ACLU NEWS

Newspaper of the American Civil Liberties Union of Northern California

Volume LXIII, No. 4 - July/August 1999

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ACLU Files Racial Profiling Lawsuit Against the CHP

San Jose attorney Curtis Rodriguez (at mikes) and ACLU-NC cooperating attorney John Streeter announced the filing of a DWB lawsuit against the California Highway Patrol.

"The California Highway Patrol routinely violates the rights of African American and Latino drivers by targeting them on the basis of race," said Michelle Alexander, Director of the ACLU-NC Racial Justice Project.

Alexander announced the filing of a major lawsuit against the California Highway Patrol (CHP) and Bureau of Narcotics Enforcement (BNE) on June 3. The federal civil rights action asserts that CHP and BNE officers systematically target, stop and search motorists on the basis of race when enforcing traffic laws and operating drug interdiction programs.

"The War on Drugs has taken a tremendous toll on the vast majority of people of color who are innocent and law-abiding, yet treated like criminals for extremely minor traffic violations or for no reason at all. We intend to put an end to racial profiling in the State of California. The lawsuit filed by Mr. Rodriguez today is an important step in that direction," added Alexander.

On June 6, 1998 Curtis Rodriguez, a Latino attorney from San Jose, observed five traffic stops

and at least ten CHP and BNE vehicles within a 10-mile stretch. All of the persons stopped were Latino, and were standing outside of their cars by the side of the highway. Distressed by what they were witnessing, Rodriguez and his passenger, Arturo Hernandez, decided that it was important to document these race-based police stops to prove to others what they had seen. Hernandez took pictures of the fourth and fifth stops of Latino drivers, while Rodriguez concentrated on obeying the speed limit and all traffic laws, to avoid giving the police any excuse to pull them over. Despite these precautions, a CHP vehicle pulled behind Rodriguez and began to follow his car, right after they passed the fifth stop. The CHP officer told Rodriguez that he had been pulled over because his car "had 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 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. We sat waiting twenty more minutes in the car, and then finally, he told us we could go. He didn't issue me a ticket, because I didn't do anything wrong."

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 is doing is illegal. It violates federal civil rights laws, the U.S. Constitution, and is utterly inconsistent with our democratic values. We are ready and willing to fight racist police practices, and hold law enforcement accountable in a court of law."

"Sadly, what Mr. Rodriguez experienced is hardly unusual," explained Alexander. "The CHP engages in a pattern and practice of race-based stops of African American and Latino drivers throughout the state. In fact, in 1997 alone, the CHP canine units - which are part of its drug interdiction program called Operation Pipeline - stopped nearly 34,000 people - but less than 2% of them were actually carrying drugs. As a result, tens of thousands of innocent motorists were stopped, searched and treated like criminals based on nothing more than a police officer's mistaken hunch. We believe that the vast majority of these stops were based on race, and we intend to prove it."

The lawsuit, Rodriguez v. California Highway Patrol, follows an ACLU national and statewide campaign to stop race-based police stops. In April, the ACLU of Northern California announced a billboard and radio ad campaign in English and Spanish to publicize its toll-free "Driving While Black or Brown" hotline, 1-877-DWB-STOP. The Spanish Language hotline is 1-877-PARALOS. Since the hotline's initiation in October, more than 1800 persons have called

to report their stories of discriminatory traffic stops.

In June, the national ACLU issued a report on the national problem of racial profiling, "Driving While Black: Racial Profiling On Our Nation's Highways." The report cites police statistics on traffic stops, ACLU lawsuits, government reports and media stories from around the nation, demonstrating that law enforcement routinely discriminates on the basis of race when stopping and searching people on the road.

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Historic Bill Strengthens Protections for Women and Disabled Workers

Forty years after the enactment of the Fair Employment and Housing Act, the Assembly Judiciary Committee has introduced legislation that would strengthen protections against discrimination for women and disabled workers. The ACLU played a major role in promoting the ominibus workers' rights bill, which is also sponsored by the Fair Employment and Housing Commission, the Attorney General's Office, the California Civil Rights Coalition and the California Labor Federation.

"This omnibus civil rights bill is years in the making," said Francisco Lobaco, Legislative Director of the ACLU. "It incorporates many provisions we have previously negotiated through the Legislature that were vetoed by former Governor Wilson. The bill provides long needed additional protections against discrimination in the workplace. We expect Governor Davis to take a more favorable attitude in support of strengthening civil rights laws."

AB 1670 strengthens and clarifies various civil rights protections afforded by the Fair Employment and Housing Act and other civil rights statutes. Among its provisions, the bill expands protections against sexual harassment for contract workers; requires workplace accommodation for pregnant employees; prohibits genetic testing; increases the amount of damages that can be awarded by the Fair Employment and Housing Commission from $50,000 to $150,000; clarifies that discrimination by agencies or entities receiving state funds is; and expands the prohibition against discrimination enforceable through a private cause of action on the basis of mental disability to include employers of five or more employees.

At a Sacramento press conference announcing AB 1670, firefighter Rebecca Ramirez spoke about the difficulties she faced with her employer during her first pregnancy. In her seventh month of pregnancy, her employer refused to continue her light duty assignment, even though a few weeks later they found light duty jobs for two other firefighters who were injured on the job. "As a firefighter, I put my life on the line," said Ramirez. "I never expected the fire department to create work that didn't need to be done, but they didn't try hard enough to find work that I could do. All I want is the chance to continue to do my job, to do as much as I can for the department, while still protecting myself and my baby." Ramirez is currently pregnant with her second child and things are going much better with her department now. They are currently accommodating her with light duty work such as providing training about emergency

medical procedures and doing business inspections. "I'm taking care of myself while still being a productive fire fighter for my department," added Ramirez.

The bill also expands the protections for workers with psychiatric disabilities who are often unnecessarily barred from the workplace and who are particularly vulnerable to on-the-job harassment and outright discrimination. " Paul S., an award-winning employee, sought a leave of absense to recover from clinical depression," noted Claudia Center, an Employ-ment Law Center staff attorney. " Instead of offering accommodation under the company's leave policy, his supervisor subjected him to the disability equivalent of racial epithets, telling him to `stop being weak,' that `everyone has problems, so suck it up and be a man.' During his leave, Paul was fired," Center explained.

"If California is to model America's new and diverse society, every person must feel secure that their civil rights will be protected," said Assembly Judiciary Chair Sheila Kuehl. "Discrimination has no place in a just society. For California to succeed in the global economy, we must ensure that employees are judged by their ability to do the work and not on their gender or disability."

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ACLU-NC at Biennial Meeting

ACLU-NC biennial delegate Dennis McNally and ACLU-NC National Board Representative Marina Hsieh

A hefty delegation of ACLU-NC Board members and staff joined more than 400 civil liberties leaders at the ACLU Biennial Meeting in San Diego from June 23 through June 27. The ACLU-NC Biennial voting delegates were led by Board Chair Dick Grosboll and included Robert Capistrano, Quinn Delaney, Aundre Herron, Charles Legalos, Dennis McNally, Susan Mizner and Michelle Welsh; Board members Chris Wu and Raha Jorjani attended as non-voting delegates.

National ACLU Executive Director Ira Glasser opened the plenary with a keynote address on race and the criminal justice system, a deep-rooted problem in the United States, exacerbated by the War on Drugs. Plenary sessions focused on Border issues, vouchers and the public school system, discrimination against lesbians and gay men, student rights and race and multi-culturalism.

Northern California leaders who attended as national participants included Luz Buitrago, Member of the Biennial Confer-ence Committee; Milton Estes, Vice-Chair, National Board; Marina Hsieh, ACLU-NC Representative to the National Board; Davis Riemer, Co-Chair National Fund-raising Faculty; and Margaret Russell, National Board member.

The ACLU-NC delegation was also proud to host Monterey Chapter leaders Dick Criley and Jan Penney. Criley, an Earl Warren Civil Liberties Award winner and former vice-chair of the ACLU-NC Board of Directors, was lauded for his six decades of activism - especially his efforts to protect the right to dissent - by his longtime colleague Frank Wilkinson who was honored with the Roger Baldwin Medal of Freedom.

ACLU-NC Executive Director Dorothy Ehrlich chaired the Executive Directors Council meetings that took place prior to the Biennial. Ehrlich led a seemingly omnipresent staff delegation that led workshops on issues ranging from student rights to racial profiling.

Delegates from all over the country decorated themselves with "ACLU - Got Rights?" tattoos, created and applied (at the Freedom Fair) by Nancy Otto, Director of the Howard A. Friedman First Amendment Education Project.

Margaret Russell, Chair of the ACLU-NC Legisla-tive Committee and National ACLU Board member, joined by Sam Paz of the ACLU of Southern California and a majority of biennial delegates, voting for the People of Color Caucus resolution.

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New Initiative Aims to Restrict Minors' Access to Abortion

A statewide pro-choice coalition is organizing to fight a new measure that threatens to turn the clock back on reproductive rights for young women. A proposed initiative has been filed with the Attorney General's Office to amend the California Constitution to deny teenagers access to confidential reproductive health care. Titled the "Parental Communication and Responsibility Act," the initiative would require doctors to notify parents of patients under 18 that their daughters are pregnant and seeking an abortion. The initiative requires, as an alternative, that a teenager petition a court for an order allowing her to obtain an abortion without parental notification.

In 1997, the California Supreme Court ruled that a 1987 law requiring parental or judicial consent for abortion violated the California Constitution's right to privacy in the *American Academy of Pediatrics v. Lungren*. The landmark decision followed a decade of litigation, including a lengthy trial with testimony from numerous experts in adolescent health care. Because of the lawsuit, filed on behalf of the leading medical organizations in the state by the ACLU-NC and the National Center for Youth Law, the law had never been enforced.

Currently, California's medical emancipation laws allow unmarried teenagers under 18 to obtain confidential reproductive health services, such as contraception and pregnancy-related care. Since 1972, minors have had the right to obtain abortions without mandatory parental involvement.

"The initiative will nullify the Supreme Court decision by amending the state Constitution to limit reproductive privacy," explained Margaret Crosby, ACLU-NC staff attorney who successfully argued *AAP v. Lungren* before the high court.

"Fifteen years of experience in other states have demonstrated that parental involvement laws inflict physical and emotional harm on young women, especially the vulnerable teenagers from unhappy homes who most need our protection," warned Crosby. "This measure, like other parental consent and notification laws, does not convert abusive, dysfunctional families into stable and supportive ones. The laws simply give pregnant adolescents from unhappy homes difficult options at a difficult time in their lives. Some travel alone to other states, some navigate through a stressful and humiliating court process, some bear babies before they are ready to be parents, and some turn in desperation to septic or self-induced abortions.

"It is essential, for the physical and mental health of our teenagers - and for the right to privacy for all Californians - that this dangerous measure be stopped," Crsoby added.

For more information on the initiative, or how you can get involved, please go to the ACLU-NC website: www.aclunc.org.

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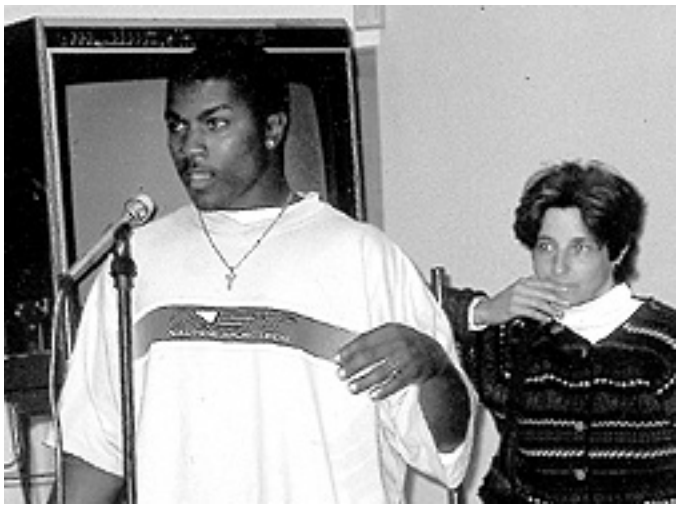
DWB Town Hall Meeting Draws a Crowd

By Melissa Daar

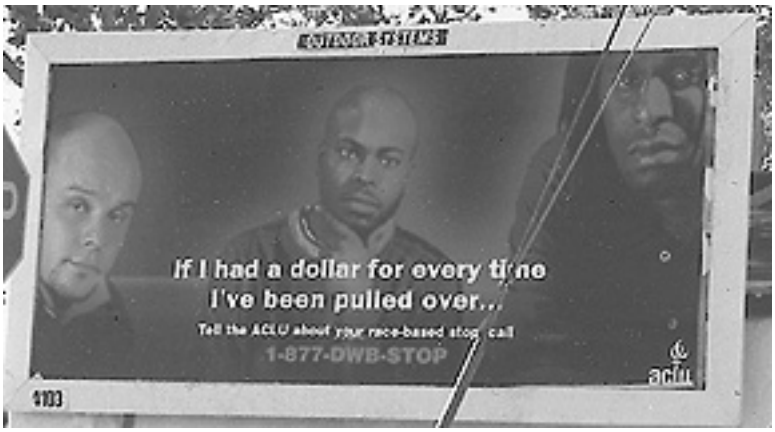


Oakland student Germaine Williams spoke out about his DWB experience at the hands of the Oakland police.

"I'm so tired of routine stops," said Oakland club promoter Tony Le-Beau. "What is a routine stop? I'm representing everyone here that looks like me."

Le-Beau was one of the more than 100 East Bay residents who gathered on May 25 to address the problem of race-based police stops at a Town Hall Meeting sponsored by the Oakland Chapter of the ACLU-NC, PUEBLO (People United for a Better Oakland), and the American Friends Service Committee (AFSC).

"Oakland police constantly pull me over for no reason at all, " said Jermaine Williams, a Skyline High School student and courtesy clerk at Lucky's. "And they pull over all my friends for no reason. They search my car without my permission: my glove compartment, under the back and front seats; they search my pockets and pat me down. I've never gotten a ticket for any offense; sometimes they don't even check my license. They never find anything, but they keep stopping me. I've been stopped so often and treated so suspiciously for no reason at all."



Sam Williams III, a Fresno State University student and former Clayton High School football star, said, "It seems like the police officers are looking for something to do...I guess I'm just a target. They always ask me, `What are you doing here?' `Is this your car?, `Who are you going to see?'"

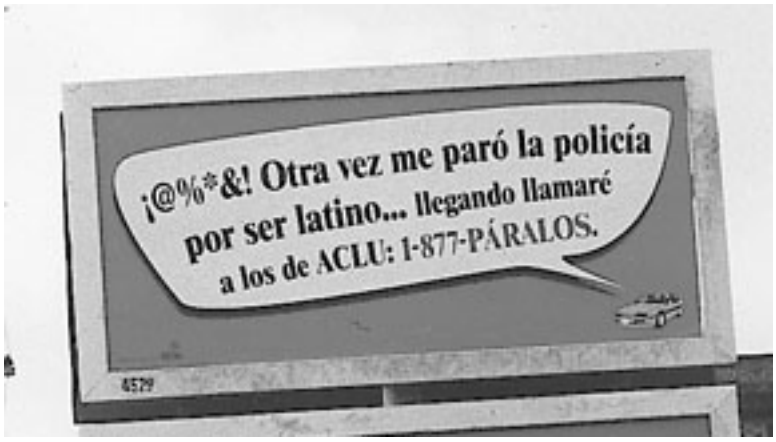
One by one the testimony pointed to the unmistakable pattern of discriminatory police stops. More than 30 people spoke to their own experience of "Driving While Black or Brown." Young and old, men and women, Latino and African American, all referred to the fear, humiliation and anger they experienced when stopped by the police because of their race. Throughout the testimony, audience members nodded their head in agreement and cheered when speakers told their stories.

"Many people of color have become resigned to racist treatment by police," said Michelle Alexander, Director of the ACLU-NC Racial Justice Project Alexander. "But what I want to emphasize is that we do have the power to say, `Enough is enough'. People of color have demanded change in other states across the country - and have forced the police and lawmakers to take their demands seriously. We can do the same here, starting tonight."

"We felt that it was vital to have a public forum on this issue," said ACLU-NC Oakland Chapter activist Stan Brackett. "Our community is affected by race-based police stops and we need to send a message to our elected officials that it won't be tolerated."

Alexander urged support for SB 78 (Murray), a bill in the state Legislature which would require law enforcement to collect data on the race and ethnicity of all drivers who are stopped. "Law enforcement steadfastly refuses to collect data to determine whether or not a discriminatory pattern of police stops actually exists," said Alexander. "SB 78 would no longer allow law enforcement to simply deny the obvious truth."

Alexander objected to outgoing Oakland Police Chief Joseph Samuel's' announcement that the Oakland Police Department would not collect data on the ethnicity of people pulled over in traffic stops. "If the Oakland police want to earn the trust of the community, they must do so with deeds --- not just words," said Alexander. "Why should we take their word for it when so many people in our community have experienced race-based stops? And why should we trust them, when they refuse to collect the data that would determine whether and to what extent a problem exists?"



D'Wayne Wiggins from the group Toni!Tony!Tone! participated as a panelist in the meeting. He described his own stop by the Oakland police: he was pulled out of his car and choked by a police officer when he took a sip of bottled water. Wiggins has filed a $1 million lawsuit against the Oakland police.

The Oakland ACLU-NC Chapter has been working with PUEBLO and the AFSC for over two years on police accountability issues. Chapter activists say that SB 78 is an important step in their battle for police accountability. "We are really happy that there is heightened visibility on the issue of pretext police stops and the disparate impact on people of color," said veteran Chapter activist Grover Dye.

Following the meeting, Oakland's new Chief of Police, Richard Word, announced that he is reversing the position of the Oakland Police Department, and agreeing to collect data regarding the race and ethnicity of all motorists stopped by police, at least for a short period of time. Chief Word explained that he wants the Oakland police to "present and image that says we have nothing to hide.

Melissa Daar is the former Public Information Associate.

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Employee Wins $55,000 in Accent Discrimination Complaint

On June 8, the Language Rights Project of the ACLU-NC and the Employment Law Center announc-ed that Miranda Chow, a Chinese-American, will receive a $55,000 settlement of a discrimination complaint that she filed with the U.S. Equal Employment Opportunity Commission. Chow, a former employee of a Northern California marketing research firm, charged that a supervisor at the firm harassed her for months eventually forcing her to leave the firm, because she speaks English with an accent.

"An employer may not harass or terminate an employee solely because the employee speaks with an accent or uses a foreign language at work. Those that do are at risk of having to pay for their actions - and reimburse employees for their loss of wages as well as emotional damages," said ACLU-NC staff attorney Ed Chen.

The EEOC found that Chow's rights were indeed violated and that the company's actions constituted discrimination based on her national origin, a violation of federal law. The company that fired her, which has since closed its office in California, will pay Chow $55,000 for her loss of wages and damages. It also agreed to issue and post a clear policy in its other offices prohibiting denial of employment opportunities based upon accent, unless the company can document that the "accent" truly affects the employee's ability to communicate. The company also agreed to report all terminations based on accent to the EEOC for the next two years and to provide training for sensitivity on accent discrimination as part of its ongoing diversity program.

Chow had been employed as a telephone interviewer by the company for two years and had received many favorable reviews and pay increases before she began working under a new supervisor in January 1994. The firm's own performance evaluations never indicated that customers had difficulty understanding her. Former supervisors had written on her evaluations, "Excellent all around job! Keep it up!" and "Congratulations Miranda! You qualify for a raise in all categories." Although she had satisfactory ratings on "enunciating" from her former supervisors who monitored her calls, those same ratings dropped dramatically when the new supervisor came on.

According to the EEOC's findings, Chow's subsequent supervisor subjected her to daily "tutorial" sessions to correct her enunciation, from which Chow often emerged in tears. When

Chow ultimately was demoted from a full-time bilingual interviewer to a part-time Chinese language only interviewer, she left the company.

"Ms. Chow was discriminated against based upon her accent in violation of Title VII's ban on national origin discrimination," added Chen. "The important question in this case is not whether there was intentional and conscious discrimination, but whether or not Ms. Chow's accent interfered with her job performance. Clearly, it didn't.

"Any assertion that Ms. Chow could not comprehend or be understood by the company's clients because of her English is totally undercut by the company's own documentation, which showed that even under the new supervisor she exceeded her production goals. It is also belied by the fact that Ms. Chow has since successfully performed bilingual duties as a telemarketer for an insurance company, medical translator, and as a customer service representative for a major telecommunications firm," said Chen. " It simply defies all the evidence and experience to suggest that her accent in any way kept her from doing her job well."

"Employers must be cautious when using one's accent to make employment decisions," warned Christopher Ho of the Employment Law Center. "Evaluations are often subjective, arbitrary and susceptible to unconscious biases. For example, many in our society are more willing to tolerate French and British accents than Chinese or Spanish accents. The law requires that accents be evaluated objectively, not based on the uninformed gut reaction of a supervisor, acting without any evidence of an actual problem with work performance."

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Civil Rights Organizations Settle Language Rights Complaint

On May 27, a coalition of civil rights groups reached a settlement with Contra Costa County Department of Social Services (CCCDS) that ensures that all county services and programs are accessible to persons who are limited English proficient (LEP).

"Regrettably, language minorities are all too often denied access to important services and benefits because of the failure of agencies to address language and cultural barriers. We hope the settlement educates both the community and public agencies that language minorities are entitled to equal rights," said Ellen Tabachnick of Contra Costa Legal Services Foundation.

The complaint was filed with the U.S. Department of Health and Human Services, the Department of Justice and the Department of Agriculture in April 1998 on behalf of a Laotian immigrant who was denied food stamps as a result of 1997 Department policy changes that effectively cut off public benefits and services to LEP proficient and monolingual Southeast Asians. The claimant was represented by Contra Costa Legal Services; the Center on Poverty Law & Economic Opportunity; the ACLU of Northern California; the Employ-ment Law Center; the Asian Law Caucus; and the Lawyers' Committee for Civil Rights.

Prior to the changes, the Refugee Unit served Southeast Asian clients through a concentration of multilingual interpreters and workers who handled cases and covered all programs. The county originally established the unit after civil rights investigators found the agency did not provide adequate bilingual services to the vast number of Southeast Asian immigrants in need of public assistance. However, beginning in 1997, the Department officials dismantled the Refugee Unit, reassigning and relocating bilingual workers and interpreters without first conducting the civil rights impact analysis mandated by federal laws and regulations.

While there are problems with the settlement because the federal agencies entered into the settlement without complainants' approval, it contains significant provisions for improving

language access. The Department of Social Services agreed to develop written policies and procedures regarding interpreter services. They will identify the language needs of clients to ensure that Limited English clients have ready access to bilingual staff or proficient interpreters at no cost during hours of operation. The Department will also disseminate its interpreter policies and procedures to all staff so that they are aware of their obligation to provide equal access to services for LEP clients.

Attorneys representing the client include Luz Buitrago of the Center on Poverty Law and Economic Opportunity; Ellen Tabachnick of Contra Costa Legal Services; Ed Chen of the ACLU-NC; Jodie Berger, Chris Ho, and Marielena Hincapie of the Employment Law Center; Estela Lopez of the Lawyer's Committee for Civil Rights; and Gen Fujioka of the Asian Law Caucus.

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Nursing Home Workers Win Language Rights Settlement

SEIU representative Maria Griffith-Cañas, joined by EEOC attorney William Tamayo and ACLU-NC staff attorney Ed Chen, lauded the settlement ending punishment for workers who speak their native languages.

Before a packed press conference, nursing home worker Maria Martinez described the humiliation and intimidation she felt when her supervisor disciplined and harassed her for speaking Spanish. "It was very difficult for many of us who were forced to speak another language that was not our primary language," explained Martinez fighting back tears. "It was as if we had policeman watching us all the time."

Martinez was joined by attorneys from the Language Rights Project of the ACLU of Northern California and the Employment Law Center (ELC) at a June 15 press conference to announce that Vencor, Inc., a nationwide nursing home corporation, will pay $52,500 to settle a language discrimination suit. The suit was filed against them in U.S. District Court by Spanish-, Tagalog- and Haitian Creole-speaking employees and SEIU Local 250. Martinez, who during the course of the language rights battle became a shop steward for the union, expressed a combination of relief and vindication at the settlement. "It's not about the money It's about dignity and respect."

The suit arose after the employees charged in a 1995 complaint to the Equal Employment

Opportunity Commission (EEOC) that the Fifth Avenue Health Care Center in San Rafael violated their rights by harassing and disciplining them for speaking in languages other than English. The EEOC found reasonable cause to believe that the nursing home discriminated against the employees on the basis of their national origin by implementing and enforcing the "speak-English-only" policy. In Martinez v. Lenox Health Care and Vencor, Inc., the plaintiffs were represented by the EEOC, ELC and the ACLU-NC. U.S. District Court Judge Vaughn Walker approved the settlement.

"The nursing home's English-only policy was unlawful discrimination," said Marielena Hincapié, of the Employment Law Center. "There was no reason for such extreme restrictions on employees' use of their primary languages when not providing care to a resident. These illegal restrictions only served to hinder care to residents and destroy employee morale."

When the employees filed their complaint with the EEOC, Hillhaven Corporation owned the Fifth Avenue Health Care Center. In 1995, Vencor purchased the facilty. It was during Vencor's ownership that the English-only policy was rigorously enforced. In 1997, Lenox Healthcare, Inc., which was also named as a defendant in the lawsuit, purchased Fifth Avenue from Vencor.

Martínez, the named plaintiff, has been working as a certified nursing assistant at Fifth Avenue since 1990. Her primary language is Spanish, but she speaks English well enough to perform her job. She was reprimanded numerous times for speaking Spanish.

Plaintiff Maria Martinez became a shop steward after fighting for her language rights at a San Rafael

nursing home.

"One time, I asked a Latino housekeeper to clean a resident's room," said Martinez. "We were both standing at the entrance to a resident's room, but there were no residents present because they were all in the dining room. The supervisor heard the brief exchange in Spanish and called us into his office, where we were admonished for violating the English-only rule. The way the supervisor acted made me feel like less of a person just because I speak another language. It all felt like another excuse to crush us Latinos," Martinez added.

Another plaintiff, Graciela Vega, had worked at Fifth Avenue as a certified nursing assistant since 1994. She too was reprimanded for speaking Spanish to a resident. Despite her pointing out that the resident understood Spanish, the supervisor maintained that they should not be speaking Spanish in any event since there were other residents in the area who did not understand Spanish. On another occasion, the staff's in-service trainer reprimanded her for speaking Spanish with another employee outside of the residents' dining room.

"I was told that this was America and that if I was unable to speak English, this was neither the place nor job for me," said Vega.

"This is a tremendous victory for SEIU Local 250 and all of our members who are constantly fighting these xenophobic English-only rules in health care facilities," said Maria Griffith-Cañas, SEUI Field Representative. "The significance of this settlement goes beyond Fifth Avenue and will serve as a model to assist all of our limited English-speaking workers in this struggle."

Cañas also noted that disciplinary action taken against workers for speaking languages other than speaking English intensified during contract talks between union and nursing home representatives.

ELC attorney Christopher Ho said, "This policy was enforced against all employees whose primary language was one other than English, but it was implemented more harshly against monolingual non-English speakers and those who have limited English proficiency, who could not as easily protest the rule or discipline administered. Fifth Avenue employees were often disciplined for speaking languages other than English even when there were no residents in the area."

ACLU-NC staff attorney Ed Chen said that the settlement sends a signal to other employers engaged in similar language discrimination practices. "Employers need to be aware of the exposure of monetary damages in these cases. There is a price to pay for discriminating against workers based on their national origin."

In the settlement, Lenox Healthcare will revise its policy to conform to California Department of Health Services standards for languages spoken by nursing home staff. In an "all-facilities"

letter to skilled nursing and intermediate care facilities statewide, DHS set out its position that federal nursing home regulations do not authorize the use of English-only rules, except in very narrowly defined situations. In fact, the DHS policy suggests that those regulations may actually require employees to speak languages other than English when interacting with non-English speaking residents.

In the policy letter, DHS affirms the rights of employees to be free from discrimination. According to the DHS, "each resident has the right to be fully informed of his or her total health status, including his or her medical condition, in a language that he or she understands. At the same time, all employees have the right to communicate with each other in their primary language when not engaged in direct communication with, or providing care to, a resident, while being aware that they should not engage in conversation of a social nature that doesn't relate to the care of the resident."

The Equal Employment Opportunity Commission is the agency charged by Congress with enforcing the federal laws that prohibit employment discrimination based on race, color, religion, sex, age, disability, and national origin. "Language rights and national origin discrimination--especially cases of `English-only' rules and accent discrimination--are a top priority for the EEOC," said William R. Tamayo, Regional Attorney of the EEOC District Office in San Francisco. "We are glad to have resolved this case short of extensive litigation and commend Vencor and Lenox for reaching this agreement."

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Second Attempt Fails to Install Spy Cams on Oakland Streets

For the second time in two years, the ACLU-NC defeated a plan to install video surveillance cameras on Oak-land streets. "This decision strikes a blow against Big Brother," said John Crew, Director of the ACLU-NC Police Practices Project.

The latest proposal for video surveillance came from City Council member Nate Miley who authored the earlier measure defeated in 1997. Crew noted a new City of Oakland staff report supporting video surveillance was virtually the same as the one written two years ago that concluded that street video surveillance was a bad idea. The new report had been rewritten only insofar as the conclusion, using the same data to come to the opposite side of the issue. This prompted Oakland Tribune columnist Brenda Payton to observe, "I guess that is one strategy--review the same report until you get the conclusion you want, whatever the report says."

At its July 6 meeting, the Oakland City Council's Public Safety Committee voted not to proceed with the video surveillance project. Crew argued that there has been no data that proves that video surveillance cuts crime. "Yet video technology has advanced remarkably to the point that today's systems will allow watchers to zoom in from over a 100 yards away to read and record the print on political flyers being distributed on public sidewalks," Crew charged.

After a letter from Crew, Oakland Mayor Jerry Brown announced his opposition to the measure. "Installing a few or a few dozen surveillance cameras will not make us safe. It should also not be forgotten that the intrusive powers of the state are growing with each passing decade."

Technology has far outstripped the means of current law to provide adequate protection to individuals who may suffer as a result of abuses from the use of video technology. Improperly used, video surveillance cameras can be used to create vast archives containing the images of innocent people.

Current video technology also includes infrared, high-sensitivity equipment, and systems operating outside the visible light spectrum. These include Forward Looking Infrared Radar (FLIR) systems able to detect activity behind walls, and infrared systems able to detect activities in darkness. National ACLU Associate Director Barry Steinhardt warned, "Today's

video technology turns police officers into supermen and -women with powers of observation that extends well beyond what can be seen by the naked eye." In addition, court decisions in Hawaii and Indiana have also called into question the use of videotape evidence obtained without a warrant.

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PROPOSITION 209 TAKES ITS TOLL:

Civil Rights Groups Keep Up the Fight for Equal Opportunity

In the aftermath of Proposition 209, California has suffered serious setbacks in racial and gender equity. The ACLU-NC has been diligently working to preserve equal opportunity for women and people of color in California -- but not without some disappointing losses.

LOSING TRACK OF DISCRIMINATION

On June 11, the state Court of Appeal upheld Governor Pete Wilson's Executive Order to bar the collection of statistics on minority- and women-owned enterprises (MBE/WBE) in state contracting. The case, *Barlow v. Wilson*, was filed on behalf of a sociology professor at U.C. Berkeley and Diablo Valley College who is writing a book on civil rights law which requires the state data; the president of a minority owned engineering firm; and a statewide organization for minority and women businesses.

After Proposition 209 was passed by California voters in November 1996, Wilson attempted to dismantle many programs considered affirmative action, leaving women and minorities without equal protection programs to counteract existing discrimination. One of the Governor's actions was to end data collection by state agencies on how many women and minority contractors share in the multi-billion dollar state contracting budget.

The plaintiffs were represented by the ACLU affiliates of Northern and Southern California, the Lawyers' Committee for Civil Rights, Equal Rights Advocates and the Employment Law Center.

SUPREME COURT REJECTS OPEN MEETING SUIT AGAINST EX-GOVERNOR WILSON AND U.C. REGENTS

Striking a blow to open government, the California State Supreme Court ruled on June 1 that student reporter Tim Molloy and the UC Santa Barbara student newspaper, *The Daily Nexus*, may not pursue their claim that former Governor Pete Wilson and the U.C. Board of Regents violated the Bagley-Keene Open Meeting Act in voting to approve resolutions abolishing

affirmative action at the University of California.

The ruling in the case, *Regents v. Superior Court* (formerly *Molloy v. Regents*), reverses lower court decisions, which had allowed the case to go forward. Still in question, and unresolved by the decision, is whether then-Governor Wilson secretly locked up votes through a series of private phone conversations to the Regents before their crucial July 1995 meeting where they passed SP1 and SP2, ending affirmative action throughout the U.C. system. In addition, the state Supreme Court held that any suits alleging violations of the open meeting law must be filed with 30 days of the supposed violation - allowing public officials to meet secretly without penalty if they can hide their wrongdoing for a month.

Litigation on the case will now proceed under the Public Records Act.

The student and the newspaper were represented by the ACLU affiliates of Northern California and Southern California, the First Amendment Project, Lawyers' Committee for Civil Rights, and Equal Rights Advocates.

COURT STRIKES DOWN SAN JOSE MINORITY OUTREACH PROGRAM

On May 26, the California Court of Appeal ruled that San Jose's contract recruiting program for women and minority owned businesses violated Proposition 209. The court acknowledged that cutting the program may indirectly result in discrimination against women and minorities in the bidding opportunities for subcontracts.

The City of San Jose plans to appeal the decision in the case, High Voltage *Wire v. San Jose*, to the California Supreme Court.

The City's recruiting program did not include quotas or set-asides for minority or women-owned businesses but required that primary contractors send four letters to women or minority owned businesses asking if they were interested in subcontracting. However, the program did not require the primary contractor to actually do business with the recipients of the letters.

The ACLU-NC and a coalition of civil rights organizations filed an *amicus* brief in the case.

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ACLU Urges School Board to Rescind Book Ban

In a letter to the Laton School District Board of Trustees, ACLU-NC staff attorney Ann Brick criticized the District's removal of Bless Me Ultima by Rudolfo Anaya and Fallen Angels by Walter Dean Myers, from use in English classes at Laton High School.

"While school boards may have broad discretion in setting curriculum, the Supreme Court has consistently noted that the school board's discretion `in matters of education must be exercised in manner that comports with the transcendent imperatives of the First Amendment,'" wrote Brick. "Removing books based either upon disagreement with constitutionally protected ideas or upon the board's desire to impose upon the students a religious orthodoxy to which the board and its constituents adhere is impermissible."

Bless Me Ultima is widely considered to be one of the finest pieces of Hispanic fiction and Fallen Angels is the winner of the 1989 Coretta Scott King Author Award and is listed by the American Library Association as a Notable Children's Trade Book in the Field of Social Studies. Brick noted that the Board appears to have removed the two books from the English curriculum because it apparently finds the ideas or philosophy expressed by the books' authors to be objectionable. According to press reports, one board member objected to the importance of the curandera (medicine woman) in Bless Me Ultima, fearing that students would be led astray from their faith.

In removing the books, the Board failed to follow its own policies which require that challenged instructional materials be reviewed by a committee before a final decision is made. Instead, without even having read the books in their entirety, the Board ordered that they be removed from all classrooms.

"When a political body, such as a school board, removes a book from the curriculum because of a disagreement with its message or point of view, it undermines the integrity of the process through which curriculum is set and paves the way for an endless series of attempts to cleanse school reading lists of materials found objectionable by one group or another," Brick said. "In the end, school curriculum becomes a tug of war among various factions instead of a carefully crafted program designed to educate our youth."

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Two Dangerous Initiatives on March 2000 Ballot

Two very dangerous initiatives will appear on the statewide ballot in March 2000.

ANTI-YOUTH

This initiative was spearheaded by ex-Governor Pete Wilson and contains many of Wilson's proposals that were rejected by the Legislature in prior years. The initiative imposes a harsh, punitive approach to addressing juvenile crime by incarcerating youth for longer periods of time and transferring more youth into the adult criminal justice system. In addition, the initiative would increase the pre-trial detention of youth, mix youth with adults in jail in some circumstances, create stricter probation rules, erode confidentiality of juvenile records and proceedings, penalize youth for associating with others through so-called "gang" enforcement measures, expand Three Strikes law, and add to the list of crimes for which the death penalty can be imposed. If passed, this anti-youth initiative will fill our prisons with youthful offenders and make it much more difficult to address the underlying causes of youth criminal behavior.

For more information please visit the No On Proposition 21 web site.

ANTI-GAY

The so-called "Definition of Marriage" or "Knight" Initiative, named after its sponsor Republican state senator Pete Knight, would prevent same-sex marriages from being recognized in California. The initiative amends the California Family Code with the following provision: "Only a marriage between a man and a woman shall be valid or recognized in California." In states with similar legislation on the books, courts and policymakers have relied on such laws to deny adoption by gay and lesbian parents, to defeat anti-discrimination ordinances for lesbians and gay men, and even to justify the elimination or denial of hate-crime laws that would protect gay men and lesbians from violence. The California State Assembly has previously defeated measures like the Knight Initiative five times. Passage of the Knight Initiative would fan the flames of homophobia and codify governmental intrusion into the ability of individuals to make fundamental and private choices about their lives on an equal basis.

For more information on Proposition 22 see the ACLU "No on Proposition 22" page!

You Can Help Stop These Initiatives!

CHECK AS MANY AS YOU WISH

[ ] Yes, I want to help defeat the Anti-Youth Initiative

[ ] Yes, I want to help defeat the Anti-Gay Initiative

[ ] I'll work wherever you need me against either/both of these dangerous measures.

Name _____

Address _____

City _____ State _____ Zip _____

Your telephone _____ and/or Email _____

Send to or contact:
Lisa Maldonado, ACLU-NC Field Representative, Email (lisam@aclunc.org), Telephone: 415 621-2493, Address: American Civil Liberties Union of Northern California, 1663 Mission Street, Suite 460, San Francisco, CA 94103

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Activist Profile: Grover Dye: Four Decades of Organizing

BY DAVID S. HARRIS

Octogenarian Grover Dye has been an activist for most of his adult life. From working with Malcolm X in the 1960's to organizing against "Driving While Black" practices in the Oakland Police Department -- his commitment to social justice has defined his life as a community organizer.

Dye's activism began in the early 60s, when he ran a poverty assistance program in the nation's Capitol. While organizing African American tenants around issues of housing discrimination and landlord exploitation, he met Malcolm X. Malcolm and Dye often worked together during those tumultuous times, and the legacy of the civil rights movement taught Dye many lessons about grassroots organization.

"You can't have an outsider come into a community without involving the people every step of the way," Dye told the ACLU News.

Dye carried that sentiment with him when he moved to Oakland thirty years ago. He joined the ACLU-NC, like many people, during the 1988 Presidential Campaign after George Bush accused Michael Dukakis of being a "card-carrying" member of the ACLU. Dye started attending chapter meetings and became quickly involved.

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

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

"I believe you must involve the people whom you are serving," says Dye. "You have to do both `with and for' a community rather than just `for.' We really needed to involve the community more in what it was trying to do," Dye added.

"Today, the Board might be considered a little more reflective of the demographics of the city; there is an equal number of men and woman, as well as a significant presence of African Americans. We are also proud to have Latinos, Asian Americans, and lesbian and gay board members," said Field Representative Lisa Maldonado. "Dye's commitment to the community and to adding diverse members to our organization has been unwavering."

Dye's long experience in the civil rights movement also taught him the importance of coalition building. He became involved with People United for a Better Oakland (PUEBLO), a grassroots organization that helped to spearhead police accountability initiatives such as strengthening Oakland's Citizen Police Review Board. In 1997, Dye participated in a successful effort by PUEBLO and the ACLU-NC to require the police department--instead of the city's general fund-- to pay for the costs of police misconduct settlements.

Dye also served as the Vice President of the Paul Robeson Centennial Committee. "Robeson was a brilliant scholar and a dedicated activist whose contributions go largely unnoticed," explained Dye. "He worked always for the underclass, the less privileged. He was a Phi Beta Kappa but many people only know him a good singer." The committee attempted to get a Robeson postage stamp issued; despite having enough signatures to qualify, the Postal Service did not adopt the stamp.

Dye recently turned 80 years old, and shows no signs of letting up. "Many people view the ACLU as only a legal organization. We wanted to change that outlook in this community and I think we've helped make a difference."

David Harris is the interim Program Assistant.

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