ACLU NEWS

Newspaper of the American Civil Liberties Union of Northern California

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Vigil at San Quentin for Jay Siripongs

In the driving rain and howling wind, ACLU-NC members and staff joined more than 300 demonstrators gathered outside the gates of San Quentin to protest the execution of Jaturun Siripongs on February 9. ACLU-NC Executive Director Dorothy Ehrlich spoke out at the midnight rally against the Governor's denial of clemency.

"Gray Davis had to make a decision about sparing Jay Siripongs life. He had a choice to act like a Governor or to continue to campaign for Governor. Tragically, he chose the latter.

"Governor Davis issued a remarkably superficial order to deny clemency, in a case where the widow of the

victim, the former Warden of San Quentin and the Pope asked for mercy. A case where the condemned man was uniformly described as gentle. A case where the prosecution illegally withheld and concealed important information from the defense," Ehrlich continued.

"This was a case where a pro-death penalty Governor, if willing to look independently at the facts, could have and should have granted clemency. "What does that foretell for the more than 500 others sitting on California's Death Row?" Ehrlich asked the crowd of abolitionists. "Decisions about whether a life should be spared are heart wrenching decisions. They cannot be made on the basis of politics. We must insist that Governor Davis find the will to carry out this solemn responsibilty."

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Minority Students Sue U.C. Berkeley for Discrimination: Admissions Process Violates Federal Civil Rights Laws

- **Jesus Rios is the son of immigrant farmworkers who worked in the fields since he was eight years old. The first in his family to attend college, he graduated from San Benito High School in Hollister with a 4.0 grade point average, having played a leading role in several Latino student organizations and the California Scholarship Federation.**

- **Raina Dyer was on El Cerrito High School's varsity basketball team for four years, served as tutor in her church and as Treasurer of the Black Student Union. Raina, who aspires to be a teacher, and her brother are the first in her family to attend college and she is currently a freshman at UCLA.**

- **Justine Certeza attended Armijo High School in Fairfield where she was Senior Class President and a member of the National Honor Society and the Asian Pacific Islander Club. She was a member of her high school's Academic Decathlon Club which placed second in Solano County.**

Despite their high academic achievement and outstanding school records, Jesus, Raina and Justine could not get into U.C. Berkeley this year.

They are part of a group of African American, Latino, Pilipino American students and organizations who filed a class action lawsuit on February 2 in U.S. District Court in San Francisco, charging that U.C. Berkeley's undergraduate admissions process violates federal civil rights laws. Plaintiffs include African American, Latino and Pilipino American freshmen college students currently attending college elsewhere who were denied admission to U.C. Berkeley, as well as three minority organizations that represent future applicants to Berkeley: the Imani Youth Council of the Oakland NAACP, the California League of United Latin American Citizens, and the Kababayan Alliance, a Pilipino high school student organization.

"U.C. Berkeley discriminates against the students of color we represent. The new admissions policies and practices have a totally unjustified disparate impact on African American, Latino,

and Pilipino American applicants. This type of discrimination is illegal under Title VI of the Civil Rights Act," explained Joseph Jaramillo, an attorney with the Mexican American Legal Defense and Educational Fund, one of several civil rights organizations representing the plaintiffs.

Berkeley implemented a new policy to admit freshmen for Fall 1998. One change, resulting from the University of California Regents Resolution SP-1, prohibits admissions readers from considering an applicant's race, as one among many other factors, in selecting the freshman class. Berkeley has also made other changes to its admissions process, not required by SP-1, that plaintiffs allege fail to consider fairly African American, Latino, and Pilipino American applicants.

"Even when affirmative action was in place, parts of the Berkeley admissions process were unfair to African American, Latino, and Pilipino American applicants. For instance, Berkeley has always placed too great an emphasis on SAT scores and has now adopted a policy that gives extra preference to students who take courses not equally available to all California high school students," added Jaramillo.

"The new admissions process has resulted in the resegregation of U.C. Berkeley," charged Michelle Alexander, Director of the ACLU-NC Racial Justice Project. "The process has a totally unjustified disparate impact on the African American, Latino, and Pilipino American applicants in violation of the Civil Rights Act and the U.S. Constitution.

"In just one year, the numbers of African American and Latino students admitted to Berkeley were cut in half," Alexander noted.

"In the past, affirmative action policies attempted to compensate for some of the unfair components of the admissions process," stated Eva Paterson, Executive Director for the Lawyers' Committee for Civil Rights. "In the absence of affirmative action, we are simply left with a discriminatory system."

Julie Su of the Asian Pacific American Legal Center of Southern California, charged, "As a leading public institution in California, responsible for educating future leaders of the most diverse state in the country, Berkeley must live up not only to its own mission, but to the principles of fairness and equality we all cherish."

(Front row) Eva Paterson of the Lawyers' Commit-tee for Civil Rights, with student plaintiff Jesus Rios and (second row l. to r.) ACLU-NC attorney Michelle Alexander, LCCR attorney Phoenix Streets, and students Eric Tandoc and Raina Dyer.

In the Fall of 1998, over 750 African American, Latino and Pilipino American applicants with grade point averages of 4.0 or better were denied admission. While white students with 4.0 GPAs or better had a 48.2 percent chance of admission, Latino students had only a 39.7 percent chance, African American students a 38.5 percent chance and Pilipino students a 31.6 percent chance. The disparity is even greater when comparing the total number of applicants of each group.

Speaking at a packed press conference at the San Francisco Federal Building, student plaintiff Jesus Rios said, "As the son of immigrant farm workers, my family encouraged me to work hard to earn a 4.0 grade point average so that I could have the type of good college education Berkeley provides. There is something terribly wrong when qualified minority students cannot attend UC Berkeley," observed Rios, a 1998 graduate of San Benito High School in Hollister who is a freshman at U.C. Davis.

Students at many of California's 2,600 high schools never reach U.C. Berkeley's gates. More than half of the freshman class at Berkeley (53%) come from fewer than 5 percent of California's high schools, the advocates point out.

"U.C.Berkeley's current process places too much weight on insignificant differences in SAT scores and gives enormous preferences to students who take Advanced Placement, or AP,

courses," explained Kimberly West-Faulcon, Western Regional Counsel for the NAACP Legal Defense and Educational Fund. "The first problem is that an SAT score tells you very little about what an applicant will ultimately contribute to Berkeley. The second problem is that many schools with high concentrations of African Americans, Latinos and Pilipino Americans have no AP courses at all. Rewarding applicants with slightly higher SAT scores who had access to AP courses simply because of where they attended high school doesn't reward merit, it rewards privilege."

Student plaintiff Justine Certeza, a Pilipina American freshman at U.C. San Diego, had little access to AP courses at her Fairfield high school. "We were very limited in resources," she said. She is angry that Berkeley puts so much emphasis on courses that she and others could not take. "They tell us we're not good enough for them. Well, that's not good enough for me!"

One of the student plaintiffs, Gregory McConnell Jr. is the grandson of attorney Wendell McConnell who joined Thurgood Marshall in fighting school desegregation in Brown v. Board of Education. "I am fighting the same battle that my grandfather fought fifty years ago," McConnell said.

The suit was filed by the ACLU-NC, MALDEF, the Lawyers' Committee for Civil Rights, the NAACP-LDF, and the Asian Pacific American Legal Center.

The defendants include members of the University of California Board of Regents, the President of the University of California System and the Chancellor of U.C. Berkeley.

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Courts Uphold Uncensored Internet Access

LIVERMORE LIBRARY PREVAILS

BY MELISSA DAAR

Two recent court decisions, one denying a parent's second attempt to force library Internet censorship, the other enjoining enforcement of a federal Internet censorship law, demonstrate the ACLU's continued success in the courts to maintain uncensored expression on the Internet.

In a first of its kind ruling endorsing on-line free speech in libraries, the Alameda County Superior Court on January 14 dismissed a lawsuit seeking to require the Livermore Library to censor Internet use at the library. The ruling in Kathleen R. v. City of Livermore marks the second time that the court has rejected an attempt by the plaintiff Kathleen R. to force the Livermore library to abandon its open access policy governing Internet use.

"The court's ruling sets an important precedent for libraries in California and across the nation," said ACLU-NC staff attorney Ann Brick, who filed a friend of the court brief in support of the library. "By upholding the library's open access policy, the court not only vindicates the judgment of the library board in adopting the policy, it vindicates the First Amendment values on which the policy rests."

Last October, the Alameda County Superior Court dismissed the lawsuit's original complaint in which Kathleen R. argued that the library's open access policy constituted a public nuisance. In her amended complaint, Kathleen R. claimed she had a constitutional right to force the library to discontinue its open access policy. Following the hearing on January 13, Judge George Hernandez dismissed the second complaint, stating that no further amended complaint could be submitted to the court, thereby dismissing the entire lawsuit.

In its amicus brief, the ACLU noted that the Livermore Public Library's policy on Internet use specifically informs its patrons that material available over the Internet may be controversial, that the library is responsible for the content of material available on the Internet, and that parents are responsible for supervising the Internet use of their children.

"The library's policy is sensitive both to First Amendment concerns and the concerns of

parents," Brick noted. "It enables each family to be sure that its children use the Internet in a manner that is consistent with its own values without imposing those values on other families."

Brick explained that this position has long been espoused by the American Library Association and the majority of libraries across the country.

In a recent related case in which the ACLU represented Internet content providers, Mainstream Loudoun v. Board of Trustees of the Loudoun County Library, a federal court in Virginia held that a library's policy of using filters to censor Internet access on library computers violated the First Amendment. The federal judge, in striking down the library's filtering policy, noted that the software, which claimed to block only obscene materials, blocked sites such as those of the San Francisco Chronicle and Examiner.

"We are pleased that the Livermore court recognized, as a Virginia court recently did, that blocking software in libraries creates, rather than solves, constitutional problems," said Ann Beeson, a National ACLU staff attorney who represented a group of Internet content providers in the Virginia case.

The amicus brief in support of the Livermore Library was filed on behalf of the ACLU-NC, the national ACLU and People for the American Way.

NEW FEDERAL LAW BLOCKED

In another related case, ACLU v. Reno, a federal court in Philadelphia granted a preliminary injunction against the "Child Online Protection Act," saying that the federal Internet censorship law would restrict free speech in the "marketplace of ideas."

The national ACLU filed the lawsuit along with the Electronic Privacy Information Center (EPIC) and the Electronic Frontier Foundation (EFF).

The law, passed by Congress last October, made it a federal crime for commercial websites to communicate material considered "harmful to minors." In granting the preliminary injunction, the Court held that the groups challenging the law are likely to succeed on their claim that the law "imposes a burden on speech that is protected for adults."

The Court's ruling came after a six-day hearing at which the ACLU presented testimony from website operators who provide free information about fine arts, news, gay and lesbian issues and sexual health for women and the disabled, and who all fear that the law will restrict their ability to engage in communication protected by the First Amendment. San Francisco Poet Laureate Lawrence Ferlinghetti and David Bunnell, former ACLU-NC Board member and publisher of Upside Magazine, filed statements supporting the plaintiffs' position.

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New Hope for a Civil Rights Agenda in California

BY DOROTHY EHRLICH
ACLU-NC EXECUTIVE DIRECTOR

Invigorated by the prospect of new opportunities for successful legislative action as a result of the November election, the ACLU-NC and our coalition partners are developing exciting, aggressive legislative agendas to promote civil rights, immigrant rights, the rights of the poor and reproductive freedom.

Our previous efforts at sponsoring affirmative legislation, even when ap-proved by the Legislature, had been met with the veto of Governors over the past 16 years. A new administration allows for new thinking and cautious optimism that bills proposed by the ACLU and its allies have a chance of becoming law.

Our new-found optimism resulted in a series of proposals -- a veritable shopping list of ideas for new legislation and executive orders, which ACLU's legislative office has already begun to pursue.

Our talented and experienced legislative advocates Francisco Lobaco and Valerie Small Navarro are literally at the center of this legislative storm. Their knowledge of the workings of the Capitol and their commitment to civil rights and civil liberties help them to provide leadership to multi-faceted advocacy coalitions.

Our priorities range from reintroducing two ACLU-sponsored bills that had been vetoed over the past two years, including the "Driving While Black of Brown" legislation; and the "Access to Prisoners by Media" legislation.

We are also proud to spearhead the campaign to pass a new piece of legislation, the Civil Rights Coalition-sponsored Omnibus Civil Rights bill. This measure, authored by Assemblywoman Shiela Kuehl (D - Los Angeles) will add needed provisions to the Fair Employment and Housing Act to strengthen and expand its protections.

We are also asking the new Governor to rescind some of Governor Wilson's previous

executive orders. We joined with other civil rights organizations throughout the state in a letter asking Governor Gray Davis to rescind Wilson's order banning the collection of data on the participation of minority and women-owned business enterprises in state contracting. This information is crucial in determining whether or not there is race or gender discrimination in the multi-billion dollar state contracting.

DIVERSE APPOINTMENTS

With our Civil Rights Coalition partners, we sent letters to the Governor and new cabinet members to urge appointments to top public policy positions to reflect the diverse people of California. While the new Governor has made an explicit commitment to women's groups that women would be included in top positions, no such commitment has been made to advocates for people of color.

In our letter to Governor Davis, we noted, "It is our sincere hope and expectation that your administration will represent a sharp departure from the politics of exclusion and division practiced by your predecessors. Over the past sixteen years, very few appointments of women and minorities were made to top public policy positions in state government.

"This shameful record reflects the loss of an incredible pool of talent and experience which would have greatly benefited our state. Indeed although Latinos constitute more than 25% of California's population, less than 5% of the appointed policy leaders were Latino. Similarly, Asian Americans constitute nearly 10% of the state's population, yet accounted for less than 2% of appointed policy leaders. African Americans make up more than 7% of California's population, but they held approximately 2% of appointed policy positions.

"Good governance requires the thoughtful participation of skilled people who represent diverse experiences and backgrounds," our letter noted, and we urged the Governor to ensure that his administration "reflects the talent and takes advantage of the wisdom of all Californians."

NEW BALLOT INITIATIVES

On the initiative front, however, this year brings sobering news. Both Governor Pete Wilson's draconian Juvenile Justice Reform Initiative and the anti-same sex marriage measure have qualified for the March 2000 ballot.

The ACLU-NC will be joining with our allies to initiate early efforts to organize statewide campaigns to defeat these two measures, which, if enacted, would present grave dangers to civil liberties. (see article in this issue.).

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Court Halts Wilson Plan to End Affirmative Action Programs

Just days before he left the Governor's office, Pete Wilson was delivered a setback by the Sacramento Superior Court when it ruled that the affirmative action programs of several state agencies were indeed constitutional and should not be discontinued.

The ruling came in the case of Wilson v. State Personnel Board, et. al., which Wilson filed in 1995 as part of his plan to end affirmative action in California. Wilson sued five state agencies that administered legislatively-mandated affirmative action programs, including the State Personnel Board, California Community Colleges, the California State Lottery Commission, and others. These programs affected more than 200,000 state civil service employees, 47,000 community college employees, and $4 billion in public works contracts awarded each year.

The Governor sought to invalidate these statutes and end the programs. He was later joined in his lawsuit by Ward Connerly, the architect behind Proposition 209. Once Proposition 209 went into effect, Wilson and Connerly added a claim that the statutes violated that initiative as well.

Because the state agencies were sued by the Governor, they did not vigorously defend the constitutionality of the statutes. So several civil rights organizations, including the ACLU-NC, Equal Rights Advocates and the Employment Law Center, joined by Jeff Bleich of Munger, Tolles & Olson intervened and assumed the substantive defense of the programs attack. Connerly and Wilson were represented by the Pacific Legal Foundation, a conservative public interest law firm that has challenged many affirmative action programs since 209's implementation.

In November, the Sacramento Superior Court upheld the constitutionality of three of the five programs. Equal Rights Advocates attorney Beth Parker explained, "The court found that the two affirmative action employment programs and the disadvantaged small business procurement program did not violate either the Equal Protection Clause or Proposition 209. It specifically held that equal protection guarantees were not implicated by affirmative government actions that seek to expand employment and other economic opportunities for minorities and women without disadvantaging persons of other racial groups or men. Thus, outreach, monitoring, and recruitment programs were permissible."

To the extent Proposition 209's ban on "preferential treatment" conflicted with these principles,

the court ruled, it must yield to the broader, anti-discrimination mandate of federal law and the U.S. Constitution.

Parker noted that the court also articulated for the first time the test courts should apply in determining the validity of a statutory program under Proposition 209. "A program only should be invalidated if it, `in its general and ordinary course, will inevitably result in a preference for minorities or women in public employment and contracting which, considering the economic realities of the program, actually disadvantages non-minorities or men.' This was a far more restrictive test than plaintiffs had advanced. Under it, most programs under attack should withstand constitutional scrutiny," Parker added.

Connerly has announced his intention to appeal. "With the election of a new, Governor, who publicly opposed Proposition 209 and other anti-affirmative action measures, it is unclear what position the State now may take," said ACLU-NC staff attorney Ed Chen. "Hopefully, it will decide to support the decision of the Superior Court and vigorously defend the programs against constitutional attack."

Chen noted that the ACLU-NC and other civil rights groups that defended the statutes during the litigation, have asked both the Governor and the newly elected Attorney General to reconsider the State's position. It has also requested the Attorney General to investigate the prior administration's hiring of the Pacific Legal Foundation and terminate its representation.

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Language Rights Victories in State, Federal Courts

BY MELISSA DAAR
PUBLIC INFORMATION ASSOCIATE

In January, the ACLU-NC had victories in two important cases challenging language discrimination. On January 11, the U.S. Supreme Court refused to revive an English-only initiative passed by Arizona voters declaring English to be the state's official language. In California, the Sonoma County Superior Court approved a settlement ensuring that the California Labor Commissioner provide non-English speaking persons filing claims for unpaid wages with materials and services in their own languages.

Legal representation and support on both these cases were provided by the Language Rights Project, cosponsored by the ACLU-NC and the Employment Law Center of the Legal Aid Society of San Francisco.

"These decisions demonstrate that both federal and state courts still understand the serious harm caused by language discrimination, which is prohibited by well-established civil rights laws," said Christopher Ho, ELC staff attorney who worked on the California case. "In the settlement of our case, the Labor Commissioner recognized his obligation under state law to provide access to non-English speaking persons. By approving that settlement, the court reaffirmed the critical importance of ensuring that all aspects of government be available to all people, irrespective of their primary language."

That case, Martinez v. Millan, began when Ramiro Martinez, a Spanish- speaking worker, filed a claim for back wages against his former employer with the California Labor Commissioner. At the hearing to discuss a possible settlement of the wage dispute, the Labor Commissioner failed to provide an interpreter even though Martinez spoke no English. Martinez later filed the class action representing the interests of non-English speaking persons throughout the state.

"In Martinez, the Labor Commissioner had violated both the Labor Code -- which specifically requires the agency to provide interpreters at hearing and interviews -- as well as other state laws requiring each state agency which serves a sizable language minority population to provide interpreters and written materials in appropriate languages," said Ed Chen, ACLU-NC staff attorney who also represented the plaintiffs. "In the settlement, the Labor Commissioner

agreed to provide qualified interpreters at all proceedings and in all communications with the general public as well as translate all appropriate forms and written materials."

U.S. SUPREME COURT

In the U.S. Supreme Court case, Ruiz v. Hull, the high court refused to review an Arizona Supreme Court decision voiding an initiative passed by Arizona voters in 1988. The Court ruled that the initiative, which made English Arizona's official language, violated the First Amendment and unduly obstructed non-English speakers' access to government.

The Arizona initiative, Article 28, would have required all state agencies to "act in English and in no other language." The Arizona Supreme Court held that by prohibiting public employees and officials from using non-English languages in the performance of their duties, the amendment unduly burdened the employees' First Amendment rights as well as the rights of those they served. The Arizona Court observed that the law's adverse impact fell almost entirely on Latinos and other national origin minorities. The ACLU-NC, along with the National ACLU and others filed an amicus brief in Ruiz.

The Language Rights Project helps combat language-based discrimination in the workplace, in businesses, and in government services. The Language Rights Hotline (1-800-864-1664) offers free multi-lingual telephone advice and referrals in English, Spanish, Mandarin and Cantonese to workers who have been subject to discrimination based on their language or accent.

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Stop the Anti-Gay Marriage Initiative

START ORGANIZING NOW!

The ACLU of Northern California is organizing to defeat a statewide, anti-same-sex marriage ballot initiative that will appear in the March 2000 primary election.

The ballot initiative, popularly referred to as the "Knight Initiative" (after Republican Assemblymember Pete Knight who led the successful drive to qualify the measure for the ballot after his bill to ban same-sex marriage failed), would add a provision to the California Family Code stating that "only a marriage between a man and a woman is valid or recognized in California."

The purpose of the initiative is to prevent same-sex marriages, including those performed in other states, from being recognized in California.

"The initiative is divisive and a slap in the face to gay men and lesbians," charged ACLU-NC staff attorney Robert Kim. "The ACLU believes that marriage is a fundamental right and a choice that should be available to individuals without regard to the gender of their partner.

"What's more, should this initiative become law and should same-sex marriage become legal in another state, the law would almost certainly be challenged as a violation of the constitutional principle that each state is required to recognize the laws of other states," Kim added.

ACLU-NC is working with other organizations including the All Our Families Coalition, the National Center for Lesbian Rights and the California Alliance for Pride and Equality to defeat the initiative.

Our first speakers training will be Saturday, April 17. We also plan to organize extensive grassroots efforts throughout Northern California. If you are interested in volunteering or can sponsor a discussion in your area, please contact Field Representative Lisa Maldonado at 415/621-2493 ext. 46.

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PROFILE OF AN ACTIVIST

Ramon Gomez

BY ANNA SOROKINA

While an Economics and History major at UC Santa Cruz, Ramon Gomez was introduced to the ACLU through a 1988 dispute with a college administrator over the menu in his Dining Hall.

The administrator cancelled a planned college Filipino dinner because it fell on the anniversary of Pearl Harbor Day. Gomez joined a group of students of color who pro-tested the in-sensitivity of the officer's remarks and the cancellation of the dinner. The students organized a boycott and a rally. The students' actions were supported in a letter from Victor Kimura, a U.C. finance officer, who objected both to the lumping together of all Americans of Asian descent and to the punishing of students for an act of war by the Japanese government almost 50 years earlier. The administrator sued Kimura for defamation over his letter. When the ACLU stepped in to defend Kimura's free speech rights -- Gomez and the other students learned a vital lesson about civil liberties.

The dispute at UC Santa Cruz brought Gomez to the Santa Cruz Chapter board -- where Kimura is also a board member! Gomez also represented the Chapter on the affiliate Board. As a Chapter leader, Gomez has organized workshops against police abuse and the rights of youth, hosted an Annual Conference at UCSC, and defended the rights of homeless people. As an active member of the ACLU-NC Field Committee, Gomez helped plan the 1998 Activist Conference at Asilomar.

"Ramon is an example of the perfect ACLU Chapter activist" said ACLU Field Representative Lisa Maldonado. "He is always thinking of ways to bring the ACLU message to the local community. And he is very effective at helping the chapter to work in coalition with other groups"

The Santa Cruz Chapter has organized Reproductive Rights and Death Penalty network coalitions, and has been involved in racial justice issues. The Chapter is also recruiting college students to participate in ACLU activities.

In November, Gomez, a paralegal in a labor law firm, won a seat on the Watsonville City Council Watsonville. After fifteen years of registering and educating voters about the democratic process, Gomez sees the victory as an important step in his effort to open the doors of government to everybody. He said, "I am looking forward to serving as a councilman to make sure that the Bill of Rights is seriously looked at and protected in the Council."

Gomez, who also tutors junior and senior high school students, worked with youth from the community to defeat a gang injunction. Gomez noted that the defeated ordinance would have prohibited youth to have any type of affiliation with one another, including associating at a Youth Center, coming to a particular area for gang prevention work, or even carpooling for work or school.

"I grew up in Watsonville," said Gomez, who also tutors junior and senior high school students. "I saw how people retreated in classrooms because of different treatment for English-speaking students versus Spanish-speaking students. I will continue my work to ensure equal treatment, fairness, and justice."

Anna Sorokina, a student at USF, is an intern in the Field Department.

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