ACLU NEWS

Newspaper of the American Civil Liberties Union of Northern California

Volume LXIV, No. 1 - January/February 2000

- No More Closed Door Civilian Police Review Meetings in Oakland
- ACLU Urges Monterey Court to Lift Gag Order on Striker

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Court Strikes Down Law Allowing Police Suits against Complainants

An October 20 victory in a suit brought by the ACLU affiliates of Southern and Northern California overturned a California law allowing police to sue individuals who lodge complaints against them.

The ACLU suit, Gritchen v. Collier, challenged California Civil Code Section 47.5, a law that gave police officers a special right to sue citizens who file complaints of misconduct against them. It was the only law of its kind in the country.

"This ruling affirms the basic right of all citizens to speak out about police misconduct, said ACLU-SC staff attorney Dan Tokaji who argued the case in federal district court. "No longer will citizens with legitimate complaints against police officers worry that they could lose their life savings or their home because they have the courage to speak out."

The case stemmed from a 1997 incident when a motorist filed a complaint with the Long Beach Police Department against an officer who treated him discourteously. Later that year the officer threatened to sue the motorist for filing the complaint.

"The ACLU has always contended that citizen complaints are protected speech guaranteed under the First Amendment of the Constitution," said John Crew, Director of the ACLU-NC Police Practices Project.

"We challenged the legality of the California Code because it singled out citizen complaints against police for disfavored treatment. Under this statute, police, but no other public officials, were allowed to bring defamation claims based on citizen complaints. Clearly, the court agreed with our argument that this law was unconstitutional."

The court determined that the 17-year-old law violates the First Amend-ment by specially targeting speech critical of peace officers. U.S. District Court Judge Gary Taylor ruled that, "Section 47.5 has . . . (a chilling) effect, since it imposes greater risk upon citizens who report claimed police misconduct and thereby discourages the filing of complaints."

Crew, who served as co-counsel along with Tokaji and ACLU-NC Managing Attorney Alan Schlosser, concluded, "There has been a long-standing and statewide problem of police officers filing retaliatory lawsuits against people who lodge misconduct complaints. For example, there have been at least four such cases brought by San Francisco police officers. While the ACLU has succeeded in defeating each of those cases, the chil-ling effect of the threat of being sued for merely filing a complaint has remained.

"This ruling should end that intimidating practice once and for all," Crew added.

An appeal has been filed in the Ninth Circuit Court of Appeal.

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Officer Must Pay Attorneys Fees Under "Anti-SLAPP" Law

On October 15, a San Francisco Superior Court Judge ordered San Francisco Police Sergeant Joseph McCloskey to pay $52,000 in fees and costs to the attorneys who represented Betty Evans, the defendant in his defamation suit. The judge found that McCloskey's defamation suit against Betty Evans, who filed a misconduct complaint against him, had no basis.

Attorneys Alan Schlosser and John Crew of the ACLU-NC, Mark Goldowitz of the California Anti-SLAPP Project and Matthew Kumin, an attorney recruited by Bay Area Police Watch, defended Evans, who filed the misconduct complaint against Officer McCloskey with San Francisco's Office of Citizen Complaints (OCC).

"If law enforcement officers bring retaliatory lawsuits against people who file legitimate police misconduct complaints, they may be held personally responsible for the defendant's attorneys fees and costs," said Mark Goldowitz of the California Anti-SLAPP Project in Oakland. "The California anti-SLAPP law was designed to end and prevent such retaliatory SLAPP suits, and we intend to help people use it whenever possible.

"Officer McCloskey should never have filed this suit in the first place. It was a blatant act of retaliation against a woman fulfilling her civic duty by officially reporting the police misconduct that she had observed," Goldowitz said.

"Let this case be a fair warning to all California law enforcement officers," added ACLU-NC Managing Attorney Schlosser. "If you interfere with citizens' First Amendment right to file official complaints, you can be held personally responsible for their attorneys fees and costs. The ACLU will not tolerate police attempts to bully and intimidate citizens who make police misconduct complaints."

The case stemmed from an incident on September 8, 1997, when Betty Evans heard a commotion outside her apartment door in San Francisco. Through the peephole she watched Officer McCloskey repeatedly kicking in the groin a handcuffed person who was on the floor. She opened her door and yelled at the officer, "Don't kick him," and he then stopped. Concerned for the man's life, she immediately called 911 to report the incident.

The OCC investigated the incident, using Evans as a witness, and sustained a finding of excessive force against McCloskey. McCloskey then sued Evans on September 1, 1998 for $25,000 damages based solely on her complaint to the OCC.

Evans' attorneys filed a motion in Superior Court, to dismiss the lawsuit, McCloskey v. Evans, under a special state law (Code of Civil Procedure, Section 425.16) enacted in 1992 to protect Californians from defamation and other Strategic Lawsuits Against Public Participation (SLAPP's). The statute allows lawsuits to be quickly dismissed if they are based on a citizen's exercise of First Amendment petition and free speech rights.

Without bothering to contest the motion, Officer McCloskey dismissed his lawsuit. Under the anti-SLAPP statute, a party who has been improperly sued for exercising First Amendment rights "shall be entitled to recover his or her attorneys fees and costs." In McCloskey v. Evans, Superior Court Judge David Garcia found that McCloskey had no basis for filing the defamation suit and ordered him to pay Evans' attorneys the $52,000 in fees.

"Given the unique powers delegated to police in a free society -- the power to use force, to take lives and to deprive us of our freedom-- it is particularly important that the First Amendment right to petition our government about grievances involving police officers not be abridged in any way," added Schlosser.

"I will never forget what I saw and what Officer McCloskey's lawsuit has put me through," said Betty Evans.

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CHANGING OF THE GUARD
Russell Elected New Board Chair

Newly-elected ACLU-NC Board of Directors Chair Margaret Russell presents out-going Chair Dick Grosboll with an orchid in thanks for his leadership of the organization.

Constitutional law professor and civil rights activist Margaret Russell is the new Chair of the ACLU Board of Directors, taking over from Dick Grosboll who has served as Chair for the past four years.

Russell, an Associate Professor of Law at Santa Clara University, has been actively involved in the ACLU-NC since 1986 when she joined the Board of the San Francisco Chap-ter. As an affiliate Board member, she has chaired both the Legal and the Legislative Policy Committees and served as well on the Executive, Development and Long-Range Planning Committee.

Russell also serves as a Vice-President of the National ACLU.

A graduate of Princeton University and Stanford Law School, Russell has taught constitutional law, civil procedure and contemporary legal theory at Santa Clara since 1991. She is also a participating scholar at the University's Markkula Center for Applied Ethics. In 1991, Russell traveled to South Africa with a delegation of legal workers to consult with the African National Congress on the drafting of a new post-apartheid constitution.

At the December 9 Board meeting, Grosboll received numerous accolades from his colleagues as he handed the Chair's gavel to Russell. A former Chapter activist and co-chair of the ACLU-NC Pro-Choice Task Force, Grosboll was credited by Field Committee Chair Michelle Welsh as a leader who brought a great deal of attention and care to the local ACLU Chapters and nurtured their grassroots efforts. Grosboll was also thanked for his leading role in the campaign to oppose Proposition 209.

New Board Members, Officers

The following were elected by the membership to serve on the Board of Directors of the ACLU-NC (incumbents are marked with an "*"): Luz Buitrago*, Scott Burrell*, Milton Estes, David Fermino*, Aundre Herron*, Dennis McNally*, David Oppenheimer*, Millicent Rutherford*, Zona Sage, and Pamela Samuelson*.

NEW BOARD OFFICERS

The new ACLU-NC Board officers are: Margaret Russell, Chair (see article this page), Luz Buitrago, Vice Chair (Chair of the Legislative Policy Committee; Quinn Delaney, Vice Chair (Chair of the Development Committee);Steve Mayer, Vice Chair (Chair of the Legal Committee); Michelle ("Mickey") Welsh, Vice Chair (Chair of the Field Committee); and David Salniker, Treasurer.

These officers will comprise the Executive Committee along with Dick Grosboll, Aundre Herron, Dennis McNally, Susan Mizner, and Fran Strauss.

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San Francisco Tenants Win a Victory in Court

BY STELLA RICHARDSON

On November 18, the ACLU and the Tenderloin Housing Clinic won a victory for tenants who were being evicted because they violated a landlord's blanket no-overnight-guest rule. Following a two-week trial in San Francisco Superior Court, the jury in the case of Harrell v. Juan Avalle-Arce II et al, ruled in favor of one of the tenants and against another for reasons largely unrelated to his having violated the no-overnight-guest rule. (During the trial Superior Court Judge James McBride threw out the eviction cases against two other tenants.) The tenants live at Yerba Buena Commons, a 257-unit building, at 88 Perry Street in San Francisco. The four tenants faced eviction because they violated a rule that categorically prohibited them from having overnight guests.. The tenants were represented by the ACLU-NC and the Tenderloin Housing Clinic.

"We represented the tenants not only to preserve their housing, but because we believe that under the state constitution, tenants have a fundamental right to privacy in their homes that encompasses the right to have overnight guests" said Robert Kim, ACLU-NC staff attorney. Under the current rental agreement and house rules, all guests must leave the building by 10:00 p.m. and cannot return until 8:00 a.m. the next day.

Although the case was not decided on privacy grounds, Kara Portnow of the Tenderloin Housing Clinic noted, "The jury - a cross section of San Franciscans - sent a clear message to the landlord that prohibiting overnight guests is unreasonable and cannot be enforced. Implicit in the jury's verdicts is the recognition that the right to have overnight guests is fundamental to the meaning of the home and cannot be abrogated by a landlord's unreasonable visitor policy.

Stella Richardson is the ACLU-NC Public Information Associate.

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Federal Court Strikes Down English-Only Driving Test

BY STELLA RICHARDSON

The Court of Appeals for the 11th Circuit ruled on November 30 that Alabama's practice of giving its driver's license examinations only in English was a violation of the Civil Rights Act of 1964. The November 30 ruling upheld a 1998 district court order in a class action brought by the Southern Poverty Law Center on behalf of Martha Sandoval and other immigrants who cannot speak English fluently enough to take a written test in English. The Language Rights Project, co-sponsored by the ACLU-NC and the Employment Law Center, assisted in the challenge to the law, because the impact of the suit is potentially very broad.

"The Court's decision is a giant step forward for the civil rights of the immigrant community in America, and for its ability to participate fully in all of the rights and opportunities the United States has to offer, " said ACLU-NC staff attorney Ed Chen who co-directs the Language Rights Project.

"It is an important victory," said Richard Cohen, legal director of the Southern Poverty Law Center, "not only because of the legal principles at stake, but also because of the lives it will touch. It will help immigrants overcome their isolation and become full participants in the economic and social life of this country." While Alabama does not have a large immigrant population, the Bureau of the Census projects that in the next decade the Latino population in Alabama is estimated to grow 32.4 percent (a gain of nearly 9000 persons).

"In California - one of the most linguistically diverse states in the country - this ruling puts state and local agencies on notice that they have to take affirmative steps to provide fair and equal access to all those they serve," added Christopher Ho, co-director of the Language Rights Project.

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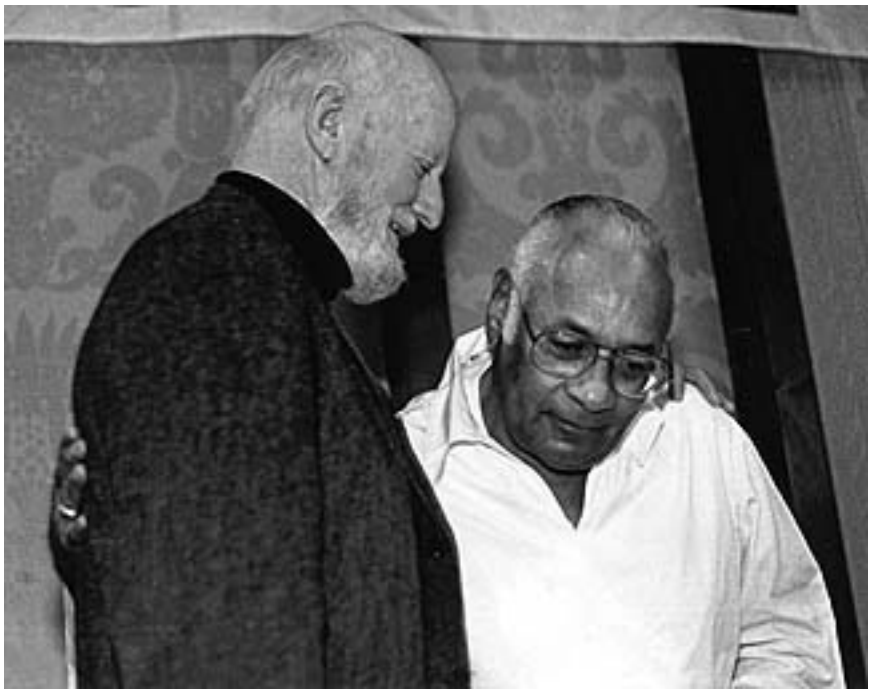
Poet Ferlinghetti Honored at Rights Day Celebration



Honoree Lawrence Ferlinghetti (left) and fellow poet Piri Thomas.

"Lawrence Ferlinghetti has helped keep the First Amendment alive through constant struggle," said former ACLU-NC staff attorney Al Bendich as he presented the 80-year old San Francisco Poet Laureate with the Earl Warren Civil Liberties Award at the ACLU-NC Bill of Rights Day Celebration on December 12.

The 500 ACLU-NC members and supporters in attendance were treated to a moving reunion of two veterans - lawyer Bendich and bookseller Ferlinghetti - of the 1957 landmark Howl trial. "Fools rush in, where angels fear to tread," was how Ferlinghetti characterized the trial whose decision reverberated throughout the country. "I just wanted to publish books. We didn't have a cent...If it hadn't been for the ACLU, we'd be out of business.

"I want to publicly thank the ACLU and Al Bendich - I haven't done that before - for defending

me," Ferlinghetti added, and then read a poem about Waco, the FBI and government violence "If There Had Been One Buddha."

Bendich noted that in more than 20 years of the Earl Warren Award, this was the first granted to a poet. And in a fitting tribute to the power of the poet and his voice for justice, the audience heard astounding poetry that spanned six decades: Ferlinghetti's Autobiography and I Am Waiting, Piri Thomas's riff against "the drops of acid known as bigotry, hatred and rejection," and Ten Poets Plus a Mic's spirited song-stories condemning Proposition 21 and a society that aims to criminalize its youth.

VOLUNTEER HONORED

The Celebration also included the presentation of the Lola Hanzel Courageous Advocacy Award to Pauline Sherman. Sherman, who has served as a volunteer Complaint Desk counselor for twelve years, was awarded by ACLU-NC Chair Dick Grosboll: "Pauline is on the frontlines of our civil liberties work. Her patience, knowledge and understanding are tremendous assets to the difficult task of responding to the many people who call the ACLU because they believe their rights are violated." (See sidebar)

ACLU-NC Executive Director Dorothy Ehrlich's State of the Union address focusing on the new Racial Justice Project, and a presentation from the Howard A. Friedman First Amendment Education Project on youth homelessness highlighted the key work of the ACLU this year.

Ehrlich also thanked Field Represen-tative Lisa Maldonado and Program Assistant Melissa Schwartz who organized the Bill of Rights Day Celebration.

POET AS ADVOCATE

Born in 1919 in New York, Ferlinghetti earned a doctoral degree in poetry at the Sorbonne in Paris and served in the U.S. military. He was sent to Nagasaki only six weeks after the U.S. dropped a nuclear bomb, destroying the city. That is where he became a pacifist.

In 1953, Ferlinghetti came to San Francisco and in 1955, with Peter Martin, founded City Lights, named for the Charlie Chaplain film, now one of the most famous bookstores in the world. Less than three years after its opening, a San Francisco police officer came in the door and, for 75 cents, bought a copy of Allen Ginsberg's 44-page "Howl and Other Poems." That purchase was the basis for the arrest of Ferlinghetti and bookstore worker Shigeyoshi Murao for selling obscene material, and the landmark trial.

Ferlinghetti wrote at the time, "It is not the poet but what he observes which is revealed as obscene. The great obscene wasters of Howl are the sad wastes of the mechanized world, lost among atom bombs and insane nationalisms."

In 1958, Ferlinghetti published A Coney Island of the Mind, a volume of poetry that had a great impact on American youth, and, over the next four decades, more than two dozen books of poetry and prose. Through City Lights Bookstore's publications, distribution and literary readings, he also gave voice to many new poets and writers, including those of the Beat Generation - Jack Kerouac, William Burroughs, Herbert Huncke, and Ginsberg.

In 1997, Ferlinghetti joined the lawsuit ACLU v. Reno, because, in his words, "This new law to censor the Internet would have a chilling effect on the First Amendment. It's upsetting and it's also un-American. We are still publishers of Allen Ginsberg's poem "Howl." "Howl" was judged not obscene in a landmark trial, but we fear that the book could now be at risk again, more than forty years later. We publish excerpts from our books and interviews with our authors on our web site and we would feel threatened by new legislation. We do not consider our books obscene, but others might."

When Ferlinghetti was named San Francisco's first Poet Laureate in 1998, he called for poetry to be a force for change in the world and called on "poets to stop mumbling in their beards to private audiences and say something important to the world."

Ferlinghetti has taken up his own challenge by writing a regular column "Poetry as News" in the San Francisco Chronicle Book Review. In a recent column entitled, "Unleashing Uncensored Thought," he wrote "Today, raw thought as poetry is everywhere, at every festival, every open mike, every poetry slam, from rap to hip-hop and back - black and white and Latino poets and the latest youth movements poets, from Manhattan's Nuyorican Café to Wednesdays at La Peña in Berkeley, and on Youth Radio on FM stations late at night.

"The poets of the world are speaking up and speaking their mind," Ferlinghetti wrote.

(*Photo above: Poet Toussaint Haki of Ten Poets Plus a Mic wowed the audience with a musical, rhyming description of the impact of Proposition 21 on youth.*)

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Sacramento Roundup: Legislative Review

BY VALERIE SMALL NAVARRO
ACLU LEGISLATIVE ADVOCATE

"Roundup", the brand name of an exceptionally toxic herbicide, aptly describes Governor Davis' approach to many of the civil liberties/civil rights bills that made it to his desk. In the Governor's attempt to position himself as a "moderate," who will "save the Democrats from themselves," his veto of bills that had broad bipartisan support demonstrates that he might pose a grave danger to our core civil liberties issues.

Davis deliberately triangulates almost every issue. In fact, in the criminal justice arena he positioned himself to the right of former Governor Pete Wilson - and possibly to the right of former Attorney General Dan Lungren - by repeatedly vowing never to parole individuals who had been convicted of murder regardless of age, infirmity, rehabilitation, etc. The Los Angeles Times reported that of the 1,489 parole hearings held since Davis took office in January through September, the parole board granted parole only 13 times. The Governor revoked eight of those paroles and returned the five others to the board for reconsideration. The board then reversed those decisions denying the individuals parole. The Governor's now-infamous quote from early in his campaign regarding violent crime and the death penalty has lost its irony: referring to Singapore's criminal justice system, Gray Davis stated that it is "a good starting point in terms of law and order. I think there ought to be clear rules. You can't punish people enough, as far as I'm concerned."

DRIVING WHILE BLACK/BROWN

In this context and given the strong financial support of the police unions, the Governor's veto of the ACLU-sponsored "Driving While Black/Brown" bill (**SB 78, Murray, D-Culver City**)that passed the Legislature with broad bipartisan support did not come as any great surprise. However, the howls of protest from the community that greeted the Governor upon his veto

surely surprised him and may be the catalyst for a better outcome this year.

Similarly, his veto of the "Media Access to Prisons" bill (**AB 1440, Migden, D-San Francisco**) was roundly criticized by journalists and free speech organizations.

On the other hand, Governor Davis showed his support for women's right to choose abortions and certain gay and lesbian issues. Governor Davis' adamant inaugural address pledge --"And to those who would seek to deny a woman her right to choose, let me offer this suggestion: Don't waste the Legislature's time . . ." -- has not actually been tested because all anti-choice bills were killed in committee. However, he signed a measure requiring that sex education be medically accurate and free of race, gender, and ethnic bias (**AB 246, Cunneen, R-Campbell)**.

In a major victory for lesbian and gay rights, the Governor signed **AB 1001**, (Villaraigosa, D-Los Angeles) that culminated a 20-year long battle to move the prohibition against employment discrimination on the basis of sexual orientation from the Labor Code to the Civil Code (into the Fair Employment and Housing Act (FEHA)) which is more protective of individual's rights. Assemblymember Sheila Kuehl's (D-Encino) five-year battle to prohibit harassment and discrimination on the basis of sexual orientation in programs, opportunities, and activities in schools and universities finally paid off (**AB 537**, formerly **AB 222**). In addition, the Governor signed a pared-down domestic partnership measure that creates a statewide domestic partnership registry for gay and lesbian couples, guarantees hospital visitation rights, and allows partners of gay state employees to receive health benefits (**AB 26, Migden**). However, Davis refused to sign a measure that would implement a system of HIV reporting based on the use of a unique identifier (instead of using an individual's name).

At the end of the session, the Governor signed the ACLU-sponsored "California Civil Rights Amendments of 1999" (**AB 1670, Kuehl**) that included numerous changes to civil rights statutes including increasing the cap on damages under the Fair Employment and Housing Act from $50,000 to $150,000, prohibiting employers or other entities from requiring testing for a genetic characteristic, and creating a civil action for injunctive or other equitable relief against agencies or entities that receive state funds and engage in discrimination.

However, he vetoed another key civil rights bill (**SB 44, Polanco, D-Los Angeles**), a measure that would have insured that women and people of color were informed about educational and employment opportunities offered by the state.

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Sacramento Report: Preview of the Year 2000

Elections for all the Assembly seats and half of the Senate seats in this final year of the two-year session absorb most of the attention of the politicians and color their bills and votes. In addition, the presidential race and the redistricting battle add further to the confusion.

The Governor's intransigence on key issues has created a new challenge for the civil rights community. We must now show the Governor that the policies we advocate for are not only right, they also have an important impact on the voters he wants to woo. Furthermore, we must overcome the inevitable pressure of the more than $10 million estimated by the Sacramento Bee that will be sitting in Governor Davis's campaign treasury by the end of 1999.

CIVIL RIGHTS: "RIGHT TO KNOW" BILLS

The ACLU and other civil rights organizations will be working on a package of civil rights "right to know" bills. At the hearings on a new version of the DWB bill, we hope to illustrate to the Governor the depth of the Driving While Black/Brown problem in this state, since he expressed skepticism about the extent of the problem (See article on Gallup poll, page 5).

In addition, we will be working on measures to collect race and gender data for government contracting, as well as race and gender data for disciplinary suspension in public schools to ensure enforcement of our anti-discrimination statutes. In the employment arena, the ACLU will continue to try to enact legislation that would ensure that people who are victims of employment discrimination have access to the courts and are not bound by arbitration clauses.

The public's right to know what happens behind prison walls will again be raised in another "Media Access to Prisons" bill.

PRIVACY RIGHTS

Scott McNealy, the chairman and chief executive of Sun Microsystems stated "You already have zero privacy--get over it." We are not prepared to get over it. To patch the holes left by federal financial privacy legislation, we will be working with the Privacy Rights Clearinghouse and others on ensuring consumer's privacy in the information provided to financial institution. In addition, we will be working on a bill regarding the monitoring of electronic communication by employers. The Governor vetoed a simple measure requiring that employers notify employees that their electronic communication may be monitored (**SB 1016, Bowen, D-Redondo Beach**).

EXONERATING THE INNOCENT

Permitting someone who has been convicted of a crime to ask for fingerprint, DNA, or other forensic testing that was not available at the time of trial, either because the evidence was not discovered or the technology did not exist is the subject of a bill drafted by the ACLU and other criminal justice organizations that will be introduced this year. According to the Los Angeles Times, DNA evidence has exonerated 64 inmates in the United States and Canada, including nine who were on death row in this country.

INVOLUNTARY COMMITMENT

The ACLU will be involved in protecting the civil liberties of individuals with mental illnesses. The enduring standard for involuntary commitment - that a person is a danger to himself or herself or others - faces a tremendous challenge spurred by Assembly Member Helen Thomson (D-Vacaville) and several organizations of family members of people with mental illnesses. **AB 1028** frames the problem as an inadequate ability to force people into treatment when they don't realize they need it. In reality, people who need treatment and know they need treatment are the primary ones who are being failed by the inadequately funded and designed mental health system.

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ACLU Expands DWB Lawsuit Against CHP

ACLU-NC Racial Justice Project Director Michelle Alexander joined Alameda County Supervisor Keith Carson (left) and other political, community and religious leaders on the steps of Oakland City Hall to condemn the Governor's veto of SB 78, the "Driving While Black or Brown" bill.

Charging civil rights violations as a result of racially motivated traffic stops by California law enforcement officers, the ACLU-NC filed a federal class action lawsuit on November 30 against the California Highway Patrol (CHP) and Bureau of Narcotics Enforcement (BNE). The lawsuit was filed in U.S. District Court in San Jose on behalf of the California Branches of the NAACP, the California League of United Latin American Citizens (LULAC), and three motorists of color.

The action amends the earlier lawsuit filed in June by the ACLU-NC on behalf of Curtis Rodriguez against the California Highway Patrol and the Bureau of Narcotics Enforcement charging race discrimination.

"This lawsuit challenges the racially discriminatory practices of the CHP and BNE in their drug interdiction efforts. Pursuant to Operation Pipeline, people of color are routinely stopped, searched and treated like criminals by law enforcement officers when they have done nothing more than commit a minor traffic violation or no violation at all," said Michelle Alexander, Director of the ACLU-NC Racial Justice Project. "These racially biased practices cannot be justified by the hope that if officers stop and search enough people of color they will eventually find some drugs. Law enforcement based on racial stereotypes is immoral and illegal," said Alexander.

The complaint alleges that the CHP and the BNE instruct officers to use minor traffic violations as an opportunity to interrogate motorists and search for drugs, even when there is no evidence that the motorist is engaged in criminal activity. This policy and practice has a grossly disparate impact on people of color, who are far more likely to be viewed as suspicious or likely drug couriers. Thousands of innocent motorists are subjected to humiliating interrogations and searches of their vehicles every year based on false racial stereotypes.

"Studies of racial profiling in other states have shown that, contrary to popular belief, people of color are not more likely than whites to be carrying drugs or other contraband in their vehicles. Yet, officers continue to rely on racial stereotypes when deciding whom to stop, question and search in connection with minor traffic violations," explained Alexander.

"The time is long overdue for these racially biased police practices to come to an end," said Walter Wilson, Vice President of the California NAACP. " These practices undermine faith in the criminal justice system and cause severe harm in police-community relations."

"The Latino community in California is gravely concerned about racial profiling," said Marcos Contreras, Statewide Director of the California LULAC. "In front of our families and loved ones, we are being humiliated and interrogated for no good reason. We joined this lawsuit because these practices have got to stop."

Joining the ACLU in filing this action is Keker & Van Nest, a major law firm in San Francisco that is donating its services pro bono. "It is critical for us, as members of the private bar, to play an active role in bringing to an end race-based police stops in California," said Jon Streeter, a litigation partner at Keker & Van Nest. "What the CHP and the BNE are doing is discriminatory and illegal. People of color have an equal right to travel our streets and freeways without fear of unjustified stops, searches and interrogations by government officials. The defendants' drug interdiction practices violate federal civil rights laws, the U.S. Constitution, and are inconsistent with out democratic values."

RACE-BASED STOPS ON HIGHWAY 152

One of the plaintiffs, Curtis Rodriguez, a Latino attorney from San Jose, was stopped and searched by the CHP on June 6, 1998, just minutes after he witnessed a slew of race-based stops of Latino drivers within a 10-mile stretch of Highway 152. The CHP officer told Rodriguez that he stopped them because his car has touched the line, and because he had turned his headlights on. (Drivers are advised to turn on their headlights in this section of Highway 152).

"The officer told me he was going to search the car for weapons," said Rodriguez. "I refused permission for the search. Since I'm an attorney, I know my rights. The officer had no probable cause to search the car, so I refused consent to search. Unfortunately, the officer refused to respect my legal rights. He ordered me out of the car and searched the car, without my permission. Of course, he found nothing illegal. The officer then checked out my license, my passenger's license and my insurance papers, and after ten minutes, he ordered us back into the car. Finally he told us we could go. He didn't issue me a ticket, because I didn't do anything wrong."

"WHAT ARE YOU DOING WITH THAT MAN?"

Another plaintiff, Jose Lopez, was stopped by the CHP while traveling with his companion and the mother of his son, Stephanie Gevorkian, who is white. They were stopped near the intersection of Highway 152 and Interstate 5. The CHP officer said that he stopped them because a small crystal was hanging from their rearview window. Gevorkian immediately apologized, took the crystal down and put it in the glove department. Instead of ticketing Lopez or allowing the couple to go on their way, however, the officers ordered Lopez out of the car. The couple was then interrogated separately for approximately 30 minutes. One officer repeatedly asked Gevorkian "what are you doing with that man?" According to Gevorkian, his tone was angry and accusing, and she understood him to be asking why she was with a Latino. One of the officers searched their vehicle, but the search turned up nothing. After being interrogated and subjected to a vehicle search, Lopez and Gevorkian were finally allowed to go. No citations were issued and no arrests were made.

MacArthur Washington, who is African American, was stopped on May 26, 1999 and searched illegally by the CHP and BNE near the intersection of Highway 152 and Interstate 5. He was on his way to pick up a co-worker and go to work. Washington lives in an agricultural area, and has worked for about four years baling hay, a task that must be performed early in the morning. On his way to his co-worker's house, a CHP vehicle spotted him, made a U-turn and stopped him. The officers told Washington that he had been stopped because the light illuminating his rear license plate light was broken (that was not true).

NO CONSENT FOR SEARCH

The officers then searched his vehicle without his consent or probable cause. Although the search turned up nothing, and Washington had not committed any traffic violation, the officers did not allow Washington to leave. Instead, they began to administer field sobriety tests to him and subject him to continued harassment despite the fact that he was innocent of any crime.

The lawsuit charges that the California Highway Patrol (CHP) and the Bureau of Narcotics Enforcement (BNE) violated the plaintiffs' rights secured by the Fourth, Fifth and Fourteenth Amendments, including the right to travel as protected by the Commerce Clause and the Privileges and Immunities Clauses of Article IV and the Fourteenth Amendment.

In April, the ACLU-NC launched a billboard and radio ad campaign in English and Spanish to publicize the toll-free "Driving While Black or Brown" hotline, 1-877-DWB-STOP. (The Spanish Language hotline is 1-877-PARALOS.) More than 2000 persons have called to report their stories of discriminatory traffic stops.

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Gallup Poll -- Most Americans Believe Racial Profiling Wrong

ACLU CALLS ON GOVERNOR TO SIGN DWB BILL NEXT YEAR

In light of Gallup Poll findings released in December on racial profiling, the ACLU-NC called on Governor Davis to support mandatory data collection legislation next year. The Gallup Poll reports that in a national survey, approximately 60% of adults aged 18 and older say that racial profiling is widespread, and 81% of all adults believe the practice is wrong. The poll further indicates that 77% of African Americans believe that racial profiling is widespread, and that 4 out of 10 African Americans have been victims of the practice. (The poll did not compare the attitudes of Latinos and other ethnic groups with respect to racial profiling.)

"The poll shows that Governor Davis is out of touch with mainstream America in claiming that racial profiling is not a widespread problem," said Michelle Alexander, Director of the ACLU-NC Racial Justice Project. "The question now is whether he will continue to listen to extremist police unions that donate to his campaigns, or whether he will listen to the clear majority, who recognize that racial profiling is widespread and must be stopped."

In October, Governor Davis vetoed SB78, the California Traffic Stops Statistics Act that would have required law enforcement agencies to collect data regarding the race and ethnicity of motorists who are stopped. The bill, authored by Senator Kevin Murray, had overwhelming bipartisan support.

In an open letter to the Governor, Alexander urged Davis to "demonstrate leadership" and "to support the data collection bill when it is reintroduced next year. Communities of color have waited long enough for politicians to offer more than rhetoric when it comes to discriminatory police practices. We hope that you will choose to be on the right side of history on this issue."

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Youth Conference Focuses on Rights, Building a Movement

BY SHAYNA GELENDER

Student activists (clockwise from left) Angelina Valentin of the Vallejo High School ACLU Chapter, Jacinta Cruz of Camptonville Academy, Cindy Dowling of San Francisco State University, Luis Ramirez of Berkeley High School and Myriam Bouaziz of Vallejo High School at the 1999 Student Rights Conference.

Schoolmates not Cellmates! This is one of the slogans being used to campaign against Proposition 21, the juvenile justice initiative slated for the March 2000 ballot. And juvenile justice - with Proposition 21 as a focal point - was the main item on the agenda at the ACLU Student Rights Conference on October 26 at UC Berkeley. The Conference was organized by the Youth Advisory Committee (YAC) of the ACLU-NC Howard A. Friedman First Amendment Education Project.

At the opening session, YAC members put on a comedic skit to demonstrate the shocking

reality that would confront youth if Prop 21 were to pass. The skit and following presentations sent a clear message to the students that their efforts are central to fighting anti-youth measures like Prop 21, that could incriminate our generation.

More than 1,000 students from high schools throughout northern California attended the conference.

"I was delighted to see the interest and thought radiating on everyone's faces," said SAC member Sirena Putnam, a senior at Castro Valley High School in Castro Valley. "Everyone seemed genuinely concerned about the issues we brought up and interested in helping make things right."

Keynote speaker Taj James from Coleman Advocates for Youth in San Francisco stressed the necessity of building a grassroots movement to fight for the rights of youth.

A series of workshops on a variety of issues provided the information and skills training to help build that movement. The workshops included Gangs and Gang Violence; Trying Youth as Adults; Student Press: Can I Really Write That?; Race and Schools--Reading, `Riting, and Racism; Gay Rights on Campus; Rights of Homeless Youth; Native American Political Prisoners; the Prison Industrial Complex; Knowing Your Rights with the Police; Media Portrayal of Youth; Investigative Journalism; Parental Consent for Abortions, Gay Marriage: No On Knight; and Needle Exchange Programs: Promotion of Prevention?

YAC facilitator Kandyce Wilson, a senior at Vallejo High School in Vallejo, said she learned, "about needle exchange, how it got started, what its purpose is, and who it helps."

She noted that the workshops were enriched by a wide spectrum of expert speakers including representatives of Horizon's Unlimited Street Outreach Program, the Third Eye Movement, the Beat Within, the S.F. Foundation AIDS Prevention Project, the Bay Area Gay-Straight Alliance Network, and several public defenders, attorneys, journalists and youth organizers. The students also enjoyed the talents of Mind Tricks, a Hip-Hop and dance troupe from the Bay Area.

The conference was possible by the joint ef-forts of students and expert youth advocates. Nancy Otto is the Director of the Friedman Project and William Walker is the Project Fellow. Members of the Student Advisory Committee include: Rachel Aoanan, Myraim Bouaziz, Jamie Christainsen, Cindy Downing, Eric Elems, Kathleen Flanagan, Shayna Gelender, Alex Green, Chris Jones, Sanam Jorjani, Jed Kinnison, Jeannie Lee, Gab Martinez, Dan Melleno, Saba Moeel, Shaffy Moeel, Zac Moon, Lucia Mortiz, Adam Nielsen, Sirena Putman, Luis Ramirez, Lani Riccobuono, Ana Sauceda, Viviane Scott, Suemyra Shah, Chris Uyeda, Jose Vargas, Marlene Williams, Kandyce Wilson, and Jenn Wu .

The YAC organizes two conferences a year, selecting themes and issues that focus on the rights of youth. If you are interested in participating in the Youth Advisory Committee, please contact Project Director Nancy Otto or Project Fellow William Walker at 415/621-2493.

Shayna Gelender is a senior at Castro Valley High School and a member of the Youth Advisory Committee.

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ACLU Defends Library Against Parent Seeking Internet Censorship

In a friend-of-the-court brief filed on October 18 in the California Court of Appeal, the ACLU joined unique legal battle over whether a parent can force a public library to censor Internet access of all its patrons in order to control her own child's use of the Internet.

A lower court dismissed "Kathleen R."s original complaint in 1998, in which she argued that the library's open-access policy constituted a "public nuisance." In an amended complaint she argued that the library has a constitutional obligation to censor the Internet access of its patrons. Both her claims are now at issue before the California Court of Appeal in Kathleen R. v. Livermore Library.

"As the court recognized, it is no more legal for a parent to compel a library to censor the Internet than it is for the government to do so," said ACLU-NC staff attorney Ann Brick, who filed the brief on behalf of the ACLU of Northern California, the national ACLU, People for the American Way and the Freedom to Read Foundation, part of the American Library Association.

"The Livermore library's policy enables each family to be sure that its children use the Internet in a manner that is consistent with its own values, without imposing those values on other families," she added. Brick noted that this position has long been espoused by the American Library Association and the majority of libraries across the country.

Last year, in a related case, a federal appeals court in Virginia held that a library's policy of using blocking software to censor materials online "offends the guarantee of free speech." The ACLU represented Internet content providers in that case against the trustees of the Loudoun County, Virginia library.

In voiding the Loudoun County library's blocking policy, the judge noted that the software, which claimed to "filter" out only obscene material, blocked sites including the San Francisco Chronicle and Examiner as well as the web site of the Maryland affiliate of the American Association of University Women.

"The Livermore Library Board recognizes, as the Virginia Library Board did not, that requiring the use of blocking software in libraries creates, rather than solves, constitutional problems," said ACLU national staff attorney Ann Beeson. "If Kathleen R. has her way, the Internet will become as bland and homogenized as daytime television. I doubt other parents will thank her for it."

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OBITUARY

CHIEF JUSTICE ROSE BIRD

Former California Supreme Court Chief Justice Rose Bird died of breast cancer on December 4 at the age of 63. The ACLU-NC honored Bird, and her fellow justices Cruz Reynoso and Joseph Grodin, with the Earl Warren Civil Liberties Award in 1987. Below is a tribute to the former Chief Justice by Mike Farrell, President of Death Penalty Focus and a member of the state Commission on Judicial Performance.

Virtually without exception, obituaries of former California Chief Justice Rose Bird attribute her 1986 electoral defeat to her unwavering opposition to the death penalty. In fact, her purported opposition to the death penalty was not the motivation for conservatives who set out to remove the state's first female Supreme Court justice from office, rather it was the club they used to punish her for other trespasses.

California's renewed death penalty statute (1976) and Justice Bird (1977) burst on the scene at almost the same time. The new Bird Court had the task of examining the constitutionality of a brand new, and in many legal scholars' estimation, badly drawn state law expanding the use of the death penalty. Her court's rulings, necessary to refine the law and protect the constitutional rights of the accused, overturned most of the death sentences brought before it.

Despite their insistence that Bird attempted to single-handedly derail California's death penalty statute, each of the 61 decisions to overrule it commanded a majority of the Court. Bird's was hardly a lone voice in the wilderness.

Oddly, while Bird was tagged as an outspoken opponent of the death penalty by the forces that waged a brutal campaign to remove her from office, in the years I knew her I never heard her make a definitive declaration on the issue. During her recall campaign in 1986, she said "I feel strongly about the sanctity of life, and I have argued against the death penalty. But I believe as an individual justice I can make a determination based on issues and not on preconceived notions."

Rose Bird was a pioneer: the first female clerk in the Nevada Supreme Court; first female

deputy public defender in Santa Clara County; the first female to hold a cabinet-level job in California; the first female justice on the California Supreme Court. But it was not simply the act of breaking through so many of California's sturdiest glass ceilings that so riled conservatives; it was what she accomplished after brushing off the shards.

As then-Governor Jerry Brown's Secretary of Agriculture, she beefed up the Division of Occupational Health and Safety, angering business interests. She banned the use of the short-handled hoe that forced farm laborers to spend hours stooped over in the fields, thus alienating powerful agribusiness interests. She earned more enmity when she drafted the landmark bill allowing farm workers to organize.

On the Supreme Court, she led a majority that bolstered environmental laws, strengthened consumer laws, and broadened injured parties right to sue. She also wrote a decision banning ladies nights at nightclubs and bars, and affirmed decisions supporting tenants' rights. She dissented from the court' ruling that upheld Proposition 13, the 1978 property tax initiative.

She sold the Court Cadillac, stopped holding judge's conferences at fancy resorts and insisted on writing individual opinions to distinguish her views from those of her colleagues. And she established a special task force to make California courtrooms free of sexual and racial bias.

Judge Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit said, "Rose Bird [had] a total passion for, and commitment to, justice." In a just world, that would have been enough.

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Federal Court Rules Against Censorship on the Internet

BY STELLA RICHARDSON<

The Ninth Circuit Court of Appeals, agreeing with ACLU arguments, ruled on December 17 that the federal Child Pornography Protection Act (CPPA) goes too far and violates the First Amendment by outlawing images that only "appear to be" minors. In October 1997, the ACLU-NC and the national ACLU filed an amicus brief in an appeal from a decision upholding the 1996 law.

The ACLU argued that the law criminalizes non-obscene materials that do not involve the participation of minors. These materials may well have serious literary, artistic, political or scientific value yet the language used in the law restricts writers, filmmakers and other artists from even using young-looking adults in their work.

"The decision is a victory for free speech," said ACLU-NC staff attorney Ann Brick, "because sexually explicit, non-obscene speech is protected by the First Amendment.

"In striking down the Act, the Ninth Circuit recognized what other courts did not," added Brick, "that when Congress expanded the definition of child pornography to cover materials in which no real children are used, they went from protecting real children who are used in pornography to the constitutionally prohibited act of banning ideas. Upholding such a law would set a dangerous precedent indeed."

The original lawsuit was filed by the Free Speech Coalition, which includes free speech activists and producers and distributors of "adult-oriented materials." The suit, Free Speech Coalition v. Reno, a pre-enforcement challenge to the CPPA, argued that the law is so broadly worded that it covers any picture in which an adult portrays a minor engaged in sexual activity.

The ACLU brief was authored by Brick and cooperating attorney William Bennett Turner.

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No More Closed Door Civilian Police Review Meetings in Oakland

In a major victory for open government and police reform advocates, Alameda County Superior Judge Henry E. Needham ruled on December 10 that the Oakland City Council may no longer meet in closed session to discuss changes to the Civilian Police Review Board (CPRB).

The ruling should end an 19-year practice of the city negotiating the powers and role of civilian oversight of its police department in secret with their local police union, the Oakland Police Officers' Association (OPOA). Oakland was the only city in the state that held these sort of closed- door meetings.

"The people of Oakland have been waiting far too long for their elected leaders to publicly consider, discuss and act upon proposals about how police officers should be held accountable to the people they serve," said ACLU-NC attorney John Crew. "It's high time for the City Council to give up their long, wasteful and ultimately desperate attempt to maintain their pracitce of back-room deals with the Oakland Police Officers' Association."

The ACLU-NC and People United for a Better Oakland (PUEBLO) filed an official complaint in May, 1998 with the city's Public Ethics Commission alleging that the Council's closed-door sessions violated state and local open meeting laws. The Commission was created by Oakland voters to oversee compliance with the City's Sunshine Ordinance which, in turn, established strong rights of public access to government documents and proceedings.

In September, 1998 the Commission unanimously ruled that the Council's closed-door sessions were illegal and should be "immediately ceased." A month later, the Council decided to sue its own Public Ethics Commission rather than comply with the ruling. That suit is pending.

In response, on November 5, 1998 PUEBLO and the ACLU sued the City Council alleging that the City Council had violated the open meetings provisions of the California Brown Act and the Oakland Sunshine Ordinance.

"Making secret backroom deals on key public policy decisions about civilian review has been a disaster for Oakland and for police-community relations," said Dan HoSang, PUEBLO's director. "If the police department wants the community to be their partner, the partnership must be based on openness, equity, trust and accountability. We hope this court ruling - which in effect forces the City Council and the police department to be open to the public on these sorts of questions - will be viewed by the police department as an opportunity to start building a new relationship with the community."

The Citizens' Police Review Board is an appointed body of civilians who, along with their staff, investigate and adjudicate allegations of police misconduct. The Review Board's disciplinary recommendations are referred to the City Manager for further action.

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ACLU Urges Monterey Court to Lift Gag Order on Striker

BY STELLA RICHARDSON

In a letter to Judge Marla O. Anderson of the Monterey County Coordinated Court, the ACLU urged the Court to strike an order barring vegetable plant striker Hallie Lake Cox from engaging in public strike activities, including peaceful picketing, passing out leaflets or petitions on a public sidewalk, or attending union rallies.

"We believe that this order infringes fundamental constitutional rights of freedom of expression and association and principles of due process," charged attorney Michelle Welsh of the ACLU Monterey Chapter and ACLU-NC staff attorney Margaret Crosby in the October 25 letter.

Cox was arrested during a strike at Basic Vegetable Products in King City and charged for allegedly throwing a rock at a bus transporting replacement workers. Judge Kay Kingsley granted Mr. Cox's motion for reduction of bail and set bail at $6,000 with the condition that he would not publicly participate in strike activities.

A few weeks later, Cox was arrested and charged with willfully disobeying the order. According to the police report, the arrest was based on Mr. Cox's driving on public roads, in his red Toyota truck, with several different flags attached (an American flag, a Mexican flag, a Teamsters 890 flag, and a flag bearing the words "Si Se Puede" Yes You Can, in Spanish.) The District Attorney filed a criminal complaint for contempt of court.

In urging the Court to dismiss the pending contempt charges, Welsh and Crosby argued that not only did Cox not violate the order because "driving a truck decorated with flags is not encompassed within its proscription," but that the order itself infringed Cox's First Amendment rights.

Following a hearing, a plea bargain was reached that ended the restrictions on Cox's public strike activities.

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