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## NEW YORK CIVIL LIBERTIES UNION

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Championing  
civil rights and  
civil liberties  
for

**50**  
years

# NYCLU POLICY AND LEGAL STAFF BY DECADE

## 1950s

George E. Rundquist, Executive Director Clifford Forster, Counsel Josephine Scheiber, Administrative Secretary Newsletter Editors: Leslie Slote, Eileen Martinson

## 1960s

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## 1970s

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**Donna Lieberman**  
Executive Director

*New York Civil Liberties Union: Championing Civil Rights  
and Civil Liberties for 50 Years*

This report has been prepared by the New York Civil Liberties Union,  
a non-partisan organization dedicated to preserving and defending the  
principles set forth in the Bill of Rights.

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Designed by Sara Glover.

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**NEW YORK CIVIL LIBERTIES UNION**  
*50th Anniversary*

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**TABLE OF CONTENTS**

Introduction . . . . . .ii

The 1950s . . . . . .1  
*Fighting for First Principles*

The 1960s . . . . . .9  
*The NYCLU In Ascendancy*

The 1970s . . . . . .17  
*A Decade of Growth*

The 1980s . . . . . .27  
*Issues of Democratic Governance*

The 1990s . . . . . .37  
*Continued Vigilance*

## **NEW YORK CIVIL LIBERTIES UNION:** *Championing Civil Rights and Civil Liberties for 50 Years*

**F**OR THE PAST HALF-century the New York Civil Liberties Union has been recognized as the pre-eminent statewide organization devoted to the protection and enhancement of civil liberties and civil rights for the residents of New York. For fifty years the NYCLU has displayed a compassionate devotion to the rights and well-being of the dissenters, the disadvantaged and the dispossessed in our society. Its work has been characterized by a commitment to constitutional principle, by the intellectual integrity of its positions, and by its advocacy programs, which have been driven by engagement with New York's many communities.

The NYCLU program has exhibited a dynamic quality. In many instances the NYCLU has used the litigation process as a mechanism of legal reform, with the objective of creating new constitutional doctrine in the service of civil liberties and civil rights. The NYCLU has also provided legal counsel and advocacy on behalf of individuals whose claims may not create new legal precedent – but who, nonetheless, have been subjected to pun-

ishment or oppression because of dissenting beliefs, racial or religious identity, or status as a member of a discrete and insular minority group.

While the NYCLU has deservedly acquired its reputation as a principled and aggressive litigating organization, its activities have not been limited to the courtroom. For at least thirty-five years the NYCLU has been actively engaged in legislative lobbying, and has also effectively advocated on behalf of civil liberties and civil rights through public education and community organizing. In this regard the NYCLU's mission has been significantly enhanced by the fact that the organization maintains offices not only in New York City but also in Albany, Syracuse, Rochester, Buffalo and Ithaca as well as in Nassau, Suffolk and Westchester counties.

The NYCLU came to the fore as a civil liberties and civil rights organization in the late 1960s and early 1970s. The NYCLU spearheaded litigation challenging the constitutionality of the Vietnam War; and the organization coordinated the work of an extensive team of lawyers who represented thousands of individuals asserting conscientious-objector claims and other challenges to the selective service system based upon its unfairness and arbitrariness. In response to the protest activities that grew out of the civil-rights and

anti-war movements, the NYCLU created its Students' Rights Project – the first in the country – to protect the First Amendment rights of student activists.

The NYCLU also created the first project in the country devoted to the protection of the mentally disabled. Its path-breaking lawsuit brought on behalf of the mentally disabled at the Willowbrook facility on Staten Island led to a new commitment to community placement of the institutionalized.

In 1973 the NYCLU became the first civil liberties organization in the country to undertake reform of the foster-care placement system. This became the mission of the NYCLU's Children's Rights Project. At the same time the organization was actively engaged in lobbying and public education in support of civilian review of police misconduct. The NYCLU also maintained a deep commitment to civil rights, pursuing school-desegregation cases in Buffalo (*Arthur v. Nyquist*) and New York City (*Caulfield v. Board of Education*).

Beginning in the decade of the seventies and on into the eighties, the NYCLU became involved as an advocate in many voting rights issues: securing for college students the right to vote in their college communities; successfully opposing the dilution of voting rights of racial minorities in Yonkers; and successfully



The NYCLU was chartered in 1951, through a grant from the Florina Lasker Foundation. Florina Lasker served as chairperson of the New York Committee of the ACLU from 1932 until her death in 1949.

challenging New York City's undemocratic Board of Estimate as a violation of constitutional "one-person one-vote" principles. In *Morris v. Board of Estimate*, a landmark suit brought by the NYCLU, the court invalidated the New York City Board of Estimate, leading to the restructuring of the city's government. And throughout its history the NYCLU has brought test-case litigation seeking to establish and preserve

constitutional principles protective of freedom of speech, assembly and association.

The NYCLU's dynamic program continues. At the same time, however, the challenges that we confront persist as well. Police abuse – particularly within minority communities – remains a systemic problem. The public schools in New York State are among the most racially segregated in the nation, and significant racial disparities and inequalities with respect to educational opportunities exist throughout the state. New York's death penalty statute remains poised to kill, its potential invocation not yet stayed despite growing evidence around the country of wrongful convictions in capital cases. The racial divide in this country is more entrenched and complex than it was thirty years ago when the Kerner Commission warned us about "two separate societies, one black, one white – separate and unequal."

Gender discrimination has not been eliminated even though statutory prohibitions against such discrimination have been on the books for years. Discrimination against gays and lesbians also persists; more work needs to be done to provide statutory protection for this minority group. The rights of reproductive choice remain deeply contested and such rights rest upon a fragile coalition of Supreme Court justices. Moreover, as new

technologies surface, controversies persist between those advocating for the autonomy of personal, medical and scientific decision-making and those who seek to impose their own religious or personal views upon others.

New technologies also present new opportunities for invading individual privacy through surveillance and data collection. Religionists continue to press for prayer in schools, vouchers for parochial education and government funding of social service agencies engaged in religious proselytizing.

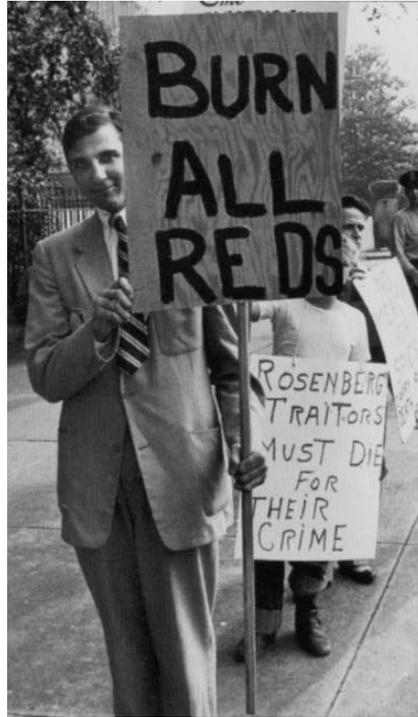
Finally, government censorship remains an enduring problem. The natural impulse to censor disagreeable speech inevitably drives the political branches of government to seek to restrict dissenting or offensive expression. Such impulsive and politically popular behavior by public officials is not about to change any time soon.

Seen in these terms, the NYCLU's mission remains unchanged. But the terrorist attacks on September 11, 2001, have given a new urgency to the NYCLU's mission. In the period following that horrific day, the federal government acted precipitously in creating extraordinary new police powers. And in the exercise of this vastly expanded law-enforcement authority, we are witnessing a frontal attack on individ-

ual rights and liberties reminiscent of the McCarthy era of the 1950s. Law-enforcement officials have prosecuted the “war on terrorism” in a manner that is intolerant of dissent and that makes criminal suspects of persons based upon national origin, immigration status, or religious belief.

Thus, in the year of its fiftieth anniversary the NYCLU faced an attack on civil liberties that was eerily reminiscent of the events of half a century earlier, which led to the organization’s founding. And so we take heed of the oft-repeated warning of ACLU founder Roger Baldwin: “Battles for civil liberties never stay won; they must be fought over and over again.” In what is referred to as the post-9/11 period, we are indeed engaged in such a fight over the first principles of our democracy.

The NYCLU remains steadfast in its mission. And in the coming years we will redouble our efforts to defend and uphold the rights and liberties that are promised in the Constitution and the Bill of Rights.



# *The 1950s*

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FIGHTING FOR FIRST PRINCIPLES

**W**HILE DELIVERING A speech in Wheeling, West Virginia, on February 9, 1950, Wisconsin Senator Joseph McCarthy held up a piece of paper. On it, the senator stated, were the names of 205 “known Communists” employed by the United States Department of State. With this address Senator McCarthy jumped into an already simmering campaign to outlaw the Communist party, its members and “sympathizers,” and to rid the government of Communists and former Communists. McCarthy’s zealotry was so excessive, his political and personal paranoia so deep and his recklessness so extensive that his name became synonymous with a political style of unrestrained intrusion into personal beliefs and associations. That style came to define an era.

During the McCarthy era it seemed that almost every public agency and private organization was engaged in scrutinizing conduct for potential threats to national security. It was a worrisome time for those who, at any point in their lives, had held views critical of government



The cartoonist Herblock's take on the flame of liberty in 1949. (From Herblock: *A Cartoonist's Life*, Times Books, 1998.)

policies or who had associated with persons or organizations who shared such views. For increasing numbers of people, loyalty oaths were becoming a condition of employment. In New York City such oaths were required of school teachers, insurance company employees – even persons called

for jury duty. A city council member from Queens introduced a resolution requiring Boy Scouts, Girl Scouts and Campfire Girls to swear their innocence of subversive activities before being permitted to use city schools for meetings.

The conflict between the United States and the Soviet Union may have been regarded, during this period, as only a “cold war.” But the frigidity of that conflict produced a political climate that had a chilling effect on dissent in this country. The prevailing intolerance and repression, however, provided an opportunity and a need for the American Civil Liberties Union, which in 1951 established the greater New York Branch of the ACLU – or the New York Civil Liberties Union. Its mission was to defend and uphold the basic rights and fundamental liberties articulated in the Bill of Rights and it jumped into action on many fronts: in the courts, at meetings with city officials, in discussions before community groups, at administrative hearings, and in newspaper articles, letters and public statements.

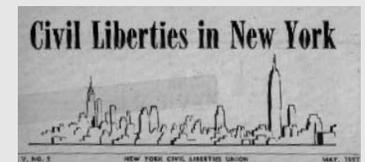
## TIMELINE: 1950s

11/51 NYCLU is formally chartered through a grant from the Florina Lasker Foundation.

9/53 Bonaventura Pinggera, NYC Parks Dept. washroom attendant, is fired because he was member of the Communist party in late 1930s; NYCLU wins his reinstatement, with back pay.

1/54 NYCLU lawsuit results in NY Court of Appeals declaring state's Loitering Law unconstitutional.

3/54 Masthead of the NYCLU's newsletter in 1954, the year the national ACLU board votes to grant the NYCLU full affiliate status.



## Letters and Lawsuits

NYCLU Board President George Rundquist publicly criticized a new policy of the Municipal Service Commission requiring all job applicants to acknowledge past membership in subversive organizations and to profess loyalty to the United States. The board published a letter opposing a city council resolution, introduced in 1954, that required officers of Parent Teacher Associations to sign an oath attesting to their loyalty. And when the New York City Youth Board rejected playwright Arthur Miller's film script on juvenile delinquency because of his alleged affiliation with left wing groups, the NYCLU came to Mr. Miller's defense.

But letters of protest were not the only vehicle by which the NYCLU sought to defend civil liberties and influence public policy. Early in its history the NYCLU came to appreciate the value of the litigation process and of the capacity of the "test case" to affirm and expand rights and liberties under the law. The dismissal of a New York City Parks Department employ-

ee, Bonaventura Pingerra, was such a case. In 1953 Pingerra was fired from his job as a washroom attendant because he had been a member of the Communist party in the late 1930s. Pingerra, represented by the NYCLU, successfully sued the Parks Department for wrongful termination. In reinstating Pingerra, with back pay, a New York State Supreme Court judge noted: "It is a bit difficult to visualize how a washroom attendant in his official capacity can give aid to his country's enemies."

In the 1950s – as is the case today – political controversies and confrontations often played themselves out in the streets and sidewalks of our cities. Ammon Hennacy, for example, was arrested and convicted for the sale and distribution of the *Catholic Worker* newspaper and the book *Autobiography of a Catholic Anarchist* without a street peddler's license. But NYCLU Counsel Emmanuel Redfield came to Hennacy's defense. And the New York Court of Appeals vindicated Hennacy's First Amendment claims, agreeing with the NYCLU's argument that Hennacy was not engaged in a commercial

enterprise, but was distributing literature of general public interest for which a peddling license was not required. Hennacy's conviction was, therefore, reversed.

At about the same time the Socialist Labor party asked Redfield to represent SLP members who had been arrested for distributing party literature. The charge: violation of sanitary code provisions that prohibited littering. Redfield won a dismissal of the charges, and then persuaded Police Commissioner Francis Adams to issue instructions that police were not to interfere with "distribution of non-commercial literature."

But the perceived Communist threat fostered a political culture in which many called upon the government to constrain individual liberties in the interests of national security. The extremism of the government's response provoked the NYCLU to act. First principles were now at stake. In the NYCLU's October 1954 newsletter Emmanuel Redfield, then serving as executive director, issued a challenge to the membership:

"There is too much hesitancy

1/55 NYCLU assails as "unwise and indeed perilous" NYC Board of Education policy requiring ex-Communist school employees to reveal names of party colleagues or face dismissal.

4/55 In response to NYCLU letter of protest, U.S. State Dept. grants Chinese students exit visas, reversing policy that had denied the visas "because of existing world conditions."

9/55 NYCLU defends former Nazi party member's admission to NY County Medical Society on grounds that "past political association" has no bearing on qualification for membership.

9/55 When Ammon Hennacy is arrested for distributing the *Catholic Worker* newspaper without a peddler's license, NYCLU overturns his conviction at NY Court of Appeals.

11/55 NYC investigates Arthur Miller (hired to write script on city's Youth Board) for "left wing" affiliations; NYCLU charges the investigation of Miller's political beliefs is "un-American."

among civil libertarians. Sometimes I feel it is due to fearfulness. Courage is the prime requisite of those who would fight for rights. If such pursuits are bogged down by timidity, by fear of being smeared, by disagreement with a writer or speaker whose liberties are invaded then indeed a great deal is lost.”

The NYCLU reorganized. Committees were formed to address issues of loyalty and security, police practices, censorship and academic freedom. A “committee of 5000” was established to recruit new members. The ACLU always had influence beyond its numbers. But now the New York branch saw the need to expand its numbers. It sought new members to advocate, to litigate, and to educate. The new branch set itself a goal of doubling the membership, to 10,000.

**“Are you now or have you ever been...?”**

Committees in both the United States Senate and the House of

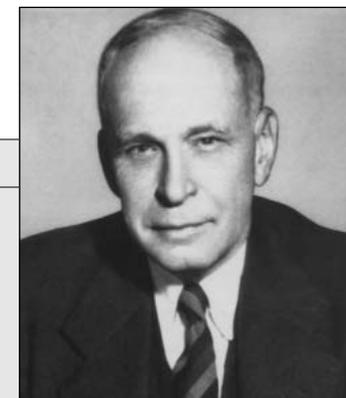
Representatives were issuing subpoenas, demanding that witnesses testify regarding present or past affiliations with the Communist party. But it was not only Congress that was asking, “Are you now or have you ever been . . . ?” In New York City, the Board of Education, with the approval of the city’s corporation counsel, required “admitted” ex-Communist school employees to name party colleagues or face dismissal. The NYCLU issued a three-point public statement denouncing the policy as “unwise and indeed perilous.”

NYCLU attorneys also defended New York Times employees Robert Shelton and Alden Whitman against charges of contempt of Congress. Shelton had refused to answer questions about possible Communist party membership; Whitman refused to name former associates who might have been party members. And when the New York City Housing Authority began evicting residents of public housing who refused to sign loyalty oaths, the NYCLU went to court on behalf of the tenants, challenging on constitutional grounds the Gwinn

Amendment to the United States Housing Act, which barred from public housing members of “subversive” organizations. The NYCLU and the tenants prevailed.

In 1955 the NYCLU filed a friend of the court brief with the Supreme Court on behalf of Harry Slochower, a Brooklyn College associate professor who had been dismissed, after twenty-seven years of tenure, for refusing to tell a Senate Judiciary subcommittee whether he had been a Communist party member in the early 1940s. The decision to represent Slochower had an institutional significance for the NYCLU that extended beyond the issue of Slochower’s right to plead “the Fifth.”

The members of the national ACLU board were deeply divided on the issue. There was strong sentiment among a narrow majority of board members that the government’s “need to know” outweighed the individual’s right not to tell. This narrow majority of ACLU board members was not alone in its willingness to compromise



**TIMELINE: 1950s**

5/56 U.S. Supreme Court finds unconstitutional the dismissal of Prof. Harry Slochower for invoking Fifth Amendment when asked about Communist party

involvement; NYCLU filed *amicus* brief supporting Slochower.

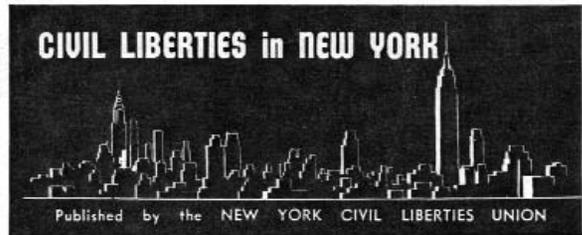
10/56 Board of Regents bans the film “Lady Chatterly’s Lover” as immoral; NYCLU files *amicus* brief challenging the board’s censorship, but NY Court of Appeals upholds ban.

2/57 The first Florina Lasker Award for Civil Liberties is given to Roger Baldwin, founder of the ACLU and for many years the director and architect of the organization’s work.

Fifth Amendment and First Amendment rights in the face of a perceived risk to national security. In 1950 the American Bar Association voted to bar any new member who failed to sign an anti-Communist oath.

The NYCLU, however, decided that the government could not trump the Fifth and First amendments when it came to matters of political belief or affiliation. It believed that witnesses before congressional committees had a right not to answer. The Supreme Court concurred in *Slochower*, condemning “the practice of imputing a sinister meaning to the exercise of a person’s constitutional right under the Fifth Amendment.”

In 1957 the House un-American Activities Committee came to New York to conduct hearings on alleged Communist influence in the entertainment field. Soon after, NBC began firing employees who had refused to answer questions before the committee. Similarly, CBS fired Joseph Papp, who would later become a leading figure in the New York theatre community, for invoking his Fifth Amendment right



## IF YOU ARE ARRESTED . . .

- What are your rights?
- What can you do?
- Where can you get help?
- What does the law say you cannot do?

(See Page 7)

VOLUME 4, NUMBER 1 SEPTEMBER, 1955

From its inception the NYCLU has had a public education mission; in the mid-1950s the NYCLU distributed 40,000 copies of a brochure explaining the rights of an arrestee.

against self-incrimination. The NYCLU rallied to the defense of Mr. Papp. NYCLU Executive Director George

Rundquist wrote Committee Chairman Francis Walter:

“[I]nquiry into political beliefs and associations as such, about which Congress may not legislate, is improper. . . . Recognizing that some performers, if continued in employment on the basis of the single standard of competent performance, might thus be able to give funds and prestige to Communist causes, the NYCLU maintains that is a small risk which our free society must face, and is actually meeting triumphantly without any need of suppression.”

Suspicion and intolerance of political dissent were not limited to legislative inquiries and employment practices. The New York City Police Department acted aggressively to break up gatherings of political agitators, poets, “beatniks” and other “free thinkers.” When the NYPD began mass arrests of so-called “undesirables,” the NYCLU board protested in an October 1954 letter to Police Commissioner Francis W. Adams: “The arrest of persons because they may commit a crime at some future time, or of those

2/57 NYCLU defends Robert Shelton, New York Times copywriter found in contempt of Congress for refusing to answer question about past membership in the Communist party.

9/57 NYCLU denounces as “absurd” Board of Education’s removal of Mark Twain’s *Adventures of Huckleberry Finn* from approved book lists.

9/57 NY Court of Appeals acquits two Puerto Rican nationalists arrested for picketing on behalf of Puerto Rican independence outside the United Nations; NYCLU entered case as *amicus*.

11/57 NYCLU calls on Gov. Harriman to conduct a statewide investigation into prison officials’ use of wiretapping devices in prison interview rooms.

3/58 NYCLU argues in *amicus* brief to U.S. Supreme Court that NYS Security Risk Law denies public employment based upon a “nebulously defined ideological tendency.”

who have already paid their debt to society because of a past offense is completely alien to our society.”

Calls came to the NYCLU in ever-increasing numbers from people asking: “What are my rights”? In response to the growing demand for information and legal advice, the NYCLU published a booklet entitled “What To Do If You Are Arrested.” Demand for the booklet was great. The NYCLU distributed 40,000 copies between September 1955 and June 1956.

### The Cultural Orthodoxy of the Period

The repression that characterized the 1950s was not limited to the imposition of political orthodoxy. The period also witnessed an effort to impose a cultural orthodoxy with respect to sexual matters, with respect to gender stereotypes and with respect to matters of reproductive choice. In 1953 the NYCLU and Congressman Louis Heller engaged in a public back-

and-forth over Heller’s efforts to ban from the United States mails the Kinsey Report, a study of human sexuality. Heller found obscene those sections of the report that discussed “so-called confessions of married women’s adulterous relationships.”

NYCLU lawyers were also called into action when police began confiscating copies of *Rascal*, *Playgirl*, and *Adam* at New York City newsstands, and arresting the vendors for peddling obscenity. And in 1957 the NYCLU took to the Supreme Court an appeal of a state court ruling that found the paperback series “Nights of Horror” obscene and therefore illegal.

From its inception the NYCLU has been a visible and vocal advocate for reproductive freedom. In 1958 New York City hospitals banned doctors from prescribing, or even discussing, contraceptives. The NYCLU vigorously protested, and helped mobilize opposition to the policy. The NYCLU’s vice chair charged in a public statement that the ban violated the civil rights of both doctor and

patient. This view prevailed. And the organization’s newsletter published in October of that year proclaimed: “NYCLU Hails Board of Hospitals for Lifting Ban on Birth Control.”

### Significant Breakthroughs

In a decade often characterized as repressively conservative, an unmistakable shift in perspective was taking place. A new if not fully articulated recognition of individual rights and liberties was emerging.

It had started in Brooklyn, in 1947, as Jackie Robinson and the Brooklyn Dodgers set into motion the racial integration of Major League Baseball. In 1948



photo by Earl Davy

### TIMELINE: 1950s

5/58 Dept. of Housing evicts Queens family from its apartment because adult son has a drug addiction; NYCLU convinces court to overturn eviction order.

9/58 NYCLU’s public-education campaign leads Board of Hospitals to lift ban on city hospitals’ providing family-planning advice and distributing contraceptives.

11/58 NYCLU defends Joseph Papp, a stage manager, when he is dismissed by CBS for invoking the “Fifth” before subcommittee of the House Committee on Un-American Activities.

1/59 Five Little Rock, Arkansas, high-school students named recipients of Florina Lasker Civil

Liberties Award for their courage and dignity in integrating Central High School.



Kenneth Clark, one of the nation's most influential scholars on issues of racial justice, was a long-time member of the NYCLU board of directors.

President Truman had ordered the racial integration of the armed forces. Then, in 1954, the Supreme Court issued its landmark ruling that held racially segregated schools were unconstitutional.

The Court's opinion gave new and far-reaching encouragement to notions of equality and full participation, not only in schools but in the workplace, in the arts, sports and entertainment – in all facets of our economic, cultural and social life. That case, *Brown v. Board of Education*, would create a deeper recognition of what is at stake when civil rights are denied or suppressed. It would create greater expectations for the vindication of individual rights and liberties in the later decades.

In the *Brown* case, NYCLU board

member Dr. Kenneth Clark provided testimony regarding the effects of racial segregation upon children, and the larger society. At a forum sponsored by the *New York Herald Tribune* in 1954, Dr. Clark advised it would be a mistake for those in the North to assume that the Court's rejection of segregation applied only to the South. He challenged New York policy makers to comply with the letter and spirit of the *Brown* decision. The NYCLU took seriously Dr. Clark's admonition, and has throughout its fifty-year history pursued a programmatic commitment to issues of racial justice.





# *The 1960s*

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THE NYCLU IN ASCENDANCY

**T**HE 1960s WITNESSED a sea change in the political climate of the country. The early part of the decade was, for the most part, simply an extension of the 1950s. Fueled by the optimism and economic growth of the post-World War II period, the early 1960s was not a time of political activism. Rather, a general atmosphere of “consensus politics” prevailed. Individualism was discounted, cultural conformity dominated, and the troubling issues of persistent racism and the damaging vestiges of McCarthyism remained largely unaddressed. It was a time when Americans adopted a self-congratulatory attitude toward their country’s political past as well as toward contemporary social, economic and racial arrangements. By the middle of the decade, however, the issue of civil rights for African-Americans assumed center-stage. And by the end of the 1960s, anti-war protests coupled with civil rights activism and the diverse demands of a counter-culture movement combined to render the closing years of the decade tumultuous and turbulent.



Dec. 17, 1967: Members of the Children’s Union for Peace protest the manufacture of war toys, leading to arrests; the NYCLU wins their release.

### First Amendment Freedoms of Expression, Association, and Religion

But even before the tumult and activism of the second half of the 1960s, the NYCLU found itself deep in controversy. Two cases, in particular, attracted national attention. The first involved the representation of George Lincoln Rockwell, a self-described American Nazi. Rockwell drew attention to himself as he traveled around the country talking about killing Jews and

Communists. When he visited New York City in 1960, the Department of Parks denied him a permit to give a speech in Union Square Park. The park had served as a site for public debate since the Civil War; therefore, Rockwell argued, he should be given an equal opportunity to speak at that location. Rockwell turned to the NYCLU for representation.

Rockwell’s views were deeply offensive. Yet, his request for assistance presented an early test of the NYCLU’s commitment to a concept of free expression under which the government was prohibited from favoring some speakers and disfavoring others based upon the offensiveness or inoffensiveness of their ideas. According to this vision of the First Amendment the government was barred from punishing offensive speech. But this did not mean that offensive ideas were immune from criticism. This concept of the First Amendment held that it is not appropriate for government to silence those whose expression some may find objectionable. To the contrary, the best antidote to “bad speech,” under this con-

#### TIMELINE: 1960s

9/61 As a result of NYCLU’s efforts, the NYPD posts English- and Spanish-language placards in police precinct stations advising prisoners of their right to a free, local telephone call.

1/62 In response to NYCLU report, City University of New York lifts ban on Communists speaking at college campuses.

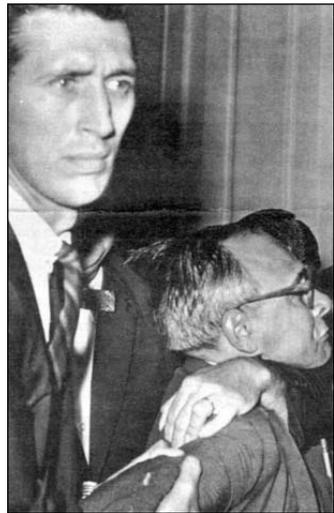
1/62 U.S. Supreme Court upholds NYCLU position that NYC Parks Dep’t. wrongfully denied George Norman Rockwell, American Nazi party leader, permit to give a speech in Union Square Park.

5/62 With NYC teachers’ strike imminent, NYCLU staunchly opposes Condon-Wadlin Act’s prohibition against strikes by public employees.

9/62 NYCLU wins Joseph Papp reinstatement to his job after CBS television dismisses Papp for invoking the “Fifth” before the House Un-American Activities Committee.

cept, is “more speech” – affording individuals the opportunity to demonstrate the unwisdom of the expression to which they object. As Justice Louis D. Brandeis observed in *Whitney v. California*:

“Those who won our independence believed that the final end of the state was to make men free to develop their faculties, and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to



HUAC still active: Civil rights attorney Arthur Kinoy is arrested at a hearing of the House Un-American Activities Committee; NYCLU challenges the committee's mandate.

speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.”

These tenets of First Amendment doctrine may not always appear self-evident, especially in times of political and social ferment. Freedom of expression and association are first principles of our democracy; however these principles are always vulnerable to compromise. For this reason it is worth considering Justice Brandeis's further observations on the First Amendment as set down in his landmark opinion. Those who won our independence, he continued, “recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to

discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law – the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.”

It is this understanding of the First Amendment that the NYCLU embraced when it elected to represent George Lincoln Rockwell. And, in doing so, the NYCLU set the standard that was subsequently followed when, in 1977, the ACLU of Illinois defended the right of American Nazis to march in Skokie, Illinois; and when, in 1999, the NYCLU defended the right of a Klan group to assemble in front of a New York County courthouse wearing their traditional hood-

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9/62 In landmark school-prayer case brought by NYCLU, U.S. Supreme Court rules that a school board cannot prescribe recitation of prayer in classrooms.

4/65 NYCLU board of directors votes to oppose death penalty as a civil liberties issue, noting that only victims of capital punishment are denied retroactive relief for due-process violations.

5/65 Known as “Mr. NYCLU,” George Rundquist retires after 14 years of service as executive director; he is to be succeeded by Aryeh Neier, NYCLU's deputy director.

9/65 Central New York Chapter of the NYCLU establishes committee to investigate the rights of the mentally ill.

12/65 David J. Miller is arrested when he burns his draft card to protest selective service regulations and the Vietnam War; NYCLU defends Miller's expression of political dissent.

ed masks.

Following its controversial yet successful defense of Rockwell’s right of free speech, the NYCLU involved itself in another deeply contested matter. This was the issue of school prayer and the scope of the constitutional principles respecting the separation of church and state.

The case that raised these issues was *Engel v. Vitale*, which ultimately reached the United States Supreme Court in 1963. However, the source of the controversy extended back to the 1950s, when the NYCLU protested against the use of the Lord’s Prayer in public schools. In response to the NYCLU’s objection, the New York State Board of Regents composed its own prayer to be recited in classrooms. As prescribed by the board, the prayer read as follows: “Almighty God, we acknowledge our dependence upon Thee and we beg Thy blessing upon us, our parents, our teachers, and our country.”

Five parents from different faiths who had children at Herrick High School in New Hyde Park objected to the prayer and, in 1961, they turned to the NYCLU’s



March 1962 protest against nuclear weapons proliferation; NYCLU assails police use of excessive force against protestors at the Times Square demonstration.

chapter in Nassau County for help. The NYCLU took the case and attorney William Butler filed suit, arguing that the Regents’ prayer violated the Establishment Clause of the First Amendment. The United States Supreme Court ultimately agreed with Butler and held that the state-prescribed prayer was unconstitutional. Writing for the Court, Justice Hugo Black observed: “It is no part of the business of government to compose official prayers for any group of the American People.”

In the *Rockwell* case the NYCLU educated the public about the importance

of protecting even the speech of those whose opinions we hate. In *Engel* the NYCLU vindicated important principles of religious liberty. But there was a third significant First Amendment case in which the NYCLU addressed the legacy of the McCarthy era and also advanced constitutional doctrine respecting rights of political association and academic freedom. The case, *Keyishian v. Board of Regents*, developed as a result of a 1949 legislative enactment that authorized the Board of Regents to identify organizations that the Board regarded as “subversive”; and the Board was further directed to provide, in its rules and regulations, that membership in any listed organization should constitute presumptive evidence of disqualification from any position in the public schools of the state. Under this McCarthy era enactment, known as the Feinberg Law, many teachers who refused to certify that they had not been members of the Communist party or who refused to sign loyalty oaths were dismissed from their jobs. In *Keyishian* the NYCLU challenged the constitutionality of this measure. NYCLU vol-

**TIMELINE: 1960s**

12/65 NYCLU convinces Nassau County D.A. to drop charges against reproductive rights pioneer William G. Baird after his arrest for distributing contraceptives to married women.

3/66 NYCLU’s Police Practices Project undertakes study of civilian review and other procedures for curbing police abuses.

1/67 In appearance before state Assembly’s Committee on Health, NYCLU questions the constitutionality of state law limitations on a woman’s right to an abortion.

3/67 In major victory for academic freedom, U.S. Supreme Court upholds NYCLU challenge of Feinberg Law, which barred members of “subversive” organizations from working in public schools.

7/67 NY Court of Appeals upholds NYCLU’s constitutional challenge of state’s vagrancy law, which permitted imprisonment of persons without visible means of employment.

unteer attorney Richard Lipsitz, who later served on the NYCLU board, argued that the statute violated First Amendment rights of associational freedom as well as principles of academic freedom. And in a decision rendered in 1968, Justice William Brennan, writing for the Supreme Court, upheld the NYCLU's position.

### Mid-Decade Transformations

The middle years of the 1960s was a period of significant transformation in the politics and culture of American society. The sit-in demonstrations directed at racial segregation in the South, the 1963 March on Washington, and Freedom Summer of 1964 led to the enactment of the 1964 Civil Rights Act. One year later, the momentous march for voting rights in Selma, Alabama, where demonstrators were assaulted by state police, allowed President Lyndon Johnson to

secure the enactment of the Voting Rights Act of 1965. The escalation of United States involvement in the Vietnam conflict provoked early protests in opposition to such involvement. And various cultural controversies of the mid-1960s spawned numerous "liberation movements," which by the end of the decade represented a significant counter-cultural challenge to the status quo.

The mid-1960s also witnessed major transformations at the NYCLU. In January 1965 Aryeh Neier became the new executive director of the NYCLU. Neier was a forceful and articulate spokesperson for the organization. He also possessed a remarkable capacity to identify and to hire talented individuals who demonstrated leadership abilities and creativity in the pursuit of programmatic goals. Under Neier's leadership the NYCLU became the preeminent civil liberties organization in the country.

Neier first hired Ira Glasser as the assistant executive director and then brought together a litigation staff consisting of individuals who would

emerge over the next ten years as the leading civil rights lawyers in the country. At the core of the staff were attorneys Alan Levine, Paul Chevigny, Burt Neuborne and Bruce Ennis. Each of these staff members brought unique skills to the NYCLU program. Neuborne was a creative and intrepid litigator whose thoughtful and inventive legal arguments were well suited to a program of "impact litigation" designed to secure individual freedoms by expanding constitutional jurisprudence. Ennis was a meticulous trial lawyer known for his comprehensiveness in developing the factual ingredients of a lawsuit. With expertise in both civil rights litigation and criminal law, Chevigny brought to the NYCLU wide-ranging experience, an eclectic scholarly perspective as well as the sensibilities and instincts of a progressive activist. And Levine served as the moral compass of the staff; he conveyed a strong sense of social engagement and pushed the NYCLU to pursue an active social justice agenda. Toward the end of his tenure at the NYCLU, Neier also brought onto the legal staff two young and promising



Dr. Spock with clients.

1/68 Dr. Benjamin Spock, the nationally known and admired baby-doctor, leads anti-war demonstration; the NYCLU represents 500 protestors who are arrested.

9/68 NYCLU releases *The Burden of Blame*, a report supporting greater community control of local schools as a remedy to systemic inequities in public education.

1/69 NYCLU launches Civil Liberties & Mental Illness Project to protect the rights and liberties of persons subjected to commitment or treatment due to mental illness.

1/69 In response to hundreds of inquiries received weekly, NYCLU sets up a Selective Service & Military Law Panel to provide counseling and legal representation.

lawyers, Art Eisenberg and Eve Cary. Neuborne and Glasser persuaded Eisenberg to drop out of graduate school and to join the NYCLU staff. He brought a scholarly perspective to staff deliberations and to the NYCLU's litigation efforts. Cary was a first-rate writer and editor who brought an uncommon degree of common sense to the daily flurry of discussions and debates on civil liberties that took place at the NYCLU offices.

The NYCLU's litigation efforts were the centerpiece of its program; however, Neier also committed additional resources to expand the legislative program, and he hired Neal Fabricant to direct that program. With the Vietnam conflict raising civil liberties issues related to the selective service and military laws, Neier also created the Selective Service and Military Law Project under the administrative direction of Ed Oppenheimer.

During this period the NYCLU was an enormously dynamic and creative organization. The office hummed with intellectual energy and excitement. Staff members were constantly developing new legal theories and new program initiatives to address social problems. Buoyed by the activism of the civil rights movement, the energy of the anti-war protestors and the expansive constitutional jurisprudence

developed by the Warren Court, NYCLU staff members went about their work with a strong sense of optimism regarding the capacity of litigation to achieve real social change. Neier recalled: "Nothing seemed beyond the reach of litigation." And the early courtroom successes of the NYCLU only reinforced staff resolve to use litigation as an instrument of social justice.

Consistent with the political and cultural temper of the late 1960s, the NYCLU staff advanced an expansive view of individual rights, and attempted to extend such rights to a variety of institutions – such as public schools, the military, mental hospitals and prisons – where individual liberties were previously thought to be seriously diminished or nonexistent. The NYCLU staff also began focusing upon the rights of women and of the poor.

### Free Speech and Racial Justice

But as the 1960s drew to a close, the NYCLU's program seemed to gravitate predominantly toward two sets of issues. The first involved the NYCLU's traditional concern for free expression and what Justice Brandeis had described as "the freedom to think as you will and to speak as you think." The second involved the concern for equality, in general, and racial



photo by Diana Davies

In a case before the U.S. Supreme Court in 1967, NYCLU and ACLU lawyers argue that burning a draft card is a form of speech protected under the First Amendment.

equality in particular.

The NYCLU's interest in expanding First Amendment doctrine was epitomized by the organization's defense of David O'Brien, who was prosecuted for burning his draft card in protest against the Vietnam War. The *O'Brien* case was actually initiated in Massachusetts. However, the NYCLU's prominence within the ACLU was such that New York staff and volunteer attorneys were deeply involved in the litigation as the case proceeded to the Supreme Court. In preparing the case for the Supreme Court, cooperating attorney Marvin Karpatkin led the ACLU/NYCLU litigation team in developing the argument that O'Brien's burning of his draft card represented a form of symbolic speech entitled to First Amendment protection. Although the

Court upheld O'Brien's conviction, it also – in an important doctrinal development – recognized the concept of “symbolic speech” and the potential application of First Amendment principles to protect such expression.

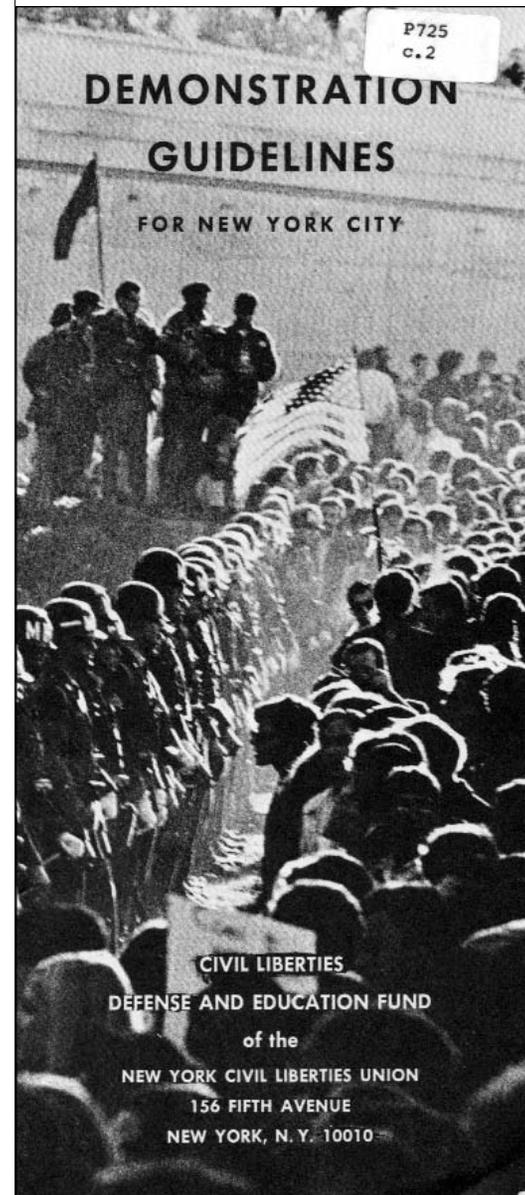
The NYCLU's concern with systemic and persistent racial discrimination also prompted the organization to take a position in connection with the New York City school decentralization controversy. In the late 1960s school reformers proposed to foster community involvement in local schools by decentralizing the New York City school system and by creating community school districts to administer the elementary schools. This proposal was met with vigorous opposition by the teachers' union. And the NYCLU jumped into the controversy by issuing a report, authored by Associate Director Ira Glasser, entitled *The Burden of Blame*. In that report Glasser documented the history of the school decentralization proposal and evaluated the proposal itself. The report ultimately supported the decentralization recommendations “as a means of giving ghetto communities equal access to the process of making decisions vitally affecting the education of their children.”

*The Burden of Blame* was controversial among the members of the NYCLU and within the broader New York City

community. Many members protested against the NYCLU's involvement in this issue. And in its newsletter of March 1969, the organization defended its position:

“If NYCLU has seemed to be concentrating more of its energies than ever before in the struggle for equality, it is not accidental. Throughout the Civil Liberties Union, there has been a conscious effort to involve the Union more deeply in the struggles for equality by Northern ghetto communities.... This movement within the Civil Liberties Union has taken place precisely when long-standing alliances between black ghetto groups and groups predominantly composed of ‘white liberals’ have been sorely strained. Because many other groups appear to be turning their backs upon the frustrating problems of the ghetto, we have felt that the responsibilities of the Civil Liberties Union in this area have been heightened. These efforts flow from a deep commitment to integration as a path towards equality.”

But beyond the compelling demand for school decentralization in the interest of racial justice, the movement toward decentralization also offered a more general paradigm of institutional reform. Indeed, staff attorneys Neuborne and Eisenberg subsequently developed a theory of social reform that placed the school decentralization controversy in a historical



When advocacy took to the streets, the NYCLU published guidelines that explained the scope of the First Amendment right to public protest and demonstration.

context and further explained why the controversy involved systemic issues of civil liberties concern even beyond the issue of racial equality.

According to Neuborne and Eisenberg, the cyclical movement between centralization and decentralization had presented itself as a common historical pattern in this country; this cyclical pattern, they observed, had been driven by an impulse toward social and political reform. In this regard, Neuborne and Eisenberg posited that bureaucratic and political institutions tend, over time, to arrogate power; that this arrogation of power often renders these institutions less responsive and, in some instances, unresponsive to the individuals that the institutions were created to serve; and that the most effective way to render such institutions more responsive is to reduce the accretion of bureaucratic or political power through a process of decentralization.

But Neuborne and Eisenberg further theorized that, over time, decentralized institutions become increasingly inefficient, unresponsive and provincial, and that the reformative reaction to such narrowness often requires centralization. Accordingly, Neuborne and Eisenberg reasoned that the furtherance of civil liberties does not compel a commitment to either centralization or decentralization. At times



The school decentralization movement had its start at I.S. 201 in the 1950s. For more than fifty years the NYCLU has fought for equal educational opportunity.

in an institution's development, social change must be brought about through decentralization. At other times, it can be brought about through centralization. Accordingly, the mechanisms of decentralization and centralization are simply engines of social change, available to reformers seeking to challenge the arrogation of power by existing bureaucracies or political entities.

In the school decentralization controversy of 1968 and 1969 the NYCLU's commitment to decentralization rested, to be sure, upon issues of racial justice. But it also rested, in part, upon a concern for the accretion of power by the city's centralized bureaucracy and its unresponsiveness to the needs of children and parents in many com-

munities. The NYCLU applied these concepts of decentralization and centralization as dynamic mechanisms of social reform in subsequent controversies of the 1970s. Thus, in response to the cruel and inhumane warehousing of mental patients and the developmentally disabled in large institutions, the NYCLU pressed for the decentralization of the system and the placement of such patients in smaller community settings and group homes. By contrast, in response to local communities using their zoning authority to exclude low- and moderate-income housing and to reinforce patterns of segregated housing, the NYCLU advocated for more centralized state and regional responsibility to combat local parochialism and narrow self-interest.



*The 1970s*

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A DECADE OF GROWTH

**T**HE 1970S WITNESSED an enormous expansion of the NYCLU's program and staff. In 1970 Aryeh Neier left his leadership position at the NYCLU to become the executive director of the American Civil Liberties Union, and Ira Glasser succeeded Neier as executive director of the NYCLU. Glasser shared most of Neier's programmatic commitments, and Glasser pursued those commitments; but in so doing, he placed his own distinctive stylistic stamp upon the organization.

Glasser's initiatives focused principally on two matters. First, reflecting a deep and lifelong commitment to matters of racial justice, Glasser led the NYCLU in its support for affirmative action programs, in its challenge to racially exclusionary zoning practices and in its insistence upon equal educational opportunities. Second, upon undertaking an examination of various institutions – such as public schools and state institutions for the developmentally disabled and mentally impaired – Glasser recognized that these institutions had become self-serving and

patronizing bureaucracies that all too frequently ignored the needs and demands of those they were intended to serve. Accordingly, Glasser committed the NYCLU to advance the rights of students in public schools, the rights of the developmentally disabled and mentally impaired housed in state institutions, the rights of



Executive Director Ira Glasser led the NYCLU through a period of explosive growth in the 1970s.

military personnel, the rights of prisoners, the rights of parolees and the rights of children in foster care.

Glasser had previously been a mathematics professor. He possessed no law degree. Yet, despite the absence of a legal education or, perhaps, because he was

unencumbered by such training, Glasser was able to function as the most effective advocate at the NYCLU. He would meet with members of the legal staff and listen to elaborate legal arguments by the attorneys discussing NYCLU cases. He would then have the capacity to distill those arguments to their essential elements and he did so with a remarkable clarity. He served, in effect, as the lawyers' lawyer. And it was this capacity to capture the essence of an argument coupled with a quick wit and an irrepressible debating style that enabled Glasser to function as an enormously successful spokesperson for civil liberties. He was also a tireless fundraiser. And these qualities permitted him to expand the NYCLU's program significantly.

### **Bringing the Bill of Rights to Institutions**

One of Glasser's primary commitments in the early 1970s was to students' rights. He and Alan Levine fashioned a project designed to establish the right of

#### **TIMELINE: 1970s**

1/70 NYCLU defends Black Panthers when police harassment leads to series of arrests for loitering and for selling the party newspaper.

1/70 NYCLU brings a constitutional challenge to the state's Mental Hygiene Law, which permits involuntary commitment of the mentally ill for 21 days without judicial review.

5/70 A campaign led by the NYCLU's legislative office leads to repeal of state law that imposes criminal sanctions for the performance of medical abortions.

6/70 Private Malcolm Berk, represented by the NYCLU, seeks to enjoin government from sending him to fight in Vietnam, arguing that Congress has not authorized the war.

6/70 NYCLU launches Prisoner's Rights Project, whose mission is to "penetrate the prisons with the rule of law."

students to engage in nondisruptive free expression while in school, and to provide rudimentary procedural protections to students who had been subjected to suspension and other forms of discipline. In the early 1970s the NYCLU's Students' Rights Project established these basic constitutional rights through court decisions and administrative rulings. At its height the Students' Rights Project was also able to put this newly recognized legal doctrine in the service of individual students by providing them direct representation at disciplinary proceedings. The work of the NYCLU's Students' Rights Project was replicated by other affiliates and gave rise to other organizations specifically devoted to advocacy on behalf of public school students.

The NYCLU's Project on Civil Liberties and Mental Illness (later, renamed the Mental Health Law Project) was actually created in 1969, during Neier's tenure as executive director. Bruce Ennis became the project's first director, and he quickly became the national authority on the rights of the developmentally disabled and mentally ill. Because of



The U.S. Supreme Court rules that NYCLU client Kenneth Donaldson posed no danger to himself or others and was therefore improperly confined as mentally ill.

his pathbreaking work in this field, Ennis was called upon to take cases from across the nation. And over the next seven years, Ennis and the NYCLU created an entirely new area of civil liberties law. The NYCLU challenged the constitutionality of New York's involuntary commitment procedures. In addition, the NYCLU established that patients have a right to treatment and to informed consent with respect to their treatment; that competent individuals also have a constitutional right to refuse treatment; and that mental patients could not be confined against

their will if they were not harmful to themselves or others.

But the major effort of Ennis's project involved a challenge to the manner in which mentally ill patients and the developmentally disabled were warehoused in large institutions that were unresponsive to patient needs. The Willowbrook institution on Staten Island became the central focus of this concern. In a major class action the NYCLU brought about the closing of the Willowbrook facility and succeeded in having the Willowbrook patients placed in community settings or in situations more appropriate to the needs of individual patients. The NYCLU has maintained its commitment to these former Willowbrook residents, monitoring their care and treatment.

The NYCLU also launched its Prisoners' Rights Project in June 1970. Headed by University of Buffalo Law Professor Herman Schwartz, the project attempted to extend basic civil liberties within prisons, where the rule of law had traditionally been absent. The project sought and, in many cases, won for

7/70 In response to NYCLU's advocacy, the state's commissioner of education issues ruling harshly critical of the lack of due process in New York City schools' disciplinary procedures.

10/70 Ira Glasser is named NYCLU executive director; he replaces Aryeh Neier, who is appointed head of the ACLU.

10/70 Federal court in Buffalo rules in favor NYCLU's class of plaintiffs, striking down state law that prohibits busing to achieve school integration.

12/70 U.S. Court of Appeals strikes down New York's flag desecration statute; the plaintiff, represented by the NYCLU, had worn a button with a peace symbol superimposed on the flag.

5/71 NYCLU plays key role in organizing Welfare Rights Litigation Task Force, a coalition that launches statewide attack on illegal and discriminatory welfare legislation.

inmates the right to free expression, including the right to uncensored mail, the right to read what they wanted, the right to give interviews to the press, the right to write and publish, and the right to due process in prison disciplinary proceedings. The NYCLU also secured prisoners the right to decent health care.

The NYCLU was also in the forefront in recognizing and asserting the constitutional rights of children. The Children's Rights Project, created in 1973 under the direction of Marcia Robinson Lowry, examined the case of fourteen-year-old Nettie Lollis, who lived in the custody of the state at the Brookwood Center for Girls. There, she had been confined to a 5' x 8' bare room for two weeks. The Children's Rights project filed suit, claiming that the practice of isolating children for extended periods of time constituted cruel and unusual punishment and that imposing punishment on persons who were civilly committed and not convicted of a crime violated their right to due process. The NYCLU secured an injunction ending the practice of extended soli-

tary confinement or isolation in New York State training schools. "It's a welcome step toward imposing a rational degree of control over what goes on in state training schools and extending basic rights to the children committed to them," said Staff Attorney Burt Neuborne.

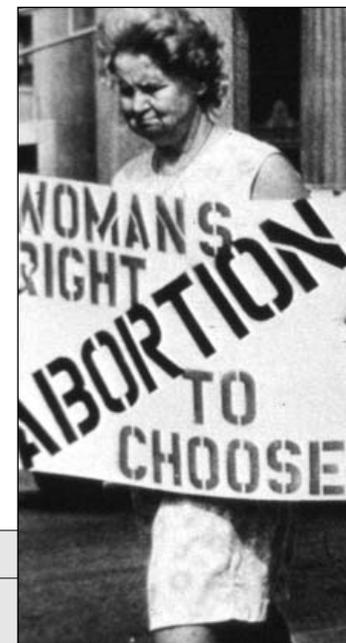
In 1973 the Children's Rights Project initiated a major case against the state's foster-care system, arguing that the manner in which the state placed children in foster care involved selection based upon race and religion, which violated the Fourteenth Amendment prohibition against racial discrimination as well as the First Amendment requirement that the institutions of church and state be separated. The litigation continued for twenty-six years, even as the Children's Rights Project migrated from the NYCLU to the ACLU. But in 1999 the case resulted in a historic consent decree altering the state's practices.

The NYCLU also sought to provide a greater degree of constitutional protection for parolees. Under the direction of David Rudenstine the NYCLU established a Parole Project that sought to

secure procedural due-process protections for parolees in connection with parole revocation hearings. The project also went to court on behalf of parolees and their family members, seeking to secure their right to remain free from warrantless and announced searches of their homes and from unannounced home visits by parole officers.

### From Vietnam to Watergate and Beyond

Even as the NYCLU engaged in major institutional reform during the early 1970s, the conflict in Vietnam continued to dominate this period. And the NYCLU was deeply involved in the



Pro-choice demonstrators outside a New York City courthouse; inside the courts the NYCLU has been the state's leading advocate on behalf of reproductive choice.

#### TIMELINE: 1970s

6/71 NYCLU/ACLU file *amicus* brief opposing government's attempt to bar NY Times from excerpting Pentagon report on U.S. policy toward Vietnam;

Supreme Court's landmark ruling upholds freedom of press.

11/71 Queens Supreme Court finds for NYCLU client and strikes down Jamaica High School's practice of maintaining dossiers on students' political activities outside of school.

3/72 NYCLU brings landmark litigation charging that inhumane conditions at the Willowbrook State School violate the constitutional rights of the mentally disabled.

civil liberties issues generated by the conflict. Three sets of civil liberties issues emerged.

The first set of issues involved the First Amendment rights of those protesting against United States' policies on Vietnam and the rights of journalists to report on those policies. During the 1960s and early 1970s the NYCLU was deeply involved in securing the right of anti-war protestors to march and demonstrate and leaflet in opposition to the war. Indeed, during this period it seemed that the offices of the NYCLU served as a crossroads for the anti-war movement, as one group after another came to the NYCLU to seek assistance in connection with that day's demonstration or political event.

But perhaps the most significant First Amendment litigation in which the NYCLU was involved during this period was the Pentagon Papers case. The NYCLU played a prominent role as *amicus curiae* in that case. At issue was the right of the *New York Times* and of the *Washington Post* to publish documents describing the history of the United States' involvement in

Vietnam in the face of an injunction requested by the Nixon administration. New York University Law Professor Norman Dorsen, along with staff attorneys Neuborne, Ennis and Eisenberg, prepared *amicus* briefs in support of the newspapers, arguing that the injunction requested by the government would violate the First Amendment prohibition against prior restraint. And the Supreme Court ultimately agreed, finding in favor of the newspapers and against the Nixon administration.

A second set of issues generated by the Vietnam War involved NYCLU litigation challenging the constitutionality of the war itself. A team of NYCLU lawyers led by Neuborne and cooperating attorney Leon Friedman, and supported by NYCLU staff members Eisenberg, Oppenheimer and Norman Siegel, initiated a series of lawsuits arguing that the Congress had never formally declared war and that without such a congressional declaration the president lacked the constitutional authority to pursue the war. Although the NYCLU lawyers succeeded in convincing lower court judges of the



Controversy over the Vietnam War severely tested the constitutional rights of speech, association and due process.

merits of the constitutional challenge, the federal judiciary ultimately concluded that the lawsuits involved political questions that were not "justiciable" and, therefore, not capable of judicial resolution. Nevertheless, the suits challenging the constitutionality of the war placed the NYCLU at center-stage within the anti-war movement and again signified the bold and innovative litigation program pursued by the NYCLU.

The third set of issues raised by the

9/72 In important reproductive rights case, a federal court upholds NYCLU's position that denial of Medicaid payments for elective abortions is unconstitutional.

10/73 Ruling on discrimination claim brought by NYCLU's Nassau chapter, NY Human Rights Commission orders Nassau County to admit women to the police cadet training program.

4/74 U.S. Supreme Court affirms right of persons in jail awaiting trial and those convicted of misdemeanors to vote by absentee ballot.

6/74 NYCLU wins enactment of state legislation prohibiting discrimination in credit transactions based on sex, marital status or child-bearing capacity.

1/75 U.S. Court of Appeals rules high-school teacher was wrongly suspended for wearing a black arm band to protest Vietnam War; NYCLU prevails in case drawing national attention.

Vietnam War involved the government's enforcement of its selective service laws and its administration of conscientious-objector applications. Under the direction of NYCLU staff member Oppenheimer, and with the assistance of NYCLU cooperating attorneys Jeremiah Gutman, Marvin Karpatkin, Michael Pollett, Steven Hyman and many others too numerous to name, the NYCLU's Selective Service and Military Law Project represented hundreds of individuals in connection with conscientious-objector applications, as well as other selective service and military law issues. To undertake this work, Oppenheimer organized an extensive panel of draft lawyers – the largest selective-service panel in the country – and offered them training and back-up resources. Before the panel was organized, it was almost impossible to win a draft case. By the early 1970s the panel boasted a better than 90-percent victory rate in its cases. In addition to handling a docket of nearly 500 cases, the panel trained more than 500 attorneys and draft counselors throughout the United States.

By the mid-1970s the Vietnam

War had ended. But the country barely had time to catch its breath before the Watergate scandal escalated into a call for the impeachment of President Richard Nixon. The NYCLU, once again, exercised national leadership by starting up an Impeachment Project designed to engage in public education and community organizing related to the call for Nixon's removal. Under the dynamic and energetic direction of Norman Siegel the project produced materials explaining the grounds for impeachment; organized a lobbying campaign; and sponsored a series of town meetings at which knowledgeable and informed staff members and volunteers addressed the impeachment issues.

The legacy of the Watergate scandal included the enactment of a significant piece of legislation: the 1974 Federal Election Campaign Act. In response to various practices of the Nixon administration, Congress enacted an elaborate statutory scheme designed to reform significantly the rules that governed the financing of federal election campaigns. Central to the congressional reform effort

was the imposition of monetary limitations on campaign contributions and expenditures.

The NYCLU advocated, however, that a core purpose of the First Amendment is to protect citizen discussion of public affairs, including the qualifications of candidates seeking public office. The NYCLU took the position that restrictions on the amount of money a person or group could spend on political communication during a campaign would necessarily reduce the quantity of expression, the number of issues discussed, the depth of their exploration and the size of the audience reached by such expression. Under Ira Glasser's leadership the NYCLU adopted a position that restrictions on spending and contribution limits would necessarily curtail expression protected by the First Amendment, and that such restrictions upon free speech could not be justified because the legislative reforms enacted in 1974 would not be capable of effectively closing off all streams of financing that could flow between monied interests and candidates for public office.

## TIMELINE: 1970s

3/75 Major U.S. Supreme Court decision upholds NYCLU's position that students are entitled to a hearing when threatened with suspension.

5/75 A federal court approves consent decree in Willowbrook case that establishes comprehensive and detailed treatment standards for mentally disabled.

6/75 In important test case brought by the NYCLU, U.S. Supreme Court rules the mentally ill cannot be held against their will if they pose no danger to themselves or others.

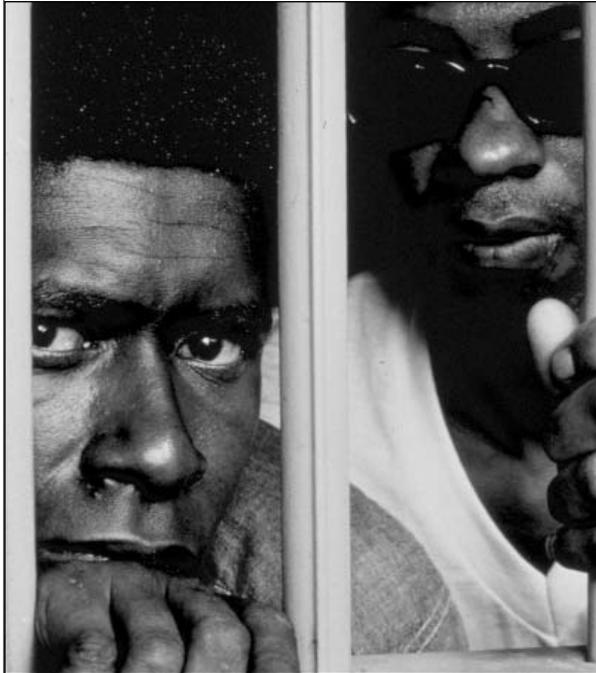
6/76 Ten years of lobbying by NYCLU results in enactment of state legislation requiring expungement of criminal records when charges are terminated in favor of accused.

6/77 NYCLU joins with NYPD in consent decree that bars police officers from arresting bystanders who observe, comment upon or photograph an arrest.

Acting upon these concerns, Glasser and ACLU Staff Attorney Joel Gora organized a constitutional challenge to the 1974 campaign finance law. That challenge reached the Supreme Court in 1976. And in a controversial exercise of solomonic justice, the Supreme Court, in the case of *Buckley v. Valeo*, held that the statutory limits on campaign expenditures violated the First Amendment but also held that the restrictions on campaign contributions were valid and should be sustained.

## The Persistent Problems of Racial Justice and Police Abuse

During the early and middle years of the 1970s the NYCLU was also prominently involved in a number of significant controversies involving questions of racial justice. Staff Attorney Art Eisenberg engaged in an extensive piece of litigation in support of an affirmative action program designed to remedy discriminatory hiring practices and the racial segregation of African-American and Latino teachers within the



In the 1970s, the NYCLU represented persons wrongfully arrested and prosecuted for their association with political organizations, such as the Black Panther party.

New York City public school system.

Eisenberg and New York University Law Professor Larry Sager were also involved in a series of legal challenges to municipal zoning practices that operated to exclude low- and moderate-income housing from suburban communities. Such

practices effectively maintained a pattern of residential segregation by confining minority residents in urban centers surrounded by largely white suburban communities. It was this pattern that reinforced an invidious cycle of segregation and discrimination: segregated residential patterns were reinforced by neighborhood school policies, which resulted in segregated and unequal schools; which, in turn, created unequal educational opportunities, leading to disparities in employment and income; which, in turn, reinforced patterns of racially segregated housing. Sager and Eisenberg attempted to break this cycle of discrimination and disadvantage by invoking the Federal Fair Housing Act of 1968 to challenge local exclusionary zoning practices. This litigation strategy resulted in one successful judicial decision that significantly expanded the protective reach of the Federal Fair Housing Act. But because of various economic contractions during the period, the legal ruling remained a “paper” victory that never actually translated into significant construction of integrated housing for low- and moderate-

income persons.

Accordingly, the NYCLU along with the NAACP then sought to combat the problems of unequal opportunity through a more traditional and direct approach. In 1972 the NYCLU launched a major school-desegregation case in the City of Buffalo. David Jay served as lead counsel in the litigation, which ultimately resulted in a desegregation order.

Police misconduct also persisted, and it remained a focus of the NYCLU's work. By the 1970s staff attorney Paul Chevigny had emerged as one of the leading experts in the country on police abuse. During this period he published two books on police misconduct, and he continued to litigate and to lecture frequently on the subject. He brought two lawsuits involving the Black Panther party. One case involved the New York City Police Department's use of an *agent provocateur* to set up members of the Black Panther party for arrest and prosecution; the second case involved harassment of members of the Black Panther party for simply seeking to sell the party newsletter on the streets of Mt. Vernon, New York.

But the principal litigation in which Chevigny was involved during this period grew out of attempts by the New York City Police Department to engage in the undercover surveillance of political

organizations. The litigation ultimately resulted in a consent decree under which the police department agreed to various procedural and substantive limitations on their authority to monitor political groups where there was no basis to believe that the political activists had engaged in or were about to engage in criminal conduct. The decree obtained in the case of *Handschu v. Department of Special Services* served as a restraint against inappropriate police surveillance of political groups.

### The Legislative Program

In the 1970s the NYCLU expanded its lobbying operation in Albany. Due to initiatives undertaken by Neal Fabricant and Ken Norwick, the NYCLU established a significant lobbying presence at the state legislature. This presence was subsequently expanded under the leadership of Barbara Shack. Ira Glasser recruited Shack, executive director of the NYCLU's Nassau County chapter, to serve as his assistant. He subsequently appointed her associate director and, later, legislative director.

One of Barbara Shack's principal substantive interests was women's rights. While working at the NYCLU she had received many requests for assistance from women who were not treated equally in

the workplace and who were not afforded the equal protection of the law. In response, Shack, along with Eve Cary, organized the NYCLU Women's Rights Project. Shack quickly learned, however, that vindicating women's rights under the Fourteenth Amendment would be difficult. She, therefore, looked for legislative solutions. Her answer was the NYCLU citizen's lobby. She recruited hundreds of NYCLU "citizen" lobbyists in each of the chapters around the state; with this operation, Shack created a statewide presence for the NYCLU's legislative program.

### The End of the Decade: A Period of Transition

The NYCLU experienced yet another transition at the end of the decade. In 1979 Ira Glasser left the NYCLU to replace Aryeh Neier as executive director of the ACLU. By that time Neuborne and Chevigny had left for teaching positions at the New York University School of Law. Ennis had moved to the ACLU, where he assumed the position of national legal director. Cary had taken a position with the Legal Aid Society; and Siegel had joined a voting rights organization and subsequently went into private practice. Levine had also

entered private practice. Shortly after Glasser moved to the ACLU, Lowry moved her Children's Rights Project to the ACLU, and Rudenstine assumed a faculty position at Cardozo Law School.

These staff members were replaced, however, by talented successors. Richard Emery, a first-rate litigator, and Steve Shapiro, a thoughtful and elegant brief-writer and a skilled advocate, became staff attorneys with the NYCLU. Chris Hansen, who developed into an extraordinarily talented trial lawyer and appellate advocate, replaced Bruce Ennis as director of the Mental Health Law Project. Hansen was subsequently joined at the project by Rob Levy, a young lawyer with enormous potential and a finely tuned sense of justice and fairness.





# *The 1980s*

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ISSUES OF DEMOCRATIC GOVERNANCE

**I**N 1979 DOROTHY SAMUELS replaced Ira Glasser as the executive director of the NYCLU. Among Samuels's many interests and objectives in undertaking this role, she had a particular concern with issues of democratic governance. The NYCLU's program, over the next decade, reflected those concerns.

## Rights of Political Participation

During the 1980s the NYCLU pursued an active program of litigation that addressed a range of voting rights issues – notable among them the claim that various legislative districting arrangements unfairly denied African-Americans and Latinos equal opportunities to vote and to elect the candidates of their choice. During this decade the NYCLU also initiated a significant legal challenge to the system that provided for the election of one representative from each of the city's boroughs to serve on the all-powerful Board of Estimate. The suit charged that this electoral scheme violated the “one-person one-vote” principle –

which, in effect, holds that your vote counts as much as my vote. And the NYCLU continued to litigate cases involving the right of college students to vote as residents of their college communities, as well as a series of constitutional challenges to provisions of the New York Election Law that unreasonably burdened opportunities to run for office.

But in its first significant case of the 1980s the NYCLU challenged a congressional enactment that reduced mailing rates for candidates of the Democratic and Republican parties but not for the candidates of other political parties. In challenging this enactment, the NYCLU represented minor parties across the political spectrum, including the Libertarian party, the Conservative party, the Socialist Party of America, and the Peace and Freedom party. NYCLU staff attorneys Arthur Eisenberg and Steve Shapiro argued that congressional favoritism afforded the Democratic and Republican parties violated two constitutional principles: First, the enactment favoring the candidates of these two parties violated First Amendment

principles that required the government to afford all similarly situated candidates and parties an equal opportunity to use the mail to communicate with potential voters; second, the enactment violated equal-protection principles that require the government to administer elections neutrally and fairly. These arguments prevailed and the congressional enactment was declared unconstitutional.

The redistricting of the state legislature, which occurs after each decennial census, calls into play constitutional obligations that require the creation of electoral districts with relatively equal populations. The redrawing of the electoral map also implicates constitutional and statutory prohibitions against the creation of districts that dilute the electoral opportunities of minority voters. Following the 1980 census, NYCLU attorneys Arthur Eisenberg and Richard Emery became actively involved in litigation forcing the state legislature to redistrict. The lawsuit charged that the state must draw its voting districts in a manner that respects the principle of “one person, one vote” and

## TIMELINE: 1980s

**1/80** U.S. Court of Appeals rules L.I. civic group, represented by NYCLU, need not register with Federal Election Commission before distributing leaflets criticizing politician's voting record.

**11/80** NYCLU lawsuit requires Immigration and Naturalization Service to free 15 Cuban women who have been detained more than 3 months without hearings or notice of charges.

**12/80** On behalf of Student Struggle for Soviet Jewry, NYCLU convinces court to ease restrictions on demonstrations at Soviet Mission to the United Nations.

**12/80** Federal court declares unconstitutional Dep't. of Corrections policy permitting parole officers to search homes of parolees and their families without a warrant.

**1/81** NYCLU enters into consent decree establishing guidelines and reporting requirement when NYPD engages in surveillance of political activities.

that guaranteed equal electoral opportunities for minority voters, as required by both the Constitution and the federal Voting Rights Act. Eisenberg and Emery pursued similar litigation in connection with New York City’s councilmanic districts.

The NYCLU along with the NAACP also sought to vindicate the rights of minority voters in Yonkers by challenging the structure of the Yonkers City Council in another suit brought under the federal Voting Rights Act. In the Yonkers case Eisenberg and Shapiro successfully argued that the districting arrangement had the effect of splitting up the African-American and Latino voters among majority-white districts – in effect, denying equal electoral opportunities to minority voters. The suit resulted in the restructuring of the Yonkers City Council.

In one of the first significant campaign finance cases following the Supreme Court decision in *Buckley v. Valeo*, the Federal Election Commission sued a controversial politically conservative organization that had distributed leaflets at a suburban train station. The leaflets called



NYCLU supports the Coalition Opposed to Censorship of the Arts when U.S. Senate proposes to bar National Endowment for the Arts from funding “indecent” art. *photo by Tom Tyburski*

for a reduction in taxes, and also identified a local congressman’s voting record on tax and spending issues. The FEC argued that because the congressman was running for

re-election and because one could interpret the leaflets as being critical of the congressman’s voting record, the leaflets constituted campaign literature. Therefore, according to the FEC, the local group had violated the Federal Election Campaign Act when it failed to disclose the names of those who had contributed money for the preparation of the leaflets. Joel Gora, former ACLU Staff Attorney, and Art Eisenberg represented the group, arguing that leafleting is a traditional form of free speech protected by the First Amendment; that, under *Buckley*, such activity could not be brought within the regulatory reach of the FEC unless such literature “expressly advocated” the election or defeat of a candidate for federal office; and, finally, that the leaflets contained issue-oriented speech and did not involve “express advocacy.” The position of the NYCLU again prevailed.

But of all the voting rights cases brought by the NYCLU in the 1980s, there was one of particular significance. This lawsuit charged that the system by which members were elected to the city’s Board of Estimate violated “one-person

1/81 Dep’t. of Justice pays damages to 5 NYCLU clients subjected to illegal wiretaps and break-ins by the FBI’s “Squad 47,” which was seeking information on suspected political radicals.

9/81 NYCLU secures enactment of state law that prohibits insurance companies from refusing to provide coverage to applicants with a history of mental illness.

1/82 NYCLU lawsuit establishes that immigrants held in Brooklyn Detention Center have been subjected to inhumane treatment.

3/82 NYCLU wins release of 53 Haitian immigrants who, a court finds, had been denied pre-hearing release “because they were black and/or because they were Haitian.”

4/82 NYCLU opens chapter office in Buffalo.

one-vote” principles – in effect, charging that the city’s most powerful political institution was constituted in a manner that was inherently undemocratic!



Haitian community in New York City protests imprisonment of “boat people” refugees seeking political asylum; NYCLU files writ of habeas corpus.

The Board of Estimate was responsible for most of the significant executive and administrative decisions with respect to municipal services, housing, commercial construction and transportation. The board was composed of eight officials: the mayor, the comptroller, the president of the city council, and the five borough presidents. NYCLU staff attor-

neys Richard Emery and Art Eisenberg argued that under the existing electoral scheme for selecting candidates to the board, the votes of certain city residents had greater weight than the votes of others. This was so, according to the NYCLU brief, because each borough’s single representative on the board had an equal vote even though the population of each borough varied dramatically.

Consequently, the challenged voting arrangements gave an advantage to voters in Staten Island – to the disadvantage of voters in Brooklyn. The case was finally resolved by the United States Supreme Court, which upheld the NYCLU position. The ruling resulted in a substantial revision of the New York City Charter and the restructuring of the city government.

### The Free Flow of Ideas in Classrooms and Across Borders

In addition to its active docket of voting rights cases the NYCLU legal staff

continued to pursue a broad array of other issues. It continued, for example, to engage in “impact litigation” with respect to a variety of First Amendment controversies. And, in this regard, perhaps the most significant First Amendment case undertaken by the NYCLU in the 1980s was *Pico v. Island Trees School District*.

The *Pico* case actually began in 1976, when the Island Trees School Board removed nine books from its high-school library. The books included Kurt Vonnegut’s *Slaughterhouse Five*, Bernard Malamud’s *The Fixer*, and Eldridge Cleaver’s *Soul on Ice*. In removing the books, the school board issued a press release announcing that the books had been removed because they were “anti-American, anti-Christian, and anti-Semitic and just plain filthy.”

The Nassau County chapter of the NYCLU had long maintained a visible presence on Long Island as a principled advocate of civil liberties. And under the superb leadership of its executive director, Barbara Bernstein, the Nassau County chapter developed and has maintained an

### TIMELINE: 1980s

9/82 In landmark First Amendment case brought by NYCLU, U.S. Supreme Court rules that students and parents can challenge school board that removes library books it deems offensive.

11/82 NYC Transit Authority rejects as “controversial” subway ad promoting nuclear disarmament; but reverses position when NYCLU brings suit.

7/85 Norman Siegel appointed NYCLU Executive Director.

12/87 U.S. Supreme Court upholds NYCLU: government cannot deny visas to foreign visitors invited to U.S. in order to prevent expression or association deemed critical of U.S. policies.

11/88 Representing Syracuse and Stony Brook college students, NYCLU prevails in case establishing right of students to vote in communities where they reside.

active litigation program. Accordingly, when a number of Island Trees High School students and their parents were seeking to challenge the school board's decision to remove certain library books, it was Bernstein to whom they turned.

The NYCLU agreed to challenge the board's removal of the library books as an act of censorship. A federal district court, however, ruled against the NYCLU, concluding that school board's decisions regarding the content of school libraries presented no First Amendment issues worthy of judicial review. A three-judge panel of the United States Court of Appeals for the Second Circuit reversed, by a 2-1 vote. A motion for a rehearing was then presented for review by all of the active judges on the Court of Appeals. Five judges ruled in favor of the NYCLU's position; five judges ruled in favor of the school board. Thus, by an even 5-5 vote the court voted not to rehear the case and to affirm the decision of the three-judge panel.

The pattern of judicial disagreement in the lower federal courts over the



Barbara Bernstein, director of NYCLU's Nassau chapter, with plaintiff Steve Pico (right), who challenged a Long Island school board's authority to ban library books deemed offensive. *photo by Newsday*

issues presented in *Pico* continued when the case was presented to the Supreme Court in the early 1980s. In its brief – prepared by Alan Levine and Art Eisenberg – the NYCLU asserted: “At the bottom the clash between the school board and the students in this case is a classic First Amendment confrontation between a transient majority that seeks to deploy the

force of a government to censor unpopular expression and those who seek to express – or be exposed to – differing perspectives.”

The NYCLU brief conceded that school boards have broad authority over the content of curricular materials and perhaps even over library collections, but the NYCLU insisted that a school board cannot impose a “pall of orthodoxy” over the classroom. That, according to the NYCLU brief, was what the Island Trees School Board was seeking to do in removing the nine books.

The Supreme Court rendered its decision in June 1982. In reaching its decision, the court divided by a 4-4-1 vote. Four justices agreed with the NYCLU that the school board had engaged in unconstitutional censorship by seeking to suppress unpopular and controversial views. Four justices agreed with the school board, concluding that the board had not violated the First Amendment. Justice Byron White rendered the dispositive vote when he concluded that a trial would be necessary before it could be determined whether the school board violated the First



The plaintiffs in *Sharif*, with NYCLU attorneys Isabelle Pinzler (second from left) and Rob Levy.

11/88 NYCLU publishes *Tompkins Square Park: The First 100 Days*, an investigative report that documents widespread police abuse at a demonstration in behalf of the homeless.

2/89 Court upholds NYCLU's claim that the Board of Education discriminates against women by awarding scholarships based solely on S.A.T. scores.

3/89 U.S. Supreme Court finds system of electing members to NYC Board of Estimate violates the constitutional principle of “one person, one vote”; NYCLU prevails after 8 years of litigation.

9/89 NYCLU Associate Director Donna Lieberman launches the Reproductive Rights Project as the legal arm of the pro-choice movement in New York State.

Amendment and that, therefore, the school board's motion seeking dismissal of the case should be rejected. But rather than explain at trial why it chose to remove the books, the school board restored the books to the shelves.

During the 1980s the NYCLU was also involved in another significant First Amendment controversy in which the Supreme Court divided evenly on the issues raised. The case challenged a policy of refusing to issue visas to foreign visitors who had been invited to the United States to speak about public matters but who, the government feared, might express views that were critical of the United States. Those who had been denied visas under this policy included Thomas Borge, the Interior Minister of Nicaragua during the Sandinista regime; Nino Pasti, a former member of the Italian Senate and a peace activist; and Olga Finley and Leonor Rodriguez Lezcano, two Cuban women with special expertise on the status of women in Cuba. In filing suit on behalf of the organizations that had invited these foreign visitors, NYCLU Staff Attorney Steve Shapiro argued that the exclusion of foreign visitors on ideological grounds violated the First Amendment as well as federal law.

The federal district court dismissed the suit. But on appeal to the

United States Court of Appeals for the District of Columbia, a divided three-judge panel reversed. The panel concluded that the exclusion of individuals based upon their ideological views or political associations, and not upon a concern about conduct that the visitors might engage in while in the country, would constitute an impermissible determination of "guilt by association" – and a violation of the Congress's statutory commitment to the "free flow of people and ideas across national borders." An equally divided Supreme Court affirmed the decision of the court of appeals.

### **Criminal Justice Issues**

In other significant litigation undertaken by the NYCLU during the decade, Staff Attorney Richard Emery successfully challenged an unreasonable strip-search of a junior high school student conducted by school officials. Emery also successfully secured the release of Bobby McLaughlin, who had served six and one-half years in prison for a crime he did not commit. McLaughlin was wrongly convicted based upon the misidentification of a witness who had been coached by police officials.

### **Willowbrook Revisited**

The NYCLU's lawyers were back in court repeatedly in the 1980s seeking to enforce the legal protections of the mentally ill that had been established in the 1973 *Willowbrook* case. In late 1981 NYCLU Staff Attorney Chris Hansen led a team of lawyers in advancing a claim that the state had failed to comply with key provisions of an earlier decree that had imposed staffing and programming guidelines and that had required the state to move more expeditiously in accomplishing the community placement of former Willowbrook residents. The federal court judge agreed with the NYCLU and appointed a special master to monitor the activities of the state and to help achieve compliance with the decree.

### **Privacy**

Dorothy Samuels served as the NYCLU's executive director for only three years at the beginning of the 1980s. But working closely with longtime Legislative Director Barbara Shack and with Norma Rollins, Samuels was responsible for one of the NYCLU's most successful initiatives in that decade: the Personal Privacy Project.

The project was born out of a legislative proposal, advocated for by the



NYCLU contingent at the Rally for Choice in Washington, D.C., March 1989.

NYCLU, that would require state agencies to prepare detailed descriptions of every state data system containing personal information. The legislature passed the bill, and it was enacted into law. After examining the data collected under the new law, the NYCLU drafted and successfully pressed for the enactment of another bill to protect the personal privacy of all New Yorkers on whom the state keeps records. This landmark statute established

for the first time mandatory standards governing the collection, maintenance and dissemination of personal information by agencies; and it set in place an oversight mechanism to insure that agencies meet these standards. This law became a model for legislation across the nation.

But the mid-1980s witnessed yet another period of transition within the organization. In late 1982 Barbara Shack resigned from her position as legislative director, and Tom Stoddard was named as her successor. Shack had served as legislative director for seven years. In that capacity she built upon the enormous credibility and skill of her predecessor, Ken Norwick, establishing the NYCLU as an important and visible lobbyist in Albany. Stoddard continued that tradition of excellence and leadership during the three years that he served as the NYCLU's legislative director.

The Mental Health Law Project also underwent a transition when Chris Hansen left the NYCLU for a position at the ACLU. Rob Levy succeeded Hansen as director of the project; Diana Tanaka joined the NYCLU as counsel to the project.

In 1983 Dorothy Samuels stepped down as NYCLU executive director and was replaced by Salvador Tio. Shortly thereafter, in 1984, Gara LaMarche, Samuels's assistant executive director, also resigned. During Samuels's tenure,

LaMarche had served effectively as an NYCLU spokesperson, and as editor of the organization's newsletter. He displayed considerable administrative and organizational skills as he developed the NYCLU's upstate chapters.

## Homelessness and Residential Displacement

Tio's tenure as executive director was brief. Among his principle interests, however, were the civil liberties of the homeless and the problems of residential displacement. He initiated the NYCLU's involvement with these issues. That involvement became an important focus of the NYCLU's work during the administration of Tio's successor, Normal Siegel.

Normal Siegel became the executive director in September 1985; he brought to this position boundless energy and a genuine compassion for the disadvantaged and dispossessed. In this regard Siegel maintained an especially strong commitment to racial equality and integration.

Accordingly, upon assuming the position of executive director, Siegel began to focus on the interaction of race and poverty. In particular, Siegel expressed concern – as had Tio – for the residential displacement of the minority poor and

upon issues related to homelessness. To that end, Siegel initiated an Urban Rights Project charged with examining issues of gentrification and the impact of displacement upon neighborhoods populated largely by members of minority groups. He brought in Mitch Bernard, an experienced and skilled litigator, to direct the project. Within a year the project achieved a notable legal victory in the New York Court of Appeals that was precipitated by the displacement of residents on the Lower East Side of Manhattan.

Siegel focused, as well, upon other homelessness issues. He was outspoken in condemning the dreadful conditions in New York City's homeless shelters. And he initiated the NYCLU's controversial representation of Joyce Brown. At issue in the Joyce Brown controversy was whether a homeless person who was acting bizarrely on the street and who refused to go to a homeless shelter even in desperately cold weather could be, nonetheless, involuntarily forced into a homeless shelter. The courts concluded that where an individual was neither mentally ill nor a danger to herself or others, she could not be forced involuntarily into a shelter.

## **Women's Rights and Reproductive Choice**

Siegel also initiated a Women's Rights and Reproductive Rights Project. The project, whose first director was Madeline Kochen, was devoted to securing women's rights to reproductive choice, gender equality and freedom from discrimination. The project expanded significantly and its work became increasingly directed toward issues of reproductive rights when Donna Lieberman came on staff as director in 1989. In the following decade Lieberman launched many new initiatives. She brought in a number of new staff members and engaged the project in a range of important public policy issues – including confidential access to the full range of reproductive health services and information; publicly funded abortions for low-income women; accurate and uncensored HIV/AIDS and sex education; minors' right to confidentiality regarding reproductive and related types of health care; expansion of the pool of trained abortion providers; religious exemptions and bias in women's health care; and pregnancy discrimination in the workplace and in schools. The project's Teen Health Initiative, founded in 1997, conducts an extensive outreach and education program, including an active peer-education program on adolescents' rights.

## **Criminal Justice and Police Abuse**

In the early years of his administration Siegel continued to support the voting rights litigation initiated during Samuels's tenure. He also launched a campaign opposing legislative efforts to reintroduce the death penalty in New York. And he began to focus increasingly upon issues of police misconduct.

From its inception the NYCLU had been concerned with issues of police accountability; and had frequently been called upon to address allegations involving the abuse of police authority. But in August 1988 these issues became especially charged, when a police "riot" erupted at Tompkins Square Park, in Manhattan's East Village. The police action, characterized by excessive violence and brutality, came in response to a street demonstration against a new city policy on homeless persons using the park. The NYCLU issued a report describing the riot and the abuse of police power. The report also severely criticized the mayor and local prosecutors for failing to punish officers who participated in and were responsible for the brutality. The Tompkins Square Park incident also highlighted the inadequacies and inefficiencies of the Civilian Complaint Review Board. Despite video and photographic

documentation of widespread police abuse, the Civilian Complaint Review Board disciplined none of the 440 officers involved in the incident. The review board's inadequate performance in connection with this incident led Siegel to call for a complete restructuring of the CCRB. This issue would become a hallmark of Siegel's tenure as executive director in the 1990s.



The NYCLU documented widespread abuse by police in suppressing an August 1988 demonstration on behalf of the homeless at Tompkins Square Park.





*The 1990s*

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CONTINUED VIGILANCE

**T**HE NYCLU'S WORK IN the 1990s demonstrates the organization's constancy in the fight for civil liberties. Just as in the 1950s, the NYCLU would again in the 1990s be required to advocate that civilians must have a greater role in the oversight of police practices. Just as in the 1950s, NYCLU lawyers were required in the 1990s to appear in court at administrative hearings and before community boards and state legislative committees, seeking to secure the right to reproductive choice – and access to information that makes the “choice” meaningful. And just as in the 1950s, the NYCLU would be called upon to assert basic principles respecting the First Amendment in response to a New York City mayor who seemed all too ready to ignore and to defy First Amendment precedent.

### **Creating a Real Civilian Complaint Review Board**

Throughout the decade of the 1990s the

appropriate use of police power was a subject of fierce debate in New York City and in urban centers nationwide. The debate about policing in New York City in the 1990s actually began in August 1988, when police officers responded to a civilian protest against the eviction of homeless persons from Tompkins Square Park. The infamous police action, captured on videotape by local residents, involved numerous random police assaults on scores of innocent bystanders, fifty-two of whom required medical attention. Mayor Edward I. Koch and Police Commissioner Benjamin Ward initially defended the police. But when shown videotapes of what looked to be a police rampage, they too decried the police conduct and promised an investigation

Unfortunately, the various investigations of the Tompkins Square Park incident followed form. Of 143 complaints filed with the Civilian Complaint Review Board – a unit of the police department – all but a handful were ruled unsubstantiated; that is, the investigation produced evidence insufficient to support a finding

of police misconduct. Of six police officers indicted and prosecuted, not one was convicted. Consequently, the NYCLU undertook its own investigation and published its findings in a report that became the impetus for a campaign to create a civilian review board independent of the police department.

NYCLU Executive Director George Rundquist had first called for civilian oversight of policing in the 1950s. Now, Executive Director Norman Siegel renewed the call for reform. He and staff members reached out to legislators, civil rights advocates, and to the city's community boards, building support for an amendment to the city charter that would create a truly independent CCRB, staffed entirely by civilians.

The campaign to create an independent CCRB reached a critical turning point in the fall of 1992, with the introduction of the proposed charter amendment addressing this issue. A hearing on the proposal was scheduled to take place before the city council on September 16. On that day the proponents of the amend-

#### **TIMELINE: 1990s**

9/90 With release of its report *Police Abuse: The Need for Civilian Investigation and Oversight*, the NYCLU launches campaign to establish

independent review board to monitor NYPD.

11/90 In the first anti-gay violence case brought against employees of U.S. government, NYCLU and ACLU file suit against DEA agents for beating two gay men.

12/90 NYCLU defends right of Daily News workers to picket outside newspaper's offices to protest hiring of nonunion replacement workers.

4/91 NYCLU challenges exclusion of abortion services from prenatal care program; NY Court of Appeals opinion recognizes for first time right to reproductive choice under state constitution.



Margaret Fung, Ben Thomas, Norman Siegel, Sung Lee, and Cho Cho Lassey at a City Hall rally calling for an independent Civilian Complaint Review Board.

traffic and taunted drivers as well as pedestrians. A contingent stormed the Brooklyn Bridge, blocking access to vehicles and pedestrians. The police misconduct offered further evidence of the need for civilians to play a role in holding police accountable for allegations of misconduct. The charter amendment passed 41-9, and the all-civilian review board came into existence in July of 1993.

But in January 1994 Rudolph Giuliani was sworn in as mayor of New York City. Giuliani rejected, as a matter of principle, the proposition that civilians should have an oversight role regarding police practices. And he instituted a “zero-tolerance” approach to fighting crime, including even minor violations.

The number of police-misconduct complaints and excessive-force lawsuits jumped dramatically. Reports of police brutality and widespread abuse of stop-and-frisk authority became all too common. The mayor was unrelenting and unapologetic. His budget left the CCRB seriously underfunded and understaffed. The NYCLU protested: Why was police

ment were six votes shy of the twenty-six vote majority required for enactment. But on the day of city council hearings the Patrolmen’s Benevolent Association organ-

ized a rally at city hall in opposition to the bill. The “rally” rapidly degenerated into what was widely regarded as a riot. Five thousand unruly police officers stopped

7/92 Court order in NYCLU class action on behalf of psychiatric patients requires that upon admission to emergency rooms, patients must be provided appropriate care and treatment.

10/92 Federal court finds for NYCLU and Colgate University’s women’s hockey team: university’s failure to give the team varsity status violates antidiscrimination regulations.

1/93 NYCLU challenges Board of Ed. requirement that public schools’ HIV/AIDS education must focus on abstinence; commissioner of education overrules Board of Ed.

1/93 Four decades of NYCLU advocacy culminates in Mayor David Dinkins signing city charter amendment that creates independent Civilian Complaint Review Board to monitor police.

3/93 Court decree requires auditing of NYCLU’s Willowbrook clients to ensure they receive adequate care in non-institutional settings.

misconduct the one infraction apparently exempted from the mayor's zero-tolerance standard? The NYCLU decided to monitor the monitor, each year publishing a report that analyzed the CCRB's performance and documented the failure of the Giuliani administration to implement the CCRB as intended by the city council.

But calls for greater accountability by the police department were ignored until the notorious police torture of Abner Louima at the 70th Precinct in Brooklyn, in August 1997. The Louima incident became emblematic of a police department that appeared to operate without restraint or accountability. Now Mayor Giuliani, in a concession to his critics, created a civilian task force. He charged its members, a broadly representative group of New Yorkers, with examining police-community relations and proposing ways to improve those relations. NYCLU Executive Director Norman Siegel and board members Margaret Fung and Michael Meyers agreed to serve on the mayor's task force. But upon completion of the task force report, it became apparent that the mayor



Demonstrators gather to protest surveillance cameras in Washington Square Park; NYCLU has monitored proliferation of such cameras citywide. *photo by Tom Tyburski*

was not committed to real reform. He dismissed the modest proposals in the report.

Siegel, Fung and Meyers issued a dissenting minority report that made twenty-nine detailed recommendations for substantive reform of police department policies and practices – including a comprehensive review of the police academy training curriculum and an affirmative-action program for hiring and promotion. The report also proposed a ten-point plan for reinvigorating the CCRB, and called for the appointment of a special prosecutor

to investigate and prosecute charges of police corruption and brutality.

Despite the Louima incident, Mayor Giuliani remained steadfast. He asserted that his revitalization of the police department and his “zero tolerance” policies accounted for a dramatic drop in the crime rate. He advanced this assertion repeatedly, ignoring the fact that crime reduction is generally regarded as a complex dynamic influenced by a variety of demographic and socioeconomic factors. The mayor also advanced this claim in the face of widely published reports that demonstrated crime rates had dropped significantly throughout the nation during the same period.

But the mayor could not avoid entirely concerns that his policies had led to grievous police errors, particularly in the treatment of individuals within minority communities. Two police shootings brought these concerns into sharp focus. In February 1999 four members of the police department's Street Crimes Unit shot and killed Amadou Diallo in a hail of forty-one bullets. About one year later Patrick

**TIMELINE: 1990s**

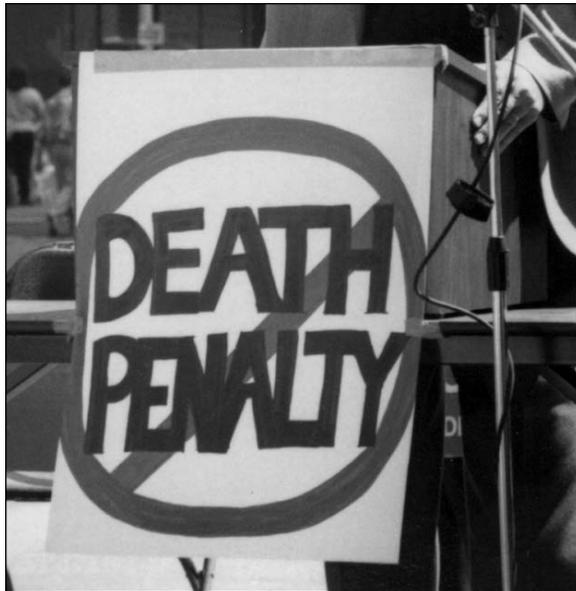
12/93 NYCLU joins NYC Board of Education to defeat legal challenge to condom distribution as component of high-school HIV/AIDS education program.

4/93 Federal court finds system for electing Nassau County Board of Supervisors violates “one-person one-vote” principle, upholding NYCLU's challenge to county's electoral scheme.

10/94 NYCLU convinces Orange County middle school to reverse decision banning educational film that mentions homosexuality.

4/95 Governor George Pataki signs bill reinstating capital punishment in the penal code; the NYCLU launches statewide campaign to have the law repealed.

11/96 When city employee is fired for talking to the press, NYCLU successfully argues in federal court that the city's gag rule is overly restrictive and unconstitutional.



Since the legislature reinstated the death penalty in 1995, the NYCLU has challenged its constitutionality in court, and campaigned for its repeal by the legislature. *photo by Tom Tyburski*

Dorismond lost his life at the hands of undercover police in a misguided buy-and-bust operation.

These episodes created a widespread outcry over the unchecked exercise of police power. Still, Mayor Giuliani was unmoved. He continued to undermine the CCRB by allocating a budget that was insufficient to the agency's mandate; and

by remaining silent when the NYCLU published reports that documented the police commissioner's rejection, without reason or justification, of substantiated police-misconduct complaints that had been forwarded to the commissioner for disciplinary action.

As relentless as was the mayor in defending aggressive police practices, the NYCLU was no less vigilant in calling for meaningful accountability when the police abused their authority. Finally, as the mayor's second term drew to a close, the CCRB began to receive a reasonably adequate budget. And Mayor Giuliani even recommended transferring authority to prosecute police misconduct complaints from the police department to the CCRB – a proposal long advocated by the NYCLU.

### The Mayor and the First Amendment

Mayor Giuliani's "zero tolerance" approach to policing extended beyond enforcement of criminal laws. It also seemed to describe

the mayor's intolerance of dissent and criticism, and his willingness to suppress political and cultural expression that he found offensive. Between 1994 and the end of the decade the NYCLU went to court in thirty-one separate cases (ten of those cases involved the filing of friend-of-the court briefs) to defend the exercise of First Amendment rights of association, speech and other forms of expression in the face of efforts by the Giuliani administration to curtail free expression.

Mayor Giuliani's narrow vision of the First Amendment was manifest. An employee of the city's child welfare agency was fired for failing to obtain the city's approval before speaking to the press about non-confidential agency practices. Taxi drivers who sought to protest new rules applied to "yellow cabs" were denied the right to conduct a procession of taxicabs across the Fifty-Ninth Street Bridge – unless the number of cabs was limited to twenty, thereby permitting the mayor to discount the strength of support for the protests. Local 100 of the stagehand's union was prohibited from picketing the

4/97 NYCLU brings age discrimination lawsuit on behalf of 81 candidates denied positions with the NYPD because they are over the age of 35.

9/97 When Mayor Giuliani directs MTA to remove from city buses an ad critical of him, the NYCLU joins lawsuit; court finds the mayor's censorship unconstitutional.

4/98 NYCLU publishes *Deflecting Blame*, criticizing the Giuliani administration and the NYPD for failing to reform police practices in the wake of the police torture of Abner Loiuma.

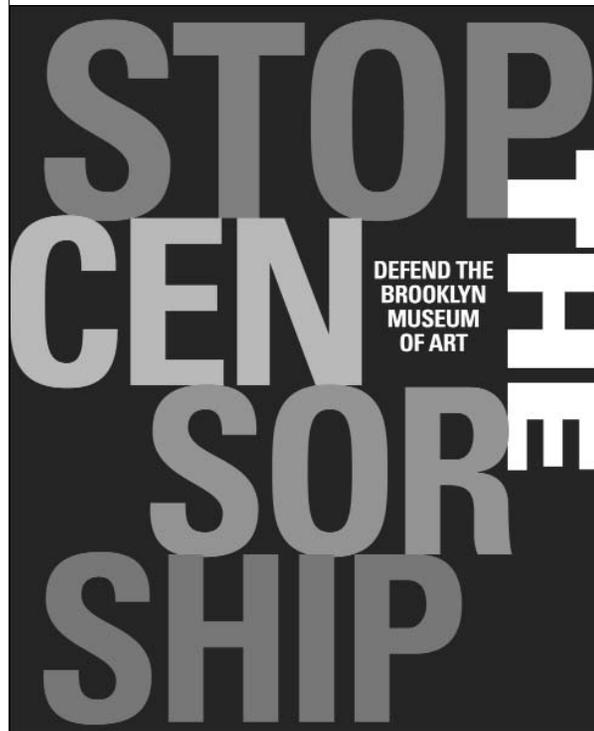
12/98 NYCLU undertakes major education reform litigation, seeking to enforce state constitutional guarantees to a sound education, as well as federal antidiscrimination law.

11/99 Mayor Giuliani seeks to censor "offensive" exhibit at Brooklyn Museum of Art by withholding funding; NYCLU, as *amicus*, participates in successful First Amendment challenge.

Metropolitan Opera over its labor practices at a location in reasonable proximity to the opera.

Police officers who spoke publicly about NYPD policies and practices were silenced. Following the police shooting of Amadou Diallo, Police Officer Yvette Walton spoke at a city council hearing about “racial profiling” practices employed by the Street Crimes Unit. The department dismissed her. When members of the Latino Officers Association publicly charged the police department with discriminatory employment practices, the department withheld recognition of the LOA as a fraternal organization and denied to the LOA the benefits necessary to its operation. The NYCLU challenged each of these attempts to restrict or punish free expression. The litigation was carried forward superbly by Staff Attorney Chris Dunn. And in each of these cases the NYCLU prevailed.

By July of 1998 the contest over the First Amendment had reached the front door of City Hall. And the legal question became, Who has the right to gather on the City Hall steps? During the next two years lawyers for the NYCLU and the city repeatedly appeared in federal court arguing the constitutionality of the mayor’s restrictions on public protest at City Hall. The issue was joined when



NYCLU postcard protesting Mayor Giuliani's attempt to censor "offensive" artwork exhibited at the Brooklyn Museum of Art.

*design by Sara Glover*

Housing Works, a provider of services to persons with AIDS, sought a permit for a news conference and demonstration protesting proposed budget cuts. The Giuliani administration had issued a rule that not more than twenty-five people could gather on the City Hall steps for such purposes. Housing Works was denied a permit. The litigation became something of a cat-and-mouse game, as the mayor repeatedly amended his executive order once it had been challenged in court but

before it had been ruled upon by a judge.

Following the announcement of the twenty-five-person limit on gatherings at the City Hall steps, the mayor attempted to bar all such protest activity, citing security concerns; but he then relented, permitting such events that he deemed to be of “extraordinary public interest.” When the mayor allowed a rally of many thousands at City Hall to celebrate the New York Yankees’ World Series championship, the NYCLU went back to court on behalf of protestors who sought to gather at the steps in much smaller numbers. Again, the city maneuvered, issuing a new policy that permitted gatherings of fifty persons if sponsored by a government official. When the NYCLU again filed suit arguing that the First Amendment simply would not permit the mayor to privilege certain types of expression, the city dropped the requirement that a government official must sponsor such events.

In January 2000 the city issued yet another set of standards dictating the numbers of persons that would be tolerated in a gathering at City Hall. The new rule would permit up to 50 persons to assemble on the City Hall steps, and up to 150 in the City Hall plaza. Once again, the NYCLU went to court, arguing that it was not the mayor’s prerogative to decide whose voice might be heard on City Hall

grounds. United States District Court Judge Harold Baer rejected this latest scheme, finding that the Giuliani administration had “two standards governing the right to assemble, one for demonstrators and another for city-sponsored speech.” This double standard, he ruled, was unconstitutional.

In a head-on confrontation between mayoral authority and constitutional principle, the Constitution had prevailed. And it was not only the steps of City Hall that had been liberated. As of mid-year 2000, the NYCLU had been victorious, in whole or in part, in twenty-four of the thirty-one First Amendment lawsuits brought against the city, with three not then decided. In seeking to tailor the First Amendment to fit his political agenda, Mayor Giuliani was responsible – albeit unintentionally – for establishing a new line of case law that reinforced the rights of speech, expression and association.

## Upholding Reproductive Freedoms

At the end of the 1980s the United States Supreme Court decided several significant cases that limited a woman’s right to reproductive choice. In one of these cases the Court permitted states to deny abor-

tions at publicly funded hospitals; and in another, the Court permitted states to condition the right to obtain an abortion upon a pregnant woman’s receiving a lecture against having the abortion and then delaying the procedure for twenty-four hours after the lecture.

Donna Lieberman, director of the NYCLU’s Reproductive Rights Project, wrote that the “court’s abdication of its role” as a protector of reproductive rights left each state to make a choice: “to rob women of control over their own bodies or to assume responsibility as a primary defender of reproductive choice.” As did many states, New York responded to the Supreme Court’s rulings by placing further constraints upon access to reproductive care. In 1989 the New York State Legislature passed a bill excluding abortion services from a newly expanded Prenatal Care Assistance Program (PCAP) that offered medical care to pregnant women whose income exceeded the federal poverty level. When individuals were denied benefits for medically necessary abortions, the NYCLU went to court on their behalf in the matter of *Hope v. Perales*.

Prior to the filing of this lawsuit, New York courts had never directly addressed the scope of a woman’s right to an abortion under the state constitution. But in April 1991 the New York State

Supreme Court found in favor of the NYCLU, holding that the state’s Medicaid scheme violated a pregnant woman’s right to due process and equal protection under the State Constitution. On appeal, the



For his efforts in upholding the right to reproductive choice, especially for low-income women, Dr. Irving Rust (pictured with his wife and son) was awarded the 1992 Lasker Award for Civil Liberties.  
*photo by Tom Tyburski*

Appellate Division affirmed the lower court, ruling that the right to reproductive choice “is an integral part of the right to privacy and bodily autonomy.” In 1994 the Court of Appeals, the state’s highest court, affirmed that reproductive choice is a fundamental right recognized under the New York State Constitution, but found no constitutional violation in the exclusion of abortion from PCAP.

In addition to the *Hope* litigation, other controversies surfaced. In May 1992

the New York City Board of Education passed a resolution requiring that AIDS prevention programs give greater attention to abstinence from sex than to other methods of prevention. The resolution required participants in public-school AIDS programs to take a “loyalty oath,” pledging adherence to the new rules. These rules, in essence, limited the discussions that teachers and healthcare professionals could have with students about reproductive choice. On behalf of various students, parents, teachers, and physicians the NYCLU claimed that the resolution confined teachers in an “instructional straightjacket” in violation of constitutional principles of academic freedom. The NYCLU presented this claim to the state’s commissioner of education, who agreed with the NYCLU.

When the New York City school system faced a lawsuit seeking to ban the distribution of condoms in health resource rooms as part of HIV/AIDS education programs, the NYCLU again intervened. Parents of a number of school children had challenged the condom availability program on the ground that it violated parental rights and religious autonomy. The NYCLU represented students, parents, teachers and healthcare providers, arguing that the religious-freedom argument was a smokescreen – an attempt to impose religious values by opposing

public-health measures that included “safe sex information and services.” In December 1993 the court found that the Constitution supported condom availability so long as there was an “opt-out” provision that permitted parents to keep their children out of the program.



The NYCLU joins with community members in opposing the NYPD's practice of maintaining school yearbook photos for use in criminal investigations.

In 1995 the New York City Parks Department stopped young people involved with a church-sponsored HIV/AIDS education program from distributing condoms at a high-school sporting event held in St. Mary’s Park, in the Bronx. The students turned to the NYCLU for legal representation. Once again, the courts vindicated the constitutional protections afforded speech and educational activity related to safe-sex practices. Through its work in the 1990s the NYCLU’s Reproductive Rights Project

established itself as the leading champion of reproductive freedoms in New York for the populations most at risk: the young, the poor, and women of color. The project’s Teen Health Initiative became a national model for integrating litigation and legislative advocacy with an ambitious peer-education program.

## Protecting and Broadening Rights and Liberties

In 1992 Staff Attorney Rob Levy, building upon the *Willowbrook* precedent, undertook a class-action lawsuit on behalf of persons who were being detained for long periods of time in the waiting areas of psychiatric emergency rooms. The case led to an order requiring that upon admitting these patients, city hospitals must provide them with a bed in an environment appropriate for their care and treatment. In the *Willowbrook* case, the NYCLU had established the rights of the developmentally disabled and of institutionalized patients. Throughout the 1990s Staff Attorney Beth Haroules conscientiously monitored and enforced a series of consent decrees designed to protect the rights of the *Willowbrook* class members.

The 1990s also saw the NYCLU address issues of discrimination against

gays and lesbians. In conjunction with the ACLU's Lesbian and Gay Rights Project, the NYCLU brought a federal lawsuit against agents of the federal Drug Enforcement Agency who had viciously attacked and beat two gay men. The suit had two purposes: to vindicate the rights of these victims of hate-motivated crime; and to call attention to the rising incidence of violence against gays and lesbians in New York City and nationwide. The litigation was complemented by a long-standing effort to enact bias-crime legislation in New York State; and after nearly twenty-five years of lobbying by the NYCLU and other advocates, the legislation was finally passed in the year 2000.

The NYCLU was also compelled to give increasing attention to the issue of capital punishment during the 1990s. Throughout his twelve-year tenure Governor Mario Cuomo had repeatedly vetoed the legislature's efforts to reinstate the death penalty in New York. But shortly after his election in 1994, Governor George Pataki acted on a campaign pledge to restore the capital punishment provision to New York's penal law. The NYCLU was among the organizers of a statewide campaign to repeal the new law; and NYCLU lawyers also filed a number of *amicus* briefs challenging the constitutionality of the death penalty. The campaign will not end



NYCLU honors retired Supreme Court Justice Harry Blackmun and former Governor Mario Cuomo for upholding civil liberties in their respective positions on the bench and in the state house. The two were recipients of the 1995 Lasker Award. *photo by Tom Tyburski*

until the death penalty is either repealed or declared unconstitutional.

As the NYCLU's fifth decade drew to a close, the organization began to implement a major litigation program directed at educational reform. The litigation involved four major lawsuits. One suit focused upon schools whose conditions and academic performance are so abysmal that these schools must be regarded as "failing." The suit looks to the

state constitution, which has been interpreted as guaranteeing all children "the opportunity" to receive "a sound basic education." It asserts that children who by virtue of economic, racial or residential circumstance are assigned to these failing schools are being denied their constitutionally guaranteed opportunity to receive a sound basic education.

The second suit rested upon regulations adopted under Title VI of the 1964 Civil Rights Act. Under these regulations recipients of federal funds are prohibited from pursuing administrative practices that have a racially disparate impact. In the Title VI suit the NYCLU contends that inadequate administrative practices undertaken by the State Department of Education have had a racially disparate impact upon children attending schools where the number of minority students exceeds 80 percent of the total student population.

The NYCLU played an *amicus* role in two other suits seeking to advance equal educational opportunity. One suit was initiated following an examination of the high poverty rate among the minority population in the Rochester City school district. The NYCLU's brief in support of the Rochester plaintiffs argued that the racial and economic isolation of the children within the Rochester school district

must be ended if these children are to be provided with the opportunity for a sound basic education.

The second suit was filed on behalf of children in New York City by the Coalition for Fiscal Equity. The suit asserted that New York State's formula for funding public education disadvantaged children in New York City and resulted in a failure to provide a sound basic education to children attending the city's schools. The NYCLU supported this suit by filing *amicus* briefs in the New York Court of Appeals.

## Looking Forward

Thus, a retrospective view of the NYCLU through its fifty-year history presents a proud record of significant accomplishment. It is a record that speaks to the organization's unflagging adherence to principle, to the enduring importance of its mission, and to the devotion of its staff and board members. The efforts of the NYCLU's staff have already been described in this brief history; the organization's board members deserve equal recognition for their extraordinary efforts in advancing the NYCLU's work, for a commitment and dedication that deserve far more gratitude and appreciation than

can be conveyed here.

But as successful as the organization has been, there is yet more to do. Indeed, the enduring importance of its work can be seen in the ongoing need to protect freedom of expression, equal educational opportunity, rights of reproductive and sexual freedom, and in the need to combat the persistent vestiges of racism and gender discrimination. Moreover, the still-new twenty first century has presented challenges more daunting than any we have seen since the early days of the NYCLU's existence. These challenges will require a vigorous and effective response – the type of response that the NYCLU has advanced over the past fifty years and will continue to advance in the coming years and decades.

## 1980s

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## 2000 - present

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BURN ALL REDS

ROSENBERG TRAITORS MUST DIE FOR THEIR CRIME

DEATH PENALTY

POLICE LINE

NOT CROSS

END WAR IN VIETNAM

END THE WAR IN VIETNAM NOW

WITHDRAW US TROOPS FROM VIETNAM NOW