



FOUNDATION

P.O. Box 32159  
Newark, NJ 07102  
Tel: 973 642 2086  
Fax: 973 642 6523  
info@aclu-nj.org  
www.aclu-nj.org



*LGBTI and straight New Jerseyans  
united in political action*

www.GardenStateEquality.org  
Phone (732) GSE-9001, fax (732) 321-6562

33 Wood Avenue South, Suite 600, PMB 610  
Iselin, New Jersey 08830-2717

July 27, 2005

Acting Governor Richard J. Codey  
New Jersey State House  
125 West State Street  
PO Box 001  
Trenton, NJ 08625

Palisades Interstate Park Commissioners  
c/o Carol Ash, Executive Director  
Palisades Interstate Park Commission  
Administration Building  
Bear Mountain, NY 10911-0427

Dear Governor Codey and Park Commissioners:

Garden State Equality and the American Civil Liberties Union of New Jersey have received several complaints and have reviewed news reports indicating that the Palisades Interstate Park Police and Police Court are treating gay and straight park visitors differently in regard to sting operations and charges involving public lewdness. Our organizations in no way condone public sex acts by anyone; in fact, we would be sympathetic to a nondiscriminatory and more effective approaches to curb such illegal activity in the park. The issue about which we write you is disparate treatment involving alleged government impropriety. We request that your offices conduct an investigation into the policies and practices of both the police and the court.<sup>1</sup>

### Police Operations

Numerous individuals and their attorneys have reported police operations in the New Jersey section of Palisades Interstate Park in which undercover police officers approach men they perceive to be gay, lure them into attempting to perform sexual acts, and then arrest them for violations of N.J.S.A. 2C:14-4, Lewdness. It appears that the Palisades Interstate Park Police arrested at least 98 men for lewdness last year using this sting operation. See Duncan Osborne, "You're Gay, You're Guilty", Gay City News, June 9-15, 2005; Duncan Osborne, "Cops on the Lookout", Gay City News, May 26-June 1, 2005. We are concerned that the Palisades Interstate Park is using a disproportionate amount of resources to target and arrest gay men. For example, it does not appear that the police department uses female officers to lure straight men into attempting to perform sexual acts, although the likelihood of luring straight men into lewd acts might be strikingly similar to the percentage of gay men lured into such activity.

<sup>1</sup> As you may know, the Palisades Interstate Park Commission operates parkland in both New York and New Jersey. Pursuant to New Jersey statute, there is a "police court" located in the New Jersey section of the park that possesses the jurisdiction and powers of a municipal court. N.J.S.A. 32:14-22, -23. The Governor, with the advice and consent of the Senate, appoints the judge(s) of the court, whose term runs for three years. N.J.S.A. 32:14-25. The Park Commission is responsible for appointing a chief of police and a local prosecutor. N.J.S.A. 32:14-4.1, -29.

We believe that an investigation by the Palisades Interstate Park Commission of its police department's practices and procedures regarding lewdness arrests is necessary to determine whether the department is engaging in discrimination. Additionally, we call on the Commission to reconsider using its limited resources to conduct undercover sting operations in the park.

### Judicial Practices

We have also received reports from attorneys representing some of the defendants that Palisades Interstate Park Police Court Judge Stephen J. Zaben has treated men arrested for lewdness more harshly than heterosexuals arrested for lewdness or other similar charges. Indeed, we were disturbed to read that, during a trial for one defendant, Judge Zaben stated that his conclusion that the defendant was in the park to have a sexual encounter was supported "by virtue of the fact that he is gay." See Duncan Osborne, "You're Gay, You're Guilty", Gay City News, June 9-15, 2005. We have not reviewed the trial transcript, but are concerned that Judge Zaben's reported remarks indicate a willingness to find against a defendant based on his status as a gay man rather than on the facts before him.

As part of his alleged policy of handling lewdness charges against gay men more harshly than other similar offenses, Judge Zaben is reported to prohibit plea bargains on lewdness charges (as opposed to all other charges) and to have a history of handing out harsh sentences for lewdness, including steep fines, a ban from the park, jail sentences, counseling and probation. See Duncan Osborne, "Disparate Results in NJ Lewdness Arrests", Gay City News, July 14-20, 2005. While a judge's sentencing discretion does not normally warrant scrutiny, Judge Zaben's practices may be in violation of New Jersey's Law Against Discrimination if he is treating gay men charged with lewdness more harshly than he treats heterosexuals charged with lewdness or other similar offenses.

Recently, the Gay City News has reported that Judge Zaben heard a case against a heterosexual couple charged with, among other things, lewdness and having an open container of alcohol. Id. After the couple was convicted, Judge Zaben imposed fines and a ban from the park, but did not impose the harsher penalties of a jail sentence, probation, or court-supervised counseling as he has on gay defendants charged with lewdness. Id.

We call on the Governor's office to conduct a comprehensive review of Judge Zaben's handling of lewdness charges against gay men including comparisons to determine whether his practices indicate disparate treatment of or have a disparate impact on gay men.

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We would be happy to meet with you to discuss these issues further. You can reach Steven Goldstein at (917) 449-8918 and Ed Barocas at (973) 642-2086.

Thank you for your prompt attention to this matter.

Sincerely,

Steven Goldstein, Chair  
Garden State Equality

Edward Barocas, Legal Director  
American Civil Liberties Union of New Jersey