ACLU OF MICHIGAN LEGAL DOCKET – 2011-2012

RIGHT TO EDUCATION

The Right to Read – If the right to a public education means anything, it means that students should be taught to read. In a first-of-its-kind case, the ACLU has filed a class-action lawsuit on behalf of students in the Highland Park Public Schools who are the victims of outrageously poor oversight, management and teaching controls on both the state and local levels. This failure on the part of state and local actors has left a generation of children reading as many as five grade levels below where they should be performing. Many students were rendered functionally illiterate while still being passed along from one grade to the next. In this groundbreaking lawsuit filed in Wayne County Circuit Court in July 2012, the ACLU is arguing that both the State of Michigan and the Highland Park School District are violating state law and the Michigan Constitution by allowing students to fall so far behind in basic literacy skills and reading proficiency. The case immediately garnered national attention and has been featured in the *Washington Post* and on CNN. In August 2012 the defendants filed numerous motions asking the court to dismiss the lawsuit, but Wayne County Circuit Judge Robert Ziolkowski has allowed the case to go forward. (*S.S. v. State of Michigan*; Executive Director Kary Moss; Staff Attorneys Rick Haberman and Mark Fancher; Cooperating Attorneys Mark Rosenbaum, Steve Guggenheim of Wilson Sonsini, and Jennifer Salvatore and Nakisha Chaney of Nacht Law; Legal Fellow Shana Schoem; and Legal Director Michael J. Steinberg.)

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. While these cases highlighted the problem, unfortunately unconstitutional "pay or stay" sentencing continues throughout Michigan. The ACLU is now building support for a new court rule that would ban the practice and is engaging in renewed courtwatching. In September 2012 the ACLU also filed a friend-of-the-court brief in a case that would allow the Court of Appeals to address the constitutionality of incarcerating the poor based on their inability to pay. (*People v. DeWitt,*

People v. Smith, People v. Preston, People v. Bellinger, People v. Clark, People v. Bell, People v. Bailey; National ACLU Staff Attorney Elora Mukherjee, Michigan ACLU Staff Attorneys Miriam Aukerman and Dan Korobkin, Cooperating Attorneys Julie North, Patrick Meagher, Justine Beyda and Yelena Konanova of Cravath Swaine & Moore, Ken Mogill, Glenn Simmington, Anthony Greene, Peter Walsh, Martin Meade, Val Newman, Frank Eaman, Melissa El, Penny Beardslee, and Elizabeth Geary, and Legal Director Michael J. Steinberg.)

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. In December 2011, Judge Baird denied the state's second motion for summary disposition. However, while the parties prepared for discovery and trial, the state filed yet another appeal challenging plaintiffs' standing and the class certification order. The Court of Appeals agreed to hear the second appeal and the case was argued in December 2012. (*Duncan v. Michigan*; Cooperating Attorneys Julie North, Sarita Prabu, and Justine Beyda of Cravath Swaine & Moore, Mark Granzotto, Frank Eaman, National ACLU Staff Attorney Elora Mukherjee, Michigan ACLU Staff Attorney 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. In a victory for free speech and the rights of the poor, Judge Robert Jonker ruled in August 2012 that the Michigan law is unconstitutional and enjoined its enforcement throughout the state. The Michigan attorney general is appealing the decision to the U.S. Court of Appeals. (*Speet v. Schuette*; 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 represented Ms. Likine in the Michigan Supreme Court and argued that it is unconstitutional to convict a person for being too poor to make court-ordered payments. In July 2012 the Michigan Supreme Court ruled in Likine's favor, ruling that she should have been permitted to argue that it was "impossible" for her to pay child support. (*People v. Likine*; Professors David Moran and Bridget McCormack of the University of Michigan Innocence Clinic, Cooperating Attorney Mark Kriger, and Legal Director Michael J. Steinberg.)

It's Not a Crime to Be Homeless – Caleb Poirier is a homeless man in Ann Arbor who lived on public property near a highway in a self-governing encampment for homeless persons called "Camp Take Notice." 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. Subsequently, the ACLU 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, several committees were formed to address both the short- and long-term issues surrounding these homeless individuals, and Camp Take Notice survived in Ann Arbor for two more years. However, in June 2012 the Michigan Department of Transportation (which owns the land) announced that it was evicting the campers, giving them 30 days to leave. The state did provide the campers with temporary housing assistance, and the ACLU continued to work with religious and social services organizations to secure legal support as they search for an alternative plot of land where the camp can be reinstated. (*People v. Poirier*; Staff Attorneys Jessie Rossman and Sarah Mehta, Cooperating Attorney David Blanchard, and Legal Director Michael J. Steinberg.)

RACIAL JUSTICE

Holding Wall Street Accountable for Predatory Mortgages in Detroit – In October 2012 the ACLU filed a groundbreaking class action lawsuit on behalf of African American Detroit homeowners against the Wall Street bank Morgan Stanley for its role in shaping the high-risk predatory loans that contributed to the foreclosure crisis and the collapse of once-vibrant Detroit neighborhoods. The ACLU represents five African American homeowners who are facing foreclosure due to the risky and abusive loan terms they received through the now-bankrupt subprime lender New Century. Between 2004 and 2007, Morgan Stanley purchased loans from New Century and, as its most significant customer, shaped New Century's lending irresponsible and destructive practices. By 2007, Detroit was number one of the hundred largest metropolitan areas with the highest foreclosure rates. Nearly 45,000 homes stood vacant by 2008, creating virtual wastelands in Detroit. Moreover, this devastation had a clear racial character: New Century's African American customers in the Detroit area were 70 percent more likely to get a subprime loan than white borrowers with similar financial characteristics. The lawsuit is the first of its kind, brought on behalf of homeowners, seeking to hold a Wall Street bank accountable

under the Fair Housing Act for the devastation to communities of color. (*Adkins v. Morgan Stanley*; Attorneys (partial list): Larry Schwartztol, Dennis Parker, and Rachel Goodman of the National ACLU; Staff Attorney Sarah Mehta and Legal Director Michael J. Steinberg of the Michigan ACLU; Stuart Rossman of the National Consumer Law Center; and Elizabeth Cabraser of Leif Cabraser Heimann & Bernstein.)

Fighting to Save Race-Conscious Admissions – 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 have successfully argued 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 in November 2012 the entire Sixth Circuit ruled "en banc" in our favor in by a vote of 8-7. Michigan Attorney General Bill Schuette has asked the U.S. Supreme Court to hear the case. (*Cantrell v. Snyder*; Attorneys (partial list): Mark Rosenbaum, Dennis Parker, Mark Fancher and Michael J. Steinberg of the ACLU; Melvin Butch Hollowell of the Detroit NAACP; Joshua Civin of the NAACP Legal Defense Fund; Karen DeMasi of Cravath Swaine & Moore; and constitutional law professors Erwin Chemerinsky and Lawrence Tribe.)

U.S. Citizen Racially Profiled, Threatened with Deportation by State Police – Tiburcio Briceno is a United States citizen of Mexican origin who works as a truck driver. In 2011, Mr. Briceno was pulled over by the Michigan State Police, allegedly for a traffic violation (although no ticket was written). Based on Mr. Briceno's lack of fluency in English, the officer immediately asked about Mr. Briceno's legal status, ignoring his valid drivers' license, and threatened him with deportation if he didn't admit to being unlawfully present in the United States. The police officer then called Customs and Border Patrol (CBP) and had Mr. Briceno's company van impounded. When CBP arrived, they realized that Mr. Briceno was in fact a U.S. citizen and released him. In March 2012 the ACLU wrote a letter to the Michigan State Police regarding this incident of racial profiling and attempted immigration enforcement by state police. In response to the letter and media attention, the MSP launched an investigation into the incident. In November 2012,the MSP investigators concluded that Mr. Briceno's charges were true and indicated that appropriate discipline would be imposed on the responsible officer. The ACLU is following up with the MSP to ensure that systemic changes are also made so that other motorists do not suffer similar mistreatment. (Staff Attorneys Miriam Aukerman and Sarah Mehta and Legal Director Michael J. Steinberg.)

ACLU Sues for FBI Records on Racial Mapping – 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. The ACLU was then able to confirm that the FBI has been collecting data on Middle Eastern and Muslim populations, but the FBI continued to refuse to release documents describing the details. Judge Lawrence Zatkoff ruled in favor of the FBI in October 2011, and the ACLU has filed an appeal. (*ACLU of Michigan v. FBI*; Cooperating Attorney Stephen Borgsdorf of Dykema, Michigan ACLU Staff Attorney Mark Fancher, and National ACLU Staff Attorneys Hina Shamsi and Nusrat Choudhury.)

Using Restorative Justice to Combat Mass Incarceration – African Americans constitute 13 percent of the U.S. population, but 40 percent of U.S. prisoners. Black males are jailed at a rate of more than 6.5 times that of white males. In order to address the problem of over-incarceration, the ACLU of Michigan is working with Wayne County judges, prosecutors and defense attorneys to establish a restorative justice program for the Wayne County criminal courts. Restorative justice is an effective alternative to incarceration that provides opportunities for offenders and victims to learn from each other, to acknowledge the seriousness of the offenses that have been committed, and to participate in a process of repairing damage and restoring relationships. (Staff Attorney Mark Fancher and Jeffrey L. Edison of the National Conference of Black Lawyers-Michigan Chapter.)

Reforming the Foster Care System for American Indians – According to documents obtained by the ACLU through a FOIA request, the Michigan Department of Human Services (DHS) denies foster care licenses to more than half of American Indian grandparents who take care of their grandchildren. Because only foster care parents who are licensed receive financial assistance, scores of Indian grandparents are being denied the resources they need to support the children entrusted to their care. To address the problem, the ACLU initiated a series of meetings with DHS officials that resulted in the agency's full review of application documents; an ongoing process of cultural education of DHS personnel; a special foster parent orientation session for Indian grandmothers; and the designation of individuals to assist Indian applicants navigate the application process. These discussions and reforms are ongoing. (Staff Attorney Mark Fancher.)

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 attorney's 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 ten-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.)

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.)

LGBT RIGHTS

Taking Away Health Insurance from Same-Sex Partners – In December 2011 the Michigan legislature passed, and Governor Snyder signed, a mean-spirited bill that made it illegal for most public employers to voluntarily provide health insurance coverage to same-sex domestic partners of employees. The ACLU filed an equal protection challenge in federal court on behalf of several couples and requested an injunction. Oral argument took place before Judge David Lawson in August 2012 and we are awaiting a decision. (*Bassett v. Snyder*; Cooperating Attorney Amy Crawford of Kirkland & Ellis, National ACLU Staff Attorneys John Knight and Amanda Goad, Michigan ACLU Staff Attorney Jay Kaplan, and Legal Director Michael J. Steinberg.)

ACLU Stops Attempt to Void Same-Sex Second-Parent Adoption – About ten 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 in 2005 the couple jointly petitioned the family court to grant a second-parent adoption so that Julianna could also become a legal parent. 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 she asked the judge to void the second-parent adoption—arguing that such adoptions are illegal in Michigan. The ACLU successfully represented Julianna in the trial court and on appeal. In December 2012 the Michigan Court of Appeals ruled that the family court had jurisdiction to grant a second-parent adoption and therefore Melissa could not nullify Julianna's legal relationship with her child. (*Usitalo v. Landon*; Cooperating Attorney Sarah Zearfoss, Staff Attorney Jay Kaplan, and Legal Director Michael J. Steinberg.)

Federal Court Asked to Rule on Second-Parent Adoptions, Same-Sex Marriage – A non-ACLU lawsuit was filed in federal court on behalf of two lesbian mothers who were denied the ability to jointly adopt their three special-needs children. The suit alleges that to deny gay parents the right to jointly adopt children violates the equal protection rights of both parents and children. After the federal judge hearing the case suggested to the plaintiffs that the case is really

about same-sex marriage equality, the plaintiffs amended their complaint to challenge the denial of their right to marry as well. In December 2012 the ACLU filed a friend-of-the-court brief in support of the mothers' right to jointly adopt, arguing that their right to jointly adopt a child need not be tied to their marital status under Michigan law. (*DeBoer v. Snyder*; National ACLU Staff Attorney Rose Saxe, Michigan ACLU Staff Attorney Jay Kaplan, and Legal Director Michael J. Steinberg.)

South Lyon Teacher Suspended for Playing Pro-Gay Song in Class – A performing arts teacher in South Lyon was suspended without pay after she permitted one of her students to play a recording of "Same Love," a popular song in support of LGBT equality, and another student complained. In the teacher's write-up the principal maintains that the subject matter in the song was "controversial," "politically charged" and contained "obscenities" (the word "damn" is said once), and that the teacher violated a policy that requires instructors to get prior approval from administrators before playing recorded material in class. In December 2012 the ACLU sent a Freedom of Information Act request to the District regarding how other alleged similar violations of the policy have been handled, expressing concern that the District may have been citing the policy as a pretext to punish the teacher and censor the song's message regarding tolerance and acceptance of LGBT people. Thanks to the advocacy efforts of the ACLU and hundreds of supporters, the teacher's suspension was subsequently lifted by the Superintendent and her pay was restored. (Staff Attorney Jay Kaplan.)

Anti-Bullying Policies Are Constitutional – The mother of two students at Howell High School filed a lawsuit alleging that the school district's anti-bullying policies violate her children's freedom of speech and religion because they were raised to believe that homosexuality is wrong. In November 2012 the ACLU filed a friend-of-the-court brief in the case, arguing that both anti-bullying policies and First Amendment rights of students can co-exist and that Howell's policy does not impinge on religious students' First Amendment rights. (*Glowacki v. Howell Public School District*; National ACLU Staff Attorney Rose Saxe, Michigan ACLU Staff Attorneys Jay Kaplan and Dan Korobkin, and Legal Director Michael J. Steinberg.)

Sperm Donors Are Not Absentee Fathers – Pamela Maxey and her same-sex partner, Judi Stilson, had a child together in 2006 through artificial insemination with a known sperm donor. The sperm donation was based on a standard written agreement that the donor would play no parental role nor have any financial responsibility for the child. When the economy crashed, the child's parents fell on hard times and sought public assistance such as health care for the child and food stamps for their family. The Department of Human Services (DHS), which administers public assistance programs, then sued the sperm donor for child support, arguing that he had been an "absentee father" for the past five years. If DHS had been successful, the sperm donor would have become a legal parent with custody and visitation rights—despite the explicit agreement between him and the child's parents that he was only donating sperm so that they could have a child. The ACLU represented Pamela, the child's biological mother, and asked the court to dismiss DHS's child support action. In July 2012 Kent County Circuit Judge George Jay Quist agreed with the ACLU and dismissed the case. (*Maxey v Fitch*; National ACLU Staff Attorney Rose Saxe, Michigan ACLU Staff Attorneys Miriam Aukerman and Jay Kaplan, and Cooperating Attorney Mark Haslem.)

ACLU Wins Sexual Orientation Discrimination Case in Federal Court of Appeals – A state 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 represented the inmate on appeal, arguing that under the Equal Protection Clause of the Fourteenth Amendment, the government cannot discriminate against gay men and lesbians when there is no rational basis for the adverse treatment. In May 2012 the U.S. Court of Appeals agreed with the ACLU and reversed the dismissal of the lawsuit, holding that Davis alleged sufficient facts regarding anti-gay bias to allow the case to go forward. (*Davis v. Prisoner Health Services*; National ACLU Staff Attorney Joshua Block and Michigan ACLU Staff Attorneys Miriam Aukerman and Jay Kaplan.)

Arrested for Flirting in Kent County – In 2010 the Kent County Sheriff's Department implemented an undercover sting operation in public parks to address reports of 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 "trespass" order, prohibiting them from entering any Kent County parks for the rest of their lives. The ACLU reviewed the police reports and sent a letter to the Kent County Sheriff's Department in June 2011, expressing concerns about the constitutionality of the stings and some of the arrests. Almost a year later, we finally met with the Sheriff and his staff, where they indicated that they are no longer arresting men in the park for flirting behavior and agreed to provide LGBT sensitivity training to its staff. The ACLU sent a follow-up letter in May 2012 continuing to protest the lifetime bans from entering the park for men who were arrested as part of the sting. (Cooperating Attorney Robert Eleveld and Staff Attorneys Jay Kaplan and Miriam Aukerman.)

Grad Student Studying Counseling Refuses 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. In January 2012 the Court of Appeals remanded the case for a factual finding of whether the graduate student's refusal to counsel LGBT clients would violate the American Association of Counseling Code of Ethics, and the case ultimately settled. (*Ward v. Polite*; National ACLU Staff Attorneys Rose Saxe and Daniel Mach and Michigan ACLU 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.)

Equitable Parenthood – The ACLU filed a friend-of-the-court brief 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, in July 2011 the Michigan Supreme Court declined to take the case. (*Harmon v. Davis*; Staff Attorney Jay Kaplan and Legal Director Michael J. Steinberg.)

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 in March 2011 explaining that a blanket ban on all LGBT online materials is unconstitutional censorship. The high school responded by fixing the settings. (National ACLU Staff Attorney Joshua Block and Michigan ACLU Staff Attorney Jay Kaplan.)

VOTING RIGHTS

Citizenship Checkbox at the Polls – In the summer of 2012, the Michigan Legislature passed a bill that would have required voters to check a box affirming their United States citizenship before they can receive a ballot. The measure made little sense because you must already be a U.S. citizen in order to register to vote. Voting rights advocates opposed the law, arguing that it was unnecessary, redundant, and could be used to intimidate some voters on the basis of race or language proficiency. Wisely, Governor Snyder vetoed the legislation. Then, in spite of the veto, Secretary of State Ruth Johnson unilaterally announced that she would require voters to check a citizenship box anyway before receiving a ballot. Alarmed that the Secretary of State was imposing new and potentially dangerous voting requirements that were not authorized by any law, the ACLU joined a nonpartisan coalition of voting rights advocates in filing a federal lawsuit. In October 2012 Judge Paul Borman ruled that the checkbox was likely unconstitutional and issued a preliminary injunction ordering the Secretary of State to remove it from the voter application forms for the November 2012 election. (*Bryanton v. Johnson*; Staff Attorney Dan Korobkin and Co-Counsel Andrew Nickelhoff and Mary Ellen Gurewitz of Sachs Waldman and Maryann Parker of the SEIU.)

Protecting Representative Democracy – Public Act 4 authorized the appointment of "emergency managers" who were granted sweeping, far-reaching powers to displace or in some cases even dissolve local governments and school districts. Opponents of Public Act 4

mobilized, and in 2012 they collected more than 200,000 signatures from Michigan residents who wanted a referendum on the law at the next general election. However, the petition was then blocked by a party-line vote of the State Board of Canvassers not to allow the referendum on the ballot, ostensibly due to a technical defect in the way the petitions had been printed. The ACLU of Michigan filed a friend-of-the-court brief arguing that the Board of Canvassers' failure to certify the petition violated the people's right to a referendum guaranteed by the Michigan Constitution. After favorable rulings by both the Michigan Court of Appeals and the Michigan Supreme Court, Michigan voters were given the opportunity to vote to retain or scrap the law. To educate the public in the period leading up to the referendum, the ACLU of Michigan published *Unelected & Unaccountable: Emergency Managers and Public Act 4's Threat to Representative Democracy*. Public Act 4 was ultimately rejected by the voters in the November 2012 election. (*Stand Up for Democracy v. Board of State Canvassers*; Staff Attorney Mark Fancher.)

Voting Rights for the Poor – The National Voter Registration Act requires all public assistance offices to help applicants register to vote. In recent years, the Michigan Department of Human Services has failed to comply with this law. Working with Demos and other national voting rights advocates, the ACLU identified potential plaintiffs for a major voting rights lawsuit and prepared to file suit in early 2012. Under pressure, the DHS and Michigan Secretary of State voluntarily agreed to change its practices to comply with federal law. (Legal Director Michael J. Steinberg, Legal Fellow Alexandra Brennan, Staff Attorney Dan Korobkin, and Co-Counsel Lisa Danetz of Demos and Mark Posner of the Lawyers Committee for Civil Rights.)

FREEDOM OF SPEECH

Jailed Over Christmas for Swearing – In December 2012 LaRue Ford, a social worker with no criminal record, attempted to take care of an unpaid traffic ticket from Berrien County so she could obtain an Indiana driver's license. After getting the run-around for weeks over the phone, she drove to the district clerk's office in Niles only to learn that she had to pay yet another fee. As she left the clerk's office to go to an ATM, she swore to herself. Although LaRue had done nothing to disrupt the proceedings of the court, when she returned to pay her fine, a court officer escorted into the courtroom and Judge Dennis Wiley charged her with "contempt of court" for uttering a profanity. Judge Wiley set the bond at $5000, which was more than her family could afford. Consequently, she spent more than a week in jail, including Christmas, until the ACLU got involved and filed a successful emergency appeal to release Ms. Ford from jail. (*People v. Ford*; Cooperating Attorneys Megan Reynolds and John Targowski and Staff Attorney Miriam Aukerman.)

Prosecuted for Protesting with Bicycle Horn – When Sean Crawford, Chris Lamere and Robert Mabbit decided to participate in a peaceful protest in Benton Harbor against Public Act 4, the emergency manager law, they did not expect to end up facing jail time. But all three were charged with violating a noise ordinance because they tooted horns during the demonstration, which was held in a public park in the middle of the afternoon. The ACLU filed motions to dismiss the criminal charges, arguing that the ordinance unconstitutionally violates the protestors' rights to free speech and assembly. Berrien County Circuit Judge Alfred Butzbaugh

agreed with the ACLU and ordered the charges dismissed in December 2012. (*City of Benton Harbor v. Crawford*; Cooperating Attorneys John Targowski and Erin Archerd and Staff Attorney Miriam Aukerman.)

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. When the AATA still refused to run the ad, the ACLU filed a free speech case in federal court. In November 2012 Judge Mark Goldsmith ruled that AATA's advertising policy was unconstitutional and that AATA violated the activist's First Amendment rights by rejecting his ad. (*Coleman v. AATA*; Staff Attorney Dan Korobkin and Legal Director Michael J. Steinberg.)

Political Speech in Bars and Restaurants – During the 2012 election year the ACLU began to receive complaints that the Michigan Liquor Control Commission was enforcing an old administrative regulation that prohibits bars and restaurants that serve alcohol from posting political ads anywhere on their property. Signs about sports teams and beer were allowed, but a sign that said "Vote for Mitt Romney" or "Re-elect Barack Obama" were prohibited. In October 2012 the ACLU filed a First Amendment lawsuit on behalf of the owners of Ann Arbor's popular Aut Bar, who wanted to post a sign encouraging patrons to vote for a progressive candidate in a local judicial race. After the lawsuit was filed, the Liquor Commission agreed to immediately stop enforcing the rule. The ACLU is now working with the commission to make sure the rule is formally revoked. (*Contreras v. Deloney*; Cooperating Attorney Genevieve Scott and Legal Director Michael J. Steinberg.)

Criminal Charges Against Peaceful Puppy Mill Protester Dismissed – Pam Sordyl leads "Puppy Mill Awareness," a group of concerned citizens who peacefully demonstrate on public property near pet stores that do business with abusive puppy mills. In April 2012, after Sordyl and her group began exercising their First Amendment rights to picket on public sidewalks near Westland Dog Food, she was charged with a misdemeanor for "posting signs" in violation of a city ordinance. When she went to court, she learned that the city attorney who was prosecuting her worked for the same law firm that represented the dog food store. The ACLU stepped in to represent Sordyl, successfully moved to have the prosecutor disqualified for a conflict of interest, and in September 2012 persuaded the replacement prosecutor to dismiss the case. (*City of Westland v. Sordyl*; Cooperating Attorneys Susan Kornfield and Jonathan Young of Bodman, Bill Wertheimer, and Staff Attorney Dan Korobkin.)

Banned Books in the Public Schools – In January 2012 parents and teachers at the Plymouth-Canton Schools reached out to the ACLU when the school superintendent removed the Pulitzer-prize-winning novel *Beloved* by Toni Morrison, and award-finalist *Waterland* by Graham Swift, from the AP English curriculum. The ACLU wrote to the superintendent and the school board,

urging them to reject censorship and allow students enrolled in the AP English class access to the "marketplace of ideas." The schools subsequently reinstated both books in the curriculum. (Staff Attorney Sarah Mehta and Cooperating Attorney Loren Khogali).

Anonymous Bloggers Sued by Law School – After several anonymous Internet bloggers who used to attend Cooley Law School complained online that Cooley misled and mistreated students, Cooley sued the bloggers for defamation. Because Cooley didn't know the identity of the bloggers, it wanted to use the court's subpoena power to force the web company that hosted the blogs to reveal the bloggers' identities. Since the days of the *Federalist Papers* and *Common Sense*, anonymous speech has been recognized as central to the free-speech tradition. Although truly defamatory speech is not protected by the First Amendment, negative opinions and rhetorical commentary are not defamatory and are entitled to First Amendment protection. The ACLU therefore filed a friend-of-the-court brief in the Court of Appeals supporting the bloggers' right to remain anonymous unless and until Cooley can actually prove that their speech is not protected by the First Amendment. The case was argued in December 2012. (*Thomas Cooley Law School v. Doe*; Cooperating Attorney Bill Burdett and Staff Attorney Dan Korobkin.)

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. The attorney general did not appeal, and in 2012 the legislature fixed the law to conform with the judge's ruling. (*Lowden v. Clare County*; Staff Attorney Dan Korobkin, Legal Director Michigan J. Steinberg, and Co-Counsel Hugh Davis and Cynthia Heenan.)

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.)

Wayne County Prosecutor Jails Terry Jones for Future Speech – In April 2011 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. In November 2011 the judge's ruling was overturned on appeal. (*People v. Jones*; Legal Director Michael J. Steinberg and Legal Fellow Zainab Akbar.)

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 2011 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.)

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. In June 2011 the judge ruled in favor of the blogger, and the city attorney did not appeal. (*Papandrea v. Doe*; Cooperating Attorney Bill Burdett and Staff Attorney Dan Korobkin.)

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. (*City of Ypsilanti v. Kolling*; Cooperating Attorneys Michael Carter and John Shea.)

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 Bill Burdett and Legal Intern Phyllis Jeden.)

Vegan Leafleter Charged with Crime – In 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.)

IMMIGRANTS' RIGHTS

Driver's Licenses for DREAMers – In 2012 the Obama Administration announced that young immigrants who were brought by their parents to the United States as children and who attended American schools are now eligible to remain in the country and work here under a program called "Deferred Action for Childhood Arrivals" (DACA). Even though Michigan law says that all immigrants who are "legally present" are eligible for driver's licenses, Secretary of State Ruth Johnson has refused to issue licenses to DACA recipients. In December, the ACLU and the National Immigrant Law Center sued Johnson to compel her to follow the law. (*One Michigan v. Johnson*; Staff Attorneys Miriam Aukerman and Sarah Mehta, Legal Director Michael J. Steinberg, Cooperating Attorneys Jason Raofield and Anthony Lopez of Covington & Burling, National ACLU Attorneys Jennifer Chang Newell and Michael Tan, and NILC attorney Tanya Broder.)

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 a federal lawsuit on behalf of the Valdezes against the United States and the six ICE agents responsible. In November 2012 Judge Robert Jonker rejected the defendants' motions for summary judgment, ruling that the case could go forward. (*ACLU v. ICE*; Staff Attorneys Miriam Aukerman and Sarah Mehta, Legal Director Michael J. Steinberg, Cooperating Attorneys Rhett Pinsky and Maura Hagen, and Michigan Immigrant Rights Center Attorneys Susan Reed and Katie D'Adamo.)

Deporting Crime Victims on Thanksgiving Day – In November 2011, after a stranger threatened Lazaro Mendoza and stole his property, Mr. Mendoza asked a neighbor to call the police. 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 because of the illegal conduct by local police, who have no authority to detain noncitizens solely for immigration law violations. The day after receiving the ACLU letter, ICE released the two men. (Staff Attorneys Sarah Mehta and 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.)

UNLAWFUL SEARCHES AND SEIZURES

Criminal Charges and Cars Seized for Going to an Art Gallery – In 2010 the ACLU filed a federal lawsuit 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 license for the late-night event. In addition, more than 40 legally parked cars were seized and not released until their owners paid nearly $1000. In December 2012 Judge Victoria Roberts ruled that the detention of the CAID's patrons and seizure of their cars was unconstitutional. Before filing the federal 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 Bill 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.)

Monitoring Police Use of Cell Phone Data Extraction Devices – For more than three years the ACLU of Michigan tried to obtain public records from the Michigan State Police (MSP) under the Freedom of Information Act about the MSP's troubling use of electronic devices that can extract the contents of cell phones within moments. The requests were prompted by concerns that there were insufficient safeguards against use of these devices to violate privacy rights. A request for public records documenting use of five of the cell phone extraction devices resulted in an outrageous demand by MSP for the ACLU to pay a $544,680 fee in order to obtain the documents. Through extensive efforts some documents suggesting questionable practices were obtained for a far more reasonable cost, but the MSP did not turn over any documents suggesting that it had developed an explicit policy for when, how and under what circumstances the cell phone data extraction devices would be used. In February 2012 the MSP finally adopted an official policy placing restrictions on who may use the devices and under what circumstances. (Executive Director Kary Moss and Staff Attorney Mark Fancher.)

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 agreed to a settlement 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.)

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 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 attorney's 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.)

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.)

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.)

FREEDOM OF RELIGION AND BELIEF

Liquor Commission Delegating Licensing Authority to Churches – In April 2012 the ACLU was contacted by the Detroit Waldorf School, which was preparing its annual fundraiser, to be held at the Gleaners Food Bank. Part of the proceeds of the event is given to Gleaners, a charity that provides food to the hungry in Detroit. This year, however, the school was informed that it could only get its one-day special liquor license for the event if churches within 500 feet of the venue agreed. Because a nearby church felt it could not sign off on the school's liquor license application due to the church's religious beliefs regarding alcohol consumption, the Michigan Liquor Licensing Commission rejected the school's application for a special license. The ACLU wrote to the Alcohol Enforcement division of the Attorney General's office, explaining that the Establishment Clause of the First Amendment does not allow the state to give a church veto power over the granting of liquor licenses. The ACLU is continuing to work with the school and the state to reform this process so that it conforms to constitutional requirements. (Staff Attorney Sarah Mehta and Legal Director Michael J. Steinberg.)

Warren Mayor Allows Nativity Scene But Rejects Atheist Display – During the holiday season the City of Warren allows the Rotary Club to display its nativity scene in the public atrium of City Hall. When an atheist group asked to place its own display in the same area, their request was denied. In rejecting the display, the mayor told the atheists that they were not a "recognized religion" and their display's statement of atheism was "highly offensive." The atheist group sued the city, seeking the same access given to the Rotary Club. The ACLU filed a friend-of-the-court brief in the U.S. Court of Appeals supporting the atheists' First Amendment

rights. The case is scheduled for argument in January 2013. (*Freedom from Religion Foundation v. City of Warren*; Cooperating Attorney Christopher Lund and Staff Attorney Dan Korobkin.)

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. In July 2012 a magistrate judge ruled in the inmates' favor. (*Dowdy-El v. Caruso;* Cooperating Attorneys Daniel Quick, Doron Yitzchaki and Trent B. Collier of Dickinson Wright, Co-Counsel Todd McFarland of the Conference of Seventh-day Adventists, and Legal Director Michael J. Steinberg.)

ACLU Files U.S. Supreme Court Brief in Religious Freedom Case – The 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. Unfortunately, in January 2012 the U.S. Supreme Court ruled against the teacher, recognizing a broad "ministerial" exception to federal anti-discrimination laws. (*Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*; National ACLU Staff Attorney Daniel Mach and Michigan ACLU Legal Director Michael J. Steinberg.)

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 Michigan ACLU Legal Intern Diana Cieslak.)

SEX DISCRIMINATION AND REPRODUCTIVE RIGHTS

Attacks on Women's Reproductive Health in the Name of Religion – In two federal lawsuits filed in Michigan, private employers have challenged on religious grounds the new requirement under the Affordable Care Act (or "Obamacare") that all employee health insurance plans include birth control prescription coverage. Congress added the contraception prescription requirement to address discrimination against women, who have historically paid much higher out-of-pocket costs than men for reproductive health care. The ACLU filed friend-of-the-court briefs in both cases in 2012, arguing that just as employers cannot rely on religion to discriminate against racial and religious minorities, they cannot rely on religion to ignore civil rights laws protecting women. (*Legatus v. Sibelius* and *Autocam Corporation v. Sebelius*; National ACLU Staff Attorney Brigitte Amiri, Michigan ACLU Staff Attorneys Sarah Mehta and Miriam Aukerman, and Legal Director Michael J. Steinberg.)

ACLU Demands Equal Treatment of Girls' Basketball Players – Due to budget concerns, in 2011 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, 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. (Staff Attorney Jessie Rossman and Legal Director Michael J. Steinberg.)

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. The case is pending. (*Davis v. Cintas Corporation*; National ACLU Staff Attorney Ariela Migdal and Michigan ACLU Staff Attorney Jessie Rossman.)

SAFE AND FREE

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. After filing a Freedom of

Information Act requests with the airport police to learn more about the incident, the ACLU filed an administrative claim under the Federal Tort Claims Act against the federal agencies that were involved. The government rejected the claims in July 2012. (Staff Attorney Sarah Mehta, Cooperating Attorneys William Goodman and Julie Hurwitz, and Legal Director Michael J. Steinberg.)

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. While the government has released some documents in response to the lawsuit, it is still withholding other documents and as of December 2012 the ACLU is continuing to litigate the case. (*ACLU v. CIA*; National ACLU Staff Attorneys Zachary Katznelson and Hina Shamsi and Michigan ACLU Legal Director Michael J. Steinberg.)

DRUG LAW REFORM

ACLU Victory in Michigan Supreme Court's First Medical Marijuana Case – The ACLU represented 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 argued 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. In a unanimous decision issued in May 2012, the Michigan Supreme Court agreed with the ACLU and ruled that King was entitled to the MMMA's legal protections for medical marijuana patients. (*People v. King*; Cooperating Attorney John Minock and Staff Attorney Dan Korobkin.)

Appeals Court Rules That Michigan Cities Cannot Ban Medical Marijuana – In 2008, the Michigan Medical Marihuana Act (MMMA) 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, but the cities contend that they don't have to follow state law because marijuana is still illegal under federal law. In a unanimous decision and a victory for medical marijuana patients throughout the state, the Michigan Court of Appeals ruled in July 2012 that Michigan cities cannot ban medical marijuana through a local ordinance, nor can they use federal law as an excuse to disregard the MMMA. The City of Wyoming has asked the Michigan Supreme Court to review the decision. (*Ter Beek v. City of Wyoming*; Cooperating Attorney Michael Nelson and Staff Attorneys Dan Korobkin and Miriam

Aukerman; *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.)

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. The ACLU believes that even a corporation as large and powerful as Wal-Mart should not be permitted to ignore Michigan law when doing business in Battle Creek, the ACLU filed a lawsuit in June 2010 to get Joseph's job back. Unfortunately, in September 2012 the U.S. Court of Appeals ruled that Michigan's medical marijuana law does not protect workers from being fired for being a medical marijuana patient, even when they do not bring marijuana to the workplace or allow the drug to interfere with their job. (*Casias v. Wal-Mart*; National ACLU Staff Attorney Scott Michelman, Michigan ACLU Staff Attorney Dan Korobkin, Legal Director Michael J. Steinberg, and Co-Counsel Daniel Grow.)

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 represented the mother in a delayed appeal, but unfortunately the Michigan Court of Appeals decided in March 2012 not to take her case. (*Snowden v. Kivari*; Cooperating Attorney Marjory Cohen, Staff Attorney Dan Korobkin, and Legal Fellow Zainab Akbar.)

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. Beginning in 2011, the ACLU brought a series of cases in state and federal court arguing that the practice violates the constitutional ban on cruel and unusual punishment. In June 2012, the U.S. Supreme Court ruled that mandatory laws that impose automatic life-without-parole punishments on juveniles are unconstitutional. In Michigan, however, the attorney general has refused to apply this ruling to juveniles who are already in prison, insisting that they are not entitled to resentencing and must never even have their cases reviewed by a parole board. Therefore the ACLU is continuing to pursue justice on behalf of hundreds of juveniles who were sentenced unconstitutionally and are now seeking the opportunity to have their cases reviewed by a judge or parole board. We are currently awaiting a decision from Judge John Corbett O'Meara in federal court, and in early 2013 we will file a friend-of-the-court brief in a parallel case before the Michigan Supreme Court. (*Hill v. Snyder*; *People v. Hawkins*; *People v. Jones*; *People v. McCloud*; *People v. Carp*; Cooperating Attorneys Deborah LaBelle and Ron Reosti, U-M Clinical Law Professor Kimberly Thomas, National ACLU Staff Attorneys Steven Watt, Ezekiel Edwards, and Brandon Buskey, 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 in December 2010 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, in May 2011 the Supreme Court declined to hear the case. (*People v. Cordes*; Cooperating Attorney Ron Bretz.)

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 contributions of parents at Ehlena's elementary school, Ehlena's family raised $13,000 to acquire a trained, hypoallergenic service dog named Wonder. Wonder performed several tasks for Ehlena, assisted her with balance and mobility, and facilitated her independence. Nonetheless, her school district refused to allow Wonder in the school. The ACLU initially negotiated an agreement with the district to allow Ehlena to bring Wonder to school on a trial period for a couple of months; however, the district required Wonder to sit in the back of the classroom away from Ehlena and was not allowed to accompany Ehlena to recess, lunch, library time, and other activities. It even refused to recognize Wonder as a service dog. The ACLU then filed a complaint with the U.S. Department of Education's Office for Civil Rights, which, following an investigation, issued a ruling in May 2012 that Ehlena's civil rights under the Americans with Disabilities Act were being violated. Ehlena's family ultimately made the difficult decision to transfer to a new school where Wonder would be welcome. In December 2012 the ACLU filed a

federal lawsuit against her former school district. (*Fry v. Napoleon Community Schools*; Cooperating Attorneys Peter Kellett, James Hermon, and Brandon Blazo of Dykema, Gayle Rosen, and Denise Heberle, and Legal Director Michael J. Steinberg.)

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. In 2012 the Michigan Legislature passed "Leo's Law" that addressed some, but not all, of the problems that led to this case. (*Ratté v. Corrigan*; Cooperating Attorneys Abraham Singer, Adam Wolfe, and Alice Rhee of Pepper Hamilton, Amy Sankaran, and Legal Director Michael J. Steinberg.)

Unfairly Barred for Life from Working as Nurse – R.V. is a certified nurse aid who worked in a nursing home from 2001 until 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, under which she was promised that if she completed probation, her record would be sealed and she would not have any other consequences. In 2012 the ACLU filed a federal lawsuit so that R.V. can return to work. The suit argues that the state has reneged on the plea agreement in made with R.V., and that it violates equal protection to bar R.V. from her profession for life, while other individuals who actually have convictions, sometimes for serious crimes like homicide, torture or criminal sexual conduct are not barred, or are barred for much shorter periods. (*R.V. v. Hilfinger*; Staff Attorney Miriam Aukerman.)

Parents Unable to Volunteer in Kids' School – Like many parents, Wendy Cross wants to be active in her kids' school by chaperoning field trips, organizing holiday parties, and helping in the classroom. But because Ms. Cross had a 2001 conviction for writing a bad check, the Grand Rapids Public Schools (GRPS) barred her—and other parents with records—from being involved. In a two-year effort involving legal correspondence, community organizing, presentations to the School Board, meetings with the GRPS leadership, and coordination of a community sign-on letter supported by over 70 community leaders, the ACLU worked to change this practice. As a result, as of 2012 GRPS is now considering parents' criminal histories on a case-by-case basis before deciding whether they may volunteer. GRPS has also created a new

process for parents to appeal if they are denied the chance to volunteer. (Staff Attorney Miriam Aukerman.)

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 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 Michigan Department of Corrections (MDOC) changed the parole conditions for our clients. Pending systemic changes, the MDOC also set up a system to resolve additional cases, in which some 70 parolees had participated by December 2012. The Parole Board has modified conditions for 90% of the parolees who completed the individual review process. In 2012 the MDOC agreed to end the practice of automatically imposing complete bans on parent-child contact, and the ACLU continues to work for additional 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.)

Right Not to Freeze to Death – In January 2009 a homeless man named Thomas Pauli 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. In December 2011 Judge Gordon Quist ruled that homeless registrants cannot be prosecuted for using emergency shelters located within 1000 feet of a school. The ACLU is now working with housing advocates to educate both shelters and homeless registrants about the ruling. (*Poe v. Snyder*; Staff Attorney Miriam Aukerman.)

Attorney Jailed for Asserting Client's Rights – When attorney Scott Millard appeared at an arraignment for a client charged with being a minor in possession of alcohol, Millard advised his client of his constitutional right to remain silent. However, Ottawa County District Court Judge Kenneth Post insisted that the client answer questions about drug use. When Millard continued to assert his client's constitutional rights, the judge held attorney Millard in contempt and sent him to jail. The ACLU, joined by the Ottawa County Bar Association and the Criminal Defense Attorneys of Michigan, filed a friend-of-the-court brief in the attorney's contempt proceeding, arguing that defense attorneys should not be thrown in jail simply for doing their jobs. In January 2012 Ottawa Circuit Court Chief Judge Edward Post (no relation to District Judge Kenneth Post) reversed the contempt finding against attorney Millard, and the Judicial Tenure

Commission has filed a complaint against the judge. (Cooperating Attorneys Nakisha Chaney and Ken Mogill and Staff Attorney Miriam Aukerman.)

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. In January 2012 the court ruled in Mr. Phillips' favor. (*In re Mays*; Cooperating Attorneys Amy Sankaran and Timothy Pinto and Legal Director Michael J. Steinberg.)

Retroactive Application of Registration Laws – Major changes to Michigan's sex offender registration law, which went into effect in July 2011, were applied retroactively to individuals who were convicted years or even decades before that law was passed. Registrants are barred from living or working in many parts of the state, cannot travel without notifying the police, and are required to report in person within three days when they do something as simple as create an email account. The ACLU filed a federal lawsuit on behalf of five registrants, arguing that the extensive burdens associated with registration are punishment and therefore cannot be retroactively imposed on individuals who were convicted prior to passage of the new law. The state filed a motion to dismiss, which was argued in August 2012, and we are awaiting a decision. (*Doe v. Snyder*; U-M Clinical Law Professor Paul Reingold, ACLU Cooperating Attorney William Swor, Staff Attorney Miriam Aukerman, and Legal Director Michael J. Steinberg.)

Registered as Child Abuser Without a Hearing – Michigan's Central Registry for Child Abuse and Neglect is supposed to protect children by ensuring that individuals who are a threat to children do not work with kids or serve as foster parents. But accused individuals are placed on the registry for life without a prior hearing. Some do not even get notice that they are listed. Others remain on the registry even if a court later finds that they never engaged in abuse or neglect. In July 2012 the ACLU submitted a friend-of-the-court brief in the Michigan Court of Appeals arguing that individuals who are listed on the registry deserve basic due process before lifetime registration as a child abuser. (*Nicastro v. Michigan Department of Human Services*; Cooperating Attorneys Brock Swartzle and Beth Kerwin of Honigman Miller Schwartz & Cohn and Staff Attorney Miriam Aukerman.)

Sentenced to Lifetime Electronic Monitoring Without Notice – When David Cole pleaded guilty to a sex offense, he was informed about the maximum prison sentence he faced. But he was never told that he was also subject to a mandatory penalty of lifetime electronic monitoring. The ACLU filed a friend-of-the-court brief in the Michigan Supreme Court arguing that a defendant's plea is not valid if the defendant does not know that the punishment of electronic monitoring will be imposed. In May 2012 a unanimous Michigan Supreme Court agreed,

holding that due process is violated if a defendant is not informed that his or her sentence will include lifetime electronic monitoring. (*People v. Cole*; Cooperating Attorney J.J. Prescott and Staff Attorney Miriam Aukerman.)

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 in 2011. 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 Fellow Zainab Akbar, and Legal Director Michael J. Steinberg.)

Right to Judicial Review of State Agency Decisions – The ACLU submitted a friend-of-the-court 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, Legal Director Michael Steinberg, and Legal Intern Matthew Spurlock.)

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. Unfortunately, the judge denied Ms. Capistrant's motions and required her to serve her sentence. (*In re C.C.*; Cooperating Attorney Gregory Gibbs and Staff Attorney Sarah Mehta.)

Prosecutor Sued For Throwing Witness in Jail – Latasha Adams sued a Genesee County prosecutor in 2008 after she was jailed for allegedly failing to testify in a criminal case. According to Adams' legal complaint, the prosecutor lied to a judge about Adams' unwillingness to testify. Adams' lawsuit against the prosecutor was thrown out under the doctrine of "absolute immunity," meaning that the prosecutor could not be sued even if she had in fact violated Adams' clearly established constitutional rights. The ACLU of Michigan filed a friend-of-the-court brief in the U.S. Court of Appeals in support of Adams, arguing that the "absolute immunity" rule should not apply when a prosecutor is accused to lying to a judge in order to jail a witness. Unfortunately, the Court of Appeals disagreed with the ACLU and issued an opinion

in August 2011 adopting the absolutely immunity rule. (*Adams v. Hanson*; Cooperating Attorneys Jim Walsh and Sara Woodward of Bodman, Staff Attorney Jessie Rossman, and Legal Director Michael J. Steinberg.)

Attorney Not Allowed to Visit His Client in Police Custody – We were disturbed to learn 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, in March 2011 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.)

PRISONERS' RIGHTS

Overcrowded Conditions and Sex Discrimination at Isabella County Jail – At the Isabella County Correctional Facility in Mount Pleasant, inmates spend many months and sometimes over a year in overcrowded cells where they are virtually on lockdown 24 hours a day, 7 days a week. Inmates eat, sleep, shower and spend virtually all their time in small cells, some of which are housing twice the number of people they were designed for. Meanwhile inmates have no opportunity to exercise outside their cell, regardless of how many months they are detained. Some inmates have the chance to leave the cell for classes or other programming, but female inmates are excluded from joining the community service program or the trustee program, which allows inmates to work time off their sentence by performing maintenance, cooking, laundry and other services in the facility. Women have been told that this is "a man's jail" and they will not be allowed to participate in those programs. In October 2012 the ACLU filed a class action lawsuit challenging the conditions of confinement and sex discrimination at the jail, and the case has been assigned to Judge David Lawson. (*Dunmire v. Isabella County*; Staff Attorney Sarah Mehta, Cooperating Attorney Daniel Manville of MSU School of Law Civil Rights Clinic, and Legal Director Michael J. Steinberg.)

Degrading and Unnecessary Strip Searches of Female Prisoners – For several years, women incarcerated at the Women's Huron Valley Prison, the only state prison housing women in Michigan, were subject to an invasive and degrading visual body cavity search on a routine basis. After every in-person visit with their family or lawyer, or when going to their prison job, women were forced to remove all their clothes, sit on a chair and spread their labia for inspection by a correctional officer. Some women had to go through this spread-labia visual cavity search on a daily basis even though the prison could offer no evidence that this search was necessary for or successful at finding weapons or contraband. Women—particularly those with histories of sexual abuse—told the ACLU that undergoing this search was both humiliating and deeply harmful; one woman described it as having to relive her past experiences of sexual assault and abuse. There were no exceptions to this search based on health conditions or age, and many women chose to forfeit visits with their children or attorneys rather than go through the search. In April 2012, in response to a letter from the ACLU and related media attention, the Michigan Department of Corrections changed its policy so that these intrusive searches can only be used in

exceptional circumstances, with the warden's permission, and where there is evidence that a particular woman may be concealing weapons or other contraband. (National ACLU Staff Attorney Mie Lewis and Michigan ACLU Staff Attorney Sarah Mehta.)

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. In March 2011 the U.S. Court of Appeals 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, with a trial on these issues scheduled for June 2013. (*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 in February 2012 a federal magistrate judge ruled that the jail's telephone policy was unconstitutional. The case settled when the Eaton County Sheriff agreed to change the policy and allow confidential attorney-client telephone calls. (*Bogle v. Raines*; Cooperating Attorneys Daniel Manville, Patricia Selby, and Elizabeth Geary and Staff Attorney Dan Korobkin.)

Challenging County Jails' "Postcard-Only" Mail Policies – In a disturbing new trend that has been sweeping the country, some jails are prohibiting inmates from sending or receiving any mail unless it is written on one side of a small, 3" x 5" postcard. Although most jails say they are trying to prevent contraband, few have documented any serious contraband problems with the mail system because they are allowed to open and search all envelopes and packages that enter or exit the jail. Such severe restrictions on inmates' ability to communicate with their families and loved ones is also counterproductive to public safety since studies have shown that prisoners are less likely to re-offend when they are able to maintain close ties with families and other support networks in the community. In February 2012 the ACLU filed a friend-of-the-court brief in a federal lawsuit challenging the Livingston County Jail's postcard-only policy. That case remains pending. In August 2012, after the ACLU provided assistance to Lenawee County inmates, the Lenawee County Jail modified its policy to allow outgoing mail in envelopes, although unfortunately most incoming mail must still be on a postcard. (In Livingston County: *Prison Legal News v. Bezotte*; Cooperating Attorneys Nakisha Chaney and Staff Attorney Dan

Korobkin. In Lenawee County: Cooperating Attorneys Ron Rose, Kim Easter, Bob Davidow, and Bryan Anderson, Staff Attorney Dan Korobkin, and Legal Director Michael J. Steinberg.)

Paying for the Costs of One's Own Incarceration – In March 2012, after the Kalamazoo Sheriff announced that he planned to start a program charging prisoners for staying in the jail, the ACLU wrote to the Sheriff explaining that such programs undermine prisoners' chances of successfully reentering the community upon release, and that such programs are often cost more than any revenue they generate. The ACLU also met with the Sheriff to discuss the legal and policy reasons why the program should not be adopted. To date, Kalamazoo has not moved forward with the proposed jail fee program. (Cooperating Attorneys Megan Reynolds, Jim Rodbard, and John Targowski and Staff Attorney Miriam Aukerman.)

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.)