ACLU OF WASHINGTON LEGAL DOCKET

2018

The ACLU of Washington's legal docket is published annually.

CRIMINAL JUSTICE

Protecting the Homeless from Illegal Search and Seizure. In January of 2017, the ACLU-WA filed a class-action lawsuit against the City of Seattle and the Washington State Department of Transportation (WSDOT) for their official policies and longstanding practices of seizing and destroying the property of homeless people, often referred to as "sweeps." Clients have lost critical and irreplaceable belongings as a result of these sweeps, which are often conducted without warning or offer of a meaningful way to reclaim items not immediately destroyed. These belongings include forms of shelter, clothing, the only remaining photos of family members, medication, important paperwork, and other items needed for survival. The lawsuit alleges that the way the sweeps are conducted violates the constitutional rights of homeless people living outside. In October of 2017, the federal district court denied our motions for a preliminary injunction and class certification. The Ninth Circuit has agreed to review the denial of class certification and trial court proceedings are currently stayed as a result. (*Hooper v. City of Seattle*, ACLU Attorneys Breanne Schuster and Nancy Talner; Cooperating Attorneys: Todd Williams, Eric Lindberg, and Kristina Markosova (Corr Cronin); Toby Marshall (Terrell Marshall)).

Demanding Constitutionally Adequate Public Defense for Juveniles. On April 3, 2017, ACLU-WA filed a class-action lawsuit against the State and the state Office of Public Defense (OPD) for failing to enforce the constitutional requirement of adequate public defense for juveniles in Grays Harbor County. Children, just like adults, have a right to a lawyer, and with children, who often cannot advocate for their own rights without guidance, the right to a lawyer who provides actual advocacy is especially important. The lack of adequate representation is detrimental to the children accused of offenses and detained in Grays Harbor. They plead guilty without understanding the alternatives or consequences, are held in detention longer than is legal, and receive harsher sentences than their cases warrant. The lawsuit, filed in Thurston County Superior Court, asks the court to declare that the public defense services that juveniles in Grays Harbor County receive are constitutionally inadequate, and to declare that OPD has the authority to take the measures necessary to ensure the provision of constitutionally adequate services. The court has certified the case as a class action and trial is set for March of 2019. (*Davison v. OPD*, ACLU Attorneys John Midgley, Nancy Talner, Breanne Schuster, and Jaime Hawk; Cooperating Attorneys: Theresa Wang, Mathew Harrison, and Lance Pelletier (Stokes Lawrence)).

Washington's Death Penalty is Racially Discriminatory. The ACLU-WA and the national ACLU filed an amicus brief in a death penalty case in the Washington Supreme Court. The brief was joined by several organizations and individuals, including Washington judges and a former US Attorney. It asked the Court to rule that Washington's death penalty system is racially discriminatory and violates the state constitution. On February 25, 2016, the case was argued in the Supreme Court and the ACLU presented the arguments from our brief. The Court then issued an order requiring further proceedings on the racial discrimination issue. The parties' statistical experts have both made submissions to the Court, and the ACLU submitted a supplemental amicus brief on the race discrimination issue on January 22, 2018. (*State v. Gregory*, ACLU of Washington Attorney Nancy Talner; National ACLU Attorneys Jeff Robinson and Cassandra

Stubbs; Cooperating Attorneys: Marc Shapiro, Aravind Swaminathan, and John Wolfe (Orrick Herrington & Sutcliffe LLP)).

Unconstitutional Death Penalty Decisions Based on IQ.
In 2015 Cecil Davis filed a Personal Restraint Petition (PRP), arguing that Washington's death penalty statute should be ruled unconstitutional. The PRP argues that legal flaws in the IQ part of the statute make it unconstitutional (the statute defines intellectual disability as having an IQ of 70 or less and forecloses all further exploration of intellectual disability in those with higher IQs). Unfortunately, the court found procedural flaws in the record and dismissed the petition in May of 2017. A motion for reconsideration is being filed in early September 2017 and the ACLU will submit an amicus brief in support of reconsideration. (*In re PRP Cecil Davis*, ACLU Attorney Nancy Talner; Cooperating Attorney: Stacey Marchesano (Garvey Schubert Barer)).

Government Accountability in Drug-Related Property Forfeiture Cases. The ACLU submitted an amicus brief to the Washington Supreme Court on this topic on April 26, 2018. The case involves a joint police task force (called OPNET) that engaged in various forms of misconduct in the course of investigating two men for growing marijuana. Police not only referred the case for criminal prosecution but also sought the forfeiture of the property the men owned. Based on the police misconduct, suppression of evidence was granted in the criminal case, and then the forfeiture case was dismissed because the evidence had been suppressed. The trial court awarded attorney fees to the defense attorney under the forfeiture statute, which the ACLU's brief supported as a form of holding the government accountable for abuses in connection with drug-related property forfeiture. The amicus brief explains the importance of legal safeguards in forfeiture cases, including the importance of awarding attorney fees. (*OPNET v. Real Property*, ACLU Attorneys Mark Cooke and Nancy Talner).

DISABILITY RIGHTS

Guaranteeing Access to Treatment for Opioid Addiction in County Jails. People suffer from opioid use disorder—a disability—when they cannot control their opioid use and experience physical tolerance and withdrawal. Medication assisted treatment (MAT), including treatment with buprenorphine and methadone, is one of the best treatments available to treat opioid use disorder. However, many county jails across the state refuse to provide these medications due to outdated and discriminatory ideas about the nature of addiction. In June 2018, ACLU-WA filed a class action lawsuit alleging violations of the Americans with Disabilities Act (ADA) against Whatcom County on behalf of two named plaintiffs who were denied MAT while in Whatcom County Jail. (*Kortlever v. Whatcom County*, ACLU Attorneys John Midgley, Mark Cooke, and Lisa Nowlin, and ACLU Equal Justice Works Fellow Jessica Wolfe; Cooperating Attorneys: Bart Freedman, Todd Nunn, Matthew Doden, and Christina Elles (K&L Gates LLP)).

Discriminatory Treatment of People with Mental Illness at the Pierce County Jail. The Pierce County Jail has a long history of mistreating people experiencing mental illness. People are forced to wait months to see a mental health provider face-to-face, experience significant delays in receiving necessary medications, and are denied basic mental health services, despite repeated requests for treatment. As a result, their mental illnesses progress unchecked, leading to

hallucinations, delusions, and an increased risk of self-harm. Pierce County also punishes people experiencing mental health crises by placing them in solitary confinement, using eyebolts to chain their legs and arms to the concrete floor, and leaving them in restraint chairs for hours on end. It then perpetuates this vicious cycle by releasing people directly into the community without a supply of their psychiatric medications. Due to their untreated illnesses, many end up back at the Jail. In December 2017, ACLU-WA filed a federal class action lawsuit challenging this cruel and unusual punishment and violation of the Americans with Disabilities Act. (*Bango et al. v. Pierce County et al.*, ACLU Attorney Antoinette M. Davis and Eunice Cho and Equal Justice Works Fellow Jessica Wolfe; Cooperating Attorneys: Salvador A. Mungia and Janelle Chase-Fazio (Gordon Thomas Honeywell)).

FREE SPEECH & EXPRESSION

DOJ Regulation Preventing Partial Representation by Non-Profit Lawyers. In May of 2017, the ACLU submitted an amicus brief in support of Northwest Immigrant Rights Project's (NWIRP) challenge to a Department of Justice restriction on their ability to consult with clients unless they are formally representing them in court. This regulation severely restricts NWIRP's First Amendment right to shape its legal mission and to speak with immigrants. The court agreed and granted a preliminary injunction, preventing the enforcement of the regulation until the conclusion of this case. (*NWIRP et al. v. Sessions et al.*, ACLU Equal Justice Works Fellow Jessica Wolfe; Cooperating Attorney: Jake Ewart (Hillis Clark Martin & Peterson, P.S.)).

GOVERNMENT TRANSPARENCY

Use of Stingrays to Search Cell Phones. The Tacoma Police Department ("TPD") owns and operates a cell site simulator, commonly referred to by its brand name, "Stingray." Stingrays trick cell phones into connecting with the device instead of a cell phone tower and providing the phone's location—as well as possibly information about calls, texts, and previous locations. They also often sweep in private data from all cell phones within an approximately one-mile radius. Without appropriate limits on the use of this technology, law enforcement agencies can obtain data from many people who were not the target of the search and potentially use that information at a later date. The ACLU has sued TPD for failing to provide public records in response to our requests about its use of cell site simulators. Our Complaint was filed in February 2016. In June 2018, the judge agreed that TPD did not conduct an adequate serarch for public records and wrongly withheld several documents; TPD is appealing that decision. We have asked the judge to order TPD to conduct a remedial search to look for records we believe exist but have not been provided. (*Banks et al. v. City of Tacoma*, ACLU Attorneys John Midgley, Lisa Nowlin; Cooperating Attorneys: Jennifer Campbell and James R. Edwards (Schwabe, Williamson & Wyatt P.C.))

Death Penalty Jury Selection Must Be Open to the Public. The ACLU of Washington filed an amicus curiae brief in 2015 urging the Washington Supreme Court to decide that all parts of jury selection that involve discretion must occur in open court. The act of dismissing jurors is a critical part of a criminal trial and, if not undertaken in a fair and open manner, is fraught with potential for undermining trust in the judicial system. This is especially critical in death penalty

cases where the public has a strong interest in safeguarding against arbitrary power. On April 12, 2018, the Court issued a fractured ruling in which a majority found there was an open courts violation, but only a minority of the justices ruled that the violation required reversal of Schierman's conviction. The defendant filed a motion for reconsideration on June 14, 2018. (*State v. Schierman*, ACLU Attorney Nancy Talner; Cooperating Attorney: Margaret Pak Enslow (Enslow Martin PLLC)).

IMMIGRANTS' RIGHTS

Right to Counsel for Unaccompanied Minors. Each year, the federal government initiates deportation proceedings against thousands of children who are required to appear in court without an attorney. Without legal representation, these children face a very real risk of being sent back to the perilous circumstances they left. That's why the ACLU filed a nationwide, class-action lawsuit on behalf of thousands of children to challenge the federal government's failure to provide them with legal representation in deportation proceedings. Although the Ninth Circuit ruled in September 2016 that the case cannot proceed in District Court and the right to counsel claim should be raised in individual children's immigration proceedings, Plaintiffs have sought rehearing before the full Ninth Circuit court.

The ACLU has also filed a Petition for Review in the Ninth Circuit on behalf of a child who was unrepresented in his immigration proceedings (*C.J.L.G. v. Sessions)*. We have also petitioned for a rehearing on that case before the full Ninth Circuit court and continue to hope for a decision that will prevent the absurd practice of children defending themselves against trained prosecutors. (*F.L.B. v. Sessions*, ACLU of Washington Attorney Emily Chiang; ACLU National Attorneys Cecillia Wang and Stephen Kang; ACLU of Southern California Attorneys Ahilan Arulanantham and Carmen Iguina; Co-Counsel: Theodore J. Angelis and Todd Nunn (K&L Gates LLP); Matt Adams and Glenda M. Aldana Madrid (Northwest Immigrant Rights Project); Kristen Jackson and Talia Inlender (Public Counsel); Melissa Crow and Karolina Walters (American Immigration Council); and Kristin Macleod-Ball (National Lawyers Guild)).

Use of Extreme Vetting in Immigration Cases. On January 23, 2017, the ACLU filed a lawsuit challenging the use of an "extreme vetting" program called the Controlled Application Review and Resolution Program (CARRP). This program is designed to delay and deny citizenship and permanent residency to Muslim immigrants and immigrants from Muslim majority countries using flawed watch lists and overly expansive criteria. It frequently denies the opportunity to gain citizenship or residency to people who otherwise meet all the congressionally approved standards for naturalization or residency. In June, the court allowed the case to become a nationwide class suit on behalf of all people with cases pending before the U.S. Citizenship and Immigration Services that might be or are subject to CARRP. The outcome of this case will be key to reforming the illegal practice of extreme vetting in U.S. immigration. (*Wagafe v. Trump,* The ACLU Immigrant Rights Project with the ACLU of Southern California and ACLU of Washington Attorney Emily Chiang; Co-Counsel and Cooperating Attorneys: NWIRP; the National Immigration Project of the National Lawyers Guild; Law Offices of Stacy Tolchin; Nick Gellert, Harry Schneider, and David Perez (Perkins Coie)).

Release of Immigrants from Mandatory Detention When Not Detained Promptly. On August 4th, 2016 the Ninth Circuit Court issued opinions on two cases (*Khoury v. Asher and Preap v. Johnson*) which stated that a non-citizen convicted of a crime is exempt from mandatory detention if they are not taken into immigration custody promptly after their release from criminal custody. The decision halted the practice of suddenly detaining non-citizens, often years after their release from criminal custody and keeping them in detention with no opportunity to prove that they are not a flight risk. The U.S. Supreme Court has agreed to hear the cases. (*Kelly v. Preap and Wilcox v. Khoury*, ACLU of Washington Attorney Emily Chiang; ACLU National Attorneys David D. Cole; Michael Tan, Judy Rabinovitz, Cecillia Wang, and Omar Jadwat ; Co-Counsel and Cooperating Attorneys: Matt Adams (NWIRP); Robert Pauw (Gibbs Houston Pauw); Devin T. Theriot-Orr (Sunbird Law PLLC)).

Freedom of Information Related to the Trump Administration Travel Ban. On April 12, 2017 the ACLU of Washington along with the ACLU of Montana and ACLU of North Dakota filed a lawsuit against the US Department of Homeland Security (DHS) and the US Customs and Border Protection (CBP) for failing to produce records in response to a Freedom of Information Act request for documents related to the local implementation of President Trump's Muslim ban. We are now reviewing the documents we have received in response, many of which reflect the chaotic implementation of the ban at Sea-Tac Airport. (*ACLU-WA v. DHS*, ACLU-WA Attorney Emily Chiang; Cooperating Attorney: Eric Stahl (Davis Wright Tremaine)).

Fighting President Trump's Muslim Ban. ACLU-WA filed a class action lawsuit in the Western District Court of Washington in response to President Trump's executive order restricting travel from seven predominately Muslim countries. Our lawsuit is brought on behalf of people with non-immigrant visas, like students at the University of Washington; the Episcopal Diocese of Olympia, whose refugee resettlement program has been seriously hampered by the ban; and the Council on American Islamic Relations of Washington State, which has had to divert resources to deal with the increase in bigotry in the wake of the executive order. Although the United States Supreme Court has ruled against the preliminary injunction issued in *Trump v. Hawaii*, the portion of our case challenging the suspension of "follow to join" families of refugees already admitted to the United States remains active. In December 2017, the District Court ordered the government to reinstate the admission of these families. The government has moved to dismiss the case but we are arguing that more information is needed about the government's compliance (or lack thereof) with the court's order. *(Jane Doe et al. v. Donald Trump et al.*, ACLU Attorneys Emily Chiang & Lisa Nowlin; Cooperating Attorneys: Tana Lin, Lynn Lincoln Sarko, Amy Williams-Derry, Derek W. Loeser, Alison Gaffney, Laurie B. Ashton, and Alison Chase (Keller Rohrback, LLP)).

Border Patrol Unlawful Detention of Greyhound Bus Passenger. In July 2017, Andres Sosa Segura was transferring from one Greyhound bus to another, at the Spokane Intermodal Center, on his way home from Montana. He was the only Latinx-appearing passenger on the bus, and as he got off the bus two Border Patrol agents stopped him and demanded to know where he was from and to see his "papers." Mr. Sosa showed them a card listing his rights, as his immigration attorney had advised him to do, but the agents said the card meant Mr. Sosa must be "illegal." The agents detained Mr. Sosa for hours and kept him in a cell in a remote location. By the time

he was brought back to the bus station, he had missed the last bus and his family had to drive for hours to pick him up. On June 20, 2018, the ACLU, together with co-counsel Northwest Immigrant Rights Project, filed a claim for damages with the federal Customs and Border Protection agency, alleging that the agency committed the torts of false arrest and false imprisonment against Mr. Sosa. (ACLU attorneys Nancy Talner and Eunice Cho; Cooperating Attorneys: Ken Payson and Jennifer Chung (Davis Wright Tremaine); NWIRP Attorneys Matt Adams, Glenda Madrid, and Leila Kang.)

Freedom of Speech for Immigrant Detainee Hunger Strikers. Immigrant detainees at the Northwest Detention Center in Tacoma, Washington, engaged in peaceful hunger strikes to protest conditions of confinement at the facility. Authorities at the detention center retaliated by assaulting and placing hunger strikers in solitary confinement. In February 2018, ACLU-WA sued Immigration and Customs Enforcement (ICE) and the GEO Group, Inc., the private prison company that operates the detention center, on behalf of Mr. Chavez Flores, for violation of his First Amendment right to free speech and assault, negligence, and false imprisonment. (*Chavez Flores v. United States Immigration and Customs Enforcement, et al.*, ACLU Attorneys Eunice Cho and Antoinette M. Davis; Cooperating Attorneys: Daniel Weiskopf, Theresa DeMonte (McNaul Ebel Nawrot & Helgren)).

LGBT RIGHTS

Using Religion to Discriminate Against Gay Couples. When Robert Ingersoll and Curt Freed got engaged and started planning their wedding, they knew they wanted their longtime florist to do the flowers. Having purchased from Arlene's Flowers on many occasions, Ingersoll approached the florist in March 2013, but was turned away on the grounds that selling him flowers for his wedding would violate the flower shop owner's religious beliefs. We sued on behalf of Robert and Curt, and in February, 2017 the Washington Supreme Court unanimously ruled in their favor. The case was then appealed by Arlene's Flowers to the U.S. Supreme Court where the court, without disagreeing with the lower court's decision, sent it back to the Washington Supreme Court to re-evaluate its decision in light of *Masterpiece Cakeshop v. Colorado*. The ACLU will continue to argue for the rights of LGBT couples in the State Supreme Court. (*Ingersoll v. Arlene's Flowers*, ACLU Attorney Emily Chiang; ACLU LGBT Project Attorneys James Esseks, Leslie Cooper, and Elizabeth Gill; Cooperating Attorneys: Jake Ewart (Hillis Clark Martin & Peterson P.S)).

Fighting Anti-Trans Discrimination: Healthcare Benefits. In October 2017, we filed a case on behalf of a transgender teenager who was denied insurance coverage for gender-affirming surgery. Cheryl Enstad was a PeaceHealth employee and her family was enrolled in PeaceHealth's medical plan. Coverage for her son Pax's double mastectomy was denied due to the PeaceHealth medical plan's exclusion of coverage for "transgender services." Defendant filed a motion to dismiss in early January. Plaintiffs also filed a motion to certify questions regarding the Washington Law of Discrimination to the Washington Supreme Court. (*Enstad v. PeaceHealth*, ACLU Attorney Lisa Nowlin; ACLU LGBT Project Attorneys Josh Block and Leslie Cooper; Cooperating Attorneys Denise Diskin and Beth Touschner (Teller & Associates)).

Fighting Anti-Trans Discrimination: Healthcare Providers. In December 2017, we filed a case on behalf of a transgender law student who was denied services by Swedish Plastics and Aesthetics, which is affiliated with Swedish Medical Group and Providence Health & Services. Mr. Robbins had a consultation with Dr. Mary Lee Peters at Swedish Plastics & Aesthetics for chest reconstruction surgery in December 2016, and scheduled his surgery with her for March 2017. Just weeks before the surgery, Dr. Peters and Swedish cancelled Mr. Robbins's surgery, along with the appointments of several other transgender people, without explanation. (*Robbins v. Swedish Health Services*, ACLU Attorneys Lisa Nowlin and Leah Rutman; Cooperating Attorney Susan Mindenbergs (Law Office of Susan Mindenbergs)).

Fighting Anti-Trans Discrimination: Access to Gender Affirming Surgery. The ACLU represents Nonnie Lotusflower, a transgender woman in the custody of the Washington Department of Corrections ("DOC") in a case challenging DOC's blanket ban on gender affirming surgery for transgender people. In September 2017, Ms. Lotusflower filed a pro se complaint against the DOC claiming a violation of her Eighth Amendment right to be free from cruel and unusual punishment and we entered the litigation in February 2018. Although DOC has recently revised its policy, litigation over Ms. Lotusflower's access to medically necessary surgery remains ongoing. (*Goninan v. Washington DOC et al.*, ACLU Attorney Antoinette M. Davis; Cooperating Attorneys: David Edwards and Kristina Markosova (Corr Cronin Michelson Baumgardner Fogg & Moore))

PRIVACY

Level 1 Sex Offender Registry and Evaluations. We have several related cases involving the release of personal information of Level I sex offenders. Level 1 sex offenders are those who the State has determined are least likely to re-offend—such as minors and adults who have successfully completed all aspects of their original sentences and are often not even required by Washington to register as sex offenders. As a result, their personal information is not published on the State's online registry of sex offenders. Level I sex offenders are also often allowed access to sentencing alternatives, such as the Special Sex Offender Sentencing Alternative (SSOSA) for adults and the Special Sex Offender Disposition Alternative (SSODA) for juveniles. These cases arose after a resident of Mesa, Washington sought SSOSA and SSODA evaluations of defendants across the state, including from the Department of Corrections, and Thurston and Pierce Counties.

We argued in each of these cases that exceptions to the Public Records Act (PRA) should block the release of these records because the evaluations are protected medical records containing medical and psychological diagnoses and history. Release of these evaluations can also re-traumatize victims and other innocent third parties. While we obtained favorable rulings on all cases at the Superior Court level, we received a negative opinion in the case related to SSOSA from the Washington Supreme Court earlier this year. The two cases involving SSOSA and SSODA records in Thurston and Pierce County are currently pending, with argument scheduled in the Court of Appeals on June 26, 2018, in the Pierce County case (*Does v. DOC et al.; Does v. Thurston County; Does v. Pierce County*, ACLU Attorney Prachi Dave; Cooperating Attorneys: Benjamin Gould (Keller Rohrback), Reuben Schutz and Sal Mungia (Gordon Honeywell)).

Disclosure of Government Employees' Birthdates to the Public. The Evergreen Freedom Foundation filed a public records request to various state agencies, seeking the names and associated birthdates of state employees because the Foundation wanted to use that information to find the employees' home addresses and mail them flyers encouraging them not to join a union. The unions argue that the employees have a privacy right in their birthdates which makes that information exempt from the Public Records Act (PRA). On April 27, 2018, the ACLU filed an amicus brief in the Washington Supreme Court urging the Court to find that the personnel records exemption to the PRA applied to the birthdates because personnel records are the source of the birthdate information. The brief explained how birthdates are sensitive private information and can be used to intrude on other sensitive records. (*WSPEA v. Evergreen Freedom Foundation*, ACLU Attorney Nancy Talner; Volunteer Attorney Doug Klunder).

Government Installation of Malware and Operation of Child Pornography Site. Federal law enforcement engaged in a nationwide operation targeting online access to child pornography. In applying for a search warrant, the agents omitted information about the malware they planned to install on target computers. The malware created significant security risks for the computers that were hacked by the government. The agents also failed to clearly disclose to the search warrant magistrate that they would be operating a massive child pornography website. In October 2017, the ACLU filed an amicus brief in the Ninth Circuit Court of Appeals explaining how intrusive and harmful these methods were. The brief supported the defendant's arguments that the search warrant was invalid because the magistrate's duty to independently determine the validity of the warrant application was undermined by the agents' deception in describing the methods that were going to be used. (*United States v. Tippens*, ACLU-WA Attorneys Nancy Talner and Shankar Narayan; ACLU National Attorneys Jennifer Granick, Brett Max Kaufman, and Vera Eidelman; Cooperating Attorney: Karin Jones (Stoel Rives LLP)).

Police Use of Drug Dog is a Search Requiring a Warrant. Police stopped a car and then called in a drug-sniffing dog that was used to detect drugs in the car, without applying for a search warrant. The issue is whether the dog sniff of the car is an unconstitutional search under the state constitution. Washington State courts have said a warrantless dog sniff outside a person's home would be unconstitutional, and they have recognized a right to privacy in a person's car, but the lower court here said the dog sniff was not a "search." In July 2018, the ACLU filed an amicus brief in support of review by the state Supreme Court, discussing the invasive nature of the warrantless search. (*State v. Lares-Storms*, ACLU-WA Attorney Antoinette M. Davis; Volunteer Attorney Doug Klunder).

RACIAL JUSTICE

Adoption of Court Rule to Reduce Bias in Jury Selection. On July 14, 2016 the ACLU proposed a change to the court rules in Washington State surrounding jury selection. The proposed rule sought to change the rule which required proof of intentional discrimination to reject the removal of a potential juror based on race. The old rule was not effective at preventing biased jury selection. On April 5, 2018, the Washington Supreme Court adopted the rule proposed by the ACLU and supported by several ally organizations; it became GR 37. It went

into effect at the end of April 2018 and applies to all jury trials. It is the first court rule in the country to require consideration of the role of implicit bias in jury selection, and to impose a rebuttable presumption that certain reasons for excluding jurors, previously used as a proxy for race discrimination, are invalid. **(**Batson Court Rule**,** ACLU of Washington Attorney Nancy Talner and ACLU National Attorney Jeff Robinson; former ACLU of Washington Attorney La Rond Baker; Cooperating Attorneys: Sal Mungia (Gordon Honeywell and Thomas); Lila Silverstein (Washington Appellate Project); Jim Lobsenz (Carney Badley Spellman); David Zuckerman).

Inadequate Compensation of Jurors Contributes to Lack of Jury Diversity in Washington. Plaintiffs in this case argue that jurors should be paid the minimum wage per hour, instead of the $10 a day currently paid for jury service. Their suit explains how it is such a severe economic hardship to serve as a juror at the current compensation rate that it becomes impossible for many people to serve. In March 2018, the ACLU filed an amicus brief discussing how the inadequate compensation of jurors contributes to lack of racial diversity on Washington juries. *(Bednarczyk v. King County*, ACLU Attorney Nancy Talner; Cooperating Attorney: Jamal Whitehead (Schroeter Goldmark & Bender)).

SECOND CHANCES

Backdating Certificate of Discharge. We have filed several amicus briefs in the court of appeals and in the Supreme Court, in support of Mr. Hubbard, who was granted a Certificate of Discharge (COD) that was backdated to February 23, 2013, the date on which he completed the terms of his sentence. Our briefs argue that the court's decision to backdate the COD is in keeping with the legislative history and intent of Washington law, which seeks to avoid increasing the collateral consequences of arrest. Because a COD is needed to vacate a prior criminal conviction, it is essential for many people to gain access to housing and employment—key factors in combatting recidivism. The Supreme Court accepted this case for review and heard oral arguments on June 28, 2018. (*State v. Hubbard*, ACLU Attorneys Prachi Dave and Nancy Talner).

Removing Barriers to Reentry. On April 12, 2016, we filed a complaint in King County Superior Court on behalf of a woman whose child-care license was revoked by the Department of Early Learning (DEL) when it learned about her 27-year-old conviction for attempted robbery. The client has put her criminal history behind her and has been an exemplary member of the community for years, but her criminal history poses a barrier to her success because state law prevents DEL from giving child care licenses to everyone with this type of conviction regardless of changed circumstances. Our complaint argued that Ms. Fields has a right to demonstrate her qualification and fitness for being awarded the license. The Washington Supreme Court heard this case on May 8, 2018, and we are now awaiting a ruling. (*Fields v. Washington Department of Early Learning*, ACLU Attorney Prachi Dave; Cooperating Attorney: Toby Marshall, Terrell Marshal Law Group)).

YOUTH

Excessive Discipline of Students with Disabilities in Washington Schools. On June 8, 2017 the ACLU filed a class action lawsuit against the Office of the Superintendent of Public Instruction (OSPI) on behalf of students with special education needs who have been wrongfully disciplined for behavior related to their disabilities in the Yakima and Pasco school districts. The suit asks the court to declare that the excessive and discriminatory discipline has deprived students of their basic right to an education, and that OSPI's failure to monitor and exercise appropriate supervisory authority over Washington's schools and school districts violates the Washington State Constitution and Washington Law Against Discrimination. (*A.D. et al. v. OSPI et al.,* ACLU Attorneys Eunice Cho and John Midgley; Volunteer Attorney: Michelle Mentzer; Cooperating Attorneys: Karen King, Alex Hyman, Elizabeth Curran, Jessica Finberg, and Rachna Shah (Paul Weiss)).

Youth Should Not Get the Same Sentences as Adults. In two different cases, the ACLU urged the Washington Supreme Court to allow juveniles and young adults to challenge the draconian adult sentences imposed on them, because youth has been recognized as a mitigating factor in sentencing. In the first case, a youth was sentenced to the top end of the standard sentence range for a murder committed when he was 19. The ACLU brief urges the Court to treat the youth's challenge to his sentence as timely, and to allow retroactive application of a ruling that recognized youth could be a mitigating factor for young adults as well as juveniles. The second case involved the re-imposition of three life without parole sentences on a man who murdered his family when he was 16 years old. The sentence precludes him from ever requesting release, despite the significant rehabilitation he has demonstrated in the 20 years he has been in prison. The ACLU brief argued this violated the state constitution. In a third case, also based on the principle that youth is a mitigating factor, the ACLU amicus brief argued that automatically sending certain juvenile cases to adult court, without any consideration of individual circumstances, is unconstitutional. (*State v. Light-Roth*, ACLU Attorneys Vanessa Hernandez and Nancy Talner; Cooperating Attorney: Eric Nusser (Terrell Marshall Law Group PLLC)) (*State v. Bassett* filed with four other organizations, ACLU Attorneys Vanessa Hernandez and Nancy Talner) (*State v. Watkins* filed with six other organizations, ACLU Attorneys Vanessa Hernandez and Nancy Talner).