



## ACLU NEWS

Newspaper of the  
American Civil Liberties Union of  
Northern California

Volume LXII, No. 4 - March/April 1998

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ACLU News - The Newspaper of the ACLU of Northern California, Spring 1998

## Reaching for the Dream: Profiles in Affirmative Action

When a college recruiter came to Raquel Arias' high school in rural Kingsburg, the career counselors told him, "Our Mexicans don't want to go to college." It took a second trip to the farmworker community before the recruiter was able to hand an application to Arias. Today, the former San Joaquin Valley farmworker is a top surgeon and a USC gynecology professor who was recently appointed to the Medical Board of California, the elite agency that oversees licensing of all the state's doctors.

Dr. Arias is one of the Californians profiled in a new publication *Reaching for the Dream: Profiles in Affirmative Action* which was launched on March 16 at press conferences at the ACLU offices in San Francisco and Los Angeles.

The booklet describes the 31 statutes and related state-funded programs that Governor Wilson has targeted for elimination or curtailment citing their purported violation of Proposition 209.

"We wanted to put a human face on the sometimes abstract question of affirmative action," said ACLU-NC Public Information Director Elaine Elinson, an editor of *Reaching for the Dream*. "We wanted Californians to understand affirmative action through the voices of people whose lives have been changed by these invaluable programs."



A coalition of civil rights groups is distributing the booklet to media outlets and community groups throughout the state.

The programs are now under attack in legislation by Assembly member Bernie Richter (R-Chico), AB 1700, which is due to be heard in the Assembly Judiciary Committee on April 21, and similar legislation by Senator Quentin Kopp (I-San Francisco). *Reaching for the Dream* has been distributed to all members of the state Legislature so that they will be aware of the value of the threatened programs.

This 32-page booklet provides thumbnail sketches of all of the threatened programs -- ranging from the California Academic Partnership Program, which has provided more than 130,000 K-12 students with mentoring, to the programs that provide opportunities for women- and minority-owned businesses at the state and local level.

The legal and policy discussion, *Affirmative Action: Still Fair, Still Necessary*, compiled by some of the leading civil rights lawyers in the state, explains that these programs help to remedy discrimination: They give no preferences to anyone but provide opportunities for thousands of Californians to reach for their dreams.

At the heart of *Reaching for the Dream* are the moving personal profiles of the people whose lives have been changed by affirmative action in California. In addition to Dr. Arias, they include:

**Maidu students from the Yuba County American Indian Early Childhood Education Program (ECE)** -- credited with helping achieve a dramatic reduction in the area's high school dropout rate through an innovative mix of computer training and Native American arts. This unique program, which is targeted for elimination by Assemblyman Richter's bill, is in Richter's district, yet he has never visited it.

**Rosa Manriquez**, the daughter of a Mexican immigrant restaurant worker whose junior high school grades were sinking fast when she was invited to join a special summer academic program for Hispanics in Oakland, part of the **California Student Opportunity and Access Program**. Her grades and aspirations soared. The first person in her family to graduate from high school, she is now a freshman at UC Berkeley with a full scholarship.



**L.J. Dolin, Jennifer Stafford and Debra Tudor**, three of the handful of women in the Elevator Union, Local 8, who fought discrimination and harassment to enter this once-closed trade. One had the highest grade point average among the 200 graduates in her Army mechanics school yet had to spend five years trying to get hired in the elevator repair industry. They are convinced that without affirmative action other women will not have the same chance.

**Derek Smith**, a 31-year old African American contractor who has worked on numerous construction projects, including the renovation of San Francisco's "Crookedest Street in the World." This Stanford graduate credits the Minority Business Enterprise program with giving him the notice and opportunity to make a name for his new company in a white male-dominated industry. He now

employs young black men and women from Bayview/Hunters Point.

**Cecelia Blanks**, a former welfare recipient and single mother from San Diego who got her master's degree and now teaches college and counsels students facing similar hardships. Extended Opportunity Programs and Services (EOPS) helped make her transition possible.

**Fred Lau** who passed the police academy's tough written exam but was told that a 5 foot, 7 1/4-inch man couldn't be a police officer because, among other things, his baton "would drag on the ground." Today he is the Chief of Police of San Francisco, one of the state's most diverse departments.

**Lisa Campbell**, a Chino Hills Republican who founded an environmental cleanup company. With good-faith efforts to seek out women subcontractors required by government, Campbell at one time received up to 50 job notices a week. After 209 passed, she was told, "We don't have to take your bid. There's no more good faith effort."

The moving and colorful profiles were written by Peter Y. Sussman, immediate past president of the Northern California Chapter of the Society of Professional Journalists and a former *San Francisco Chronicle* editor. The booklet also includes an introduction by ACLU-NC Board member David B. Oppenheimer, an Associate Professor of Law at Golden Gate University. The editorial board included contributors from the ACLU affiliates of Northern and Southern California, Equal Rights Advocates, Lawyers' Committee for Civil Rights and others. The booklet, which is a project of a consortium of a dozen civil rights organizations, was published with generous assistance from the van Loben Sels Foundation.

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## Congress Restores SSI to Immigrants

Hundreds of thousands of elderly, blind, and disabled legal residents who faced homelessness and hunger without Supplemental Security Income (SSI) benefits have been assured of their right to receive public assistance thanks in part to a lawsuit challenging federal legislation that would have purged legal immigrants from the SSI rolls.

After the ACLU-NC and a coalition of civil rights attorneys filed the class action lawsuit *Sutich v. Callahan* in U.S. District Court in March, 1997, Congress restored SSI benefits to most legal residents as part of the Balanced Budget Act. In December the Social Security Administration subsequently issued instructions to allow those noncitizens to receive their benefits. As a result, *Sutich* was dismissed without prejudice on January 13. The ACLU suit, filed in conjunction with other civil rights organizations and cooperating attorneys from Heller Ehrman White & McAuliffe, mirrored multiple lawsuits filed throughout the country.

Attorney Judith Gold of Heller said, "It is a great relief that this anti-immigrant legislation has been repealed. This success can be credited in no small way to the plaintiffs who had the courage to tell their personal stories to the public."

The *Sutich* case was filed on behalf of legal residents who receive subsistence-level SSI benefits because they cannot work due to advanced age or disability. The plaintiffs were being denied SSI benefits or would have been purged from SSI rolls as a result of the so-called "welfare reform" bill passed by Congress and signed by President Clinton in 1996. More than forty percent of those who would have been affected live in California.

The lawsuit charged that Section 402 of the Personal Responsibility and Work Opportunity Act of 1996 violated the constitutional rights of indigent legal resident immigrants by unfairly barring them from receiving SSI because of their non-citizen status.

ACLU-NC managing attorney Alan Schlosser said, "Congress corrected unjust legislation which would have threatened the lives of full-fledged members of our society, many who were welcomed to this country under U.S. national immigration policies like family unification, worker recruitment, and refugee asylum."

The case was litigated by cooperating attorneys Judith Z. Gold, Paul W. Sugarman, Roger W.

Doughty, Thomas P. Brown, Robert Mahnke and Jeff Hessekiel of the San Francisco law firm Heller, Ehrman, White & McAuliffe; ACLU-NC attorneys Alan Schlosser and Edward Chen; ACLU National Immigrants' Rights Director Lucas Guttentag; Yolanda Vera and Linton Joaquin of the National Immigration Law Center; Victor Hwang and Gen Fujioka of the National Asian Pacific American Legal Consortium; Gerald A. McIntyre and Herbert Semmel of the National Senior Citizens Law Center; Melinda Bird and Giocando R. Molina of Protection and Advocacy, Inc.; and Robert Rubin of the Lawyers' Committee for Civil Rights.

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## Kern County Library Removes Internet Filters

Responding to a warning from the ACLU that mandatory use of Internet filtering software could result in a lawsuit, on January 28, Kern County agreed to provide a choice of an unfiltered or a filtered computer to both adult and minor library patrons. Minors do not need parental consent to use an unfiltered computer.

The resolution came less than a week after the National ACLU and the ACLU affiliates of Northern and Southern California told Kern County officials that the organization would take legal action if they did not remove Internet filtering software from public library computers within 10 days.

"This is a victory for free speech rights," said ACLU-NC staff attorney Ann Brick. "Web sites accessed from a library's computer are just like the books on a library's shelves. The Constitution prevents the government from censoring either one."

The controversy began in July 1996, after the Kern County Board of Supervisors passed a resolution to block on-line material defined under California state law as "harmful to minors." Upon learning that the Board's solution involved installation of a filtering program called "Bess," the ACLU contacted county officials.

Although developers of Bess software had earlier informed the Board that they could not customize the software to only filter "harmful matter" as defined by

the California Penal Code, the Board went ahead with the program. Only after hearing from the ACLU did the Board go back to the makers of Bess and ask - unsuccessfully - that the company "refine" the software.

Among the web sites the software blocked were political sites such as those advocating drug policy reform and the site of Hate Watch, an organization dedicated to working to eliminate bigotry.

"We applaud the Board of Supervisors' decision to honor the First Amendment rights of Kern County readers by changing its library Internet access policy to allow all adult and minor patrons to decide for themselves whether to access the Internet with or without a filter," said



national ACLU staff attorney Ann Beeson, in a letter to the County counsel.

Beeson also urged the libraries to clearly mark filtered and non-filtered terminals so that patrons can make informed decisions about which terminal to use, and to place terminals for maximum privacy.

The filtering issue has drawn many cities across the country into a national debate about whether library systems should limit what people can see on the Internet.

On the other side of the country, the National ACLU has intervened in a lawsuit on behalf of on-line speakers, including *San Francisco Examiner* columnist Rob Morse, whose web site has been filtered out of local library computers in Loudon County, Virginia.

"Libraries are our nation's storehouses of knowledge," said Brick. "Their mission is to make that knowledge available to young and old alike. Filters are fundamentally antithetical to that mission."

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## Korematsu Honored with Medal of Freedom

*In January, Fred Korematsu was honored with the Medal of Freedom, the country's highest civilian award, at a White House ceremony. As a tribute to Fred Korematsu and his enduring courage, ACLU-NC Executive Director wrote the following "Perspective," which was aired on KQED-FM in February:*

This week, as we commemorate the Day of Remembrance, marking 56 years since the Executive Order was issued during World War II which resulted in the incarceration of more than 110,000 Japanese Americans, we should stop and reflect on the journey of a true hero of the civil rights movement, Fred Korematsu.

The way I've heard the story is that in June of 1942, Fred Korematsu, a 22-year-old draftsman, was locked up in the Oakland Jail, when he was surprised to learn that he had a visitor. It turned out to be a stranger, by the name of Ernest Besig.

Besig, who was then the Executive Director of the ACLU of Northern California, had read an article in the local paper about a U.S. citizen of Japanese descent who refused to go quietly to the internment camps. He clipped the article and drove to the jail to meet Fred Korematsu and to offer the ACLU'S assistance in representing him.

Who could have known on that summer day that Fred Korematsu's resistance, born out of some very basic sense of justice, and his meeting with Ernie Besig, would create a significant chapter in the advancement of civil rights in this country.

It was a long journey from Fred Korematsu's incarceration in a local jail, to concentration camps, through the darkest days of wartime anti-Japan-ese hysteria, all the way to the U.S. Supreme Court. His brave challenge to the government's decision to intern Japanese Americans was rejected then by the high court; his conviction for refusing to obey was upheld. It was a journey so painful, that for decades he couldn't even share these events with his own children. Yet forty years later, with that same sense of justice and courage, he decided to



reopen the case; and, in 1983, won a successful reversal of his conviction.

This long journey made the short walk to the podium last month, to accept the Medal of Freedom from the President of the United States, a sweet irony. Once denounced as an enemy alien, today Fred Korematsu is the recipient of the highest civilian honor for his courage in trying to force a nation, even during a time of war, to adhere to the principles of the Bill of Rights.

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## ACLU Joins Landmark Lesbian Custody Case

by Kelli Evans  
Staff Attorney

Lisa Wagner and Kathleen Crandall lived together for several years as domestic partners. At the inception of the relationship, Wagner already had a three-year-old child. During the course of the relationship, Wagner and Crandall jointly decided to have a second child. Wagner gave birth to the child and Crandall participated in the birth. Crandall's surname was given to the child and Crandall and Wagner continued to live together and share parenting activities for several years following the second child's birth. The women jointly raised the children for eleven years.

When the couple separated, both children remained with Wagner. However, Crandall continued to visit regularly with both children, with whom she shared a loving parental relationship and a deep attachment. But disputes between Wagner and Crandall eventually led Wagner to cut off her former partner's contact with the children.

In every sense of the term, Crandall was the children's *de facto* parent. Under current law, however, if the *de facto* parent's relationship with the child's legal parent terminates, the *de facto* parent has no standing to *initiate* custody or visitation proceedings. Instead, she must wait for someone with standing to bring a proceeding (such as the juvenile court, a grandparent, or a stepparent). However, if no one else initiates the proceeding, and the parent with the legal claim to the child forbids further contact, the *de facto* parent has no alternative but to withdraw from the child's life.

In search of a forum to raise her custody/visitation claims, Crandall filed an action under the Probate Code for Guardianship. In a landmark ruling, an Alameda County trial judge recognized that a *de facto* parent may be entitled to a limited form of personal guardianship in order to obtain visitation rights to children. The court granted jurisdiction and held the first lesbian co-parent custody/visitation trial in California history. However, Crandall lost her visitation battle due to latent homophobia and the misapplication of current law. She appealed the decision to the First District Court of Appeal.

The ACLU of Northern California, along with the National Center for Lesbian Rights, filed an

*amicus* brief with the appellate court which argues that the de facto parent doctrine protects a lesbian co-parent's right to maintain a relationship with children for whom she has shouldered all the responsibilities of parenthood. In turn, the brief argues that de facto parents must be provided a fair forum in which to raise their claims.

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## **Court Allows Open Meeting Lawsuit Against Governor, Regents for Anti-Affirmative Action Vote**

On March 11, the California Court of Appeal ruled that an Open Meeting Act lawsuit against Governor Wilson and the U.C. Regents could proceed as there is information to support plaintiffs' claim that the Governor and Regents broke the law.

"This ruling is a victory for the public's right to know," said ACLU-NC attorney Ed Chen.

The suit was initiated in February 1996, when student reporter Tim Molloy, and the UC Santa Barbara student newspaper, *The Nexus*, charged that Governor Wilson and the Regents violated the Bagley Keene Open Meeting Act by secretly locking up the votes of a majority of Regents through a series of private phone conversations prior to the July 20, 1995 meeting at which the Board voted to approve resolutions abolishing affirmative action at the University. The students are represented by the ACLU affiliates of Southern and Northern California, the First Amendment Project and others.

The Governor and Regents sought to have the suit, *Molloy v. UC Regents*, dismissed on procedural grounds. The trial court refused to do so, and the Court of Appeal's decision affirms that ruling. The decision will allow the plaintiffs to take depositions regarding the Governor's and Regents' alleged wrongdoing. It also protects the ability of citizens and newspapers to challenge official wrongdoing in the future by seeking a determination from the court that the Regents violated the law. The decision does not, however, allow Molloy to obtain a remedy of nullification of the UC Regents vote on affirmative action, because his suit was filed after the 30-day statute of limitation.

ACLU-SC attorney Dan Tokaji said, "This ruling means that Governor Wilson and the Regents will have to stop stonewalling, and disclose information that should have been made public months ago."

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## **ACLU Asks S.F. Mayor to Ensure City Employees' Speech Rights**

In a letter to San Francisco Mayor Willie Brown, ACLU-NC Managing Attorney Alan Schlosser asked the Mayor to issue a directive to ensure that "city employees who wish to exercise their constitutional rights may do so without fear of reprisal."

The ACLU demand was prompted initially by a complaint to the ACLU about a Muni restriction limiting employee contact with the media. Schlosser noted that in a letter from Muni chief Emilio Cruz, he was informed that Cruz had clarified the policy to apply only to those comments that employees make as Muni representatives and not as individuals. "However, it seems that city employees in other departments are burdened by similarly overbroad policies which restrict their free speech rights," Schlosser wrote.

Because statements by city officials quoted in the media conflict with the First Amendment, Schlosser urged the Mayor to issue a directive to all city departments which makes it clear that public employees who are speaking as individuals and not on behalf of the city have the same right to discuss public affairs with the media as any other citizen.

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## **Falsely Detained Teen Can't Get Damages Under Civil Rights Law**

**by Maria Archuleta**

On January 29, the California Supreme Court ruled that a sixteen-year old African American who was unlawfully detained by retail store employees cannot receive damages or attorneys fees for the violation of his civil rights because a private entity, not the government, committed the violation.

The ACLU-NC filed an amicus brief in *Jones v. K-Mart* on behalf of the innocent teenager, arguing that California Civil Code extends constitutional rights, such as protection against unreasonable searches and seizures, to private entities as well as to the government.

K-Mart employees forcibly search-ed, detained and handcuffed the teenager as a suspected shoplifter which left him with lingering back and neck problems. After the humiliating and painful struggle, the employees realized that he had not stolen anything and released him before the police arrived. The young man then sued the store.

A jury decided that the employees did not discriminate against the plaintiff because of his race, but that they did violate his constitutional rights. He was awarded damages and attorneys fees under California's Bane Act which explicitly states that private parties need not be acting under the "color of the law" for their conduct to be considered in violation of constitutional protections when they act in an intimidating or coercive manner.

K-Mart appealed the jury award and the California Court of Appeal reversed the ruling. When the young man appealed to the California Supreme Court, the ACLU-NC filed a friend of the court brief.

ACLU Managing Attorney Alan Schlosser said, "Both the plain statutory language and the legislative history showed an intent to broaden constitutional protections so that Californians are protected from intimidating and coercive actions by private as well as state actors. The Court's narrow interpretation represents an unwarranted judicial rewriting of this important civil rights statute."

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## Chen and Lobaco Honored

Two ACLU-NC staff members, Legislative Director Francisco Lobaco and staff attorney Ed Chen, were honored recently for their outstanding efforts for civil liberties.

On March 26, Lobaco was honored by the Society of Professional Journalists with the James Madison Award for his work on a bill which would have restored the media's right to interview California prisoners face-to-face. The award was presented to him at SPJ's annual awards dinner held at the Fort Mason Officer's Club in San Francisco.

Due in large part to Lobaco's lobbying efforts, the bill passed with a majority vote in both houses, however, Governor Wilson vetoed the measure. The bill attempted to reverse the California Department of Correction's (CDC) 1996 ban on face-to-face interviews with specified prisoners and confidential mail between media and all prisoners claiming "security concerns." On February 27, the Asian American Bar Association (AABA) of the Greater Bay Area honored Ed Chen with the 1998 Joe Morozumi Award for Exceptional Legal Advocacy. The award was presented by Jeff Adachi of the San Francisco Public Defender's Office at the AABA's 20th Annual Installation Dinner at the Empress of China restaurant in San Francisco.

Chen was part of the legal team that challenged the legality of Proposition 209 in *Coalition for Economic Equity v. Wilson* and authored the ACLU's amicus brief to the U.S. Supreme Court in *Croson v. Richmond*, in support of a city minority contracting program. He is nationally known as an expert on language discrimination and has litigated numerous cases involving English-only workplace rules, accent discrimination, government restrictions on foreign language business signs and the constitutionality of laws proclaiming English as the official language.

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## ACLU Foundation's Gift Annuity Program

**You've Sent Checks to the ACLU --  
Now Let Us Send Checks to You!**

By participating in the

### **ACLU Foundation's Gift Annuity Program**

you can receive quarterly income checks for the rest of your life and, at the same time, help the American Civil Liberties Union protect our precious constitutional rights for years to come. The rate of return you can receive depends upon your age. Much of this income is tax-free! And, because your annuity contract will help the ACLU Foundation, you will receive a sizable income tax charitable deduction for participating. Return this form for a personalized illustration.

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## Field Program Meetings

### Chapter Meetings

(Chapter meetings are open to all interested members. Contact the Chapter activist listed for your area.)

**B-A-R-K (Berkeley-Albany-Richmond-Ken-sington) Chapter Meeting:** (Usually fourth Thursday) For more information, time and address of meetings, contact Jim Chanin at 510/848-4752 or Rachel Richman at 510/540-5507.

**Fresno Chapter Meeting:** (Usually fourth Tuesday). Please join our newly-reorganized Chapter! Meetings are held at 7:00 PM at the Fresno Center for Non-Violence. For more information, call Bob Hirth 209/225-6223 (days).

**Lesbian and Gay Rights Chapter Meeting:** (Usually first Thursday) For schedule of meetings or more information, contact Steve Zollman at 510/845-7108.

**Marin County Chapter Meeting:** (Usually third Monday) Meet at 7:30 p.m. at the Corte Madera Town Center, Community Meeting Room. For more information, contact Kerry Peirson at 415/383-3989.

**Mid-Peninsula Chapter Meeting:** (Usually fourth Thursday) Meet at 7:00 PM, at 460 South California Avenue, Suite 11, Palo Alto. For more information, contact Ken Russell at 650/325-8750.

**Monterey County Chapter Meeting:** (Usually third Tuesday) Meet at 7:15 PM, Monterey Library. For more information, contact Richard Criley at 408/624-7562.

**North Peninsula (San Mateo area) Chapter Meeting:** (Usually third Monday) Meet at 7:30 PM, at 700 Laurel Street, Park Tower Apartments, top floor. For more information, contact Marshall Dinowitz at 415/595-5131.

**Redwood (Humboldt County) Chapter Meeting:** (Usually third Thursday) Meet at Chan's at 359 G Street in Arcata at 7:00 PM. For information on upcoming meeting dates and times,

contact Christina Huskey at 707/444-6595.

**Sacramento Valley Chapter Meeting:** (Usually first Wednesday) Meet at 7:00 PM at the Java City in Sutter Galleria (between 29 & 30, J & K Streets) in Sacramento. For more information, contact Ruth Ordas at 916/488-9955.

**San Francisco Chapter Meeting:** (Third Tuesday) Meet at 6:45 PM at the ACLU-NC Office, 1663 Mission Street, Suite #460, San Francisco. The San Francisco Board would like to welcome and talk to new chapter members at the New Members Party on Friday, April 3, from 7:00 to 9:00 p.m. Special Guest: Sue Bierman. For more information, call the Chapter Information Line at 415/979-6699.

**Santa Clara Valley Chapter Meeting:** (Usually first Tuesday) Meet at 7:00 PM at the Community Bank Towers, 1st Floor Conference Room, 111 West St. John Street, San Jose. For further chapter information contact Jon Cox at 408/293-2584.

**Santa Cruz County Chapter Meeting:** (Usually third Monday) Meet at 7:15 PM. For more information, contact Dianne Vaillancourt at 408/454-0112.

**Sonoma County Chapter Meeting:** (Usually third Tuesday) Meet at 7:30 PM at the Peace and Justice Center, 540 Pacific Avenue, Santa Rosa. Call Judith Volkart at 707/526-2893 for more information.

**Yolo County Chapter Meeting:** (Usually third Tuesday) Meet at 7:30 PM, 2505 5th Street 154, Davis. For more information, call Natalie Wormeli at 916/756-1900 or the Chapter Hotline at 916/756-ACLU.

## **Chapters Reorganizing**

If you are interested in reviving the Mt. Diablo or North Valley Chapter, please contact Field Representative Lisa Maldonado at 415/621-2493.

## **Field Action Meetings**

(All meetings except those noted will be held at the ACLU-NC Office, 1663 Mission Street, 460, San Francisco.)

**Student Outreach Committee:** Meet to plan outreach activities. For more information, contact Nancy Otto at 415/621-2006 ext. 37.

**Student Advisory Committee:** For more information, contact Nancy Otto at 415/621-2006

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