

ACLU

The following cases are only representative of the Constitutional litigation the ACLU of Ohio undertakes. Our work would be impossible without the collaboration of our members, contributors, volunteer attorneys, chapter activists, Board of Directors and staff struggling to preserve and strengthen the Constitution.

◆ AIDS / HIV TESTING

◆ *Charon v. Memorial Hospital* (U.S. Court of Appeals, Sixth Circuit)

This landmark case, brought on behalf of a patient who was refused admission to a hospital because he acknowledged being HIV positive, is the first AIDS discrimination claim to go to trial under the Americans with Disabilities Act (ADA). Our complaint also included a claim under an older statute, the Federal Rehabilitation Act (FRA). Trial commenced on May 31, 1994 and received national attention. It was covered by CNN, ABC Television News, National Public Radio, the Associated Press, USA Today, and CBS Radio News. On June 14, the jury returned a \$512,000 verdict under the FRA. On November 21, the judge ruled in our favor under the ADA, granting injunctive relief in a precedent-setting opinion. The defendants are pursuing an appeal to the Sixth Circuit.

◆ Lawyers: Mark Elovitz (National ACLU); Ellen Simon Sacks (lead counsel); Doris Wohl.

◆ CRIMINAL PROCEDURE/ RIGHTS OF THE ACCUSED

◆ *State v. Golston* (Ohio Supreme Court)

We agreed to handle this appeal in order to rectify an injustice that plagued many felony convicts who, through the appeals process, endeavored to clear their names. Appeals courts in Ohio consistently dismissed – on mootness grounds – appeals by convicts who had already served their jail term by the time the court took up their case. We sought to establish a new doctrine that would bar courts from dismissing these appeals on mootness grounds, affording inmates a meaningful opportunity to clear their names on appeal. On December 20, 1994 the Ohio Supreme Court ruled in our favor.

◆ Lawyer: William M. Saks.

◆ ELECTIONS/RIGHT TO PETITION

◆ *McIntyre v. Ohio Elections Commission* (U.S. Supreme Court)

In this precedent-setting appeal, argued before the U.S. Supreme Court on October 2, 1994, we are challenging a state statute that prohibits the distribution of all anonymous political leaflets. Under the statute, *The Federalist Papers* (which were published under the pseudonym "Publius") would have been illegal. The High Court is expected to issue its decision by the summer of 1995.

◆ Lawyer: David Goldberger.

◆ FREE SPEECH AND EXPRESSION

◆ *City of Cincinnati v. The Pink Pyramid* (Cincinnati Municipal Court)

This case was an obscenity prosecution directed at a gay bookstore and its owner for renting a videotape of "Salò: 120 Days of Sodom," the final work of master Italian filmmaker Pier Paolo Pasolini. Working with the ACLU's Arts Censorship Project, we filed on September 2 an amicus curiae brief in support of the defendants' motion to dismiss. Among the 50 amici who signed onto our brief were The Museum of Modern Art, The Film Society of Lincoln Center, The Whitney Museum of American Art, film di-

rector Martin Scorsese, and a broad range of artists, scholars, and institutions. Invoking the exclusionary rule in a November 14, 1994 decision, the trial court granted a motion to suppress the evidence (i.e., the videotape of "Salò") on the grounds that it had been illegally seized. This ruling left the City powerless to proceed with the prosecution.

◆ Lawyers: Scott Greenwood, Kevin O'Neill (Amicus).

◆ *Pinette v. Capitol Square Review & Advisory Board* (U.S. Supreme Court)

This was a major victory for free and equal access to a traditional public forum. Though the case initially involved a variety of issues stemming from governmental efforts to suppress and punish KKK speech, the controversy finally boiled down to one question: whether state officials can deny the Klan a permit to erect a "cross for Christmas" on Capitol Square in Columbus – a space that we argue constitutes a public forum. We secured an injunction on December 21, 1993 and successfully defended that victory in the Sixth Circuit, obtaining a unanimous ruling on July 25, 1994. On January 13, 1995, the U.S. Supreme Court agreed to hear the government's appeal. Oral argument was April 26, with a decision to follow by the end of June.

◆ Lawyers: David Goldberger, Benson Wolman.

◆ GAY AND LESBIAN RIGHTS/ SEXUAL ORIENTATION ISSUES

◆ *Equality Foundation of Greater Cincinnati, Inc. v. City of Cincinnati* (U.S. Court of Appeals, Sixth Circuit)

This is a First Amendment and Equal Protection challenge to a measure, approved by Cincinnati voters on November 2, 1993, that amended the city charter to repeal anti-discrimination protection for gay men and lesbians and to forbid all branches of local government from enacting or enforcing laws that ban discrimination on the basis of sexual orientation. On August 9, U.S. District Judge S. Arthur Spiegel issued a landmark 75-page decision endorsing each of our constitutional claims. The case is now on appeal before the Sixth Circuit. On September 13, the intervening defendants (a group called Equal Rights, Not Special Rights) announced that Robert Bork and Edwin Meese had joined their litigation team. Oral argument was held on March 7, 1995.

◆ Lawyers: Scott Greenwood, Kevin E. O'Neill

◆ RELIGION: ESTABLISHMENT AND FREE EXERCISE ISSUES

◆ *Creationism in Public Schools* (ongoing investigation; litigation contemplated)

Christian fundamentalists have declared Louisville, Ohio to be "ground zero" in the fight to bring Creationism to public schools. The Rutherford Institute, which litigates on behalf of the religious right, has agreed to provide free legal services in the impending battle. We were successful two years ago in persuading the Louisville School Board to halt the teaching of Creationism in its schools. But in the waning months of 1994, Christian fundamentalists renewed their lobbying efforts with the Board, inaugurated a public relations campaign, organized public meetings and speeches by national figures in the Creationist movement, purchased multiple copies of Creationist textbooks and offered to donate them for use in the Louisville schools, and began amassing a legal defense fund in anticipation of a clash with the ACLU. On February 13, 1995, the

Louisville School Board expressly refused to reintroduce Creationism into its science curriculum, but agreed to accept 150 copies of a new Creationist textbook – purportedly for use as a library reference source. We continue to monitor developments in Louisville.

◆ Lawyers: Kevin F. O'Neill, Raymond V. Vasvari.

◆ POLICE MISCONDUCT

◆ *Rice v. City of Cleveland* (U.S. District Court, Cleveland)

Not long after the Rodney King incident, an African American couple used their camcorder to photograph police choking a neighborhood youth; the officers, threatening to arrest the husband if he did not surrender his camcorder, eventually confiscated the videotape. We filed suit in late August 1992. On March 22, 1995, Judge Kathleen McDonald O'Malley granted us summary judgment on our Fourth Amendment claims against the arresting officers. Defendants have vowed to appeal.

◆ Lawyers: Thomas Buckley (Of Counsel), J. Michael Murray, Kevin F. O'Neill, Steven D. Shafron.

◆ RIGHTS OF THE HOMELESS

◆ *Clements v. City of Cleveland* (U.S. District Court, Cleveland)

This lawsuit, filed on October 4, 1994 is the culmination of a two-year investigation into police abuse of the homeless population in Cleveland. Our investigation revealed that police – apparently at the behest of their superiors in the department and, ultimately, at the behest of officials within Mayor White's Administration – actively discouraged homeless and/or destitute individuals from visiting certain well-traveled sectors of downtown, primarily Public Square and the Flats. Those who defied these orders were forcibly deposited in police vans or squad cars, transported to remote industrial areas, and abandoned. Our plaintiffs include four homeless men, all of whom have been "dumped" at least once, and the Northeast Ohio Coalition for the Homeless. Discovery is proceeding.

◆ Lawyers: James A. Levin, Kevin F. O'Neill, Gino Scarselli, Raymond V. Vasvari.

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