



NY CIVIL LIBERTIES

Published by The New York Civil Liberties Union, 125 Broad Street, New York, N.Y. 10004

Vol. LI, No. 2 Winter 2003-04



Kelly Moore, Stephen Duncombe, Sydney Railla-Duncombe (age 4 months), and Bob Lesko were Patriots Against the Patriot Act at a rally outside City Hall on October 20 in support of Resolution 909, which seeks to defend civil liberties against post-9/11 infringements. Photo by Pat Arnow

Bill of Rights Defense Campaign Heats Up New Yorkers Choose Liberty Over Fear

By Udi Ofer

Complex times call for complex measures, and post-September 11 America is no exception. The New York Bill of Rights Defense Campaign (NYBORDC) is leading the grassroots movement to reject the government's claim that we must sacrifice our liberty in the name of national security. The statewide campaign is a coalition effort led by the NYCLU to place cities and towns all over the state on record with resolutions opposing government policies that chill free speech; needlessly invade our privacy; profile individuals based on race, ethnicity or national origin; and undermine the principles of due process at the core of our criminal justice system.

NEW YORK CITY

Thirty-four of the 51 members of the

New York City Council, including the Council Speaker, have endorsed Resolution 909a, which is one of the most comprehensive in the nation. It states that government officials must abide by constitutional standards when prosecuting the war on terrorism. It calls on law enforcement officials to protect New Yorkers from intrusive and unconstitutional surveillance; to refrain from engaging in racial, ethnic and religious profiling; and to oppose the secret detention of persons without charges or access to counsel.

The broad support is the result of an intensive campaign by hundreds of NYBORDC volunteers, under the leadership of Glenn Devitt and a facilitators working group, who circulate petitions, fax,

(continued on page 3)

The 2003 Legislative Session in Review

By Robert Perry

There is much still to be learned about the politics of federal antiterrorism initiatives in the weeks and months following September 11. (How, for example, the Bush Administration engineered the middle-of-the-night rewrite of the USA PATRIOT Act, followed by an early morning vote on a version of the bill few legislators had even read.)

However, even less attention has been given to the expansion of police powers by state legislatures, which has empowered law enforcement officials to pursue the war on terrorism at the local level. And yet the risks to individual rights and liberties created by these legislative efforts are no less grave than those created by federal antiterrorism initiatives.

"September 11 Opportunism"

Consider one such example. On Feb. 10, 2003, Governor Pataki announced in a news release that he was submitting to the state legislature a bill that would "provide New York State with the toughest, most comprehensive antiterrorism laws in the nation."

The bill -- 20 pages of single-spaced text

amending scores of statutes -- was rushed to a vote in the Senate the very next morning. This "fast track" procedure is barred by the state constitution (which prevents a floor vote on a bill less than three days after its introduction) unless the governor issues a "message of necessity" that includes the factual basis for the expedited vote.

Why the rush to legislate? An expedited vote on S.3 was required, so read the governor's message, because it was "necessary for the purpose of enacting further anti-terrorism measures to enhance public safety." Put another way: A vote on the bill was urgent because it was urgent that a vote be taken.

The governor had also issued a message of necessity on September 17, 2001, in order to pass the Antiterrorism Act of 2001, which created five terrorism crimes involving "intimidation or coercion" of a civilian or unit of government. The legislation passed that same day with hardly a word of public debate.

Perhaps one can rationalize (if not satisfactorily explain) the rush to legislate on Sept. 17, 2001. But it is difficult to inter-

(continued on page 6)



LASKER/ CALLAWAY AWARDS

NYCLU Executive Director DONNA LIEBERMAN joins Lasker Award winner RUSSELL SIMMONS and former New York City Mayor DAVID DINKINS.

NYCLU Hails Court Ruling on "Enemy Combatants"

The United States Court of Appeals for the Second Circuit ruled on December 18 in the case of *Padilla v. Bush* that the President had no authority unilaterally to detain an American citizen in a United States military facility without access to the courts and to an attorney. Mr. Padilla was originally taken into military custody in New York City over 18 months ago and since then has been held incommunicado in a military brig in South Carolina. The government insists that the President believes that Mr. Padilla has associated with Al Qaida and is, therefore, an "enemy combatant" Padilla can be held indefinitely without any criminal charges or trial at which the government would be required to prove its case. The Court of Appeals rejected the government's position.

In reaching its decision, the Court reasoned that the President's authority "must stem either from an act of Congress or from the Constitution itself;" that Congress did not authorize the President to designate individuals as "enemy combatants" and to detain such individuals indefinitely where, as here, the individual was not captured on a battlefield, but was arrested on American soil; that federal law specifically prohibits the detention of American citizens without congressional authorization; and that the President as Commander-in-Chief possesses no inherent authority to treat United States citizens in that fashion, especially in the face of a federal law that prohibits the unauthorized detention of US citizens.

The government has announced that it will appeal the

ruling to the United States Supreme Court. The NYCLU along with the ACLU has played an active role as amicus in the case and will continue to do so at the Supreme Court as well.

In announcing the NYCLU's plans to continue to defend Padilla's right to due process, NYCLU Executive Director Donna Lieberman said, "This is an historic ruling. It reaffirms the fundamental principle that an American citizen cannot be swept off the street and confined without access to the courts simply by a unilateral act of the President. Of course the government can and should prosecute alleged terrorists. But in doing so, it must follow the basic rules of fairness set out in the Constitution."

DIRECTOR'S COLUMN



Scott Jones

BY DONNA LIEBERMAN
EXECUTIVE DIRECTOR

Kudos to Our Grassroots

As I look back on the year 2003, I am simply amazed at the high quality of the work we did, the enormity of the challenges we faced, and the significance of the victories we won. And when I say "we" I am referring to the entire NYCLU community – its staff, state and chapter boards, volunteers and members. I am especially proud of our grassroots organizing over the past year which has made it possible for so many NYCLU members and supporters to engage in civil liberties activism.

Safe & Free Campaign

One of my proudest moments came on September 9. Three days earlier, we had learned that Attorney General John Ashcroft was coming to New York City to drum up support for his beleaguered PATRIOT Act. The appearance was part of a stealth national tour, and only friendly New York officials and members of the U.S. Attorney's office were invited. We decided not to let the Attorney General get off so easy. In less than 72 hours, relying upon our growing network of activists and the speed of electronic communication, we were able to mobilize over 2,000 protesters for a "Bashcroft" protest outside the closed-door meeting on Wall Street to express their opposition to Ashcroft's policies.

The Wall Street demonstration was organized by the NYCLU's Bill of Rights Defense Campaign, whose achievements since its March 2003 launch have been truly astounding. Albany, Syracuse, Ithaca, Schenectady and a number of other cities and towns have already passed resolutions condemning the Bush Administration's attack on civil liberties. And the Speaker of the New York City Council has joined a substantial majority of the Council in supporting Bill of

Rights Resolution 909a and promises to bring it to a vote on February 4, 2004. At that point, the number of people living in "civil liberties safe zones" will swell to more than 37 million nationwide, sending a powerful message to the Administration and to all the presidential candidates that Americans are not willing to needlessly sacrifice their rights in the name of national security.

These resolutions are passing because they have significant voter support, and that support is due in large measure to the hard work of our members throughout the state who have formed local Bill of Rights Defense Campaign committees. I want to encourage all members of the NYCLU to get involved in this historic effort, especially as we gear up for a struggle to have a resolution passed by the state legislature in Albany. We will need all of your help in making New York State a civil liberties safe zone! For more information on how you can become involved, go to our website, www.nyclu.org.

Our grassroots efforts often complement cutting-edge litigation. Bill of Rights Resolution 909a opposes the "indefinite incarceration of non-citizens based on mere suspicion of terrorist activity, and the indefinite incarceration of citizens designated as 'enemy combatants' without access to counsel or meaningful recourse to the federal courts." The NYCLU played a major role as *amicus curiae* in *Padilla v. Bush*, the legal challenge to the detention of Jose Padilla for over 18 months without charges, trial or access to counsel. In a resounding defeat for the Bush Administration, a federal appeals court in New York ruled that a U.S. citizen, arrested on American soil, cannot be held in military detention at the sole discretion of the President.

Dissent Is Patriotic

I'm also very proud of our work over the past year defending the right to protest and laying the legal groundwork for what promises to be a huge outpouring of dissent when the Republican National Convention takes place in New York City next August. When the City denied a permit for the huge anti-war march last February 15th, the NYCLU went to court on behalf of the organizers, United for Peace and Justice (UFPJ). When the police department herded tens of thousands of protestors into holding pens, attacked people with pepper spray and horses, and arrested hundreds, we publicized a special e-mail address and invited victims to tell us their stories. Based on hundreds of firsthand accounts we received, we demanded and won a public hearing concerning the City's protest policies, released a special report, *Arresting Protest*, documenting the NYPD's unconstitutional actions, and generated a tremendous amount of media coverage. UFPJ applied for a second permit to march, and this time, the permit was granted. On March 22, more than 200,000 people "talked with their feet" from Times Square to Washington Square Park.

In the meantime, we learned from protestors arrested on February 15 that many had been held for hours and questioned by the police about their political views before being issued desk appearance tickets and released. We were able to obtain a copy of a document with the sinister title: "Criminal Intelligence Division / Demonstration Debriefing Form." Among other things, the form called for

information about the person's organizational affiliations and had a space for "Prior Demonstration History." We immediately confronted the Police Commissioner with this evidence of unconstitutional intelligence gathering, and the NYPD quickly agreed to halt the secret program and to destroy the dossiers that had already been compiled.

On November 19, the NYCLU filed three lawsuits as part of our overall strategy to provide maximum legal protection for the rights of protestors in advance of the Republican National Convention. We are seeking court orders barring the police practices described in *Arresting Protest* – practices like using horses to disperse peaceful demonstrators, barricading access to the rallying point, and detaining protestors in vans for long periods of time without access to food, water, or bathrooms. The lawsuits were brought on behalf of three victims of police abuse during the anti-war demonstration on February 15 – victims like Ann Stauber, a 60-year-old diabetic, wheelchair-bound Manhattanite who was herded into a metal pen from which she could not exit without the permission of the police. When she tried to leave, she was forcibly prevented and her wheelchair was broken. All three of our plaintiffs plan to attend large demonstrations at the Convention in August.

As another season of protests approaches, we are working hard to improve and upgrade our website, www.nyclu.org. Our plan is to make it a one-stop-shop for all New Yorkers who are seeking information about their right to protest. I invite all of you to visit our website in the New Year to see how we're doing. And I thank all of you for helping us fight the good fight! ■





NYCLU
NEW YORK CIVIL LIBERTIES UNION

N.Y. CIVIL LIBERTIES
(ISSN 0746-0801)
is published twice a year by
The New York Civil Liberties Union,
125 Broad St., New York, N.Y. 10004
(212) 344-3005 • www.nyclu.org

Subscription by membership only at \$20 and up, of which 50 cents is for a one-year subscription.

Claudia Angelos President; **Miriam O. Hyman**, Vice President;
Jonathan F. Horn, Secretary; **Julie Clegg**, Treasurer

Executive Director: Donna Lieberman
Legal Director: Arthur Eisenberg
Associate Legal Director: Christopher Dunn
Director, Reproductive Rights Project: Rebekah Diller
Director, Teen Health Initiative: LeeChe Leong
Legislative Director: Robert Perry
Project Director, Bill of Rights Defense Campaign: Udi Ofer
Director of Development: Christina VanLanen

Chapter Directors:
Melanie Trimble (Capital Region), Barrie Gewanter (Central New York),
Barbara de Leeuw (Genesee Valley), Barbara Bernstein (Nassau),
Jared Feuer (Suffolk), Linda S. Berns (Westchester),
Jeanne-Noel Mahoney (Western Regional)

Editor: John Rosenthal
Staff Photographer: Tom Tyburski

N.Y. State Lobbying Commission Keeps NYCLU Busy Defending First Amendment

By Christopher Dunn

The NYCLU is seeking to block New York State from vastly expanding the reach of its lobbying laws to core First Amendment activity like public rallies and marches and to public-education efforts. At issue in this controversy is the extent to which advocacy organizations can be required to report to the government about their work and the extent to which the government can use lobbying laws as a basis for investigating the internal workings of advocacy groups.

The NYCLU first became involved in this issue over the summer when the New York Temporary State Commission on Lobbying ordered the Coalition on Fairness, a group formed by Russell Simmons, to provide documents to the Commission about a public rally at City Hall in Manhattan. That rally featured speakers -- including NYCLU Executive Director Donna Lieberman -- who called for reform and abolition of the draconian Rockefeller drug laws. The Commission sought copies of minutes of meetings held by groups planning the rally, letters between the groups, and information about those who provided financial support for the rally.

As soon as the case was filed, the NYCLU entered it as a friend of the court

("amicus curiae"). We actively participated in several hearings and submitted extensive briefing about the First Amendment rights of groups to be free from the registration and disclosure obligations of lobbying laws when they are engaged in advocacy that is not directly targeted at legislators. In our view, staging a public rally is not and cannot be lobbying.

Before the court decided on the Russell Simmons case, the NYCLU received a letter from the Lobbying Commission demanding that the NYCLU submit information about a billboard the NYCLU had sponsored. The billboard read: "Welcome to the mall. You have the right to remain silent. Value free speech. www.nyclu.org". The NYCLU had sponsored the billboard in response to a highly-publicized March 2003 arrest of a patron at the mall for wearing an anti-war T-shirt. During the time the billboard was up, the NYCLU also was engaged in lobbying in support a New York State Assembly bill bearing on the same issue.

Two days after receiving the letter from the Lobbying Commission, we filed a federal lawsuit against it, arguing that a billboard that makes no mention of legislation cannot be lobbying and thus cannot be subject to the lobbying law's registration and disclosure requirements. The lawsuit seeks to

impose clear limits to the Lobbying Commission's power and seeks to protect organizations like the NYCLU that engage in a wide range of advocacy that

includes lobbying as well as much other advocacy that clearly is not lobbying.

Christopher Dunn is the NYCLU's Associate Legal Director. ■

LEGAL BRIEFS

NYCLU Restores First Amendment Rights

• On October 22 the NYCLU filed suit against the New York City Police Department challenging a policy by which the Department was barring all First Amendment activity (leafleting, petitioning, picketing, and assembly) on public sidewalks in front of schools in New York City. Immediately after we filed the suit, the NYPD issued a City-wide directive suspending the policy, and we are negotiating a settlement to the case.

EMS Gag Order Lifted

• On October 28 the City of New York agreed to a court order barring the Fire Department from reinstating policies that prohibited Emergency Medical Services employees from speaking to the press. That same day, two other City agencies revoked a series of policies that barred employees at the Department of Corrections and Department of Youth and Community Development from making public statements about problems at City agencies. All of these actions came in response to NYCLU litigation and demands targeting City policies restricting the free speech rights of City employees.

NYCLU Asserts Death Penalty Unconstitutional

• On September 22, the New York Court of Appeals heard arguments in the second appeal of a death sentence under New York's newly enacted death-penalty scheme. The NYCLU filed a brief arguing that the death sentence was unconstitutional because the trial took place in the midst of massive publicity that was deeply prejudicial to the defendant and that improperly influenced the jury.

Bill of Rights Defense Campaign Heats Up

(Continued from page 1)

email, phone, and meet with elected officials, and bring the campaign to scores of community organizations, unions, and professional associations.

On September 9, the NYBORDC organized a rally that drew over 2,000 people, on less than two working days notice, to protest when Attorney General Ashcroft came to town to promote the USAPATRIOT Act.

On October 20, Deputy Majority Leader Bill Perkins, the resolution's primary sponsor, convened a hearing on Resolution 909a. More than a dozen organizations offered testimony on behalf of the resolution, including former Republican Congressman Bob Barr of the American Conservative Union, who supported Resolution 909a because, "the Constitution . . . is the one thing - when all is said and done - that will keep us a free people and a signal light of true liberty for the world."

On December 2, the Campaign brought hundreds out in the freezing cold to demonstrate at City Hall in support of Resolution 909a. That demonstration, co-sponsored by our coalition partners in the campaign, prompted the Council Speaker to take the podium and announce his support for Resolution 909a.

Though originally scheduled for consideration at the Council's final meeting in December, the vote has been rescheduled for the first business meeting of the new session, February 4, 2004. Campaign volunteers and coalition partners will turn out at City Hall for the vote.

More than 90 organizations have joined the campaign - including the American-Arab Anti-Discrimination Committee, Council on American Islamic Relations, Council of Pakistan Organization, the NAACP, New York



NYCLU Board member PAT PERRY, Deputy Director DAVID ADDAMS, CCR attorney NANCY CHANG, Rev. PETER LAARMAN, and AALDEF Director MARGARET FUNG stand behind (L-R) City Council Members MARGARITA LOPEZ and BILL PERKINS with NYCLU Executive Director DONNA LIEBERMAN and Congressman JERROLD NADLER at October 20 rally in support of Resolution 909a. Photo by Pat Arnow

Public Library Guild, Amnesty International USA, and the Association of Legal Aid Attorneys.

NYCLU CHAPTERS CONTINUE TO WORK WITH NYBORDC

Syracuse: The Central New York (CNY)

BORDC kicked off in June with a coalition meeting that drew over 100 people from Syracuse, Utica, Auburn, Oswego, and Binghamton. Fourteen area organizations have endorsed the Campaign, including groups dedicated to advocacy on peace; gay rights; environmental protection; social

justice, and animal rights, as well as organizations associated with the Quaker, Catholic, and Muslim Communities.

On Sept. 8, the CNYBORDC won a major victory when the Syracuse Common Council overwhelmingly adopted a strongly worded Civil Rights Preservation Resolution, with eight of the nine members, both Democrat and Republican, supporting the measure.

CNY Chapter Director Barrie Gewanter continues an active outreach and education program through regular speaking engagements and a substantial volunteer network that has reached out to church groups, peace and social justice organizations, high school and college students, as well as the library community, including the New York Library Association's Intellectual Freedom Committee.

Westchester: The chapter has obtained over 2,000 signatures on petitions that will be presented to the Westchester County Legislature. Resolution efforts are underway in Mamaroneck, Mt. Vernon, Yonkers, White Plains and Greenburgh. Over 30 organizations have joined the growing campaign, whose steering committee members have lobbied Congresswoman Nita Lowey, met with the editorial board of the Journal News (Gannett), and made scores of presentations on the Bill of Rights defense movement.

Buffalo area: The Western Regional Office helped organize a demonstration of 400 protesters when Attorney General John Ashcroft came to Buffalo. On several occasions the WRO has publicly debated the USA PATRIOT act publicly with U.S. Attorney Michael Battle.

Udi Ofer is Director of the NYCLU's Bill of Rights Defense Campaign. ■

THE ASSEMBLY

Assemblymember	Issues Rating	A.15/Emergency Contraception for Rape Survivors	A.888/Emergency Contraception prescriptions	A.1118/Student Dignity	A.5446/Human Rights Complaint Filing Time	A.2859/Farm Worker's Labor Rights
Abbate	100%	+	+	+	+	+
Acampora	60%	+	-	+	-	+
Alfano	100%	+	+	+	+	+
Arroyo	100%	+	+	+	+	+
Aubertine	60%	-	-	+	+	+
Aubry	100%	+	+	+	+	+
Bacalles	60%	+	+	+	-	-
Barclay	60%	+	+	+	-	-
Barra	40%	+	-	+	-	-
Barraga	20%	-	-	-	+	-
Benjamin	100%	+	+	+	+	+
Bing	100%	+	+	+	+	+
Boyland	100%	+	+	+	+	+
Bradley	100%	+	+	+	+	+
Brennan	100%	+	+	+	+	+
Brodsky	100%	+	+	+	+	+
Brown	40%	+	+	-	-	-
Burling	60%	+	+	+	-	-
Butler	0%	-	-	-	-	-
Cahill	100%	+	+	+	+	+
Calhoun	60%	+	+	+	-	-
Canestrari	100%	+	+	+	+	+
Carrozza	100%	+	+	+	A	+
Casale P	40%	-	-	+	-	+
Christensen	100%	+	+	+	+	+
Clark	100%	+	+	+	A	+
Cohen A	100%	+	+	+	+	+
Cohen M	100%	+	+	+	+	+
Colton	100%	+	+	+	+	+
Conte	100%	+	+	+	+	+
Cook	100%	+	+	+	+	+
Crouch	60%	+	+	+	-	-
Cusick	100%	+	+	+	+	+
Cymbrowitz	100%	+	+	+	+	+
DelMonte	60%	-	+	+	+	-
Destito	80%	+	+	+	+	-
Diaz L	100%	+	+	+	+	+
Diaz R	100%	+	+	+	+	+
DiNapoli	100%	+	+	+	+	+
Dinowitz	100%	+	+	+	+	+
Eddington	100%	+	+	+	+	+
Englebright	100%	+	+	+	+	+
Errigo	40%	+	-	+	-	-
Espallat	100%	+	+	+	+	+
Farrell	100%	+	+	+	+	+
Ferrara	80%	+	+	+	-	+
Finch	40%	+	-	+	-	-
Fitzpatrick	20%	-	-	+	-	-
Galef	100%	+	+	+	+	+
Gantt	100%	+	+	+	+	+
Gianaris	100%	+	+	+	+	+
Glick	100%	+	+	+	+	+
Gordon	100%	+	+	+	+	+
Gottfried	100%	+	+	+	+	+
Grannis	100%	+	+	+	+	+
Green	100%	+	+	+	+	+
Greene	100%	+	+	+	+	+
Grodenschik	100%	+	+	+	+	+
Gromack	100%	+	+	+	+	+
Gunther	100%	+	+	A	+	+
Hayes	60%	+	-	+	-	+
Heastie	100%	+	+	+	+	+
Higgins	100%	+	+	+	+	+
Hikind	100%	+	+	+	+	+
Hooker	0%	-	-	-	-	-
Hooper	100%	+	+	+	+	+
Hoyt	100%	+	+	+	+	+
Jacobs	100%	+	+	+	+	+
John	100%	+	+	+	+	+
Karben	100%	+	+	+	+	+
Kaufman	100%	+	+	+	+	+
Kirwan	40%	-	-	-	+	+
Klein	100%	+	+	+	+	+
Kolb	40%	+	-	+	-	-
Koon	100%	+	+	+	+	+

The NYCLU's 2003 Voting

Following is a brief description of the bills included in the NYCLU's 2003 Voting Index. The Index includes only bills that the NYCLU supported or opposed in a memorandum distributed to the legislature, and that were voted on by the full Assembly, the full Senate, or both are included. Bills that were held in a legislative committee or reported out of committee but not presented for a vote on the floor of the Assembly or Senate are not included in the Index.

Bills Passed by Both the Assembly and the Senate

Emergency Contraception for Rape Survivors (A.15-A, John et al.)

This bill requires all hospital emergency rooms to offer emergency contraception (EC) to rape survivors seeking treatment after a rape. Specifically, the bill mandates that all hospitals providing emergency medical treatment must give advice verbally regarding the availability of emergency contraception to all women who receive emergency care after a rape; it requires such hospitals to provide EC upon request to all such patients, immediately and on site; it directs the Commissioner of Health to develop informational materials in multiple languages on the nature and effectiveness of EC, including information that EC cannot cause abortions, for distribution to all such hospitals; and it requires all such hospitals to provide these patients with the written materials prepared by the Commissioner. Emergency contraceptive pills, high doses of oral contraceptives, are FDA-approved as a safe and effective means of preventing pregnancy following unprotected sex and should not be confused with mifepristone (RU-486), an FDA-approved drug for early abortion. EC works by preventing ovulation, fertilization, or implantation. It does not disrupt an established pregnancy, which the medical community defines as beginning at implantation. The NYCLU supported this bill. **Passed by the Assembly 143-3. Passed by the Senate 61-0. Signed by the Governor.**

Bills Voted on in the Assembly Only

Emergency Contraception – Non-Patient Specific Prescriptions (A.888, Paulin et al.; S.3339, Hoffman)

This bill would allow licensed physicians, certified nurse practitioners and licensed midwives to write "non-patient specific" prescriptions for emergency contraception (EC), which could then be dispensed by licensed pharmacists or registered professional nurses. Under existing law, a woman who requires EC must make an appointment with or contact her doctor, who must then write her a prescription, which she must then have filled by a pharmacist. All these steps take precious hours as the drug's effectiveness wanes. Under the existing prescription procedure, therefore, this highly effective contraceptive is often rendered useless because women may not be able to obtain the drug in a timely manner. The NYCLU supported this bill. **Passed by the Assembly 118-29.**

Dignity for All Students Act (A.1118, Sanders et al.; S.1925, Duane et al.)

This bill would prohibit discrimination and harassment, including "verbal threats and intimidation or abuse, based upon a person's race, color, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender or sex," in public elementary and secondary schools and at school functions. The bill recognizes that, as a matter of public policy, the state has a role in promoting respect for diversity in the school setting, and in fostering a learning environment that is free of bias and discrimination. The NYCLU supported this broad policy initiative, while seeking clarification on the definition of "harassment" to insure safeguards for students' constitutionally protected speech and expressive conduct. **Passed by the Assembly 136-8.**

Human Rights Complaint Filing Time (A.5446, Sanders et al.)

This bill would extend the time limit for filing a complaint of discrimination with the Division of Human Rights from one year to three years, equivalent to the time period for filing a similar judicial complaint. Many victims of discrimination do not immediately file complaints due to fear of retaliation from the person they are filing against (employer, landlord, etc.) or are simply unaware that legal recourse is available. This change would give those seeking a less costly and less time consuming administrative remedy the same amount of time to act as someone pursuing a civil cause of action in the courts, insuring that all victims of discrimination are given equal access to either channel of redress. For these reasons, the NYCLU supported this bill. **Passed by the Assembly 104-40.**

Farm Workers' Labor Rights (A.2859, Nolan; S.3351, Mendez et al.)

This bill would remove farm laborers from the list of workers excluded from coverage under the New York State Labor Relations Act. Under this Act, farm workers are currently denied the guarantees of "the right ... to form, join or assist labor organizations, to bargain collectively ... and to engage in concerted activities, for the purpose of collectively bargaining or other mutual aid or protection, free from interference, restraint, or coercion of employers." The NYCLU supported this bill for its recognition of farm workers' constitutional right of freedom of association. **Passed by the Assembly 113-33.**

Bills Voted on in the Senate Only

Transmissible Disease Testing of Criminal Defendants and Juveniles (S.1928, Saland et al.)

This bill would allow court-mandated, involuntary testing of individuals for sexually transmitted diseases charged with or convicted of sex offenses, violent felonies, or aggravated assault. These results would then be disclosed to the person alleging exposure to the bodily fluids of the defendant during the commission of the crime, as well as involved attorneys. By forcing someone who has not been convicted of a crime to

Index: A Summary of Bills

undergo medical testing against their will the bill violates defendants' right to due process and discards the presumption of innocence that our criminal justice system is based upon. The bill also has the potential to mislead and endanger the very victims it seeks to protect because only the testing of the victim herself will determine whether infection has occurred. A negative result for the defendant can lead a victim to ignore the need to test herself, while a positive result can cause unnecessary fear and stress for a victim who has not been infected by contact with her attacker. For these reasons the **NYCLU opposed** this legislation. **Passed by the Senate 46-15.**

E-mail "Spam" (S.1680, Rath et al.; A.6036, Schimminger et al.)

This bill would prohibit the transmission of commercial electronic mail to or from a computer located in the state if the e-mail uses a third party's internet domain without permission or proper identification of the third party. The bill also provides a civil remedy for its violation. By imposing civil liability for sending unsolicited commercial e-mail or bulk e-mail, and by failing to limit the legislation's scope to bulk e-mail, this proposed legislation would seriously limit the ability of individuals to engage in anonymous and commercial speech. The **NYCLU opposed** this bill on the grounds that the proposed regulatory scheme was overreaching and would frustrate legitimate commercial speech. **Passed by the Senate 61-1.**

Anti-Terrorism Act of 2003 (S.3, Balboni et al.)

This bill would make radical changes in the protections that New Yorkers enjoy against unconstitutional government actions. Specifically, the bill would: create a "good faith" exemption to the exclusionary rule that prevents evidence obtained in violation of the Constitution from being used as evidence in a criminal prosecution; allow people accused of terrorism or related crimes to be tried more than once for the same crime, a so called "double jeopardy" prosecution; allow a defendant to be convicted solely upon the uncorroborated testimony of an accomplice to the alleged crime; and permit "roving wiretaps" (which attach to the person being surveilled; not to the telephone or computer used by that person) in all criminal investigations. These provisions seriously compromise fundamental legal and constitutional protections, and for this reason the **NYCLU vigorously opposed** the bill. **Passed by the Senate 52-8.**

Fetal Assault (S.403, Maltese et al.; A.693, P. Rivera)

In an attempt to undermine a woman's constitutional right to choose abortion, this bill has as its principle intent and effect the redefinition of the fetus, at any stage of gestation, as a person. With this new definition in place the bill then creates a number of new criminal offenses for crimes committed against a fetus, including murder, manslaughter, criminally negligent homicide, and vehicular manslaughter. This attempt to separate the woman from her fetus implicitly countenances the view that life begins at conception and endows that fetus with the legal status of an autonomous individual. The **NYCLU opposed** this bill as a direct attack on reproductive freedom. **Passed by the Senate 38-22.**

Police and Public Protection Act of 2003 (S.2773, Volker et al.)

This legislation proposes several amendments to the criminal procedure law that would significantly diminish the legal constraints upon law enforcement officials when interacting with civilians and when conducting searches and seizures. The bill would create a "bad faith" exception to the exclusionary rule, which bars the introduction of evidence obtained in violation of Constitutional standards (i.e., the tainted evidence would be admitted unless except upon a showing that it was obtained in bad faith). The bill would also significantly broaden a police officer's authority to stop and question a person even in the absence of a reasonable suspicion criminality is afoot. The sponsor's memorandum that accompanies the bill asserts, without substantiation, that in light of the threat posed by terrorism long-standing constitutional standards governing police interactions with civilians actually compromise the public safety. The bill would seem to pose the greater danger to the rights of due process, privacy, and association. The **NYCLU opposed** this legislation. **Passed by the Senate 42-18.**

Ban on Medicaid Funding for Abortion (S.4877, Committee on Rules)

This bill would prohibit Medicaid (the joint federal-state health insurance program for the poor) from paying for abortions except to preserve the life of the mother or in cases of rape or incest. This attempt to ban Medicaid abortion funding is a bold and dangerous attempt to control poor women's reproductive choices and force them to carry pregnancies to term. With such a ban, New York would also turn its back on women who need abortion due to cancer, diabetes, heart conditions, or other threats to their health. The **NYCLU opposed** this legislation as an attempt to rob poor women of their constitutional right to reproductive choice. **Passed by the Senate 34-24.**

THE ASSEMBLY

Assemblymember	Issues Rating	A.15/Emergency Contraception for Rape Survivors	A.888/Emergency Contraception prescriptions	A.1118/Student Dignity	A.5446/Human Rights Complaint Filing Time	A.2859/Farm Worker's Labor Rights
Labriola	80%	+	+	+	-	+
Lafayette	no score	+	A	A	+	+
Lavelle	100%	+	+	+	+	+
Lentol	60%	-	-	+	+	+
Levy	100%	+	+	+	+	+
Lifton	100%	+	+	+	+	+
Lopez	100%	+	+	+	+	+
Magee	60%	+	+	+	-	-
Magnarelli	100%	+	+	+	+	+
Manning	60%	+	+	+	-	-
Markey	100%	+	+	+	+	+
Mayersohn	no score	A	+	A	A	+
McDonald	60%	+	+	+	-	-
McDonough	60%	+	-	+	-	+
McEneny	100%	+	+	+	+	+
McLaughlin	100%	+	+	+	+	+
Miller	80%	+	+	+	-	+
Millman	100%	+	+	+	+	+
Mills	60%	+	+	+	-	-
Mirones	40%	-	-	+	-	+
Morelle	100%	+	+	+	+	+
Nesbitt	40%	+	-	+	-	-
Nolan	100%	+	+	+	+	+
Norman	100%	+	+	+	+	+
Oaks	40%	+	-	+	-	-
O'Connell	60%	+	-	+	-	+
O'Donnell	100%	+	+	+	+	+
Ortiz	100%	+	+	+	+	+
Ortloff	40%	+	-	+	-	-
Parment	100%	+	+	+	+	+
Paulin	100%	+	+	+	+	+
Peoples	100%	+	+	+	+	+
Peralta	100%	+	+	+	+	+
Perry	100%	+	+	+	+	+
Pheffer	100%	+	+	+	+	+
Powell	100%	+	+	+	+	+
Prentiss	40%	-	-	+	-	+
Pretlow	100%	+	+	+	+	+
Raia	60%	+	-	+	-	+
Ramos	100%	+	+	+	+	+
Reilich	20%	+	-	-	-	-
Rivera J	100%	+	+	+	+	+
Rivera P	100%	+	+	+	+	+
Robinson	100%	+	+	+	+	+
Sanders	100%	+	+	+	+	+
Sayward	60%	+	+	+	-	-
Scarborough	100%	+	+	+	+	A
Schimminger	60%	-	-	+	+	+
Scozzafava	60%	+	+	+	-	-
Seddio	80%	-	+	+	+	+
Seminario	no score	+	A	A	+	A
Sidikman	100%	+	+	+	+	+
Smith	80%	+	+	+	+	-
Spano	100%	+	+	+	+	+
Stephens	100%	+	+	+	+	+
Straniere	80%	+	+	+	-	+
Stringer	100%	+	+	+	+	+
Sweeney	100%	+	+	+	+	+
Tedisco	40%	-	-	+	+	-
Thiele	100%	+	+	+	+	+
Titus	100%	+	+	+	+	+
Tocci	75%	+	-	A	+	+
Tokasz	100%	+	+	+	+	+
Tonko	80%	+	+	+	+	-
Towns	100%	+	+	+	+	+
Townsend	60%	+	+	+	-	-
Warner	0%	-	-	-	-	-
Weinstein	100%	+	+	+	+	+
Weisenberg	100%	+	+	+	+	+
Weprin	100%	+	+	+	+	+
Winner	60%	+	+	+	-	-
Wirth	0%	-	-	-	-	-
Wright	100%	A	+	+	+	+
Young	40%	+	-	+	-	-
Speaker Silver	100%	+	+	+	+	+

HOW TO READ THE NYCLU VOTING INDEX

Symbol **Vote**
 + Agreement with NYCLU position
 - Disagreement with NYCLU position
 A Officially recorded as absent or abstained

The Voting Index only indicates the voting record for floor votes, and does not reflect votes in committee.

The 2003 Legislative Session

(Continued from page 1)

pret the rush to pass S. 3 on Feb. 11, 2003, except as another example of what NYU law professor Stephen Schulhofer refers to as "September 11 opportunism."

A brief overview of S.3 may offer some insight into the rationale for avoiding public debate on the merits of the bill. It included provisions that would --

- Amend the "exclusionary rule" -- which bars the admissibility of evidence that is obtained unlawfully -- provided a police officer can claim his otherwise unlawful search and seizure was undertaken in "good faith." Such an exception, New York's highest court has ruled, places a premium on illegal police action.

- Permit the conviction of a suspected terrorist based upon the uncorroborated testimony of an accomplice. In rejecting this practice, New York's Court of Appeals observed that the testimony of a suspected partner in crime -- typically offered in exchange for a reduced sentence or freedom -- is inherently untrustworthy.

- Suspend the rule against "double jeopardy" prosecutions involving suspected acts of terrorism. The constitutional protection against twice being tried for the same offense is intended to protect against the vindictive use of prosecutorial power. And, indeed, the historical record is replete with examples of prosecutors using their power vindictively, and without justification, to target dissenters perceived as security risks.

The floor "debate" on S.3 quickly degenerated into demagoguery. The substance of the bill was never addressed; and those who objected to the hurried vote were accused of being unpatriotic, un-American -- or worse.

Later in the legislative session Sen. Dale Volker, chairperson of the Senate Codes Committee introduced the Police and Public Protection Act of 2003, which proposed to increase significantly a police officer's authority to stop and question persons, and would just as dramatically diminish the legal constraints upon law enforcement when conducting searches and seizures. The sponsor's memorandum states the bill is a response to "the dramatic increase in violent crime including terroristic attacks on [the] civilian population."

The Senate passed each of these bills by a comfortable margin; but none was taken up by the Assembly. From this outcome one might conclude the exercise has no negative consequence. However, bills such as S.3 are drafted and introduced in anticipation of the actual or manufactured crisis that makes opposition politically untenable. (Many of the provisions in the USA PATRIOT Act had been sitting dormant in computer files, their authors awaiting the political circumstances that would silence objections.) Indeed as the invasion of Iraq loomed, Governor Pataki charged that the "democratic controlled Assembly" placed New Yorkers "at risk on the eve of war" by failing to take up S.3.

But all of this may have been but a prologue. In his State of the State address on January 6, 2004, Governor Pataki put antiterrorism initiatives, such as S.3, at the top of his agenda.

In a recent New York Times column, Paul Krugman commented on the subversion of the legislative process by exploiting the freighted symbolism of 9/11 and the fear of terrorism. He put this question to the reader: "Is the public -- and the media -- finally prepared to cry foul when cynicism

comes wrapped in a flag? America's political future may rest on the answer."

The New York

Bill of Rights Defense Campaign

There is a counter narrative to the federal government's seemingly relentless call for ever more expansive and intrusive police powers in response to the threat of terrorism. It is the national Bill of Rights defense movement, which grew out of town meetings in places such as Ann Arbor, Michigan; and Northampton, Massachusetts. Nat Hentoff analogizes the local committees formed at these meetings to the "Sons of Liberty" of the 1750s, who organized Committees of Correspondence in the American colonies to spread the news of British attacks on liberties.

The NYCLU has organized a statewide Bill of Rights Defense Campaign.

Reproductive Rights

It is a fact that many New York hospitals fail to provide emergency contraception (EC) to a woman seeking treatment after a rape. Legislation enacted this year, with the support and advocacy of the NYCLU, will remedy this failure. The new law, sponsored by Assembly Member Susan John and Senator Nicholas Spano, mandates that hospitals providing emergency medical services must offer on-site emergency contraception to rape survivors and fully inform these patients regarding the nature and effectiveness of emergency contraception as a means of pregnancy prevention.

The NYCLU advocated with less success for the passage of a bill that would permit certain licensed professionals to write "non-patient specific" EC prescriptions -- also referred to as "over the counter" prescriptions. The recent endorsement of these types of EC prescriptions by an advisory committee of the Food and Drug Administration gives new impetus to the enactment of a federal bill.

New York's Rockefeller Drug Laws: The Enduring Shame of the State's Criminal Justice System

This year's effort to rewrite the state's draconian drug-sentencing laws concluded much as last year's: reform delayed; justice denied. Gov. Pataki has demonstrated little commitment to meaningful reform of the state's sentencing scheme for drug offenses.

With each of his proposals the governor moves that target in the direction of more regressive "reform." His most recent bill, released in May but never actually introduced, is a veritable "poison pill." That is, it includes provisions that subvert meaningful reform and ensure rejection by the Assembly. These provisions include a "three strikes and your out" rule that would mandate sentences of 15-25 years to life for non-violent drug offenders; harsh penalty enhancements for so-called Drug Kingpins, a term defined so broadly that low-level offenders on the periphery of a drug transaction could be charged as a kingpin; and new enhanced penalties for a drug offender who "attempts" to possess a gun or who is in the "proximity" of and has "access" to a gun.

As a practical matter the governor's bill will accomplish the very opposite of what it purports to accomplish. For every drug offender released out the front door of a New York State prison, at least one drug offender will be taken into custody through the many "trap doors" in the governor's bill.

THE SENATE

Senator	Issues Rating	A.15/Emergency Contraception for Rape Survivors	S.1928/Transmissible Disease Testing	S.1680/Spam (S.1680)	S.3/Anti-terror (S.3)	S.403/Fetal Assault	S.2773/Police & Public Protection Act	S.4877/Medicatd Funding for Abortion
Alesi	17%	+	-	-	-	-	A	-
Andrews	71%	+	+	-	-	+	+	+
Balboni	14%	+	-	-	-	-	-	-
Bonacic	29%	+	-	-	-	-	-	+
Breslin	57%	+	-	-	-	+	+	+
Brown	57%	+	-	-	-	+	+	+
Bruno	14%	+	-	-	-	-	-	-
Connor	71%	+	+	-	-	+	+	+
DeFrancisco	29%	+	-	-	-	-	+	-
Diaz	14%	+	-	-	-	-	-	-
Dilan	86%	+	+	-	+	+	+	+
Duane	100%	+	+	+	+	+	A	+
Farley	14%	+	-	-	-	-	-	-
Flanagan	14%	+	-	-	-	-	-	-
Fuschillo	14%	+	-	-	-	-	-	-
Golden	14%	+	-	-	-	-	-	-
Gonzalez	50%	+	-	-	A	+	-	+
Hannon	14%	+	-	-	-	-	-	-
Hassell-Thompson	86%	+	+	-	+	+	+	+
Hoffmann	43%	+	-	-	-	+	-	+
Johnson	14%	+	-	-	-	-	-	-
Krueger	71%	+	+	-	-	+	+	+
Kruger	33%	+	-	-	-	+	-	A
Kuhl	14%	+	-	-	-	-	-	-
Lachman	29%	+	-	-	-	-	-	+
Larkin	14%	+	-	-	-	-	-	-
LaValle	14%	+	-	-	-	-	-	-
Leibell	14%	+	-	-	-	-	-	-
Libous	14%	+	-	-	-	-	-	-
Little	14%	+	-	-	-	-	-	-
Maltese	14%	+	-	-	-	-	-	-
Marcellino	14%	+	-	-	-	-	-	-
Marchi	14%	+	-	-	-	-	-	-
Maziarz	14%	+	-	-	-	-	-	-
McGee	43%	+	-	-	-	+	-	+
Meier	14%	+	-	-	-	-	-	-
Mendez	43%	+	-	-	-	+	-	+
Montgomery	86%	+	+	-	+	+	+	+
Morahan	14%	+	-	-	-	-	-	-
Nozzolio	14%	+	-	-	-	-	-	-
Onorato	29%	+	-	-	-	-	+	-
Oppenheimer	57%	+	+	-	-	+	-	+
Padavan	14%	+	-	-	-	-	-	-
Parker	86%	+	+	-	+	+	+	+
Paterson	86%	+	+	-	+	+	+	+
Rath	14%	+	-	-	-	-	-	-
Robach	14%	+	-	-	-	-	-	-
Sabini	71%	+	+	-	-	+	+	+
Saland	14%	+	-	-	-	-	-	-
Sampson	no score	+	A	-	-	-	+	A
Schneiderman	86%	+	+	-	+	+	+	+
Seward	29%	+	-	-	-	-	-	+
Skelos	14%	+	-	-	-	-	-	-
Smith A	86%	+	+	-	+	+	+	+
Smith M	57%	+	+	-	-	-	+	+
Spano	43%	+	-	-	-	+	-	+
Stachowski	14%	+	-	-	-	-	-	-
Stavisky	71%	+	+	-	-	+	+	+
Trunzo	14%	+	-	-	-	-	-	-
Veella	14%	+	-	-	-	-	-	-
Volker	14%	+	-	-	-	-	-	-
Wright	14%	+	-	-	-	-	-	-

Media accounts, by and large, dutifully parroted the governor's public relations statements, which pledged a commitment to fairness and balance, a tireless effort in seeking reform, & etc. In fact the governor's legislative game plan employed a classic divide-and-conquer strategy. The plan's execution was brilliant. Russell Simmons, impresario of hip-hop activism, mobilized an extraordinary coalition of rappers, spoken-word artists, community

organizers, policy experts and politicians in behalf of drug law reform. Simmons' appeal was driven by a (quite justified) righteous indignation over Albany's legislative inertia on this issue. The governor negotiated with Simmons various reform measures in closed-door sessions. But once made public, these proposals proved unacceptable to many of the advocates, who then fell to bickering publicly.

(Continued on page 7)

NYCLU Testifies Statewide for Education Reform

On June 26, 2003, the state's highest court ruled that the New York City schools fail to provide the education to which students are entitled and that the state must, at minimum, revamp its system for school funding in order to ensure that every student can get a "sound basic education." A sound basic education, the court said, is not just the 8th grade standard proposed by a lower court, but a "meaningful high school education."

The Court ordered the state to come up with a solution by summer 2004. Although the case, which is known as *CFE v. New York* (or "*CFE*", for the organizational plaintiff, Campaign for Fiscal Equity) dealt with New York City, the NYCLU advocates a statewide solution. Two statewide commissions – the Governor's Education

Reform Commission and the state Assembly Education Committee — have been holding hearings around the state on possible solutions.

The NYCLU, through our statewide chapter network and with the coordination of Board member Donald Shaffer, has testified at several of these hearings about the overwhelming need for statewide education reform and has argued that, while massive reform of the funding system is necessary, money alone is not sufficient to remedy the problems of failing schools statewide.

The NYCLU lawsuit, *NYCLU v. Pataki*, seeks to remedy massive educational failure in 27 abysmally "failing schools" around the state outside of New York City. We seek school-specific fiscal

and non-fiscal remedies. Many of the schools are in low-income communities and the overwhelming majority of the students consigned to them are children of color.

At the New York City hearing on December 12, Legal Director Arthur Eisenberg documented the problem: physical problems including unheated, unventilated, and grossly overcrowded classrooms, insufficient desk space, exposed electrical wires, no computers or internet access; no music teachers; no school supplies; less than 1 library book per child; no gym; and, abysmal performance statistics where well over half the student and sometimes as many as 75 percent failed to meet state standards.

NYCLU Chapter Directors, volunteer lawyers and Board members testified at the hearings in their communities about the massive failure in their areas. Chapter Directors Barrie Gewanter (Central New York) and Jared Feuer (Suffolk) testified before both Commissions. Directors Jean-Noel Mahoney (Western Regional Office), Melanie Trimble (Capital

Region) and Genesee Valley Chapter Board member Michael Slade testified before the commission. And state Board member and cooperating lawyer Donald Shaffer testified on behalf of the statewide education reform coalition, the Alliance for Quality Education, in Suffolk County. The full set of testimony is available on the NYCLU website: www.nyclu.org. NYCLU legal staff also met privately with the Executive Director of the Governor's Commission to present a thorough picture of the problems documented in the NYCLU lawsuit.

The NYCLU's statewide advocacy effort complements an aggressive legal strategy. Arthur Eisenberg presented oral argument before the Appellate Division Third Department in December urging the court to reinstate our lawsuit in light of the landmark decision in *CFE*. As we await a ruling in the *NYCLU v. Pataki* appeal, the NYCLU continues to advocate in the political arena for statewide and school-based reform to provide meaningful solutions for massive educational failure. ■

The 2003 Legislative Session

(Continued from page 6)

The only hope, in the near term, is that with cash tight and further deficits looming, New York will be impelled to follow suit with some twenty-five other states that have reduced or eliminated mandatory minimum prison sentences in an effort to reduce prison populations and close budget shortfalls.

Meantime the end-of-session news accounts depicted the true legislator-hero of this story, Jeff Aubry, chair of the Assembly Corrections Committee, as

having been relegated to the sidelines during the closed-door negotiations. Aubry has sponsored a bill that would return sentencing discretion to judges and provide funding for a comprehensive program of treatment and rehabilitation as an alternative to sentencing. Today the promise of the Aubry bill remains barely visible, out on the far perimeter of the field of legislative possibility.

Robert Perry is the NYCLU's Legislative Director. ■

New Faces at NYCLU

Sheila Stainback, an Emmy award-winning journalist, has joined the NYCLU as our first Director of Communications. A former Knight fellow in journalism at Stanford and Vice President of the National Association of Black Journalists, she comes to the NYCLU from a highly successful 20-year long career in broadcast journalism, most recently as a news anchor at Court TV. She will be responsible for NYCLU's publications and media work and will supervise the programmatic work of the chapters. Collaborating closely with Sheila on chapter matters is Connie Harshman, our Operations Director who is the former Director of Events and Affiliate Affirmative Action Programs at the ACLU. Deputy Director David Addams has been appointed to the affiliate support department at the ACLU.

Christina VanLanen joined the NYCLU as the Director of Development on January 5. Most recently Christine was the Vice President, Development and Communications, at Population Communications International. While there, she managed their entire fundraising and communication program. This included foundations, major gifts, planned giving, direct marketing, donor events, publications and public relations. Christina previously worked as the Director of Direct Response at Amnesty International USA and held a similar position at Planned Parenthood Federation of America.

Irum Taqi will be working as the new legislative counsel and policy associate. A graduate of Fordham Law School, she worked in the fields of criminal defense, police abuse and international human rights. She replaces Julie Ebenstein who is planning to attend law school.

Two new contract attorneys, Dawn Yuster and Palyn Hung, are working with our legal staff on criminal justice, education and general legal issues. Dawn is a graduate of Northwestern University School of Law, and worked for the past two years at the ACLU's Reproductive Freedom Project. Palyn was a Harlan Fiske Stone Scholar at Columbia Law School and cum laude graduate of Harvard. They will carry on the work of pro bono attorneys, Allan Silver, who spent the last year at the NYCLU as a public interest fellow from Pillsbury Winthrop, and Rob Koslow, from Millbank Tweed, who worked on privacy and technology issues.

Jared Feuer, who previously worked at the ACLU's Washington office and helped set up their email action network, has become the Director of our Suffolk Chapter. He will also assist the NYCLU in developing our email action network. ■



Board Nominations

The annual meeting of the members of the New York Civil Liberties Union will be held on June 16, 2004, 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 20 vacancies to be filled. The NYCLU Nominating Committee is charged by the NYCLU bylaws to nominate only as many candidates as there are vacancies on the Board.

The Nominating Committee will nominate its slate of nominees by March 8, 2004. If you are interested in finding out who the nominees are, please write Donna Lieberman, Executive Director, 125 Broad Street, New York, N.Y. 10004.

Additional nominations may be made and are hereby solicited up to May 3, 2004, 45 days prior to the annual meeting. The governing board of each NYCLU chapter is entitled to nominate one director. Nominations may also be made by petition of at least 25 members.

All nominations should be sent to Board Vice President Miriam Hyman, c/o the NYCLU, 125 Broad Street, New York, N.Y. 10004.

A Proxy ballot, along with biographical information and supporting statements for each of the candidates, will be published in the next issue of N.Y. Civil Liberties. ■

*Reproductive Rights Update***NYCLU Challenges Ban on "Partial Birth Abortion"**

Within a day of President Bush's signing of the first-ever federal ban on abortion procedures, a federal judge in Manhattan issued a temporary restraining order barring the government from enforcing this deceptive and extreme law in an ACLU/NYCLU challenge on behalf of the National Abortion Federation. The so-called "partial-birth abortion" ban presents the most direct threat to the constitutional right to choose in a decade.

Perhaps no anti-choice initiative is more misunderstood than this one. There is no known medical procedure termed "partial-birth abortion." The term is a rhetorical device concocted by anti-choice extremists to propagate gross misrepresentations about what are, in reality, harmful bans that obstruct access to safe medical care.

The ban is not limited to abortions performed late in pregnancy. In fact the ban does not specify a specific stage of pregnancy. Its sweeping, unconstitutional language would outlaw safe abortion procedures used throughout the second trimester, without regard to woman's health. There is no exception to protect a pregnant woman's health, meaning that a physician could be put in jail for doing his or her job—per-

forming a safe procedure that is medically appropriate to protect a woman's health.

There is much evidence that the law is unconstitutional. Just three years ago, in a case called *Stenberg v. Carhart*, the Supreme Court struck down a similar Nebraska ban on two grounds. The Court held that the ban impermissibly endangered women's health and imposed an undue burden because it includes dilation and evacuation procedures, the most

common form of second trimester abortion. The new legislation suffers from the same two fatal flaws.

The NYCLU's Reproductive Rights Project is co-counsel with the ACLU Reproductive Freedom Project in its challenge to the law on behalf of the National Abortion Federation and seven individual physicians. As Pres. Bush was signing the ban on November 5, we were in court in the Southern District of New York

seeking a temporary restraining order to prevent the law from being enforced. Judge Richard Conway Casey issued a temporary restraining order a day later, prohibiting Attorney General Ashcroft from enforcing the law against NAF and its members throughout the country.

In two other cases in San Francisco and Nebraska, federal judges also issued temporary restraining orders barring the law from being enforced. ■

NYCLU Sues School for Requiring Girls to Get Pregnancy, STD Tests

As a result of its extensive youth work, the NYCLU's Reproductive Rights Project received the call last spring when the principal of I.S. 164., a public intermediate school in Washington Heights, suspended a group of eighth-grade girls for having attended a "hooky party" and refused to let them back into school until they brought in a note from their doctor certifying that they were not pregnant and specifying the results of highly private STD and HIV tests. The boy who attended

the "hooky party" was not suspended from school and was not directed to undergo medical exams or disclose test results.

Furthermore, the principal continued to insist that the girls turn over test results even after being told that she had no right to make such a demand. Upon learning what had happened, the director of a clinic where some of the students went to get tested called the school principal and informed her that these test results were confidential and that she had no right to such information. Nonetheless, the principal refused to withdraw her order. Rather, when several of the girls tried to return to school and submitted notes that stated only that they had been seen in the clinic, the principal turned them away and told them to get notes with specific test result information or to undergo the exams again entirely. One family was so distraught over the school's orders that they chose to send their daughter to live with relatives in the Dominican Republic rather than be subjected to such humiliation.

The Reproductive Rights Project filed a federal lawsuit in the Southern District of New York on July 8, 2003 against the principal, another administrator involved

in the incident, and the New York City Department of Education, on behalf of two of the girls and their parents. On September 4, 2003, three more girls and their parents joined the lawsuit.

The suit charges the school and the New York City Department of Education with serious constitutional violations, including incursions on rights to privacy, bodily integrity, due process and equal protection. In addition, the complaint charges the defendants with violating federal and state anti-discrimination laws by suspending the girls but not the boy, and by requiring a pregnancy test, and for violating a state law that prohibits compelling someone to get an HIV test or to disclose their HIV test results.

The suit demands that all medical and disciplinary information related to the incident be removed from the students' educational records and that the Department of Education institute policy changes and staff trainings to ensure that school personnel understand and respect the educational and privacy rights of students, particularly with regard to reproductive health and pregnancy. ■

**March for Women's Lives
Sunday, April 25, 2004
Washington, D.C.**

For more and more women, critical reproductive health care is increasingly out of reach. In the last eight years, states have pushed through more than 330 measures restricting abortion, contraception, and sexuality education. And this year, the federal government enacted a dangerous and unconstitutional ban on abortion that threatens the health and rights of women throughout the country.

Join the NYCLU as we participate in this historic march to protect reproductive rights

Sign up for the NYCLU bus from New York City.

(If you cannot march, please consider sponsoring a seat for a student or other person of lesser means.)

Name _____

Address _____

City _____ State _____ Zip _____

Phone number _____

E-mail _____

of seats _____ x \$20 (NYCLU members) \$ _____

of seats _____ x \$40 (Non-members) \$ _____

Donation to sponsor others \$ _____

Total enclosed \$ _____

Make checks to "NYCLU" and Note "Bus to DC"

To charge seats to: Amex MasterCard Visa

Cardholder name _____

Account # _____

Exp. Date _____

Cardholder Signature _____

Telephone (for verification) _____

Return this form to NYCLU, 125 Broad St., New York, N.Y. 10004

See www.nyclu.org for additional details

For the latest: www.nyclu.org



125 BROAD STREET, NEW YORK, N.Y. 10004

Non-Profit Org.
U.S. Postage
PAID
New York, NY
Permit #2723