

ACLU FALL 2007 news

VOLUME LXXI ISSUE 4

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GOV'T SURVEILLANCE CAMERAS THRIVE WITH NO SAFEGUARDS

By Stella Richardson

California cities are moving quickly to install video surveillance cameras on public streets and plazas without regulations, with little or no public debate, and without an evaluation of their effectiveness, according to an ACLU report released in August.

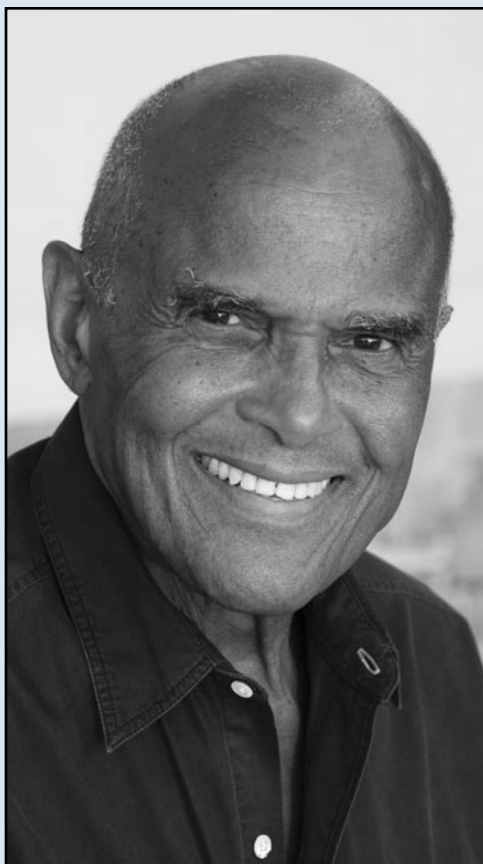
ACLU-NC's recently released report "Under the Watchful Eye" warns of the impact of California's video surveillance systems on civil liberties and public safety.

A public records survey done by the ACLU disclosed that even though 37 cities have some type of video surveillance program and 10 are considering expansive systems, none has conducted a comprehensive evaluation of the cameras' effectiveness. Only 11 police departments have policies that even purport to regulate the use of video surveillance. The ACLU sent Public Records Act requests to 131 jurisdictions statewide and received responses from 119 cities.

In the last two years, the Department of Homeland Security has made more than \$1.4 billion available to cities for anti-terrorism projects. This funding, along with rising homicide rates and aggressive marketing of security systems by private companies, has led many cities to approve and install surveillance camera systems. The ACLU is urging local governments to pause and consider whether this is the best way to make our cities safer, given its negative impact on civil liberties.

CONTINUED ON PAGE 9

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Join us for
Bill of Rights Day 2007

Honoring
Harry Belafonte

Sunday, December 9 at 1:30 p.m.

The Westin St. Francis
335 Powell St. (Union Square)
San Francisco

Call 415-621-2493 x372 for more
information, or to buy tickets
online go to www.aclunc.org



ACLU

AMERICAN CIVIL LIBERTIES UNION
of NORTHERN CALIFORNIA

WELCOME TO THE ACLU NEWS. READ MORE AT WWW.ACLUNC.ORG

BOARD OF DIRECTORS ELECTION

VOTING INFORMATION

WHO CAN VOTE:

The by-laws of the ACLU of Northern California 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 by the time the *ACLU News* mailing 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. (Please note that it is your non tax-deductible membership dues payable to the ACLU, not donations to the ACLU Foundation, that make you eligible to vote.)

HOW THE CANDIDATES WERE NOMINATED:

As explained in our summer 2007 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:

The candidates are listed in alphabetical order. We have 10 candidates running to fill 10 vacancies on our Board of Directors. You may vote for up to 10 candidates.

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

After marking your ballot, clip it and enclose the ballot in an envelope. Your address label (on the reverse side of this ballot) must be included to ensure voter eligibility.

ADDRESS THE ENVELOPE TO:

Elections Committee
ACLU of Northern California
39 Drumm Street
San Francisco, CA 94111

If you prefer that your ballot be confidential, put your ballot in one envelope, then insert that envelope plus your address label in a second envelope and send 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, Pacific Standard Time, on Thursday, Dec. 13, 2007.

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

To help you assess this year’s candidates, we’re including brief statements submitted by the candidates (see page 3). We’ve also indicated below how they were nominated.

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).

☐ ☐ CHERRI ALLISON

☐ ☐ FARAH BRELVI

☐ ☐ KAREN CARRERA

☐ ☐ CHRISTY CHANDLER

☐ ☐ LISA HONIG

☐ ☐ GOODWIN LIU

☐ ☐ ENRIQUE RAMIREZ

☐ ☐ MARSHA ROSENBAUM

☐ ☐ CLARA SHIN

☐ ☐ KEN SUGARMAN

Please clip and send along with your address label to:

Elections Committee
ACLU of Northern California
39 Drumm Street
San Francisco, CA 94111

Ballots must be received by noon on December 13, 2007

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



CHERRI ALLISON

It is a great honor and privilege to be nominated to serve as a Board member of the ACLU-NC. I have served as the Affirmative Action Officer since 2005. As an African American woman and executive director of an organization serving survivors of domestic violence I am keenly aware of the significance of protecting the rights of underserved, disadvantaged and threatened communities. If elected I will support the

work of the ACLU-NC to protect and uphold the civil rights that are guaranteed under the Constitution of the United States and to continue to work towards increasing board diversity.

Nominated by: ACLU-NC Board of Directors
Incumbent: Yes



FARAH BRELVI

As a longtime member and supporter of the ACLU, I am honored to be nominated to the Board. I will bring the perspective of an experienced Board member, a human rights advocate and a litigator to the vital battle to save our bill of rights. I recently served on Amnesty International’s national Board, fighting for civil rights in a global context. I’m a founding member of Muslim Advocates; we work to ensure

that Muslims can, and do, fully participate in American public life. As a litigator in NYC, I fought the discriminatory hiring and promotion practices of an Alabama fire department in one of the nation’s longest-running consent decrees. It would be a privilege to bring my energy and experience to the ACLU-NC board.

Nominated by: ACLU-NC Board of Directors
Incumbent: No



KAREN CARRERA

I am qualified to be on the Board of the ACLU of Northern for the following reasons:

- 1. My commitment to the protection of our Constitutional Bill of Rights;
- 2. Being a Latin American, bilingual and bi-cultural woman, and a mother of two, I bring diversity to the ACLU-NC Board of Directors;

3. My background as a Deputy City Attorney in the S.F. City Attorney’s Office helps me understand ACLU decisions regarding litigation and policy;

4. My current, as well as former, legal practice of representing low-income Latino immigrants and workers in labor and employment matters allows me to assist the Board in considering and being more sensitive to issues that affect immigrants and Latinos.

Nominated by: ACLU-NC Board of Directors
Incumbent: Yes



CHRISTY CHANDLER

As a San Francisco public defender, and now in my own criminal defense practice, I am constantly reminded of the consequences of an unchecked, overreaching government. Each case involves a fight against the erosion of civil rights, a fight to which I have dedicated my life’s work. Before becoming a lawyer, I was an advocate for improved policies concerning women’s reproductive health issues. To be able to

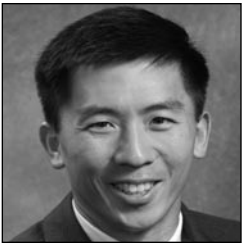
address these critical issues as part of the Board of the ACLU-NC is an enormous privilege and an exciting challenge. I hope to join the ACLU in its important work protecting the freedoms that are the bedrock of our democracy. I am passionate about the goals of the ACLU, and respectfully request your vote to continue this work.

Nominated by: ACLU-NC Board of Directors
Incumbent: No

LISA HONIG

I have been connected with the ACLU for close to 40 years, from seeking their assistance as a teenager to challenge what I considered to be a discriminatory school policy, to serving on the Board of Directors, the Executive Committee, the Finance Committee the Officer Nominating Committee and the Legislative Policy Committee. Most recently, I have served as the Chair of the Legislative Policy Committee and the Personnel Committee, as well as being a member of the Finance and Executive Committees. My commitment to the ACLU-NC grows stronger each year, and I am proud to be able to assist in the defense of freedom, human rights, and civil liberties in this time of such enormous threat.

Nominated by: ACLU-NC Board of Directors
Incumbent: Yes



GOODWIN LIU

As a scholar who specializes in constitutional law, I am deeply aware of the challenges we face in protecting civil rights and civil liberties today. In recent years, we have seen extravagant claims of executive power and government secrecy, and an erosion of America’s moral standing in the world. I can think of no organization more instrumental in undoing this damage and protecting our freedoms than the ACLU. I am

honored to be nominated for a second term on the Board of the ACLU of Northern California. I currently serve on the Board’s Executive Committee and Legal Committee, and with your support, I look forward to contributing even more to the vitality of the ACLU-NC and its important mission.

Nominated by: ACLU-NC Board of Directors
Incumbent: Yes

ENRIQUE RAMIREZ

Enrique Ramirez is an attorney who specializes in the areas of Immigration, Personal Injury and Employment Discrimination. He graduated from Hastings College of the law and has practiced in San Francisco for the last 25 years.

He has worked as an activist for the United Farm Workers, has served as president of the San Francisco La Raza Lawyers on four different occasions, and currently serves as chair of the La Raza Community Resource Center in San Francisco.

I am committed to continue fighting for the objectives the ACLU stands for and I am seeking your support to this end. I believe I offer a new and different perspective on the issues and challenges that lie ahead of us.

Nominated by: ACLU-NC Board of Directors
Incumbent: Yes

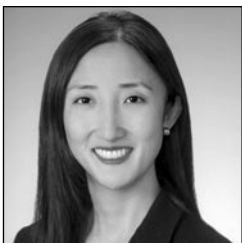


MARSHA ROSENBAUM

The ACLU-NC is arguably the most productive of all the affiliates. I continue to be amazed at the scope and quality of the work, as well as the talents of the staff. Although we are (hopefully) approaching the end of what might be considered the most difficult of times for civil liberties, the fight is far from over and we must continue to be vigilant. As a drug policy reform advocate, I keenly understand what it means

to have become a “surveillance society.” That’s why the work of the ACLU-NC continues to be critically important, and I am deeply honored to be nominated for a second term on the board. There is much work to be done, and I look forward, if elected, to lively discussions and healthy dissent.

Nominated by: ACLU-NC Board of Directors
Incumbent: Yes



CLARA SHIN

I welcome the opportunity to assist the ACLU-NC’s efforts to preserve the protections of our Bill of Rights, particularly in these critical times when our civil liberties are so threatened. I am a partner at Howard Rice Nemerovski Canady Falk & Rabkin, and have engaged in extensive pro bono advocacy and Board work focused on the defense of Constitutional rights. I also will bring to the Board my commitment to

strengthening the public sector. My experiences include serving in the White House Office of the Chief of Staff, assisting in the start-up of the AmeriCorps national service program, working for USAID in South Africa and designing community service programs in partnership with HUD. Thank you for your consideration.

Nominated by: ACLU-NC Board of Directors
Incumbent: No



KEN SUGARMAN

I am excited to be nominated for Board membership. I am a long-time supporter of the ACLU, and deeply committed to its work. In college, I was Vice-President of the ACLU’s campus chapter, and attended the Rhode Island affiliate’s board meetings. In my first year of law school I started a civil liberties group and also volunteered for the Connecticut ACLU. After law school, I did volunteer work for the ACLU-NC,

and then joined its Racial Justice Project as an attorney for a one-year fellowship. Since 2002 I have represented employees in employment and wage and hour matters, including discrimination cases and class actions. I am ready to marshal my experiences and skills to help the ACLU-NC grow stronger than ever.

Nominated by: ACLU-NC Board of Directors
Incumbent: Yes

LETTER FROM THE EXECUTIVE DIRECTOR



Dear Friends,

Is Big Brother watching you?

The answer is “more than ever.” But also, “Not if we can help it!” This issue is full of news about how the ACLU is protecting your right to privacy.

Our new report, “Under the Watchful Eye,” reveals the results of our survey of California law enforcement agencies, and their increasing reliance on video surveillance programs. In recent years, many local jurisdictions have used Department of Homeland Security funds for video surveillance with little or no public debate. Unfortunately, this comes at the expense of spending the money on proven crime reduction measures, like community policing and better lighting. See what your police department is up to—and what you can do about it.

Our Technology and Civil Liberties Policy Director Nicole Ozer warns that San Francisco’s new municipal wireless Internet plan must have safeguards in place to protect residents’ privacy rights or people will not be able to freely and safely search for private health, financial or other sensitive information, or engage in online political activism.

To put it in a national context, our “Ask the Experts” column features Staff Attorney Ann Brick answering questions about the complex cases of federal government snooping on library, Internet and phone company records.

This issue also features a fascinating look at the inner workings of our Legislative Office in Sacramento. You will read about the wide range of bills—from educational opportunity for at-risk students and fair housing for immigrants, to protections against wrongful convictions—our skilled, hard-working legislative advocates have helped push through the California Legislature to the Governor’s desk. Some of their work may even surprise you, including alliances with unusual political bedfellows.

The success of our Legislative Office depends on our staff, volunteers and members. The in-depth article on SB 1019, the police accountability bill, will give you insight on how our Policy, Organizing and Communications Departments were able to strengthen our lobbying effort. The issue of police accountability was a priority campaign for the affiliate this year, and we relied on our chapter and grassroots activists to make sure that Legislators heard powerful, compelling testimony as they considered this crucial measure.

There are many ways for you to be active in the ACLU-NC. Shasta-Trinity-Tehama Chapter members halted a proposed Redding Municipal Library policy to censor Internet access. The inquisitive, outspoken high school students of our Friedman Project took a hard look at military recruitment this summer, and are now sharing their investigation with their classmates—just as pressure mounts for increased recruitment.

Don’t forget to review the statements of our Board of Directors candidates on page 3 and cast your ballot. We are honored to have such a talented, diverse group of people willing to take a leadership role in our affiliate.

I look forward to seeing you at Bill of Rights Day on December 9, where we will honor Harry Belafonte with the Chief Justice Earl Warren Civil Liberties Award. Order your tickets today!

Maya

Maya Harris
Executive Director

4TH FRONTLINE ATTORNEY RECEPTION HOSTED BY BINGHAM MCCUTCHEN

A 42-member host committee and 17 law firms signed on to sponsor the Fourth Annual Frontline Attorney Reception last June 26, which was generously underwritten by host firm Bingham McCutchen. The event featured ACLU client Charlene Nguon, a recent high school graduate from Orange County, who is challenging censorship and unfair disciplinary action by her Orange County school district.

The ACLU of Northern California and the National ACLU Lesbian Gay Bisexual Transgender & AIDS Project hold a reception every summer for Northern California attorneys and summer associates to highlight the ACLU’s work to protect the constitutional rights of LGBT people and those living with HIV and to raise some of the financial support needed for this work.

PHOTOS: MICHAEL WOOLSEY



Julian Kendell Holmes, fifth-grader from Live Oak School, took this occasion to learn more about the ACLU for his presentation at an assembly on Human Rights.



Trent Norris, of event underwriter Bingham McCutchen, Maya Harris, ACLU-NC Executive Director, Charlene Nguon, plaintiff, David Balabanian, of Bingham McCutchen, and Matt Coles, Director of the national ACLU LGBT Rights & HIV/AIDS Project.



Charlene Nguon and attorney Natalie Nardecchia. A lawsuit filed on behalf of Nguon and the Gay-Straight Alliance seeks to clear her record and create a district-wide policy and guidelines to ensure that gay and lesbian students are treated equally.

MARTY KLEIN LOOKS AHEAD

By Stan Yogi

Internationally renowned marriage counselor and sex therapist Marty Klein grew up in a Brooklyn family that encouraged the articulate expression of strong opinions. So when he learned about the ACLU, an organization devoted to protecting free speech, he was thrilled. Years later, to help ensure the ACLU’s long-term viability, Marty and his wife included a generous bequest to the organization in their estate plan.

Marty’s interest in sexuality, freedom, and justice crystallized when he volunteered as a pregnancy counselor at Planned Parenthood while a sociology graduate student in Santa Barbara. He considered contraception as a means to reduce poverty. He soon recognized that successful contraception use results from acceptance of sexuality. That epiphany led to his 27-year career as a sex educator and therapist.

Awareness of the politics surrounding family planning brought him closer to the ACLU. “I realized that we can’t take for granted access to contraception and accurate information on sexuality,” Marty says. “The ACLU is one of the country’s most important players in guaranteeing those rights.”



“IT IS A PRIVILEGE TO ACCUMULATE RESOURCES AND GIVE THEM TO AN ORGANIZATION THAT WILL SHAPE THE POLITICAL AND SOCIAL WORLD AFTER I’M GONE.”
—MARTY KLEIN

A talk in the early 1990s by national ACLU President Nadine Strossen cemented Marty’s commitment to the organization. Her message about the importance of the constitutional system, threats to that system, and the ACLU’s critical work confronting those threats changed his life.

Marty asked Strossen to write the foreword to his latest book, the award-winning *America’s War on Sex*. She readily agreed, calling him “a longtime colleague in the civil liberties movement.”

Marty has convinced colleagues about the ACLU’s significance and recruited several to join. “I’ve been a loud voice in promoting the idea that all justice issues are linked. Any challenge to the Constitution is a challenge to the entire Constitution,” he explains.

Working on his estate plan, Marty decided that a bequest to the ACLU was a wonderful way to leave a meaningful legacy. “It is a privilege to accumulate resources and give them to an organization that will shape the political and social world after I’m gone,” he says. ■

Stan Yogi is the ACLU-NC Director of Planned Giving.

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

SF'S WI-FI PLAN HEADED FOR BALLOT

As San Francisco's municipal wireless Internet plan recently hit a snag, the ACLU of Northern California reiterated its support for any system that increases Internet access while guaranteeing free speech and privacy safeguards for users.

"We will continue to work with city officials to make sure that whatever new plans are put on the table, residents' privacy and free speech rights are protected," says ACLU-NC Technology and Civil Liberties Policy Director Nicole Ozer, after news came that EarthLink, one of the two would-be wireless Internet service providers, backed out of the project due to financial considerations.

The city was in the final stages of contract negotiations with service providers Google and EarthLink, which offered users a choice of no-fee and paid subscription models, respectively. City officials vowed to continue the project, which was conceived two years ago, despite the EarthLink setback and put a non-binding initiative on the November ballot to gather public support.

Ozer credited city supervisors with asking hard questions during the final stages of negotiations about safeguards for users' privacy and freedom of expression, regardless of whether they would be using the paid or no-fee service. "It's good that the city didn't jump to sign an inadequate contract," she says. "Some other cities overlooked the need for protections in their eagerness to deploy municipal wireless Internet access."



The ACLU-NC asked city supervisors to press for protections on how much information is collected about you, what you are looking at, your location, and how long the Internet service provider retains that information and to whom it is disclosed.

Such protections are necessary to ensure that people can safely search for private health or financial information, engage in online political activism, or search for other sensitive information without violation of their privacy. In just the last two years, AOL accidentally leaked the search histories of over 600,000 customers and the U.S. Department of Justice used its subpoena power to obtain user search terms from companies such as Yahoo and MSN.

The ACLU-NC is reviewing the city's ballot initiative for November. Ozer says, "While the ballot provision states that it protects privacy, the actual wording only includes protec-

tions for user location information and prohibits sharing information with third parties. It does not control the service providers' tracking who you are and what you are looking at or prohibit them from using this information for marketing or turning it over to the government."

Ozer is hopeful, however, that San Francisco and other Bay Area cities will become models for deploying systems that increase Internet access, but do not force community members to pay for it with their privacy and free speech rights. ■

STUDENT WEB HOST REINSTATED

By Ankit Rastogi

In a victory for Internet free speech, the San Jose Unified School District reinstated a high school student suspended for creating an "inappropriate Web site," after the ACLU sued on the student's behalf. Ruida Su of Leland High School was allowed to return to his school this fall after he was suspended and transferred to another school with a significantly lower Academic Performance Index score.

In January 2007, Su created a discussion group for a few friends on Facebook, the popular online social network. The group shared inside jokes and several lines from the popular African-American comedian Dave Chappelle, who made disparaging comments while playing the character of a blind white supremacist. The Web page created off-campus on Su's home computer contained no obscenities or any threats or references to violence of any kind.

After an anonymous complaint, however, school administrators summarily decided to suspend Su, forcing him to miss the majority of his Advanced Placement exams in May 2007. The ACLU sued, requesting a preliminary injunction. The San Jose school district quickly rescinded Su's suspension.

"Internet speech, whether it is that of a high school student or an online journalist, is entitled to the highest degree of constitutional protection," said ACLU-NC Staff Attorney Julia Harumi Mass. "In this case, Ruida created and managed the website outside of school hours and school facilities and should never have been disciplined by school administrators." ■

Ankit Rastogi was an ACLU-NC Communications Intern.

LEGAL BRIEFS

PASSENGERS ALSO HAVE RIGHTS IN UNLAWFUL STOPS

The U.S. Supreme Court reversed the California Supreme Court by unanimously ruling on June 18 that an unlawful traffic stop violates the rights of everybody in a vehicle, and all occupants, including passengers, may therefore challenge the legality of the stop and any searches resulting from it (*Brendlin v. California*).

Since many unlawful traffic stops involve police officers becoming suspicious merely because of the vehicle occupants' looks, race or ethnicity, "the ruling means that passengers, not just drivers, can bring civil rights lawsuits against police officers who practice racial profiling," explained ACLU-NC Staff Attorney Michael Risher, who helped draft the ACLU's amicus brief filed in the U.S. Supreme Court.

Bruce Brendlin was a passenger in a car stopped by sheriff's deputies in November, 2001 in Yuba City, Calif. for a registration check. (Authorities later admitted that the officers had no valid reason to stop the car, making it an unlawful stop.) After the stop, an officer recognized Brendlin as a parole violator. They arrested and searched him, the driver and the car, finding drug paraphernalia. At a trial court hearing, Brendlin moved to suppress these as evidence, arguing that the traffic stop was unlawful. The trial court denied his motion, holding that Brendlin, a passenger, could not suppress the evidence.

The California Court of Appeal reversed the trial court, holding that Brendlin, was also "seized" in the unlawful traffic stop, violating Brendlin's Fourth Amendment right against illegal search and seizure. But the California Supreme Court disagreed, stating that only the driver had constitutional protection. The U.S. Supreme Court reversed, stating that the lower court's decision would "invite police

officers to stop cars with passengers regardless of probable cause or reasonable suspicion of anything illegal."

TWO MORE CIA 'RENDITION' VICTIMS JOIN ACLU SUIT

Two more victims of the U.S. government's unlawful "extraordinary rendition" program joined the ACLU's lawsuit against Boeing subsidiary Jeppesen Dataplan, Inc. on Aug. 1. The amended complaint accuses Jeppesen of knowingly providing direct flight services to the CIA, which secretly flew Bisher al-Rawi and Mohamed Faraq Ahmad Bashmilah to clandestine sites to be tortured and subjected to other forms of cruel, inhuman and degrading treatment.

Iraqi citizen and British resident al-Rawi was stripped, dressed in a diaper, shackled, blindfolded, restrained in a harness, and flown from Banjul, Gambia to Kabul, Afghanistan where he was detained, interrogated, and tortured at the secret U.S.-run detention facility known as the "Dark Prison" and then at the Bagram Air Base. After brutal treatment while in U.S. custody, al-Rawi was flown Guantánamo Bay, Cuba. He was released in March 2007 and now resides in England. No charges have ever been brought against him.

Yemeni citizen Bashmilah was beaten and then flown, shackled and hooded, from Jordan to Kabul, Afghanistan, taken to Bagram Air Base for interrogation and torture and held incommunicado for about six months. Bashmilah was later moved to a CIA "black site" in an unknown country and once again tortured. In May 2005, he was again "prepared" for flight, this time to Yemen where he was held for nine months before being released. The original complaint was filed on May 30 on behalf of Binyam Mohamed, Abou Elkassim Britel and Ahmed Agiza, three other victims of the CIA's rendition program.

COURT HALTS NAPA SCHOOL DRESS CODE

Ruling that students do not "shed their constitutional rights at the schoolhouse gate," a Napa Superior Court judge on July 3 stopped the Napa Valley Unified School District from enforcing Redwood Middle School's dress code (*Scott v. Napa Valley Unified School District*).

With their parents' permission, students returning to school this fall can wear clothing containing expressive messages and a variety of colors and patterns. The district cannot enforce its Appropriate Attire Policy as written without giving parents an opportunity to opt out of participation.

Redwood Middle School's dress code allowed only solid-color clothes in blue, white, green, yellow, khaki, gray, brown—it banned pictures, logos, words, or patterns of any kind, including plaintiff Toni Kay Scott's "Tigger" socks, an American Cancer Society breast cancer awareness pin, and T-shirts emblazoned "D.A.R.E. to keep kids off drugs."

Issuing the preliminary injunction, Napa Superior Court Judge Raymond Guadagni cited the recent U.S. Supreme Court decision *Morse v. Frederick*, 127 S. Ct. 2618 (June 25, 2007) which upheld that student expression is protected if it does not "materially and substantially disrupt the work and discipline of the school." Redwood Middle School's uniform dress code policy "violates not only the students' First Amendment rights, but also California state law rights of students and their parents," explained Thomas V. Loran III, ACLU-NC cooperating attorney from Pillsbury Winthrop Shaw Pittman LLP, who worked on the case with ACLU-NC staff attorney Julia Harumi Mass. The District filed a notice of appeal to the preliminary injunction. ■

PRESERVING THE LEGACY OF *BROWN V. BOARD*

By Maya Harris
Executive Director

During my years in law school, I learned the elementary principle that every law school teaches: Without context, the law is only words on paper. History gives law meaning. To follow the letter of the law without honoring its spirit is to lose the flower of justice in the weeds of formalism. It's a fundamental lesson that appeared lost in the recent U.S. Supreme Court decision striking down voluntary integration plans in the Seattle and Louisville, Ky., public schools, *Parents Involved in Community Schools v. Seattle School District*, 127 S. Ct. 2738 (June 28, 2007). Chief Justice John Roberts, who wrote the court's decision, took pains to justify his conclusion that the school districts' plans were unconstitutional by quoting from legal briefs filed in another watershed case about integration, *Brown v. Board of Education*. 347 U.S. 483 (1954).

By invoking the memory of Brown, Roberts tried to equate efforts to eradicate legalized segregation with present-day attempts to create racially diverse schools. Because Seattle and Louisville used race as a factor to desegregate their schools, their integration plans, reasoned Roberts, were no different from past efforts that exploited race to separate and exclude. "The way to stop discriminating on the basis of race is to stop discriminating on the basis of race," he wrote. Plain and simple.

But what of the historical context of Brown? Had Roberts forgotten that Thurgood Marshall, the African-American lawyer and future Supreme Court justice who argued the Brown case, was urging the court to breathe spirit into the letter of the Constitution's promise of equality for all and chart a brave new course for the nation? Had he forgotten that the crisis of segregation was so alarming and so damaging that the court's decision would define us as a nation? Had he forgotten that Chief Justice Earl Warren, who penned the Brown decision, worked tirelessly to convince all nine justices - who hailed from both the North and South - to sign onto the majority opinion so that the court could speak with one powerful voice in repudiation of the archaic doctrine of "separate but equal"?

FORTUNATELY, A MAJORITY OF THE JUSTICES REAFFIRMED THAT THE GOVERNMENT HAS A COMPELLING INTEREST IN AVOIDING RACIAL ISOLATION AND ACHIEVING RACIAL DIVERSITY IN PUBLIC SCHOOLS.

Unlike the unanimous decision in Brown, the court's recent decision was bitterly divided. And it is no wonder.

For several justices, Roberts' use of Brown to dismantle efforts to achieve the very integration that Brown had promised was a distortion of the case's unifying legacy - a "cruel irony," Justice John Paul Stevens wrote in dissent.

"The chief justice rewrites



The Roberts opinion twisted the spirit of the Brown decision that Thurgood Marshall (left) and Chief Justice Earl Warren (right) fought for.

the history of one of this court's most important decisions," Stevens said. "It is my firm conviction that no member of the court I joined in 1975 would have agreed with today's decision."

Justice Stephen Breyer, in an emotional opinion read from the bench, reminded his colleagues: "In this court's finest hour, Brown v. Board of Education challenged th[e] history [of segregation] and helped to change it." Brown, said Breyer, held out a "promise of true racial equality - not as a matter of fine words on paper, but as a matter of everyday life in the nation's cities and schools."

Justice Anthony Kennedy rejected Roberts' simplistic application of the letter of Brown as "too dismissive of the legitimate interest government has in ensuring all people have equal opportunity regardless of their race." In a separate opinion of his own, Kennedy wrote: "The enduring hope is that race should not matter; the reality is that too often it does."

History teaches us that far from ignoring race, the Brown court explicitly used it as a tool of inclusion. Recognizing the significant social context in which the Brown decision was made, later courts upheld the use of race to integrate, equalize and harmonize society, instead of allowing segregation to persist.

Although he concurred with Roberts' conclusion that the Seattle and Louisville plans were unconstitutional, Kennedy clarified that Roberts' opinion implied "an all-



Future Justice Thurgood Marshall (center) celebrating desegregation in 1954.

too-unyielding insistence that race cannot be a factor in instances when, in my view, it may be taken into account."

Kennedy's words leave the door ajar for school districts trying to implement integration plans that fulfill both the letter and spirit of Brown. Fortunately, a majority of the justices reaffirmed that the government has a compelling interest in avoiding racial isolation and achieving racial diversity in public schools. The court made clear that a range of affirmative measures, including some race-conscious ones, are still available to districts across the country that are seeking to create racially diverse educational environments to fulfill their educational mission.

This is particularly important here in California, where, in the shadow of Proposition 209, public schools are as segregated today as they were nearly 40 years ago.

Despite this challenge, there are examples of success. Earlier this year, an Alameda County Superior Court judge threw out a legal challenge to Berkeley Unified School District's elementary and high school student assignment plans, finding that the district does not violate state law by considering the racial demographics of students' neighborhoods along with other factors in assigning students to schools. The judge upheld the plan because it does not consider any individual student's race or grant any so-called "racial preference."

In his dissent, Justice Breyer warned that last month's decision will be one that "the court and the nation will come to regret." But we don't have to live with such regret.

All of us - parents, advocates, school administrators, elected officials - have a role to play in continuing the hard but critically important work of creating racially diverse public schools. Let's maximize the tools we still have available to promote equal opportunity and inclusion in California's educational system. ■

This article was first published in the Daily Journal. The ACLU is representing Berkeley Unified School District parents in supporting the district's student assignment plan.

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

PUSH FOR OPEN POLICE REVIEW CONTINUES

By Juliana Pearson and Justine Sarver

The ACLU of Northern California this year chose police accountability as one of its priority campaigns, dedicating significant resources to pushing legislation that would restore civilian oversight in police misconduct cases.

Two pieces of legislation were the focus of our efforts—Assembly Bill 1648, sponsored by Assemblymember Mark Leno (San Francisco) and Senate Bill 1019, sponsored by Senator Gloria Romero (Los Angeles). Both bills would overturn the California Supreme Court's decision in *Copley Press v. San Diego*, which blocked public access to records relating to sustained police misconduct complaints and stopped police review agencies from holding open hearings.

It has been an uphill battle from the start. Lobbyists for the powerful and often politically influential police unions vehemently opposed the bills.

We formed a multidisciplinary campaign team from the ACLU-NC Policy, Organizing, and Communications departments, and worked with our legislative office in Sacramento to move the legislation forward. In April, the Public Safety Committee heard AB 1648, but neither Assemblymember Fiona Ma nor Assemblymember Greg Aghazarian, the Northern California representatives on the committee, moved to take a vote on the bill. It will remain in committee until later this year, when it will either move forward or die.

We have achieved greater success with Senator Romero's SB 1019. It was voted out of Public Safety Committee and passed in the Senate, in a climate of very intense advocacy on both sides. A lobbyist for police unions was exposed making a quid pro quo threat against the Senate leadership, stating that if the leadership supported the bill, the police union would oppose any efforts to reform term limits, a key issue for Senate leaders.

Our team worked diligently to create a broad coalition supporting the bill, from community organizations and newspapers to local government officials and civilian oversight agencies. Law enforcement leaders also came forward to express support, including the Los Angeles, Oakland, East Palo Alto, and Newark police chiefs, the San Francisco Sheriff, and former Los Angeles Police Chief Bernard Parks. (For a full list of endorsements, visit www.aclunc.org on the Police Practices page.)

Once voted out of the Senate, SB 1019 came up before the Assembly Public Safety Committee on June 26. The committee heard powerful testimony from supporters, who spoke strongly about the need to restore transparency in civilian complaints and police review processes that had been in place for the past 30 years.

Leticia Rodriguez recounted how her daughter, Jessica, was killed when another motorist who was being pursued by police in a high speed chase smashed into her vehicle. Witnesses said officers did not use sirens or flashing lights, a violation of Oakland city policy. Leticia and her family filed a complaint with the Oakland Citizen Police Review Board. Because her complaint was brought before the board after the Copley Press decision, she could not learn of the hearing's outcome. She has no avenue for justice. United Farm Workers Co-Founder Dolores Huerta also testified, recalling being severely beaten by a San Francisco police officer in the late 1980s.

Opposing SB 1019, more than 150 police union representatives packed the committee chamber. Dozens of police officers lined up to oppose the bill, many repeating the same phrase: "Keep our families safe." Officer after officer said they feared that the public release of their names would make them targets of "the criminal element."

No Public Safety Committee member challenged this

**TRANSPARENCY
AND OPEN REVIEW
OF COMPLAINTS
ARE ESSENTIAL FOR
BUILDING PUBLIC
TRUST IN THE
POLICE.**

assertion. Not one asked for a specific example or pointed to the obvious: During nearly 30 years of open civilian oversight in California, there has never been an example of a police officer who was physically harmed because information about misconduct and discipline was released to the public.

When Senator Romero asked for a vote on the bill, members refused and avoided going on record. After the committee hearing, Romero requested that SB 1019 be heard again on July 3, but Chairman Jose Solorio refused to schedule it.

Shortly after the committee hearing, the *Los Angeles Times* conducted an investigation into police claims of safety concerns. Reporters Matt Lait and Scott Glover interviewed police union representatives but none could provide an example of an officer who had been harmed because of the release of disciplinary files.

The Assembly Public Safety Committee will hear the bill again during the next legislative session. Advocates for SB 1019, including the ACLU team, are continuing their legislative push this fall and building even more public support.

A speakers' bureau training session for coalition partners and chapter members was held on Sept. 5 to prepare community leaders to speak throughout Northern California about police misconduct, the need for transparency, strategies for affecting change in local communities, and how to get involved. (For more information about becoming a speaker, contact Ashley Morris at amorris@aclunc.org.)

The ACLU and other organizations are also holding a series of forums on police accountability and oversight, beginning with an event in San Jose on Sept. 17, followed by another community forum in Santa Rosa on October 27. (Sign up at www.aclunc.org to receive action alerts on the open records campaign and an invitation to a forum near you.)

When police misconduct occurs, it sparks intense community concern and suspicion. Transparency and open review of complaints are essential for building public trust in the police. With your support, we will work to ensure that California officials champion both public safety and transparency for our communities. ■

Juliana Pearson is an ACLU-NC Policy Intern, Justine Sarver is the ACLU-NC Organizing Director.

Join the Sonoma County Chapter of the ACLU of Northern California
and many coalition partners for

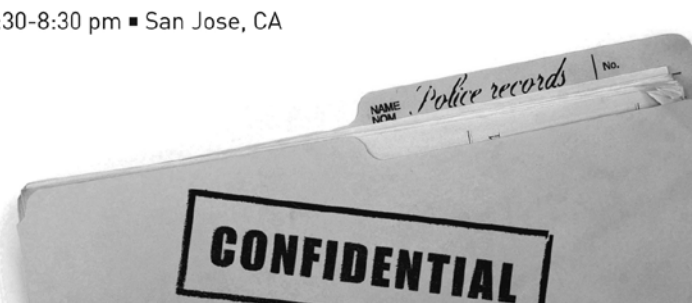
☆ a forum on ☆
**Community-Police
Relations**

Saturday, October 27, 2007 ☆ 10 a.m. to 5 p.m.

You are invited to a community forum hosted by the ACLU of Northern California

**POLICE TRANSPARENCY:
PUBLIC SAFETY,
PUBLIC TRUST**

Monday, September 17 ■ 6:30-8:30 pm ■ San Jose, CA



Meetings on police accountability, oversight and transparency are being held in Northern California communities this fall.

WHAT WE DO INSIDE THE STATE CAPITOL

By Amanda Sheldon

Many of us are familiar with the critical work done by our ACLU staff in California court rooms day-in and day-out, and the numerous hours spent organizing, coalition-building and working to defend civil liberties around the state. There is, however, another important component to our efforts to achieve equality and justice for all—the work of our legislative advocates, also known as lobbyists, at the capitol in Sacramento. The legislative arena is where the ideas and principles we strive for are molded into words and enacted into law.

So, what do we do in our little office across the street from the gleaming capitol dome and the Governor’s headquarters?

To begin with, our staff members don’t actually log many hours in their offices. That’s because our three ACLU legislative advocates in Sacramento—Valerie, Vik and Francisco—spend most of their time meeting with lawmakers, legislative personnel and the staff of various committees who write the analyses of the bills. The ACLU is a well-respected voice and valued resource for many members of the legislature and their staff, and we are often asked to provide insight and legal expertise on civil rights and civil liberties concerns raised in legislation.

On a typical day, our advocates are involved in several of the many activities that transform our ideas into law. For example, they testify at many committee hearings, advocating for or against legislation pertaining to civil liberties. Legislators, in forming their own opinions, often ask our advocates about particular aspects of a bill and rely on their knowledge of civil liberties and the potential impact of legislation on the rights of Californians. Our advocates also often write

the actual text of legislation and are in frequent contact with committee staffers who write the bill analyses. These analyses, done on every bill introduced in the legislature, provide the pertinent details, background and financial information that legislators need to make their decisions.

Despite our “liberal” reputation, it may be surprising how often we forge alliances with “conservative” members to achieve our goals. For example, conservative Republican State Senator Tom McClintock (Thousand Oaks) has been one of our strongest advocates on two ACLU-sponsored bills—SB 1019, which would shed light on police misconduct records, and SB 30, which would require basic privacy protections in government identification documents that are embedded with RFID (radio frequency identification) tags.

Senator McClintock recently spoke on the Senate floor on behalf of SB 30, stating, “I just point out that the measure again makes a very sharp distinction between the voluntary use of these devices and the mandated use by government that citizens submit to these devices. That’s the critical difference



between freedom and authoritarianism, and I’m glad to see that Senator Simitian [the author of the bill] every now and then sides with the freedom.”

In addition to our work with the folks in “the building” (a.k.a. the state capitol), we build or join legislative coalitions that can be very diverse. For example, the ACLU’s partners on SB 30 include groups ranging from the Gun Owners of California and the Eagle Forum to the American Association of Retired Persons, which are worried about the threats to personal privacy posed by the unregulated use of RFID tags. Many legislators have been surprised to see us all at the same table.

Our legislative advocates play an active role in ensuring that when laws are created in Sacramento, our lawmakers fully consider the impact on civil rights and civil liberties. It is part and parcel of the broader role of the ACLU as a defender of our freedoms.

Amanda Sheldon is the ACLU legislative assistant in Sacramento.

SACRAMENTO REPORT

FLURRY OF ACTIVITY AS CAPITOL’S YEAR WANES

By Vivek Malhotra

Once again, the end of the legislative year brought a whirlwind of activity as state legislators acted on hundreds of bills in just a few short weeks. Several of the ACLU’s highest priority bills went to Governor Schwarzenegger’s desk but are still awaiting his action.

INFORMED STUDENT CHOICES FOR COLLEGE AND CAREER SB 405, by Senator Darrell Steinberg (D-Sacramento) and sponsored by the ACLU, won bi-partisan legislative approval. The bill reforms the state’s middle and high school counseling programs so that students receive individualized reviews of their career goals and are informed of college eligibility requirements and career technical educational opportunities. Many kids, especially students of color, low-income students, and English-language learners, lack basic information about the options available to help them succeed in life after graduating from high school. SB 405 promotes a more level playing field for the most at-risk kids in our public schools.

EQUALITY IN NAME CHANGE OPTIONS

The ACLU and Equality California won bi-partisan passage of **AB 102**, by Assembly Member Fiona Ma (D-San Francisco), to ensure that the government respects the family name choices of married couples and domestic partners, regardless of gender or sexual orientation. The bill arose from an ACLU of Southern California case in which a young man, Mike Buday, wished to take his wife’s last name upon marriage. He was unable to do so even after concerted efforts to record his new name at the county clerk’s office, local DMV, and other state agencies. **AB 102** codifies name change rights in a gender-neutral manner and guarantees these same options to domestic partners.

ACCURATE AND BIAS-FREE SEX EDUCATION

The Legislature also approved **AB 629**, by Assembly Member Julia Brownley (D-Santa Monica) and co-sponsored by the ACLU. The bill ensures that publicly funded community-based pregnancy prevention and sexually-transmitted disease education programs are medically accurate, objective, age-appropriate, culturally and linguistically suitable, and taught by knowledgeable instructors. The governor vetoed a similar measure last year, but **AB 629** addresses some of his reasons for vetoing the previous bill.

REDUCING WRONGFUL CONVICTIONS

Also approved was a trio of criminal justice reform bills to minimize the risks of wrongful criminal convictions. **SB 511**, by Senator Elaine Alquist (D-San Jose), reduces the likelihood of false confessions by requiring the electronic recording of police interrogations in homicide and serious felony cases. **SB 609**, by Senator Gloria Romero (D-Los Angeles), mitigates the use of false testimony from informants by requiring corroborating evidence for in-custody informant testimony. **SB 756**, by Senator Mark Ridley-Thomas (D-Los Angeles), increases the accuracy of eyewitness identifications by urging police departments to adopt guidelines on the conduct of police line-ups and photo arrays. All three bills await the governor’s action.

FAIR HOUSING FOR IMMIGRANTS

In contrast to a slew of failed anti-immigrant bills, a measure to protect immigrants from discrimination made it to the governor’s desk. **AB 976**, by Assembly Member Chuck Calderon (D-Whittier), prohibits cities and counties from enacting ordinances requiring landlords to check the immigration or citizenship status of their tenants, and prohibits landlords from doing this on their own.

Following lawsuits filed by the ACLU and other groups, federal courts have enjoined such local housing ordinances

around the country, including Escondido, California. If the governor signs the bill, California would become the first state to expressly prohibit these local anti-immigrant ordinances.

MARRIAGE EQUALITY

Assembly Member Mark Leno (D-San Francisco), backed by several LGBT equality-minded lawmakers and advocates, again delivered a marriage equality bill to the governor. **AB 43** would end marriage discrimination against same-sex couples and protect the freedom of religious institutions to perform marriage ceremonies as they choose. Despite an outpouring of support for the measure, the governor, who vetoed a marriage equality bill in 2005, has signaled he would veto this legislation.

TWO-YEAR BILLS

Several ACLU-sponsored bills were not sent to the governor this year but will be held until 2008, the second in the two-year legislative session, becoming “two-year bills.”

Two measures to restore public access to police misconduct records and hearings, following the devastating state Supreme Court decision in *Copley Press v. Superior Court*, were held up in the Assembly Public Safety Committee. **AB 1648**, by Assembly Member Leno, and **SB 1019**, by Senator Romero, are co-sponsored by the ACLU and the California Newspaper Publishers Association.

The ACLU’s perennial battle to protect individual privacy by setting appropriate safeguards before radio frequency identification or RFID tags (transmitting microchips) can be inserted in government-identification documents, such as drivers’ licenses, will be held over until next year as well. The chief vehicle for this protection is SB 30, by Senator Joe Simitian (D-Palo Alto).

Vivek Malhotra is a legislative advocate for the ACLU’s California affiliates.

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

VIDEO SURVEILLANCE

CONTINUED FROM PAGE 1

The 19-page report “Under the Watchful Eye: The Proliferation of Video Surveillance Systems in California,” examines law enforcement justifications for video surveillance programs, looks at the threat these programs pose to privacy and free speech, and makes a series of recommendations on how to change course and protect civil liberties.

Surveillance camera programs do not significantly reduce crime in city centers, the report argues. Mark Schlosberg, Police Practices Policy Director of the ACLU of Northern

THE USE OF
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AND COMMUNITY
POLICING.

California and co-author of the report said, “The use of surveillance cameras, unfortunately, comes at the expense of proven crime reduction measures such as better lighting, foot patrols, and community policing. In this sense, throwing money at video surveillance actually detracts from law enforcement’s efforts to reduce crime.”

The report cites a survey commissioned by the British Home Office, which found that improved lighting led to “a 20 percent average decrease in crime, with reductions in every area of criminal activity including violent crime,” while cameras led only to reductions “no more significant” than in control areas with no cameras. Britain has more than four million cameras operating in more than 500 towns and cities.

In a July 13 editorial, the *New York Times* raised similar concerns about the New York police commissioner’s \$90-million initiative to install 3,000 cameras in lower Manhattan: “The troubling thing about New York’s move, though, is that the only thing it’s guaranteed to diminish is privacy. There’s little proof that the money spent to equip and operate the system will do more for public safety than, say, hiring more cops.”

Along with New York City, Baltimore and Chicago are also receiving federal money to build massive surveillance systems that may link to thousands of privately owned security cameras.

In the last few years, reports of abuses involving surveillance cameras have surfaced. From camera surveillance of protesters in NYC to a San Francisco police officer who was disciplined for using surveillance cameras at the airport to ogle women.

Nicole Ozer, Technology and Civil Liberties Policy Director and report co-author, raised another serious concern. “The threat of widespread government surveillance only multiplies when cameras are combined with other new technologies.” She cited automated identification software among such technologies. “In this light, video surveillance cameras provide a critical pillar for an emerging government surveillance infrastructure,” Ozer added. ■

For a copy of the full report, go to www.aclunc.org/watchfuleye.

Stella Richardson is the ACLU-NC Media Relations Director.

IS THIS WHAT WE WANT?

- In Great Britain there are more than four million cameras being used and operated throughout the country.
- In London the average person is now captured on video surveillance cameras 300 times a day.
- There is one video surveillance camera for every 14 people.
- Approximately 500 towns and cities have surveillance camera systems.

RECOMMENDATIONS

- **Cease deploying surveillance cameras.** Given surveillance cameras’ limited usefulness and the potential threat they pose to civil liberties, local governments should stop deploying them in public spaces.

For cities considering cameras:

- **Evaluate other alternatives.** Local governments should fully evaluate other crime reduction measures before spending limited public safety dollars on video surveillance systems.
- **Fully assess any proposed system’s effectiveness and impact and establish a process for open public debate.** No city or town should deploy a technology without fully debating and considering its impact on members of the community. The city should conduct a full assessment of the system’s effectiveness and impact on privacy and free speech before proceeding with the installation of cameras.

For cities with cameras already in place:

- **(Re)evaluate the system’s effectiveness and its impact on privacy and hold public hearings.** Any city with a video surveillance system already in place should conduct a comprehensive (re)evaluation of its effectiveness and impact on privacy. The city should make public the results of the evaluation and hold public hearings on the future of surveillance programs and possible alternative crime reduction measures.



HOW TO LOOK AT CAMERAS’ EFFECTIVENESS

To conduct a comprehensive evaluation, a jurisdiction must, at a minimum, look at the following information:

- Crime at the camera location before and after placement
- Crime within 500 feet and 100 feet of the location before and after placement
- Overall crime within the jurisdiction
- Other changes that might account for reductions in crime

Despite the simplicity of such a study and the millions being spent on new camera systems, not one jurisdiction in the ACLU survey had studied the effectiveness of surveillance cameras after they were put in place.

CHARITABLE TRUST RENEWS LEGACY CHALLENGE

The Robert W. Wilson Charitable Trust has renewed the ACLU Legacy Challenge matching grant program. That means if you include a bequest to the ACLU Foundation of Northern California in your will or living trust between now and June 2009, the ACLU will immediately receive a cash grant matching 10 percent of the value of your bequest, up to a maximum of \$10,000, to be used on our current program.

The Wilson Trust provided the ACLU nationally with over \$3.3 million in Legacy Challenge matching grants between January 1, 2005 and December 31, 2006. The Legacy Challenge has been renewed to encourage more ACLU supporters to include the ACLU Foundation in their estate plans.

The Legacy Challenge is a simple opportunity for you to help generate a current gift to the ACLU Foundation without writing a check. Simply notify us that you’ve remembered the ACLU Foundation in your will or trust, and the ACLU Foundation will qualify for Legacy Challenge matching funds.

For more information on the Legacy Challenge or to request information about how your legacy gift can benefit the ACLU Foundation, contact Stan Yogi at (415) 621-2493 or visit www.aclunc.org/support/legacy_challenge.shtml.

STUDENTS PROBE MILITARY RECRUITMENT

By Ravi Garla

Twenty-three students from several Northern California high schools are returning to their classrooms this fall with more than the usual vacation stories. They are bringing information and personal perspectives on military recruitment and service, having traveled the state to meet with veterans, recruiters, military families, conscientious objectors, and counter-recruitment activists.

The week-long trip from Aug. 5 to 12 was the ACLU of Northern California Howard A. Friedman Youth Project's twelfth annual summer exploration trip. The students named this year's excursion "The Truth Behind the Camouflage: A Youth Investigation into the Myths & Truths of Military Recruitment & Military Service."

Their investigation comes at a critical time, as the pressure mounts for intensified military recruitment. The week before the trip, the *Army Times* reported that the U.S. Army had ordered a surge in the number of recruiters and in recruiter bonuses to meet the largest shortfall in Army enlistment in over two years.

Many among the ACLU-NC Friedman activist class of 2007 have been approached by military recruiters and felt that the issue was "personal."

"It seemed that the recruiters had the run of [our] campus," recalled 17-year-old Jacquieta Beverly, a recent graduate of Hayward's Tennyson High School. "They had access to classrooms and students in the lunch room. It got to the point where it felt like they were harassing students. They would follow us into the lunchroom, offering to buy us snacks and stuff. It felt like it was an invasion of our privacy."

"An overarching goal of this trip," explained Eveline Chang, director of the ACLU-NC's Friedman Youth Project, "is for



The ACLU-NC Friedman Youth Project's 23 student activists looked into military recruitment during their summer tour.

these students to be resources on the realities of military recruitment and military service to their peers."

Chang added, "We are especially concerned about the reports of abuse and misrepresentations by recruiters. Young people are not getting the full story."

On the trip's last day, the students presented their preliminary reactions to family, friends, and ACLU-NC staff, easily alternating between personal experiences gleaned from the trip and well-studied facts.

One student who visited the Marine Corps Recruit Depot in San Diego as part of the trip recounted an incident in a restroom where a servicewoman urged her to go to college and

not join the military. Students also fielded questions from parents and informed them of San Francisco's phasing out of the Junior Reserve Officer Training Corps (JROTC). They also told parents that the No Child Left Behind Act requires schools to turn over student contact information to recruiters unless students opt out.

The trip was often an emotional experience. The group met with family members of service women and men. Tania Flores of Chico High School told the *Chico News & Review* that she cried after hearing a mother speak about her son's service in the military. The mother received an email from her son one day saying, "Don't worry about me," only to be informed the next day that he had died.

Leslie Layton, Tania's mother, said her daughter "came out of it with a much better idea of how things work, and a very compassionate view of people who are serving in this war."

The student activists will share their experiences by speaking in various Northern California high schools. Up against the more than one billion dollars the federal government spends annually on recruitment support and advertising, the Friedman students know they have their work cut out for them this school year.

Samantha Johnson seems undaunted by the task. The Sacramento High student is already planning her classroom workshops. She told *Sacramento Bee* columnist Anita Creamer that while military recruiters may have access to campuses, so does she.

And so do 22 other passionate and motivated Friedman youth activists. ■

Ravi Garla is an ACLU-NC Communications Fellow.

PROFILES OF FRIEDMAN YOUTH ACTIVISTS

By Laurel James

SAMANTHA JOHNSON



PHOTOS: LAUREN REID

Samantha Johnson, 18, takes activism seriously, so when asked about her other interests, she laughed, and for good reason. Samantha commutes between Sacramento and San Francisco to attend the ACLU-NC Youth Activist Committee (YAC) meetings on Sundays. She has been involved with the Friedman Youth Project since her freshman year of

high school. This is her fourth summer attending the Youth Project's Summer Exploration.

Samantha was named vice president of the Sacramento High School student body, but she declined the position in favor of spending the fall semester of her senior year studying peace, justice, and sustainability in a Sierra Friends program. On top of a medical internship in biophotonics, she finds time to be with her family, including her younger brother Dennis, who is also a member of the Youth Activist Committee.

About this year's Friedman trip: "Once you're in this bubble for eight days, you come out and you want to change the world," she says. "It's great." ■

JACQUIETA BEVERLY

Jacquieta Beverly sees finishing her final year of high school at Tennyson in Hayward as another opportunity to do more. Not that the 17-year-old hasn't already accomplished plenty. At Tennyson, she was founder of the Action for Social Justice Club and a member of the Black Student Union. She spends time with her younger siblings, writes poetry, attends poetry slams, and volunteers at her local Boys & Girls Club to provide food for families in need. She works closely with Alternatives To War Through Education (AWE) and is a member of the ACLU-NC's Youth Activist Committee (She is also a 2007 national ACLU Youth Activist Scholarship recipient).

"The first encounter I had with a recruiter, they came on campus with this big Hummer and our teachers at that time were on strike," she recalls. "So I just didn't understand how the government has all this money to spend on a war and on recruitment when our teachers are on strike and our textbooks are all outdated."



This fall Jacquieta begins political science studies at San Francisco City College. She has long harbored dreams of becoming a civil rights lawyer, but she now also finds herself inspired by the prospect of teaching. ■

ANTONIO AYALA

A senior at San Francisco's Gateway High School, Antonio, has a long history of community involvement. The 18-year-old just "retired" after two and a half years of service on the



San Francisco Youth Commission, where he was both the Recreation and Services and Community Affairs officer. He took a break this summer from city government to work as a junior counselor for Silver Tree Day Camp in Glen Park and join the ACLU-NC's Friedman Youth summer trip investigating military recruitment.

Antonio's interest in the military is more than academic:

"I know that my brother has never really been the same since he came back from the military, so I wanted to see from his perspective how it can change people."

After high school, Antonio will decide between studying film editing or politics. For now he is doing both—Antonio brought along his camera to document the trip. Look for his final product in early 2008. ■

Laurel James was an ACLU-NC Communications Intern.

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

CHAPTER PREVENTS LIBRARY CENSORSHIP

By Caroline Kornfield

Protecting the First Amendment rights of Redding residents, the ACLU-NC Shasta-Trinity-Tehama (STT) Chapter successfully challenged a proposed Redding Municipal Library policy to censor Internet access.

The proposed library policy would have “allow(ed) librarians, either as a matter of policy or practice, to deny an adult unfiltered Internet access upon request.” Beyond blocking minors’ access to obscene material, these filters also often block materials that adults have a First Amendment right to obtain.

“We were able to make the Redding City Council, LSSI (corporate managers) and the Citizens Advisory Board acutely aware that local citizens do not want their rights infringed on by policies that restrict access to information for adults,” said chapter board member Doug Bennett, head of the sub-committee set up to monitor library practices and keep pressure on the city.

According to ACLU-NC Staff Attorney Ann Brick, the United States Supreme Court “upheld the constitutionality of the Children’s Internet Protection Act, which requires libraries receiving certain federal funds to use filtering software, only because it read the statute as requiring libraries to honor requests from adults for unfiltered access to the Internet.”

The STT Chapter worked with ACLU-NC staff to bring attention to the flaws in the draft policy and recommend changes. In its request to the Library Board, the chapter asked that the policy allow “adults an unqualified right to obtain

unfiltered Internet access and allow minors to obtain access to materials erroneously blocked by the software.”

Because of chapter’s efforts, Redding City Attorney Rick Duvernay in June revised the policy statement to include some of the chapter’s recommendations. Chapter members, in recent weeks, have monitored the implementation of the new policy and attended Citizens Advisory Board meetings to express their concerns. They have tested library practice and found that access for adults was appropriately provided upon request.

“We have talked to the librarians and the director to let them know how much we appreciate their ethical response to First Amendment rights,” Bennett said. “Our chapter has made some continuing friends on both the Advisory Board and among the library staff.”

Field organizer Shayna Gelender applauded the commitment and vigilance of the STT chapter. “Because ACLU-NC covers such a vast region, we rely on chapter activists to work with the affiliate on issues like these that arise in their communities,” she explained. “Collaboration between the chapter leadership and affiliate staff really moves us forward.” ■

Caroline Kornfield is an ACLU-NC Organizing Intern.



Shasta-Trinity-Tehama Chapter officers Doug Bennett (left) and Chris Bradford (2nd from right) hail results of negotiations with Redding officials. Also featured, ACLU-NC staff members Justine Sarver (2nd from left) and Shayna Gelender (right).

ACLU-NC CHAPTER MEETING SCHEDULES

CONTACT YOUR LOCAL ACLU CHAPTER AND GET INVOLVED!

B.A.R.K.+ PLUS CHAPTER MEETING: Third Wednesday of each month at 7 p.m. For more information, contact Barbara Macnab at (510) 845-4256.

CHICO AND NORTH VALLEY ASSOCIATE CHAPTER MEETING: Regular meetings. Contact Laura or Brett Ainsworth for more information: (530) 894-6895 or email: acluchico@yahoo.com.

GREATER FRESNO CHAPTER MEETING: Contact Bill Simon, Chair, for more information at simonaclu@sbcglobal.net.

MT. DIABLO CHAPTER MEETING: Regular meetings. For more information, contact Lee Lawrence at (925) 376-9000 or leehelenalawrence@yahoo.com. All ACLU members in central and eastern Contra Costa County are invited to participate.

MARIN COUNTY CHAPTER MEETING: Third Monday of each month at 7:30 p.m. at the San Rafael Corporate Center. For more information, contact George Pegelow at (415) 492-8903 or gpegelow@sbcglobal.net. Or call the Marin Chapter complaint hotline at (415) 456-0137.

MID-PENINSULA CHAPTER MEETING: Fourth Tuesday of each month, from 7 – 9 p.m. at the Fair Oakes Community Center, Room #4, 2600 Middlefield Road, Redwood City. Chapter mailing address is: PO Box 60825, Palo Alto, CA 94306. Contact Harry Anisgard for more information: (650) 856-9186.

MONTEREY COUNTY CHAPTER MEETING: Third Tuesday of the month (except August, December, and January) at 7:15 p.m. at the Monterey Public Library. 625 Pacific Street, Monterey. For more information, contact Elliot Ruchowitz-Roberts at (831) 624-1180 or visit

www.aclumontereycounty.org. To report a civil liberties concern, call Monterey’s complaint line at (831) 622-9894 (Spanish translation available).

NORTH PENINSULA (DALY CITY TO SAN CARLOS) CHAPTER MEETING: Third Monday of the month at 7:30 p.m. For more information, contact chapter hotline at (650) 579-1789 or npenaclu@comcast.net.

PAUL ROBESON (OAKLAND) CHAPTER MEETING: Fourth Monday of each month at the Rockridge Library (corner of Manila and College Ave.), Oakland. For more information, contact (510) 869-4195.

REDWOOD (HUMBOLDT COUNTY) CHAPTER MEETING: Third Thursday of each month at noon. 917 3rd Street, Eureka, CA. For more information, contact (707) 215-5385 or visit redwoodaclu.blogspot.com.

SACRAMENTO COUNTY CHAPTER MEETING: Contact Jim Updegraff for more information: updegraf@pacbell.net.

SAN FRANCISCO COUNTY CHAPTER MEETING: Third Tuesday of each month at 7 p.m. at 39 Drumm Street, San Francisco. For more information, contact Susana Millman at mamarazi@sbcglobal.net.

SAN JOAQUIN COUNTY CHAPTER MEETING: Regular meetings. For more information, contact John Williams at jandjw1@netzero.com.

SANTA CLARA VALLEY CHAPTER MEETING: First Tuesday of each month at 7 p.m. at 1051 Morse Street (at Newhall), San Jose. For more information, contact acluscv@hotmail.com or visit www.acluscv.org. To leave a voice message for the chapter Chair, call (408) 327-9357.

SANTA CRUZ COUNTY CHAPTER BOARD MEETING: Fourth Monday of every month at 7 p.m. For more information, contact info@aclusantacruz.org or visit www.aclusantacruz.org.

SHASTA-TEHAMA-TRINITY COUNTIES CHAPTER MEETING: Regular meetings are held in Redding. For more information, contact Dan Yost, chair, at donald@snowcrest.net or (530) 241-8421.

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). For more information, contact the chapter hotline at (707) 765-5005 or visit www.aclusonoma.org.

STANISLAUS COUNTY CHAPTER MEETING: Third Wednesday of every month from 7 – 9 p.m. at the Modesto Peace/Life Center, 720 13th Street, Modesto. For more information, contact the chapter hotline at (209) 522-0154 or stanaclu@sbcglobal.net.

YOLO COUNTY CHAPTER MEETING: Fourth Thursday of every month at 6:30 p.m. For meeting location, contact Natalie Wormeli at (530) 756-1900.

CAMPUS CLUBS

BERKELEY CAMPUS ACLU: Weekly meetings on Tuesdays at 7 p.m. For more information, contact Devin McCutchen at devin_mccutchen@berkeley.edu.

SANTA CLARA UNIVERSITY LAW: For more information, contact Lauren Vasquez at lvasquez@yahoo.com.

ASK THE EXPERTS!

UPDATE ON GOVERNMENT SURVEILLANCE



ALEX ORQUIZA

Ann Brick

WHAT LED TO THE ACLU'S LAWSUITS?

In December 2005, the *New York Times* revealed that, since shortly after September 11, 2001, the National Security Agency ("NSA") had engaged in the warrantless interception of telephone calls and emails from the United States to recipients abroad. The NSA's Terrorist Surveillance Program ("TSP") operated without any judicial supervision whatsoever. Instead, an NSA shift supervisor authorized the intercepts based on a finding that there was a "reasonable basis to conclude" that one party to the communication was connected to or working in support of Al Qaeda.

Then, in May 2006, *USA Today* ran a ground-breaking story detailing how giant telecommunications companies, including AT&T and MCI, now owned by Verizon Communications, Inc., were turning over their customers' private telephone calling records to the NSA. Federal and state laws require phone companies to have their customers' consent or be presented with a court order or other form of legal process, but the phone companies were turning over the records without obtaining either.

WHAT WAS THE ACLU'S RESPONSE?

In January 2006, just weeks after the first *New York Times* story broke, the national ACLU sued the NSA in federal court in Michigan, arguing that the TSP violated the Foreign Intelligence Surveillance Act ("FISA") and the Fourth Amendment (*ACLU v. NSA*). Our clients are a group of prominent attorneys, journalists, scholars, and nonprofit organizations whose work requires them to communicate by telephone and email with people in the Middle East and Asia. The district court rejected the government's claim that the TSP's legality could not be litigated without revealing state secrets. Instead, it granted the ACLU's motion for summary judgment, holding that the TSP violated both FISA and the U.S. Constitution.

Unfortunately, that victory was short-lived. In July 2007 the Sixth Circuit, in a 2-1 decision, reversed the district court. The appeals court, however, did not uphold the legality of the warrantless surveillance program. Instead, it held that our clients did not have standing to sue because they could not state with certainty that they themselves had actually been wiretapped by the NSA. But Judge Gilman, in dissent, found not only that our clients had standing, but also that the TSP, at minimum, violated FISA and that the president did not have the inherent authority to disregard that statute. We intend to ask the U.S. Supreme Court to review the Sixth Circuit's decision.

IS ACLU V. NSA THE ONLY LAWSUIT AGAINST WARRANTLESS SURVEILLANCE?

Hardly. Shortly after we filed *ACLU v. NSA*, the Electronic Frontier Foundation ("EFF") sued, challenging AT&T's role in helping the government engage in warrantless surveillance (*Hepting v. AT&T*). The Hepting lawsuit alleges that AT&T permitted the NSA to intercept the content of all the telephone calls and emails of its customers for use in a data mining program and also turned over calling records to the NSA.

The issue of government spying on Americans has been in the headlines once again, heavily involving both the national ACLU and the ACLU-NC with important arguments and rulings in the courts. ACLU expert Ann Brick brings us up to date.

In addition, after *USA Today* exposed the details of the telecommunications companies' collaboration, the three California affiliates of the ACLU sued AT&T and Verizon in state court for illegally turning over customer records (*Campbell v. AT&T* and *Riordan v. Verizon Communications, Inc.*). Our plaintiffs include former Congressman Tom Campbell, attorneys, including prominent criminal defense lawyer Dennis Riordan, journalists, members of the clergy and the psychiatric and medical professions, and the three California affiliates, suing on behalf of our more than 100,000 members. We allege that, by voluntarily providing customer calling records to the NSA, AT&T and Verizon violated both the state Public Utilities Code and the privacy provisions of Article 1, section 1 of the California Constitution. The defendants removed the cases to San Francisco federal court.

Other federal class action lawsuits were filed all across the country against AT&T, Verizon, and phone companies, on grounds similar to those in Hepting and our cases. Among them was *Terkel v. AT&T*, filed by the Illinois ACLU. In the summer of 2006, the Judicial Panel on Multi-District Litigation sent all of these cases to Judge Vaughn R. Walker of the Northern District of California, who already had the Hepting, Campbell, and Riordan cases.

WHAT IS THE STATUS OF THE CASES BEFORE JUDGE WALKER?

In July 2006, Judge Walker rejected the government's claim that its state secrets privilege prevented the Hepting plaintiffs from pursuing their claims against AT&T for illegally aiding the NSA. Judge Walker, however, said he did not have enough information to determine whether the state secrets privilege applied to the allegations about the call records program, and he put those claims on hold. Those rulings are now before the Ninth Circuit Court of Appeals, which heard argument last August. The Ninth Circuit also heard argument on the state secrets issue in the case of *Al Haramain Islamic Foundation, Inc. v. Bush*, in which the plaintiff alleged that the government accidentally provided it with a document showing that conversations between its board members and its attorneys were subjected to warrantless wiretapping. Those cases are now under submission with the court.

The other cases against AT&T, including Campbell, are on hold until the Ninth Circuit decides Hepting. Meanwhile, last August, Judge Walker heard argument on a series of motions in the Verizon lawsuits, including Riordan. The government moved to dismiss all of the cases on state secrets grounds. Verizon moved to dismiss Riordan and two other state law-only cases, arguing that they were preempted by federal law. Laurence Pulgram, of Fenwick and West, the ACLU's cooperating attorneys, ably argued these two motions. Verizon also moved to dismiss the master consolidated class action complaint, raising numerous arguments, including a claim that it had a First Amendment right to turn over private customer calling records to the government. We are awaiting rulings on these motions.

WHAT ABOUT NATIONAL SECURITY LETTERS?

The Patriot Act of October 2006 greatly expanded the FBI's ability to issue National Security Letters ("NSLs"). Under the Act, the FBI can demand that telephone companies, Internet service providers, banks and other financial institutions turn over private information about their customers without first securing a court order.

A recent report by the Department of Justice Office of the Inspector General ("OIG") reveals that the FBI has widely used and abused its power to issue NSLs. Between 2003 and 2005, the FBI issued more than 143,000 NSL requests, the vast majority for telephone records.

These requests were not limited to those being investigated but often extended to anyone who simply had contact with the person under investigation.

Even more disturbing are the other abuses found by the OIG's report. The FBI had sought information not permitted by the NSL statute, issued NSLs without proper authorization, and sent more than 700 "exigent letters" requesting information without actually issuing an NSL. (Equally disturbing, the telephone companies provided the documents requested by these exigent letters.)

Each NSL contains a gag order preventing its recipient from telling anyone that it has been compelled to turn over information. In a heartening victory for civil liberties, however, U.S. District Court Judge Victor Marrero of the Southern District of New York on Sept. 6, 2007 held that the gag order power conferred by the NSL statute violated the First Amendment because it prevented the courts from engaging in meaningful judicial review of the gags. Moreover, because the court found that the gag provisions were inseparable from the rest of the statute, it struck down the entire statute.

The ruling came in the case of *Doe v. Gonzales*, originally filed in April 2004 by the national ACLU on behalf of an anonymous Internet access company that had received an NSL. Because of the gag order, our John Doe plaintiff was prevented from participating in the contentious Patriot Act reauthorization debate. Although the court has stayed its ruling, pending an appeal by the government, the ruling stands as an important reaffirmation of the vital role that courts must play in safeguarding civil liberties. ■

ACLU-NC Staff Attorney Ann Brick is on the litigation team for the AT&T and Verizon cases, challenging their collaboration with the NSA.

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