ACLU OF MICHIGAN LEGAL DOCKET – 2009-2010

CIVIL LIBERTIES AND POVERTY

Reforming the Broken Indigent Defense System

For decades, leaders in the state have recognized that Michigan's system of representing poor individuals accused of crimes is broken. In February 2007, the ACLU, working with its coalition partners, filed a critically important class action against the state to fix this longstanding problem. The state responded by asking the court to dismiss the case, contending that the counties, not the state, were responsible for any deficiencies in the system. Ingham County Circuit Judge Laura Baird rejected the state's argument. She ruled that the state is responsible for ensuring constitutionally adequate criminal defense and simply because Michigan has delegated its responsibility to the counties, it is not "off the hook" when the system fails. Judge Baird also granted the ACLU's request to certify the case as a class action. The Michigan Court of Appeals affirmed Judge Baird's ruling in a 2-1 decision and in June 2010 the Michigan Supreme Court unanimously ordered that the ACLU be given an opportunity to prove its case in the trial court. However, in an unprecedented move, the Supreme Court reversed itself the following month and, in a 4-3 order, dismissed the case outright. The ACLU has asked the court to reconsider its latest order. (Duncan v. Michigan; Attorneys (partial list): Mark Granzotto, Robin Dahlberg, Jessie Rossman, Frank Eaman, Julie North, Sarita Prabu, Emily Chiang, Mark Fancher.)

Mother Sent to "Debtors' Prison" for not Paying Her Son's Juvenile Detention Fee

Edwina Nowlin was held in contempt of court by an Escanaba judge in March 2009 and sentenced to jail for 30 days because she could not afford to pay $104 to reimburse the court for the "care" of her son, who had been sentenced to a juvenile detention facility. Ms. Nowlin, who had never been convicted of any crime, was destitute, unemployed, and homeless. Although she explained to the judge that she could not possibly afford to pay $104 per month to the juvenile detention facility, the judge nonetheless sent her to prison for violating the court order that imposed the payments. The judge also denied her request for a court-appointed lawyer. The ACLU filed a motion for reconsideration on her behalf, and Ms. Nowlin was finally released after 28 days behind bars for being poor. Ms. Nowlin's case and the ACLU's work on her behalf were featured on the editorial page of the New York Times, which described her treatment in a modern day "debtors' prison" as "both barbaric and unconstitutional." (In re Victor Lee Nowlin; Cooperating Attorneys Karl Numinen and Kenneth Mogill.)

Mom Convicted for Being Poor

Selesa Likine has a mental disability that caused her to lose her job, her husband and then custody of her children. When her kids were taken from her, the court ordered her to pay $1,100 per month in child support to her well-off husband by imputing money to her that she did not have. In fact, her only source of income was the $637 she received per month in social security benefits. When Ms. Likine failed to make her child support payments, she was arrested and placed in jail. At trial, the judge refused to allow her to present evidence of her inability to pay

and she was convicted of a felony. The Michigan Court of Appeals affirmed the conviction. The ACLU and the University of Michigan Innocence Project is representing Ms. Likine in the Supreme Court arguing that it is unconstitutional to convict a person for being too poor to make court-ordered payments. (People v. Likine. Cooperating Attorneys David Moran and Bridget McCormack and Legal Director Michael Steinberg.)

Threatened with Jail Because of Inability to Pay Court Fees
David Sutton has no assets and his only income is the $262 monthly disability check he receives from the government. He suffered severe and permanent injuries in a car crash several years ago that prevent him from working. In 2003, Sutton was convicted of "attempted insurance fraud" and sentenced to probation for a year. He performed community service and fulfilled all the other conditions of his probation except one: he was not able to pay the supervision fee. Because the fee was not paid, a Wayne County Circuit Court judge extended his probation year after year for four years. In February 2009 the ACLU successfully represented him at a hearing where the state had moved to revoke his probation. We argued that the Constitution and Michigan law prevent a judge from revoking or extending a person's probation if the failure to pay fees is due to poverty. The judge discharged him from probation. (People v. Sutton; Cooperating Attorney: Valerie Brader.)

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

Right to Appellate Counsel for the Poor
In 2009, the Michigan Court of Appeals, relying on Supreme Court precedent set by the Michigan ACLU, ordered a Saginaw County judge to appoint appellate counsel to an individual who wanted to appeal his sentence due to his guilty plea. Following the decision, the ACLU worked with Saginaw County to notify thousands of individuals that they were wrongfully denied their constitutional right to counsel. As a result of this effort, more than a hundred will now receive counsel to appeal their sentences. In a similar case, the ACLU successfully helped a man convicted of a misdemeanor in Wayne County obtain an attorney to represent him on appeal after the trial judge refused to appoint one. (People v. Holden; Cooperating Attorney Terence Flanagan; People v. Nerenberg; Cooperating Attorney Ralph Simpson.)

FREEDOM OF SPEECH

Minister Sent to Prison for Criticizing Judge

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

Funeral Protest Law Challenged

On behalf of army veteran Lewis Lowden and his late wife, Jean, the ACLU filed a federal lawsuit challenging Michigan's funeral protest law, which makes it a felony to "adversely affect" a funeral. In 2007, the Lowdens attended the funeral of a close friend who was killed in action in Iraq. By invitation of the soldier's family, they drove in the funeral procession from the church to the cemetery. Although the Lowdens had done nothing to disrupt the procession, two Clare County sheriff's deputies pulled them over solely because the van they were driving had signs on it critical of then-President Bush and his policies. The deputies then placed them under arrest and brought them to jail for violating the funeral protest law. In March 2010, Judge Thomas Ludington denied the county's motion to dismiss, ruling that it was clearly established that arresting a person for displaying anti-government signs in a car on a public street violated a person's free speech rights. He further ruled the Michigan law was probably "void for vagueness" and violated the First Amendment on its face. (Lowden v. Clare County; Staff Attorney Dan Korobkin and Hugh Davis and Cynthia Heenan.)

Honk if You Don't Support Bush's Policies

For more than 4-1/2 years, peace activists have protested the Iraq War for one hour a week on the sidewalk at the corner of Woodward and Nine Mile in Ferndale. When the police asked them to stop holding signs encouraging people to honk for peace, Nancy Goedert and Victor Kitilla held signs that read, "Ferndale Cops Say Don't Honk if you Want Bush Out" and "Police Say Don't Honk for Peace." The police charged both with the crime of disturbing the peace for inciting honking and issued citations to those who honked. The ACLU, with the National Lawyers Guild,

wrote the Ferndale City Attorney explaining that both the honkers and the "honkees" had a First Amendment right to express their displeasure for the war, and honking at sidewalk protests is a time-honored and constitutionally protected tradition. While Ferndale agreed to dismiss the charges against Goedert and Kittila for displaying, "Don't Honk" signs, it said that they will be prosecuted if they encourage honking in the future. It further suggested that Goedert, who is part of the "raging grannies," and Kittila should bring a federal lawsuit if they wanted to challenge the policy. A federal suit was filed and after numerous months of litigation, Judge Denise Page Hood struck down the Ferndale policy as an unconstitutional infringement on protestors' free speech rights in April 2008. The petition for attorneys' fees was settled in March 2010. (Goedert v. Ferndale; Cooperating Attorneys: Thomas Cavalier and Melanie Stothers with assistance from ACLU Law Intern Rachel Simmons.)

Flint Police Department Gag Rule Challenged

After union leaders in the Flint Police Department answered reporters' questions about some extremely controversial appointments within the Department, Interim Police Chief David Dicks issued an absolute ban barring police personnel from speaking to the media. Chief Dicks then disciplined two union officials under the new rule, firing one of them. The ACLU filed a federal lawsuit in October 2008 arguing that police officers do not forfeit their First Amendment rights when they join the police department and may speak out publicly on certain matters of public concern. A couple of days before the hearing on the ACLU motion for preliminary injunction, the police department changed its unconstitutional rule. The damages action was placed on hold after Chief Dicks was indicted for fraud and theft of government funds, but discovery in the case resumed in 2010 after he pleaded guilty. Defendants filed a motion for summary judgment, which has been fully briefly by both sides and is currently pending before the Court. (Gaspar v. City of Flint; Staff Attorney Jessie Rossman and Cooperating Attorneys Gregory Gibbs, Sarah Zearfoss, Jeanmarie Miller and Muna Jondy.)

Artist Jailed for Michelangelo Mural

Roseville artist Edward Stross painted a mural on the side of his studio depicting Michelangelo's "Creation of Man" from the Sistine Chapel in Rome. Because the mural included one of Eve's bare breasts and was entitled, "Love," the City of Roseville charged and convicted Stross of violating a variance provision that prohibited genitalia or lettering. Stross pointed out that breasts are not genitalia; that the restriction on lettering was intended to bar commercial advertising, not the title of his mural; and that, in any case, the restrictions were unconstitutional. Nonetheless, the judge sentenced Stross to 30 days in jail. The ACLU agreed to represent him on appeal on free speech grounds and secured his release during the appeal. In February 2008, the Michigan Court of Appeals reversed the conviction striking down the restriction on lettering. However, in September 2008, the Michigan Supreme Court reversed the Court of Appeals and remanded the case for consideration of Mr. Stross' other arguments. Finally, the case ended in 2009 when the Court of Appeals held that breasts do not meet the definition of genitalia. (City of Roseville v. Stross; Cooperating Attorneys: Mark Kriger and Carl Marlinga.)

Freedom of Speech on Independence Day
James Gould, a member of the "Taxed Enough Already Party" (TEA Party), contacted the ACLU because he said that his organization was prohibited from holding an anti-tax protest at the Shiawassee County Courthouse on Independence Day, 2009. We wrote a letter explaining that the park-like area in front of the Courthouse, which had been used for past demonstrations, was a public forum and that it would be ironic for the county to suppress Mr. Gould's speech on Independence Day, the day we celebrate the freedoms that make this county great. Within a couple of hours, the county assured us that Mr. Gould would be able to protest freely and that the county would, as the ACLU urged, develop free speech policies for demonstrations at the courthouse. (Attorney: Greg Gibbs with assistance from law intern Libby Benton.)

Arrested for Circulating Petition
Gershom Avery was arrested in the Village of Clinton for seeking signatures on a petition to propose the legalization of medical marijuana on the ballot. In 2009 the ACLU wrote a letter to the Village of Clinton urging officials to amend the village solicitation ordinance so that it would no longer be a crime to circulate political petitions on the sidewalks of Clinton without a permit. The letter also explained how it was unconstitutional to bar petitioning anywhere in the village during the Clinton Fall Festival. In response, the village amended its ordinance to protect free speech. (Staff Attorney Jessie Rossman.)

Firefighter Threatened with Dismissal for Criticizing City's Road Conditions
Ken Jacobson, a firefighter for almost three decades in the Upper Peninsula town of Ironwood, was threatened by city officials with discipline and termination after writing four letters on his own time to the local press. The letters mainly questioned the city manager's commitment to plow the roads. After the ACLU wrote a letter in 2010 defending Jacobson's right to speak out on matters of public concern, the city backed down. (Cooperating Attorney Sarah Zearfoss.)
Freedom to Criticize Judges -- The ACLU filed a friend-of-the-court brief in the U.S. Court of Appeals in the case of an outspoken attorney who had been disciplined for harshly criticizing three Michigan judges on a radio show. The attorney was disciplined under Michigan rules of professional conduct that bar lawyers from engaging in "undignified or discourteous conduct towards the tribunal." The ACLU argued that these rules violated the free speech rights of lawyers to the extent that they punished lawyers for comments made outside the courtroom. The federal appeals court, in a 2-1 opinion, refused to address the issue briefed by the ACLU and held that the attorney lacked "standing" to even challenge the rule. (Fieger v. Michigan Supreme Court. Cooperating Attorney Kenneth Mogill with assistance from ACLU intern Audrey Braccio.)

Vegan Leafleter Charged with Crime

In July 2009, Philip Letten was distributing flyers advocating a vegan diet on a public sidewalk in Detroit when an officer told him to stop. When Letten questioned why he had to stop, he was charged with"distributing leaflets without a permit" – even though there is no such crime. The ACLU represented him in his criminal case and the charges were dismissed. In June 2010, the ACLU filed a federal lawsuit seeking to ensure that Detroit police officers stop retaliating against citizens for exercising their First Amendment rights to question police action. (City of Detroit v. Hall; Staff Attorneys Dan Korobkin and Jessie Rossman.)

Harassment at the Border Because of Political Beliefs

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

Man Charged for Criticizing the Police for a "Classic Case of Racial Profiling"

Josef Kolling was attending a house party near Eastern Michigan University when the police appeared and began to question two African American men in the front yard. Kolling, who is white, explained to the officers that everything was okay, but the officers told him to return to the house and started to interrogate the African American men again. Frustrated by what he believed to be racial discrimination, Mr. Kolling crossed the street and yelled back to the squad car, "This is a classic case of racial profiling." The police promptly arrested Mr. Kolling for causing a "public disruption." The judge denied Kolling's motion to dismiss the case on free speech grounds in 2010 and the ACLU has appealed. (Cooperating Attorneys Michael Carter and John Shea.)

Seeking Documents for Vincent Chin Book

Former Wayne State Law School Dean Frank Wu is writing a book about Vincent Chin, the Chinese-American man who was brutally murdered in Highland Park in the 1980s by men who blamed Chin for the loss of car manufacturing jobs in the U.S. to Japan. Dean Wu's request to the Department of Justice for records about the federal prosecution was denied in 2008 and the ACLU is representing him on appeal. So far, we have secured access to hundreds of previously unreleased documents regarding Chin's death, but the appeal continues. (ACLU Cooperating Attorney Omar Chaudhary of Butzel Long.)

RACIAL JUSTICE

Fighting to Save Affirmative Action

A coalition of civil rights organizations, led by the ACLU, filed a federal lawsuit in December 2006 to preserve affirmative action in university admissions in the wake of Proposal 2. The ACLU represents 19 African American, Latino, Native American and white applicants, current students and faculty who want to ensure that they are able to learn and teach within a diverse environment. We argue that the initiative violates equal protection by making it more difficult for people of color to affect the admission process than nearly any other group. In other words, nearly any group wanting a characteristic to be considered as a plus factor in U-M admissions – whether it be legacy status, athletic ability or having a home in an obscure part of the state – need only lobby the University. In contrast, in order for underrepresented racial minorities to urge the University to employ affirmative action, they must first amend the Michigan Constitution through a ballot initiative. The U.S. Supreme Court has struck down similar voter initiatives that make it more difficult for people of color and for the gay community to seek change than others. Unfortunately, in March 2008 the district court rejected our claims and dismissed the case. However, oral argument on appeal went very well in December 2009 and we are waiting for a decision. (Cantrell, et al. v. Granholm; Attorneys (partial list): Mark Rosenbaum, Kary Moss, Catherine Lhamon, Mark Fancher, Dennis Parker (ACLU), Melvin Butch Howell (NAACP Detroit), Victor Bolden and Anurima Bhargava (NAACP Legal Defense Fund), Jerome Watson (NAACP State Conference) Karen DeMasi (Cravath Swaine & Moore), Professor Erwin Chemerinsky and Professor Lawrence Tribe.)

Racist Mob Violence

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

Slavery Skit in School

During a music class at a Canton elementary school, the music teacher ridiculed an old Negro spiritual and made disparaging remarks about Africans. She then arranged an impromptu classroom skit where she had three 9-year-old African American students play the roles of slaves while white students played the slave masters. The white students pretended to beat the black students in front of the entire class and actually made physical contact. The parents of one African American student, who was traumatized by the episode, came to us for help. We

represented her during the mediation conducted by the Michigan Department of Civil Rights in 2009. While disagreeing with our client's version of the facts, the school ultimately apologized, punished the teacher and promised that neither the girl nor her siblings would ever be required to go to classes with this teacher again. (Staff Attorney Mark Fancher.)

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

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

School to Prison Pipeline Cases
In cooperation with the Student Advocacy Center of Michigan, the ACLU of Michigan has provided counseling and advocacy in 2008 and 2009 for suspended and expelled students of color who were – or who are – at risk of entanglement in the criminal justice system. These students were suspended or expelled on highly questionable grounds.

Strip Searching Students
A Native American high school girl was accused of possession of marijuana. When she denied the allegations in the principal's office, a female security guard escorted her into a restroom stall and after a pat-down, demanded that the girl lift her shirt. The guard then pulled back the girl's bra to examine her breast area. She was then instructed to lower her pants to the mid-thigh region. The outer surface of the girl's underwear was examined. When no drugs were found, the

traumatized girl was told to return to class. At no time was her mother called by school officials. When the ACLU of Michigan confronted school officials, it became immediately evident that the issue of whether school officials had the requisite cause to conduct the search was highly contested. In 2009 the ACLU of Michigan successfully negotiated a new policy for the school that will prohibit strip searches of students except in those cases when there is probable cause to believe that a student has an item that presents an imminent danger and circumstances are such that it is too dangerous to wait for law enforcement officials to arrive to search the student. (ACLU Staff Attorney Mark Fancher and Cooperating Attorney Sandhya Bathija.)

Wal-Mart Won't Automatically Disqualify Job Applicants with Criminal Records

The Michigan and National ACLU warned Wal-Mart in a letter that a blanket ban on hiring ex-offenders is illegal. The ACLU sent the letter in December 2009 after receiving a complaint about Wal-Mart's hiring policy at the new Pittsfield Township store. Blanket bans on hiring ex-offenders -- no matter how old or how unrelated the conviction is to the job sought -- violates federal employment law because it has an unfair impact on racial minorities. Wal-Mart asked for a meeting with the ACLU and then revised its nationwide employment application to comport with federal anti-discrimination laws. (ACLU Staff Attorney Jessie Rossman; Cooperating Attorneys Miriam Auckerman and Kim Thomas.)

SAFE AND FREE

Harassment of Arab-Americans at the Border

Since November of 2002, Dr. Elie Ramzi Khoury, a 68-year-old naturalized American citizen, and his wife, Farideh, have been detained seven separate times when returning to this country from vacations in Europe, South America and Canada. Although permitted to fly without any restrictions, they have been detained for numerous hours upon return to the U.S., separated from their grandchildren, interrogated like terrorists and forced to urinate in front of government officials. In June 2006, the Khourys and the ACLU of Michigan joined a national class action filed in Chicago challenging the repeated harassment of individuals who are cleared of terrorist ties during the first detention and should not be repeatedly subjected to humiliation and harassment on subsequent flights. In June 2008, the U.S. Court of Appeals reversed the district court order granting class certification and sent the case back to the district court. The case was dismissed in 2010 after the government instituted positive changes to address some of the problems raised by the lawsuit. (Rahman, et al. v. Chertoff, et al.; Michigan ACLU Cooperating Attorney: Noel J. Saleh).

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 U.S. Court of Appeals agreed with the district court in a June 2007 opinion. We worked on the case with the National ACLU Reproductive Freedom Project, Planned Parenthood and the Center for Reproductive Rights. The U.S. Supreme Court denied the state's request to hear the case in January 2009. (Northland Family Planning Clinic, et al. v. Cox; ACLU Attorneys: Talcott Camp and Brigitte Amiri.)

VOTING RIGHTS

ACLU Lawsuit Restores 5500 Voters to the Rolls

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

SEX DISCRIMINATION

DPD Pregnancy Discrimination

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

Mandatory Single Sex Education in Algonac
In 2009, after learning that fourth graders at Millside Elementary School in Algonac were involuntarily separated into two single gender classrooms, we sent a letter warning that these sex segregated classrooms are illegal, discriminatory and ineffective. Despite court rulings to the contrary, the school district claimed that they were not violating the law because parents who did not like single sex education could move their kids into a different school. We are exploring our options to stop the discriminatory practice. (ACLU Staff Attorney Jessie Rossman.)

UNLAWFUL SEARCHES AND SEIZURES

Arrested and Strip-Searched for Going to a Bar
The ACLU provided direct representation in the criminal cases of 93 young men and women who were arrested, strip-searched and/or cavity-searched by the police at a licensed Flint dance club in 2005. Although all the ACLU clients were drug free, they were arrested because some other patrons in the bar possessed drugs. They were each charged with "frequenting a drug house." The police admitted to strip searching all patrons in the bar whether or not they had drugs. Many of our clients also reported 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. After many months and two appeals, the criminal charges were dismissed on the ground that the police lacked probable cause to believe that our clients had violated the law. In March 2007, the ACLU filed a civil suit in federal court on behalf of dozens of patrons. The case settled in 2010 which included change in policy and agreement not to commit such acts in the future, police training and a total of $900,000. (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; Thompson v. City of Flint; Cooperating Attorneys: Michael and Peggy Pitt, Maureen Crane, Lauri Ellias, Ken Mogill, Elizabeth Jacobs, Greg Gibbs, Jeanmarie Miller and Dan Korobkin.)

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

Illegal Cavity Searches in SW Detroit
During the summer of 2006, two Detroit police officers were stopping men in Southwest Detroit who they suspected of drug activity and, without a warrant, cavity searched them on the street. After an extensive investigation, the ACLU sued the city in March 2007 on behalf of an army veteran who had nothing to do with drugs. The two officers were using this illegal technique so often that many residents thought it was permissible. Despite the publicity that this issue has drawn, the two officers are still on the street and one was promoted. In 2009 the case was settled when the Detroit Police Department agreed to train police officers about the constitutional requirements for searches and pay money damages to the victim. (Ware v. City of Detroit; Attorneys: Melissa El, Kevin Carlson and Mark Fancher.)

Stopping Unconstitutional Breathalyzers of Young Adults
In 2003, the ACLU of Michigan successfully sued Bay City on behalf of a 20-year-old rollerblader who, even though she was not drinking, was threatened with a civil infraction under a local Minor in Possession ordinance if she did not submit to a breath test. Despite sending letters to city attorneys across the state alerting them to the Bay City ruling, many police agencies – including the Michigan State Police – continued to violate young people's rights. In August 2005 the ACLU filed a lawsuit challenging a state law that is identical to the Bay City ordinance, suing the State of Michigan, Thomas Township, Saginaw County, Central Michigan University, Mt. Pleasant and Isabella County. In September 2007, Judge David Lawson, in an opinion that will affect hundreds of young adults and teens across the state, held that the provision of the state law that required pedestrians to submit to a PBT violated the right to be free from searches without a search warrant. In 2009, the Michigan Court of Appeals, relying on the two ACLU cases, issued a similar decision. (Platte, et al. v. Thomas Township, et al.; Cooperating Attorneys: Marshall Widick, William Street and David Moran.)

Man Working on Laptop from Car Near ACLU Office Charged with Loitering
Ken Anderson, a homeless veteran, was searching online for work from his laptop computer while sitting in his legally parked car one block from the ACLU office in Detroit. When two officers approached him and demanded ID, Anderson, who has no criminal record, questioned whether the officers had reasonable suspicion. Irritated by the question, the officers retaliated against Anderson by charging him with "loitering in a known drug area." The charge was based on an ordinance that was repealed several years ago because it is unconstitutional. The ACLU successfully represented Anderson on a motion to dismiss. In June 2010, the ACLU filed a federal lawsuit seeking to ensure that that Detroit police officers stop retaliating against citizens for questioning the basis for police action. (Staff Attorney Daniel Korobkin.)

Proposal to Drug Test Public Housing Tenants in Flint
In the spring of 2010 the director of the Flint Housing Commission floated the idea of drug testing all public housing tenants as a condition of continued shelter. The ACLU wrote a letter strongly urging the commission to refrain from implementing a program testing all tenants

without suspicion of wrongdoing. The letter pointed out that like the Michigan Welfare Drug Testing Act that was struck down as unconstitutional in an ACLU case several years ago, the suspicionless testing of tenants violated the Fourth Amendment. The program would also unfairly single out poor people for humiliating and expensive tests when there are other more effective ways to address drug abuse. (Cooperating Attorney Gregory Gibbs with assistance from Law Intern Alexandrea Anderson-Tuttle.)

LGBT RIGHTS AND HIV/AIDS DISCRIMINATION

Court Refuses to Resolve Custody Dispute between Lesbian Couple

Diane Giancaspro and her lesbian partner jointly adopted three daughters in Illinois as is permitted under Illinois law. When they moved to Michigan the couple split up and Diane filed a motion for custody in Berrien County Family Court. The court, however, refused to resolve the custody dispute because it claimed that Michigan's "Marriage Amendment" – which bars same-sex marriage -- prohibited the couple from utilizing the Michigan courts to resolve custody disputes. The ACLU, working with Lambda Legal Defense Fund, represented Diane on appeal and argued that the lower court violated the Michigan Child Custody Act and the U.S. Constitution and that there is nothing in the Michigan Marriage Amendment that precludes a court from making custody decisions in the best interest of the children. In February 2009 the Court of Appeals ruled that the Michigan courts were required to recognize the Illinois adoption and that the custody dispute must be decided based on the best interests of the children. (Giancaspro v. Congleton; ACLU Staff Attorney Jay Kaplan.)

Judge Dismisses Bioterrorism Charge Against HIV-Positive Man

Daniel Allen was accused of biting his neighbor during a physical altercation. In addition to being charged with assault and battery, the Macomb County Prosecutor charged him with bioterrorism because he is HIV-positive. The ACLU filed a friend-of-the-court brief arguing that the charges are based on baseless assumptions about how HIV is transmitted and that the Michigan terrorism statute was not designed to punish this sort of behavior. The judge, citing the ACLU brief, agreed and dismissed the charges. (People v. Allen; Staff Attorney Jay Kaplan.)

Mom Tries to Void Second Parent Adoption Several years ago Julianna Usitalo and Melissa Landon fell in love, entered into a committed partnership and decided to have a child together. In 2003, Melissa had a child through artificial insemination and asked a judge to make Julianna a legal parent through a second parent adoption. In 2008 Julianna and Melissa split up, but entered into a custody and visitation agreement so both parents could continue to raise the child. However, in 2010 Melissa decided that she wanted to cut Julianna out of their daughter's life completely and asked the judge to void the second parent adoption. The ACLU is representing Julianna and, relying on a Court of Appeals' opinion in another ACLU case, argues that Melissa is precluded from asking a judge to vacate an order she asked the judge to issue more than five years ago and that the second-parent adoption is valid. (Usitalo v. Landon; Staff Attorney Jay Kaplan.)

Transgender Persons and Birth Certificates

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

IMMIGRANT RIGHTS

ACLU Stops Wrongful Deportation of International Student

In March 2008, graduate student Alice Nalubamba went to change the address on her Michigan driver's license at the Secretary of State's office. Ms. Nalubamba produced her Zambian passport and immigration documents and the Secretary of State worker told her to sign a number of papers, including a voter registration application – even though citizens of other countries may not vote in the United States. Ms. Nalubamba had not asked for a voter registration form, was not aware that she was signing such a form and never attempted to vote. Nevertheless, the federal government attempted to remove her from this country for allegedly signing the voter application. In 2009, the ACLU successfully stopped the deportation proceedings after establishing that Secretary of State employees were wrongfully registering foreign students without their knowledge. (In re Nalubamba; Staff Attorney Jessie Rossman).

DRUG LAW REFORM

Wal-Mart Fires Employee of the Year for Positive Drug Test

After suffering for over ten years from chronic pain and nausea due to sinus cancer and a brain tumor, Joseph Casias finally found relief when he registered as a medical marijuana patient with the Michigan Department of Community Health based on the recommendation of his oncologist. Joseph worked at the Wal-Mart in Battle Creek, where he was praised for his hard work and recognized as employee of the year. In accordance with the law he never smoked marijuana at work or came to work under its influence. Wal-Mart nonetheless fired him for using "illegal drugs" after a drug test came up positive for marijuana -- even though Joseph possessed a state-issued medical marijuana card. Because even a corporation as large and powerful as Wal-Mart may not ignore Michigan law when doing business in Battle Creek, the ACLU filed a lawsuit in

June 2010 to get Joseph's job back. (Casias v. Wal-Mart; ACLU National Drug Law Reform Staff Attorney Scott Michelman, ACLU of Michigan Staff Attorney Dan Korobkin, and Co-Counsel Daniel Grow.)

Terminally Ill Medical Marijuana Patient Fights Eviction
Lori Montroy is a 49-year-old Elk Rapids mother with advanced, terminal brain cancer similar to the type that killed Senator Ted Kennedy. In order to treat the excruciating pain, depression and nausea caused by the cancer, Lori's doctor recommended medical marijuana as allowed by the Michigan Medical Marijuana Act. Based on this recommendation, the State of Michigan issued her a medical marijuana card, allowing her to grow a limited number of plants for personal use. However, when her public housing landlord learned of the plants, he issued an eviction notice shortly before Christmas 2009. The ACLU wrote a letter explaining that as long as tenants like Ms. Montroy comply with state medical marijuana laws, public housing landlords are not required to evict. The management company reconsidered its decision and allowed Ms. Montroy to continue to live in her apartment. (Staff Attorney Dan Korobkin.)

Medical Marijuana Patient and Caregiver Assert "Affirmative Defense" to Drug Charges
Montcalm County residents David and Patricia Rempp both suffer from debilitating medical conditions and obtained their physician's written recommendation to use marijuana for medical purposes pursuant to the Michigan Medical Marijuana Act (MMMA). Police raided their home, arrested them, confiscated their medicine, and prosecuted them for felony drug offenses because they began growing medical marijuana before registering with the Department of Community Health. In January 2010 the ACLU filed a friend-of-the-court brief explaining that under the law's "affirmative defense" provision, drug charges must be dismissed when patients and caregivers can show they were using marijuana for medical purposes based on the recommendation of their doctor, even if they were not officially registered at the time of their arrest. Upon receiving the ACLU's brief, the prosecutor dropped the drug charges. In a similar case, the ACLU filed an amicus brief in the Michigan Court of Appeals arguing that a case must be dismissed based on the MMMA's affirmative defense provision. (People v. Rempp and People v. Redden; Cooperating Attorneys Shaun M. Johnson and Nadav Ariel of Dykema Gossett and ACLU Staff Attorney Dan Korobkin.)

Cancer Patient's Car Subjected to Forfeiture for One Joint of Marijuana
James Simpson suffers from stage 4 esophageal cancer that has spread to his liver, and based on his doctor's recommendation he uses medical marijuana to treat his pain and other symptoms. James was stopped by police in Detroit after being observed acquiring one joint of marijuana. Although he was not arrested or charged, the police confiscated his car and the prosecutor initiated forfeiture proceedings against it as part of Wayne County's "Operation Push-Off" vehicle forfeiture program. In October 2009 the ACLU wrote a letter to the prosecutor and judge explaining that the Medical Marijuana Act expressly protects the property of medical marijuana patients from forfeiture. Upon receiving the letter, the prosecutor returned Mr. Simpson's car.

(People v. 1995 Honda Civic; ACLU Fellow Nadav Ariel.)

Birmingham and Bloomfield Hills Ban Medical Marijuana

In 2008, the Michigan Medical Marihuana Act was approved by an overwhelming majority of Michigan voters, including 70 percent of voters in Birmingham and 62 percent of voters in Bloomfield Hills. The law mandates that registered patients and caregivers not be subject to arrest, prosecution, or any other penalty. In 2010, however, both cities' commissions enacted ordinances that completely banned medical marijuana. In a letter to both cities, the ACLU of Michigan urged officials to rescind the ordinances or not enforce them against medical marijuana patients and caregivers. The ACLU noted that even the federal government has adopted an official policy of not prosecuting medical marijuana users who are complying with state law. The city ordinances, therefore, flout state law and ignore federal drug policy. The ACLU of Michigan is following this important issue closely and stands ready to protect the rights of medical marijuana patients and caregivers in Birmingham, Bloomfield Hills, and throughout the State of Michigan. (ACLU Staff Attorney Dan Korobkin and Law Student Intern Katherine Marcuz).

Police Confiscate Patient's Marijuana Because He Didn't Grow It Himself

During a traffic stop in Royal Oak, Christopher Frizzo voluntarily told police that he was lawfully in possession of a small amount of medical marijuana because he is a registered patient who suffers from multiple sclerosis. Although Frizzo was in full compliance with the Medical Marijuana Act, the police officer announced that he was confiscating the medicine because Frizzo did not have a registered caregiver and did not grow it himself. In February 2010 the ACLU wrote a letter to the Royal Oak City Attorney and Chief of Police on Frizzo's behalf, explaining that the Medical Marijuana Act expressly prohibits the police from seizing medical marijuana from registered patients, even if they do not have a registered caregiver and do not grow their own. The City Attorney disagreed and Royal Oak continues to threaten medical marijuana patients with seizure of their property in violation of state law. (ACLU Staff Attorney Dan Korobkin.)

FREEDOM OF RELIGION AND BELIEF

Proselytizing During School

In 2008 a youth minister from the Hope Reformed Church, while volunteering at South Haven High School, recruited students to become involved in the church. When one student, Tyler Wiley, changed his mind about attending a religious retreat sponsored by the church, the youth minister demanded that he pay for the cost of the retreat and, after Tyler asked to be left alone, followed Tyler out of the lunch room. A school administrator then became involved and made Tyler meet with the youth minister in a room and explain his behavior. When the parents complained, the superintendent admitted in a letter that the high school provided the youth minister with a room that he could "use during lunch for any recruiting or religious activities that he wants to conduct while at school." After the ACLU wrote two letters to the superintendent on behalf of Tyler's family, the superintendent acknowledged the school district's mistakes and

assured the ACLU that it would not happen again. The superintendent and the school attorney then met with the ACLU in 2009 to develop policies addressing religion in the schools, which are being considered by the school board. (ACLU Attorney James Rodbard with assistance from law intern Diana Cieslak.)

Ferndale Church Has Right to Help Poor People

The ACLU successfully represented the First Baptist Church of Ferndale in its quest to fulfill its religious mission of serving the poor. Initially, we wrote a letter to the Zoning Board of Appeals explaining that the board must permit the church to provide services to homeless at the church in order to avoid violating the federal Religious Land Use Act. After the permit was granted and certain neighbors sued the zoning board, the ACLU filed a friend-of-the-court brief on behalf of the church. In December 2009, the court ruled in favor of the church. (Ashmore v. City of Ferndale; Cooperating Attorney Marshall Widick and Staff Attorney Dan Korobkin.)

Religious Restrictions in Prison

In 2009 the ACLU agreed to represent Muslim and Seventh-day Adventist prisoners in a religious freedom class action in federal court. Although the Michigan Department of Corrections accommodates Jewish inmates by providing kosher meals, it denies Muslim inmates halal meals even though kosher food meets the religious requirements for many Muslim groups. Furthermore, although inmates are excused from their prison jobs for many reasons -- including doctor appointments, therapy and visitation -- the MDOC will not release them from work on their Sabbath. The ACLU, working with the General Conference of Seventh-day Adventists, sued the MDOC under the Religious Land Use and Institutionalized Persons Act, so that the inmates' religious practices will be accommodated. (Dowdy-El v. Caruso; Attorneys: Daniel Quick, Doron Yitzchaki and Trent B. Collier of Dickinson Wright, and Todd McFarland of the Conference of Seventh-day Adventists.)

ACLU Urges Court Rule Allowing Women in Religious Veil to Testify

The ACLU submitted a comment and testified on a proposed court rule that would give judges the discretion to bar women who wear religious veils called "niqabs" from testifying. The ACLU argued that denying women their day in court because of their religious dress violated the Michigan Constitution's Religious Freedom Clause. It also provided numerous examples of judges and juries determining the credibility of witnesses without seeing their facial expressions, including when the judge is blind, when witnesses with disabilities do not have control of their facial movements and when the former testimony of an unavailable witness is simply read to the jury by a third person. The comment was signed by a broad coalition of domestic violence and religious groups including the Baptist Joint Committee for Religious Liberty, the American Jewish Congress, the Michigan Conference of the United Church of Christ, and the Jewish Council for Public Affairs. Although the Michigan Supreme Court ultimately adopted the rule in 2009 by a 5-2 vote, we will urge judges to exercise their discretion in a manner that does not deny an entire class of women their right of access to the court. (Staff Attorney Jessie Rossman).

DUE PROCESS

Parents' Rights to their Children

The ACLU filed a friend-of-the-court brief in an important Michigan Supreme Court case that determined what the standard should be in child custody disputes between a parent and another relative. The ACLU argued that there is a very strong presumption that custody should be awarded to the parent unless a court finds by clear and convincing evidence that the parent is unfit. In a strong opinion released in July 2009, the Supreme Court adopted the standard advocated by the ACLU. (Hunter v. Hunter; ACLU Cooperating Attorneys: Professors Ashley Lowe and Robert Sedler.)

Parolees Barred from Seeing Kids, Marrying and Going to Church

The Michigan Parole Board sometimes imposes automatic conditions of parole on inmates leaving prison that deny them fundamental constitutional rights even though there are no individual determinations of whether the conditions are necessary to protect the community. In February 2009, the ACLU, working with Legal Aid of Western Michigan and the University of Michigan Clinical Law Program, filed a lawsuit on behalf of two men who were convicted for having sexual contact with young women who were just shy of the age of consent. The men, having finished their prison terms, were now barred from seeing their own sons, going to church and marrying women who have children even though psychological experts have determined that the children of these men would benefit from maintaining relationships with their fathers and the fathers pose no danger to the public. In 2010, the case was successfully settled when the MDOC changed the parole conditions for our clients and began to conduct a more individualized assessment of former sex offender to determine whether such harsh conditions are necessary. (Houle v. Sampson; Attorneys: Miriam Aukerman, Paul Reingold and Kimberly Thomas.)

Young Man with No Conviction Placed on Sex Offender Registry

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

STUDENT RIGHTS

Illegal Mass Searches of Students Stopped

In 2009 the Detroit Schools resumed a practice of searching all students' bags without reasonable suspicion as they enter the school -- despite a 2006 consent order barring the practice in a prior ACLU case. The ACLU responded by filing a new class action lawsuit to vindicate current students' privacy rights and a motion to hold the district in contempt. In December 2009 a federal judge issued a preliminary injunction against the school district, halting further suspicionless searches. In July 2010, the Detroit Public Schools agreed to another consent judgment forbidding the mass searches. This time the order is enforceable by any current or future Detroit Public School students. The district also paid damages to the students who brought the new lawsuit. (Wells v. Detroit Public Schools and McBurrows v. Detroit Public Schools; Cooperating Attorney Amos Williams; Staff Attorneys Mark Fancher and Dan Korobkin, and ACLU Fellow Avani Bhatt).

Students Jailed for Being in the Hallway

In March 2009 the Detroit Police Department raided Central High School, arrested every student who was not in class and charged them each with the crime of disrupting school. We successfully represented three of the students who were arrested even though they simply were on their way to sign up for the ACT college admission test with the permission of their teacher. (City of Detroit v. Kelso; Cooperating Attorney Kenneth Mogill and Staff Attorneys Mark Fancher, Jessie Rossman and Dan Korobkin.)

Censorship Decision Reversed at High School

Renee Macdonald, the co-editor of the student newspaper at Loy Norrix High School in Kalamazoo, contacted the ACLU in 2009 when her principal refused to allow the paper, Knight Life, to publish a student editorial critical of the school's suspension policy. The ACLU wrote Renee a letter explaining that administrators cannot censor articles in school sponsored newspapers without a legitimate educational reason and that censorship is unconstitutional if it is based on disagreement with the author's viewpoint. After the editor showed her principal the letter, he allowed the paper to publish the article. (ACLU Attorneys: James Rodbard and Jessie Rossman.)

DISABILITY RIGHTS

School Denies 5-year-old Service Dog

Ehlena Fry is a young girl with cerebral palsy who needs assistance with many of her daily tasks. Thanks in part to the help of the Parent Teacher Organization at her elementary school, Ehlena's parents raised $13,000 to buy a trained, hypoallergenic service dog named Wonder to help Ehlena become more independent. However, the Napoleon Community Schools initially refused to allow the dog in the school, contending that human assistants could help the girl with these tasks and that the dog is distracting. The ACLU represented Elena in 2010 and wrote a letter arguing that she was entitled to have Wonder's assistance at school under the Americans with

Disabilities Act. The ACLU then negotiated an agreement reached with the school district to allow Wonder in the classroom for the rest of her kindergarten year. Once the school year ended, the ACLU filed a complaint on the Fry's behalf with the Department of Education to gain more permanent access for Wonder. The complaint is currently pending before the DOE. (Cooperating Attorney Gayle Rosen and Staff Attorney Jessie Rossman.)

JUVENILE JUSTICE

Kids Sentenced to Die in Prison

The United States is the only country is the world that sentences juveniles to life in prison without the possibility of parole. This inhumane practice is condemned throughout the world and prohibited by international law. Yet in Michigan, there are over 300 prisoners serving life without parole for offenses committed before the age of 18. Only two other states -- Pennsylvania and Louisiana -- have more. In May 2010, the Supreme Court ruled that life sentences without the possibility of parole, when meted out to juveniles who did not commit homicide, violate the Eighth Amendment's ban on cruel and unusual punishments. In September 2010, we filed a brief asking the Michigan Supreme Court to hear the case of Anthony Jones, who was sentenced to life without parole when he was 17 years old for aiding and abetting a felony murder. Jones did not commit the murder or intend to kill anyone, but he was convicted because he participated in the robbery of a convenience store and one of his co-defendants shot and killed the store's owner. The Michigan Supreme Court is being asked to rule that it is unconstitutional to impose a life-without-parole sentence on juveniles who do not kill, intend to kill, or foresee that life will be taken. (People v. Jones; Staff Attorney Dan Korobkin and Co-Counsel Deborah LaBelle and Kimberly Thomas.)

PRISONER RIGHTS

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 challenged a jail policy whereby guards routinely strip searched 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." All the cases were resolved through trial or settlement by 2009 with the county agreeing to change its policy and more than $800,000 in verdicts, settlements and fees. (Rose v. Saginaw County Jail; Whittum v. Saginaw County Jail and Brabant v. Saginaw County Jail. Attorneys: Steven Wassinger, Michael Pitt, Peggy Pitt, Beth Rivers, Chris Pianto and Loyst Fletcher).

Prison Health Care
In a longstanding ACLU lawsuit against the Michigan Department of Corrections, a federal judge strongly criticized its failure to provide adequate medical and mental health care. Following the August 2006 death from dehydration of a mentally ill prisoner who had been chained naked to a concrete slab for four days in an unventilated cell, Judge Richard Enslen ruled that MDOC was practicing torture in violation of the Eighth Amendment: "A prisoner, who receives a sentence of 2-10 years, deserves 2-10 years. What he does not deserve is a de facto and unauthorized death penalty at the hands of a callous and dysfunctional health care system that regularly fails to treat life-threatening illness." The judge appointed an independent medical monitor and threatened $2 million a day in fines if the MDOC did not fill staff vacancies to provide basic medical and mental-health care to prisoners. However, the case was then assigned to another judge who fired the monitor and held that prison officials were not "deliberately indifferent" to prisoners serious medical and mental-health needs. The case is now on appeal. (Hadix v. Michigan; Attorneys: Elizabeth Alexander, Patricia Streeter and Dan Korobkin).

Denial of Medical Treatment in the Eaton County Jail
David Bogle, who has Crohn's Disease, was convicted of a misdemeanor and sentenced to the Eaton County Jail. Although he brought his doctor's notes about the need for narcotic prescriptions to treat the excruciating pain caused by the disease, the jail told him it had a no-narcotic prescription drug policy. The jail also records confidential phone calls between him and his attorney. In November 2009 the ACLU filed a lawsuit challenging both policies. (Bogle v. Eaton County; Cooperating Attorneys Daniel Manville and Patricia Selby).

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 misdiagnoses of mental illnesses; (4) failure to provide adequate mental health 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 case has been put on hold until December 2010 to give the parties an opportunity to develop and implement a plan to ensure that mentally ill youth receive proper services at their new facilities. (MPAS v. Caruso; Attorneys: Stacy Hickox and Mark Cody.)