

# Docket of the Racial Justice Program of the ACLU

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This docket describes the currently active lawsuits and advocacy efforts of the Racial Justice Program of the ACLU's National Legal Department. It does not describe advocacy efforts currently under development. Updates to the docket should be sent to Salima Tongo at stongo@aclu.org

## Education

### Desegregation

**Sheff v. O'Neill:** In 1989, we filed suit in CT state court alleging that the Hartford public schools were racially and economically segregated. In 1996, the CT Supreme Court ordered the State to take steps to reduce racial and ethnic segregation. Ten years later, however, the schools remained divided by race and class. In 2008, we entered into a court-approved agreement with the State to implement the 1996 desegregation order. We are carefully monitoring the agreement's implementation and are actively working with the state on expanding and improving opportunities for desegregated education for Hartford's children. (RJP)

### Alternative Schools

**Alternative Schools - Florida:** Data provided by the public school district in Lee County, Florida, indicates that African-American students are being deprived of equal educational opportunities. They are over-identified as learning disabled and emotionally disturbed; they are disproportionately disciplined at main-stream schools, disproportionately referred to alternative schools (ALCs), and provided with

inadequate educations and harsh discipline at the ALCs. We are currently producing a report documenting our findings. (RJP, NY Law School)

### Educational Adequacy

**Schroeder v. The Palm Beach County School District:** In 2008, we filed suit in Florida state court alleging that the shamefully low rate at which students graduate from high school in the Palm Beach County School District indicates that the District is not providing students with the education to which they are entitled under the Florida constitution. Defendants moved to dismiss claiming that we should have sued the state not District officials. The trial court granted their motion and dismissed our suit. The dismissal was affirmed on appeal. In December 2009, we re-filed, naming the state as a defendant. (RJP)

### Police in Schools

**Police in Public Schools – Massachusetts:** Anecdotal evidence suggests that a significant percentage of youth arrested in Massachusetts are arrested for misbehaving at school. Together with Citizens for Juvenile Justice, a local advocacy group, we are conducting an in-depth investigation into school-based arrests in selected school districts to determine whether and why this is the case. (RJP, ACLU-MA, CFJJ)

## **School-to-Prison Pipeline**

**B.H. v. City of New York:** On January 20, 2010, we filed a federal class action lawsuit in the Eastern District of New York on behalf of all New York City public middle and high school students challenging abuses by members of the NYPD School Safety Division, including school resource officers assigned to patrol public schools. The suit alleges a pattern and practice of the unlawfully arresting of schoolchildren for non-criminal conduct and a pattern and practice of physically assaulting and beating these children. (RJP, NYCLU, Dorsey & Whitney)

### **J.W. v. DeSoto County School**

**District:** On September 1, 2009, we filed suit on behalf of a twelve-year-old student who had been expelled from school for engaging in alleged gang activity. A school official had searched his cell phone and found photographs of J.W. and a friend dancing in the bathroom at home, and a school police officer then asserted that J.W. was throwing gang signs in the photograph. The suit alleged that the search of the cell phone violated the Fourth Amendment and that the disciplinary rule under which he was expelled is void for vagueness and overly broad in violation of students' due process and free expression rights. The case settled in February, 2011, when the school district agreed to promulgate a new gang policy that gave students actual notice of what signs and symbols were prohibited. (RJP, ACLU MS)

### **D.G. v. DeSoto County School**

**District:** On October 19, 2009, we filed suit on behalf of a sixteen-year-old student, A.S., who had been a plaintiff in a prior civil rights lawsuit against the

DeSoto County School District. On the first day of the new school year, a mere four days after that prior lawsuit settled, DeSoto County School District officials and school resource officers from the Olive Branch Police Department suspended and expelled A.S. for engaging in alleged gang activity. He had been singing quietly to himself, bopping his head and bumping his hands to the beat, while sitting in the bleachers during a school assembly. The suit alleges that A.S.'s suspension and expulsion constitute unlawful retaliation and that the disciplinary rule under which he was expelled is void for vagueness and overly broad in violation of students' due process and free expression rights. The case settled in February, 2011, when the school district agreed to promulgate a new gang policy that gave students actual notice of what signs and symbols were prohibited. (RJP, ACLU MS)

### **State Administrative Complaint Against United Independent School**

**District:** Last fall, we filed an administrative complaint to the Texas Education Agency challenging the systemic denial of special education services to students in the United Independent School District. (RJP, ACLU-TX, Advocacy, Inc., Southern Disability Law Center, Southern Poverty Law Center)

### **Antoine v. Winner School District:**

In 2005, we filed a class action lawsuit on behalf of Native American students attending majority-white schools in Winner, South Dakota. The suit alleged that the District maintained an environment hostile to Native American students (and their parents), disciplined them in a racially discriminatory

manner, and coerced confessions from them in order to prosecute them in juvenile and criminal court. The case settled in December 2007 with the entry of a Consent Order. We are working closely with the District to ensure implementation of this Consent Order. The parties have jointly retained the Washington D.C. based-group, Learning Point Associates, to monitor compliance with the Consent Order. (RJP, ACLU-SD)

**Rhode Island Family Court's Truancy Program:** On March 29, 2010, we filed suit in Rhode Island state court on behalf of nine families against the Chief Justice of the Family Court, other judicial personnel and six municipalities challenging the manner in which students are referred to the state's Truancy Court and in which truancy charges are adjudicated. At the same time, we moved for preliminary injunctive relief and class certification. (RJP, ACLU-RI, NY Law School)

**De Luna v. Hidalgo County:** On July 26, 2010, the ACLU of Texas filed a class action complaint against the County and its justices of the peace on behalf of indigent youth. Our named plaintiffs are indigent high school students who were fined for truancy violations and then jailed for failure to pay fines without the required determination that they possessed the financial ability to pay. As a result of their weeks in jail, the students missed school days and graduation exams. RJP joins ACLU-TX and cooperating counsel in the litigation. (RJP, ACLU-TX, cooperating counsel).

### **STPP Resource Clearing House**

We serve as a resource for advocacy groups seeking to challenge the school-to-prison pipeline.

**Policing in Schools: Developing a Governance Document for School Resource Officers in K-12 Schools:** We developed a white paper analyzing policies and procedures to govern the conduct of law enforcement officials deployed to patrol public schools. The document identifies best practices and recommendations for reform. (RJP)

**Schooltoprison.org:** We administer a password-protected internet forum for impact litigators, direct services attorneys, and other legal advocates across the nation to share ideas and strategies to challenge the push-out of children from schools and into the juvenile and criminal justice systems. The website currently has over 600 members. (RJP)

**STPP Litigation Guidance:** We have coauthored a manuscript for a book (NYU Press, forthcoming 2010) setting forth various legal strategies that can be used to challenge the STPP in the courts. (RJP)

## **Health**

**New Jersey Lead Poisoning:** For the last 10 years, we have been actively working with state agencies and non-governmental advocacy groups to increase the screening of poor and minority children in New Jersey for lead poisoning. We successfully persuaded the State to make significant changes in its childhood lead poisoning prevention program that dramatically increased screening rates of Medicaid-enrolled children. In 2005, we released a report

documenting our efforts. We are now investigating the failure of a local department of health to order the remediation of homes known to contain lead-hazards. (RJP, ACLU- NJ)

**Food Deserts:** RJP has joined with the Racial Justice Project of New York Law School to produce a report on food deserts and their disproportionate impacts on communities of color. The report, which will be issued in the fall of 2011, will highlight the relationship between structural racism and nutritional stress in these communities. (RJP, NY Law School).

### Housing

**Florida Foreclosure Courts:** As the magnitude of the foreclosure crisis became clear in Florida, its state courts created new divisions specifically to adjudicate foreclosures. RJP is investigating reports that these courts infringe upon the due process rights of homeowners on a widespread basis. Initial advocacy to the Chief Justice of the Florida Supreme Court around the issue of public and media access to foreclosure proceedings resulted in a forceful letter from the Chief Justice to the trial courts instructing them to keep the proceedings open. The foreclosure crisis, in Florida and around the nation, has a severely disproportionate impact on communities of color (RJP, ACLU-FL).

### Indigent Defense

**Duncan v. Granholm:** In 2008, we filed suit against the State and Governor of Michigan alleging that indigent defense programs in three counties were failing to provide constitutionally adequate

legal representation. Defendants moved to dismiss. Their motion was denied. An intermediate appellate court affirmed and defendants sought permission to appeal to the state's Supreme Court. In December 2009, the Supreme Court granted their request. The appeal will be argued before the Supreme Court on April 14, 2010. At the same time, we launched the Michigan Campaign for Justice, a non-profit corporation dedicated to reforming Michigan's many indigent defense systems. The Campaign presented a model bill establishing a state-wide indigent defense system to the Michigan state legislature in late spring. That bill is currently in committee. We are working with local lobbyists to ensure its passage. (RJP, ACLU-MI)

**Report for Policy Makers:** We are drafting a report for state policy makers explaining why it is in their best interest to ensure that their state's indigent defense programs are capable of providing constitutionally adequate legal representation. (RJP)

### Jails/Prisons

**Davis v. Canyon County, Idaho:** (Federal District Court, Idaho) In March 2009, we filed a federal class action lawsuit against a county jail, challenging numerous conditions of confinement including overcrowding, inadequate sanitation, plumbing, ventilation, and recreation. The Case settled pursuant to a Consent Decree in November, 2009. We are monitoring compliance. (RJP)

**Riggs v. Valdez:** This is a class action "failure to protect" case against Idaho's largest men's prison, the Idaho Correctional Center (ICC), operated by

Corrections Corporation of America (CCA). Stephen was appointed by the Court to represent one prisoner at ICC and then amended the complaint to make this case a class action. A study conducted by the Associated Press in 2008 found that ICC has more violent assaults than occurs at all the other seven Idaho prisons combined. Our lawsuit raises fourteen Eighth Amendment claims. CCA is aggressively defending this case, filing numerous motions, including one that seeks to ban ACLU counsel from speaking with the media about the case. The case is in the discovery stage. The litigation has generated considerable publicity, all of it critical of CCA. Our motion for class certification will be argued May 19, and we will also be seeking summary judgment on at least two of the Eighth Amendment issues at that same hearing.

### Juvenile Justice

**Casey A. v. Darline Robles:** On January 12, 2010, we filed a federal class action lawsuit in the Central District of California on behalf of all children incarcerated in juvenile probation camps in Los Angeles County. The suit alleges that these children are being denied their right to an adequate education, in violation of equal protection and due process rights. (RJP, ACLU-So Cal, Public Counsel, Disability Rights Legal Center)

**J.P. v. Taft:** In July 2004, we filed a class action lawsuit on behalf of all juveniles (nearly 2000) incarcerated in Ohio's eight juvenile correctional facilities. We alleged that the State was failing to provide these juveniles with constitutionally adequate access to the

courts. The Case was settled pursuant to a Consent Decree. We are monitoring compliance. (RJP)

**Juvenile Right to Counsel:** In 2006, we filed a petition with the Ohio Supreme Court asking that it promulgate a rule prohibiting juveniles in delinquency proceedings from waiving their right to counsel without first discussing the consequences of a waiver with an attorney. In September 2009, the Court's Subcommittee on Rules recommended that the Court adopt our suggestion and sent the issue to the Court's Advisory Committee on Children, Families and Courts, which will then make a final recommendation to the Court.

**Disproportionate Minority Contact:** We are researching the possibility of using the federal False Claims Act to enforce that section of the federal Juvenile Justice and Delinquency Prevention Act that requires states to take steps to address the disproportionate confinement of youth of color in their detention and correctional facilities. (RJP)

### Racial Profiling

**Castelano, et al. v. Rice:** In 2008, we filed a class action lawsuit challenging the federal government's unwillingness to issue passports to Mexican-Americans or individuals with Latino surnames whose births were attended by midwives in border states. The parties filed a settlement agreement with the court on July 25, 2009, providing for detailed injunctive relief. The court preliminarily approved the settlement on July 3, and a fairness hearing was held in early August, 2009. The court formally approved the settlement in mid-August,

2009. We are now monitoring government compliance with the Settlement. (RJP, IRP, ACLU-TX)

**NAACP v. Maryland State Police:** In 1998, we filed a class action lawsuit alleging that the MD State Police had a policy and practice of stopping, searching, and/or detaining minority drivers along Interstate 95 in violation of the 4th and 14th Amendments, Title VI of the Civil Rights Act, and state law. The injunctive part of the case settled in 2003 with defendants agreeing to collect data and make other reforms. The damages part settled in 2008. Plaintiffs filed a contempt motion in May 2006, seeking documents needed to evaluate MSP's compliance with the 2003 settlement agreement. In February 2010, the Maryland Court of Special Appeals ordered that the MSP release the records. (RJP, ACLU-MD, Cooperating Counsel)

**Racial Profiling – Louisiana:** We are investigating the possibility of litigation against L.A.'s new driving-while-undocumented statute. (RJP, IRP)

**Racial Profiling – North Carolina:** We are investigating advocacy possibilities to combat misuse of license checkpoints as pretext for checking the immigration status of Latinos on NC roadways. (RJP, IRP, ACLU-NC)

## Right to Vote

**Legislative Advocacy, Public Education and Policy Reform:** Right to Vote works with affiliates in states across the country and with national partners to promote legislation to increase access to the ballot box for people with criminal records, to raise awareness about felony disfranchisement

and to challenge voting restrictions through legislative and administrative measures.

The project's most recent publications include *De Facto Disfranchisement* and *Voting with a Criminal Record: How Registration Forms Frustrate Democracy*, both of which explore how the poor administration of felony disfranchisement laws keep untold thousands of eligible voters from the ballot box.

The project also creates state-specific public education materials.

## Affirmative Action

**Jones v. Carnahan:** In December 2008, we filed suit challenging an anti-affirmative action ballot initiative proposed by Tim Asher and his Missouri Civil Rights Initiative. The lawsuit charges that the proposed ballot initiative should not be circulated for signatures because it violates the MO Constitution by seeking to trick and defraud MO voters in attempting to ban an array of equal opportunity programs. Plaintiffs had a bench trial on May 19, and the court agreed with our argument that the proposed ballot initiative was inadequate and should not be circulated. Asher then filed a new ballot initiative with the Secretary of State but, facing another ACLU lawsuit, withdrew it in February, 2010. (RJP, WRP, ACLU-Eastern Missouri, ACLU-Kansas/Western Missouri, Cooperating Counsel)

## Human Rights

**CERD:** In 1994, the U.S. signed and ratified the International Convention on

the Elimination of All Forms of Racial Discrimination (CERD), pledging to take steps to identify and eliminate discrimination based on race in America.

The ACLU Racial Justice and Human Rights Programs, in collaboration with other NGOs, engage in ongoing advocacy around the CERD treaty to ensure that the U.S. takes steps to eliminate racial discrimination in the U.S. and fully implement the treaty.