ACLU INDIGENT DEFENSE DOCKET

LITIGATION

ALABAMA

Powell v. Alabama (289 U.S. 45 (1932)): In 1932, the ACLU represented four young African-American men before the United State Supreme Court in a case establishing the right of indigent defendants in state capital prosecutions to effective assistance of counsel. The defendants were four of nine young men who had been sentenced to death by an all-white jury for allegedly raping two white women near the town of Scottsboro, Alabama. On the morning of their trial, the trial judge appointed as their counsel a lawyer from Tennessee who was present in the courtroom as an observer. The attorney had not prepared for the trial, was not familiar with local practice or procedure and was later described as being so drunk that he could not walk straight. The ACLU was asked to represent the boys in the appeal of their conviction to the United State Supreme Court. The Court reversed their convictions after finding that the Fourteenth Amendment's due process clause guaranteed indigent defendants in state capital prosecutions a meaningful opportunity to be heard, which included the right to the assistance of counsel.

ARIZONA

In re Gault (387 U.S. 1 (1967)): In 1967, the ACLU represented Gerald Gault in a case before the United States Supreme Court establishing the right to counsel in juvenile delinquency proceedings. At the age of fifteen Gault was accused of making an obscene phone call to a neighbor. He was convicted primarily on the basis of his own statements and received a sentence significantly harsher than the one he would have received had he committed the same offense as an adult. Neither he nor his parents had received written notice of the charges against him and had never received the assistance of counsel. After the Supreme Court of Arizona denied his writ for a petition of habeas corpus and affirmed his sentence, Gault appealed to the United States Supreme Court. The Supreme Court overturned his conviction, holding that respondents in juvenile delinquency proceedings were entitled to due process protections.

CONNECTICUT

Gaines v. Manson (481 A.2d 1084 (1984)): The Connecticut Civil Liberties Union filed a lawsuit on behalf of seven indigent defendants whose right to appeal their convictions had been compromised by the fact that Connecticut's public defender system did not have enough public defenders to prosecute the appeals in a timely manner. Several defendants were forced to wait more than four years before their attorneys filed the requisite pleadings. After the Connecticut Supreme Court ruled that the failure to prosecute appeals promptly had due constitutional implications, the parties settled. The settlement imposed caseload limits on the appellate division of the public defender system.

Rivera v. Rowland (1998 WL 96407 (Conn. Super.)): In January 1995, the Connecticut Civil Liberties Union filed a lawsuit against the State of Connecticut and members of its Public Defender Commission. Attorneys working for the state's public defender office had annual caseloads of more than 1,000 and were unable to perform many of the most basic tasks required of a competent defense attorney. Shortly after the lawsuit was filed the ACLU's National Office

joined the affiliate as counsel for the plaintiff class. In July 1999, after surviving a motion to dismiss, the suit settled. Pursuant to the settlement, the budget of the public defender's office increased by approximately 30 percent, enabling the office to hire 80 new attorneys and support staff. In addition, the office revised its practice standards, enhanced its training program and revamped its assigned counsel program. It raised the compensation paid to attorneys who handled its conflict work for the first time since 1983.

GEORGIA

Luckey v. Harris (860 F.2d 1012 (11th Cir. 1988), *rehearing denied*, 896 F.2d 479 (11th Cir. 1989) (*en banc*), *cert. den*. 495 US 957 (1990)): In 1986, the ACLU's National Legal Department and its Georgia affiliate filed a lawsuit in federal court against the State of Georgia alleging that the state's various indigent defense systems had neither the financial nor the administrative resources to provide constitutionally adequate legal representation. Indigent defense attorneys were unable to interview clients in a timely manner, investigate the charges against their clients, research relevant law, engage in necessary motion practice and prepare adequately for trial. In an unpublished opinion, the federal district court dismissed the case for failure to state a claim under the Sixth Amendment. On appeal, the Eleventh Circuit reversed, making it the first court to recognize that a class of indigent criminal defendants could assert Sixth Amendment ineffective assistance of counsel claims prior to conviction. On remand, the district court again dismissed the case, this time on *Younger* abstention grounds. The Eleventh Circuit affirmed. *Luckey v. Miller*, 975 F.2d 672 (11th Cir. 1992); *rehearing denied* 983 F.2d 184 (11th Cir. 1993).

MICHIGAN

Tesmer v. Granholm (2002 FED App. 0220P (6th Cir. July 2, 2002)): In 2000, the ACLU's Michigan affiliate challenged a state law prohibiting the appointment of appellate counsel to indigent criminal defendants who had pled guilty but wished to appeal their conviction. Plaintiffs won at the trial level but lost on appeal. On December 11, 2002, the Sixth Circuit heard the case en banc. Plaintiffs await a decision.

MONTANA

***White v. Martz*:** On February 14, 2002, the ACLU, its Montana affiliate, the New York law firm Cravath, Swaine & Moore, and local attorneys filed a lawsuit against the state of Montana and seven of its counties alleging that defendants had failed to adequately fund and supervise county indigent defense programs. Specifically, the suit alleged that the state had abdicated its constitutional duty to ensure effective lawyers for the poor by delegating the design and administration of those programs to its counties, without sufficient funding or guidance. As a result of the lack of state oversight, county programs were plagued by a number of deficiencies, including: a virtual absence of adversarial advocacy; high attorney caseloads; the inability of lawyers to meaningfully confer with their clients or to develop a defense; lack of investigatory and expert services; excessive pleas bargaining, and unnecessary pre-trial incarceration. Defendants filed a motion to dismiss the suit, which was denied. Discovery is ongoing.

NEW YORK

Donaldson v. State (156 A.D. 2d 290 (1989)): In 1989, the ACLU National Legal

Department, the New York Civil Liberties Union and other organizations filed an action in New York state court seeking to establish the right that indigent persons facing summary eviction proceedings in Housing Court were entitled to be represented by counsel. The Appellate Court ruled that while the issue was justiciable, the Court did not have jurisdiction to decide the matter and transferred it to the state Supreme Court. The ACLU appeal to the New York Court of Appeals was denied.

OREGON

Metropolitan Public Defenders v. Courtney and Minnis: On February 10, 2003, the ACLU of Oregon filed a Petition for an Alternative Writ of Mandamus on behalf of the Metropolitan Public Defenders requesting that the Oregon Supreme Court compel the state Legislative Assembly to restore $10.1 million of the $27.4 million removed from the Judicial Department's Indigent Defense Account. As a result of the budget cuts, the Judicial Department had announced that between March and June 2003, it would cease the prosecution of and no longer appoint counsel in cases involving crimes against property, post-conviction relief cases, and most juvenile cases. All such cases would be rescheduled for court appearances after July 1, 2003. The lawsuit alleged that the funding cuts violated the constitutional rights of those individuals who would not be assigned counsel and the Separation of Powers provision of the Oregon Constitution by permitting the Legislative Assembly to shut down parts of the judicial system by failing to fund them. Plaintiff Metropolitan Public Defenders alleged that the cuts would force them to lay off attorneys while having to maintain office space in anticipation of the enormous backlog of cases that will require their services starting July 1, 2003.

On March 6, 2003, the Court denied the request for a writ, in part on the ground that the budget cut, though severe and resulting in "unprecedented and regrettable" consequences, "will not prevent the judicial branch from carrying out its core functions...." The ACLU of Oregon will continue to pursue a remedy by filing an amicus brief in the request for mandamus filed by the Multnomah County District Attorney on March 5, 2003, which asks the Court to order local judges to enforce the law and the constitutional requirement that defendants be arraigned within 96 hours and have counsel appointed where necessary.

PENNSYLVANIA

***Doyle v. Allegheny County Salary Board*:** In September 1996, the ACLU's National Legal Department, its Greater Pittsburgh Chapter and local lawyers filed suit in state court against Allegheny County, Pa., alleging that the county was failing to provide its public defender system with the tools necessary to enable it to adequately represent its clients. The county cut the public defender's budget so drastically that the office's attorneys had astronomical caseloads. They were unable to visit clients, investigate cases and prepare adequately for trial. Two years after it was filed, the case settled. Under the terms of the settlement, the County agreed to double its funding for the public defender program and to employ a consultant to assist the program in promulgating a merit hiring system, practice standards, a system of supervision and monitoring, and a training program. Implementation of the settlement is still under way.

T.M. v. City of Philadelphia: In 1984, the ACLU of Pennsylvania filed suit to enforce a state statute requiring family court judges to appoint counsel for children in abuse and neglect proceedings. The case settled on terms favorable to the plaintiffs.

RHODE ISLAND

Ravenelle [Inscoe] v. Family Court**:** The ACLU of Rhode Island participated in a federal suit challenging the state's refusal to provide counsel to certain indigent juveniles facing criminal charges. The suit was dismissed on jurisdictional grounds.

TEXAS

Burdine v. Huffman: In a recent federal lawsuit, the ACLU of Texas represented Calvin Burdine, whose court-appointed lawyer slept through much of his capital murder trial and who received a death sentence. Attorney Robert McGlasson represented Burdine during his appeal and post-conviction proceedings which resulted in a federal writ of habeas setting aside the conviction and sentence after 15 years. However, upon retrial, the state trial court refused to appoint McGlasson to represent Burdine, citing Texas' recently-enacted Fair Defense Act which required judges to appoint counsel on a rotational basis from a list. Ironically, Burdine's first trial has been widely recognized as the emblem of Texas' flawed public defender system and arguably spurred the passage of the Fair Defense Act. On September 17, 2002, the ACLU filed a lawsuit seeking an injunction and asking the federal court to order the state court to appoint McGlasson to Burdine's case. The federal court dismissed the lawsuit on abstention grounds, but noted that there may be legal support for Burdine's contention that his on-going relationship with counsel should not be disrupted. The ACLU of Texas is pursuing other avenues to ensure quality counsel for Burdine.

King v. Holmes**:** In 2000, the ACLU of Texas joined a suit filed by a former indigent defendant against Harris County. The plaintiff alleged, among other things, that he was systematically denied legal representation after he was arrested in 1998 for failing to identify himself to a police officer. In response to the lawsuit, Harris County agreed to change policies – written and unwritten – that had encouraged indigent defendants to plead guilty and denied them due process. Specifically it agreed to stop appointing as indigent defense counsel attorneys who do not investigate the charges against their clients; to change its policy denying good time credit to inmates who appealed their convictions; and to cease denying good time credit to inmates who did not plead guilty or no contest.

Kuhns v. Travis County**:** This suit, filed by the Austin Chapter of the ACLU of Texas, challenges a Travis County policy holding that indigent defendants charged with jailable misdemeanors who post bond are no longer indigent and not entitled to appointed counsel.

WASHINGTON

Norbert DuPuis v. Maxwell (415 P.2d 1 (1966): In 1964, the ACLU of Washington filed a habeas corpus petition on behalf of Norbert DuPuis, a Native American living in eastern Washington who was charged with carnal knowledge. Having been stabbed in the chest three days before his arraignment, DuPuis was scarcely in any condition to comprehend his legal rights. He told the judge that he had no memory of the alleged crime but that since a deputy sheriff said he had committed the act, he "guessed" he would plead guilty. After failing to appoint an attorney, the judge accepted the guilty plea and sentenced DuPuis to life in prison. ACLU-WA staff counsel argued that DuPuis had not intelligently waived his right to counsel. In 1966 the Washington Supreme Court granted the petition and ordered DuPuis released from prison.

Leon Morris Hendrix v. City of Seattle (456 P.2d 696 (1969)): In 1969, the ACLU of Washington filed suit on behalf of the defendant, Leon Morris Hendrix, against the City of Seattle. Hendrix was convicted in Seattle Municipal Court, without the assistance of counsel, on two charges of disorderly conduct. He subsequently filed a notice of appeal and a petition for certiorari. On appeal, the Superior Court set aside the two convictions with directions to supply counsel to Hendrix at public expense on remand. The Washington Supreme Court, however, reversed holding that indigent persons charged with a misdemeanor in municipal court did not have a constitutional right to counsel at public expense.

City of Lynnwood v. Richard Coe: In 1998, the ACLU of Washington filed a notice of appeal on behalf of Richard Coe, a developmentally disabled man, charged by the City of Lynnwood with 18 counts of malicious mischief for graffiti. At arraignment, Coe's request for counsel was ignored and he was not advised of his rights. He was subsequently sentenced to one year in jail, in spite of the lack of a voluntary, intelligent waiver of rights. After filing a notice of appeal to preserve Coe's rights, the ACLU of Washington succeeded in convincing the Lynnwood public defender to represent him. The City later amended its public defense contract to require representation at arraignments.

NON-LITIGATION ADVOCACY EFFORTS

CONNECTICUT

Board of Parole: In 2002, after receiving a complaint from an inmate facing a parole revocation hearing and the imminent return to prison, the Connecticut Civil Liberties Union learned that the Connecticut Board of Parole had not been informing parolees of their right to request state-appointed counsel and did not have sufficient funds to pay for attorneys if a person qualified for representation. As a result of negotiations between the CCLU and the Board of Parole, the state has agreed to adopt a formal process to evaluate, on a case-by-case basis, whether inmates are entitled to counsel during parole revocation proceedings. All parolees who face a loss of liberty as a result of alleged parole violations will be clearly informed of their right to request appointed counsel in writing. Adequate funds will be available to appoint counsel where required.

GEORGIA

All Georgia Counties: In 2002, the ACLU of Georgia sent a letter to over 400 state court, superior court, magistrate court and recorder's court judges notifying them that, in light of the United States Supreme Court's decision in *Shelton v. Alabama*, the failure to appoint defense counsel in certain misdemeanor cases violated the Sixth Amendment. *Shelton* extended the right to appointed counsel to misdemeanor cases that may not immediately involve incarceration. In response to the ACLU's letter, the Stephens County Commission agreed to spent $40,000 to hire a new public defender for misdemeanor cases despite an outspoken judge who publicly stated his refusal to comply with *Shelton*. In four other locales, courts and county commissions issued orders mandating appointment of counsel for misdemeanor cases where no such counsel had been appointed previously. The ACLU of Georgia has followed up with over a dozen counties where appointment of counsel problems persist.

NEBRASKA

Notary Services: In November 2002, the ACLU of Nebraska received complaints from pretrial detainees and inmates at a rural county jail and their overworked Public Defender that the county jail had decided to cease providing notary public services to incarcerated individuals. Because numerous legal documents require notarization, the Public Defender, who is responsible for all indigent defense in four counties covering several hundred miles, had to travel to the jail to act as a notary on diverse documents ranging from poverty affidavits, notices of appeal, and child support worksheets. Investigation revealed that other individuals who were not represented by the Public Defender had no access to notarization. ACLU of Nebraska successfully resolved the matter through negotiation with the county Sheriff's office and notary services have been restored.

Juvenile Facility Law Libraries and Legal Aid Programs: In October, 2002, ACLU of Nebraska received complaints from youth incarcerated at the state penal facility regarding the sufficiency of their law library and legal aide program. The inmates complained that the law library was vastly deficient in comparison to the library in the three adult facilities. Further, the youth facility did not have any program in place to train inmate legal aides in research and legal writing although the adult prisons did. The inmate legal aides are frequently the only source of help for illiterate, non-English speaking, or undereducated prisoners pursuing *pro se* efforts or researching their rights. After negotiations with the Department of Corrections, the prison agreed to begin a legal aide training program and commenced the classes within a week of contact from the ACLU. A research librarian from an adult prison was transferred to the youth facility and is in the process of reviewing the sufficiency of the law library.

NEW YORK

New York State Litigation Roundtable: The ACLU and its New York affiliate host a series of roundtable discussions concerning various indigent defense reform efforts in New York State. The Roundtable was established in an effort to maximize communication among the various reform advocates and, where appropriate, provide litigation expertise and otherwise coordinate their efforts. Among the goals of the Roundtable are to: (1) identify statewide, systemic problems in indigent defense ripe for litigation reform; (2) share information on current political and litigation reform developments; and (3) create a "check-in" structure for the evaluation of constitutional and statutory claims contemplated by reform-minded defense practitioners. The Roundtable consists of various national and local civil rights organizations, law firms and defense attorneys.

OHIO

Cleveland Immigration and Naturalization Services: In late 2002, the INS summoned citizens of several countries to mandatory registration interviews, with failure to comply potentially resulting in deportation. Despite the federal law granting the right to bring counsel to such interviews, several immigration lawyers were told they could not accompany their clients. The ACLU of Ohio demanded that the INS clarify its policy and allow lawyers to accompany registrants. On December 11, 2002, the INS faxed a letter to the ACLU confirming that it would respect the right of registrants to be represented by counsel.

PENNSYLVANIA

Lawrence County: The ACLU of Pennsylvania's Greater Pittsburgh Chapter threatened to sue Lawrence County after learning that 37 people imprisoned for failure to pay child support were never appointed counsel or afforded an opportunity to be heard prior to their incarceration. In response the County released all 37 people, but has not yet agreed to the ACLU's demand that it appoint counsel for indigents in nonsupport cases.

Venango County: Located 80 miles northwest of Pittsburgh, Venango County has a public defender program that suffers from many of the same problems as the indigent defense program in neighboring Allegheny County (*see above).* High caseloads prevent attorneys from meeting with their clients, investigating the charges against those clients, and preparing adequately for hearings and trials. In March 2001, after receiving a complaint from the then Chief Public Defender, the ACLU, its Greater Pittsburgh Chapter and the National Association of Criminal Defense Lawyers retained an expert to evaluate the program. In early June, the ACLU released the expert's report, "Report on Public Defender Office, Venango County, Pennsylvania, A Preliminary Assessment," to the press in an effort to increase public awareness of the problem. In response to the report, the County hired one additional full-time attorney, additional support staff and retained the National Legal Aid and Defender Association to conduct its own evaluation. In June 2002, NLADA presented the County with the results of its investigation. The County is currently implementing the recommendations set forth in NLADA's report.

Westmoreland County: As in Lawrence County, Westmoreland County was incarcerating persons for nonpayment of child support without appointing them a lawyer. At the request of the ACLU of Pennsylvania's Greater Pittsburgh Chapter, the Westmoreland County President Judge instructed other county judges to (1) insure that all non-support defendants had lawyers; (2) revise forms given to non-support defendants to inform them of their right to counsel and how to contact the Public Defender's Office; and (3) expedite a review of all non-support defendants currently detained in the County Jail so that appropriate "remedial measures" can be taken.

WASHINGTON

Indigent Defense Standards Project: The ACLU of Washington has been investigating whether local jurisdictions have adopted public defense standards as required by state law. As part of the project, they reviewed public defense contracts in each of Washington's 39 counties to determine whether they contained provisions establishing standards to measure performance of contract obligations. When the project is completed, ACLU of Washington will issue a report detailing their findings and proposing a set of recommendations to address systemic problems in Washington's public defense system.

SELECTED AMICUS BRIEFS

United States Supreme Court

Betts v. Brady (316 U.S. 455 (1942)): In 1942, the ACLU filed an amicus brief on behalf of Smith Betts seeking to extend to all state felony prosecutions the constitutional right to counsel established in *Powell v. Alabama* with respect to state capital proceedings. The Supreme

Court, however, ruled that a state's refusal to appoint counsel for a non-capital felony defendant did not violate either the Sixth or the Fourteenth Amendment. Whether counsel was constitutionally required in a criminal proceeding depended upon an appraisal of the totality of the facts of that case.

Gideon v. Wainwright (372 U.S. 335 (1963)): In 1963, the ACLU filed an amicus brief on behalf of Clarence Gideon in the appeal of his conviction to the Supreme Court. Gideon had been charged with burglarizing a poolroom. After having his request for counsel denied, he represented himself at trial, where he was sentenced to five years in prison, and on appeal. The Court unanimously overturned Gideon's conviction, finding that the Sixth Amendment right to counsel provisions applied to the states through the Fourteenth Amendment. This seminal decision forced the states to develop comprehensive public defender systems that then have become a basic part of American criminal justice.

Escobedo v. Illinois (378 U.S. 478 (1964)): In 1963, the ACLU filed an amicus brief on behalf of Danny Escobedo, arguing that the denial of an arrested person's request to consult with counsel until after the completion of an informal police interrogation violated the Fourteenth Amendment. Escobedo had been arrested in connection with the murder of his brother-in-law and interrogated by the police prior to being formally charged. Although he had retained a lawyer in anticipation of his arrest and repeatedly asked to consult with counsel during his interrogation, the police refused to allow him to do so. He ultimately made some incriminating statements which were subsequently used to convict him of murder. On appeal, the Supreme Court held that his statements were inadmissible because he had been improperly denied the right to consult with counsel.

Miranda v. Arizona (384 U.S. 436 (1965)): In 1965, the ACLU filed an amicus brief on behalf of Ernest Arthur Miranda and others, arguing that the failure to provide the assistance of counsel during police custodial investigation designed to elicit a confession renders the Fifth Amendment privilege against self-incrimination meaningless. Miranda, a person with considerable mental health issues, was taken into custody and interrogated in a police station in order to obtain a confession. Miranda was not effectively advised of his right to remain silent or his right to consult an attorney. The Court held that the presence of counsel prior to and during custodial interrogation was a necessary procedural safeguard to guard against coercive police practices. In addition, the Court articulated the now well-known "Miranda Rights," which law enforcement personnel are required to give to persons in custody prior to seeking confessions.

United States. v. Cronic (466 U.S. 648 (1984)): In 1984, the ACLU National Legal Department filed an amicus brief in support of Harrison Cronic. Cronic was convicted of a federal check "kiting" scheme after having been appointed a young real estate lawyer with no prior jury trial experience and 25 days within which to prepare for trial. The Supreme Court reversed Cronic's conviction and remanded for a new trial. In doing so, the Court reinforced it's view that the Sixth Amendment right to counsel contemplated the right to *effective* counsel, including those capable of subjecting the prosecution's case to the crucible of meaningful adversarial testing.

Kimmelman v. Morrison (477 U.S. 365 (1986)): In 1985, the ACLU filed an amicus brief on behalf of Neil Morrison arguing that federal courts may grant habeas relief where appointed counsel was deficient for failing to obtain discovery and timely move to suppress illegally-seized physical evidence. Morrison was convicted of rape after trial in New Jersey state court. During his pre-trial proceedings, Morrison's lawyer failed to request any discovery. Had he done so, the discovery would have shown that illegally-seized physical evidence was to be used against his client. Because the lawyer's motion to suppress came ate and was denied during trial, Morrison was convicted in part on the basis of that evidence. Morrison filed for federal writ of habeas corpus claiming, among other things, violation of his Sixth Amendment right to effective assistance of counsel. The District Court granted habeas relief, the Third Circuit affirmed the decision, and the state appealed to the Supreme Court. The Supreme Court's holding embraced the ACLU's position that habeas petitioners may raise ineffective assistance of counsel claims that are based upon incompetent handling of Fourth Amendment claims.

NORTH CAROLINA

State v. Fulp **(**355 N.C. 171 (2002)): After being indicted by a Forsyth County grand jury for felonious possession of stolen goods and for being an habitual felon, Bryan Fulp moved to suppress one of the three convictions used to support the habitual felon indictment. He argued that a 1993 Rockingham County felony larceny conviction had been obtained in violation of his right to counsel. Although Fulp acknowledged that he had signed a form waiving his right to counsel at the time, he claimed that the waiver was neither knowingly nor voluntarily made. Although the trial court disagreed, the North Carolina Court of Appeals vacated Fulp's habitual felon conviction after finding that Fulp had not understood the nature of waiver because of his young age (he was 17 years old), educational level, and limited experience with the waiver form. The state appealed the case to the North Carolina Supreme Court and the ACLU of North Carolina filed an amicus brief on Fulp's behalf. On February 1, 2002, the North Carolina Supreme Court reversed the Court of Appeals, holding that Fulp's waiver of counsel had been knowingly and intelligently made.

State v. Kinlock (566 S.E.2d 738 (N.C. App. 2002): Darlon Kinlock appealed his January 23, 2001 conviction in the Sampson County Superior Court alleging that the trial court had violated statutory and constitutional requirements by not conducting a more extensive *Faretta* inquiry to determine whether Kinlock's waiver of his right to counsel had been voluntary and well-informed. Prior to defending himself at his trial, Kinlock had expressed, on several occasions, a desire to retain counsel. The Court of Appeals affirmed Kinlock's conviction. On the basis of one justice's dissent, the North Carolina Supreme Court accepted his appeal. The ACLU of North Carolina filed an amicus brief on behalf of Kinlock, and on March 13, 2003, staff attorney Seth H. Jaffe participated in oral argument before the North Carolina Supreme Court.

In re Nicholas Roberts (563 S.E. 2d 37 (2002)): On October 11, 1996, Nicholas R. Roberts, a sophomore at A.C. Reynolds High School in Buncombe County, allegedly made derogatory remarks to a female student. After investigation the principal determined that Roberts had violated Buncombe County Board of Education policy prohibiting sexual harassment and recommended that the Reynolds District Hearing Board suspend Roberts for the rest of the

semester. At the hearing, on October 14, Roberts was not allowed to have an attorney present at the hearing.

In May 2002, after several hearings and appeals, the Court of Appeals unanimously held that Robert's Fourteenth Amendment due process rights had been violated. The ACLU of North Carolina, together with the Duke Children's Education Law Clinic, filed an amicus brief in the North Carolina Supreme Court on behalf of Roberts arguing that students have the right to have counsel present at school disciplinary hearings. On February 28, 2003, the North Carolina Supreme Court held that discretionary review was improvidently granted, thereby leaving the Court of Appeals ruling intact.

RHODE ISLAND

In re George G. (676 A.2d 764 (1996)): In 1995, George G. appeared before the Family Court for a pretrial hearing on outstanding criminal petitions for waywardness and a parental petition asserting disobedience. Because the Department of the Public Defender was already representing a codefendant, and because George G. was facing charges that might result in deprivation of liberty, the Family Court ordered the state Department for Children, Youth and Families to provide counsel. The Department petitioned the state Supreme Court. Along with other organizations, the ACLU of Rhode Island filed an amicus brief in favor of the Family Court order. The Supreme Court disagreed, ruling that the Family Court was responsible for paying private counsel.

In re Advisory Opinion to the Governor (666 A.2d 813 (1995)): In 1995, the ACLU of Rhode Island filed an amicus brief in state Supreme Court arguing that the Rhode Island Constitution requires appointment of counsel to indigent persons charged with misdemeanors but not facing jail sentences. The court ruled otherwise.

WASHINGTON

***In re Discipline of Judge Stephen Michels*:** In 2002, the ACLU of Washington submitted an amicus brief in a judicial discipline case where a public defender in a municipal court also served as a judge in the same court. As a result of his dual roles, he often presided over his own clients' cases, going as far as imposing sentences. In those situations, he made no arrangements for his clients to have substitute counsel, so they were forced to appear in court unrepresented. The ACLU of Washington's amicus brief pointed out that it would have been an intolerable deprivation of the right to counsel if the judge had summarily fired the public defender and forced defendants to represent themselves, which was the practical result of the judge's actions. The ACLU is currently awaiting the court's decision on the level of sanction that will be issued against the judge.

State v. Tinkham (871 P.2d 1127 (1994)): In 1994, the ACLU of Washington submitted an amicus brief on behalf of defendant John Tinkham, who was appealing a sentence in excess of the standard range. Prior to sentencing, the trial court had required Tinkham to undergo a psychological examination to aid in determining his future dangerousness. The court prohibited defense counsel from advising Tinkham that he had a Fifth Amendment privilege against self-incrimination at the exam. The ACLU-WA amicus brief pointed out that the trial court's order violated Tinkham's Sixth Amendment right to counsel. The state Court of Appeals agreed, vacating the sentence and remanding the case for resentencing.