

# ACLU FALL 2003 news

BECAUSE FREEDOM CAN'T PROTECT ITSELF

VOLUME LXVII ISSUE 5

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## NO ON 54: A VICTORY FOR RACIAL JUSTICE

On October 7, Ward Connerly's Proposition 54 was decisively defeated by a 64% to 36% margin. The measure would have banned the collection of racial and ethnic data by any California state agency. More people voted "no" on 54 than voted in favor of the recall or for Governor-elect Schwarzenegger.

What does this historic vote mean for California and the nation – and how did it come about? ACLU-NC executive director Dorothy Ehrlich explains.

Statewide ballot measures have challenged the ACLU of Northern California (ACLU-NC) for more than two decades. We have suffered our share of major losses, from the three strikes law to juvenile incarceration, from Proposition 187 to Proposition 209. We have rarely been able to beat back the most polarizing amendments to our state Constitution once they appear on the ballot. Thus, our overwhelming victory against Proposition 54 on October 7 was all the more extraordinary.

How did we snap our losing streak? It began nearly three years ago when Ward Connerly, University of California Regent and author of the anti-affirmative action Proposition 209, first proposed a so-called "Racial Privacy Initiative." Connerly has carved out a career as a national leader of anti-

racial justice measures, and this was to be one more feather in his cap. But a small group of civil rights leaders came together with a clear goal: forging a winning strategy to defeat this measure and putting an end to the cascading cutbacks on civil rights that have been enacted since the Reagan era.

Connerly's proposal would have nearly put an end to our work for racial justice by eliminating the data that could prove or disprove racial disparities and injustices. How could you insist that school children be granted equal access to educational opportunities, if you couldn't even learn what disparities existed in funding, test scores, or school assignments? How could you stop the illegal practice of racial profiling by law enforcement, if you were banned from collecting data statewide? How could health professionals and social scientists pursue meaningful research if they were prevented from knowing or asking why more Filipina teenagers commit suicide or why white people are more likely to be afflicted with Alzheimer's disease?

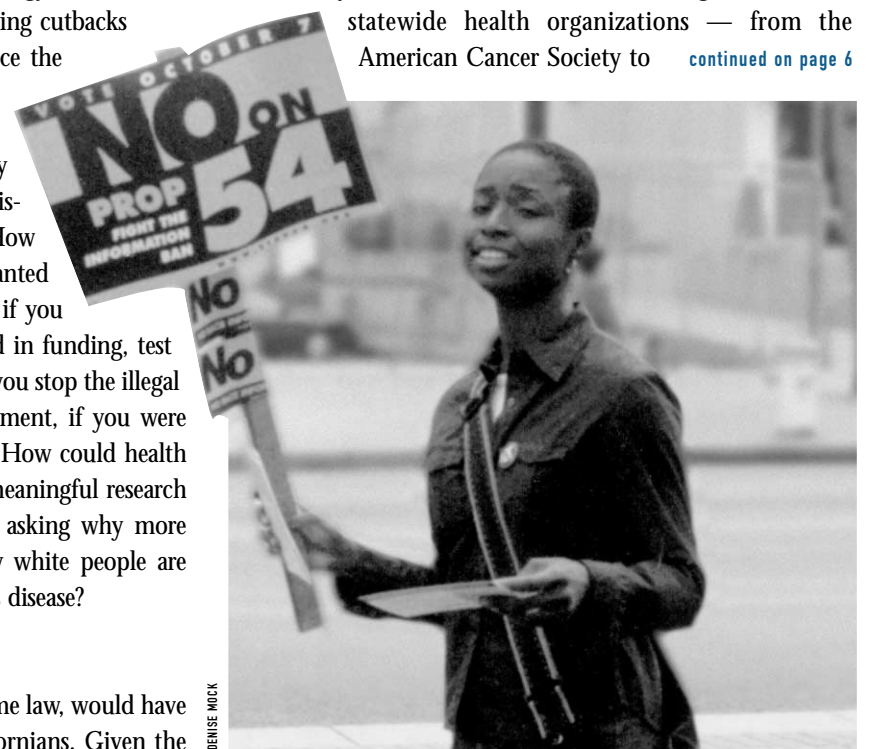
**ALLIES IN HEALTH AND EDUCATION**

We knew that Proposition 54, if it became law, would have a profound effect on the lives of all Californians. Given the

high stakes, it was clear that we had to expand beyond the close-knit group of civil rights groups in the Bay Area to build a truly statewide campaign. We also successfully fought in court to force Connerly to change the name of the initiative, because it was not about racial privacy at all. Indeed, the information he hoped to ban is all voluntarily provided.

As we learned more about the measure, officially named by the Secretary of State the "Classification by Race, Ethnicity, Color and National Origin Initiative," it became clear that the implications for health care posed the greatest danger for the greatest number of people. As we began looking for allies in the public health field, groups like Kaiser Permanente and Breast Cancer Action quickly joined up, providing expert advice and support. Over the next two years, more than 50 of the leading national and statewide health organizations — from the American Cancer Society to

*continued on page 6*



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### BE THERE! BILL OF RIGHTS CELEBRATION

On December 14, 2003 join the ACLU of Northern California for  
**FREEDOM DETAINED: YESTERDAY AND TODAY**

**HONORING:** DALE MINAMI and DON TAMAKI, representing the legal team that overturned the conviction of Fred Korematsu, who resisted internment and whose case paved the way for reparations

**PERFORMANCE BY:** BOB WEIR, founding member of Grateful Dead and RatDog, and ROB WASSERMAN, Grammy Award-winning bassist

**PRESENTING:** PARALLELS IN PREJUDICE – stories of Japanese Americans interned during World War II and Arab, Muslim, and South Asian immigrants detained in the so-called "War on Terrorism"

**DATE:** SUNDAY, DECEMBER 14, 2003,  
2:00 PM — Reception (light refreshments, no host bar)  
3:00 PM — Program

**LOCATION:** The Argent Hotel, 50 Third Street, San Francisco (wheelchair accessible)

Admission price of \$20 includes reception and program. For more information see [www.aclunc.org](http://www.aclunc.org).

Call 415-621-2493, x382 to order your tickets now!



# ARE YOU A MATCH?

## BOARD CHAIR CHALLENGES ACLU DONORS

In September, ACLU of Northern California (ACLU-NC) board chair Quinn Delaney and her husband, Wayne Jordan, issued an innovative \$100,000 challenge to the ACLU-NC. Delaney said they offered the generous gift because: "This is such a critical time for our civil liberties. The ACLU needs the resources to mount a vigorous campaign to withstand the assault on our civil rights and fight for justice."

The "Challenge from the Chair" challenges supporters of civil liberties to think big and increase their support for the ACLU. *Gifts eligible for a match from the challenge fund must be \$500 or more, and matches will be capped at \$24,999 per donor. Here's how it works:*

**NEW GIFTS:** If you are a *new donor* contributing \$500 or more to the ACLU-NC Foundation, the challenge fund will match your entire gift.

**INCREASED GIFTS:** If you gave *\$500 or more last year* and increase your tax-deductible gift to the ACLU-NC Foundation, the amount of your *increase* will be matched. For example: if you gave \$1,000 last year and give \$2,000

this year, the \$1,000 increase will be matched, making your gift worth \$3,000.

**RETURNING DONORS:** If you have not given for a year or longer, and now make a gift of at least \$500, the whole gift will be matched.

To trigger a match from the challenge fund, you must pledge your gift *in writing* between September 11 and December 15, 2003, and pay by March 31, 2004. Pledges can be made by pledge card or letter, and paid via cash, check, credit card, or stock transfers — whatever is most convenient for you.

"This challenge is a very special opportunity for donors to make the most of their gift to the ACLU," said Cheri Bryant, ACLU-NC's director of development. "At a time when our civil liberties are under unprecedented attack, we encourage every donor to dig deep and help us meet the full \$100,000 challenge."

For more information about the Challenge from the Chair, contact Cheri Bryant, director of development, at 415-621-2493 or [cbryant@aclunc.org](mailto:cbryant@aclunc.org). ■

# STEADFAST CHAMPIONS OF CIVIL LIBERTIES

By Stan Yogi, *Planned Giving Director*



JAN ADELSON GARCIA

Lifelong ACLU members *David and Valerie Adelson* spent their lives fighting injustice. Valerie, who survived her husband, passed away in 2001 and created a lasting legacy of lib-

erty through a generous bequest to the ACLU Foundation of Northern California (ACLU-NC).

Personal experience with hardship helped shape the Adelsons' social consciousness. Valerie, born in Denver in 1916, lived in poverty with her mother after her parents divorced. Born in Chicago in 1912, David also grew up poor. His father died shortly after the family moved to Florida, and his mother struggled to raise three children.

David studied chemistry at the University of Florida and, after a post-doctoral fellowship at Columbia University, took a job with Shell Development Corporation in Emeryville. The couple met through mutual friends in Berkeley, marrying in 1939 when Valerie graduated from U.C. Berkeley with a degree in psychology.

As young adults, the Adelsons supported the Lincoln Brigade, which fought fascists in Spain. David organized the first union for professional workers at Shell Development. Believing that anti-Semitism would bar him from a university job, in the late 1940s David enrolled in Golden Gate University's night law school program. By then, the couple had two young daughters. After law school, David opened a storefront civil law practice in Emeryville and spent the rest of his life serving the area's low-income people of color.

In 1970, the Adelsons' eldest daughter died of Hodgkin's Disease, spurring an enduring commitment to find a cure. The Adelsons also decided that her share of any inheritance would go to charity.

"They were both very modest people but had very strong convictions," Jan Adelson Garcia recalled of her parents. "They felt strongly about supporting causes with the means they had."

The board and staff of the ACLU-NC are deeply honored by the Adelsons' bequest. ■

## LAWYERS COUNCIL 15TH ANNIVERSARY



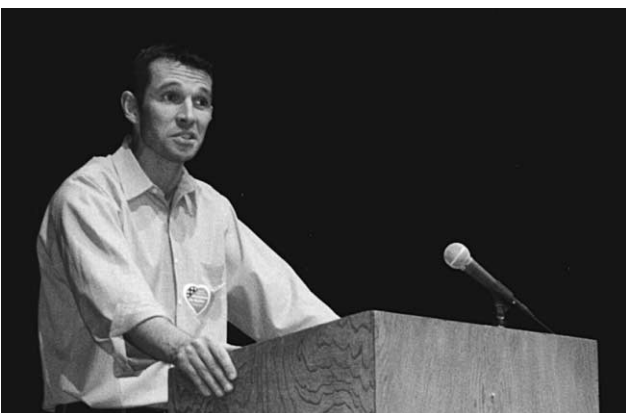
STAN YOGI

Lawyers Council co-chair Ruth Borenstein, ACLU-NC executive director Dorothy Ehrlich, guest speaker Tony West, and co-chair Angel Garganta celebrated the Lawyers Council's 15th anniversary at a June 19 luncheon. West discussed the civil rights implications of the John Walker Lindh case. The Lawyers Council includes hundreds of lawyers from the legal, academic, public interest, and business communities, whose leadership and financial commitment support ACLU-NC's work.

## MEMBERSHIP CONFERENCE ENERGIZES ACTIVISTS

By Allison Reid, *Field Intern*

ACLU members from throughout northern California filled a sunny lobby, sipping coffee, meeting members from other chapters for the first time, greeting familiar faces, and looking through their brightly colored information packets. In all, more than 120 people had gathered early on a



JANE HONG

ACLU-NC associate director Bob Kearney addresses a packed audience at the affiliate's annual membership conference.

Saturday morning, ready to focus their considerable energy on becoming even more effective activists.

The first session, on the fight to defeat Ward Connerly's Proposition 54, was packed. Some eagerly took notes; others took a turn at the microphone (wielded by a busy volunteer) to ask about tactics and share ideas. The lively exchange continued even as people headed to the next session, pausing only to pick up a new piece of literature or pin a "Safe and Free" button to a t-shirt or tote bag.

Attendees' enthusiasm never seemed to flag throughout the full day of informational and strategic sessions. Topics ranged from the Internet as an activist tool to discriminatory law enforcement in the wake of September 11. Everyone had a chance to learn something new, from their fellow members as well as the ACLU-NC experts and other presenters.

First-time attendee Martin Zonlight described the conference as "helpful and exciting." The Modesto resident said, "It brought the civil liberties issues that are under the surface into focus, and helps us know what to look for." *continued on page 11*

## ACLUnews

THE QUARTERLY PUBLICATION OF THE AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA.

Membership (\$20 and up) includes a subscription to the *ACLU News*. For membership information call 415-621-2493 or visit [www.aclunc.org/join.html](http://www.aclunc.org/join.html).

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\*ACLU-NC director of communications Rachel Swain is on maternity leave.

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# WIN IN MEDICAL MARIJUANA CASE

By Stella Richardson, *Acting Communications Director*

In a victory for patients and doctors, the U.S. Supreme Court declined to hear *Walters v. Conant*, a case concerning doctors' First Amendment right to discuss the medical use of marijuana with patients suffering from cancer, HIV/AIDS, and other life-threatening diseases. This means that the Ninth Circuit Court of Appeals' ruling, which allows doctors to recommend medical marijuana to their patients, stands in California, Arizona, Alaska, Hawaii, Nevada, Oregon, and Washington.

"The Supreme Court's action today protects doctors and patients from government censorship of open and honest discussions in the exam room," said Graham Boyd, Director of the ACLU's Drug Policy Litigation Project. "Patients deserve access to accurate information about marijuana's medicinal value in treating pain, nausea, wasting syndrome, and other symptoms of life-threatening diseases."

The case arose after California voters passed Proposition 215 in November 1996, which makes it legal for patients to grow and possess marijuana for medical use when a doctor recommends it. Currently nine states (Alaska, Arizona, California, Colorado, Hawaii, Maine, Nevada, Oregon, and Washington) have legalized some form of medical marijuana.

The Clinton Administration reacted to Proposition 215 by threatening to revoke the prescription drug licenses of doctors who recommended medical use of marijuana; the Bush administration has continued that policy. The ACLU represents a group of prestigious doctors and patients in California who have suffered as a result of federal threats to doctors who discuss marijuana as medicine.

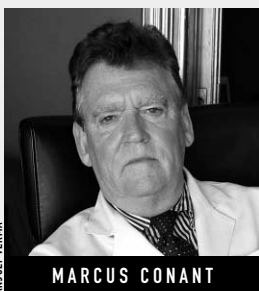
Physicians have a long history of recommending marijuana to patients. A 1990 Harvard survey of more than 2,000 oncologists found that 44 percent had recommended marijuana to cancer patients undergoing chemotherapy. Even as federal law prohibited physician prescription of marijuana, the federal government itself has operated a marijuana farm in Mississippi and has distributed marijuana to a small number of patients in its Compassionate Care program - a measure that recognizes the growing body of evidence that marijuana has legitimate medical uses for some patients.

"The federal government's current efforts to insert itself between doctors and their patients when it comes to recommending medical marijuana is contrary to our most fundamental First Amendment values," said ACLU-NC staff attorney Ann Brick. "The central purpose of the First Amendment is to protect dissent from the government's

version of the facts on any particular issue, including the issue of medical marijuana."

According to ACLU-NC plaintiff (and former board chair) Dr. Milton Estes, "Now I can advise my patients on the medical use of marijuana without fear of being criminally prosecuted or losing my license." ■

## PROFILES OF KEY PLAINTIFFS



ANJULI VERMA

MARCUS CONANT

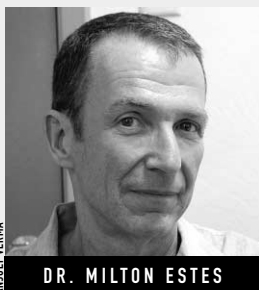
DR. MARCUS CONANT is the medical director of one of the largest private AIDS practices in the United States. The practice cares for over 5000 persons infected with HIV, including about 2000 with active AIDS in San Francisco. He is a professor at the University of California Medical Center in San Francisco and is the author or co-author of over 70 publications on treatment of AIDS.

JUDITH CUSHNER is the director of a preschool program in San Francisco and the mother of two. She has fought breast cancer since 1989. Medical marijuana was the only relief she could get from the extreme nausea, retching, and mouth sores caused by a rigorous schedule of chemotherapy. Cushner believes that the federal government's threats to doctors could be the death sentence for patients like her who depend on honest and complete medical advice from doctors.



ANJULI VERMA

JUDITH CUSHNER

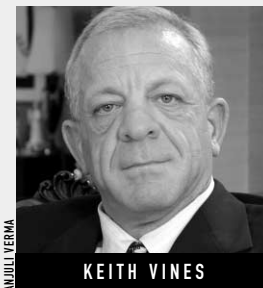


ANJULI VERMA

DR. MILTON ESTES

DR. MILTON ESTES is the medical director and senior physician for the forensic AIDS project of San Francisco. To combat nausea and weight loss in his patients, Dr. Estes prescribes Marinol (a legal prescription drug with the active compound found in marijuana, THC) and other prescription drugs. When conventional approaches fail or a patient poorly tolerates oral medication, Dr. Estes believes medical marijuana can often help.

KEITH VINES is an assistant district attorney, decorated Air Force officer, and father, whose bout with AIDS has caused him to lose more than 40 pounds of lean body mass. Vines worked for two years as a felony prosecutor in a federally funded program where he secured a conviction in what was San Francisco's second largest marijuana seizure. With great reluctance given his career in law enforcement and after failing to respond to other medications that unsuccessfully treated his illness, Keith Vines used small amounts of marijuana, which he credits with saving his life.



ANJULI VERMA

KEITH VINES

## LEGAL BRIEFS

By Stella Richardson

### EDUCATIONAL DIVERSITY

On September 4, parents and students who objected to a diversity education program's message of tolerance for lesbian and gay people dropped their lawsuit against the Novato school district. They had sued the school district for presenting a play entitled "Cootie Shots: Theatrical Inoculations Against Bigotry" in two elementary schools. The play tackles the issue of stereotypes and discrimination in an age-appropriate way, through short plays, songs, and poems. It is performed by Fringe Benefits, a Los Angeles-based educational theater company.

The ACLU of Northern California (ACLU-NC), ACLU of Southern California (ACLU-SC), National ACLU Lesbian & Gay Rights Project, and the National Center for Lesbian Rights (NCLR) represented a group of concerned parents and the theater company, which joined the lawsuit to defend the school district's authority to require mandatory attendance at diversity awareness and tolerance-building programs. On July 11, 2003, the U.S. District Court of Northern California granted a motion allowing them to intervene as defendants in the case. Apparently recognizing the strength of the interveners' legal team and the weakness of their own case, the plaintiffs decided to walk away from the lawsuit, taking nothing after nearly two years of litigation. *Citizens for Parental Rights v. Novato Unified School District*.

### FREE SPEECH

On September 12, parties to *Kasky v. Nike* agreed to a settlement that will include a greater investment from Nike in workplace-related programs. The case involved a claim that some of Nike's public statements about working conditions in overseas factories constituted false or misleading advertising. Nike claimed that its statements were part of a larger public debate and therefore entitled to full First Amendment protection, not commercial speech subject to the state's false advertising laws. The ACLU filed an amicus brief with the U.S. Supreme Court, arguing that Nike's statements should not be treated as commercial speech.

While benefiting factory workers and consumers worldwide, the settlement means that the issue of what constitutes commercial speech will not be resolved until the question arises in another case. Earlier this year, after hearing oral arguments, the U.S. Supreme Court concluded that its decision to review the Nike case was premature, because it had not yet gone to trial. The U.S. Supreme Court originally took the case after the California Supreme Court issued a disappointing 4-3 decision giving an extremely broad definition to the term commercial speech. *Kasky v. Nike*.

### CYBER-LIBERTIES

The California Supreme Court has asked a state court of appeal to review the factual record in a case concerning

whether trade secret laws were violated when Bay Area programmer Andrew Bunner and others found a program on the Internet that enabled them to copy DVDs, and then posted the program on their own websites.

The case began when a 15-year-old Norwegian boy discovered the key to decrypting the copy protection system on DVD movie disks and published his decryption program ("DeCSS") on the Internet. The program spread like wildfire, and the DVD Copy Control Association ("DVD CCA") filed suit to stop its republication, claiming the program contained trade secrets.

The high court recognized that important First Amendment principles are at stake in this case, but concluded that publication of the program did not involve a "matter of public concern." The Court said that the lower court's temporary injunction, barring continued publication of the encryption program, could remain in place while the court of appeal determines whether there was any secret left to be kept.

The ACLU filed an amicus brief, arguing that while the dissemination of real trade secrets can be stopped, once trade secret information has already been widely disseminated, an injunction prohibiting further republication is forbidden, even if those republishing it suspect that the original posting of the program may have been improper. *DVD Copy Control Association v. Bunner*. ■

# CALIFORNIA VICTORY FOR FINANCIAL PRIVACY

By Amanda Canevaro, *Communications Intern*

Identity theft. Spam. Telemarketing. These and other side effects of the technological age have made consumers acutely aware of just how vulnerable their personal information can be. But what should consumers do when the financial institutions they trust are the ones putting their privacy at risk?

State Senator Jackie Speier responded to rising consumer concern with her landmark legislation, the Financial Information Privacy Act (SB 1). Signed into law by Governor Gray Davis on August 27, SB 1 was four years in the making. It promises to empower consumers with direct control over their financial information and decrease annoying telemarketing and potentially damaging financial profiling.

Speier argued that a system where financial institutions may sell and share their customers' financial information — including account balances, lending history, and credit rating — leaves consumers vulnerable to aggressive marketing, financial profiling (targeting low-income people and limited-English speakers for worse quality products at higher prices), and fraud.

Speier and her pro-consumer and pro-privacy allies, including the ACLU, fought a hard battle with corporate interests and lobbyists that poured seemingly unlimited money and power into defeating the measure. After losing several key votes in 2001, Speier went back to the drawing board and added several amendments to make the bill more attractive to the banking industry.

But that wasn't enough. Determined opponents used over \$20 million and political influence to convince Assembly

members to vote no or abstain. On June 17, the bill only managed to muster three "yes" votes from the 12-member Assembly Banking and Finance Committee. With an almost 90% public approval rating, supporters of the bill had to find a new path to fulfill the public mandate.

## CONSUMERS CALL CORPORATIONS' BLUFF

Fed up with the stalemate, Californians for Privacy Now, a group of consumer and privacy advocates backed by E-Loan CEO Chris Larsen, launched a campaign to place a more stringent financial privacy initiative on the ballot in March 2004. After they easily collected more than the required 600,000 signatures and threatened to submit them on August 19, banking and corporate lobbyists saw the writing on the wall. They withdrew their resistance and grudgingly supported SB 1 with further changes to address more of their concerns. On August 18, the bill passed the full Assembly by a 76-1 vote.

SB 1 works by blocking the sale of financial information to third parties without consumers' affirmative permission. Under SB 1, consumers must "opt in" to let a financial institution sell their personal data and may "opt out" to prevent sharing among affiliates, subsidiaries, or companies in "joint-marketing agreements."

"Most people are very particular about disclosing personal financial information to others, yet current federal law allows banks, insurance companies, and other financial institutions

to trade and sell their customers' information with very little restriction," said Valerie Small Navarro, a legislative advocate in California's ACLU Legislative Office and a leading proponent of SB 1.

The legislation also requires banks, brokerages, and insurance companies to clearly disclose their information-sharing policy in a plain English written statement to all of its customers. Such notice was not required under previous law.

## FEDERAL ROLLBACK THREATENED

While a tremendous victory for California's consumers, SB 1's success is not yet assured. Almost as soon as SB 1 became law, the U.S. Senate undertook a review of the Federal Credit Reporting Act (FCRA). Banking lobbyists argue that a section of the FCRA bans states from enacting financial privacy rules more stringent than the federal government's. That section is set to expire at the end of this year, but corporate interests want it made permanent. If they succeed,

Californians will be denied the full range of important protections that SB 1 provides.

## SB1 WORKS BY BLOCKING

### THE SALE OF FINANCIAL

### INFORMATION TO THIRD

### PARTIES WITHOUT CON-

### SUMERS' AFFIRMATIVE

### PERMISSION.

A decision on the FCRA is due by then end of 2003, when several of its provisions expire. Senators Barbara Boxer (D) and Dianne Feinstein (D) have pledged to fight for SB 1, facing down financial lobbies that may hold even more sway in Washington than they do in Sacramento.

In late September, the two lawmakers proposed the Feinstein-Boxer Amendment, which would enforce at the federal level SB 1's "opt-out" policy for sharing information with subsidiaries and affiliates. The status of other provisions, as well as the renewal of the FCRA, remains undecided as of this writing.

The long road to SB1 tested proponents' patience and ingenuity, but ultimately proved that consumers can beat corporate interests in the battle for financial privacy. Privacy advocates hope the law remains intact and serves as a model for other states. ■

## SACRAMENTO REPORT

By Bob Kearney, *Associate Director*

Now that the 2003 legislative session is over, ACLU-NC's Sacramento lobbying team has many victories to celebrate as they begin laying the groundwork for 2004. Several of the most significant civil rights bills signed into law over the last several months were initiated and sponsored by the ACLU. To get the latest on our legislative work and take action on key civil liberties issues, go to <http://www.aclunc.org/takeaction.html>.

### VICTORIES

**SEX EDUCATION** – In October Governor Davis signed SB 71 (Kuehl-D) into law, streamlining and updating California's confusing and contradictory sex education laws. Sponsored by the ACLU and Planned Parenthood Affiliates of California, SB 71 establishes a new definition of comprehensive sexual health education, sets age-appropriate grade floors for required topics, creates a new uniform parental consent policy, and ensures that instruction is age-appropriate, scientifically current, and bias-free. The bill continues to mandate HIV/AIDS prevention education and to give schools discretion as to whether to teach sex education.

**DEATH PENALTY** – Sponsored by the ACLU and backed by strong public support, SB 3 (Burton-D) implements the recent Supreme Court decision prohibiting the execution of the mentally retarded. By implementing a pretrial hearing solely to determine mental retardation, this new law ensures that the issue of mental retardation is not biased by the proceedings of the trial.

**Front Yard Free Speech** – AB 1525 (Longville-D and Steinberg-D) extends free speech protections most of us take for granted to private homeowners who happen to live in common interest developments, such as condominiums. Initiated by the ACLU, AB 1525 upholds the First Amendment by codifying that common interest housing developments may not prohibit homeowners from placing signs on their lawns or windows.

**LGBTI RIGHTS** – We are happy to report three big wins for LGBTI rights. AB 205 (Goldberg-D) extends to domestic partners many of the same rights and responsibilities currently given to married couples under state law. This includes protections such as community property, financial support obligations, assumption of parenting responsibilities, and mutual responsibility for debts. AB 196 (Leno-D) makes gender identity a category protected from illegal discrimination, became law in August. And AB 17 (Kehoe-D) prohibits the state from contracting with vendors that do not offer benefits to the domestic partners of employees that are equal to the benefits given to married spouses of employees.

**FINANCIAL PRIVACY** – Brought back from the dead, SB 1 (Speier-D and Burton-D) makes it easier for Californians to protect their personal financial information. When the bill was voted down in committee, the threat of a ballot initiative brought opponents back to negotiate, and the bill was revived. SB 1 then sped through the legislature, and Governor Davis signed it in August. Sadly, the U.S. Congress is advancing legislation that undercuts the new

California law and provides much weaker consumer protections. (See article on this page for more information on SB 1.)

### UPCOMING BATTLES IN 2004

**POLICE REFORM** – All three police reform bills supported by ACLU-NC's Police Practices department have passed the Assembly, but will not be taken up by the full Senate until next year. AB 1119 (Wesson-D) would require law enforcement agencies to implement "early warning systems" to identify problematic patterns of police officers. AB 1077 (Wesson-D) would improve current complaint procedures and allow complaints to be filed at locations less intimidating than the police department. AB 1331 (Wesson-D and Horton-D) would require the Attorney General to establish whistleblower protections in law enforcement agencies.

**STUDENT INTERROGATION** – Also up for consideration in 2004 is AB 1012 (Steinberg-D), sponsored by the ACLU. This legislation would increase parent participation when police seek to question children at school. AB 1012 would require school principals to seek the consent of parents or guardians of elementary school pupils before allowing students to be questioned. For high school students, school principals would have to offer the opportunity to have a parent or trusted member of the school staff present during questioning. AB 1012 has been working its way through the Assembly and has yet to be considered by the Senate. ■

TAKE ACTION ONLINE TO PROTECT CIVIL LIBERTIES: SIGN UP AT [WWW.ACLUNC.ORG](http://WWW.ACLUNC.ORG)

# THROUGH OUR EYES: "THE WAR ON DRUGS"

This summer, 17 high school students spent seven days traveling around northern California to get an in-depth look at the "War on Drugs." The trip, organized by the ACLU-NC's Howard A. Friedman First Amendment Education Project, exposed students to a wide range of viewpoints on this complex topic. Here, a student participant gives his personal perspective.

By Jackson Yan, *Lowell High School senior*

The fanfare of a boisterous group on a tour bus. Don't mistake us for a minor league baseball team. We are a lineup of 17 strong-willed, opinionated youth, five fabulous chaperones, and one cool bus driver named Antonio. This past August, we ventured around California to investigate the so-called "War on Drugs." Over seven days, we tried to meet people with as many points of view as possible.

One important concept we came across repeatedly was "harm reduction." It's a nonjudgmental approach to helping users by minimizing the consequences of drug use. Harm reduction realizes that each drug user is different and needs individually tailored care. It "meets individuals where they're at," coming to terms with the fact that rehabilitation cannot be forced. Harm reduction can range from fact-based drug education to demonstrating safer ways to use drugs.



TRIP PARTICIPANTS AND CHAPERONES IN SANTA CRUZ. TOP ROW: Matt Atkin, senior, Maria Carrillo High; Aaron Leonard, Friedman Project Staff; Cassandra Mitchell, Lick-Wilmerding High; Tynan Kelly, junior, Carlmont High; Lani Riccobuono, Friedman Project Staff; Danielle Silk, Rohnert Park High; SECOND ROW: Shayna Gelender, Friedman Project Staff; Amanda Gelender, Castro Valley High; David Cruz, senior, Menlo Atherton High; Danni Biondini, senior, Mercy High; Laura Rosbrow, '03 grad, University High; Darline Ng, Lincoln High; Supervisor Mardi Wormhoudt and Mayor Emily Reilly (Santa Cruz); Lindsay Waggener, Friedman Project Staff; THIRD ROW: Andrew Mok, sophomore, Monta Vista High; Nick Stromberg, junior, Urban High; Jackson Yan, senior, Lowell High; Amelia Rosenman, senior, Lick-Wilmerding High; Hannah Dreier, Urban High; Erin Baldassari, Maria Carrillo High; Maraya Massin-Levey, junior, School of the Arts; Jennifer Lerche, junior, Carlmont High.

During our field investigation, we worked with the San Francisco AIDS Foundation's needle exchange project, and saw harm reduction in action. We gave packets containing clean syringes and water, cotton, straps, and cookers in exchange for users' dirty needles. Clean needles slow the spread of diseases, and purified water helps prevent other contamination. Clean cookers and straps are distributed as safer substitutes for the bottom of a soda can and belts. People who dropped by were so friendly and grateful for the packages. They had absolute trust in the staff because the staff would not judge them.

The current state of drug education is misguided, with DARE (Drug Abuse Resistance Education) teaching the curriculum in many of our schools. They bring police officers into

classrooms and try to scare kids into blind abstinence from drug use. They don't explain why people take drugs. It's cool to explain the values of abstinence, but do not shortchange young people. I had to rely on TV to get drug information. The first time I heard about medicinal marijuana was on "The Simpsons." We understand more than you think. Give us honest and credible facts. We can make the safe decisions.

The victims of drugs are endless. The federal government purports to only go after large-scale dealers. However, by requiring judges to enforce mandatory minimum sentencing, nonviolent drug users are incarcerated with severe sentences. This attacks the family structure and often destroys life at home.

During our visit to Central Valley Women's Facility in Chowchilla, Amelia Rosenman, a senior at Lick Wilmerding High School in San Francisco, was especially moved.

"I was stunned by the women's intelligence, sophistication, concern, 'normalcy,' kindness and humanity," she told me, "and their fierce need to speak and be heard."

The prison is so overcrowded, due largely to the increase in nonviolent drug offenders, that there are plans to expand it.

We learned some reasons why people do drugs. When we met Dorsey Nunn and his friend from Free at Last, a community center in East Palo Alto, they told us poignantly, "I didn't like the way I felt about my myself, so I took drugs." They also touched on the subject of race relations and drug use, pointing out that rich, white people who otherwise would not associate with them (as poorer black men) had no problem getting high with them. Drugs seem to be the only things that don't discriminate.

We also met with the Drug Enforcement Administration (DEA). They enforce the drug policies of the federal government. Each officer told us they believed they were doing what was just by upholding laws. Credit needs to be given to these brave folks who just want to help people. But the DEA is allowed to sidestep the civil liberties of others.

We learned more about that when we met with Wo/Men's Alliance for Medical Marijuana (WAMM) in Santa Cruz. They distribute free medicinal marijuana to people with serious illnesses. They do this legally under Proposition 215, approved by California's citizens in 1993. Things were going pretty smoothly at WAMM until early 2003.

Under the orders of U.S. Attorney General

John Ashcroft and Drug Czar John Walters, the DEA raided WAMM. They handcuffed sick and wheelchair-bound patients and stuck guns to their heads. WAMM was doing everything legally under California law. These people have the right to medicate themselves and relieve pain. That should not be taken away.

It is ironic that the government puts so many resources into enforcing dubious drug laws in the guise of "fighting the drug war," yet drug rehabilitation is grossly under-funded. Drugs don't discriminate, but rehab does. If you have money, Betty Ford welcomes you. If you are poor, you have to rely on overcrowded, poorly run, government-sponsored rehabilitation. The best option would be to find a nonprofit agency that cares, but those fill up quickly. If you are willing to get help, help should be there for you, but it isn't.

The drug war is so complicated. Instead of prevention, the government advocates for full punishment. They'll have the DEA and other agencies camp out in poor neighborhoods where people of color live even though many users are white. They go after small-time, nonviolent offenders and incarcerate to the max.

A meeting with Chris Conrad from Human Rights and the Drug War had me wondering even more about the liberties we believe we have. He told us that relatives of drug users are forced either to squeal or go to jail for crimes they did not commit. The federal government can get away with using tactics of blackmail, threats and murders. By labeling it the War on Drugs, the civil liberties we all come to love are denied.

THE FIRST TIME I HEARD ABOUT MEDICINAL MARIJUANA WAS ON 'THE SIMPSONS.' WE UNDERSTAND MORE THAN YOU THINK. GIVE US HONEST CREDIBLE FACTS. WE CAN MAKE SAFE DECISIONS.

After the full seven days, we were happy to see that there were organizations in California to help those who want it. We were upset, though, at the policies and measures that limit people's rights and freedoms. The revolving door between prison and the streets is particularly appalling. I must admit with so much information, I am even more confused, though all the personal stories lead me toward one direction.

More than ever, the status quo of forced or inadequate rehabilitation, theft of rights, and incarceration to the max doesn't work. It's imperative that we initiate alternative approaches to tackling this epidemic, and tell people about the struggles this drug war creates.

Fellow trip-goer Amelia Rosenman said it best about the people who are victims of this "war:" "They gave me a challenge I plan to strive toward all my life: to walk through doors they cannot approach and speak their truths to those who wish to ignore them." ■

## WHERE WE WENT WHO WE MET

Judith Appel and Alexandra Cox, Office of Legal Affairs for Drug Policy Alliance; Ann Brick, ACLU-NC; The Sage Project, Inc.; Americans for Safe Access; Students for a Sensible Drug Policy; Ed Rosenthal; Drug Enforcement Administration; Dorsey Nunn, Legal Services for Prisoners with Children and Free At Last prisoners in Substance Abuse Treatment Program, Central California Women's Facility; D.A.R.E. police officer (Modesto); Mothers Against Drunk Driving (San Joaquin County chapter); Curtis Kaiser and Whitney Taylor, Drug Policy Alliance; Ken Russell, ACLU Legislative Office; Santa Cruz County Needle Exchange; Mayor Emily Reilly and Supervisor Mardi Wormhoudt (Santa Cruz); Wo/Men's Alliance for Medical Marijuana; San Francisco AIDS Foundation; Haight-Ashbury Youth Outreach Team (San Francisco); Mikki Norris and Chris Conrad, Human Rights and the Drug War; Cannabis Consumers Campaign; Delancey Street Foundation.



Check out the Friedman Project's new report: *The Drug War: A Field Investigation by and for High School Students*. Inside, you'll find students' own creative written and visual responses to this summer's trip. For more information or a free copy, contact Aaron Leonard at 415-621-2493 or [aleonard@aclunc.org](mailto:aleonard@aclunc.org); or go to [www.aclunc.org/publications](http://www.aclunc.org/publications).

TAKE ACTION ONLINE TO PROTECT CIVIL LIBERTIES: SIGN UP AT [WWW.ACLUNC.ORG](http://WWW.ACLUNC.ORG)

# HOW THE ACLU-NC HELPED BEAT PROP 54

From trade union rallies in San Francisco to phone banks in Modesto, the ACLU of Northern California played a key role in the defeat of Proposition 54. Here are some of the highlights of the ACLU-NC effort:

The fight began almost three years ago, when Ward Connerly first floated his idea for a ballot measure that would ban the collection of racial and ethnic data in California. Though it was hard to get people to focus attention on his vague idea at that time, ACLU-NC executive director Dorothy Ehrlich played a crucial role in developing an initial team to prepare to fight the initiative.

Ehrlich stayed at the center of the opposition during the on-again, off-again campaign, partnering with Eva Paterson of the Equal Justice Society, Abdi Soltani of Californians for Justice, leaders from the California Teachers Association, and others to create a strong core coalition. Connerly's first attempt failed, as he did not get enough signatures to qualify the initiative for the November 2002 ballot. The core opposition group stayed together, however, knowing that an infusion of cash from conservative, out-of-state funders could easily provide the money Connerly needed to get on the next ballot.

Connerly's donors came through, and Proposition 54 qualified for the next statewide election, then set for March 2003. Ehrlich played a leadership role in establishing the official "No on 54" campaign: the Coalition for an Informed California. This broad coalition eventually included more than 300 organizations representing health professionals, educators, trade unionists, environmentalists, law enforcement, students, and more. Ehrlich served on the executive committee, along with representatives of the California Teachers Association, Service Employees International Union, NAACP, Kaiser Permanente, and the Mexican American Legal Defense and Educational Fund.

Delaney and her husband, Wayne Jordan, later organized

the first fundraising event in California, which raised an additional \$80,000. ACLU-NC communications director Rachel Swain participated in the statewide media team, shaping messages and pitching stories.

## NORTHERN CALIFORNIA CAMPAIGN HEADQUARTERS

In August, the campaign faced a new obstacle: an October 7 ballot for the gubernatorial recall. With a full five months cut from the campaign timeline, the ACLU-NC board decided to commit maximum resources to build the most effective campaign.

As part of this commitment, the ACLU-NC assigned Maya Harris, the new director of its Racial Justice Project, to be the full-time northern California political director for the "No on 54" campaign. ACLU-NC also allocated space, staff, and resources to set up the northern California headquarters. Harris quickly transformed a sixth-floor ACLU-NC office into a war room, stuffed with signs, bumper stickers, and literature and buzzing with volunteers and phone bankers. With the assistance of Amina Luqman, Harris spread the word about the campaign throughout the region. A quickly organized speakers bureau sent "No on

54" activists to more than 50 venues throughout the state.

Harris was invited to speak at events with national civil rights leaders Julian Bond, Jesse Jackson, Dolores Huerta, and Kwesi Mfume, as well as at many community and educational events. At a moving anniversary celebration of Martin Luther King's "I Have a Dream" speech, Harris warned the assembled trade union and civil rights activists of the new threat to racial justice posed by Proposition 54. She was met with thunderous applause — and scores of people signed up to work on the campaign.

A media campaign, coordinated by Swain and former ACLU-NC public information director Elaine Elinson, successfully targeted the ethnic media and rural outlets in addition to the mainstream press. Harris's visit to the San Jose Mercury News editorial board led to a scathing editorial against the initiative. Harris and Ehrlich were interviewed on numerous radio programs throughout the state.

## GRASSROOTS CAMPAIGN

ACLU-NC associate director Bob Kearney ensured that ACLU members were on the frontlines of the grassroots campaign. Working with Harris, Kearney conducted three speakers' trainings, drawing more than 100 people who came to learn about the most effective ways to warn their communities about Proposition 54. This incredibly diverse group of volunteers came from trade unions, black sororities, synagogues, churches and youth groups; they were students, retirees, doctors, nurses, teachers, housing rights activists, and people who identified themselves as "just plain concerned citizens."

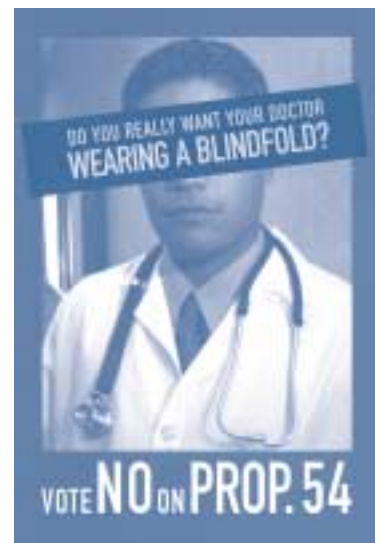
The annual ACLU-NC Membership Conference, held in mid-September, helped prepare members for the tough fight during the final month of the campaign. Chapters from Yolo County to Monterey and Modesto to Mendocino implemented a field plan that included phone banking, literature distribution, and informational tabling. Among their efforts, the North Peninsula Chapter hosted 45 phone bankers, and the Sacramento Chapter distributed leaflets to mosques in the area.

The ACLU-NC communications department created a postcard, palm cards, flyers, and a special edition of the ACLU News. ACLU members distributed more than 90,000 pieces of literature at public transportation stations during rush hour, at coffee shops, bookstores, and college campuses, and at hundreds of local events. The field operation also took to cyber-space, using "viral marketing" to reach voters who looked for election information on the Internet.

## FUNDRAISING

The ACLU-NC continued raising money to put the "No on 54" message on the air via paid advertisements featuring former U.S. Surgeon General C. Everett Koop. ACLU-NC board members contributed generously, led by Delaney and two former board chairs, Milton Estes and Dick Grosboll, whose fundraising party netted \$50,000. In addition, ACLU-NC Vice Chair Jon Street reached out to the legal community and raised more than \$30,000.

The ACLU-NC's coordinated, multi-faceted approach helped create a winning strategy to defeat one of the most dangerous initiatives on the California ballot in years. The organization's ability to provide leadership to a broad coalition, and to harness resources from fundraising, to media savvy, to committed chapter and community grassroots work will provide valuable lessons for future campaigns. ■



ACLU MEMBERS DISTRIBUTED MORE THAN 90,000 PIECES OF LITERATURE AT PUBLIC TRANSPORTATION STATIONS DURING RUSH HOUR, AT COFFEE SHOPS, BOOKSTORES, AND COLLEGE CAMPUSES, AND AT HUNDREDS OF LOCAL EVENTS.

## PLANTING THE SEEDS

ACLU-NC board members, staff, chapter activists, and members throughout the

## VICTORY continued from page 1

the California Medical Association to the American Public Health Association — signed on to oppose the initiative.

Proposition 54 would also have had a devastating effect on efforts to provide equal educational opportunities for all children in the state, so we turned to our allies in education. The California Teachers Association and the National Education Association offered extraordinary support. Given their core commitment to diversity, the teachers' unions played an important leadership role throughout the campaign, insuring that we had the funds to deliver our powerful health and education messages to voters through a sophisticated, statewide paid advertising campaign.

## ROCKY ROAD TO RECALL

In January 2003, a team of top-flight campaign consultants was hired to provide research and a winning electoral strategy. They drove home the importance of communicating directly with as many of the state's 10 million voters as possible, an expensive but essential goal. With that in mind, we set our fundraising targets and campaign plan for an election in March 2004.

This was a daunting enough timeline, but as the months went by, a small grassroots effort to "recall" Governor Davis grew from a trickle to a tidal wave, and suddenly we were along for the rocky ride. First there was the possibility of Proposition 54 being on a November ballot, which would have shaved four valuable months from our campaign. But

on July 23, we learned that the recall election — and the vote on Proposition 54 — would take place on October 7. That was a frightening moment: the election was now a mere 10 weeks away, yet we had raised less than one million dollars and had not even completed the research necessary for a successful campaign strategy.

Nevertheless, the Campaign for an Informed California, which led the “No on 54” effort, numbered several hundred organizations by August and kept gaining momentum. By September, the Field Poll showed that a full 40% of likely voters were against Proposition 54, with the same number supporting it. This dead heat was a tremendous advance over polls in April and July, which showed the initiative leading by more than 10 points.

But there were still more unprecedented twists and turns. The Federal Court of Appeals’ decision to delay the election in an ACLU voting rights case (see article on this page) created even greater uncertainty for several weeks until it was resolved. Throughout this intense time, the campaign against Proposition 54 was often drowned out by the din of the recall.

#### TV AND RADIO ADS

Despite these difficulties, our campaign was in full swing. Through generous donors we were able to raise enough money to advertise on radio and TV.

The campaign chose nationally respected spokespersons to bring our effective messages to the airwaves: former U.S. Surgeon General C. Everett Koop focused on the health dangers; Spanish language ads played on Univision. In our radio ads, Danny Glover and Jesse Jackson explained that core civil rights issues were at stake.

Editorials in newspapers throughout the state echoed the “No on 54” campaign’s messages, urging a vote against the initiative because it was bad for health, bad for education, and bad for public safety. Six of the seven “top-tier” candidates running for governor all came out in opposition to Proposition 54 — only Tom McClintock supported it. Lt. Governor Cruz Bustamante ran his own, separately financed television ads in opposition to the measure. Meanwhile, grassroots activities proliferated throughout the state, from web-based educational efforts, to local events and precinct walking in communities of color, to statewide campaigning by labor unions and environmentalists.



#### TURNING THE TIDE

In the last few weeks of the campaign, victory began to seem not only possible, but increasingly likely. But what happens in the last few weeks of the campaign is almost never the whole story. When did Proposition 54 really begin to turn around?

Was it the University of California Regents’ vote last spring repudiating their own colleague Ward Connerly’s proposal by an overwhelming margin of 15-3 that started people thinking? Was it the rally and press conference in Sacramento last spring where hundreds came from around the state, and every state constitutional office holder publicly rejected the measure? Was it the opinion pieces and letters in newspapers up and down the state that asked people to think about the serious consequences of this critical issue?

We may never know exactly how much each of these and other critical steps along the way contributed to our ultimate victory. But we do know that on Election Day, all the hard work paid off.

According to the Associated Press: “Those who said

Proposition 54 would help unify California’s racial groups and create a colorblind society turned out to be right in one respect: Voters of every race united to defeat it.”

This decisive vote has both local and national reverberations. The cycle of anti-civil rights ballot measures has been broken, and we have learned how to win. As we celebrate our victory, however, we must also prepare to face the obstacles that lie ahead.

Following the U.S. Supreme Court decision in the University of Michigan affirmative action case, Ward Connerly stated that he would target four states with measures to outlaw affirmative action. He has also threatened to introduce another race information ban in California.

But California’s voters have seen through Connerly’s lies and deceptions and have repudiated his vision of a society where we are blinded to the race and ethnic discrimination

that tragically persists.

The ACLU-NC is well equipped to build upon this success. Our Racial Justice Project, established five years ago, is a tremendous resource in the continuing fight for equality. Having already created a national model for fighting racial profiling, and with this fresh victory on a statewide ballot measure, we have the experience and momentum to take on new challenges, like glaring inequities in our educational and criminal justice systems.

It will be a long road, but we been energized by this extraordinary success and strengthened by the new and enduring partnerships that made it possible. The many lessons we have learned will serve us well as we chart our future course towards racial justice. ■

## VOTING RIGHTS CASE HIGHLIGHTS PUNCH-CARD PROBLEMS

By Elaine Elinson\*

In a September 22 hearing watched around the nation, ACLU attorneys made a principled stand for California voters’ rights before an 11-judge panel of the Ninth Circuit Court of Appeals. The ACLU argued that the use of obsolete punch-card ballots in at least six California counties could potentially disenfranchise tens of thousands of voters during the October 7 recall election.

According to lead attorney Mark Rosenbaum, of the ACLU of Southern California (ACLU-SC), “The case built on our voting rights victory in 2001, when the Secretary of State agreed that California counties had to stop using the same obsolete, decertified punch-card machines that caused the Florida 2000 debacle. Those machines – which are expected to invalidate an estimated 40,000 votes due to mechanical flaws – were supposed to be phased out by spring 2004. Neither we nor anyone else could ever have predicted that there would be an election this year.”

Less than 24 hours after hearing arguments, the Court issued a unanimous, unsigned, 12-page decision that the election would proceed as scheduled, but acknowledged that “the argument is one over which reasonable jurists may differ.”

“[THE PLAINTIFFS ARE] LEGITIMATELY CONCERNED THAT THE USE OF THE PUNCH-CARD SYSTEM WILL DENY THE RIGHT TO VOTE TO SOME VOTERS WHO MUST USE THE SYSTEM.”

NINTH CIRCUIT COURT OF APPEALS

The joint statement also said, “We remain firmly convinced that using voting equipment officially declared by the state to be obsolete, in a number of counties with a high concentration of minority voters, violates the equal protection clause of the Fourteenth Amendment and the Voting Rights Act. We remain deeply concerned over the fairness of the October 7 election, but with the election just two weeks away, we do not believe we should prolong the uncertainty any longer.”

The counties that still use punch cards are Los Angeles, Mendocino, Sacramento, San Diego, Santa Clara and Solano. They represent 44% of California’s total population.

The case, *Southwest Voter Education Project v. Shelley*,



ACLU of Southern California legal director Mark Rosenbaum speaks at an ACLU-NC news conference directly following the Ninth Circuit Court of Appeals en banc decision to reinstate the October 7 election. L-R: ACLU-SC staff attorney Catherine Lhamon, ACLU-NC executive director Dorothy Ehrlich, Mark Rosenbaum, ACLU-NC legal director Alan Schlosser, and ACLU-NC staff attorney Margaret Crosby.

was filed in U.S. District Court after the recall election was set for October. Co-counsels included ACLU-SC attorney Ben Wizner and ACLU-NC attorneys Alan Schlosser and Margaret Crosby. The plaintiffs included the Southwest Voter Education Project, NAACP California, and the Southern Christian Leadership Conference of Greater Los Angeles.

After District Court Judge Stephen V. Wilson ruled against the ACLU in August, a three-judge panel of the Ninth Circuit ruled on September 15 that the election should be delayed. Secretary of State Kevin Shelley then appealed to the full Ninth Circuit, leading to the September 22 hearing.

“[The plaintiffs are] legitimately concerned that the use of the punch-card system will deny the right to vote to some voters who must use the system,” the Court stated, but decided that the election should proceed because of the 700,000 absentee ballots already cast and the “enormous resources already invested” in the election.

“We are disappointed by the Ninth Circuit’s en banc decision,” said ACLU-SC executive director Ramona Ripston, “but we will press forward vigorously with our national campaign for election reform and will fight to ensure the fairness and accuracy of all voting procedures in every future election, including the 2004 Presidential contest.”

The day after the election, research confirmed that punch-card systems resulted in at least 176,000 disqualified votes – four times more than expected, although not enough to change the election’s outcome. Said Rosenbaum, “I hope this puts to rest claims that these [punch card] machines have any place in a democracy.” ■

\* The author is a communications consultant and former ACLU-NC public information director.

# BOARD OF DIRECTORS ELECTION

## VOTING INFORMATION

### WHO CAN VOTE:

The by-laws of the ACLU of Northern California (ACLU-NC) call for the "at large" Directors to be elected by our general membership. The label affixed to this issue of the *ACLU News* indicates on the top line if you are a current member and thus eligible to vote. Your label states "VOTE" if you are eligible to vote, or "INELIGIBLE" if you are not eligible to vote.

If your label states that you are ineligible to vote, but you have recently renewed your membership, please send in your ballot with an attached note including your name and phone number, so we can verify your renewal that was not yet processed as of the time the labels were generated. If you are ineligible because you have not renewed your membership but would like to do so at this time, please enclose your membership renewal check in the same envelope along with your ballot. (Only non tax-deductible membership dues payable to the ACLU, not donations to the ACLU Foundation, make you eligible to vote.)

### HOW THE CANDIDATES WERE NOMINATED:

As explained in our special summer 2003 issue of the *ACLU News*, our by-laws specify two methods for nominating candidates for directorships. Candidates may be nominated by the current Board of Directors after the Board considers recommendations from its Nominating Committee. Candidates may also be nominated by petition bearing the signatures of at least 15 of our members in good standing. (One of this year's candidates was nominated that way.)

### INSTRUCTIONS FOR VOTING:

This year's candidates are listed on these pages in alphabetical order. We have 11 candidates running to fill 10 vacancies on our Board of Directors. You may vote for up to 10

candidates. You cannot cast more than one vote for any candidate. That is so even if you vote for fewer than 10 candidates. If you share a joint membership with another member, each of you can vote for 10 candidates. Do that by using both of the columns provided for that purpose.

After marking your ballot, clip it and enclose the ballot and your address label from this issue of the *ACLU News* in an envelope. *Your address label must be included to ensure voter eligibility.* Address the envelope to:

Elections Committee  
ACLU of Northern California  
1663 Mission Street, Suite 460  
San Francisco, California 94103

If you prefer that your ballot be confidential, insert your ballot in one envelope, then insert that envelope plus your address label in a second envelope and mail that second envelope to our Elections Committee at the address indicated above. In that case, we will separate your envelopes before we count your ballot.

*In order for your ballot to be counted, we must receive it at the address shown above by noon, California time, on Thursday, December 11, 2003.*

As required by our by-laws, in order to have quorum for our election, we need at least 100 timely returned ballots from our members.

To help you assess this year's candidates, here are brief statements submitted by the candidates. We've also indicated, below, how they were nominated.

## CANDIDATES' STATEMENTS

### JIM BLUME

During these perilous times when many of our hard-won and cherished civil liberties are under assault, it would be a great honor to serve on the Board of the ACLU-NC.

From 1988 - 1994, when I previously sat on the Board, I was actively engaged on a variety of committees including the Finance Committee and its sub-committee, the Endowment committee, where I continue to serve. I also assisted ACLU National when it established its Endowment Fund. I currently serve as a Board member of The Ploughshares Fund.

I am an investment advisor in the East Bay.

I hope you will support my candidacy for Board membership. I can assure you that I will, if elected, serve with dedication and vigor.

NOMINATED BY: Board of Directors INCUMBENT: No



### DONNA BRORBY

Eligible for one more term on the Board, I seek re-election to make full use of the experience that I've gained on the Board during the last five years. I am Board Chair of the Development Committee and a member of the Executive and Legal committees. I serve on the Board to be part of fighting for individuals' civil rights and liberties against encroachment by the government and the masses.

I grew up and attended public schools in Richmond, California in the 1950s-60s where I learned much about poverty, racial justice and civil rights issues. I graduated from Harvard University and Boalt Hall Law School. I'm a civil rights litigator, primarily in the areas of prisoners' constitutional rights and employment discrimination.

NOMINATED BY: Board of Directors INCUMBENT: Yes



### MARIANO-FLORENTINO CUELLAR

As a professor at Stanford Law School, I try to teach our students about the extent and fragility of our country's legacy of freedom. Because that legacy is under pressure in our times, I focus my research and pro bono projects on promoting government accountability through law. I hope you'll give me the chance to join with you, the chapters, and the staff to help the ACLU of Northern California protect our country's legacy. I have three main priorities: helping to articulate our concerns about legal developments and constitu-

tional government to the general public; working with staff to respond to legal developments in court decisions, legislation, and regulatory policy; and supporting our outreach to immigrants and communities of color.

NOMINATED BY: Board of Directors INCUMBENT: No



### QUINN DELANEY

These challenging times present the ACLU with an opportunity to become an ever stronger voice for justice. Our membership has increased dramatically because people understand the importance of an effective ACLU. As the current Chair of the Board, I have the honor of working with an outstanding group of committed individuals who work to safeguard civil liberties and civil rights for everyone.

I have been associated with the ACLU for many years, first as a volunteer attorney, then as a Board member and chair of the development committee. In my professional life I am the director of a foundation focusing on racial justice.

WANT TO SUPPORT THE ACLU? GIVE ONLINE AT [WWW.ACLUNC.ORG](http://WWW.ACLUNC.ORG)



My commitment to the ACLU-NC and the issues it works on is unwavering. I hope you will support my re-election to the Board.

NOMINATED BY: Board of Directors INCUMBENT: Yes



## LAURA DONOHUE

I was honored to serve this past year as a member of the ACLU-NC Board of Directors. The experience underscored my belief that the most effective way to address increasing limits placed on individual rights combines public advocacy, judicial remedy, and dissemination of information. Outside the ACLU, I focus on the intersection between individual rights and counter-terrorist law. Acting Assistant Professor of Political Science at Stanford University, for the past two years I taught Security, Civil Liberties, and Terrorism. I am a

Fellow at Stanford's Center for International Security and Cooperation, where I am completing the project "Security and Freedom in the Face of Terrorism." I would welcome the opportunity to continue to apply my academic work to the goals and concerns of the ACLU.

NOMINATED BY: Board of Directors INCUMBENT: Yes

## JAN GARRETT

As someone who was born with a disability and has worked in the disability civil rights field for seven years, I know how important civil rights protections are. As an ACLU-NC Board member, I hope to encourage the pursuit of more disability rights cases. As an attorney with the Disability Rights Education & Defense Fund, I have had direct experience with many civil rights issues. I also have experience as a past Board president of the AXIS Dance Company. The ACLU-NC is uniquely positioned to take cases that the mainstream legal community cannot or will not take. I would be proud to help ensure that those with the least power can turn to the ACLU for protection. Thank you for your consideration of my nomination.

NOMINATED BY: Board of Directors INCUMBENT: Yes

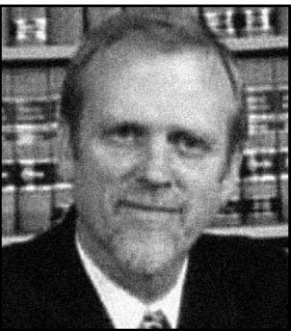


## BARBARA ZERBE MACNAB

Currently our nation faces major assaults on civil liberties at all levels. Liberties lost are difficult to regain. The ACLU becomes even more crucial as fear cripples the public will. A longtime member of the ACLU, I am presently the chair of the vibrant BARK Chapter whose dedicated Board fights to preserve our rights. Chapters are essential in this fight. Some of my past experiences are: two terms as Vice Chair of the Earl Warren ACLU Chapter; founder and past chair of NWPC of California; Chair, CDC Women's Caucus; Chair,

Berkeley Energy Commission and Commission on the Status of Women; past president, Local 1902, AFT; Lead Site representative, seven years, NEA Local; six times representative to the NEA convention. I will serve you well if elected.

NOMINATED BY: Petition INCUMBENT: No

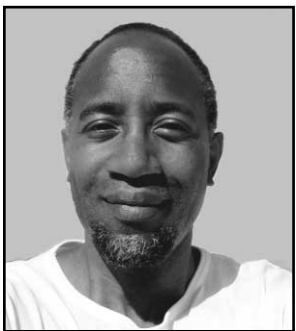


## PHILIP C. MONRAD

I am a partner in the law firm of Leonard Carder, LLP, where we represent labor unions and individual employees in employment litigation. I have served as an interim at-large member of the ACLU-NC Board since last September. I have been active in civil rights and social justice issues since 1970. At the present perilous moment, the ACLU is perhaps the most courageous and effective counterbalance to the forces fronted by Ashcroft, Cheney and Connerly. It is thus more important than ever to maintain and expand the vitality

of the ACLU. I urge everyone to give generously of their time and resources to that end, and ask for your support in allowing me to do so as a member of the Board.

NOMINATED BY: Board of Directors INCUMBENT: Yes

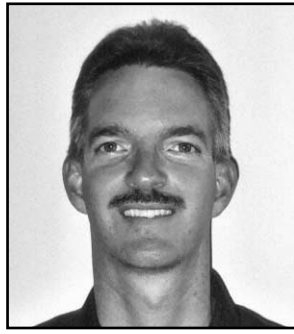


## RONALD TYLER

For thirteen years I have served as an Assistant Federal Public Defender in Northern California. The people that I represent come from many cultures and backgrounds, but the unifying experience for all of them is a confrontation with an inordinately powerful adversary within a legal system unfairly designed to incapacitate rather than to mete out justice. As a criminal defense attorney, I stand as a bulwark against the many excesses of that system.

I am honored to be nominated as a board member of the ACLU. Working to protect and expand the constitutional freedoms of Northern Californians is a natural outgrowth of my professional career. If I am elected as a board member, I pledge to work diligently to further the aims of the ACLU.

NOMINATED BY: Board of Directors INCUMBENT: No



## JEFF VESSELS

I am excited by the opportunity to remain engaged in the ACLU's vital work. Prior to relocating to San Francisco this spring to unite with my partner Gilberto, I was Executive Director of ACLU of Kentucky for three years. I created programs for young civil libertarians, established cadres of volunteers in remote areas, and initiated a Major Gifts Campaign and an Endowment Campaign. I also taught policy courses in the masters of social work program at the University of Louisville. Prior to working at the ACLU, I

was affiliate Vice Chair and, in my 20s, organized activities in my small hometown. A masters degreed social worker, I am Director of Lavender Seniors of the East Bay. I am particularly interested in fundraising and community organizing.

NOMINATED BY: Board of Directors INCUMBENT: No



## CECILLIA WANG

When I recently thanked a Lawyers' Council donor for his pledge, he replied: "If ever there was a time this was needed, it's now." How true. Right now, our ACLU is battling for civil rights and liberties, just as it has through history. I would be honored to join in that fight as a board member. I am currently an attorney at the law firm of Keker & Van Nest. From my past work as an ACLU Immigrants' Rights Project lawyer and public defender, and as a current member of the indigent criminal defense panel for the San Francisco federal district court

and the ACLU Lawyers' Council, I know how vital the ACLU is to our community. Here's to fighting the good fight together.

NOMINATED BY: Board of Directors INCUMBENT: No

# ACLU-NC BOARD OF DIRECTORS BALLOT

Please vote by marking one square next to each candidate you support.

You may *vote for up to 10 candidates* out of the 11 on this ballot.

(Joint members: use both squares.)

- JIM BLUME
- DONNA BRORBY
- MARIANO-FLORENTINO CUELLAR
- QUINN DELANEY
- LAURA DONOHUE
- JAN GARRETT
- BARBARA ZERBE MACNAB
- PHILIP C. MONRAD
- RONALD TYLER
- JEFF VESSELS
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# PATRIOT ACT UNDER FIRE

By Bob Kearney

**T**he grassroots groundswell against the USA Patriot Act is taking hold on Capitol Hill. Northern California continues to lead the way, passing more than 45 anti-Patriot Act resolutions out of more than 200 around the nation. In just two years, these resolutions, along with letters, calls, and visits to Congress, have had a profound impact in Washington.

On October 26, 2001, the House of Representatives passed the Patriot Act by a margin of 357-66. This year, the House considered an amendment, sponsored by conservative Republican "Butch" Otter of Idaho, which would block "sneak and peek" searches. These searches, authorized by section 213 of the Act, allow the government to enter a home or office with a search warrant when the occupant is away, search and take photographs, in some cases even seize physical property and electronic communications, and not tell the occupant about the search until much later. The move to block funding for these searches passed by a vote of 309-118, with 113 Republicans voting in favor.

CONGRESS IS  
TAKING A SECOND  
LOOK AT THE  
PATRIOT ACT  
AND RELATED  
THREATS TO CIVIL  
LIBERTIES.

On a related front, this September Congress approved a measure that puts the breaks on the CAPPS II (Computer Assisted Passenger Pre-Screening System) program, a vast integrated database that would run several kinds of searches on individual travelers' personal information using unknown criteria and unidentified sources. Congress forbade the CAPPS II program from going beyond the testing phase unless the Transportation Safety Administration can prove that the system will have

adequate oversight and not cause a host of privacy, civil rights, and other violations.

#### TAKING ON THE PATRIOT ACT

Within days of the CAPPS II victory, Reps. Dennis Kucinich (D-OH) and Ron Paul (R-TX) unveiled the Benjamin Franklin True Patriot Act (H.R. 3171) to correct some of the original law's excesses. This bipartisan bill: eliminates "sneak and peek" search warrants; revokes Section 215, which gives law enforcement unfettered access to a wide array of personal records, including library, medical and educational records; and challenges the Attorney General's authority to indefinitely detain non-citizens he certifies are terrorists, without any judicial review.

At the same time, Senators Larry Craig (R-ID) and Dick Durbin (D-IL) introduced the Security and Freedom Assured (SAFE) Act. The SAFE Act (S. 1709) would make sure that intelligence agents cannot search library records unless there is suspicion that an individual is involved with a foreign power. It would also limit the use of "sneak and peek" searches by government agents. And it would reinstate stronger legal limits on the government's ability to conduct widespread searches of your personal information.

#### THREATS TO OUR RIGHTS STILL ON THE HORIZON

While we are increasingly optimistic that our grassroots efforts have stopped Attorney General John Ashcroft's proposed "Patriot II" legislation from progressing this year, the Bush administration continues to push for expanded police

powers. The President marked the anniversary of the September 11 attacks by calling for many of the powers listed in the draft of "Patriot II," including the ability to issue secret subpoenas, hold more suspects indefinitely without bail, and expand the use of the death penalty.

A new threat from Capitol Hill is H.R. 2671, the "Clear Law Enforcement for Criminal Alien Removal Act" (CLEAR). The CLEAR Act would force local police to investigate and enforce federal civil immigration laws, or face losing a portion of federal funds. Despite evidence that some law enforcement officers engage in racial profiling, these same officers would now be empowered to stop and question people based on their ethnic background or their accent, leading to violations of the rights of U.S. citizens and legal residents whose only offense is "looking foreign." Anticipating this, the bill further seeks to grant immunity from civil lawsuits for officers who enforce immigration laws.

Local law enforcement also lacks the training to carry out immigration-related work, which is why many communities have indicated that they will not deputize their local law enforcement officials to take on such responsibilities.

Clearly, thanks to the efforts of many activists in northern California, Congress is taking a second look at the Patriot Act and related threats to civil liberties. We are now entering a new phase of activism, where we will need to pressure Congress directly with our letters, calls and visits. By engaging our representatives and their staffs, we can stop these new assaults on our civil liberties and push legislation that brings the Patriot Act back in line with the Constitution.

(For more about "sneak and peek" searches and other dangerous aspects of the Patriot Act, see page 12.) ■

#### TAKE ACTION

## TELL CONGRESS TO KEEP AMERICA SAFE AND FREE

Several federal bills could help make or break Attorney General John Ashcroft's attempts to sabotage our civil liberties. Help beat back the USA Patriot Act and other dangerous legislation!

- Support the SAFE Act (S. 1709)! This Senate legislation would roll back some of the Patriot Act's worst excesses. Ashcroft's allies will do all they can to block it. *Urge Senators Boxer and Feinstein to cosponsor S. 1709!*
- Stop the CLEAR Act (H.R. 2671)! This bill would require local enforcement of federal immigration laws, which local police and other law enforcement agencies are not trained to do. This wrong-headed legislation already has more than 100 supporters in the House of Representatives, and could face a vote early in 2004. *Urge your House member to oppose H.R. 2671!*
- Support the "Benjamin Franklin True Patriot Act" (H.R. 3171)! This House bill would revoke many of the Patriot Act's most extreme provisions. However, it will take many more vocal supporters to be considered by the full House. *Urge your House member to cosponsor H.R. 3171!*

Make your voice heard! It's easy to *write to your elected officials* about these and other important issues at <http://www.aclunc.org/takeaction.html>. You can also *call House and Senate offices* through the Capitol Hill switchboard at (202) 225-3121.

## ASHCROFT "CHARM OFFENSIVE"

By Sanjeev Bery, *Field Organizer*

U.S. Attorney General John Ashcroft is hard at work. Armed with new talking points and rhetoric, in August he embarked on a 16-city tour to shore up support for the controversial USA Patriot Act.

Faced with a rising tide of opposition to the Patriot Act's violation of civil liberties, the White House and U.S. Department of Justice have decided that the best defense is a good offense. They are now trying to characterize legitimate concerns about excessive government power as Patriot Act "myths."

Of course, they are doing their best to avoid the tough questions. Ashcroft's speaking engagements have frequently been limited to law enforcement officials and have been closed to the public. And he has refused to do interviews with newspapers or other print media, focusing only on television sound bites.

His entire tour, however, is a direct response to our hard work. So far, thousands of ACLU members have taken steps to oppose the Patriot Act, including sending a steady stream of letters, emails, and phone calls to members of Congress representing northern California. In addition, 45 northern California cities and counties have passed resolutions opposing the Patriot Act. Nationwide, nearly 200 local pro-civil



liberties resolutions and three statewide resolutions (Alaska, Hawaii, and Vermont) are in place as of this writing, representing over 25 million people in 32 states.

While Ashcroft's "charm offensive" might not win any new fans, it could undermine important congressional efforts to stop the Patriot Act. That is why we must keep up the pressure. While Ashcroft's speeches may make headlines, our votes are what really matter. And when elected officials hear strong opposition to the Patriot Act from their constituents, they'll respond with action. ■

KEEP AMERICA SAFE AND FREE. GET CAMPAIGN INFORMATION AND UPDATES AT [WWW.ACLUNC.ORG](http://WWW.ACLUNC.ORG)

**B-A-R-K CHAPTER HOSTS HIGHTOWER AND LEE**

On September 14, more than 500 people gave up a sunny Sunday to hear best-selling author Jim Hightower and Congresswoman Barbara Lee speak out against the USA Patriot Act. This wildly successful event was held at St. John's Presbyterian Church and was sponsored by the Berkeley, Albany, Richmond, and Kensington (B-A-R-K) Chapter of the ACLU-NC.

Congresswoman Lee pointed out the importance of grassroots action at this moment: "We are at this crossroads of selling out the soul of this country. We are doing this in some misguided attempt to buy security. The world is not more secure than it was two years ago — it's less secure." Lee thanked ACLU activists for keeping up the pressure on Congress to bring the Patriot Act back in line with the Constitution.

Hightower also praised the high-energy crowd as "ACLU agitators" and "Ashcroft arrogance busters." He went on to call the Patriot Act a "little shop of horrors" that turned "280 million Americans from being citizens to suspects."

Hightower, who publishes his own newsletter, hosts a radio show, and writes a column for The Nation and other publications, is on a tour promoting his popular new book, "Thieves in High Places."

**U.S. REP. SAM FARR RECEIVES AWARD**

On October 19, the Monterey County ACLU Chapter awarded Congressman Sam Farr its 2003 Atkinson Civil Liberties Award. Farr's public statements on the USA Patriot Act, as well as his stands on key civil liberties issues, have made him a most deserving candidate. ■

**MEMBERSHIP** continued from page 2

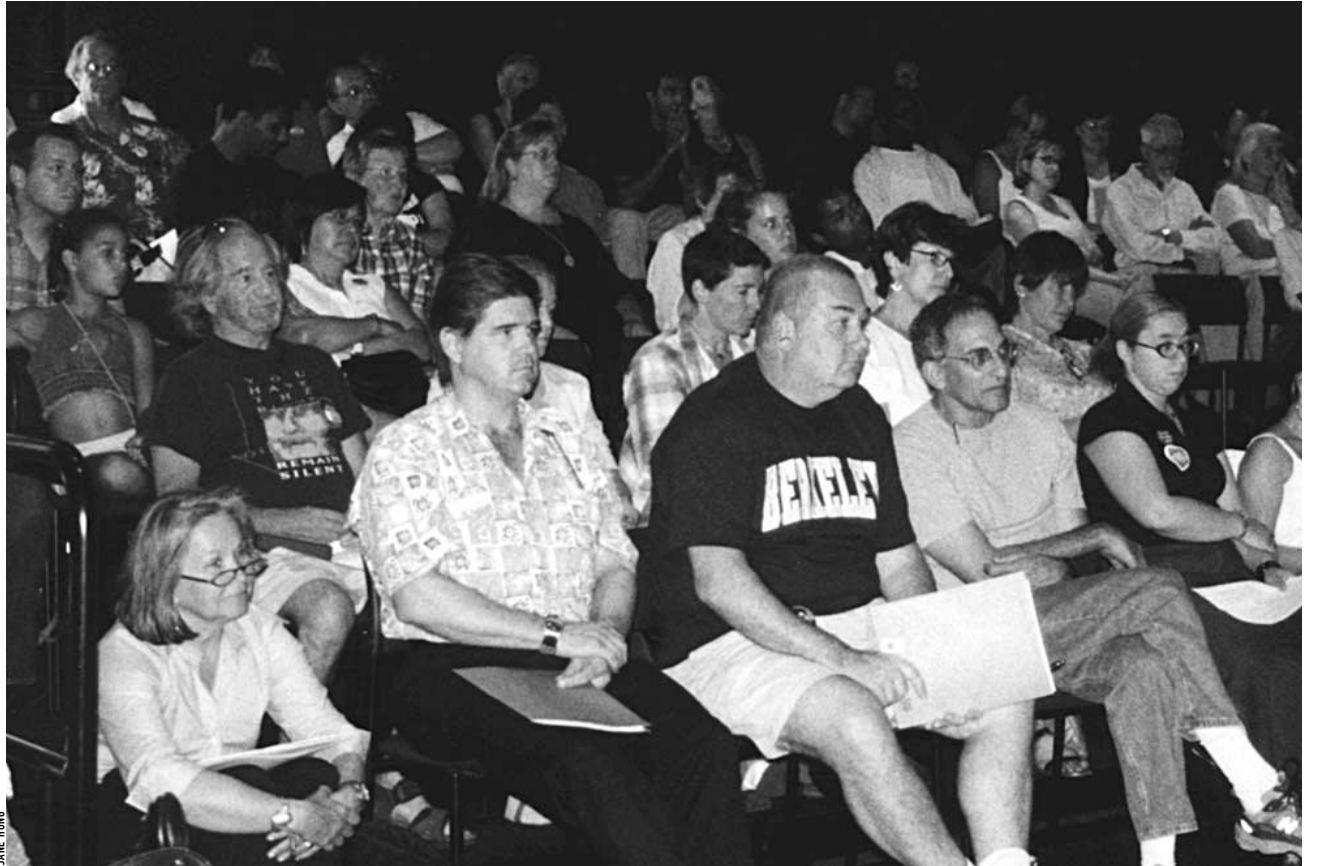
Michelle Welsh, Monterey affiliate board member and a conference presenter, said that she left the conference "fired up to go out and continue fighting against the Patriot Act and Prop. 54, and *for* the Constitution!"

After Toni Broaddus, program director for Equality California, spoke on a panel about gay marriage, she said, "I couldn't believe all the energy in the room. I know from my own work that ACLU members are powerful partners in the fight for equal rights."

Members left the conference clutching flyers, reports, business

cards, and scraps of paper with email addresses scribbled on them. They also left with a clear agenda for the next year, as well as specific tools and ideas to bring back to their own communities.

Sanjeev Bery, who helped organize the conference, called it a great success. Said Bery, "We educated the delegates about the most urgent attacks on their civil liberties and how they can fight back at every level, from local to national. The passion of these activists is inspiring. Now it's up to them to use their knowledge and their passion to enlist more people to defend the Bill of Rights." ■



*The ACLU-NC's annual Membership Conference was held on September 13 at Holy Names College in Oakland. More than 120 enthusiastic members, representing 15 northern California chapters, attended the daylong event. The conference included discussions of Proposition 54, the USA Patriot Act, and local organizing strategies; a roundup of important state legislation; and a presentation by youth activists from the Friedman First Amendment Education Project.*

**GET INVOLVED! LOCAL CHAPTER MEETINGS**

*Contact your local ACLU chapter and become a force for change in your community.*

**B-A-R-K (BERKELEY-ALBANY-RICHMOND-KENSINGTON) CHAPTER MEETING:** Meet the third Wednesday of each month at 7p.m. at Yangtze River restaurant, located at 1668 Shattuck in Berkeley. For more information, contact Jim Hausken: (510) 558-0377.

**MARIN COUNTY CHAPTER MEETING:** Meet on the third Monday of each month at 7:30 p.m. Currently meeting at the West End Café, 1131 Fourth Street in San Rafael. Contact Bob Harmon for more information: (415) 388-3980. Or call the Marin Chapter complaint hotline at (415) 456-0137.

**MENDOCINO CHAPTER MEETING:** Meet the second Saturday of each month. Locations rotate throughout Mendocino County. For information on next meeting, contact Jessie Jesulaitis at (707) 964-8099, or Chapter Chair Linda Leahy at 707-937-3452 or lleahy@mcn.org.

**MID-PENINSULA CHAPTER MEETING:** Meet at 11 a.m. on the third Saturday of the month. Contact Harry Anisgard for more information: (650) 856-9186.

**MONTEREY COUNTY CHAPTER MEETING:** Usually meet the third Tuesday of the month at 7:15 p.m. at the Monterey Public Library. Contact Matt Friday to confirm time and location: (831) 899-2263. Or to report a civil liberties concern, call Monterey's complaint line: (831) 622-9894. Visit [www.aclumontereycounty.org](http://www.aclumontereycounty.org).

**NORTH PENINSULA (DALY CITY TO SAN CARLOS) CHAPTER MEETING:** Meetings usually held at 7:30 p.m. on the third Monday of each month, at the downstairs conference room at 700 Laurel Street (off Fifth Avenue). Contact Linda Martorana: (650) 697-5685.

**PAUL ROBESON (OAKLAND) CHAPTER MEETING:** Usually meet the fourth Monday of each month at the Rockridge library (on the corner of Manila Ave. and College Ave. in Oakland). Contact Louise Rothman-Riemer: (510) 596-2580.

**REDWOOD (HUMBOLDT COUNTY) CHAPTER MEETING:** Meet the third Tuesday of each month at 7 p.m. above Moonrise Herbs at 826 G. Street in Arcata. Please contact Roger Zoss: rzoss@quik.com or (707) 786-4942.

**SAN FRANCISCO CHAPTER MEETING:** Meet the third Tuesday of each month at 6:45 p.m. at the ACLU-NC office (1663 Mission Street, Suite 460). Call the Chapter hotline: (415) 979-6699.

**SANTA CLARA VALLEY CHAPTER MEETING:** Meet the first Tuesday of each month at 1051 Morse Street (at Newhall) in San Jose. For more information and news on events, contact [acluscv@hotmail.com](mailto:acluscv@hotmail.com) or visit [www.acluscv.org](http://www.acluscv.org).

**SANTA CRUZ COUNTY CHAPTER BOARD MEETING:** Meet the third Tuesday of each month at 7 p.m. at 260 High Street. Contact Marge Frantz for more information: (831) 471-0810.

**SONOMA COUNTY CHAPTER MEETING:** Usually meet the third Tuesday of each month, at 7 p.m. at the Peace and Justice

Center, located at 467 Sebastopol Avenue, Santa Rosa (one block west of Santa Rosa Avenue). Call the Sonoma hotline at (707) 765-5005 or visit [www.aclusonoma.org](http://www.aclusonoma.org) for more information.

**NEW CHAPTERS ORGANIZING**

**CONTRA COSTA/MT. DIABLO:** Next meetings are 7-9 pm, Tuesday, November 15 and Tuesday, December 2 at the Ygnacio Valley branch of the Walnut Creek Library, 2661 Oak Grove (just south of Ygnacio Valley Blvd). Contact Lee Lawrence at (925) 376-9000 or [leehelelawrence@yahoo.com](mailto:leehelelawrence@yahoo.com). All ACLU members in central and eastern Contra Costa County are invited to participate in this chapter.

**NAPA:** Meet the first Thursday of the month. Contact Ken Croft at (707) 592-3459 or Mary Wallis at (707) 226-6756.

**SAN JOAQUIN COUNTY:** The next meeting will be 7:30 PM, Monday, December 1, at Unity Southern Baptist Church (multipurpose room), 1545 Rosemary Lane, Stockton. Contact Kamran Alavi for more information: (209) 833-0576 or [calm\\_ron@yahoo.com](mailto:calm_ron@yahoo.com).

**SOLANO:** Contact Bill Hatcher at (707) 449-0726.

**STANISLAUS COUNTY:** Meetings are monthly. Contact Tracy Herbeck at (209) 522-7149 for more information.

**YOLO COUNTY:** Contact Natalie Wormeli: (530) 756-1900.

# ASK THE EXPERTS! USA PATRIOT ACT FOCUS

## BACKGROUND

The USA Patriot Act, signed into law in October 2001, vastly expanded the government's authority to spy on its own citizens, while simultaneously undercutting many important checks and balances on law enforcement and intelligence powers.

Under this controversial law, the government can search your home without notifying you and find out which books you read – even if these activities have nothing to do with the fight against terrorism.

While we should provide law enforcement with necessary tools to fight terrorism, the Patriot Act goes too far. Two of its most controversial provisions are Sections 213 and 215, which expand the government's ability to spy on you and have access to your personal property and information.



GIGI PANDIAN

## SECTION 213: "SNEAK AND PEEK" SEARCHES

*Jayashri Srkantiah* Under Section 213, the government can enter your house, apartment, or office without telling you until days or weeks later. The government can then search the property, take photographs, and in some cases, even seize your personal property. Jayashri Srkantiah, associate legal director, answers key questions about Section 213.

## HOW DOES SECTION 213 INCREASE THE GOVERNMENT'S SURVEILLANCE POWERS?

Section 213 expands the government's ability to search your private property without telling you. For centuries, common law required that the government give an individual notice before it conducts a search – this "knock and announce" principle has long been recognized as a part of the Fourth Amendment to the Constitution, which prohibits unreasonable search and seizure. Now, under Section 213, the government can conduct "sneak and peek" searches without notifying you until long after the search took place. And, Section 213 is not limited to investigations into terrorism-related offenses.

## DOES THE GOVERNMENT NEED THESE ADDITIONAL POWERS TO FIGHT TERRORISM?

**NO.** Even before Section 213, the government could delay notification in limited circumstances involving electronic communications (such as email), by showing that one of five things would happen if notice were given: (1) a person's physical safety would be endangered; (2) someone would flee prosecution; (3) evidence would be tampered with; (4) potential witnesses would be intimidated; or (5) an investigation would be jeopardized or a trial unduly delayed. Section 213 takes this limited authority and makes it available for any kind of search, whether physical or electronic, and in any kind of criminal case, not just anti-terrorism investigations. The only standard that law enforcement must meet to justify a "sneak and peek" search – that an investigation will be jeopardized – is a very low one.

**THE JUSTICE DEPARTMENT RECENTLY CONCEDED THAT THE FBI HAS USED SECTION 213'S "SNEAK AND PEEK" PROVISION IN DOZENS OF CASES.**

From San Francisco to Arcata, 46 northern California communities have passed resolutions opposing provisions of the USA Patriot Act. Here, ACLU-NC legal experts take a closer look at two of the law's most controversial sections.

## IS SECTION 213 CONSTITUTIONAL?

Section 213 raises serious constitutional problems under the Fourth Amendment, which requires the government to both obtain a warrant and give you notice before conducting a search. The notice requirement allows you to assert your Fourth Amendment rights. For example, you might find irregularities in the warrant, such as the wrong address or name. Or, you may be able to show that the warrant limits the search to your car alone and does not allow law enforcement to search your home. "Sneak and peek" searches under Section 213 strip individuals of their Fourth Amendment rights, because the search occurs before they even know about the search or see the warrant.

## SECTION 215: VAST EXPANSION OF SPYING POWERS

*There is no restriction on the kinds of records or things that the FBI can demand under Section 215. Examples include personal belongings like books, letters, and computers from your home; a list of people who have borrowed a particular book from a public library; medical records, including psychiatric records; membership lists from advocacy organizations; and lists of people who worship at a particular church, mosque, temple, or synagogue. Staff attorney Ann Brick explains in more detail why the provision is so dangerous.*



ALEX ORRIZZA

Ann Brick

## WHY IS THERE SO MUCH OPPOSITION TO SECTION 215?

Section 215 has been a lightning rod for opposition to the Patriot Act for a number of reasons. First, the public quickly became aware that this provision could be used to monitor the reading habits of ordinary Americans. Later, the ACLU's federal lawsuit challenging the constitutionality of Section 215 (*Muslim Community Association v. Ashcroft*) increased public awareness of the many other kinds of personal information – such as medical and financial records and religious institutions' membership lists – that the FBI can pry into without having to show that someone is suspected of doing anything wrong. Such invitations to abuse have inspired strong public opposition, and legislation limiting the use of Section 215 has been introduced in both houses of Congress.

## HOW IS SECTION 215 UNCONSTITUTIONAL?

Let me count the ways. Section 215 both ignores important Fourth Amendment protections and tramples First Amendment rights. It actually requires courts to issue a Section 215 subpoena whenever the FBI states that information is being "sought for" a foreign intelligence or international terrorism investigation. The FBI does not have to establish probable cause, as normally required for a search warrant under the Fourth Amendment, and their reason for obtaining the subpoena can be based in part on a citizen's exercise of First Amendment rights, such as writing a letter to the editor or participating in a demonstration. If the target of the subpoena is a non-resident alien, the FBI's request can be based entirely on that person's First Amendment activities.

Section 215 subpoenas can be used to obtain the most personal kinds of information, such as a list of who visited a particular website, again raising First Amendment concerns,

or may ask for medical records, raising serious privacy concerns. And a person who receives a Section 215 subpoena is subject to a gag order that prohibits telling anyone else about it, even where there is no real need for secrecy.

## DOES THE GOVERNMENT NEED THESE POWERS?

**No.** Section 215 is a power grab by the FBI for new powers it does not need to investigate people who are legitimate terrorism suspects. The FBI already had the power to engage in surveillance of anyone whom it had probable cause to believe was an agent of a foreign power or a spy, regardless of whether the person was suspected of any crime. Section 215 authorizes the FBI to go after records of innocent people, knowing that they are not engaged in international terrorism or acting as spies.

## IS THE FBI ABUSING ITS POWERS?

It is difficult to know, but we do know that the FBI has certainly abused its power in the past. After months of saying that it would compromise national security to reveal how many times the FBI has used Section 215, Ashcroft bowed to public pressure and suddenly decided that it wouldn't compromise national security after all to reveal that the FBI has not yet used Section 215.

## THE FBI COULD USE

**SECTION 215 TO DEMAND EDUCATIONAL RECORDS, MEDICAL INFORMATION, LIBRARY CIRCULATION RECORDS, E-MAIL, EVEN GENETIC INFORMATION.**

This sudden turnaround calls into question the Administration's many other claims that "national security concerns" require keeping the public in the dark about how the Patriot Act is being used.

Democracy is endangered when government seeks to act under a cloak of secrecy. The fact that the FBI has not used

Section 215 thus far does not mean that it will not use it in the future. And the "gag order" that accompanies every Section 215 subpoena means that no one will know about it, unless the Justice Department can be required to report on its use of its Section 215 powers on a regular basis. ■

## NEW! ACLU FORUM

The ACLU Forum is the place where you, our readers and members, can ask questions of our experts and share your comments with us. In each issue, we will focus on one or two specific topics.

### WE WANT TO HEAR FROM YOU!

For the Winter 2003-04 issue, please send us questions about:

### Touch Screen Voting

We also encourage you to send letters to the editor on any of the subjects we cover, though we cannot print every letter or answer every question. Letters should not exceed 200 words.

Send your questions and comments to [gpandian@aclunc.org](mailto:gpandian@aclunc.org) or Gigi Pandian, 1663 Mission Street #460, San Francisco, CA 94103.