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PREGNANCY DISCRIMINATION

Two Women Share Their Stories: Drug Testing Pregnant Patients Without Consent is Discrimination

BY MOLLY LINHORST, STAFF ATTORNEY

On March 8, two women represented by the ACLU of New Jersey filed complaints with the New Jersey Division on Civil Rights after they were drug tested without their knowledge upon arriving at the hospital to give birth. The filings allege that the hospitals' practice of drug testing pregnant patients violates New Jersey's Law Against Discrimination on the basis of sex and pregnancy and seeks, among other relief, that both hospitals end this unlawful practice.

Both women's tests returned positive for opiates based on their consumption of an "everything" bagel with poppy seeds the morning they went to the hospital. Based on these tests alone, the hospitals then called the New Jersey Department of Child Protection and Permanency (DCPP) to report both women for possible abuse or neglect before they even had the chance to parent their newborn children. This led to



Kaitlin K. hopes that filing this complaint will ensure no more parents have to be subjected to the discrimination she faced. BEN BOWENS PHOTOGRAPHY

an invasive, traumatic investigation of each woman's family.

In filing their complaints, Kaitlin K. and Kate L. are sending a clear message

to hospitals that these testing and reporting policies are unacceptable. They hope that no one else will be subjected to this harmful practice – and

to spread awareness, they're sharing their stories.

ML: When we first spoke about your experiences, part of your reasoning for wanting to file a complaint was your concern that this could be happening to many people, in even more hospitals across the state. What were your motivations for bringing these complaints?

KK: I'm hoping no new mother bringing home her baby ever has to share in my experience. I'll do whatever I can to prevent that. By working with ACLU-NJ to make this complaint, I'm hopeful that we can achieve policy change, not only at my hospital, but at hospitals across New Jersey.

Shortly after my son was born, I stumbled upon an ACLU article from a different state where a similar situation happened. I immediately reached out for help because I felt so alone, and I was desperate to find someone

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RACIAL JUSTICE

Ending the Drug War in New Jersey to Build a Brighter Tomorrow

BY AMI KACHALIA, CAMPAIGN STRATEGIST

As we continue to monitor the implementation of cannabis legalization, we're reminded of the progress we've made in ending the drug war in New Jersey over the past few years. Though more work remains to ensure that New Jersey lives up to its promises of justice and equity in the cannabis space, the progress we've seen since legalizing and decriminalizing marijuana in a way that prioritizes racial and social justice has proven what we at the ACLU-NJ have

always known: transformative change is possible, and it is the springboard to implement even more comprehensive reforms going forward.

There is still a far way to go to achieve our affirmative vision for the future. We're calling for the removal of all criminal and civil penalties related to drug use because New Jersey has an obligation to end the drug war policies that have long harmed New Jerseyans and replace them with forward-thinking, evidence-based solutions that advance public health and racial justice.

The drug war has devastated communities since the 1800s and has always promoted white supremacy.

The drug war is a series of laws and policies that criminalize people for using or selling drugs. The first punitive drug laws were created in the late 1800s to target Chinese immigrants, and similar laws followed that targeted Mexican Americans and migrants and Black Americans. The very root of drug policies in this country have always been about targeting communities of color and using criminalization as a tool to systematically deny people their rights and access to opportunity. Since its inception, the drug war has promoted white supremacy.

The modern-day drug war, launched in 1971 under President Nixon to similarly target civil rights and anti-war activists and expanded throughout the 1980s and 1990s, has infused funding into the criminal legal system at devastating costs – expanded access to military equipment for police departments, increased resources for prosecutors, and the rise of mass incarceration across the country. Policies targeting people for drug use and sale have played out the way

nearly every policy in our criminal legal system has – they have disproportionately harmed Black and brown people.

In New Jersey, Black people are 3.3 times more likely to be arrested for a drug war violation than white people, despite similar rates of use. In a state that already has the nation's worst racial disparities in its prisons, New Jersey incarcerates Black residents at a rate 12.5 times higher than white residents – and policies that disproportionately target Black communities only exacerbate already alarming disparities. Removing criminal and civil penalties for drugs must include ending unnecessary arrests, racial disparities, and the consequences they bring – the impact of arrests and convictions reverberate throughout people's entire lifetimes and create barriers to opportunity in housing, education, employment, immigration, and more.

Drug war enforcement also comes at a massive financial cost. In 2019 alone, New Jersey's spending on drug war enforcement was 8.5 times higher than its investment in addiction services and 27.9 times higher than its investment in rental

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PHOTO CREDIT: CHRISTOPHER LOPEZ

POLICE ACCOUNTABILITY

Najee Seabrooks Should Be Alive Today

BY JIM SULLIVAN, DEPUTY POLICY DIRECTOR

Najee Seabrooks was experiencing a mental health crisis when he called the police for help. The Paterson Healing Collective – a community violence intervention group that Mr. Seabrooks worked at and dedicated his life to – arrived at the scene and pleaded with the Paterson Police Department (PPD) to let the Collective do what they do best: de-escalate and save lives. He deserved care from members of the Collective and mental health professionals. Instead, he was shot and killed by police. He should be alive today.

Tragically, the way PPD mishandled Mr. Seabrooks’ mental health crisis and then killed him isn’t an isolated incident. It’s yet another example of widespread, systemic, and unmistakable mismanagement and violence. Nearly 25% of Paterson’s residents are Black, yet they account for 49% of arrests and 43% of people killed by police. Between 2015 and 2019, Paterson had more excessive force complaints than Jersey City and Newark, cities that are twice its size. The PPD’s Internal Affairs Division was even under the oversight of the Passaic County Prosecutor’s Office (PCPO) – but it’s clear that PPD has not improved.

The Paterson community – and all New Jerseyans – deserve better. That’s why the ACLU-NJ and our partners have called for federal intervention, transparency, and legislative action.

PPD’s history of impunity calls for federal intervention.

Police officers must be held accountable. Too often, we see racist policing go unpunished as a result of a criminal legal system built upon white supremacy. And despite years of oversight by the PCPO, PPD’s unconstitutional behavior persists. The ACLU-NJ joined 48 New Jersey groups to send a

letter to the U.S. Department of Justice calling for a federal investigation of PPD’s pattern of misconduct that continues to deprive the Paterson community of their civil rights.

Ensuring that the PPD is held accountable is just part of what Najee Seabrooks’ family and the Paterson community need and deserve. There is much more to be done. We must reimagine policing by enacting laws to check officers’ power, hold law enforcement accountable to the people they are meant to serve, make policing practices transparent to all communities, and invest in non-law enforcement alternatives to public safety.

Transparency and accountability of police power are two sides of the same coin.

In 2020, the New Jersey Attorney General’s Office issued a directive to improve police interactions with people with special needs and people with mental illness. More than two years later, the PCPO has refused to publicly release information on the county’s implementation of the directive. The ACLU-NJ wrote a letter on behalf of the Paterson Healing Collective and other community members requesting access to these records, arguing that the PCPO is obligated by law to share information on the implementation of the directive.

But building a systemic culture of accountability will only be possible if police disciplinary records are made public – it is the only way to identify police officers with histories of violent or racist conduct. New Jersey lags behind many other states that

do not keep police disciplinary records hidden from the public. Shielding officers and their conduct is just one part of what is broken within a larger system that necessitates change from top to bottom.

Lawmakers must honor their promises for New Jersey to build systemic change.

New Jersey’s injustices in policing are deeply systemic and require wholesale shifts in practice and culture of law enforcement. To move toward a more just New Jersey, lawmakers must begin by enacting policies that reflect the urgency of reducing the outsized power of police.

For years, the ACLU-NJ and our community partners have demanded action on a set of bills that will increase accountability of police and begin to put power

in communities, including providing public access to disciplinary records, creating civilian complaint review boards that have subpoena authority, and ending qualified immunity.

New Jersey lawmakers pledged action after the murder of George Floyd. Since, we’ve seen continued violence against Black and brown communities at the hands of New Jersey law enforcement. Elected officials must honor their repeated promises to protect Black lives and take meaningful action.

Together, we can go beyond reforms, hold police accountable, and reinvest in community-based, life-affirming public safety programs and solutions. New Jersey communities deserve tools to hold police accountable – join us in urging your lawmakers to reimagine policing. We won’t stop fighting for it. ■



PHOTO OF NAJEE SEABROOKS COURTESY OF THE PATERSON HEALING COLLECTIVE

PURSuing JUSTICE

Placing Power in People, Not Police, Through Integrated Advocacy



BY AMOL SINHA, EXECUTIVE DIRECTOR

When the ACLU of New Jersey first called for a licensure scheme for police officers in our state nearly two decades ago, we were proud to be in the vanguard of advocates who were already in the throes of a now-mainstream national reckoning: reimagining what accountable policing could and should look like in our communities.

It took the New Jersey Legislature nearly 20 years to agree when the corresponding bill was finally passed and signed into law in 2022.

In that time, more than 7,000 people across the country have been shot and killed by police.

And in that time, we have continually urged lawmakers to avoid the same mistake in delaying action that will increase accountability and transparency of policing.

Each day, we leverage every tool we have to push for a fair and equitable New Jersey. We

call this *integrated advocacy*, an approach that utilizes litigation, political and legislative advocacy, community organizing, public education, and strategic communications to achieve our transformative vision for the future. In our work to hold police accountable, we’ve used these tools to call for police disciplinary records to be made public; for an end to unjust stops and searches by police; for communities to play an active role in oversight of law enforcement through civilian review boards; for the restriction of officers’ authority to use deadly force; and for the abolishment of qualified immunity, a legal principle that makes it nearly impossible to hold police accountable for misconduct.

We partner with community advocates throughout the state through New Jersey Communities for Accountable Policing, a unified voice that puts impacted New Jerseyans at the forefront.

And when inaction from those in power comes at a tragic, preventable human cost, we call for the accountability that the community needs.

Most recently, on March 3 in Paterson, Najee Seabrooks was experiencing a mental health crisis when he called the police. His colleagues from the Paterson Healing Collective (PHC) – a community violence intervention group – pleaded with officers to let them support Najee. He deserved care from mental health professionals. Instead, he was shot and killed by police.

Mr. Seabrooks should be alive today. Unified calls for action from the Paterson community, the ACLU-NJ, and

partner advocates around the state are what pushed the New Jersey Attorney General to initiate a formal takeover of the Paterson Police Department, which is a drastic but necessary step in response to officers who have lost community trust for decades.

But we know the Paterson community, and all New Jerseyans, deserve more. We’ve joined the local calls for a federal investigation by the Department of Justice. We’re working with community groups in Paterson to help advise during the AG’s investigation. We’ve filed public records requests on behalf of the PHC to learn about the ways in which the Passaic County Prosecutor’s Office has implemented an AG directive intended to improve how police handle interactions with people with special needs or mental illness. And we’ve called for federal and state investigations into other instances of police misconduct in Paterson, including a recent incident when officers brutalized teenagers who were recording police activity.

Protecting and expanding civil rights and civil liberties for all is what the ACLU does best. We challenge authority directly. We embrace action and protest. We organize against power. We advance landmark cases through the courts and make arguments about correcting injustice and our vision for the future.

We’ve seen our integrated advocacy approach shift popular opinion, push our communities toward progress, and mobilize the public and stakeholders alike

to achieve change that has powered our movement for generations and continues to ground our work today.

Our legal docket at the New Jersey Supreme Court has proven that both incremental and transformative change are possible through the courts.

But even our most tried and true strategies – litigation, political and legislative advocacy, community organizing, public education, and strategic communications, to name just a few – are often met with resistance from lawmakers who too often prioritize law enforcement and other state power over people.

For New Jersey to achieve wholesale change in law enforcement – and address the stark racial disparities that continue to perpetuate violence against Black and brown communities – lawmakers must come to the table with the intention to represent the needs of their constituents.

New Jersey has proven it can be a national leader in pioneering a future that is fairer and more just. We can be fearless and lean into our values of justice for all and reimagine policing as we know it. It’s past time for lawmakers to put power in people, not police. Until lawmakers act, more Black lives are put at risk and our communities are left to pay an immeasurable price.

With each passing day of silence, legislators’ ties to the police lobby only grow louder. Soon, it will be a deafening roar on the mind of every New Jerseyan casting their ballot. ■

REPRODUCTIVE FREEDOM

Raising the Bar: Defending Access to Abortion in New Jersey

BY JEANNE LOCICERO, LEGAL DIRECTOR

When the U.S. Supreme Court issued its devastating ruling in *Dobbs v. Jackson Women's Health Organization* that eliminated federal constitutional protections for abortion rights, it emboldened anti-abortion politicians across the country to strip access to abortion from millions of people. And then just days after the midterm elections in which voters overwhelmingly demonstrated support for abortion rights, several anti-abortion groups sued the U.S. Food and Drug Administration over its approval of mifepristone, one of the two drugs used in medication abortion, which accounts for more than half of all abortions in the U.S.

These assaults on the rights of people to make health care decisions are not going to stop – they are the result of a decades-long, coordinated effort, rooted in control, misogyny, and racist policies, to strip away bodily autonomy and to further marginalize the already vulnerable.

To discuss the impact of abortion restrictions and the future of reproductive health care in our state and across the country, I had the privilege of joining longtime advocacy partners at Raising the Bar, a virtual event on defending access to abortion in New Jersey hosted by the ACLU-NJ on May 23. Our panelists included:

- Dr. Kristyn Brandi, Darney-Landy Fellow, Strategies for Health Equity and OB/GYN Physician.
- Lauren Johnson, Director of the ACLU Abortion Criminal Defense Initiative.
- Kimberly Mutcherson, Co-Dean and Professor of Law, Rutgers Law School.
- Catherine Weiss, Partner & Chair of the Lowenstein Center for the Public Interest, Lowenstein Sandler.

Since our founding over a hundred years ago, the ACLU has been an essential part of the fabric of American life, and advocating for reproductive autonomy has been an integral part of our work. Whether it was defending the distribution of birth control literature in the 1920s or being a part of the team of litigators on cases that secured abortion rights in the 60s and 70s, fighting for abortion access has been a part of our DNA – and we aren't going to stop.

Be sure to watch the full event and join us in our fight to expand abortion access for all at aclu-nj.org. ■



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Pregnancy Case

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to help advocate for me. I'm sure anyone who has been pregnant or has given birth understands the exhaustion and the emotional toll on your body – it was a very difficult time. Having someone to speak to who not only believed me, but shared in my frustration for this situation meant the world to me. Speaking to the ACLU-NJ and realizing how big of an issue this is, it was clear that something was horribly wrong, and I knew I had to do something about it.

What I went through changed my life drastically and will keep affecting me for a long time, so I want people to be aware that hospitals are doing this, and I want to make sure hospitals get rid of these testing and reporting policies. At the very least, I want to help anyone else going through this also feel a little less alone.

ML: I cannot imagine going to a hospital in labor and being drug tested without my knowledge. How has this experience changed your view of medical professionals going forward?

KL: When I found out that the hospital drug tested me without my consent, I was in complete shock, especially since I learned about it a full four days after they had tested me. Like most other pregnant people, I was used to providing urine samples

during my prenatal appointments; I understood it to be a routine thing to check for proteins. I had no idea – and I assume other people would have no idea – that they might also drug test these samples.

After I got the results, I questioned everything. *Are they sure? Can we re-test? How come no one said anything?* It felt like the doctors had all been talking about me, judging me to be an unfit mother, and they wouldn't even agree to do a new test at my request.

What the hospital staff put me through after giving birth to my daughter has shaken all my faith in medical professionals. I worry that because the record of this test remains in our medical files, doctors that I see in the future, and doctors treating my child, will immediately question me as a mother. I'm terrified the system will take my baby away.

Going to the pediatrician with my child is very difficult; it's so hard for me to hand her to medical staff and trust them to tell me all the information. If my daughter is fussy or crying like any child might be, I worry that people at the doctor's office will



Kate L. hopes no new mother bringing home her baby has to share in her experience. BEN BOWENS PHOTOGRAPHY

wrongly assume I have done something wrong. And I struggle to understand how I will confidently have another child in the future when I am afraid to put my trust in doctors.

ML: The investigations that resulted from the hospitals' testing and reporting policies were deeply traumatic for you both. Could you share how facing this discrimination has affected your life?

KK: Bringing your new baby home from the hospital is supposed to be filled with happiness and joy. That's how it was with my first son. The hospital stole that from me this time. They took that beautiful moment from me, and I'll never get it back.

The fact that DCPP will hold onto their record of this for three years is what still haunts me. The thought of this situation somehow being used against me keeps me up at night.

KL: I'm terrified of ever going to a hospital again. I'm always going to worry that our family could be torn apart.

I have so many questions, and I filed my complaint in part to get answers, but mostly because I never thought this would happen to me, and now I know it can happen to anyone. I don't want anyone else to have to deal with the stress and shame that I went through. ■

Ending the Drug War

Continued from page 1

assistance, homeless shelters, homelessness prevention, and lead abatement combined. It's past time for New Jersey to invest in a public health approach that supports our families and communities instead of criminalizing them at an immeasurable human cost.

Our vision for a post-drug war future prioritizes public health and racial justice.

Under drug war policies, when someone is using or selling drugs, the primary response by the state is criminalization. Yet over fifty years of data show us that criminalization does not deter drug use or drug sale and that it does not prevent overdose deaths, which are at an all-time high in New Jersey.

What the evidence does tell us is that a public health approach to drug use can keep our communities safe and healthy. Instead of continuing to criminalize people, the State can invest in the kinds of resources that help communities thrive – housing, education, access to non-coercive treatment and harm reduction resources. We must take a holistic approach when implementing comprehensive solutions in place of drug war policies. Our communities deserve to be supported without the immeasurable harm caused by decades of criminalization.

Revenue from cannabis – already promised for reinvestment in the communities most harmed by

marijuana criminalization – is an opportunity for that state to begin addressing decades of disinvestment, but only if decisions are driven by a transparent, community-led process, including public tracking of revenue spent and annual reporting on reinvestment, are incorporated into the process. With tens of millions of dollars on the table – and eventually hundreds of millions of dollars as the industry grows – each year, community members must be centered at every step of the process.

We've made progress in ending the drug war in New Jersey, but we must go further.

By decriminalizing and legalizing marijuana in 2020, New Jersey has taken a first step toward a future without drug war policies. Before decriminalization, there were over 36,000 marijuana-related arrests in New Jersey each year. For many New Jerseyans, these arrests were a gateway into the criminal legal system. As a result of decriminalization and legalization, criminal and civil penalties have been removed for possession under six ounces and new policies encouraging a public health approach to youth drug use have been implemented. And importantly, over 360,000 prior records have been expunged and policies have been created to prevent discrimination in employment and mortgage lending against those with prior marijuana use. This is a model for future actions: New Jersey must continue adopting measures that not only decriminalize, but that are also retroactive in nature. ■

TRIBUTES

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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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