

**OVERVIEW OF MATTERS**  
**THE JOHN J. GIBBONS FELLOWSHIP IN PUBLIC**  
**INTEREST & CONSTITUTIONAL LAW**  
**1990-2003**

**Affirmative Action**

*Board of Education of the Township of Piscataway v. Sharon Taxman*, Docket No. 96-679 (U.S. Supreme Court 1997). Working with the American Civil Liberties Union, the Fellowship filed an *amicus curiae* brief on behalf of the ACLU and several other public interest organizations arguing that non-remedial affirmative action plans are legal under Title VII. The Fellowship also assisted in the settlement of the case before it reached the Supreme Court.

*Association for Fairness in Business v. State of New Jersey*, 193 F.R.D. 228 (D.N.J. 2000). Working as co-counsel with the NAACP Legal Defense and Educational Fund, the Fellowship intervened on behalf of minority business owners in this federal district court action, in which the constitutionality of New Jersey's Minority Set-Aside program in the casino industry had been challenged. The matter was resolved by consent order specifying that the casino program was unconstitutional only on very limited grounds.

*L. Feriozzi Concrete Co., Inc. v. Casino Reinvestment Development Authority*, 342 N.J. Super. 237 (App. Div. 2001). Representing the NAACP Legal Defense and Educational Fund, the Fellowship appeared as *amicus curiae* in this appeal of a trial court's decision holding unconstitutional New Jersey's Minority Set-Aside program in state contracting. Although the Appellate Division affirmed the trial court's decision, the court was persuaded to limit its ruling to the issue of narrow tailoring, leaving open the State's ability to enact a new program benefiting those racial minorities as to whom there is a demonstrated history of discrimination.

**AIDS**

*D.B. v. Bloom*, 896 F.Supp. 166 (D.N.J. 1995). In this landmark case, the Fellowship represented an HIV-positive individual in a suit against a dentist who refused to treat him based solely upon his HIV status. The court held that the dentist's actions violated the Americans with Disabilities Act and the New Jersey Law Against Discrimination, and ordered the dentist to cease discriminating against HIV-positive persons; damages and attorney's fees were also awarded.

*S.P. v. Sullivan*, Docket No. 90 Civ. 6294 (S.D.N.Y.). In this class action challenging the Social Security Administration's criteria for providing disability payments to HIV-positive persons, the Fellowship represented the New Jersey Women and AIDS Network as *amicus curiae*.

*In re J.G.*, 151 N.J. 565 (1997). The Fellowship represented a criminal defendant in this unsuccessful constitutional challenge to a New Jersey statute requiring HIV testing of persons accused of sex offenses.

*DYFS v. Principe*, Docket No. FG-09-92 (Ch. Div.). In 1991, the Fellowship, along with Hudson County Legal Services, represented an HIV-positive mother in a case in which the New Jersey Division of Youth and Family Services was seeking to terminate her parental rights at least in part based upon her illness. The State eventually dismissed its petition and the mother was awarded full custody.

*ACLU-AIDS Project*. Beginning in 1992, the Fellowship represented the ACLU AIDS Project in the development of an appropriate surveillance definition of AIDS. Working with a broad coalition of groups, the Fellowship advocated for the adoption by the CDC of a broader, clinically-based definition of AIDS which would include the symptoms associated with women and drug users. The CDC ultimately adopted the definition, which has been implemented by the States in obtaining and disbursing funds.

*HIV Planning Council of Newark, East Orange and Irvington*. The Fellowship provided a letter of advice to the Planning Council, which was in the process of distributing approximately \$5 million worth of funds to AIDS service providers pursuant to the Ryan White AIDS Resource Emergency Act of 1990. In particular, the Fellowship advised the Council regarding how it could comply with the Act, which required AIDS service providers to participate in decisions regarding the disbursement of funds, without running afoul of state and federal conflict of interest provisions. The solution to the difficult issue posed by requiring the participation in funding decisions of potential recipients became a national model.

### **Campaign Finance Reform**

*Common Cause of New Jersey*. For nearly a decade, Fellowship attorneys have served on the Legal Task Force of New Jersey Common Cause and provided Common Cause with legal assistance. The Fellowship has drafted model ordinances forbidding the solicitation of campaign funds on or through the use of public property which have been passed by over 80 municipalities, and forbidding campaign contributions by businesses receiving public contracts. The Fellowship has also provided Common Cause with legal memoranda supporting the constitutionality of these provisions, and pledged to defend the ordinances against constitutional attack at no charge, thus providing an important boost to this important reform effort.

### **Capital Punishment**

*Williams v. Taylor*, 529 U.S. 362 (2000). In October 1999, Judge Gibbons argued this critical case in the United States Supreme Court on behalf of a Virginia death row inmate. The Court's decision defined the scope of federal courts' review of state court judgments under the federal *habeas corpus* statute, as amended by the Anti-Terrorism and Effective Death Penalty Act of 1996, and, set important precedent by granting a new penalty trial to Mr. Williams on the grounds that he had been deprived of the effective assistance of counsel.

*United States v. Hammer*, 226 F.3d 229 (3d Cir. 2000). In this important case of first impression, the Fellowship was appointed *amicus curiae* by the United States Court of Appeals for the Third Circuit to brief and argue the proposition that a federal capital defendant may not waive all appellate review of his death sentence. Although the Third Circuit rejected the Fellowship's arguments, Mr. Hammer subsequently changed his mind about waiving appellate review, and is currently seeking *habeas corpus* review of his sentence.

*United States v. Pretlow*, 779 F.Supp. 758 (D.N.J. 1991). The Fellowship represented the Association of Criminal Defense Lawyers of New Jersey in the first federal death penalty case brought in New Jersey, also one of the first in the nation. The Fellowship filed pretrial motions to dismiss the notice of aggravating factors and argued these motions in the United States District Court. The court denied the motions, but in doing so construed the statute in a manner favorable to future defendants.

*State v. DiFrisco*, 174 N.J. 195 (2002). For nearly a decade, the Fellowship has represented a New Jersey death row inmate, Anthony DiFrisco, in his efforts to overturn his capital conviction based upon the woefully ineffective assistance of counsel provided him by his inexperienced public defenders. His initial petition for post-conviction relief ("PCR") was denied, which denial was affirmed by a 4-3 vote of the New Jersey Supreme Court. Currently pending are a second PCR in state court, and a petition for a writ of habeas corpus in federal court.

*State v. Josephs*, 174 N.J. 44 (2002). Representing the Association of Criminal Defense Lawyers of New Jersey, the ACLU of New Jersey, and New Jerseyans for a Death Penalty Moratorium, the Fellowship assembled the considerable evidence of a shift in public opinion about the death penalty in the past two years, and urged the court to hold that the death penalty is no longer consistent with evolving standards of decency. The death penalty was reversed on appeal, and the dissenting opinions expressly adopted many of the Fellowship's arguments.

*In re Proportionality Review Project (II)*, 165 N.J. 206 (2000); *In re Proportionality Review Project (I)*, 161 N.J. 337 (1999). Representing the Association of Criminal Defense Lawyers of New Jersey, the Fellowship has repeatedly urged the New Jersey Supreme Court to engage in meaningful proportionality review to ensure that the death penalty is not administered in an unconstitutionally inconsistent and arbitrary manner.

*State v. Loftin*, 157 N.J. 353 (1999). Representing the Association of Criminal Defense Lawyers of New Jersey as *amicus*, the Fellowship persuaded the New Jersey Supreme Court that proportionality review is a matter of constitutional magnitude, and accordingly, that there are limits to the extent to which the Legislature can dictate that process.

*State v. Martini*, 144 N.J. 603 (1996). As co-counsel for the Association for Criminal Defense Lawyers of New Jersey, the Fellowship successfully persuaded the New Jersey Supreme Court to hold that a capital defendant cannot waive post-conviction relief.

*State v. Bey*, 137 N.J. 334 (1994). Representing the Association of Criminal Defense Lawyers of New Jersey and the New Jersey State Conference of NAACP branches as *amicus curiae* in the second proportionality review undertaken by the state Supreme Court, the Fellowship argued that the death penalty is disproportionately sought and imposed in New Jersey, based upon the race of the victim and defendant, and upon mentally ill defendants.

*State v. Marshall*, 130 N.J. 109 (1992). Representing the Association of Criminal Defense Lawyers of New Jersey as *amicus curiae*, the Fellowship filed briefs and argued in the first proportionality review undertaken following the affirmance of a death sentence in New Jersey. The Court adopted the Fellowship's arguments with respect to the universe of cases which should be utilized in determining whether a particular death sentence is disproportionate to the penalty imposed in similar cases - *i.e.*, it held that it would look to all "clearly death eligible homicides," including those in which the prosecutor elected not to seek the death penalty, and in doing so, interpreted New Jersey law in a manner far more protective of constitutional rights than is required by the United States Constitution.

*State v. Larry Wayne Whitehead*, Docket No. CC-95-200095 (27th Judicial District, Marshall County, Alabama). In the fall of 2001, the Fellowship undertook the representation of this Alabama death row prisoner whose attorney presented absolutely no mitigating evidence at the penalty phase of his capital trial. Because Alabama does not provide indigent prisoners with a post-conviction attorney, Mr. Whitehead was unrepresented and was about to miss the deadline for seeking any collateral review of his death sentence when the Fellowship stepped in.

### **Consumer Protection**

*Green v. Continental Rentals*, 292 N.J. Super. 241 (L. Div. 1994). Representing the Consumers League of New Jersey as *amicus curiae*, the Fellowship assisted in this challenge to the practice of rent-to-own for appliances, whereby unscrupulous dealers disguise retail installment sales as week-to-week rentals, charging usurious interest rates, and repossessing property long after the consumer has paid well beyond the fair market value of the appliance. In a significant victory, motions for partial summary judgment as against the rent-to-own merchant were granted, and the case subsequently settled.

### **Criminal Law and Procedure**

*Illinois v. Lidster*, No. 02-1060. This past summer, the Fellowship filed a brief in this United States Supreme Court case, arguing on behalf of *amici curiae* the National Association of Criminal Defense Lawyers and the American Civil Liberties Union that the suspicionless stop of motorists in order to gather evidence of a past crime violates the Fourth Amendment.

*United States v. Arvizu*, 534 U.S. 266 (2002). The Fellowship filed an *amicus curiae* brief on behalf of the National Association of Criminal Defense Lawyers, arguing that the Court of Appeals had appropriately determined that the facts in this case did not provide the police with reasonable suspicion to stop a motor vehicle under the Fourth Amendment to the United States Constitution.

*Roe v. Flores-Ortega*, 508 U.S. 470 (2000). The Fellowship filed an *amicus curiae* brief on behalf of the National Association of Criminal Defense Lawyers in this case establishing the duty on the part of criminal defense counsel to consult with a defendant regarding his right to appeal.

*Peguero v. United States*, 526 U.S. 23 (1999). The Fellowship filed an *amicus curiae* brief on behalf of the National Association of Criminal Defense Lawyers, arguing that the failure of the district court to advise a defendant of his right to appeal, in violation of Federal Rule of Criminal Procedure 32(a)(2), was *per se* error, resulting in the automatic reinstatement of a defendant's right to appeal.

*Vasquez v. Stack*, 228 F.3d 143 (2d Cir. 2000); *Ramirez v. Senkowski*, 189 F.3d 462 (2d Cir. 1999) and *Matteo v. Superintendent, SCI Albion*, 171 F.3d 877 (3d Cir.1999). In each of these cases the Fellowship filed an *amicus curiae* brief on behalf of a group of former Article III judges, arguing that the interpretations of the federal *habeas* statute, 28 U.S.C. § 2254(d)(1), rendered by a number of the Courts of Appeals were unconstitutional on separation of powers grounds.

*United States v. Torres*, 926 F.2d 321 (3d Cir. 1991). Representing the Association of Criminal Defense Lawyers of New Jersey as *amicus curiae*, the Fellowship argued that illegally seized evidence should be suppressed for the purpose of calculating a sentence under the Federal Sentencing Guidelines.

*State v. Frankel*, Docket No. 54,261. This matter, pending before the New Jersey Supreme Court, presents significant issues regarding the propriety of warrantless searches of homes and the scope of the so-called emergency aid exception to the warrant requirement. The Fellowship represents the Association of Criminal Defense Lawyers of New Jersey as *amicus curiae*.

*State v. A.G.D.*, Docket No. 53,191. This pending appeal in the New Jersey Supreme Court, in which the Fellowship represents *amicus curiae* the Association of Criminal Defense Lawyers of New Jersey, presents the significant question of whether the right to counsel attaches at the point at which a criminal complaint is filed against the defendants or whether a criminal defendant does not have the right to counsel until his initial appearance. The matter is to be argued in September, 2003.

*State v. Goodwin*, 173 N.J. 483 (2002). The Fellowship filed a brief on behalf of the Association of Criminal Defense Lawyers of New Jersey addressing the standards to be applied in determining whether counsel has provided constitutionally adequate representation to a defendant in connection with a petition for post-conviction relief, and the effect of such inadequate performance on arguments of procedural default.

*State v. Carty*, 170 N.J. 632 (2002). The Fellowship filed an *amicus curiae* brief on behalf of the ACLU of New Jersey in this significant case, holding that officers should not be permitted to seek consent to search a vehicle without reasonable suspicion that they will discover evidence of a crime.

*State v. Hernandez*, 170 N.J. 106 (2001). Representing the Association of Criminal Defense Lawyers of New Jersey, the Fellowship argued against the admissibility of other crimes evidence presented through a co-defendant's uncorroborated testimony.

*State v. Williams*, 169 N.J. 349 (2001). The Fellowship represented *amicus curiae* the Association of Criminal Defense Lawyers of New Jersey in this case redefining the statement against penal interest exception to hearsay under New Jersey's Rules of Evidence. The Court accepted the Fellowship's argument that the statement at issue, which was excluded from the defendant's trial, fell within the exception and ordered a new trial.

*State v. Afanador*, 151 N.J. 41 (1997). The Fellowship persuaded the New Jersey Supreme Court to find that its holding in *State v. Alexander*, 136 N.J. 563 (1994), requiring jury instructions that limit the scope of the New Jersey drug kingpin statute, must be applied retroactively. This was the culmination of the Fellowship's long-standing participation in the effort to assure a sensible interpretation of this statute, given its draconian penalties. See *State v. Afanador*, 134 N.J. 162 (1993).

*State v. Muhammad*, 145 N.J. 23 (1996). As co-counsel for the Association of Criminal Defense Lawyers, the Fellowship failed to persuade the court to preclude introduction of victim impact evidence at the sentencing phase of capital trials, but succeeded in limiting the nature of such proof and circumscribing the manner in which it may be admitted.

*State v. One 1990 Ford Thunderbird, et al*, Docket No. A-003879-02T1 (App. Div.). Working with the Atlantic Legal Foundation, and representing *amici curiae* the National Association of Criminal Defense Lawyers and the Association of Criminal Defense Lawyers of New Jersey, the Fellowship is challenging the constitutionality of a New Jersey statute providing that prosecutors offices reap the financial benefits of criminal forfeitures. The matter, which is pending, is one of first impression and has garnered national attention.

*Merola v. Department of Corrections*, 285 N.J.Super. 501 (App. Div. 1995). The Fellowship challenged the New Jersey Department of Corrections policy refusing to provide for commutation or work credits for inmates serving mandatory minimum sentences.

*Matter of Mandell*, 250 N.J. Super. 125 (App. Div. 1991). Representing the Association of Criminal Defense Lawyers of New Jersey as *amicus curiae*, the Fellowship successfully argued that a public defender ought not to have been held in contempt of court for refusing to obey an order requiring her to disclose pretrial whether her client would testify.

*State v. Cevallos*, Ind. No. 323-02-96 (L. Div.). The Fellowship argued on behalf of the Government of Ecuador, advancing the issue for the first time in New Jersey, that the State had violated the Vienna Convention on Consular Relations because the defendant had not been advised, at the time of his arrest, of his right to consult with his consular officer. As a result of this case, all arrestees in Hudson County are now advised of their “Cevallos rights.”

### **Domestic Violence**

*Sacharow v. Sacharow*, 177 N.J. 62 (2003). Representing a victim of domestic violence who sought the protections of New Jersey’s Address Confidentiality Program, the Fellowship successfully defeated a constitutional challenge to the important program and obtained a reversal of a trial court order requiring disclosure of her address to her ex-husband, notwithstanding that the victim did not have a domestic violence restraining order entered in her case.

*H.E.S. v. J.C.S.*, 175 N.J. 309 (2003). Representing *amicus curiae* the New Jersey Coalition for Battered Women, the Fellowship won a significant victory in a case holding that surreptitiously videotaping amounts to harassment and stalking under the Domestic Violence Act.

*State v. Reyes*, 172 N.J. 154 (2002). Representing *amicus curiae* the New Jersey Coalition for Battered Women in a very significant domestic violence case in which the victim was abused in New York and then sought shelter and safety at a relative’s home in New Jersey, the Fellowship successfully contended that New Jersey’s Domestic Violence Act empowers New Jersey courts to issue restraining orders protecting domestic violence victims seeking shelter within the state, regardless of where the violence occurred.

*Wildoner v. Borough of Ramsey*, 162 N.J. 375 (2000). The Fellowship successfully argued, on behalf of *amicus curiae* the New Jersey Coalition for Battered Women, in this case explicating the unique definition of probable cause to arrest in the domestic violence context. The Court accepted the Fellowship’s argument that because victims of domestic violence often do not report such incidents, probable cause to arrest for an incident of domestic violence may be based upon reliable third-party information, specifically the accounts of a neighbor.

*Cesare v. Cesare*, 154 N.J. 394 (1998). Representing a victim of domestic violence, the Fellowship persuaded the Court to hold, in this landmark case, that a past history of abuse must be considered by trial courts in determining whether a particular act or threat constituted domestic violence.

*State v. Gartland*, 149 N.J. 456 (1997). The Fellowship represented the New Jersey Coalition for Battered Women in this case addressing the appropriate jury instructions in homicide cases involving evidence of battered women’s syndrome.

*Harris v. Inghram*, Docket Nos. A-001084-00T1 and A-001127-00T1 (App. Div. 2002) (unreported). In this appeal the Fellowship represented a victim of domestic violence whose complaint for a restraining order was dismissed based on her prior recantation of credible allegations of abuse.

*State v. Hines*, 303 N.J. Super. 311 (App. Div. 1997). The Fellowship argued successfully on behalf of *amicus curiae* the New Jersey Coalition for Battered Women, in favor of the reversal of the criminal conviction of a battered woman who had been precluded from presenting evidence of post-traumatic stress disorder.

*State v. Guess*, Docket No. A-2837-94T2 (App. Div. 1997). The Fellowship represented the New Jersey Coalition for Battered Women at the sentencing of a victim of domestic violence who had been convicted of manslaughter in the killing of her husband, arguing that the sentence ought to take into account her history of being battered. Thereafter, the Fellowship represented Ms. Guess on appeal and although her conviction was affirmed, her sentence was reversed and reduced.

*Nicholson v. Williams*, No. 02-7079 (2d Circuit). Representing *amicus curiae* the ACLU Women's Rights Project, the Fellowship challenged New York City's policy of removing children from the homes of domestic violence victims, advancing a novel argument based upon the Nineteenth Amendment to the Constitution. The matter has been argued and remains pending in the Second Circuit Court of Appeals.

## **Education**

*M.A. v. Newark Public Schools*, Docket No. 01 Civ. 3389 (D.N.J.). Along with the Education Law Center, the Fellowship is counsel in a class action which asserts that the Newark Public Schools and the State have not timely identified, evaluated, and provided Newark children with critical special education services. While settlement discussions are ongoing, the defendants' motions to dismiss were denied by the United States District Court, and important questions regarding the State's immunity from suit on such issues have been argued and are currently pending decision in the United States Court of Appeals for the Third Circuit.

In re Grant of Charter School Application of Englewood on Palisades Charter School, 164 N.J. 314 (2000); In re Charter School Application of Greater Charter School, Middlesex County, 164 N.J. 316 (2000). Working as co-counsel for the so-called *Abbott* plaintiffs - school children from poor urban districts - the Fellowship argued that the *Abbott v. Burke* line of cases, which established the requirement under the State Constitution of equal funding for poor and rich school districts, should extend to charter school students.

*Abbott by Abbott v. Burke*, 153 N.J. 480 (1998), and *Abbott by Abbott v. Burke*, 136 N.J. 444 (1994). The Fellowship has long served as co-counsel with the Education Law Center, or represented *amici curiae*, in this ground-breaking litigation seeking school finance reform, a struggle which has resulted in the provision of an unprecedented array of educational rights for children in poor urban districts, including for example, the rights of poor students to full-day kindergarten and half-day pre-school, and the funding of supplemental programs and improvement of facilities.

*P.H. v. Board of Education of Bergenfield*, Docket No. A-006566 (App. Div.). Representing *amici curiae* the Association for Children of New Jersey, the Statewide Parent Advocacy Network of New Jersey and New Jersey Parents' Caucus, the Fellowship argues, in this pending appeal from a decision of the State Board of Education, that the Education Clause of the New Jersey Constitution requires that even expelled children receive alternative educational services.

*In re Renewal Application of the Red Bank Charter School*, Docket No. A-005811 (App. Div.). Representing *amicus curiae* the American Civil Liberties Union of New Jersey, the Fellowship argues, in this pending appeal, that in certifying charter schools, the Commissioner of Education is required by law to consider their segregative effect.

*Bacon v. New Jersey State Department of Education*, Docket No. 4-03 (N.J. Bd. of Ed.). Representing the Education Law Center as *amicus curiae*, the Fellowship argues in this appeal to the State Board of Education, that certain non-urban districts should, based upon their intense solid-economic disadvantage and substantive educational failures, be deemed *Abbott* districts for purposes of state funding. The matter is pending.

## **Environment**

*South Camden Citizens in Action v. New Jersey Dep't of Environmental Protection*, 274 F.3d 771 (3d Cir. 2001). In this environmental racism case plaintiffs, brought a Title VI claim pursuant to 42 U.S.C. § 1983 in the wake of a United States Supreme Court decision holding that Title VI itself provides no private right of action. The Fellowship authored an *amicus curiae* brief on behalf of the ACLUs of New Jersey and Pennsylvania discussing the historical importance of § 1983 in protecting against race-based discrimination.

*South Camden Citizens in Action v. Camden County Municipal Utilities Auth.*, No. A-0056646-99T2 (App. Div. 2001). The Fellowship represented a community group in their attempt to recover attorneys' fees for their suit to reduce odor pollution.

*In re Petition for Substantive Certification of the Housing Element and Fair Share Plan of the Township of Hillsborough*, Somerset County, No. A-5349, 95T1 (App. Div.). Acting as co-counsel with the Rutgers Environmental Law Clinic, the Fellowship argued that implementation of the State Development and Redevelopment Plan required the preservation of open space in Hillsborough Township, New Jersey and succeeded in having the dispute remanded to the Council on Affordable Housing for re-evaluation.

*New Jersey Conservation Foundation.* In 1993, the New Jersey Conservation Foundation asked the Fellowship to provide it with an analysis of how the public trust doctrine could be used to argue for greater procedural formality and more meaningful substantive standards, to govern the sale, lease, or other alienation of state land. The Fellowship provided a lengthy letter setting forth this analysis, which the NJCF used to lobby for legislation, which was enacted. The Fellowship then converted its work into a petition for rulemaking, in an effort to extend the safeguard of the legislation to state agencies beyond the Department of Environmental Protection.

## **Family Law**

*Baby Sparrow v. Waldman*, Docket No. 96 Civ. 4118 (D.N.J.). In March 2001, the Fellowship settled this class action, filed in 1996, which has gone a long way toward alleviating the so-called “boarder baby” problem, whereby newborn children were warehoused in hospitals even after there was no medical reason for them not to be provided with foster care. As a result of the Fellowship’s efforts, the length of “boarder baby” stays in hospitals has been dramatically reduced and further progress is anticipated in years to come, pursuant to the State’s agreement to implement a coherent “boarder baby plan” and appoint a “boarder baby czar.”

*In re Guardianship of K.H.O.*, 161 N.J. 337 (1999). The Fellowship successfully argued that drug use during pregnancy should not automatically result in the termination of a mother’s parental rights, given the lack of available facilities to assist pregnant women suffering from substance abuse.

*Gubernat v. Deremer*, 140 N.J. 120 (1995). On behalf of the ACLU of New Jersey, the Fellowship appealed a decision changing a child’s name to that of his father, even though the father had originally denied paternity. The Fellowship successfully challenged the trial court’s findings which amounted to an irrebuttable presumption that children be given their father’s last names. Tragically, just two days after the Court issued its landmark decision, the father killed himself and the child.

*In re Guardianship of J.C.*, 129 N.J. 1 (1992). In this case involving the termination of the parental rights of a mother, based upon her children having bonded with their foster parents during the time that the mother was receiving treatment for drug addiction, the Fellowship argued on behalf of a coalition of individuals and organizations that provide service to drug-addicted and alcoholic women that it would be unconstitutional to require a mother to choose between treatment and giving up her children. The court agreed, and reversed the termination of parental rights.

*In re N.K.*, Docket No. FN-07-293 (Ch. Div.). In 2000, the Fellowship represented a woman whose infant the New Jersey Division of Youth and Family Services sought to take into custody on account of the woman’s methadone use during pregnancy. The Fellowship succeeded in placing the mother in a substance abuse treatment facility in which she could taper off her methadone use without losing her child to foster care; three months later, the State dismissed its action.

*Court Appointed Special Advocates (“CASA”).* CASA, a private, non-profit organization which lends assistance to the Court in evaluating and monitoring cases involving the abuse or neglect of children, asked the Fellowship to assist it in determining whether and how its reports could be admitted into evidence, and thus officially affect the course of proceedings. The Fellowship composed a lengthy letter, advising CASA as to the advantages and disadvantages of pursuing this course, and of how its procedures could be improved to accomplish this goal.

### **First Amendment**

*North Jersey Media Group, Inc. v. Ashcroft*, 205 F.Supp. 2d 288 (D.N.J.), *rev’d*, 308 F.3d 198 (3d Cir. 2002). Representing a consortium of newspapers, the Fellowship -- working with the American Civil Liberties Union -- initially succeeded in obtaining a nationwide injunction against a Bush Administration policy closing deportation proceedings to the public for 9/11 detainees; the Court of Appeals, however, reversed on appeal, and the Supreme Court denied certiorari, notwithstanding a split in the Circuits, when the Administration promised to reconsider the policy.

*Legal Services Corporation v. Velazquez*, 531 U.S. 533 (2001). In this landmark First Amendment case concerning the constitutionality of restrictions on the types of arguments that can be made by lawyers who receive funds from the Legal Services Corporation, the Fellowship filed an *amicus curiae* brief on behalf of coalition of 39 bar associations, legal services organizations, law school ethics centers, and welfare rights organizations. The brief provided critical empirical data demonstrating that if lawyers who receive federal funds cannot provide unrestricted representation, there will be virtually no representation in many parts of the country.

*Southern Christian Leadership Conference v. Supreme Court of Louisiana*, 252 F.3d 781 (5th Cir. 2001). The Fellowship filed an *amicus curiae* brief on behalf of the ACLU of Louisiana in this case, which challenged the constitutionality of Louisiana Supreme Court rules prohibiting clinical law students from appearing in cases in which the clinics initiated contact with their clients.

*Dunn v. New Jersey State Interscholastic Athletic Association*, Docket No. C-91-0013 (Ch. Div., Mercer County). In 1991 the Fellowship represented a class of St. Benedict’s Preparatory School soccer players, who sued the New Jersey State Interscholastic Athletic Association (NJSIAA) after the NJSIAA imposed sanctions upon the St. Benedict’s state champion soccer team based upon student recruiting. The complaint, alleging violations of Due Process and Freedom of Speech under the State and Federal Constitutions, was consolidated with the St. Benedict’s appeal from the NJSIAA order and ultimately resulted in a reversal of the NJSIAA sanction by the Superior Court.

*Crawford v. Borough of Prospect Park*, (Sup. Ct. Passaic County). In 1991, on behalf of the ACLU of New Jersey, the Fellowship challenged Prospect Park’s blue laws, which prohibited a wide range of activities, including the playing of games, on Sundays. As a result of the litigation, the Borough amended its ordinance.

## **Gay and Lesbian Rights**

*Lewis v. Harris*, Docket No. L-00-4233-02 (L.Div.). Acting as co-counsel with Lambda Legal Defense & Education Fund, the Fellowship is challenging New Jersey's prohibition against same sex marriage in this pending landmark case.

## **Housing**

*Paterson Coalition for Housing*, Docket No. 90 Civ. 4683 (D.N.J.), on appeal, Docket Nos. 91-5557 (3d Cir.), and 92 Civ. 7 (D.N.J.). In 1991, the Fellowship, along with the Passaic County Legal Aid Society, represented a non-profit corporation which was seeking to build transitional housing for the homeless in Clifton, New Jersey. The City of Clifton filed several actions challenging the federal government's lease of a former military facility for this use. The Fellowship successfully defended against these actions in the district court and on appeal, and the project was constructed.

*In re Adoption of the 2002 Low Income Housing Tax Credit Qualified Allocation Plan, N.J.A.C. 5:80-33.1, et seq.* (App. Div.). Representing *amici curiae* the New Jersey Institute for Social Justice, Coalition for Affordable Housing and the Environment, Housing and Community Development Network and New Jersey Public Policy Research Institute, the Fellowship is participating in this pending challenge to the allocation of low income tax credits in New Jersey, arguing that such allocation must be consistent with the Federal Fair Housing Act's pro-integration and neighborhood revitalization mandates and with New Jersey's *Mt. Laurel* doctrine, mandating the creation of affordable housing.

*In re Zion Towers*, 344 N.J. Super. 530 (App. Div. 2001). In this important appeal, the Fellowship challenged inadequately supported and unlawful rent increases in publicly-subsidized housing in Newark. This appeal marked the culmination of years of collaboration between the Fellowship and the Newark-HUD Tenants Coalition, which represents tenants in public housing, in their effort to make the New Jersey Housing and Mortgage Finance Agency more accountable to tenants.

*Associates Home Equity Services v. Troup*, 343 N.J. Super. 254 (App. Div. 2001). In this landmark case, the Fellowship represented *amicus curiae* the New Jersey Institute for Social Justice, obtaining a ruling which vindicated the right of victims to raise claims of predatory lending in the course of foreclosure proceedings.

*Pueblo City Housing v. Swint*, No. AM-000182-98T1 (App. Div.). In this case, the Fellowship represented tenants facing eviction from public housing on account of criminal charges, and argued that tenancy actions should be stayed pending the resolution of the criminal cases, so as not to compromise tenants' Fifth Amendment and other constitutional rights.

*County of Morris v. Riverview Condominiums, Inc.*, 304 N.J. Super. 322 (App. Div. 1997). On behalf of minority citizens, the Fellowship unsuccessfully challenged construction of a new county jail on a site previously designated for affordable housing under a *Mt. Laurel* consent order.

*Veniero v. Township of Pequannock*, Docket No. MRS-L-003942-02 (L.Div.). The Fellowship challenged a town's unilateral decision to ignore a valid *Mt. Laurel* consent decree, particularly with respect to issues regarding whether certain improvements could be included in calculating re-sale price, an important incentive to maintaining adequate affordable housing.

*Housing and Neighborhood Development Services, Inc. v. City of Orange Township et al.*, Docket No. L-10646-91 (L. Div.). In 1991 the Fellowship commenced an action against the City of Orange alleging that the City's breach of an agreement of sale with HANDS prevented the client from constructing a number of low and moderate-income housing units. The case was ultimately settled and the City cooperated with HANDS in acquiring financing for the housing project.

*Sisters of Charity Employees*. Early in its existence the Fellowship undertook the representation of a number of employees of the Sisters of Charity, located in Florham Park. These employees, who came from Newark or Irvington, were being denied the opportunity to apply for housing in Mount Laurel housing, located in Florham Park, based on the developer's having reserved much of that housing for local residents. Arguing that this limitation violated *Southern Burlington County NAACP v. Township of Mount Laurel*, 67 N.J. 151 (1975), and 92 N.J. 158 (1983), the Fellowship entered into an agreement with the developer which had the effect of providing the Sisters of Charity employees with the opportunity to apply for and obtain apartments in this housing complex.

### **Immigration and Human Rights**

*Castillo v. Reno*, 178 F.3d 1278 (3d Cir. 1999). The Fellowship represented a Honduran woman, whom the INS sought to summarily deport, pursuant to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, notwithstanding her pending application for adjustment of status to lawful permanent resident based upon her marriage to a U.S. citizen. After the Third Circuit reversed the trial court's dismissal of her *habeas corpus* petition, the Fellowship persuaded the district court that the INS could not deport her before adjudicating her adjustment application and she was released from custody. In April 2001, with the ongoing assistance of the Fellowship, the client was granted lawful permanent residency.

*Kitembo v. Ashcroft*, No. 03-3108 (3d. Cir.). This compelling asylum case, based upon allegations of rape and torture in Uganda, is on appeal to the United States Court of Appeals for the Third Circuit, based upon such fundamental issues as the asylum applicant's right to be present for testimony at her hearing. Deportation has been stayed and our client has recently been released on parole after 16 months in custody.

*In re M.I.* The Fellowship, in association with a private attorney and the ACLU Immigrants' Rights Project, wrote a *habeas corpus* petition on behalf of a man, who although born in the Middle East had lived and worked in the United States for more than two decades. As part of the FBI and INS sweeps following the September 11 attacks, he was arrested and detained for over two weeks without being charged with a crime or immigration violation. Although the petition ultimately was not filed, because the individual was released, it was used as a blueprint for other attorneys with clients being detained post-September 11. Similarly, in *In re J.E.*, during the fall of 2001 the Fellowship agreed to represent a native of the Middle East who was questioned and then arrested by the Immigration and Nationalization Service in the weeks following the September 11 attacks, ultimately obtaining his release.

*In re R. E.*, Docket No. 96 Civ. 2541 (D.N.J). The Fellowship represented an Iranian national who had been in INS custody for over three years following completion of a five-year prison term for a federal drug conviction. For two years the Fellowship succeeded in staying his deportation pending the implementation of regulations under the United Nations Convention Against Torture. Once the regulations were in place, the Fellowship succeeded in a claim brought under them, preventing R.E.'s deportation to Iran, and securing his release from INS custody.

*In re Haddam*, A-22-751-813 (BIA). The Fellowship filed an *amicus curiae* brief before the Board of Immigration Appeals challenging the use of *ex parte*, *in camera* evidence in deportation, naturalization, and work authorization proceedings.

*Lawyers Committee for Human Rights.* Through Judge Gibbons, the Fellowship participated in an investigation by the Lawyers Committee for Human Rights beginning in 1992 and for several years thereafter, into the murder of Patrick Finucane, a defense lawyer in Belfast, Northern Ireland who frequently represented persons suspected of being affiliated with the Irish Republican Army. As it proceeded, the investigation extended to broader questions regarding the treatment to which members of the bar who represented suspected IRA sympathizers were subjected. The findings of the delegation were publicly presented in the United States and abroad on several occasions, and were embodied in a report to the United Nations Commission on Human Rights. The Fellowship has also represented numerous individuals, referred by the Lawyers Committee for Human Rights, in their asylum petitions and follow-up immigration matters, including, for example, a journalist from Cameroon who had been sentenced to death and tortured for anti-government remarks; a Zairean political dissident; and an individual from the minority Oromo ethnic group in Ethiopia.

*Haitian Refugees.* Working with the Center for Constitutional Rights and the Yale Law School clinical program, as well as the AIDS Resource Foundation for Children, the Fellowship undertook the representation of three pregnant, HIV-positive Haitian women who had been permitted to leave the Guantanamo Bay Naval Station in order to give birth in the United States. In each case, the Fellowship prepared the initial papers to secure asylum for these women, and thus to begin the process whereby they would be able to resist deportation, and remain legally on American soil, rather than being returned to Haiti, where they would likely be subject to repression and would certainly not obtain the medical care necessary for their survival.

*Domestic Slavery Cases* - The Fellowship has brought, frequently as co-counsel with the New York University School of Law clinical programs, a series of federal and state cases challenging the treatment of immigrant workers, who have been denied appropriate wages under the federal Fair Labor Standards Act, or otherwise mistreated or even enslaved. Several have settled (*e.g.*, *Wakodikars v. Dias*, Civil Action No. 01-3919 (D.N.J.)); others remain pending (*e.g.*, *Santender v. Rebimbas*, Civil Action No. 03-660 (D.N.J. and *Montoya v. Burns*, Docket No. 7752-02 (L.Div.)).

### **Megan's Law**

*Smith v. Doe*, \_\_\_\_\_ U.S. \_\_\_\_\_, 123 S.Ct. 1140 (2003). The Fellowship represented *amicus curiae* the American Civil Liberties Union and the Association of Criminal Defense Lawyers of New Jersey in the Supreme Court challenge to the constitutionality, on *Ex Post Facto* grounds, of Alaska's version of Megan's Law. The court, in a sharply divided opinion, rejected the challenge. This followed our earlier challenges to these statutes in both state and federal courts, in which, although retroactive application of Megan's Law on *Ex Post Facto* and Double Jeopardy grounds, the Fellowship prevailed in arguments that the statute violated Due Process, and that the state must bear that the burden of proof, by clear and convincing evidence, of demonstrating a particular sex offender's future dangerousness. *E.B. v. Verniero*, 119 F.3d 1077 (3d Cir. 1997); *Artway v. Attorney General*, 83 F.3d 594 (3d Cir. 1996); *Doe v. Poritz*, 142 N.J. 1 (1994). Finally, in *A. A. et al. v. State of New Jersey*, \_\_\_\_\_ F.3d \_\_\_\_\_, 2003 WL 21957986 (3d Cir. August 18, 2003), the Court of Appeals reversed our victory in the district court, 176 F.Supp. 2d 274 (D.N.J. 2001), invalidating New Jersey's Megan's Law on privacy grounds to the extent that it allowed for the internet posting of offenders' addresses. In this challenge, as in others, the Fellowship acted as co-counsel with the ACLU of New Jersey and the Office of the Public Defender.

*Alves v. Ferguson*, Civil Action No. 01-789 (D.N.J.). Focusing on those provisions of Megan's Law that allows criminal sentences effectively to be extended indefinitely through civil commitment, the Fellowship has joined the Seton Hall Center for Social Justice in a pair of cases challenging the lack of treatment actually provided to civilly committed inmates, contending that, in effect, they are being retroactively and unconstitutionally punished by their continued confinement.

*In re M.F.*, 169 N.J. 45 (2001). In this case the Fellowship filed an *amicus curiae* brief on behalf of the ACLU of New Jersey, persuading the Court not to rely on a recently enacted state constitutional amendment authorizing disclosure of sex offenders' personal information over the Internet, in light of the untested constitutionality of the amendment.

### **Prisoners' Rights**

*Waterman v. Farmer*, 12 F.Supp.2d 364, *on reconsideration* 12 F.Supp. 2d 378 (D.N.J. 1998), *rev'd* 183 F.3d 208 (3d Cir. 1999). In this case the Fellowship represented inmates challenging, on vagueness grounds, a statute limiting inmates' receipt of "sexually oriented materials." Although the District Court's decision invalidating the statute was reversed by the Third Circuit, this was, at least in part because as a consequence of the suit, the State issued regulations, narrowing and clarifying the statute, to comport with the Constitution.

*Rouse v. Plantier*, 997 F.Supp. 575 (D.N.J. 1998), *rev'd* 182 F.3d 192 (3d Cir. 1999). After protracted litigation and negotiation, the Fellowship settled this class action on behalf of diabetic inmates seeking appropriate medical care. The consent order provided for necessary care as well as damages for class members.

*Jones v. Lilly*, 37 F.3d 964 (3d Cir. 1994). The Fellowship unsuccessfully argued that the district court properly exercised its authority to issue a writ of habeas corpus to a prison paralegal in order for him to assist another inmate in a civil case against prison officials.

*Lovett v. Fauver*, Docket No. 92 Civ. 2617 (D.N.J.), on appeal, Docket No. 93-5045 (3d Cir.). The Fellowship challenged the Department of Correction's policy of suspending or terminating visitation privileges without notice and an opportunity to be heard.

*Liles v. Camden County Dept of Corrections*, 225 F.Supp. 2d 450 (D.N.J. 2002). The Fellowship, acting for two former inmates challenging the constitutionality of the horrific conditions of confinement at the Camden County Jail, settled after successfully beating back a summary judgment motion.

*Allah v. Brown*, Civil Action No. 02-5298. In this pending matter, the Fellowship is challenging the New Jersey Department of Corrections policy of opening inmates' legal mail, outside of their presence. It is pending.

*Pack v. Beyer*, 1995 WL 775360 (D.N.J. 1995), 157 F.R.D. 219 (D.N.J. 1993). For over a decade, the Fellowship has represented a class of New Jersey inmates, who were wrongly placed in solitary confinement, in a federal district court action. Pursuant to a consent order, the Fellowship then represented each inmate before a Special Master who determined their damages awards.

*Roe v. Fauver*, Docket No. 88 Civ. 1225 (D.N.J.). Since 1991, the Fellowship has represented a class of HIV-Positive inmates who challenged their treatment in New Jersey prisons. The case was settled by virtue of a Consent Decree, approved by the federal district court in 1992. The broad-ranging decree prohibits the Department of Corrections from segregating HIV-positive inmates and provides, among other things, for the testing, treatment, and counseling of these inmates, as well as for such matters as confidentiality. Since 1992, the Fellowship has been actively monitoring the State's compliance with the decree.

*McNeill v. Morton*, Docket No. 96 Civ. 2888 (D.N.J.). At the request of a federal district court, the Fellowship undertook the representation and obtained the release of a prisoner suffering from a terminal liver condition.

*Denike v. Fauver*, 3 F.Supp.2d 540 (D.N.J. 1998). The Fellowship initially succeeded in a constitutional challenge, on separation of powers grounds, to the provision of the Prison Litigation Reform Act which provides for the automatic termination of federal court consent decrees. The district court's decision was vacated by the Third Circuit, however, in light of its decision in another case.

*Prisoner's Legal Association v. Roberson*, 1997 WL 998592 (D.N.J. 1997), *rev'd*, 159 F3d 1352 (3d Cir. 1998). In this case the Fellowship challenged a course of retaliation against prison paralegals at East Jersey State Prison.

*Fisher v. New Jersey State Parole Board*, 303 N.J. Super. 229 (App. Div. 1997), *aff'd*, 154 N.J. 85 (N.J. 1998). The Fellowship persuaded the Court to hold that a newly enacted provision, requiring indigent inmates to pay partial filing when bringing civil cases, did not apply to appeals from the denial of parole or to the imposition of disciplinary sanctions.

*Hairston v. Fauver*, Docket No. 90 Civ. 1850 (D.N.J.) Acting in concert with the Seton Hall Clinical program, the Fellowship represented a class of inmates at Northern State Prison in Newark who alleged that the conditions of their confinement violated the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution. The case was settled by a detailed consent decree providing for significant reforms in the way in which health care is provided to inmates.

*Lapan v. McGhee*, Docket No. 92 Civ. 2031 (D.N.J.). In 1992 the Fellowship brought this case against a county jail on behalf of an inmate who was denied the use of his prosthetic arm while in custody, asserting claims under the Fourteenth Amendment and the Americans with Disabilities Act. The case was settled with damages being paid to the plaintiff.

## **Racial Justice**

*McNeil v. Legislative Apportionment Commission of New Jersey*, \_\_\_ N.J. \_\_\_, 828 A.2d 840 (July 31, 2003). Representing *amicus curiae* the New Jersey State Conference of NAACP Branches, the Fellowship successfully participated in the New Jersey Supreme Court litigation which overturned a legislative apportionment plan, on federal voting rights grounds, that had the effect of limiting each of Jersey City and Newark to two legislative districts, thus effectively reducing the number of minority districts by “packing” minority voters.

*Morka v. New Jersey State Police*, Docket No. MID-L-8429-97 (L.Div.). The Fellowship, acting as co-counsel in this putative class action challenging the practice of racial profiling on the New Jersey Turnpike, participated in this high profile and controversial matter, which was settled, with damages paid to the plaintiffs.

*NAACP v. New Jersey State Police*, Docket No. MER-L-002687-96 (L. Div.). The Fellowship served as co-counsel in this class action challenging discrimination in the recruiting and hiring of minority State Troopers.

*State v. Soto*, Docket No. A-5334-95T3 (App. Div.). In this case in which several African-American defendants moved to suppress evidence from traffic stops resulting from discriminatory enforcement of the traffic laws, the Fellowship filed a brief on behalf of the ACLU of New Jersey, the New Jersey State Conference of NAACP Branches and the Association of Criminal Defense Lawyers of New Jersey, precipitating the State’s withdrawal of its appeal and admission that racial profiling was a reality.

## **Reproductive Rights**

*Planned Parenthood v. American Coalition of Life Activists*, 290 F.3d 1058 (9<sup>th</sup> Cir. 2002). In this critical case for the interpretation of the Freedom of Access to Clinic Entrances Act, the Fellowship filed an *amicus curiae* brief on behalf of 59 members of the United States Congress, urging rehearing *en banc* in a Ninth Circuit case concerning threats against reproductive health care workers by anti-abortion extremists. The Ninth Circuit granted rehearing, and upheld the applicability of the Act to the internet listing of abortion providers at issue.

*State v. Ashley*, 1997 WL 674215 (Fla. Sup. Ct. Oct. 30, 1997). The Fellowship represented a coalition of public interest organizations in this case successfully challenging the conviction of a pregnant woman for manslaughter based upon a suicide attempt resulting in the death of her fetus.

*State v. Barker*, Ind. No. 96-02-605. After a trial court held that a woman could not be prosecuted for manslaughter or endangering the welfare of a child based upon her intravenous drug use, and the State appealed, the Fellowship represented the ACLU of New Jersey and the Association of Criminal Defense Lawyers of New Jersey as *amicus curiae*. The State then dismissed its appeal, preserving this important victory.

## **Welfare Reform**

*Saenz v. Roe*, 526 U.S. 489 (2000). The Fellowship filed an *amicus curiae* brief on behalf of a group of social scientists in this critical case in which the Supreme Court struck down a residency requirement for the receipt of welfare benefits. The brief advised the Court that as a matter of social science, the poor do not move between states in order to receive better welfare benefits.

*Pelletier v. Waldman*, Civil Action No. 93-2488 (D.N.J.). The Fellowship brought a class action on behalf of New Jersey children alleging that the State was in violation of a Medicaid statute by virtue of its failure to implement the Early and Periodic Screening, Diagnostic and Treatment prevention health program required by federal law. The matter was resolved through a settlement that affected important reforms in the way in which the New Jersey Department of Human Services implemented Medicaid, as well as increasing fee levels for pediatric dental care, so as to make such services more available.

*Sojourner A. v. New Jersey Dept. of Human Services*, a-160-01 N.J. (2003). The Fellowship served as co-counsel in this unsuccessful state constitutional challenge to the statutory provision denying welfare benefits to children born to mothers already receiving welfare; the Fellowship pursued a similar argument under Federal law in *C.K. v. New Jersey Dept. of Health and Human Services*, 92 F.3d 171 (3d Cir. 1996).

*Maisonet v. New Jersey Dept. of Human Services, Div. of Family Development*, 140 N.J. 214 (1995). In this case in which a food stamp recipient appealed from an adverse administrative decision, the Fellowship represented *amicus curiae* the ACLU of New Jersey. The Court held that the recipient was entitled to assert federal civil rights claims, including claims for attorneys' fees, when challenging the administrative decision and established a procedure for the review of such claims in the Superior Court.