



# CIVIL LIBERTIES NEWSLETTER

The American Civil Liberties of Michigan  
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## BIG WINS!

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U-M Affirmative Action Case, page 8



- Kary L. Moss**.....Executive Director
- Wendy Wagenheim**.....Public Education Director
- Michael J. Steinberg**.....Legal Director
- Brenda Bove**.....Administrative Assistant
- Becky Bull**.....Assistant to the Executive Director for Development
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- Micki Levin**.....Executive Vice President  
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- Robert Shecter**.....Secretary
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## CIVIL LIBERTIES NEWSLETTER

Wendy Wagenheim, Editor

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# WE'RE MOVING!



MORE INSIDE ON OUR NEW HOME FOR JUSTICE...

IN JULY 2000, Michigan ACLU moved boldly to ensure the future stability of the organization. The board of directors voted unanimously to purchase a building on West Hancock in Detroit for the Michigan ACLU State Office. Only one other ACLU affiliate in the nation has taken the initiative to establish a permanent state headquarters. And by July of this year, we will have our New Home for Justice.

The one and a half story building is located on the edge of the cultural center and the Wayne State University campus. Michigan ACLU is clearly aware of the importance of locating in the heart of the City of Detroit. Our presence and our increased visibility proclaim our intention to continue to be a part of the City's renaissance.

Our New Home for Justice will give us greater access to the University for collaborative efforts,

internships and teaching opportunities. We envision endless possibilities for the ACLU and WSU to develop relationships. We look forward to the opportunity to connect with a younger generation that can experience the fight for civil liberties first hand and gain understanding of the significance of defending the Bill of Rights.

The establishment of a permanent facility means that we will no longer be at the whim of landlords in quarters that never seem to be large enough, where elevators, heating and plumbing never seem to function properly. We will not have to move every few years as our programs expand when the existing space is no longer suitable or appropriate.

We will now be located in a larger, newly renovated facility designed to house our existing staff that also allows for the addition of more staff and programs in the years ahead.

We will have parking to accommodate staff, interns, volunteers and visitors.

I am so pleased to report that, since July, we have received donations and pledges from 100% of our board members and others which total more than \$400,000 toward our goal of \$800,000.

The renovations have begun and we plan to move into the building by this summer. But we have a long way to go if we are to meet our goal. We have always appreciated the support of our members without whom the ACLU could not exist. So I am asking all of you to step up to the plate once again to make an investment in our future.

Won't you please help make A New Home for Justice a reality?

Jacquelin Washington  
President, ACLU of Michigan

# A NEW HOME

***“A permanent home for the ACLU means a solid foundation to exist in the future. And we need that because civil liberties will continue to be threatened.”***

—Winn Irwin, Grand Rapids

NEARLY HALF A CENTURY AGO the Detroit ACLU and the Lansing ACLU—only once before having worked together—joined forces to form the ACLU of Michigan. Its early supporters included Rolland O’Hare, Carl Levin, Avern Cohn, Josephine Gomon, Henry Hitt Crane, Alice Wallace, James and Erwin Ellmann and Harold Norris, among others. The ACLU of Michigan now boasts nine branches throughout the state with its headquarters located in Detroit and a satellite office in Lansing.

THE FIRST EXECUTIVE DIRECTOR, Ernest Mazey, served as a volunteer and with dedicated members began to file important cases in the state and federal courts. Before long the ACLU of Michigan had established itself as the premier guardian of civil liberties and civil rights in Michigan. In the past 30 years, the ACLU of Michigan has led some of the most important battles in the country protecting the Constitution and Bill of Rights.

OUR ISSUES ARE BROAD—racial justice, reproductive freedom, privacy, separation of church and state, free speech, gay and lesbian rights, juvenile justice, right to counsel, ballot access and due process—and our contributions are vast. We are able to address some issues quickly, others require more time, focus and resources. In 1999 alone, ACLU cooperating attorneys in Michigan donated more than half a million dollars in time for their legal services, a contribution that reflects the enormous amount of activity that takes place in the state office.

OUR MEMBERSHIP HAS GROWN to more than 8,000 and our staff has grown to include six full-time professional staff, two part-time staff and many law and undergraduate interns. Every week, member volunteers handle hundreds of calls for assistance, investigate complaints and provide office support services. The ACLU of Michigan now has not only a Legal Department, but also a Legislative Department, Public Education Department and Development Department—each of which is essential to the protection of the Bill of Rights.

WE TOUCH THE LIVES OF MANY.

A plan for additional staff positions will allow us to touch the lives of many more. Because of the support of the C.S. Mott Foundation and the State Bar Foundation of Michigan, we will launch a new fellowship to address the problem of racial profiling. We also received a grant from the Arcus Foundation to hire another attorney to focus on gay rights in Michigan. Both initiatives will start in early 2001.

OUR PRESENT OFFICES are woefully inadequate to house all of these people and service their needs. Indeed, last winter the office was without water or heat for several weeks. The telephone and communication systems are outdated and ill-equipped to meet the challenges of the next century. It is

***“It’s time that the ACLU Fund of Michigan has a permanent home and the stability that it represents. Eternal vigilance requires that everyone step up in one way or another.”***

—Peggy Pitt, Esq., Royal Oak

hoped that paid staff positions will be increased to 10 during the next five years in order to meet the ever-increasing demands on the office and staff.

IN 1999, RECOGNIZING THE NEED FOR IMPROVED WORKING CONDITIONS and for the long-term stability of the organization, ACLU of Michigan President Janet Cooper and Executive Director Kary Moss enlisted real estate developer Leonard Grossman to lead the organization in a search for new office space. Mr. Grossman evaluated available space in the downtown area, New Center, WSU/Cultural Center and East Jefferson areas. That search revealed that renting new space would cost 25 percent more per square foot for improved conditions and allow for minimal expansion. With that in mind, we began searching for permanent office space to buy.

BY MARCH OF 2000, WE HAD IDENTIFIED

A WONDERFUL BUILDING located on the edge of the Wayne State University (WSU) campus. The building is next door to the WSU Police Department and down the street from the 13th Precinct Detroit Police Department. The production department of the WSU theatre, the printing plant and the Asiatic department of WSU, the old Central High building now known as Old Main, St. Paul’s Episcopal Cathedral and Hanna House are all in the immediate vicinity. The location is ideal. We anticipate that it will provide many opportunities for internships for WSU students studying political science, law, education, social work, and other related fields. The location, just off Woodward, will be convenient for attorneys, board members and office volunteers and facilitate easy access for the staff to downtown Detroit, the suburbs, and the courts via I-696, I-75 and I-94.

PERHAPS MOST IMPORTANTLY, the chosen site will allow supporters of the ACLU of Michigan to make a long-term investment in its future and, at the same time, create long-term stability for the

ACLU of Michigan. As evidence of the commitment of many to this project, the law firm of Honigman, Miller, Schwartz & Cohn is donating legal services, the architectural firm of Kessler, Francis & Cardoza is doing the architectural plans pro bono, promotional services are being donated by Simons, Michelson & Zieve and Drake Development will undertake the interior remodeling at a reduced price.

***“A New Home for Justice means that our work will continue for years to come. We are seeing support from around the state from members who know that they are making a meaningful investment in the ACLU Fund of Michigan.”***

—Jacquelin Washington, President, ACLU of Michigan, Detroit

THE CONCEPT FOR THE BUILDING includes 10 offices, a large conference room, a combination lunch/workroom and a reception area that could eventually become two additional offices as our staff expands. There is ample space on-site for private parking and room for an addition to the building if future needs require.

THE STATE BOARD OF DIRECTORS has indicated its complete support for this project and has approved a total budget of \$800,000. This budget will allow for purchase of the building, and complete remodeling and landscaping as well as a maintenance fund. To bring this project to reality, we are now undertaking a campaign to create A New Home for Justice, that we hope you will support.

# FOR JUSTICE!

## Long-Time Activists Support A New Home for Justice

### PUTTING BELIEF INTO ACTION

**MICHAEL AND PEGGY PITT** have put their belief in the ACLU of Michigan into action in many ways.

As volunteer lawyers, they are involved in several high-profile cases including the ACLU's challenge to the state's unfair and discriminatory policy of using only the MEAP standardized test as the criteria for awarding Michigan Merit Scholarships, and the case against the Livingston County Jail for its poor treatment of female prisoners.

Peggy and Michael, partners in the Royal Oak firm Pitt, Dowty, McGehee and Mirer, give not only their time, but their financial support to the ACLU. They have made a very generous Circle of Freedom gift to the building fund.

Peggy and Mike support A New Home for Justice because of the message it sends—the ACLU will continue to have a strong presence in Michigan. They also believe that the new building's location, close to Wayne State University, will allow more students to get involved which is important to the future of any organization.

"We both feel passionately about issues relating to church/state separation and maintaining diversity through affirmative action," Peggy says. "It's likely that the next four years will see challenges mounted in both areas. Strong support for the ACLU is vitally important."

### DOING HER PART

**PAULETTE HATCHETT** spends a lot of her free time with the ACLU, attending state board, Lansing branch and committee meetings. Whenever help is needed, Paulette is always one of the first to volunteer.

And it was no different when the ACLU of Michigan decided to buy a building. She immediately pledged a Circle of Equality gift, even though she says it may mean taking a part-time job to meet her commitment.

Paulette truly understands the importance of giving and what it means to give back. When she grew up in Detroit, her own family received donated food through the generosity of others.

To Paulette, it's vital that the ACLU remain strong. Being able to

go to college, graduate and get a job with the state government wouldn't have been possible without the rights guaranteed in the Constitution, those the ACLU works to protect.

"Everything we do makes me proud to be a member of the ACLU," Paulette says. "I'm frequently telling people—if you deny someone's rights then you're leading to other people violating your rights. And everyone has to do their part to achieve the goal," Paulette says. "You can't just sit back and wait for other people to give money."

### A SYMBOLIC MOVE

**FOR DICK SOBLE AND BARBARA**



**KESSLER**, a building for the ACLU of Michigan is not only practical, but also symbolic.

"I think on a symbolic level, a building is important," says Barbara, who is an Ann Arbor-based mediator. "It says, 'We are going to be around for a long time.'"

And it's important for the ACLU to be around, Dick says. The ACLU plays an important role in Michigan by being a stable, articulate voice for civil rights and civil liberties. He's proud that his family—his wife, stepson and brother-in-law—is involved in the ACLU. Dick and Barbara showed their devotion by making a Circle of Justice gift to the building fund.

Dick, who practices law in Ann Arbor, has been involved with the ACLU for more than 30 years. He has worked as a volunteer lawyer on several cases, including the ACLU's effort to stop the creation of publicly funded all-male academies and the recent suit against the school district of Whitmore Lake, where several high school students were strip-searched.

"It (the ACLU) has developed a strong sense of organizational

integrity," Dick says. "The government and the right wing are attacking civil liberties in many directions. I'm more interested in protecting all civil liberties than picking one."

### MAKING AN INVESTMENT IN THE ACLU

**JACKIE WASHINGTON** has made a hobby of leading building fund campaigns. As a board member of the NOW Legal Defense and Education Fund and as Executive Director of Planned Parenthood of Southeastern Michigan, she helped both organizations secure buildings.

And now as president of the ACLU of Michigan she has been a tireless advocate for securing the building on Hancock. Not only has she supported the building campaign by volunteering her time, she's made a commitment at the Circle of Citizenship level.

"I believe in this investment," Jackie says. "It's there—you have something that's on your books."

But more importantly, better office space means better work to Jackie. "No matter how dedicated

the staff is, if your offices are inadequate it affects the quality of the program," Jackie says. She got involved in the ACLU through a case and the more she learns of the organization, the more she likes it and more devoted she becomes.

"Once I got involved in an issue, it made sense to support the organization," Jackie says. "I think it's that way with a lot of people."

### ENSURING THE FUTURE

**M.C. PORTER** decided to join the Circle of Honor for the building fund for one reason: To guarantee the future of the ACLU of Michigan.

She joined the ACLU more than 30 years ago when she lived in Chicago and served on the Illinois affiliate's board. She moved to Grand Rapids 15 years ago and immediately got involved with the ACLU in Michigan where she has served on the board of the Western Michigan branch for many years.

As a political scientist, she devoted much of her career to studying and teaching civil liberties. She believes in everything the ACLU stands for, especially free speech and the separation of church and state. And it's important to her to make sure that the organization that most effectively defends civil liberties be around for years to come.

"I'm 78 and I want to be sure that I leave something to an organization that means a lot to me," M.C. says. "You have to look out for the future."

Yes, I want to help fund A New Home for Justice!

Please send me more information about the New Home for Justice campaign.

I will donate \$ \_\_\_\_\_ for a New Home for Justice.

I prefer to pledge \$ \_\_\_\_\_  
 monthly  semi-annually  annually.

Please charge my  Visa  MasterCard  American Express  
 \$ \_\_\_\_\_  monthly  semi-annually  annually.

Card number \_\_\_\_\_  
 expiration date \_\_\_\_\_

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Please make checks payable to the ACLU Fund of Michigan Building Fund. Return this coupon to: ACLU Fund of Michigan, 1249 Washington Boulevard, Suite 2910, Detroit, MI 48226. Or fax to 313-961-9005. Stock donations are also welcome. For more information on making a gift of stock, call 313-961-7728.

LEVELS OF GIVING	
\$100,000	CIRCLE OF VIGILANCE
\$50,000	CIRCLE OF FREEDOM
\$25,000	CIRCLE OF LIBERTY
\$10,000	CIRCLE OF HONOR
\$5,000	CIRCLE OF JUSTICE
\$2,500	CIRCLE OF EQUALITY
\$1,000	CIRCLE OF CITIZENSHIP
\$ _____	OTHER
	CIRCLE OF FRIENDSHIP

## From the Executive Director



**Kary L. Moss, Esq.**

AS WE ENTER THE NEW YEAR we face many dangers to the rights that are guaranteed under the Constitution. The prospect of John Ashcroft as our Attorney General, the need to address the many voting issues that arose during the last election, and the power of the far-right in this new administration should cause us all concern.

I wish, however, to brighten your day by telling you about the great accomplishments of the ACLU of Michigan this past year. We are well positioned to deal with anything that comes our way.

In fact, columnist Jack Lessenberry just lauded us in a recent *Metrotimes* article about the election problems, writing: "But who do you think will take the lead in pushing that? ... If there is any hope, it starts with the ACLU."

With the support of four Michigan foundations, we are able to launch two new projects involving racial profiling and gay and lesbian rights. We have hired Delphia Simpson for a two year fellowship which you can read more about in this newsletter (see NEW PROJECT: NEW STAFF, p. 6). We will soon be hiring a new attorney for the GLBT project. The grant money raised for these efforts is the most ever raised in a single year by this organization.

We filed many new cases, and avoided the need for many others through effective advocacy. We won two very important cases, including the University of Michigan case defending its undergraduate affirmative action program (see AFFIRMATIVE ACTION VICTORY!, p. 8), and the challenge to the state's newest ban on late-term abortions. We also filed another case of national significance challenging the Michigan Merit Scholarship program.

And who can forget the enormous energy put into the successful defeat of the voucher ballot initiative. Our former Legislative

Director, Wendy Wagenheim (who is now our new Public Education Director), devoted almost all her time in the eight months preceding the election to this important effort. Additionally, the ACLU national office stepped up to the plate by donating \$75,000 to our coalition partner All Kids First! for radio advertising in urban media markets.

We purchased our own building—a huge step for any non-profit organization—launching a building fund campaign that has brought in more than \$400,000 in just four months. Our President, Jackie Washington, tells you more about this important campaign in this newsletter (see FROM THE PRESIDENT, p.1). I hope you'll also take the time to read about some of the people from around the state (see p.3) who have stepped forward to support this exciting and important effort.

Our second annual student summit, held this past fall, qualified for national recognition by the national office and it will be featured on the National ACLU's new "campus organizing" webpage. Michigan is one of only two affiliates in the country that has spearheaded this type of effort and it's paying off. We not only have new student members—the future of the ACLU—we have energized activity on campuses across the state.

This fall we held three major fundraising initiatives at once: the fall renewable gift campaign, the building fund campaign, and the annual dinner. Fundraising from annual events this year exceeded all historical benchmarks raising over \$75,000. Our annual dinner significantly raised our profile in several communities. The sold-out dinner, honoring Judge Avern Cohn, attracted hundreds of people who had never before been to an ACLU event.

New planned giving raised our endowment fund to more than \$1 million, helping to ensure the ACLU of Michigan's long-term viability.

We are within budget on almost every item, with the exception of auditing costs.

Our staff put in tremendous work in various coalition efforts and we are recognized as leaders on many issues. We have been proud to work with the NAACP, National Conference for Community and Justice, Arab American Anti-Discrimination Committee, Michigan Department of Civil Rights, Anti-Defamation League, Scouting for All, All Kids First!, Michigan Pro-Choice Network and others.

The new millenium is off to a great start. We know that what lies ahead are greater challenges for the ACLU—we'll need your support now more than ever.



**Judge Cohn, Kary L. Moss, Executive Director of the ACLU of Michigan, and Juan Williams at the dinner.**

More than 300 people attended the ACLU Fund of Michigan and the ACLU, Metro Detroit Branch annual dinner on Dec. 1 at the Charles H. Wright Museum of African American History to honor Federal District Judge Avern Cohn for his work as a tireless advocate for constitutional rights and civil liberties. Keynote speaker, Juan Williams, host of NPR's *Talk of the Nation* and author of *Eyes on the Prize: America's Civil Rights Years 1954-1965*, spoke eloquently about Justice Thurgood Marshall and the importance of the ACLU. The sold-out event and silent auction benefited the ACLU's legal work and public education programs.



**Jacquelin Washington, president of the ACLU of Michigan, welcomed guests to the event.**



**Alan E. Schwartz, of Honigman, Miller, Schwartz & Cohn and friend of Judge Cohn's, was a host of the event and introduced the honoree at the dinner.**



**Dr. Donald Newman, Michigan Supreme Court Justice Marilyn Kelly and Tiffany and Al Butzbaugh were hosts for the event.**

## From the Capitol

### LOOKING BACK AT 2000

By Wendy Wagenheim

**THE FIGHT FOR CIVIL LIBERTIES** suffered severe set backs in the Michigan Legislature before the 1999-2000 session closed.

On issues involving woman's rights and reproductive health care, the Legislature passed 23 bills that limit a woman's right to abortion and family planning, leaving 13 bills that will likely be reintroduced in the new session. The so-called "partial birth abortion" legislation, passed early in the year, has already been successfully challenged in federal court.

Unfortunately, a bill was passed to amend the Mandatory 24-Hour Waiting Period and Informed Consent Law for abortions (PA 133 of 1993). The new law undoes the stipulated settlement reached after a six-year long court battle that ended in 9/99. The Act prohibits providing abortion information through electronic means, such as e-mail, organization websites, or fax. It also mandates information mailed have a return receipt. This unnecessary requirement may force a woman to stay home, miss work or risk an invasion of privacy if she receives the letter at work.

*ON A BRIGHTER NOTE*, we experienced a rare and surprising victory when Governor Engler vetoed a package of bills to prohibit private insurance companies from covering abortion in a basic policy except to save the life of the mother. A separate insurance rider would have to be purchased for abortion coverage.

Beyond the re-introduction of those bills which died at the end of this session, including a bill to defund Planned Parenthood from the family planning program and a "conscience clause" bill to establish the right of a health care provider or facility to assert a conscientious objection to participating in a health care service on a professional, ethical, moral or religious ground. Legislators will certainly attempt to prohibit the use of the recently FDA approved mifepristone (the early abortion pill). And, of course, Right to Life will try for a third time to



Wendy Wagenheim

prohibit abortion in the guise of another late-term abortion bill.

The ACLU will be working harder than ever as the new session begins to uphold women's reproductive rights and access to comprehensive reproductive health care. But with only 34 pro-choice endorsed members in the House and 10 pro-choice Senators it will certainly be an up-hill battle.

*ON ANOTHER FRONT*, legislators passed a new bill that limits prisoners to up to five years to file DNA-based legal challenges. Creating such a time limit may be a surefire way to keep innocent people in prison. And, the bill applies only to defendants who were convicted of a felony "at trial," which means that a defendant who pleaded guilty or no contest will not be eligible to bring a petition for DNA testing and a new trial. Frequently many innocent defendants enter into plea bargains, upon the advice of their attorney, in order to avoid the risk of a longer prison sentence. As we saw too often in session, this bill was rushed through the legislature with little time for public comment.

As the new session begins, we know already that there will be battles that we will need to fight. We must remain vigilant. Watch for Action Alerts on [www.aclumich.org](http://www.aclumich.org).

## ACLU ANNOUNCES RACIAL PROFILING PROJECT

### NEW PROJECT—NEW STAFF

**THROUGH THE SUPPORT** of the C.S. Mott Foundation and State Bar Foundation of Michigan, we are launching a new project to address the problem of racial profiling.

The goal of the project is to develop and implement public education efforts through the education of judges, lawyers, prosecutors, police agencies and the community about the problem of racism in the criminal justice system and racial profiling.

The project will facilitate police training specific to racial profiling, discussions about voluntary and mandatory data collection, creation of community task forces to stimulate local organizing efforts, and educating the public about appropriate ways to interact with law enforcement in situations of potential high conflict.

It will also allow the ACLU to monitor data collection efforts by local law enforcement agencies and provide information regarding the results to community groups and civil rights organizations to support their organizing and police reform efforts.



Delphia Simpson

And to head up this project we are thrilled to welcome Delphia Simpson as a Fellow to our staff.

Delphia comes to us from the Michigan Poverty Law Program in

Ann Arbor where she coordinated the statewide legal services family law task force since 1997. Prior to that she had been on the staff at the Legal Aid Bureau of Maryland and was the acting chief attorney during her last three years there. She was also an adjunct professor at the Baltimore City Community College.

As a member of the ACLU Washtenaw County Lawyers Committee, Delphia is no stranger to ACLU. In this case, the loss of a good volunteer is certainly a gain for the ACLU staff.

## ACLU STAFF HONORED

As Michigan Lawyers Weekly so aptly put it, "Is that Don Quixote tilting at those windmills? And look over there, is that Sancho? No—it's Kary L. Moss, the executive director of the Michigan American Civil Liberties Union and her dedicated staff."

Our own Executive Director, Kary Moss, started out the year with a "wish-list" headline in the Detroit Free Press ("State Legislature reads the Bill of Rights"), so it was no surprise that she would end the year by being named one of 10 "Lawyers of the Year 2000" in the December issue of Michigan Lawyers Weekly.

The interview with Kary that appeared in the publication covers the gamut from vouchers to the Internet censorship suit that we recently won in the 6th Circuit Court of Appeals to the MEAP Scholarship case that should begin in the spring.

This honor was a great tribute to Kary, her staff and all the volunteer attorneys who keep the ACLU out there fighting the good fight.

And on December 10 at Hartford Memorial Baptist Church in Detroit, Public Education Director Wendy Wagenheim and the ACLU received all kinds of kudos for their contribution to the overwhelming defeat of Proposal 1, the school voucher ballot initiative, along with Rev. Charles Adams, the church's pastor and Honorary Co-Chair of All Kids First!, and Heaster Wheeler, Executive Director of Detroit NAACP.

Wagenheim was recognized by Senator Carl Levin in the Congressional Record. This honor, in particular, made her most proud because of her work as the ACLU Legislative Director for five years. Detroit Deputy Mayor Freman Hendrix was on hand with another representative of the Mayor's office and a representative of Wayne County Executive Ed McNamara to present tributes from Senators Virgil Smith and Jackie Vaughn, the Detroit Public Schools, Congressman John Conyers, Jr., the Detroit City Council, the Wayne County Commission, and Mayor Dennis Archer.

"The ACLU devoted a lot of resources and energy to this campaign—it was wonderful to be recognized in this way for our hard work!" said Wagenheim.

***The ACLU of Michigan suffered a significant loss with the passing of four longtime and passionate supporters – Don Loria, Ed Wise, Phil Denenfeld and Wendy Joyrich. Each of them brought a wealth of talent, learning and commitment to the service of civil liberties!***

**DONALD W. LORIA**



Don Loria was a man of great intellect, intelligence, principle and courage and a great believer in civil liberties. For many years he

served on the Executive Board of the Detroit Chapter of the American Civil Liberties Union where he asked precisely the kind of questions that sharpened ACLU public positions and increased the success of ACLU litigation. Just before his death, Don was honored by the chapter with the Bernard Gottfried Bill of Rights Day Award. At age 79 he was as deserving of this honor and recognition as ever.

A giant in his field of Worker's Disability Compensation benefits, he was a brilliant legal strategist responsible for many of the key precedents that expanded the rights of employees. His dedication resulted in the right to recover benefits for psychiatric disabilities, challenges to the Worker's Compensation Bureau and Worker's Compensation claims for professional athletes.

We will never forget his great laugh, ironic sense of humor or his sweet and understated nature. The ACLU has lost a great friend.

**ED WISE**



When Ed Wise became the ACLU of Michigan's second General Counsel in 1977, the organization

was in its early adolescence. Its skeleton staff did not include a Legal Director (or a lawyer). Except for a brief but wonderful period, he was the legal program.

He alone was responsible for molding and maintaining a credible legal program.

Ed was a member of the faculty of the Wayne State University Law School and, in the late eighties and the early nineties, its associate dean. His specialities were international, comparative, criminal and constitutional law. For the past 11 years, he had been president of the International Association of Penal Law.

Ed's subtle and sharp wit matched his wisdom—he will truly be missed.

**PHIL DENENFELD**



Phil Denenfeld was a member of the ACLU from its beginnings in Kalamazoo and throughout much of his life. As the

quintessential volunteer, he did whatever needed to be done. As an officer of the Southwestern Michigan Board and the State Board, he raised funds, developed policies, counseled against rash courses of action, mediated disputes, recruited new members and supported their development. Wherever there was a need, there was Phil.

He generously shared his extraordinary knowledge, passion for civil liberties and for justice, his wisdom about the vagaries of history and the world, and seasoned it all with a delightfully wicked sense of humor. He wrote and lectured about civil rights and civil liberties and those who read or heard his words were privileged to do so.

Phil had the respect and affection of all who knew him, not only for what he did, but for what he was.

*Shel Stark, Rolland O'Hare, and Janet Cooper contributed to this memoriam.*

**WENDY JOYRICH**



Sometimes life is just too short. That is certainly true in the case of Wendy Joyrich. It is with such profound sadness that we include

Wendy on this page. At only 38, she had given so much of herself to the ACLU over the last 10 years. As the president of the Oakland Branch, State Board member, and chair of the State legislative committee, Wendy devoted herself to the never ending fight for civil liberties. And she did this not only through her work as a volunteer. Wendy switched gears

from teaching high school math to teaching social studies where she was able to impart her passion for the Bill of Rights in the classroom.

Wendy touched hundreds of thousands of lives by her involvement in the ACLU. Six years ago she helped launch the National ACLU on-line forum on AOL, a site dedicated to the principles of free speech. Wendy was the forum leader for chat rooms and message boards where people from all walks of life could express their opinions on the issues of the day or civil liberties in general.

Though she may have been somewhat anonymous to her on-line friends, those of us who knew her always saw the smile on her face, her unfailingly upbeat attitude, and her tireless devotion to the ACLU.

## VOUCHER VICTORY

An effort to amend the Michigan Constitution to allow the use of public tax dollars for private and religious school tuition ended in a resounding defeat in our statewide election in November.

In a landslide victory, roughly 68 percent of Michigan voters said NO to school vouchers, despite the fact that supporters of the ballot proposal outspent voucher opponents 2 to 1. In Detroit, more than 80 percent of voters rejected the measure.

The credit for this victory goes to the people of Michigan and to the grassroots efforts of ALL Kids First!, a coalition of more than 250 organizations that came together to oppose Proposal 1. Working together, we built a network of community members who could inform friends, family, neighbors and community members about the damaging impact that vouchers would have on public education and on the neighborhood schools where most students will remain.

The ACLU of Michigan was proud to have been a leader in this coalition, which managed to get its message out in one of the most expensive campaigns around the country. We also note that this victory marks the third time that such a proposal has been defeated in the state. In 1970, 57 percent of voters approved a constitutional ban on public aid to private schools. In 1978, 74 percent of voters defeated an attempt to remove that ban.

Finally, we salute the efforts of our friends and colleagues in California, where a similar voucher initiative was overwhelmingly rejected by voters.

Voucher proponents who claim to be speaking for the people should now respect the will of the people and end their misguided attempts to force this unconstitutional and unfair program on our nation's students. But as we have heard from the new administration, this is far from over.

## From the Legal Director

### DOCKET UPDATE

**A LOT HAS BEEN HAPPENING** at the ACLU in the last few months. Here are some recent legal highlights and victories that we've had thanks to all of the cooperating attorneys who donated thousands of hours of legal work in 2000 to protect civil liberties.

#### VICTORY IN INTERNET CENSORSHIP CASE

In November, the U.S. Court of Appeals upheld the district court's 1999 injunction of Michigan's Internet censorship law. The law would have outlawed constitutionally protected, sexually explicit speech on the Internet. We represented a wide variety of individuals and organizations with valuable speech on their web sites, such as AIDS/HIV prevention groups, art and literature collectives, a sex therapist, a gay and lesbian bookstore and the National ACLU. (*Cyber-space v. Engler*; ACLU of Michigan Cooperating Attorneys: Andrew Nickelhoff and Marshall Widick).

#### MAN ARRESTED FOR NOT SHOWING ID

We are representing Travis Risbrider, who was arrested while walking down an East Lansing street and jailed overnight simply because he failed to show identification to a police officer. U.S. District Court Judge Gordon J. Quist, in a published opinion, recently ruled that the arrest violated Risbrider's clearly established right to due process and his right against unreasonable searches and seizures. The City has appealed to the U.S. Court of Appeals. (*Risbrider v. City of East Lansing*; Cooperating Attorneys: Dorean Koenig and Bryan Waldman).

#### FEDERAL PRISONER ALMOST DENIED REPRODUCTIVE RIGHTS

Federal officials tried to prevent a halfway house resident who was 13 weeks pregnant from terminating her unwanted pregnancy because her first trimester had expired. The prisoner contacted the ACLU, and we took action to ensure that the inmate was permitted to exercise her constitutional right to choose. (Cooperating Attorneys: Mark Kriger and Elizabeth Gleicher).

#### CHALLENGING RELIGION IN SCHOOL

The ACLU represented parents of students at Vanguard Charter Academy who alleged that Vanguard, a public charter school run by National Heritage Academy, violated the constitutional requirement of separation of church and state. The parents alleged, among other things, that the charter school endorsed Christianity by: teaching creationism and bible stories; allowing a minister to pray and preach during a mandatory teacher training; attempting to establish a formal relationship with a church; allowing school volunteers to read religious literature to students; and permitting a "Moms' prayer group" to meet at school during school hours. The judge eventually dismissed the case based, in part, on the changes that the school implemented after the lawsuit was filed - including the adoption of policies prohibiting most of the challenged practices. (*Daugherty v. Vanguard Charter Academy*; Cooperating Attorney: Kary Love).

#### CHALLENGE TO THE MICHIGAN ANTI-MASK LAW

During the demonstration against the Organization of American States in Detroit last summer, over 10 protestors were arrested and jailed for wearing Lone Ranger masks. They were charged under a 1931 Michigan law prohibiting anyone who marches or assembles from concealing part of his or her face. The law contains exceptions if the masks are worn during minstrel shows and other entertainment, during Halloween or masquerade parties, or during parades of an educational, religious or historical character. There is no exception for political expression. The ACLU, with the National Lawyers Guild, represented the protestors arguing that the state law violates the First Amendment "on its face." After oral argument, the prosecutor dropped the charges "in the interests of justice." (*People v. Clark*; ACLU Cooperating Attorney: Kenneth Mogill).



Michael Steinberg

#### FEMALE PRISONERS SUE TO STOP DISCRIMINATION

The ACLU has an ongoing lawsuit against the Livingston County Jail for the sexual harassment of women prisoners who have been treated deplorably in this jail for years. Last month, jail officials coerced several women inmates into signing "waivers" permitting male guards to "pat them down" and watch them dress and undress whenever the guards wish. The women were told that if they did not sign the forms, they would lose their prison jobs, which, in turn, would mean loss of "good time." Soon after the ACLU learned of the prison guards' tactics, our cooperating attorneys were able to put an end to the use of the waiver. (*Cox v. Homan*; Cooperating Attorneys: Michael Pitt, Peggy Goldberg Pitt, Deborah LaBelle, Prof. Richard Hills and Kim Easter).

#### DETROIT SCHOOL TAKEOVER

The ACLU is filing a "Friend of the Court" brief in the U.S. Court of Appeals arguing that the state takeover of the Detroit School Board disenfranchised Detroit voters in violation of the Voting Rights Act. Although other school districts were in worse shape than Detroit, academically and financially, the Michigan legislature chose to nullify only the voters' choice for school board in Detroit—the largest black majority city in the nation. (*Moore v. Engler*; Cooperating Attorney: Timothy Veerer).

#### NO "SPECIAL RIGHTS" FOR THE BOY SCOUTS

The Boy Scouts of America fought for their right to discriminate against gays and lesbians all the way to the U.S. Supreme Court,

arguing that sexual orientation discrimination was a core value of the organization. Yet, many public schools still give the Boy Scouts advantages that other outside organizations do not have—including the ability to set up displays in schools and send recruiting flyers home in students' folders and backpacks. The ACLU is working with gay and lesbian rights groups in Ann Arbor and other parts of the state to ensure that the schools refrain from granting "special rights" to this organization. We have also been successful in encouraging Parent/Teacher Organizations to stop sponsoring or chartering BSA troops until the BSA rescinds its discriminatory policies. (ACLU Cooperating Attorney: Nicholas Roumel).

#### THE PRAYING COACH

A minister who coaches football for the Melvindale-Northern Allen Park schools insisted on leading his football team in prayer before games despite the protest of some parents. The same minister, whose wife is the president of the school board, had previously attempted to inject the religious theory of creationism into the science curriculum. After receiving a letter from the ACLU, the CEO of the district stated that the minister's coaching contract had ended for the year. The ACLU will be monitoring the district for future violations of the constitutional requirement of separation between church and state.

#### FIGHTING ABUSE OF FORFEITURE LAWS

Fred Lipke took \$2000 in cash to the City of Wayne police department to bail out his friend. The police took the bail money and showed it to a drug-sniffing dog. Between 70% and 95% of money that has been in circulation has traces of drugs on it and, not surprisingly, the dog alerted on Mr. Lipke's money. The police then seized the money and initiated forfeiture proceedings. When the ACLU became involved, the prosecutor agreed to dismiss the case and return the \$2000 plus the \$250 bond that Lipke had to post to challenge the seizure. (In *Re \$2000 in U.S. Currency*; Cooperating Attorney: Cynthia Heenan).

For a more complete listing of our cases, click on "Docket" on our web site. [http://www.aclumich.org/events/aclu\\_of\\_michigan\\_legal\\_docket\\_20.htm](http://www.aclumich.org/events/aclu_of_michigan_legal_docket_20.htm)

# HISTORIC FIRST ROUND WIN IN U-M AFFIRMATIVE ACTION CASE

by Michael J. Steinberg

IN ONE OF THE COUNTRY'S most important civil rights cases, a federal judge in Michigan ruled that the University of Michigan's undergraduate affirmative action admissions program is legal. The December 13 ruling was hailed as a total victory by a civil rights coalition that included ACLU, the NAACP Legal Defense and Educational Fund (LDF), the Mexican American Legal Defense Fund (MALDEF) and the Detroit-based Coalition for Affirmative Action's Preservation (CAAP). The coalition represented 17 African-American and Latino students as "intervenor" in the case arguing that affirmative action is not only necessary to achieve diversity, but also to "level the playing field" for under-represented minorities.

"This is a resounding win for equality and integration at our nation's top universities," said Kary Moss, Executive Director of the Michigan ACLU. "Affirmative action, if properly structured, is a necessary and legal way to ensure that the door to higher learning remains open to African-Americans, Latinos and Native Americans. Without affirmative action, we would see a re-segregation of education."

The U-M considers race as only one of numerous factors when deciding which of the qualified applicants to admit. The University argued that consideration of race is necessary to achieve a diverse educational environment which enhances the learning experience of both majority and minority students. General Motors and dozens of other Fortune 500 companies filed Friend-of-the-Court briefs supporting U-M's position, stating that unless students are educated in an environment where they interact with people of different backgrounds, they are not prepared to function in today's global economy.

U.S. District Court Judge Patrick Duggan agreed: "This Court is persuaded that a racially and ethnically diverse student body produces significant educational benefits such that diversity, in the context of higher education, constitutes a compelling state interest." Because the current undergraduate admissions program does not use quotas,



Cartoon from The Ann Arbor News, Thursday, December 21, 2000. Reprinted with permission. Booth News Service © 2000

but simply considers the race of under-represented minorities as a "plus factor," the judge ruled that the current admissions program is legal. In contrast, the pre-1997 program was ruled unconstitutional because it specifically reserved seats for under-represented minorities.

The intervenors filed a brief and submitted expert reports documenting the shocking history of discrimination at the U-M as well as the present hostile environment on campus for African Americans, Latinos and Native Americans.

The expert reports show how affirmative action is necessary to offset the discriminatory impact that most admissions factors have on under-represented minorities today. Factors such as the caliber of the high school attended, difficulty of courses taken, parents' alumni status, hometown and standardized test scores typically count against African Americans and Latinos. Under-represented minority students, through no fault of their own, often do not attend high-achieving schools where advanced placement courses are offered, they do not live in remote areas such as the Upper Peninsula, and their parents typically have not attended the U-M. Additionally, standardized test scores—which fail to measure a student's likelihood of success at U-M—have a disproportionate adverse impact on under-represented minorities.

The judge, although ruling in the civil rights groups' favor, did not specifically address the intervenors' arguments regarding past and present discrimination. Nonetheless, the record created by the coalition will be part of the

record on appeal. Many think that the U-M undergraduate case, along with the U-M Law School case (currently pending before a different judge) will eventually be decided in the United States Supreme Court.

Many thanks go to Prof. Brent Simmons and Judith Martin who donated thousands of hours of work as cooperating attorneys for the ACLU of Michigan. Thanks also to the entire team of lawyers from the national ACLU, the NAACP LDF, MALDEF and CAAP.

To see the coalition's main brief see: <http://www.aclumich.org/briefs/UM%20Affirmative%20Action2.htm>

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