



ACLU NEWS

Newspaper of the
American Civil Liberties Union of
Northern California

Volume LXV, No. 1 - January/February
2001

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aclu news

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Key Language Rights Case Before U.S. Supreme Court

Sandoval v. Hogan is going to the United States Supreme Court, language rights case based on Title VI. Co-counsel with the Southern Poverty Law Center. This lawsuit challenges the Alabama Department of Public Safety's decision to stop administering drivers license examinations in languages other than English, following the passage of an "English only" measure in Alabama. The ACLU-NC and the Employment Law Center argued on behalf of a Spanish speaking plaintiff who needed to drive to work but could not pass the drivers license exam because of the policy. The Court of Appeal upheld the district court's decision that the Department violated Title VI of the Civil Rights Act, which states that recipients of federal funds cannot discriminate on the basis of national origin.

"We do not have to prove that institutions are intentionally trying to exclude on the basis of ethnicity, origin or race," explained Chen, "as the federal government has said that what are prohibited are actions that have a discriminatory impact. The burden is there fore non the Alabama state government to show that there is a specific and strong reason to eliminate foreign-language licensing tests."

"However, this issue does not only concern language discrimination in Alabama, but also whether there can be a private right of action to go to court it challenge any form of race or national origin discrimination under disparate impact theory. Without this recourse, the only enforcement mechanism is to rely on the federal government to cut off funds to offending agencies or bring its own federal lawsuit, something that rarely happens.

Title VI has been a very important tool to challenge many issues, including bilingual education for immigrant children. The ACLU is currently working on many cases that are based on Title VI.

This case is not just about language rights, but racial justice in general.

Challenge to Utah "Official English" initiative

Prohibits public agencies from providing services and information in any language other than English and requires that state funds appropriated for translation of materials or the provision of services or information in other languages be

returned to the state, thus denying equal protection limited and non-English speakers.

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State "Sues Itself"

Governor Sues School District Instead of Fixing Schools

Seven months after the ACLU and other civil rights groups sued the state of California for failing to provide an equal and adequate education to thousands of California students, the State filed a 147 page cross-complaint against 18 school districts. The schoolchildren named in the original complaint attend schools in the 18 districts sued by the State. None of the districts was a defendant in the suit brought by the ACLU on behalf of schoolchildren. The filing of the cross-complaint comes on the heels of the state's announcement that it had noticed the depositions of all of the 46 principals of the schools that the plaintiffs attend over the winter holiday school break.

"The State's decision to sue the districts makes no sense," said ACLU of Southern California Legal Director Mark Rosenbaum, "because the judge has already decided that 'local districts are the state's agents for local operation of the common school system, and the state's ultimate responsibility cannot be delegated to any other public entity.' So the state is really just suing itself."

Michael Jacobs, a cooperating attorney from Morrison & Foerster, noted that the state's action indicates that it has no effective or rational system of accountability over public education. "They don't know whether the facts alleged in our suit are true and they don't have systems in place to get districts to comply with adequate educational standards - except by suing."

"The state has already admitted that it has no idea whether students throughout California have textbooks or not," added ACLU-NC attorney Michelle Alexander. "Nor does it have even a basic inventory of the schools where unsafe, unsanitary, and unhealthful conditions endanger our children and make it impossible for them to obtain a decent education. It appears that the only means the State has to find out what's going on at the local level is to wait for poor children and students of color to bring a lawsuit."

"By suing the districts, the State is forcing those districts to make a choice between spending limited funds on books, teachers, and safe facilities on one hand, and paying lawyers on the other," added Rosenbaum. "This behavior is consistent with the state's decision to use taxpayer funds to hire O'Melveny & Myers, one of the largest law firms in the country, to

represent the state. Neither decision is in the best interest of schoolchildren or taxpayers."

"This suit totally belies Governor Davis's public position that education is his number one, two, and three priorities," added Alexander. "By forcing the districts to defend themselves against a complaint brought by the State, the State is forcing the districts to waste money and delaying the improvements for poor and minority students that they so desperately need."

The ACLU suit, *Williams v. State Board of Education*, originally filed in May 2000 in San Francisco Superior Court on behalf of 100 students in 46 schools around the state, charges that the state is violating its constitutional duty to provide a free and equal public education to all students. The students attend schools that are in a state of disrepair, are infested with cockroaches and vermin, have inadequate heating systems, filthy and broken toilets and water fountains, out-of-date textbooks and a lack of credentialed teachers.

"It appears that the only means the State has to find out what's going on at the local level is to wait for poor children and students of color to bring a lawsuit."

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Staff Attorney Chen Appointed Federal Magistrate Judge

First Asian-American for District Court in S.F.



ACLU-NC staff attorney Edward M. Chen, has been appointed United States District Court Magistrate Judge for the San Francisco Division. Chen has worked at the ACLU-NC since 1985, litigating cases on issues ranging from drug testing and affirmative action, to "English Only" laws and the Fourth Amendment. Chen is a nationally renowned attorney on language rights, and has litigated cases in Arizona, Utah, and Alabama as well as in California. He is Co-Director of the Language Rights Project, which focuses on challenging language and accent discrimination.

"Not only is Ed Chen an extraordinary lawyer, with a deep commitment to justice and equality, his creativity and dedication have also strengthened our organization significantly," said ACLU-NC Executive Director Dorothy Ehrlich. "His unique contributions in the areas of language rights and racial justice have helped the ACLU broaden our reach to fight discrimination in these arenas.

"He will be missed at the ACLU not only for his legal brilliance, but for his witty, collegial and generous spirit. His genuine respect for all individuals and his overarching sense of fairness will serve him well on the bench," added Ehrlich.

Chen's appointment marks the first time in its 150-year history, that the U.S. District Court for the Northern District has selected an Asian American to serve on the bench. "One reason I was interested in the job is that I am aware that there has never been an Asian American on the court. I think it is important that this court reflect the community it serves. It is one of the reasons I applied for the job," said Chen. "It's going to be hard, however, leaving a job I love so much. I've had such a rare opportunity to work on interesting cutting edge cases, to work with an incredibly talented and dedicated staff, volunteers and ACLU members, and to help forge coalitions and alliances with other public interest and community organizations across a

wide range of issues."

Dale Minami of Minami, Lew & Tamaki, who worked with Chen on the successful case to overturn the wartime conviction of Fred Korematsu for defying Roosevelt's internment order, said, "Ed Chen's appointment is of particular significant to Asian Pacific Americans throughout this country. He is the first Asian Pacific American to serve as a magistrate judge in the Northern District of California which historically has been the home of the most famous (and infamous) Supreme Court decisions affecting us as an ethnic group: *Korematsu v. U.S.*, upholding the imprisonment of Japanese Americans during World War II, *Yick Wo v. Hopkins*, striking down discriminatory laundry ordinances in San Francisco, *Lau v. Nichols*, mandating bilingual education programs, and *Wong v. Hampton*, striking down federal civil service rules excluding non-citizens from employment.

"Ed's appointment is a dramatic symbol of advancement for our community in the legal profession. Seeing a progressive Asian Pacific American in a visible public position is a wonderful encouragement to all of us." Minami said.

Chen served on the legal teams that challenged Proposition 209, the 1996 ballot measure that eliminated affirmative action in state programs, and Proposition 227, the measure passed in 1998 that severely restricted bilingual education in California's schools. Chen also authored the ACLU brief to the United States Supreme Court in *Croson v. City of Richmond*, in defense of that city's minority contracting program. He is currently challenging Alabama's "English only" law in a case before the U.S. Supreme Court, *Sandoval v. Alabama*.

Maria Blanco, Regional Counsel at the Mexican American Legal Defense and Education Fund and Co-Chair of the Coalition for Civil Rights, said, "We have worked together on many issues over the years - from language rights, to health access for the poor, to equal opportunity in education for all of California's children. In all of this work, Ed Chen has shown that his knowledge of the law is superb, his leadership on civil liberties issues is outstanding and his sense of fairness prevails over all."

Chen is a graduate of U.C. Berkeley's Boalt Hall Law School and former law clerk to District Court Judge Charles Renfrew and Court of Appeals Judge James R. Browning. He was honored by the National Japanese American Historical Association for his work on the *Korematsu* case and by the Asian American Bar Association with its Joe Morozumi Award for Exceptional Legal Advocacy.

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ACLU-NC Board Elections

The membership of the ACLU-NC has elected the following people to serve on the Board of Directors [an asterisk (*) denotes an incumbent]: The new Board members are *Donna Brorby, *Rini Chakraborty, *Quinn Delaney, *Martha Jimenez, Jenny Kern, *Steven L. Mayer, *Margaret Russell, *David Salniker, *Frances Strauss and *Jon Streeter. Their three-year terms will begin in January 2001.

In addition, **Judith Belk** has been appointed to fill a vacancy on the Board. Belk has over twenty years of public affairs experience in both the public and private sectors. Most recently, Belk served as Vice President of Global Public Affairs for Levi Strauss & Co, where she managed a professional team based throughout the U.S., Asia and Europe working on issues including diversity efforts, human rights, labor conditions in manufacturing facilities, environmental programs, and responsible marketing practices. She also had reporting responsibility for the company's corporate communications and governmental affairs units. She has also held several management positions in local government including Director of Public Affairs for the Association of Bay Area Governments (ABAG), and Community Relations Officer for the City of Sunnyvale, California, located in Silicon Valley.

Belk has been honored for her work by the League of California Cities, the International City Management Association (ICMA), International Association of Business Communicators (IABC), *Diablo Magazine*, KGO-TV and the Rotary Foundation. In 1999, Cal State Hayward, where she received her Masters Degree, named her as "Alumnus of the Year" award for outstanding professional and community leadership.

Estes Elected to National ACLU Exec Board

ACLU-NC Board member and former Board Chair Milton Estes has been elected to the Executive Committee of the National ACLU Board of Directors. This is a pivotal position this year, as the National Board will elect the successor to Executive Director Ira Glasser, who is retiring after 23 years of leading the organization.

Former ACLU-NC Board member Marina Hsieh, who resigned from the affiliate Board when she moved to Maryland two years ago, has also been elected to the Executive Committee.

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Thanks to our Volunteers



The dozens of volunteers who staff the ACLU-NC Complaint Desk, monitor newspapers, mail fundraising letters and staff tables and events, were honored at a special luncheon on November 28 at the ACLU-NC office.

ACLU-NC Board Chair Margaret Russell thanked the volunteers for their "dedication, energy and commitment," and noted that many of the volunteers had a longer tenure at the

ACLU than the present staff and Board.

ACLU-NC Executive Director Dorothy Ehrlich said that she was "especially grateful to the volunteers who contribute one or more day days per week - over a long period of time. Your efforts have helped the ACLU become a strong organization and have furthered the cause of civil liberties," she said. Ehrlich presented each volunteer with an ACLU pen, a Statue of Liberty bookmark, and a certificate of appreciation, that proclaimed November 28, 2000 "ACLU Volunteers Day."

The lunch was organized by a team from several ACLU-NC Departments whose work depends on the support of volunteers: Mila De Guzman and Cheryl Artuz, from Administration, Melissa Schwartz from Public Information and Field, and Beth Feinberg from Legal. Leticia Pavon and Winona Reyes also assisted in transforming the ACLU library into a festive party site, complete with flowers and a cake.

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Crowd at Bill of Rights Day Celebration Lauds Stevenson's "Heroic Efforts" Against the Death Penalty

"I've seen valleys of hopelessness filled with people. The death penalty is the ultimate expression of hopelessness. Hope is an orientation of the spirit. That's why we who believe in freedom cannot rest - we have to keep on fighting." With these soaring words, abolitionist Bryan A. Stevenson, the recipient of the 2000 Earl Warren Civil Liberties Award, brought the Bill of Rights Day Celebration crowd to its feet.



Rick Rocamora

The December 10 Celebration event drew more than 500 ACLU supporters to the Argent Hotel in San Francisco to honor Stevenson and Oakland activist Grover Dye, hear the exhilarating music of Agustin Lira and Patricia Wells Solarzano, and to hear ACLU-NC Executive Director Dorothy Ehrlich speak to the challenges and accomplishments of the affiliate this year.

Stevenson, a death penalty attorney in Alabama and founder of the Equal Justice Institute, was introduced by ACLU-NC Board member Aundre Herron as a "champion of the voiceless."

"The struggle to end the death penalty is - like the battle to end slavery and the fight against apartheid - the battle for the soul of the nation," said Herron, and Stevenson "is one of this country's most eloquent and learned advocates."

Stevenson said that he was especially proud to receive an award named for Chief Justice Earl Warren, architect of the *Brown v. Board of Education* decision. "I attended segregated schools in the South," he explained, and that decision is absolutely essential to who I am today."

Stevenson is the Executive Director of the Equal Justice Initiative (EJI) of Alabama, challenging bias against the poor and people of color in the criminal justice system. In 1995, Stevenson won the prestigious MacArthur "genius" grant of \$250,000 and devote the prize money to EJI to provide legal representation to capital defendants and death row prisoners. "Alabama has the largest death row per capita in the South, and the thirds largest in the United States. "The average length of a capital case in Alabama is three and a half days; the average length of the penalty phase is only three hours," Stevenson explained. The EJI office, with only five lawyers, has a caseload of 103 death row clients.



As Stevenson reeled off the grim statistics in Alabama - there is no system of public defenders, there is an initiative to try 8 year-old children in adult courts, and in November, 47% of the voters opposed initiative to lift the ban on inter-racial marriages - he also shared stories of hope from a despairing condemned client who sat on Death Row as his mother died, to an African American women guard at Alabama's prison who hummed him a song from the civil rights movement, to an elderly Black woman who overcame her fear of a snarling Sheriff's dog to enter a courtroom to witness a trial on behalf of her community.

"In order to keep on fighting," Stevenson said, "we have to be willing to believe in things we haven't yet seen. And with your support, and the beautiful spirit in this place, I am resolved to keep on fighting."

"The ACLU has never been stronger or more effective than it is today, it grows stronger with the collaboration we engage in - with many of you - and because we are part of a national organization with a clear mission," said ACLU-NC Executive Director Dorothy Ehrlich.

"But," she warned, "We have not gone nearly as far as we hoped our aspirations would take us, because we live in a society so willing to close its eyes to injustice." She reminded the audience that nearly 2 million people are incarcerated in America, that nearly one out of three young African American men are currently locked up or on parole, and that Proposition 21, passed by the voters in March, aims to incarcerate a whole new generation of youth.

Ehrlich noted that the ACLU-NC "has been at the forefront of developing a strategy to fight against the injustice. Our campaign to stop the most insidious discrimination in the criminal justice system - racial profiling, and our spirited fight to defeat Proposition 21 and our lawsuit to overturn it when we lost at the polls, have all created vehicles to being to change public policy or at least expose these injustices.

"This fight is made all the more challenging the given the near disappearance of the presumption of innocence "the principle of , embodied in the Bill of Rights has become nearly fictional -Ehrlich noted that the prosecution of Dr. Wen Ho Lee, the battle over forfeiture laws,

and the convictions of innocent people swept up in the Rampart and Oakland police scandals show that "we now have a presumption of guilt that has infected the entire justice system."

Ehrlich noted that "our hard fights, have not been lonely battles, because they have been imbued with the commitment and generosity of all of you here today." She also noted that in the past decade public support for the death penalty in California has declined by more than 20% and that we have the first opportunity in my life time to actually think about ending the death penalty."

Saba Moheel and Joey Wilhite, two of the Student Advisory Committee of the ACLU-NC Howard A. Friedman First Amendment Education Project, gave a multi-media presentation about their journey this summer "Corporate America: Unplugged."

Musicians Agustin Lira and Patricia Solarzano sang songs of the farmworkers' struggle "Deportee" and "Ser Como el Aire Libre" and brought the audience to its feet once again, as they joined the duo in singing a bilingual version of "We Shall Overcome."

The event was organized by Field Director Lisa Maldonado, with assistance from Catrina Raollos.

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Activist Dye Honored with Hanzel Award

Octogenarian Grover C. Dye has been an activist for most of his adult life. From working with Malcolm X in the 1960's to organizing against "Driving While Black" practices in the Oakland Police Department this year -- his commitment to social justice has defined his life as a community organizer. He is a driving force behind the ACLU-NC Paul Robeson Chapter, based in Oakland.



Rick Rocamora

Dye's activism began during the early civil rights movement in Washington, D.C. where he organized African American tenants around issues of housing discrimination and landlord exploitation. This local people-to-people work in the shadow of the White House gave him valuable lessons on how grassroots organizing can impact national policy.

Dye brought those experiences with him when he moved to Oakland thirty years ago. He joined the ACLU-NC during the 1988 Presidential Campaign after George Bush accused Michael Dukakis of being a "card-carrying" member of the ACLU.

"I believe the ACLU is the most important civil rights organization in the country," Dye explained. "Death penalty opposition, the Driving While Black or Brown campaign, the desecration of the flag ... these are issues that are fundamental to civil rights issues."

When Dye first joined the ACLU-NC Chapter in Oakland, it was apparent to the seasoned organizer that the chapter lacked diversity in a city where diversity thrives. In 1994, there was just one African American on a board of sixteen. In an effort to bring about more diversity, Dye worked with other members to recruit activists of color from the community.

"We really needed to involve the community more in what we were trying to do," Dye explained, "Today, our Board is more reflective of the demographics of our city; there is an equal number of men and women, as well as a significant presence of African Americans. We are also proud to have Latinos, Asian Americans, and lesbian and gay board members."

Dye is exemplary at forging coalitions to reach common goals. Dye served as Vice President of

the Paul Robeson Centennial Committee to honor the Robeson's myriad accomplishments as political activist, lawyer, scholar and singer. Dye was a leader in a successful joint effort by People United for a Better Oakland (PUEBLO) and the ACLU to strengthen the Citizen Police Review Board and police accountability. He also helped to protect free expression in the Oakland Public Library, insuring that the library rescind its disciplinary action against a lesbian employee for refusing to take down a gay pride display. In the wake of that controversy, the Library Advisory Commission approved a new policy on display cases that comports with the First Amendment.

Dye recently turned 80 years old, and shows no signs of letting up. He actively campaigned against Propositions 21 and 22, tirelessly phoning members and mobilizing voters.

"Many people view the ACLU as only a legal organization. We wanted to change that outlook in this community and I think we've helped make a difference," says Dye - whose activism and commitment has made a big difference.

The Lola Hanzel Courageous Advocacy Award, created to recognize and thank volunteers who have provided strength, dedication and leadership to the ACLU-NC by their exemplary efforts, is named for Lola Hanzel who served as a volunteer at the ACLU-NC for more than a decade before her death in 1980.

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Glasser to Retire from National ACLU

Ira Glasser, Executive Director of the American Civil Liberties Union Executive Director for almost a quarter century, announced that he will retire on July 1, 2001. In a memo to ACLU staff and affiliates entitled, "Passing the baton (without dropping it)," Glasser explained the timing of his decision, and his thoughts on the future of the ACLU:

"I continue to feel undiminished passion for the issues that first brought and then kept me here, and for the ACLU, which so remarkably carries and institutionalizes so many of the fundamental values that move me," Glasser wrote. "I will leave in July loving this organization, what it stands for and what it has provided me: an opportunity that very few people ever have to spend one's worklife fulfilling a teenage dream."

Glasser, a non-lawyer with a graduate degree in mathematics from Ohio State University, first became involved with the ACLU in 1967, serving as associate director of the New York affiliate. After an 8-year term as executive director of the NYCLU, he was appointed as director of the national ACLU in 1978.

As only the fifth executive director in the organization's 80-year history, Glasser took on leadership of the ACLU at a time when the country was moving into a new political era. The heady legal victories dating from the Warren Court years were experienced as defeats by others, and by the mid-1970's opponents began to organize resistance to the rights movement and to the ACLU.

In 1978, the ACLU's annual income was \$3.9 million and the organization was \$150,000 in debt. By 1999, income had risen to \$45 million, with a \$31 million endowment.

One of the many major accomplishments attributed to Glasser has been the expansion of ACLU support and organization in state affiliate offices. Nearly half the states in 1978 had no staffed ACLU office. Glasser pushed to change the rules for distribution of donor money, allowing an influx of funds to states with the lowest membership and tremendous need for advocacy and education.

According to ACLU-NC Executive Director Dorothy Ehrlich, "Ira's boundless energy for fighting for civil liberties is matched only by his zeal and competence at both fundraising and managing

the organization's finances.

"Ira built what is truly a national organization, with local resources to monitor the effects and enforcement of court rulings that we fight so hard to secure."

Glasser noted, "It was pretty clear from the beginning, that if you win a Supreme Court decision or you get a bill through Congress everyone thinks you've won something. But if you can't enforce it in a little town in Mississippi or Montana or Oklahoma because there's no presence there to even know that the violation has taken place, there's no one to call, there's no resources to do anything about it, you've won a lot of lawyers' victories, but you haven't really assured liberty" Glasser said.

ACLU-NC Executive Director Dorothy Ehrlich, who is also Chair of the Executive Directors Council, lauded Glasser's role in strengthening the national organization. "In addition to expanding the litigation program, under Glasser's guidance the ACLU created programs for public education and lobbying at the Congressional and state levels."

Though aptly described as a "First Amendment absolutist," Glasser is equally fierce about fighting discrimination based on race, immigration status, gender and sexual orientation and defending reproductive rights. Over the years, he steered the ACLU more substantively into those areas with the establishment of new programs and projects. He was particularly active in making racial justice a core concern of the ACLU.

"We know that the struggle to adapt 18th century values of free speech and privacy to 21st-century conditions and technologies will be difficult," Glasser said. "We also know that the vision of liberty and equality that the ACLU represents today has, since the founding of our nation, often been at war with the reality of repression and subjugation based on race, gender, sexual orientation and religion.

"We therefore expect the struggle to continue, but we look forward optimistically to that time, still distant but now so much closer, when it will be easy to speak freely, normal to be treated fairly and safe to be different from the majority - everywhere in America," he added.

"The infrastructure to defend fundamental rights that Ira Glasser leaves us is truly a legacy of liberty," said ACLU President Nadine Strossen. "His qualities as a civil liberties visionary and an organizational architect are what enabled him to fulfill the ACLU's mission, and what will allow the ACLU to continue its work into the next century.

The process of identifying Glasser's successor has begun. The search committee plans to have his replacement chosen by April and on the job by June, in time to overlap with Glasser prior to ACLU Biennial Conference. "None of us can run this race forever," Glasser writes. "All each of us can do is take the baton when we have the chance, and run with it as fast and as far and as skillfully as possible, and then pass it on without dropping it."

"I love what the ACLU stands for and what it has provided me: an

opportunity that very few people ever have to spend one's worklife fulfilling a teenage dream."

Ira Glasser

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ACLU-NC Youth Rights Conference "Vital for Young People"

by Shayna Gelenderad

Where else can youth from throughout northern California come together and share ideas, knowledge, and passions about issues that affect young people today? The ACLU-NC Youth Advisory Committee's (YAC) annual Youth Rights Conference is a genuine youth-run youth space, with a youth focus. High school students attended the conference from locations as varied as rural Sonoma County, Santa Cruz, and Oakland.



Sam Coturri, William Waker and Dan Melleno (left to right) brought the house down with their skit about school vouchers.

Susana Millman

This year's fall conference, held at UC Berkeley, featured workshops and speakers on an array of topics: "Power of the Student Press...WORD," "Breaking Down the Walls: How can Christian Clubs and Gay-Straight Alliances coexist?" "Voting... Does it Matter?" "Your Rights with the Police," and "Are you Being Targeted?" Spoken word and poetry artists "Ten Poets Plus a Mic" performed during the opening, and were very well received. Members of the YAC wrote, directed, and performed a comic skit that took a satirical look at how the passage of Prop 38 would affect families. YAC members also planned and facilitated the workshops.

Helen Pak from Castro Valley High served as a panelist in the "Breaking Down the Walls" workshop. Pak converted to Christianity when she was twelve years old, and is currently the president of *Spectrum*, Castro Valley High's gay-straight alliance. Before she joined *Spectrum*, Pak did some considerable soul-searching and concluded that, "Who am I to say that's a sin and that's not a sin?" Pak knows how it feels to be stepped on, she says, because she's an Asian girl who speaks out about controversial things. She doesn't want others to be discriminated against the way she has been.

"If you let evil happen, you're an accomplice," says Pak, and she doesn't want to be an accomplice.



Pak's experiences with faith and ethnic identity is representative of many conference participants. The diversity of students in attendance was striking, and their struggles shared. Dillon Alter, a senior from Maria Currillo High in Santa Rosa attended the GSA/Christian club workshop and saw that her peers from across the state were experiencing similar challenges with respect to gay-straight alliances and homophobia on campus. Alter learned that there are effective ways to break tensions between students and work toward common goals of tolerance and acceptance. This groundbreaking

workshop generated enthusiastic networking and sharing of ideas. Students listened to one another and discussed opposing viewpoints, personal experiences, and ways they've discovered to combat intolerance.

In his seven years of teaching, Merrit College High English teacher Dennis Guikema told the *ACLU News* that he's never seen another arena where different people are so effectively brought together to share and discuss issues in a common dialogue. He believes that the ACLU-NC Youth Rights Conference is one of the most important events he shares with his students throughout the school year. "The conferences," said Guikema, "honor what's important and are vital for young people."

The Youth Advisory Committee is part of the Howard A. Friedman First Amendment Education Project of the ACLU-NC. The Project is directed by Nancy Otto.

Shayna Gelender, a freshman at Mills College is an intern with the Friedman Project. Last year, Gelender was granted a national ACLU Student Activist scholarship for her civil liberties activism.



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Spanish Radio Ads Target Latino DWB Victims

"*Estoy hasta el copete!* - I've had it up to here!" sighs the man in the ad. "*No es mi familia*, -- it's not my family, or my job," he continues. "I've been stopped by the police again. I was interrogated as if I were a criminal. They demanded my papers."

"And your only crime is being Latino," his friend responds. "But there's something you can do when your rights are violated, you can call the ACLU! Call 1-877-PARALOS."

Tens of thousands of listeners to Spanish-language radio stations throughout northern California heard this ad through the months of November and December, when the ACLU-NC Racial Justice Project launched an advertising campaign targeting Latino drivers who feel they have stopped by the police because of their race.

The radio ads, which were aired on Spanish-language radio stations in Fresno, Modesto, San Jose, and Santa Rosa, promoted the ACLU-NC DWB Spanish Hotline - 1-877-PARALOS [1-877-727-2567]. The ads were created for the ACLU-NC *pro bono* by HeadQuarters, a San Francisco-based ad agency that specializes in marketing to the Latino community.

The ads were unveiled at a November 15 press conference at the ACLU office. At the press conference, packed by Spanish language TV and other minority media outlets, ACLU-NC Racial Justice Project Director Michelle Alexander was joined by Maria Blanco, Regional Counsel of the Mexican American Legal Defense and Education Fund, Renee Saucedo of La Raza Centro Legal and several victims of racial profiling stops.

Luis Monterrosa, a 26-year old Spanish teacher, had called the ACLU after hearing the hotline promoted on KPOO, a community radio station that played the ad as a Public Service Announcement. "I was stopped five or six times in the course of a year," Monterrosa told the press, "and I started getting nervous every time I saw a police car."

Project Director Alexander explained that more than 3,000 people have called the ACLU hotline since it was initiated two years ago to track the stories of "DWB," or Driving While Black or Brown. Their experiences strengthened the statewide campaign to pass legislation to require data collection on race-based police stops. In addition, many callers have stepped forward to lobby in their own communities for change: now, although Governor Davis has blocked state-

mandated data collection, more than 60 law enforcement agencies in the state collect data voluntarily.

"However, the racial profiling debate has been framed in black and white," Alexander explained. Here in California there can be no doubt that Latinos are the victims of racial profiling as much as African Americans. We wanted to ensure that that we reached the Spanish-speaking victims of DWB as well."

The radio stations were selected to reach Spanish-speaking drivers in areas where racial profiling is a problem and where there is no data collection by local police agencies. For example, Fresno is the only large city in California - and one of very few of the largest 50 cities in the United States -- that does not have a data collection program.

The national ACLU is also distributing a Spanish-language TV ad as a PSA. The TV ad aired on television stations in northern California as part of the coverage of the press conference, and also generated many calls to the hotline. The television ad was created by the Kinocraft, based in Philadelphia.

The English language hotline is 1-877-DWB-STOP. Three thousand people have called the hotline to report their experiences of racial profiling.

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Victory for Open Government

Oakland Council Strengthens Citizens' Review of Police

Just weeks after criminal charges were brought against four Oakland police officers for abusing the rights of residents of West Oakland, the Oakland City Council approved on November 28 a consent decree requiring that matters of the Citizens' Police Review Board (CPRB) must be discussed by the Oakland City Council in open session. The CPRB is an appointed body of civilians who, along with their staff, investigate and adjudicate allegations of police misconduct.

The consent decree comes two years after the lawsuit *People United for a Better Oakland v. Oakland* was filed against the City by PUEBLO and the ACLU-NC charging the City Council with violating the Brown Act and the Sunshine Ordinance by discussing CPRB matters in closed session.

"This consent decree is a significant victory for the citizens of Oakland - it guarantees greater openness of Citizens' Police Review Board issues than even the Brown Act and the Oakland Sunshine Ordinance require," said ACLU-NC cooperating attorney Monique Olivier of the Law Offices of Amitai Schwartz. "Oakland can now move forward with the business of implementing key reforms to the Citizens' Police Review Board and strengthening police review."

According to ACLU-NC Managing Attorney Alan Schlosser, "This consent decree reaffirms the legal principle declared by Judge Needham in his ruling last year - namely, that matters concerning the powers and authority of the CPRB are public policy matters that must be discussed by the Council in open session rather than in closed door meetings.

"We believe this is a victory both for effective civilian oversight of police as well as the principle of open government," Schlosser added.

"The community has been calling on the City Council to demonstrate leadership and to seriously address police abuse and police accountability," said PUEBLO's Dawn Phillips. "By settling this lawsuit in the midst of the current public focus on the Oakland Police Department because of the criminal charges brought against officers for terrorizing residents of West Oakland, we can get to the real work of taking steps towards policies that address police accountability and community safety. The first step the City Council can take is to immediately

adopt the CPRB Task Force consensus recommendations."

Those recommendations include that the CPRB should have original jurisdiction over all citizen complaints, increased staffing and more training.

The decree will result in the final resolution of both this case and a related case brought by the City (*City of Oakland v. Public Ethics Commission*), and provides for a dismissal of all pending appeals from the rulings of the Superior Court.

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ACLU-NC Supports Man's Right to End Life Support

by Jenesse Miller

On October 10, the ACLU-NC filed an *amicus* brief in the California Supreme Court supporting Robert Wendland, a man on life-support, who had previously asserted his desire not to be sustained artificially by medical technology.

Robert suffered a catastrophic automobile accident in 1993, which left him in a prolonged coma. He emerged from the coma in 1995, but has remained in a minimally conscious state, from which he will not improve, from which he will not improve, unable to communicate and sustained by artificial feeding tubes. After three operations to surgically reinsert the tubes after Robert pulled them out, his wife Rose Wendland declined to give consent to a fourth surgery. She stated that Robert told her that he would never wish a prolonged existence on medical technology if her suffered a major accident.

Acting as the conservator of her husband, Robert, Rose Wendland is seeking to honor her husband's wishes in withdrawing artificial nutrition and hydration. Robert Wendland's mother and sister successfully challenged the this action in the trial court. The Court of Appeal reversed. The case, *Wendland v. Wendland*, is now before the California Supreme Court, and presents the court with an opportunity for a major constitutional decision on the right to die.

"This case is about the constitutional right to privacy," said ACLU-NC staff attorney Margaret Crosby. "California's right to privacy expressly protects two important freedoms: autonomy in important decisions and control of information. The right to make choices at the end of life has its roots in both of these."

The ACLU argues that California's revised Probate Code directs conservators to implement the wishes of incompetent patients whenever possible. "Robert's current inability to articulate his treatment preferences does not negate his constitutional right to privacy," explained Crosby. "The California Legislature has made it possible for a conservator to carry out the private end-of-life decisions of a loved one who is unable to personally convey those wishes."

Although Robert Wendland's mother and sister argued that Robert never officially recorded a

desire to forgo life-sustaining treatment prior to the tragic accident that left him unable to further articulate his treatment preferences, the ACLU-NC brief cites national surveys that most people, although they think about and discuss these issues, never put those requests into writing. "Imposing such a high evidentiary burden would impede many genuine treatment desires, thereby blocking a patient's constitutionally protected choice," said Crosby.

Robert's condition does not exactly mirror that of others who have won the right to terminate artificial life support: those in persistent vegetative states and those who are competent and can voice their decision. However, the ACLU argues that he still has the right to have his treatment wishes honored. Crosby pointed out that because minimally conscious patients like Robert can experience pain, suffering and feelings of humiliation, they may have even more at stake than those in vegetative states in having their directives respected.

"The ACLU recognizes the state's interest in enacting safeguards to ensure that end-of-life choices reflect authentic wishes of the patient. But the state may not require an individual to endure a biological existence he has made clear he would find unbearable, simply to promote an abstract interest in preserving life," said Crosby. "The key question we must ask ourselves is: is Robert Wendland a participant in his treatment, or a prisoner of technology?"

Crosby noted several safeguards that have been enacted in California to protect potentially vulnerable patients, including procedures for appointing and challenging a conservator, who must set aside personal beliefs, act as a true surrogate, seek medical advice, and involve several experts who play a role in any decision to terminate care. In Robert Wendland's case, his treating physician, a hospital ethics committee, and an ombudsman unanimously supported Rose's decision to honor her husband's wishes not to artificially prolong his existence.

"Essentially this case is about the fundamental right to privacy, and the right to control one's own body -- to make private choices about how we will die, just as we make private decisions about how we will live," concluded Crosby.

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ACLU-NC Challenges Narcotics Association's Move to Undermine Privacy of Utilities Customers

by Jenesse Miller

"Constitutionally guaranteed privacy may not be sacrificed simply to make the work of narcotics officers easier," charged ACLU-NC staff attorney Margaret Crosby in response to a petition from the California Narcotics Association (CNOA) to the Public Utilities Commission requesting the Commission to weaken its rules, protecting the confidentiality of customer information.

Narcotics officers want access to utility records because they reveal personal information, such as where customers live, how many homes they have, and what time of day they are home. The ACLU argued that the Commission's decade-old position appropriately protects constitutional privacy rights, and that the CNOA's petition should be denied.

Crosby cited California Supreme Court cases that established that opening accounts with companies that provide basic financial, residential and communications services does not mean people must relinquish the privacy of their personal information.

"The ACLU agrees with the state's highest court that public utilities, banks and credit card companies may not divulge customer information to law enforcement authorities unless a valid legal process compels that disclosure," stated Crosby.

State courts have ruled that because bank accounts, telephones, and credit cards are necessary in order to participate in modern life, opening an account of this kind is not truly a voluntary act. "Thus, utilities customers reasonably expect that their personal information will be used solely for their accounts, and that their privacy will be ensured," Crosby explained.

Crosby argued that California's constitutional protection of privacy is more protective than the U. S. Constitution, where the right of privacy is derived from the Fourth Amendment. The U.S. Supreme Court has ruled that when customers release personal information to banks and telephone companies, they assume a risk that these companies will disclose personal data to law enforcement. In California, law enforcement officials need a warrant to obtain this information.

"Heat and light are basic necessities for millions of California residents," Crosby explained. "The California Supreme Court has recognized that people do not relinquish privacy by opening accounts with utilities, and it characterized the underlying rationale of the federal decision as a 'fiction.'"

California constitutional law governs the state's utilities, and mandates that they protect the privacy of customer information.

Jenesse Miller is an intern with the ACLU News.

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ACLU Heads Legal Team to Defend Victims in Berkeley Trafficking Case

The ACLU national Immigrants' Rights Project, based in New York and Oakland, is representing the teenage girls and others who are the victims of the crimes with which Berkeley landlord Lakireddy Balireddy and four of his relatives have been charged by federal prosecutors.

Balireddy was indicted by the United States Justice Department in February 2000 in the U.S. District Court for the Northern District of California on nine counts, including transportation of minors in foreign commerce for illegal sexual activity. Updated charges were added at an October 24 hearing in U.S. District Court in Oakland.

The investigation leading to the indictment began in November 1999 when a minor girl died from carbon monoxide poisoning in one of the apartment units that Balireddy owns in Berkeley. Balireddy was arrested in January 2000 and is currently free on \$10 million bail.

At a December 9 candlelight vigil in front of Balireddy's Pasand Restaurant in Berkeley, IRP attorney Jayashri Srikantiah said, "By coming here today the South Asian community and larger Bay Area community reminds Balireddy that we will not tolerate trafficking and sexual abuse.

"It is tragic that it took Chanti's death to open our eyes to the physical and sexual abuse that has been going on for over a decade in our own backyard," Srikantiah told scores of supporters who joined the demonstration.

The ACLU Immigrants' Rights Project is coordinating a team of lawyers to represent the victims. IRP Director Lucas Guttentag urged immigrants in need of legal advice who are the victims of Balireddy's alleged illegal actions or who are contact for questioning by the Immigration and Naturalization Service to contact the Project at 510/625-2010 for advice or referral. Srikantiah noted that 45,000 to 50,000 women and children were trafficked into the United States last year, according to a State Department report.

In addition to legal representation, several social service and advocacy organizations, including the South Asian women's groups Narika and Maitri, are assisting the victims.

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North Pen Chapter Calls for Review of Private Defender Program

***By Lisa Maldonado
ACLU-NC Field Director***

Concerns about legal representation for low-income residents of San Mateo County led the ACLU-NC North Peninsula Chapter to call for an evaluation of that county's Private Defender Program. Chapter activists, who have been working hard on criminal justice issues for the past few years, noticed that many callers to the Chapter hotline concerned complaints about Program.

San Mateo County is the only one in the state that does not have a public defender program, and instead contracts directly with the local bar association to match local area lawyers with indigent clients who have been accused of crimes in the County. Chapter hotline callers complained that they were inadequately represented, had difficulties contacting their lawyer and were often encouraged to plea bargain instead of going to trial.

Last year, activists in the chapter contacted the Private Defender Program in Sam Mateo seeking any statistical information on the program's effectiveness. They were told that the program didn't keep statistics. Bob Notz & Dan Halpern, members of the North Peninsula Chapter's Criminal Justice Committee, launched their own informal evaluation. In addition, the county-wide statistical information they received from the District Attorney's office revealed an exceptionally high pleading rate.

"San Mateo County may be saving money at the expense of quality," said ACLU North Peninsula Chapter Chair Marc Fagel, a San Carlos attorney. "We think it's important that the county evaluate the program in comparison to other counties with a fully staffed office of the Public Defender."

Last June, the chapter wrote to Rich Gordon, President of the County Board of Supervisors, requesting that the Board convene a citizen's committee to evaluate the Private Defender Program. In November, Gordon appointed a committee and charged it with instituting performance criteria for the Program.

"Our purpose and guiding principle is trying to improve the criminal justice system in our county as much as we can," explained Chapter activist Halpern. "Of course, since we're the ACLU, we are talking about improvements regarding fairness, reduced harshness, and preserving of rights, in particular, the right to competent representation. Ultimately we are looking to make changes that insure public accountability."

"The North Peninsula Chapter's efforts show that a local county can be responsive to citizens' civil liberties concerns if activists hold them accountable," said Field Committee Chair Michelle Welsh. "We are so lucky to have such dedicated and tenacious chapter activists in this organization"

"We know we can make a difference in our community and we intend to keep at it," said Fagel. "It's hard work, and we're all volunteers, but we thrive on being the voice of the ACLU in our local community."

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Sacramento Report Legislative Review and Preview 2000-2001

*By Valerie Small Navarro
ACLU Legislative Advocate*

Implementing the Governor's Myopic Vision

Governor Gray Davis diluted, gutted, or vetoed almost every piece of civil rights/civil liberties legislation during this past year. Unfortunately, we foresee more of the same unless advocates continue to expose Mr. Davis' lack of commitment to civil liberties. , -- at the polls, in the media, and with his contributors.

While his popularity rides the tide of California's booming economy, Governor Davis, who is already being touted as a potential Democratic candidate for the Presidency, has abandoned one of the central responsibilities of his position: ensuring fair and equal treatment of all people in our society.

A brief examination of his record this past year underscores his lack of concern for civil rights and civil liberties:

The Governor vetoed a narrowly tailored bill that required school districts to report their suspension and expulsion data by gender, age, and race, **SB 444 (Alarcon-D-Van Nuys)**. Thus, we have no record of whether a disproportionate number of African American and Latino students are being harshly punished in the public schools. In addition, the Governor vetoed a measure that would have required the gathering of data on public contracting to women and minority businesses to determine whether our anti-discrimination laws are being followed by the state, **SB 2047 (Polanco-D-Los Angeles)**. How can a democratic society guarantee that all people are being treated fairly if we do not have the information about how people are being treated?

Unwilling to cross his friends in law enforcement, the Governor gutted the racial profiling traffic stop data collection measure (aka the Driving While Black or Brown bill) and instead championed a bill that reiterates current law that racial profiling is unlawful. The new measure, **SB 1102 (Murray-D-Los Angeles)**, also provides racial profiling training to the police; in

addition, the Governor promised to provide \$7 million in this year's budget for law enforcement agencies that want to collect data voluntarily.

Furthermore, the Governor vetoed for the second time the media access to prisoners bill, **AB 2101 (Migden-D-San Francisco)**, despite its having been amended to address many of the concerns raised in his first veto message.

Davis's bill to improve the availability of Advanced Placement (AP) courses in high schools was significantly strengthened at the urging of the ACLU to alleviate various inequities in the original proposal: numerous programmatic changes were incorporated, the number of schools that can apply for new grants was increased, and additional funds for schools were obtained. Nevertheless, schools are eligible for only the same paltry \$30,000 annually for four years regardless of whether the school serves 600 or 3,000 students.

Governor Davis eviscerated many of the substantive provisions of the domestic partnership bill, **AB 26 (Migden-D)**: the law now provides that the Secretary of State must prepare forms for the registration and termination of domestic partnerships - with no rights or responsibilities attached to the status (other than requiring hospitals to allow domestic partners to visit each other), and it *authorizes* state and local employers to offer health care coverage and other benefits.

On the positive side, the Governor managed to do the "right thing" when he had the political coverage to do so (i.e., when there was little or no opposition to the idea).

The most important civil liberties bill signed this year, the DNA Innocence Bill, **SB 1342 (Burton-D-San Francisco and Baugh-R-Huntington Beach)** was approved by the Governor only after long and hard negotiations with both the Attorney General and the District Attorney's Association garnered their support. This new law permits people who have been convicted to file a motion requesting DNA testing to demonstrate their innocence and requires law enforcement agencies to retain biological material in a condition suitable for DNA testing during the time individuals are incarcerated.

The Governor also signed **AB 2222 (Kuehl-D-Encino)** that clarifies the definition of "disability" throughout various civil rights statutes, and makes California law more protective of persons with disabilities than the federal Americans with Disabilities Act (ADA). In addition, it defines the limits on employers when making medical inquiries or requiring examinations of applicants and employees.

The Governor signed ACLU-sponsored legislation, **AB 2484 (Romero-D-Monterey Park)** developed in response to the Rampart scandal in the Los Angeles Police Force. This measure provides the California Attorney General statutory authority to seek civil remedies against law enforcement officials that engage in a pattern and practice of depriving people of their rights under the laws and the U.S. and California Constitutions. There was no opposition to this measure.

Through the Looking Glass Darkly - The 2001-2002 Legislative Session

The November election bestowed on the Democrats an almost two-thirds majority of each house of the California Legislature. Fifty of the 80 members of the Assembly and 26 of the 40 Senators are now Democrats. Although the ACLU is non-partisan, we often find that Democrats are more sympathetic to civil liberties concerns. Of the 120 legislators there are 35 women, 27 Latinos, six African-Americans, three Asian Americans, and four openly gay members. Fortunately, strong civil libertarians remain in important positions: John Burton-D, President Pro Tem of the Senate, John Vasconcellos-D, Chair of Senate Education, Carole Migden-D, Chair of Assembly Appropriations, and Darrell Steinberg-D, Chair of Assembly Judiciary. The new Speaker of the Assembly, Bob Hertzberg-D, while a moderate on economic issues, supports civil rights and civil liberties and has championed reproductive health rights bills.

The California-ization of the face of the Legislature hopefully brings more people committed to improving civil rights and civil liberties in this state. Furthermore, Assemblyman Bill Campbell-R, the Republican Leader of the Assembly, is sounding the bipartisan clarion call for education, health care, and quality of life issues.

The decennial process of redrawing the electoral districts in the state will absorb much of the Legislature's time. In addition to fighting against bad bills, the ACLU, collaborating with a panoply of usual and not-so-usual bedfellows, will be working on bills on several key issues:

- expanding the rights and responsibilities of domestic partners,
- the death penalty,
- privacy of personal financial records,
- obtaining information to determine whether the constitutional right to equal opportunity in education and public contracting for women and people of color is in fact being protected, and
- collection of racial profiling data by those law enforcement agencies not currently doing so voluntarily.

A leap forward

Using technology developed by the ACLU national office, we are looking forward to involving ACLU members and civil liberties supporters in e-mailing and faxing members of the California Legislature on targeted issues-direct from the ACLU website. Watch the pages of the *ACLU News* in upcoming issues to see how you can become part of this Cyber-lobbying effort.

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