



## NEWARK REPORT CARD

NAME: Mayor Cory Booker

DATE: July 2009

SUBJECT	GRADE
<i>Immigrant Rights</i>	<i>B</i>
<i>Open Government</i>	<i>B</i>
<i>Free Speech</i>	<i>C-</i>
<i>Police Practices</i>	<i>D</i>

OVERALL GRADE: *C*

JULY 2009

# Civil Liberties in Brick City

Junior-Year Report Card for Booker Administration Earns a “C” Average

**T**hree years into the Administration of Newark Mayor Cory Booker, the ACLU-NJ has assessed whether the Mayor has realized his promises of respect for individual rights in Newark.

**SUBJECT:** Immigrant Rights      **GRADE:** B

Newark is home to immigrants of every legal status, and the Mayor has not ignored this fact. The Mayor has shown that he recognizes the rights of immigrants and wants to defuse tension between different communities in Newark. He has boldly spoken out against discrimination based on immigration status. He demonstrated exceptional grace in discouraging anti-immigrant sentiments or actions following the August 2007 murders of three college students at Mount Vernon Elementary School.

The City also deserves praise for working closely with advocates to fairly address issues relating to day laborers who gather in the Ironbound to wait for contractors to pick them up for jobs.

The Booker Administration upheld an Attorney General directive that prohibits local police from asking crime victims or witnesses about immigration status. The Newark Police Department swiftly disciplined a Deputy Chief who asked a crime witness about his immigration status. While the disciplinary action was appropriate, we have to wonder why NPD personnel weren't sufficiently trained on the well-publicized directive, and why the Deputy Chief who violated the directive was concerned with the witness's immigration status. (Ironically, the witness was well known to many NPD officers, having received a NPD “Citizen of the Year” award several years prior for helping solve crimes).

We have felt frustration when the City has taken positions antithetical to the Mayor's stated policy. For example, in one lawsuit against the city, Newark attorneys insisted that they had the right to ask a witness about his immigration status during a deposition, contrary to the spirit of the Attorney General's directive and the Mayor's stated policies.

**SUBJECT:** Free Speech

**GRADE:** C-

For nearly seven years on and off, the ACLU-NJ has been forced to sue and negotiate with the City for its practices in granting permits for free speech activities. The problems have stemmed from the City's attempt to require people who engage in free speech activities to carry liability insurance — a policy that originated with the James Administration and has remained a problem throughout the Booker Administration. We have won lawsuits, rewritten the City's policies and dutifully alerted Corporation Counsel to ongoing problems encountered by citizens — from the People's Organization for Progress to labor groups, to immigrants' rights organizers to domestic violence victims' advocates — whom City employees have informed that they need liability insurance to hold a protest or demonstrations (some as recently as this spring). While City authorities have acknowledged that our stance is correct, they have not adequately trained the front-line City Hall staff to properly implement the law. Further, when the City passed an ordinance that removed the insurance requirement, the ordinance imposed other impermissible constitutional restrictions on speech. After the City's attorneys worked with the ACLU-NJ to create a new ordinance, it has still taken months for the City to put the ordinance up for a vote. To the best of our knowledge, it appears that the unconstitutional ordinance is still on the books and has not been replaced. As a consequence, many groups have faced unlawful roadblocks, including improperly denied or delayed permits.

Also, the Newark Police Department improperly obtained information on an officer who posted his opinions online, and then improperly disciplined him for so doing (see *Wohlman v. Newark* below). The case was settled for approximately \$150,000, presenting an expense not only for free speech, but for Newark taxpayers.

**SUBJECT:** Police Practices

**GRADE:** D

Both Mayor Booker and his appointed Police Director Garry McCarthy promised the ACLU-NJ that they would reform the city's police practices. However, we have not seen significant improvement. The ACLU-NJ has been involved with an unprecedented number of lawsuits over police practices with the city including:

- **Pop Warner 3:** The case of two Pop Warner football players and their coach, who were treated abusively and unlawfully searched by Newark Police.
- **Lima v. Newark:** The case of *Brazilian Voice* publisher Roberto Lima, who was unlawfully handcuffed and detained by police until he agreed to relinquish photos his staff took of a crime scene. Lima had already offered to provide the police with the originals of the photos, but the police refused to allow him to keep any copies, in violation of freedom of the press.

- ***State v. Moore***: The case of a woman harassed by two Newark Police officers in May 2009, after the officers took an inappropriate interest in her gender. After arresting her for no reason, the police threatened retaliation if she attempted to file a complaint with internal affairs. Having successfully defended Moore against trumped-up municipal charges, the ACLU-NJ is now preparing a lawsuit against the Newark Police for violating Moore's civil rights.
- ***Wohltman v. Newark***: The case of Newark Police Officer Lou Wohltman, who was unreasonably punished for posting his opinions online about issues concerning public safety in Newark. In this case, the City spent taxpayer dollars to hire outside counsel to oppose the ACLU-NJ's submission of a "friend of the court" brief in support of the public employee's free speech rights.

The Lima case raises both a freedom of the press and police practices issue, as did an incident in October 2008 in which a Newark Special Police Officer stationed outside of a church grabbed the camera of a CBS cameraman and took him into custody for being a disorderly person because he refused to stop videotaping a peaceful demonstration outside the church. Although Mayor Booker spoke out forcefully against the officer's actions when asked by the press, the City Prosecutor still pursued charges against the cameraman, which were dismissed only after the Essex County Assignment Judge removed the case from Newark's jurisdiction.

Although we disagreed with the City's decision to install surveillance cameras, we appreciate that it sought our input in developing a strong standard operating procedure to govern use of the cameras including protections against violations of citizen privacy, free expression or religious exercise rights.

Unfortunately, one of the weakest areas for NPD is one that the Mayor and Police Director have repeatedly identified as a top priority — internal affairs.

We have serious concerns about accessibility, thoroughness of investigations, language access and case tracking by NPD internal affairs. In addition to having two cases in which NPD internal affairs mishandled our clients' complaints, we continue to receive reports from citizens who encounter problems or intimidation when trying to file complaints. We also hear from police officers who allege disparate treatment in discipline of officers. We have urged the establishment of a Discipline Matrix that will provide for consistency in punishment of officers.

The Director and his top deputies cannot account for serious discrepancies and dropped cases in the official, publicly released Internal Affairs statistics submitted to the county and state. Nor have they provided any other accounting of internal affairs cases. Nevertheless,

they have publicly touted drops in complaints, but those statistics are meaningless given the department's unreliable accounting of past years' complaints as well as an inaccessible system.

On the plus side, the City did, at our urging, finally release information publicly about how to file a complaint with Internal Affairs on the Newark Police website. It has also agreed to take additional steps to educate members of the public about their rights, but progress has been slow. The Police Department has also taken the positive step of designating individuals as the go-to recipients of Internal Affairs complaints in each precinct.

**SUBJECT:** *Open Government*      **GRADE:** *B*

In 2007, the City took action on two concerns we raised concerning open government. First, they rescinded a policy that required people to pay for copies of public documents with a cashier's check rather than cash. Second, they agreed not to require Corporation Counsel to review every single Open Public Records Act request received. They also reorganized to ensure that every department had a designated open government request liaison to the clerk's office, as it often takes time for the clerk's office to retrieve files from the departments.

We frequently send Open Public Records Act requests to the City and we have generally experienced good communication with the City Clerk's office concerning public records. That responsiveness may or may not be typical, as we may benefit from name recognition and ongoing relationships in getting responses. We had a serious struggle only when we asked for the bills paid by the city to an outside law firm hired to defend the city in *Wohltman v. Newark* (see above). It took literally months of bird-dogging to get the right documents.

**OVERALL GRADE:** C

We appreciate and commend the Mayor's expressed support for many civil liberties issues, even when facing public opposition. However, we don't see that his messages and professed policies trickle down to the people implementing them. Bottom line: The talk isn't walking. We need the Mayor to prioritize civil liberties in actions as well as words, and ensure that his policies and the spirit of respect for civil liberties are realized in City Hall. Otherwise, he is not living up to his promises or to his potential.

We recognize that the Booker Administration has focused much of its work on reducing crime, revitalizing the city's economy and developing social service programs to help people improve their lives, and all have an effect on civil liberties. We thank the Administration for those initiatives, and we will continue to work with the Mayor to ensure civil liberties have a place at the table and in our city.



American Civil Liberties Union of New Jersey  
P.O. Box 32159, Newark, NJ 07102  
973-642-2086  
info@aclu-nj.org  
www.aclu-nj.org