

Justice Department Responds to ACLU-NJ Petition and Opens Investigation into Newark Police Department

ACLU-NJ documented more than 400 complaints of abuse in its petition to federal authorities

More than 40 years after the ACLU-NJ first sought federal intervention into the troubled Newark Police Department, the Justice Department has opened an investigation into reports of excessive force, discriminatory policing and other civil rights violations by police officers.

The May 9, 2011 announcement came eight months after the ACLU-NJ filed a 96-page petition to the Justice Department, documenting the incidents of abuse.

“The ACLU-NJ first called for federal intervention in the Newark Police Department in 1967,” said ACLU-NJ Executive Director Deborah Jacobs. “The announcement that the DOJ will bring its resources and expertise to our city and hold the NPD accountable marks a critical moment in our city’s history. The cries of Newarkers have finally been heard.”

The ACLU-NJ cited 418 serious, routine civil rights violations reported by citizens in a two-and-a-half year period, including false arrests, inconsistent discipline of officers, discrimination and, most egregiously, acts of violence against citizens, some of which resulted in injury and death. The complaints included a 2006 case where a woman



The ACLU-NJ documented 418 incidents of abuse by Newark Police in its petition to the Justice Department.

and her daughters were maced when they tried to stop police officers from assaulting juveniles during a car stop. Separately, in another case in October 2006 a man died in police custody after officers violently beat and punched him and did not assist him when he showed medical distress. He died and the city settled a wrongful death suit with his father.

In the face of these civil rights violations, the department’s deficient Internal Affairs Unit provided citizens with little recourse. Out of the 261 internal affairs complaints filed reporting serious police misconduct between 2008 and 2009, only one — alleging an improper search — was sustained. The ACLU-NJ documented police officers’ retaliation and threats to citizens making an internal affairs complaint, as well as discouragement from making complaints altogether.

After looking into the petition’s claims, the Department of Justice’s Civil Rights Division determined the situation in the Newark Police Department called for its involvement, based on a 1994 law allowing the Justice Department to intervene if a police department demonstrates a “pattern or practice” of violating the law or citizens’ constitutional rights.

The ACLU-NJ hopes the federal government will provide the initial oversight and guidance for the Newark Police Department to establish real reform, including an overhaul of internal affairs, more training for police officers, and new systems to identify and discipline problematic officers.

“The federal government has brought progress before to police departments struggling to break free of ingrained institutional traditions of civil rights abuses,” said ACLU-NJ Policy Counsel Alexander Shalom. “We hope the Newark Police Department becomes another success story, built on a foundation of its renewed commitment to justice and equality.”

The ACLU-NJ has offered itself as a resource to the Department of Justice in the next stages of the investigative process, redoubling its own commitment to increasing accountability for the Newark Police and rebuilding the public’s trust in law enforcement. [ACLU](#)

New Jersey Transit Employee Wins Free-Speech Fight — and His Job Back

Derek Fenton lost his job after participating in a protest during personal time

When Derek Fenton burned three pages of a Koran at a rally protesting a proposed community center in Lower Manhattan, he expected to incite some controversy. He did not expect to lose his job with New Jersey Transit. With help from the ACLU-NJ, Fenton got his job back.

As part of a settlement signed on April 22, New Jersey Transit agreed to return Fenton’s job and provide him with back pay. In addition, New Jersey Transit will pay \$25,000 in damages and \$25,000 in attorneys’ fees.

“I am pleased that the matter is now successfully settled,” Fenton said. “Our government cannot pick and choose whose free speech rights are protected, based on whether or not they approve of the content of our statements or actions. This is the very essence of the First Amendment.”

For Fenton, the idea of an Islamic community center near the World Trade Center site reopened the wounds of September 11. On his day off on September 10, 2010, he joined a protest and expressed his disapproval by burning the holy text. He did not identify himself as a New Jersey Transit employee, nor was he wearing his uniform. A photographer captured the act and the father of two’s face was plastered all over the Internet. After his employers saw his photo, Fenton lost his job on September 13 for violating the agency’s code of conduct. Fenton had worked at New Jersey Transit for 11 years.

The ACLU-NJ challenged New Jersey Transit’s illegal actions. The law prohibits public employers from firing workers for engaging in constitutionally protected speech on matters of public concern in their personal capacities.

During the initial discovery period, Gov. Chris Christie and four members from his office were named as persons with information relevant to the decision. Christie publicly supported New Jersey Transit’s decision.

“The First Amendment protects Fenton’s right to protest just as it protects the freedom to build a religious center at the location of one’s choosing. And it protects his right not to get fired by a public employer for exercising that right,” said Frank Corrado of Barry, Corrado, Grassi & Gibson, who, along with Ruben Sinins of Javerbaum, Wurgaft, Hicks, Kahn, Wikstrom & Sinins, represented Fenton on behalf of the ACLU-NJ.

To read the complaint and the settlement, visit www.aclu-nj.org. [ACLU](#)

Newark Police Illegally Detain Honors Student Over Cellphone Footage

ACLU-NJ files lawsuit on behalf of teen who was pulled from bus and handcuffed

By the time her junior year rolled around, Khaliah Fitchette had already planted the seeds to a promising future.

The Newark teenager was the junior class president at University High School and an honor roll student who was already thinking about college. But her dreams were nearly shattered after Newark Police yanked her off a public bus on March 22, 2010 and illegally handcuffed and detained her for filming them.

Nearly a year later, on March 28, 2011, Fitchette filed suit against Newark Police for illegally detain-

ing her, seizing her cellphone and deleting the phone’s video footage. “This is another example of egregious misconduct by the Newark Police Department,” said Executive Director Deborah Jacobs. “We have already filed a petition documenting 418 incidents of beatings, false arrests, retaliation and other misconduct by Newark Police. This case is another reason why we desperately needed federal intervention from the U.S. Department of Justice.”

Fitchette was going to downtown Newark with friends on a New Jersey Transit bus after school. When the bus rolled down a hill, a man, who appeared under the influence of drugs or alcohol, fell from his seat and into the aisle, creating a scene. The driver pulled over and called Newark Police for assistance, and Fitchette began recording the incident on her cellphone. When two officers boarded, one ordered Fitchette to turn off her phone to prevent any videos from appearing online. Fitchette, who was not interfering with police activity and was standing a number of



Khaliah Fitchette and her mother, Kameelah Phillips on the porch of their home in Newark. Fitchette, 17, was illegally detained by Newark Police after she filmed them on a public bus.

Continued on page 3

What One Letter or Phone Call from the ACLU Can Do

The ACLU-NJ works to defend liberty through lobbying, advocacy, litigation and education. And in some cases, it can make a difference with a simple phone call or letter. Here are three examples:

Correction Center Grants Kosher Meal to Jewish Prisoner

All Thomas Feldheim wanted was a kosher meal. But when Feldheim, a prisoner at Middlesex County Adult Correction Center (MCACC) asked for a meal, officials questioned whether he was really Jewish.

On June 15, 2010, corrections officials arranged for Feldheim to meet with Rabbi Mendy Carlebach, director of the Chabad Lubavitch House in South and North Brunswick, an institution within the Hasidic movement of Orthodox Judaism. Feldheim said “no” when Carlebach asked if his mother was Jewish, but Feldheim’s father is.

After the meeting, Feldheim and another inmate repeated their request. Joyce Pirre, the director of Social Services at MCACC responded, “I spoke to the rabbi after your visit. He explained that neither one of you is Jewish, and he cannot recommend a kosher diet from the jail. Therefore your request is denied.”

Corrections officials violated the state Constitution’s provision that no person shall be deprived of the

right to worship and the New Jersey Law Against Discrimination’s ban on discrimination in public accommodations. The state cannot impose its or anyone else’s views on what it means to belong to a particular religion.

When the ACLU-NJ notified Middlesex County that it would take legal action, MCACC reversed its decision and honored Feldheim’s request.

Somerset County Agency Allows Muslim Men to Attend Services

Every Friday, Ayman Ramadan left a daily skills class at the Somerset County Board of Social Services one hour early to attend weekly prayer service.

Over 10 years, Ramadan, a devout Muslim, had only missed Jumah service three times. But in April, the agency abruptly changed its policy, informing Ramadan and other Muslims that if they left early to attend religious services, they would be removed from the program.

The 9 a.m.-to-2 p.m. skills workshop was a requirement for individuals receiving public assistance from the county.

Ramadan turned to the ACLU-NJ, which informed the agency’s attorney on April 26 that while the ACLU-NJ preferred to settle amicably, we were ready to file suit. Two days later, the attorney said the men could attend services without risking removal.

Vernon Township to ACLU: We’re Sorry

The Vernon Township Council apologized to the ACLU-NJ in late March for stifling public participation during an October 2010 meeting.

The dispute began when Vernon Mayor Sally Rinker repeatedly interrupted township resident Michael Furrey during a portion of a meeting set aside for public comments. When Furrey asked about a proposed change in governance, Rinker said she would not allow his “politicking” on the issue so close to an election.

Furrey contacted ACLU-NJ Open Governance Project Attorney Bobby Conner, who sent a letter notifying township officials that silencing Furrey had violated the state’s Open Public Meetings Act (OPMA). Vernon Township responded, but failed to apologize to Furrey and to bring its township code in line with OPMA as requested.

On March 15 Conner sent a letter stating, “Actions taken to obstruct access to public records and meetings put the Township at great risk for lawsuits. And while we would ordinarily file suit...Mr. Furrey insisted from the beginning that we work with the township in an attempt to resolve this matter outside of court — because, as he puts it, it’s in the best interest of Vernon residents. We too believe it is in the best interest of the township.”

Two weeks later, Vernon Township apologized and said it would change its ordinance to comply with OPMA.

ACLU News from Around the Nation

Arkansas Court Strikes Down Ban Against Unmarried Cohabiting Couples from Adopting

LITTLE ROCK, ARK. — The Arkansas Supreme Court declared unconstitutional a law banning unmarried couples living together in a sexual relationship, including same-sex relationships, from serving as adoptive or foster parents. The ACLU of Arkansas filed suit against the ban in December 2008 on behalf of children, parents and couples harmed by the law, known as Act 1.

“The state admitted good families would be banned by this law and that we have a critical shortage of homes,” said Rita Sklar, executive director of the ACLU of Arkansas.

The court’s ruling affirmed an earlier ruling by a lower court that Act 1 violates the Arkansas Constitution’s guarantee of a right to privacy.

ACLU Tells Supreme Court That Wal-Mart Sex Discrimination Case Should Go Forward

WASHINGTON, D.C. — The ACLU filed a friend-of-the-court brief with the U.S. Supreme Court March 1 supporting a class action lawsuit filed against Wal-Mart for systemic discrimination against the company’s female employees at stores across the country.

The lawsuit detailed testimony from women who were told that men deserve promotions and higher pay because they have families to support, while women were just working to make “extra money.” The stores also confined them to departments such as cosmetics and women’s clothing, denying women jobs in hardware, meat-cutting and firearms.

The ACLU’s brief argues that a class action lawsuit is necessary because many of the employees affected would not have the ability or resources to bring such a lawsuit individually and would have reason to fear retaliation if they proceeded alone in challenging the company.

ACLU Files Lawsuit Against Alabama Department of Corrections for Segregating Prisoners with HIV

MONTGOMERY, AL — The ACLU of Alabama filed a federal class action lawsuit March 28 charging that the state’s practice of separating prisoners with HIV from the rest of the prison population is discriminatory. The Alabama Department of Corrections (ADOC) has required all men with HIV to wear white armbands signifying their assignment to the HIV living area, forcing them to publicly disclose their status in violation of medical ethics and international human rights law.

The segregation denies all HIV-positive prisoners access to rehabilitative and community re-entry programs, which may result in their serving longer sentences.

“There is absolutely no legitimate justification for segregating prisoners with HIV from the general prison population,” said Margaret Winter, associate director of the ACLU National Prison Project.

Alabama and South Carolina are the only two states in the nation that continue to segregate inmates with HIV in separate, specially designated housing units.

Rallying Around Our Nation’s Health

On April 7, about 50 people from New Jersey — members of the ACLU, Planned Parenthood, NARAL and the Council of Jewish Women, among others — traveled to Washington, D.C. to fight congressional proposals to eliminate Title X (the nation’s family planning program), defund Planned Parenthood and deny patients abortions even when it could save their lives. ACLU-NJ Communications Specialist Allison Peltzman was among the participants.

This is her first-person account of how the day unfolded:

5:30 a.m.

ACLU-NJ Executive Director Deborah Jacobs dropped me off at the Brookdale Service Area in Bloomfield, where a bus chartered by Planned Parenthood was ready to transport women from the ACLU, Planned Parenthood, and Council of Jewish Women to Washington, D.C. and back.

11 a.m.

After the buses pulled into Union Station, the mostly female delegation walked about a half mile to the National Mall amid a sea of Planned Parenthood pink, while “Born to Run” blasted through outdoor speakers. Men and women from all generations and dozens of states waved protest signs urging people to “stand up for women’s health.”

A stream of politicians, activists, patients and actors took the stage, including New Jersey Senator Frank Lautenberg.

“I don’t want to tell you how old I am, but I enlisted in World War II to make sure Americans stay free, and we’re going to continue that,” Lautenberg boomed.

1 p.m.

Some of us left the rally for appointments in Capitol Hill offices. About a dozen activists of all ages gathered in one of Senator Robert Menedez’s conference rooms to speak with a legislative aide about reproductive issues. One woman recalled her experiences at the very beginning of the fight against attacks on Roe v. Wade. She had rallied with her small children in tow in 1976 to protest the Hyde Amendment, which prohibited federal funds from paying for abortions.

8 p.m.

After spending the entire day standing for our belief in choice and standing for those who couldn’t make it down, we arrived back to the Garden State, exhausted but rewarded.



Thousands of people — young and old — descended upon Washington, D.C. on April 7 to stand up for women’s health and reproductive rights.

A Prayer for our Government Officials to Respect Every Religion

BY THE REV. BRUCE DAVIDSON



Voters Demand Same-Day Registration in NJ Elections

Despite advances in technology, state still maintains an obsolete 21-day deadline

Gabriela Grzybowski registered to vote through a campus registration drive at Rutgers University, but when she showed up at the polls for the 2009 election, her name did not appear in the rolls. Poll workers denied her a provisional ballot, which would have registered her for the next election, even if it didn't go through for that one. She left, crushed to have missed the election.

In 2010, eager to cast a vote in an important local election, the Rutgers student found herself unable to vote again. She realized she had registered after the 21-day deadline before an election, even though she was eligible to vote in every other way.

Grzybowski's experience happens to thousands of people in New Jersey each year, but the ACLU-NJ, along with co-counsel at the Rutgers Constitutional Law Clinic and New Jersey Appleseed Public Interest Law Center, aim to change that. The organizations filed a lawsuit against Middlesex County Board of Elections demanding Election Day registration in the state of New Jersey. Other states that have adopted it have increased voter turnout.

"Two of the main culprits in denying people their right to vote — citizens not receiving provisional ballots or not having those ballots counted — would be problems of the past," said ACLU-NJ Legal Director Ed Barocas.

The state has relied on the 21-day registration because it needed time to verify voters' identities. But New Jersey's electronic voter databases have been modernized in accordance with the Help America Vote Act and can now rapidly verify voters' information for elections, rendering the 21-day registration deadline obsolete. The current regulations are incompatible with modern political campaigning, which targets voters most heavily in the week before an election, when voter interest peaks.

New Jersey's overly strict registration regulations disproportionately deny the right to vote to young adults, who move more frequently than older adults.

"Our generation gets an unfair reputation for not being engaged in the political process, but when I look around, that's just not what I see," said Matt Cordeiro, Vice President of the Rutgers Student Association, a lead plaintiff in the lawsuit. "I see students desperate to have a say in their democracy, but when they come up against hurdles every step of the way, they question whether the system is functional enough for their vote to count."

To read the complaint, visit www.aclu-nj.org. [ACLU](#)



Rutgers University student Gabriela Grzybowski is one of thousands of New Jersey voters who were disenfranchised because of an obsolete 21-day deadline for voter registration.

After years of the Point Pleasant Beach Borough Council opening its meetings with the Lord's Prayer and the sign of the cross, a resident sued in September 2010 to stop the practice. A few months later in December 2010, a judge halted a borough policy that allowed members of the council to recite prayers on a rotating basis, setting off public debate in the community and beyond. Point Pleasant Beach Mayor Vincent Barrella asked why the New Jersey State Legislature could still open its session with divine appeals while his local government could not.

The explanation is actually simple. The court ruling did not ban prayer at the Point Pleasant Beach Borough Council. It banned the body's exclusive use of prayers from only one faith. Like Congress, the state legislature begins and ends sessions with prayers. However, unlike the sectarian pattern of prayer the court ruled against, the legislature's prayers reflect the diversity of the state.

As a pastor in the Lutheran Church, I have led prayers at legislative sessions. As director of the Lutheran Office of Governmental Ministry in New Jersey, I heard invocations from ministers, priests and nuns of Christian faith; rabbis from the Jewish tradition; imams from the Muslim community; Hindus; Jainists; and other religious leaders who respected the wide variety of religious and secular beliefs held by those in the legislature and the galleries.

At their best, public prayers should speak to the humanity we share and allow people to collect their thoughts. However, at their worst, they promote the idea that one religion (or any religion at all) gets it right all the time. Individuals may view only their beliefs as correct, but government bodies cannot endorse one religion over others in official public duties. In a government "of the people, by the people,

and for the people," one faith cannot stand in for the beliefs of all.

I learned the Lord's Prayer as "the supreme act of adoration and petition." Jesus did not intend this act of devotion to become a source of anger and alienation. Neither our church nor Jesus deems it the only way to approach God. Christians in this country are free to pray in accordance with our understanding of God, but as Americans, we should also observe the long national tradition of respecting the faiths of others. The court's decision in Point Pleasant Beach was not an attack on Christian faith, but an affirmation of the equal value our Constitution grants every religion.

To end the divisiveness the prayer dispute has caused at meetings, the mayor and borough council would do well to adopt an invocation calling residents to reflect independently on their own beliefs. In the long term, respecting and protecting the religious liberty of us all allows us to unite in our differences. [ACLU](#)

The Rev. Bruce Davidson, of Stockton, is the former director of the Lutheran Office of Governmental Ministry in New Jersey and a former member of the ACLU-NJ Board of Trustees.



Teen Pulled from Bus and Handcuffed

Continued from page 1

rows away, stopped recording. She refused to turn off her phone in case someone needed to reach her, especially since she was running late.

That wasn't good enough. The officer grabbed Fitchette by the arm and pulled her off the bus, saying, "Kids today think they can do whatever they want." The police left the man who fell from his seat behind.

They handcuffed her and deleted the video from her cellphone, ignoring her pleas to call her mother. They took her to a juvenile detention facility, where they tried to charge her with obstructing justice. With her backpack and identification still on the bus, she couldn't prove that she was a minor, so the police threatened to charge her as an adult.

Fitchette began to cry and begged again to see her mother.

"I was scared. I was a junior and about to apply to college. I didn't want a criminal record that I didn't deserve to hold me back from applying," she said.

When the officers realized they couldn't charge her with anything, they brought her to her mother's workplace. Her mother, Kameelah Phillips, was angry at her daughter initially, before she learned the police had misled her about what happened. When she realized her daughter was mistreated and denied her constitutional rights, she decided to take action. She wanted to make sure that no one else would go through what her daughter had.

Soon after, one of Fitchette's friends attended a "Know Your Rights" workshop held by the ACLU-NJ and told the organization's representatives about Fitchette's fateful bus trip. Fitchette's family then met with lawyers from the ACLU-NJ.

Meanwhile Fitchette still has her sights set on the future. The high school senior, who has been accepted by number of prestigious schools, is considering a career in law.

To read the complaint, visit www.aclu-nj.org. [ACLU](#)

CAPTURED CAMERAS: A GROWING EPIDEMIC

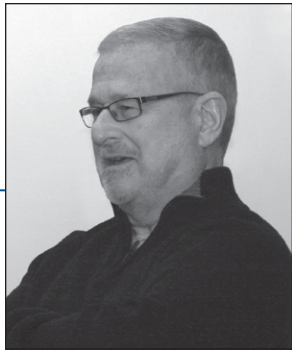
Khaliah Fitchette's case is not an isolated incident. The ACLU has challenged illegal police confiscations of cameras, a problem growing more prevalent across the country, including in New Jersey. In 2008, the ACLU-NJ filed a lawsuit on behalf of Roberto Lima, editor of the Brazilian Voice newspaper, who had been arrested and held in custody by Newark Police officers until he relinquished photos taken by his publication of a dead body in an alley. The ACLU-NJ also supported a CBS News camera man who was taken into custody for taking video of an anti-violence rally.

Under the First Amendment, people have the right to receive, gather and record information in a lawful manner. The Newark Police

violated Fitchette's freedom of expression by ordering her to stop video recording public events on a public bus, seizing the phone and then deleting it.

The Newark Police also violated the rights guaranteed under the Fourth Amendment of the U.S. Constitution, which guarantees the right to be free from unreasonable search and seizure. The police arrested Fitchette without probable cause, a warrant or any other lawful basis for an arrest. By unlawfully detaining her for more than an hour against her will and taking her to various points across the City of Newark, the officers falsely arrested and imprisoned Fitchette. [ACLU](#)

Faces of Liberty: Sanford “Sandy” Luger



The ACLU-NJ mourns the recent loss of Sanford “Sandy” Luger, whose intelligence, kindness, and sense of humor will be sorely missed. He died on April 13 at age 74.

As a short, pudgy, Jewish boy growing up on the wrong side of the tracks in Newark and Perth Amboy, Sandy Luger learned how to defend himself — with fists and with words. Those lessons taught him more than just how to stand up for himself; they sowed the seeds for a lifelong gift of standing up for others.

Sandy’s parents, immigrants who fled the Holocaust, worked hard, yet made time for causes they believed in. His mother was a street warden in local politics and his father was a dedicated union member. Sandy was the first in his family to go to college, graduating with a degree in pharmacy. He started out running his own drugstore, but wanted his impact to extend further past the counter and eventually became a health care advocate. He oversaw New Jersey’s Medicaid program, ensuring that people in the state received the durable medical equipment — like wheelchairs and hospital beds — that allowed them to address their fundamental physical needs. Sandy and his brother were the first in their family to go to college, and Sandy graduated with a degree in pharmacy.

But the memory of his youth always stayed with him, often surfacing in the form of a question he asked himself whenever he considered a cause: “Is it good for children?”

That philosophy led him to contribute generously to improve the lives of the next generation, through the American Civil Liberties Union, The Diaper Bank (started by his daughter in law Joanne) and the International Center for Photography, especially in its efforts to educate new photographers in photojournalism and war reporting.

Sandy was most passionate about the First Amendment and privacy, in part because his career showed him the importance of medical confidentiality. He served as an active member of the ACLU-NJ’s privacy committee, helping with research and strategies to promote individual privacy rights.

“He was always pragmatic,” said Ellen Samuel, his wife of nearly 25 years and former ACLU-NJ board president. “He cared about the issues in terms of how people really live.”

As a skilled photographer and an advocate, he saw the world through different lenses, with genuine compassion for people and empathy. [ACLU](#)

Tributes

In memory of Puneet Bhandari

Narendra C. Bhandari

In memory of Leah Lerner

Michael Rappeport

In honor of Steve Latimer and

Michaelene Loughlin

Frank Askin

Vivodh Anand

Laura Locklin

Jane Herchenroder

In memory of Sandy Luger

Lenore Toner

Ed and Nicki Kessler

In memory of Margarete Meyers

Women’s Alliance of CUC

Joan Field

In honor of Sharon Cadalzo

Gerald F. O’Sullivan

In honor of Rev. Bruce Davidson

Gary Nissenbaum

Tributes are contributions made to honor or remember special friends, family, colleagues and occasions.

To have your tribute appear in the *Civil Liberties Reporter*, please contact the ACLU-NJ office at: 973-642-2086 or P.O. Box 32159, Newark, NJ 07102.

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