ACLU OF MICHIGAN LEGAL DOCKET – 2004-2005

POST 9/11 CASES

First Challenge to the Patriot Act – The ACLU Fund of Michigan and the National ACLU filed the first direct challenge in the country to the USA PATRIOT Act – the law passed in the wake of 9-11 that vastly expands the power of the government to spy on ordinary people. We are challenging Section 215 of the law that allows the FBI to secretly obtain private information about a person even though it does not suspect the person of doing anything wrong. All the FBI must do is certify to a secret court judge ("FISA judge") that the information is "sought for" a terrorism investigation and the court must order any person – including librarians, Internet service providers, doctors and employers – to hand over records or other items sought by the FBI. Moreover, the person who receives the order is forever gagged from telling anyone that she or he received the secret court order. We are representing six national and local organizations that serve Arab and Muslim people and we argue that the law violates constitutional protections against unlawful searches as well as the First Amendment and Due Process Clause. A hearing was held in this groundbreaking case in December 2003 and we are awaiting a decision. (*Muslim Community Association of Ann Arbor v. John Ashcroft*; Attorneys: Ann Beeson, Jameel Jaffer, Noel Saleh and Kary Moss).[1]

Michigan State Police Sued for Violating Data Collection Law – The ACLU, representing former Republican governor William Milliken and a Catholic nun, sued the Michigan State Police (MSP) in August 2004 for violating a 1980 law regulating data collection on Michigan residents. The law, which was signed by Gov. Milliken, was enacted to serve as a safeguard against the abuses perpetrated by the MSP in the 60's and 70's when it spied on and kept so-called "red squad files" on hundreds of peaceful civil rights and anti-war activists. The 1980 law forbids the MSP from participating in an "interstate law enforcement intelligence agency" without either obtaining explicit approval of the legislature or establishing an oversight board. Nonetheless, the MSP, without implementing the required safeguards, shared data about Michigan residents with a surveillance system located in Florida called "MATRIX." MATRIX contains billions of pieces and with a few strokes on the keyboard can instantly create dossiers

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

on law-abiding citizens throughout the county. In May 2005, soon after a Wayne County judge denied the state's motion to dismiss the ACLU case, the MSP dropped out of MATRIX. (*Milliken v. Sturdivant*; Attorneys: Satyam Talati, Kary Moss, Kirk Tousaw and Noel Saleh).

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

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

Challenging "Gag Rule" on Post-Trial Publicity in Terrorism Trial – After the first terrorism trial in the country was over, a federal judge in Detroit issued a broad gag order barring attorneys in the case from not only disclosing sealed and classified documents but also from "commenting" on "confidential" information about the case. The defense attorneys did not object to the portion of the order about sealed or classified evidence, but they believed that the ban on commenting about other information went too far. Because of the order, they were afraid to answer questions from the media about the government's failure to disclose exculpatory evidence about their clients and the lawsuit by the prosecutor against John Ashcroft. The defense attorneys appealed the gag order and the ACLU, along with the Criminal Defense

Attorneys of Michigan, filed a friend-of-the-court brief on their behalf in the summer of 2004. The case was rendered moot after the cased was dismissed for prosecutorial misconduct. (*U.S. v. Koubriti*. Cooperating Attorney: Erwin Chemerinsky).

Racial Profiling of People of Arab Descent – We have received complaints of discrimination against people of Arab descent across the state at airports, schools, work and apartment complexes. We are investigating potential lawsuits.

RACIAL JUSTICE

Bicycling While Black – In June 2005, the ACLU scored a victory in its "biking while black" case when the U.S. Court of Appeals sent the case back to the district court for trial. The ACLU is representing 21 young African-American men from Detroit who were stopped by the police while riding their bikes on the other side of Eight Mile Road in Eastpointe. The ACLU argues that the bicyclists were stopped in this predominantly white suburb because of their race. In a 1996 memorandum to the Eastpointe City Manager, the former police chief stated that he instructed his officers to investigate any black youths riding through Eastpointe subdivisions. The police searched several of the young men and in some cases seized and later sold their bicycles. The Court of Appeals wrote in its decision that it was "frustrated and concerned with what appears to be consistent disregard for basic Fourth Amendment principles by the Eastpointe Police Department and its officers." (*Bennett v. Eastpointe*; ACLU Attorneys: Mark Finnegan, Saura Sahu, and Delphia Simpson).

Seeking Racial Justice in the Lansing Police Department – After several months of investigation, the ACLU of Michigan entered talks with the Lansing Police Department (LPD) about claims of race discrimination it had received from several African American police officers. The officers complained about a racially hostile environment at the LPD and told stories of how white officers derisively referred to a shift that contained multiple black officers as the "soul patrol." The black officers had reason to believe that white officers would not come to assist them when they called for back up, placing them in danger. They explained that while they often were disciplined for various minor infractions, white officers faced no discipline whatsoever for similar acts. Documents that we obtained in response to a Freedom of Information Act request confirmed that African-American officers were, in fact, disciplined at a much higher rate than white officers. In 2005, as a result of the talks with the ACLU, the LPD conducted its own study, created a task force and implemented many of its recommendations to address the disparity in the way white and black officers were treated. Additionally, some of the individual officers ended up filing their own lawsuits seeking monetary damages for race discrimination. (Cooperating Attorney: Jeanne Mirer).

School District Reforms after so-called "KKK game" – Kyron Tryon was the only African

American eighth grader at Bullock Creek Middle School near Midland. In May 2003, seven boys grabbed Kyron during recess, picked him off the ground and hit him with a belt while they chanted "KKK." He was then pushed to the ground and kicked. Unsatisfied with the way the school district initially responded to the attack, Kyron's parents contacted the ACLU and filed a complaint with the Michigan Department of Civil Rights (MDCR). The ACLU and the school district agreed to mediate the case before the MDCR and jointly developed a comprehensive plan to create an atmosphere at the school to prevent further racist incidents. The plan, which was announced in May 2004, includes far-reaching diversity training for administrators, faculty and students by the Bridge Center for Racial Harmony; symposiums on Martin Luther King Day; and formation of a district wide Diversity Committee to recommend other actions. Kyron's parents will be part of the Diversity Committee in addition to representatives from the staff, student body, Board of Education and Dow Chemical. Dow Chemical has also agreed to fund these programs. (Attorney: Michael J. Steinberg with assistance from law students Tiffani Smith and Daniel Scripps).

Scholarship Program Fails Students – In 2000, a coalition of groups led by the ACLU sued the state for discrimination against minority and poor students by awarding Michigan Merit Scholarships based solely on Michigan Educational Assessment Program (MEAP) test scores. The MEAP test was designed to measure how well school districts teach the optional model Michigan curriculum, not individual student merit. By misusing the MEAP test as a measure of student merit, the state denies $2,500 scholarships to thousands of outstanding minority students and students from poor school districts who do not fare as well on the MEAP test as majority students from wealthy districts. The coalition sought an injunction requiring the state to discontinue use of the MEAP as the sole criterion for awarding scholarships and revise the criteria to include a fairer means of assessing student achievement. The ACLU worked with the Mexican American Legal Defense and Education Fund, the Michigan State Conference of the NAACP, and Trial Lawyers for Public Justice on this case. In 2005, after the U.S. Supreme Court held that individuals could no longer challenge programs that disproportionately hurt people of color, the coalition was forced to dismiss the case. (*White v. Engler;* Attorneys: Michael Pitt, Peggy Goldberg Pitt, Judith Martin and Kary Moss).

FREEDOM OF SPEECH

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

Discrimination Committee v. City of Dearborn; Cooperating Attorneys: William Wertheimer and Miriam Aukerman, Cynthia Heenan, Majed Moughni and Noel Saleh).

Right to Display Political Yard Signs – Numerous cities throughout Michigan, such as Grosse Pointe Woods and Troy, ban election signs more than thirty days before the election even though most people make up their mind about who to vote for before that time. Some municipalities, such as Troy, prohibit more than two political signs in a yard at a time even though a resident may feel passionately about more than two political races at a time. Most of the cities with time and numerical limits on political yard signs do not have similar restrictions on commercial signs or seasonal decorations. In the months prior to the 2004 elections, the ACLU successfully sued Grosse Pointe Woods and Troy on behalf of two homeowners who were threatened with misdemeanors for displaying their political signs. One client posted a Kerry/Edwards sign and the other put up a "W" sign in support of President George W. Bush. The ACLU also was able to convince numerous municipalities -- including Allegan, St. Joseph, Lincoln Township and Chelsea -- to refrain from enforcing similar restrictions and to take steps to amend their ordinances in order to respect the free speech rights of their residents. (*Adzigian v. City of Grosse Pointe Woods* and *Fehribach v. City of Troy*; Attorneys: David R. Radtke and Michael J. Steinberg).

Student Newspaper Censored – The ACLU filed a successful case on behalf of Katy Dean, a Utica High School student who serves as the managing editor for her school-sponsored newspaper, the *Arrow*. Ms. Dean wrote an article for the *Arrow* about a lawsuit filed against Utica Community Schools. Although the subject of the article was approved by a faculty advisor, the principal prohibited it from being published. The ACLU argued that school administrators cannot censor school-sponsored student newspapers where there is no legitimate educational reason for doing so and that the principal censored Ms. Dean's article only because it could embarrass the district. In October 2004, the U.S. District Court ruled in favor of Ms. Dean and ordered the school district to publish the article with an explanation that it was unconstitutionally censored. (*Dean v. Utica Public Schools*; Cooperating Attorney: Andrew Nickelhoff).

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

Artist Jailed for Michelangelo Mural – A Roseville artist named Edward Stross painted a mural on the side of his studio that contained a variation of Michelangelo's "Creation of Man" from the Sistine Chapel in Rome. Because the mural included one of Eve's bare breasts, the City of Roseville charged and convicted him of violating the city's sign ordinance. When the judge sentenced Stross to 30 days in jail in February 2005, the ACLU agreed to represent him on appeal on free speech grounds and secured his release during the appeal. (*City of Roseville v. Stross*. Cooperating Attorneys: Mark Kriger and Carl Marlinga).

State Charges Frustrated Farmer for Complaining – Gerald Henning is an 82-year-old farmer in Lenawee County whose property is surrounded on three sides by a huge agribusiness. Contrary to state regulations, the agribusiness sprays liquid manure on its property without incorporating it into the soil. The liquid manure emits a sickening smell. Henning called a complaint hotline set up by the Michigan Department of Agriculture (MDA) and left voicemail messages complaining about the stench and asking for help. When his pleas went unheeded, he left messages with stronger language. At times he referred to the MDA as "suck ass Farm Bureau sons-of-bitches." Rather than helping Henning, the state responded by charging him with making "obscene" phone calls. The ACLU represented Henning on appeal in February 2004, a judge dismissed the charge because Henning's speech was protected by the First Amendment. *(People v. Henning.* Attorney: Sarah Zearfoss).

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

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

Protecting Environmental Activists from SLAPP Suits – Nancy Orweyler is the president of an environmental group called Saving Wetlands and Trees of Chesterfield (SWAT). She and other members of her organization spoke out against the development of wetlands in public

meetings. After a lawsuit by the Macomb County Prosecutor and SWAT to stop the development was dismissed, the developers filed a lawsuit against Ms. Orweyler and SWAT for defamation and "product disparagement" among other things. The ACLU agreed to defend Ms. Orweyler and the environmental organization because it believed the developers' lawsuit was designed to intimidate, deter and bankrupt activists for exercising their First Amendment right to speak out on matters of public concern. These types of cases are commonly referred to as "SLAPP suits" or "Strategic Lawsuits Against Public Participation." After the ACLU became involved, the developers decided not to pursue the case and the SLAPP suit was dismissed in winter of 2005. Cooperating Attorney: Daniel Quick.

Protecting Environmental Activists from SLAPP Suits II – Laurie Fromhart spoke at a Michigan Department of Environmental Quality Hearing against granting a corporation permission to excavate an area large enough to create a 50-acre lake. She expressed her concerns on behalf a citizen group called Stewards of Bridgewater about the adverse impact the project would have on wetlands and on the neighboring homeowners. The MDEQ denied the permit. In May 2004, just before re-submitting its permit request, the corporation sued Fromhart and others who had spoken out against the initial project in an attempt to intimidate her from speaking out again. In the summer of 2004, after the ACLU agreed to represent Ms. Fromhart and filed a motion to dismiss on First Amendment grounds, the corporation simply dropped the case. (*Sylvester Material Co, Inc. v. Fromhart*; Cooperating attorneys: Daniel Quick and Professor C.J. Peters).

Criminalizing Expression on Cable T.V. – The ACLU represented a man in the Michigan Court of Appeals who was convicted of indecent exposure for a short comedy skit on community access television. The skit involved "locker room humor" and was not sexual in nature. The ACLU asserts that the indecent exposure statute was intended to apply only to in-person nudity, not televised nudity. Moreover, the ACLU asserts that non-obscene nudity on cable television is protected by the constitution; otherwise, it would be a crime to broadcast award-winning movies such as *Schindler's List* on cable television. In a decision that could impact what shows are available on television throughout the state, the Michigan Court of Appeals upheld the conviction in May 2005. The case has been appealed to the Michigan Supreme Court. (*People v. Huffman*. Cooperating Attorneys: Peter Armstrong, Eugene Volokh, Gary Gershon and Ralph Simpson).

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

involved. After further discussion, the district agreed to refrain from censoring the Mr. Petrasko comments, thereby averting a lawsuit.

Protecting Art and the American Flag – Shirley and Frank Piku, avid art collectors in Sylvan Lake, purchased an art piece from a well-respected local artist, Eric Mesko, and displayed it in their yard. The piece is entitled, “Star Spangled Banner” and is an 8-foot long rendering of the American Flag constructed of barn board and metal stars. In 2004, City authorities charged the Pikus with a misdemeanor for displaying the flag because they claimed that it constituted an illegal fence – even though the fence ordinance defined a fence as a structure “designed as a barrier.” Mark Kriger represented the Pikus on behalf of the ACLU and argued that the flag was art, not a structure designed as a barrier. Unfortunately, a jury found the Pikus guilty. (*Sylvan Lake v. Piku*. Cooperating Attorney: Mark Kriger).

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

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

Banning Endorsements of Political Candidates – The student government at Michigan State University enacted a rule prohibiting student groups from endorsing a candidate for student government unless the candidate first consented in writing to the endorsement. Violators of the rule would be referred to the university’s internal judicial system and could conceivably be suspended or expelled from school for making unauthorized endorsements. Both the campus Republicans and the campus Democrats asked the ACLU to represent them in a lawsuit to

protect their free speech rights. After discussions with the ACLU in the spring of 2004, the student government agreed to rescind the regulation without the need for litigation. (Attorney: Mary Ellen Gurewitz, with assistance from MSU/DCL law student Andrew Banyai).

The Middle Finger and Free Speech – Thomas Lawrence was a passenger in a car stopped at a traffic light one night when he observed a Pontiac police officer who appeared to be harassing a homeless person. When the officer realized that Lawrence was watching him, he directed the flood light from his cruiser in Lawrence's eyes. The light turned green and, as Lawrence's car was pulling away, Lawrence extended his middle finger at the officer. Within minutes, the police had pulled over the car and arrested Lawrence for disorderly conduct. The ACLU filed a motion to dismiss, which was granted in the spring of 2004. The ACLU relied on a long line of cases holding that extending one's middle finger is a form of expression which, while disrespectful, cannot serve as the basis of a criminal prosecution. (*People v. Lawrence*; Rob Shaya and Amy Neville).

Judge Dismisses Case Because of Pretrial Publicity – A Wayne County judge dismissed a sexual harassment lawsuit against Ford Motor Company because the victim and her attorneys made public statements about the case before trial. The judge took the drastic measure of dismissing the lawsuit even though he never issued a "gag order" or attempted to determine whether an impartial jury could be seated to hear the case. The ACLU, which is very concerned about both the right to a fair trial and free speech, filed a friend-of-the-court brief in the Michigan Court of Appeals, arguing that dismissal of the case was extreme, that the plaintiff and her attorneys' free speech rights were violated, and that there were other measures short of dismissing the case that the judge could have employed to ensure a fair trial. In April 2004, the Court of Appeals agreed with the ACLU and reversed the dismissal of the case. (*Maldonodo v. Ford Motor Company*. Cooperating Attorney: Christine Chabot).

Charged for Complaining – A retired union member named Bruce King ran for election as president of his local, but lost what he believed to be a corrupt election. King then wrote numerous letters to union officials complaining about the election and criticizing them for failure to investigate. Instead of investigating the matter, the union officials called the police and the City of Dearborn charged King with "malicious annoyance by writing." The ACLU defended the case and the judge dismissed the charges in 2003. *(City of Dearborn v. King*; Cooperating Attorney: Mark Kriger).

Contempt Charges for Woman Who Criticized Judge Out of Court – After an African American woman was sentenced to probation and required to pay court costs for driving on a suspended license in Eastpointe, she left the district court courtroom and went to the clerk's office to pay the costs. She was upset and told her friend that she thought that the judge was treating white defendants more favorably than black defendants. The clerk overheard the conversation and reported it to the judge who demanded that the woman come back to the

courtroom. The judge confronted the woman with what the clerk had told the judge and set a date for a hearing on whether the woman should be held in contempt of court. The ACLU represented the woman at the hearing and the contempt charges were eventually dropped. *(People v. Tilley.* Cooperating Attorney: James Maceroni).

School Reverses Student's Suspension for Wearing Anarchy T-Shirt – Bay City Central High School suspended honor student Timothy Gies for five days for wearing a t-shirt with an anarchy symbol on it. The school also forbade Gies from wearing a sweatshirt with an upside down American flag and an anti-war quote from Albert Einstein. Even though the clothing did not cause any disruption to the school, the district thought the messages were inappropriate. In May 2004, the ACLU successfully appealed Gies' suspension to the superintendent's office and received assurances that Gies and other students would not be punished in the future for expressing political views on their clothing. (Attorney: Michael J. Steinberg).

Right to Complain about the Police – A psychologist who believed that he was mistreated by an aggressive police officer wrote to the Flint Police Chief about the officer stating, among other things, that the officer would benefit from therapy. The officer sued the psychologist for defamation. The ACLU filed a friend-of-the-court brief at the trial level arguing that complaints against governmental officials are protected by the First Amendment except in extraordinary circumstances. The trial judge, agreeing with the ACLU, dismissed the lawsuit. When the officer appealed, the ACLU provided direct representation to Mr. Mach. In April 2004, the Court of Appeals ruled in Mr. Mach's favor, ending a seven year legal battle. (*Allen v. Mach.* Attorney: Daniel Quick).

Convicted of Being "Offensive to Manners or Morals" – A woman on the west side of the state was convicted for "indecent conduct" which was defined by the trial judge as doing something that is "grossly unseemly or offensive to manners or morals." The ACLU submitted a friend-of-the-court brief in the Michigan Court of Appeals in August 2004 arguing that this definition is unconstitutionally vague. In May 2005, the Court of Appeals issued an opinion agreeing with the ACLU and reversed the conviction. (*People v. Sleeman*; Cooperating Attorney: Marshall Widick).

REPRODUCTIVE FREEDOM

Abortion Ban Defeated – For the third time in eight years, the ACLU successfully challenged a Michigan law that would have banned the safest and most commonly performed abortions during all stages of pregnancy. In September 2005, a federal court struck down the most recent law, the "Legal Birth Definition Act," because it failed to adequately protect the health and life of women. The court further ruled that the law "creates a ban on actions at the heart of abortion procedures from the earliest stages of pregnancy, whether used to perform induced abortions or

to treat pregnancy loss." The state has appealed. We are working on the case with the National ACLU Reproductive Freedom Project, Planned Parenthood and the Center for Reproductive Rights. (*Northland Family Planning Clinic, et al. v.* Cox; ACLU Attorney: Talcott Camp).

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

SEX DISCRIMINATION

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

Domestic Violence Eviction Case Settled – In August 2005, the ACLU of Michigan, working with the National ACLU Women's Rights Project and the Michigan Poverty Law Center, settled a case in which a victim of domestic violence was evicted from her home. Our client, referred to here as "Laura," was assaulted by her husband soon after giving birth to their child. Her husband was arrested and barred from their apartment as a condition of his bail. Although the landlord was aware of the judicial order, he agreed to her husband's request to lock Laura and her new-born out of the apartment without notice while they were running an errand, leaving them

homeless. Rather than face an ACLU lawsuit, the complex, although denying liability and insisting that its name not be revealed, agreed to pay Laura to compensate her for the emotional distress she suffered as well as the loss of property. It also agreed to implement policies and training to ensure that no other women would be evicted because they were victims of domestic violence. (ACLU Attorney: Emily Martin).

Ensuring Integrated Schools – The ACLU opposes public schools that segregate students by race and by sex. We believe that single-sex schools, similar to single-race schools, not only violate students' right to equal protection of the law, but also perpetuate negative stereotypes. Research clearly shows that students in single-sex schools are more likely to embrace damaging gender stereotypes about the opposite sex than those in integrated schools. In the summer of 2005, when the Detroit Schools announced its intention to become the only public school district in the state to create all-male and all-female high schools, the Detroit ACLU met with the administration and urged the district to create small coed schools, not illegal gender-segregated schools. The administration, apparently convinced that state law prevented single-sex schools, reluctantly agreed to keep the two new schools integrated.

Stopping Sexual Abuse of Inmates – For years there has been a persistent and well-documented problem in women's prisons of male guards raping and sexually harassing women and then retaliating against any women who complain about such treatment. In order to address this problem and to settle a class action lawsuit on behalf of women inmates, the Michigan Department of Corrections agreed to assign only female corrections officers in the area where women dress, shower and use the toilet. In response, certain guards sued the MDOC for sex discrimination in employment. In 2003, the ACLU submitted a friend-of-the-court brief on appeal, arguing that while gender-specific assignments should be legal only under rare circumstances, those circumstances existed in this case because: (1) the MDOC did not impose a blanket ban on employing men in women's facilities; (2) there is not an adequate gender-neutral alternative to protect inmates' safety and privacy; and (3) same sex supervision in intimate settings is necessary for the women inmates' rehabilitation given their history of cross-gender sexual abuse both before and during incarceration. The ACLU also argued that in order to accommodate both workers' and prisoners' rights, the trial court should have ordered the MDOC to ensure that none of the male guards who were moved would lose security or pay and promotion opportunities. In December 2004, the U.S. Court of Appeals issued an opinion upholding the exclusive use of women guards in areas where inmates shower, dress and use the toilet. (*Everson v. MDOC*; ACLU Cooperating Attorney: Professor Roderick Hills).

PROTECTION AGAINST UNREASONABLE SEARCHES AND SEIZURES

Search and Seizure Case to be Argued in U.S. Supreme Court – In January 2006, the ACLU of Michigan will argue an important search and seizure case in the nation's highest court. The

case arose in 2000 when the Detroit police went to Booker Hudson's home with a warrant to search his house. Instead of waiting a reasonable amount of time to enter the house after knocking and announcing their presence, the police violated the Constitution by simply breaking down the door. Most judges in the country would rule that the small amount of drugs the police found should not be introduced in court because it was obtained illegally. However, the Michigan Supreme Court has ruled that any evidence obtained in violation of the "knock and announce" rule is admissible because the police would have "inevitably discovered" the evidence if they had conducted a constitutional search. We believe that the Michigan Supreme Court's position is dangerous because, under such logic, there would be no incentive for the police to follow the Constitution. (*Hudson v. Michigan*. Cooperating Attorney: David Moran).

Stopping Unconstitutional Breathalyzers of Young Adults – In August 2005, the ACLU filed a federal lawsuit challenging a state law that allows police to force pedestrians under age 21 to take a Breathalyzer test without first obtaining a search warrant. We are representing young adults from Saginaw and Mount Pleasant who were forced to submit to tests even though they were not driving or drinking. In 2003, we won a similar case challenging a Bay City ordinance which was identical to the state law. Despite sending letters to city attorneys across the state alerting them to the Bay City ruling, many police agencies – including the Michigan State Police – are still violating young people's rights. We hope this case will solve the problem statewide. (*Platte, et al. v. Thomas Township, el al.*; Cooperating Attorneys: Marshall Widick, David Moran and William Street).

Challenge to Mass Search Policy in Detroit Schools – The Detroit Schools have a policy of conducting mass searches of students at each of its high schools and middle schools on random, unannounced days in conjunction with the Detroit Police Department. Many of the searches, including the search of Mumford High School in February 2004, take up to two hours. Each student is lined up against the wall and required to stand in silence until it is his or her turn to walk through the metal detector, be patted down and have his or her backpack searched. The students are then placed in a holding area in the auditorium until the searches are over. In June 2004, the ACLU sued the Detroit Schools for conducting the intrusive, lengthy searches of each student without reasonable suspicion. In the summer of 2005, a federal judge denied the DPD's motion for summary judgment. A trial is expected in 2006. (*Wells v. Detroit Schools*; Cooperating Attorney: Amos Williams with the assistance of ACLU legal intern Jennie Santos).

Stripped of their Rights – We are representing eight Whitmore Lake High School students in a suit against the Whitmore Lake School District. In the spring of 2000, school officials strip-searched all members of a gym class in an unsuccessful attempt to find money that was reported stolen. The boys were forced to pull down their pants and underwear while they were examined by a teacher. The girls were forced to stand in a circle and pull up their shirts and pull down their shorts. In June 2003, a federal judge in Detroit ruled that school officials, but not the school district, could be sued for money by the students. Unfortunately, in April, 2005, the U.S.

Court of Appeals held that while the school officials violated the students' rights, they were "immune" from a lawsuit for damages. The students have now appealed and are arguing that the school district is liable because it had a practice of conducting mass searches and failed to adequately train its employees. (*Beard v. Whitmore Lake School District*; ACLU Cooperating Attorneys: Richard Soble and Matthew Krichbaum).

Man Arrested for Not Showing ID – We represented Travis Risbridger, who was arrested while walking down an East Lansing street and jailed overnight because he declined to show identification to a police officer. He was charged with "hindering or obstructing" an officer in the line of duty. In 2000, U.S. District Court Judge Gordon J. Quist ruled that the arrest violated Risbridger's due process rights and his right against unreasonable searches and seizures. However, in 2002, the U.S. Court of Appeals held that the police officer was "immune" from having to pay Mr. Risbridger money and sent the case back to the district court to determine whether the City of Lansing was liable. Then, in the summer of 2004, the U.S. Supreme Court, in a controversial 5-4 decision, ruled in a Nevada case that a person does not have a right to refuse to show ID when there is a law that clearly requires the showing of ID. After the Supreme Court ruling, the ACLU and the City negotiated a settlement of the case for $27,500 in damages and attorneys fees. East Lansing also revised its ordinance to track the Nevada law. (*Risbridger v. City of East Lansing*; Cooperating Attorneys: Dorean Koenig, Bryan Waldman).

Flint Mayor Orders News Carrier's Arrest – Flint Mayor Don Williamson issued an executive order last summer barring city employees from bringing into City Hall newspapers or other reading material unrelated to city business. In September 2004, as Tom Hansen was delivering copies of the Flint Journal to the newsstand in Flint City Hall, the mayor confronted Hansen and demanded to know which employees in the building subscribed to the newspaper. When Hansen refused to reveal the subscribers, Williamson ordered the Flint Police Department to arrest him. The ACLU is representing Mr. Hansen in a wrongful arrest lawsuit. (*Hansen v. City of Flint*. Cooperating Attorney: Gregory Gibbs).

GAY, LESBIAN, BISEXUAL AND TRANSGENDER RIGHTS

Victory in Same-Sex Benefits/Proposal 2 Case – In November 2004, much to our dismay, the voters of Michigan approved Proposal 2, a ballot initiative amending the Michigan Constitution to bar same-sex marriage "or any similar union." Throughout the campaign, the proponents of the amendment insisted that the vote was about marriage and that it would have no impact on same-sex domestic partnership benefits. However, after the election Governor Granholm said there was a "cloud" over whether such benefits were legal and said that the state would not provide health insurance to same sex partners of employees until a court ruled on the issue. The ACLU filed a lawsuit in March 2005 on behalf of 21 same-sex couples throughout the state seeking a declaration that Marriage Amendment did not preclude employers from providing

same sex benefit. In September, in a great victory for LGBT rights, an Ingham County judge agreed with the ACLU and ruled that same-sex benefits were work-related benefits unrelated to marriage. As a result, hundreds of couples and their families will receive or continue to receive health insurance. Attorney General Mike Cox has appealed. (*National Pride v. Granholm*. Attorneys: Deborah Labelle, Jay Kaplan, Tom Wilczak, Barbara Buchanan, Kurt Kissling, Amanda Shelton, Nancy Katz and Professor Roderick Hills).

Health Insurance for Gay and Lesbian Families – Even before Proposal 2, the conservative Thomas More Law Center was trying to strip the partners of gay and lesbians of health insurance benefits on the ground that they were somehow barred by Michigan's marriage laws. In 2004, the ACLU filed a friend-of-the-court brief on behalf of the Washtenaw Medical Society and the Women Lawyers of Michigan in the Michigan Court of Appeals arguing that the marriage laws, while limiting marriage to a union between a man and a woman, have absolutely nothing to do with an employer's ability to grant benefits to whomever it pleases. In April 2005, the Court of Appeals dismissed the case because the plaintiffs failed to do what they were required to do to have "standing" to sue. (*Rhodes v. Ann Arbor Schools*; Attorneys: Kara Jennings and Jay Kaplan).

Michigan Dept. of Corrections (MDOC) Agrees to Stop Identifying Prisoners as Gay – For years, the Michigan Department of Corrections has identified inmates' sexual orientation on numerous forms and records. As a result, guards and other prisoners would "out" LGBT inmates and LGBT inmates would become the target of harassment and physical abuse. Both the ACLU of Michigan LGBT Project and the Northwest Michigan ACLU Branch wrote letters to the MDOC requesting that inmates' sexual orientation no longer be identified on prison forms. The letters stressed that while it is important for security reasons to identify which inmates are sexual predators, an inmate's sexual orientation is irrelevant. Based on the letters, the MDOC conducted a review of the policy and, in an April, 2003 letter to the ACLU, announced that it would change its policy of reporting sexual orientation. When it came to our attention in 2005 that some officials were still marking the sexual orientation designation section on the forms, we contacted the MDOC again and convinced the department to develop new forms. (ACLU Attorneys: Al Quick, Steve Morse, Jay Kaplan, and Deborah LaBelle and ACLU Intern Daniel Mullkoff).

Right of College Students to Present "Drag" Show – The Gay-Straight Alliance, a non-curricular club at Muskegon Community College began planning and advertising for an on-campus fundraiser- a drag show featuring transgender performers. The College President, upon hearing about the proposed show, ordered the fundraiser canceled, stating that such a show was "sexual" in nature and would offend the college community. In 2005, the ACLU sent a letter to the President, stating that this violated the first amendment rights of the Gay Straight Alliance. The President reversed his position and the drag show fundraiser was allowed to be held. (Attorney: Jay Kaplan).

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

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

RIGHT TO COUNSEL

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

Right to Appointed Counsel in Appeal of Misdemeanor Convictions – Many Michigan judges will not appoint an attorney to represent poor people on appeal after they are convicted of a misdemeanor. In the summer of 2004, the ACLU successfully challenged this policy on behalf of a man who was refused appellate counsel by a judge in Plymouth. We are now working to persuade the Michigan Supreme Court to clarify its court rules to make it clear that all indigent misdemeanants who are sentenced to jail are entitled to appointed counsel and free transcripts. (*People v. Kanka*; Cooperating Attorney: Ralph Simpson with assistance from ACLU interns Bryan Anderson and Melanie Sonnenborn).

Systemic Problems in Michigan with Criminal Defense of Poor – The ACLU of Michigan, the National ACLU and the Brennan Center for Justice in New York are conducting a thorough study of Michigan's system of appointing lawyers to represent poor people accused of crimes. Our investigation so far reveals that there are major problems with the funding, training and oversight of the public defense systems in counties throughout the state. The Michigan firm of Dykema Gossett and the New York firm of Cravath Swain are serving as cooperating counsel. (ACLU Cooperating Attorneys: Margaret Costello, Roger Timm, Elliott Hall, Kingsley Buhl, Jerome Maynard, Clay Guise, Charles LeMoine and Joanne Lax).

FREEDOM OF RELIGION AND BELIEF

Religious Discrimination by Drug Court – Joe Hanas appeared in the Genesee County Drug Court on a marijuana charge. The judge gave Hanas the choice of either being convicted of a drug offense and sentenced to jail, or going to a Pentecostal drug treatment center called the Inner City Christian Outreach Program (ICCOP). He chose the treatment center. Much to his surprise, ICCOP officials insisted that Hanas, who is Catholic, give up his rosaries and refrain from seeing a priest because they claimed that Catholicism is witchcraft. The officials also demanded that he participate in Bible reading, faith healing and daily church services where residents speak in tongues. When Hanas' attorney asked the drug court judge to move Hanas to a secular drug treatment program, the judge declared that Hanas failed the program and proceeded to convict him and sentence him to boot camp. After the ACLU publicized the treatment individuals receive at ICCOP, the drug court stopped sending people there. The ACLU has asked the Michigan appellate courts and the U.S. Supreme Court to reverse Hanas' conviction and each of the courts have declined to hear the case. We are now considering filing a habeas corpus petition in U.S. District Court. (*People v. Hanas*; Cooperating Attorneys: Erwin Chemerinski, Frank Ravitch, Greg Gibbs and Glenn Simmington, Andrew Nickelhoff and Harold Gurewitz).

Valedictorian's Religious Liberty Defended – Abbey Moler was the valedictorian of her class at Utica High School. She and other high achieving students were profiled in a section of the school yearbook. As part of the profiles, students were asked to submit "words of wisdom" to pass on to other students. However, when the yearbook was published, Ms. Moler's entry was omitted because it contained a passage from the bible. The passage was from Jeremiah and said: "'For I know the plans I have for you,' says the Lord, 'plans to prosper you and not to harm you, plans to give you hope and a future.'" The ACLU agreed to represent Moler because once the school gave her a forum for speech, it could not constitutionally suppress her expression simply because it was religious in nature. In May 2004, the ACLU worked out a settlement with the school district obviating the need to file a lawsuit. The district agreed to change its policy, provide in-service training to teachers on religious freedom issues and place a sticker in the yearbooks on file with the school containing Abbey's advice. (Attorneys: Michael J. Steinberg and Marshall Widick).

Wrestling and Coerced Prayer – In the winter of 2005, the Lincoln High School wrestling coach taught his athletes more than the latest take-down moves. The coach also led team prayers at practices and before games. The Washtenaw County ACLU wrote a letter to the school superintendent explaining that coach-led prayer was wrong not simply because it violated the constitutional requirement of church and state separation. It was also wrong because it sent a message to non-Christians that they were not welcome on the team. The day after the letter was sent, the principal consulted with the school's attorney and the coach was ordered to stop. (Attorney: Michael J. Steinberg and David Santacroce).

Swimming While Muslim – A 7th grade student named Jamanah Saadeh went on an end-of-school trip with her Ann Arbor public school to Rolling Hills Water Park in June 2005. As an observant Muslim, Jamanah's faith allows her to only expose her hands and face in public. Accordingly, she brought a pair of nylon pants, a light cotton t-shirt and a head covering (hijab) to wear while swimming. To Jamanah and her teachers' shock and dismay, the park supervisor demanded that Jamanah exit the water because she was not wearing a bathing suit. On the advice of Jamanah's teachers, Jamanah's mother contacted the ACLU. We have set up a meeting with Washtenaw County officials, park officials, Jamanah and her mother and leaders of the Muslim community to develop a policy that will accommodate religious beliefs and ensure that no other Muslim woman will be subjected to the embarrassment and humiliation faced by Jamanah. (Cooperating Attorney: Gayle Rosen with the assistance of ACLU legal intern Maleeha Haq).

Government Interference with Hanukkah – In December 2004, Central Michigan University officials seized a student's Hanukkah candles from his dormitory room. Although the university allows students to smoke in this particular dorm, it claimed that the Hanukkah candles posed a fire hazard. Central Michigan ACLU President John Scalise wrote a letter to the University arguing that it violated students' religious freedom to accommodate students desire to smoke but not to accommodate students' religious use of celebratory candles. The letter stated that there were other ways to address safety concerns – such as requiring that students remain in the room and that they place candles on a fireproof surface – without banning religious candles altogether. Soon after the letter was sent, CMU changed its policy.

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

Nativity Scenes in Front of Public Buildings – In December 2004, we received a handful of complaints about cities erecting unadorned nativity scenes celebrating the birth of Christ in front of municipal buildings. The ACLU's position is that the government cannot prevent churches

and private individuals from displaying a crèche on their own property. But, by the same token, the government must honor the wall between church and state and refrain from placing crèches on public property as part of a display endorsing religion. After ACLU lawyers spoke with city officials, the officials either changed the displays by adding secular holiday symbols or by establishing a public forum on city property where any private organization could put up displays of their choice. (Cooperating attorney: Sheila Cummings).

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

DRUG POLICY

Arrested and Strip-Searched for Going to a Bar – The ACLU is representing 93 young men and women who were arrested, strip-searched and/or cavity-searched by the police last March at a licensed Flint dance club. Although all the ACLU clients were drug free, they were arrested because some other patrons in the bar possessed drugs. They were each charged with "frequenting a drug house." The police admit to strip searching all patrons in the bar whether or not they had drugs. Many of our clients also report that they were cavity searched and one woman said that an officer did not change her latex glove in between searching her anus and her vagina. We filed a motion to dismiss the charges arguing that our clients' First Amendment rights to associate and watch musical performances were violated as well as their rights to remain free from illegal searches and arrests. The trial judge recognized that clients had a First Amendment right to go to a club and listen to music, dance and socialize. However, the judge ruled that the only way to address the problem of drug use at such clubs was to arrest everyone present who knew that others had drugs. We appealed the case in October 2005. (*City of Flint v. Doyle, et al.* Cooperating Attorneys: Ken Mogill, Elizabeth Jacobs, Gregory Gibbs, Jeanmarie Miller, Glenn Simmington, Dean Yeotis, Chris Pianto, Daniel Bremer, Matthew Abel and Michael Segesta).

Welfare Drug Testing Halted B In 2000, a federal judge halted enforcement of a Michigan law requiring mandatory drug testing for all welfare applicants and recipients regardless of whether there was reason to suspect that they were abusing drugs. The court agreed with the ACLU that the law violates the Fourth Amendment and, if permitted, would set a dangerous precedent by

opening up the door to permitting drug testing of all people who benefit from a government program -- whether it be small business loans, student grants or tax deductions for home mortgage payments. In April 2003, the Court of Appeals issued an order affirming the district court=s ruling. In 2004, the state agreed to settle the case, abandon suspicionless testing and pay $100,000 in attorneys fees. (*Marchwinski v. Howard;* Attorneys: Robert Sedler, Graham Boyd, David Getto and Cameron Getto).

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. In January 2002, 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. The ACLU then filed a federal lawsuit to ensure that the city of Wayne would no longer seize bail money based on a dog alert. In September 2004, the federal case settled when the city agreed in writing not to seize cash under similar circumstances and to pay $7500 in damages and attorneys fees. (*In Re $2000 in U.S. Currency*; ACLU Cooperating Attorney: Cynthia Heenan).

ACLU Negotiates Approval of Petition for Ballot – A group that had gathered thousands of petition signatures to put a charter amendment about medical marijuana on the Ann Arbor ballot was initially told in April 2004 by the city that the petitions were legally defective. The city claimed that the name of the group had to appear both in the body of the petition and in the certificate of the circulator. The ACLU argued that Michigan law did not take such a formalistic approach to petitions, and the proposal was placed on the ballot. It was overwhelmingly approved by the Ann Arbor electorate on November 2, 2004. (Attorney: David Cahill).

DUE PROCESS

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

on “How Do I Clear My Name” at www.aclumich.org. (Attorney: Miriam Aukerman).

Stopping Government Seizure of Property for Private Interests – In 1981, the Michigan Supreme Court issued a decision allowing Detroit to condemn an entire low-income neighborhood called Poletown and transfer it to General Motors at a discounted rate. The ACLU filed a friend-of-the-court brief in the Michigan Supreme Court asking it to overturn the Poletown decision. The brief argued that the Poletown decision has created an inequitable policy of corporate welfare allowing wealthy and powerful interests to take other people’s land for their own profit usually at the expense of the poor and unrepresented. In July 2004, the Supreme Court agreed with the ACLU and held that taking private land to be transferred to private entities is not a “public use” justifying the seizure of homeowners’ land. (*County of Wayne v. Hathcock*. ACLU Attorney: Kary Moss).

Youthful Offenders on the Sex Offender Registry – There are many people in Michigan who, when they were young, committed crimes by having consensual sex with a boyfriend or girlfriend who had not yet reached the age of 16. Because most youth in these “Romeo and Juliet” cases pose no threat to society, many judges sentence them under the Holmes Youth Training Act (HYTA). Under HYTA, youthful offenders’ criminal records are expunged once they complete their sentences. Unfortunately, even though HYTA sex offenders have no criminal records, many still appear on the sex offender registry – thereby making it very difficult for them to obtain jobs and housing. The ACLU recently filed a friend-of-the-court brief in support of a class of youthful offenders arguing that placement of HYTA offenders on the registry violates their due process and equal protection rights. Unfortunately, the federal judge dismissed the case in October 2005. We are considering an appeal. (*Doe v. Sturdivant*. Cooperating Attorneys: Susanna Peters and Miriam Aukerman).

Father Jailed for Violating Unconstitutional Order – When Gregory White’s wife died in 2000, his late wife’s parents went to court to secure visiting privileges with White’s twins. The court granted visitation privileges under the Michigan grandparent visitation law. However, the law was later declared unconstitutional by the Michigan Court of Appeals because it infringed upon the fundamental right of fit parents to make decisions in the best interests of their children. After White moved to Colorado with the twins and his new wife, a Michigan judge ordered White to return to Michigan. When White returned in the spring of 2002, the judge jailed him for contempt of court, claiming that White violated the visitation order. White was in jail for two months until the ACLU got involved and filed a motion to rescind the unconstitutional order. Soon after the motion was argued, Gregory White was released. In 2004, the Michigan Court of Appeals ruled that the visitation order was void after the Court of Appeals struck down the grandparent visitation law. (*White v. Johnson;* ACLU Cooperating Attorney: Peter Armstrong along with Lorray Brown of the Michigan Poverty Law Program).

PRISONERS' RIGHTS

Religious Freedom Behind Bars – The ACLU filed a class action lawsuit challenging the Michigan Department of Corrections' rule prohibiting members of the Melanic Islamic Palace of the Rising Sun to practice their religion in prison. Regardless of their disciplinary records, the MDOC designated as security threats all Melanics members and has placed them in administrative segregation until they renounce their religion. Prison officials also confiscated all Melanic religious materials. In September, 2002, the judge issued one of the first opinions in the country upholding the constitutionality of a new federal law upon which the ACLU relies – the Religious Land Use and Institutionalized Persons Act (RLUIPA). The case was placed on hold until the U.S. Supreme Court upheld the constitutionality of RLUIPA in June 2005. Trial is expected in 2006. (*The Melanic Islamic Palace of the Rising Sun v. Martin*; Cooperating Attorneys: Daniel Manville and Susanna Peters).

Challenging Unfair Visitation Policies – The ACLU submitted a friend-of-the-court brief in the U.S. Supreme Court in an important prison visitation case. The ACLU argued that the Michigan prison rule barring minors from visiting all inmates except incarcerated parents and grandparents violates the right to familial association. Decisions of whether it is in the best interest of minors to visit with sisters, uncles or non-relatives are best left to the parents, not the MDOC. The ACLU further argued that the draconian rule permanently barring any visitation with inmates who have used drugs in prison more than once violates due process. Although the visitation rules were struck down in the trial court and the U.S. Court of Appeals, the Supreme Court issued an unfavorable opinion in 2004 cutting back on the right of inmates and their loved ones. Fortunately, it is unlikely that the MDOC will reinstate the rules. (*Bazetta v. MDOC*; Attorneys: Professor Roderick Hills and Elizabeth Alexander).

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

DISABILITY RIGHTS

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

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

VOTING RIGHTS

Educating College Students on Voting Rights – In 2000, Michigan passed a law requiring that a person's driver's license address be the same as her voter registration address. That caused much confusion for college students who use their hometown address for their driver's licenses (because they moved each year on campus) but who wanted to vote in their college town in November. As a result, many students did not vote in 2000. In order to encourage students to exercise their fundamental right to vote, the ACLU developed a flyer and an online feature to educate students about their options. The flyer and web address was distributed to thousands of students throughout Michigan and publicized through press releases before the 2004 elections. (Cooperating Attorneys: Sharon Anderson Aiello and Jennifer K. Miller).

Election Protection in Grand Rapids. The Western Michigan Branch of the ACLU worked with an African American sorority and a number of other minority and civil rights organizations during the November 2004 election to answer questions and address problems encountered by voters and poll watchers. Many ACLU members worked both at the polls and in the "command

center." Following the election, the coalition prepared a comprehensive 21-page report, authored primarily by ACLU Board member Miriam Aukerman, outlining areas in which elections could be improved. The report offers numerous recommendations on a wide range of matters including training of poll workers, educating voters and stopping voter intimidation by challengers.

AGE DISCRIMINATION

Discrimination Against Young Adults – Tom Zinn, a twenty-year-old army reservist from Zeeland, and his long-time girlfriend, Theresa Taylor, wanted to stay overnight in the Detroit area in August 2004 after watching the Detroit Tigers play in a night game. However, they quickly learned that the Holiday Inn, like most hotels in the state, does not rent rooms to individuals under 21. After the ACLU sued two different Holiday Inn hotels for age discrimination, the two hotels agreed to change their policy and pay the ACLU attorneys fees. The ACLU is planning to contact hundreds of hotels with similar discriminatory policies in order to stop the practice statewide. (*Zinn v. Holiday Inn*. Cooperating Attorney: Andrew Nickelhoff).

PRIVACY

Denying Family Visitation for Lack of Social Security Number – It was brought to the attention of the ACLU in the spring of 2004 that the Calhoun County Jail was denying inmates' family the right to visit inmates because they lacked a social security number. The ACLU wrote a letter to the jail administrator that the practice violated the 1974 Privacy Act which prohibits the government from denying a privilege for failure to reveal one's social security number except in very limited circumstances. In response to the letter, the jail changed its policy. (Attorney: Michael J. Steinberg, with the assistance of law intern Leah Plunkett).