ACLU NEWS

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American Civil Liberties Union of Northern California
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Government Retreats from Threat to MDs On Medical Marijuana

Facing pressure from a lawsuit brought by the ACLU-NC on behalf of California physicians, the federal government retreated from its hard-line position on medical marijuana, no longer threatening to punish doctors if they discuss the medical use of marijuana with their patients.

"For over two months federal officials have intimidated California physicians with threats of dire punishment for simply telling a sick or dying patient that marijuana could help them," said Graham Boyd of Altshuler, Berzon, Nussbaum, Berzon, & Rubin, one of the attorneys representing the California doctors and patients suing the government. "On the very day that federal officials had to explain their policy to a federal judge, they finally backed down."

Dr. Marcus Conant, one of the nation's most prominent AIDS physicians and lead plaintiff in the lawsuit, reacted to the announcement by saying, "The White House has declared a truce in its war on California doctors. We are once again free to practice medicine without fear of DEA agents harassing us for simply trying to do our jobs."

"It seems to me that the change in position by the federal government represents a realization that their threats of intimidation to physicians and their interference in doctor/patient relationships was destructive, untenable and inappropriate," said Dr. Milton Estes, director of San Francisco's forensic AIDS project and National ACLU Board Member. "I think that the federal government confused its 'war on drugs' with the legitimate medical needs of patients with AIDS, cancer and other chronic diseases. Patients truly benefit, in some instances, from the use of marijuana and they need to be able to talk to their physicians about this and any other related problems," added Dr. Estes.

In a letter sent to the California Medical Association on February 27, the Department of Health and Human Services and the Department of Justice states, "Nothing in federal law prevents a physician, in the context of a legitimate physician-patient relationship, from merely discussing with a patient the risks and alleged benefits of the use of marijuana to relieve pain or alleviate symptoms."

The letter continues, "No gag rule' stops physicians from engaging in these discussions."

"The Government's change in policy is an important victory for the First Amendment and for the rights of patients and physicians everywhere," said ACLU-NC staff attorney Ann Brick.

Although the federal government claims to be merely "clarifying" its position, the letter actually constitutes a major reversal. Following passage of California's Proposition 215, the Clinton administration unveiled a harsh policy that threatened to punish doctors who recommend medical marijuana to their patients. According to the letter, the government has now abandoned its hard-line

stance and officials will permit doctors to inform patients of the benefits of medical marijuana. The government policy will only penalize a doctor who, instead of providing medical advice, seeks to help a patient obtain marijuana in violation of federal law.

On January 14, a group of physicians and patients filed a class action lawsuit, *Conant v. McCaffrey*, in U. S. District Court in San Francisco in direct response to the Clinton administration's December 30 announcement of its plan to fight implementation of Proposition 215 by threatening to punish doctors if they are found to be recommending medical marijuana to their patients. The plaintiffs, represented by the ACLU-NC and attorneys from the San Francisco firm Altshuler, Berzon, Nussbaum, Berzon, & Rubin, are seeking an injunction to block federal officials from taking any punitive action, or threatening to do so, against any such physicians.

A hearing is scheduled before U.S. District Judge Fern Smith in San Francisco for March 21, at which time the plaintiffs will not dismiss the complaint, but will renew a proposed settlement offer to the Justice Department.

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Court Bans San Quentin's Secret Execution Procedures

Upholding the First Amendment right to witness California's executions, U.S. District Court Judge Vaughn Walker ruled on February 28, that public witnesses - including the media - have a constitutionally protected right to observe executions.

"The Court has sent a loud and clear message that the California authorities cannot pull the curtain on executions. The public has a right to have representatives independently observe executions, and does not have to rely on government officials to tell us how they were performed," said attorney David Fried.

Jeffrey Ross of Friedman, Ross & Hersh explained, "Recognizing that capital punishment represents the 'ultimate exercise of state power,' the Court held that to discharge their function as the public's representatives, witnesses are entitled to perceive the nature and quality of the execution by observing the condemned from prior to his immobilization and attachment to the death apparatus until after his death."

ACLU-NC managing attorney Alan Schlosser added, "Recognizing the administration of the death penalty is a matter of great public concern and controversy, the Court upheld the media's First Amendment right to function in its critical role as the eyes and ears of the public."

Contrary to arguments from the Department of Corrections, the court ruled that there was no evidence that media presence jeopardizes prison security or the safety of prison personnel.

The ACLU-NC and the law firm of Friedman, Ross & Hersh filed the lawsuit, *California First Amendment Coalition v. Calderon*, on April 9, 1996 after William Bonin became the first person in California to be executed by lethal injection. Reporters and other witnesses to Bonin's February 23 execution were prevented by San Quentin prison officials from observing the complete execution procedure. Unable to offer first-hand accounts of the process, including the difficulties prison officials admitted they encountered in inserting the IV needles, the journalists could not thoroughly inform the public on all aspects of the execution. Thus, the public had to rely solely on prison officials for information about how the new method of execution was being implemented.

A month after the filing, on May 31, 1996, the ACLU-NC obtained a preliminary injunction on behalf of journalists, news organizations and First Amendment advocates enjoining prison officials from restricting witness observation of executions. The injunction allowed journalists and other witnesses to view San Quentin's execution of Keith Daniel Williams.

Plaintiff Peter Sussman, former president of the Society for Professional Journalists, said, "Judge Walker's ruling is right, it's important and it is also courageous. The Court has recognized a First

Amendment right for public witnesses to see this most irrevocable of governmental acts in its entirety, without the mediation of prison PR people. It's not a role anyone can relish, but it's essential if the citizens of this state are to be kept informed about the awesome powers exercised in their name," he added."

The plaintiffs, the California First Amendment Coalition and the Society for Professional Journalists, are represented by ACLU-NC managing attorney Alan Schlosser and staff counsel Kelli Evans; and cooperating attorneys David M. Fried; Jeffrey S. Ross, Jill Hersh, Paul Jahn and Michael J. Kass of Friedman, Ross & Hersh; and Lynne S. Coffin of the Law Offices of Coffin & Love.

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Congress Can't Restrict Legal Programs for the Poor

In a victory for poor families and individuals in need of legal help, on February 21, U.S. District Judge Alan Kay in Hawaii issued a preliminary injunction blocking Congress' attempt to restrict funds given to Legal Service Programs by non-Legal Services Corporation (LSC) sources - including money from states, cities, charitable foundations and private donors.

This is the first ruling in the country which blocks the sweeping restrictions imposed by Congress on legal service programs funded by non-LSC sources.

"We are very pleased with the ruling," said Stephen Bomse of Heller, Ehrman, White & McAuliffe, lead counsel in the suit *Legal Aid Society of Hawaii vs. Legal Services Corporation*. "The judge recognized that government does not have the right to grant a benefit predicated on the condition that the recipients relinquish their constitutional rights.

"Conservative lawmakers cannot suppress the expression of certain ideas and limit the legal rights of certain groups that Congress disfavors for ideological reasons," Bomse added.

In a 43-page preliminary injunction, Judge Kay held that the restrictions violate constitutional rights to free speech, free association and to petition the government for redress of grievances. The injunction also held that poor individuals' access to legal representation would be severely impaired if the congressional restrictions remained in effect.

Five legal service programs from California, Hawaii, and Alaska originally filed the suit on January 9, in U.S. District Court in Hawaii. In 1995, these agencies, which receive a large portion of their funding from non-LSC services, handled more than 70,000 cases, serving a combined client population of 1.2 million people at the poverty level.

The agencies are represented by Stephen Bomse of Heller, Ehrman, White & McAuliffe as well as the National ACLU and the ACLU of Northern California.

Under the restrictions imposed by Congress as part of the 1996 and 1997 appropriations, legal services organizations that obtain any portion of their financial support from the LSC were prohibited from using funds received from any other resources for certain purposes, including legislative advocacy, filing class action lawsuits, challenging federal or state welfare laws, or seeking attorneys fees in cases where fees are authorized by statute. In addition, the restrictions prohibited the programs from representing certain clients, including prisoners and many immigrants, severely limiting access to critical legal assistance for low-income people.

ACLU-NC staff attorney Margaret Crosby said, "The ruling provides some relief to the community of poverty rights advocates at a time when the number of poor people needing legal assistance is rapidly increasing because of cutbacks in services due to budget cuts and overhaul of welfare laws. It is unconscionable for congress to deny indigent children and adults access to justice to secure fundamental rights of shelter, survival and safety."

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Settlement Ends Dispute over Teacher Credentials

A settlement reached on February 13 between two San Francisco school teachers and the State Commission on Teacher Credentialing, lifts the cloud of unfounded and exaggerated allegations that has haunted Edward Buckley and Martha Squaglia-Castell because of one parent's complaint about a presentation on lesbian and gay issues in their family life class at Everett Middle School in 1992.

"Based on a complaint ripe with gross misrepresentations, homophobia, and hostility towards sex education, the Commission attempted to take away the credentials of two fine teachers," explained ACLU-NC staff attorney Kelli Evans. "The teachers fought back, reached a settlement agreement with the Commission, and will retain their full teaching credentials. Fortunately for San Francisco students, despite the wrongful accusations, neither of these popular teachers has been forced to miss a single day of teaching," added Evans.

Evans and ACLU-NC staff attorney Margaret Crosby, along with Ballinger Kemp of the California Teachers Association defended Mr. Buckley and Ms. Squaglia-Castell in the face of the credential revocation.

Decade of Programs

On April 24, 1992, Ms. Squaglia-Castell and Mr. Buckley supervised a school district-approved family life class for sixth grade students at Everett Middle School in San Francisco. Prior to the class, both teachers complied with all state and district parental notification requirements. Two trained speakers from Community United Against Violence (CUAV), a nonprofit organization that has provided more than a decade of well-received educational programs in hundreds of classrooms in the San Francisco school district, attended the hour-long class and answered students' questions regarding the lives of lesbians and gay men.

A parent whose child attended the Everett class claimed that his daughter and her two friends told him that the speakers had spent the better portion of the hour describing personal and graphic sexual acts and that Mr. Buckley and Ms. Squaglia-Castell failed to take any action. "Contrary to the parent's claims, the class *did not* consist of sexually graphic or inappropriate comments and the teachers *did not* fail to adequately supervise the class," said Evans, "The students' questions dealt primarily with nonsexual matters such as, Does your family know that you are gay?, How old were you when you realized you were gay,' Do you want to have kids?' and Do people discriminate against you?'.

At one point during the class, a student asked the speakers how gay people have sex. The speakers, accustomed to receiving sex-related questions, responded in a brief, clinical, and age-appropriate manner.

Although dozens of other students attended the same class and thousands of other students have attended virtually identical family life classes with CUAV speakers, not a single other student or family has complained about the content of the presentation or about Mr. Buckley's or Ms. Squaglia-Castell's competence.

Investigation

In response to the allegations, San Francisco Unified School District conducted an investigation, determined that the teachers were fit teachers, and decided to allow CUAV speakers to continue providing the important educational programs. Taking into account parental concerns, the District adopted a memorandum of understanding with CUAV relating to training, presentation schedules, evaluations, and parent notification.

Nevertheless, almost two years later, the parent filed a complaint against the teachers with the State Commission on Teacher Credentialing and went to the media with accusations against the teachers, CUAV, and the District.

Although the Committee of Credentials originally recommended the revocation of Mr. Buckley's and Ms. Squaglia-Castell's teaching credentials, the new agreement states that both teachers will retain their teaching licenses. In exchange, the teachers have agreed to accept a ten-day suspension that does not impact their ability to continue teaching; the agreement spares them from enduring the ordeal even longer.

"Mr. Buckley and Ms. Squaglia-Castell have agreed to the settlement because they refuse to allow homophobia or hostility towards sex education to strip them of their licenses to teach or to take up anymore of their time or attention," said Crosby, "The settlement is a far cry from victory for those who wanted to end the careers of these distinguished teachers."

In addition, the settlement agreement does not establish any type of precedent in the District. Teachers may continue to teach family life classes and may continue to invite lesbian and gay speakers to their classes.

"Mr. Buckley and Ms. Squaglia-Castell stand firm in their convictions regarding the importance of these classes to all students, regardless of sexual orientation. In these classes, students receive critical information that can literally save their lives or the lives of others," added Evans.

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High Court Upholds San Jose's Anti-Gang Injunction

On January 30, the California Supreme Court ruled that the City of San Jose may implement civil anti-gang injunctions to penalize non-criminal behavior if committed by alleged gang members in a particular neighborhood. The Court overturned a 1995 appellate court decision in the ACLU case, *People v. Acuna*.

"The enthusiastic affirmation of anti-gang injunctions by the state's highest court adds momentum to the broad movement in our state and across the country that advocates criminalizing non-criminal conduct, if such conduct is engaged in by people out of favor -- justifiably or not--with the social mainstream," said ACLU-NC cooperating attorney Amitai Schwartz. Schwartz, a former ACLU-NC staff attorney now in private practice, argued before the high court in November that San Jose's anti-gang injunction is unconstitutionally vague and overbroad and targets Latino youths without sufficient proof that they have committed any crimes or harassed residents.

"Simply because these men and women are suspected gang members, they are stripped of a variety of constitutional freedoms, the rights to associate, to assemble and the right to due process. This ruling effectively places law-making powers in the hands of judges instead of the Legislature," added Schwartz.

In 1995, the City of San Jose branded over thirty young Latinos who congregate in the Rocksprings area as gang members and obtained a preliminary injunction, based on public nuisance law, that imposes up to six months in jail or a $1,000 fine for engaging in such legal activities as being seen in public with another "known gang member," talking to someone inside a car, climbing a tree, making a loud noises, wearing certain clothing, or carrying marbles, screwdrivers, pens, pagers and sparkplugs.

Because the injunction came via a civil suit, those declared gang members were not allowed protections ensured in a criminal proceeding such as the right to an appointed attorney, a jury trial or criminal justice standards of proof.

In April 1995, the California Court of Appeal found that the injunction was overbroad and did not sufficiently define the prohibited activities or provide definite standard for police enforcement and ascertainment of guilt. The California Supreme Court reversed and reinstated the challenged portions of the injunction.

The City of San Jose is not alone in implementing such constitutionally questionable injunctions in an attempt stop gang problems. Seduced by the temporary reduction of violence in specific neighborhoods, cities across the state especially in the Los Angeles area, have issued similar injunctions. Forty-eight cities in California submitted an *amici* brief in the case supporting the San Jose injunction.

In 1994, the ACLU was successful in preventing one such order sought by the City of Oakland. According to ACLU-NC staff attorney Ed Chen, who successfully litigated *Oakland v. "B Street Boys*," the perceived success of gang abatement injunctions, is not the pivotal issue. "Whether they work in reducing crime or not, they flagrantly violate the rights of groups targeted specifically because of their age, ethnicity and relationships. Illegal searches may also work, but our Constitution doesn't permit them, lest we were to allow the government to impose a complete police state."

In addition to Schwartz and Chen, the team of attorneys challenging the San Jose injunction included the Public Interest Law Firm attorneys Patricia Price and Amanda Wilson; Sara Campos of the Lawyers' Committee for Civil Rights; and San Jose lawyers Dan Mayfield and Stuart Kirchick.

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Settlement in Police Malicious Prosecution Suit

After ten years of litigation, three police officers have dismissed their malicious prosecution suit against an Alameda woman who filed a civil rights suit charging the officers with brutality. The officers also sued the woman's husband and sister. The officers received nothing in return for dismissing their suit other than the agreement that each side would bear its own legal costs. This agreement was announced on February 10.

"This is a victory for Virlee Berry and her family as well as for all civil rights plaintiffs," said ACLU-NC staff attorney Ann Brick. "Police cannot use malicious prosecution suits as a form of intimidation to prevent victims of police brutality from seeking justice in the courts."

The litigation, *Fuentes v. Berry*, originated in February, 1987, when Virlee Berry filed a civil rights suit in U.S. District Court against the City of Alameda, the Chief of Police and the three individual officers, Heriberto Fuentes, Robert Villa, and Ronald Jones. Mrs. Berry alleged race discrimination by the Alameda Police Department and brutality by the arresting officers.

On the eve of trial, the City agreed to settle the suit with Mrs. Berry, paying her $15,000. In exchange, the City required Mrs. Berry to drop her case. The three named police officers then filed a malicious prosecution suit in Alameda County Superior Court against Mrs. Berry, her husband, and her sister Betty Williams. The family turned to the ACLU for legal representation.

During the course of the litigation, the Court of Appeal held that when a settlement agreement requires a litigant such as Mrs. Berry to dismiss her claims against *all* of the defendants, even those who do not settle cannot later bring a malicious prosecution action. It was this principle that the ACLU sought to establish in taking this case.

Mrs. Berry, and her family were represented by ACLU-NC cooperating attorneys Jerome B. Falk, Jr. and Barbara A. Winters, both partners in the San Francisco law firm of Howard, Rice, Nemerovski, Canady, Falk & Rabkin, along with ACLU-NC staff counsel Ann Brick and Ed Chen.

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ACLU Veteran Women Activists Honored

Two longtime ACLU activists, Miriam Rothschild and Alice Hamburg, were honored at separate events for their outstanding work for social justice and civil liberties.

Miriam Rothschild, the 1982 recipient of the ACLU-NC Lola Hanzel Courageous Advocacy Award for her outstanding contribution as a volunteer, was honored in San Francisco by the National Committee Against Repressive Legislation (NCARL) on her 90th birthday in January. Rothschild has been active in the ACLU-NC for four decades: she has been tireless in her efforts -- staffing literature tables, calling on telephone alerts for legislative action, bringing carloads of people to rallies, and marching in demonstrations.

A founder of NCARL, Rothschild also chaired the Criminal Justice Committee of the California Democratic Council and was a catalyst in the formation of the Bay Area Coalition to Stop S.1., a draconian federal crime bill inthe 70's.

This nonagenarian activist did not let the birthday party go by without accomplishing another political coup. Rothschild buttonholed San Francisco Mayor Willie Brown who came to wish her a happy birthday and asked him to pledge not to allow the City to participate in the FBI's counterterrorism task force as the agency had proposed. The Mayor agreed, saying he would "not go along with or support any attempt to circumvent San Francisco's current policy on surveillance."

Mayor Brown's comments appeared the following day on the front page of the *San Francisco Examiner*. Thank you, Miriam, for protecting a future generation of political activists from police spying!

Hamburg, a vital leader of the Bay Area's peace and justice community, has been on the frontlines of progressive activism for 50 years. A longtime ACLU member, Hamburg is also a member of the ACLU-NC Founders' Circle. Hamburg was honored by the Jane Addams Peace Association and the Women's International League for Peace and Freedom for a half century of activism at a tribute in Berkeley on February 22.

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Monterey Chapter Gets an 'A' for Essay Contest

The Monterey County ACLU Chapter presented awards to the winners of its thirteenth annual Bill of Rights Essay Contest at its 1997 Membership Meeting in February. The topic this year: "Dog Sniff Searches in Schools: Do They Violate Students' Rights?" drew over 154 essays from local high schools and middle schools in King City, Salinas, Seaside Pacific Grove and Monterey.

The winning essays were read aloud at the annual meeting, and were also printed in the *Monterey Herald*. First place winners received $100 dollars, second place winners were awarded $50 dollars and honorable mentions received a certificate. "Our essay contest theme is always a topical one," explained Chapter Chair Katherine Stoner. "Last year's theme was affirmative action -- mirroring the fight to defeat Proposition 209 -- and this year's dog sniff theme coincided with the ACLU of Northern California's approval of a lawsuit against the Monterey School District for their dog sniff policy."

The first prize winner in the high school category was Atticus Culver-Rease from Carmel High School. The winner of first prize in the middle school category was Lauren Norris from Pacific Grove Middle School. First place winners received $100 dollars, second place winners were awarded $50 dollars and honorable mentions received a certificate.

Maria Wilhelm, who has chaired the Essay Contest Committee since its inception, said that she is "continually amazed at the fine quality of the essays that we receive."

"I get tons of letters from teachers anxious to thank us for the chance to discuss these issues with their students. The students are so enthusiastic that we always have individual students enter on their own, even if teachers haven't assigned the essay," Wilhelm added.

Chapter Chair Stoner feels the contest is so successful "because our active chapter members are so good at selecting topics that interest students and teachers."

"We also have a dedicated core group of readers and judges as well as a retinue of teachers excited about bringing the Bill of Rights to students."

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