



ACLU NEWS

Newspaper of the
American Civil Liberties Union of
Northern California

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Victory for Free Speech on the Internet - Court of Appeals Uphold Library's Right to Provide Uncensored Internet Access

In a resounding victory for civil liberties, the First District Court of Appeal in San Francisco has held that a parent may not force a public library to censor the Internet access of its patrons in order to control her own child's use of the Internet.

"The Court's decision in this first-of-its-kind case is a true vindication for public libraries committed to preserving the First Amendment rights of their patrons," said ACLU of Northern California staff attorney Ann Brick, who helped argue the case for the library in the Court of Appeal and submitted a friend-of-the-court brief on behalf of the national ACLU, People for the American Way and the Freedom to Read Foundation, part of the American Library Association.

Kathleen R. sued the City of Livermore when her 12 year-old-son downloaded a number of explicit pictures at the Livermore library and then took the disk to the home of a relative, and printed the pictures.

The Alameda County Superior Court had twice dismissed the case, in which Kathleen R. first argued that the library's open-access policy constituted a "public nuisance", and then argued that the library has a constitutional obligation to censor Internet access. The Court of Appeal in its March 6th ruling upheld the lower court's rulings dismissing the case.

"No longer are libraries faced with a 'damned if you do, damned if you don't' choice when it comes to providing uncensored access to the Internet," added Brick. "The court's opinion is unequivocal in ruling that libraries may not be required to blue-pencil content on the Internet, nor may they be required to take over the role of parents in monitoring the library use of minors."

In 1998, in a related case, a federal appeals court in Virginia ruled that a library's policy of using blocking software to censor materials online "offends the guarantee of free speech." The ACLU represented Internet content providers in that case against the Loudoun County Library. In voiding the library's blocking policy, the judge noted that the software, which claimed to "filter" out only obscene material, blocked sites including the San Francisco Chronicle as well as the web site of the Maryland affiliate of the American Association of University Women.

Requiring the use of blocking software in public libraries creates, rather than solves, constitutional problems," said ACLU national staff attorney Ann Beeson. "Libraries have never

been in the business of policing what their customers read and they shouldn't start now."

The issue of censoring library Internet access will soon be before the courts again when the ACLU files its challenge to the recently enacted federal Children's' Internet Protection Act. The ACLU contends that the statute, which requires libraries that receive certain federal funds to install blocking software to censor Internet access, violates the First Amendment. That suit is expected to be filed later this month.

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ACLU Suit Seeks to End Anti-Gay Harassment in Visalia School District

The ACLU-NC filed a lawsuit on January 24th in U.S. District Court in Fresno on behalf of a former high school student and the Gay Straight Alliance Network, seeking an end to harassment and discrimination of students who are gay or lesbian or who are perceived to be gay or lesbian in the Visalia Unified School District. The lawsuit charges that students are persistently harassed because of their actual or perceived sexual orientation by school administrators, teachers, and classmates, who refer to them in school as "faggots," "queers," and "homos." Some students have been physically assaulted by other students. The suit, *Loomis v. Visalia Unified School District*, seeks to eliminate the hostile and intolerant climate through changes in the policies and practices of the District.

"We are filing this lawsuit because the Visalia Unified School District and its employees are depriving students who are gay or lesbian or perceived to be gay or lesbian of their constitutional rights to equality and due process under the law," said ACLU-NC staff attorney Robert Kim. "When public officials not only ignore pleas for help by gay and lesbian students but in some cases contribute to the harassment that they are experiencing, the result is an unsafe and hostile environment in which learning is all but impossible."

Hostile environment

John Eichhorst, a partner at the law firm of Howard, Rice, Nemerovski, Canady, Falk & Rabkin added, "A hostile learning environment harms not only the actual targets of the harassment, but the entire community. The Visalia schools are teaching all students, including heterosexual students, that discrimination is acceptable in our society. No student should have to witness harassment or be forced to learn in an environment in which peers or classmates are taunted, harassed, physically attacked or, in some cases, removed from the school altogether."

In addition to making federal constitutional claims, the lawsuit is one of the first to utilize the California Student Safety & Violence Prevention Act of 2000 (AB 537), a measure sponsored by state Senator Sheila Kuehl and passed in 1999, which forbids discrimination based on actual or perceived sexual orientation or gender identity in any state-funded school in California.

"As a former student at Golden West High School, I faced unrelenting harassment from my

peers and in some instances, from my teachers," said plaintiff George Loomis. "In the classrooms and hallways, people spit on me or called me 'fag' or 'homo' and no one did anything to stop it. During my senior year, a teacher repeatedly made statements about 'faggots'-referring to me-in front of the whole class. Everyone laughed at me, and it encouraged other students to call me derogatory names too. When I reported this to the administrators, none of them did anything about it. That is why it is so important that this be stopped; there are too many students who suffer in silence and are deprived of their education simply because of their sexual orientation."

The Gay Straight Alliance Network (GSA), a plaintiff in the case, is a youth-led nonprofit organization made up of gay, lesbian, bisexual, transgender and heterosexual students and adults who are dedicated to eliminating homophobia and intolerance in California schools. The GSA Network has over 150 clubs in northern and central California, including an office in Fresno.

"I think it is critical that this climate of intolerance in the Visalia schools be stopped," said Carolyn Laub, is Executive Director of GSA Network. "In surveys that we've conducted in California schools, we have found that 53% of students at public and private high schools surveyed indicated that each day they hear homophobic comments at school. The same survey shows that 84% of students surveyed said that teachers or administrators never or rarely intervene when anti-gay comments are made. How can a student who is gay or lesbian feel safe, much less learn, in such an environment?"

The plaintiffs are represented by the ACLU-NC and cooperating attorneys from Howard, Rice, Nemerovski, Canady, Falk & Rabkin.

"There are too many students who suffer in silence and are deprived of their education simply because of their sexual orientation."

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New DWB Bill Defines Racial Profiling Under State Law - Provides Victims Greater Protection

Bill Also Seeks Statewide Mandatory Data Collection

The Racial Justice Coalition applauds the introduction of a new racial profiling bill - **AB 788** - as a critical step in ending racial profiling in California and providing greater protection for motorists of color. The bill, introduced by Assemblymember Marco Firebaugh and Assemblymember Jerome Horton, would make it illegal for law enforcement officers to rely on race "in any fashion" and "to any degree" when deciding whom to stop, detain, interrogate or search (except where there is a specific suspect description that identifies a suspect by race). The bill also seeks statewide mandatory data collection, and restricts the funding that is available to support voluntary data collection efforts to those agencies that are already collecting the data described in the new bill.

"One might think that defining racial profiling is unnecessary, because everyone knows what it is. But surprisingly, law enforcement agencies in California continue to insist that they can use race as a factor in deciding whom to stop and search," said Michelle Alexander, Director of the Racial Justice Project of the ACLU of Northern California. "This bill clarifies what should be obvious - namely, that race may never be relied upon when an officer makes decisions regarding whom to stop, detain, interrogate or search - unless there is a specific suspect description. There is no excuse for the police to be relying on race in any other situation."

An officer found to violate the provisions in the racial profiling bill would be liable for damages no less than \$5000.

The bill also mandates statewide data collection on the race of those stopped and searched by the police. In California, more than 60 of the state's 300 law enforcement agencies have voluntarily agreed to collect data. However, less than ten are collecting the basic data that is necessary to make meaningful analysis possible. "Without the right data, it is impossible to track, monitor or prove discrimination by the police," explained Elizabeth Guillen, Legislative Counsel for the Mexican American Legal Defense and Education Fund (MALDEF). "Statewide mandatory data collection remains absolutely critical. Nobody should be misled into believing that the voluntary data collection efforts of a handful of agencies is going to solve this problem."

Marcos Contreras, Executive Board Member of the League of United Latin American Citizens

(LULAC) added, "Numerous law enforcement agencies are currently in the process of developing training regarding racial profiling for their offices. That is why a statute that establishes a proper definition of racial profiling, a clear statewide standard regarding what is prohibited, and mandatory data collection is extremely important at this time."

"We will not give up until Governor Davis signs a mandatory data collection bill, and takes meaningful steps to prohibit racial profiling from occurring in this state," said Michael McBride, Vice President of the NAACP in San Jose. "Last year, Davis claimed to 'outlaw' racial profiling, but all he did was reaffirm existing law. We demand meaningful police accountability, and we applaud Assemblymembers Firebaugh and Horton for taking this important step to protect people of color from discrimination in California."

The bill will also require law enforcement agencies that receive taxpayers' funds for voluntarily collecting racial profiling data to publish their data and to include five elements of data in their collection and reporting. Those elements are the race/ethnicity of the motorist stopped, the reason for the stop, whether a search was conducted, whether drugs or other evidence of illegal activity was found, and whether a citation was issued or an arrest was made.

The Racial Justice Coalition includes the ACLU, LULAC, NAACP Branches, Lawyers Committee for Civil Rights, United Farm Workers, Asian Law Caucus, National Network for Immigrant and Refugees Rights, SEIU locals and numerous other organizations.

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Court Overturns Key Part of Proposition 21

Decision to Try Juveniles in Adult Court Belongs to Judges not Prosecutors

By Stella Richardson
Media Associate

In the first major victory for opponents of Proposition 21, on February 7th the California Fourth District Court of Appeal in San Diego ruled 2-1 that a provision which allowed prosecutors rather than judges to charge youths as adults is unconstitutional and a violation of the separation of powers provision of the state Constitution. The Court stated that the decision of whether to prosecute a juvenile as an adult was essentially a sentencing decision, which is the constitutional province of the courts.

"This is a major ruling that strikes at the heart of Proposition 21," said ACLU staff attorney Robert Kim. "One of the core purposes of the initiative was to treat minors more like adults and transfer more juvenile cases to the adult criminal court system. The Court of Appeal is saying that it is not permissible to resort to unconstitutional means in an effort to increase incarceration and punishment of youth."

The ruling comes in the case of *Manduley/Rose v. Superior Court of San Diego County*, in which eight San Diego youths were charged as adults in the alleged beating and robbing of five elderly Latino migrant workers. In September, a judge of the Fourth District Court of Appeal issued an emergency stay in the proceedings in order to allow the constitutional issues to be decided before the youths entered pleas in adult court.

"Today the court re-affirmed a basic principle underlying our system of government - that the authority to prosecute someone for a crime and responsibility for sentencing the guilty should not be placed in the same hands," said William LaFond, an attorney for one of the juveniles. "The decision of whether or not to prosecute a juvenile as an adult is, in effect, a sentencing decision, because it pre-determines what will happen to a young person if he or she is convicted. Proposition 21 took that authority away from an impartial judge and gave it to the district attorney, who is by definition a biased advocate in an adversarial system. The Court, by striking down this provision, restored the proper balance to our system."

The ACLU affiliates in California joined the challenge to Proposition 21 initiated by the

defendants' legal team. . The ACLU case challenging Proposition 21, *League of Women Voters v. Davis*, filed immediately after the initiative was passed in March 2000, is currently pending in the California Supreme Court.

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Governor Permitted to Pursue Attack on School Districts

On February 8, San Francisco Superior Court Judge Peter Busch ruled that California Governor Gray Davis's counter-suit, which attempts to foil ACLU's landmark education over substandard conditions in 18 school districts, could proceed. The Governor's suit transfers culpability from the state to the school districts themselves. While Judge Busch conceded that Davis' counter-suit is "cumbersome," he found no legal ground to dismiss it.

"The state is completely denying their responsibility to the children in our public schools," said Michelle Alexander, Director of the ACLU-NC Racial Justice Project, "There is no control and no responsibility and as a result many of California's students still don't have books or an adequate place to learn."

The ACLU lawsuit, *Williams v. State of California*, filed last year on behalf of 100 students in 46 different schools, charges the State of California with failing to provide the bare essentials necessary for every student's education and violating state and federal requirements for equal access to education. Rather than responding to the pleas for up-to-date textbooks, credentialed teachers, and sanitary and safe conditions, the Governor responded by hiring O'Melveny & Myers, one of the largest law firms in the country, and filing a counter-suit to cover its lack of responsibility over the school districts.

The ACLU suit, filed by all three California affiliates and other civil rights groups, details the appalling conditions that persist in 18 school districts in major cities and rural areas throughout the state, ranging from San Francisco to West Contra Costa County, Oakland, East Palo Alto, and Visalia. The charges include classrooms infested with rats and mice; falling ceilings in gymnasiums; textbooks that must be share by several classes of students or are out-of-date; lack of heat; and a lack of credentialed teachers.

Both the original ACLU lawsuit and the Governor's counter-suit will now proceed in San Francisco Superior Court.

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ACLU-NC Board, Staff Members Honored

Marlene De Lancie

The San Mateo County Board of Supervisors and the Commission on the Status of Women will induct ACLU-NC Board member Marlene De Lancie into the Women's Hall of Fame on March 22. Citing De Lancie's "never-ending spirit," the Commission lauds her for fighting for her beliefs and bringing about changes in our schools and legal system. De Lancie, who helped to desegregate the San Mateo City Elementary and Union High School Districts, has been active with the ACLU for four decades. She has led the Bill of Rights fundraising campaign for more than 15 years; she serves on the Development and Field Committees and is the North Peninsula Chapter representative to the Board. The ACLU-NC gave De Lancie the Lola Hanzel Courageous Advocacy Award in 1997 for her outstanding volunteer services to the affiliate.

Quinn Delaney

The San Francisco Women's Foundation will honor ACLU-NC Board member Quinn Delaney at its 22nd Anniversary Gala on March 22. Delaney is being honored with the Foundation's Dream Maker Award for her contributions as a Founding Donor of the Economic Development and Justice Fund Donor Circle and Director of the Akonadi Foundation. Delaney is Chair of the ACLU-NC Development Committee and has played a leadership role in helping the national ACLU build its endowment campaign, the Trust for the Bill of Rights. Delaney also serves on the ACLU-NC Personnel Committee and was a delegate to the 1999 Biennial Conference.

Ed Chen

The Asian Law Caucus is honoring ACLU-NC staff attorney Ed Chen as a "warrior" at its annual dinner in March. Chen is being honored for his willingness to "take on the most unlikely cases and to rally the troops to challenge the establishment, because he believes that justice can be done." Chen, who volunteered with the Caucus before, during and after law school, has worked at the ACLU-NC since 1985. Working with the Caucus, he represented Vietnamese American fishermen banned by federal law from commercial fishing because they had not yet attained U.S. citizenship. Chen has worked on landmark civil rights cases, particularly on race and language discrimination; he has consistently fought against the scapegoating and stereotyping of Asian Americans.

Michelle Alexander

The California Association of Black Lawyers at its 24th Annual Convention in San Diego is honoring Michelle Alexander, Director of the ACLU-NC Racial Justice Project, in April. Alexander is being awarded one of the Loren Miller Lawyer of Year Awards, named for an admired African American jurist. Alexander, who launched the ACLU-NC Project three years ago, has led the campaign against racial profiling in the state. She helped found the Racial Justice Coalition, a diverse group of dozens of organizations that held numerous town hall meetings and a mass rally in Sacramento against the practice of Driving While Black or Brown. She is litigating a suit against the California Highway Patrol for racial profiling, as well as a suit against UC Berkeley's admissions policy that exclude many students of color.

William Walker

William Walker, the first fellow of the ACLU-NC Howard A. Friedman First Amendment Education Project, was by Coleman Advocates for Children and Youth at its 25th Anniversary Gala Reception on March 15. Walker is being cited for his work to empower youth. Walker joined the ACLU-NC Youth Advisory Committee when he was a senior in high school; he has organized conferences, spoken in high schools about civil liberties issues; and been a participant and a chaperone on the summer exploratory journeys. A leading activist in the campaign to defeat Proposition 21, the juvenile injustice initiative, Walker has helped to build coalitions to fight the criminalization of youth of color.

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ACLU Honored by Journalists' Association

The Society of Professional Journalists, Northern California Chapter, honored the ACLU of Northern California with the James Madison Freedom of Information Award for an organization that promotes and defends free speech and public access to government.

"Throughout its 67-year existence, the ACLU-NC has been a leading defender of free speech and freedom of information, taking on major legal battles, public information campaigns, and legislative efforts to ensure the public's basic rights under the First Amendment," said Randy Lyman of the SPJ Freedom of Information Committee. "Last year it won two California cases preserving individuals' rights to post public information on the Internet; and in alliance with the national ACLU, it won a permanent injunction from the U.S. District Court of Northern California that bans the government from revoking the licenses of doctors who discuss medical marijuana with their patients (Conant v. McCaffrey)."

The James Madison Freedom of Information Awards, named for the creative force behind the First Amendment, honor local organizations and individuals who have fought for public access to government meetings and records, or have promoted the public's right to know, publish, broadcast, and speak freely about issues of public concern.

The 12 winners were honored at the 16th annual James Madison Freedom of Information Awards dinner on March 27 at the Fort Mason Officers Club in San Francisco.

Also honored were San Jose State University Professor C. James Schmidt, a long-time advocate for freedom of information in libraries, and the former head of the American Library Association's Intellectual Freedom Committee and Freedom to Read Foundation; the Berkeley Daily Planet; the Stockton Record; the Sonoma Index-Tribune; Freedom Forum Pacific Coast Center, the First Amendment Project and several local journalists and educators.

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Dear ACLU News Readers,

Early in my tenure as editor of the *ACLU News*, our affiliate celebrated its 50th anniversary. We decided to publish an anniversary edition of the newspaper, and I took down from my bookshelf five dusty black volumes of the *ACLU News*, dating back to 1936 (although the affiliate was founded in 1934, we began publishing the paper two years later).

In the very first issue, editor -- and former Executive Director -- Ernie Besig wrote about winning damages for strikers who had been attacked by vigilantes during the General Strike. He also wrote about the ACLU defense of a 9-year old Jehovah's Witness who had been expelled from her Sacramento elementary school for refusing to say the Pledge of Allegiance. The next few issues had articles about union members tarred and feathered in Sonoma, the segregation of Mexican high school students, and the deportation of anarchists, Communists and anti-Fascists.

I thumbed through the yellowing newsprint, fascinated by the history and proud of the role that our affiliate played in facing the injustices of the times.

In the 40's, editor Besig wrote about the "Gestapo-like conditions" of the Japanese Americans interned at Tule Lake, Tanforan and Manzanar, and about our defense of Fred Korematsu for defying Roosevelt's Executive Order.

It was impossible to stop reading. And it was then that I realized how fortunate I was to be the editor of the *ACLU News*.

As I leave the ACLU-NC after two decades as Public Information Director, I still believe that this is a dream job. Where else can you wake up in the morning hearing news of an injustice - a cutback in reproductive rights, an expansion of the death penalty -- and go to work and do something about it? I will never forget the first execution in California in 25 years, when we stayed through the night to report on the outrage, the appeals and the anguish. Or the huge press conference the day after the passage of the Proposition 187, when we announced our challenge to that anti-immigrant measure. Or the meeting with our Coalition partners, in the wee hours of a November morning following the vote count in Proposition 209, where we pledged to fight the rollback of affirmative action.

I have been inspired by our clients - from Fred Korematsu, to the veterans who were pummeled by military policemen for unfurling anti-war banners at the Presidio, to the hospital

workers who were disciplined for speaking Chinese, Spanish and Tagalog, to the students who insisted on expressing their ideas on murals, T-shirts and websites.

I have learned something every day from my colleagues on the staff and Board, whose cooperative spirit, creativity, intelligence and tenacity have wielded a mighty sword against those who would violate our civil liberties.

And I am especially grateful to you, dear readers, the members and supporters of the ACLU. Your generosity in building this organization and your willingness to act for justice are truly inspiring.

I hope that the two decades of civil liberties battles that I have chronicled in the *ACLU News* will be as inspiring to future editors, readers and activists as the stories I read in the dusty volumes when I first arrived.

With many thanks,

Elaine Elinson

Editor

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Theater Benefit

For the Berkeley-Albany-Richmond-Kensington Chapter

The Laramie Project

Playwright Moises Kaufman will direct the West Coast premiere of his work about the aftermath of the murder of 21-year old gay University of Wyoming student Matthew Shepard.

Thursday, May 24th at 8 PM
Berkeley Repertory Theater

You may purchase tickets at a reduced rate of \$38.50 through the B.A.R.K. Chapter. Send checks only to: ACLU BARK Chapter, P.O. Box 11141, Berkeley, CA 4712-2141

(Some low-income/student tickets are available for \$30.50)

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Paul Robeson Chapter presents:

Of Civil Rights & Wrongs: The Fred Korematsu Story

A documentary film followed by a panel discussion with Fred Korematsu and film director Eric Fournier.

Friday, April 20

7:30 PM

Asian Pacific Cultural Center

388 Ninth Street

Oakland, CA

Admission Free / Donations Welcome

For more information and tickets, contact Grover Dye: 510-530-1712.

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Maurice Rosen: A Life and a Legacy for Justice

By Stan Yogi
Director of Planned Giving

Long-time ACLU member Maurice Rosen saw first-hand in Europe and California how the denial of civil liberties impacted people. These experiences contributed to Rosen's life-long commitment to liberty and justice. He manifested his beliefs not only through his professional and volunteer work but also through a generous bequest to the ACLU Foundation.

Born in Pennsylvania in 1913, Rosen hitchhiked across the country during the height of the depression to study citriculture at Chaffey Jr. College in Southern California. His interest in that field was sparked by a trip he took with his family to Israel (then Palestine), where he witnessed the reclamation of arid lands and the development of citrus crops. After two years he realized that his true calling was his facility for and love of language. With the aid of a scholarship he transferred to Pomona College and earned a bachelors degree with honors in French. He eventually learned to speak six languages.

While working on his Ph.D. in Romance Language Philology at UC Berkeley in the late 1930s, he awakened to the rise of fascism in Europe. Many of his professors were émigrés who escaped persecution in Europe. Rosen himself got a taste of this oppression when he was detained in southern France by police officers that suspected him of attempting to cross the border to support anti-Franco forces in the Spanish Civil War. The political crises of World War II and the resulting human misery ultimately compelled Rosen to leave academia, just short of completing his doctorate degree, and work directly to help people impacted by the war.

His first post-academic job was with the Farm Security Administration, through which he aided migrant farm workers. He worked for the Red Cross and the United Nations Relief and Rehabilitation Administration, where he was stationed in post-war Italy and helped resettle refugees in Germany and Poland.

In 1948, Rosen joined the staff of the California Department of Social Welfare, where he worked until retirement in 1978. He traveled throughout California doing fieldwork and saw firsthand the results of economic injustice in the state. He was also one of the first non-lawyers to become a referee for the Department, and he conducted hearings throughout Northern California. One of Rosen's more notable decisions was a ruling that teachers could receive unemployment benefits. For this decision, he earned the ire of then-Governor Ronald Reagan.

During his 22 years of active retirement, he devoted his time and financial assistance to numerous peace and justice organizations, including the Abraham Lincoln Brigade, Gray Panthers, American Friends Service Committee, as well as groups working for peace in the Middle East.

According to his nephew, Stephen Rosen, Maurice Rosen devoted his nearly 50-year career "to ameliorate social, political, and economic injustice both in the United States and the rest of the world" and was always aware of the important role the ACLU played in protecting unpopular viewpoints and liberty for minorities.

"Maurice Rosen led a truly inspirational and remarkable life," said ACLU-NC Executive Director. "His compassion and generosity have made the world better, and we are deeply honored that he left the ACLU a bequest to defend the principles he cared about so passionately."

If you would like to leave a legacy to the ACLU, please contact Stan Yogi at 415/621-2493 ext. 330 or by e-mail at syogi@aclunc.org.

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