



# NYCLU News

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## NYCLU Mobilizes to Promote Police Accountability in Schools and on Streets

### In Wake of Bell Shooting, NYCLU Organizes and Advocates for Investigation and Reform

On November 25, 2006, the New York City Police Department shot 50 bullets into a car in Queens, killing unarmed civilian Sean Bell and wounding two companions. The shooting rekindled debates about race and policing, and the New York Civil Liberties Union has called for an independent investigation and advocated for policy reform:

- On November 29, the NYCLU called on the Attorney General's Office to launch an independent investigation of the New York City Police Department policies regarding undercover operations, semiautomatic weapons, the handcuffing of seriously injured persons, and the release of racial and ethnic data on police shootings.

- On November 30, in a letter to NYPD

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### NYCLU to NYC: Address Over-Policing in Schools

Carlos Rodriguez arrived at his high school in Harlem on the morning of November 17 to find an army of NYPD officers waiting for him. NYPD officers had set up metal detectors to scan all students.

Worried that his cell phone would be confiscated by the police, Rodriguez called his mother to ask that she pick up his phone, which he uses for work after school.

As Rodriguez waited outside the school for his mother, a police officer asked him for identification. Rodriguez showed the officer his ID and said, "My mother's on the way. She should be just up the block." The officer didn't like this response. He said to his partner: "What are we going to do with this smart alec?" "Take him to the precinct," the other officer replied.

The police arrested Rodriguez outside his school without informing a single school official. Rodriguez was

> Continue on page 5



■ A student crossed police lines to enter Martin Luther King, Jr. HS.

## NYCLU Pledges to Continue Fight against Suffolk Anti-Immigrant Law

By Jamarah Harris,  
NYCLU Communications Assistant

This fall brought an opportunity for the NYCLU to use all of its tools — organizing, advocacy, and legal work — to try to stop the Suffolk County Legislature from passing a virulently anti-immigrant bill that is unconstitutional and will foster rampant discrimination.

While the NYCLU's organizing and advocacy efforts did not stop the bill from becoming law, they did change

the debate about the bill and about immigration in Suffolk. The organization will continue its efforts to stop the bill from going into effect.

Local Law No. 52-2006 imposes special penalties on employers who fail to verify the immigration status of their employees. In August, the NYCLU joined other Suffolk County advocates, including SEIU 32BJ, Long Island Immigrant Alliance, the Workplace Project, Jobs With Justice and scholars from Hofstra Law School, in working to stop the legislation. The groups argued that the law would foster discrimination against citizens and non-citizens alike.

"This law will serve no function and will take an enormous human

toll," said Dolores Bilges, NYCLU Suffolk County Chapter Director.

Bilges and NYCLU Field Director Udi Ofer spearheaded the NYCLU's campaign against the bill.

"Civil rights advocates have been saying from the

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■ Families rallied for a fair path to citizenship, worker protections, and full civil rights at the National Day of Immigrants' Rights.



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## Feet to the Fire

This new year we have something to celebrate.

The American public has rejected the politics of fear, secrecy and repression. The outcome of the mid-term elections in November is a rebuke not only to the tragic war in Iraq but to the abuses of power that led us to this critical juncture in our nation's history.

In September the ACLU commissioned a telephone survey of registered voters in four battleground states: Connecticut, New Mexico, Ohio and Pennsylvania. The results were unequivocal. A majority of voters in the bellwether state of Ohio, for example, said they opposed the following practices in the "fight against terrorism": searching homes without telling people; reading mail and e-mails; extraordinary rendition;

examining American's bank records, torturing prisoners, obtaining library records, military tribunals, and holding detainees at Guantanamo.

Perhaps the best that can be said about the past five years is that Americans have received an indelible education about the dangers of unfettered executive power. And I am enormously proud of the role that the NYCLU, its members and supporters have played in stepping up to that "teachable moment."

As I look back on the year 2006, I can say with strong conviction that our organization mobilized all of its resources to protect liberty and seek justice.

Our job now is to hold our elected leaders' feet to the fire. The shift in power won't matter if all it produces is a Congress without the courage to act boldly to demand answers, end abuses, restore justice, and expose wrongdoing. In the aftermath of the election, there was much discussion in the media about how in the past the conservative base was instrumental in keeping the Bush Administration and its anti-democratic policies in power. Well, we have a base too, and it's 550,000 ACLU members strong. It's time to flex our muscles and demand that our leaders keep America both safe and free.

Our agenda for moving forward is clear:

- **Expose torture.** As a result of our ongoing Freedom of Information Act lawsuit (*ACLU v. Dept. of Defense*), members of the public are gradually learning the sordid facts about what our government is doing in their name. This past November we were back in federal court to resist government efforts to conceal 21 photos depicting abuse of detainees in Afghanistan and Iraq. We won't stop until the government's veil of secrecy is totally raised.

- **Challenge illegal government spying.** When we learned that the FBI and state law enforcement agencies were using expanded powers to spy on peaceful political protest, we filed Freedom of Information Act requests on behalf of fourteen organizations in our state, including the War Resisters League, the American Friends Service Committee, and the September 11 Families for Peaceful Tomorrows. And we created a web-based FOIA tool kit so that other groups and individuals could file their own requests. We won't stop until freedom of speech and freedom of association are fully vindicated.

- **Protect our telephone privacy.** We have challenged the National Security Agency's warrantless eavesdropping program in court. And when we learned that AT&T and Verizon had improperly shared New Yorkers' telephone records with the NSA we mobilized more than 5,000 members and supporters through our e-action alert program to sign a petition demanding that our state officials launch an official investigation. We won't stop until we know the government has stopped listening in on our telephone conversations without warrants.

- **Block the school-to-prison pipeline.** In the past decade New York City and other large urban school districts have adopted discipline policies that treat students as suspects. Based on law-enforcement strategy instead of educational models, these policies strip educators of authority to enforce discipline and rely on police officers and safety agents who subject students to routine searches and arrest them for minor disciplinary infractions. In New York City we have launched a project to ensure that our students attend schools that are both safe and respectful of their rights, and in Albany

we're training parents to know their rights when their children face school discipline. We won't stop until every student has the opportunity to get an education.

- **Ensure competent defense.** According to our own intensive research and that of a special commission appointed by Chief Justice Judith S. Kaye, the quality of New York's indigent defense services is so substandard that the Sixth Amendment right to effective legal counsel is being systematically violated in courtrooms throughout the state. In 2007 we will mount a major litigation and public education campaign to reform the delivery of criminal defense services to poor people in New York. We won't stop until every defendant is represented by a competent and committed lawyer.

- **Fight racial and ethnic profiling.** We are pursuing our lawsuit against the Department of Homeland Security on behalf of American citizens who were detained, interrogated, fingerprinted and photographed at the Canadian border solely because they were Muslim and had attended an annual religious conference in Toronto. Their treatment wasn't an aberration; in fact, we learned during the discovery process that it's a matter of policy. We won't stop until such discriminatory policies are off the books.

- **Stop abusive military recruitment.** Our statewide Project on Military Recruitment and Students Rights continues to provide students, parents and advocates with essential information on how to defend against unwanted, intrusive, and abusive military recruiting tactics in New York's public high schools. And our lawsuit against the Department of Defense for maintaining an unauthorized database on American high school students is still in play. We won't stop until the military stops harassing students — especially poor students and students of color — in their schools and in their homes.

You can help us turn the tide. I'm thrilled to report that we will be launching a new and re-engineered NYCLU website soon after you receive this newsletter. The new site will have better tools for e-activism and more ways to get involved. Meanwhile, our Field Department is fine-tuning our e-action alert program in order to make it as user-friendly and effective as possible. And we are working to enhance our chapter network and strengthen our statewide presence in order to maximize our ability to build on the strength of our nearly 50,000 members statewide.

Come along for the ride. Make [nyclu.org](http://nyclu.org) your homepage. Join our campaign to restore checks and balances, to protect liberty, and to seek justice. Let's hold their feet to the fire. ❖

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### NOTICE REGARDING BOARD NOMINATIONS

The annual meeting of the members of the NYCLU will be held at 6:00 p.m. on June 13, 2007 at 125 Broad Street, New York, NY for the purpose of electing directors, receiving the annual report, and transacting any other appropriate business.

All directors are elected by a vote of the statewide membership. This year there are 15 vacancies to be filled. The NYCLU Nominating Committee is charged by the NYCLU by-laws to nominate only as many candidates as there are vacancies on the Board.

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

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.

Nominations must be filed with the Executive Director, Donna Lieberman, by April 14, 2007, 60 days prior to the annual meeting, at 125 Broad Street, New York NY 10004.

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



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## Jury Finds Suffolk County Police Department Discriminates Against Pregnant Officers

The NYCLU and the ACLU achieved a major court victory this summer when a federal jury found that the Suffolk County Police Department discriminates against female officers by denying them access to limited-duty positions, such as working the precinct desk, during their pregnancies.

The NYCLU Reproductive Rights Project and the ACLU Women's Rights Project brought the case, *Lochren v. Suffolk County*, to challenge a policy that disqualified pregnant officers from non-patrol jobs that would have enabled them to continue working for much of their pregnancies. At the same time, the police department failed to provide pregnant officers with fitting bulletproof vests and gun belts that are neces-

sary to perform patrol duties.

Over a week of testimony, the NYCLU's six plaintiffs, all female Suffolk cops, recalled being forced to use their accrued sick and vacation days — and, in some cases, to go without pay — when they were still willing and able to work.

The jury found that the policy was discriminatory and that the police department intentionally discriminated against two of the officers; damages were awarded to all six plaintiffs.

NYCLU RRP attorney Cassie Stubbs tried the case along with Namita Luthra of the ACLU Women's Rights Project and cooperating attorneys Linda Neilan and Carmelyn Malalis of Outten & Golden LLP. ❖



■ *Lochren v. Suffolk* client Officer Sarah MacDermott was forced to take sick leave while pregnant even though she was ready and willing to work.

## NYCLU Sues State for Barring Prison Guards from Wearing Religious Head Coverings

The NYCLU is pursuing a federal lawsuit challenging a New York State policy that forbids state-prison guards from wearing religious head coverings.

Abdus Samad N. Haqq, a devout Muslim who works at a state work-release facility in Harlem, was informed that he could not wear a kufi while on duty because guard uniform regulations bar the wearing of religious items. But the New York State Department of Correctional Services' refusal to accommodate the religious beliefs of prison guards

stands in stark contrast to the policies of other agencies — and in violation of the constitution.

"Freedom of religion is one of our most cherished rights, and the state of New York cannot force public employees to surrender their religious beliefs as a condition of keeping their jobs," said NYCLU Executive Director Donna Lieberman.

The New York State prison system's refusal to accommodate the religious beliefs of prison guards stands in stark contrast to the policies of other agencies.

The New York City Department of Correction allows guards to wear religious head coverings, and every major branch of the United States military allows its members to do so. Earlier this year the United States Coast Guard, in response to another lawsuit filed by the NYCLU, abandoned its policy of barring members of the merchant marine from wearing religious head coverings in their license photographs.

The NYCLU filed the lawsuit in conjunction with the New York University Civil Rights Clinic. ❖

## After Supreme Court Hearing, Tide May Turn on Federal Abortion Ban

On November 8, just one day after Democrats gained control of Congress, the United States Supreme Court heard arguments in *Gonzales v. Carhart*, a case which could determine the constitutionality of the Partial Birth Abortion Ban of 2003, which prohibits a range of medically acceptable abortion procedures, including some of the procedures most commonly used in the second trimester, without regard to women's health needs.

The Supreme Court heard the case the day

after the midterm election, in which a number of states rejected proposed abortion bans and parental notification legislation.

The case has major implications for the legality of abortion in America: the passage of the law in 2003 marked the first time that Congress has banned a medical procedure; furthermore the court could, for the first time, eliminate the "health exception" required under *Roe v. Wade*, undermining one of the most important protections for

women's health.

In 2003, immediately after the law was being signed, the NYCLU Reproductive Rights Project and the ACLU Reproductive Freedom Project filed their own legal challenge the Ban on behalf of the National Abortion Federation and seven individual physicians. The New York case is stayed while RRP and RFP wait for the Supreme Court decision in *Gonzalez v. Carhart*.

A decision is expected in the first half of 2007. ❖

## In Wake of Bell Shooting, NYCLU Organizes and Advocates for Investigation and Reform

(continued from page 1)

Commissioner Raymond Kelly, the NYCLU protested the NYPD's failure to comply with a city law enacted in the aftermath of the 1999 Amadou Diallo shooting to address concerns about racial profiling.

- On December 5, the NYCLU called on the New York City Council to create an independent agency to review all police shootings of civilians.

- On December 12, an NYCLU op-ed in the pages of the New York Daily News explained the

need for independent review of police shootings.

The NYCLU is also working with other New York City grassroots groups, clergy members, and advocacy organizations around issues of police practices and accountability. A new NYCLU field organizer will work with such coalitions to organize community forums and other public education and organizing events, create know-your-rights materials in print and online, and give know-your-rights pre-

sentations in schools, community board offices, churches, mosques, temples, and other centers of community life.

"The Bell shooting demands a full and honest investigation into police training and procedures and a hard look at the data to identify what went wrong and why," said NYCLU Executive Director Donna Lieberman. "Now is the time for New Yorkers to come together and demand reform." ❖

# NYCLU Protects Liberty around the State

## >> **Capital Region Chapter** Educates Local Police Departments on Safe Alternatives to Lethal Force

After receiving numerous complaints regarding the use of conducted electronic devices (“Tasers”) by local police departments, the NYCLU Capital Region Chapter was encouraged by the Albany police chief to arrange a seminar inviting police departments from eight counties to educate themselves about these devices. In cooperation with the School of Criminal Justice at the University at Albany, SUNY and the Government Law Center at Albany Law School, the Capital Region Chapter developed a panel of national experts and hosted the event at the Albany Law School.

In preparation for the seminar, the Chapter asked 62 law enforcement agencies to report their policies, procedures and training manuals on Tasers; participating cities, towns and villages were asked to report the number of complaints that had been filed against their respective police departments regarding Taser use.

A report, “Providing Effective Alternatives to Lethal Force,” was published, and presented at the seminar. The Capital Region Chapter will continue to work with local law enforcement officials to educate them about the proper use of conducted energy devices and to help them develop safer policing techniques.

## >> **Central New York Chapter** Vindicates Rights of Lesbian Couple Subjected to Discrimination

The NYCLU’s Central New York Chapter teamed with the Human Rights Commission in Syracuse on behalf of a lesbian couple subjected to homophobic pro-se-lytizing by a motel clerk who then provided them with a room that had not been cleaned.

After Chapter Director Barrie Gewanter and a Commission investigator met with the motel manager, the couple — who had originally come to Syracuse to participate in a Pride Agenda Marriage Ambassador Training — received a written apology and a refund. The motel manager also requested that the motel chain update its non-discrimination policy to reflect the Sexual Orientation Non-Discrimination Act (SONDA), the 2003 New York State law that prohibits discrimination on the basis of sexual orientation in employment, housing, and public accommodations (including hotels and motels).

The Chapter has also worked throughout the year with the Empire State Pride Agenda to educate the Central New York community about lesbian and gay partnerships and the need for marriage equality.

## >> **Genesee Valley Chapter** Brings Together 400 Students to Discuss Civil Liberties

The Genesee Valley Chapter, acting on its strategic goals to engage and educate youth, held its first

LIBERTY! Conference in October. Well over 400 students and high school teachers, representing sixteen school districts in six counties, participated in the full-day event.

Fifty-two legal, educational and community volunteers simultaneously conducted small group workshops on the First, Fourth and Fourteenth Amendments. The students reviewed legal cases, engaged in role-plays, deliberated scenarios, and discussed the future of civil liberties and civil rights.

George Christian, the lead litigant in *Doe v. Gonzales* and Executive Director of the Library Connection in Windsor, Connecticut, was the keynote speaker. Christian told the story of his recent battle with the FBI, which began when he was served with a National Security Letter demanding the records of a library patron and instructing him not to discuss the FBI’s request with anyone. The FBI eventually dropped their request, and the ACLU litigated and overturned the permanent gag order.

“The students were stunned by George Christian’s experience and awed by the power of the Patriot Act,” said Barbara deLeeuw, Genesee Valley Chapter Director.

## >> **Lower Hudson Chapter** Hosts Record Crowd at Annual Lecture

The Lower Hudson Valley Chapter held its 8th annual Schwarzschild Lecture at Manhattanville College in Purchase on October 12, with the largest audience in the lecture’s history. Over 175 attendants heard the lecture, which was delivered by Helen Prejean, CSJ, author of the bestseller *Dead Man Walking: An Eyewitness Account of the Death Penalty*.

In 1981 Sister Helen Prejean began her prison ministry in New Orleans, where she became the spiritual advisor to Patrick Sonnier, a Louisiana death row inmate. Through their relationship she became an advocate for death penalty reform. Henry Schwarzschild, in whose memory the lecture series was created, was the coordinator of the national death penalty campaign for the ACLU. In his ACLU position he became a tireless and eloquent advocate against capital punishment. He also served on the boards of both the NYCLU and the Lower Hudson Valley Chapter.

## >> **Nassau Chapter** Advocates for Client Seeking Methadone Treatment

Nassau Chapter client “R.C.” was thriving in a hospital-based methadone drug treatment program when he was arrested on an outstanding warrant. R.C. served his time and was paroled on the condition that he enter a drug treatment program. But when he returned to the clinic in which he had been enrolled prior to his incarceration, his parole officer informed him methadone treatment was not an option; he could go only to a facility that did not uti-

lize this treatment method, which would require him to pursue a course of rapid detoxification.

R.C. contacted the Nassau Chapter, who determined that a parole officer could accept a variety of treatment options, including methadone. Working in conjunction with the New York State Office of Alcoholism and Substance Abuse Services, which had accredited the methadone program, Director Tara Keenan-Thomson successfully convinced the New York State Division of Parole to allow R.C. to return to the methadone clinic.

The parole officer, whose authority had been challenged, later had R.C. rearrested on a minor technicality. At a hearing R.C., represented by a legal aid attorney, was released.

## >> **Suffolk Chapter** Persuades School District to Respect Quaker Parent’s Right to Oppose Child Immunization

The NYCLU’s Suffolk Chapter achieved a victory this Fall on behalf of an Eastport parent who believed her religious rights were being violated when her child was denied entry to a school because her adherence to religious beliefs conflicted with the school’s immunization policy.

The parent, who is a Quaker and does not believe in immunizing her children, contacted the Suffolk Chapter after the Eastport School District refused to allow her child into school without required immunizations. Although the parent complied with all of the school’s requests for further documentation/information, the school district continued to deny the child entry.

After the NYCLU’s state office and its Suffolk chapter worked together to advocate on behalf of the parent and her child, the School Board voted to allow the child to attend school without first having been immunized.

## >> **As Military Continues Aggressive Recruiting in Schools, Western Regional Office** Advocates for Students’ Rights

The NYCLU’s Western Regional Office began the new school year leafleting and distributing opt-out forms, which allow students in Buffalo public schools to exercise their right to remove their names from contact lists that their schools must hand over to military recruiters as a condition of the No Child Left Behind law. The City of Buffalo has agreed to distribute forms to all eligible students.

The Western Regional Office continues to lead a coalition of groups that oppose aggressive recruiting in schools; the coalition’s focus has expanded and joined the WRO in conducting a region-wide survey of some 114 school districts to determine which schools participate in programs that advance Department of Defense goals. Students at these schools can then be targeted for advocacy by the WRO and other groups that wish to inform those students about alternatives to military service. ♦

# From the Op-Ed Page: State Must Reform Town and Village Courts and Address Indigent Defense Crisis

By *Melanie Trimble, NYCLU Capital Region Chapter Director, and Corey Stoughton, NYCLU Staff Attorney*

*A version of this op-ed was published in the Albany Times-Union on October 29, 2006.*

In the town of Coxsackie, just 20 miles south of Albany, the local town and village court judge was known for jailing people accused of crimes and awaiting trial for much longer than the law allows — in one case for 64 days because he thought the man had information about vandalism at the justice's own home. This judge was not even supposed to be on the bench, as he had failed the very basic true-or-false test required to become a justice.

Another judge, in a rural town near Utica, jailed a small farmer for ten days without bail and without a chance to defend himself because the judge single-handedly decided the farmer was violating local livestock codes. The state Commission on Judicial Conduct described the incident as “a shocking abuse of judicial power.” Yet another Utica-area judge asked the prosecutor to write an opinion for her in a case involving evidence of an illegal search, because she did not “really have the time to puzzle this out.”

These stories — and similar stories from all over the state — recently came to light in a shocking New York Times exposé on New York's broken town and village court system. The judges in these courts preside over tens of thousands of cases in New York every year yet have little to no legal training or respect for the law.

The investigation identified justices who routinely jail defendants in order to coerce them into pleading guilty, engage in brazen acts of corruption, and openly tolerate racial slurs in their courtrooms.

Yet the scandal of town and village courts is just one

of the many obstacles that stand between criminal defendants and the justice they deserve. Across the State of New York, defendants who cannot afford attorneys are routinely denied the counsel they are guaranteed by law.



The results shock the conscience. In one upstate county, dozens of sixteen-to-eighteen-year-olds regularly sit in jail at any particular time. Their lawyers never visit them and do not accept phone calls, which can only be made collect from the jail. These incarcerated children have no idea what is happening in their case, and they languish in jail on petty charges.

In another county, a mother of an eight-year-old child was locked up without bail because she was not provided an attorney at her arraignment. Even after getting an attorney, she sat in county jail for two

months because her public defender never visited or spoke with her despite numerous attempts she and her family made to contact him. In court, her public defender read a magazine instead of preparing her case. She was forced to become homeless in order to raise money to hire a private attorney to handle her case and win her release from jail.

The right to a public defense has been recognized again and again by courts, but the reality on the ground is that the system is under-funded, understaffed, and under-resourced. Earlier this year a blue-ribbon commission assembled by the Chief Judge of New York State, Judith S. Kaye, issued a report finding “a crisis in the delivery of defense services to the indigent throughout New York State.” The Commission Report calls for a fully funded, independent New York public defender office that will ensure justice in every court in the state.

There is a crisis in our criminal justice system. Now we must solve that crisis. Every accused person must have an accountable, competent, and well-trained attorney who has the time and resources to provide meaningful advice and counsel at every critical stage of the prosecutorial process.

New Yorkers should not have to wait for a lawsuit to accomplish this goal. Our new governor and legislature must move to reform both the public defense system and the town and village courts. Failure to do so would be its own crime. ❖

## NYCLU to NYC: Address Over-Policing in Schools

*(continued from page 1)*

ultimately charged with disorderly conduct.

Rodriguez's story is not unique. In the past few months the NYCLU has received dozens of complaints from students, parents, teachers, and administrators who report that policing in public schools has gotten out of hand and is violating students' rights.

At Martin Luther King Jr. High School in midtown Manhattan, female students whose under-wire bras set off metal detectors frequently have to lift up their shirts so that school safety agents can verify that they are not concealing metal objects. At another high school, school safety agents routinely harass an openly gay student, who told the NYCLU: “When it's time for me to get scanned, the male security guards flip a coin to see who has to scan me.” The NYCLU has also received complaints from students at Aviation High School in Queens, Curtis High School in Staten Island, Community High School for Social Justice in the Bronx, and Wadleigh School in Manhattan.

These complaints have multiplied as more and more schools have installed permanent metal detectors and as the NYPD has introduced unannounced roving scanners that are used to patrol every city school.

In response, the NYCLU, in collaboration with the ACLU Racial Justice Project and ACLU and NYCLU Karpatkin Fellow Elora Mukherjee, has launched a campaign to counter the over-policing of public schools.

New York's children have a right to attend schools that are safe, the NYCLU argues, but the overpolicing of schools creates a prison-like atmosphere that undermines students' right to a sound education and to privacy.

“These policies treat all students as suspects,” said Donna Lieberman, NYCLU Executive Director. “They strip educators of the authority to enforce discipline, unfairly target low-income students and students of color, violate students' fundamental privacy rights, and, ironically, discourage students from going to school.”

The NYCLU is calling on the Department of Education to establish clear rules of governance that confer upon principals the authority to direct the conduct of school safety agents; train police officers and school safety agents to work with youth and school officials; sharply reduce the use of metal detectors; rely on alternatives to policing; and establish a clear, confidential procedure for complaints of abuse against school safety agents. ❖

## NYCLU Pledges to Continue Fight Against Suffolk Anti-Immigrant Law

*(continued from page 1)*

beginning that this law is based on prejudice and hostility toward immigrants, and will act as an invitation to vigilantism,” Ofer said.

As the session unfolded, it became clear that stopping the bill would be an uphill battle. The NYCLU took advantage of its unique status as a legal organization to point out to legislators that, in addition to being bad policy, the bill conflicts with federal law. Ofer, Bilges, and other NYCLU staff and volunteers used online action alerts, public testimony, lobby visits and letters to try to make both points to Suffolk legislators.

Ofer and Suffolk Chapter Board Member Andrea Callan testified before the Suffolk County Legislature. In his testimony, Ofer reminded lawmakers that “should the proposed Suffolk County legislation pass, it will undoubtedly lead to a rise in discrimination against individuals who appear to be from certain countries, regardless of their citizenship status.”

But on September 19, the Suffolk County Legislature passed Introductory Resolution 2025.

As this legislation goes into effect as law, the NYCLU will monitor the situation closely and consider its legal options for stopping any damage that the law causes.

Noted NYCLU Executive Director Donna Lieberman: “We hope its time on the books will be brief.” ❖

# The 2006 State Legislative Session: A Civil Liberties Overview

By Robert Perry,  
NYCLU Legislative Director

Every elected state official was up for re-election. Governor Pataki was a lame duck. The Republican members of the State Senate, the last redoubt of the Republican Party, were fighting to retain their majority. Eliot Spitzer, the governor elect (for years, so it seemed), proclaimed that “Everything changes on Day One” as he closed in on the executive office. There was little oxygen left in Albany’s chambers to take up proposals that might advance civil liberties. And the small amount of oxygen expended on such matters was not to advance individual liberty, but to protest its diminution. Herewith a synopsis of what transpired.

## Civil Commitment of Sex Offenders

A proposal to commit sex offenders to indefinite detention, after serving a sentence, became the most fiercely contested issue of the 2006 legislative session. Legislators generated extraordinary political heat — but, ultimately, no law — to advance a policy initiative that experts agree would do little to address the problem of sex crimes.

The proposed law would affect less than 2 percent of the registered offender population — at a cost of \$250,000 per year to commit each offender. (The Supreme Court has ruled that civil commitment, as proposed, must be for treatment and rehabilitation, not punishment.) Enforcement of this statute would all but bankrupt any other state-sponsored initiative to prevent sex crimes — for example, monitoring, supervision and treatment of high-risk offenders. These interventions can reduce recidivism by up to 60 percent, according to Dr. Richard Hamill, a nationally recognized expert who operates such a program in the Albany County area.

The public policy debate in Albany is nearly ten years behind the curve. No state has adopted a civil commitment program since 2000. Officials in Kansas and Florida are considering proposals to dismantle their programs. New York has the expertise needed to develop a national model for preventing sex crimes, but politics has overcome sound judgment. Governor Pataki called the legislature into session in December for the stated purpose of passing a civil commitment bill. It failed again, but will be re-introduced in the 2007 session.

## Expansion of the DNA Databank

With the Assembly and the Senate in a stalemate over civil commitment legislation, Governor Pataki launched a full-court press in support of a bill that would require persons convicted of any crime — from E-misdemeanor to A-felony — to submit a DNA sample for inclusion in the state’s databank.

“A no-brainer,” said Senate Majority Leader Joseph Bruno. But the evidence suggests that the issue was, at least, a half-brainer. In an investigation of DNA laboratories throughout the country, Professor William C. Thompson (University of California, Irvine) found widespread error, fraud and abuse in the collection and analysis of DNA samples

and in the reporting of lab results. The errors — mislabeling and cross-contamination of samples as well as failure to obtain or retain control samples that would reveal errors — occurred with alarming frequency. And the problem was not limited to negligence. Thomson also discovered willful destruction of control samples and intentional misrepresentation of DNA evidence by forensic lab analysts.

There are other problems that might have given legislators pause. The rush to expand DNA databanks in other jurisdictions has led to extensive backlogs. There have been numerous reports from across the country of violent felons who have remained at large because labs were overwhelmed by the processing of samples from low-level, non-violent offenders. Nevertheless, the legislature passed, and the governor signed, legislation that requires the collection of DNA samples from anyone convicted of a felony or any of more than dozen misdemeanors, including petit larceny.

## Family Health Care Decisions Act

New York is one of two states that lack clear, reasonable legal procedures permitting family members and close friends to make health-treatment decisions when a loved one lacks decision-making capacity. As a consequence incapacitated persons are routinely subjected to intrusive, painful and futile medical treatment.

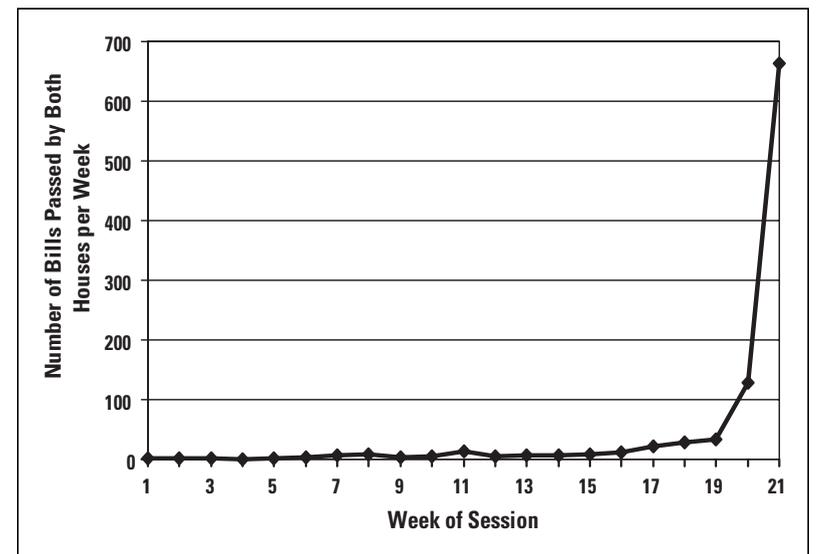
A legislative remedy has been pending in Albany since 1993 — the Family Health Care Decisions Act. But opponents of abortion and gay rights have, somehow, stalled the bill for more than a decade. In an effort to overcome the objections of these opponents, the bill was amended to provide that consideration of an incapacitated patient’s wishes regarding treatment would include the effect upon a fetus when the patient is a pregnant woman. The amended bill also removed explicit reference to domestic partners in the list of individuals vested with decision-making authority, referring instead to “close friend or relative” — an attempt to address the objection that domestic partners should not have equal status with family members when designating a surrogate decision-maker.

The amendments mollified the bill’s Republican opponents in the Senate, but the new language alarmed some members of the Democratic conference who saw in the “fetus” language a dangerous legislative precedent. (The NYCLU supported the Gottfried bill, concluding that the new language gave clear and unqualified primacy to the woman’s choice.) Others saw in the term “friend,” adopted for its apparent neutrality, a diminishment of the status of domestic partners.

Late in the session Gottfried restored the bill’s original terms, deleting the fetus language and listing domestic partners (along with friends) among those

individuals accorded decision-making status. The Senate Republicans withdrew their support. The status quo — although cruel and irrational — prevails. Perhaps an enlightened voice in the executive chamber can alter the political impasse.

## The “Albany Curve”



The New York State Legislature introduces more bills than any other legislative body in the nation — about 15,400 annually, between 1997 and 2001 (according to the Brennan Center). But most of the important business is transacted in the final days of the legislative session. As a consequence the legislative process is shockingly un-democratic in essential respects.

The graph tells the story. To become law, a piece of legislation must first be passed by both the Senate and Assembly. Of all the “two-house” (or “same-as”) bills passed in both chambers last year, 791 — or 82 percent — were passed by the second chamber in the final two weeks of the session. The legislature passed 386 two-house bills — 49 percent of the year’s total — in the last two days of the session. This leaves most of us, legislators included, guessing as to which bills are under serious consideration and as to what form the final legislation will take.

Legislative leaders should take up Governor Spitzer’s pledge — to make state government “responsive, open, transparent, available to the public” — as they rewrite the rules governing the legislative process.

## Civil Liberties Watch: 2007

Action or inaction on the following legislative issues may give early indication of the Spitzer Administration’s commitment to upholding the individual rights and liberties promised in the federal and state constitutions.

**Marriage Equality.** Governor Spitzer has pledged his commitment to passing legislation that recognizes the right of same-sex partners to marry. The public is slowly (but steadily) coming to share the governor’s conviction (53 percent support marriage equality for all, up from 47% just 2 years ago).

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## The 2006 State Legislative Session: A Civil Liberties Overview *(continued from page 6)*

The legislature will follow public opinion; the NYCLU will promote support for marriage equality through a statewide public education and advocacy campaign.

**Rockefeller Drug Laws.** Little has changed since David Paterson, as Senate Minority Leader, issued a report that concluded New York's drug-sentencing laws are the most harsh and irrational in the nation. The question now becomes, Will Governor Spitzer and Lieutenant Governor Paterson join the reformers in jurisdictions throughout the country who are adopting alternatives to incarceration for drug offenses?

**Education Funding.** The statewide Alliance for Quality Education (AQE) has called on Eliot Spitzer to allocate \$8.5 million statewide toward the goal of ensuring that all students receive a sound education, as mandated by the state's constitution. In a letter sent to Governor Spitzer, the NYCLU endorsed the AQE funding recommendation and also urged that the state undertake "school-based" reform, which tailors remedial measures to specific deficiencies, and also undertake a strategy to ameliorate persistent racial inequality in the state's education system.

**Drawing Electoral Districts.** In testimony before the State Assembly, NYCLU Legal Director Art Eisenberg urged legislative reform that mandates fair, independent procedures by which electoral districts are drawn. The government is far from a neutral referee under the existing procedures. Governor Spitzer has called for an independent commission to undertake redistricting after the 2010 census. There is perhaps no other initiative that will more profoundly reform state government. ❖

*NYCLU Legislative Associate Christian Smith-Socaris conducted the research and analysis for "The Albany Curve."*

## New Staff Join NYCLU Ranks

Mary Hedahl joins the NYCLU as Director of Development. Hedahl comes to the NYCLU from its uptown partner Symphony Space, where Hedahl worked as the Interim Director of Development and the Associate Director of Development for Individual Giving. Before joining Symphony Space, Hedahl was the Director of Development for the Women's Project, an off-Broadway theater and the Senior Development Associate for Theatre Development Fund.



In addition to her work in the non-profit sector, Hedahl does volunteer work at the East Harlem Block Schools, and the Coalition for the Homeless. Her work for these organizations speaks to her commitment to human rights, community organizing and political responsibility.

The NYCLU has welcomed a number of other new faces in the past six months. Galen Sherwin joined the NYCLU's Reproductive Rights Project, first as Staff Attorney in April 2006 and now as the Project's Interim Director. Sherwin comes to the NYCLU with extensive experience in reproductive rights advocacy and the struggle for women's equality, having served as both a legislative aide to State Senator Catherine Abate and as President of the New York City Chapter of the National Organization for Women.

Ari Rosmarin and Darinka Maldonado officially joined the expanded Field Department as a Field Organizers in the summer of 2006. At present the Field Department is working to limit the presence of police and military recruiters in New York City public schools.

Jamarah Harris joined the NYCLU in the new position of Communications Assistant. Pete Kane has temporarily replaced Andrew Adams as the Executive Assistant to Director Donna Lieberman. Ariel Samach joined the NYCLU's staff as Reproductive Rights Project Assistant. The NYCLU also welcomed Vitra Maharajh as the Finance Department's new Accountant, and Keith Kole as the new database administrator in the Development Department. ❖

## CUNY Law Chapter's 'Protest Week' Series Brings Together Advocates for Justice

The New York Civil Liberties Union joined the ACLU chapter of the City University of New York School of Law to organize a panel discussion for CUNY Law School's "Protest Week."

The panel "Protest in New York: From 'Free Angela' to 'Freewheels,'" which was part of the CUNY chapter's larger series on protest rights, included NYCLU Executive Director Donna Lieberman, CUNY ACLU chapter chair (and former NYCLU Development staffer) Sally Robinson, and Martin Stolar, a long-time NYCLU collaborator. Speakers focused on the right to protest and engage in public expression in New York City.

Other panels in the series focused on legal remedies for police violations of the right to free expression. The series was presented in conjunction with CUNY's National Lawyers Guild chapter. ❖



PHOTOS: Chris Rottler

# Broadway Stands Up For Freedom In Evening Supporting Civil Liberties

Tony Award winners Michael Cerveris (*Sweeny Todd, Assassins*), Cady Huffman (*The Producers*), and Shoshanna Bean (*Wicked*) were among the scores of Broadway stars who performed this year in "Broadway Stands Up for Freedom!" an annual benefit show to support the youth programs of the New York Civil Liberties Union.

Tony Award- and Pulitzer Prize-winning playwright Tony Kushner co-chaired the event with NYCLU Executive Director Donna Lieberman. Kushner's remarks are reprinted, in part, below.

The money raised at the benefit supports the NYCLU's youth programs, including its campaign to oppose overly-aggressive policing in city public schools. As part of that campaign, the NYCLU evaluated scores of entries — including poetry, artwork, music and essays — that young people submitted to its annual Student Expression contest, which focused this year on policing in schools and the Rockefeller Drug Laws. Richard Easton read one of the contest entries at the performance.

Other performers included Celia Keenan-Bolger (*Spelling Bee, Les Miserables*), Kevin Chamberlain (*Chicago, Dirty Blonde*), Matthew Modine (*The Bedford Diaries*), Richard Easton (*The Invention of Love, Henry IV*), Leah Hocking (*Mama Mia!*), Cheyenne Jackson (*All Shook Up*), Barrett Foa (*Avenue Q, Spelling Bee*), Todd Buonopane (*Spelling Bee*), Thos Shipley (*Miss Saigon*), Sara Kramer (*Mama Mia!*), Amanda Green (*High Fidelity*), and founding performers Liana Stampur and Erich Bergen (*Jersey Boys*).



■ Cady Huffman, Tony-winning star of *The Producers*, stands up for the NYCLU.

Seth Rudetsky (*Seth's Broadway Chatterbox*) served as musical director, and Daniel Goldstein (*Indoor/Outdoor, But I'm a Cheerleader: The Musical*) directed.

This was the benefit concert's third year. It was founded by performers Liana Stampur and Erich Bergen as a way to put into action their personal dedication to protecting reproductive rights and other civil liberties issues relevant to them as young people.

More photographs are available online at [www.nyclu.org/bway](http://www.nyclu.org/bway). ❖



■ The cast of "Broadway Stands Up for Freedom!" celebrated before the show.



■ Donna Lieberman met with contest winners Aliza Keen, Jaclyn Silverman, and Leonora Martelly.

## Tony Kushner Co-chairs Benefit for NYCLU Youth Programs

The following is excerpted from Tony Kushner's remarks at the NYCLU's summer benefit concert, "Broadway Stands Up for Freedom!"

No one is born knowing how to make art, and no one is born the citizen of a secular pluralist democracy, and the US constitution didn't pop up out of the ground waving the 1st and the 14th amendments in the breeze. Really smart, really clever people invented our civil liberties, and generations of really smart, brave, far-sighted people have worked hard to preserve and even better, to enlarge them.

It's been the grand project of the American people, working at our rights till we got it right, or right-ish, editing, shaping, refining, reinventing, re-conceiving, resisting the devil or falling from grace ... Human society is a work of art, and a secular pluralist democracy is a particularly wondrous work of art, and we citizens are its creators, and we're only as good as we are skilled, and our skills come to us through learning, and are in need of continual refinement.

That's what's really exciting about tonight, apart from the amazing citizen artists who have volunteered their time and talents, and to whom I am about to surrender the stage. The money we raise tonight goes not just to the NYCLU — which has been fighting the enemies of civil liberties for decades (for instance, theocratically-inclined administrations looking to cast off habeas corpus, legitimate torture, expand the illegitimate use of signing statements to sidestep limits on executive power and demolish the balance of power, bunker down and secrete government,

conduct warrantless wiretapping and data mining, apply an ideological exclusion standards to immigration policies, rig voting districts, fake election results, use gay marriage to scare the folks who live in Naturalville in the county of Normal in the Red State of Deep Delusions into tithing and voting for things that are already making their lives nearly unlivable - to say nothing of the thousands killed in a war predicated on lies told to the American people).

The NYCLU defends civil liberties from threats posed by administrations like these. ... And it's great that we're here to support the NYCLU, but especially that this benefit is for NYCLU's youth programs, student organizers, peer educators, youth conferences and scholarships — people who are doing the profound and rigorous thinking and grappling with the subtleties and the difficult disciplines and the unending demanding work it takes to become champions and artists of democracy.

So thank you all very much for supporting the NYCLU and American democracy, please keep giving, and keep fighting. ... And now, on with the show. ❖



■ Tony Kushner addressed a standing-room-only house at "Broadway Stands Up for Freedom!"



**Help the NYCLU continue to fight for individual freedoms and democratic principles. Help us advance a civil liberties agenda in Albany. Help us to ensure your freedom and the freedom of every New Yorker.**

Enclosed is my check payable to the **NYCLU Foundation** in the amount of:  
 \$500  \$250  \$100  \$50  Other \_\_\_\_\_

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

Please charge \$\_\_\_\_\_ to my  AmEx  Visa  MasterCard

CARDHOLDER NAME \_\_\_\_\_

ACCOUNT # \_\_\_\_\_ EXP DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

**New York Civil Liberties Union 125 Broad Street, 19th Floor, New York, NY 10004  
 Tel: 212-607-3300 Fax: 212-607-3329**

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In the coming year we plan to:

- Reform the Rockefeller Drug Laws
- Enact marriage-equality legislation
- Guarantee women's reproductive freedom
- Ensure competent legal representation to the indigent

**We cannot do less. And we're hoping you'll help us do more.**