



CIVIL LIBERTIES NEWSLETTER

The American Civil Liberties of Michigan

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60 W. Hancock • Detroit, MI 48201-1342

www.aclumich.org

VOL. 5 NO. 2

June 2001



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Wendy Wagenheim, Editor

Published by the

American Civil Liberties Union /

ACLU Fund of Michigan

60 W. Hancock

Detroit, Michigan 48201-1342

www.aclumich.org

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Inside this issue...

Bicycling While Black..... 1
 From the Executive Director:
 2001 Workplan..... 2-3
 ACLU Announces Wendy Joyrich
 Civil Libertarian
 Educator Award..... 4
 Glasser Passes the Torch
 to Romero..... 4
 Flint Student Wins National
 ACLU Scholarship Award..... 4
 Racial Justice Project Update..... 5
 Meet the New Staff..... 5
 What's Happening in the Capitol..... 6
 From the President..... 6
 From the Legal Director..... 7
 Save the Date..... 8
 Staff Celebrates New Building..... 8

RACIAL PROFILING CASE FILED AGAINST THE EASTPOINTE POLICE

BICYCLING WHILE BLACK

by Delphia T. Simpson

THE ACLU HAS JOINED A LAWSUIT filed against the City of Eastpointe on behalf of 21 young African-American young men who were stopped by the police while riding their bikes in Eastpointe. The young men, ages 10-18 at the time of the incidents, were simply riding their bikes as kids do in their nearby neighborhoods. After the case received front page publicity in April, (*The Detroit Free Press* 4/10/01), more young men have come forward for representation.

Eastpointe, formerly East Detroit, is a predominantly white suburb that is separated from Detroit by 8 Mile Road. Many of the stores and restaurants that serve both communities are located in Eastpointe.

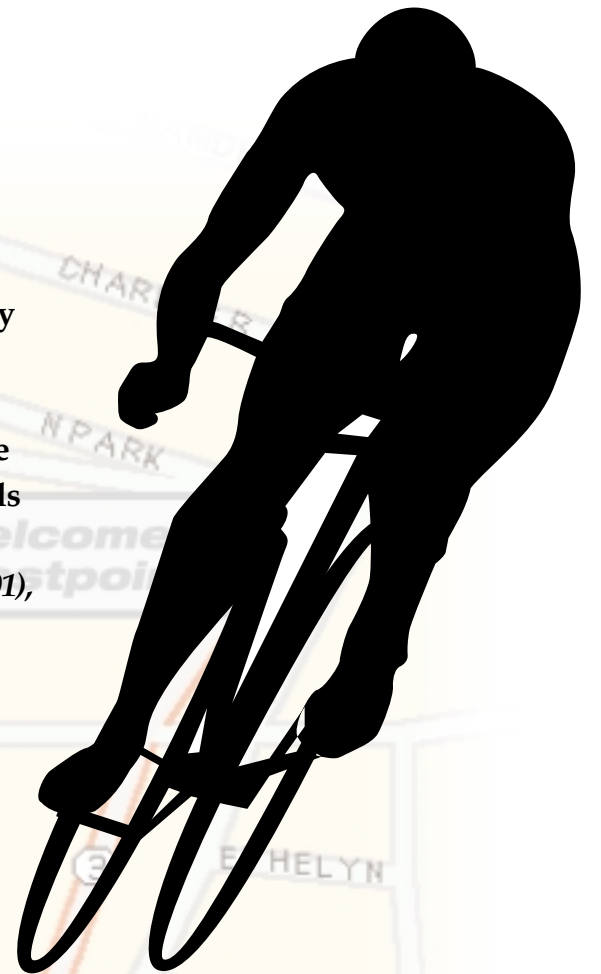
In a 1996 memorandum to the Eastpointe City Manager, former Chief of Police Fred E. DeWeese, outlined the department's policy of using race as a reason to stop young African-Americans on bicycles.

In the memorandum Police Chief DeWeese stated: "My instructions to the officers were to investigate any black youths riding through our subdivisions."

In several of the incidents the young men were searched in addition to being stopped and questioned. Some of the victim's bicycles were seized by the police and later sold at a police auction. None of the young men involved in the lawsuit were charged with bike theft. Police logs and reports in Eastpointe have identified over 100 incidents between 1995 and 1998 in which African-American youth were detained. The lawsuit claims Fourth and Fourteenth Amendment violations, including a pattern, practice and policy of discrimination.

The ACLU, co-counsel with Chuck Chomet of Kelman, Loria, Will, Harvey & Thompson, hopes this lawsuit will result in a court-appointed monitor to track the police department's stops and searches, require mandatory reporting of stops of African-Americans on bikes for three years and require mandatory training on constitutional bike stops for all current and future Eastpointe officers.

"Racial profiling is especially insidious when it happens to children and it may stigmatize them for the rest of their lives," said Kary Moss, Executive Director. "When some people think about racial profiling, it's usually about 'driving while black,' but it can also affect children who aren't even old enough to have a license to drive."



2001 Workplan

From the Executive Director

THE ACLU FUND OF MICHIGAN has a long and prominent tradition as the pre-eminent defender of the Bill of Rights in our state. This may be more important now than ever.

As a result of the most recent election, our Congress and state legislature are more conservative than they have been in a long time and future legislation is likely to reflect this conservative leaning. Moreover, our legal work may become more difficult due to the last election's impact on the Michigan Supreme Court. Additionally, more than 100 vacancies in the federal judiciary wait to be filled and it is not yet clear if these appointments will be hostile to civil liberties.

These developments mean that we must work even harder to educate the public about the importance of the Bill of Rights and the issues that threaten our civil rights and civil liberties. Our new communications department and our legislative staff perform ever-important functions as we defend civil liberties and promote pro-active positions wherever possible. Our new part-time campus organizer is helping us develop new leadership dedicated to the Bill of Rights.

We have identified five priority areas that we believe will be most threatened and where we can make the greatest impact in the next year. They are: racial profiling; free speech; the rights of gay, lesbian, bisexual and transgender persons (GLBT); reproductive rights; and privacy. We will employ multi-faceted strategies for each issue that includes litigation where appropriate, media campaigns, coalition building, and policy development.

1. RACIAL PROFILING

WHAT WE FACE:

IN THE LAST SEVERAL YEARS, the public has awakened to the problem of racial profiling. Racial profiling, or "driving while black," describes the police practice of targeting minority motorists for traffic stops in hopes of finding contraband during the stop. When police officers exercise their wide powers of discretion to stop people in a racially discriminatory manner, they violate our nation's civil rights laws, perpetuate the over-representation of people of color in our criminal justice system, and undermine public confidence in the police and judiciary.

The problem is especially serious as we witness an explosion in the prison population. Although crime rates are falling, the number of those in prison has tripled since 1980. African-American men, who comprise less than



Kary L. Moss, Esq.

seven percent of the United States population, comprise approximately half of those in prisons.

In the last several years an opportunity to confront these inequities has arisen with the emergence of data on the extent of racial profiling. As a result of growing public awareness, President Clinton issued an Executive Order urging federal agencies to implement strategies to combat this problem. Dozens of states have enacted or considered legislation, including Michigan. And in several key problem areas, like New Jersey, litigation challenging the practice of racial profiling has served to significantly increase public awareness of the problem. The ACLU has been a leader on this issue both nationally and in Michigan.

We have a special hotline to receive racial profiling complaints; a page on our website (aclu.org) addressing this issue; a targeted media campaign including special Public Service Announcement's for radio; and we have given thousands of "DWB Survival Kits" to people who have attended forums or called us to learn more about their rights. This past February, an article I wrote entitled "Destination Justice" appeared in a special issue of the Michigan State Bar Journal focusing on the State Bar's Open Justice Commission.

WHAT WE HOPE TO ACHIEVE:

DURING THIS NEXT YEAR, we will continue our education campaign directed at lawyers, judges, law enforcement agencies and the community. We will work with other non-profit organizations and law enforcement agencies to address the need for legislation to end racial profiling.

We will continue to work with our coalition to build consensus and ensure discussion about the obstacles within the law enforcement community that must be addressed in order to end racial profiling. We will pursue our litigation in Eastpointe and monitor the data collection efforts of other police agencies to ensure accountability throughout the state. (See page 1 story.)

WHAT WE NEED TO ACHIEVE IT:

WE HAD ENORMOUS SUCCESS in obtaining foundation money to launch our Racial Justice Project, but the funds are only available for two years. In order to continue this work, we must now begin raising additional funds. We will need \$120,000 to continue the program for an additional two years.

2. SAFEGUARDING FREE SPEECH

WHAT WE FACE:

WITH THE HUGE TECHNOLOGY explosion in the last decade, many government officials are tempted to rewrite First Amendment law in order to apply different and harsher standards to speech on the Internet. While First Amendment law is well established, in reality many local government officials are unaware of its existence or are misinformed.

As a result of the highly publicized tragedies involving violence in the schools, this has been compounded by some school administrators who want to issue harsh penalties against teenagers for their writings, even when they are done at home.

We have vigilantly worked to protect your rights in this area. Last year, for example, we were able to stop Michigan's Internet censorship law, which would have outlawed constitutionally protected speech on the Internet. We represented many individuals and organizations with valuable information on their websites, such as AIDS/HIV prevention groups, the national ACLU, art and literature organizations, a sex therapist, and a gay and lesbian bookstore.

Other areas involving speech that we typically take for granted – the right to artistic expression – also require vigilant protection. This past year we successfully represented an artist who challenged an obscenity ticket that he received from the Pontiac Police in response to a commissioned exhibit he developed on censored artwork. The exhibit included photos of works by Picasso, Rodin and Rembrandt.

Our work also included protecting the right to protest. We represented 10 people who were arrested for wearing Lone Ranger masks during demonstrations against the Organization of American States in Detroit last sum-

mer. After oral argument, the prosecutor dropped the charges "in the interests of justice." (See *Legal Director's Report*, page 7).

These are just a few examples of the work we've done this past year to protect the right to freedom of expression and speech that illustrate the importance of having the ACLU as your watchdog.

WHAT WE HOPE TO ACHIEVE:

RIGHT NOW, First Amendment cases comprise approximately 40% of our docket. We need to continue this work at the same pace we always have.

WHAT WE NEED TO ACHIEVE IT:

WE ESTIMATE THAT WE NEED approximately \$50,000 this year to protect First Amendment rights in Michigan.

3. SAFEGUARDING GLBT RIGHTS

WHAT WE FACE:

INCREASED LEGAL PROTECTION for the GLBT community depends on the ability to develop effective, affirmative strategies that combine litigation with education.

In the past, the ACLU of Michigan has been involved in many issues with the GLBT community, but these efforts have been ad-hoc and dependent on the availability of resources. In addition, these efforts have been reactive, instead of pro-active.

Representatives from more than 20 organizations and many members of the GLBT community participated in three focus groups that we held last year in Royal Oak, Kalamazoo, and Ann Arbor.

The focus groups identified a range of issues that participants agreed would benefit from ACLU involvement.

There are many important organizations and individuals that work to protect and defend the rights of the GLBT community in Michigan, yet there are no Michigan-based organizations that are equipped to bring test cases, provide updated legal information and support volunteer attorneys who represent this community.

To meet this need, we have launched a new GLBT project and have hired a staff attorney for a two-year position. (See *Meet Jay Kaplan*, page 5.)

WHAT WE HOPE TO ACHIEVE:

WE WILL FOCUS ON SEVERAL key areas including family law, youth, criminal law, and workplace discrimination. In some situations, we will look for test cases; in other situations we will employ media campaigns or organizing strategies to improve enforcement of civil rights laws. We will also provide legal backup to GLBT organizations on a variety of issues.

ACLU of Michigan

WHAT WE NEED TO ACHIEVE IT:

WHILE WE HAVE OBTAINED foundation support to launch this project, we still need an estimated \$20,000 to fully fund the project for the next two years. We must begin raising \$120,000 to continue for an additional two years.

4. PROTECTING REPRODUCTIVE RIGHTS

WHAT WE FACE:

WE CONTINUE TO FACE the Michigan legislature's hostility to women's reproductive rights. We have vigilantly opposed every effort by Right to Life to use our elected officials for their own purposes.

We successfully challenged Michigan's so-called "infant protection act," which would have sent doctors to jail for performing the safest abortions. (See *Legal Director's Report*, page 7). We also prevented enforcement of Michigan's "informed consent"/24-hour waiting period law for nearly six years. We settled a lawsuit against the state challenging the law and were able to eliminate some of its harshest potential consequences.

Under the settlement, women seeking abortions who are required by the law to obtain "informed consent" materials can conveniently do so via the Internet 24 hours before an abortion. Unfortunately, the legislature then turned around and enacted new legislation designed to destroy parts of the settlement.

We also provided assistance to women whose access to abortions was being denied. When 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. We ensured that the inmate was able to exercise her constitutional right to choose.

WHAT WE HOPE TO ACHIEVE:

WE MUST STAND FAST in Lansing and in the courts, with coalition partners like Planned Parenthood and NOW, to defend our right to choose. This means that we must be prepared to launch litigation when necessary and to maintain high visibility in the press on issues affecting reproductive choice.

WHAT WE NEED TO ACHIEVE IT:

WE ESTIMATE that we will need \$30,000 this year to continue our pro-choice work. This will include monitoring developments in Lansing, assisting women to overcome legal barriers to abortion, and filing litigation as appropriate.

5. PROTECTING PRIVACY RIGHTS

WHAT WE FACE:

AS WITH OUR RIGHT to free speech, our right to privacy is continually threatened, especially as use of computer technology increases. Access to personal, private information by third parties or use of state databanks to track personal information, including DNA, all pose new threats.

The popularity of drug testing also continues, although it is frequently imposed in violation of the Constitution. We filed suit on behalf of a student at Grand Blanc High School, the first Michigan school to require random drug testing of high school athletes even if there is no reason to suspect that an athlete is using drugs. We also challenged a law enacted by the Michigan legislature that required drug testing of welfare recipients. After we filed suit, a federal court judge halted enforcement of the law, agreeing that it violated the Fourth Amendment and if permitted would set a dangerous precedent. After all, being poor is not a crime.

And the privacy of ordinary college students was threatened by East Lansing police. Though doing nothing wrong, a young man was arrested while walking down the street and jailed overnight simply because he refused to show his identification. In October, a federal judge ruled that the arrest violated the young man's due process rights and his right against unreasonable searches and seizures. In another case involving students, we sued the Whitmore Lake school district after several male and female students were strip-searched during a gym class by school employees in an unsuccessful attempt to find money that was reported stolen. (See *Legal Director's Report*, page 7).

WHAT WE HOPE TO ACHIEVE:

WE MUST VIGILANTLY challenge unconstitutional state laws directed at the young and the poor. We must also develop a pro-active privacy agenda that will result in the adoption of policies by state agencies and the legislature to protect our privacy rights as technology continues to advance.

WHAT WE NEED TO ACHIEVE IT:

WE ANTICIPATE needing \$30,000 to continue our legal and public education work in this area.

This gives you an idea of how enormous our agenda already is and the key areas in which we anticipate new or escalating crises during this next year. It by no means even begins to adequately describe our legal docket or the many other ways in which we work to defend and enforce the Bill of Rights. I have not described here, for example, our very important case representing minority students in the defense of the University of Michigan affirmative action program. I have not mentioned our challenge to the Michigan Merit Scholarship Program, a program that discriminates against minority and low-income students. I have not mentioned our representation of six African American children who were victims of racial profiling at an Ann Arbor pool last summer.

Nor have I mentioned our work on behalf of women prisoners at the Livingston County jail; or victims of domestic abuse who are being evicted

from public housing under a new "one-strike" policy. Nor have I really described all of our work defending the cardinal principle of separation of church and state and the protection of religious freedom.

We need your support to continue our work. Our small staff—there are nine of us, in all—accomplish an enormous amount efficiently and effectively. We mobilize attorneys around the state to donate their time. In 1999, for example, volunteer lawyers contributed more than half a million dollars in billable hours on our cases. We have few luxuries, but know that we are fighting—and often winning—the good fight.

To do our work successfully, we need your support more than ever. Please consider renewing and increasing your tax-deductible donation so that we may maintain our existing program and continue broadening our work as needed.

Give civil liberties its place in history

**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: _____

***Enclosed is a check for membership in
the ACLU of Michigan:**

Basic (\$20)* Contributing (\$35)* Supporting (\$75)* Sustaining (\$125)*

I do not wish to join the ACLU, but enclosed is my contribution of: \$ _____

I'm already an ACLU member; here's an extra contribution of: \$ _____

Make your tax-deductible check payable to the ACLU Fund of Michigan Building Fund. Return this coupon to: ACLU Fund of Michigan, 60 W. Hancock, Detroit, MI 48201. Or fax to (313) 578-6811. Stock donations are also welcome. For more information on making a gift of stock, call (313) 578-6800.

*FOR MEMBERSHIP: Make check payable to ACLU of Michigan.
Membership dues are not tax deductible.

Our Apologies

Photo credits were inadvertently omitted in our last newsletter.

Our thanks to Dan Manville and Jason Vaughn for the wonderful pictures taken at the Annual Dinner.

ACLU of Michigan to give Wendy Joyrich Civil Libertarian Educator Award

WENDY JOYRICH was a beloved ACLU member who died earlier this year. In her memory, the ACLU of Michigan, in cooperation with the Joyrich family, is creating an award to be given to an educator or student who, like Wendy, has made an outstanding contribution to the education of high school students by working to protect and teach others the importance of civil liberties.

Her love for civil liberties and her desire to transfer this passion to her students was the driving force for a career change from teaching math to teaching social studies at Adams High School in Rochester.

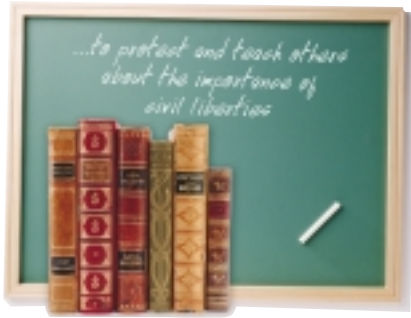
Wendy devoted 10 years to the ACLU serving as president of the Oakland Branch, as a member of the State Board

of Directors and as chair of the State legislative committee.

The Wendy Joyrich Civil Libertarian Educator Award will be presented at the second annual ACLU of Michigan

dinner in December. If someone you know has made a significant contribution to the education of high school students through teaching, development of innovative programs, or political expression, please let us know.

Send a short typed-essay describing the person's work and the reason you feel he/ she should be honored to the ACLU of Michigan, Wendy Joyrich Award, 60 W. Hancock, Detroit, MI 48201 or fax to 313-578-6811. Please include your name and phone number with the nomination.



Glasser Passes the Torch to Romero

THIS SEPTEMBER, Ira Glasser will pass the torch to Anthony D. Romero. Romero, a public interest attorney, will become the sixth executive director in the National ACLU's 81-year history.

"I hope to begin my tenure as the leader of this vitally important organization by sparking a new dialogue about the bedrock values of American democracy," said the 35-year-old Romero. "My overarching goal is to promote a new generation of committed civil libertarians and civil rights activists."

Romero is currently the Ford Foundation's Director of Human Rights and International Cooperation, the foundation's largest program with \$90 million in grants last year. He joined Ford in 1992 as a program officer in the Rights and Social Justice Program and, after less than four years, was promoted to become the one of the youngest Directors in Ford's history. Before joining the Ford Foundation, Romero worked at the Rockefeller Foundation.

Ira Glasser, who has served as Executive Director since 1978 will be leaving on July 1, 2001, after 34 years with the ACLU, 23 of them as its chief. Glasser announced his retirement last August, saying that he wanted to spend more time with his wife of 41 years, his four adult children and two grandchildren. "Retirement for me does not mean a change of career," he said of his future. "It means the end of work."

Glasser, a non-lawyer with a graduate degree in mathematics from Ohio State University, began his ACLU career in 1967 as associate director of the New York Civil Liberties Union. He spent 8

years as the NYCLU's executive director before his appointment as chief of the national ACLU in October, 1978 at the age of 40.

As only the fifth executive director in the organization's 81-year history, Glasser took on leadership of the ACLU at a time when the country was moving into a new political era. The heady legal victories dating from the Warren Court years were experienced as defeats by others, and by the mid-1970's opponents began to organize resistance to the ACLU.

Twenty years ago, nearly half the states had no staffed ACLU offices and there were fewer than 35 lawyers on the ACLU payroll in the entire country, compared to more than 100 today.

Now, people from small towns to large cities in every state can pick up the telephone to tell their local ACLU about incidents of unfair treatment, racial discrimination, police abuse, and restraints on free speech, religious liberty, reproductive freedom and gay rights.

Glasser also oversaw the ACLU's transformation into a truly diverse organization that did not merely advocate, but actively implemented the principles of affirmative action. Today, the ACLU's staff and leaders reflect in practice, as well as in principle, the organization's values of equality, and the national staff is integrated at all levels in a way it was not when Glasser took over in 1978.

This is certainly evidenced by the choice of Anthony Romero as the new executive director. Born in the Bronx of immigrant Puerto Rican parents and flu-

Flint Student Wins National ACLU Scholarship Award

ALEC GIBBS OF FENTON Senior High School is one of 12 high school seniors nationwide to be awarded a \$4,000 college scholarship in recognition of his exceptional contributions to the struggle to defend civil liberties.

The ACLU's College Scholarship for Youth Activism Award recognizes the efforts of graduating seniors who have demonstrated a strong commitment to civil liberties throughout their careers in secondary school.

"The future of the ACLU depends on young people like Alec," said Kary Moss, ACLU of Michigan executive director. "It's wonderful to see a high school student working to ensure that we keep the rights and liberties guaranteed by the Constitution."

As a youth activist, Alec took a leadership role in speaking out about important civil liberties issues within his school. In the wake of Columbine and the many zero tolerance policies that have since been implemented in schools throughout the nation, Alec has spearheaded efforts to educate fellow students and school officials about administrative policies that are adverse to the rights of students.

While earning top grades at his school, Alec also volunteered his time to work on ACLU campaigns, worked on his school paper and wrote countless letters to the local newspaper addressing civil rights issues.

"Many people assume that teens are ambivalent to civil rights issues," said Alec, who will attend Michigan State University in the Fall. "I have learned through discussions with my class-



Alec Gibbs

mates, especially those that I disagree with, that common stereotypes of apathetic and ignorant youth is not the case at all. We very much understand the issues and want to become involved."

When Alec was a sophomore in high school, his school administration began to implement conduct policies in reaction to the Columbine incident, such as surveillance cameras and zero tolerance-like rules that targeted violence, but had high potential for abuse by school officials.

"Zero tolerance policies that were put into effect after Columbine have had a damaging effect on the rights of students," said Alec. "Individual choice and freedom of expression are some of the most important rights we have as young adults. We stand to lose these rights and others if these rules go unchallenged."

The ACLU College Scholarship program was made possible by a generous grant from an anonymous donor.



(Left to right) Ira Glasser and Anthony D. Romero

ent in Spanish, Romero is a graduate of Stanford Law School and Princeton University.

As part of his vision for the ACLU, Romero said that he would work to increase, diversify and better utilize the

ACLU membership and strengthen its affiliate offices. "The ACLU is the only organization that can serve as a wholesale bulwark against attacks on our civil liberties," he said.

Racial Justice Project Update

by Delphia T. Simpson

WE'VE BEEN WORKING VERY HARD on the issue of racial profiling over the last two years, but the benefits of a grant-funded program now allows us to do so much more. And the Racial Justice Project is off to a fantastic start.

The project is concentrating on four areas: educating communities, educating professionals, legislation and litigation (see article on p.1 *Bicycling While Black*).

We're well on the way to creating effective training programs for lawyers, judges, law enforcement agencies and communities. More importantly, we're now in a position to galvanize groups to support new policies and programs that can address the problem of racial profiling in their own communities.

We, along with the NAACP and the National Conference of Community and Justice, will be working this year in three counties - Wayne, Washtenaw and Genesee - with the communities and their law enforcement agencies. In addition to one large statewide conference, a local symposium will be held in each of the three counties. The local symposiums will focus on informing the community of their rights and responsibilities during a traffic stop, demonstrate to law enforcement the

personal and social impact of racial profiling and create the groundwork for on going dialogue between the community and the local police agencies.

Our Racial Justice Project is also working with the Michigan State Bar to craft educational programs specifically for judges, magistrates, civil rights lawyers, criminal defense lawyers and prosecutors. With the Bar's Open Access to Justice Commission, we are convening an advisory committee to assist in the development of a racial profiling training program that will address the needs of each of these groups. We held our first major training on racial profiling on May 5 in Traverse City for magistrates across the state sponsored by the Michigan Judicial Institute. The participants were eager to share their experiences and discuss possible judicial solutions to the racial profiling incidents they hear about in their courtrooms everyday.

Community groups throughout Michigan have already shown great interest. In the last few months, I have spoken with community groups in Grosse Pointe, at Eastern Michigan University, and conducted a training for the Michigan Department of Civil Rights. I am also co-coordinator of Washtenaw County's "Driving While Black" coalition and will be working

with the Western Michigan Branch of the ACLU to build a new coalition specifically to address the community's racial profiling problem. Kary Moss, ACLU executive director, has been named vice-chair of Advocates and Leaders for Police and Community Trust (ALPACT), a coalition of civil rights organizations, national, state and local law enforcement agencies, and community organizations that has been meeting for over two years.

In addition to the education and training programs, racial profiling legislation is still in the works. Both Congressman John Conyers, Jr. and Congresswoman Eleanor Norton Holmes have introduced federal legislation. In Michigan, State Representative Samuel Buzz Thomas has introduced a racial profiling bill this term (H.B. 4927). Unfortunately, after nearly two years of debate and efforts to build consensus, there continues to be great division between law enforcement and the groups represented by the project on the issue of mandatory data collection. Without data, it will be impossible to determine progress or measure if there is a problem in a particular law enforcement agency. Law enforcement officials, however, are fearful that the data would be used inaccurately and have a negative impact. If



Delphia T. Simpson

we are ever to have effective legislation, we must all work hard to put pressure on all law enforcement agencies to agree to data collection. It is also crucial that legislators know that their community supports data collection of all traffic stops and searches.

If you are interested in learning more about the racial justice project or getting help in organizing your community, please contact Delphia Simpson at the ACLU office.

ACLU WELCOMES NEW STAFF & NEW GLBT PROJECT

Meet Bill Flory...



Bill Flory

THERE'S A NEW FACE in the Legislative Office. Bill Flory joined the staff in March as the Assistant Director of Legislative Affairs. As the ACLU lobbyist, Bill will be working with the Michigan Legislature and other public bodies on legislation and public policy with civil liberties implications.

Bill is not a stranger to Lansing and his experience will be an asset to the ACLU. He spent the last 6 years working as an analyst for the Michigan House of Representatives Legislative Analysis Section providing non-partisan analyses of pending legislation.

"Working six years in a non-partisan position, observing the legislature in action, was a real eye-opener," said Bill. "I think that anyone who really watches how government works for an extended period of time naturally becomes concerned about protecting (if not increasing) the restrictions on government's power and authority."

Bill is a graduate of the Thomas Cooley Law School in Lansing and of Michigan State University where he received a B.A. in English and a minor in Political Science.

...and Jay Kaplan



Jay Kaplan

THE ACLU IS ALSO PLEASED to announce the newly established Gay, Lesbian, Bisexual and Transgender Project and the addition of Jay Kaplan to our staff. As the staff lawyer for the GLBT project, Jay will be responsible for coordinating important test cases to initiate impact litigation to gain greater

legal recognition for and protect the rights of the GLBT community.

"This project is going to provide a great opportunity for us to really make a difference," said Jay. "I'm very excited to be joining the staff and look forward to making some strides in the development of GLBT civil rights law in Michigan. I believe this is one of the last frontiers in the civil rights movement. Being free from discrimination is a civil right, never a special right."

Jay graduated from the Wayne State University Law School in 1985 and spent the last 13 years with the Michigan Protection and Advocacy Services, a private disability civil rights agency where he developed the HIV/AIDS Advocacy Program, the first legal services program of its kind in Michigan. He also developed the agency's Human Rights Project that provided legal information and referrals regarding sexual orientation legal issues. Jay, specializing in housing law, has worked with Legal Services of Southeastern Michigan, the Legal Aid and Defender Association, and the Wayne County Neighborhood Legal Services.

What's Happening in the Capitol

by Bill Flory

THE 2001-2002 SESSION of the Michigan Legislature began rather slowly. The partisan split has remained much the same as last session, but has (so far) been considerably less contentious. The House of Representatives currently includes 57 Republicans, 52 Democrats and 1 vacant seat (in a district that leans strongly Republican); the Senate has 23 Republican members and 15 Democrats. The Governor's office and State Supreme Court are also controlled by Republicans.

On a positive note, whether it is due to the slow start or is a reflection of the personalities of those in leadership positions (particularly in the House of Representatives), the legislature has been spending less time on controversial issues than in times past.

However, lest we become complacent, we should remember that the first new law makes it illegal to kill a fetus. The bills (Senate Bills 70 and 71, introduced by Sen. Schuette (R) Midland, and Sen. Van Regenmorter (R) Georgetown Township) expand the 1998 pre-natal protection law that created separate criminal penalties for causing a miscarriage, stillbirth or great bodily harm to a pre- or non-viable fetus or embryo during the commission of an assault or through certain negligent acts.

The new bills amend the law to include actions causing the death of an embryo or fetus. The change is yet another part of the on-going attempt to establish that life begins at conception.

A package of bills to expand the DNA Profiling Act is likely to be passed by both houses (Senate bills 389-392, introduced by Sen. McCotter (R) Livonia; and Senate Bill 394, introduced by Sen. Bullard, Jr. (R) Milford). The DNA Profiling Act creates and maintains a database of DNA profiles (the things that look like a bar code) on convicted criminals. When the ACLU



opposed the creation of this database, supporters argued that it was limited to sexual offenders who allegedly have higher rates of recidivism. If this package is enacted, it would include profiles of those convicted of non-violent crimes and even misdemeanors, including indecent exposure. Police want to collect profiles for the convenience in investigating and solving crimes. The attitude seems to be that as we are only keeping criminal's DNA profiles, it is okay. The question is, will the collection of data end only when it includes every citizen?

On a slightly happier note, a bill that would create an office of *Faith Community Liaison* has slowed down considerably. (House Bill 4157 introduced by Rep. Hart (R) Kent County.) Since religious organizations are exempt from many civil rights laws, they are allowed to discriminate in their employment practices on the basis of their religious beliefs and teachings. As a result, they may discriminate based on race, religion, sexual orientation, gender

and pregnancy status. This office would assist organizations that can discriminate in getting government funding.

Fortunately, this bill has been losing steam since a similar federal plan has been under attack. President Bush's faith-based initiative has been criticized by some conservative Christian leaders who realize that government money would come with government strings. Though this plan is referred to as "charitable choice" by some, the ACLU knows it better as government-funded religion.

House Bill 4103 (introduced by Rep. Koetje (R) Grandville) would place *restrictions on political participation* by prohibiting school employees and volunteers from wearing buttons, making comments, or displaying literature or signs supporting or opposing ballot questions at school during school hours or at a school sponsored event, where a pupil might be present. The restrictions would apply in any area where a student may be present or overhear a discussion.

This bill does not merely limit speech, but would limit political speech – arguably the most protected form of speech.

Two hearings have been held on House Bill 4226 (introduced by Rep. Bradstreet (R) Gaylord), which would allow the *public display of the Ten Commandments*. Just this month, the U.S. Supreme Court declined to hear a case from Indiana. By doing so, they left a ruling in place that posting the Ten Commandments violates the constitutional principle of separation of church and state. In spite of this, the Michigan Legislature appears ready to continue their effort to pass an unconstitutional law.

WATCH FOR THE FOLLOWING BILLS AFTER THE SUMMER-UPDATES WILL BE AVAILABLE AT www.aclumich.org

HATE CRIMES LEGISLATION. House Bill 4662 (introduced by Rep. Kolb (D) Ann Arbor), adds sexual orientation to the ethnic intimidation law and changes the

name of the crime from ethnic intimidation to felonious intimidation.

CIVIL RIGHTS PROTECTIONS. House bill 4661 (sponsored by Rep. Godchaux (R) Birmingham), includes sexual orientation under the state's civil rights protections by amending the Elliott-Larsen Civil Rights Act to include sexual orientation as a category protected under the act.

DE-FUNDING OF PLANNED

PARENTHOOD. House Bill 4655 (sponsored by Rep. Jansen (R) Gaines). Family planning funding priority would be given to anti-choice groups over groups that support abortion rights (even though funding for abortions is already prohibited). Groups that support or provide abortions could receive a grant or contract only if no anti-abortion entities had applied for the same grant or contract.

"CHOOSE LIFE" FUND AND "CHOOSE LIFE" LICENSE PLATES.

House Bill 4759 (introduced by Rep. Newell (R) Saranac) and Senate Bill 466 (introduced by Sen. Garcia (R) St. Johns). Money collected through the sale of the license plates (a \$25 donation per license plate) would be distributed to the counties where plates are registered and given to non-government not-for-profit anti-choice pregnancy counseling organizations. Organizations that provide abortion services or advocate for abortion rights would be specifically prohibited from receiving money from the fund.

RACIAL PROFILING LEGISLATION. One final note, the entire office has been working hard on the issue of racial profiling. House Bill 4927 has been introduced in the House of Representatives. Check out Delphia Simpson's report, page 5, for more information on this important issue.

For more information on these and other ACLU issues, check out the ACLU of Michigan website at www.aclumich.org.

From the President



Jacquelin Washington

WE'VE MOVED! The renovations are complete, equipment is being delivered and the unpacking has begun. With every day that goes by, the excitement increases. This is a new era for Michigan ACLU.

One of the benefits of the Building Fund Campaign has been the opportunity to meet and talk with our supporters who wanted to express their confidence in the ACLU's work, their belief in our mission and their desire to see our programs expand by making a donation to the Building Fund.

I talked with one couple, involved in the ACLU since the 1960s when they were students in college, who spoke

with pride in being members and with deep admiration for the ACLU's efforts over the years. They were pleased that we were expanding to a new and larger facility because that indicated to them that the ACLU would continue to be an important voice for civil liberties.

Meetings with donors also gave me an opportunity to talk about issues. Even though most members support the broad range of issues raised by the ACLU, many have specific issues they care about deeply. Whether it is reproductive health, death penalty, racial profiling, free speech or the separation of church and state, our donors believe that the ACLU speaks for them.

Whether a gift is a major one or more modest, each contributor is excited about investing in the future of this great organization. Our supporters understand that they are enabling the ACLU of Michigan to take a bold step that will allow more space for existing and additional staff, more programs and greater visibility.

Our move is complete, but we have not yet attained our goal and it is important that we continue to reach out to our supporters until we do. Please consider making an investment in the future of the ACLU of Michigan. (See coupon on page 3.)

From the Legal Director

For decades, the Michigan ACLU legal program has functioned with simply a legal director on staff. Thanks to the hard work of Kary Moss and the generous grants of forward-looking foundations, we are able to welcome, for the first time, staff attorneys to the state office. I could not be more thrilled to work with Delphia Simpson and Jay Kaplan on developing proactive strategies to expand our racial justice and GLBT work in the state. Both Delphia and Jay are outstanding, dedicated, experienced attorneys and great people. I am sure you will be hearing a tremendous amount about their work for years to come.

In addition to the Eastpointe racial profiling case discussed on page 1, here are some recent highlights of our legal docket:

ARRESTING WITNESSES

Detroit Police Chief Benny Napoleon acknowledged in a March *Detroit Free Press* article that the DPD has had a long-standing policy of routinely arresting witnesses to murders and taking them to headquarters against their will for questioning. Some have been incarcerated for days even though there was no reason to believe that they were, in any way, guilty of a crime. Chief Napoleon, who is a lawyer, said he did not know if the policy was illegal, but suggested that he would change the policy if it was. ACLU Cooperating Attorney David Moran and ACLU Legal Director Michael J. Steinberg wrote Chief Napoleon to demand that the practice cease, citing Supreme Court decisions that make it clear that it is unconstitutional to arrest witnesses without probable cause that they have committed a crime. Recently two class actions have been filed against the DPD for the unconstitutional policy. The ACLU is considering joining the cases to ensure that the DPD abides by the Constitution.

KEEPING ABORTION SAFE AND LEGAL

For the second time in four years, the ACLU successfully struck down a Michigan law designed to prevent women from exercising their right to choose to have an abortion. The latest law, dubbed the "Infant Protection Act," was declared unconstitutional by U.S. District Court Judge Arthur Tarnow. The decision made final a temporary injunction that prevented the law from taking effect in March 2000. The law would have made it a felony punishable by life in prison for doctors to perform the safest and most commonly performed second trimester abortions and even some first term abortions. Moreover, the law did not include any exception to protect the physical or mental health of the pregnant woman. The Michigan ACLU co-counseled the case with the National ACLU and Planned Parent-

hood. *Evans v. Granholm*. Michigan ACLU Cooperating Attorneys: Heidi Salter-Ferris and Donald Ferris.

SPEAKING OUT AGAINST CORPORATE MISCONDUCT

What would you do if a local steel plant installed a new stamping press in your neighborhood that, when in use, wakes the neighbors up and makes the nearby houses shake? Janet Donahue, faced with such a problem, called the police to complain. The steel plant, in an attempt to stifle Donahue and any potential criticism, retaliated by suing Ms. Donahue for "malicious prosecution" and "intentional infliction of emotional distress." The ACLU filed a friend-of-the-court brief in the case asking the judge to dismiss this "SLAPP Suit" (Strategic Lawsuit Against Public Participation) on the grounds that it was designed solely to silence citizens who are simply exercising their freedom of speech on matters of public concern. The judge, agreeing with the ACLU, dismissed the case prior to trial. *Kendor Steel v. Donahue*. Cooperating Attorney: Daniel Quick.

CHALLENGE TO THE MICHIGAN ANTI-MASK LAW

During the demonstration against the Organization of American States in Detroit last summer, over 10 protesters 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, successfully represented the protesters arguing that the state law violates the First Amendment, "on its face." In June, the ACLU and NLG filed a lawsuit in federal court seeking an injunction to prevent the police from ever using the unconstitutional law to harass protesters again. *Miller v. City of Detroit*. Cooperating Attorneys: Kenneth Mogill, David Radtke and Cynthia Heenan.

RAVE ARRESTS

The Detroit Police Department has repeatedly shut down private rave parties and arrested those in attendance whether or not there was evidence that the individuals were using illegal drugs or committing any other crime. At one such bust, the police arrested Jessica Ginn, who staffed a table at the rave on behalf of a harm reduction group called DanceSafe. Ginn was passing out literature warning young people about the consequences of using drugs like Ecstasy. The ACLU represented Ginn on her vague criminal charge of "loiter-



Michael J. Steinberg

ing in a drug house," and is considering a federal case to stop the mass arrests at raves. *People v. Ginn*. Michigan ACLU Cooperating Attorney: Harold Gurewitz.

POLITICAL SPEECH OVER COMMERCIAL SPEECH

Neal Porter has maintained a sign advertising the snowmobile business on his property in a commercial zone for years. Prior to a political primary election last summer, however, he changed the words on the sign to encourage the election of a political candidate. The sign officer issued Porter a ticket because although business signs can be 20 square feet under the township sign ordinance, political signs can only be 12 square feet and his sign was larger. The ACLU filed a motion to dismiss, arguing that the Township cannot treat commercial speech more favorably than political speech. Before the court ruled on the motion, the township agreed to drop the case and review its ordinance. *Orion Township v. Porter*. Cooperating Attorney: Robert Shaya.

HIGH SCHOOL STRIP SEARCH CASE

Last year, the acting principal of Whitmore Lake High School ordered that all students in a gym class be strip-searched in an unsuccessful attempt to find money that one of the students reported missing. The ACLU filed a lawsuit on behalf of several of the student who were searched. This May, both sides agreed to attempt to resolve all issues with a neutral mediator rather than go to trial. *Beard v. Whitmore Lake School District*. Cooperating Attorneys: Richard Soble and Matthew Krichbaum.

THE RIGHT TO SPEAK ONE'S MIND AT CITY COUNCIL MEETINGS

The Michigan Court of Appeals issued an important First Amendment opinion in May protecting speakers at city council meetings from being sued for defamation unless the speaker knows that the statements made are false or is acting in "reckless disregard" of whether the statement is true or false. The appeals court reversed a trial judge's ruling that a union official was

liable for a statement to city council criticizing a non-union contractor for shoddy work because the criticism was unfounded. The ACLU was concerned that the standard used by the trial judge would have a chilling effect on would-be speakers at council meetings and filed a friend-of-the-court brief. *J&J Construction v. Bricklayers and Allied Craftsmen, Local 1*. Cooperating Attorney: Richard McHugh.

RELIGION IN THE PUBLIC SCHOOLS

ACLU branches across the state have been responding to complaints from students, parents and teachers about various public schools promoting religion. After the Lansing Area Branch contacted officials at Everett High School about a planned mandatory assembly featuring "Megaforce Ministries," the school canceled the assembly. The Flint Area Branch is investigating a school Chaplin program in the Linden Schools and a "one church, one school" program in the Clio Schools. The ACLU also contacted a school in the U.P. about how prayer at graduation and school participation in the distribution of "religious survival kits" would violate the constitutional requirement of separation between church and state.

SURVEILLANCE OF STUDENT MEETINGS

The Lansing Area ACLU recently discovered that the Michigan State University police, with the knowledge of the university president, sent undercover police officers to numerous meetings of a student anti-sweat shop organization last spring after it learned the group would be protesting at graduation. Though it was clear from the beginning that the group was merely planning a peaceful picket, the police continued to monitor the meetings. The ACLU has filed an extensive Freedom of Information Act request and will be investigating to determine if the University has also illegally been secretly monitoring other groups.

THE RIGHT TO FILE A CITIZEN COMPLAINT

The ACLU represented a man who was sued by the City of Ypsilanti for complaining too much about the police. The City sought an order from the judge that would require the man to pay \$100 every time he filed a complaint—which would be forfeited unless an internal police investigation determines the complaint to be valid. Additionally, the City asked the court to order that the man seek permission from the City Attorney prior to entering any city building to speak with a government employee. The case has been dismissed without prejudice. *City of Ypsilanti v. Gary Hann*. ACLU Attorney: Michael J. Steinberg with assistance from intern Niraj Ganatra.

For more information on these and other ACLU issues, check out the ACLU of Michigan website at www.aclumich.org.

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Left to right: Jay Kaplan, Becky Bull, Brenda Bove, Michael Steinberg, Kary Moss, Wendy Wagenheim, Delphia Simpson, Bill Flory.



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