

**Breaking News:**  
**NYC Health Board Hearing Held Nov 1st.**  
**Decision to Amend the "Leash Law" Now**  
**Up to the Health Board.**



Offleash Hours scenes like this one in Prospect Park currently are threatened by a lawsuit that seeks to end the successful 20-year policy of limited hour offleash recreation in certain sections of certain NYC parks. The NYC Health Board held a hearing on November 1st that ended the public comment period for the Health Department's proposed amendments to the Health Code that would likely render the pending court decision moot.



Mary McInerney, NYCdog V.P. and President of FIDO in Prospect Park speaks to the press in front of the NYC Health Department building prior to the November 1, 2006 Health Board hearings. The hearing was to solicit public comments on the proposed amendments to the Health Code known as the "Leash Law" to clarify the Parks Commissioner's authority to permit Off-Leash Hours in NYC Parks.

## Background

A brief review of what got us to this point:

- In May 2006, a small Queens civic association filed a lawsuit in State Supreme Court seeking to end the successful 20-year policy of allowing dogs off-leash during the limited hours of 9pm-closing, and opening to 9am in designated locations in NYC parks that don't have a dog run.
- On August 29, 2006 the case was heard in State Supreme Court and the judge has said he would rule in the case. Typically, rulings are issued within 12 weeks of hearing oral argument.
- In September 2006, the NYC Parks Department asked the NYC Health Department to amend Article 161.05 of the Health Code (commonly called the "Leash Law") to clarify the power of the NYC Parks Commissioner to allow dogs off the leash as per Section 1-04 of the Parks regulations ([Click here to view the Health and Parks regulations](#)). The Health Department began the amendment process by publishing their proposed amendments ([Click here to view the proposed amendments](#).)
- If the Health Board passes the proposed amendments to the "Leash Law", clarifying the power of the NYC Parks Commissioner, it will likely render any legal judgment from the State Supreme Court moot. Most likely, the judge wouldn't even

## Sign the Online Petition to Preserve the 20-year Offleash Hours Policy

Make Your Voice Heard!

### Sign the Petition:

[Click here to sign the Online Petition](#) in support of the successful 20-year Offleash Hours policy in NYC. Please only sign the online petition if you are a NYC resident and have not previously signed a paper version of this petition.

### Donate to Save Offleash Hours::

[Consider a donation](#) to the all-volunteer, non-profit [New York Council of Dog Owner Groups](#) (NYCdog), the group that has led the citizen's fight against the lawsuit seeking to end the Offleash Hours policy and is continuing work to save responsible Offleash recreation for all New Yorkers.

issue a ruling.

## Health Board Hearing

On November 1st, 2006 the NYC Health Board held a public hearing from 2pm-5pm at the Health Department at 125 Worth Street in Manhattan. The NYC Health Board is a group of public health professionals that work for the NYC Health Department who have the power to amend the City Health Code.

Prior to the 2pm hearing, the New York Council of Dog Owner Groups ([NYCdog.org](http://NYCdog.org)) held a news conference in Foley Square Park, across the street from the Health Department. TV crews and reporters from NY1, CBS, NBC, FOX, UPN, Daily News, 1010WINS, and 880 WCBS Radio attended, in addition to several other smaller news outlets. NY City Council Member Gale A. Brewer, among others, spoke at the NYCdog press conference strongly in favor of the proposed amendments. News coverage has been extensive and generally supportive of the amendments.

Inside the Health Department 2nd floor auditorium, the Health Board brought the hearing to order at exactly 2pm. Health Department Commissioner Thomas Frieden, a supporter of the amendments, attended part of the hearing. A total of 39 speakers had a maximum of 5 minutes each to present oral testimony to the four members of the Health Board in attendance. The Board also accepted comments from the public in the form of emails, letters, and faxes up until 5pm on Nov. 1st.

Thirty speakers were in favor of the proposed amendments. In general, the pro-offleash speakers could be categorized as either 1) representatives of dog owner groups, 2) public health professionals, 3) dog behavior experts, and 4) general members of the public who support the amendments.

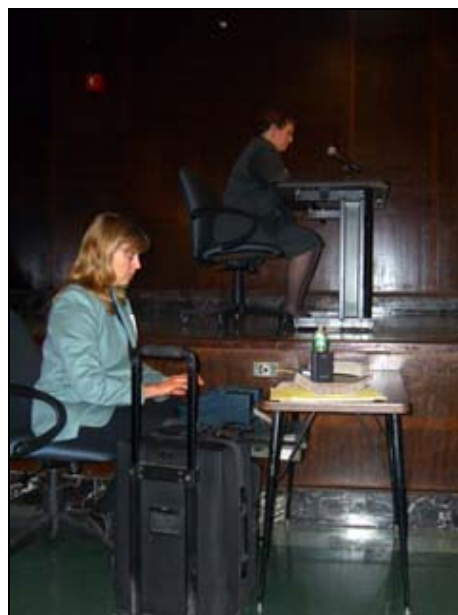
Representatives from the following organizations strongly supported the Health Department's proposed amendments: the New York City Bar Association's Committee on Legal Issues Pertaining to Animals, Friends of Animal Care and Control and the Veterinary Medical Association of New York City. Moreover, former Parks Commissioner Henry Stern spoke at the hearing. Alluding to the 9 PM to closing, and opening to 9 AM Off-leash policy that he initiated twenty years ago, Stern stated that the "allocation of space and time within the parks" for both dog-owners and non dog-owners represents "common sense".

The comments were cogent, intelligent, reasonable, accurate, at times passionate, but covered the gamut of reasons why the successful 20-year Off-leash Hours policy should be preserved and strengthened by the proposed Health Code amendments:

- Dog bite statistics are at an historic low, despite the fact that dog ownership is at a historic high level in NYC. (Prior to the off-leash policy, 40,000 bites occurred annually. Since the off-leash policy, less than 4,000 bites occur annually, and only 2.2% of them – exactly 86 – occurred in City parks in 2005).
- The presence and vigilance of dog owners provides an effective deterrent against crime in NYC parks during early morning and late evening hours.



Members of the NYC Health Board, including Health Department Commissioner Tom Frieden (on the far left), listen to speakers at the public hearing held on November 1, 2006. The Health Board's favorable ruling on the proposed amendments will strengthen and solidify the 20-year successful park Offleash Hours policy.



Terri Sullivan, NYCdog Board Member, and President of the 200-member Juniper Valley Park Dog Association in Queens gives her testimony in front of the NYC Health Board while a Health Department stenographer takes the record.



Former NYC Parks Commissioner Henry Stern provided his testimony at the Health Board hearing. Mr. Stern is the "Godfather" of the Offleash Hours policy. The policy was first promulgated under his tenure and has been

The off-leash policy generally makes parks safer for both dog-owners, and non dog-owners.

- Community bonds are strengthened by responsible dog-ownership, and friendships across all socio-economic lines are forged among dog-owners in many neighborhoods.
- Dogs are properly exercised and socialized, and as a result, are better adjusted for urban living. As many studies detail ([click here to view the studies](#)) a tired dog is a good dog, as dogs that are properly exercised and socialized are less aggressive.
- Utilizing designated park space during limited hours is necessary, since there are only 44 dog runs Citywide. More dog runs would be helpful, but, in addition to the high cost to build more dog runs, there is little space available to devote solely to dogs on a 24/7 basis.

That is why the limited hours and designated locations within City parks is necessary, and why it presents an equitable policy that is good for both the dog-owning and non dog-owning public.

Having rational, fact-based, and statistically-driven arguments from health care professionals, licensed veterinarians, licensed dog behaviorists, responsible dog owners, dog owner group spokespersons, and attorneys intimately familiar with the applicable Parks and Health regulations presented a clear and strong argument in favor of the Off-leash policy and the Health Department's proposed amendments to the Health Board.

### The Opposition

A total of nine out of thirty-nine total people spoke against the amendments. Among those most represented were board members of the Juniper Park Civic Association, the un-elected, private, rapidly dwindling and beleaguered civic organization in Middle Village, Queens. This is the same group that misguidedly brought the lawsuit to State Supreme Court in May because they misinterpreted the powers and duties of the Parks Commissioner. Perhaps they only read the Health Code, and didn't bother to read the City Charter, or the Parks Department regulations?

Prior to bringing the lawsuit, the JPCA rejected a dog run in Juniper Valley Park, which would have been the only off-leash area for dogs in the park. Instead, because the JPCA rejected both Offleash Hours and a dog run in Juniper Valley Park, they chose to initiate a costly and frivolous lawsuit against City.

NYCdog was expecting stronger arguments from the anti-amendment people. Instead, the infamous JPCA board members spent a significant amount of their allotted time haranguing the Health Board for even considering such an amendment to the Health Code. The JPCA board did their side of the debate a disservice at the Health hearing, but showed their true colors. They came across as illogical, shrill, pedantic, uncompromising, and some speakers a bit unhinged.

## Commissioners' Corner

**Strong support for the Off-leash Hours policy from three of most recent NYC Parks Commissioners.**

**[Read The Letters and Speeches](#)**

Henry Stern, [New York Civic](#)  
Betsy Gotbaum, [NYC Public Advocate](#)  
Adrian Benepe, [NYC Parks Commissioner](#)



NYCdog President Bob Marino (right) talks to Dr. Carmine Petracca, an Offleash supporter and hearing speaker, before the Health Board hearing began.



Matthew H. Parker, NYCdog Board Member and President of Friends of Hillside Dog Park in Brooklyn speaks to the press surrounded by NYCdog supporters before the start of the Health Board hearing.



The JPCA president, the lead instigator of the lawsuit that began this entire process, was particularly nasty to the Health Board and his arguments reflected his desperation. It's highly likely that the JPCA's lawsuit would be rendered moot by the adoption of the Health Code amendments.

Ironically, the JPCA would then be the group responsible for helping to clarify and strengthen the Off-leash policy. Their performance at the Health Board hearing illustrated frustration at their losing cause and chagrin at how badly their misguided lawsuit has backfired.

### The Legal Basis for Off-Leash Hours

The hearing was part of the approximately 90-day City Administrative Procedures Act (CAPA) process in an attempt to amend the Health Code. While the Health regulations state that animals must be restrained by a leash no more than six feet in length, Section 1-04 of the Parks regulations permits the Parks commissioner to allow animals off-leash in City parks. Additionally, chapter 21 of the City Charter empowers the Parks commissioner to establish and enforce Citywide rules and regulations for the use of public parks, which shall have the full force of law.

The Parks Department's Off-leash policy in designated park locations and during limited times (9 pm to closing, and opening to 9 am) represents a reasonable accommodation for all park users, and has been successful and legal for 20 years.

The Health Code (article 161.05) allows for discretionary enforcement of the "Leash Law" by the Parks Department, and the Parks regulations (section 1-04) clearly state that the Parks commissioner may allow dogs to be off-leash in city parks. This stems from the City Charter's mandate granted to the Parks commissioner (chapter 21), which allows the commissioner to issue and enforce rules and regulations regarding the use of parks that have the full force of law.

In other words, the Parks commissioner can legally issue a 9 PM to park closing, and park opening to 9 AM off-leash policy within certain designated spaces. So, the current off-leash policy is quite legitimate, very much legal, and has been successful for 20 years [Click here to view the NYCdog memorandum of law](#) submitted to the State Supreme Court in August 2006 that details the legality of the Off-leash Hours policy.

### What Happens Next?

The Health Board votes on December 5, 2006 whether to adopt amendments to their own regulations. These amendments will clarify the Health Code, and rightfully acknowledge that the Parks commissioner has the authority to allow dogs off the leash in City parks. (It fully supports Section 1-04 of the Parks regulations).

The amendments will promote greater awareness of the Off-leash Hours policy and will strengthen licensing and vaccination requirements. [Click here for the full text of the Health Department's proposed amendments.](#)

If the Health Board votes to pass the amendments, it will



Rissa Pickar, a member of the Marine Park Dog Owners Group, an informal organization of local residents that have recreated with their dogs during Offleash Hours in Brooklyn's Marine Park for many years speaks at the Health Board hearing.



NYCdog supporters and their dogs from member group FIDO in Prospect Park at the noon press conference outside of the Department of Health.



Parvene Farhoody, a noted animal behaviorist from Manhattan, is interviewed by the news media at the NYCdog press conference. Inside the Health Board hearing Ms. Farhoody spoke strongly in favor of preserving and strengthening the park Offleash Hours policy.

If the Health Board votes to pass the amendments, it will be reviewed by the City's attorney, the Corporation Counsel, to ensure that it is legally sound. Then, the amendments will be published in the City Register. Thirty days after publication, the proposed amendments to the Health Code would be deemed mature, and officially enacted.

### **CAPA vs. Legislation**

The City Administrative Procedures Act (CAPA) is a much faster, more streamlined, and clearer process than the sometimes onerous and much longer legislative process favored by some. As it has previously said publicly, NYCdog does not support any legislation regarding this issue at this time. The CAPA process is perfectly legitimate, and very democratic, as it openly solicits feedback from the public and allows for an open and public hearing on the issue. While NYCdog appreciates the support of many elected officials, this issue is one best left for the agencies involved – the Health and Parks Departments – and not partisan politicians solely seeking to generate publicity for themselves.

The New York State Supreme Court judge who heard the case against the Off-leash policy in late August may withhold his ruling until the Health Board votes. Additionally, if the Health Code is successfully amended, he may not rule on the case.

### **But We're Not Done Yet!**

If the Health Board amends the Health Code, it will provide a clear sign that the Off-leash Hours policy will be strengthened, and that the City will be protected against future misguided lawsuits.

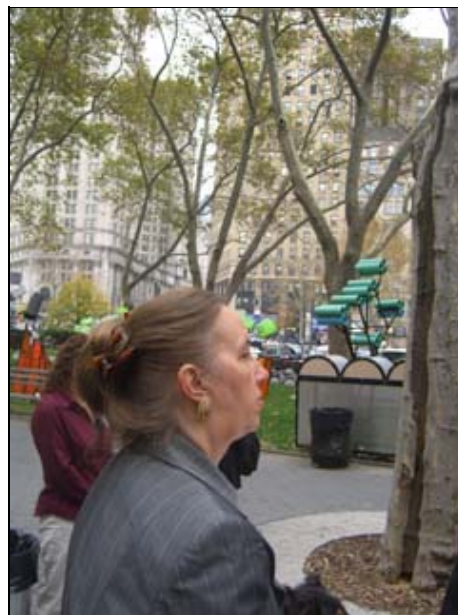
However, once the Health Board is done with their proposed amendments, the Parks Department may likely decide to initiate their own rule change to further clarify the Off-leash Hours policy. Such a rule change would follow the Health Board's proposed amendments, which call for greater awareness among the public about the limited hours and designated locations of the Off-leash Hours policy. This will likely make things absolutely crystal clear, and insure that both dog owners and non dog owners alike understand the Off-leash Hours policy.

**THAT'S WHY WE'LL NEED YOUR HELP.**

The Parks Department will likely initiate their own CAPA process at the beginning of 2007, and we still need your support. Your voice can be heard on how to further improve the Off-leash Hours policy, and how to make sure that both the dog-owning and non dog-owning public can safely enjoy City parks.



Matthew Greller, NYCdog's attorney from the law firm of Blank, Rome speaks with an Offleash Hours supporter from the Juniper Valley Park Dog Association before the hearing began. NYCdog wishes to thank Mr. Greller and Blank, Rome for their outstanding pro bono legal and advisement services throughout the lawsuit and the subsequent City Administrative Procedures Act process. NYCdog also greatly thanks Mr. Andrew Otis and Ms. Dora Straus from the Law Firm of Curtis, Mallet-Prevost, Colt & Mosle, LLP, the pro bono attorneys who drafted NYCdog's Memorandum of Law and who presented oral arguments in front of Judge Peter J. Kelly at State Supreme Court on Aug. 29, 2006. Thank you!!!



New York City Council Member Gale A. Brewer spoke in favor of the Health Code amendments at the NYCdog press conference in Foley Square Park, across the street from the Department of Health.



**We have to wait until December 5th until we learn the outcome of the Health Board's decision to amend the Leash Law.**

Keep checking back for further updates.



Denali, an Italian Spinone, appreciates his owner's strong support to continue the Offleash Hours policy that have helped Denali become a well-socialized dog.

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## Background on the Lawsuit that Threatens to **END OFFLEASH HOURS** in NYC

A small neighborhood civic association in Queens is suing the City, the Parks Department and Park's Commissioner Adrian Benepe to end Parks' 20-year successful policy that permits dogs off-leash in certain areas of certain parks during limited hours. This has been commonly referred to as the "Offleash Hours" or the "9-9 policy" since the hours of relaxed enforcement of the leash law are typically from 9pm until park close and then from when they re-open until 9am.

This Offleash Hours policy is a reasonable accommodation that allows the hundreds of thousands of City dog owners to exercise and socialize their dogs in the park off-leash. The policy started before the City's first dog park was built and continues because most neighborhoods do not have a dog park (also known as a dog run). In fact, fewer than 50 dog runs exist in the City, which has 1.4 million dogs. The Parks Department typically follows local Community Board advice on the construction of dog runs, as was [recently the case in Marine Park, Brooklyn](#).

It has been the Parks Department's longstanding policy that where dog runs do not exist within a reasonable walking distance, designated NYC parks would offer dog owners limited Offleash Hours in designated locations. Former Parks Commissioner [Henry Stern recently said](#) about the Off-leash Policy he enacted 20 years ago, "it's worked out extremely well over the many years that it's been in place, and it's never been challenged before now."



Juniper Valley Park in Middle Village, Queens. The Juniper Park Civic Association said NO to a dog park and Offleash Hours in the park, then sued the Parks Department to end Offleash Hours citywide.

### Lawsuit Chronicle & Documents

(ordered most recent to least recent)

**August 29, 2006:** Judge Kelly heard oral arguments. [NYCdog](#) made a cross motion to intervene on the side of the Parks Department. NYCdog holds a press conference on the steps of State Supreme Court in Queens. Attorney for the City said in court that the City would

[Click here to learn why the 20-year offleash policy is good for New Yorkers.](#)

The Juniper Park Civic Association (JPCA) originally brought suit against the Parks Department in March 2006, but the judge refused to take the case. The JPCA then refilled the case against Parks in May 2006, and that time the court granted an [Order to Show Cause](#).

## What this means for the 500,000-plus dog owners of NYC

If the lawsuit is ultimately successful, the Offleash Hours policy could be eliminated. That would mean an end to off-leash exercise and socialization in Central Park, Prospect Park, Ft. Greene Park, Stuyvesant Park, East Side Park, Marine Park and many other parks where dog owners rely on the parks to exercise and socialize their dogs. A judge is currently hearing the case and a ruling is expected sometime in early Fall 2006.

## What Can You Do to Keep Offleash Hours Alive?

[Sign the online petition](#). Only NYC residents and only if you have not previously signed the paper version of this petition.

[Donate to the New York Council of Dog Owner Groups](#) (NYCdog), which is helping to lead the citizen's charge against the lawsuit.

## Analysis/Opinion: Why the JPCA Has Brought Suit

Contrary to the JPCA's rhetoric about a crisis of dogs running wild in NYC parks, in reality, this lawsuit is really about power and who controls the parks.

Juniper Valley Park is a magnificent 55 acre park, which belongs to all New Yorkers, and run by the Parks Department, since it [was paid for, primarily maintained and improved by the Parks Dept.](#), spending city taxpayer money, to the tune of \$8.8 million dollars budgeted since 1996.

But the president of the JPCA doesn't see it that way. From his perspective, Juniper Valley is HIS park, and he wants to control it. The JPCA's vitriolic statements against Commissioner Benepe stem from the commissioner's reluctance to give the JPCA carte blanche to control Juniper Valley Park.

The kernel of this lawsuit is Commissioner Benepe's power as Parks commissioner to apply the rules uniformly across all NYC parks; in this case a choice to the Middle Village community to retain Offleash Hours as it now exists or build a dog park in Juniper Park since there's a sizable [constituency of taxpayers in the neighborhood](#) who like to recreate in the local park with their dogs offleash, as can all other New York City residents.

The JPCA postures that they are "being held hostage" by a Parks commissioner who is tyrannizing the community by forcing dogs offleash in Juniper Park. The JPCA doesn't want either Offleash Hours or a dog park in Juniper Valley Park. The JPCA president was [quoted in the New York Times](#) in April 2006 when asked about a dog park in Juniper Park saying, "Tell me why our park has to be turned into a dog toilet."

immediately begin a process seeking to amend the "Leash Law" to eliminate any confusion between the Health Dept. and the Parks Dept.'s 20-year Offleash Hours policy. Judge Kelly closed the hearing and said to expect a ruling.

[Download a debrief](#) of what occurred at the court.

### Download the Court Documents:

- [NYCdog Memorandum of Law](#)
- [NYCdog Notice of Cross Motion to Intervene](#)
- [NYC Corporate Counsel Answer Memorandum](#)

**August 8, 2006:** [JPCA press release](#) claims to have attempted compromise as Judge Kelly had requested. Though previously claiming that this lawsuit case is not a local issue and the JPCA was seeking to eliminate Offleash Hours because it is a citywide problem and crisis of critical importance to all New Yorkers, the writer of this JPCA release says the group was willing to drop the citywide offleash lawsuit if the question of dog parks and off-leash in Juniper Valley Park would be put in front of the local Community Board (which, of course, consists of many JPCA members, virtually ensuring rejection of both a dog park in Juniper Park and offleash).

**June 27, 2006:** State Supreme Court Judge Peter Kelly meets with attorneys from the JPCA and Parks Department in chambers. Judge tells both sides that neither side wants him to rule in this case and encourages both sides to find a compromise. The judge does not accept [NYCdog's Amicus Curiae "friend of the court" brief](#), but says he would if the case moves forward. Sets next court date for August 29.

**May 31, 2006:** [JPCA resubmits suit](#) and obtains an Order to Show Cause in State Supreme Court.

**March/April 2006:** [JPCA attempts to start an Article 78 proceeding](#). Article 78 proceedings are generally used to compel a governmental body to do what it is required to do or refrain from what it is not supposed to do or from acting in an arbitrary and capricious manner. The attempt was rejected by State Supreme Court Judge Peter Kelly without prejudice to permitting another future attempt to start a proceeding, but with a requirement that the JPCA file a memorandum of law setting forth the reasons they believe the relief they are seeking in the proceeding is permitted in an Article 78 proceeding.

**1999:** [JPCA press release](#). This is the earliest known public document indicating the JPCA's hostile intentions toward Offleash Hours in NYC parks.

The JPCA president is determined to force power from the Parks Dept to the local Community Board (where, somewhat coincidentally, the JPCA president also happens to be the vice chairman and believes he can control what goes on at the Community Board level.).

If the JPCA is successful in their lawsuit it would mean an end to the off-leash policy citywide, as well as no dog park in Juniper Valley Park. The 200+ dog owners of the Juniper Park Dog Association would be defeated and not have a location in Juniper Valley Park to exercise and socialize their dogs off-leash.

Ironically, [just three years ago the JPCA honored Commissioner Benepe with the "2003 Community Service Award"](#) possibly because [Parks spent \\$1,800,000.00 renovating the ball fields in Juniper Park.](#) Coincidentally, the President of the JPCA coaches baseball teams which use the new facilities. It all seemed pretty chummy.

Formerly a JPCA award winner, Commissioner Benepe is now one of the JPCA's adversaries because he's telling the JPCA they need to accommodate the 200+ members of the Juniper Park Dog Association who wish to have either a dog park or Offleash Hours in the park. It's clear that the private and unelected Juniper Park Civic Association isn't interested in accommodating the needs of [a significant number of Middle Village residents](#). At a recent meeting, a JPCA member who favors either Offleash Hours or a dog park in Juniper Park was told to "shut up."

By filing the lawsuit, the president of the JPCA is vindictive enough to try to take down a successful 20-year Offleash Policy that benefits hundreds of thousands of people in the five boroughs of New York City in his effort to teach Commissioner Benepe and anyone else a lesson about what will happen in "his" park.

Quite hypocritically, though the JPCA claims there's such a crisis of dogs running wild off-leash and the reason the JPCA filed this lawsuit is to help save their fellow New Yorkers citywide, a [recent JPCA press release](#) states that the JPCA was willing to drop their lawsuit if Commissioner Benepe cedes his authority to build a dog park in Juniper Park to the local Community Board (of which the JPCA president is vice chairman, and which the dog park would most certainly be defeated, leaving Middle Village dog owners out of luck in Juniper Valley Park.).

It has also been rumored that the president of the JPCA has political ambitions for elected office. He could also be using this issue and the lawsuit to flex political muscle and generate publicity for self-aggrandizement, possibly hoping to achieve what he would consider a political "victory" that could be bandied about to garner votes in a future election, perhaps for City Council.



NYCdog members on the steps of the State Supreme Court, Queens County on Aug. 29, 2006 give a press conference while Judge Kelly hears oral arguments inside the courthouse.



State Supreme Court in Jamaica, Queens where on Aug. 29, 2006 Judge Peter J. Kelly heard oral arguments in the case of Juniper Park Civic Association v. The City of New York, Adrian Benepe, Commissioner of The New York City Department of Parks and Recreation, and the New York City Department of Parks and Recreation.



