ACLU OF MICHIGAN LEGAL DOCKET – 2003-2005
STUDENT RIGHTS CASES

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).

Bicycling While Black – 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. While acknowledging that the Eastpointe police said and did things that were racially insensitive, the trial judge held in 2004 that the plaintiffs were not able to prove intentional discrimination and dismissed the case. The decision has been appealed. (*Bennett v. Eastpointe*; Attorneys: Mark Finnegan, Charles Chomet, Saura Sahu, and Delphia Simpson).

Scholarship Program Fails Students – 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 seeks 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 is working 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. The trial is likely to be held in the spring of 2005. (*White v. Engler;* Attorneys: Michael Pitt, Peggy Goldberg Pitt, Judith Martin and Kary Moss).

Student's Political Speech Defended – Bretton Barber, a junior at Dearborn High School, wore a t-shirt to school which displayed a photograph of George W. Bush with the caption, "International Terrorist." Although the t-shirt did not disrupt the functioning of the school, the principal sent Bretton home and told him not to wear the shirt to school again. After the school district denied our request to permit the student to return to school wearing the shirt, we filed suit arguing that the student has a First Amendment right to express his political views. In October, 2003, Judge Patrick J. Duggan ruled in a published decision that the school must permit Bretton to wear the shirt because the message on the shirt is protected speech. (*Barber v. Dearborn Public Schools*, Cooperating Attorney: Andrew Nickelhoff).

Students Punished for Distributing Underground Newspaper – Two juniors at South Lyon High School, Josh Woodcock and Dan Schaefer, wrote and published a newspaper at home called *The First Amendment*. The articles addressed a wide variety of school issues and were, at times, critical of the school administration. One of the articles referred to an assistant principal as a "sadistic tyrant." When Josh and Dan attempted to distribute the underground newspaper at school, they were suspended for five days. The ACLU filed a federal lawsuit on the students' behalf, arguing that they have a First Amendment right to distribute the newspaper as long as it does not substantially disrupt the functioning of the school. The case settled in March 2003, when the school agreed to adopt new rules permitting the distribution of underground newspapers and rescinded the students' suspensions. (*Woodcock v. South Lyon Community Schools*; ACLU Cooperating Attorney: Andrew Nickelhoff with assistance from ACLU Legal Intern Steven Blackburn).

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).

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. 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. (ttorney: Michael J. Steinberg)

Challenging Zero Tolerance Rules – Alex Smith, an A-student at Mt. Pleasant High School, wrote a parody while at home criticizing his school's new tardy policy and making fun of his principal and teachers for instituting the rule. The next day, he read the parody to some friends at school during lunch time. When the principal learned of the critique, she suspended Alex under the school's "verbal assault" rule. The rule requires the suspension of students who "assault the dignity of a person." The ACLU challenged the rule on First Amendment grounds. In October 2003, U.S. District Court Judge David Lawson struck down the Mt. Pleasant policy as well as the state law requiring each school district to adopt a "verbal assault" rule without defining the meaning of "verbal assault." *(Smith v. Mt. Pleasant School District*; ACLU Cooperating Attorneys: Richard Landau and Bradley Smith).

Right to Criticize the Police – The ACLU represented a Ferris State student, Naomi Owens, who was out with friends at a Bennigan's restaurant watching Monday night football when several police officers entered to address complaints about several other intoxicated patrons. Ms. Owens, who was unaware that an officer was standing right behind her, said to her friends: "I hate the f-g police." The officers reported the incident to the university, and as a result, the university started disciplinary hearings against Ms. Owens. Ms. Owens faced possible suspension or expulsion just for expressing her views. Because Ms. Owens lives in a university apartment, she also faced eviction, if suspended or expelled. After the Western Michigan Branch of the ACLU intervened, Ferris dropped its case. (Attorney: Miriam Aukerman).

Armbands to Protest the War – A group of 8th graders at Carter Middle School, in Clio, felt uncomfortable about the school's "Red, White and Blue Days," where students were encouraged each Friday to wear the colors of the flag in support of the war in Iraq. Some of the students decided that they wished, instead, to express opposition to the war, by distributing anti-war literature and wearing white armbands -- a means of protest used by students during the Viet Nam War. However, they were told by the principal that although an accommodation

would be made for the devotion of class time to making posters supporting and opposing the war, the wearing of the armbands would result in suspension. One of the 8th grade teachers, on behalf of the students, then contacted the Flint Area Branch of the ACLU for help. In April 2003, the ACLU was able to persuade the school district to permit the students to wear the armbands. (Cooperating Attorney: Glenn Simmington).

Student Punished for Refusing to Stand for the National Anthem – Because of her opposition to U.S. policies, a student refused to stand during the playing of the National Anthem every morning at Wright High School in Ironwood. The principal told the student that she needed parental permission if she was not going to stand and that if she obtained parental permission, she must leave the room during the song. In April 2003, at the family's request, the ACLU wrote a letter to the principal stating that he cannot constitutionally punish a student by making her leave the room on the ground that she, as a matter of conscience, remains seated during the National Anthem. The letter also states that the constitution protects student expression whether or not the student has parental permission to express herself.

"Unnatural" Hair Color in School – In 2003, the ACLU, in conjunction with the Student Advocacy Center (SAC), intervened on behalf of a student at Flushing Community Elementary School near Flint and a student at Oak Valley Middle School in Oakland County. Both were being threatened with punishment for having "unnatural" hair color. The Flushing student had dyed his hair blue and the Oak Valley student, with the help of her mother, put fuchsia highlights in her hair. After the ACLU and the SAC sent letters to both districts, the Flushing Schools agreed to re-write its policy to prohibit punishment unless the hair causes a material disruption to the school. The middle school has agreed to allow the 7th-grader to continue to attend school despite her fuchsia highlights. (ACLU Cooperating Attorneys: Greg Gibbs and Elsa Shartsis).

Law Forcing Pedestrians to Submit to Breathalyzer Tests – The ACLU of Michigan filed a federal lawsuit in October, 2002, challenging a widespread police practice of forcing pedestrians under age 21 to take a Breathalyzer test without first obtaining a search warrant. The case was filed against the City of Bay City on behalf of Jamie Spencer, a 20-year-old woman who was forced by an officer to take a breath test or pay a $100 fine even though she had not been drinking alcohol. The ACLU charged that penalizing citizens who are not driving for refusing to consent to a search violates the Fourth Amendment prohibition against searches without search warrants. In November, 2003, Judge David Lawson issued an opinion striking down the ordinance. The Bay City ordinance is identical to the state law and the case is expected to have a statewide impact. After the victory in Bay City, the ACLU emailed or mailed over 400 letters to city attorneys and general counsel at universities throughout Michigan alerting them to the decision and urging them to instruct their police chiefs to stop administering unconstitutional breath tests to pedestrians. (*Spencer v. City of Bay City*; ACLU Cooperating Attorneys: Professor 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 of 2004, the ACLU sued the Detroit Schools for conducting the intrusive, lengthy searches of each student without reasonable suspicion. (*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, the school 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 ruled that the officials who conducted the strip search are not immune from liability and the school district has appealed. (*Beard v. Whitmore Lake School District*; ACLU Cooperating Attorneys: Richard Soble and Matthew Krichbaum).

Freedom From Random Drug Tests – Grand Blanc High School was the first Michigan school to require random drug testing of high school athletes, whether or not there is any reason to suspect that an athlete is using drugs. In 2000, the ACLU filed a lawsuit on behalf of Micah White challenging the policy. White, a member of the National Honor Society, refused to sign an agreement for random drug testing in order to be on the school's wrestling team. We argued that the policy violated the Michigan Constitution's privacy protection. In May, 2003, the trial judge ruled that while administrators could not constitutionally require drug testing of students as a condition of attending school, random drug testing of student athletes did not violate the Michigan Constitution. *(White v. Grand Blanc School District;* ACLU Cooperating Attorneys: Greg Gibbs and Mark Granzotto).

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).

Graduation in Churches – In 2003, the ACLU received two complaints from students that a Detroit High School was planning to hold its commencement services inside a church. We contacted the Detroit Schools' attorneys and explained how such a practice is not only divisive but violates the principle of separation of church and state. The Detroit Schools agreed not to hold commencement in a church in the future. Similarly, the Northwest Michigan ACLU Branch was successful in convincing a local college to move its graduation from a church to a secular building. (Attorneys: Ralph Simpson, Al Quick and Steve Morse).

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).

20-Year-Old Army Reservist Denied Hotel Room – In Michigan, numerous hotels will not allow young adults to rent a room on their own unless they are over 21 years old. The ACLU is challenging this policy on behalf of twenty-year-old Thomas Zinn and eighteen-year-old Theresa Taylor. Both Zinn and Taylor, who have been dating for several years, are college students. Zinn is also a member of the army reserves and may be called up to join other members of his unit in Iraq at any time. In August 2004, the two attended a Detroit Tigers night game. When the game was over they felt too tired to make the four-hour drive back to their home in Zeeland and looked for a hotel. They were turned away from several hotels, including the Holiday Inn, because of their age. The ACLU hopes that this case will lead to changes in discriminatory policies at hotels statewide. (*Zinn v. Holiday Inn*; Cooperating Attorney: Andrew Nickelhoff).