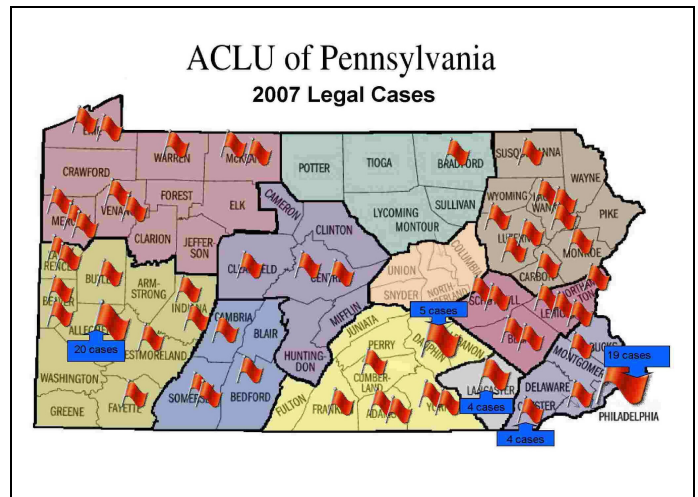


ACLU of Pennsylvania 2007 Legal Docket

The ACLU of Pennsylvania's 2007 Legal Docket reflects another busy and productive year challenging the abuse of power by government officials across the Commonwealth. The docket contains the typically large number of First Amendment cases, involving freedom of speech, association and religion. Discontent among the populace must be high, given the many protester cases. Students also called upon ACLU-PA more frequently than in past years. But the most dramatic change in our docket is the growth of our immigrants' rights work, featuring several nationally significant cases. Ultimately, the ACLU-PA helped defend rights and liberties of many people throughout the Commonwealth on varied and important issues.

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FREEDOM OF SPEECH

PUBLIC EMPLOYEES

(Allegheny Co.) Catherine McNeilly, the most senior Pittsburgh Police Commander, was demoted to Lieutenant in December 2006 after she sent an e-mail to the Mayor and City Council members alerting them to her concerns about the Mayor's nominee for Public Safety Director. The ACLU-PA filed a lawsuit against the City alleging that the demotion violated her rights under the First Amendment and the state Whistleblower Act. In January 2007, the court issued a preliminary injunction reinstating Ms. McNeilly to her commander position. The case settled thereafter with the City agreeing to pay \$85,000 in damages, plus attorneys' fees. McNeilly v. City of Pittsburgh, W.D. Pa. (Chief Judge Ambrose); *O'Brien*; *Krakoff* (*Stember Feinstein*); *Walczak*, *Rose*

PROTESTERS

(Allegheny Co.) In August 2007, the Pittsburgh Mayor's office refused to issue a permit to anti-war demonstrators who wanted to conduct a round-the-clock vigil and protest in front of the armed services recruiting station in the City's Oakland neighborhood. Failing to get the permit, the protesters planted themselves on a portion of the sidewalk, taking care not to obstruct passage. Nevertheless, City police officers issued several citations to the protesters simply for sitting, lying down or sleeping on the sidewalk, even though they weren't blocking passage. After the police failed to heed repeated warnings from the ACLU-PA to stop harassing the protesters, we filed suit in mid-September. During preliminary injunction proceedings, the City agreed to a consent order whereby protesters were, for the duration of the protest through late September, allowed to sit, lie down, place chairs, etc., in two 45-square-foot sidewalk areas on either side of the recruiting station. Pittsburgh Organizing Group v. City of Pittsburgh, W.D. Pa. (Judge Conti); *Healey*, *McKechmie* (*Healey & Hornack*); *Walczak*

(Adams Co.) A Gettysburg NOW Roe v. Wade Anniversary rally in January 2006 was cancelled at the last minute when the group couldn't navigate the City's onerous demonstration permit requirements. Not having heard about the cancellation, Bruce Davis showed up with his wife and child. He stood on the sidewalk with a sign that read, "Dad for Choice." The police came and ordered people to disperse; when Davis demurred, he was arrested and charged with disorderly conduct and resisting arrest. The ACLU-PA represented Davis and succeeded in getting all charges

dismissed. We then filed a civil rights lawsuit against Gettysburg in December 2006 to challenge Davis' arrest and to invalidate unconstitutional portions of the permit ordinance, including 60-day-advance-notice and liability-insurance requirements. In late December, Gettysburg passed a revised demonstration ordinance and the case settled in January 2008, paying Davis \$22,500 in damages and attorneys' fees. Davis v. Gettysburg, M.D. Pa. (Chief Judge Kane); *Rice*; *Knudsen*, *Roper*, *Walczak*

(Lancaster Co.) Thong-clad protesters were arrested by East Lampeter Township and Pennsylvania State Police for disorderly conduct in summer 2004 for recreating on a roadside a scene from the Abu Ghraib prison scandal just prior to a visit by President Bush. The charges were withdrawn by the Lancaster County District Attorney in fall 2004. The ACLU-PA filed suit in December 2004 against East Lampeter Township and the PA State Police for arresting the protesters in retaliation for exercising their First Amendment free speech rights. The claims against East Lampeter Township were settled with a damages payment, but the district court in March 2006 dismissed our claims against the state police officers. We appealed. The case was argued in the Third Circuit in April 2007, and we await a decision. Egolf v. Witmer, 3d Circuit (Judges Nygaard, Smith & Hansen); E.D. Pa. (Judge Diamond); *Yoder*, *Hess* (*Gibble*, *Kraybill & Hess*); *Knudsen*, *Walczak*

(Delaware) In August 2005, a Delaware state trooper ejected teenagers from a Santorum book signing at a Barnes & Noble store at the request of Santorum-event organizers, and briefly arrested two of the teens. Together with the ACLU of Delaware, the ACLU-PA brought claims for violation of First Amendment and false arrest against the trooper and the unidentified Santorum staff. In discovery we identified the Santorum aides involved in the ejection. The case settled in Fall 2007 with the aides paying \$2500 in damages and sending the teenagers a written apology. The Delaware State Police paid \$15,000 in attorney fees and passed a policy to prevent officers from excluding non-disruptive people from property open to the public simply because of their viewpoint. Galperin v. DiJiacomo and Doe, D. Del. (Judge Sleet); *Einhorn*, *Kauffman* (*Hangley Aronchik*), *Monhait* (*Monhait*); *Kreimer*; *Roper* (*ACLUPA*); *Graff* (*ACLUDE*)

(Somerset/Lancaster Co.) International Workers of the World (IWW) members wanted to protest Starbucks' employment practices and treatment of coffee growers at PA Turnpike service plazas on "Black Friday," the day after Thanksgiving. The Turnpike Commission suggested that such a protest was not allowed, but

ultimately stated that it was up to the lessee, HMS Host Corporation, which runs the service plazas. HMS Host said no and threatened legal action if protesters went forward with plans. The ACLU-PA negotiated a resolution of the dispute and IWW was able to protest without incident on November 23. IWW v. PA Turnpike Comm'n and HMS Host Corp.; *Healey (Healey & Hornack); Walczak*

(McKean Co.) In November 2007, a county commissioner commented to the local newspaper that the county would not permit an anti-war group to hold a peace vigil on the courthouse steps on election day because it might "upset people." The County relented after the ACLU-PA sent a letter threatening emergency court action. The protest occurred peaceably without incident. Fifth District Peace Project v. McKean County; *Rose*

(Philadelphia) A coalition of anti-war groups was scheduled to stage large demonstrations on October 27, including a three-mile human chain and march to Independence Mall. Counter protestors from the Gathering of Eagles were expected to attempt to disrupt the rally. The ACLU-PA worked as liaison with University of Pennsylvania police, City police and the National Park Service to ensure an appropriate response to counter-protestors that would allow both peace activists and counter protestors to convey their respective messages without disrupting the opposing event. Mid-Atlantic Anti-War Mobilization; *Roper*

(Philadelphia) New Jersey anti-war activists sought permission to march across the Ben Franklin Bridge to join a large peace rally (described above) in Philadelphia on October 27, but met resistance from the Port Authority, which manages the bridge. The ACLU-PA successfully negotiated with Port Authority to, first, allow the march and, second, to waive an onerous and unconstitutional indemnification agreement. United for Peace and Justice; *Roper*

(Chester Co.) A group of peace activists who gather for a vigil each week in West Chester faced increasing interference from a pro-war group. The interference included name calling, blocking people's view of the activists and their signs, and shouting and making noise to drown out their message. In October 2007, the ACLU-PA requested that the police chief assign the groups different locations to prevent confrontations. We also sent legal observers. Subsequent vigils occurred without incident. Chester County Peace Movement v. West Chester; *Roper*

(Philadelphia) At a July 2007 peace rally organized by Veterans For Peace on Independence Mall, National

Park Service (NPS) officials refused to intervene when counter-protestors entered the rally site and used air horns to drown out the keynote speaker. In August 2007 the ACLU-PA met with NPS representatives and the U.S. Attorney's Office to discuss handling of counter demonstrators. While the officials gave only vague assurances, subsequent peace rallies were well managed. Independence Mall Protests; *Caine; Roper*

(Allegheny Co.) In August 2007, the ACLU-PA contacted the Mt. Lebanon police after receiving a complaint that peace protestors demonstrating against the war on the sidewalk in front of U.S. Representative Tim Murphy's office had been threatened with arrest for videotaping police. We explained that the demonstrators had a First Amendment right to videotape police officers in the performance of their duties, and the police eventually agreed, allowing the protestors to continue. Mt. Lebanon peace protestors; *Roper*

(Chester Co.) In August 2007, animal-rights activists were denied permission by local police to protest outside the Devon Horse Show in Easttown. The police wanted the protestors to stand across the street, where they wouldn't have contact with attendees. The ACLU-PA successfully negotiated to allow the activists to protest right next to the fairgrounds entrance. Easttown Animal-Rights Protesters; *Roper*

(Philadelphia) In a series of cases during summer 2007 involving an animal-rights group, Hugs for Puppies, the ACLU-PA provided court representation to limit injunctions being sought by Philadelphia restaurants to stop the group's protests. The group was protesting the treatment of geese in the making of foix gras. Restaurants seeking injunctions were Le Bec Fin, Philadelphia Bistro and the London Grille. The ACLU-PA succeeded in reducing the extreme distances mandated by the court, allowing the protestors to share their message with patrons without disrupting dining enjoyment. We have taken an appeal to Superior Court on some remaining restrictions. Le Bec Fin, et al., v. Hugs for Puppies, Phil. Ct. Com. Pl.; *Rudovsky, Messing (Kairys Rudovsky Messing & Feinberg)*; *Roper*

(Dauphin Co.) Jose Frayre and two colleagues sought to hold an impromptu protest on the steps of the State Capitol Building. The ACLU-PA intervened in July 2007 with the PA Department of General Services, which had advised Frayre that he couldn't protest without a permit and that the permit must be filed at least ten days in advance. DGS relented and allowed the protest without a permit. Frayre v. PA Dept. of General Services; *Burch*

(Northampton Co.) Joseph Yamrus flew an American flag upside down on his front porch as a signal of distress to protest America's involvement in the Iraq War. After the flag had flown for a month, a neighbor complained, and in June 2007 a Bangor Borough police officer cited Yamrus under a PA statute that makes it a crime to "insult" the American flag. The District Attorney dropped the charges in July after ACLU-PA cooperating counsel entered the case. The ACLU-PA is preparing a civil suit to challenge the constitutionality of the "flag insult" statute. Yamrus v. Bangor Borough; *Saint Antoine*; *Roper*

(Dauphin Co.) A coalition of peace activists was told by Harrisburg officials that they must pre-pay a \$180 fee, plus pay \$45 per hour to police officers needed as an escort for the march. The ACLU-PA's "suggestion" to Harrisburg that the fees were unconstitutional resulted in the City waiving them for the August 10, 2007, march. Harrisburg Peace Activists; *Burch*

(Philadelphia) In March 2007, the ACLU-PA filed a civil rights complaint on behalf of Marianne Bessey, an animal rights activist, who was arrested while standing in a public street outside a circus performance. She was holding a sign and handing out literature about the circus's treatment of animals when two Philadelphia police officers demanded that she move to a nearby street, where most of the arriving circus patrons would not see her. When Bessey refused, she was handcuffed, placed in a police van, and taken to a police station, where she was held in a cell for nearly three hours before being released with a citation for disorderly conduct. The lawsuit charges that the Philadelphia Police Department knowingly fails to train its police officers about the rights of people who engage in public protest and instead allows its officers to retaliate against and discourage peaceful protestors from exercising their First Amendment rights. Bessey v. City of Philadelphia, E.D. Pa. (Judge Robreno); *Roper*

(Luzerne Co.) On St. Patrick's Day in 2006, Kurt Shotko and Victor Brobrzyk attended a community parade in Luzerne County, bringing with them their home-made signs criticizing the Bush administration. They stood in the crowd along the side of the parade route with their signs and made no attempt to disrupt the parade. Nonetheless, they were arrested and charged with disorderly conduct and with resisting arrest. Half the charges stemmed from the defendants' alleged use of profanity when they were taken into custody by the police (which, even if true, cannot constitutionally support a charge of disorderly conduct). In January 2007, Shotko and Brobrzyk were

tried before a jury in the Luzerne County Court of Common Pleas. They were convicted on all counts. ACLU-PA has appealed the convictions to the Pa. Superior Court. Commonwealth v. Shotko and Brobrzyk, Pa. Superior Court; *Welsh (Welsh & Recker)*; *Knudsen, Roper*

(Allegheny Co.) Over a four-month period in late '03 and early '04, we won three federal court orders blocking the City of Pittsburgh from charging excessive police fees and requiring onerous insurance coverage for groups wanting to protest on public property. The ACLU-PA represented the NAACP, Thomas Merton Center and People Against Police Violence. After extended negotiations and numerous court proceedings, in February 2006 the City presented what we believed was a constitutional ordinance and application procedure. The litigation has continued over attorneys' fees, as the City has appealed the District Court's fee award to the Third Circuit. The appeal was argued in December 2007 and we await a decision. PAPV v. City of Pittsburgh, 3d Circuit (Judges Rendell, Stapleton and Irenas); W.D. Pa. (Judge Conti); *Healey, McKechnie (Healey & Hornack)*; *Rose, Walczak*

(Lancaster Co.) Anti-war groups have encountered problems trying to get permits in the City of Lancaster. The ACLU-PA's analysis of the underlying ordinance revealed numerous constitutional problems, including excessive fees, indemnification and insurance requirements, too much discretion in deciding who gets permits, and otherwise unnecessarily onerous application requirements. In response to ACLU-PA's concerns, the mayor agreed in July 2007 to suspend enforcement of the old ordinance and the City is working to draw up another one that comports with the First Amendment. Lancaster Demonstration Permit Ordinance; *Roper*

(Allegheny Co.) In 2002, the ACLU-PA filed a lawsuit on behalf of four activists arrested by Pittsburgh police outside a Pirates' baseball game at PNC Park for distributing pamphlets criticizing Major League Baseball for selling merchandise made by foreign sweat shops. We secured a court order protecting protesters' rights to engage in political activity on the sidewalks surrounding the stadium. After a trial in March 2007, the court denied the protesters' damages claim. Industrial Workers of the World (IWW) v. City of Pittsburgh, W.D. Pa. (Judge Lancaster); *Healey, Akers, McKechnie (Healey & Hornack)*; *Walczak*

SIGNS

(McKean Co.) In 2004, the ACLU-PA filed suit on behalf of three City of Bradford residents who were given citations for displaying signs on their property without having first secured a permit. The law prohibited all political signs in the City's historic district. The City quickly revised the ordinance to remove the ban on non-commercial signs. It left in place some restrictions, including a permit requirement for commercial signs. The District Court ruled in August 2005 that the revised ordinance was constitutional. In May 2007, the Third Circuit affirmed the lower court decision. Despite our belief that the appeals court erred, ACLU-PA elected not to petition for Supreme Court review. Riel v. City of Bradford, 3d Circuit (Judges Fisher, Chagares & Buckwalter); W.D. Pa. (Judge McLaughlin); *Friedman; Walczak*

(Adams Co.) Kenneth Frock placed a sign in the front yard of his Littlestown home that read, "We refuse to yield to 'Gestapo' tactics of the Littlestown Borough." Mr. Frock was upset about how the Borough had handled a discrepancy in his water bill. Littlestown Borough sent Mr. Frock a letter threatening to fine him for every day that the sign remained up, because it violated the Borough zoning ordinance. The ACLU-PA sent a letter to Littlestown officials in July 2007 demanding that they withdraw the threat of fines and pointing out that the Borough cannot prohibit political speech on private property. While the Borough never responded to the letter, they also have not taken further steps to force Mr. Frock to remove the sign. Frock v. Littlestown Borough; *Burch, Walczak*

(Carbon County) Non-incumbent candidates for township supervisor were threatened with prosecution for posting lawn signs more than 30 days before an election. The ACLU-PA sent a letter in April 2007 to the township explaining that they could not restrict the time during which political signs could be displayed on private property without violating the First Amendment. The township agreed not to follow through with citations. Truhe v. East Penn Twp; *Roper*

(Allegheny Co.) Ron Halsac was instructed by Beaver Borough to remove political-campaign signs from his lawn because they were up more than thirty days before an election. The ACLU-PA sent a letter in May 2007 advising the Borough that such a restriction on political speech on personal property violated the First Amendment. The Borough advised us they would cease enforcing the restriction. Halsac v. Beaver Borough; *Rose*

(Allegheny Co.) In March 2007 South Park Township officials directed a man to remove a political sign, which supported his son's candidacy for district magistrate, from his yard or face sanctions. The ACLU-PA sent a letter to the township explaining that the township's rules requiring permits and restricting the time during which political signs could be displayed on private property violated the First Amendment. The township immediately suspended all enforcement activities related to its sign ordinance. In September 2007, however, the Township alerted the complainant they would resume enforcing the 30-day limit on campaign signs. The ACLU-PA is preparing a lawsuit. Rudolph v. South Park; *Walczak*

"OFFENSIVE" LANGUAGE

(Allegheny Co.) The ACLU-PA filed a civil suit against the City of Pittsburgh and one of its police officers in February 2007 on behalf of a man who received a disorderly conduct citation from a City police officer for displaying his middle finger, i.e., flipping him the bird. David Hackbart was convicted of disorderly conduct by the District Justice, but the District Attorney withdrew the charge prior to the appeal hearing in the Court of Common Pleas. The civil case is in discovery. Hackbart v. City of Pittsburgh, W.D. Pa. (Judge Cercone); *Antonette, Farrell (Dreier LLP); Rose, Walczak*

(Lackawanna Co.) In October 2007, Dawn Herb cursed at an overflowing toilet in her home. Her neighbor, an off-duty police officer, heard her through the open bathroom window. He contacted the Scranton City police who cited Herb with disorderly conduct for using profanity in her own home. The case drew international media attention. In December 2007 a district magistrate threw out all charges, ruling that even though the speech may have been "offensive, vulgar and imprudent," it was nevertheless constitutionally protected. The ACLU-PA is preparing a civil suit to ensure that Scranton police do not punish people for simply offending them. Commonwealth v. Herb, Lackawanna Co. Dist. Mag. Ct.; *Dyller; Burch, Walczak*

(Venango Co.) Patty and David Ace were cited for disorderly conduct for using "obscene language" after they called a woman with whom they have an acrimonious relationship "a fucking whore," a "home-wrecking lesbian slut," and threatened to "kick her ass" if she did not get off their lawn during a confrontation on their private property. After being found guilty by the district magistrate, the ACLU-PA represented the Aces on appeal. In October 2007, the charges against

David for threatening to kick the woman's ass were dismissed, but the court found Patty guilty. We decided not to appeal further. Commonwealth v. Ace, Venango Co. Ct. Com. Pl. (President Judge White); *Hadley*

(Dauphin Co.) In July 2007, a Harrisburg City police officer cited an Enola man with disorderly conduct for giving the officer the "middle finger." In September, the ACLU-PA represented the man before the district magistrate, who dismissed the disorderly conduct charge, agreeing that the "middle finger" is constitutionally protected speech. Liang v. Commonwealth, Dauphin Co. Ct. Com. Pl.; *Willis; Burch*

(Lawrence Co.) Rocky Grim Jr. attempted to request a hearing concerning a child-support order entered against his son's mother at the Lawrence County Domestic Relations Office in April 2006, but the clerk refused to accept the paperwork, claiming that the request was too late. Mr. Grim requested a copy of his file instead, uttered a few choice words, and left the office. He was followed to his car by a police officer, who issued him a citation for disorderly conduct for using obscene language in a public building in front of women and small children. Mr. Grim was convicted of the offense in district court and in the court of common pleas. The ACLU-PA has appealed the court of common pleas' verdict to Superior Court, claiming that Grim's First Amendment rights were violated. Commonwealth v. Grim, Pa. Superior Court; *Ranjan, Reiter (Kirkpatrick & Lockhart, Preston Gates Ellis); Rose*

SPEECH ON COLLEGE CAMPUSES

(Philadelphia) The ACLU-PA signed onto an *amicus* brief in August 2007 drafted by the Foundation for Individual Rights in Education ("FIRE") supporting the plaintiff in a case challenging Temple University's speech code as vague and overbroad. The challenged sexual harassment policy contains no threshold requirement of severity or pervasiveness and prohibits generalized sexist remarks and behavior, not necessarily designed to elicit sexual cooperation, but that convey insulting, degrading or sexist attitudes about women and men. While the line between unprotected harassment and protected expression is a difficult one, we believe Temple's demarcation intrudes too far on protected speech. DeJohn v. Temple University, 3d Circuit; *Lukianoff (FIRE); Rose, Walczak*

(Indiana Co.) The Indiana University of PA chapter of Students for a Democratic Society contacted the

ACLU-PA in October 2007 after the campus police chief told the group that it could not write political messages on a U.S. flag during a demonstration on the campus' free-speech day. The ACLU-PA sent a letter to University officials explaining that the First Amendment protects the right to write political messages on a U.S. flag. That same morning, we received a phone call from IUP's counsel assuring us that the students would be able to carry out their demonstration as planned. The students' demonstration took place without incident. Students for Democratic Society v. Indiana Univ. of PA; Rose

(Dauphin Co.) In September 2007, The Harrisburg Area Community College (HACC) Board of Directors was set to vote on the adoption of a campus speech policy creating "free speech zones," which would require outside groups to give 2 weeks advance notice to obtain a permit to speak or distribute literature anywhere on campus, even outdoors. The ACLU-PA believed the proposed zones were located in inadequate and remote areas of some of the HACC campuses, and that the policy otherwise unjustifiably restricted political and religious expression. The ACLU-PA's letter to HACC administrators resulted in postponement of the policy and prompted an extended discussion by faculty and staff. At year's end the policy was still being discussed. Harrisburg Area Community College Speech Zones; Burch, Walczak

(Berks Co.) In April 2007, Charles Kline displayed a sign that read, "Equal Rights for Robots," during a confrontation between pro- and anti-gay demonstrators on a public university campus. He was arrested and charged with disorderly conduct at the direction of campus security. The ACLU-PA provided representation and in July 2007 the District Attorney dropped the charges at the preliminary hearing. Kline v. Kutztown University, Berks Co. Dist. Mag.; *Willis; Roper*

(Butler Co.) In September 2006, Keith Darrell stopped at Slippery Rock University to give an evangelical Christian lecture in an outdoor common area. Although his lecture caused no disruption, university security officers advised him that he could not speak on campus without a permit and that he would be arrested for trespass if he returned to campus to speak without first obtaining a permit. We sent a letter to Slippery Rock University officials in February informing them that requiring Mr. Darrell to obtain a permit before speaking on campus violated his First Amendment free-speech rights. The University responded with a written assurance that it would not require people who wished to speak on campus to obtain permits beforehand. Darrell v. Slippery Rock

DOOR-TO-DOOR CANVASSING

(Allegheny Co.) Clean Water Action contacted us in July 2007 after being told by the Upper St. Clair Township police department that they could not canvass after 8 p.m. (CWA typically canvasses from 5 p.m. to 9 p.m. in order to reach people when they are home) and that every canvasser was required to register with the police department before asking for contributions while canvassing. The ACLU-PA sent a demand letter to Upper St. Clair officials, who agreed to allow CWA to canvass until 9 p.m. and solicit contributions without a permit. Despite a U.S. Supreme Court decision several years ago holding that permitting requirements for charitable solicitation violated free-speech guarantees, such permit and registration laws persist throughout Pennsylvania. Clean Water Action v. Upper St. Clair; Walczak

ARTISTIC FREEDOM

(Philadelphia) In March 2007, Philadelphia police arrested a man on disorderly conduct charges for singing in Rittenhouse Square Park. Thereafter City police banned all musical performances in the Square, citing an ancient Park regulation that required a permit for any “performance” in the park, even by a single musician. In June the ACLU-PA and others met with City police and lawyers. The City issued a new guide. While we think the new language is still potentially problematic, the police have not harassed musicians in the park. Rittenhouse Park Musicians v. City of Philadelphia; Kohart (Drinker, Biddle & Reath); Messing (Kairys Rudovsky); Roper

(Bedford Co.) In 2006, Bedford Borough cited the owner of Noteworthy, a Christian-themed night club directed to minors, for violating the local noise ordinance. The ordinance prohibited “excessive noise,” a term that we thought was too vague. The owner was found guilty and fined by a district magistrate. A trial was held in April 2007, and the judge ruled in June that one of the borough’s ordinances was unconstitutional, because the ban on “excessive noise of any kind” was unduly vague. The judge, however, upheld the provision of the ordinance that prohibits “disturbing or destroying the peace,” saying that common law adequately defines the provision. He thereby affirmed the conviction. We did not appeal. Commonwealth v. Fetterman, Bedford Ct. of Com. Pls.; McKechnie (Healey & Hornack)

SPEECH AT PUBLIC MEETINGS

(Westmoreland Co.) The ACLU-PA sent a letter to members of the Trafford Borough Council about new rules that were distributed at the August 2007 council meeting prohibiting public comment on political or personnel-related matters. We explained in our letter that the council’s restrictions on public comments violated the state Sunshine Act and the First Amendment. The borough agreed to inform people in writing at the next meeting that the council would permit public comment on any matter of concern, official action, or deliberation that is or may be before the council, as required by the open-meetings law. Lloyd v. Trafford Borough; Rose

(Centre Co.) At a Boggs Township Meeting, resident Deborah Gosa complained about seeing the Township Secretary use a municipal vehicle to conduct personal business. Gosa then received a letter from the Township Solicitor threatening her with legal action for allegedly stalking and harassing the Township Secretary, scaring Gosa into silence. An August 2007 letter from the ACLU-PA demanded that the Township solicitor retract his threats of legal action, which he did. Gosa v. Boggs Township; Burch

(Allegheny Co.) We sent a letter in June 2007 to the Brentwood Borough Council after Borough residents contacted us concerning a new policy restricting public comment at council meetings to only those items listed on the agenda. We explained that the policy violated the state open-meetings law and the First Amendment. The borough rescinded the policy. Brentwood Borough public-comment policy; Rose

MASS TRANSIT ADVERTISING

(Allegheny Co.) In August 2006, the ACLU-PA filed suit on behalf of the League of Young Voters and the ACLU of Pennsylvania against the Allegheny County Port Authority Transit (PAT). PAT had refused the groups’ request to display on buses an advertisement informing ex-felons of their right to vote and encouraging them to register to do so. PAT had claimed that it permitted only “commercial” ads, but many people had observed similar know-your-rights ads displayed by other non-profit groups on area buses. Discovery has been completed and the case has been briefed. We are awaiting the court’s decision on cross motions for summary judgment. League of Young Voters v. Port Authority, W.D. Pa. (Judge McVerry); Sternberger; Pushinsky; Walczak, Rose

See also, Cyber Liberties (all entries); Students’ Rights (Expression – all entries); Religious Liberty (Regrut v.

Allentown, et al.; Baylor v. Hamburg Sch. Dist., McClary v. Nazareth Area Sch. Dist.)

CYBER LIBERTIES

(Lackawanna) The ACLU-PA represented local political activists in a suit arising from the blocking of an on-line political discussion board in October 2005. The Pilchesky's operated www.dohertydeceit.com and a related discussion board, which served as a forum for criticism of the Scranton city government. When the Pilchesky's allowed postings critical of the city's Director of Economic and Community Development, the official convinced the District Attorney and the Pennsylvania State Police (PSP) to pressure the Internet website host to shut down the site. Access to the site was restored in December 2005, after the ACLU-PA threatened a preliminary injunction. The State Police later agreed to the entry of an order barring further police interference with the discussion board. The case settled in September 2007. The DA adopted a protective Internet speech policy and paid \$50,000 in fees and costs. The PSP promised not to interfere with the Pilcheskys' website again and paid \$25,000. Pilchesky v. PSP, M.D. Pa. (Judge Caputo); Larocca (Kohn, Swift & Graf); Kreimer; Roper, Walczak

(Mercer Co.) The publisher of The Mercer News — an online newspaper — contacted the ACLU-PA after Mercer County removed the link to his publication from its homepage, ostensibly because the paper did not take a county-job posting off its site after being asked to do so. After learning that the County has no policy regarding the placement of links to outside organizations on its website, the ACLU-PA sent a letter to the county solicitor in August 2007 explaining that the County's removal of the link to The Mercer News from its website — in the absence of any guidelines and in retaliation for posting information about a county job opening — violated the newspaper's First Amendment rights and demanded that the link to The Mercer News be reinstated. The County cured the constitutional problem by removing all outside links from its website. Allen v. Mercer County; Rose

(Cambria Co.) The ACLU-PA received a complaint from two recent alumni of the University of Pittsburgh at Johnstown that they had been told by the school's residence-life director that they were no longer allowed on campus because of messages they posted on facebook.com criticizing a residence-life employee. The ACLU-PA sent a letter to university officials in February 2007 explaining that the residence-life

director's restriction on the alumni's access to the campus in response to their speech constituted retaliation in violation of the First Amendment to the U.S. Constitution and asked that the alumni be allowed the same access to the campus as any other alumnus would have. The university responded by assuring us that the alumni would be permitted on campus. University of Pittsburgh at Johnstown Retaliation; Rose, Walczak

(Allegheny Co.) The ACLU-PA signed on to an *amicus* brief filed by the Electronic Frontier Foundation in a case before the Allegheny Court of Common Pleas. The brief argued that the *operators* of the website "Don'tDateHimGirl.com" (as opposed to people *posting* on the site) cannot be held liable for defamation under the Communications Decency Act for comments that others post on the site, which allows women to publicly shame men they have dated. The Court of Common Pleas dismissed the claims against the website operator in April 2007. Hollis v. Joseph, Allegheny Ct. Com. Pl. (Judge Wettick); Hofmann (EFF); Rose

See also, Students' Rights (Layshock v. Hermitage Sch. Dist., Trosch v. Layshock, et al., J.S. v. Blue Mountain Sch. Dist., Commonwealth v. Doe, B.D. v. Monaca Sch. Dist.).

RELIGIOUS LIBERTY

FREEDOM OF RELIGION (FREE EXERCISE CLAUSE AND RELIGIOUS-FREEDOM STATUTES)

(Allegheny Co.) The Allegheny County Register of Wills denied a "self-uniting marriage license" to a couple because they could not prove that they were members of the Quaker, B'hai, or Buddhist faith. A self-uniting marriage license has been allowed in Pennsylvania since 1681. It permits couples to marry without an officiant. Otherwise, the license requirements are the same as for other recorded marriages (this is not "common law marriage"). After the County refused the ACLU-PA's demands, we filed suit in September 2007 arguing that the religious litmus test violated the First Amendment. Government cannot prefer some religions to others. The court granted a preliminary injunction several days before the planned wedding directing the County to issue the license. The County subsequently agreed to change the practice for everyone. Knelly v. Wagner, W.D. Pa. (Judge Conti); Litman; Mahood (Wilder & Mahood); Rose, Walczak

(Allegheny Co.) One month prior to the Knelly case (see preceding entry), the ACLU-PA negotiated on behalf of a couple where the bride was an ordained Universal Life Church minister, an ordination that occurs over the Internet. The County Register of Wills had refused to issue a self-uniting marriage license. The Register eventually agreed to issue a regular marriage license, but told the couple that they could officiate the ceremony themselves. Hall v. Allegheny County Register of Wills; *Litman*; *Mahood (Wilder & Mahood)*

(Warren Co.) Sugar Grove Township, which has a large Amish population, recently put in a sewer system. The sewer system, which requires an electric pump, abuts the property of one of the township's Amish families. That family refused for religious reasons to hook their home up to the sewer system. The township revoked the family's permit for their state-approved privy and placed a lien on their house for the unpaid sewer-system hook-up fee and monthly charges. The ACLU-PA sent a letter to Sugar Grove officials in March 2007 explaining that the state Religious Freedom Protection Act protects the family's right to exercise their religion and refrain from hooking up to the sewer system. We are nearing an agreement that will allow the Amish to avoid connecting their homes to the sewer system – but having to pay fees -- while continuing to use their privies. Warren County Amish Religious Freedom; *Doblick (Reed Smith)*; *Rose*

(Allegheny Co.) Linda Foster has run a soup kitchen out of her father's McKeesport church for several years. In November 2006, the City of McKeesport cited her for operating a soup kitchen in violation of the zoning ordinance. She applied for a variance, but was denied. ACLU-PA filed an appeal of the zoning board's decision in the Court of Common Pleas in December 2006. In February 2007, the case settled, as the City agreed to allow the soup kitchen to remain open as an accessory use to a church. Foster v. City of McKeesport, Allegheny Co. Ct. Com. Pls.; *Shuckrow, Strassburger (Strassburger, McKenna, Gutnick & Potter)*

(PA) In January 2007, the ACLU-PA filed an *amicus* brief in a case brought by home schooling parents under the Pa. Religious Freedom Protection Act, contending that state supervision of their home-schooling program substantially burdened their ability to fulfill their religious duty to educate their children. The District Court had granted judgment for the school districts, holding that there was no interference with the parents' religious views because the districts did not dictate the parents' religious observance or forbid the parents from using religious materials. The ACLU-

PA submitted an *amicus* brief in January 2007 urging reversal because we believed the District Court's analysis – in the first published decision under the Pa. RFPA – would severely restrict the intended protections of the Act. While the schools may have been able to demonstrate a compelling need for supervision of home schooling, to say that the supervision did not burden the parents' religious beliefs was an improperly narrow view of the kinds of religious observance protected by the Act. The case was argued in November 2007 and we are awaiting a decision. Combs v. Homer Area School District, 3d Circuit (Judges Scirica, Ambro & Jordan)); *Lund (Dechert)*; *Roper*

(Lehigh Co.) A second grader, instructed to write a story for class, wrote about Easter and redemption. The teacher told her that she couldn't turn in the story because it was only appropriate for Sunday school and the students would ultimately be reading their stories aloud. The principal backed up the teacher, claiming there were "state policies" forbidding that kind of religious expression. ACLU-PA wrote a letter to the principal and school district explaining that as long as the student complied with the assignment, her story containing religious expression could not be rejected or treated differently from other submissions. The principal immediately apologized to the mother, the teacher apologized to the student, and the principal agreed to instruct his teachers and administrators in the law. McClary v. Nazareth Area School District; *Roper*

FREEDOM FROM RELIGION (ESTABLISHMENT CLAUSE)

(NJ) A New Jersey high school football coach had prayed with team members before games and at pre-game dinners for twenty-three years. After receiving complaints about the coach's conduct from parents, school district officials prohibited the coach from participating in prayer with students. The coach sued, arguing that he had a right, based on his academic freedom, to pray with the players. The district court held that the coach's silent participation in prayer with football players did not violate the Establishment Clause and that the school district's directive prohibiting the coach from participating in student prayers violated the coach's constitutional rights. The school district appealed. The ACLU-PA, along with the American-Arab Anti-Discrimination Committee, the American Ethical Union, the American Jewish Committee, the Hindu American Foundation, and the Unitarian Universalist Association, submitted an *amicus curiae* brief to the U.S. Court of Appeals for the Third Circuit in support of the school district, arguing that allowing the coach to engage in silent

prayer with football players would coerce players into participating in religious activity, in violation of the Establishment Clause. The case was argued in October 2007 and we await a decision. Borden v. East Brunswick Sch. Dist., 3d Circuit (Judges McKee, Barry & Fisher); Goldberg, Lustberg (Gibbons, *Del Deo, Dolan, Griffinger & Vecchione*); *Rose*

(Berks Co.) Dennis Baylor was upset to see an apparently religious, anti-evolution presentation advertised at his local high school in summer 2006. He filed suit, on his own, seeking an injunction to stop the presentation, which was unsuccessful. He then attended the event and was threatened with arrest for standing outside with a sign that urged people to investigate the speaker. The judge invited ACLU-PA participation. The ACLU-PA brokered a settlement that requires the school to ensure clarity about the sponsorship of outside activities conducted on school grounds and recovers for the client some costs he incurred in bringing suit. Baylor v. Hamburg School District, E.D. Pa. (Judge Brody); *Roper*

(Lehigh Co.) Reggie Regrut contacted the ACLU-PA in December 2007 to complain about the cities of Allentown, Bethlehem and Easton allowing privately erected religious displays on public property. When we explained that the municipalities could allow such displays as long as they welcomed all private displays without discrimination, Mr. Regrut sent letters to each municipality requesting permission, on behalf of himself and local peace organizations Veterans for Peace and the Lehigh-Pocono Committee of Concern (LEPOCO), to erect a holiday anti-war message on public property. When he received no response (despite numerous attempts to contact city officials), the ACLU-PA sent letters to each of the municipalities demanding that they give Mr. Regrut, Veterans for Peace and LEPOCO permission to put up their peace displays. Each municipality responded promptly with assurances that any formal application filed by Mr. Regrut would be accepted. Regrut v. Allentown, et al.; *Roper*

(Chester Co.) The ACLU-PA received complaints about sectarian prayer and proselytizing at Coatesville City Council meetings. We wrote an open letter to the City Council in March 2007, requesting that the council members cease using the meeting to promote their personal religious beliefs, and, particularly, that they cease reciting sectarian prayers. The City Council adopted a new policy to govern its use of opening prayers which, among other things, prohibits prayers that advance a particular religion. We will continue to monitor council meetings to ensure prayer remains non-sectarian and non-proselytizing. We were joined

by the Anti-Defamation League, Americans United for the Separation of Church and State, the Jewish Social Policy Action Network and the Freethought Society of Greater Philadelphia. Coatesville City Council Prayer; *Roper*

(U.S., PA & Bradford Co.) In February 2005, ACLU-PA filed suit against the U.S. Government, the Pennsylvania Commission on Crime and Delinquency (PCCD), Bradford County, and the Firm Foundation on behalf of local taxpayers and a former inmate alleging that the agencies were providing funds for religious programs, but not monitoring the use of those funds. One such program, a faith-based, prison-work-release program run by the Firm Foundation, used the funds for worship activities and to proselytize prisoners. In Spring 2007, we entered settlement agreements with Bradford County and PCCD that required the County to provide better supervision of grantees in the future to prevent misuse of government funds. Moeller v. Bradford County, M.D. Pa. (Judge Munley); *Kuhn, et al.* (*Arnold & Porter*); *Katskee, Luchenitser* (*Americans United for Separation of Church and State*); *Roper, Knudsen, Walczak*

See also, Freedom of Speech (Speech on College Campuses, Darrell v. Slippery Rock Univ.; Artistic Freedom, Commonwealth v. Fetterman)

RACE DISCRIMINATION

GOVERNMENT CONTRACTING

(Allegheny Co.) A 2006 University of Pittsburgh study found that deficient advertising and information-sharing in the Pittsburgh Public Schools' (PPS) construction-contract-procurement practices resulted in qualified minority-owned businesses getting a disproportionately small percentage of contracts, primarily because they could not get timely and adequate information about contract opportunities. In June 2007, the ACLU-PA asked the School Board to adopt changes in procurement practices to fix the problem. A majority of board members showed hostility to the request. One week later we learned that a \$5.4 million project to renovate the Miller African-Centered Academy (ironically, a predominantly African-American school) was never advertised. In June 2007, we sent a letter to PPS requesting that they re-bid the Miller project and adopt a policy implementing the changes recommended in the Pitt study. After negotiations with the district's solicitor, the PPS agreed in the future to publish ads in several newspapers and on the Internet four weeks before the pre-bid meeting, to make the ads more specific to the

project, and to hold the pre-bid meetings a month before the bid due date. Pittsburgh Public Schools' Minority Contracting; Strassburger (Strassburger, McKenna, Gutnick & Potter); Walczak

RACIAL PROFILING

(York Co.) In August 2003, an African-American off-duty Pennsylvania state trooper was pulled over by two white York County Deputy Sheriffs, verbally abused, humiliated, and issued a traffic citation for a tinted window for which he had a PennDOT exemption. The ACLU-PA filed suit in federal court, claiming racial profiling. In July 2005, an all-white jury found in favor of the Defendants. In June 2007, the Third Circuit reversed the decision in part, requiring a re-trial on the Fourth Amendment illegal-stop claim, but affirmed dismissal of the race-discrimination count. A confidential settlement of the civil rights case was reached in January 2008. In the companion criminal case, all charges resulting from the traffic stop were dismissed by the trial court. The York County District Attorney appealed, and in March 2007, the Pennsylvania Superior Court affirmed the trial court's dismissal of the charges. Christopher v. Nestlerode, 3d Circuit (Judges Scirica, Barry & Aldisert); M.D. Pa. (Judge Conner) and Commonwealth v. Christopher, Pa. Superior Ct.; Gildin; Knudsen, Burch

(Philadelphia Co.) In December 2005, Jerry Kabbah was pulled over without probable cause, beaten and told to "go back to Africa" by a white Philadelphia police officer. We filed a lawsuit in October 2006. The case settled in May 2007 for \$25,000. Kabbah v. City of Philadelphia, E.D. Pa. (Judge Sanchez); Rudovsky, Feinberg (Kairys, Rudovsky, Messing & Feinberg); Roper

See also, Police Misconduct (Kyeame v. Buckheit)

LGBT RIGHTS

(Philadelphia) Long-time domestic partners who served short prison sentences for drug possession and were on supervised release wished to reunite, but were forbidden to do so by their probation conditions. Their probation office would not grant them permission to see one another even though such permission is routinely granted to married couples and for unmarried family members who are under supervision. The ACLU-PA asked the sentencing judge to overrule the Probation Office, but that motion was denied. In July 2007, the Third Circuit reversed, instructing the trial court to reconsider. After a hearing, the trial court issued an order removing all restrictions on contact

between the two men. The court ruled that same-sex couples are entitled to the same treatment as straight couples, making the decision one of the first of its kind in the nation. U.S. v. Roberts, + U.S. v. Mangini, 3d Circuit (Judges Rendell, Jordan & Aldisert); E.D. Pa. (Judge Katz); Goldberger; Roper (ACLU-PA); Cooper, Esseks (ACLU LGBT and AIDS Project)

(DE/NJ/PA) The ACLU-PA joined with the ACLU of DE, ACLU of NJ and national LGBT and Prisoner Rights Projects in petitioning the Bureau of Prisons to place a pre-operative male-to-female transsexual in a community corrections program or other alternative to all-male prison. The inmate was sentenced in DE but at the time was housed in PA and expected to be classified to prison in NJ. In January 2007, the Bureau of Prisons classified the inmate to an all-male prison. Bowie v. U.S. (BOP); Graff (ACLU DE); Roper

See also, Students' Rights (all entries under LGBT-Students' rights).

IMMIGRANTS' RIGHTS

(Luzerne Co.) In June 2006, Hazleton passed the country's first *municipal* anti-illegal-immigration law. The law, which has been amended repeatedly since its initial passage, requires employers to check all employees' immigration papers, and for landlords to do likewise with tenants. It also establishes a system whereby anyone can file a complaint triggering an investigation into immigration status, and requires all tenants to register with the City and provide proof of immigration status. If an undocumented immigrant is found on the payroll or in an apartment, the employer and landlord are subject to loss of business license, which means they can no longer operate. ACLU-PA and others filed suit in July 2006. Hazleton agreed to suspend enforcement of the law in August, but only so they could amend to make it legally "bullet proof." In late October 2006, the court granted our preliminary injunction motion blocking Hazleton from enforcing its revised law. We have argued that the Hazleton law intrudes on the federal government's authority to regulate immigration, fails to give aggrieved parties adequate notice and opportunity to contest adverse findings, discriminates based on race and ethnicity, and is inconsistent with Pennsylvania law on employment and housing. After a nine-day trial in March 2007, the court on July 26 declared the ordinances unconstitutional. The case is being watched closely across the country since about 100 other cities have either passed or expressed a desire to pass similar laws. Hazleton appealed the decision in September. An appeals court decision is unlikely before 2008. Lozano v. City of Hazleton, 3d Circuit; M.D. Pa. (Judge

Munley); *Wilkinson, Fiddler, Kaiser, Trujillo, Park, Rosenberg (Cozen O'Connor); Puerto Rican Legal Defense and Education Fund; Community Justice Project; Barron; Vaida; Jadwat, Chang, Guttentag (ACLU IRP); Walczak*

(Lancaster Co.) In 1998 Sameh Khouzam, an Egyptian Coptic Christian, escaped from Egyptian police custody after he had been tortured. Upon arrival in the U.S., however, he was detained based on a scant claim by Egyptian authorities that he was wanted for murder. In 2004, a federal appeals court ruled that the U.S. could not return Khouzam to Egypt because he was likely to be tortured and thus his return would violate the U.S. obligations under the Convention Against Torture (CAT). In 2006, a NJ federal court ordered his release from prison. For the next year Khouzam lived in Lancaster, where he was gainfully employed as an accountant. But in May 2007, he was detained in the York County Prison and advised that the U.S. had received “diplomatic assurances” from Egypt that he would not be tortured upon his return and therefore the U.S. was sending him back. The ACLU filed for and secured emergency injunctions prohibiting the U.S. from deporting Khouzam pending a final ruling from the court. Significantly, the judge 1) rejected the government’s argument that the court had no jurisdiction to review the Administration’s decision to return Khouzam, an argument the court characterized as one that would eliminate all judicial review via habeas corpus; 2) ruled that the government’s action raised serious constitutional due process concerns because it is difficult to believe that some protection is not required before a person is sent into a situation where he might be tortured; and 3) held that Khouzam had raised adequate grounds to find that the decision likely violates the CAT. In January 2008, the judge ruled that the government cannot deport Khouzam without giving him an opportunity to assess the nature of the diplomatic assurance and to contest the deportation order. He also ordered Khouzam released immediately. The government’s emergency appeal to the Third Circuit to stay Khouzam’s release was denied. The case is now on appeal. *Khouzam v. U.S.*, 3d Circuit; M.D.Pa. (Judge Vanaskie); *Singh, Rabinovitz, Gelernt; (ACLU IRP); Pell; Walczak, Roper*

(Luzerne Co.) In April 2007, the ACLU-PA and ACLU Immigrants’ Rights Project filed a federal lawsuit on behalf of a West Hazleton couple, Heather Buck and Jose Arias-Maravilla. The couple was denied a marriage license because of a policy instituted by the Register of Wills for Luzerne County that marriage licenses would not be issued to any non-citizen who could not provide a current visa or green card. Although Ms. Buck is a U.S. citizen, Mr. Arias did not

have a current visa. The couple, who have a four-month-old son, hoped to marry before Mr. Arias had to leave the country pursuant to an order of voluntary departure issued by an immigration court, which required him to return to Mexico by May 12. After a one-day trial, on May 1 the court issued a preliminary injunction requiring the Register of Wills to issue a marriage license to the couple, ruling that the policy violated the couple’s fundamental right to marry because it was not narrowly tailored to fulfill any compelling government interest. The couple obtained their marriage license on May 2 and were wed in front of family and friends in Philadelphia on May 7. We are still in discussions with opposing counsel regarding the need for further court proceedings. *Buck v. Stankovic*, M.D. Pa. (Judge Caputo), *Kreimer; Grogan, Diver (Langer & Grogan); Roper, Walczak (ACLU-PA); Jadwat, Chang, Guttentag (ACLU Immigrant Rights Project)*.

(US) Petitioner Ismoil Samadov is a 29-year-old national and citizen of Uzbekistan who was detained at York County Prison from January 2004 until April 2007. Mr. Samadov is an Independent Muslim and as such cannot return to his country for fear of religious persecution and torture – a danger the U.S. State Department has acknowledged. Samadov was being held based on a November 2003 extradition warrant issued by the Uzbek government alleging that Mr. Samadov had participated in the “Wahhabi . . . illegal religious extremist movement,” and was affiliated with other Uzbek citizens who had been convicted on “extremist” grounds. Samadov had already sought and been granted asylum, but was not released because of the ill-supported allegation that he posed a terrorist threat. The ACLU-PA filed a petition for a writ of habeas corpus on behalf of Mr. Samadov in December 2006, arguing that since it was not reasonably foreseeable that Samadov will be extradited to Uzbek because he would likely face torture, recent U. S. Supreme Court cases dictated his release. Mr. Samadov was released in April 2007 on the eve of a habeas corpus hearing. *Samadov v. United States*, M.D. Pa. (Judge Jones); *Singh, Rabinovitz (ACLU IRP); Walczak, Roper*

(York Co.) In February 2003, Moroccan national Faysal Snoussi was detained and placed in immigration removal proceedings for overstaying his student visa and trafficking in hashish. Snoussi claimed that he should not be removed to Morocco because he was likely to be tortured upon his return since the U.S. had identified him as a terrorism suspect. The government has already determined that Snoussi is not a danger to this country. The issue in these proceedings is whether the immigration court should permit Mr. Snoussi’s

lawyers to subpoena and question U.S. agents about whether they advised Moroccan officials that they considered Snoussi a terrorism suspect, a fact that would increase the likelihood Snoussi would be tortured. In re Faysal Snoussi, Immigration Ct.; *Burch*

WOMEN'S RIGHTS

(Dauphin Co.) The ACLU-PA, working with the Widener Law School student clinic and ACLU's Women's Rights Project, filed suit in April 2007 on behalf of a teenage mother against the Central Dauphin School District. The District refused to excuse the girl's absences for taking her child to the pediatrician. The school regularly excuses absences if the student is sick, for farming-related reasons and for educational trips. The numerous truancy proceedings initiated by the District resulted in our client receiving after-school detention and losing her driving privileges, which prevented her from working to pay for additional day-care help. The case settled in June with all sanctions against the client for her absences being waived. C.B. v. Central Dauphin School District, M.D. Pa. (Judge Connor); *Cliatt, Lockard (Widener Law School); Schmidt (Pepper Hamilton); Martin, Lapidus (ACLU Women's Rights Project); Walczak*

(Cambria Co.) The ACLU-PA was contacted in May 2007 by the parents of J.M., a teen mother who had been adjudicated dependent in June 2006 for truancy. J.M. has a 2-year-old son with severe asthma. Although J.M.'s mother watched J.M.'s son so that the girl could attend school, J.M. sometimes had to stay home with him if her mother could not watch him or if he was sick or needed to go to the doctor. Since March, J.M. had been under in-home detention for missing school during the 2006-07 school year. Her juvenile probation officer also threatened to place her in emergency shelter care if she had any additional unexcused absences or tardiness. He required J.M. and her family to undergo intensive and non-confidential counseling. We represented J.M. at a review hearing during which J.M.'s probation officer alleged that J.M. had refused to comply with court-ordered counseling. We asked the judge to terminate J.M.'s dependency status, arguing that the school had interfered with her right to parent and noting that she had been going to school every day since March and was getting good grades. The judge ordered that J.M.'s dependency be terminated on June 6. In re J.M., Cambria Co. Ct. Com. Pls., (Judge Tulowitzki); *Rose, Walczak*

See also, Reproductive Rights (all entries).

REPRODUCTIVE RIGHTS

(Philadelphia) A pregnant woman in pretrial detention at the Philadelphia Riverside Correctional Facility requested to have an abortion in her first trimester, but the prison doctor sought to change her mind by telling her frightening lies about the procedure and playing on her emotions. When the ACLU-PA got involved in August 2007, the client was still unsure how she wanted to proceed, so we counseled her about her legal options. When the client made a firm decision to seek an abortion in August, 2007, ACLU-PA cooperating counsel wrote a strong letter to the prison, warning against further interference. The prison scheduled the procedure, which was completed within ten days. D.O. v. Philadelphia Riverside Correctional Facility; Chandonnet, Tolin (Dechert); Roper

See also, Women's Rights (In re J.M. and C.B. v. Central Dauphin).

PRIVACY

(Columbia Co.) In August 2007, the Town of Bloomsburg proposed a "Social Gatherings Ordinance," which would prohibit gatherings of 50 or more people at which students are present and alcohol is served, unless the town issues a permit. Under the ordinance, such gatherings would be subject to random police inspection. Permits would require the host to post a bond and pay a fee. In October 2007, the ACLU-PA sent a letter to the Town Council warning that the proposed ordinance infringes on the rights of privacy and association and is, thus, unconstitutional. The Town tabled the proposed ordinance. Since then the Town has tried other tactics to stop student partying, including the use of decoy surveillance cameras. Bloomsburg Party Permit Ordinance; Burch, Walczak

See also, Students' Rights (Sto-Rox Sch. Dist. Re-enrollment).

RIGHTS OF THE HOMELESS

(Lackawanna Co.) In July 2007, a homeless man, Randy Barr, witnessed a murder. Since he did not have a home address, police and prosecutors detained him in the Lackawanna County Prison under the state's material witness rule. He was not released for more than a month. After testifying in a preliminary hearing against the murder suspect, he was released on house arrest (a couple who had befriended him agreed to

allow him to stay with them). He received no legal representation or process of any kind before being detained and later placed on house arrest. The ACLU-PA entered the matter in September to argue for Barr's release from all restraints and conditions. In October, after the murder suspect pled guilty, the judge released Barr from all conditions of confinement. Commonwealth v. Barr, Lackawanna Ct. Com. Pl., (Judge Munley); McGonigle, McElhinny, Stanton, Thomas (Kirkpatrick, Lockhart, Preston, Gate & Ellis); Walczak, Burch

(Allegheny Co.) In August 2007, the ACLU-PA received a complaint from a truck driver who was not permitted to rent a P.O. box at the Coraopolis Post Office because he could not show proof of a permanent residence. We sent a letter to the Coraopolis postmaster asking the basis for denying the complainant a P.O. Box in light of a U.S. Postal Service regulation that permits persons who cannot show proof of a permanent address to open P.O. boxes as long as they can supply identifying information and a point of contact. An attorney for the postal service assured us that the Coraopolis post office will follow that regulation and allow people without permanent addresses to open P.O. boxes. Coraopolis post office boxes; Rose

STUDENTS' RIGHTS

PRIVACY

(Allegheny Co.) The ACLU-PA sent a letter in January 2007 to Sto-Rox School District officials after receiving a complaint from parents about the district's "re-enrollment plan." The school district asked the parents of every student in the district to submit multiple documents verifying both residency and custody. We explained in our letter that the district's request for the documents was unreasonable, violated guidelines established by the Pennsylvania Department of Education, and unnecessarily invaded families' privacy rights. The school district quickly cancelled its request for re-enrollment documents, advising parents on its website and in notices sent home with students that they were not required to submit the requested documents. Sto-Rox School District Re-Enrollment; Rose, Walczak

EXPRESSION

(Mercer Co.) In January 2006, Justin Layshock, a high-school senior and gifted student, was suspended for ten days and removed from his regular classes and

placed in an alternative education program after he admitted to creating, from his home computer, a parody profile of his principal on the Internet. The profile discussed how everything about the principal was "big." The ACLU-PA filed suit. After a one-day hearing the court denied a temporary restraining order to reinstate Justin to his classes. The judge ruled that the school district had shown that the website disrupted the school, claims we view as greatly exaggerated. The parties subsequently reached agreement to return Justin to classes and other privileges. In July 2007, after the parties completed discovery, the judge partially granted our motion for summary judgment, ruling that the school district violated Justin's First Amendment rights by disciplining him for the profile. After reviewing the full record in the case, the judge found that the school district had not shown a connection between Justin's profile and any disruption of the school. The School District has appealed the case to the Third Circuit. We have appealed the court's ruling that the school did not violate the parents' rights to direct their child's upbringing. Layshock v. Hermitage Area School Dist. 3d Circuit; W.D. Pa. (Judge McVerry); Watterson, Ting (Reed Smith); Walczak

(Mercer Co.) In a companion case to the preceding entry, the ACLU-PA is defending Justin Layshock against a defamation action filed by the principal. The principal sued four students, including Justin, who independently had created parody profiles of him on MySpace. The Common Pleas Court refused our motion to dismiss the case on the ground that the principal should have filed his claim in the federal case, and his failure to do so required dismissal of the state defamation claim. The case is pending. We will argue that Justin's website is a "parody" and thus protected by the First Amendment from a defamation claim. Trosch v. Layshock, et al., Mercer Co. Ct. Com. Pl. (Judge St. John); Watterson, Quesnelle (Reed Smith); Walczak

(Schuylkill Co.) The ACLU-PA filed suit and sought a temporary restraining order against the Blue Mountain School District in March 2007 on behalf of a middle-school student who was suspended for ten days for creating a parody profile of her principal on Myspace.com. After a half-day hearing, the judge denied a temporary restraining order to return the student to her classes. The judge ruled that the school district had raised concerns about whether the speech in question was protected by the First Amendment and whether the website had disrupted school. The parties have now completed discovery and filed cross motions for summary judgment. We await the court's decision. J.S. v. Blue Mountain School District, M.D. Pa. (Judge

Munley); *Kohart, Nissan (Drinker Biddle & Reath); Gordon (Education Law Center); Roper*

(Beaver Co.) In December 2007 B.D. was suspended from school for seven days and placed on in-school suspension thereafter for allegedly making threats against other students on his MySpace.com page. B.D.'s mother contacted the ACLU-PA after he had served the out-of-school suspension regarding conditions that the school had placed on B.D.'s return to class. School officials were insisting that B.D. undergo counseling, even though he had already been evaluated by a mental health professional who said such counseling was not necessary, and submit to random searches by school officials. We sent a letter to school officials informing them that suspending B.D. for comments he made on his MySpace.com page violated his First Amendment free-speech rights and asking them to allow B.D. to return to his normal schedule of classes without any other conditions. The school district agreed. B.D. v. Monaca Sch. Dist.; *Rose*

(Monroe Co.) Heather Magnano was represented by ACLU-PA in 2005 when her middle school teacher tried to force her to stand for the Pledge. Heather is now in high school and her new home room teacher berated her when she did not stand for the Pledge. The teacher moved her seat to the back of the room to prevent "disruption" when she did not participate. In September 2007, the ACLU-PA wrote a letter to the school district demanding that Heather be returned to her regular seat and that the teacher be instructed to apologize. The Principal spoke to the teacher about the matter and then brought an ACLU attorney to the school in October for a teacher in-service training on students' rights. Magnano v. East Stroudsburg School Dist.; *Roper*

(Lawrence Co.) In August 2007, a Neshannock high-school student contacted us after being charged with misdemeanor identity theft and misdemeanor harassment for posting a parody profile of his superintendent on MySpace.com. The ACLU-PA contacted the police superintendent and juvenile probation officer and convinced them to dismiss all charges, which had been brought by the school superintendent. Commonwealth v. Doe; *Rose*

(Franklin Co.) Less than one week after the Virginia Tech shooting tragedy, a high school senior was expelled and banned from graduation simply because he tried to check out a book about guns that was housed in the school library. The student is half Korean, as was the shooter at Virginia Tech. The ACLU-PA negotiated with school officials to ensure

that the student graduated. He has since been accepted to college. Doe v. Chambersburg School Dist.; *Roper; Gordon (ELC-PA)*

(Philadelphia Co.) Students at Strawberry Mansion High School have been refused permission to engage in any group organizing or distribution of information. After an ACLU-PA volunteer attorney sent a letter in March 2007 on behalf of several students stating that students would be distributing materials outside class time, the principal announced a new policy forbidding students to distribute any materials. In May, the District's General Counsel's office responded to the ACLU-PA's second demand letter that denied the principal had tried to limit the students' right to distribute materials and confirmed that students were permitted to do so outside class time. Youth United for Change; Doherty (Drinker); Roper

(Montgomery Co.) R.C., a high-school junior, was suspended for terroristic threats in the spring of 2007 after the school obtained a copy of a poem R.C. had written five months earlier about a creative writing teacher who had insulted him. The poem included violent imagery but did not contain any threats. The school ordered the student to undergo psychological testing, which indicated that the student was not dangerous. The ACLU-PA intervened on behalf of the student and was able to get the suspension expunged, the student's grades adjusted to exclude assignments he missed during the suspension, and payment by the school for transportation to an alternative creative writing course at a local college. R.C. v. XYZ School Dist.; *Roper*

(Beaver Co.) The ACLU-PA filed a lawsuit in December 2006 on behalf of a student who was suspended for ten days for saying to a friend that "if I were Osama, I would already have pulled a Columbine." The student, Cory Johnson, made the remark in response to teasing by students and even a teacher who repeatedly referred to him as Osama bin Laden after a motivational speaker called him Osama bin Laden at a school assembly the day before. The ACLU-PA has argued that the statement was not a "true threat" (and the school didn't respond as if it was by taking common-sense safety precautions) and the school never informed students that uttering the word "Columbine" was forbidden. The parties have filed cross motions for summary judgment and we await a decision. Johnson v. New Brighton Area School District, W.D. Pa. (Chief Judge Ambrose); *Rose; Walczak*

LGBT-STUDENT RIGHTS

(Lehigh Co.) In 2006, the ACLU-PA successfully intervened on behalf of high-school student Sam Smith, whose teacher was forcing him to stand for the Pledge of Allegiance. In Fall 2007, Sam experienced severe harassment over his sexual orientation. When the harassment got particularly bad in one class, the teacher moved Sam, not the offending students, to another part of the class. When Sam protested, the teacher called Sam a hypocrite for fighting to secure his own free-speech rights (on the Pledge matter) but denying them to other students. The ACLU-PA's letter to the Nazareth School District's administration resulted in the teacher being counseled, seating being arranged alphabetically, and the school's anti-harassment policy being distributed to all students and staff. Smith v. Nazareth Area Sch. Dist.; *Roper*

(Venango Co.) In March 2006, a ninth-grade Franklin High School student suffered a game of "smear the queer," which consisted of boys throwing wet, wadded paper towels at him while he sat on the toilet. This was the latest of many incidents where he suffered harassment based on his perceived sexual orientation, some of which had been witnessed and ignored by teachers and administrators. When the assistant principal refused to take action against the perpetrators this time, our client purposely swore at the official in order to get suspended. He was not only suspended, but also criminally charged with disorderly conduct. The mother has withdrawn the boy from school. The ACLU-PA is representing the boy and his mother in a complaint filed with the Pennsylvania Human Relations Commission. Since the boy has a disability, the committee is investigating on that basis. The parties have reached an agreement whereby the District will provide appropriate anti-harassment training, through a consortium of groups headed by the F.B.I., to school teachers, administrators and students. The District, while not conceding wrongdoing, will also pay damages. Doe v. Franklin Sch. Dist., Pa. Comm'n Hum. Rel.; *Walczak*

See also, Freedom of Speech (all entries under *Speech on College Campuses*); *Religious Liberty* (Combs v. Homer Area Sch. Dist. and McClary v. Nazareth Area Sch. Dist.); *Women's Rights* (both entries); *Privacy* (Bloomsburg Party Permit Ordinance)

POLICE MISCONDUCT

(Centre Co.) In July 2006, a PA State Trooper stopped Mr. Nana Kyeame and his wife as they were driving through Centre County on their way home to Canada.

Kyeame is a Canadian citizen born in Ghana. The trooper demanded cash for an alleged speeding violation. When Kyeame couldn't pay on the spot, the officer handcuffed and then beat him, called him a "Canadian nigger" and imprisoned him for 3 days. All charges were dismissed as soon as Kyeame appeared before a magistrate, three days later. The ACLU-PA filed a lawsuit in July 2007 seeking compensatory and punitive damages. Kyeame v. Buckheit, M.D. Pa. (Chief Judge Kane); *Lappas (Serratelli, Schiffman, Brown & Calhoon, PC)*; *Walczak, Burch*

(Allegheny Co.) In November 2001, Michael Kossler, an x-ray technician with no arrest record, was leaving a Pittsburgh night club when he witnessed a fight. An off-duty police officer mistakenly thought Kossler had touched him. The officer arrested Kossler and charged him with a felony — aggravated assault on a police officer — and various other crimes. Kossler took the case to trial and was acquitted on all charges, except for a summary disorderly conduct charge. Kossler filed suit, through private counsel, in federal court alleging, among other things, malicious prosecution on the felony charges, which landed him in jail. The federal court threw out the malicious prosecution claim because the criminal court had found Kossler guilty of the disorderly-conduct charge. We filed an *amicus* brief in January 2007 in support of Kossler, arguing that a conviction on a summary offense should not bar a malicious prosecution claim against the filing of more serious charges. Otherwise, police officers would be effectively immunized from filing false and inflated charges. Kossler v. Crisanti, 3d Circuit (Judges Fisher, Aldisert & Hardiman); *Lee, Winkelman (Schnader Harrison)*; *Rudovsky*; *Roper, Walczak*

See also, Race Discrimination (Christopher v. Nestlerode and Kabbah v. City of Philadelphia)

CRIMINAL JUSTICE

MEGAN'S LAW – EQUAL PROTECTION

(Philadelphia) The ACLU-PA filed suit on behalf of a first-time sexual offender challenging a Pennsylvania statute that subjects *all* out-of-state sexual offenders (who transfer probation or parole from another state into Pennsylvania) to community notification procedures, including police officers going door-to-door in the neighborhood distributing "Megan's Law Offender" fliers. Similarly situated in-state sexual offenders are not subject to community notification unless they are adjudicated by a judge, after a full trial, to be a "sexually violent predator." The ACLU-PA has

challenged the disparate treatment of offenders, based on where they committed the offense, under the Fourteenth Amendment's Equal Protection, Privileges and Immunities, and Due Process Clauses. In September 2005, the District Court declared the law unconstitutional. The Commonwealth appealed. The case was argued in the Third Circuit in October 2006 and we are still awaiting a decision. Doe v. Pennsylvania Bd. Of Probation and Parole; 3d Circuit (Judges McKee, Ambro & Nygaard); E.D. Pa. (Judge Pollak); *Walczak, Kerrigan*

COMMUTATION – EX POST FACTO

(Pa.) The Prison Society and others have challenged the 1997 changes to the Pennsylvania Constitution that made it much more difficult for the governor to commute a sentence or grant a pardon. Prior to the change, the governor could act based on a recommendation by a *majority* of the pardons board. After the statutory change the governor could act only if the pardons board recommendation was *unanimous*. The statute's intent was to make it more difficult for prisoners to receive a pardon or parole. The Ex Post Facto Clause prohibits government from retroactively increasing punishment. In March 2006, the District Court held that the change in procedure violated the Ex Post Facto Clause as to all prisoners except those sentenced to death. The ACLU-PA joined with the PA Institutional Law Project and others in an *amicus* brief urging the Third Circuit to rule that the new, more difficult standard could not be applied to any prisoner whose offense took place prior to 1997. In November 2007, the Third Circuit dismissed the appeal, ruling that none of the parties bringing the suit had standing to challenge the 1997 law. The case was remanded to the district court for further proceedings to develop the record with respect to the plaintiffs' standing. Prison Society v. Rendell, 3d Circuit; *Rosenberg, Beck, Walk, Pechansky (Dechert); Roper*

TRAFFIC STOPS – PROBABLE CAUSE

(Erie) The ACLU-PA has submitted an *amicus* brief to the Supreme Court of Pennsylvania urging affirmance of an Erie Court of Common Pleas decision striking down a Pennsylvania statute that would permit vehicle stops for "reasonable suspicion" that a traffic violation has occurred. We argue that the Pennsylvania Constitution requires "probable cause" for such stops. The case was argued to the PA Supreme Court in September 2006; no decision has yet issued. Commonwealth v. Chase, PA Supreme Ct.; *Kohart, Sgrignoli, McInnes (Drinker Biddle & Reath); Roper*

RIGHT TO COUNSEL

(Lehigh Co.) In October 2007, we learned that a man who allegedly failed to pay child support was facing imprisonment for contempt. He was not appointed an attorney and had previously been jailed in this situation without being assigned an attorney. The notice given to him by the court failed to mention his right to an attorney. The ACLU-PA sent a letter asking the court to adopt a policy of providing counsel for contempt defendants facing jail time for non-support. The court responded with assurances that in the future they would arrange for court-appointed counsel. At the client's hearing on October 30, no counsel was available so the contempt petition was dismissed. The ACLU-PA in past years has successfully changed similar unconstitutional policies wherein courts failed to provide counsel before imprisoning non-support defendants in Lawrence, Beaver, Westmoreland and Montgomery Counties. Lauer v. Lehigh County Ct. Com. Pl.; *Roper, Walczak*

DUE PROCESS

(Fayette Co.) John Doe contacted the ACLU-PA in May 2007 after Fayette County CYS required him and his wife to sign a safety plan stating that he would have no contact with his stepdaughter or son until he completed sex-offender treatment. Doe pled guilty in 2004 in Allegheny Common Pleas Court to indecent assault against a daughter with whom he no longer lives. Although there have been no new allegations of abuse since then, a CYS worker came to Doe's home and told him and his wife that unless Doe agreed to move out of his home and cease contact with his children — and his wife agreed to keep the children away from him — that CYS would immediately remove the children from the home. Doe and his wife reluctantly signed the safety plan, and Doe left the home. We learned that Fayette CYS had a policy of prohibiting all convicted sex offenders from having contact with children until they have successfully completed a sex-offender-treatment program. Removal of children in these cases requires a hearing and a judge's decision that the children are in danger. We met with the CYS administrator and solicitor to discuss Doe's case and the constitutionality of the policy. Doe was then permitted to return home in August after three months of having no contact with his children. Doe v. Fayette County CYS; *Mansell; Millstein; Rose, Walczak*

See also, LGBT Rights (U. S. v. Roberts and Mangini)

PRISONERS' RIGHTS

(Clearfield Co.) An SCI-Houtzdale inmate complained that he was denied a newspaper, called American's Bulletin, and books by the same publisher because of a PA Department of Corrections policy prohibiting materials related to the Uniform Commercial Code, redemption, and copyrighting a name. The ACLU-PA sent a letter in October 2007 to the warden asking why the materials were confiscated under the DOC's policy. In November, DOC legal counsel advised us that the American's Bulletin periodicals were banned because they provide information on how to commit fraud, but counsel agreed to speak with the warden about whether to allow inmates access to the books and materials catalog. SCI-Houtzdale Publications Policy; *Rose*

(PA-statewide) An investigation conducted by the Disability Rights Network (DRN) has revealed serious deficiencies in the mental-health services provided and available to prisoners in the Pennsylvania Department of Corrections. The main problems involve delays in identification and treatment of inmates with mental illness, many of whom end up in disciplinary custody because of lack of treatment; the scarcity of specialized units for treatment of the seriously mentally ill; and the lack of mental-health services for inmates housed in Restricted Housing Units. The ACLU-PA has joined with DRN and others to press the DOC to make improvements to the system. In October 2007, ACLU-PA and DRN representatives met with DOC officials, the chief psychiatrist, and legal counsel. The DOC officials denied any problems with mental health services, but agreed to provide certain statistics we requested and to be available for further discussions. The DOC provided some of the information we had requested in December 2007; we have renewed our request for the missing information and also requested a follow-up meeting with the new Deputy Secretary. DOC Mental-Health Practices; *Meek (DRN)*; *Walsh (Institutional Law Project)*; *Rudovsky*; *Roper*, *Walczak*

See also, LGBT Rights (U. S. v Bowie); Reproductive Freedom (D.O. v. Philadelphia Riverside Correctional Facility)

GOVERNMENT SURVEILLANCE

(PA) In the wake of news reports that telephone companies were sharing customer-calling information with the National Security Agency (NSA) without customer permission, in May 2006 the ACLU-PA filed a complaint with the PA Public Utility Commission (PUC) on behalf of 20 organizations and individuals

who are concerned about the privacy of their telephone records. The complaint asked the PUC to order the telephone companies to reveal what information they had disclosed to the NSA, to declare that such releases violate Pennsylvania privacy laws and to prohibit future disclosures. The ACLU-PA is one of 20 ACLU state affiliates to file actions with PUC's or state Attorneys General in this matter. AT&T and Verizon sought dismissal on the basis of state secrets. In August 2006, the Administrative Law Judge, holding that the complaint presents a federal question regarding national security, granted the motions to dismiss, but stated that plaintiffs could return to the PUC for further action if a federal court determined that the PUC has jurisdiction to address the alleged violations of Pennsylvania law. We have appealed that decision to the full Commission and are awaiting a decision. ACLU of PA, et al v. AT&T, et al., Pa. Utilities Comm'n; Trujillo, Harr (Trujillo Rodriguez & Richards); *Roper*

OPEN GOVERNMENT

(Mercer Co.) The ACLU-PA sent a letter to the Greenville Borough Council in August 2007 after receiving a complaint from a reporter for the Greenville Record Argus concerning new rules issued by the Greenville Borough Council in July 2007 for tape-recording council meetings. Among other things, the rules required persons who wished to tape-record a meeting to identify themselves before doing so. The borough solicitor responded by informing us that the tape-recording rules were not being enforced pending a review of their legality. Kennedy v. Greenville Borough; *Rose*

See also, Freedom of Speech (Speech at Public Meetings – all entries)