (NAACP Detroit), Victor Bolden and Anurima Bhargava (NAACP Legal Defense Fund), Jerome Watson (NAACP State Converence) Karen DeMasi (Cravath Swaine & Moore), Professor Erwin Chemerinsky and Professor Lawrence Tribe.

Bicycling While Black – In 2005 the ACLU scored a victory in its "biking while black" case when the U.S. Court of Appeals sent the case back to the district court for trial. The ACLU represented several 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 argued 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, used racial slurs against others and in some cases seized and later sold their bicycles. Some of our clients were told to get their "black asses" back on the other side of Eight Mile Road. The Court of Appeals wrote in its decision that it was "frustrated and concerned with what appears to be consistent disregard for basic Fourth Amendment principles by the Eastpointe Police Department and its officers." In 2006, the case settled for $160,000. (*Bennett v. Eastpointe*; ACLU Attorneys: Mark Finnegan, Saura Sahu, and Delphia Simpson).

Seeking Racial Justice in the Lansing Police Department – After several months of investigation, the ACLU of Michigan entered talks with the Lansing Police Department (LPD) about claims of race discrimination it had received from several African American police officers. The officers complained about a racially hostile environment at the LPD and told stories of how white officers derisively referred to a shift that contained multiple black officers as the "soul patrol." The black officers had reason to believe that white officers would not come to assist them when they called for back up, placing them in danger. They explained that while they often were disciplined for various minor infractions, white officers faced no discipline whatsoever for similar acts. Documents that we obtained in response to a Freedom of Information Act request confirmed that African-American officers were, in fact, disciplined at a much higher rate than white officers. In 2005, as a result of the talks with the ACLU, the LPD

conducted its own study, created a task force and implemented many of its recommendations to address the disparity in the way white and black officers were treated. Additionally, some of the individual officers ended up filing their own lawsuits seeking monetary damages for race discrimination. (Cooperating Attorney: Jeanne Mirer).

Scholarship Program Fails Students – In 2000, 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 sought 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 worked 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. In 2005, after the U.S. Supreme Court held that individuals could no longer challenge programs that disproportionately hurt people of color, the coalition was forced to dismiss the case. (*White v. Engler;* Attorneys: Michael Pitt, Peggy Goldberg Pitt, Judith Martin and Kary Moss).

FREEDOM OF SPEECH

Dearborn's 30-Day Waiting Period for Protesters Struck Down – In August 2005, The U.S. Court of Appeals issued an important decision in the ACLU's challenge to a Dearborn ordinance that prohibited activists from demonstrating until 30 days after they apply for a permit. The ACLU represented the American-Arab Anti-Discrimination Committee (ADC) and Imad Chammout, a Dearborn resident and business owner, who believed it was unreasonable to have to wait a month after the U.S. invasion of Iraq to march in protest. The Court of Appeals stressed the importance of marches in bringing about change in this country and held that the 30 day delay infringed upon protestors' First Amendment rights. (*American-Arab Anti-Discrimination Committee v. City of Dearborn*; Cooperating Attorneys: William Wertheimer and Miriam Aukerman, Cynthia Heenan, Majed Moughni and Noel Saleh).

Paying to Protest – Following the Israeli invasion of Lebanon in 2006, the Congress of Arab American Organizations (CAAO) organized two demonstrations in Dearborn. Later, the City of Dearborn issued a bill to CAAO for more than $20,000 to pay for the police it dispatched to monitor the demonstration. Believing that people should not have to pay to express their political views in a democratic society, the ACLU agreed to represent CAAO. Following a meeting with the new mayor and his staff in July 2007, the City agreed to waive the charges and work with the ACLU and CAAO to develop a fair and constitutional policy. (Attorneys:

William Wertheimer and Jocelyn Benson).

Ann Arbor Film Festival Censored – Until 2006, the state of Michigan had provided arts funding to the Ann Arbor Film Festival, a world renowned experimental film festival, for about ten years. Then, in response to complaints about some sexually themed films, the state refused to disburse money that had already been appropriated. The films included "Booby Girl," a three minute cartoon, which tells the story of a girl who had always wanted an ample chest but came to regret it and "Chests," a short that features two shirtless men bumping chests in the fashion of athletes celebrating. In March 2007, the ACLU filed a lawsuit, asserting that the state cannot withdraw funding simply because it finds some films objectionable. (*Ann Arbor Film Festival v. Anderson*; Attorneys: James Walsh, Alicia Chambers and Susan Kornfield).

Political Yard Signs Supporting Presidential Candidates – Numerous cities throughout Michigan, such as Troy and Grosse Pointe Woods, 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 displaying 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. A published opinion adopting the ACLU position was issued in the Troy case in January 2006. (*Fehribach v. City of Troy* and *Adzigian v. City of Grosse Pointe Woods*; Cooperating Attorney: David R. Radtke).

Political Yard Signs Supporting Gubernatorial Candidates – In October 2006 the ACLU filed a lawsuit against the City of Fenton on behalf of a resident who was ordered by the city to remove his political sign supporting Dick DeVos for Governor. Although the Fenton sign ordinance allowed commercial signs in the same area as large as 32-square-feet, it forbade political signs more than 4 square feet. Federal Judge Marianne Battani granted the ACLU's motion for a temporary restraining order, finding that the ordinance likely violates the resident's free speech rights. The case settled in June 2007 when Fenton amended its ordinance. Similarly, in October 2006, the City of Plymouth ordered Mary Grotz to remove her 16-square-feet sign in support of Jennifer Granholm even though the city allowed non-political signs up to twice as large. In response to an ACLU letter, the city agreed to revisit the sign ordinance and to permit Ms. Grotz to keep her sign up. Additionally, in response to a letter by the Oakland County ACLU, the City of Clawson agreed to review its size and durational limitations on political signs.

(*Hood v. City of Fenton*; Cooperating Attorneys: Gregory Gibbs (Fenton case), Paul Stevenson (Plymouth case) and Elsa Shartsis (Clawson case)).

No Protest-Zone Successfully Challenged. David Brooks, a retired engineer, wanted to protest the environmental policies of former Interior Secretary Gail Norton who was speaking at a celebration of a new wildlife refuge at Lake Eerie Metro Park. Mr. Brooks silently stood on a sidewalk in the park behind the seated audiences with a sign that said, "There is No Refuge if You Can't Drink the Water or Breath the Air." The park police refused to allow Brooks to stand there and, upon threat of arrest, told him if he wanted to protest, he had to protest in a part of the park nearly two miles from where the event was held. In August, 2007, the case was settled when park officials agreed to a free speech policy permitting peaceful protest anywhere in the park. Under the new policy, no permit is needed to protest and the only time organizers must inform park officials in advance of a protest is when there will be more than 75 participants. (*Brooks v. Huron-Clinton Metropolitan Authority*; Cooperating Attorneys: Diane Akers and Thomas Bruetsch).

Victory on Behalf of Newspaper Courier – In June 2006, U.S. District Court Judge Victoria Roberts ruled that Mayor Don Williamson of Flint violated Tom Hansen's constitutional rights by having him arrested for delivering the Flint Journal to subscribers in City Hall. The mayor had organized a boycott of the Flint Journal because of negative editorials about him and forbade city hall employees from reading the paper during working hours. Following Judge Roberts' ruling, the City agreed to settle the case for $150,000. *Hansen v. Williamson;* Cooperating Attorneys: Gregory T. Gibbs and Jeanmarie Miller.

Honk if You Don't Support Bush's Policies – For more than 3-1/2 years, peace activists have protested the Iraq War for one hour a week on the sidewalk at the corner of Woodward and Nine Mile in Ferndale. When the police asked them to stop holding signs encouraging people to honk for peace, Nancy Goedert and Victor Kitilla held signs that read, "Ferndale Cops Say Don't Honk if you Want Bush Out" and "Police Say Don't Honk for Peace." The police charged both with the crime of disturbing the peace for inciting honking and issued citations to those who honked. The ACLU, with the National Lawyers Guild, wrote the Ferndale City Attorney explaining that both the honkers and the "honkees" had a First Amendment right to express their displeasure for the war and honking at sidewalk protests is a time-honored and constitutionally protected tradition. While Ferndale agreed to dismiss the charges against Goedert and Kittila for displaying, "Don't Honk" signs, it said that they will be prosecuted if they encourage honking in the future. It further suggested that Goedert, who is part of the "raging grannies," and Kittila should bring a federal lawsuit if they wanted to challenge the policy. A federal suit was filed in April 2007. (Cooperating Attorneys: Thomas Cavalier and Melanie Stothers with assistance from ACLU Law Intern Rachel Simmons).

Protesting U.S. Policy with an American Flag – As part of a protest against the Iraq War in

Marshall (near Battle Creek) in April 2006, Thomas Little carried an American flag upside down. The police responded by arresting him for "mutilating" an American flag. The ACLU wrote a letter to City of Marshall officials explaining that the U.S. Supreme Court has repeatedly held that such expression is speech protected by the First Amendment and the charges were immediately dropped. (*People v. Little* Cooperating Attorneys: Gary Peterson and James Rodbard).

The Middle Finger Case – Tom Lawrence was a passenger in a car stopped at a traffic light in Pontiac when he observed what appeared to be police officers harassing a homeless person. When the officers saw that Lawrence was observing them, they directed a spot light in his eyes. When the light turned green and the car pulled into the intersection, Lawrence extended his middle finger at the officers. Ignoring several courts' holding that flipping off an officer is protected speech, the officers promptly pulled Lawrence over, arrested him, threw him in jail and charged him with disorderly conduct. In December 2006, after the ACLU worked to successfully have the charge dismissed, Lawrence filed a civil case. (*Lawrence v. Martinez.* Attorneys: Rachel Eickemeyer, Rob Shaya, Amy Neville with assistance from law intern Sarah Cook).

Detroit Police Department Gag Rule Repealed – Until recently, the Detroit Police Department had a rule that barred officers from speaking to the news media about anything without prior approval from the top brass. Sergeant David Malhalab asked the ACLU for help after being suspended for speaking to a TV reporter about what he viewed as corruption in the department. The ACLU wrote a letter to Chief Ella Bully-Cummings explaining that the gag rule violated the First Amendment because it prohibited officers from speaking to the press about matters of public concern. In response to the letter, the DPD rescinded the policy. (Cooperating Attorney: Sarah Zearfoss).

Lawsuit Challenging College Gag Rule Prompts Change – In April 2005, the ACLU filed a federal lawsuit against St. Clair Community College on behalf of one of its trustees, Tom Hamilton, over a gag rule that barred trustees from speaking to faculty, students or staff about their concerns without prior approval of the Board. It further prevented trustees from attending any meetings other than Board meetings where Board matters were discussed. It even prohibited trustees from visiting campus to talk with members of the college community without first notifying the college president. Within a month of filing the suit, the college repealed the rule. (*Hamilton v. Board of Trustees of St. Clair Community College.* Cooperating Attorney: Andrew Nickelhoff).

Artist Jailed for Michelangelo Mural – Roseville artist Edward Stross painted a mural on the side of his studio that contained a variation of Michelangelo's "Creation of Man" from the Sistine Chapel in Rome. Because the mural included one of Eve's bare breasts, the City of Roseville charged and convicted him of violating the city's sign ordinance. When the judge sentenced Stross to 30 days in jail in February 2005, the ACLU agreed to represent him on

appeal on free speech grounds and secured his release during the appeal. The circuit court refused to reverse the conviction, but the Michigan Court of Appeals has agreed to hear the case (*City of Roseville v. Stross*. Cooperating Attorneys: Mark Kriger and Carl Marlinga).

Censoring Shakespeare in the Park – In the summer of 2005, Todd Heywood and his theater company approached the City of Lansing seeking permission to perform Shakespeare's *Titus Andronicus* in a Lansing Park. However, Lansing's Department of Parks and Recreation told Mr. Heywood that he would not be able to perform the play in public because stage blood was used during the performance and they feared that it might be offensive to viewers. After the ACLU wrote a letter complaining that Lansing was censoring one of the world's greatest playwrights of all time, it reversed its position. (Attorneys: Michael J. Steinberg and Carolyn Koenig, with assistance from U-M law student Jeffrey Landau).

The Right to Ask for a Dime – In June 2005, Ypsilanti was about to enact a panhandling ordinance that would have made it a misdemeanor for a person to ask for money in any public place in the city. The Washtenaw County ACLU Lawyers Committee quickly fired off a letter to council explaining how soliciting funds was protected First Amendment speech and that while it was okay to outlaw aggressive panhandling, a complete ban would not only be unconstitutional, but it would likely lead to a lawsuit. As a result of the letter and testimony before council, the provision was struck from the ordinance. (Cooperating Attorneys: Paul Sher and John Shea with the assistance of Legal Intern Jeff Landau).

Protecting Environmental Activists from SLAPP Suits – Nancy Orweyler is the president of an environmental group called Saving Wetlands and Trees of Chesterfield (SWAT). She and other members of her organization spoke out against the development of wetlands in public meetings. After a lawsuit by the Macomb County Prosecutor and SWAT to stop the development was dismissed, the developers filed a lawsuit against Ms. Orweyler and SWAT for defamation and "product disparagement" among other things. The ACLU agreed to defend Ms. Orweyler and the environmental organization because it believed the developers' lawsuit was designed to intimidate, deter and bankrupt activists for exercising their First Amendment right to speak out on matters of public concern. These types of cases are commonly referred to as "SLAPP suits" or "Strategic Lawsuits Against Public Participation." After the ACLU became involved, the developers decided not to pursue the case and the SLAPP suit was dismissed in winter of 2005. (Cooperating Attorney: Daniel Quick).

Criminalizing Expression on Cable T.V. – The ACLU represented a man in the Michigan Court of Appeals 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 asserts that the indecent exposure statute was intended to apply only to in-person nudity, not televised nudity. Moreover, the ACLU asserts that non-obscene nudity on cable television is protected by the constitution; otherwise, it would be a crime to broadcast award-winning movies

such as *Schindler's List* on cable television. In a decision that could impact what shows are available on television throughout the state, the Michigan Court of Appeals upheld the conviction in May 2005. The case has been appealed to the Michigan Supreme Court. (*People v. Huffman*. Cooperating Attorneys: Peter Armstrong, Eugene Volokh, Gary Gershon and Ralph Simpson).

Speaking One's Mind at School Board Meetings – In the spring of 2005, during public comment time before a Saline School Board meeting, a parent named Michael Petrasko started to criticize the way the athletic department was treating athletes and retaliating against them when their parents complained. The school board president cut off Petrasko and told him that he was barred from discussing the topic because it involved litigation between the district and a different family. When the ACLU first contacted the district on behalf of Mr. Petrasko, the district decided that Mr. Petrasko could talk about the issue, but that he couldn't name the people involved. After further discussion, the district agreed to refrain from censoring the Mr. Petrasko comments, thereby averting a lawsuit.

Access to Policies on Racial Profiling – In preparation for efforts to encourage cities and towns to pass resolutions opposing the Patriot Act, the Lansing Area ACLU wanted to review local municipalities' current policies on racial profiling. Most police departments were very cooperative in sharing their policies; however, Meridian Township refused to make public their policy and even denied the ACLU's formal request for the policy under the Freedom of Information Act (FOIA) In 2004, Henry Silverman, then-president of the Lansing Area Branch, filed a lawsuit alleging that Meridian Township violated the FOIA. In 2005, Meridian Township finally settled with the ACLU, agreeing to hand over the policies and pay $500 of the ACLU's costs and attorneys fees. (*Silverman v. Meridian* Township. Cooperating Attorney: David E. Christensen).

Protecting the Free Speech Rights of Local Activists – William Riney, an activist and frequent critic of Ypsilanti Township officials, is the publisher of the Liberty News, a newsletter that focuses on local politics. In one edition of the newsletter, he wrote an article about how the Ypsilanti Township Board voted to write-off back taxes on a club that he believed belonged to the uncle of the township clerk. Another article, based on a 1970's newspaper article, discussed the relationship between the former chair of the Washtenaw Board of Commissioners and a man who pleaded guilty to a racist act of tarring and feathering the Willow Run Schools Superintendent in 1971. The officials responded by suing him for defamation and libel. The ACLU agreed to protect Riney's First Amendment rights and was able to settle the case in 2005. (*Stumbo v. Riney.* Cooperating Attorney: Thomas Wieder)

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. Unfortunately, the Michigan Supreme Court, in a widely criticized opinion, reversed the Court of Appeals in 2006. (*Maldonodo v. Ford Motor Company*. Cooperating Attorney: Christine Chabot).

Contempt Charges for Woman Who Criticized Judge Out of Court – In 2005, after an African American woman was sentenced to probation and required to pay court costs for driving on a suspended license in Eastpointe, she left the district court courtroom and went to the clerk's office to pay the costs. She was upset and told her friend that she thought that the judge was treating white defendants more favorably than black defendants. The clerk overheard the conversation and reported it to the judge who demanded that the woman come back to the courtroom. The judge confronted the woman about what the clerk told the judge and set a date for a hearing on whether the woman should be held in contempt of court. The ACLU represented the woman at the hearing and the contempt charges were eventually dropped. *(People v. Tilley.* Cooperating Attorney: James Maceroni).

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. In May 2005, the Court of Appeals issued an opinion agreeing with the ACLU and reversed the conviction. (*People v. Sleeman*; Cooperating Attorney: Marshall Widick).

REPRODUCTIVE FREEDOM

Abortion Ban Defeated – For the third time in eight years, the ACLU successfully challenged a Michigan law that would have banned the safest and most commonly performed abortions during all stages of pregnancy. In September 2005, a federal court struck down the most recent law, the "Legal Birth Definition Act," because it failed to adequately protect the health and life of women. The court further ruled that the law "creates a ban on actions at the heart of abortion procedures from the earliest stages of pregnancy, whether used to perform induced abortions or to treat pregnancy loss." The U.S. Court of Appeals agreed with the district court in a June 2007 opinion. We worked on the case with the National ACLU Reproductive Freedom Project, Planned Parenthood and the Center for Reproductive Rights. (*Northland Family Planning Clinic, et al. v. Cox*; ACLU Attorneys: Talcott Camp and Brigitte Amiri).

Protecting Minors' Right to Choose – In Michigan minors may obtain abortions if they either receive permission from a parent or if a judge determines that they are mature enough to make the decision without parental permission. A 17-year-old southeastern Michigan woman became pregnant when her birth control failed while having sex with her long-term boyfriend. Afraid that her parents would kick her out of the house if they learned of the pregnancy, she sought permission to obtain an abortion from a judge in July 2005. The judge asked her numerous questions about her sex life and morality and then denied her permission because he did not think she should hide the pregnancy from her parents. The ACLU immediately appealed the denial and within three days the Court of Appeals reversed the trial judge. The Court of Appeals further directed the trial judge to stop asking inappropriate questions that were irrelevant to whether the young woman was mature enough to exercise her right to choose. (Cooperating Attorney: Elizabeth Gleicher).

SEX DISCRIMINATION

ACLU Wins Right for Women to Join Fraternal Order of Eagles – In a ground-breaking victory for women's equality, the National Fraternal Order of Eagles (FOE) agreed to settle an ACLU lawsuit by allowing women to become full and equal members. The ACLU represented the Flat Rock Chapter of the Eagles, which had welcomed women as full members for years. The National FOE policy, however, stated that only men could become full members with voting rights, while women who wanted to participate in Eagles activities were relegated to joining the "Ladies' Auxiliary." When the National FOE threatened to revoke Flat Rock's charter because it treated women as equals, the local chapter and three of its members sued. Under the consent judgment, signed in July 2005, the National FOE agreed to send letters to all 132 chapters and ladies auxiliaries in Michigan informing them that chapters are now free to offer women full membership and privileges. (*Flat Rock Aerie #3732 of the Fraternal Order of Eagles v. Grand Aerie of the Fraternal Order of Eagles.* Cooperating Attorneys: Margaret Costello and Katrina Staub with assistance from Miranda Massie).

Domestic Violence Eviction Case Filed – Tanica Lewis, a mother of two, obtained a personal protection order (PPO) against her abusive former boyfriend and informed her landlord of the PPO. Nonetheless, the ex-boyfriend broke into her home when she was away. The landlord then victimized Ms. Lewis a second time by evicting her and her children from the apartment because she was a victim of domestic violence. In January, the ACLU wrote the management company a letter explaining that it violated Ms. Lewis' rights under the Fair Housing Act and demanding that it drop its policy and provide Ms. Lewis with a new apartment. We are awaiting a response. ACLU Attorney: Emily Martin.

Domestic Violence Eviction Case Settled – In August 2005, the ACLU of Michigan, working with the National ACLU Women's Rights Project and the Michigan Poverty Law Center, settled a case in which a victim of domestic violence was evicted from her home. Our client, referred to

here as "Laura," was assaulted by her husband soon after giving birth to their child. Her husband was arrested and barred from their apartment as a condition of his bail. Although the landlord was aware of the judicial order, he agreed to her husband's request to lock Laura and her new-born out of the apartment without notice while they were running an errand, leaving them homeless. Rather than face an ACLU lawsuit, the complex, although denying liability and insisting that its name not be revealed, agreed to pay Laura to compensate her for the emotional distress she suffered as well as the loss of property. It also agreed to implement policies and training to ensure that no other women would be evicted because they were victims of domestic violence. (ACLU Attorney: Emily Martin).

Ensuring Integrated Schools – The ACLU opposes public schools that segregate students by race and by sex. We believe that single-sex schools, similar to single-race schools, not only violate students' right to equal protection of the law, but also perpetuate negative stereotypes. Research clearly shows that students in single-sex schools are more likely to embrace damaging gender stereotypes about the opposite sex than those in integrated schools. In the summer of 2005, when the Detroit Schools announced its intention to become the only public school district in the state to create all-male and all-female high schools, the Detroit ACLU met with the administration and urged the district to create small coed schools, not illegal gender-segregated schools. The administration reluctantly agreed to keep the two new schools integrated. However, in 2006, the state legislature amended the state civil rights act to permit single-sex schools. The ACLU is working with the Detroit Public Schools to enact further legislation so that sex-segregated schools will re-integrate if boys and girls do not receive equal resources or if the segregated schools fail to show that single students in sex-segregated schools perform substantially better than their counterparts in comparable coed schools. If the legislation does not pass and cannot reach an agreement with the Detroit Schools, the ACLU will challenge the program in court.

Stripping Inmates of Civil Rights Protection – In 2000, Michigan took the drastic and unprecedented step of amending its civil rights law so that prisoners no longer were protected from discrimination based on sex, race, religion or disability. In August 2006, the ACLU filed a friend-of-the-court brief in a sex discrimination case on behalf of a class of women prisoners who were victims of sexual abuse and harassment. The ACLU argued that Michigan had deprived prisoners of equal protection by singling them out and depriving them of remedies for discrimination under state law. In a precedent-setting opinion issued in January 2007, U.S. District Court Judge John Corbett O'Meara agreed with the ACLU and struck down the law. (*Mason v. Granholm*, Cooperating Attorney: Bryan Anderson).

Sex Discrimination and Name Changes – Stephanie Pierce and Timothy Morill called the ACLU shortly before their wedding in June 2007. Timothy wanted to adopt Stephanie's last name when they were married. However, staff at the Kent County Clerk's Office and Kent County Probate Court told them that it was much more difficult for men than women to change

their names upon getting married. They were told that while a bride need only sign the man's last name on the marriage certificate to legally change her name, a groom was required to go through an elaborate and expensive process of petitioning the probate court and publishing notice in the newspapers of his intention to change his name. The ACLU intervened and Timothy was able to adopt Stephanie's surname by simply signing it on their marriage license. (Attorney: Michael J. Steinberg with the assistance of ACLU law intern Anya Pavlov-Shapiro).

PROTECTION AGAINST UNREASONABLE SEARCHES AND SEIZURES

Illegal Cavity Searches in SW Detroit – During the summer of 2006, two Detroit police officers were stopping men in Southwest Detroit who they suspected of drug activity and, without a warrant, cavity searched them on the street. After an extensive investigation, the ACLU sued the city in March 2007 on behalf of an army veteran who had nothing to do with drugs. The two officers were using this illegal technique so often that many residents thought it was permissible. Despite publicity that this issue has drawn, the two officers are still on the street and one was promoted. *Ware v. City of Detroit*; Attorneys: Michael Pitt, Melissa El, Mark Fancher and Kevin Carlson.

Stopping Unconstitutional Breathalyzers of Young Adults – In 2003, the ACLU of Michigan successfully sued Bay City on behalf of a 20-year-old rollerblader who, even though she was not drinking, was threatened with a civil infraction under a local Minor in Possession ordinance if she did not submit to a breath test. Despite sending letters to city attorneys across the state alerting them to the Bay City ruling, many police agencies – including the Michigan State Police – continued to violate young people's rights. In August 2005 the ACLU filed a lawsuit challenging a state law that is identical to the Bay City ordinance, suing the State of Michigan, Thomas Township, Saginaw County, Central Michigan University, Mt. Pleasant and Isabella County. In September 2007, Judge David Lawson, in an opinion that will affect hundreds of young adults and teens across the state, held that the provision of the state law that required pedestrians to submit to a PBT violated the right to be free from searches without a search warrant. *Platte, et al. v. Thomas Township, et al.* Cooperating Attorneys: Marshall Widick, William Street and David Moran.

"Knock and Announce" Case in the U.S. Supreme Court – In January 2006, the ACLU of Michigan argued an important search and seizure case in the nation's highest court. The case arose when the Detroit police went to Booker Hudson's home with a warrant to search his house. Instead of waiting a reasonable amount of time to enter the house after knocking and announcing their presence, the police violated the Constitution by simply breaking down the door. The ACLU argued that any evidence obtained in violation of the "knock and announce" rule must be excluded from evidence. If not, there would be no incentive for the police to follow the Constitution. Supreme Court observers believe that the ACLU won the case after oral argument,

but when Justice O'Connor resigned and was replaced by Justice Alito, the Court argued that the case be reargued. In June 2006, the Court in a 5-4 decision ruled that the evidence was admissible. (*Hudson v. Michigan*. Cooperating Attorney: David Moran).

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" until the searches are over. In June 2004, the ACLU sued the Detroit Schools for conducting the intrusive, lengthy searches of each student without reasonable suspicion. In 2006, after a favorable ruling from a federal judge, both the school district and the police department settled the case. Under the agreement, DPS agreed that it will no longer search clothing, backpacks, cars or other items unless they have reasonable suspicion that the individual has contraband and they will not prolong searches any longer than possible. The police and the school district also agreed to pay a total of $32,500 in damages, costs and attorney fees. (*Wells v. Detroit Schools*; Cooperating Attorney: Amos Williams with the assistance of ACLU legal intern Jennie Santos).

GAY, LESBIAN, BISEXUAL AND TRANSGENDER RIGHTS

Fighting to Preserve Domestic Partnership Benefits – In November 2004, much to our dismay, the voters of Michigan approved Proposal 2, a ballot initiative amending the Michigan Constitution to bar same-sex marriage "or any similar union." Throughout the campaign, the proponents of the amendment insisted that the vote was about marriage and that it would have no impact on same-sex domestic partnership benefits. However, after the election Governor Granholm said there was a "cloud" over whether such benefits were legal and said that the state would not provide health insurance to same sex partners of employees until a court ruled on the issue. The ACLU filed a lawsuit in March 2005 on behalf of 21 same-sex couples throughout the state seeking a declaration that the Marriage Amendment did not preclude employers from providing same sex benefits. In September, in a great victory for LGBT rights, an Ingham County judge agreed with the ACLU and ruled that same-sex benefits were work-related benefits unrelated to marriage. Attorney General Mike Cox has appealed and the Court of Appeals reversed. The Michigan Supreme Court granted our application to hear the case and oral argument is scheduled for November 2007. (*National Pride v. Granholm*. Attorneys: Deborah Labelle, Mark Granzotto, Jay Kaplan, Tom Wilczak, Barbara Buchanan, Kurt Kissling, Amanda Shelton and Nancy Katz).

Health Insurance for Gay and Lesbian Families – Even before Proposal 2, the conservative Thomas More Law Center was trying to strip partners of gays and lesbians of health insurance

benefits on the ground that they were somehow barred by Michigan's marriage laws. In 2004, the ACLU filed a friend-of-the-court brief on behalf of the Washtenaw Medical Society and the Women Lawyers Association of Michigan in the Michigan Court of Appeals arguing 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. In April 2005, the Court of Appeals dismissed the case because the plaintiffs failed to do what they were required to do to show "standing" to sue. The issue of standing is now pending in the Michigan Supreme Court. (*Rhodes v. Ann Arbor Schools*; Attorneys: Kara Jennings and Jay Kaplan).

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" LGBT inmates, making them targets of harassment and physical abuse. Both the ACLU of Michigan LGBT Project and the Northwest Michigan ACLU Branch wrote letters to the MDOC requesting that it discontinue identifying inmates' sexual orientation 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 and, in an April, 2003 letter to the ACLU, announced that it would change its policy of reporting sexual orientation. When it came to our attention in 2005 that some officials were still marking the sexual orientation designation section on the forms, we contacted the MDOC again and convinced the department to develop new forms. (ACLU Attorneys: Al Quick, Steve Morse, Jay Kaplan, and Deborah LaBelle and ACLU Intern Daniel Mullkoff).

Right of College Students to Present "Drag" Show – The Gay-Straight Alliance, a non-curricular club at Muskegon Community College, began planning and advertising an on-campus fundraiser featuring transgendered performers in a drag show. 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. In 2005, 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).

Trangendered Referee – In 2005, the ACLU contacted the Michigan High School Athletic Association on behalf of a transgendered referee for high school sports, whose re-application to officiate was put on hold by the MHSAA because it had received complaints regarding her transition from male to female. At first, the MHSAA maintained that the re-application process was on hold because there had been complaints about her ability to officiate. When it failed to provide any documents to back up these concerns, MHSAA agreed to process the referee's application. (Attorney: Jay Kaplan).

The Right to Form a Gay Straight Alliance – Clare High School administrators refused to

permit a group of students to form a Gay Straight Alliance for over six months, claiming that they needed advice from legal counsel. The ACLU wrote a letter on behalf of the students explaining that the students had a First Amendment right to form a GSA. Immediately after receiving the ACLU letter, the administration approved the GSA. (Attorney: Jay Kaplan).

RIGHT TO COUNSEL

Reforming the Broken Indigent Defense System – For decades, leaders in the state have recognized that Michigan's system of representing poor individuals accused of crimes is broken. In February 2007, the ACLU, working with its coalition partners, filed a critically important class action against the state to fix this longstanding problem. The state responded by asking the court to dismiss the case, contending that the counties, not the state, were responsible for any deficiencies in the system. In May 2007, Ingham County Circuit Judge Laura Baird rejected the state's argument. She ruled that the state is responsible for insuring constitutionally adequate criminal defense and simply because Michigan has delegated its responsibility to the counties, it is not "off the hook" when the system fails. Judge Baird also granted the ACLU's request to certify the case as a class action. The state has appealed to the Michigan Court of Appeals. At stake is nothing less than the legitimacy of our criminal justice system. (*Duncan v. Michigan*; Attorneys (partial list): Frank Eaman, Julie North, Emily Chiang, Robin Dahlberg, Elizabeth Kennedy, Mark Granzotto and Mark Fancher).

ACLU Wins Appointed Counsel Case in U.S. Supreme Court – In June 2005, the ACLU of Michigan won its first of what hopefully will be many victories in the U.S. Supreme Court. The case guarantees poor people the right to an attorney in criminal appeals not just in Michigan, but nationwide. At issue was the constitutionality of a Michigan law that, except in limited circumstances, prohibited judges from appointing attorneys to help poor people appeal their sentence in cases where they plead guilty. While Michigan was the only state in the country with such a law, 21 states filed friend-of-the-court briefs in support of Michigan and were expected to enact similar laws if the ACLU lost. The ACLU previously argued a similar issue in the Supreme Court, but in December 2004 the Court issued an opinion that side-stepped the constitutional question because the attorneys who were the plaintiffs in that case did not have "standing" to challenge the law. (*Halbert v. Michigan* and *Kowalski v. Tesmer*; Cooperating Attorneys: David Moran, Mark Granzotto and Terence Flanagan).

Enforcing the Right to Counsel in State Court – Despite our U.S. Supreme Court victory in *Halbert v. Michigan*, some Michigan judges continued to deny court appointed attorneys on appeal. For example, Kent County Circuit Court Judge Dennis C. Kolenda stated that he has no obligation or intention of following the Supreme Court's ruling and characterized the opinion as "incorrect" and "illogical." In January 2006, the ACLU filed a class action "Complaint for Superintending Control" in the Michigan Court of Appeals. When the appellate court declined to hear the case, the ACLU represented an individual criminal defendant, William James, who was

denied counsel by Judge Kolenda. In August 2006, the Michigan Court of Appeals held that James was entitled to appointed counsel on appeal. (*Brown v. Kolenda*; *People v.* James; Cooperating Attorneys: Mark Granzotto, David Moran and James Czarnecki).

Attorney-Client Visits at the Wayne County Jail – In July 2007, the ACLU received numerous complaints from attorneys that the Wayne County Jail was barring attorney-client visits except for very limited hours and only on a couple of days during the week. We also received complaints that jail personnel were denying such visits unless the attorney was the attorney "of record." Attorneys who were meeting with potential clients or witnesses or who were considering bringing a civil case on behalf of an inmate were not allowed to meet privately with inmates. After contacting the Wayne County Corporation Counsel's office, the problem was resolved.

FREEDOM OF RELIGION AND BELIEF

Religious Discrimination by Drug Court – Joe Hanas appeared in the Genesee 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 readings, faith healing and daily church services where residents spoke 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. After the ACLU publicized the treatment individuals receive at ICCOP, the drug court stopped sending people there. The ACLU has asked the Michigan appellate courts and the U.S. Supreme Court to reverse Hanas' conviction and each of the courts have declined to hear the case. In 2006, we filed a habeas corpus petition in U.S. District Court and a civil lawsuit Mr. Hanas' behalf. (*People v. Hanas*; Cooperating Attorneys: Andrew Nickelhoff, Greg Gibbs, Glenn Simmington, Erwin Chemerinski and Frank Ravitch).

Devout Student Suspended for Long Hair. Claudius Benson, is a ninth grader at Old Redford Academy, a public charter school in Detroit. He and his mother maintain a sincerely held religious belief based on a verse in Leviticus that he is forbidden to cut his hair. Despite the religious basis for his long hair, ORA suspended him and referred him for expulsion for violating its "closely cropped" hair policy. In October 2007, the ACLU filed a lawsuit against ORA for violating Claudius' religious freedom rights under the Michigan and U.S. Constitutions and the Michigan Civil Rights Act. (*Benson v. Old Redford Academy*; Attorney: Mark Fancher).

Wrestling and Coerced Prayer – In the winter of 2005, the Lincoln High School wrestling coach taught his athletes more than the latest take-down moves. The coach also led team prayers

at practices and before games. The Washtenaw County ACLU wrote a letter to the school superintendent explaining that coach-led prayer was wrong not simply because it violated the constitutional requirement of church and state separation, it was also wrong because it sent a message to non-Christians that they were not welcome on the team. The day after the letter was sent, the principal consulted with the school's attorney and the coach was ordered to stop. (Attorney: Michael J. Steinberg and David Santacroce).

Swimming While Muslim – A 7th grade student named Jamanah Saadeh went on an end-of-school trip with her Ann Arbor public school to Rolling Hills Water Park in June 2005. As an observant Muslim, Jamanah's faith allows her to only expose her hands and face in public. Accordingly, she brought a pair of nylon pants, a light cotton t-shirt and a head covering (hijab) to wear while swimming. To Jamanah and her teachers' shock and dismay, the park supervisor demanded that Jamanah exit the water because she was not wearing a bathing suit. On the advice of Jamanah's teachers, Jamanah's mother contacted the ACLU. After negotiations with the ACLU, the county adopted a model policy in 2006 that does not deny access to individuals because of their religious garb. We believe this is the first written pool policy to accommodate religious dress and we hope the policy will serve as a model for other pools throughout the state and country. (Cooperating Attorney: Gayle Rosen with the assistance of ACLU legal intern Maleeha Haq).

Riding the Bus While Muslim – Tasha Douglas is a devoted Muslim woman who wears a niqab, or veil that reveals only her eyes. This summer a public bus driver in Grand Rapids forbade Ms. Douglas from riding the bus because her face was covered. Although she used the Grand Rapids bus system – "The Rapid" – on numerous occasions without incident, the driver insisted on applying The Rapid's no-face-covering rule to Ms. Douglas. After the ACLU met with bus company officials, The Rapid repealed its rule, agreed to conduct diversity training and offered Ms. Douglas a year-long bus pass. (Cooperating Attorneys: Miriam Aukerman, Michael Nelson and Gary Gershon with assistance from Law Intern Jessie Rossman).

Hijabs and Mug Shots – In January 2006, we received a desperate call from a Muslim woman. The FBI was demanding that she be photographed for an ongoing investigation without her hijab or headscarf. While the woman was willing to have her photo taken, she was not willing to commit a sin and allow men who were not members of her family see her without the headscarf. We called the U.S. attorney who agreed that there was no reason why the photo could not be taken with the hijab and directed the FBI to accommodate the woman's religion. (Attorney: Kary Moss).

ACLU Addresses Religious Shrine in Warren Courtroom – The Metropolitan Detroit ACLU Branch wrote a letter to a Warren District Court judge asking him to remove the myriad religious symbols displayed in his courtroom, including a cross and religious prints. The letter explained that judges cannot promote religion over non-religion or one religion over another in a

courtroom. The display was removed shortly after the letter was sent. (Cooperating Attorney: Heather Bendure).

Religious Discrimination Against Sikhs – As an observant Sikh, Wayne State University student Sukhpreet Garcha is required to wear a "Kirpan," or a ceremonial sword in sheath, as a reminder of his solemn duty to help the needy and work for justice for all. In August 2005, Mr. Garcha was videotaping practice for the Wayne State football team when he was approached by Wayne State police officers and told that if he did not remove his Kirpans, he would be arrested. Despite his polite explanation that his faith required him to wear the Kirpan, he was charged with a violation of the Detroit knife ordinance. The ordinance bans knives more than three inches long, but makes numerous exceptions for those who use knives for "work, trade, business, sport or recreation." However, the ordinance makes no exceptions for those who carry knives for religious purposes. The ACLU filed a friend-of-the-court brief on behalf of Mr. Garcha arguing that the city must accommodate his religious beliefs and dismiss the case. In November 2005, a Detroit judge ruled that the police violated Mr. Garcha's rights under the Michigan Constitution and dismissed the case with prejudice. Additionally, Wayne State has said that it will no longer arrest or otherwise punish Sihks wearing Kirpans as an expression of their faith. (*City of Detroit v. Garcha*; Cooperating Attorney: Robert Sedler).

Religious Displays in Front of Public Buildings – In December 2005, we received a complaint about the city-sponsored religious display in front of Berkely City Hall. The display consisted of a nativity scene celebrating the birth of Christ and a Star of David, the symbol of the Jewish faith. The ACLU's position is that the government must remain neutral on matters of religion. For example, it cannot prevent churches and private individuals from displaying a crèche and other religious symbols on their own property. But, by the same token, the government cannot promote one religion over another or religion over non-religion by putting unadorned religious symbols in public places. Religious leaders in the City agreed with the ACLU and in 2006, after ACLU lawyers met with city officials, the City gave the crèche and Star of David to a coalition of religious groups who will take turns displaying the symbols on church or synagogue grounds during the holiday season. (Cooperating attorneys: Christine Gale, Elsa Shartsis and Penny Beardslee).

Protecting the Religious Freedom of Pentecostal Church Members – The City of Ypsilanti issued an eviction notice ordering a small Pentecostal church group to leave the downtown building where it met. Under Ypsilanti's zoning ordinance, secular groups are permitted to meet downtown, but religious groups must meet outside the downtown area. After the ACLU wrote a letter explaining how the City's action as well as its zoning ordinance violates both the Religious Land Use Act and the First Amendment, the city reversed its position. Some city officials have pledged to change its ordinance so they may exclude religious groups in the downtown area and make room for more bars. The ACLU is monitoring any such attempts. (Attorneys: Michael J. Steinberg and David Santacroce with assistance from U-M law student Jeffrey Landau).

Students Indoctrinated at Public School Assembly – On Good Friday in 2006, the principal of Muskegon's Steel Middle School invited the Shiloh Tabernacle Church to a mandatory student assembly to perform a series of skits promoting religion. One of the skits, entitled "The Last Call," depicted a child molester who asked for God's forgiveness for his sins being escorted to heaven, while the victim, a lesbian with AIDS, was dragged to hell after killing her molester. The play also included imagery of a woman being reunited with her aborted fetus in heaven. Muskegon Heights High School has invited the church to perform similar skits for their students. After being contacted by concerned teachers and residents, the ACLU filed Freedom of Information Act requests with both schools and is developing an appropriate response. (Cooperating Attorney: Paul Denenfeld with the assistance of law student intern Lina Yermian).

Ending Tax-Funded Proselytization of Youth – In 2003, the State of Michigan stopped financing and sending children to Teen Ranch, a residential youth services program, because it was indoctrinating children using state funds. Rather than fixing the problem, Teen Ranch sued the State. The ACLU filed a friend-of-the-court brief in support of the state in the U.S. Court of Appeals. In January 2007, the court agreed with the ACLU that Michigan properly cut ties with Teen Ranch. (*Teen Ranch v.* Udow; ACLU Attorney: Daniel Mack).

IMMIGRANT RIGHTS

Denied the Right to Marry – The County Clerks in a few isolated counties such as Kent and Ottawa are refusing to issue marriage licenses to couples unless both the bride and groom have social security numbers. These clerks claim that they are abiding by federal and state law even though federal and state authorities state that those without social security numbers may get married. The ACLU is working on setting up a meeting with the Catholic diocese to set up meetings with state and local officials to address this problem.) (Cooperating Attorney: Daniel Schiffer).

Sentenced to the Max because of Immigration Status – Luis Gonzalez-Mireles pled guilty to a first time offense of drunk driving in Jackson. Although the probation agent recommended a sentence of probation, the judge sentenced him to the maximum sentence of 93 days in jail because Mr. Gonzalez-Mireles was not in this country legally. Apparently ignoring the fact that jail is the most expensive of the sentencing options, the Judge stated that he did not want the county to spend resources on illegal immigrants. In June 2007, the ACLU filed a friend-of-the-court brief in support of Mr. Gonzalez-Mireles' appeal. The brief argued that state judges are preempted by federal law from imposing criminal penalties for immigration violations and that the sentence violated due process and equal protection. The judge let Mr. Gonzalez-Mireles out of jail while he considered the issues. (*People v. Gonzalez*-Mireles; Attorney: Michael J. Steinberg with the assistance of ACLU Legal Intern Anya Pavlov-Shapiro).

The Right to Communicate Languages Other than English – The ACLU, joined by the American Arab Anti-Discrimination Committee (ADC) and Latin Americans for Social and Economic Development (LASED), wrote a letter to Sterling Heights in July 2006 urging the city to reject plans to require businesses in Sterling Heights to translate all of their signs into English. The city claimed that the proposal was aimed at helping fire crews' identify buildings in emergencies. But the ACLU explained that the city could not constitutionally prevent resident businesses from communicating as they wished and that the buildings' street address is a more than sufficient way to locate buildings that are on fire. It appears now that the city has abandoned the plans for the English sign policy. (Volunteer: Law Intern Jessie Rossman).

DRUG POLICY

Arrested and Strip-Searched for Going to a Bar – The ACLU provided direct representation in the criminal cases of 93 young men and women who were arrested, strip-searched and/or cavity-searched by the police at a licensed Flint dance club in 2005. Although all the ACLU clients were drug free, they were arrested because some other patrons in the bar possessed drugs. They were each charged with "frequenting a drug house." The police admitted to strip searching all patrons in the bar whether or not they had drugs. Many of our clients also reported that they were cavity searched and one woman said that an officer did not change her latex glove in between searching her anus and her vagina. After many months and two appeals, the criminal charges were dismissed on the ground that the police lacked probable cause to believe that our clients had violated the law. In March 2007, the ACLU filed a class action civil suit in federal court on behalf of the patrons. (*City of Flint v. Doyle, et al.* Cooperating Attorneys: Michael and Peggy Pitt, Maureen Crane, Ken Mogill, Elizabeth Jacobs, Gregory Gibbs, Jeanmarie Miller, Glenn Simmington, Dean Yeotis, Chris Pianto, Daniel Bremer, Matthew Abel and Michael Segesta; *Thompson v. City of Flint*; Cooperating Attorneys: Michael and Peggy Pitt, Maureen Crane).

DUE PROCESS

Challenging the Use of Cohabitation Laws to Deny Visitation. – The Michigan Court of Appeals, relying on an 1838 Michigan law that criminalizes "lewd and lascivious cohabitation," barred our client, Christian Muller, from having overnight visitation with his children when his long-term girlfriend stayed overnight. As a result, the long term girlfriend slept outside in the van when the children came to visit. In December 2006, we filed an appeal in the Michigan Supreme Court arguing that courts should rely on the best interests of the children when determining visitation, not an antiquated law that has not been enforced in nearly a century. Soon after we filed the appeal, the ex-wife withdrew her objections to overnight visits when the girlfriend was present. (*Muller v. Muller*; Cooperating Attorney: Bethany Berger).

Clearing the Names of Identity Theft Victims – For years the Michigan State Police was re-victimizing identity theft victims by providing documents to the public suggesting that individuals had criminal records when, in fact, they did not. The problem initially arose when criminals lied to the police when they were arrested and said that they were someone else. However, the problem was compounded when the MSP, in response to requests for criminal background histories, reported crimes that the victims of identity theft did not commit. Even when the ID theft victims learned of the problem and proved that they had no criminal record, the MSP had no process to help victims correct their erroneous records. These reports made it difficult, if not impossible, for many ID theft victims to obtain employment. The ACLU and Western Michigan Legal Services met with the MSP several times and, in the summer of 2005, were able solve the problem together without the need for litigation. For more information, click on "How Do I Clear My Name" at www.aclumich.org. (Attorney: Miriam Aukerman).

Youthful Offenders on the Sex Offender Registry – In Michigan, like most states, teen lovers who engage in forms of consensual sex can be convicted as sex offenders if one or both of the teens are not yet 16 years old. However, in Michigan, unlike most states, convicted "Romeo and Juliet" teens are also placed on the Internet-based sex offender registry for 25 years -- thus destroying many of their job, housing and educational opportunities. In order to address this great injustice, the Michigan legislature amended the registry so that Romeo and Juliet offenders do not have to register if they were convicted after October 1, 2004. However, there are dozens of youths who were convicted before that date who are suffering. The ACLU filed a brief in the U.S. Court of Appeals arguing that it violates the equal protection and due process rights of these youths to treat them differently than those convicted after 2004. In July 2007, the appeals court held that while the treatment of these young people was unfair, it did not violate the Constitution. (*Doe v. Sturdivant*. Cooperating attorneys: Miriam Aukerman and Susanna Peters).

Evictions without Court Orders – At the request of a landlord, two Lansing police officers evicted Jonny Conner, Jr. from his apartment even though there was no court order permitting such an eviction. When the officers entered the apartment, they shot the Conner's dog. The ACLU filed suit in 2006 asserting that Conner's due process rights were violated. (*Conner v. Rendon*; Cooperating attorney: William Fleener).

STUDENT RIGHTS

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, school officials 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 in Detroit ruled that school officials, but not the school district, could be sued for money by the students. In April 2005 the U.S. Court of Appeals held

that while the school officials violated the students' rights, they were "immune" from a lawsuit for damages. In June 2007, the Court of Appeals held that the school district was not liable even though the staff did not conduct any training about district's no-strip-search rule. (*Beard v. Whitmore Lake School District*; ACLU Cooperating Attorneys: Matthew Krichbaum and Richard Soble).

Coed Cheerleading – The Michigan High School Athletic Association (MHSAA) instituted a rule beginning in the fall of 2006 that would have essentially banned all competitive coed cheerleading. The ACLU wrote a letter to the MHSAA on behalf of 600 members of the newly-formed Coalition for Competitive Cheerleading and then met with the MHSAA leadership. The ACLU's position is that if the MHSAA is not going to sponsor coed cheerleading, it should not deny boys and girls the opportunity to compete together in non-MHSAA competitions. The MHSAA changed its position thereby permitting the nationally-ranked Plymouth-Canton-Salem team to compete in the national cheerleading tournament again this year. Cooperating Attorney: Mark Finnegan with assistance from law intern Rachel Simmons.

Suspended for Hair Length – Rodell Jefferson, III is a 10-year-old honor student at Old Redford Academy, a public charter school in Detroit. In May 2007, Rodell was suspended and referred for expulsion because the principal believed that his hair violated the "closely cropped" school rule. Rodell's hair was no longer than ¾ of an inch. The ACLU sued to prevent the expulsion and, after a hearing on a motion for an injunction, the school permitted him to return and cleared his school records of the incident. (*Jefferson v. Old Redford Academy*; Attorney: Mark Fancher).

Political T-Shirts and Buttons – In 2006, Tom Vonck, a junior at Lincoln High School in Ypsilanti and a member of a group called Students Against War (SAW), was threatened with discipline and censorship after wearing a political t-shirt, political buttons, and distributing political literature critical of the war in Iraq. The high school was also planning to conduct a mass search of every student's backpack the last week of school to be used in a senior prank. After two telephone calls and letters from the ACLU, the principal agreed to honor the rights of student to express themselves and be free from unreasonable searches.

PRISONERS' RIGHTS

U.S. Supreme Court Victory on Prisoner Lawsuits – Before January 2007, there were so many obstacles for Michigan inmates to overcome to get a federal judge to even look at their constitutional claims that most meritorious prisoner rights cases were being dismissed on technical grounds. For example, judges were dismissing entire lawsuits filed by ill-educated inmates representing themselves if (1) the inmates forgot to allege in the lawsuit that they had filed a prison grievance; (2) they sued more prison guards than they named in their prison grievance; or (3) they alleged more violations of the law in the lawsuit than they had in their

prison grievance. The National and Michigan ACLU filed a brief in the U.S. Supreme Court and the Supreme Court, in a unanimous decision, did away with these onerous obstacles to vindicating constitutional rights. (*Jones v. Bock*; ACLU attorney: Elizabeth Alexander).

Religious Freedom Behind Bars – After more than five years of litigation, in December 2005 the ACLU won its class action challenge to the Michigan Department of Correction's policy prohibiting members of the Melanic Islamic Palace of the Rising Sun to receive religious literature. In one of the first cases of its kind in the country, a federal judge ruled that the prison's blanket ban on religious literature violated the Religious Land Use and Institutionalized Persons Act (RLUIPA), a federal law that stops prisons from preventing inmates from practicing their religion unless it has compelling reasons. The ACLU is monitoring the MDOC to ensure compliance with the ruling. (*Johnson v. Martin*; Cooperating Attorneys: Daniel Manville and Susanna Peters).

Victory for Prison Health Care – In a longstanding ACLU lawsuit against the Michigan Department of Corrections, a federal judge strongly criticized its failure to provide adequate health care. Judge Richard Enslen wrote in a December opinion, "A prisoner, who receives a sentence of 2-10 years, deserves 2-10 years. What he does not deserve is a de facto and unauthorized death penalty at the hands of a callous and dysfunctional health care system that regularly fails to treat life-threatening illness." The judge appointed a monitor and threatened $2 million a day in fines if the MDOC did not hire medical staff vacancies to provide basic health care to prisoners. *Hadix v. Michigan*; Cooperating attorneys: Patricia Streeter and Michael Barnhart.

Inhumane Treatment of Inmates in the Saginaw County Jail – In March 2005, the ACLU joined in three lawsuits against the Saginaw County Jail for the inhumane and unconstitutional treatment of female and male inmates awaiting trial. In two of the cases, detainees were stripped and held naked in a cell referred to as "the hole" where they could be viewed by jail personnel and inmates of the opposite sex. If the prisoner declined to strip on her or his own, guards forcibly removed the clothing which often included a physical blow to the body, the use of a chemical spray and the use of a scissors to cut off the clothing. In the third case, the ACLU is challenging a jail policy whereby guards routinely strip searched thousands of inmates – sometimes requiring them to strip completely in front of an opposite sex guard, raise their breasts or genitals, spread their buttocks and "squat and cough. (*Rose v. Saginaw County Jail, Whittum v. Saginaw County Jail* and *Brabant v. Saginaw County Jail*. Attorneys: Steven Wassinger, Michael Pitt, Peggy Pitt and Chris Pianto).

DISABILITY RIGHTS

Eviction of Breast Cancer Patient Stopped – Laura Barhyte, a terminally ill breast cancer

patient, was able to remain in her home thanks to a letter sent to her Ann Arbor landlord by the ACLU working in association with the Fair Housing Center of Southeastern Michigan and the Clinical Law Program of the University of Michigan Law School. The apartment complex originally refused to accept her public rental assistance rental voucher after she became ill even though they were under a legal obligation to accommodate her disability. Ms. Barhyte, a mother of two, had been a model tenant at University Townhouses Cooperative where she has lived since 1999. In March 2005, after a protest and much publicity, the complex agreed to accept the Section 8 rental assistance voucher and Ms. Barhyte and her family were not forced to move from their home. (ACLU Attorney: Michael J. Steinberg).

Challenge to Treatment of Mentally Ill Youth at Michigan's "Punk Prison" – In September 2005, the ACLU joined with the Michigan Protection and Advocacy Service (MPAS) in a lawsuit challenging the manner in which the privately-run Michigan Youth Correctional Facility (MYCF) – a/k/a the "Punk Prison" – treats its mentally ill inmates. There were numerous documented problems at MYCF such as: (1) the exacerbation of young inmates' mental illnesses by placing them in long-term isolation where they were cut-off from social contact, programs or stimulation; (2) placement of youth in isolation as a result of their mental illness; (3) failure to diagnose and mis-diagnoses of mental illnesses; (4) failure to provide adequate mental heath care; and (5) failure to provide adequate special education. Shortly after the lawsuit was filed, an announcement was made that the prison was closing. The ACLU will work with MPAS to ensure that the mentally ill youth receive proper services at their new facilities. (*MPAS v. Caruso*. Attorneys: Stacy Hickox and Mark Cody).

VOTING RIGHTS

Picture ID Requirement – In 1996, Governor Engler signed a law requiring voters to show photo ID before voting. The law was never enforced because then Attorney General Frank Kelley issued an opinion that the law was an undue burden on the right to vote. Recently, the Michigan legislature again passed a picture ID law and asked the Michigan Supreme Court to issue an "advisory opinion" on the law's constitutionality with the hope that the Supreme Court decision would trump the attorney general's opinion. The ACLU joined the Detroit NAACP and numerous other civil rights groups and filed a friend-of-the-court urging the Supreme Court to strike down the new picture ID requirement. The brief pointed out that there is no evidence of significant voter fraud in the state and that measure would pose a disproportionate burden on people of color, people with disabilities and seniors, Nonetheless, the Michigan Supreme Court upheld the law, stressing that people without picture ID could vote by filling out an affidavit. In August 2007, the ACLU sent a letter to the Election Bureau urging it to develop rules implementing the law in a manner that would impose the least possible burden on the fundamental right to vote. In September 2007, the ACLU and the NAACP sent a letter to the Department of Justice urging it to deny "preclearance" for implementation of the photo ID law in Buena Vista and Clyde – the two townships in Michigan where changes in voting cannot be

implemented until the DOJ certifies under the Voting Rights Act that the new rule will not negatively impact racial and language minorities. *In Re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*. (Attorneys: Melvin Butch Hollowell and Joselyn Benson.)

Lying to Put Anti-Civil Rights Measure on the Ballot – The ACLU filed a friend-of-the-court brief in the Michigan Supreme Court in support of a lawsuit seeking to invalidate thousands of signatures on petitions to place Proposal 2 on the November 2006 ballot. According to testimony by numerous citizens, including some judges, many of the signature solicitors lied about the initiative's purpose and actually told signers that the initiative would preserve affirmative action as opposed to abolishing it. The ACLU, writing on behalf of itself and numerous civil rights groups, argued that the Michigan constitution requires that the Board of Canvassers or another state agency be permitted to investigate the voting fraud allegations to determine whether criminal prosecutions or other actions are warranted. Unfortunately, the Michigan Supreme Court declined to hear the case. (Attorney: Mark Fancher.)