ACLU NEWS

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aclu news

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Dick Grosboll, Chairperson
Dorothy Ehrlich, Executive Director
Elaine Elinson, Editor
Maria Archuleta, Associate Editor
Lisa Maldonado, Field Representative
ZesTop Publishing, Design and Layout

1663 Mission St., 4th Floor
San Francisco, California 94103 (415) 621-2493

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American Civil Liberties Union of Northern California
1663 Mission Street, Suite 460, San Francisco, CA 94103
(415) 621-2493

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Students, Parents File Class Action Lawsuit to Block 227

Juana Flores (right) worries that because of Proposition 227, she will soon be unable to participate in her children's education because she does not speak English. Marielena Hincapie of the Employment Law Center interpreted Flores' comments for the press. Photo by Maria Archuleta.

In an effort to rescue bilingual education in California, students and parents in California's public schools represented by public interest advocacy groups filed a class action lawsuit in U.S. District Court in San Francisco to block implementation of Proposition 227 on June 3, the day after the measure was passed by voters.

The case, Valeria G. v. Wilson, seeks to invalidate the initiative for violating the Equal Educational Opportunity Act of 1974 (EEOA) Title VI of the Civil Rights Act of 1964, and the Equal Protection Clause of the 14th Amendment. The suit charges that Proposition 227 denies the right of language minority children to equal access to educational opportunity.

On June 10, attorneys filed a motion for a preliminary injunction. U.S. District Court Judge Charles Legge will hear oral argument on the motion on July 15 in San Francisco.

Public interest law firms representing the plaintiffs include the ACLU-NC, Multicultural Education, Training and Advocacy (META), Mexican American Legal Defense and Education Fund (MALDEF),

Asian Pacific American Legal Center, Asian Law Caucus, Employment Law Center, and Public Advocates.

Ed Chen, ACLU-NC staff attorney, said, "This initiative is unlike any other state law dealing with the needs of limited English proficient students. It prescribes a one-size-fits-all English-only model for 1.4 million students throughout California, in complete disregard for their individual needs and differences. Proposition 227 also overrules the educational expertise of local schools and school districts, which use a variety of programs - including those which involve instruction in the students' primary language - to assure that students are able to make progress on academic subjects while learning English at the same time."

The suit was filed on behalf of parents of limited English proficient students and their parents, as well as local and statewide civil rights organizations, who oppose the attempt to end optional bilingual education programs and limit parents' choices for educational programs for their children.

Attorneys in the case hope to block the implementation of Proposition 227 before its provisions disrupt the programs currently offered to 1.4 million students identified as limited English proficient. Plaintiffs in this case are concerned that the English-only program mandated by Proposition 227, and the administrative havoc that implementing Proposition 227 will cause, will negatively affect all 5.6 million children in the state's public schools.

"Parents, including immigrant parents, should have the right to make basic choices about their children's education," said Deborah Escobedo, staff attorney with META. "All children, including immigrant children, should have the right to learn academic English and have access to science, math and history. Proposition 227 takes away these basic rights. This suit seeks to defend these basic rights and to ensure that no child will be denied a meaningful education."

Juana Flores has two daughters enrolled in bilingual classes in San Francisco schools. Ms. Flores, speaking through an interpreter, said, "Although I do not speak English well, I have been able to help my children with school. As parents, the more we are involved the more our children are going to see that education is important. If they take away bilingual education, they are going to take away our communication with the teachers, and we will no longer feel welcome at the schools, nor will we be able

to participate in the school community."

Christopher Ho, an attorney with the Employment Law Center, said, "Proposi-tion 227 will segregate children who do not speak English and teach them that their primary language is worthless. It will deprive them of their only means to really communicate with their teachers, it will take away their parents' ability to participate in their children's education, and it will not give them access to the educational programs enjoyed by students who do speak English. It's pure and simple discrimination based on language and on national origin, and we want to stop this from going forward."

"Proposition 227 sets back public education in California by 25 years," commented Ted Wang of Chinese for Affirmative Action, which helped bring the original Lau v. Nichols case in 1973 which resulted in the U.S. Supreme Court mandate that language minority children must be provided access to programs which meet their specific language needs. "This proposition treats children who are not fluent in English as if they have a disease. They will be isolated from other children, placed in English immersion classes, and denied other academic programs. We just can't tolerate this," added Wang, who is an ACLU-NC Board member.

"Proposition 227 violates the fundamental right of national origin minorities to participate on an equal basis in the political process of advocating for effective educational programs for their children," stated Joe Jaramillo, staff attorney for MALDEF. "This Proposition shuts off the basic means to advocate for or to change local educational programs designed to overcome students' language barriers. We're now forced to turn to the courts to vindicate the rights of parents and students to advocate for effective and appropriate education programs for limited English proficient children."

Maria Blanco, the Northern California Director of the California Latino Civil Rights Network, said, "As a Latino civil rights organization whose focus is to ensure equal opportunity for all of California's Latino school children, we deplore the passage of Proposition 227. This initiative is bad public policy, and it takes away educational choices from parents, from students and from local school districts."

Plaintiffs in the lawsuit include the California Latino Civil Rights Network, Chinese for Affirmative Action, Mujeres Unidas y Activas (United and Active Women), Parents for Unity, and numerous parents of children currently enrolled in California's public schools. Defendants include Governor Pete Wilson, the State Board of Education, and the State Superintendent of Public Instruction.

Cartoon by Tom Meyer, Reprinted with Permission

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Security Firm to Pay up to $2.1 Million to Settle Class Action Against Employee "Political Litmus Test"

Burns International Security Services, a subsidiary of Borg-Warner Protective Services Corporation -- the nation's largest security firm -- has agreed to pay up to $2.1 million to settle a class action challenge to its use of a controversial pre-employment test that asked probing questions about job applicants' attitudes toward corporations ("Most companies make too much profit"), employers, workers' rights and drug and alcohol laws ("Marijuana should be legalized").

The suit, *Thompson v. Borg-Warner*, filed in 1994 by the ACLU-NC, cooperating attorneys from Howard, Rice, Nemerovski, Canady, Falk & Rabkin and Berkeley civil rights attorney Brad Seligman, charged that the test discriminated against job applicants based on their political beliefs and affiliations.

Under the settlement, which must be approved by San Francisco U.S. District Court Judge Marilyn Hall Patel, Burns has already paid $1.6 million into a fund that will provide up to $1250 to each applicant who was rejected because of the test and $500 to those who took the test and were nevertheless hired. About 8,000 applicants took the test. The fund will also cover costs and attorneys fees for the plaintiffs.

Applicants were asked to answer Yes or No to 100 probing questions about their personal beliefs, including:

- Workers usually come last as far as most companies are concerned.
- Most employers try to underpay their employees if they can.
- Companies provide only what they have to for worker comfort.
- Most employers really care about improving working conditions for their employees.
- Most bosses are fair to their employees.

- The drinking age should be lowered.
- The government has no right to interfere with a person who chooses drugs if its doesn't hurt anyone.
- Illegal use of marijuana is worse than drinking liquor.

Responses were scored according to a grading manual and applicants were ranked "High Risk," "Medium Risk" or "Low Risk" for hire.

Attorney Linda Foy noted, "Employers have a legitimate right to information about an applicants' job-related qualifications. However, that right does not permit an employer to require job applicants to disclose their political beliefs and opinions, nor to base employment decisions upon their responses. Having to take this test had a chilling effect even on those applicants who gave theoretically `right' answers," Foy said.

"The test was apparently adopted as a marketing tool by Burns, whose executives never really examined whether the test would be either effective or legal," explained attorney Brad Seligman. "This case illustrates the high price a company may pay for unthinkingly subjecting job applicants to a test that discriminates or needlessly invades their privacy."

Lead plaintiff Mel Thompson, an experienced security guard who applied for an unarmed guard position in San Francisco, had been told he was an excellent prospect for hire until he took the test. For questions that probed his political beliefs, rather than answering Yes or No, Thompson wrote a question mark on the test. Following the test, he was not hired by the company.

"I always thought that the difference between a totalitarian society and a free one, would be that workers have a right to their political beliefs," Thompson said. "It's a dangerous precedent when the free exercise of one's conscience rules one out of employment opportunities."

The lawsuit, a class action on behalf of all applicants and potential applicants for employment with Burns in California, charged that the company's use of the test violated California Labor Code Sections 1101-1102, which prohibit employers from discriminating against employees and applicants based on their political attitudes, activities and affiliations. The lawsuit also charged that the use of the test was an unlawful business practice under the Business & Professions Code Section 17200.

"It is crucial that employers be prevented from dictating the political beliefs of their employees," said ACLU-NC staff attorney Ed Chen. "The effect of this test was to discriminate against people who held liberal views on issues such as workers' rights and drug legalization. Fortunately, California labor laws prohibit employers from discriminating on the basis of

political views and activities."

The suit is one of the largest cases concerning employees' political activity in California. Its outcome will have a broad impact on the nature of employment testing throughout the state. Plaintiffs are represented by ACLU-NC staff attorney Ed Chen and cooperating attorneys Brad Seligman, and Laurence Pulgram and Linda Foy of Howard, Rice, Nemerovski, Canady, Falk & Rabkin.

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Election Year Answer: Demonize the Young

BY VALERIE SMALL NAVARRO

In an election year, politicians are always looking for the perfect "wedge issue." Now that race and immigration are wearing a little thin, we can look forward to the demonization -- and strangely enough, simultaneously, the infantilization -- of young people. Behold, the new danger on your block -- the kids.

Unless something unexpected happens, the religious right and Governor Wilson will bring us the ironic juxtaposition of ballot initiatives in the year 2000 to require young women to get parental consent for abortions and to completely overhaul our juvenile criminal justice system, treating young people as adults in the name of "prevention."

Jim Shultz, a political analyst from the Democracy Center, even formulated a possible campaign slogan for the opposition when it looked like the juvenile justice initiative was going to be on the same ballot as the class-size reduction initiative: "Fighting for the future of California's children -- twenty kids to a classroom; twenty kids to a cell."

JUVENILE JUSTICE REFORM

Two new measures, SB 1455 and AB 1735 embody Governor Wilson's sweeping "Gang Violence and Juvenile Crime Prevention Act" targeted for the 2000 ballot. This act

-- mandates that juveniles charged with murder or "one-strike" sex crimes be tried as adults;

-- gives the District Attorneys the power to prosecute juveniles 16 or over for a broad range of crimes without a judicial finding of "fitness;"

-- expands the use of wire taps in gang investigations;

-- and requires registration (similar to sex offender registration) of people convicted of gang-related felonies.

Despite the media-savvy title of this measure, the ACLU finds neither an ounce of "prevention" nor a smidgen of a cure. Furthermore, we find it appalling that children and young people drop out of dilapidated California schools in neighborhoods that some people won't even drive through and end up in "state-of-the- art" prisons.

The real means of preventing juvenile crime -- investment in our children's futures and education, ensuring jobs and living wages, and treating drug and alcohol addiction as diseases -- are far more cost-effective in terms of state dollars and preventing the pain and suffering of possible victims and our communities.

In addition, the Governor's Department of Finance describes the fiscal impact as follows: "This measure would result in unknown major net costs to the state of at least hundreds of millions of dollars annually and one-time costs of at least several hundreds of millions of dollars. It would also result in unknown net costs to local governments of at least tens of millions of dollars annually, and tens of millions to hundreds of millions of dollars in one-time costs."

REPRODUCTIVE FREEDOM

The "California Parental Rights and Protection Initiative," which would amend the California Constitution to include the recently-struck down parental consent law for minors' abortion, will probably also be on the 2000 ballot.

Recycling takes on a new meaning in the hands of certain legislators. The bad ideas keep coming back: parental consent for young women's abortions -- a bill carrying the text of the initiative was introduced in each house [SCA 17 by Senator Tim Leslie, R-Tahoe City and ACA 38 Assembly Member Bill Leonard, R-Upland]. The Senate Judiciary Committee killed the bill after hearing from ACLU-NC staff attorney Margaret Crosby and her opponent, Attorney General Dan Lungren.

The coalition of women's organizations working on reproductive freedom were also able to defeat other "oldies" such as imposing felony penalties on women for fetal vehicular manslaughter if her fetus dies in an accident and criminalizing certain late-term abortion procedures.

CYBER-LIBERTIES

Numerous Internet-related bills have been introduced, including bills to censor access to the Internet. The most troubling is AB 2350 by Assembly Member Peter Frusetta (R-Tres Pinos) requiring public libraries to install software programs that prohibit access to obscenity.

Internet blocking software unconstitutionally abridges First Amendment rights by restricting access by adults and minors to valuable protected speech while leaving other material

unrestricted. Topics ranging from safe sex, AIDS, gay and lesbian issues and women's rights have been blocked by these imperfect devices. Strong opposition by the ACLU and librarians have stalled AB 2350 in the Assembly.

BIOMETRICS: PRIVACY AND IDENTITY

To prevent "identity theft," banks, department and grocery stores, and other businesses are moving toward the use of "biometrics." Scanners will take measurements from the iris of your eye, your voice, or fingerprints and compare those to the prints you've previously given the business. The two bills setting out the parameters for gathering and use of biometric data by private entities are: AB 50, sponsored by the unusual alliance between the California Bankers Association and the Center for Law in the Public Interest, is carried by Assembly Member Kevin Murray (D-Los Angeles) and SB 1622, a stricter proposal with more significant penalties imposed for violations carried by Senator Steve Peace (D-San Diego).

No one questions the need to protect people from other individuals using their identity to obtain goods and services; however, the ACLU advocates less intrusive means of insuring identity (i. e., the use of a magnetized card combined with a personal identification number (PIN)). We have also raised serious privacy concerns, including the need to protect against theft of data from these private data banks; access by government officials to the data; and the need to prohibit private businesses from gathering DNA or using the information for anything other than identity purposes.

SEARCHES AND SCANNING DEVICES

AB 533 by Assembly Member Wally Knox (D-Los Angeles) allows law enforcement to use weapons scanning devices that can "see through" clothing and even buildings and can be used up to 90 feet away without the individual knowing that she is being searched. With the expert assistance of Professor David Harris, University of Toledo, School of Law, the ACLU is working to ensure that the devices may only be used when there is a "reasonable suspicion" based on articulable facts that the person is armed and dangerous, or where a search warrant has been issued.

EXPANDING THE DEATH PENALTY

No election year would be complete without efforts to expand the use of the death penalty. The ACLU is urging supporters to send letters opposing SB 1799 and SB 1878 to Speaker Antonio Villaraigosa opposing the measures and asking that the bills be stopped.

SB 1799, carried by Senator Charles Calderon (D-Los Angeles), adds to the list of "special circumstances" for which a person can be executed, the intentional killing of a someone under 14. SB 1878 by Senator Quentin Kopp (I-San Francisco) would permit the death penalty where

the defendant kidnaps or commits arson with the intent to kill the victim.

THE GOOD NEWS:
DATA COLLECTION ON PROPOSITION 209

To gauge the effect of Proposition 209's ending of affirmative action, and to determine the extent to which barriers to women and minorities remain, monitoring information is obviously crucial.

The ACLU was instrumental in insert- ing language into the Senate version of the Budget to continue the State's obligation to collect statistical data on ethnicity and gender of small business bidders in public contract and procure- ment. This effort comes in response to Governor Wilson's re-cent Executive Order eliminating the monitoring of the numbers of minorities and women receiving the State's contracting business.

We will lobby to maintain this provision in the final version of the Budget.

INTERROGATION OF STUDENTS ON CAMPUS

Assembly Member Kerry Mazzoni (D-Novato) agreed to carry AB 2501 that will require a parent or guardian to be present when the police question an elementary school student on campus. Secondary school students have the option of asking for either a parent or a member of the school staff to be present.

An unusual coalition supports this measure including the Pacific Justice Institute, the Capitol Resource Institute, the National Center for Youth Law, the California Teachers' Association, and the Junior State of America. These organizations support this bill to involve parents in the discipline of their children.

ACLU-NC staff attorney Ann Brick, an experienced advocate for student rights, worked to ensure that AB 2501 had the votes necessary to move out of the Assembly Education Committee and onto the Assembly Floor where it got widespread bi-partisan support: 49 of 80 possible votes. Unfortunately, law enforcement organizations have come out opposing this unique opportunity to involve parents, despite an exception in the bill to allow for questioning without parental notification in circumstances where waiting for parental consent would materially interfere with the officer's ability to conduct an investigation.

The ACLU is encouraging members and supporters to write letters to their Senators and the Governor supporting this measure.

More information on all of these bills is available on the California Senate website, www.sen.ca.

gov; information on how to lobby your legislators can be found on the ACLU-NC website at www.aclunc.org.

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ACLU, PUEBLO Blast Oakland City Council for Illegal Closed Door Meetings

The ACLU-NC and PUEBLO (People United for a Better Oakland) filed a complaint on May 27 against the Oakland City Council for convening illegal "closed door" meetings regarding the Citizens Police Review Board (CPRB).

These meetings violate the City's open government "Sunshine Ordinance," a law which places strict limitations on issues that can be discussed out of public view. The ACLU-NC and PUEBLO filed the complaint with Oakland's two-year old Public Ethics Commission, the watchdog group charged with enforcing open government laws.

The 22-page complaint details how the City of Oakland has effectively set the terms of the Citizens Police Review Board in a series of illegal closed door meetings in order to accommodate the political demands of the Oakland Police Officers Association. These secret meetings break the spirit and the letter of the Sunshine Ordinance, the groups charge.

ACLU-NC Police Practices Project Director John Crew explained, "Less than two years ago, the Oakland City Council made a significant commitment to open government by passing the Sunshine Ordinance and creating the Public Ethics Commission to enforce these laws. We are asking that commitment with the people of Oakland be kept.

"What is at stake is whether the laws concerning civilian review will be crafted openly and fairly or in backrooms where secret deals lead to bad laws," Crew said.

"Will Oakland argue that matters of civilian review are not police/community relations issues? Frankly, we don't think that they can meet that burden," Crew added.

PUEBLO member Vildred Dawson said, "The City Council is breaking the law and we're demanding an immediate investigation. Oakland has long history of striking secret, backroom deals that are bad for the public. That was what the Raiders deal was about. That is what this is about. The Ethics Commission must act now to restore the credibility of this government."

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Ninth Circuit Hears Oral Argument on Written "Drug Tests" for Welfare Applicants

The ACLU-NC lawsuit, Hunsaker v. County of Contra Costa, challenging a controversial "drug test" used to weed out welfare applicants by labeling them "chemically dependent" was heard by the Ninth Circuit Court of Appeals on June 9.

On behalf of welfare recipients and applicants in Contra Costa County, ACLU-NC cooperating attorney David J. Berger of the law firm Wilson, Sonsini, Goodrich & Rosati, argued that the County's "SASSI" test, (Substance Abuse Subtle Screening Inventory) violates the Americans with Disabilities Act (ADA) and the Due Process clause of the 14th Amendment.

Contra Costa County's use of the test was first challenged in 1995 by the ACLU-NC and the Disability Rights Education and Defense Fund, Inc.(DREDF) working with cooperating attorneys at Palo Alto's Wilson, Sonsini, Goodrich & Rosati (WSGR). In August 1997, U.S. District Court Judge Maxine M. Chesney ruled that the test violated the ADA and prohibited the County from continuing to use the test. The County appealed to the Ninth Circuit.

The test, which the County began using about six years ago, asks 62 true/false questions such as "I believe everything is turning out just the way the Bible said it would.", "Most people would lie to get what they want.", Sometimes I have a hard time sitting still.", "Some crooks are so clever that I hope they get away with what they've done." and "Pornography and obscenity have become serious problems and must be curbed.". Twelve additional questions ask about alcohol and drug related experiences in the past year. The test is then scored as "CD" (chemically dependent) or "non-CD". A CD score requires the General Assistance applicant to be further evaluated, and may lead to enrollment in a mandatory drug treatment program as a condition for continuing to receive County welfare.

A joint study by the County and the plaintiffs showed that SASSI incorrectly labeled 44% of those who took the test as chemically dependent yet missed half of the truly chemically dependent. It also incorrectly identified many recovered and rehabilitated drug and alcohol users as currently dependent.

"The County was removing people from General Assistance based on a test not much more accurate than a coin toss," said Berger. "It wasn't serving any interest in getting the right

people into treatment, while at the same time it was forcing non-chemically dependent people into extremely burdensome treatment programs."

In 1966, the County agreed to stop using the test pending the outcome of the lawsuit. Until that time, the County required thousands of GA applicants scored as "chemically dependent" or "at risk" of dependency to go through a six-month treatment program that was so onerous, most were unable to finish.

In addition to Berger, the plaintiffs were represented by Brad Seligman from DREDF, ACLU-NC staff attorney Ed Chen and WSGR attorneys Millicent Meroney, Marthe LaRosiliere, and Dorothy Fernandez.

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Homeless People Sue San Francisco for Property Rights Violations

On June 17, ten homeless individuals filed small claims actions against the City of San Francisco for property rights violations that occurred during last year's sweeps of Golden Gate Park. The Coalition on Homelessness and the ACLU had previously advised the City that it was illegal to summarily destroy homeless people's property. A hearing on the claims has been set for July 30.

In November 1997, Mayor Willie Brown ordered a crackdown on homeless people staying in and around Golden Gate Park. A key component of these sweeps was the systematic and unlawful seizure and destruction of homeless people's property. Since that time, City workers have regularly seized and destroyed homeless people's personal property both in the parks and in other public areas of the City. The City has confiscated and destroyed personal property, including life necessities such as medication, clothing and blankets, as well as irreplaceable sentimental items such as family photos.

"It's as if the City believes homeless people have no property rights," says Judy Appel, staff attorney for the Coalition on Homelessness. "The City's actions evince a rejection of the constitutionally-enshrined idea that every person, regardless of her wealth, should not be deprived of her property without due process of law."

The claims allege state and federal constitutional violations, and negligence, conversion, trespass and intentional infliction of emotional distress causes of action.

"A policy that allows the City to seize and destroy the property of homeless people not only violates their constitutional rights, but punishes people simply for being poor," said ACLU-NC Executive Director Dorothy Ehrlich. "We oppose the City's policy of sweeping homeless people and their property out of sight."

The Coalition, the ACLU and others have suggested a policy that would better protect homeless people's property rights, providing for 24-hour notice prior to seizing unattended property and other due process safeguards. The City has refused to incorporate pre-confiscation notice and some of the important safeguards in its official policies.

"I did not have an indoor place to sleep and the city had destroyed all of my warm clothes and sleeping bag," says James G., one of the claimants. "It was especially bad because this was the rainy El Ni–o period." James G., who had left his property momentarily to get some food at St. Anthony's, was told by police officers upon his return that city workers had thrown all of his property into the trash truck and crushed it. James G. was particularly worried about his feet, which have metal pins in them and need to be kept warm. When he asked to retrieve his socks, boots, and tennis shoes from the trash compactor, the officer refused his request.

James B. is HIV positive, and the medications vital to his well-being were among his property seized by city workers. Despite the urgency of locating James B.'s property for medical reasons, which he explained to a Recreation and Park employee, he was not allowed to look for them in the abandoned property storage container. All of James B.'s possessions, except for a pouch found near the bottom of a dumpster, are still missing. Among them are necessities such as warm clothing, a sleeping bag, and rain gear. "I developed a severe cold due to the loss of my belongings which protect me from the weather," James B. says. He was admitted to the emergency room of the Veterans Hospital on March 23, 1998. Paul F. was fortunate enough to have a friend watch out for his property while he was gone. However, when his friend told city workers not to take Paul's property, a police officer told him that he would "go to jail if he tried to butt in." "The city workers stole my brand-new sleeping bag that I had not even slept in yet," says Paul F. "I was afraid that if I fell asleep, I would not have woken up because it was so cold."

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ACLU Helps Defeat Official English Law in Arizona

BY MARIA ARCHULETA

Arizona's Official English Amendment, Article 28, violates the First Amendment and unduly obstructs non-English speakers access to government, ruled the Arizona Supreme Court in Ruiz v. Symington on April 28.

Article 28, passed by Arizona voters in 1988, declared English to be Arizona's official language and required all state agencies to "act in English and in no other language." Article 28 also banned the enforcement of any law or policy that required the use of any language other than English.

The ACLU-NC along with the National ACLU, and the law firms Dominguez & Associates, and Hanson, Birdgett, Marcus, Vlahos & Rudy filed an amicus brief in the case.

"We're pleased with the decision," said ACLU-NC staff attorney Ed Chen. "The Court recognized that English-only laws are discriminatory and lock language minorities out of the political process."

The ruling was the second to find the state's official English Amendment unconstitutional. In October 1996, the Ninth Circuit Court of Appeals struck down the amendment in a parallel case, Yniguez v. Arizonans for Official English, a lawsuit in which the ACLU-NC aided the lead counsel in strengthening their legal arguments.

The plaintiffs in Ruiz included elected officials, public employees and a private citizen who routinely use Spanish to discuss matters of public concern with their coworkers, colleagues, and constituents during the performance of governmental business.

The Arizona Supreme Court ruled that Article 28 violated the First Amendment because it made providing government information and services to non-English speakers nearly impossible. The Court also found that the official English Amendment violates the Equal Protection Clause of the Fourteenth Amendment because it had a disproportionately negative effect on language minorities.

In June 1996, the Arizona Court of Appeal found Article 28 unconstitutional, overturning the Superior Court's 1994 dismissal of the Ruiz case. The defendants appealed to the Arizona Supreme Court which stayed any legal action on Ruiz until after the U.S. Supreme ruled on Yniguez. In March 1997, the U.S. Supreme Court found the Yniguez case to be moot, because the plaintiff was no longer employed by the state of Arizona.

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An ACLU Roundtable

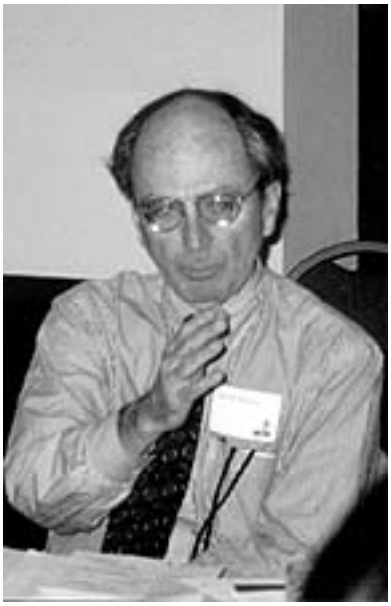
Racism and the Criminal Justice System

The meeting was organized by ACLU-NC staff attorney Kelli Evans and brought together thirty advocates from groups such as the Institute on Race and Poverty, the Sentencing Project, the Justice Policy Project and the Environ-mental Defense Fund, as well as law professors, criminal defense and con- stitutional lawyers, public defenders and self-described "recovering prosecutors." The meeting was supported by a generous grant from the Center on Crime, Communities and Culture of the Open Society Institute.

Evans opened the Roundtable by recalling that, "despite being well-educated about racial disparities in the criminal justice system, I was still astonished the first time I visited the San Francisco Jail and saw that virtually all the faces behind the bars were black or brown."

That experience was relentlessly repeated for Evans as she worked as a public defender in California's juvenile justice system. "Unfortunately, racial disparities of enormous proportions continue at virtually every level of juvenile and adult criminal justice systems across the nation," Evans said. "It goes without saying that these disparities contribute to even greater disenfranchisement of many communities of color.

"In the context of the criminal justice system, with its many layers and multiple decision makers, pro-ving discrimination continues to be an extremely difficult, if not impossible, task -- but there is a role for litigation that is very important for fighting racism in the criminal justice system. By being here, we are making a commitment to one another to address this crisis," Evans said.



Professor David Baldus, University of Iowa Law School, author of the groundbreaking McCleskey study on race and the death penalty.

The two-day discussion examined the growing racial disparities at every point in the adult and juvenile criminal justice systems -- from the moment of police stops all the way through sentencing and incarceration. "The entire burden of the Reagan-Bush `get-tough-on crime' crusade was borne by African American youth," charged former national ACLU Legal Director john powell, now the Director of the Institute on Race and Poverty at the University of Minnesota Law School.

His statement was underscored by a presentation from Mark Mauer of the Sentencing Project. "The numbers are clear, striking and dramatic," he said, the peaked lines and long bars of his charts graphically depicting the disparity of African Americans being stopped by police, detained, sentenced and imprisoned in far greater numbers than their white counterparts. "The criminal justice system has become an instrument of social policy. The criminal justice control rates, combined with the potential impact of current social and criminal justice policies, attest to the gravity of the crisis facing the African American community."

Death penalty defense lawyer Bryan Stevenson of the Equal Justice Initiative in Montgomery, Alabama (r. to l.) with Mark Mauer of the Sentencing Project in Washington, D.C. and James O'Sullivan with the Center on Crime, Communities and Culture of the Open Society Institute.

The War on Drugs was cited as one of the most dangerous ways that the criminal justice system is used to deal with social problems. "Although we know that prevention and treatment are more effective in dealing with the drug problem, we still build more prisons," noted Barry Krisberg of the National Center on Crime and Delinquency. In 1980, one out of 15 people were in prison for a drug offense; today that number has risen to one out of four.

Participants who had litigated race-based challenges in situations such as death penalty jury selection, disparate sentencing for cocaine/ crack offenses and police abuse spoke of how difficult it is move to the criminal justice system when the argument is race. As Impact Fund Executive Director Brad Seligman noted, "In McCleskey, the U.S. Supreme Court accepted as true that the race of the victim and the defendant make a difference in the outcome of a capital trial, but added that changing a death sentence because of it would upset the whole apple cart of the American judicial system. The justices declined to do so."

David Rudovsky, who successfully challenged the racially motivated police stops of motorists in Pennsylvania, heard echoes of that U.S. Supreme Court decision when a police officer told his client that her car was stopped "because you're young, you're black and driving a fancy car."

ACLU-NC staff attorney Ed Chen said that in California young people of color are targeted by the police as gang members even if they have never been arrested. "The state's law

enforcement gang database criminalizes young people based on their race, their style of dress, or who they hang around with. Forty-seven percent of the young black men in Los Angeles are in this database and 44% of those have never been arrested.

Professor Angela J. Davis of the American University Law School in Washington, D.C. (l.) with investigator Nancy Pemberton, former Chair of the ACLU-NC.

"There is no control over this information, no supervision over this data base which includes a quarter of a million names," Chen warned.

Experts with backgrounds in statistics, criminal defense and constitutional law shared their experiences and ideas in sessions on Title VI of the U.S. Civil Rights Act, racially motivated pedestrian and auto stops, questions of evidence, and the complex and elusive problems of prosecutorial discretion and unconscious racism.

Death penalty attorney Bryan Stevenson, Director of the Equal Justice Initiative in Alabama, called for "dynamic litigation," which has as its goal the changing of the larger political reality, working with disenfranchised communities through education and organizing work. "We cannot underestimate the psychic harm of living in a society where the criminal justice system is most brutal to people of color."

Though the statistics were grim, and the depth of the problem almost immeasurable, the roundtable participants were encouraged by each other's experiences and commitment to working on this issue. As Georgetown University Law Professor Charles Lawrence explained, "When the United States Supreme Court basically

says `If you're black, you lose,' without giving any arguments that anyone would buy, we need

to look for new ways to respond.

"Racism is like a disease, which we must get rid of because it is hurting all of us," Lawrence concluded.

The Roundtable participants plan to build a network to further this exchange of ideas and to prepare for future litigation.

Roundtable photos by Union Maid

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Criminal Justice in Black and White

BLACKS AND THE CRIMINAL JUSTICE SYSTEM

In the United States, almost one in three (32.2%) young African American men in the age group 20-29 is under criminal justice control on any given day in prison or jail, on probation or parole.[1] In our nation's capital, the figure is 50% [2]

In recent years, African American women have experienced the greatest increase in entering the criminal justice system of all demographic groups, with their rates of criminal justice supervision rising by 78% from 1989-94. [1]

JUVENILE OFFENDERS

Who is in Juvenile Hall in California?

Latinos	47%
African Americans	27%
Whites	16%
Other people of color	3% [3]

Youth in the Adult System

California minors 14 and over can be tried as adults for certain crimes after "fitness hearings" where a judge determines the appropriate venue. In Sacramento, judges spend less than 6 minutes hearing each case and deciding the fate of young people.[4]

Youth sent to adult court are rearrested 29% more than youth sent to juvenile court.[6] Juveniles tried as adults commit new crimes sooner after their release from prison and perpetrate more serious and violent crimes than those tried as juveniles. [6] Only 5.5% of white youth were sent to adult court, while 34.3% of black teens and 60.2% of other racial minorities were transferred to adult court.[5]

Children in adult institutions are 5 times more likely to be sexually assaulted, twice as likely to be beaten by staff, and 50% more likely to be attacked with a weapon than juveniles confined in a juvenile facility. In 1994 45 juveniles died while housed in adult facilities: 12 homicides, 16 suicides, and 16 "unexplained deaths." [6]

California's Youth Incarceration

California's juvenile incarceration rate is more than twice the national average rate. California spends more to incarcerate a youth than it does to educate a young person. The state spends $32,200 per year to house a youth at the California Youth Authority [7] and $5,327 to educate a public school student.

PRISONS VS. UNIVERSITIES

Since 1984 we have built 24 new prisons in California and only one state university. In the 132 years prior to 1984, we built 12 prisons and 28 universities. Since 1984, the Department of Corrections added 25,864 employees while the higher education workforce was reduced by 8,082.

THREE STRIKES

In Los Angeles, 56% of those who have received a three strikes sentence are African American.[8]

DEATH PENALTY

The most comprehensive study of racial discrimination and the death penalty found that killers of whites were eleven times more likely to be condemned to death than killers of African-Americans.[9]

Prosecutors--90% of whom are white--seek the death penalty more often if the victim is white.[9] For example, in Georgia prosecutors sought the death penalty in 70% of the cases where the perpetrator was African American and the victim was white. When there was a white killer and an African-American victim, the same prosecutors sought the death penalty in only 15% of the cases. [10]

WAR ON DRUGS

One third of the increase in prison and jail populations since 1980 is due to increase in drug law violators behind bars. The percentage of people in prison today for violent offenses 20%;

for drug-related crimes 50% .[1]

In 1979, 20% of all female federal prisoners were there for drug violations, in 1993, the percentage rose to 68%. Women prisoners are the fastest growing segment in prison population. [1]

The War on Drugs is the single most significant factor contributing to the rise in prisoners. From 1983 to 1993, the number of people incarcerated for drug offenses rose by 510%. The number of African American women incarcerated in state prisons for drug offenses increased more than eight-fold (828 %) from 1986 to 1991.[10]

A survey by the National Institute for Drug Abuse found that arrest rates bear no relation to drug use. African Americans and whites use cocaine and marijuana at roughly the same rate, yet African Americans undergo five times the number of arrests of whites for these drugs. [10] For African Amer-icans, the proportion of arrests for drug offenses increased from 24% in 1980 to 39% in 1993, well above the African American population of drug users nationally.[1]

Almost 90% of those sentenced to state prison for drug possession are African American or Latino. [10]

SOURCES:

The information on these pages came from the following sources:

1. Young Black Americans and the Criminal Justice System: Five Years Later, The Sentencing Project, 1995.

2. Roundtable Participant: Paul Butler, George Washington University Law School, Washington, D.C.

3. First Commitment Characteristics, California Department of the Youth Authority, 1995.

4. New York Times, July 21, 1997

5. U.S. Government Accounting Office study, 1994; cited by Pacific Center for Violence Prevention in Youth Incarceration.

6. Youth Incarceration, Pacific Center for Violence Prevention;1997.

7. Ward Per Capita Costs, Fiscal Year 1996/97. California Youth Authority, Office of Public

Affairs.

8. Roundtable participant Los Angeles Public Defender Mike Judge.

9. The Death Penalty in Black and White: New Studies on Racism in Capital Punishment; Death Penalty Information Center Report, 1998.

10.The Real War on Crime, Report of the National Criminal Justice Commission, 1996.

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Bittersweet Victory For Interned Japanese Latin Americans

Former internee Art Shibayama (l.), joined by ACLU-SC attorney Fred Okrand, tells of how he was forcefully taken from Peru and held in an internment camp during World War II. Photo by Eddie Jen.

"This is truly a bittersweet settlement," said Grace Shimizu of the Campaign for Justice, whose father was among the kidnapped Japanese Latin Americans. "There is a possibility that Japanese Latin Americans will not be compensated."

Shimizu spoke at a June 12 news conference to announce the settlement of a federal class action lawsuit, Mochizuki v. U.S. The suit was filed by the ACLU of Southern California on behalf on 2,264 Japanese Latin Americans who were kidnapped and interned by the United States government to be used as hostages in return for Americans located in Japan during World War II.

The settlement includes a presidential apology and $5,000 reparation payment to survivors. Assistant Attorney General for Civil Rights Bill Lann Lee, who also spoke at the press conference, acknowledged that the settlement was a "compromise" because it compensates Japanese Latin Americans only one quarter of the amount given to Japanese Americans and because it fails to guarantee payment. Payment to Japanese Latin Americans will be disbursed from whatever amount is left unclaimed in the 1988 Civil Liberties Act fund after the fund satisfies remaining eligible claims from Japanese Americans.

Former internee Art Shibayama spoke with a quivering voice as he recounted memories of being stripped of clothing and sprayed with insecticide upon arrival in the U.S.

Internees have only until August 10, 1998 to apply for redress under the Civil Liberties Act, and claims must be received by the Office of Redress Administration no later than September 1998. "Our job is not over," declared Lee. "We must work to find everyone who is eligible for redress."

For information on claims in Japanese: Ayako Hagihara (310) 344-1893

For information on claims in Spanish or English:

Robin Toma (213) 974-7640.

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Lawyers Council Fund Kick-Off Features Kaczynski Defense Team

In celebration of the tenth anniversary of the Lawyers Council and the kick-off of its 1998 fundraising campaign, the ACLU-NC held a luncheon for the Steering Committee at San Franciso's Boulevard Restaurant featuring a presentation by Quin Denvir and Gary Sowards, defense attorneys for Theodore Kaczynski.

"Since being established in 1988, the Lawyers Council has strengthened our support within the northern California legal community allowing the ACLU to be at the forefront of significant civil liberties issues," said Susan Harriman of Keker & Van Nest. Harriman co-chairs the Council with Lenard G. Weiss of Steefel, Levitt & Weiss.

ACLU-NC Executive Director Dorothy Ehrlich told the Council members that "during these tough years for the ACLU -- the El Niño season for civil liberties -- the reason we can respond so rapidly and so well to threats to affirmative action, immigrant rights and reproductive freedom is because of the extraordinary dedication of the legal community."

Through individual and corporate contributions, the Lawyers Council provides major financial support to the ACLU-NC Foundation. Currently there are 38 members of the Steering Committee and more than 250 lawyers who are members of the Council. ACLU-NC Board Chair Dick Grosboll introduced four lawyers who have been members of the Council Steering Committee for the past ten years: Harriman; Charles Freiberg of Heller, Ehrman, White & McAuliffe; and Karl Olson and Michael Ram, both of Levy, Ram & Olson.

Quin Denvir, Federal Public Defender of the Eastern District, and Gary Sowards, a criminal defense attorney with Sternberg, Sowards & Lawrence, spoke of the challenges presented by the highly-publicized Unabomber case when the local prosecutors, the Attorney General of the United States and even President Bill Clinton were intent on seeking the death penalty.

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San Francisco Honors ACLU-NC for Defense of Domestic Partners Law

BY MARIA ARCHULETA

The City of San Francisco officially thanked the ACLU-NC for defending the city's "Equal Benefits Ordinance," which requires companies that the city does business with to provide the same benefits to unmarried domestic partners that they provide to married couples.

In a June 1 resolution, the Board of Supervisors commended "the extraordinary efforts" of the ACLU-NC and other members of the City's legal team in "defending the Equal Benefits Ordinance."

The controversial law, passed in November, 1996, was widely viewed by gay rights advocates as a major step forward in the effort to get fair treatment for lesbian and gay employees.

Challenging its obligation to follow the ordinance, the American Transport Association filed suit in May 1997 against the City on behalf of major airlines.

The ACLU-NC filed an amicus brief supporting the ordinance along with the Lambda Legal Defense Fund and the National Center for Lesbian Rights.

On April 10, 1998, U.S. District Court Judge Claudia Wilken largely upheld the Equal Benefits Ordinance, although she ruled that portions of it could not be applied to the airlines because of the unique nature of their businesses.

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Death Penalty Foe Mike Farrell at S.F. Chapter Meeting

Death Penalty Focus President Mike Farrell (center-left) with San Francisco Chapter activists Jeannie Maher, Philip Mehas and Roberta Speikerman (l. to r.). Photo by George T. Kruse.

"The death penalty is not a fringe issue. It's not about Left or Right, Republican or Democrat. It's about what kind of country America is -- and what kind of country it wants to be."

Mike Farrell, President of Death Penalty Focus and Advisory Board Member of the National Coalition to Abolish the Death Penalty, spoke to an appreciative audience about the difficulties -- and the value -- of organizing against capital punishment. The actor and former star of M*A*S*H was the keynote speaker at the Annual Meeting of the San Francisco Chapter on May 28.

More than 100 members and supporters of the ACLU attended the event at the First Unitarian Church, which also included a reception, student art exhibit and a fundraising auction of an original Ansel Adams photograph. Chapter Chair and event organizer Jeannie Maher opened the meeting with a spirited call to action for San Francisco activists and introduced the keynote

speaker.

Farrell, who is also the Co-chair of Human Rights Watch, California, drew lessons from his experiences in Bosnia, Rwanda and America's Death Rows. "We do not want a nation that claims to believe in equal justice for all yet applies a double standard when it comes to the impoverished and people of color; a nation which presents itself as the standard bearer of human rights yet is one of only two that has not ratified the Convention on the Rights of the Child; and nation that claims to cherish its children, yet joins Iran, Saudi Arabia, Nigeria and Afghanistan in executing them," Farrell said.

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