

ACLU FALL 2004 news

BECAUSE FREEDOM CAN'T PROTECT ITSELF

VOLUME LXVIII ISSUE 4

WHAT'S INSIDE

PAGE 2

November Election:
"YES" on 66, "NO" on 69



PAGE 3

Supreme Court Rules on
Marriage Equality

PAGE 4

Youth Explore Sexism
on ACLU Summer Trip

PAGE 6

ACLU Victory Limits
Patriot Act

PAGE 8

VOTE in the ACLU-NC's
Board Election

LANDMARK VICTORY FOR CALIFORNIA STUDENTS

By Elaine Elinson, *ACLU News Contributor*

Filthy bathrooms. Dilapidated equipment. Mouse-infested classrooms. Is this what California students should expect from their public schools? On August 13, a \$1 billion settlement in a historic lawsuit delivered the answer: a resounding "no."

Williams v. California leveled grave charges at the state. Brought by civil rights and educational advocates on behalf of students in California's poorest schools, the suit charged that California was abdicating its constitutional responsibility to provide predominantly low-income students of color with the bare essentials necessary for learning: adequate books and classroom materials, credentialed teachers, and clean, safe facilities.

"The settlement provides up to a billion dollars to put instructional materials in the hands of students, to identify and repair crumbling, low-performing schools, and to assure that qualified teachers are in every classroom," said Mark Rosenbaum, Legal Director of the ACLU of Southern California (ACLU-SC). "Equally important," he noted, "it sets standards for access to books, teachers, and clean and safe facilities, and holds districts accountable for meeting those standards in our lowest performing schools. It empowers students and teachers to file complaints and receive quick

redress when the standards are not met."

The lawsuit was filed in May 2000 by the ACLU affiliates of Southern and Northern California, Public Advocates, Inc., the Mexican American Legal Defense and Education Fund (MALDEF), and the law firm of Morrison & Foerster on behalf of 46 students in 18 school districts. It was later expanded to include scores of additional schools after a toll-free hotline established by the ACLU was flooded with calls from students, parents, and teachers around the state.

"I knew conditions at my school were a lot worse than the conditions at schools in wealthier areas," said lead plaintiff Eli Williams, now 16, who was a student at Luther Burbank Middle School in San Francisco when the suit was filed. "Our bathrooms were dirty and flooded, ceiling tiles would fall in the gym, and the railings around the playground were rusty and broken. Our classrooms were dirty, cold, and infested with mice. It made it hard to concentrate in class."

The settlement will benefit more than one million students



Eli Williams (center), lead plaintiff in the suit seeking equality in California public schools, at a press conference in 2000. Eli is now a 16-year-old senior at San Francisco's Balboa High School.

in the state's 2,400 lowest-performing schools. It requires that all students have books, and that their schools be clean and safe, and provides nearly \$1 billion to accomplish these goals: \$800 million over four years to make emergency repairs and

CONTINUED ON PAGE 10

YES ON PROPOSITION 66, NO ON 69 FAIR SENTENCING, DNA PRIVACY AT STAKE

By Jeff Gillenkirk, *Guest Editor*

The ACLU is taking leadership on two critical initiatives on the California ballot this November—Propositions 66 and 69.

Proposition 66 would reform the "Three Strikes You're Out" law passed by voters in 1994 and restore it to its original intent—providing lengthy sentences for repeat violent and serious felony offenders, not for people convicted of stealing a loaf of bread or a package of videotapes. The ACLU of Northern California (ACLU-NC) strongly supports Prop 66 and urges

its members to vote "Yes" for more sensible sentencing.

Proposition 69 would expand California's violent criminal database to include the DNA profiles of all people arrested for a felony—even if they are never charged with a crime. The ACLU-NC vigorously opposes expanding California's already vast government database to include innocent people, and urges its members to vote "No" on 69 (see "No on 69", page 2, and ACLU Forum, page 12).

CONTINUED ON PAGE 2

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The move to reform California's "Three Strikes You're Out" law is spearheaded by a broad coalition including Joe Klaas, the grandfather of Polly Klaas. It was the kidnapping and murder of 12-year-old Polly Klaas by repeat offender Richard Allen Davis which helped ignite support for the "Three Strikes" ballot initiative that passed in 1994 with support from 72 percent of the voters.

SAN FRANCISCO CHRONICLE: "...STUDIES BY CRIMINAL-JUSTICE EXPERTS SHOW THE LAW TO BE UNDULY COSTLY... AND FAILING IN ITS PRIMARY MISSION TO CURB CRIME."

Strongly supported by the California Prison Guards Union, the "Three Strikes" law substantially lengthened prison sentences for persons who had previously been convicted of a violent or serious crime. Specifically, a person who committed one prior violent or serious offense and committed any new felony could receive the normal prison sentence for the new felony (the "second strike"). A person who committed two or more violent or serious offenses and then committed any new felony would automatically receive 25 years to life in prison (the "third strike").

According to the California Department

of Corrections, almost 65 percent of those now serving second and third strike sentences were convicted of nonviolent, petty offenses such as writing a bad check, stealing a videotape, a loaf of bread, or pack of T-shirts. Critics of the law believe this is a major factor behind California's prison population soaring to more than 160,000 inmates, the most in the nation, and its prison budget increasing from \$1 billion in 1983 to nearly \$6 billion today.

SACRAMENTO BEE: "CALIFORNIA NEEDS TO MODIFY ITS THREE-STRIKES LAW, THE HARSHTEST IN THE NATION."

nia's prison population soaring to more than 160,000 inmates, the most in the nation, and its prison budget increasing from \$1 billion in 1983 to nearly \$6 billion today.

ORANGE COUNTY REGISTER: "THE MEASURE... WILL END THE UNREASONABLE PRACTICE UNDER CURRENT LAW OF SENDING THOSE CONVICTED OF PETTY OFFENSES TO LIFE IN PRISON AT GREAT COST TO TAXPAYERS."

ORIGINAL INTENT OF VOTERS

"California is the only state with a three strikes law that doesn't require a third felony conviction be violent or serious in order to trigger such harsh sentences," says Bob Kearney, Associate Director of ACLU-NC and a spokesperson for the Yes on 66 campaign. "Proposition 66 will restore the three strikes law to what voters originally intended, and bring some common sense to sentencing in California."

While opponents of Prop 66 attribute California's falling crime rate to the passage of Three Strikes, Kearney points out that crime rates have fallen nearly everywhere across the country, even in jurisdictions without comparable Three Strikes laws or where it has not been vigorously enforced.

FRESNO BEE: "CALIFORNIANS HAVE A LEGITIMATE INTEREST IN PROTECTING THEMSELVES BY PUTTING AWAY FOR LIFE... VIOLENT HABITUAL CRIMINALS. BUT THE 'THREE STRIKES' LAW SHOULD NOT BE NETTING NONVIOLENT, THREE-TIME SHOPLIFTERS FOR 25-YEARS-TO-LIFE SENTENCES."

"San Francisco has used this law sparingly and in the fashion the voters intended," Kearney says. "And San Francisco's crime rate has dropped far more quickly than places like Fresno, which has prosecuted three strikes offenses far more aggressively."

At a time of record state budget deficits and severe cuts in government services and local funding, another benefit of Prop 66 that proponents point to is savings. According to the state's Legislative Analyst, Prop 66 is expected to save "potentially... several hundred millions of dollars," as "the lower prison population resulting from this measure would potentially result in capital outlay savings in the long-term associated with prison construction and renovations that would otherwise have been needed." It all ends up to a strong argument for voting "Yes on 66." ■

SAN JOSE MERCURY NEWS: "THE LAW IS WASTING TENS OF MILLIONS OF TAX DOLLARS... AND WASTING LIVES."

VOTE NO ON PROPOSITION 69! PROTECT YOUR DNA

Prop 69 would expand California's convicted felon DNA database to include innocent people. California already has a criminal DNA database. Current law requires the collection, storage, and testing of DNA from people convicted of serious and violent felonies, including kidnapers, rapists, murderers, and child molesters.

PROPOSITION 69 IS DANGEROUS BECAUSE:

Adults arrested for any felony offense—even if they are never charged with a crime—will have their DNA profile included in California's violent felony database. Innocent people don't belong trapped in a massive government database.

Youth who are adjudicated or convicted for any felony offense—including shoplifting or writing a bad check—will be permanently stored in this expanded criminal database.

Once you're in the database, you must petition to be removed by providing a certified copy of documents

to three separate jurisdictions proving your innocence. Under Prop 69, the court can deny your request—and its decision cannot be appealed.

Your DNA exposes the most intimate details about you and your family, including your predisposition and carrier status for diseases such as Alzheimer's, heart disease, and cancer. Healthy people have lost their jobs or health insurance based on genetic "predictions."

Innocent people have spent years in jail for crimes they did not commit because of botched DNA testing.

It will cost California hundreds of millions of dollars to implement Prop 69, clogging an already-overwhelmed DNA testing system needed to help the wrongfully convicted.

Join the Privacy Rights Clearinghouse, California Democratic Party, AFL-CIO California Labor Federation, Children's Defense Fund, ACLU, NAACP, Council for Responsible Genetics, National Black Police Association and many others in saying "No" on Prop 69! ■ (See page 12 for more information on Prop 69.)

INAUGURAL LAWYERS RECEPTION FOR LGBT RIGHTS



On July 14, ten law firms sponsored a reception for Bay Area attorneys and summer associates. The first annual Summer Attorneys Reception was generously hosted by Morrison & Foerster and benefits Fronline, the joint advocacy program of the ACLU-NC and the ACLU Lesbian & Gay Rights and AIDS Projects. ACLU-NC staff attorney Tamara Lange (second from left) and ACLU-NC associate director Bob Kearney (second from right) are joined by Jeanne Rizzo and Pali Cooper, plaintiffs in the *Woo v. Lockyer* marriage equality case.

JACK STRATFORD LEAVES A LASTING LEGACY

By Stan Yogi, *Planned Giving Director*

Longtime Oakland resident and ACLU member John "Jack" Stratford spent a lifetime supporting the rights of political activists and labor organizers, the separation of church and state, and international human rights. When he passed away in July following hospitalization for a stroke, Jack ensured that his values would carry on after him by leaving a generous legacy for the ACLU through his estate plan.



Jack Stratford

Born in Albany, California in 1933, Jack earned a bachelors degree in Electrical Engineering from DeVry's University and served in the Air Force as a telegraphic mechanic during the Korean War.

His wartime service, unfortunately, left him with permanent hearing loss and post traumatic stress disorder.

Upon returning to the Bay Area, Jack worked as a gardener for the East Bay Regional Park District. His love of botany led him to publish a plant list of the Huckleberry Trail in Oakland. He also compiled an extensive collection of plant specimens from Anthony Chabot Regional Park that he donated to the UC Berkeley Jepson Herbarium. Actively involved in his labor union, he was once arrested while on strike.

His 1984 retirement provided him time to pursue his other great interest: jazz. He loved listening to jazz recorded before 1955, particularly the works of Louis Armstrong.

"All of us at the ACLU of Northern California are deeply honored that Jack Stratford remembered the ACLU in his estate plan," said Dorothy Ehrlich, executive director. "Because of the thoughtfulness of civil libertarians like him, the ACLU has the resources necessary to fight the good fight." ■

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TWO STEPS FORWARD, ONE STEP BACK FOR MARRIAGE EQUALITY

By Adam Forest, *ACLU Intern*

Dealing a bitter blow to thousands of same-sex couples who were married in San Francisco's City Hall this winter, the California Supreme Court invalidated close to 4,000 marriages on August 12. The court ruled that Mayor Gavin Newsom overstepped his authority by granting marriage licenses to 3,955 same-sex couples before the court ordered the City to stop issuing the licenses on March 11.

In protest of the decision, hundreds of couples affected by the court's decision marched from Harvey Milk Plaza to San Francisco City Hall along with supportive community members, some wearing their wedding garb. The mood was somber, yet resolute.



The faces of Woo v. Lockyer. Lancy Woo (r), her partner Cristy Chung, and daughter Olivia are plaintiffs in the historic challenge to California's marriage laws.

"I'm very hurt," said Dave Chandler, 40, who was married on Valentine's Day to his partner of 11 years. The couple attended the City Hall rally with their 8-month-old baby, Jacob. "I feel violated to have these rights given to me, and then taken away," Chandler added. "I'm going to fight. I don't want Jacob to grow up in a world where he has to live with this."

MAJOR CASE PENDING

The Court could have waited to declare the 3,955 licenses "null and void" until a later marriage equality case involving the ACLU is decided. That case, *Woo v. Lockyer*, is pending in San Francisco Superior Court, and will decide whether marriage discrimination violates California's constitutional guarantees of equality and right to privacy. The case was brought on behalf of several same-sex couples, Our Family Coalition, and Equality California by lawyers for the American Civil Liberties Union of Northern California (ACLU-NC), the National Center for Lesbian Rights (NCLR), and Lambda Legal.

A majority of the California Supreme Court elected not to await the outcome of the *Woo* case, however, saying "it would not be prudent or wise to leave the validity of these marriages in limbo for what might be a substantial period of time given the potential confusion." The Court's vote to nullify the marriage licenses was 5-2. Its declaration that Mayor Newsom overstepped his authority was unanimous, 7-0.

The Justices were careful to note that their decision that Mayor Newsom overstepped his authority was in no way indicative of their opinion on same-sex marriage in general. "To avoid any misunderstanding," wrote Chief Justice Ronald George, "we emphasize that the substantive question of the constitutional validity [of prohibiting marriage between same-sex couples] is not before our court in this proceeding, and our decision in this case is not intended, and should not be interpreted, to reflect any view on that issue."

Mayor Newsom, who launched himself into the national spotlight by approving marriages between same-sex couples



Same-sex couples wait in line for marriage licenses at San Francisco Hall in February. Almost 4,000 couples obtained licenses before the California Supreme Court ordered a halt on March 11.

just weeks into his first term as Mayor, sounded an upbeat note after the ruling. "Now we have these 4,000 couples to tell their stories, I'm not in any way discouraged," he said. "There is nothing any judge, lawyer, and politician can ever do to take away the moment those couples shared together when they said 'I do.'"

For more information about marriage equality, go to <http://aclunc.org/couples/index.html>. ■

LEGAL BRIEFS

By Stella Richardson, *Media Relations Director*

ANTI-SLAPP SUIT

The Alameda Superior Court dismissed a lawsuit filed against two day laborers, a San Francisco based non-profit group, and members of its legal staff by employers who hired the day laborers but then refused to pay them. The court ruled on September 9 that the lawsuit was in violation of the anti-SLAPP statute, which was enacted in 1992 to put a stop to lawsuits designed to chill the valid exercise of free speech.

Alameda Superior Court Judge James Richman held that La Raza Centro Legal's advocacy work on behalf of the day laborers was "an attempt to highlight the broader public issue of labor abuses against workers who are hired informally."

"The court's decision sends a message to employers throughout the state: Do not abuse day laborers and expect to find refuge in the justice system," said cooperating ACLU attorney Benjamin Riley of Chapman, Popik & White. "Employers who shirk their legal responsibilities—and then sue the public interest groups that advocate on behalf of the victims—will find out quickly that California law does not protect them."

ACLU-NC attorney Margaret Crosby was co-counsel for the defendants. *Maltez v. Alvaro*

COURT UPHOLDS STUDENT'S FIRST AMENDMENT RIGHTS

On July 22, the California Supreme Court unanimously overturned the conviction of a 15-year old Santa

Clara County student who was imprisoned for writing a disturbing poem. The student, "George T," had been convicted of violating the state's criminal threat statute after writing and sharing a poem that explored "dark themes."

Drawing on an amicus brief submitted by the ACLU-NC, the First Amendment Project, and The Thomas Jefferson Center for the Protection of Free Expression, the court held that the poem, "Faces," was too ambiguous and equivocal to constitute a criminal threat. The brief, submitted on behalf of Nobel Laureate J. M. Coetzee, Pulitzer Prize winner Michael Chabon, and other distinguished writers and poets, emphasized the literary importance of "dark" or "confessional" poetry and argued that George's poem fit within that genre. The high Court agreed.

"The Court's decision makes clear that students' creative works deserve the same high level of First Amendment protection as that accorded to established poets, authors, and artists," said Ann Brick, a staff attorney for the ACLU-NC. "The Court also noted that school safety and protecting freedom of expression need not be 'antagonistic goals.'"

David Greene of the First Amendment Project also worked on *People of the State of California v. George T.*

CHALLENGE TO NEW DOMESTIC PARTNERSHIP PROTECTIONS DISMISSED

On September 8, a Sacramento Superior Court dismissed a lawsuit that sought to block legal protections for same-sex couples that are to go into effect in January,

2005. The Court rejected claims by deceased Senator Pete Knight and Randy Thomasson of Campaign for California Families that the new domestic partnership protections guaranteed under AB205 were in conflict with Proposition 22, which states that "only marriage between a man and woman is valid or recognized in California."

"We're grateful that the court has dismissed this harmful lawsuit. But by noting the many ways that AB205 differs from full marriage rights, the court's decision demonstrates how same-sex couples will only have true equality once the state allows same-sex couples to marry," said ACLU-NC attorney Christine Sun.

Equality California as well as 12 California couples who are registered domestic partners petitioned the court and were allowed to participate against the lawsuit filed by Knight and Thomasson. They were represented by the Law Office of David C. Codell, the American Civil Liberties Union, the ACLU affiliates in Northern California, Southern California, and San Diego, the National Center for Lesbian Rights, and Lambda Legal.

AB205 provides basic protections that include: community property, mutual responsibility for debt, parenting rights and obligations such as custody and support, and the ability to claim a partner's body after death. The law does not allow for joint tax filing and certain other protections under state law, and does not provide access to over 1,000 federal protections that married couples enjoy. *Knight v. Schwarzenegger* ■

ACLU YOUTH ACTIVISTS EXPLORE SEXISM

This August, 23 high school students spent a week traveling throughout Northern California on a field exploration entitled, “SEXism: A Youth Study of Gender, Power, and Privilege.” On this page we present the reflections of three of our travelers on their experiences and perceptions around this critical issue.

SEXISM IN THE AIR WE BREATHE

“I had no idea to what extent sexism affected me, and how I saw it everyday and just thought it was “normal.” For example, the exploitation of women in the media to sell products and the unattainable standard of beauty that it portrays: I never thought there was anything wrong with this. That shows how sexism is so ingrained...

“One of the groups we met with was the National Organization of Men Against Sexism (NOMAS), on the final day of their national conference in San Francisco. They brought up a concept that I’d never given any deep thought to—making men more aware of their part in challenging sexism. Their national conference aims to make men more aware of the system of sexism, how it relates to the other ‘isms’ (racism, classism, heterosexism, etc.), and how men can make both individual and systemic changes. They had a lot to say about how sexism is programmed into men at a young age, being taught to be tough and not show emotion. One idea that stood out to me was when they said that sexism, like other forms of oppression, is “in the air that we breathe” — that we’re so used to it, we often don’t even notice that it’s there.”

—Samantha Johnson, 15, Friedman Project Youth Activist Committee

IGNITING A PASSION FOR GENDER POLITICS

“This year’s trip on gender, power, and privilege was unbelievable. I learned that the oppression, degradation, and objectification of women is prevalent in every aspect of U.S. culture. Women are discriminated against in the criminal justice system, the school system,

the media, government, etc. Women are denied equal access to certain jobs, opportunities and leadership roles, raped by men, taught to starve themselves, paid less, and forced into a double standard of sexuality. I also learned that the gender binary system is polarized and isolating to many, many people who do not fit into one of the two standard gender categories. I have always been a feminist, but this trip ignited my passion for gender politics, forced me to think introspectively about my own internalized sexism, and allowed me to teach and empower other people to take

action on these vital issues.”

—Amanda Gelender, 17, Friedman Project Youth Activist Committee.

AS AN 18-YEAR-OLD BOY...

“To consider myself an activist is one thing, but to consider myself a feminist is another. As an 18-year-old boy, I have taken on the responsibility of making a change in the world. This summer’s trip, Sexism: A Study of Power and Privilege, revealed sexism in the media, in schools, in family restaurants, even prisons. Now educated, it is only fair to educate others around me, and to let them know of the injustices inflicted upon people because of not only sex, but skin color, sexual preference, age, ability, or social status. Through this experience, I feel that I may better serve as an advocate for the third wave of the feminist movement. I embarked on this trip, ignorant of the sexist world, but disembarked with a fueled flame of anger. When it’s said and done, we all stand and fall as one.”

—Adam Chang, First Year at UC Davis

COMMITTED TO HELPING OTHERS

“We spoke with five inspiring women who are clients and peer advocates with LIFETIME (Low-Income Families’ Empowerment through Education), an Oakland organization that was created by a group of mothers at U.C. Berkeley who completed college degrees while raising their families on welfare, and who are committed to helping others do the same. One of them shared her story of how she’d never been on welfare before and was forced to go on it after being involved in a domestic abuse situation. She was unable to keep a job because her ex-husband stalked her and wouldn’t leave her alone.

“Our visit with LIFETIME really helped me understand the barriers that so many women face in their daily lives. Many women are out there struggling to survive difficult situations without much support, but get blamed for “being lazy.” At the end of the trip I felt I understood sexism a lot better and it changed my outlook on everything from TV, to careers, to everyday conversation. I felt extremely moved by all these groups’ perseverance to make people more aware of how deep sexism is, and what we can all do to challenge sexism for the betterment of all people.”

—Samantha Johnson, 15



Trip Participants and Chaperones at State Capitol Building in Sacramento.

TOP ROW (L-R): Tynan Kelly (Senior, Carmont High, Belmont); Aaron Leonard (Friedman Project Staff); Kiran Savage-Sangwan (Junior, Davis Senior High, Davis); Claire Greenwood (Senior, Urban High School, SF); Samantha Johnson (Sophomore, Elk Grove Charter School, Sacramento); Danni Biondini (First-Year, Lewis & Clark University); Jenni Lerche (Senior, Carmont High, Belmont); Jackson Yan (First Year, UC Davis). MIDDLE ROW (L-R): Shayna Gelender (ACLU staff chaperone); Adam Chang (First-Year, UC Davis); Lindsay Waggerman (Friedman Project Staff); Barbara Pinto (Senior, Lowell High, SF); Dessi Woods (Senior, Berkeley High, Berkeley); William Tian (Senior, Lowell High, SF); Caitlin Di Mantova (Junior, Rio Americano High, Carmichael); Liliana Cabrera (Senior, Mission High School, SF); Brittany Davis (Junior, Leadership Charter High, SF); Danielle Smith (Junior, Lowell High School, SF); Amanda Gelender (Senior, Castro Valley High, Castro Valley); Eveline Chang (Friedman Project Director). FRONT ROW (L-R): Rashida Harmon (Junior, Urban High School, SF); Angela Suen (Senior, Oceana High School, Pacifica); Amelia Rosenman (First-Year, Brown University); Kelsi Ju (Junior, Lowell High, SF); Ashlee Lake (Sophomore, Elsie Allen High, Santa Rosa); Akasha Perez (Sophomore, Pioneer High, San Jose); Maraya Massin-Levey (Senior, School of the Arts, SF); Rupali Jain (Senior, Sheldon High, Sacramento).

The ACLU-NC’s Howard A. Friedman First Amendment Education Project organizes an annual investigative trip based on a topic selected by the program’s Youth Activist Committee (YAC). Offering students an in-depth view of the chosen subject, the summer trips prepare participants to present in classrooms throughout the following school year. Past trips have focused on issues such as immigration, the juvenile justice system, and homelessness. ■

EXPLORING SEXISM: WHERE WE WENT, WHO WE MET

National Organization of Men Against Sexism (National) ■ Mills College (Oakland) ■ Panel of Activist Women featuring Camila Chavez (Executive Director of Dolores Huerta Foundation) ■ Margaret Russell (Professor at Santa Clara University & former ACLU-NC board chair) ■ Shahnaz Taplin (independent consultant with expertise in media, feminism & Islam) and Crystal Plati (Executive Director of Choice USA) ■ LIFETIME: Low-Income Families Empowerment through Education (Oakland) ■ Bitch Magazine (Oakland) ■ Against Patriarchy—collective of men challenging sexism (Oakland) ■ Global Fund for Women (San Francisco) ■ Barbara Brenner, Breast Cancer Action (San Francisco) ■ Health Initiatives for Youth—Peer Education workshop on sexism (San Francisco), Chris Daley, Transgender Law Center (San Francisco), Equal Rights Advocates (San Francisco), Margaret Crosby, ACLU-NC (San Francisco) ■ Street Outreach with Tracy Helton and company (San Francisco) ■ Global Exchange—sweatshops and fair trade (San Francisco) ■ The Women’s Building (San Francisco) ■ Sexual Assault Prevention & Self-Defense workshop with Janet Gee (consultant with SF Women Against Rape) ■ Women’s Day Labor Collective, La Raza Centro Legal (San Francisco), Center for Young Women’s Development (San Francisco), California Commission on the Status of Women (Sacramento), Valerie Small-Navarro, ACLU Legislative Office (Sacramento) ■ National Organization for Women (Sacramento) ■ Walden House Substance Abuse Program, Valley State Prison for Women (Chowchilla) ■ Radio Grito—La Voz del Pueblo, community radio featuring women & youth broadcasters, American Friends Service Committee (Visalia) ■ Maitri—domestic violence agency serving the South Asian community (San Jose) ■ Melissa Farley, Prostitution Research and Education (San Francisco) ■ Lisa Souza, Indybay Media (Bay Area) ■ Sex Worker Outreach Project (Berkeley) ■ Performances by Sisterz of the Underground, all-female hip hop collective, Pacific Center for Human Growth (Berkeley) ■ Feminists for Life (National).

TAKE ACTION ONLINE TO PROTECT CIVIL LIBERTIES: SIGN UP AT WWW.ACLUNC.ORG

GENDER EQUALITY REACHES FOR GRASSROOTS

By Donald Lathbury, *ACLU intern*

In 1972 President Richard Nixon signed into law Title IX, a sweeping education reform that guaranteed gender equity in school athletics funding. Thirty-two years later, Governor Arnold Schwarzenegger got the same opportunity to ban gender inequity in community-based athletic programs by signing AB 2404, “The Gender Equity for Community Athletics” bill.

Introduced by Assembly Member Darrell Steinberg and co-sponsored by the ACLU and the Commission on the Status of Women, AB 2404 provides Title IX-type guidelines to ensure gender equity in community athletic programs run by cities, counties, and special districts. The ACLU had earlier sought feedback from community leaders and coaches across the state, and found that girls’ athletics still experienced unequal treatment across the state.

“Everyone says there is no difference between girls and boys, but we are sure treated differently,” 10-year-old Kelsey Craven told the Assembly Judiciary Committee. “On the field where I play fast pitch, there are holes in the ground, no stands for the parents, we have to go out and clean up papers—and worse—before we play.”



New legislation guarantees girls in California the same level of facilities and funding for community sports as boys.

SEPARATE AND UNEQUAL

The conditions described are common for girls’ athletics throughout California. In Petaluma, the girls’ softball fields are not maintained or groomed, and have no scoreboard. The boys’ baseball fields have scoreboards, restrooms, covered dugouts, and grass that is regularly maintained. In Murietta and Riverside, boys are allowed storage facilities on the park site, but the girls are not. In Stockton, the boys’ Little League teams are given first choice of fields, while girls are left with poorly maintained fields that are a safety hazard, due to inadequate lighting and an outfield littered with gopher holes.

AB 2404 seeks to reduce this kind of discrimination in girls’ sports by ending the practice of local communities providing superior services, facilities, and funding to boys’ sports programs than to girls’. While studies show that girls and boys are equally interested in sports from the ages of 6 to 9, the disparities become irreconcilable once girls see a lack of opportunity and encouragement. If a girl doesn’t play a sport by the age of 10, she is less than 10% likely to

be involved in athletics by the age of 25, the Women’s Sports Foundation reports.

“ON THE FIELD WHERE I PLAY FAST PITCH, THERE ARE HOLES IN THE GROUND, NO STANDS FOR THE PARENTS, WE HAVE TO GO OUT AND CLEAN UP PAPERS—AND WORSE—BEFORE WE PLAY.”

—KELSEY CRAVEN, 10

The benefits to girls of ending this kind of discrimination go well beyond youth, the foundation’s studies show. Athletic teenage girls have higher graduation rates, and skills learned on the playing field, such as teamwork and goal setting, are of immense help later in the workplace, studies show. Teenage female athletes are less prone to depression, and have higher rates of self-esteem and confidence. They are less likely to be sexually active in adolescence, and more than half as likely to become pregnant as non-athletes. Fewer female athletes smoke, and athletes have a lower risk of breast cancer and other diseases later in life.

COMPLIANCE WILL BE MONITORED

Local governments must comply with the new standards set up by AB 2404 by demonstrating one of the following in their community athletic programs: that male and female participation in sports is roughly equivalent to the gender breakdown of the community; that the community has a history and continuing practice of advancing opportunities for an underrepresented gender; or that the community is fully and effectively accommodating female athlete’s interests and abilities.

“It’s not fair that girl players aren’t able to play on the same types of fields as the boys,” Kelsey Craven told California legislators. With passage of AB 2404, California’s government has shown it is willing to take a major step toward ending gender discrimination in community athletics. ■

SACRAMENTO REPORT

By Bob Kearney, *Associate Director*

California’s ACLU legislative team was extremely successful helping pass bills in the state legislature this year—but far less so in getting Governor Schwarzenegger to sign them. The Governor vetoed five pieces of ACLU-sponsored legislation, setting back efforts to shine light on deteriorating conditions in California’s prisons, provide compassionate release to terminally ill prisoners, and require parental notification of police interrogating their children in school. Following is a summary of the bills sponsored by the ACLU and passed by both the Assembly and state Senate, and those signed or vetoed by the Governor. For updated information on these and other bills of interest to the ACLU, visit www.aclunc.org and select “Take Action.”

EQUALITY IN PUBLIC EDUCATION

This summer, the Governor agreed to a settlement in *Williams v. California*, originally filed by the ACLU in May of 2000 charging the state with renegeing on its constitutional obligation to provide students with the bare essentials necessary for education (see article, p. 1). The legislative component of this agreement (AB 1550, AB 3001, SB 6, SB 550) passed by a unanimous vote in the Assembly, received the necessary 2/3rds vote in the Senate, and was signed by the Governor.

GENDER EQUITY IN SPORTS

State and federal anti-discrimination laws prohibit schools, cities, and counties from discriminating against girls in youth athletics programs. Under current law, however, only schools must follow specific standards when it

comes to allocating funds, not cities and counties. Assembly Bill 2404 (Steinberg) would extend this protection to the administration of community youth athletic programs (see article above). Signed by Governor.

FAIRNESS WITH FOOD STAMPS

California citizens with prior drug felony convictions are currently subject to a lifetime ban on receiving food stamps. Denying individuals food stamps threatens their ability to become self-sufficient, to provide for their children, and to overcome their drug convictions. AB 1796 (Leno) brings additional Federal funding (not state funding) back into California for food stamps to help people who have served time for drug possession and are participating in a drug treatment program. Signed by Governor.

POLICE INTERROGATION OF CHILDREN

Currently in California, police can interrogate even a first-grader on school grounds without parental notification. Assembly Bill 1012 (Steinberg) would require elementary schools to obtain consent from parents prior to police questioning of students. It would also grant all K-12 students the right to have a parent or school official present during police interrogations. Vetoed by Governor.

STUDENTS’ RIGHTS AND DRUG TESTING

Even without any specific suspicion of drug use, many school districts force their students to take random drug tests. These tests can be so invasive that school officials sometimes stand outside a bathroom stall and listen for the sounds of urination to make sure a student is not tampering with the sample. Senate Bill 1386 (Vasconcellos) would ensure that students be free from invasive searches

absent reasonable suspicion of student drug use. SB 1386 would also ensure that a student testing positive for drug use be directed to appropriate support services. Vetoed by Governor.

COMPASSIONATE RELEASE

Public tax dollars are needlessly wasted on incarcerating terminally ill and permanently incapacitated prisoners who no longer pose a threat to public safety. Assembly Bill 1946 (Steinberg) would provide notice to permanently incapacitated and dying prisoners and their families of their rights to early release. It would also extend, from six months to a year, the period of time for the early release. Vetoed by Governor.

FAIRNESS IN SENTENCING

AB 2705 (Goldberg) would raise the threshold between petty theft and grand theft from \$400 to \$800 to account for inflation. In addition to bringing fairness to sentencing, this legislation would save the state money, as fewer first-time petty thieves will go to state prison. Vetoed by Governor.

MEDIA ACCESS TO PRISONS

SB 1164 (Romero) would restore the right of the media to conduct interviews with specific inmates, and allows inmates to correspond with the media by establishing confidential outgoing mail between inmates and reporters. It would ensure the ability of the press to provide the public with the necessary information to reach intelligent and informed opinions about the operations of the correctional system. Vetoed by Governor. ■

TAKE ACTION ONLINE TO PROTECT CIVIL LIBERTIES: SIGN UP AT WWW.ACLUNC.ORG

TAKE ACTION

LET THE SUN SET ON THE PATRIOT ACT

When Congress passed the USA Patriot Act just 45 days after September 11, 2001, it acted in haste—but not without foresight. Section 224 of the Act holds that some of the provisions that pose grave threats to civil liberties should expire—or “sunset” on December 31, 2005—approximately 10% of the Patriot Act. With that date fast approaching, the future of the “sunset provisions” is up for grabs.

The Bush administration is campaigning tirelessly for the permanence—and expansion—of the USA Patriot Act. With the administration’s support, Senator Jon Kyl (R-AR) has introduced Senate Bill 2476, which calls for all sunset provisions to be lifted, thereby making permanent the whole of the Patriot Act.

On July 31 in San Francisco, the ACLU of Northern California (ACLU-NC) hosted a teach-in for Bay Area activists covering efforts to roll back the Patriot Act and other erosions of civil liberties since September 11, 2001. ACLU-NC Associate Director Bob Kearney was joined by Sanjeev Bery, ACLU-NC Field Organizer, and guest speakers Phil Gutis, Director of Legislative Communications at the ACLU’s Washington National Office, and Naheed Qureshi, Safe and Free Western Organizer for the Washington Legislative Office.

“We know it takes only ten letters to a Member of Congress to get their attention,” Kearney told the gathering of activists. “With 100 people attending this training, we are ready to flood Capitol Hill with demands that our government keep us both safe AND free.”

Teach-in hosts urged activists and ACLU-NC members to contact their representatives in Congress and ask them to:

- **Oppose S 2476** and let the sunset provisions expire as planned. There is no evidence that these provisions have made us any safer – but plenty to show that they pose grave threats to civil liberties and rights.

- **Support the SAFE Act of 2003 (S 1709, HR 3352)**. Co-sponsored in the Senate by Larry Craig (R-ID) and Richard Durbin (D-IL), the “Security and Freedom Ensured Act” is a big step towards rolling back the Patriot Act’s worst excesses.

- **Oppose the CLEAR Act/Homeland Security Enhancement Act (S 1906, HR 2671)**. By requiring local and state law enforcement officers to enforce federal immigration laws, this bill would significantly burden already overstretched police forces and likely result in an increase in racial profiling.

For additional action alerts, or to become a member of the ACLU-NC’s email action network, visit our website at www.aclunc.org/takeaction.html ■

THE SUNSET PROVISIONS

WHAT WILL SUNSET?

More than a dozen major provisions of the Patriot Act, including Section 215, which allows the government to obtain lists of books people have read at bookstores and libraries, and require booksellers and librarians to keep that hidden from you. Section 215 also permits secret courts to issue subpoenas on US citizens.

WHAT WILL NOT?

Section 213, which allows the government to conduct “sneak and peek” searches of your home without notifying you first. The SAFE Act would eliminate this section from the Act.

STUNNING ACLU VICTORY LIMITS PATRIOT ACT

Saying that “democracy abhors undue secrecy,” Judge Victor Marrero of federal district court in New York struck down an entire Patriot Act provision that gives government unchecked authority to issue “National Security Letters” to obtain sensitive customer records from internet service providers (ISP) and other businesses without judicial oversight. The court also found a broad gag provision in the law to be an “unconstitutional prior restraint” on free speech.

The American Civil Liberties Union (ACLU) and New York Civil Liberties Union, which brought a challenge to the law earlier this year, hailed the ruling as a major blow to the current administration’s efforts to expand government surveillance powers in violation of the constitution. The September 29 ruling was the first to uphold a challenge to the surveillance section of the Patriot Act.

“This is a landmark victory against the Ashcroft Justice Department’s misguided attempt to intrude into the lives of innocent Americans in the name of national security,” said ACLU Executive Director Anthony D. Romero in reaction to the decision. Added ACLU lawyer Jameel Jaffer, who argued the case, “As this decision suggests, certain provisions of the Patriot Act should never have been enacted in the first place.”

The suit was brought on behalf of an Internet Service Provider (ISP) that received a National Security Letter (NSL)

from the FBI. Due to the gag order that applies to NSLs, the ISP could not even publicly reveal its name. Moreover, the gag order prevented the ISP from telling its customers that the FBI had collected their information, which included customers’ names, addresses, credit card data, and details of their Internet use. It even implied that those who received it could not discuss it with a lawyer.

Judge Marrero called the National Security Letter “an ominous writ” that the FBI issued “in tones sounding virtually as a biblical commandment” and “had no place in our open society.” His 120-page ruling struck down Section 505 of the Patriot Act on grounds that it violates free speech rights under the First Amendment, as well as the right to be free from unreasonable searches under the Fourth Amendment. His ruling will not take effect for 90 days, to give the Bush administration time to appeal. ■

GOVERNMENT OUTSOURCING SPYING, ACLU STUDY FINDS

By Lauren Asher, *ACLU News Contributor*

A new ACLU report has identified an alarming new trend in government surveillance: relying on the private sector to do the dirty work. From banks to airlines to Internet service providers, intelligence and law enforcement agencies are tapping into the personal data collected by companies we do business with every day.

“THE REPORT’S MOST IMPORTANT CONCLUSION IS THAT MASS SURVEILLANCE THREATENS FREEDOM, BECAUSE IT MAKES EVERYONE A SUSPECT.”

—ACLU-NC STAFF ATTORNEY ANN BRICK

From buying data from companies that create individual “profiles,” to pressuring businesses to share customer information, to requiring whole industries to gather, store, and analyze data in ways that support intelligence goals, the tactics are as varied as the entities involved.

These are among the chilling findings of a national ACLU report released in August, *The Surveillance-Industrial Complex: How the American Government Is Conscripting Businesses and Individuals in the Construction of a Surveillance Society*. The 40-page report documents how new technologies, aggressive business practices, and expanded government powers are converging to make average Americans more vulnerable to surveillance than ever before.

Another major finding is that despite Congress’s rejection of the infamous TIPS (Terrorism Information and Prevention System) Program, there are ongoing federal, state, and local efforts to recruit individuals to spy on their neighbors and customers. Those asked to serve as “eyes and ears” for the authorities include truck drivers, neighborhood-watch groups, utility workers, and real estate agents. They are encouraged to report “suspicious” people and behaviors, including “people who don’t seem to belong”—directives that easily lend themselves to racial profiling.

In addition to directing Americans to “keep your yard clean” and “prune shrubbery,” a “Citizens’ Preparedness Guide” published by the federal Citizen Corps asks people to be “on the lookout” for suspicious activities “in your neighborhood, in your workplace, or while traveling”—in short, everywhere.

KEY FINDINGS IN THE NEW ACLU REPORT INCLUDE:

- Many companies provide customer data to the government even when they are not required to by law. Examples range from major airlines giving up millions of passenger records, to diving instructors passing along the names and contact information of nearly everyone with a recent scuba license.
- Government is using its expanded powers since 9/11 to force businesses to share customer records. Under the Patriot Act, the FBI has broad discretion to access a wide range of information about people who are not even suspected of a crime. Businesses can also be forbidden to tell anyone what happened. In one known incident, the FBI collected every hotel, airline, and rental car record for the estimated 270,000 people who planned to spend Christmas or New Year’s in Las Vegas in 2003.
- Businesses are bearing a growing burden for the costs of government surveillance. These range from having to check customers and employees against official watch lists such as the error-laden “No-Fly” list (see article on the next page), to conducting their own increasingly intrusive background checks. While the private surveillance sector is thriving under direct and indirect government sponsorship, mainstream businesses, from jewelers to health insurers, are paying a rising “surveillance tax” to comply with government mandates.
- Public pressure can help contain the growth of the surveillance-industrial complex. For example, while California initially expressed interest in a multi-state surveillance database, it and several other states withdrew in response to concerns about privacy and civil liberties.
- According to ACLU-NC staff attorney and cyberliberties

CONTINUED ON NEXT PAGE

KEEP AMERICA SAFE AND FREE: GET INFORMATION AND UPDATES AT WWW.ACLUNC.ORG

FRIVOLOUS CLAIMS: JUDGE BLASTS GOVERNMENT STONEWALLING IN “NO-FLY” SUIT

By Stella Richardson

A federal judge has accused the government of using “frivolous claims” as justification for withholding information about controversial government watch lists sought by two Bay Area peace activists and the ACLU of Northern California (ACLU-NC).

The ACLU-NC is seeking information about the government’s “no-fly” list and other transportation watch lists in a Freedom of Information Act (FOIA) action. At least 339 passengers were stopped or questioned in connection with these lists between September 2001 and March 2003, according to information obtained from San Francisco International Airport (SFO) last April.

“NO-FLY” TIMELINE

- August 2002: Bay Area activists Jan Adams and Rebecca Gordon are briefly detained at San Francisco airport and told their names are on a government “no-fly” list.
- November 2002: ACLU-NC files a Freedom of Information Act and Privacy Act request for information about post-9/11 transportation watch lists, including how the two activists’ names appeared on the no-fly list, and how they can be removed.
- April 2003: With no response from the government to the FOIA request, the ACLU-NC files a FOIA lawsuit on behalf of Adams and Gordon. The suit garners widespread media attention.
- December 2003: The government releases 94 pages of heavily redacted documents which fail to answer crucial questions. ACLU-NC charges that the documents reveal “shoddy” management that puts innocents at risk.
- April 2004: National ACLU files class-action lawsuit in Seattle on behalf of individuals whose names appeared on the no-fly list and other transportation watch lists.
- June 2004: Federal Judge Charles Breyer accuses government of relying on “frivolous claims” in refusing to release crucial documents about the transportation watch lists in the Adams/Gordon case.

RULING BOLSTERS FREEDOM OF INFORMATION

In a sharply worded decision issued on June 15, U.S. District Judge Charles Breyer ordered the FBI and the Transportation Security Administration “to review all withheld material and reconsider whether it is exempt from disclosure,” and “to prove that an exemption applies and that exemptions are to be construed narrowly.” The FOIA contains nine exemptions that a government agency may invoke to protect documents from public disclosure.

“This decision is significant because the court rejected the federal government’s sweeping contention that information having to do with the government’s screening of airline passengers after September 11, 2001, is off limits,” explained ACLU cooperating attorney, Thomas R. Burke, of Davis Wright Tremaine LLP in San Francisco. “The court agreed that many of the documents that the government is withholding simply cannot be kept secret.”

Judge Breyer also criticized the government’s refusal to disclose how many people are on the list, saying that the “defendants do not meet their burden by simply reciting that information derived from security directives is sensitive security information.” The judge also said that the government blacked out the names of two public government officials from the documents, which “makes no sense.”

The Court is ordering the government to review all withheld information, and if it is exempt, “to provide a detailed affidavit that explains why the particular material is exempt.”

ACTIVISTS’ DETENTION SPARKED SUIT

ACLU-NC filed the case, *Gordon v. FBI*, after Bay Area activists Jan Adams and Rebecca Gordon were detained at SFO when they checked in for an American Trans Air (ATA) flight to Boston via Chicago in August 2002. The ATA agents who checked them in told them that their names appeared on a “no-fly” list. San Francisco police arrived and informed Adams and Gordon that the police would have to check whether their names appeared on a “master list.” Although they were eventually allowed to fly, their boarding passes were marked with a red “S,” which subjected them to additional searches.

In November 2002, the ACLU-NC filed a FOIA and Privacy Act request on behalf of Gordon and Adams, in an



Sarosh Syed, a special projects coordinator at the ACLU, was flagged as a member of the “no fly” list five times.

effort to determine how the women’s names appeared on the list, and how could they be removed. When government failed to respond by April, 2003, the ACLU-NC filed a FOIA

“THE COURT REJECTED THE FEDERAL GOVERNMENT’S SWEEPING CONTENTION THAT INFORMATION [ON] THE GOVERNMENT’S SCREENING OF AIRLINE PASSENGERS AFTER SEPTEMBER 11, 2001, IS OFF LIMITS.”

—ACLU COOPERATING ATTORNEY THOMAS BURKE

lawsuit. The government subsequently released 94 pages of heavily redacted government documents, which failed to answer fundamental questions, including why names are added to the lists, how incorrect names can be removed from such lists, and what guidelines are in place to restrict the use of such lists.

In addition, the documents failed to answer another crucial question: whether individuals are being singled out on the list based solely on their First Amendment-protected activity. The documents also raised serious questions about how well the list is being managed, by whom, and whether it contains clear constraints to ensure that it does not violate basic freedoms.

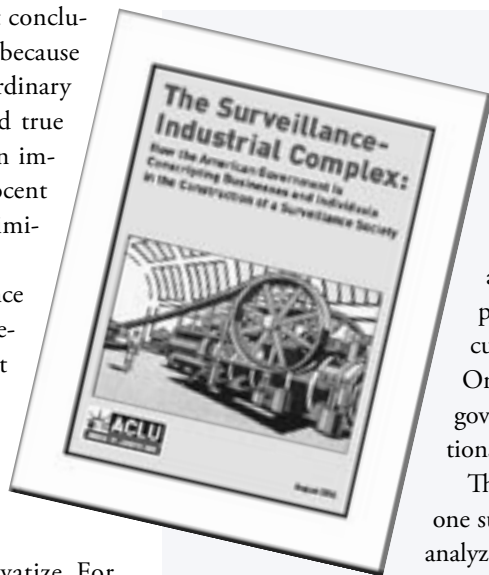
“When potentially thousands of innocent travelers are being subjected to unwarranted searches and detentions because of the government list, the public should be able to understand and meaningfully deliberate on whether the lists improve security or are just a waste of government resources,” said Burke. ■



Plaintiffs Rebecca Gordon and Jan Adams asked how they got on the government’s “no fly” list—and how to get off.

expert Ann Brick, “The report’s most important conclusion is that mass surveillance threatens freedom, because it makes everyone a suspect. It shows an extraordinary shift in intelligence techniques—from tried and true methods focusing on real suspects, to casting an impossibly wide net that is more likely to put innocent people on permanent ‘watchlists’ than catch criminals.”

The launch of ACLU’s national Surveillance Campaign coincided with release of the new report. The campaign encourages consumers to fight the growing “Surveillance-Industrial Complex” by asking prominent companies to take a “no-spy” pledge and defend customers’ privacy. For a sample letter and list of suggested businesses to contact—including drugstore chains, insurance companies, and retailers—see www.aclu.org/privatize. For a copy of the report, see www.aclu.org/surveillance. ■



HOMELAND SECURITY 5.5

An entire industry has sprung up to produce software that makes it easier for companies to enforce the government’s blacklists and other mandates. An example is “Homeland Tracker,” produced by a subsidiary of the giant database company Choicepoint, to “help any business comply with OFAC and USA PATRIOT Act regulations.” The manual proudly touts the software’s ability to “get identity verification, check individual names, scan customer files” and “build personal accept and deny lists” (otherwise known as blacklists). Once a company’s customer data is “scanned for violations against all data lists”—that is, government watch lists—the software lets the company “scan, block or reject business transactions” involving any entities “that threaten national security.”

This kind of product is offered by more than 50 companies and is being used, according to one survey, by 83 percent of financial companies for watch list screening, and by 50 percent to analyze transactions for money-laundering violations. —from *The Surveillance Industrial Complex*

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 2004 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.

INSTRUCTIONS FOR VOTING:

This year’s candidates are listed on these pages in alphabetical order. We have 10 can-

didates 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 9, 2004.

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



MICHELLE ALEXANDER

Joining the Board of Directors would be a great honor, allowing me to continue my service to the ACLU-NC in a new role. I served as the Director of the Racial Justice Project at the ACLU-NC from 1998-2002 and in that role coordinated the Project’s litigation, media, lobbying and grassroots organizing work. I helped to launch a major campaign against racial profiling in California that later evolved into a national campaign by the ACLU, known as the “DWB Campaign.” I remain committed to the ACLU’s multi-disciplinary approach to strategic advocacy, and I am eager to support the work of the organization in a new

capacity. Currently, I am an Associate Professor of Law and the Director of the Civil Rights Clinic at Stanford Law School.

NOMINATED BY: Board of Directors

INCUMBENT: No



BOB CAPISTRANO

As a legal aid lawyer, I understand the needs of the most disfranchised members of our community, and have used these insights as a member of the ACLU legislative policy and legal committees. Some of the fundamental problems of the most marginalized actually affect broader strata of society. The ability to meaningfully participate in the political process is one of the most important civil liberties, and implies not simply the formal right to vote, but also such things as access to an adequate (and affordable) education, wide-ranging public debate over issues, and the lessening of barriers for independent

candidates and their ideas. Meaningful political participation by the great majority is central

to safeguarding basic freedoms. The activists of the ACLU-NC will continue to play a key role in this and other campaigns.

NOMINATED BY: Board of Directors

INCUMBENT: Yes



SUSAN FREIWALD

I am honored to be nominated. I have found being a member of the ACLU-NC board to be inspiring and important. I attended both membership conferences, and was a delegate to the biennial. I have also enjoyed my work on the Development Committee. An essential and quite enjoyable aspect of board work is fundraising. I have long supported many of the ACLU’s efforts, particularly its campaigns for privacy, reproductive rights and gay rights. As a law professor at USE, I have focused on cyberspace law and contracts, and also taught courses on employment discrimination and women and the law. Although I went to Harvard for college and

law school, I am delighted to be back in San Francisco, where I was raised.

NOMINATED BY: Board of Directors

INCUMBENT: Yes

LISA HONIG

Lisa Honig is a weaver—an art she returned to after practicing employment discrimination law for 15 years. She has served on the ACLU-NC Board for the past year, and previously served on the Board for 8 years. She is currently a member of the Finance Committee and Executive Committee. She has an extensive background in development work, as well as civil rights law. She is thrilled to be a part of the ACLU-NC Board, particularly at this time when civil liberties are so threatened.

NOMINATED BY: Board of Directors

INCUMBENT: Yes

NOT A CARD-CARRYING MEMBER? JOIN AT WWW.ACLUNC.ORG



GOODWIN LIU

I am honored to be nominated for the Board. I grew up in Northern California, attending public school in Sacramento before going to college at Stanford. After law school, I spent several years in Washington, including one year clerking for one of the ACLU's finest, Justice Ruth Bader Ginsburg, another year in the Clinton Administration working on civil rights and K-12 policy in the U.S. Department of Education, and two years in an appellate litigation practice. Now in my second year on the Boalt faculty, I am eager to bring to the ACLU what I bring to my teaching and research: a passion for civil

rights, broad expertise in constitutional law, and a commitment to liberty and opportunity for the dissenters and disadvantaged in our society.

NOMINATED BY: Board of Directors

INCUMBENT: No



ROBERTO NAJERA

I have worked as a deputy public defender in Contra Costa County, California for fifteen years. Before that I worked as an attorney with various community agencies in the Bay Area, specifically focusing in the areas of Immigration and Tenant Defense. I have devoted my professional career to the plight of the poor and minorities. Throughout my life as well as my career I have seen and fought against the results of fear and race-based politics and policies and their devastating effects on personal freedoms and the rights of the accused. I believe my experience in these battles is an asset I can bring

to the board. I would be honored to serve if elected and will endeavor to do my best on behalf of the entire organization.

NOMINATED BY: Board of Directors

INCUMBENT: No



MARSHA ROSENBAUM

At no time in America's history do we need to worry more about our civil liberties. As director of the San Francisco office of the Drug Policy Alliance, I know how much the War on Drugs has contributed to the erosion of our basic freedoms, through racial profiling, disproportionate arrest, conviction, and sentencing, disenfranchisement, wire tapping, drug testing, persecution of those who use and prescribe "certain" medications, and silencing debate about this failed policy.

The ACLU has been the leading organization protecting the Bill of Rights, and a major force fighting against the War on Drugs. I am proud to come from a family of "card carrying" members, and now look forward

to working with the ACLU's strongest and most progressive affiliate, the ACLU-NC.

to working with the ACLU's strongest and most progressive affiliate, the ACLU-NC.

NOMINATED BY: Board of Directors

INCUMBENT: Yes



PEGGY SAIKA

I first worked with the ACLU in the early 1980's when I was the executive director of the Asian Law Caucus. We were privileged to be involved with some of the most significant and amazing cases/issues impacting immigrant and refugee communities. Being on the ACLU this board this past year and as the current Executive Director of Asian Americans/Pacific Islanders in Philanthropy continues to inform my perspective on the challenges that face us today. Just as we opposed the internment of Japanese Americans in the 1940's, we must continue to oppose current injustices being perpetuated against Muslims and all people of

color. With your support, I look forward to continuing my participation on the ACLU board and contributing to its growth and development.

NOMINATED BY: Board of Directors

INCUMBENT: Yes

PATRICIA WALL

As Executive Director of the Homeless Action Center, I defend the rights of those who have the hardest time advocating for themselves - people who are homeless with mental disabilities. My projects include defending the civil rights of homeless individuals who are given "quality of life" citations and ensuring that electronic welfare benefits are designed to accommodate people with severe disabilities. I am particularly interested in how poverty affects my clients' civil liberties, including their access to the voting booth and their access to healthcare and reproductive rights. I am eager to continue this work in the company of the ACLU.

NOMINATED BY: Board of Directors

INCUMBENT: Yes



GUY WALLACE

I suffered a spinal cord injury at the age of 16, and I have been a wheelchair user ever since. I am a partner in the law firm of Schneider & Wallace, and a graduate of the Harvard Law School. For the past twelve years I have worked as a lawyer in various civil rights class actions on behalf of persons with disabilities, persons of color, and women. It has been an honor to serve on the Board of the ACLU-NC during the past year because of its unyielding commitment to protecting civil rights and civil liberties. I would welcome the opportunity to continue serving as a Board member so that I can help in the

ACLU's ongoing struggle to ensure equal opportunity for all.

NOMINATED BY: Board of Directors

INCUMBENT: Yes

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 on this ballot (joint members: use both squares).

MICHELLE ALEXANDER

ROBERTO NAJERA

BOB CAPISTRANO

MARSHA ROSENBAUM

SUSAN FREIWALD

PEGGY SAIKA

LISA HONIG

PATRICIA WALL

GOODWIN LIU

GUY WALLACE

Please clip and send along with your address label to:

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

Ballots must be received by noon on December 9, 2004.

NOT A CARD-CARRYING MEMBER? JOIN AT WWW.ACLUNC.ORG

WILLIAMS CASE TO BENEFIT STATE'S POOREST SCHOOLS

LANDMARK SETTLEMENT CONTINUED FROM PAGE 1

repair deteriorating facilities; nearly \$139 million for new instructional materials for students; \$20 million to inventory facilities needs; and \$30 million to build County Superintendents' capacity to oversee low performing schools and fund emergency repairs in those schools next year.

LEGISLATION REQUIRED

Finalization of the settlement required that the state Legislature pass specific bills, which they did on August 27. Among other provisions, the new measures call on the state to:

- Provide financial assistance to repair low performing schools through a new \$800 million School Facilities Emergency Repairs Account;
- Create new standards for instructional materials and facilities, and require the shortened school year calendar to be eliminated by 2012;
- Post instructional materials and facilities standards in all classrooms;
- Collect data on compliance with these standards, and teacher

requirements;

- Intervene in low-performing schools if instructional materials and facilities standards are not met, and in any district having difficulty attracting, retaining, or properly assigning teachers;
- Improve the teacher supply by streamlining requirements for out-of-state credentialed teachers to earn California credentials;
- Require each district to implement a facilities inspection system; and
- Include new schools in the High Priority Schools Grant Program when current schools are phased out.

In addition to these specific provisions, the legislation contained this promising language: "These new thresholds for teacher quality, instructional materials, and school facilities are intended by the Legislature and by the Governor to be a floor, rather than a ceiling, and a beginning and not an end to the state of California's commitment and effort to ensure that all California school pupils have access to the basic elements of a quality public education." Now that Governor Schwarzenegger has signed the bills, the settlement will be submitted to San Francisco Superior Court Judge Peter Busch, who is expected to approve the settlement early next year.

SHARP CONTRAST TO DAVIS

The Legislature's language and the Governor's high-profile announcement of the settlement stand in sharp contrast to the state's initial response to the lawsuit. Governor Gray Davis

spent more than \$18 million hiring the high-priced law firm of O'Melveny and Myers to fight the students.

A 2001 *San Francisco Chronicle* article exposed the harsh methods the firm's lawyers used to depose children as young as 8, including refusing to excuse from a deposition an 11-year old boy whose mother had been shot and killed just weeks before. Several students broke into tears under questioning. The article also revealed that the firm's attorneys charged the state \$325 an hour, and stayed at expensive hotels whenever they deposed students in the Bay Area.

The state's enormous expenditure of funds to fight the case caused consternation among many educators and political leaders. "To spend [millions] on lawyers from Los Angeles instead of on education is really a crime," State Senator John Vasconcellos (D-San Jose) commented. ACLU-SC attorney Catherine Lhamon called Governor Davis's stance "inexplicable," noting, "The state has a constitutional obligation to ensure educational equality for all students."

ACLU of Northern California Executive Director, Dorothy Ehrlich, applauded the students and parents who were determined to improve their schools, and the many teachers and educational experts who supported their efforts. "No child should have to study in deteriorating, rodent-infested classrooms, with out-of-date books and poorly trained teachers," she said. "This historic agreement will bring real changes to California's public schools, and to the millions of students who deserve the best education our state can provide, no matter what district they live in." ■

MOFO GOES THE DISTANCE

There are many heroes in a case the size of *Williams v. California*, and no hero was bigger than the San Francisco-based law firm of Morrison & Foerster, which devoted 73,000 pro bono hours over the four-and-a-half years of the case. According to Morrison & Foerster partner Jack Londen, that is the equivalent of 10 attorneys and legal assistants working full-time on the lawsuit.

"No case was more important than this one, in terms of what was at stake," said Londen. "There are 9,000 schools in California, and the state made a studied effort not to know what was going on in them. We had to make a huge effort to go out and get the facts," he explained.

More than 6,000,000 children attend public schools in more than 1,000 school districts. The attorneys discovered, for example, that there are 1,243 schools with fewer than 80% credentialed teachers. Those schools are located in districts that are predominantly poor and attended by students of color.

"Given the enormous scope of *Williams v. California*, Morrison & Foerster made an invaluable contribution to this case and this landmark settlement," said ACLU-NC Executive Director Dorothy Ehrlich. ■

HIGHLIGHTS OF THE SETTLEMENT

- **Books:** Provides \$138.7 million for textbooks for the lowest performing schools; requires every student be provided with textbooks for class and homework.
- **Teachers:** Improves teacher supply by streamlining requirements for out-of-state credentialed teachers to earn California credentials; holds school districts to federal guidelines of a "highly qualified" teacher in every core class by 2006.
- **Schools:** Provides \$800 million to emergency repairs over the next four years; requires state to develop standards to ensure clean, safe, and well-maintained school facilities. Budgets \$50 million for the 2004-5 school year, including \$20 million for a first-time, statewide inventory of the lowest performing schools.
- **Accountability:** Requires posting of instructional materials and facilities standards in all classrooms; requires posting of clear instructions for students, parents, and teachers who wish to file a complaint about poor conditions, with a 30-day deadline.
- **Authority for County Superintendents:** Increases capacity of county superintendents to ensure lowest performing schools meet the new standards for textbooks, facilities, and trained teachers.

For full details of the settlement, go to: www.decentschools.org

The deplorable conditions in California's public schools that gave rise to *Williams v. California* affected the lives of hundreds of thousands of students, parents and teachers. Here's what some of them had to say about their schools—and this historic new settlement:

STUDENTS

We're just trying to get the state to give us an equal opportunity to learn. In my government class, the book was from the 1980s. The other Bush was President.

—Manuel Ortiz, Plaintiff

Graduate, Watsonville High School

We mostly don't get homework in math class because we don't have books. Without books, we're not getting the education we should be getting.

—Silas Moultrie

8th grader, Luther Burbank Middle School, San Francisco

I am going to be a senior next year, so I probably won't see many of the changes the settlement will bring. But I didn't do this just for myself, I did it for all kids who attend public schools in California, including my little sister who will be starting school soon. Finally all kids will know that they have a right to go to a school that is safe, and to have the books they need to learn and succeed in the future.

—Eliezer "Eli" Williams named plaintiff

16, Senior, Balboa High School, San Francisco



MELISSA SCHWARTZ

Students display a dilapidated math text provided by their school. Under the Williams settlement, California will provide \$138.7 million for textbooks for the state's lowest performing schools.

TEACHERS

"In January [2000], the roof in my classroom leaked over half of my room, ruining a great many diligently done projects. The roof had been leaking for years—fourteen years, in fact—and not one repair was undertaken to prevent its eventual collapse.

—Shannon Carey

Teacher, Stonehurst Elementary School, Oakland

The conditions under which our kids at our school learn remind me of *Brown v. Board of Education* all over again.

—Allison Dills

History teacher, Balboa High School, San Francisco

PARENTS

When I saw the education Eli was receiving I became very concerned about my son's future and wanted to do something. Being a part of this case has shown me that it only takes one person to stand up when there are good people standing behind you.

—Sweetie Williams

Father of Eli Williams, named plaintiff

FOR THE LATEST NEWS AND OPINIONS VISIT WWW.ACLUNC.ORG

AROUND THE REGION

NEW CHAPTER TACKLES BOOK BANNING

The new Stanislaus County Chapter, ratified in the spring of 2004, is now a dynamic presence in the Central Valley. One of their first projects is called "Right to Teach, Right to Learn," which focuses on the interface between First Amendment rights and competing community interests. The project began after a parent demanded that the Stanislaus County School Board ban a book called *Mi Vida Loca* from the high school curriculum, deeming it inappropriate for students due to its candid discussion of drug use.

The school board currently allows the book to be used only with written parental consent. In response, the Stanislaus Chapter sponsored a public forum in Modesto in which students, teachers, and parents discussed their rights and voiced their concerns about the public school system. ■

VOLUNTEER OPPORTUNITIES!

VOLUNTEER INTAKE/COMPLAINT COUNSELORS NEEDED

A challenging volunteer position awaits you as an ALCU-NC Intake/Complaint Counselor! As counselor, you will staff the ALCU-NC complaint lines, open from 10am-3pm, Monday-Friday. Due to the training involved, the position requires at least a 6-month commitment to work for one day a week.

The main duties are:

- Serving as an ACLU representative to the general public
- Analyzing and screening calls about civil liberties issues and presenting them to an ACLU staff attorney
- Providing information and referral services to callers

Current Positions Open:

- Bilingual counselor: schedule to be determined
- Alternate counselor, to cover absences and vacations

Please contact Leah Cerri at 415-621-2493 if you are interested in a counselor position.

LETTERS TO THE EDITOR

Dear Editor,

We read Nat Hentoff's column regarding ACLU Executive Director Anthony Romero's signing an agreement that the ACLU would not "knowingly hire people whose names appear on watch lists of suspected terrorism supporters" in order to accept \$500,000 from the "Combined Federal Campaign," the government's annual charity drive. The column further reported that the ACLU Board President Nadine Strossen supported Romero's conduct.

As members of the ACLU, we are appalled to read that the ACLU supports or condones government watch lists that can result in putting "innocent individuals in damaging government databases." Gee, if we really wanted to support government watch lists, we would have donated to George W. Bush.

If this is the best we can expect from the ACLU, it is no wonder civil liberties are nearly extinct. Speaking of watching and lists, we will be monitoring the ACLU, which may not make our membership renewal list next year.

Sincerely,

Rita Carlson and Tim Dellas

Dear Editor,

Just received the summer 2004 issue, good coverage of the convention....But...where is the info about Romero signing an agreement not to hire people who are on the government terrorist list in order to receive monies from the government charities committee? ACLU membership does not support this... ACLU staff does not support this...and are fighting against it in other areas. The ACLU board supports Romero... Anyway, sounds like the leadership of ACLU has fallen in to the clutches of the money-laden politicians....OOOOPPPSSSS! Can you give more info on this... I'm not sure I want to be a member of such a duplicitous group.

Sincerely,

Gayle Vaughan

Dear Gayle Vaughan, Rita Carlson and Tim Dellas:

I don't blame you for being disturbed by the initial news (July 31, New York Times story) about the Combined Federal Campaign (CFC). Following the news, the ACLU's leadership sprang into action and launched a national campaign to take action. ACLU is leading the effort to overturn this new CFC policy that requires recipients of contributions from the CFC to check the names of all of their employees against a somewhat surreal database of potential "terrorists." (Note that the contributions themselves do not "belong" to the CFC in the first place—they all originate from individual donors who work in government offices who have affirmatively chosen the ACLU to receive charitable contributions via a payroll deduction—making the action of the CFC to limit the receipt of the gifts even more egregious.)

Following the New York Times story, the ACLU agreed that it would withdraw from the CFC (which currently raises nearly \$500,000 in annual income for the organization), and announced its intention to pursue a legal challenge to the policy. ACLU Executive Director Anthony Romero is working to build a nationwide coalition of non-profit organizations to join forces with us to take legal and advocacy action against this dangerous policy. And Anthony Romero knows first hand the danger of such government blacklists—an "Antonio Romero" is listed as one of those employees that matches the federal terrorists data base!

Thank you for writing. We are grateful for your steadfast commitment to the ACLU's principles, for your concern about this important issue, and for allowing us to clarify the ACLU's response.

Dorothy Ehrlich

Executive Director, ACLU-NC

GET INVOLVED! LOCAL CHAPTER MEETINGS

Local chapters are a force for change in their communities. Contact your local ACLU chapter (information below) to get involved!

B - A - R - K + PLUS (BERKELEY-ALBANY-RICHMOND-KENSINGTON+EL CERRITO-EL SOBRANTE-PINOLE-SAN PABLO) CHAPTER MEETING: Third Wednesday of each month at 7:00p.m. Contact Roberta Spieckerman for more information: (510) 233-3316.

MARIN COUNTY CHAPTER MEETING: Third Monday of each month at 7:30 p.m. at the public media room, Sewerage Agency of Southern Marin, 450 Sycamore Ave., Mill Valley, CA 94941. Contact Bob Harmon for more information: (415) 388-3980. Or call the Marin Chapter complaint hotline at (415) 456-0137.

MENDOCINO COUNTY CHAPTER MEETING: Second Saturday of each month. Locations rotate throughout Mendocino County. For information on the 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: First Wednesday of each month from 7:00 to 9:30 p.m. All meetings are in the conference room of Community Activities Building, Red Morton Community Park at 1400 Roosevelt Avenue. Contact Harry Anisgard for more information: (650) 856-9186.

MONTEREY COUNTY CHAPTER MEETING: Third Tuesday of the month at 7:15 p.m. at the Monterey Public Library. Contact Matt Friday at (831) 899-2263 or visit www.aclumontereycounty.org. To report a civil liberties concern, call Monterey's complaint line: (831) 622-9894 (Spanish translation available).

NORTH PENINSULA (DALY CITY TO SAN CARLOS) CHAPTER MEETING: Usually third Monday of each month at 8:00 p.m. in the downstairs conference room at 700 Laurel Street (off Fifth Avenue), San Mateo. Contact Linda Martorana for more information: (650) 697-5685.

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

REDWOOD (HUMBOLDT COUNTY) CHAPTER MEETING: Third Tuesday of each month at 6 p.m. above 632 9th St. Arcata, CA 95525. Contact Greg Allen for more information: (707) 825-0826.

SANTA CLARA VALLEY CHAPTER MEETING: First Tuesday of each month, 1051 Morse Street (at Newhall), San Jose. Contact acluscv@hotmail.com or visit www.acluscv.org for more information.

SANTA CRUZ COUNTY CHAPTER MEETING: Third Tuesday of each month at 7 p.m. at 260 High Street. Contact Kathleen Hughes for more information: (831) 439-9467.

SONOMA COUNTY CHAPTER MEETING: Third Tuesday of each month, at 7 p.m. at the Peace and Justice Center, 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 for more information.

STANISLAUS COUNTY CHAPTER MEETING: Fourth Wednesday

of every month at the Modesto Peace/Life Center, 720 13th Street, Modesto from 7:00-9:30p.m. Contact Tracy Herbeck for more information: (209) 522-7149.

YOLO COUNTY CHAPTER: Every third Wednesday at 1175 Lake Blvd. #144, Davis. Contact Natalie Wormeli: (530) 756-1900.

NEW CHAPTERS ORGANIZING

CONTRA COSTA/MT. DIABLO CHAPTER MEETING: Regular meetings. Contact Lee Lawrence for more information at (925) 376-9000 or leehelenalawrence@yahoo.com.

NAPA COUNTY CHAPTER MEETING: Meetings to be announced. Call (415) 621-2493.

SACRAMENTO COUNTY CHAPTER MEETING: Regular meetings. Contact Mutahir Kazmi at (916) 480-9543.

SAN FRANCISCO CHAPTER MEETING: Meetings to be announced. Contact Dennis McNally for more information: (415) 896-2198 or dmcscribe@aol.com.

SAN JOAQUIN COUNTY CHAPTER MEETING: Regular meetings. Contact Kamran Alavi for more information: (209) 833-0576 or calm_ron@yahoo.com.

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

CAMPUS CLUBS

UC BERKELEY: Wednesday from 7:00-8:00p.m., location TBA. Visit www.berkeleyaclu.com.

ASK THE EXPERTS! PROPOSITION 69 AND YOUR DNA PRIVACY

WHY SHOULD I WORRY ABOUT MY DNA BEING TAKEN BY POLICE—IT'S JUST LIKE A FINGERPRINT, RIGHT?

Your fingerprints merely provide a method of identification. Your DNA exposes the most intimate details about you and your family, such as your genetic makeup, ancestry, and susceptibility to or carrier status for certain diseases. Studies claim to link genetic markers with Alzheimer's, schizophrenia, even drug use and sexual orientation.

Although proponents argue they will only use your DNA sample for purposes of identification, the fact remains that the initial sample the government collects, stores, and refuses to destroy after taking your identification profile could also be analyzed to reveal personal, private medical information about you and your family. Experts have documented hundreds of cases where people have lost their job or health insurance based on genetic predictions.

BUT DOESN'T PROPOSITION 69 APPLY ONLY TO PEOPLE CONVICTED OF CRIMES?

California already requires the collection, testing, and storage of DNA from serious and violent felons, including kidnappers, rapists, murderers, and child molesters. Prop 69 would expand that government database to anyone arrested for any felony offense—even if you are later proven innocent and never charged with a crime. More than 50,000 felony arrests each year do not result in criminal charges in California.

In other words, an 18-year old high school senior arrested for shoplifting merchandise from the mall or for writing a bad check—but who is not charged and is released—would have her DNA seized and stored in the database.

Victims of identity theft have been falsely accused, arrested, and jailed for crimes they did not commit. They are released when police discover their error—but, under Prop 69, not before their DNA is captured and stored in the government database.

Prop 69 seeks to do what only one other state in the nation—Louisiana—has done: seize and store DNA from anyone arrested for any felony offense, yet never charged with a crime, whether victims of racial profiling, labor strikers, or anti-war protestors.

IF YOU'RE INNOCENT, CAN YOU GET OUT OF THE DATABASE?

Not without a court order. Once you are in the database, you can request expungement by petitioning the court and by providing certified documents proving your innocence. However, Prop 69 says the court has the discretion to deny your request, and the court's decision cannot be appealed.

WHY WOULD ANYONE WANT TO KEEP MY DNA ONCE IT'S CLEAR I'M INNOCENT?

That's the question Shannon Kohler and Blair Shelton asked when their local police departments refused to return their DNA samples. Both men provided police with their DNA samples to aid criminal investigations—Kohler in connection with the hunt for a serial killer in Louisiana, and Shel-

ton to help identify a rapist in Michigan. Both men were cleared. Yet, in both instances, even after the real suspects were in custody, police maintained their right to retain the DNA samples for use in other investigations. Kohler and Shelton were forced to sue; when Shelton prevailed in the lower court, police appealed the decision to the Michigan Supreme Court.

It is also not hard to imagine a day when California's DNA database set up for one discrete purpose is "legitimately" used for others. Remember, when Social Security numbers were originally assigned, the government assured us they would only be used to administer the newly-established federal retirement program.

IF I'M INNOCENT, WHAT'S THE BIG DEAL?

Your DNA information in the wrong hands can have devastating consequences. Law enforcement officials have been charged with using confidential government databases to check up on a spouse, sell information to third parties for profit, and for other unauthorized uses. Experts have documented hundreds of cases where healthy people have lost their job or health insurance based on genetic predictions. Lawrence Berkeley Laboratories was sued for allegedly secretly testing African-American and female employees in the 1990's for sickle-cell genes, pregnancy, and syphilis. Gene Trust, a company that collected DNA samples, attempted to sell its DNA databank during bankruptcy proceedings.

Moreover, DNA testing is not infallible. Mistakes can and do happen and innocent people pay the price. Take the case of 16-year-old Josiah Sutton. Arrested in 1998 for a rape he didn't commit, he was sure it was only a matter of time before the mistake would be cleared up. After all, he didn't really fit the suspect description. The suspect was 5-feet 7-inches tall and approximately 135 pounds; Josiah stood 6-feet tall and weighed 200 pounds. "Fortunately," the police had crime scene evidence against which they could test Josiah's DNA. To Josiah's shock, the DNA test came back a match, the case went to trial, and the jury returned a guilty verdict in less than two hours.

Serving a 25-year sentence, Josiah's hope was renewed when his mother saw a story about Houston's crime lab on the evening news. An audit revealed widespread problems,

ISN'T HAVING A DNA DATABASE LIKE THIS WORTH IT TO FIGHT CRIME?

Trapping hundreds of thousands of innocent people in a criminal DNA database is not going to make us safer. In fact, it may do more harm than good. The immediate and enormous backlog of DNA testing created by Proposition 69 would likely result in the Department of Justice outsourcing DNA testing to local laboratories (Proposition 69 will require the immediate testing of more than 500,000 people). Problems with untrained personnel, inadequate storage, contamination of samples, and incorrect or misleading test results have emerged from DNA laboratories across the country. Overloading the system and outsourcing testing will inevitably impact quality control in California.

And the fiscal impact is expected to be overwhelming. At a time when California is struggling to fund basic services like police and fire protection, expansion of DNA testing under Proposition 69 will cost the state tens of millions—and, by some estimates, hundreds of millions—of dollars each year.

Proposition 69 is invasive, expensive, and unnecessary. It turns the presumption of innocence on its head and will have dangerous consequences for the privacy and security of all Californians. The ACLU urges California voters to Vote "No" on Proposition 69. Protect your DNA! ■

from mishandling of evidence to poorly trained technicians. The analyst who testified in Josiah's case had two weeks training; she misinterpreted his test results and overstated her findings. Josiah persuaded authorities to retest his DNA and was finally released last year—after spending nearly five years in prison.

Josiah is not alone. Timothy Durham spent nearly four years in an Oklahoma prison for a rape he didn't commit, despite testimony from 11 alibi witnesses who placed him in another state at the time of the crime. The prosecution's silver bullet: a DNA test that was later proven mistaken. In Nevada, a young man was jailed for over a year before it was discovered that the crime lab had switched his DNA with that of the true rapist.

Proposition 69 on the November ballot gives the government the power to seize DNA from people arrested—even if they are never charged with a crime—and store their DNA profiles in a massive government database maintained by the Department of Justice. ACLU-NC Racial Justice Project Director, Maya Harris, answers questions about the implications of Proposition 69 for you and your family, and the costs to the state of California.

For more information go to www.ProtectMyDNA.com.



Maya Harris

TRAPPING HUNDREDS OF THOUSANDS OF INNOCENT PEOPLE IN A CRIMINAL DNA DATABASE IS NOT GOING TO MAKE US SAFER. IN FACT, IT MAY DO MORE HARM THAN GOOD.

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 next issue, please send us questions about:

Marriage Equality

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 gpanadian@aclunc.org with the subject line Letter to the Editor, or write to
Letter to the Editor
1663 Mission Street #460
San Francisco, CA 94103