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.

“The 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.”

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

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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 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 remanding school districts that they may 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.

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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, compliments a class-
Words from NYCLU Executive Director Donna Lieberman

Success Amidst the ‘Red Tide’

“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 approaches 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 with strong support for civil liberties reform, a repeal of the D.A.R.E. program, a number of other bills that we pushed through the Legislature, and 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 conflict of interest 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 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, deceptive 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 be enforced in all schools, from 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 particular exciting development: We’re launching our own TV show! That’s right – this winter the NYCLU will be hitting screens in New York City. Our Communications Department is busy producing NYCLU-TV, a news-style TV show that exposes our issues and updates viewers on our work. The first episode, currently airing in Manhattan, has segments on the NYCLU’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.”

NYCLU Victory Requires Erie County to Reveal Jail Spending Records

“Any 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 conditions at the county’s jails. The NYCLU filed a lawsuit in state court against Erie County in June. 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.”
Anchor of Genesee Chapter Has Given 23 Years to NYCLU

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 barring the law’s enforcement. The judge issued an extraordinary order barring its enforcement because the Ordinance is discriminatory and violates the constitutional rights of day laborers and all Oyster Bay residents.

“English-only ordinances infringe on the speech rights of day laborers and all Oyster Bay residents. 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 Rosann
A day laborer protests Oyster Bay’s anti-immigrant ordinance at an NYCLU rally held right after the law was passed.

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 late last year, three Washington County towns—Jackson, Argyle and Easton—have passed measures making English their official town language. These laws are generally non-enabling and divisive. 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 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 “hassle of day laborers,” calling them “unsafe and unsightly.” Local lawmakers and police officers 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 law was filed, a federal judge issued an extraordinary order barring its enforcement as a preliminary assessment that the law will ultimately be found unconstitutional. We are now asking the judge to issue 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.

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 own 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 to vote.

According to the complaints the NYCLU received last year, students were challenged on the basis of residency. The allegations 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 an important victory on Oct. 27, local election commission members contacted the NYCLU’s and pledged to instruct inspectors to pose a series of questions to individuals who challenged a student’s right to vote based on residency. If inspectors determine that the challenge was based solely on the voter’s status as a student, then the challenge must be invalidated and the student should be allowed to vote.

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

Nassau Town Barred from Enforcing Discriminatory Day Laborer Law

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

The town, 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 Jack- son 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 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 invades litigation.”

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

NYCLU.... YOU
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 left over 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 applauded 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.

From page 1

School Districts Surveyed Over Treatment of Immigrant Students

School districts across the state are required to provide children with Social Security numbers when registering. Undocumented children are ineligible for Social Security numbers and, therefore, have 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 Pabón. "The NYCLU will continue monitoring compliance by school districts to ensure that all schools are open to all of New 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 violated the Equal Protection Clause 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.
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 weigh the proposal, which did not include any explicit measures to safeguard privacy.

“Whatever the public safety rationale for mandating the use of video surveillance cameras there’s 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 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 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, Legislators Lou D’Amaro, the proposal’s sponsor, withdrew it from consideration.
For Eighth Year, Broadway Stands Up for NYCLU Youth Programs

The eighth annual Broadway Stands Up for NYCLU Youth Programs, 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.

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.

Francis Leso, a New York psychologist who allegedly led a team of mental health professionals as part of the abusive treatment of detainees at Guantánamo, and eventually to detainees held in U.S. custody in Iraq and Afghanistan, is accused of violating the most fundamental medical principles and New York law.

The complaint filed on Nov. 24 in New York State Supreme Court, the NYCLU and the Center for Justice and Accountability (CJA) asked 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 at Guantánamo. But what the OPD ignored are the impact of 160 days of segregation from other detainees, the cruel treatment of detainees 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.

Lesso 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 interrogation sessions, 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 the 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.

Lesso 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, NYCLU is working with New York City lawmakers on legislation that would require crisis pregnancy centers (CPCs) 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 are told that abortion is not available, people get hurt,” said NYCLU Executive Director Donna Lieberman. “We believe that this legislation can be crafted to protect the rights 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 are concerned that the 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 about their health.”

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 EMPC Pregnancy Center – a CPC located in downtown Brooklyn. Carnig, who is pregnant, said she visited the center to observe first-hand the work 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 viewpoint – the First Amendment clearly protects all political speech,” Carnig said. “But when I left EMPC 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.”

NYCLU Investigates Neglect in a Central New York Jail

The Central New York chapter of the National Organization for Women, NYCLU, called for greater transparency and cautioned that contractors delivering medical services would not absolve county officials of the constitutional duties regarding the jail.

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 will testify before the City Council’s Committee of the League of United Latin American Citizens (LULAC) and the Women’s Media Center, kick off the day by engaging the high school students with stories of how the First Amendment gave her the ability to pursue her advocacy 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 mother and her fetus. It’s important for you to know that. It’s a great responsibility for 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. Janina 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.

With their understanding of the Bill of Rights.

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. The keynote address, given by Gary Padick, 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.”

The workshop format provided an intimate atmosphere in which students were able to talk openly about their understanding of our core values – the freedoms of speech, religion and privacy.
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. Thus, this practice facilitates what The New York Times has called “prison-based gerrymandering.” Inmates, who cannot vote, are counted at predetermined state 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 be counted where they were before incarceration, liberating the prisoners of the census, and helping to rehabilitate the principle of one person, one vote. (Assembly Member Hakim Jeffries/Senator Eric Schneiderman.)

In writing about several of these bills, and others, Daily News columnist Erin Louise 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 polls 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. The Democratic majority enabled the polynomial through of cumbersome bills year after year with close to unanimous support in 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 in extending statements of each of the candidates, will be published in the next issue of the NYCLU News.

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