



NYCLU News

Winter 2004

www.nyclu.org ■ Published by the New York Civil Liberties Union ■ Volume LII, No. 2

2

> Director's Column
> Notes from the Board

3

> Appeal to Guarantee Education Opportunity
> NYCLU Praises Decision on Abortion Ban Law

4

> 2004 Legislative Session: An Overview

5

> Dedication in Any Language
> Board Nominations

6

> Lasker/Callaway Awards Night

7

> Legal News in Brief

8

> Student Chapter Conference
> NYCLU Fights for Defense of the Poor
> NYCLU Welcomes New Staffers

NYCLU Pressures City Over RNC Protest Abuse

By Chris Dunn, Associate Legal Director

In the year leading up to the recent Republican National Convention, the NYCLU devoted enormous resources to protecting the right to protest. The NYCLU won lawsuits, negotiated and obtained permits, educated the public about First Amendment rights and assured that the convention protests were held without undue interference by the police.

The end of the RNC, however, hardly marked the end of the NYCLU's work in this important effort. The organization continues to challenge the NYPD on a range of issues and has secured important victories. This work will continue into the coming year.

Shortly after the RNC concluded, the NYCLU was the lead witness at a City Council hearing called to examine charges leveled by advocates and the NYCLU about illegal and improper NYPD actions during the convention. At that hearing, the NYCLU brought to the council's attention widespread and unlawful arrests, dangerous conditions of detention and excessively harsh policing of certain demonstrations.

On the same day, the NYCLU gave the Manhattan District Attorney's office a videotape showing the arrest of 227 people attempting to march peacefully on a sidewalk near the World Trade Center. The NYCLU then met with high-level officials of the DA's office and, on the basis of the videotape, asked that the DA drop the charges in all of the cases. On October 6th, the District Attorney did just that, marking the first major victory in the organization's post-convention work.

Meanwhile, the NYCLU learned that the NYPD systematically had fingerprinted every person arrested during the RNC and those fingerprints had been forwarded to Albany and, in many cases, to the FBI. New York State law bars this type of fingerprinting of people charged with minor offenses known as "violations" which do not qualify as a crime. But fingerprinting was the case for almost everyone arrested at the RNC. On October 4th, the NYCLU wrote to NYPD Commissioner Raymond Kelly demanding that the department destroy these unlawfully obtained fingerprints. In the substantial press accounts of the letter that resulted, city officials defended the practice. However, ten days after the NYCLU brought this challenge, the NYPD agreed to destroy all the fingerprints it had taken during the RNC. All prints are now expunged from NYPD files, marking a second major victory for the NYCLU. The



■ Protestors in Union Square park on last day of the RNC.

> Continue on page 5

A Portion of the Patriot Act Declared Unconstitutional

A federal judge striking down an entire USA PATRIOT Act provision that gives the government unchecked authority to issue "National Security Letters" (NSLs), said "democracy abhors undue secrecy." The September 29th ruling by U.S. District Court Judge Victor Marrero bars the government from using NSLs to obtain sensitive customer records from Internet Service Providers and other businesses without judicial oversight. The court also found a broad gag provision in the law to be an "unconstitutional prior restraint" on free speech.

The American Civil Liberties Union and the New York Civil Liberties Union, which brought a challenge to the law earlier this year, hailed the ruling as a blow to the current administration's efforts to expand government surveillance powers in violation of the Constitution. The ruling is the first to strike any of the vast new surveillance powers authorized by the USA PATRIOT Act.

"This is an important victory and significant step in the efforts to dismantle the harmful aspects of the Patriot Act," said Arthur Eisenberg, Legal Director of the NYCLU.

In a 120-page decision, Judge Marrero of the Southern District of New York struck down

Patriot Act imposed a 'categorical, perpetual and automatic' gag on every person who received a National Security Letter, as well as their lawyers," said ACLU Associate Legal Director Ann Beeson.

In striking down the gag provision, the court said: "Under the mantle of secrecy, the self-preservation that ordinarily impels our government to censorship and secrecy may potentially be turned on ourselves as a weapon of self-destruction."

The ACLU and NYCLU noted that the Patriot Act provision was worded so broadly that it could effectively be used to obtain the names of customers of Web sites such as Amazon.com or eBay, or a political organization's membership list, or even the names of sources that a journalist has contacted by e-mail.

> Continue on page 5



Section 505 of the law on the grounds that it violates free speech rights under the First Amendment as well as the right to be free from unreasonable searches under the Fourth Amendment.

Since filing the case, the ACLU and the NYCLU have labored under a broad gag order under which the government sought at every turn to censor even the most innocuous, non-sensitive information about the case. "As the judge recognized, the



NYCLU
NEW YORK CIVIL LIBERTIES UNION

125 Broad Street
New York, NY 10004
www.nyclu.org

Non-Profit Org.
U.S. Postage
PAID
New York, NY
Permit No. 2723



BRACING FOR FOUR MORE YEARS

The good news is, Attorney General John Ashcroft, chief architect of the USA PATRIOT Act, is moving back to Missouri. The bad news is, he's being replaced by White House Counsel Alberto Gonzales, the man who thinks the Geneva Conventions are a "quaint" relic of the past and who advised that it was okay to torture "enemy combatants." Gonzales also called the shots on death penalty cases when Bush was Governor of Texas. The Atlantic Monthly examined all of Gonzales' case memos to Gov. Bush and concluded: "Gonzales repeatedly failed to apprise the governor of crucial issues in the cases at hand: ineffective counsel, conflict of interest, mitigating evidence, even actual evidence of innocence." A Gonzales Department of Justice does not bode well for civil liberties.

Join NYCLU E-Activist List

The NYCLU is urging you to sign up to protect our civil liberties. E-activism can make a difference. Many of us are very busy but yearn somehow to get involved and to let government know when issues matter to us. If you are reading this newsletter, you no doubt have concerns about civil liberties. The work that needs to be done to uphold the Constitution requires the input of all of us and sharing your e-mail address is one way to join the effort. Civil liberties are too precious to take for granted. Please go to www.nyclu.org and sign up to get involved with E-Activism.

Since Election Day I've been asking myself: Are we sliding back into a 21st Century version of McCarthyism? Will the wall of separation between church and state finally come tumbling down? Is *Roe v. Wade* about to be snatched away from us, our daughters and generations of women to come? Will the growing atmosphere of fear and intimidation succeed in silencing dissent?

This Administration's response to dissent is especially worrisome. The Supreme Court once said that free speech is "the matrix, the indispensable condition of nearly every other form of freedom." Without it, other rights wither and die. Although our courts have generally interpreted the First Amendment generously, there are troubling signs that this Administration will not hesitate to do an end run around the Constitution when it can. Just days before the election, for example, Julian Bond, the Chairman of the NAACP, revealed that his organization's tax-exempt status was being audited by the Internal Revenue Service in the wake of remarks Bond made in July at the NAACP's annual convention. In the speech, he said of the Bush Administration, "They preach racial neutrality and practice racial division...they write a new constitution for Iraq and they ignore the Constitution here at home." The NAACP faces a challenge for political speech deserving of the highest protection. Who will be next?

Now More Than Ever

In 1915, on the night before his execution in Utah on a trumped-up murder charge, labor organizer Joe Hill telegraphed his supporters: "Don't waste your time in mourning. Organize." Joe Hill's 90-year-old counsel is as timely as it ever was. With your encouragement and support, the NYCLU is organizing its staff, its chapters, its volunteers and its members not only to resist anticipated attacks on civil liberties, but to gain ground wherever and whenever possible.

Please take a look at our "Year In Review" Special Section in our centerfold. The NYCLU is involved in virtually every cutting edge civil liberties issue, from education reform to gay marriage. We are challenging counterterrorism measures that make us neither safe nor free: the government's "no-fly" list, secret subpoena powers and indefinite detentions without charge or access to counsel. We are doing everything we can to ensure that New York State remains a safe haven for safe and legal abortion. And we are in the forefront of challenging "faith-based initiatives" that permit employers to engage in government funded religious discrimination against their employees and to infuse government funded social services with their religion.

Our trademark litigation program is not the only game in town. We have ramped up our communications and organizing efforts considerably and will continue to do so. I am especially excited about our E-Activism program which arms our members and supporters with the tools to lobby their elected representatives on civil liberties priorities. In June, we had 2,000 names on our E-Activism list. In a few short months, we have doubled that number and more than 4,000 NYCLU members and supporters can now be reached with a click of the mouse. In October, we generated close to 2,000 faxes in opposition to HR10, an anti-immigrant 9/11 reform proposal pending in Congress. Please become a part of this network of civil liberties activists by going to nyclu.org and clicking on "Join our e-mail list" on the left side of the homepage.

What will set the next four years apart from the McCarthyism of the 1950s will not be the government's repressive tactics. Rather, the difference will be our capacity to respond and to break new ground. This is no time to quit! ❖



NYCLU News (ISSN 0746-0801) is published twice a year by The New York Civil Liberties Union, 125 Broad St., New York, NY 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

ACTING DIRECTOR, REPRODUCTIVE RIGHTS PROJECT: Anna Schissel

DIRECTOR, TEEN HEALTH INITIATIVE: Lee Che Leong

LEGISLATIVE DIRECTOR: Robert Perry

PROJECT DIRECTOR, BILL OF RIGHTS DEFENSE CAMPAIGN: Udi Ofer

DIRECTOR OF DEVELOPMENT: Christina Maggi

DIRECTOR OF COMMUNICATIONS: Sheila Stainback

DIRECTOR OF FINANCE: Claudette Cosbert

DIRECTOR OF OPERATIONS: Connie Harshman

CHAPTER DIRECTORS:

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

EDITOR: Sheila Stainback

STAFF PHOTOGRAPHER: Tom Tyburski

PHOTOS BY: Maggie Gram, Sally Robinson, Miriam Hurwitz

COPY EDITORS: Martin R. Miller, Jane Schatz

From the President

NOTES FROM
THE BOARD

by Claudia Angelos, President of the NYCLU Board of Directors

Now more than ever we are grateful for the support of all of you, our members. And now more than ever we urgently need you to step up that support.

In the coming months and years, the recent assault on civil liberties and our core democratic principles will certainly be redoubled. Our resistance must redouble as well.

We have witnessed an unprecedented erosion of personal privacy. Law enforcement agencies have assumed an unimaginable amount of authority to detain and spy on us. Government and corporations are increasingly tracking and collecting our most personal information, including personal purchases, medical records, and even relationships.

We have witnessed a more energetic attack on women's rights to reproductive medical decisions and on the rights of lesbians and gays to form families.

We have witnessed the continued erosion of the

separation of church and state through the provision of taxpayer money for faith-based programs.

We anticipate proposed legislation requiring Americans to carry national identification cards.

And these are just a few examples.

The ACLU and the NYCLU are leading the resistance against these assaults. As the challenges to our Constitution and its Bill of Rights expand, so does our litigation, lobbying, education, and grass-roots organizing both here in New York and on the national level.

You need us. And we need you. Please help. Get involved. (Our Web site will give you ideas on how.) Give more generously this year than last. And tell your friends to join. Any New Yorker who joins the ACLU or the NYCLU is automatically a member of both. Our power lies in our energy, commitment and intelligence, but most importantly in our numbers. If you have been looking for something to do to resist the current attacks on our most basic American values, this is it. ❖

An Appeal to Guarantee Education Opportunity for all Students

In January, the New York Court of Appeals will hear oral argument in a landmark school reform case which seeks to extend the constitutional promise of educational opportunity beyond the New York City schools to children throughout the state. The case, *New York Civil Liberties Union v. State of New York*, rests upon earlier Court of Appeals decisions in a suit brought by the Campaign for Fiscal Equity (CFE) on behalf of the New York City school children. In the CFE case, the Court of Appeals held, in 1995, that the Education Article of the New York Constitution requires the state to offer all children “the opportunity” to receive “a sound basic education.”

To develop its lawsuit, the NYCLU examined student performance levels in schools outside of New York City. It identified 27 schools in 12 different school districts in upstate New York, Westchester County and Long Island where the performance levels of the children were abysmal. In these schools, between 30-40% of the children were functionally illiterate and approximately 60% of the children were failing the state competency tests. Among the high schools examined, only 4% to 27% of the students received regents’ diplomas.

To decide how to structure the suit, the NYCLU convened meetings at Columbia Teachers College with a number of national school reform experts in order to explore the question of what would explain school success and failure. At the meetings the experts identified approximately ten common characteristics of school failure. These characteristics included a highly transient teaching staff, inadequately trained teachers, inadequate textbooks and computers, decrepit facil-



■ “Failed School” Blodgett Elementary in Syracuse

Berrie Gewanter, 2000

ities, overcrowded conditions, a failure to give adequate attention to the core-curriculum, a lack of administrative leadership, class-sizes that are too large for the many “high need” children in the classes, school buildings that house too many students to give children and parents a sense of community, an inability to involve parents in the activities of the school and inadequate programs in art, music and athletics. The NYCLU then examined the 27 schools in light of these characteristics. Not every school presented precisely the same characteristics of failure, but each of the 27 schools shared a critical number of characteristics.

The NYCLU then filed a class action lawsuit that focused on the 27 schools which it regarded as representative of perhaps another 150-200 schools outside of New York City, which by virtue of inadequate resources and abysmal performance levels must be regarded as “failing schools.” The NYCLU’s principal argument rested on a straightforward premise: Under the state constitution, the state is obligated to provide children with the “opportunity” to receive “a sound basic education.” The educational environment at each of these schools is so inadequate that any child consigned by economic, residential or racial circumstance to one of these schools is being denied the “opportunity” to “a sound basic education.”

The suit, which was filed in March 2001, proposed a remedy that also focused upon individual schools. The suit asserted that because the characteristics of failure may vary from school to school, an appropriate remedy would require state education officials to meet with local school officials, parents and community representatives, as well as education experts to develop, collectively, a remedial plan tailored to each of these failing schools. The state would then be required to implement these remedial plans.

The appeal that will be argued in January stems from an Appellate Division decision that dismissed the suit on the grounds that constitutional claim under the Education Article can only be pursued if the educational inadequacy is “systemic”; that a systemic claim can only be established if the constitutional injury is “district-wide”; and that the NYCLU’s suit, which is “school-based” in its approach, does not allege “district-wide” inadequacies. In response, the NYCLU contends that the reasoning of the Court of Appeals in the CFE case does not foreclose a “school-based” approach toward school reform; and that such an approach, with its promise to direct resources specifically to the deficiencies of individual schools offers the most effective means of providing meaningful educational opportunity for the children of the state. ♦

NYCLU Praises Ruling Halting Abortion Ban Law

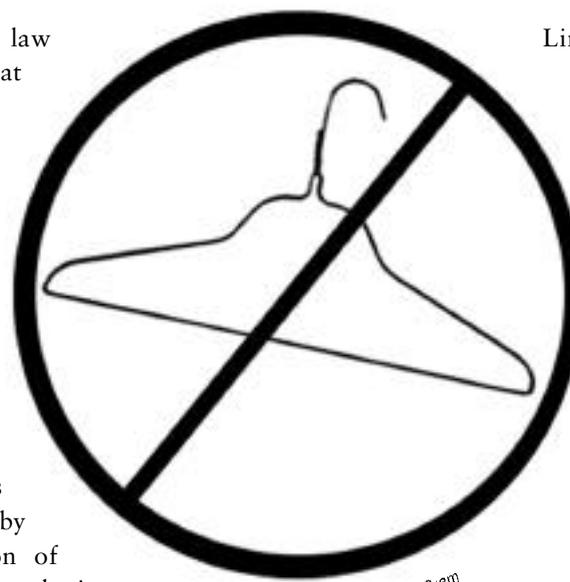
The New York Civil Liberties Union applauded a federal court ruling that struck down the federal abortion ban on August 26, 2004 because it violated the United States Constitution.

The NYCLU (as co-counsel with ACLU) represented the National Abortion Federation and seven individual physicians in challenging the law in the U.S. Southern District Court in Manhattan. The ruling was a sweeping victory which recognized the significant threat the ban, passed in November 2003, posed to constitutional rights and reproductive freedom.

“We’re gratified that the court recognized the grave threat that the ban posed to women’s health because it would have outlawed safe and medically appropriate abortions as early as 13 weeks in pregnancy,” said Donna Lieberman, Executive Director of the NYCLU.

The judge, finding the law unconstitutional, concluded that “[t]he Act as whole cannot be sustained because it does not provide for an exception to protect the health of the mother.” In addition, the court noted that several of Congress’s factual findings about the ban were unsupported.

The case was one of three challenges brought in federal courts: a second was brought in San Francisco by Planned Parenthood Federation of America and the third was brought in



Maggie Gram

Lincoln, Nebraska by the Center for Reproductive Rights on behalf of four individual physicians. The judges in all three cases concluded that the law, which banned safe and common abortion procedures in the second trimester of pregnancy and did not contain an exception to preserve a woman’s health, was unconstitutional. ❖

2004 Legislative Session: An Overview

New York typically votes “blue” in presidential elections. And yet it is painfully predictable that when the state legislature adjourns each summer, important social-justice legislation hasn’t even come up for a vote.

Why did it take more than three decades to adopt discrimination protections for gays and lesbians? What explains the legislature’s failure to reform the state’s cruel, unjust and exorbitantly expensive drug-sentencing laws? And why is New York among a minority of states that permit punishment by execution?

The Reform(?) Movement

A recent report by the Brennan Center for Justice at New York University goes some way toward answering these questions. New York, the report concludes, has the most undemocratic rules of governance in the nation. Legislators and their constituents are all but locked out of a system controlled by the governor, the Senate Majority Leader and the Assembly speaker.

For several years *The New York Times* has been hammering state legislators for acquiescing in a legislative process that more closely resembles the pre-Gorbachev Soviet Politburo than a representative democracy. The Brennan Center report seemed to give the issue critical mass; and in the run-up to the 2004 legislative session a nascent reform movement appeared.

Senate Majority Leader Joseph Bruno dismissed the Brennan Center report as “pure nonsense.” But after contemplating the meaning of a two-seat swing to the Democrats, the Majority Leader determined that the “people had spoken.” He had also figured out what the people had said. They want “change,” the Senator announced. Change, of course, is not reform. But with a loss of three Republican seats and with the ballot count for one additional seat still too close to call (at press time), the Senate majority could be reduced to a mere four members. In New York State, this would qualify as a revolution.

So, viewed through the crimson afterglow of the federal elections, things look bleak. But if one takes a blinkered view of the vote (ignoring the rest of the country), it is possible to find reason for hope in New York’s state election results — tentative, qualified hope, perhaps; but cautious optimism does not require a mandate.

Here, then, are the major civil liberties issues taken up by the state legislature in the 2004 session - as well as a First Amendment agenda we put before the Mayor of New York and the City Council.

Counter terrorism and Due Process of Law

As he has in each legislative session since September 11, 2001, Governor Pataki in 2004 proposed legislation that would repeal a century of due-process protections that could be invoked by defendants charged under the state’s antiterrorism statute (adopted with frantic haste in September 2001).

At a news conference that received extensive media coverage, the NYCLU along with criminal defense experts, a former federal prosecutor, and an upstate immigrants’ rights advocate, argued that the bill would corrupt law enforcement practices; that prosecutors did not need procedural short cuts; and that throwing the state’s penal code at the specter of terrorism would do little to identify, deter or apprehend terrorists.

The goal of the NYCLU was to alter the terms of the debate. And the organization was largely successful in meeting that objective. The Assembly did not take up the Senate bill, but instead passed a bill (as the NYCLU had suggested) that created a new statewide agency charged with securing critical infrastructure; preparing emergency responders to protect public safety in the event of an act of terror; and mobilizing an effective, coordinated public-health response.

The bill, also passed by the Senate, was stripped of the most problematic provisions in the governor’s proposal. But it did include new “bio-terrorism” crimes, with a mandatory sentence of life without parole for the mere possession of certain naturally occurring biological substances or products. Even as the bill was under negotiation, federal agents brought an indictment against an assistant professor of art at the University of Buffalo for using harmless biological organisms in his artwork.

Rockefeller Drug Laws: Incremental Reform

On November 2, David Soares, pledging to support reform of the Rockefeller Drug Laws, was elected District Attorney of Albany County. Soares defeated his former boss, District Attorney Paul Clyne, who had been one of the most outspoken and unyielding opponents of drug-law reform. About a month later, the legislature passed a bill that reduces the most severe mandatory sentences for drug offenses.

The Soares factor and a revitalized reform coalition led to the post-election conversion by the Republican leadership. Throughout the legislative session the Real Reform 2004 coalition mobilized a united and forceful advocacy effort. The NYCLU helped deliver the real-reform message at news conferences organized by our Albany and Westchester chapters, in the op-ed pages, and in the halls of the Capitol building in Albany.

But New York’s draconian drug laws are still draconian. The amended sentencing “grid” will remain one of the harshest in the country; and the sentencing procedures are still in the control of prosecutors. What’s more, the new law will do little or nothing to reform the harsh sentences imposed on non-violent B felons, who represent the majority of drug offenders serving time in New York prisons.

So, the Republicans have blinked. The danger now is that this small, incremental measure of reform will give political cover to the apologists for the status quo.

Death Penalty: A Court-Ordered “Moratorium”

In late June, New York’s Court of Appeals addressed a peculiarity of New York’s sentencing procedures in capital cases. The law permits a judge to order a life sentence

with the possibility of parole if jurors are deadlocked in a vote to choose death versus life without parole. The Court of Appeals found that a juror who favors a life sentence but cannot accept the prospect of the defendant walking out of prison might feel compelled to break the deadlock and vote for death. This, the court found to be coercive and unconstitutional.

Death penalty opponents quickly mobilized an aggressive campaign to forestall a legislative “fix” of the constitutional flaw identified by the court. The effort succeeded. The Assembly’s Democratic conference prevailed in holding off a vote in September. The Speaker announced that public hearings would precede any new legislative initiative. This makes possible an airing of the disturbing empirical evidence that demonstrates the capital punishment system is administered in a manner that is routinely and often fatally unjust.

Help America Vote Act and Gay Marriage: Not Now

The gay marriage phenomenon that took off across the country from San Francisco led to the introduction of same-sex marriage bills in the New York legislature (sponsored by Assembly Member Dick Gottfried and Senator Tom Duane), but election-year politics brought the issue to an abrupt halt. Most legislators were anxious to see the issue placed on court dockets, and off the legislative agenda. Likewise, important action on the Help America Vote Act was averted, with a show-down over voting technology, voter registration and cronyism in contracting looming in the 2005 session.

Protecting Protest: Enlisting Legislators’ Support for First Amendment Rights

Following the Republican National Convention (RNC), Mayor Bloomberg and Police Commissioner Raymond Kelly issued loud self-congratulations for the manner in which the NYPD handled demonstrations and protests. But as complaints and arrest reports were called in to the NYCLU’s Protecting Protest storefront near Madison Square Garden’s back door, it became increasingly clear that the city continues to employ special measures that frustrate and punish protected First Amendment activity at certain high-profile political events.

It’s not that the city had no notice that these practices were unconstitutional. The NYCLU, through its Bill of Rights Defense Campaign, guided a Right to Assembly resolution through public hearings at the City Council; its members adopted the resolution by an overwhelming majority. On the steps of City Hall, the NYCLU was joined by members of New York’s Congressional delegation — Charles Rangel, Major Owens and Jerrold Nadler — calling on the mayor to enter into a Memorandum of Understanding that set out policies and practices to protect the rights of speech, expression and association during the RNC.

An agreement never entered into cannot be breached. But had the mayor heeded the recommendations in the memorandum, many hundreds of arrests could have been avoided. The NYCLU will now, once again, seek a remedy in the courts. The organization will also propose local legislation that prohibits the arrest and detention practices used to punish lawful political protest at the RNC.

The NYCLU scorecard of legislators’ votes on key civil liberties issues can be viewed at www.nyclu.org. Click on the legislative page. ♦



(l-r): Council member Margarita Lopez, NYCLU Executive Director Donna Lieberman and Innocence Project Founder Barry Scheck.

Dedication in Any Language

As a fifth grader in Jamaica, Queens, Yanilda Gonzalez was already defending free speech. Playing a lawyer in a mock court case pitting freedom of the press against national security, the 10-year old Gonzalez argued that to prohibit a newspaper from writing about nuclear plant safety violations in the name of plant security was a violation of protected freedoms in the Bill of Rights.

Born in 1983 in the Dominican Republic, Gonzalez grew up in Santo Domingo and moved to New York at the age of seven. Although she knew no English when she entered the third grade (other than "Cowabunga, dude" and other phrases heard on the TV cartoon Ninja Turtles), Gonzalez wasted no time getting acclimated. By the sixth grade, she was class president, salutatorian, and winner of the all-school spelling bee.

Gonzalez graduated from Richmond Hill High School as valedictorian and was awarded a scholarship to New York University. As a college student, Gonzalez decided to volunteer with the NYCLU

because she was disturbed by post-September 11th civil liberties violations like detentions and special registration requirements. "I had read a lot over time about different periods in history when civil liberties were curtailed for national security purposes and people just stood for it," she says.

In September 2003, Gonzalez was hired as NYCLU's New York Bill of Rights Defense Campaign (NYBORDC) Project Assistant. She is now a Project Associate whose job includes event planning, spearheading public education efforts, coordinating volunteers and maintaining post-9/11 issues on the NYCLU Web site.

Now a senior at NYU, Gonzalez is majoring in political science and Latin American Studies, and she is writing a thesis on democracy and public services in Latin America. She is also studying Portuguese, her fourth language.

Gonzales is happy "that right now I'm able to do something that I'm passionate about...Being able to do something where I can help educate other people about



■ Yanilda Gonzalez

important issues and help mobilize them to act and change-and that I get to see in action the principles that I've been learning about since fifth grade." ❖

Maggie Gram is a senior at Columbia University and works as an NYCLU communications assistant.

NYCLU Pressures City Over RNC Protest Abuse

(Continued from page 1)

organization remains concerned, however, about whether the fingerprints remain in state or federal computers and will pursue this through two lawsuits.

The NYCLU filed two major federal lawsuits against the city over actions it took during the convention. The organization challenged the indiscriminate mass arrests of people who were simply standing on public sidewalks and either participating in or observing demonstrations, and the NYPD's prolonged detention of arrestees at Pier 57 in the filthy and now notorious bus depot. NYCLU clients include a dancer who was walking to work along 16th Street near Union Square and went into convulsions and was hospitalized after police officers swooped in with orange netting and arrested everyone on the block; a Harvard Law School student who was arrested on the same block while standing on the sidewalk watching a demonstration; a filmmaker working for HBO who was arrested standing on a sidewalk while filming a peaceful march and then was held for nearly 36 hours, part of that time at Pier 57; and a father and his 17-year-old son who were lawful participants in a sidewalk march and ended up in handcuffs and then were detained at Pier 57. Six students from the NYU Law School's Civil Rights Clinic, which is based in part at the NYCLU, are working on these cases.

Most recently, the NYCLU learned that in August the

NYPD decided that officers charged by the Civilian Complaint Review Board with misconduct during the convention would not face discipline until after a second investigation by an internal NYPD panel. As is explained in an op-ed piece (at www.nyclu.org), the reinvestigation of substantiated cases that warrant discipline by the independent CCRB will only delay discipline. It also will lead to many cases simply going away because complainants and witnesses will not want to go through a second investigation, particularly one run by the police. This type of reinvestigation will undermine the goal of independent civilian oversight of the NYPD. The NYCLU has challenged Commissioner Kelly on this decision and called upon him and Mayor Bloomberg to abolish this panel.

Finally, the NYCLU is preparing a comprehensive report about the city's handling of RNC protest activity. This report is patterned after the organization's influential "Arresting Protest" report on the February 15, 2003 anti-war protest debacle. It will serve as the definitive historical account of this event and will spell out specific reforms the NYCLU will urge upon the Mayor, the NYPD and the City Council.

The NYCLU expects to release this report in early 2005. It will complement and frame much of the organization's post-convention work which will continue through the coming year. ❖

A Portion of the Patriot Act Declared Unconstitutional

(Continued from page 1)

Judge Marrero's decision enjoins the government from issuing National Security Letters or from enforcing the gag provision. The judge stayed his ruling for 90 days in order to afford the government an opportunity to raise objections in the district court or the Second Circuit Court of Appeal. Attorneys in the law-

suit are Ann Beeson and Jameel Jaffer of the ACLU and Arthur Eisenberg of the NYCLU. The court's ruling can be found online at www.nyclu.org.

An ACLU Web feature about the case is online at www.aclu.org/nsl. ❖

BOARD NOMINATIONS

The annual meeting of the members of the New York Civil Liberties Union will be held on June 15, 2005, 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 22 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 7, 2005. 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. Additional nominations may be made and are hereby solicited up to May 2, 2005, 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 Secretary Jonathan Horn, c/o NYCLU, 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. ❖

Lasker/Callaway Photos from Oct. 25th Awards Night

(l-r) Donna Lieberman, awardees William Butler, Sarah Jones, Tony Kushner, and Dr. James Neal representing the American Library Association



Actor and Callaway awardee Sarah Jones

The New York Civil Liberties Union present its Lasker/Callaway Awards Oct. 25th. The NYCLU's annual salute to individuals and institutions for their dedication to civil liberties issues took place at the Yale Club in mid-town Manhattan before a distinguished audience of guests and supporters.



Callaway awardee Kushner and actor Maggie Gynellnhall performing an original routine written by Kushner.



Author Kurt Vonnegut, Kushner and Lieberman.



Former ACLU/NYCLU Executive Director Ira Glasser and Lasker awardee Butler.

Photos by Miriam Hurwitz

Legal News in Brief

► Signs of Trouble in Essex

The New York Civil Liberties Union filed suit against the Town of Essex in September in the United States District Court in Albany challenging its law restricting the use of political signs on front lawns as a violation of the First Amendment.

The Town of Essex adopted a zoning law on June 12, 2003 that states that temporary signs for “a political campaign...may be erected no more than 30 days prior to the event and shall be removed by the sponsor within 7 days after the close of the event.” Violation of this law may result in criminal penalties of up to 6 month’s imprisonment and civil fines of up to \$100 per day. The town agreed not to enforce the law in the 30 days before Election Day.

The NYCLU notes that a political yard sign is a classic example of freedom of speech that is at the heart of the First Amendment’s guarantee of the right to free expression.

► “Too Poor to Parent” Decision

The NYCLU Reproductive Rights Project and National Advocates for Pregnant Women (NAPW) filed a friend-of-the-court brief in Family Court in Monroe County asking that the court reverse its order prohibiting a woman with children in foster care from having any more children until she could regain custody of those already in foster care. The order was issued when the woman was not in court and not represented by counsel. In March, the Family Court had stated that the woman’s and the father’s right to have children was trumped by society’s right not to have to support their children, citing the parents’ history of drug problems and poverty.

The NYCLU and NAPW, on behalf of nine medical, child welfare and drug policy advocacy organizations, contend the order violates the woman’s fundamental right to privacy and specifically, the decision violates the right to procreate under the United States and New York constitutions. The organizations condemned the order as dangerous to the welfare of both parents and their children. They agreed that this kind of order does not promote child welfare, and in fact deflects attention from the need for meaningful family assistance services.

Among the organizations and individuals being represented by NYCLU and NAPW as friends-of-the-court are: Child Welfare Organizing Project, Doctors of the World-USA, Drug Policy Alliance, Washington Square Legal Services’ Family Defense Clinic, Feminists for Life of New York, Global Lawyers and Physicians, Robert G. Newman, M.D., Planned Parenthood of the Rochester/Syracuse Region, and the Battered Women’s Resource Center’s Voices of Women Organizing Project

Executive Director Donna Lieberman argued the points presented by amici before the Monroe County Bar Association and presented the issues before the editorial board of the Rochester Democrat and Chronicle.

► The ABC’s of HIV

Eleven-year veteran teacher Susan Denis did what the Sag Harbor School District neglected to do: Teach her sixth grade class about HIV/AIDS as legally mandated by NY State law. Denis attempted to teach the course by

bringing in an HIV/AIDS educator from the Suffolk County Department of Health. Together, they presented an age-appropriate lesson similar in content to lessons provided to sixth graders in previous years. The school district removed Denis from her sixth grade classes following complaints by parents and imposed special restrictions on her teaching. Denis is also prohibited from speaking about the issue. The NYCLU sent a letter to the School Superintendent charging that administrators violated Denis’ First Amendment rights. The district responded quickly and efforts to resolve the matter are underway.

► Improper Use of DNA

The NYCLU filed a friend of the court brief supporting a challenge to the New York State DNA Database statute. The statute mandates the extraction and indexing of an individual’s DNA merely on the basis of a person’s status as a convicted felon, not based on suspicion that the person has committed any other crime. The NYCLU argued this can only be undertaken under the Fourth Amendment on the basis of “individualized suspicion” or a “special need” unrelated to law enforcement. Because routine taking and indexing DNA for possible use in a subsequent criminal investigation does not meet this standard, the NYCLU argues that the New York DNA Database statute violates the Fourth Amendment.

Some believe that maintaining DNA files on all persons living in this country would make the resolution of criminal investigations easier. The NYCLU, however, contends that the government may not invade an individual’s body and compel him or her to surrender sensitive information for inclusion in a permanent centralized government database that would be used someday as evidence in some subsequent prosecution.

► Monitoring “terrorism” case in Syracuse

Central New York Chapter Director Barrie Gewanter and others continue to monitor the trial of Dr. Rafil Dhafir, a naturalized American who was arrested with a flurry of headlines linking him to terrorism. As reported by the Washington Post, Dr. Dhafir was arrested in Syracuse more than a year-and-a-half ago when more than 85 federal agents descended on his home, handcuffed him in his driveway and hauled away dozens of boxes of books and records. Former Attorney General John Ashcroft spoke of him as a terrorism supporter. Since that time, Dr. Dhafir, who emigrated from Iraq to the United States 32 years ago, has not faced terrorism-related charges. Dr. Dhafir is charged with defrauding a charity he ran and violating sanctions by sending millions of dollars to feed children and to build mosques in Iraq, before the war began. Though he only faces “white collar” charges, Dr. Dhafir has been held without bail since his arrest and has encountered numerous difficulties meeting with his counsel in jail. At press time, his court case is still underway.

► Docking the Dock Master

The Suffolk County Chapter of the New York Civil Liberties Union has filed a lawsuit against the Village of Northport and Mayor Peter Panarites for violating the free speech protections of Michael Suchocki, an applicant for seasonal employment as a Village Dock Master.

Suchocki, who was a Dock Master in 2001, 2002 and 2003, was denied a summer 2004 position after



■ Dock master, Michael Suchocki

a winter in which he had protested the suspension of the Village Police Chief. During an April Town Board meeting, Suchocki inquired why he was not reoffered a position and was told by Village Mayor Peter Panarites, “I do not compliment people that put up signs.”

The Suffolk NYCLU charges the Village and Mayor Panarites with denying the constitutional rights of Suchocki by refusing him employment because he exercised his First Amendment rights. Suchocki is seeking earnings lost over the 2004 summer season, damages from the violation of his constitutional rights, and reinstatement as a Dock master in the 2005 summer season.

► Salvation Army Update

The NYCLU lawsuit against the Salvation Army has an additional participant. The Department of Justice was granted amicus status in October. The NYCLU challenges the charity’s use of direct taxpayer money to support directly the religious mission of The Salvation Army Church.

► NYBORDC Activity

Huntington, Long Island — The Town Board of Huntington on Long Island passed a Bill of Rights Resolution in September opposing unconstitutional provisions of the USA PATRIOT Act, and affirmed the Town’s commitment to uphold civil rights and civil liberties. The Suffolk Bill of Rights Defense Campaign (BORDC), an informal, non-partisan group, worked to educate the Suffolk community on the importance of protecting the Bill of Rights in a post-9/11 world. Suffolk NYCLU Chapter Director Jared Feuer is the Secretary for Suffolk BORDC.

Westchester — Also in September, the Westchester County Board of Legislators passed a resolution condemning the sections of the USA PATRIOT Act that violate civil liberties. After a year of organizing, Wesley Stromberg and Elizabeth Saenger, co-chairs of the Bill Of Rights Defense Campaign in Westchester, mobilized more than a hundred BORDC supporters to attend the meeting. They represented forty-four groups who endorsed the resolution.

The Town of Greenburgh and the City of Mt. Vernon in Westchester County also passed similar resolutions, as did the Village of Nyack. In Dutchess County, a resolution was defeated in a County legislative committee in November 2003. In Ulster County, the towns of Rosendale, Woodstock and New Paltz and the village of New Paltz have passed resolutions. ❖

STUDENT CHAPTERS MEET IN CONFERENCE for 2nd time this year at NYCLU, on Oct. 9

> *Back Row (left to right):* Matt Morse (Vassar), David Ries (Brooklyn Law), Seth Katzenstein (Touro Law), Saima Akhtar (Touro Law), Diane Ng (Albany Law), Judith Le (NYU), Carrie Townsend (Touro Law)

> *Front Row (left to right):* Steve Theberge (NYCLU), Stacy Meisner (Touro Law), Yanilda Gonzalez (NYCLU/NYU), Nina Maturu (NYCLU/NYU), Andrea Callan (Touro Law)



NYCLU Fights to Improve Defense Services for the Poor

The NYCLU has moved to reform the delivery of legal services to poor people accused of crime in New York State. Although New York is under a federal and state constitutional obligation to provide adequate counsel to indigent defendants, the state has deferred to its sixty-two counties (including New York City) to fund and provide effective representation.

After ongoing investigations of public defense systems in various counties such as Albany, Onodaga, and Schenectady, the NYCLU has found that the consequences of the state's failure to properly fund and administer public defense systems are far-reaching. Most importantly, the investigations revealed that criminal defendants who cannot afford to pay for an attorney are not receiving meaningful and effective representation which would provide them with fundamental fairness.

Analysis of county indigent defense reports revealed that the vast majority of counties receive none or almost no funding from the state and strikingly, most of these counties are among the poorest in New York.

Not surprisingly, the organization has found that under-funded, understaffed, and under-resourced indigent defense providers are plagued with systemic problems.

By Dawn Yuster, Staff Attorney

These providers have excessive caseloads; ineffective case management; inadequate attorney training and a backlog of appeals. They also fail to communicate with clients about their case; fail to visit clients in jail for weeks or even months at a time; fail to adequately investigate cases; fail to assume an adversarial role against the prosecution and fail to file important motions.

The state legislature's establishment of an Indigent Legal Services Fund for counties to improve the quality of public defense services was a small, but important step in the right direction. However, the Legislature appropriated only \$12 million out of the projected \$50 million available for local governments on March 31, 2005. This is a paltry sum considering that in 2003, New York's sixty-two counties expended a total of over \$225 million of their own to fund indigent legal services.

The NYCLU intends to hold the New York State Legislature accountable for its promise to provide state funds to counties and to New York City for public defense. Hopefully, this advocacy will stem the serious and persistent systemic deficiencies that exist. ❖

NYCLU Welcomes New Staffers

Ryan Rivera joined the NYCLU in August as the Database Administrator in Development. Before joining the NYCLU, Rivera worked for the Gay Men's Health Crisis for many years; he has also been an activist in LGBT and HIV/AIDS issues for the past 10 years. In his off-hours, Rivera is a multi-media visual artist whose work has been shown extensively in New York. He is also a writer trying to publish his first collection of short stories and is currently at work on a novel and a new series of videos.



■ Ryan Rivera



■ Nina Maturu

Nina Maturu came to the NYCLU as Student Chapter Coordinator this September. Maturu is a junior at New York University, where she is majoring in history and is an officer of the university's ACLU student chapter. Maturu is also involved in a student organized effort to create a South Asian Studies department at NYU. In her spare time, Maturu sews and makes jewelry. ❖

HELP US FIGHT - AND WIN - THE BATTLES AHEAD



Help the NYCLU preserve individual freedom and protect civil liberties.

Our legal docket for 2005 (available at www.nyclu.org) reads like a dispatch from the front lines of today's constitutional battle grounds. Your support will enable us to combat the stepped up assaults on our fundamental rights. Please send a generous gift today!

Enclosed is my check payable to the NYCLU in the amount of: \$1,000 \$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, 17th Floor, New York, NY 10004
Tel: (212)344-3005 Fax: (212)344-3318

N0412