

N.J. Supreme Court Extends Anti-Discrimination Protections To School Children Facing Bullying, Harassment

IN A MAJOR VICTORY FOR STUDENTS' rights, the New Jersey Supreme Court ruled that anti-discrimination protections must be extended to school children who endure bias-based bullying and harassment.

"Bullying is enormously destructive to students emotionally and psychologically," says Deborah Jacobs, executive director of the ACLU-NJ, which joined child advocacy groups in a friend-of-the-court brief. "This decision requires schools to take necessary steps to ensure that students are protected from bias-based harassment, and makes clear that, when necessary, schools must address the entire school environment instead of merely viewing specific incidents of bullying as isolated events."

"Students in the classroom are entitled to no less protection from unlawful discrimination and harassment than their adult counterparts in the workplace."

— N.J. Supreme Court Chief Justice James R. Zazzali.

In the case, *L.W. v. Toms River Regional Schools Board of Education*, Louis White, a student in the Toms River schools, said he suffered years of anti-gay harassment and bullying from classmates. According to court papers, while in seventh grade White was subjected to harassment almost daily, which

escalated to physical aggression. Eventually, the persecution became so severe that White transferred to another school district.

He filed a claim with the New Jersey Division on Civil Rights, which held that the state's tough Law Against Discrimination protected him from harassment. The order used the same standard that applies to employment discrimination.

The Toms River Regional Schools Board of Education appealed to the Appellate Division of Superior Court, which decided for White. The board then appealed to the New Jersey Supreme Court.

In its unanimous decision, the Supreme Court noted that "isolated schoolyard insults or classroom taunts are not necessarily actionable." Rather, the court ruled that the aggrieved student must allege discriminatory conduct that would be considered "sufficiently severe or pervasive enough to create an intimidating, hostile, or offensive school environment that the school district failed to reasonably address." The decision also required schools to implement effective preventative and remedial measures to curb severe or pervasive discriminatory mistreatment.

"Students in the classroom are entitled to no less protection from unlawful discrimination and harassment than their adult counterparts in the workplace," wrote Chief Justice James R. Zazzali.

For the Supreme Court arguments, the ACLU-NJ's volunteer attorneys on the case, Emily Goldberg and Larry Lustberg,

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Louis White, now 21, endured taunts and physical abuse in middle school and high school because of his perceived sexual orientation. He was the victorious plaintiff in a recent N.J. Supreme Court decision that aims to protect students from bullying based on sexual orientation, race, religion or gender. *The Star-Ledger ©2007*

Help Make the Death Penalty History

A GROUNDBREAKING REPORT FROM the New Jersey Death Penalty Commission recommended that New Jersey remove from its laws the ultimate deprivation of civil liberties: death.

Appointed by the Legislature and made up of law enforcement professionals and community leaders to examine capital punishment's place in the law, the commission recommended that the Legislature replace the death penalty with life without parole for the most heinous crimes.

Now the ACLU needs our members to take the next step and urge your elected officials to abolish the death penalty in New Jersey for good.

"The death penalty is immoral in principle, fundamentally unfair and discriminatory in practice, and it violates the Constitution's ban on cruel and unusual punishment," says ACLU-NJ Executive Director Deborah Jacobs. "As we have seen depressingly often, it also assures the execution of innocent people."

Since 1976, 125 death row inmates have been found to be innocent, representing one innocent person for every nine executed.

The commission issued its findings after hearing public testimony from death penalty advocates, opponents and experts, including prosecutors and defense lawyers, prison administrators, academics, religious leaders, wrongly convicted individuals, and murder victims' survivors, who are increasingly vocal in their view that capital punishment is unworkable.



Larry Peterson (right), wrongly convicted of murder, spent 18 years in a New Jersey prison before being freed by DNA evidence. Peterson and Barry Scheck (left), founder of the Innocence Project, testified before the state Death Penalty Commission. *John C. Goodwin ©2006*

In its report, the commission found the following:

- The death penalty serves no valid purpose in our penal system that would not be satisfied by a sentence of life without parole; in particular, the death penalty does not deter murder.
- The death penalty involves both law enforcement and victims' families in long, exceedingly costly proceedings, which far exceed the cost of a life sentence.
- Despite the state's efforts, the death penalty involves a high risk of arbitrariness in its application.
- There is a very real possibility that an innocent person will be executed; since 1976, 125 death row inmates nationwide have been found to be innocent, representing one innocent person for every nine executed.

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School District Flunks Religious Freedom Test

TALK ABOUT MISSING A TEACHING moment: Kearny High School officials had a great opportunity to show students the real-life application of such ethereal constitutional principles as the separation of church and state. Unfortunately, they taught the wrong lesson.

It all started last fall, when teacher and part-time Baptist minister David Paszkiewicz decided to teach his personal religious beliefs to his 11th-grade history students. His lesson plan included some startling revelations:

- Those who don't believe that Jesus died for their sins belong in hell.
- There's more fact in the Bible than in the theory of evolution.
- There were dinosaurs on Noah's Ark.
- The fulfillment of biblical prophecies proves the literal truth of the Bible.

At least one student already knew enough about the First Amendment to take offense. Convinced Paszkiewicz had leapt clear over the wall of separation between church and state, junior Matthew LaClair complained to school administrators.

Fearing he might not be believed, LaClair recorded the teacher's statements during class and provided those recordings to the principal. But rather than address the teacher's violation of the law and of his professional and ethical duty to his students, school officials found ways to blame the victim for holding the preaching teacher accountable. Their actions — which included failing to acknowledge LaClair's actions as appropriate, banning audio recording in class and moving LaClair's entire class to another teacher — contributed to other students

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Student Journalists Expose Cyber-Freedom in Prize-Winning Article



Westfield High School students Jessica Riegel (right) and Sarah Queller (left) won the ACLU-NJ Student Press Liberties Award for their article exploring free speech online. Photo by Gary S. Latimer/ShoreShot Photography

IN THEIR ARTICLE, “Student rights in question online,” seniors Sarah Queller and Jessica Riegel explored the boundaries of student freedom in cyberspace, particularly their rights regarding Internet postings, one of the most pressing free speech issues that young writers face today.

Their article, published in Hi’s Eye, Westfield High School’s weekly newspaper, won Queller and Riegel the ACLU-NJ’s 2006 Student Press Liberties Award.

To read the winning article or for more information on the 2007 Student Press Liberties competition, visit www.aclu-nj.org/issues/studentyouthrights. ■

Anti-Discrimination

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collaborated on a brief with a slew of child advocacy groups that reflected the breadth of support for White and frustration with this school district’s response to bias-based bullying. The groups included: Association for Children of New Jersey; Education Law Center; Gay Lesbian and Straight Education Network of Northern New Jersey; National Conference for Community and Justice (NJ); New Jersey Family Voices; Roxbury Parents for Exceptional Children; and Statewide Parents Advocacy Network of New Jersey. ■

Death Penalty

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- The death penalty offends evolving standards of decency.

Two bills that would eliminate the death penalty in New Jersey are pending in the Legislature. “Those bills give us and other death penalty opponents an opportunity to take simple but powerful steps to help put an end to the unjust practice of punishment by state-sanctioned death,” says Jacobs. “This is an historic moment to end the futility of capital punishment.”

To find out what you can do to abolish the death penalty, visit <http://tinyurl.com/ypmwss>. ■

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Religious Freedom

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harassing 16-year-old LaClair for complaining. Getting nowhere on their own with the school, the LaClair family attempted to resolve the matter amicably. They proposed, for example, that the school hold a forum to explain to students the role of religion in public schools and to correct Paszkiewicz’s erroneous scientific statements. But they, too, were rebuffed. The district’s intransigence eventually forced the lawyers for the LaClair family to file a tort claims notice, the first step toward suing a public entity.

The ACLU-NJ is providing legal support and advocacy to the LaClairs.

“As a person of faith, I share with the LaClair family the view that everyone’s liberty is best protected when government stays neutral in religious matters.”

— Rev. Bruce Davidson, Director, Lutheran Office of Governmental Ministry in New Jersey

“Instead of recognizing and reinforcing the student for his courage and understanding that it is not the job of school officials to usurp parents’ role in teaching religious belief,” says ACLU-NJ Executive Director Deborah Jacobs, “the school, at every turn, has taken action to protect itself and the teacher who violated one of our most fundamental American principles: freedom of religion.”

The LaClairs also have found support from the faith community.



Matthew LaClair, a Kearny High student, is challenging his public school teacher’s preaching in class.

“In public schools, it is essential to religious liberty that all religious viewpoints are given the absolute protection the Constitution guarantees,” says the Rev. Bruce Davidson, Director of the Lutheran Office of Governmental Ministry in New Jersey. “As a person of faith, I share with the LaClair family the view that everyone’s liberty is best protected when government stays neutral in religious matters.”

As for Matthew LaClair, he says he believes students should know their rights — and know that they can defend those rights when necessary. “I believe it is important to stand up for our constitutional rights and to make sure that these violations of the First Amendment, which apparently have been going on for years, are stopped once and for all,” he says. ■

New Jersey Supreme Court Rules Videotaping of Public Meetings Is a Basic Right

THE NEW JERSEY SUPREME COURT IN A recent ruling affirmed an individual’s right to videotape public meetings, upholding critical values of government transparency and accountability.

“Videotaping is an invaluable method of documenting government activities or misconduct,” says Ed Barocas, legal director of the ACLU-NJ, which filed a friend-of-the-court brief in the case. “We are pleased that the Supreme Court recognized that American democracy depends on the people having a right to access government information.”

The case arose out of efforts by Robert Wayne Tarus to videotape meetings of the Pine Hill Borough Council in Camden County. Tarus, a longtime borough resident and self-described local government watchdog, was frequently at odds with the council. He wanted to visually document what he viewed as the governing body’s inconsistencies on matters concerning the town.

Tarus’ efforts got him tossed from council chambers and charged with disorderly conduct twice in 2000. The charges were dismissed in municipal court, and the council adopted guidelines that allow “anyone [to] videotape the meeting as long as they are not disruptive.”

Tarus, however, sued in federal court and, after losing there, went to state court alleging,

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“Openness is a hallmark of democracy — a sacred maxim of our government — and video is but a modern instrument in that evolving pursuit.”

— N.J. Supreme Court Chief Justice James R. Zazzali

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Requiring National 'Real ID' Poses Real Nightmare for New Jersey

IN EARLY MARCH, THE Department of Homeland Security released draft regulations for implementing the Real ID Act, federal legislation that, after being rejected as a stand-alone bill, was forced through Congress in 2005 as part of a must-pass Iraq war appropriations measure.

Among the many costly, misguided national security ideas the federal government has tried to impose on the states in recent years, Real ID ranks as one of the most dangerous and disruptive. It won't be long before New Jerseyans will see Real ID as a real nightmare of more red tape, longer lines, more identity theft and higher fees.

The Real ID Act creates a national ID card system that federalizes and standardizes state driver's licenses. It requires every person in the country to have a Real ID-compliant identification document in order to fly on commercial airlines or enter government buildings. DHS has said that someday Real ID will be required for other purposes, like getting a passport.

If New Jersey adopts Real ID, it will pay a high price in both public money and personal privacy. Even DHS concedes that the burden to taxpayers will be high. Its own figures show that Real ID will cost individuals and the states a combined estimated \$23 billion.

We don't know the extent of New Jersey's share of these costs yet, but we know from experience that everything costs more in the



Deborah Jacobs

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Garden State. What makes this more exasperating still is that Real ID practically mirrors the 6-point system that New Jersey's Motor Vehicles Commission already adopted at enormous cost and effort.

New Jersey must also consider the consequences of allowing what amounts to a federal takeover of our MVC. The Real ID regulations dictate details of MVC operations. Everything from the color of the card background to the computer systems that store licensing information must conform to common standards, requiring states to overhaul their systems completely.

DHS also fails to address the privacy problems Real ID creates. Here again, DHS concedes the point — in this case, the danger that license data could be scanned and sold by third parties, which will contribute to massive identity theft. DHS' response? Identity theft is someone else's problem: According to the proposed regulations, "DHS believes that it would be outside its authority to address this issue within this rulemaking." Instead, it encourages the states to come up with a solution. The irony is that in seeking to ensure that everyone has official government identity papers, the government would, by omission or by negligence, make identity theft easier.

Worse, in order to verify home address information, DHS is encouraging states to

collect financial information, including bank statements, which will be saved and stored in MVC computers. News reports abound with numerous instances of both private and government databases being hacked. In 2003, the press reported several instances of New Jersey MVC employees involved with fraud by selling fake licenses. Real ID makes the risk of similar abuses exponentially bigger. A state database of every drivers' financial information would be an open invitation to identity theft and a flagrant intrusion of privacy.

Finally, we must ask what we're getting in exchange for the many costs of Real ID. Will Real ID keep Americans safe? According to security experts, the answer is no. Because many Americans will not have birth certificates or other official documents to prove their identity so that they can get a Real ID card, DHS has acknowledged it needs an exemption allowing individuals to bypass many of the verification and document requirements. This exemption creates a huge security void and demonstrates the fundamental security flaws beneath Real ID, or any national identification system.

There's a growing rebellion among the states against Real ID. In January, Maine rejected the Real ID scheme, and similar legislation has been passed by one chamber in the legislatures of Arizona, Georgia, Idaho, Montana, New Mexico, Utah, Vermont and Wyoming. Bills rejecting Real ID have also been introduced in 14 other legislatures, with more expected in the coming weeks.

Now is the time for Governor Corzine and the New Jersey Legislature to join the dozens of other states taking action to reject Real ID. The last thing New Jersey needs is to waste money, jeopardize our privacy and replace our driver's license scheme with a new system that will cost billions and fail to provide real security.

Real ID? Try Real nightmare.

For more information about Real ID, see www.realnightmare.org. ■

Anti-Bullying Brochure Outlines Legal Protections and Resources For Students

MANY OF US AS ADULTS LOOK BACK ON THE playground antics of our school days and realize that children and teenagers can do real, life-altering damage to their peers through bias-based harassment and cruelty.

Bullying also disrupts the educational experience. In fact, studies show that at least 30 percent of all students have been bullied — or have bullied other students — within any given school semester. (For a related story, see page 1, "N.J. Supreme Court Extends Anti-Discrimination Protections to School Children Facing Bullying.")

Studies show that at least 30 percent of all students have been bullied — or have bullied other students — within any given school semester.

However, there are legal avenues to protect children from bullying, and the ACLU-NJ and its coalition partners have a new brochure to help students, parents and schools address this insidious problem.

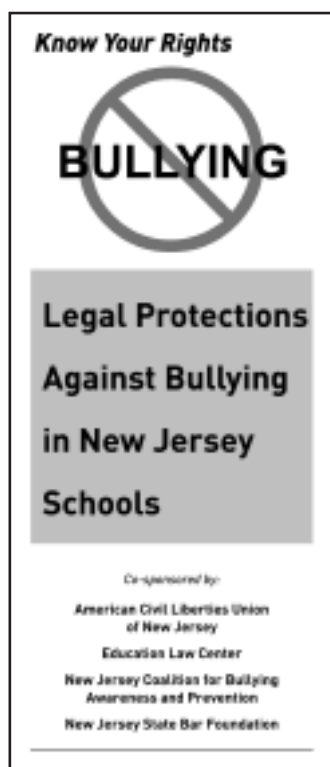
Called "Legal Protections Against Bullying in New Jersey Schools," the brochure is the latest in the ACLU-NJ's "Know Your Rights" series of publications aimed at helping people understand and secure their rights.

The brochure provides legal definitions of bullying under state law, tips and strategies for students and parents, and information on advocacy and rights groups.

"We want students and parents to know that they don't have to put up with bullying, and that they can get assistance in bringing an end to it," says ACLU-NJ staff attorney Jeanne Locicero, who helped write the brochure.

In developing the brochure, the ACLU-NJ worked with the Education Law Center, the New Jersey State Bar Foundation, and the New Jersey Coalition for Bullying Awareness and Prevention.

For a copy of the brochure, which is available in English and Spanish, visit the ACLU-NJ Web site: www.aclu-nj.org/home/publications/ ■



Videotaping

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among other things, violations of his constitutional and common law rights to videotape council meetings.

In its brief to the New Jersey Supreme Court, the ACLU-NJ argued that videotaping is a form of free speech that provides a uniquely valuable source of information that may not be obtained through handwritten notes or audio recording. The only limit, the brief said, should be legitimate "time, place and manner" restrictions to ensure that government business is not significantly interrupted.

"In no arena is the idea of open government as important as during government functions," says Jennifer Klear, an attorney with Drinker, Biddle & Reath, who wrote the ACLU-NJ brief. "The Borough of Pine Hill inappropriately restricted that right."

The Supreme Court agreed. In its decision, the justices unanimously held that videotaping public meetings is part of the common law right to obtain public information subject to reasonable restrictions. The borough and mayor, the high court said, violated that right by imposing arbitrary and unreasonable restrictions that prevented Tarus from videotaping council meetings.

Writing for the court, Chief Justice James R. Zazzali explained: "Openness is a hallmark of democracy — a sacred maxim of our government — and video is but a modern instrument in that evolving pursuit."

"The use of modern technology to record and review the activities of public bodies should marshal pride in our open system of government," Zazzali added, "not muster suspicion against citizens who conduct the recording."

The case was captioned *Tarus v. Borough of Pine Hill, et al.* ■



In Memory of Molly Ivins (1944 - 2007), An ACLU Crusader

Photo by
Paul Traves

The American Civil Liberties Union of New Jersey acknowledges with sadness the passing of legendary journalist, columnist and longtime ACLU supporter Molly Ivins. Molly never wavered in her commitment to the mission of the ACLU and worked tirelessly as a spokesperson to benefit our organization. She appeared at countless affiliate events, and at one point, resolved to do something for the ACLU at least once a month.

Like many ACLU supporters, Molly firmly believed in the dignity of the individual, free speech, the right to dissent and other bedrock principles that define who we are as Americans.

Her legacy of support will live on through her bequest to the ACLU, a gesture she energetically encouraged others to make as well. As she put it, "I can't think of anything I'd rather do with my worldly goods than fund folks who will be a pain in the ass to whatever powers come to be."

To make a donation to The Molly Ivins Fund for Justice and Liberty, please visit www.aclu.org/mollyivinsfund. To learn about planning a bequest for the future of the ACLU, please visit www.aclu.org/legacy or call toll free (877) 867-1025. ■

"I can't think of anything I'd rather do with my worldly goods than fund folks who will be a pain in the ass to whatever powers come to be."

Civil Rights Move Forward in End-of-Year Legislation

THE AMERICAN CIVIL LIBERTIES UNION OF New Jersey applauds the New Jersey State Legislature and Governor Corzine for passing critical civil rights protections in a year-end sweep of legislation, including measures on civil unions, needle exchange and transgender anti-discrimination.

"New Jersey has once again proven itself one of the most progressive states in the nation," says Deborah Jacobs, ACLU-NJ Executive Director. "Our leaders have made tremendous steps toward equality in our great state."

Here are the highlights:

Civil Unions

On December 21, 2006, New Jersey became the third state in the nation to establish a civil union system designed to afford gay and lesbian couples the full rights and responsibilities that heterosexual married people enjoy.

The civil union bill followed a decision by the New Jersey Supreme Court declaring it unconstitutional for the state to bar same-sex couples from the myriad of rights and protections that the state provides to families through marriage. The legislation also creates a commission to examine over the next three years whether New Jersey should take the next step and allow gay marriage.

"Civil unions are a temporary fix," says Jacobs. "We are going to keep pressing until same-sex couples and their families have access to the dignity and respect that only comes through marriage."

Needle Exchange

Overcoming longstanding resistance and unfounded fears, the Legislature passed a bill to allow six New Jersey cities to establish needle-exchange programs, making New Jersey the last state in the nation to allow intravenous drug

users to have legal access to clean needles without a prescription.

Cities will have to apply to become one of the six locations to establish a program; it's likely that Atlantic City and Camden will be among those applying. Health advocates view needle exchange as an important tool in combating the spread of the AIDS, HIV and hepatitis C viruses. In New Jersey, unlike most states, needle sharing among intravenous drug abusers is the leading cause of the spread of AIDS.

Transgender Rights

In another first, the Assembly followed the Senate's lead and outlawed discrimination against transgender people in New Jersey. Once signed by the governor, the new law will add "gender identity or expression" as a basis for protection under the New Jersey Law Against Discrimination. As of this writing, the bill awaits the governor's signature. ■

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Very sincerely,

Ellen Samuel
ACLU-NJ Board President

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