ACLU OF MICHIGAN LEGAL DOCKET – 2010-2011

CIVIL LIBERTIES AND POVERTY

Challenging Modern-Day Debtors' Prisons – The Supreme Court ruled decades ago that it is unconstitutional to jail a person for failure to pay a debt that she or he cannot afford. However, the ACLU discovered through a two-year court watching effort that numerous judges throughout Michigan are jailing poor people on "pay or stay" sentences – sentences where individuals who plead guilty to misdemeanors are given the "choice" of immediately paying their fines and costs or going to jail. In order to draw attention to this problem, the ACLU successfully represented seven indigent individuals in appealing their pay-or-stay sentences during the summer of 2011. One unemployed client who was charged with catching a fish out of season was sent to jail because he could not pay $215 in fees at the time of sentencing. Another was sent to jail for 41 days because he could not immediately pay $415 in costs and fees for driving without a license. None of the judges held a hearing to determine whether our clients could afford to pay the fines and they refused to allow our clients to set up a payment plan or do community service. The ACLU is now building support for a new court rule that would ban the practice. (*People v. DeWitt, People v. Smith, People v. Preston, People v. Bellinger, People v. Clark, People v. Bell*; Legal Director Michael J. Steinberg, Staff Attorneys Miriam Aukerman and Dan Korobkin, National ACLU Staff Attorney Elora Mukherjee, and Cooperating Attorneys Ken Mogill, Julie North, Patrick Meagher, Justine Beyda, Lena Konanova, Glenn Simmington, Anthony Greene, Peter Walsh, Martin Meade, Val Newman, Frank Eaman, Melissa El and Penny Beardslee.)

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. Ingham County Circuit Judge Laura Baird rejected the state's argument. She ruled that the state is responsible for ensuring 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 appealed and the Michigan Court of Appeals ruled in favor of the ACLU. In December 2010, the Michigan Supreme Court, after reversing itself twice, also ruled in favor of the ACLU and sent the case back to the trial court. The parties are now engaged in discovery in preparation for trial. (*Duncan v. Michigan*; Cooperating Attorneys Mark Granzotto, Frank Eaman, Julie North, Sarita Prabu, and Justine Beyda (partial list), National ACLU Staff Attorney Elora Mukherjee, Michigan ACLU Staff Attorneys Jessie Rossman and Sarah Mehta and Legal Director Michael J. Steinberg.)

Jailing Poor People for Asking for Money – In these difficult economic times, one would hope that the government would take measures to assist the poor and homeless. In Grand Rapids, however, police officers are arresting, prosecuting and jailing individuals for asking for financial assistance. In fact, since 2008, Grand Rapids have made almost 400 arrests under an archaic Michigan law that makes it a crime to "beg" in public. In 2011, the ACLU filed a federal lawsuit challenging the law as a violation of the free speech rights of two men. One man was arrested for holding up a sign on a sidewalk saying, "Need a Job. God Bless." The other, a veteran, was arrested for asking a stranger for bus fare. Other people, including firefighters, regularly raise funds on the streets and sidewalks of Grand Rapids for charitable causes without being charged with a crime. The matter has been briefed and we are waiting for a decision. In contrast to Grand Rapids, the City of Royal Oak agreed to amend its panhandling ordinance after receiving an ACLU letter explaining that its complete ban on begging violates the constitutional rights of people in need. (*Speet v. City of Grand Rapids*; Staff Attorneys Miriam Aukerman and Dan Korobkin and Legal Director Michael J. Steinberg.)

Debtor's Prison for Mother with Disability – Selesa Likine has a mental disability that caused her to lose her job, her husband and then custody of her children. When her kids were taken from her, the court ordered her to pay $1,100 per month in child support to her affluent husband by imputing money to her that she did not have. In fact, her only source of income was the $637 she received per month in social security benefits. Ms. Likine was hospitalized to treat her schizophrenia for a period of time. Upon her release from the hospital, she was promptly arrested and placed in jail for failure to pay child support. At trial, the judge refused to allow her to present evidence of her inability to pay and she was convicted of a felony. The ACLU and the University of Michigan Innocence Project are representing Ms. Likine in the Michigan Supreme Court and have argued that it is unconstitutional to convict a person for being too poor to make court-ordered payments. Oral argument was held in October 2011 and we are waiting for a decision. (*People v. Likine*; U-M Innocence Project professors David Moran and Bridget McCormack and Legal Director Michael J. Steinberg.)

It's Not a Crime to Be Homeless – Caleb Poirier is a homeless man in Ann Arbor who lives on public property near a highway in an encampment called "Camp Take Notice" with several other homeless people. In early 2010, Poirier was arrested during a police sweep of the area and charged with trespassing. The ACLU filed a friend-of-the-court brief arguing that it is unconstitutional to arrest a person for sleeping on public land when there is no other place for him to sleep. Soon after the brief was filed, the prosecutor dismissed the criminal charges. Since that time, the ACLU has met with local and state police representatives and government officials to discuss the constitutional issues about arresting members of Camp Take Notice for being on public land when there are no other options. As a result, two committees have been formed to address both the short- and long-term issues surrounding these homeless individuals, and law enforcement has not moved to clear the encampment again. (*People v. Poirier*; Staff Attorney Jessie Rossman, Legal Director Michael J. Steinberg and Cooperating Attorney David

Blanchard.)

Proposal to Drug Test Public Housing Tenants Abandoned – In the spring of 2010 the director of the Flint Housing Commission suggested that all public housing tenants should be drug tested as a condition of living in public housing. The ACLU wrote a letter strongly urging the commission to refrain from drug testing tenants without suspicion of wrongdoing. We pointed out that, like the Michigan Welfare Drug Testing Act which was struck down in federal court in an ACLU case several years ago, the housing commission proposal would violate the Fourth Amendment ban on unreasonable searches. We further explained that the program would unfairly single out poor people for humiliating and expensive tests when there are other more effective ways to address drug abuse. After receiving the ACLU letter, the housing commission abandoned the proposal. (Legal Director Michael J. Steinberg, Cooperating Attorney Gregory Gibbs and Legal Fellow Alexandrea Brennan.)

Right to Appellate Counsel for the Poor – In 2009, the Michigan Court of Appeals, relying on United States Supreme Court precedent set by the Michigan ACLU, ordered a Saginaw County judge to appoint appellate counsel to an individual who pleaded guilty but wanted to appeal his sentence. Following the decision, the ACLU worked with Saginaw County to notify thousands of individuals that they were wrongfully denied their constitutional right to counsel. As a result of this effort, approximately 70 individuals were appointed counsel in 2009 and 2010 to appeal their sentences. (*People v. Holden*; Cooperating Attorney Terence Flanagan.)

FREEDOM OF SPEECH

Victory for the Right to Petition – During the summer of 2011, Genesee County Park rangers told Denise Miller, a union activist seeking to recall Governor Snyder, that she could not petition in the public parks without a permit. Miller applied for a permit to petition in 135-acre Linden Park, but when the permit was finally granted, the only area in which she was allowed to petition was an isolated, nine-square-foot "Freedom of Speech" area. The ACLU filed a federal lawsuit challenging the permit requirement in July and five days later the court issued an order allowing her to petition throughout the park without a permit. The court signed a consent judgment in October permanently protecting the right to petition freely. (*Miller v. McMillan*; Legal Director Michael J. Steinberg, Staff Attorney Dan Korobkin, Cooperating Attorney Glenn Simmington and Legal Intern Alexandra Link.)

Funeral Protest Law Struck Down – In 2007 army veteran Lewis Lowden and his wife Jean attended the funeral of a close friend who was killed in action in Iraq. By invitation of the soldier's family, they drove in the funeral procession from the church to the cemetery. Although the Lowdens had done nothing to disrupt the procession, Clare County police pulled them over solely because the van they were driving had signs on it critical of then-President Bush and his policies. The police then placed them under arrest and brought them to jail for violating the

Michigan funeral protest law, which made it a felony to "adversely affect" a funeral. The ACLU filed a federal lawsuit challenging the law on behalf of the Lowdens. In 2010 Judge Thomas Ludington ruled that arresting a person for displaying anti-government signs in a car on a public street – even near a funeral – violated a person's free speech rights. The Michigan attorney general intervened to defend the validity of Michigan's funeral protest statute, but in 2011 Judge Ludington ruled that the "adversely affect" provision of the Michigan law was unconstitutional on its face. (*Lowden v. Clare County*; Staff Attorney Dan Korobkin, Legal Director Michigan J. Steinberg and Co-Counsel Hugh Davis and Cynthia Heenan.)

Minister Sent to Prison for Criticizing Judge – Reverend Edward Pinkney is an activist from Benton Harbor who for years has spoken out against the discriminatory treatment of African Americans in Berrien County courts. In 2007 Rev. Pinkney was charged with election law violations and convicted by an all-white jury. While on probation pending a motion for a new trial, he wrote an article for a small Chicago newspaper about his case in which he criticized the judge that presided over the case as being racist, dumb and corrupt. Paraphrasing a biblical passage from the Book of Deuteronomy, Rev. Pinkney also predicted in the article that unless the judge changed his ways, God would "smite" him with "consumption," "fever," "inflammation" and "burning." Based solely on the newspaper article, another judge found that Rev. Pinkney violated the terms of his probation and sentenced him to 3-10 years in prison. The ACLU represented Rev. Pinkney on appeal on free speech grounds and secured his release on bond pending appeal. In 2009, the Court of Appeals reversed the order revoking his probation. Then in February 2010 the ACLU won a motion for Rev. Pinkney reducing the term of his probation by more than a year and permitting him to protest at the courthouse while on probation. (*People v. Pinkney*; Cooperating Attorneys James Walsh and Rebecca O'Reilly of Bodman, and Douglas Mullkoff, Staff Attorney Dan Korobkin and Legal Director Michael J. Steinberg.)

Wayne County Prosecutor Jails Terry Jones for Future Speech – This spring, controversial pastor Terry Jones and cohort Wayne Sapp planned to hold a small, peaceful protest of Sharia law in Dearborn in front of the largest mosque in the country. However, before they had a chance to protest, the Wayne County Prosecutor filed a lawsuit "to prevent crime" under Michigan's "peace bond" statute. The ACLU filed a friend-of-the-court brief arguing that while it found their speech offensive, it is not a crime to protest in the public right of way and the prosecutor's lawsuit was an unconstitutional "prior restraint" on speech. The judge refused to dismiss the case, however, and when a jury ruled against Jones and Sapp, the judge barred them from protesting near the mosque. The case is on appeal. (*People v. Jones*; Legal Director Michael J. Steinberg and Legal Fellow Zainab Akbar.)

Victory for Right of Blogger to Criticize Warren Officials Anonymously – The ACLU successfully represented an anonymous blogger who posted a message on warrenforum.net, an online forum about Warren politics. The post questioned the legitimacy of Assistant City Attorney Ronald Papandrea's bankruptcy filings, suggesting that he had arranged to retire, file

for bankruptcy and then be rehired after his debts were discharged. Papandrea, who was running for city council, filed a defamation suit against the anonymous blogger and then sought a court order requiring the Internet service provider to reveal his identity. Concerned about the attempt to stifle protected political speech, the ACLU represented the blogger and asked the judge to dismiss the case on First Amendment grounds. The judge ruled in favor of the blogger, and the city attorney did not appeal. (*Papandrea v. Doe*; Cooperating Attorney William Burdett and Staff Attorney Dan Korobkin.)

Defending the *Polish Weekly* – The *Polish Weekly* has been publishing articles about local, state and international issues of interest to the Polish community in Hamtramck and the Metro Detroit area for 100 years. Over the past couple of years, knowledgeable members of the Polish community have been writing letters to the editor complaining about Anut Dul, Chief Operations Officer of a federal credit union catering to Polish-Americans. Some of the letters suggest that Ms. Dul lacks experience, ignores conflicts of interest and misuses credit union funds. The *Polish Weekly* publisher also wrote a critical article about Ms. Dul, but only after a meeting with Ms. Dul in which she refused to discuss the claims. When Ms. Dul sued the newspaper for defamation in a lawsuit that threatened the financial viability of the paper, the editor asked the ACLU for help. Believing that there should be a marketplace of ideas about matters of public concern, the ACLU agreed to provide representation. The case was successfully settled in 2011 without the *Polish Weekly* having to pay damages. The editor credited the ACLU with saving the publication. (*Dul v. Polish Weekly*; Cooperating Attorney William Burdette and Legal Intern Phyllis Jeden.)

Political Advocacy in the University of Michigan Dorms – For thousands of students in the dorms at the University of Michigan, the federal elections in 2010 was their first opportunity to vote. Many student groups and individuals at U-M wanted to canvass the dorms to talk about the elections and register other students to vote. However, U-M had a rule that barred anyone except candidates for office from going door-to-door in student dorms to talk about political issues. It even barred U-M students from promoting a candidate or issue to other students in their own dorm. The U-M ACLU student chapter, working with the state and Washtenaw County ACLU, sent a letter complaining about the unconstitutional policy and then met with the general counsel. Shortly before the elections, the university amended its policy to allow students to canvass in their own dorms and agreed to review the entire policy with student input. (Legal Director Michael J. Steinberg, Staff Attorney Jessie Rossman, Cooperating Attorneys Patricia Selby and John Shea, and ACLU students Mallory Jones and Bennett Stein.)

ACLU Sues Ann Arbor Bus System For Censoring Controversial Ad – For years the Ann Arbor Transportation Authority (AATA) has allowed advocacy organizations, churches and political candidates to advertise on the outside panels of the bus. However, when a local Palestinian rights activist submitted a “Boycott Israel” ad, the AATA refused to run it. The ACLU wrote a letter to the AATA stating that once a government agency creates a forum for

advocacy ads, it cannot deny an ad simply because it is controversial or because some might find it offensive. The AATA still refused to run the ad and in November 2011 the ACLU filed a free speech case in federal court. (*Coleman v. AATA*; Staff Attorney Dan Korobkin and Legal Director Michael J. Steinberg.)

Charged with a Crime for Swearing About a Ticket – An Americorps volunteer who works with underprivileged children returned to his Lansing apartment one night to find an officer ticketing his friend's car for allegedly "blocking the sidewalk." The young man protested, told the officer that the car was not blocking the sidewalk, and commented, "this is f***ing bullshit." Although the volunteer had never been in trouble with the police, the officer took him into custody and charged him with violating a Lansing ordinance that makes it a crime to "utter profane, obscene or offensive language." The ACLU is representing the man on appeal, arguing that the ordinance is unconstitutional. (*City of Lansing v. J.K.*; Cooperating Attorney Mary Chartier.)

Honk if You Don't Support Bush's Policies – For nearly five years, peace activists 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 with 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 and Kittila should bring a federal lawsuit if they wanted to challenge the policy. A federal suit was filed and after months of litigation, Judge Denise Page Hood struck down the Ferndale policy as an unconstitutional infringement on protestors' free speech rights in 2008. The petition for attorneys' fees was settled in 2010. (*Goedert v. City of Ferndale;* Cooperating Attorneys Thomas Cavalier and Melanie Stothers and Legal Director Michael J. Steinberg.)

Flint Police Department Gag Rule Challenge – In 2008 Flint Police Chief David Dicks instituted a rule barring police personnel from speaking to the media after leaders of the police officers' union made public remarks about some extremely controversial appointments by the chief. Chief Dicks then fired Sergeant Richard Hetherington and disciplined two other officers. The ACLU filed a federal lawsuit in October 2008 arguing that police officers do not forfeit their First Amendment rights when they join the police department and may speak out publicly on certain matters of public concern. In December 2010, U.S. District Court Judge Patrick Duggan agreed with the ACLU and denied Flint's motion to dismiss the case. Shortly before trial was

scheduled to start in December 2011, Flint agreed to pay damages and we settled the case. (*Gaspar v. Dicks*; Cooperating Attorneys Gregory Gibbs, Sarah Zearfoss, Muna Jondy and Jodi Hemmingway, Staff Attorney Jessie Rossman, Legal Fellow Sarah Mehta and Legal Director Michael J. Steinberg.)

Firefighter Threatened with Dismissal for Criticizing City's Road Conditions – Ken Jacobson, a firefighter for almost three decades in the Upper Peninsula town of Ironwood, was threatened by city officials with discipline and termination after writing four letters on his own time to the local press. The letters mainly questioned the city manager's commitment to plow the roads. After the ACLU wrote a letter in 2010 defending Jacobson's right to speak out on matters of public concern, the city backed down. (Cooperating Attorney Sarah Zearfoss and Legal Director Michael J. Steinberg.)

Vegan Leafleter Charged with Crime – In July 2009, Phillip Letten was standing on a public sidewalk in Detroit distributing flyers advocating a vegan diet when a police officer told him to stop. After Letten questioned why he had to stop, he was charged with "distributing leaflets without a permit" – even though there is no such crime. The ACLU represented him in his criminal case and the charges were dismissed. In 2010 the ACLU filed a federal lawsuit seeking to ensure that Detroit police officers stop retaliating against citizens for exercising their First Amendment rights to question police action. In 2011 the City agreed to settle the case by enacting new policies and paying damages and attorneys' fees. (*Letten v. Hall*; Staff Attorneys Dan Korobkin and Jessie Rossman and Legal Director Michael J. Steinberg.)

Harassment at the Border Because of Political Beliefs – In June 2010 over 15,000 progressive activists from around the country came to Detroit for the U.S. Social Forum. Three college students attending the Social Forum decided to take a bus trip to Windsor, Ontario for a couple of hours to see the sights. On their way back to the U.S., customs officials singled the students out for interrogation because they were wearing orange bracelets identifying them as registered participants in the conference. In a hostile tone, the officials questioned them about their politics, the type of workshops they were attending and whether they planed to protest. The officers removed the students' journals and flyers from their bags and read them. The ACLU, along with the National Lawyers Guild, wrote a letter to U.S. Customs and Border Patrol and the Justice Department strongly urging the government to investigate and take corrective action to ensure that citizens not be punished for their political beliefs in the future. (ACLU Attorneys Kary Moss and Michael J. Steinberg and NLG Attorneys John Royal and Thomas Stephens.)

ACLU Defends Rights of Howell Street Musician – When Howell officials told popular street musician Joseph Flanders that he could no longer perform on city streets, Flanders turned to the ACLU. The ACLU fired off a letter explaining that Howell's ordinance barring "annoying or disturbing" noise was unconstitutional and that a rule censoring all musical expression on public sidewalks violated the First Amendment. Within a couple of weeks, the Howell City Council

voted to suspend enforcement of the noise ordinance against street musicians and directed staff to develop a permitting process. Flanders went back to entertaining in front of the Dairy Queen, much to the delight of countless kids and families. (Staff Attorney Jessie Rossman, Legal Director Michael J. Steinberg and Legal Fellow Alexandrea Brennan.)

Man Charged for Criticizing the Police for a "Classic Case of Racial Profiling" – Josef Kolling was attending a house party near Eastern Michigan University when the police appeared and began to question two African American men in the front yard. Kolling, who is white, explained to the officers that everything was okay, but the officers told him to return to the house and started to interrogate the African American men again. Frustrated by what he believed to be racial discrimination, Mr. Kolling crossed the street and yelled back to the squad car, "This is a classic case of racial profiling." The police promptly arrested Mr. Kolling for causing a "public disruption." The ACLU appealed the denial of Kolling's motion to dismiss the case on free speech grounds and in April 2011 and the prosecutor agreed to dismiss the case if the client agreed to attend an alcohol education class. (Cooperating Attorneys Michael Carter and John Shea.)

No Special Restrictions on Political Speech – In October 2010 the Oakland County Branch of the ACLU learned that the Village of Milford was considering an ordinance that would place new restrictions on how long before an election a person could display political signs. There would be no durational restrictions on "for sale" signs, "bed and breakfast" signs, and other non-political signs that are typically displayed on private property. The ACLU wrote to village officials and informed them that the proposed restriction would violate the First Amendment because it would single out political speech for unfavorable treatment. In response, the Village Council decided not to adopt the ordinance. (Staff Attorney Dan Korobkin and Oakland County Branch Attorney Elsa Shartsis.)

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, and white applicants and current students and faculty who want to ensure that they are able to learn and teach within a diverse environment. We argue that Proposal 2 violates equal protection by making it more difficult for people of color to affect the admissions 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 living 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. In July 2011, the U.S. Court of Appeals for the Sixth Circuit ruled in our favor in a 2-1 decision, and the entire court has agreed to hear the case "en banc." Oral argument is set for March 2012. (*Cantrell v. Snyder*; Attorneys (partial list): Mark Rosenbaum, Kary Moss, Dennis Parker, Mark Fancher and Michael J. Steinberg (ACLU), Melvin Butch Howell (NAACP Detroit), Josh Civin (NAACP Legal Defense Fund), Jerome Watson (NAACP State Conference), Karen DeMasi (Cravath Swaine & Moore), Professor Erwin Chemerinsky and Professor Lawrence Tribe.)

ACLU Sues for FBI Records on Collection of Racial and Ethnic Data – According to a 2008 FBI operations guide recently acquired by the ACLU, the FBI has the authority to collect information about, and create maps of, so-called racial and ethnic "behaviors" and "lifestyle characteristics" in communities with concentrated ethnic populations. Concerned that such information would be used for racial profiling, the ACLU requested documents related to this practice in Michigan under the Freedom of Information Act (FOIA). After the FBI refused to turn over the documents in a timely manner, a FOIA lawsuit was filed in July 2011. Thus far, the ACLU has been able to confirm that the FBI has been collecting data on Middle Eastern and Muslim populations, but the FBI has not yet released documents describing the details. (*ACLU v. FBI*; Cooperating Attorney Stephen Borgsdorf of Dykema, Staff Attorney Mark Fancher, and National ACLU Staff Attorneys Hina Shamsi and Nusrat Choudhury.)

Racist Mob Violence – Michael Williams is an African American man who, by coincidence, ran into an old high school classmate at a tavern in Tuscola County during the classmate's bachelorette party. Mr. Williams congratulated the woman and she, in turn, invited him to her wedding reception the following evening. However, when Mr. Williams came to the reception, a group of white men confronted him and, while screaming racial epithets, knocked him down and repeatedly kicked and beat him. In a shocking verdict, the men were acquitted of all criminal charges by an all-white jury. In September 2010, the ACLU filed a civil rights lawsuit in federal court alleging that the men conspired to deprive Mr. Williams of his rights because of his race. In October 2011, the case settled for damages and attorneys' fees. (*Williams v. Pholad*; Cooperating Attorneys Rick Haberman and Francis Ortiz and Staff Attorney Mark Fancher.)

Racist Incident on School Bus – The ACLU filed a complaint against the Van Buren School District with the Michigan Department of Civil Rights on behalf of a 10-year-old African American student after the student was called a vile racial slur on the school bus. Rather than address the problem, the principal told the student's mother that she should withdraw the student from the school district if she was not happy. The case was mediated in 2011 and the district agreed to adopt diversity training for its employees to ensure that incidents like this will be approached more constructively in the future. (Staff Attorney Mark Fancher and Legal Intern Crystal Redd.)

Wal-Mart Won't Automatically Disqualify Job Applicants with Criminal Records – After receiving a complaint that the new Wal-Mart in Pittsfield Township refused to hire all ex-offenders, the Michigan and National ACLU sent Wal-Mart a letter explaining that such a policy is illegal. Blanket bans on hiring ex-offenders – no matter how old or how unrelated the conviction is to the job sought – violates federal employment law because it has an unfair impact on racial minorities. In response, officials form Wal-Mart headquarters set up a call with the ACLU in 2010 and then revised its nationwide employment application to comport with federal anti-discrimination laws. (Staff Attorneys Jessie Rossman and Miriam Aukerman and Cooperating Attorney Kim Thomas.)

Racially Hostile Educational Environment – Two black siblings who were students at East Detroit High School in Eastpointe encountered daily racial epithets and catcalls by white students. Reports to school officials did not result in an abatement of the harassment. Brewing hostility eventually erupted in a racially charged physical attack on the siblings by five white students. In 2009, the ACLU filed a federal civil rights case challenging the hostile environment at the school. Unfortunately, the judge ruled in October 2010 that there was not enough evidence to take the case to trial. (*Turner v. East Detroit High School;* Cooperating Attorney Khalilah Spencer from Honigman Miller and Staff Attorney Mark Fancher.)

Racial Assault Victim Jailed for Criticizing Assailants' Light Sentence – Cory Holland, an African American resident of Hazel Park, was assaulted by two white neighbors who called him various racial epithets. The city attorney asked Holland to testify against the assailants. When Holland arrived and realized that the assailants had made a deal with the city attorney and that the judge was not going to sentence them to jail, he asked if he could address the judge. With the judge's permission, Holland calmly expressed his view that the sentence was too lenient and that if he, as a black man, had assaulted white women, he would be behind bars. When the judge told Holland, "I appreciate your input," Holland responded by saying in a calm manner, "I'm sure you do," and prepared to leave. However, the judge was clearly angered by Holland's response and, with no hearing or appointment of counsel, convicted Holland of criminal contempt of court and sentenced him to jail for 30 days. The ACLU appealed the case all the way to the Michigan Supreme Court, but the court issued an order in 2010 declining to hear the case. (*In re Holland*; Cooperating Attorney Kenneth Mogill, Legal Director Michael J. Steinberg and Staff Attorney Dan Korobkin.)

Police Intimidation of Film Crew – Concerns that a predominantly white police unit overreacted to an all-black movie cast and crew prompted the ACLU to provide legal representation to B.U.P. Films, a small Michigan-based production company. While the film company was shooting footage in a Detroit neighborhood for a biographical film about the late community activist Hayward Brown, heavily armed police descended on the actors and crew. The filmmakers were forced to the ground, handcuffed and frisked while the police, with guns drawn, shouted profanity-laced threats at them. At the time, actors were carrying toy guns that

they used as movie props. They were nevertheless charged with brandishing firearms. The ACLU represented those charged with criminal offenses and got all charges dismissed. We also sent a letter to the Mayor of Detroit that expressed concern that apparent governmental communications breakdowns and deficiencies in the permit process appeared to contribute to the fiasco and cause a consequent chilling effect on legitimate First Amendment activity. (Cooperating Attorney Ralph Simpson and Staff Attorney Mark Fancher.)

School-To-Prison Pipeline in East Lansing Public Schools – In 2010 an African American student at East Lansing High School attempted to defuse a tense situation by escorting his friend away from an argument she was having with a school administrator and a school police officer. In response, the school officials summoned city police officers who tracked down and tasered the African American student. The school district not only suspended the student who was tasered, but it also suspended -- and attempted to expel -- the student's brother, who protested when he saw the police using a taser. The ACLU represented the brother during expulsion proceedings and negotiated an agreement to allow him to return to school after a few weeks when the new semester began. The district also agreed to pay for tutoring during the suspension, allow him to take his exams and receive full course credit. (Staff Attorney Mark Fancher.)

Protecting Access to a Sacred Site – In recent years, several American Indians have been charged with trespassing for attempting to worship at Eagle Rock in Ishpeming, a sacred site controlled by the mining company Kennecott Eagle Minerals. In 2011, the ACLU wrote a letter to the corporation suggesting that it was violating civil rights laws by opening its lands up to the general public for hunting, hiking, snowmobiling and other recreational activities, but denying American Indians access to the land for religious ceremonies. After receiving the letter, the company agreed to allow reasonable access to Eagle Rock for future religious ceremonies. (Staff Attorney Mark Fancher.)

SAFE AND FREE

CIA Spies on U-M Professor/Bush Critic in Attempt to Discredit Him – *The New York Times* printed a front-page story in June 2011 about a former CIA agent who claimed that the Bush Administration asked the CIA to collect damaging information on University of Michigan Professor Juan Cole, a prominent critic of the Iraq War. When the CIA refused to respond to the ACLU request for documents about the spying, the ACLU filed a lawsuit in federal court under the Freedom of Information Act. (*ACLU v. CIA*; National ACLU Staff Attorney Zachary Katznelson and Legal Director Michael J. Steinberg.)

American Woman Removed from Plane and Strip Searched – On September 11, 2011, an Ohio woman of Middle Eastern and Jewish descent named Shoshana Hebshi was sitting in the same row of a Frontier Airlines plane as two men of Indian descent on a flight from Denver to Detroit. When the Indian men got up to use the bathroom at the same time, someone reported

their behavior as suspicious. After the plane landed in Detroit, armed federal officials took not only the two men, but also Ms. Hebshi into custody at the airport jail. Although she had never met the two men and had done nothing to arouse suspicion, Ms. Hebshi was strip-searched in the jail and held for four hours before being interrogated and released. The ACLU has filed a Freedom of Information Act request with the airport police on her behalf to learn more about the incident. (Legal Fellow Sarah Mehta and Legal Director Michael J. Steinberg.)

Harassment of Arab-Americans at the Border – Since November 2002, Dr. Elie Ramzi Khoury and his wife Farideh, who are American citizens, 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 restrictions, they have been detained for hours upon return to the U.S., separated from their grandchildren, interrogated like terrorists and forced 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 by the Illinois ACLU 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. In June 2008, the U.S. Court of Appeals reversed the district court order granting class certification and sent the case back to the district court. The case was dismissed in 2010 after the government instituted positive changes to address some of the problems raised by the lawsuit. (*Rahman v. Chertoff*; Cooperating Attorney Noel J. Saleh.)

VOTING RIGHTS

ACLU Lawsuit Restores 5500 Voters to the Rolls – In an important voting rights victory, the U.S. Court of Appeals ruled in October 2008 that Michigan had unlawfully purged voters from the voter rolls. As a result, 5500 Michigan residents were able to vote in the historic presidential election after their names were restored to the voting rolls. The ACLU lawsuit charged that the state was violating the National Voter Registration Act when it prematurely removed voters from the rolls in two circumstances: (1) when voter identification cards were returned as undeliverable, and (2) when Michigan voters obtained drivers licenses in other states. U.S. District Court Judge Stephen Murphy agreed with the ACLU that there are many legitimate reasons why voter ID cards might be returned as undeliverable and that a person may be a resident of Michigan for voting purposes, yet have an out-of-state license. In June 2010 the case was settled when the state agreed to stop the practice permanently. (*United States Student Association Foundation v. Land*; Cooperating Attorneys Matthew Lund, Mary Deon and Deborah Kovsky-Apap of Pepper Hamilton, National ACLU Staff Attorney Meredith Bell-Platt, Staff Attorney Dan Korobkin, Legal Director Michael J. Steinberg, and Advancement Project Attorney Bradley Heard.)

SEX DISCRIMINATION

Pregnancy Discrimination in the Detroit Police Department – In October 2008, the ACLU of Michigan filed a pregnancy discrimination case against the Detroit Police Department on behalf of five police officers. At the time, the department had a practice of forcing women police officers to go on sick leave as soon as they became pregnant – even though they were perfectly capable of working either on patrol or in a light-duty job. One client was forced to go on sick leave even though she had been working a desk job for five years when she became pregnant. Another client was forced to go on welfare when her sick leave was used up. In July 2010, the parties settled the case when the department agreed to not only compensate the women, but to also implement one of the best policies in the country for pregnant police officers. Under the new policy, women officers are no longer required to report their pregnancies, they are able to work on patrol until they can no longer perform their assignment and they are entitled to a light duty job once they are no longer able to work on patrol. (*Prater v. City of Detroit*; Cooperating Attorneys Deborah Gordon, Sarah Prescott, and Sharon Dolente, Staff Attorney Jessie Rossman and Legal Director Michael J. Steinberg.)

ACLU Demands Equal Treatment of Girls' Basketball Players – Due to budget concerns, the Downriver League decided to reduce the number of referees for high school girls' basketball games to two, but retained three referees for boys' games. Troubled by the negative message the league was sending to her players, Katie McFadden, the Melvindale High School girls' varsity coach, contacted the ACLU. The ACLU immediately sent a letter to all ten athletic directors in the league advising them that the new policy not only violated Title IX of the Civil Rights Act of 1964, but it unfairly attempted to balance the budget solely on the backs of female athletes. The next week all boys and girls games were assigned three referees throughout the league. The Melvindale girls then went on to win their first Downriver League title in school history. (Legal Director Michael J. Steinberg and Staff Attorney Jessie Rossman.)

Class Action Sex Discrimination Case – In 2011 the ACLU filed a friend-of-the-court brief in the U.S. Court of Appeals on the question of whether women who claimed that they were facing sex discrimination at work could file a class action. The case could have a significant impact on future efforts to address patterns of discrimination in the workplace. (*Davis v. Cintas Corporation*; National ACLU Staff Attorney Ariela Migdal and Michigan ACLU Staff Attorney Jessie Rossman.)

UNLAWFUL SEARCHES AND SEIZURES

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 and strip 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 on them. Many of our clients also reported that they were cavity searched. 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 civil suit in federal court on behalf of dozens of patrons. The parties reached a settlement in 2010 which included changes in policies, an agreement not to commit such acts in the future, police training, and a total of $900,000 in damages and attorneys' fees. In 2011 the judge granted the ACLU's motion to enforce the settlement agreement when Flint did not complete the training of its officers more than a year after it had agreed to do so. (*Thompson v. City of Flint*; Cooperating Attorneys Michael and Peggy Pitt, Maureen Crane, Lauri Ellias, Ken Mogill, Elizabeth Jacobs, Gregory Gibbs and Jeanmarie Miller Staff Attorney Dan Korobkin and Legal Director Michael J. Steinberg; *City of Flint v. Doyle;* Cooperating Attorneys Ken Mogill, Elizabeth Jacobs, Gregory Gibbs, Jeanmarie Miller, Glenn Simmington, Dean Yeotis, Chris Pianto, Daniel Bremer, Matthew Abel and Michael Segesta.)

Illegal Mass Searches of Students Stopped – In 2009 the Detroit Public Schools resumed a practice of searching all students' bags without reasonable suspicion as they enter the school, despite a 2006 consent order barring the practice in a prior ACLU case. The ACLU responded by filing a new class action lawsuit to vindicate current students' privacy rights and a motion to hold the district in contempt. In December 2009 a federal judge issued a preliminary injunction against the school district, halting further suspicionless searches. In November 2010, the Detroit Public Schools agreed to another consent judgment forbidding the mass searches. Although metal detectors may be used at entrances to detect weapons, DPS must allow students to go to class after they successfully pass through the metal detectors. This new order is enforceable by both current or future Detroit Public School students. The district also paid damages to the students who brought the new lawsuit. (*Wells v. Detroit Public Schools* and *McBurrows v. Detroit Public Schools*; Staff Attorneys Mark Fancher and Dan Korobkin, Legal Director Michael J. Steinberg, Cooperating Attorney Amos Williams and Legal Fellow Avani Bhatt.)

Criminal Charges and Cars Seized for Going to an Art Gallery – In February 2010, the ACLU filed a federal case challenging the Detroit Police Department's 2008 raid of a fundraising event at the Contemporary Art Institute of Detroit. During the raid more than a hundred innocent people were detained, searched, and charged with loitering because, unbeknownst to them, the gallery did not have the proper liquor license for the late night party. In addition, more than 40 legally parked cars were seized and not released until their owners paid nearly $1000. In one case, the police took the car of someone who had parked at a friend's house about a mile from the gallery and walked to the event. Before filing this case, we had already won dismissal of the criminal cases of over 120 people charged with "loitering" at the art gallery. (*Mobley v. City of Detroit*; Cooperating Attorneys William Goodman, Julie Hurwitz and Kathryn James, Staff Attorney Dan Korobkin and Legal Director Michael J. Steinberg; *City of Detroit v. White*; Cooperating Attorney Ken Mogill.)

Man Working on Laptop from Car Near ACLU Office Charged with Loitering – Ken Anderson, a homeless veteran, was searching online for work from his laptop computer while sitting in his legally parked car one block from the ACLU office in Detroit. When two officers approached him and demanded ID, Anderson, who has no criminal record, questioned whether the officers had reasonable suspicion. Irritated by the question, the officers retaliated against Anderson by charging him with "loitering in a known drug area." The charge was based on an ordinance that was repealed years ago because it is unconstitutional. The ACLU successfully represented Anderson on a motion to dismiss. In June 2010, the ACLU filed a federal lawsuit seeking to ensure that that Detroit police officers stop retaliating against citizens for questioning the basis for police action. In 2011 the City agreed to settle the case by enacting new policies and paying damages and attorneys' fees. (*Anderson v. Peoples*; Staff Attorneys Jessie Rossman and Dan Korobkin and Legal Director Michael J. Steinberg.)

No Warrant, No Breathalyzer for Minors – In September 2011, the ACLU filed a lawsuit against the Livonia police for forcing a 13-year-old boy to take a breathalyzer on a middle school graduation field trip. After the boy and several of his classmates went for a short walk in the woods, the assistant principal found an empty alcohol bottle in the woods and called the police. The breath test revealed that none of the students had been drinking. The lawsuit, which relied on victories in past ACLU cases, alleged that the police cannot force minors to take a breath test without first obtaining a search warrant or valid, non-coerced consent. Livonia has agreed to a settlement agreement with a new police policy and training for its officers. (*A.B. v. City of Livonia*; Staff Attorney Dan Korobkin, Legal Director Michael J. Steinberg, and Legal Intern Crystal Redd.)

ACLU Gun Case – In August 2011, the ACLU wrote a letter to the Farmington Hills Police Department on behalf of a local gun owner demanding the return of three registered firearms that were seized from his home. The police had seized his guns after receiving a complaint that his housemate, who was not home, might be suicidal. However, even six weeks after the police determined that the housemate was not suicidal, the police would not return the guns. Upon receiving the ACLU letter, the police chief immediately returned the firearms, apologized, and thanked the ACLU for protecting civil liberties. (Cooperating Attorneys David Moran and Syeda Davidson and Staff Attorney Dan Korobkin.)

LGBT RIGHTS AND HIV/AIDS DISCRIMINATION

ACLU Stops Attempt to Void Same-Sex Second Parent Adoption – Several years ago Julianna Usitalo and Melissa Landon fell in love, entered into a committed partnership and decided to have a child together. In 2003, Melissa had a child through artificial insemination and asked a judge to make Julianna a legal parent through a second parent adoption. In 2008 Julianna and Melissa split up, but entered into a custody and visitation agreement so both parents

could continue to raise the child. However, in 2010 Melissa decided that she wanted to cut Julianna out of their daughter's life completely and asked the judge to void the second parent adoption. The ACLU successfully represented Julianna, and the judge, following a Court of Appeals decision in another ACLU case, ruled that Melissa could not vacate an adoption order seven years after it was entered. In 2011, the parties worked out a parenting time agreement so that both parents could be part of the child's life. (*Usitalo v. Landon*; Staff Attorney Jay Kaplan and Legal Director Michael J. Steinberg.)

Grad Student Studying Counseling Cannot Refuse to Help LGBT Clients – The ACLU filed a friend-of-the-court brief in the U.S. Court of Appeals supporting Eastern Michigan University's right to remove from its counseling program a graduate student who refused to counsel lesbian, gay and bisexual clients during her clinical training on any issues relating to same-sex relationships. The ACLU argued that while counselors are entitled to their own religious beliefs, EMU properly took steps to prevent the graduate student from imposing those beliefs on her clients and discriminating against them in the university's training program. EMU's counseling program requires its graduate students to adhere to the American Counseling Association's Code of Ethics, which prohibits counselors from discriminating on the basis of sexual orientation or imposing their personal beliefs on clients. (*Ward v. Wilbanks*; National ACLU Staff Attorneys Rose Saxe and Daniel Mach and Legal Director Michael J. Steinberg.)

School Takes Away Homecoming King Title from Transgendered Student – Oak Reed, a popular female-to-male transgendered student at Mona Shores High School, was elected homecoming king in 2010. However, school officials stripped him of the crown because he was transgendered. The students established a Facebook page called "Oak is My King" which quickly drew over 12,000 fans. Before the 2011 Mona Shores prom, the ACLU wrote a letter to demand that the school not discriminate against Oak and allow him to run for prom king. In response, the school announced that it would have a gender-neutral prom court. (National ACLU Staff Attorney John Knight, Michigan ACLU Staff Attorneys Jay Kaplan and Miriam Aukerman and Legal Director Michael J. Steinberg with assistance from cooperating attorneys from Sidley Austin.)

Sexual Orientation Employment Discrimination Case – A prisoner filed an employment discrimination case on his own, claiming that he was removed from his public works job because he is gay. A federal judge, without the benefit of any briefing, dismissed the lawsuit, ruling that there is no protection whatsoever for discrimination based on one's sexual orientation. The ACLU is representing the inmate on appeal arguing that, as most courts across the country have held, the government cannot discriminate against gay men and lesbians when there is no rational basis for the adverse treatment. (*Davis v. Prisoner Health Services*; National ACLU Staff Attorney Joshua Block and Michigan ACLU Staff Attorneys Miriam Aukerman and Jay Kaplan.)

Judge Dismisses Bioterrorism Charge Against HIV-Positive Man – Daniel Allen was accused of biting his neighbor during a physical altercation. In addition to charging him with assault and battery, the Macomb County Prosecutor charged him with bioterrorism because he is HIV-positive. The ACLU filed a friend-of-the-court brief arguing that the charges were based on inaccurate assumptions about how HIV is transmitted and that the Michigan terrorism statute was not designed to punish this sort of behavior. The judge, citing the ACLU brief, agreed and dismissed the charge in 2010. (*People v. Allen*; Staff Attorneys Jay Kaplan and Jessie Rossman.)

Transgendered Persons and Birth Certificates – A birth certificate may be changed in Michigan to reflect changes in a resident's status. For example, when a child is adopted, the birth certificate is changed to reflect the new parents. Similarly, if a transgendered person has "sexual reassignment surgery" and presents a surgeon's affidavit, the Michigan Office of Vital Statistics will change the gender marker on the person's birth certificate. While there are many types of gender reassignment surgery, the Office of Vital Statistics refused to change the gender marker on a person's birth certificate unless the person had genital surgery -- an often dangerous or cost prohibitive procedure. The state's new interpretation of the law caused humiliating problems for transgendered people because if the birth certificate could not be changed, neither could the driver's license and other forms of identification. The ACLU viewed Michigan's new definition of "sexual assignment surgery" as unduly narrow and inconsistent with other states' practices and was prepared to file a lawsuit. However, after several meetings, in 2010 the ACLU successfully convinced the state to improve its policy. (Staff Attorney Jay Kaplan and Legal Intern Celeste Davis.)

Equitable Parenthood – The ACLU filed a friend-of-the-court brief in 2011 urging the Michigan Supreme Court to address the case of Renee Harmon, a woman who raised three children for more than a decade with her same-sex partner, who was the biological parent. When the couple eventually spilt up, the biological mom refused to permit Ms. Harmon to have any contact with their children. The trial judge ruled that Ms. Harmon was an equitable parent and therefore was entitled to parenting time, but the Court of Appeals reversed. Unfortunately, the Michigan Supreme Court declined to take the case. (Staff Attorney Jay Kaplan.)

Rochester High School Stops Filtering LGBT Online Resources – Some high schools in Michigan have installed filters on their computers to block access to all LGBT resources, including information about school Gay Straight Alliance organizations. As part of the national "Don't Filter Me" campaign, the ACLU wrote a letter to Rochester High School explaining that a blanket ban on all LGBT online materials is unconstitutional censorship. The high school responded by fixing the settings. (Michigan ACLU Staff Attorney Jay Kaplan and National ACLU Staff Attorney Joshua Block.)

Arrested for Flirting in Kent County – The Kent County Sheriff's Department in the fall of 2010 implemented an undercover sting operation in Kent County parks to address reports of

public sexual activity. Undercover officers, pretending to be gay, approached male visitors to the parks and attempted to engage them in conversations regarding sexual activity. A number of men were arrested for flirting with the officers and/or responding to invitations to meet for sexual encounters at a later date or time and in a private location. Although there were no conversations about exchanging money for sex, several men were charged with solicitation and/or criminal sexual conduct. Those persons arrested were also issued a lifetime trespass order, prohibiting them from entering any Kent County parks. The ACLU reviewed the police reports and sent a letter to the Kent County Sheriff's office, expressing concerns about the constitutionality of the stings and some of the arrests. The county's lawyer said several months ago that the Sheriff's Department would revise its policy and meet with the ACLU, but no new policy has been adopted and it has not agreed to a meeting date. (Staff Attorneys Jay Kaplan and Miriam Aukerman.)

IMMIGRANT RIGHTS

Racial Profiling by ICE – The ACLU is representing two Latino residents of Grand Rapids, Thelma and Luis Valdez, who were detained and assaulted by agents from U.S. Immigration and Customs Enforcement (ICE) even though Luis is a U.S. citizen and Thelma is a lawful permanent resident. The mother and son drove to a relative's house to show their six-year-old cousin their new puppy when ICE agents pulled into the driveway demanding ID. Even though they both produced a Michigan driver's license, they were handcuffed at gunpoint. One agent banged Thelma's head against the car while yelling at her to admit that she was someone else. The ACLU has filed both a Federal Tort Claims Act complaint against ICE and a federal lawsuit to seek records about the disturbing incident under the Freedom of Information Act. (*ACLU v. ICE*; Staff Attorney Miriam Aukerman, Cooperating Attorney Rhett Pinsky, Legal Director Michael J. Steinberg and Michigan Immigrant Rights Center Attorney Susan Reed and Legal Fellow Maura Hagen.)

Deporting Crime Victims on Thanksgiving Day – In November 2012, after a stranger threatened Lazaro Mendoza and stole his property, Mr. Mendoza asked a neighbor to call the police. The Antrim County Sheriff's deputies came to Mr. Mendoza's home the next day as he was about to sit down to Thanksgiving dinner with his wife and guests. Rather than investigating the crime, the deputies began interrogating Mr. Mendoza, a farmworker from Mexico who has lived in the United States for approximately ten years, about his immigration status. The deputies took Mr. Mendoza, who had never committed a crime, and a guest away in handcuffs and turned them over to immigration authorities, who began deportation proceedings. The ACLU sent a letter to Immigration and Customs Enforcement ("ICE") on behalf of the two men arguing that it violated ICE's own policies to deport crime victims, since public safety is undermined when people do not trust law enforcement and are reluctant to report crimes. The ACLU also emphasized that ICE should end the deportation proceedings because the men only came to ICE's attention as a result of the illegal conduct by local police, who have no authority to detain

noncitizens solely for immigration law violations. The day after the ACLU sent its letter, ICE released the two men. (Legal Fellow Sarah Mehta and Staff Attorney Miriam Aukerman).

ACLU Warns State Jails About Costly, Unlawful Detention of Immigrants – In order to prevent future unlawful detention of immigrants, the ACLU, along with the Michigan Immigrant Rights Center (MIRC), sent letters to officials at every jail in the state clarifying their legal responsibilities when receiving federal requests to detain immigrants who should otherwise be released. The letter explained that when Immigration and Customs Enforcement (ICE) issues an "immigration detainer" for an individual, there has been no judicial ruling that the person has done anything wrong and jail officials may not legally detain that person for more than 48 hours. Moreover, the detainer is simply an optional request to hold the person, and ICE often does not reimburse the jail for the cost of that hold. (Staff Attorney Miriam Aukerman, Legal Director Michael J. Steinberg and MIRC Attorney Susan Reed.)

FREEDOM OF RELIGION AND BELIEF

Proselytizing During School – A few years ago a youth minister from a local church, while acting as a volunteer at South Haven High School, recruited students to become involved in church activities. After a student named Tyler Wiley changed his mind about attending a religious retreat sponsored by the church, the youth minister confronted Tyler in the lunch room and demanded that he pay for the cost of the retreat. Tyler asked to be left alone, but the minister refused and followed Tyler out of the lunch room. A school administrator then required Tyler meet with him and the youth minister and explain his behavior. When Tyler's parents complained, the superintendent admitted in a letter that the high school provided the youth minister with a room that he could "use during lunch for any recruiting or religious activities that he wants to conduct while at school." Tyler's parents then contacted the ACLU and we wrote to the superintendent outlining the several constitutional violations the school committed by sanctioning proselytizing at the school. The superintendent finally acknowledged the school district's mistakes and met with the ACLU to develop policies addressing religion. The new rules were adopted in 2011. (Cooperating Attorney James Rodbard, Legal Director Michael J. Steinberg, National ACLU Staff Attorney Heather Weaver, and Legal Intern Diana Cieslak.)

Religious Restrictions in Prison – In 2009 the ACLU agreed to represent Muslim and Seventh-day Adventist prisoners in a religious freedom class action in federal court. Although the Michigan Department of Corrections accommodates Jewish inmates by providing kosher meals, it denies Muslim inmates halal meals. Further, although inmates are excused from their prison jobs for many reasons -- including doctor appointments, therapy and visitation -- the MDOC will not release them from work on their Sabbath. The ACLU, working with the General Conference of Seventh-day Adventists, sued the MDOC under the Religious Land Use and Institutionalized Persons Act, so that the inmates' religious practices will be accommodated. The issues have

been briefed and oral argument is expected to be scheduled soon. (*Dowdy-El v. Caruso;* Cooperating Attorneys Daniel Quick, Doron Yitzchaki and Trent B. Collier of Dickinson Wright, Legal Director Michael J. Steinberg and Todd McFarland of the Conference of Seventh-day Adventists.)

ACLU Files U.S. Supreme Court Brief in Religious Freedom Case – The Michigan and National ACLU filed a friend-of-the-court brief in the U.S. Supreme Court on behalf of a teacher at a church-run school in Redford who sued the church for disability discrimination. The church has taken the position that the judge should dismiss the civil rights case because courts should not interfere in church matters. The ACLU argues that while faith communities clearly have the right to set their own religious doctrine free from government intrusion, they cannot break civil rights laws and discriminate against their employees for reasons unrelated to church doctrine. Because there is ample evidence in this case that the teacher, who primarily taught secular subjects, was fired because of her disability, and not for any religious reason, she should have her day in court. The Supreme Court will issue its opinion before the term ends in June 2012. (*Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*; National ACLU Staff Attorney Daniel Mach and Legal Director Michael J. Steinberg.)

JUVENILE JUSTICE

Kids Sentenced to Die in Prison – The United States is the only country in the world that sentences juveniles to life in prison without the possibility of parole. This inhumane practice is condemned throughout the world and is prohibited by international law. Yet, in Michigan, there are over 300 prisoners serving life without parole for offenses committed before the age of 18, including some who were as young as 14. The ACLU believes that the practice violates the constitutional ban on cruel and unusual punishment and that individuals sentenced as children should be entitled to parole hearings at some point to determine whether they still pose a threat and whether they deserve a second chance in society. The ACLU is challenging this practice in four separate cases. In July 2011, a judge ruled in favor of the ACLU on procedural issues and allowed a federal court challenge to proceed. Additionally, in November 2011, a judge in Kalamazoo heard our motion to strike down the sentence of Anthony Jones, who was sentenced to life without parole over 30 years ago for felony murder even though he did not intend for anyone to die; Jones participated in the robbery of a convenience store when a co-defendant unexpectedly shot and killed the store's owner. Finally, we have filed briefs in the Michigan Court of Appeals on behalf of three 14-year-olds sentenced to life without parole. (*People v. Jones*; *Hill v. Snyder*; *People v. Hawkins*; *People v. McCloud*; Cooperating Attorneys Deborah LaBelle and Ron Reosti, U-M Clinical Law Professor Kimberly Thomas, National ACLU Staff Attorneys Steven Watt and Ezekiel Edwards, Michigan ACLU Staff Attorney Dan Korobkin and Legal Director Michael J. Steinberg.)

Placed on a Tether for Life at Age 17 – Michael Cordes admitted in court that he acted impulsively when, at age 17, he touched a girl's breast. Because of a new law, the sentencing

judge not only imposed a prison sentence, but also ordered that Michael wear an electronic tether for the rest of his life once he was released. Michael has challenged the lifetime tether provision as unconstitutional and the ACLU filed a friend-of-the-court brief asking the Michigan Supreme to hear the case. The ACLU argued that the lifetime punishment is disproportionate to the crime and the offender and that no other state punishes people like Michael so severely. Unfortunately, the Supreme Court declined to hear the case. (*People v. Cordes*; ACLU Cooperating Attorney Ron Bretz.)

DRUG LAW REFORM

Wal-Mart Fires Employee of the Year for Positive Drug Test – After suffering for over ten years from chronic pain and nausea due to sinus cancer and a brain tumor, Joseph Casias finally found relief when he registered as a lawful medical marijuana patient with the Michigan Department of Community Health based on the recommendation of his oncologist. Joseph worked at the Wal-Mart in Battle Creek, where he was praised for his hard work and recognized as employee of the year. In accordance with the law, he never smoked marijuana at work or came to work under its influence. Wal-Mart nonetheless fired him for using “illegal drugs” after a drug test came up positive for marijuana. Because even a corporation as large and powerful as Wal-Mart may not ignore Michigan law when doing business in Battle Creek, the ACLU filed a lawsuit in June 2010 to get Joseph’s job back and is representing him now in the United States Court of Appeals. (*Casias v. Wal-Mart*; ACLU National Drug Law Reform Staff Attorney Scott Michelman, ACLU of Michigan Staff Attorney Dan Korobkin, and Co-Counsel Daniel Grow.)

Michigan Supreme Court to Hear First Medical Marijuana Case – The ACLU is representing a man with severe and chronic back pain in the first case before the Michigan Supreme Court to address medical marijuana. The Michigan Medical Marijuana Act (MMMA), which was enacted by an overwhelming majority of Michigan voters in 2008, allows individuals with a doctor’s recommendation to obtain a state-issued card and grow up to 12 marijuana plants in an “enclosed, locked facility.” Larry King, after receiving a medical marijuana card, grew his plants in an enclosed, locked, six-foot-high dog kennel. Nonetheless, he was charged with drug possession because the locked kennel did not have a roof. The ACLU will argue that King was following the MMMA, but even if he was not in strict compliance, the charges must be dismissed under the “affirmative defense” provision that protects people against criminal prosecution if they are using marijuana on the advice of a physician. (*People v. King*; ACLU Cooperating Attorney John Minock and Staff Attorney Dan Korobkin.)

ACLU Stops Eviction of Medical Marijuana Patient – After the Michigan voters approved the Medical Marijuana Act in 2008, 56-year-old Jeanette Keillor became a state-approved medical marijuana patient. She used a marijuana balm to treat the excruciating pain caused by Fibromyalgia and, as allowed by the law, grew a few plants in a locked closet of her rental house. Although her landlord gave her permission to grow the plants, the state housing authority

terminated her Section 8 housing subsidy when they found out she had marijuana in the house. The ACLU successfully challenged the termination in an administrative hearing in 2011. The judge ruled that, contrary to the housing authority's belief, federal law does not require the termination of tenants who are complying with Michigan's Medical Marijuana Act. (*In re Keillor*; Legal Fellow Zainab Akbar and Legal Director Michael J. Steinberg.)

Denying Parenting Time to Marijuana Patient – An Oakland County judge terminated a mother's unsupervised parenting time solely because she was a state-approved medical marijuana patient. The judge acted under the mistaken impression that the Michigan Medical Marijuana Act only protects patients against criminal prosecution. In fact, the act specifically provides, "A person shall not be denied custody or visitation of a minor for acting in accordance with this act, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated." The ACLU is representing the mother on appeal. (*Snowden v. Kivari*; Cooperating Attorney Marjory Cohen and Staff Attorney Dan Korobkin.)

Birmingham, Bloomfield Hills, Livonia and Wyoming Ban Medical Marijuana – In 2008, the Michigan Medical Marihuana Act was approved by an overwhelming majority of Michigan voters, including significant majorities in Birmingham, Bloomfield Hills, Livonia and Wyoming. Although the law bars state officials from arresting, prosecuting or in any way penalizing registered patients and caregivers who comply with the MMMA, all four cities enacted ordinances that completely ban medical marijuana. The ACLU has sued each of these cities arguing that their ordinances violate state law. Although the cities contend that they don't have to follow state law because marijuana is still illegal under federal law, courts across the country have been clear that states are not required to prohibit all drugs that are illegal under federal law. Additionally, federal authorities have said that they are not going to prosecute individual patients and caregivers who comply with state medical marijuana laws. The ACLU is representing registered patients whose doctors recommended medical marijuana to alleviate the symptoms of multiple sclerosis, glaucoma, and a neurological disorder that causes neuropathy and severe pain. The cases are pending in the Michigan Court of Appeals. (*Lott v. City of Livonia* and *Lott v. City of Birmingham*; Cooperating Attorneys Andrew Nickelhoff and Jerold Lax, Staff Attorney Dan Korobkin and Legal Director Michael J. Steinberg; *Ter Beek v. City of Wyoming*; Cooperating Attorney Michael Nelson and Staff Attorneys Dan Korobkin and Miriam Aukerman.)

DUE PROCESS

Mike's Hard Lemonade Case – Christopher Ratté, a University of Michigan professor, took his 7-year-old son, Leo, to a Detroit Tigers game in Comerica Park. Before they took their seats, Christopher purchased what he thought was lemonade from a stand advertising "Mike's Lemonade," and, not knowing that it contained alcohol, gave it to his son. During the ninth inning, a security guard saw Leo with a Mike's Hard Lemonade and alerted the police. Although a blood test revealed that Leo had no alcohol in his system and the police recognized that

Christopher had made an honest mistake, they turned Leo over to Child Protective Services. The agency then refused to release Leo to either his mother, who was not even at the game, or to Leo's aunt, who was a social worker and licensed foster parent. Rather, Leo was placed in a foster home for three days until attorneys from the University of Michigan were able to intervene. The ACLU filed a lawsuit in 2011 on behalf of the family to challenge the constitutionality of Michigan's child removal law, which permits the government to take custody of children without having to prove that the child is in immediate danger. (*Ratté v. Corrigan*; Cooperating Attorneys Abraham Singer, Adam Wolfe and Alice Rhee of Pepper Hamilton, Amy Sankaran and Legal Director Michael J. Steinberg.)

U-M Changes Trespass Rules After ACLU Advocacy – Until recently, University of Michigan public safety officers had the power to permanently ban any person from campus if the officer suspected the person of failing to comply with university rules. At least 2000 people were banned under this rule and face trespass charges if they step on campus – including for a political event that is open to the public. After the ACLU state and student chapter protested that the policy is unconstitutional and met with the general counsel, the university revised the policy. The new policy limits the circumstances under which a trespass warning can be issued, limits the duration of the warning to a year, has a better appeal process, and is more protective of free speech. (ACLU students Mallory Jones and Bennett Stein, Staff Attorney Jessie Rossman, Legal Director Michael J. Steinberg and Legal Fellow Zainab Akbar.)

Parolees Barred from Seeing Kids, Marrying and Going to Church – The Michigan Parole Board sometimes imposes automatic conditions of parole on inmates leaving prison that deny them fundamental constitutional rights – even though there are no individual determinations of whether the conditions are necessary to protect the community. In February 2009, the ACLU, working with Legal Aid of Western Michigan and the University of Michigan Clinical Law Program, filed a lawsuit on behalf of two men who were convicted for having sexual contact with young women who were just under of the age of consent. The men, having finished their prison terms, were now barred from seeing their own children even though psychological experts have determined that the children of these men would benefit from maintaining relationships with their fathers and the fathers pose no danger to their children. The men are also barred from going to church and marrying women who have children. In 2010, the case was successfully settled when the MDOC changed the parole conditions for our clients and began to conduct a more individualized assessment of former sex offenders to determine whether such harsh conditions are necessary. The ACLU continues to work for systemic changes to the process of assigning parole conditions that restrict parolees' fundamental rights. (*Houle v. Sampson*; Staff Attorney Miriam Aukerman, Legal Director Michael J. Steinberg and U-M Clinical Law Professors Paul Reingold, Kimberly Thomas, Joshua Kay and Vivek Sankaran.)

Terminating the Rights of Parents Without a Finding of Unfitness – The ACLU filed a friend-of-the-court brief in the Michigan Supreme Court on behalf of Wali Phillips, whose

parental rights were terminated even though there was no court finding that he had ever neglected or abused his children. When Mr. Phillips was legally separated from the mother of his young children, the mother left the kids at home alone. Although Mr. Phillips had done nothing wrong, the court ordered that both he and the mother comply with a "service plan." Phillips generally complied with the plan and went to parenting classes. However, because he missed a couple of counseling sessions due to a conflict with a class, the court terminated his parental rights. The ACLU brief argues that it is unconstitutional for the state to take away a parent's right to care for his or her children without a court finding that the parent is unfit. The case was argued in October 2011 and we are waiting for a decision. (*In re Mays*; ACLU Cooperating Attorneys Amy Sankaran and Timothy Pinto and ACLU Legal Director Michael J. Steinberg.)

Young Man with No Conviction Placed on Sex Offender Registry – When Robert Dipiazza was 18 years old, he had consensual sex with his then-girlfriend (and later wife) Nanette Trowbridge, who was underage at the time. Although Nanette's parents supported her relationship with Robert, Robert was charged with criminal sexual conduct when Nanette's school reported the relationship to the police. Because Robert posed no threat to anyone, the judge put him in a diversionary program for youthful offenders, and after a successful probationary period Robert's criminal charges were dismissed. Strangely, although Robert had no conviction, Michigan law required him to register as a sex offender, making it very difficult for him to get a job. The ACLU filed a friend-of-the-court brief in the Michigan Court of Appeals arguing that placing Robert on the sex offender registry under the circumstances was cruel or unusual punishment. In 2010 the appeals court issued a groundbreaking decision agreeing that placing Robert on the registry was unconstitutional. (*People v. Dipiazza*; Cooperating Attorney Christine Pagac.)

Right to Judicial Review of State Agency Decisions – The ACLU submitted a friend-of-the-court amicus brief in the Michigan Supreme Court arguing that individuals who have been aggrieved by a government agency decision have a right under the Michigan Constitution to ask a state judge to correct a mistake. The brief argued that judicial review and separation of powers is essential to deter and address government abuse. In May 2011, the court issued a decision adopting the ACLU position. (*Iron Mountain Information Management, Inc. v. Naftaly*; Cooperating Attorney Marshall Widick, ACLU Legal Director Michael Steinberg and Legal Intern Matthew Spurlock.)

College Policy Barring All Students on Sex Offender Registry Amended – In early 2010, Lake Michigan College adopted a policy requiring the expulsion of any student who is listed on the Michigan Sex Offender Registry without any hearing or determination that the student was dangerous. The ACLU represented a college student who had been expelled, despite having wide support inside and outside the college. After the ACLU got involved, LMC developed a new policy for all LMC students, under which a student cannot be expelled unless there is a finding that she or he poses a risk to public safety. The ACLU client won reinstatement to the

college after a hearing under the new policy where the college considered letters submitted by his professors, therapist, landlord and parole officer. (ACLU Staff Attorneys Miriam Aukerman and Jessie Rossman and Cooperating Attorney Greg Ladewski.)

Mother Sent to Jail for Daughter's Crime – A district judge in Lapeer County ordered Lisa Capistrant to undergo drug and alcohol testing as a condition of her 14-year-old daughter's probation for shoplifting cigarettes. Due to her daughter's illness, Ms. Capistrant and her daughter were unable to drive to the testing location for one of appointments; instead, the probation officer came to their home and picked up the urine samples. However, the judge refused to accept the tests and sent Ms. Capistrant to jail for violating her daughter's probation conditions. In November 2011, the ACLU filed a motion to stay the sentence and for reconsideration in light of the fact that Ms. Capistrant had not been represented by an attorney or given the opportunity to present a defense. The judge denied Ms. Capistrant's motions and required her to serve her sentence. (*In re C.C.*; Cooperating Attorney Gregory Gibbs and Legal Fellow Sarah Mehta.)

Right Not to Freeze to Death – In January 2009, Thomas Pauli, a homeless man, froze to death on the street in Grand Rapids after he could not get into emergency shelters. All shelters in the city are located within 1000 feet of a school, and Pauli, who was required to register as a sex offender due to a 1991 conviction, was not allowed to "reside" within 1000 feet of a school. The ACLU represents five homeless registrants who, along with two Grand Rapids area homeless shelters, filed a federal lawsuit arguing that the residency restrictions do not apply to shelters, and that forcing people to sleep on the street is cruel and unusual punishment. The matter has been submitted for summary judgment, and a decision is pending. (*Poe v. Snyder*, Staff Attorney Miriam Aukerman.)

Unfairly Barred for Life from Working as Nurse – R.V. is a certified nurse aid who worked in a nursing home from 2001-2009. In 2009, the Department of Community Health informed R.V. that she was barred for the rest of her life from working in long-term care, thereby forcing R.V. to give up her career. The reason given was that almost a decade ago R.V. had participated in a diversion program for youthful offenders after altering the quantity on a prescription for painkillers she was receiving for tooth pain. R.V. completed the diversion program and does not have a criminal record. While R.V. is barred from her profession for life, individuals with convictions for homicide, torture or criminal sexual conduct are barred for fifteen years. Other individuals with criminal records are barred for shorter periods. The ACLU is representing R.V. in her appeal and is arguing that (a) it is irrational to bar R.V. from working as a nurse for life while allowing others to return; and (b) imposing a lifetime bar on employment on R.V., particularly after she has demonstrated through eight years of solid employment that she is not a threat to the people in her care, violates due process. (*In the Matter of R.V.*; Staff Attorney Miriam Aukerman.)

Attorney Not Allowed to Visit His Client in Police Custody – In December 2010 we were informed that a man who had been arrested for murder was not permitted to speak with his attorney while in police custody in Clinton Township. When the suspect's attorney walked into the police station and asked to speak with his client, he was told that attorneys are not permitted to speak with their clients at the police station. Alarmed by this apparent violation of the constitutional right to counsel, the ACLU of Michigan wrote a letter to the chief of police asking him to take immediate steps to correct the problem. Within days, the police chief wrote back with a description of the measures he had taken to ensure that such violations of the right to counsel would not occur again. (Staff Attorney Dan Korobkin and Legal Intern John Zervos.)

DISABILITY RIGHTS

Five-Year-Old Denied Right to Bring Service Dog To School – Ehlena Fry is a young girl with cerebral palsy who needs assistance with many of her daily tasks. Thanks in part to the help of the Parent Teacher Organization at her elementary school, Ehlena's parents raised $13,000 to buy a trained, hypoallergenic service dog named Wonder to help Ehlena become more independent. However, the Napoleon Community Schools refused to allow Wonder in the school, contending that human assistants could help the girl and that the dog is distracting. The ACLU represented Elena in 2010 and wrote a letter arguing that she was entitled to have Wonder's assistance at school under the Americans with Disabilities Act. The ACLU then negotiated an agreement with the school district to allow Wonder in the classroom for the rest of her kindergarten year. Once the school year ended, the ACLU filed a complaint on Fry's behalf with the Department of Education to gain more permanent access for Wonder. The complaint is currently pending. (Cooperating Attorney Gayle Rosen and Staff Attorney Jessie Rossman.)

PRISONER RIGHTS

Prison Health Care – In a longstanding ACLU lawsuit against the Michigan Department of Corrections, a federal judge strongly criticized its failure to provide adequate medical and mental health care. In 2006, following the death from dehydration of a mentally ill prisoner who had been chained naked to a concrete slab for four days in an unventilated cell, Judge Richard Enslen ruled that MDOC was practicing torture in violation of the Eighth Amendment. The judge appointed an independent medical monitor and threatened a fine of one million dollars plus $10,000 per day if the MDOC did not fill staff vacancies to provide basic medical and mental-health care to prisoners. However, the case was then assigned to another judge who fired the monitor and held that prison officials were not "deliberately indifferent" to prisoners' serious medical and mental-health needs. The Sixth Circuit upheld the decision, effectively putting an end to federal oversight of mental health care in Michigan's prisons. The case remains active on issues related to prescription medications, end-of-life care, and other medical issues affecting prisoners with extremely grave medical conditions. (*Hadix v. Caruso*; Attorneys Elizabeth Alexander, Patricia Streeter and Staff Attorney Dan Korobkin.)

Unconstitutional Conditions in the Eaton County Jail – David Bogle, who has Crohn's Disease, was convicted of a misdemeanor and sentenced to the Eaton County Jail. Although he brought his doctor's notes about the need for narcotic prescriptions to treat the excruciating pain caused by the disease, the jail told him it had a no-narcotic prescription drug policy. The jail also refused to allow him to speak privately with his attorney over the phone, telling him that they recorded all telephone conversations and made no exceptions for attorney-client calls. In 2009 the ACLU filed a lawsuit challenging both policies. Bogle was forced to drop his medication claim, but the ACLU's challenge to the jail's telephone policy remains pending. (*Bogle v. Raines*; Cooperating Attorneys Daniel Manville and Patricia Selby and Staff Attorney Dan Korobkin.)

Shining a Light on Prisoner Abuse – The American Friends Service Committee (AFSC) is a Quaker peace and justice organization that, among other projects, works to improve prison conditions. When the AFSC receives complaints about prison guards using excessive force, they investigate the complaint by asking for documents from the Michigan Department of Corrections (MDOC) such as critical incident reports. However, recently a MDOC official told the AFSC that it was no longer going release critical incident reports even when they were sought under the Freedom of Information Act. In 2011, after the ACLU filed a lawsuit challenging the new practice, the MDOC agreed to turn over the reports and change its policy. (*AFSC v. MDOC*; Cooperating Attorney Stephen Borgsdorf of Dykema and Legal Director Michael J. Steinberg.)