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Landmark Case that Challenges New York's Unconstitutional and Dysfunctional Indigent Defense System Moves Ahead

Court of Appeals Green Lights Public Defense Lawsuit

In a landmark legal victory, the New York State Court of Appeals ruled in May that the NYCLU's lawsuit challenging the New York State's dysfunctional and unconstitutional public defense system can proceed.

"With this victory, New York is a step closer to justice," said NYCLU Executive Director Donna Lieberman. "Justice should not depend on the size of your wallet. But every day in courtrooms throughout the state, New Yorkers are denied justice simply because they are poor."

The 4-to-3 ruling paves the way for a trial in the lawsuit, *Hurrell-Harring et al. v. State of New York*. The case was filed on behalf of all criminal defendants in Onondaga,

Ontario, Schuyler, Suffolk and Washington counties who have encountered an unconstitutional public defense system.

"The Court held that if defendants are not getting lawyers or are getting lawyers whose ability to represent clients is so seriously compromised that it is as if no attorney is present, then the constitution is violated," said NYCLU Legal Director Arthur Eisenberg. "It has been shown time and again that the system of public defense in New York is so compromised."

Writing for the majority, Chief Judge Jonathan Lippman concluded that, in the counties named in the suit, "there is a considerable risk that indigent defendants are,

with a fair degree of regularity, being denied constitutionally mandated counsel."

The NYCLU and the law firm of Schulte Roth & Zabel LLP filed the lawsuit in November 2007. It charges that poor criminal defendants in some New York counties are being unconstitutionally denied their right to a lawyer.

Dozens of reports by legal advocacy organizations, professional associations and government commissions document inadequacies within New York's public defense system. Currently, court-appointed lawyers across the state are overwhelmed by huge caseloads and lack sufficient staff and

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New Guidance Protects Immigrant Students Across New York State

In response to an NYCLU analysis finding that at least 20 percent of public school districts in New York State were unlawfully discouraging the enrollment of immigrant students, the New York State Education Department in August cautioned districts that they cannot erect barriers to prevent immigrant children from enrolling in school.

The NYCLU surveyed New York State's 694 school districts last school year and found that at least 139 of them were asking, either directly or indirectly, for proof of a parent or child's immigration status during registration. On July 23, the NYCLU sent a letter to those districts informing them that the practice is unlawful. It also contacted to the Education Department, which it had reached out to multiple times over a 10-month period about the enrollment barriers.

In August, the Education Department issued guidelines reminding school districts that they may not deny resident students a free public education on the basis of their immigration status. The guidelines advise against asking any question regarding immigration status during school registration.

"We applaud the State Education Department for providing guidance on the law and the U.S. Constitution to help ensure that all of New York's children are able to attend school and get an education," said NYCLU Advocacy Director Udi Ofer. "The Supreme Court ruled 28 years ago that all children have an equal right to a public school education, regardless of their immigration status. It's critical that every school district in the state is aware of that and

"The Supreme Court ruled 28 years ago that all children have an equal right to a public school education, regardless of their immigration status. It's critical that every school district in the state is aware of that and doesn't unknowingly exclude immigrant children."

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Photo by Dan Lavoie

NYCLU Executive Director Donna Lieberman spoke at a press conference in May introducing the stop-and-frisk legislation. The bill was sponsored by Assemblyman Hakeem Jeffries and Senator Eric Adams.

NYCLU, State Legislature Pull the Plug on NYPD's Stop-and-Frisk Database

Working in both the Legislature and the courts, the NYCLU is leading the fight to shutdown the NYPD's vast database of hundreds of thousands of innocent New Yorkers who have been stopped and frisked by police officers.

The NYCLU developed legislation, signed by Governor Paterson in August, that prohibits the NYPD from storing in a computer database the names, addresses, Social Security numbers and other personal information of individuals who have been stopped and/or frisked by police and released without any further legal action.

The new law, which was sponsored in the Legislature by Assemblyman Hakeem Jeffries and Sen. Eric Adams, complements a class-

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Words from NYCLU Executive Director Donna Lieberman

Success Amidst the 'Red Tide'

Despite the generally bleak national political landscape after the November elections, the NYCLU is winding up a year of historic victories in both the courts and the state Legislature. And while we have a tough road ahead, the past year's successes in New York fuel our excitement over our upcoming 60th anniversary. (A gala is being planned for March 15.) And it emboldens us as we prepare to confront new challenges.

Armed with a strong statewide advocacy network, we will continue our nuanced approach to defending and expanding New Yorkers' civil liberties.

We accomplished so much this last year, particularly at the legislative level where we enjoyed a half-dozen major victories – some bills we supported for years, such as the Dignity for all Students Act, were finally pried from the iron grip of the Republican majority in the Senate. Others we pushed through the Legislature with remarkable speed.

In a matter of months, we proposed a bill to pull the plug on the NYPD's vast stop-and-frisk database of innocent people, worked with key legislators to get it passed, and persuaded Governor Paterson to sign it against Police Commissioner Ray Kelly's wishes. Kelly had campaigned hard for a veto, but the governor was not swayed by the NYPD's fear-mongering. It was the first time political setback of its kind for the commissioner.

The November election changed the political landscape, though control over the State Senate is still undetermined – it could remain under Democratic control, switch to the Republicans or be split evenly. Congress is another matter. With the Republican takeover in the House of Representatives, the prospects for comprehensive immigration reform, a repeal of the Don't Ask, Don't Tell pol-

icy and other progressive reforms face enormous hurdles.

We're engaged in the difficult task of adjusting our legislative agenda to find opportunities for strengthening civil liberties amidst this Red Tide. We know that some of our legislative goals, such as achieving fair marriage laws and passing the Reproductive Health Act, will ultimately be achieved. We will champion them for as long as it takes, and we'll find progressive Republicans willing to carry the banner of justice.

Other goals, including comprehensive immigration reform and the DREAM Act to give the children of undocumented immigrants a chance to go to college, may remain dreams deferred for the time being, especially if congressional Republicans continue their strategy of torpedoing all Democratic proposals – even ones they generally support – in a shameless attempt to deny the Obama administration another term.

But there will be opportunities for progress – even on an issue as difficult as immigration. For instance, we're building opposition to Secure Communities, a misguided federal program that requires a massive expansion of government surveillance to identify and deport immigrants. It's possible that we can find common ground within the libertarian strains of the GOP and, yes, even the Tea Party to stop this deeply flawed program that weakens public safety and invites rampant racial profiling.

And with a closely divided State Senate and a new governor committed to reform, this could be the moment to achieve non-partisan redistricting.

Despite the challenges we face in Congress and the Legislature, we have an aggressive, proactive and multifaceted program that makes us a powerful voice for civil liberties and progressive reform throughout the state. Acting through the courts, the Legislature and the grassroots network of members and supporters like you, we will make important change.

Following a landmark victory this May in the New York State Court of Appeals, we are focusing enormous resources on our indigent defense case. We've begun discovery, which will be a year-long effort. With our co-counsel at Schulte Roth & Zabel LLC, we'll be reviewing literally hundreds of thousands of pages of documents from the five counties named in the lawsuit.

We're fanning the state to depose witnesses, including scores of judges, lawyers, county officials and state officials. And we've sent monitors to courts across the five counties to uncover more stories of injustice.

We're launching a major policing initiative that involves developing an in-depth analysis of the impact of

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policing strategies that target communities of color, including stop-and-frisk policies and the effects of broken windows policing, a strategy that cracks down on minor violations in low-income areas, such as having an open container in public or riding a bike on the sidewalk.

In the schools, we continue to pursue our class-action lawsuit challenging the NYPD's aggressive, disruptive and often dangerous school safety practices. We're also working closely with the governor's office to ensure that the Dignity for All Students Act, the new anti-bullying law, will promote safe, nurturing classrooms across the state once it takes effect in 2012. And that's just our racial justice and students' rights agendas. We're up to so much more.

Here's a particularly exciting development: We're launching our own TV show! That's right – this winter the NYCLU will be hitting TV screens in New York City. Our Communications Department is busy producing *NYCLU-TV*, a news-style TV show that examines our issues and updates viewers on our work. The first episode, currently airing in Manhattan, has segments on the NYPD's stop-and-frisk practices, immigration, our anti-bullying efforts, the Park51 controversy in Lower Manhattan and our concerns over the spread of 24/7 video surveillance in public spaces.

This is a great new way to spread our message. We hope to eventually air the show throughout New York State.

And of course, stay tuned for more about our 60th anniversary celebration. It will be a great party! Keep supporting us. We need you now more than ever. You are the NYCLU.



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NYCLU Victory Requires Erie County to Reveal Jail Spending Records

An NYCLU legal victory has shed much-needed light on Erie County's use of taxpayer money to thwart legal efforts to hold it accountable for deaths and unconstitutional conditions at two county jails.

According to records the NYCLU obtained through a lawsuit, the county is spending \$11,000 a month on outside counsel while resisting investigations and subsequent legal actions by the U.S. Department of Justice, Civil Rights Division and the New York State Commission of Correction regarding conditions at the Erie County Holding Center in downtown Buffalo and the Erie County Correctional Facility in Alden.

"This is a victory for open government," said NYCLU Western Regional Office Director John A. Curr III. "The public has the right to know about the fiscal consequences of county officials' decision to block legal efforts to expose and correct inhumane conditions in the county's correctional facilities."

Over the past two years, the county has paid private law firms more than \$264,000 to assist its legal defense regarding the jails. It is paying attorneys from high-powered Washington D.C.-based law firm Alston & Bird \$425 an hour, according to a signed retainer agreement.

For years, Erie County has aggressively resisted investigations and subsequent legal challenges by the federal government regarding unconstitutional and inhumane conditions at the two jails. Investigations and legal complaints initiated by the U.S. Justice Department and the State Commission of Correction have included allegations of inadequate medical care, violent treatment by prison personnel, and poor efforts to protect suicidal inmates.

During the investigations, county officials barred

"This is a victory for open government. The public has the right to know about the fiscal consequences of county officials' decision to block legal efforts to expose and correct inhumane conditions in the county's correctional facilities."

federal inspectors from touring the Holding Center or the Erie County Correctional Facility unless they were accompanied by a county attorney. Rather than agreeing to reform proposals in a settlement, the county has decided to mount an expensive legal defense to maintain the status quo.

The NYCLU filed a Freedom of Information Law (FOIL) request seeking records of taxpayer money used to defend against investigations and legal actions involving conditions at the facilities. After the county rejected the records request, the NYCLU filed a lawsuit in state court against Erie County in June.

In August, a judge ordered the county to turn over 10 years of records detailing spending related to jail lawsuits and investigations.

"For at least a decade, Erie County has taken an obstructionist approach to efforts to hold it accountable for inhumane conditions in its jails," said NYCLU Senior Staff Attorney Corey Stoughton, lead counsel on the case. "The court decision is a step toward making sure that the public has the information to hold the county responsible for its decisions."

NYCLU... YOU

Anchor of Genesee Chapter Has Given 23 Years to NYCLU

At 88 years old, Daan Zwick is an integral part of the NYCLU Genesee Valley Chapter. For more than 23 years, he has volunteered in the chapter's office one day a week. He attends the chapter's events and recruits new members. And he donates his money along with his time.

"I've always been a bleeding heart liberal," he said. "The NYCLU is doing something to make a difference."

Zwick, who is retired following a career as a research scientist at Eastman Kodak, became interested in the ACLU in the 1970s after the organization defended the right of the National Socialist Party of America, a neo-Nazi group, to demonstrate in Skokie, Ill.

"It cost them a lot of members," Zwick said. "I felt that an organization that would put its money where its mouth is is a good organization."

Zwick, a board member emeritus for the chapter, is remarkably active. Apart from his interest in civil liberties, he is a passionate outdoorsman. He's a life member of the Genesee Valley Chapter of the Adirondack Mountain Club, the Genesee Valley Hiking Club, the Green Mountain Club, and the Finger Lakes Trail Association.

"Daan has long been an anchor to our chapter," said Chapter Director Gary Pudup. "In fact, his commitment to professionalism and dedicated service to civil liberties served inspired us to create the 'Daan Zwick Outstanding Volunteer Award,' which we bestow periodically to individuals who provide exceptional volunteer service."

Zwick is a strong advocate for free speech but also champions the separation of church and state, the right to privacy, and the due process rights of those accused of crimes.

He says ignorance is the biggest single threat to civil liberties in the United States. He believes that the NYCLU does essential work to combat against ignorance by disseminating information through publications, its website and public events.

"The NYCLU makes sure that our Constitution, and especially the Bill of Rights, is taken seriously," he said. 🐘



Nassau Town Barred from Enforcing Discriminatory Day Laborer Law

When the Town of Oyster Bay on Long Island enacted an ordinance unfairly targeting immigrant day laborers last year, the NYCLU went to court to block the discriminatory measure.

On June 1, a federal judge issued a preliminary injunction prohibiting enforcement of the ordinance, which banned people from seeking employment on streets, sidewalks, and other public spaces. The court ruled that the ordinance is an overbroad restriction on protected speech.

"This ruling is a great victory for the First Amendment and for the day laborers who can now go back to work and support their families," said Samantha Fredrickson, director of the Nassau County Chapter.

Passed in September 2009 under the guise of "public safety," the ordinance deprives Latino day laborers of their livelihoods and sought to drive immigrants from the community. It imposes a \$250 fine on anyone caught soliciting work on a public sidewalk, criminalizing constitutionally protected speech that presents no threat to traffic safety.

For nearly two decades, day laborers have gathered in Oyster Bay to find work. They typically perform short-term manual labor and construction. For many, it is their only income.

The NYCLU, ACLU, and LatinoJustice PRLDEF filed the lawsuit on May 18 on behalf of two Long Island organizations that protect Latino day laborers' rights, the Centro de la Comunidad Hispana de Locust Valley and the Workplace Project. The lawsuit challenged Oyster Bay and its supervisor, John Venditto, for violating the First and Fourteenth Amendments of the U.S. Constitution.

"This misguided ordinance uses public safety as a smokescreen for intolerance and violates the constitutional rights of day laborers and all Oyster Bay residents," said Senior Staff Attorney Corey Stoughton, lead counsel on the case. The ordinance was introduced after a March 2009 town board meeting where several residents complained of the "invasion of day laborers," calling them "unsafe and unsightly." Local lawmakers and police officials never explained why current road safety laws are inadequate to protect motorists or pedestrians and there is no evidence that the presence of day laborers causes traffic problems.

Two days after the lawsuit was filed, a federal judge issued an extraordinary order barring its enforcement as a preliminary assessment that the law will ultimately be found unconstitutional. Weeks later, the judge granted a preliminary injunction barring the law's enforcement.

The county has appealed to the U.S. Court of Appeals for the Second Circuit. Both sides have filed briefs. 🐘

"This misguided ordinance uses public safety as a smokescreen for intolerance and violates the constitutional rights of day laborers and all Oyster Bay residents."



Photo by Ari Rosmarin

A day laborer protests Oyster Bay's anti-immigrant ordinance at an NYCLU rally held right after the law was passed.

Protecting Student Voting Rights at Bard, Vassar

In the run-up to November's midterm elections, the NYCLU worked with the Dutchess County Board of Elections to protect the voting rights of Bard and Vassar College students, who have been the target of voter suppression efforts at polling places in previous elections.

"Students have the right to register and vote within their college community, but it appears that there was a concerted effort in Dutchess County last year to keep students of local colleges from casting their ballots," said Linda Berns, director of the Lower Hudson Valley Chapter.

Following the 2009 general election, the NYCLU received numerous complaints from students, poll watchers and other county residents concerning attempts to challenge the residency of college students when they show up at the polls to vote.

According to the complaints the NYCLU received last year, students were challenged on the basis of residency. Those challenges were not based on specific information that the individuals trying to vote were not living where they claimed to be living. Instead, the challenges were simply directed at voters who appeared to be college students based upon the erroneous assumption that college students should not be considered residents of their college communities.

In a letter dated Oct. 27 to local election commissioners, the NYCLU cited federal case law establishing students' right to acquire voting residency in their college community. It urged the commissioners to instruct its election inspectors to pose a series of questions to individuals who challenge a student's right to vote based on residency. If inspectors determine that the challenge was based solely upon the voter's status as a student, then it should be immediately dismissed and the student should be allowed to vote.

In response to the letter, an election commissioner contacted the NYCLU's and pledged to instruct inspectors to closely question challenges directed at students based on residency. 🐘

NYCLU Fights English-Only Laws

The Capital Region Chapter is confronting an alarming trend of English-only ordinances in small towns in its region.

Since last spring, three Washington County towns—Jackson, Argyle and Easton—have passed measures making English their official town language. These laws are odiously explicit and comprehensive. The Easton statute, for example, designates English as the language for all town "public meetings, discussions, transactions, forms, applications, discussions, or communications."

"The English language is not under attack in Washington County or anywhere else in the state or country," said Chapter Director Melanie Trimble. "This misguided law prohibits a vast array of constitutionally protected speech and unfairly discriminates against people with limited English skills who try to conduct business with the town; whether they wish to report a crime or testify in local court, speak to a school official about their child's education or obtain a building permit."

English-only laws violate Title VI of the federal Civil Rights Act of 1964 by excluding people who are not fluent in English from accessing important federally funded town services, such as medical aid, public education services and police protection.

After the Jackson board approved its ordinance, the NYCLU sent a letter to Town Supervisor Alan Brown, explaining how the ordinance violates the U.S. Constitution and the New York State Constitution, as well as state and federal law. The NYCLU informed town officials that it will notify the U.S. Department of Justice of the town's Title VI violations unless concrete actions are taken to rescind the ordinance.

The town subsequently drafted a second, slightly less sweeping, law, but has not acted upon it. The NYCLU has called for the town to refrain from enacting this second

law, in addition to rescinding the first law. The organization is considering a lawsuit if the town doesn't comply.

The NYCLU letter gives several examples of important communications that are banned by the Jackson law currently on the books: "An appointed or elected Town education official can no longer communicate with a student's mother in a language that both of them speak if that language is not English. A town resident can no longer report a hazardous safety condition on his street to an appointed or elected town official if the resident does not speak English, even if the relevant town official

"The English language is not under attack in Washington County or anywhere else in the state or country."

could communicate with him in another language. A town official will no longer be able to say 'Mazel Tov' when performing a marriage ceremony."

Only three states – Alaska, Arizona and Oklahoma – have attempted to pass or enforce restrictive English-only measures similar to those of the Washington County towns. In each case, courts invalidated the laws for violating constitutionally protected speech.

"English-only ordinances infringe on the speech rights of elected representatives, public employees, citizens and visitors," said NYCLU Senior Staff Attorney Corey Stoughton, upstate litigation coordinator. "They are a symptom of the anti-immigrant hostility that has swept our country in recent years that promotes intolerance and invites litigation."

Washington County has a tiny population of non-English speakers, according to U.S. Census figures. 🐘

NYCLU Helps Pass Anti-Bullying Law

On Sept. 8, NYCLU staff members stood with Governor Paterson as he signed the Dignity for All Students Act into law. The moment was the culmination of a decade-long campaign to provide New York's schoolchildren protections against bias-based bullying and harassment.

The Dignity Act amends state education law to protect public school students from severe and pervasive harassment and discrimination, including "verbal threats, intimidation or abuse," based on race, color, national origin, ethnicity, religion, religious practice, weight, disability, sexual orientation, gender or sex. Its protections are not limited to these categories.

"This is a major victory for children, parents and educators across the state," NYCLU Executive Director Donna Lieberman said. "No child should be afraid to go to school. The Dignity Act empowers New York's educators to fulfill their responsibility to provide all students a safe, nurturing learning environment."

The new law aims to protect all students from any harassment that substantially interferes with their educations. It requires school districts to incorporate curricula on diversity and sensitivity into lessons on civility and citizenship. It also mandates regular training for teachers and staff on how to properly address instances of harassment and discrimination.

Under the law, incidents of bullying will be reported to the New York State Education Department on at least an annual basis so the state can evaluate schools' performance.

The NYCLU paved the way for this victory by helping to reconvene and lead the Dignity Coalition, a group of more than 100 advocacy organizations. NYCLU staff lobbied and consulted with the governor's counsel, met with key legislators and interest groups. Supporters sent thousands of faxes to legislators calling for passage of the bill.

"This victory was the result of a team effort involving our staff, coalition partners and thousands of NYCLU members across the state, who urged their legislators to support



Photo courtesy of Governor David Paterson's office

New York State Governor David Paterson with NYCLU Executive Director Donna Lieberman at the bill signing of the Dignity for All Students Act.

the bill," said NYCLU Legislative Counsel Rahul Saksena, who organized lobbying efforts. "Their faxes and phone calls made an enormous difference."

The Dignity Act defines harassment in a manner that appropriately excludes speech and expression that is entitled to First Amendment protections.

It takes effect on July 1, 2012. Until then, a statewide task force will be developing guidelines and model programs for schools to adapt for their students and staff. The NYCLU is working closely with the governor's office to ensure that the Dignity Act will promote safe, nurturing classrooms across New York. 🐘

With Legislative Victory and Lawsuit, NYCLU Pushes NYPD Stop-and-Frisk Database into Public Debate

From page 1

action lawsuit that the NYCLU filed in May challenging the NYPD's practice of storing in the database the personal information of people who were stopped by police, arrested or issued a summons, and subsequently cleared of any wrongdoing.

"We applaud Governor Paterson for pulling the plug on the NYPD's sprawling database of innocent black and Latino New Yorkers," said NYCLU Executive Director Donna Lieberman. "By signing this bill, the Paterson administration has put itself on the right side of history and leaves an important legacy in support of civil rights, civil liberties and common sense."

Since 2004, the NYPD has stopped and interrogated people nearly 3 million times, and the personal information of those stopped has been entered into the Department's database, regardless of whether the person had done anything wrong. Last year, NYPD officers stopped and questioned or frisked people more than 575,000 times, the most of any year. Nearly nine out of 10 of those stopped and questioned by police were neither arrested nor issued a summons. More than 80 percent were black or Latino.

"The new law should serve as a wake up call to the mayor, the Police Department and all of New York's elected officials: We have work to do," said NYCLU Associate Legal Director Christopher Dunn. "The NYPD must not continue its campaign of excessive and racially lopsided policing. The database legislation is just the start of what we must accomplish."

The NYPD is still required to keep nonpersonal information about stop-and-frisk encounters, such as the gender and race of individuals stopped, and the location of the stops. This data is necessary to analyze the NYPD's stop-and-frisk activity and identify possible racial profiling.

The class-action lawsuit, filed in State Supreme Court for New York County, asks, among other things, for an injunction requiring the NYPD to seal all records, including personal information in the stop-and-frisk database, of people who were stopped and frisked, were arrested or issued a summons, and whose cases ended either in dismissal or only the payment of a fine for a noncriminal violation.

"Innocent New Yorkers who are the victims of unjustified police stops should not suffer the further in-



Photo by Alberto Morales

Clive Lino, a graduate student, is the lead plaintiff in a class action lawsuit challenging the NYPD's practice of keeping personal information of innocent people in a sprawling electronic suspect database.

justice of having their personal information stored indefinitely in a sprawling NYPD database," said Lieberman. "With this database, the NYPD is turning innocent black and Latino New Yorkers into criminal suspects. Since Commissioner Kelly refuses to end this unconstitutional and illegal practice, we had no choice but to ask the courts to step in."

Clive Lino, a 29-year-old graduate student, is one of the lead plaintiffs in the case. Lino, a black man and Harlem resident, was stopped at least 13 times by NYPD officers between February 2008 and August 2009. On numerous occasions, he has written to city agencies and officials about his mistreatment by NYPD officers, complaining in one letter that "they make me feel like a criminal or suspect when I haven't done anything wrong."

On April 18, 2009, Lino and his cousin were getting into his brother's car on Morris Avenue in the Bronx when five police officers stopped them. The officers threw Lino against a wall, frisked him, handcuffed him and searched his pockets. After detaining him for about a half hour, the police officers issued Lino summonses for spitting in public and possessing an open container. Both were dismissed.

"I should not have to fear becoming the subject of an investigation without my knowledge for things that I have no involvement in," Lino said. "This is a clear violation of my rights." 🐘

From page 1

School Districts Surveyed Over Treatment of Immigrant Students

doesn't unknowingly exclude immigrant children."

Many school districts updated their policies after hearing from the NYCLU. For example, Spencerport Central School District near Rochester revised a student registration checklist that had stated: "If your child is not a U.S. citizen by birth, please bring your child's I-94 form [or] Resident Alien Card. If the card is expired it will not be accepted."

School districts across the state stopped requiring children to provide their Social Security numbers when reg-

istering. Undocumented children are ineligible for Social Security numbers and, therefore, had been unable to register.

"We heard from dozens of school districts across the state that were eager to follow the law, but just weren't sure how to do it. It's clear that this guidance from the state will help school districts meet their constitutional obligations," said NYCLU Staff Attorney Adriana Piñón. "The NYCLU will continue monitoring compliance by school districts to ensure that all schools are open to all of New

Domestic Workers Bill of Rights Wins Labor Protections

Governor Paterson made history this August by signing the Domestic Workers Bill of Rights, legislation that provides New York's 200,000 domestic workers with basic labor protections. New York is the first state to enact such legislation.

"For too long, domestic workers have been excluded from basic labor protections, a legacy leftover from the Jim Crow era," said NYCLU Legislative Director Robert Perry. "Domestic workers take care of New York's children, our sick, and our aging parents and grandparents. They keep New York going. We applaud the governor and legislators for standing up for equal protection for all of New York's workers and enacting this landmark law."

The NYCLU was instrumental in rallying support for the bill. Staff facilitated lobby visits in Albany, cosponsored a town hall event in New York City to promote the bill and sent e-alerts that generated thousands of faxes urging legislators to vote for the bill. The NYCLU sent Governor Paterson a letter urging him to sign the bill after both chambers of the legislature had passed it.

"Public education was a crucial component of this campaign," said NYCLU Legislative Counsel Socheatta Meng. "A lot of people, including legislators, just assumed that domestic workers had the same labor protections as other workers. Fortunately, we were able to open some eyes to the need for this legislation."

According to a study by Domestic Workers United and Datacenter, 26 percent of domestic workers earn wages below either the poverty line or the minimum wage rate. Thirty-three percent have reported verbal or physical abuse. Although half report working overtime, few have received overtime pay. Only 10 percent receive health insurance from their employers.

Additionally, the denial of basic labor rights to domestic workers perpetuated racial discrimination and affected New York's most marginalized communities – 95 percent of domestic workers are people of color and 93 percent are women.

While the Domestic Workers law does not provide domestic workers with all of the protections they deserve – it doesn't include two weeks' notice of termination, paid sick days or the right to form a union – the legislation is a significant improvement. 🐘

York's children. The state must do the same."

In 1982, the Supreme Court ruled that denying undocumented children education opportunities provided to United States citizens is a violation of the 14th Amendment. New York State Education Law guarantees a free public education to youth older than five and younger than 21 who have not earned a high school diploma. Based on these laws, schools break the law if they inquire about a student or parent's immigration status. 🐘

'Ground Zero Mosque' Sparks Civil Liberties Debate

When a project to build a community center and mosque on private property two blocks north of Ground Zero triggered a nationwide torrent of anti-Muslim sentiment and bigotry this summer, the NYCLU sprung to action in defense of tolerance and religious liberty.

The NYCLU countered the bigoted opposition to the project in print and on the airwaves, and was instrumental in forming New York Neighbors for American Values, a coalition of more than 100 groups that support the project. It is monitoring anti-mosque and anti-Muslim sentiments in communities throughout New York State.

"We are committed to resisting the effort to push this project out of Lower Manhattan, and we reject the refrain of 'freedom of religion, but not in my backyard,'" NYCLU Executive Director Donna Lieberman said. "We have fought the political posturing, fear mongering and crude stereotyping that seeks to demonize a project whose goal is to build bridges among faiths simply because it contains a space for Muslims to worship."

The project, Park51, would include a performing arts center, a swimming pool, basketball court, a restaurant and other amenities. It's modeled on the 92nd Street Y, a popular Jewish community center on Manhattan's Upper West Side that reaches out to people of every race, ethnicity, religion, age and economic class.

It became the center of controversy in May after a local community board unanimously approved it. "Panel approves 'WTC' mosque" blared an inaccurate headline in the *New York Post*. Bloggers, television pundits and politicians blasted the project, relying on misinformation and cultural stereotypes that do not distinguish law-abiding Muslims from terrorists who committed atrocities in the name of Islam.

The NYCLU and ACLU responded with a statement in strong support of both the Park51 project and the core American values of religious freedom and tolerance. Lieberman echoed the statement in a letter to the editor printed in *The New York Times*.

"Those who call the project insensitive must believe, consciously or not, that the people who would pray at the center are, by virtue of their faith alone, tainted by the terrorists who committed the 9/11 atrocities," she wrote in the letter, cosigned by ACLU Deputy Legal Director Louise Melling. "Preventing Muslims, or any religious group, from freely practicing their faith is unconstitutional and conflicts with our core American values. Those who oppose the Park51 project have every right to speak their minds, but in the end, discrimination is a losing proposition, and obeying the Constitution is not optional."

Western Regional Office Director John A. Curr III also defended Park51 in a letter published in the *Buffalo News*.

The NYCLU and ACLU collaborated on an ad promoting religious freedom on the backs of buses throughout the New York City transit system and a video featuring religious leaders from multiple faiths proclaiming that freedom of religion is a fundamental right.

In late August, the NYCLU stood with its partners in New York Neighbors for American Values at a press conference to counter the bigoted rhetoric and misinformation that had been overwhelming the debate over Park51.

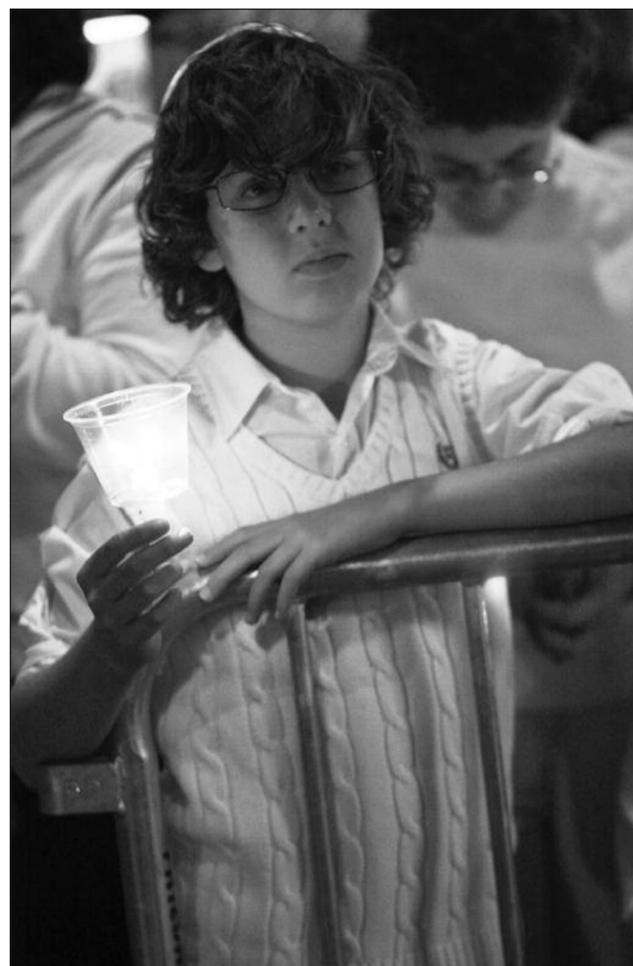
"If we betray our ideals, then we hand a victory to those who seek to undermine our nation," Lieberman said. "And to those who believe as I do that Ground Zero is hallowed ground, I say let us honor the memory of those who died not by abandoning our values, but by standing up for them."

The press conference was widely covered by print and TV media across the world.

On Sept. 10, the coalition organized a candlelight vigil near the site of the project to commemorate 9/11 and celebrate religious freedom and diversity. The vigil, attended by more than 2,000 people, was a thoughtful and inspiring demonstration of peace and unity. It stood in sharp contrast to the hatred, intolerance and disrespect that characterized the opposition's protests the following day.

The Park51 issue appears to have triggered a wave of anti-Muslim sentiment in New York State and nationwide. The NYCLU is closely monitoring cases in Brooklyn, Staten Island and Nassau County where mosques or planned mosques have encountered stiff resistance from community members or local governments.

Top: More than 2,000 people joined a candlelight vigil to support Park51 on the eve of September 11. Middle: Journalists from around the world covered a press conference held in support of religious freedom. Bottom: The ACLU and NYCLU ran a bus ad campaign targeting xenophobia and supporting freedom of religion.



Photos by Ricardo Aca and Taylor Pendergrass

Would there even be a controversy if this weren't a mosque?

In America, religious freedom knows no boundaries.

ACLU AMERICAN CIVIL LIBERTIES UNION NYCLU NEW YORK CIVIL LIBERTIES UNION Paid for by ACLU Foundation

Suffolk County Tables New Surveillance Initiative

The Suffolk County Chapter worked to defeat a legislative initiative in the county legislature to establish a high-tech "neighborhood watch" program that would recruit private citizens to monitor police surveillance cameras in Huntington Station – a hamlet located in the City of Huntington that has had a high crime rate.

Under the proposal, introduced in August, the Suffolk County Police Department would train volunteers to view surveillance footage recorded by its 25 video cameras in Huntington Station and identify suspicious behavior.

"Enabling private citizens to monitor their neighbors' daily activities via police surveillance was a bad idea from the start," said Chapter Director Amol Sinha. "Thankfully, county legislators thought better than to enact this misguided resolution."

Addressing the County Legislature's Public Safety Committee in October, Sinha called on legislators to consider privacy concerns as they weight the pro-

posal, which did not include any explicit measures to safeguard privacy.

"Whatever the public safety rationale for mandating the use of video surveillance cameras, there is an equally compelling interest that the County Legislature must take into account: the civil liberties of Suffolk County residents," Sinha said. "The Legislature must take into consideration potential abuse of the system. If in the implementation of a video surveillance law enforcement strategy the County abandons its duty to protect the rights and liberties of its residents, then that strategy has failed."

He raised several questions pertaining to the cost of the proposal, the storage and retention of surveillance footage, and the type of training the volunteers would receive. He also reminded legislators that the effectiveness of surveillance cameras as a crime-prevention tool is highly debatable.

"Surveillance cameras can capture images of events and in some instances those images can help in-

"Enabling private citizens to monitor their neighbors' daily activities via police surveillance was a bad idea from the start. Thankfully, county legislators thought better than to enact this misguided resolution."

investigators identify people carrying out criminal acts," Sinha said. "But, video camera surveillance is not a magic bullet. Cameras cannot prevent bad things from happening – and the money spent on them may, in fact, divert resources from more effective crime prevention strategies and tactics."

Following Sinha's remarks, the committee voted to table the proposal. The chapter continued to apply pressure to legislators over the proposal. In early November, Legislator Lou D'Amato, the proposal's sponsor, withdrew it from consideration.

"We must marshal our resources, spend wisely, which of course means, giving a lot to organizations without which our liberties and our republic would be lost, organizations like the NYCLU." – Tony Kushner

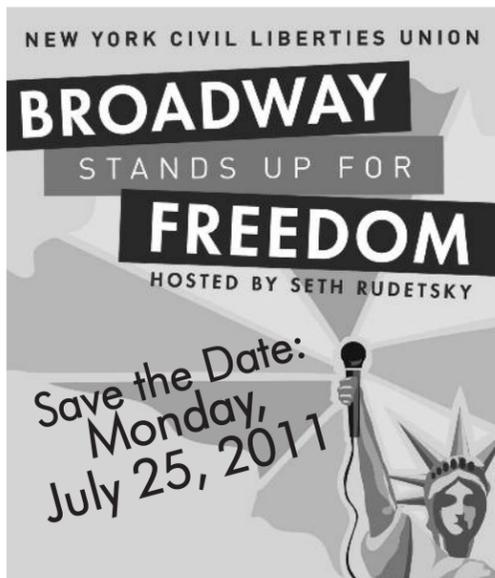
For Eighth Year, Broadway Stands Up for NYCLU Youth Programs

The eighth annual Broadway Stands Up for Freedom! concert, held on July 26 at NYU's Skirball Center for Performing Arts, was a sold-out hit. Dozens of Broadway's finest – including leading actors from *Hair*, *Next to Normal*, *Passing Strange*, *Rent*, *Finian's Rainbow* and *Mary Poppins* – took to the stage night to salute the work of the NYCLU.

The show raised more than \$100,000 to benefit the NYCLU's youth programs, including its work with LGBT teenagers; its Teen Health Initiative, which educates teenagers on their rights to access health care in New York City; and its work to stop overly aggressive policing and military recruiting in the city's public schools.

The NYCLU and Shelley and Donald Rubin Foundation also honored winners of the annual Freedom of Expression contest, which invited young people in New York City to lend their voices and creativity to the struggle for social justice.

Tony Award- and Pulitzer Prize-winning playwright Tony Kushner, a longtime NYCLU member, opened the show and served as honorary chairman.



Top: The full cast. Middle, left to right: Kate Baldwin (*Finian's Rainbow*), J. Robert Spencer (*Next to Normal*) and Rebecca Luker (*Mary Poppins*); De'adra Aziza (*Passing Strange*); Host and Musical Director Seth Rudetsky. Bottom: NYCLU Executive Director Donna Lieberman and Founding Performer Liana Stampur show off a long scroll of all of the NYCLU's accomplishments.

Photos by Starpix



NYCLU Asks Court to Investigate Gitmo Psychologist

U.S. Army Major Licensed in New York Alleged to Have Designed, Participated in Abusive Interrogation Program

The NYCLU has asked a court to order the New York State Office of Professional Discipline (OPD) to investigate a complaint asserting that a New York State licensed psychologist engaged in unethical conduct when he allegedly designed and participated in the abusive treatment of detainees at Guantánamo Bay.

In a petition filed on Nov. 24 in New York State Supreme Court, the NYCLU and the Center for Justice and Accountability (CJA) ask the court to direct OPD to investigate a misconduct complaint against Dr. John Francis Leso, a New York psychologist who allegedly led the behavioral science consultation team at Guantánamo Bay from June 2002 to January 2003.

The CJA, a San Francisco-based human rights organization, filed a professional misconduct complaint with OPD in July 2010 calling for an investigation of Leso's role in the abusive treatment of detainees, and for revocation of his psychologist's license. The misconduct complaint was filed on behalf of Dr. Steven Reisner, a New York psychologist and an advocate against the use of torture.

"Psychologists and medical professionals must be held to the highest ethical standards," Reisner said. "By refusing to even investigate the actions of Dr. Leso, the State of New York has indicated that it will immunize medical professionals who violate the most fundamental precepts upon which good medicine is practiced, including the bedrock principle that a doctor shall do no harm. Granting blanket immunity from investigation to medical professionals who design, justify and inflict pain and

abuse is contrary to our core common values, professional medical principles and New York law."

According to Reisner's misconduct complaint, Leso led the first team of mental health professionals assigned to support interrogation operations at Guantánamo. Many of the techniques and conditions that Leso is accused of devising were applied to people held at Guantánamo and eventually to detainees held in U.S. custody in Iraq and Afghanistan.

The complaint filed with OPD alleges that Leso participated in the brutal interrogation and mistreatment of detainee Mohammed al Qahtani from Nov. 23, 2002 to Jan. 11, 2003. As further alleged, Leso was present when interrogators menaced al Qahtani with dogs, forcibly injected him with fluid causing painful swelling of his limbs, deprived him of sleep and denied him opportunities to pray.

Leso allegedly advised the interrogators on how to keep the detainee awake, disoriented and vulnerable. For example, during one session, he advised interrogators to place al Qahtani in a swivel chair to keep him awake and prevent his eyes from fixing on one place.

The Army's own Investigation Report characterizes the interrogation program that Leso developed and supervised in its application to al Qahtani as follows:

"[T]he creative, aggressive, and persistent interrogation of the subject of the Special Interrogation Plan resulted in the cumulative effect being degrading and abusive treatment. Particularly troubling is the combined impact of 160 days of segregation from other detainees, 48 of 54 consecutive days of 18- to 20-hour interrogations, and the creative application of authorized interrogation techniques. Requiring the subject of the first Special Interrogation Plan to be led around by a leash tied to his

chains, placing a thong on his head, wearing a bra, insulting his mother and sister, being forced to stand naked in front of a female interrogator for five minutes, and using strip searches as an interrogation technique [was] abusive and degrading, particularly in the context of the 48 days of intense and long interrogations."

The CJA complaint concludes that as a result of this abuse, al Qahtani demonstrated behavior consistent with extreme psychological distress, including talking to himself, reportedly hearing voices, and crouching in a corner of his cell covered by a sheet for hours on end.

The OPD, nevertheless, declined to investigate the complaint against Leso. It did so upon the assertion that the ethical rules that OPD is obligated to enforce only apply to conduct that occurs in the context of a therapist-patient relationship. OPD concluded that no such relationship existed between Leso and those who were interrogated at Guantánamo. But what the OPD ignored are official rules prohibiting the unauthorized practice of psychology and barring immoral conduct by licensed therapists. The NYCLU petition argues that the conduct that Leso is alleged to have undertaken would clearly fall within both of these two ethical proscriptions.

Leso has never faced a criminal or civil trial for his actions, and his license remains in good standing. To this date, no U.S. official has been held accountable for the cruel treatment of detainees at Guantánamo.

"The NYCLU's petition to the New York Court does not ask the court to address whether the allegations about Dr. Leso's conduct are true or whether he should be sanctioned if the allegations are proven to be true," said NYCLU Legal Director Arthur Eisenberg. "At issue in this case is whether OPD erroneously refused to investigate the allegations and consider disciplinary measures."

Balancing Free Speech and the Right to Repro Health Care

In an effort to balance free speech with women's right to reproductive health care, the NYCLU is working with New York City lawmakers on legislation that would require crisis pregnancy centers in the city to be straightforward and honest about the scope and limit of their services.

A bill before the New York City Council would ensure that crisis pregnancy centers (CPCs) in the city are upfront with women who come to them that they do not provide or refer for abortions.

"Crisis pregnancy centers are not licensed medical facilities, but women often believe that they are. When they deceive women about their services, people get hurt," said NYCLU Executive Director Donna Lieberman. "We believe that this legislation can be crafted to both protect the right to free speech and women's right to have accurate information when they make critical decisions about their health."

Reports from across the country, including a report released by NARAL Pro-Choice New York in October 2010, document a pattern of practices by CPCs that lead women to confuse them with licensed medical facilities. The NARAL report showed that CPCs in New York City often employ tactics that delay or mislead women

about the care they are receiving or discourage them from seeking care from licensed medical providers.

Women are put at risk when they rely on false and misleading information and when they delay medical care. If a woman chooses to carry a pregnancy to term, prenatal care is vital to ensure the health of both the prospective mother and the fetus. If a woman chooses to have an abortion, doing so within the first trimester is far safer and less expensive. Further, if a woman delays making a decision about obtaining an abortion, she can be effectively prevented from obtaining the healthcare to which she is entitled under the law.

"We believe that the city's interest in protecting women's health is sufficiently strong to justify the kind of regulation on speech that the City Council is considering," said Senior Public Policy Counsel Corinne Carey. "We are working with key council members to ensure that the legislation strikes the appropriate balance between protecting speech and protecting women's right to make informed choices."

Testifying before the City Council's Committee on Women's Issues in November, Lieberman advised council members to closely tailor the legislation's speech restrictions to the government's interest in preventing

both medical fraud and deliberate delays in pregnant women seeking medical care.

Among her recommendations, she urged council members to revise the bill's language to ensure that it will not target facilities solely based upon their unwillingness to provide abortion services. She also recommended that the legislation require all CPCs to disclose that they are not licensed medical facilities.

In an effort to better understand what happens at CPCs, NYCLU Communications Director Jennifer Carnig visited the EMC Pregnancy Center – a CPC located in downtown Brooklyn. Carnig, who is pregnant, said the center had the look and feel of a doctor's office, complete with a waiting room, paperwork on her medical history, and an employee in scrubs performing a sonogram on her.

"It's crucial that employees at crisis pregnancy centers have the right to continue expressing their viewpoints – the First Amendment clearly protects all political speech," Carnig said. "But when I left EMC I felt it was a place that wants people to think it is providing medical services. And while crisis pregnancy center employees must have a right to speak, it's also crucial that women have all of the facts when it comes to their health." ❏

New Legislation Restores 'One Person, One Vote'

In a victory for the democratic principle of one person, one vote, Governor Paterson signed legislation on Aug. 11 that ends the practice of prison-based gerrymandering in New York State.

The new law, the Census Adjustment Act, requires incarcerated people to be counted as residents of their home districts rather than the districts in which they are imprisoned for the purposes of drawing electoral districts based on the 2010 census.

Previously, incarcerated people, who cannot vote, were counted where they are confined, not where they were living before they were incarcerated, even though the vast majority of people return home when they are released. This practice inflated the populations of electoral districts containing prisons. As a result, New Yorkers living near prisons got disproportionate representation in Albany, weakening the votes of people who do not live near prisons.

"The Census Adjustment Act will restore the principle of one person, one vote that is fundamental to our democracy," said NYCLU Senior Public Policy Counsel Corinne Carey. "The strength of your vote shouldn't depend on if your legislative district contains a prison or not. This new law brings fairness to voting in New York."

The victory follows intense advocacy work by NYCLU staff, which coordinated lobby visits with legislators, enlisted additional cosponsors of the bill and initiated a postcard mailing campaign.

"Our state's system for drawing legislative districts has been fundamentally unfair for far too long," said NYCLU Western Regional Office Director John A. Curr III, who addressed a rally in Albany in support of the bill. "By counting incarcerated people where they were confined, not where they were from, the system has artificially padded the populations of districts with prisons while weakening the vote of every other New Yorker." ❏

Hundreds of High School Students Gather for Liberty Conference

More than 150 local high school students came to John Fischer College in Pittsford on Oct. 15 for the Genesee Valley Chapter's third biennial Youth Liberty Conference.

This year's conference, themed "We the Students," emphasized students' First and Fourth Amendment rights. Chapter Director Gary Pudup kicked off the day by welcoming the students.

"Just because you're students doesn't mean you leave your rights at the schoolhouse gate," he said. "It's important for you to know that. It's a great responsibility as an American to participate in our government and we need you to do that. This is one of the reasons that we host the Liberty Conference, so that you, as the next generation, will participate in our democracy."

Keynote speaker Ms. Jamia Wilson, vice president of the New York City-based Programs at the Women's Media Center, kicked off the day by engaging the high school students with stories of how the First Amendment gave her the ability to pursue her advocacy

NYCLU Investigates Neglect in a Central New York Jail

The Central New York Chapter is fighting for accountability at the Onondaga County Justice Center, where local officials have turned a blind eye to persistent misconduct, neglect and negligence.

The recent deaths of people in custody at the facility starkly illustrate the seriousness of the problems there. In November 2009, a 21-year-old woman died in agony there after medical staff failed to diagnose or treat her for an ectopic pregnancy. In August a 31-year-old man died after falling unconscious while guards restrained him in the jail's booking center.

"No one should die in fear or agony, while guards or medical staff at the jail routinely defy procedure and dismiss inmates' humanity by ignoring their obvious distress," said Chapter Director Barrie Gewanter. "We are working closely with allies throughout the community to force county officials to uphold their duty to ensure that people held at the jail are treated humanely and with dignity."

Aside from the incidents that made headlines, several other people have died or sustained serious injuries as a result of unconstitutional conditions at the jail.

Additionally, the NYCLU has received reports

of various misconduct and negligence, including deputies using racial and homophobic slurs, nurses refusing to dispense prescribed medications, and denying prisoners the use of toilet paper and utensils to eat their food. Inmates with disabilities have reportedly been denied the use of walkers and wheelchairs and prison staff ignored inmates' repeated complaints of pain or illness. Deputies often used excessive force or misused their power to impose harsh restrictions and punishments.

The chapter has worked with a diverse group of community and civil rights organizations to raise awareness of the issue and hold county officials responsible. The chapter has also taken the lead in questioning a plan by county officials to hire a private contractor to run medical services at the jail. In an Oct. 7 letter to the county executive, the NYCLU called for greater transparency and cautioned that contracting medical services would not absolve county officials of the constitutional duties regarding the jail.

The Syracuse/Onondaga branch of the NAACP, Disabled in Action of Greater Syracuse, and the Syracuse Council of the League of United Latin American Citizens endorsed the letter. ❏

Public Defense Fight Continues

From page 1

resources to do their jobs. Some lack the necessary experience and training to competently handle their cases.

Kimberly Hurrell-Harring, the lead plaintiff in the case, had a clean record when she was caught in 2007 bringing a small amount of marijuana to her husband in prison. She was assigned a Washington County public defender who refused her phone calls and allowed her to be convicted of a crime more serious than the one she actually committed. As a result of her lawyer's mistakes, the mother of two spent four unnecessary months in jail and lost her nurse's license, job and home. An appellate court reversed her conviction more than two years after her arrest.

"What happened to Kimberly is not an isolated case of justice gone wrong," said Corey Stoughton, senior staff attorney and the lead counsel on the case. "Every day, New Yorkers are denied justice because they are poor." ❏

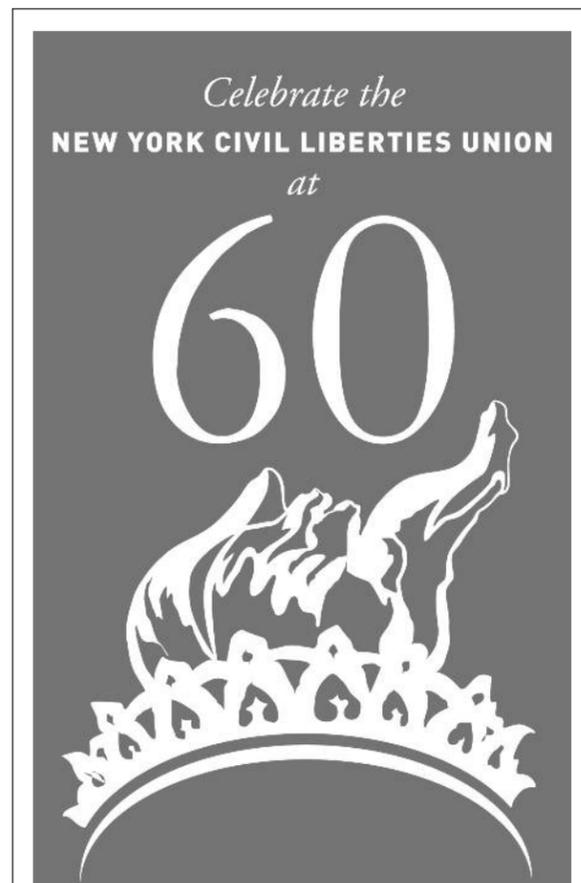
work on behalf of women in the media.

"We have the right to speak our minds without persecution from the government and to hold them accountable when we feel that right has been encroached upon," Wilson said.

After Wilson's speech, the students broke into small discussion groups facilitated by more than 20 volunteers. Their discussions were open to all aspects of the First Amendment and to their rights under the Fourth Amendment. The workshop format provided an intimate atmosphere in which students were able to talk openly about their experiences and understandings of these basic protections.

"It was a great day," Pudup said. "The kids were engaged and put a lot of thought into how these rights pertain to them. We appreciate the opportunity to enrich their understanding of the Bill of Rights."

The conference is the centerpiece of the Genesee Valley Chapter's programming. The event ensures that the NYCLU plays a role in passing on to the next generation an appreciation of our core values – the freedoms of speech, religion and privacy. ❏



Save the Date!
We're celebrating our
60th anniversary on
Tuesday, March 15, 2011.
For more info, call
212.607.3365.

2010 State Legislative Review: Advances for Civil Liberties

Legislative Director Robert Perry on the NYCLU's View

What has the legislature done for civil liberties lately?

Before answering, forget last year's "coup" and the "four amigos," the bidding process for the electronic wagering contract with the Aqueduct racetrack, and the various federal and state investigations underway.

A lot to forget, yes.

But below the political cloud cover, the Legislature passed a package of bills that creates important statutory protections of individual freedom. By the standards of Albany, this legislative record amounts to a modest revolution for civil liberties. (The legislative sponsors are identified below the discussion of each bill.)



Respecting medical privacy when the patient is incapacitated

In New York every year, tens of thousands of people face death in a hospital without a medical directive or a designated proxy. What follows in many instances is intrusive and unwarranted medical intervention – or the withholding of necessary treatment. The Family Health Care Decisions Act authorizes spouses, domestic partners, other family members, and close friends to make medical decisions on behalf of a loved one who is incapacitated. From introduction to floor vote, it took nearly two decades to pass this legislation, at which point New York was one of a handful of states without a rational policy for treating patients without decision-making capacity. (Assembly Member Richard Gottfried/ Senator Thomas Duane)

Dignity for all students

The Dignity for All Students Act mandates that local school districts develop and implement affirmative measures – training, education, counseling – that promote respect, understanding and tolerance for difference in the school setting. The bill is a response to bullying, which is often a vicious form of bias-based harassment. Governor Paterson signed the bill in a spirited public ceremony; he also charged a working group of education professionals, counselors, psychologists and advocates with developing best-practice guidelines and protocols to ensure the law is implemented effectively. Why did it take 10 years to pass the bill? No good reason. At a news conference Senator Neil Breslin observed that he came to the Senate to pass bills like this. (Assembly Member Daniel O'Donnell/ Senator Thomas Duane)

Stopped, frisked – and held in the NYPD databank

In an extraordinary political contest the state Legislature and Governor Paterson challenged the NYPD's disposition of stop-and-frisk encounters – which in 2009 alone numbered 574,000, of which close to 90 percent were released without legal consequence: no arrest, no summons, no desk appearance ticket. Close to nine of every 10 persons stopped were black or Latino. The new law prohibits the Police Department from archiving in a databank the personal identifiers (name, address, Social Security number) of persons who are innocent of wrongdoing, but who happen to have been the target of a police stop. (Assembly Member Hakeem Jeffries/ Senator Eric Adams)

A bill of rights for domestic workers

There are an estimated 200,000 domestic workers in New York State. They labor without statutory right to a minimum wage or overtime pay, without even a mandatory day off after six days of work. These workers are excluded from the protections given other workers under the state's labor law. Their demographic profile suggests why these workers have little standing in the law: They are mostly women, immigrants and persons of color. The Domestic Workers Bill of Rights affords these workers basic protections under the labor law. The legislation is an important legislative precedent: It is the first state law to recognize the rights of domestic workers. (Assembly Member Keith Wright/ Senator Diane Savino)

Counting phantom voters: the Census Adjustment Act

The state constitution requires that the population of each electoral district is roughly equivalent. This is to ensure equal representation in Albany. But New York counts prison inmates as residents of the counties in which they are incarcerated – not as residents of the communities they lived in prior to incarceration. This practice facilitates what *The New York Times* has called "prison-based gerrymandering." Inmates, who cannot vote, are used to pad certain upstate districts. This inflates the political influence of "prison" districts, while diminishing the political clout of New York City and other urban centers – where most inmates lived before being sent to prison. The Census Adjustment Act directs that inmates are counted where they lived before incarceration, liberating the prisoners of the census, and helping to rehabilitate the principle of one person, one vote. (Assembly Member Hakeem Jeffries/ Senator Eric Schneiderman.)

In writing about several of these bills, and others, *Daily News* columnist Errol Louis observed: "These feats were not the muddling through of legislative slackers." This legislation was passed because "advocates and activists made a loud, insistent case for change – and the pols took action."

NYCLU advocates and activists were catalysts in bringing these bills to a successful vote, and in ensuring the governor signed them into law.

Now what?

The legislative record set out above is a product of the 2008 elections, which gave Democrats a majority of Senate seats for the first time in four decades. The Assembly had passed the bills year after year with close to unanimous support by the Democratic conference. But the measures never received a floor vote with the Senate under Republican leadership.

The 2010 election leaves political control of the Senate an open question. As this newsletter goes to press, ballots cast in three Senate races are still being examined and recounted. Unless the Democrats win all three seats, the chamber will be gridlocked, at 31-31; or Republicans will regain a majority, 32-30.

The safe bet: an election outcome that presents a volatile, unpredictable dynamic. In that political environment we will take up the civil liberties agenda for 2011, including:

- **LGBT rights:** In 2011, advocates will revive the campaign to advance bills recognizing fair marriage laws, and establishing protections against discrimination based upon gender expression or identity.
- **Reproductive Health Act:** This legislation establishes

The Paterson Legacy

In 2009, Gov. David Paterson put his signature to legislation that converts the state's drug law policy from a mass incarceration model, driven by harsh mandatory sentences, to a public health model. The governor was eloquently outspoken in his endorsement of legislation recognizing the marriages of lesbian and gay couples; he directed state agencies to extend benefits to same-sex couples in New York who had been married in a jurisdiction that sanctioned their marriage. In 2010, Governor Paterson signed into law bills that protect, uphold and extend rights and liberties to students who are vulnerable to bullying, to those stopped and frisked by the NYPD without legal justification, to incapacitated patients whose privacy and autonomy are at risk, and to domestic workers, who are often underpaid and overworked. The Legislature, to be sure, was a partner in creating this record. But it was the governor who made law of legislation. In two years, Governor Paterson has established an extraordinary record on civil liberties – unmatched even by predecessors who served multiple terms.

clear, affirmative recognition of the right to reproductive choice under the public health law (rather than as exception in the penal code).

- **Paid family leave:** At minimal cost, the state could extend the workers compensation formula, enabling employees a limited leave from work to care for a newborn or a family member who is ill.
- **Healthy Teens Act:** Decades overdue for action, this bill would establish a program that ensures students receive medically sound, age appropriate sex education.
- **Farm workers' rights:** Farm workers are often victims of dangerous work conditions and exploitative pay practices, with few avenues of redress. The Farm Workers Fair Labor Practices Act gives these workers the right to fair pay and basic protections of health and safety.

And who will map the new election districts?

The state's electoral districts are redrawn after each decennial census. Control of the pen has become the holy grail – or the unholy sword in the stone. Once every 10 years the leaders of the majority party release the sword and carve up election districts to reward allies, punish adversaries, and to secure political control for another decade. The NYCLU – along with every proponent of transparency and accountability in government – has long advocated for the creation, by statute, of an independent commission that is charged with redistricting. Governor-elect Andrew Cuomo has spoken forcefully, and rightly, on the importance of taking politics out of the process. Can he restore integrity to redistricting? It would be a signal accomplishment for a champion of government accountability. 🐘



NYCLU
NEW YORK CIVIL LIBERTIES UNION

YES, I will be there for the NYCLU!

In the coming year we will fight to:

- Bring accountability to police in schools
- Advocate for fair marriage laws that protect all families
- Guarantee women's reproductive freedom
- End racially-biased policing practices

Enclosed is my check payable to the **NYCLU Foundation** in the amount of:

\$500 \$250 \$100 \$50 Other _____

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Please charge \$_____ to my AmEx Visa MasterCard

CARDHOLDER NAME _____

ACCOUNT # _____ EXP DATE _____

SIGNATURE _____

New York Civil Liberties Union, 125 Broad St., 19th Floor, New York NY 10004

Tel: 212.607.3300 Fax: 212.607.3329

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NOTICE REGARDING BOARD NOMINATIONS

The annual meeting of the members of the NYCLU will be at 6 p.m. on Wednesday, June 15, 2011 at 125 Broad St., New York NY for the purpose of electing directors, receiving the annual report and transacting any other appropriate business.

All directors are elected by a vote of the statewide membership. This year there are 13 vacancies to be filled. The NYCLU Nominating Committee is charged by the NYCLU by-laws to nominate only as many candidates as there are vacancies on the Board.

The Nominating Committee will nominate its slate of nominees. If you are interested in finding out who the nominees are, please write to Donna Lieberman, Executive Director, 125 Broad St., New York NY 10004.

The governing board of each NYCLU chapter is entitled to nominate one director. Nomination may also be made by petition of at least 25 members.

Nominations must be filed with Executive Director Donna Lieberman by April 15, 2011, 60 days prior to the annual meeting, at 125 Broad St., New York NY 10004.

A proxy ballot, along with biographical information and supporting statements of each of the candidates, will be published in the next issue of the NYCLU News.