



## ACLU NEWS

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### ACLU News

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ACLU News - The Newspaper of the ACLU of Northern California, May 2002

## **Broad Coalition Pledges to Fight Connerly's "Race Information Ban"**

Ward Connerly is back in action in California and that can only mean one thing: the ACLU and our allies have a fight on our hands.

On April 19<sup>th</sup>, the anti-affirmative action activist filed close to a million signatures with the Secretary of State – almost certainly enough to qualify the so-called "Racial Privacy Initiative" for the ballot in November 2002.

This time, the vision that Connerly is pitching to voters is a "colorblind society" – a world that has moved beyond its "obsession" with race.

The first step to achieving this, he argues, is to stop the government asking us about race – by eliminating the checkboxes on government forms.

But this seductive vision is dangerously shortsighted, say a host of opponents, including the ACLU. "We all want a colorblind society," says ACLU-NC executive director Dorothy Ehrlich. "But we do not live in a colorblind world and we will not solve the problem of racial discrimination by hiding the fact that it exists. Make no mistake; this initiative is not about protecting privacy. This initiative is about imposing a race information blackout on our state – a blackout that will set back for generations our

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***"Why would you take information that's useful and say it's against the law? It's a little like burning books."***

– Carmen Nevarez, MD

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progress toward creating a level playing field for all Californians.”

If passed at the ballot box, this initiative would have such sweeping ramifications for the state that it has already drawn vocal opposition from leading environmental, education and public health organizations, as well as civil rights groups. At the heart of Connerly’s plan is #an almost complete ban on state and local agencies compiling any information on race or ethnicity#. It would obscure such critical information as how many Latino students are graduating high school, whether the state is making progress in minority contracting, or why African American women have the highest mortality rates from breast cancer.

“Why would you take information that’s useful and say it’s against the law?” asks Carmen Nevarez, MD, Medical Director at California’s Public Health Institute and a member of the Executive Board of the American Public Health Association. “It’s a little like burning books.”

Days after Connerly filed his signatures, civil rights, public health and education leaders from across the state launched a campaign to defeat the initiative at packed news conferences in Los Angeles, San Francisco and San Diego. ACLU-NC helped organize the San Francisco news conference, where Nevarez was joined by spokespersons from the California Teachers’ Association (CTA), the California Public Health Association, the Greenlining Institute, the NAACP and MALDEF.

“If our schools are to strive for excellence in an era of accountability, educators must have access to every tool in the tool-box,” said Lynette Henley, a teacher in Vallejo and a board member of the CTA. “Mr. Connerly wants to keep Californians in the dark about demographics that are crucial in helping us identify and meet the needs of all of our students. This initiative would damage the efforts of California teachers to provide a

quality education for all of our children for decades to come.”

“Under this initiative the tobacco industry will be able to collect and use information on race and ethnicity to push cigarettes to our children; yet that same information cannot be collected and used by the California Public Health Department to protect children and others from the risks of smoking" said Paul H. Turner, a program director with the Greenlining Institute.

The ACLU-NC's Michelle Alexander got reporters nodding when she was invited to respond to a question about Connerly's claim that his initiative would “end racial profiling.”

“Connerly is selling this plan to voters by making the spurious claim that his initiative would end racial profiling,” said Alexander. “The truth is, this initiative includes a specific exemption for racial classifications by law enforcement, so the police can continue to track people on the basis of race and engage in racial profiling. To make matters worse, the initiative would prohibit the legislature from ever passing a law requiring the police to collect data on racial profiling in traffic stops - data that is necessary to prove discrimination. In other words, the initiative specifically allows the police to continue to engage in racial profiling, while preventing the public from doing anything to stop it. Far from ending racial profiling, this initiative would guarantee it.”

Experts from the Natural Resources Defense Council, the Sierra Club, the Asian Pacific Islander Health Forum and other organizations were also on hand to field questions about the initiative's impact on environmental health and justice.

"Californians need to vote “no” on Connerly's initiative because how likely your children are to have asthma is directly connected to your race; and because if you are Latino, Asian

American or African American you are much more likely to get pollution-related cancer," said Denise Hoffner-Brodsky, environmental justice attorney at the Sierra Club. "Race is the biggest determining factor when it comes to environmental health. We will not solve this problem by obscuring the facts. We will solve this problem by arming ourselves with information."

The initiative currently has 48 percent support among voters, according to an independent Field poll released May 1, although most Californians have not yet heard much about it. "In the world of ballot initiative politics, 48 percent is encouraging news," says Ehrlich. "Campaign consultants say that they expect passing initiatives to poll closer to 60 percent when voters first hear about them, but Connerly has been unable to muster a majority. I think that when voters have had a chance to hear the real story about this initiative that they will deliver the verdict of a resounding "no.""

### **TAKE ACTION!**

*Here are a few things you can do to help us defeat the  
Connerly initiative:*

1. Say "no" to the race information blackout by signing up your organization to endorse the opposition. Download an form at [www.aclunc.org](http://www.aclunc.org)
2. Volunteer or make a donation to the campaign. Call Gigi Pandian at 415-621-2493x358 to find out more.
3. Sign up for a speakers training in June. Email [gpandian@aclunc.org](mailto:gpandian@aclunc.org) to put your name on the list.
4. Watch for stories about this in your local paper and send letters to the editor explaining why this initiative is bad for California.
5. Tell everyone you know to say "NO" to Connerly's race

information ban.

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## **Board Elections 2002**

The ACLU-NC Board of Directors, in accordance with changes adopted in 1996, have an election schedule as follows:

Nominations for the Board of Directors will now be submitted by the September Board meeting; candidates and ballots will appear in the November-December (fall) issue of the *ACLU News*; elected board members will begin their three-year term in January.

As provided by the revised ACLU-NC by-laws, the ACLU-NC membership is entitled to elect its 2000-2001 Board of Directors directly. The nominating committee is now seeking suggestions from the membership to fill at-large positions on the Board.

ACLU members may participate in the nominating process in two ways:

1. They may send suggestions for the nominating committee's consideration prior to the September Board meeting (September 12th, 2002). Address suggestions to: Nominating Committee, ACLU-NC, 1663 Mission Street, #460, San Francisco, CA 94103. Include your nominee's qualifications and how the nominee may be reached.



2. They may submit a petition of nomination with the signatures of 15 current ACLU-NC members. Petitions of nomination, which should also include the nominee's qualifications, must be submitted to the Board of Directors by October 2, 2002 (twenty days after the September board meeting). Current ACLU members are those who have renewed their membership during the last 12 months. Only current members are eligible to submit nominations, sign petitions of nomination, and vote.

ACLU members will select Board members from the slate of candidates nominated by petition and by the nominating committee. The ballot will appear in the November-December (fall) issue of the *ACLU News*.

### **Revised ACLU-NC By-Laws**

**Article VII, Section 3:** Presentation of Nominations and Additional Nominations. The final report of the committee to nominate members-at-large to the Board shall be presented at the September Board meeting. Members of the Board may propose additional nominations. If no additional nominations are proposed by Board members, the Board by a majority of those present and voting, shall adopt the nominating committee's report. If additional nominations are proposed, the Board shall, by written ballot, elect a slate of nominees with each member being entitled to cast a number of votes equal to the vacancies to be filled; the persons nominated by the Board shall be those persons, equal in number to the vacancies to be filled, who have received the greatest number of votes. The list of nominees to be placed before the membership of the Union for election shall be those persons nominated by the Board as herein provided, together with those

persons nominated by petition as hereinafter provided in Section 4.

**Article VII, Section 4:** Recommendations and Nominations by Members of the Union. Any fifteen or more members of the Union in good standing may themselves submit a nomination to be included among those voted upon by the general membership by submitting a written petition to the Board not later than twenty days after the adoption by the Board of the slate of Board nominees. No member of the Union may sign more than one such petition, and each such nomination shall be accompanied by a summary of qualifications and the written consent of the nominee. This provision of the By-Laws shall be printed in the first page of the May-June (spring) issue of the *ACLU News* together with an article advising members of their rights in the nominating process.

\* The Board of Directors of the ACLU of Northern California revised the By-Laws of the organization in February, 1995, to change the timeline for Board election procedures.

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## **Field Program Meetings**

**B-A-R-K (Berkeley-Albany-Richmond-Kensington) Chapter Meeting:** Meet the third Wednesday of each month at 7p.m. at the Vege House restaurant in Berkeley (2042 University Avenue at Shattuck). For more information, contact Jim Hausken: (510) 558-0377.

**Fresno Chapter Meeting:** Meet the fourth Thursday of each month. For more information, please contact Tom Simpson: (559) 432-2787.

**Lesbian, Gay, Bisexual and Transgender Chapter Meeting:** Contact Roy Bateman (415-621-7995) if you are interested in reinvigorating this chapter.

**Marin County Chapter Meeting:** Meet on the third Monday of each month at 7:30 p.m. Currently meeting at the West End Café, 1131 Fourth Street in San Rafael. Contact Coleman Persily for more information: (415) 479-1731. Or call the Marin Chapter complaint hotline at (415) 456-0137.

**Mid-Peninsula Chapter Meeting:** Meet the third Saturday of the month. Contact Harry Anisgard for more information: (650) 856-9186.

**Monterey County Chapter Meeting:** Meet the third Tuesday of the month at 7:15 p.m. at the Monterey Public Library. Contact Matt Friday: (831) 899-2263. Or to report a civil liberties concern, call Monterey's complaint line: (831) 622-9894.

**North Peninsula (San Mateo area) Chapter Meeting:** Meetings usually held at 7:30 on the third Monday of each month, at the downstairs conference room at 700 Laurel Street (off Fifth Avenue). Contact Linda Martorana: (650) 697-5685.

**Paul Robeson (Oakland) Chapter Meeting:** Usually meet the fourth Monday of each month at the Rockridge library. Contact Louise Rothman-Riemer: (510) 596-2580.

**Redwood (Humboldt County) Chapter Meeting:** Meet the third Tuesday of each month at 7 p.m. at the Redwood Peace and Justice Center in Arcata. Please contact Roger Zoss: rzoss@mymailstation.com or (707) 786-4942. Or call the Redwood Chapter of the

ACLU:(707) 444-6595 or visit [www.acluredwood.org](http://www.acluredwood.org)

**San Francisco Chapter Meeting:** Meet the third Tuesday of each month at 6:45 p.m. at the ACLU-NC office (1663 Mission Street, Suite 460). Call the Chapter hotline: (415) 979-6699.

**Santa Clara Valley Chapter Meeting:** Usually meet the first Tuesday of every month at 1051 Morse Street (at Newhall) in San Jose. Contact Sam Freund: [acluscv@hotmail.com](mailto:acluscv@hotmail.com).

**Santa Cruz County Chapter Meeting:** Usually meet the third Thursday of each month at 7 p.m., but this may change so please contact Marge Frantz: (831) 471-0810.

**Sonoma County Chapter Meeting:** Usually meet the third Tuesday of each month, at 7 p.m. at the Peace and Justice Center, located at 467 Sebastopol Avenue (east of 101). Call the Sonoma hotline for more information: (707) 765-5005.

## **CHAPTERS REORGANIZING**

**Yolo County Chapter:** If you are an ACLU member in the Davis area, and are interested in reviving this chapter, please call Natalie Wormeli: (530) 756-1900.

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## **Free Speech Victory in U.S. Supreme Court** **by Andy Lurie**

In a major victory for First Amendment advocates, the U.S. Supreme Court struck down Congress's attempt to expand the definition of child pornography in the federal Child Pornography Prevention Act on April 16<sup>th</sup>, saying that the law "prohibits speech despite its serious literary, artistic, political, or scientific value."

The court said that this law impermissibly punishes the expression of ideas instead of punishing the abuse of children," said Ann Brick, a staff attorney with the ACLU of Northern California, which filed a friend-of-the-court brief in the case together with the national office. "This ruling constitutes a significant and forceful defense of First Amendment principles."

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*"This ruling constitutes a significant and forceful defense of First Amendment principles."*

– Ann Brick

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Justice Anthony Kennedy, who authored the 6-3 majority opinion, saved some of his strongest language for his rebuke of the government's attempt to act as the "thought police," saying "The right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought."

The definition of child pornography in the 1996 Act barred sexually explicit material that depicts what "appear(s) to be a minor" or that is advertised in a way that

“conveys the impression” that a minor was involved in its creation. This extends to images created by a computer, photographs of young-looking adults, and scenes from Academy Award-winning films like *Traffic* and *American Beauty*.

The criminal law could also be applied to “a picture in a psychology manual, as well as a movie depicting the horrors of sexual abuse,” the court wrote. This is the kind of material used by the ACLU’s clients, which include Institute for the Advanced Study of Human Sexuality, the Society for Professional Journalists, and the Radio and Television News Directors Association.

Indeed, as the court noted, none of the groups opposing the law challenged a provision that banned the use of identifiable children in computer-altered sexual images. In addition, child pornography that involves real children has been illegal for many years, and that law was not affected this recent ruling.

The newly decided case is *Ashcroft v. Free Speech Coalition*, No. 00-795. The ACLU’s legal brief in the case is online at <http://www.aclu.org/court/ashcroft2.pdf>.

The ACLU’s clients were represented by Brick, ACLU staff attorney Ann Beeson, ACLU National Legal Director Steven R. Shapiro, and William Bennett Turner of the San Francisco-based law firm Rogers, Joseph, O’Donnell & Phillips.

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## **ACLU Racial Profiling Book Tour Passes Through Oakland** **By Gigi Pandian**

Professor David Harris of Toledo University began his talk on March 13th with a promise: “I’m going to spend my few minutes with you tonight to persuade you that racial profiling will *not* make us more safe.” Over the next 90 minutes, in front of a packed house at Diesel Books in Oakland, Harris and a panel of experts did just that.

Harris, a national authority on racial profiling, was in town as part of a 13-city book tour designed to spark discussion of racial profiling in the post-September 11<sup>th</sup> world and to promote Harris’ new book, *Profiles in Injustice: Why Racial Profiling Cannot Work*. The Oakland event, organized by the Paul Robeson Chapter of the ACLU, featured King

Downing from the national ACLU, who accompanied Harris on the tour, Michelle Alexander of the ACLU-NC, Fadi Saba of the Arab American Anti-Discrimination Committee, and community activist Rashidah Grinage. Captain Ron Davis of the Oakland police department was also in attendance and said a few words in support of the panelists’ arguments against racial profiling.

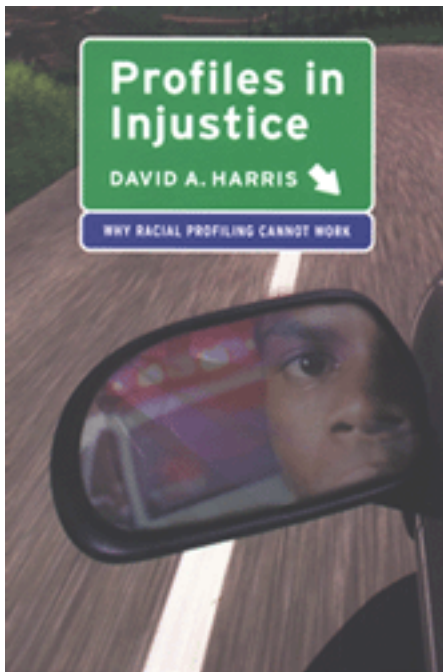
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*“Racial profiling is a strategy that is doomed to fail whether the context is the war on drugs or the war on terrorism,”*

– Michelle Alexander

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Harris relayed a short history of racial profiling before spelling out its dangers. His argument is simple but compelling – racial profiling is not only ineffective, but actually does more harm than good. Questioning people based on race or ethnicity rather than based on their behavior wastes resources by targeting innocent people and letting real criminals slip through the cracks.

Whether the targets are African Americans or Latinos during the war on drugs or Middle Eastern communities during the war on terrorism, racial profiling destroys trust within communities of color, making it less likely that people will come forward with information that could aid authorities.

“When young men are labeled a threat simply because they are Arab or Muslim, when many are detained indefinitely on petty immigration violations, and when even some who have come forward to help have been rewarded with incarceration, it is not hard to imagine the result: alienation, anger and silence,” says Harris.

It is no surprise that several police departments reacted with skepticism to Attorney General John Ashcroft’s directive ordering the ‘voluntary’ questioning of 5,000 Middle Eastern men last November, according to Harris. “Eight former FBI officials, including former FBI and CIA chief William A. Webster went on record to voice doubt about the law enforcement value of these tactics,” he says. “One of these former officials called the wholesale questioning “the Perry Mason School of Law Enforcement” that would produce little but “the recipe to Mom’s chicken

soup.””

“Racial profiling is a strategy that is doomed to fail whether the context is the war on drugs or the war on terrorism,” the ACLU-NC’s Alexander summed up. “ Numerous studies show that it just doesn’t work, and on top of that it alienates communities that should be law enforcement’s greatest allies.”

By ignoring behavior and focusing on skin color, Harris, Alexander, Downing, Grinage, and Saba all drove home the point that authorities are misguided in their use of racial profiling to catch violent criminals such as terrorists. “After all,” Saba reminded the crowd, before September 11<sup>th</sup>, “the previous ‘profile’ of a terrorist was Timothy McVeigh.”

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## **Lucy Kendall**

**by Elaine Elinson**

The ACLU-NC mourns the death of Lucy Kendall, a longtime labor and women's rights activist who volunteered on the ACLU Complaint Desk for more than a decade. Kendall died on March 8, International Women's Day, at the Jewish Home for the Aged in San Francisco at the age of 89.

Kendall's job on the Complaint Desk was to answer letters from prisoners who contacted the ACLU seeking legal help or information about their rights. Her desk was piled high with correspondence from people in California's jails and prisons who had nowhere else to turn. The demanding task became increasingly difficult when the prison population swelled during Reagan's "War on Drugs" and subsequent federal legislation cut back on prisoners' access to law libraries, recreation, mental health care and job training. Yet Kendall persisted with compassion and patience.

Born in Los Angeles, Kendall came to San Francisco in 1935 armed with a high school diploma and a secretarial school certificate. It was a time of political turbulence and trade union struggle. Kendall plunged right into the world of radical politics. She worked as the women's dispatcher for the ILWU during World War II. After the war, she became a waitress at the Buena Vista Café and the Washington Square Bar and Grill and helped build the Waitress Union, Local 2. After 50 years, she was memorialized by a *San Francisco Chronicle* columnist as "the only waitress who read Proust for pleasure."

Kendall also volunteered at the California Historical Society and the San Francisco Labor Archives, taking oral histories of women trade unionists and labor leaders. A March 30 memorial was packed with many people whose lives she had touched: ILWU members, labor historians, waitresses and civil liberties advocates. In honor of Lucy Kendall, they took up a collection for the Labor Archives and the ACLU, so that her legacy of activism for social justice will continue.

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## **Sacramento Report**

### **A Measured Response to Terrorism**

Balance safety with freedom and urgency with prudence. That ethos is at the heart of the ACLU's legislative efforts in a Sacramento packed with anti-terrorism bills -- and so far, it seems to be working.

Fresh from victory in gutting provisions from **AB74 (Washington-D)** that would have given the state sweeping new powers to wiretap its residents, the ACLU went on to help scuttle three major "anti-terrorism" bills and slow down a fourth.

In a crucial victory on April 16th, ACLU testimony played a key role in persuading a legislative health panel to put the brakes on a controversial bio-terrorism bill. **AB1763 (Richman-R)** would have allowed for the forcible quarantining of Californians, the seizure of hospitals and drugstores by the state and the destruction of contaminated property without the owners' consent in the event of a bio-terror attack.

"We fully support the state's efforts to prepare for a disaster like an outbreak of bio-terrorism," said ACLU legislative advocate Valerie Small Navarro. "However, part of that preparedness must include identifying the least restrictive means in order to accomplish governmental goals." The Assembly Public Safety Committee gutted the bill of its core provisions, instead establishing a commission to study the issue and solicit input from the public and key stakeholders.

Committee hearings also spelled the end for a slew of bills seeking to ramp up penalties for crimes committed while engaged in “terrorist activities,” including efforts to expand the death penalty to apply to certain “terrorist acts.” “The definitions of terrorism contained in these bills cast an absurdly wide and nebulous net,” said ACLU legislative director Francisco Lobaco. “The ACLU will continue to mount strenuous opposition to over-broad anti-terrorism bills that scoop into their net people who are clearly not engaged in what most of us understand by terrorism.”

## **Reproductive Privacy**

The Reproductive Privacy Act (SB1301 (Kuehl –D)), which brings California law in line with the protections enshrined in *Roe v. Wade*, passed out of committee in April and is now set to advance to the Senate floor. *The ACLU says a big thank you to every one of the 3,254 supporters who sent faxes and emails to their legislators urging them to support this crucial bill!*

### **Three Strikes -- Reform at Last?**

“The Eighth Amendment does not permit the application of a law which results in a sentence grossly disproportionate to the crime.” With those words, a federal court in San Francisco ruled in December that California’s Three Strikes law was cruel and unusual punishment in the case of a San Bernardino man sentenced to 50 years to life for shoplifting \$153 worth of videotapes from a K-Mart store.

The next month, Assemblywoman Jackie Goldberg introduced

legislation that addresses the same question: should non-violent offenders receive a third strike for a petty crime conviction? **AB1790** seeks to put an initiative on the ballot in March 2004 that asks California voters to amend the law that they overwhelmingly supported ten years earlier. “We can bring the law into balance with what’s fair and just and stop wasting tens of millions of taxpayer dollars locking up people for life for shoplifting and other non-serious felonies,” says Goldberg. “The California three strikes initiative is going to be changed...We can spend a fortune changing it one lawsuit at a time, or the state legislature, with a majority of California voters, can make sure a person isn’t sentenced to life in prison for stealing a few videotapes.”

AB1790, which the ACLU supports, has passed out of the Assembly Public Safety Committee, and is now pending in the Appropriations Committee.

## **Religious Freedom**

The ACLU’s testimony also helped defeat a major charitable choice bill (**AB1280, (Haynes-R)**) that would have expanded state and federally funded services contracted to religious organizations. “SB 1280 conflicts with the California Constitution’s strong protection for separation of church and state, and California’s important laws protecting the civil rights of employees,” wrote the ACLU in a letter to Senator Ray Haynes before the bill was defeated in the Senate Health and Human Services Committee.

## **Students’ Rights**

The right of school students to not participate in pledge of allegiance ceremonies is also secure, thanks to the ACLU. **SB1248 (Knight-R)**, which requires all students to recite the pledge, was amended at the ACLU's insistence to ensure that participation is voluntary.

*For more information on the rights of students in California public schools, see the ACLU-NC's new brochure: **Pledge, Patriotism and Prayer in California's public schools.***

Among many other efforts on the legislative front, the ACLU is continuing our work to support domestic partner benefits (AB2216 (Keeley-D)), the rights of immigrants who are applying for adjustment of their legal status to have drivers licences (AB 60, Cedillo-D)), and financial privacy for Californians.

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## **ACLU Leader Moves on in Fight for Rights** **by Gigi Pandian**

The ACLU-NC sadly bid *adieu* to a stalwart leader this spring. But while **Lisa Maldonado** will no longer serve as field director, her commitment to defending civil liberties and rights will flourish. Maldonado, a 13-year ACLU veteran, is focusing her energies on completing her law degree at the University of San Francisco, with a focus in – what else? – civil liberties.

Maldonado began her career at the ACLU in 1989 as a part-time complaint line coordinator, and in 1994 found her home in the field department. As field director, she quickly became a respected leader among ACLU chapter activists. “The most rewarding part of the job was seeing the admirable work chapters did fighting for important issues, particularly on initiative campaigns,” said Maldonado. As well as working alongside chapters throughout northern California, Maldonado was responsible for producing the annual Bill of Rights Day celebration and the annual ACLU activist conference. “Being able to honor so many deserving people at Bill of Rights Day is an incredible feeling,” she said. As the daughter of a migrant worker, the celebration that honored Dolores Huerta was especially meaningful to her.

Now, Maldonado is moving on, but not apart, from the ACLU. As part of her studies, she has been selected to work against the death penalty this summer at the Capital Post-Conviction Project of Louisiana under the tutelage of Denise Le Boeuf.

“It has been a privilege to work alongside you all these years,” Mickey Welsh, chair of the field committee told Maldonado as the Board bid her farewell in March. “We’ll see you in court!”

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## **Modoc Backs Down on Drug Tests for Teens**

As a pivotal case on drug testing in schools went before the U.S. Supreme Court, this session, the Modoc Joint Unified School District was attracting attention with a proposal of its own. Going one step further than the drug tests for students involved in extracurricular activities at issue in *Pottawatomie County vs. Earl*, Modoc's policy proposed mandatory random drug and alcohol tests for *all* students in grades 9-12. Any student who refused to take the test or who tested positive would be barred from extracurricular activities.

Then the Drug Policy Alliance and the ACLU-NC stepped in. On the evening that the board of trustees was set to consider the proposal, the two organizations sent a powerful letter arguing that the drug test policy would do more harm than good.

"The proposed policy will not only fail to address drug use, it will unnecessarily force a wedge of distrust between students and teachers, co-opt important parent decision-making regarding how to address their children's behavior, and perhaps most tragically, keep students away from the very extracurricular activities that are a proven means of reducing the very drug use you hope to eliminate," said the letter, authored by Judith Appel of the Drug Policy Alliance and Ann Brick of the ACLU-NC.

Citing briefs filed in *Pottawatomie County vs. Earl* by the American Academy of Pediatrics, the American Public Health Association, the National Education Association

and other health and education groups, the letter pointed out that drug testing is actually *counterproductive* to the goal of reducing drug use and abuse among students. “We urge you to vote against the proposed drug testing policy and implement proven, effective and cost-effective strategies for addressing adolescent drug use,” the letter concluded.

That evening, the trustees voted to reject the proposal.

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ACLU News - The Newspaper of the ACLU of Northern California, May 2002

## **Moratorium March**

On May 1<sup>st</sup>, over 350 people marched to the state capitol building in Sacramento and delivered over 88,000 signatures calling for a moratorium on executions to Governor Davis. A noontime rally featured actor and death penalty activist Ed Asner, ACLU-NC Board Member Aundre Herron, religious leaders, youth activists, and a former death row inmate. The Moratorium Day was organized by Californians for a Moratorium on Executions, a consortium of over 30 organizations working to abolish the death penalty.

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## **Vacancies Filled on Oakland's Citizen Police Review Board**

Oakland's Citizens Police Review Board (CRPB) is charged with hearing citizen complaints about police conduct – a critical task in the wake of the Rider's police scandal, which uncovered over 100 cases of police abuse in the community. But CRPB faced a major problem at the start of the year – only four seats were filled on the nine-member board.

When a February 28<sup>th</sup> meeting was cancelled for lack of a quorum, the ACLU-NC and People United for a Better Oakland (PUEBLO) took action. In an open letter signed by community groups including the Paul Robeson (Oakland) Chapter of the ACLU and the Bay Area Urban League, the organizations called on Mayor Jerry Brown to fill the empty seats without delay.

“Effective civilian review of the police is necessary to ensure a vigorous, impartial and thorough investigation of police complaints,” the letter said. “It decreases the chance of widespread police abuse and causes the department to function better. If done effectively, civilian review can increase the public's confidence in the Police Department and allay community fears that the Department is functioning apart from the community.”

“The people of Oakland deserve more than they have been getting out of their Police Department and the Board,” said ACLU-NC police practices director Mark Schlosberg. “That is why it is critical that Mayor Brown appoint board members as soon

as possible. It is his mayoral obligation to the citizens of Oakland.”

After media coverage in the *Oakland Tribune*, *KPFA* and elsewhere in the region, the Mayor filled all the vacancies on the board.

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## Protecting Privacy

Imagine a world where a simple scan of your face or your ID card as you board an airplane can reveal where you live and work, whether you are gay or straight, and how much money you have in the bank.

For civil libertarians, this suggests a world rife with privacy incursions; one that opens the door to perilous error and governmental abuse. But for many leaders in the high-tech industry, this is a world of opportunity. Indeed, since September 11<sup>th</sup>, the industry has discovered a new boom: pitching the government technological innovations ostensibly designed to keep Americans safe. And this is happening in our own backyard, in the low-rise campuses of Silicon Valley.

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*We are now at the point where virtually every day a new surveillance technology is rolled out... It's hard to imagine anything less patriotic than this assault on American values."*

*-- Barry Steinhardt*

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Larry Ellison, CEO of Oracle, perhaps the most visible player in this market, recently expounded on his plans for a powerful national database that can cross reference data from disparate sources in the *New York Times Magazine*. "I do think this database will exist, and I think Oracle will run it," he said. "And we're going to track everything." Ellison dismissed concerns about privacy and an omniscient government with a simple but chilling phrase: "privacy is gone."



Months earlier, at a special exhibition dedicated to homeland defense at the Consumer Electronics Show in Las Vegas, one speaker cited by the *Times* predicted that federal spending on security technologies would grow by 30 percent a year, rising to \$62 billion by 2006. Meanwhile, from in-flight video surveillance cameras to a body-scanning technology that “virtually” strips passengers naked, experimental devices have actually been installed around the country since September 11<sup>th</sup> – with varying effectiveness and sometimes, with little or no debate.

In response to this burgeoning market and to the new powers that the USA PATRIOT Act gave the government to monitor email and Internet use, this April, the ACLU announced the formation of a Technology and Liberty Program. Led by current associate director Barry Steinhardt, with Ann Beeson as its litigation head, the program will work to ensure that government-sanctioned technologies pass a basic test: improving security without needlessly eroding civil liberties. When Beeson and Steinhardt visited San Francisco in April, ACLU-NC took advantage of their proximity to the heart of the Valley by hosting a briefing for local reporters.

### **Act Now to Protect Privacy!**

Concerned with the increasing erosion of privacy in the United States, the ACLU has endorsed newly introduced legislation -- sponsored by Reps. Bob Barr (R-GA) and Mel Watt (D-NC) -- that would incorporate key privacy protections into the operations of federal agencies. The bill, titled the "Federal Agency Protection of Privacy Act," would require federal agencies to prepare a "privacy impact statement"

Steinhardt began by warning of the dangers of trusting in technologies that do not work – such as facial recognition, the biometric technology that uses a video camera to scan faces against a database of photographs. Even in a carefully controlled lab environment, the system has a high error rate, he warned, and the “real world results are even more abysmal.” During tests in Tampa, FL, a facial recognition system was unable to make a single identification and the computer

before issuing most new regulations.

Visit [aclu.org](http://aclu.org) to send a letter urging your Member of Congress to support the *Federal Protection of Privacy Act*.

generated nonsensical descriptions such as a “juvenile runaway adult” or a “female suspect with a male face.” Such flawed systems are not only untenable invasions of privacy, says Steinhardt, but they also create a false sense of security and divert resources from anti-terror tactics that actually work.

While Tampa Airport dismantled its system after the tests, they are still in place elsewhere, including Fresno – which the ACLU believes is the only airport the nation to perform a facial recognition scan on *all* passengers. ACLU-NC is still awaiting a response to a letter to Fresno Airport, urging the airport to reconsider its use of the system.

Steinhardt also cautioned against seizing upon the federalization of identification cards as a solution. Highlighting the challenges of developing a foolproof system and the hazards of identity theft, he cited the lucrative black markets that have sprung up in European countries. “If someone wants a card, they can get a card, for a price,” he said. “And if you wind up having your ID stolen, that ID belongs to the thief – you can *never* undo it.” Days later, an editorial in the *San Jose Mercury News* agreed: “An effective national ID system to keep terrorists away will take a lot more than issuing nifty new cards. Without a thorough national debate, it is likely to be little more than pork for the tech industry -- and do nothing to keep Mohammed Atta No. 2 off an airplane.”

As the reporters grilled ACLU experts on the impact of the USA-PATRIOT Act, Ann Beeson said that the ACLU has heard that there has been a huge volume of requests from law enforcement for installing pen register / trap and trace (pr/tt) devices on Internet service providers to monitor Internet use, and explained that the FBI’s Carnivore system is sometimes used to execute a pr/tt order. This aptly-named surveillance system gives the

FBI access to the email of *every subscriber to the same Internet service provider as that which is used by the target of the order*. But because these orders are secret, Americans have no way of knowing if their email is being monitored. Additionally, Beeson said that the ACLU has learned that the government has subpoenaed records related to the Internet use and other activities of foreign students from colleges and libraries. Once again, entities that receive these subpoenas are barred from talking about them.

The net result of this increase in surveillance is likely to be the chilling of speech, says the ACLU-NC's Ann Brick. "People become afraid to talk openly when they fear their apartment might be bugged or their phones might be tapped...Surveillance has a chilling effect because you just don't know whether you can communicate freely."

In sum, said Steinhardt, "September 11<sup>th</sup> changed many things and among them, it accelerated the trend of our society to move toward a mass surveillance society. We are now at the point where virtually every day a new surveillance technology is rolled out... It's hard to imagine anything less patriotic than this assault on American values."

Stay tuned for more information on the work of the ACLU to protect our privacy and our freedom during this pivotal time.

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## **State Supreme Court Deals Blow to Juvenile Justice**

**By Stella Richardson**

In a major setback for advocates of juvenile justice and voters' rights, on February 28<sup>th</sup>, the California Supreme Court upheld Proposition 21, the sweeping juvenile crime measure passed by voters in March 2000.

In a 6-1 decision, with Justice Kennard dissenting, the high court held that the new law's provision giving prosecutors rather than juvenile court judges the discretion to charge children in adult criminal court did not violate the constitutional separation of powers doctrine. The court also rejected the argument that Proposition 21 violated the California Constitution by rolling multiple subjects into one ballot initiative.

More than 50 organizations and individuals, including the ACLU, the League of Women Voters of California and the California Teachers' Association, submitted briefs urging the court to strike down the voter-approved initiative in *Manduley v. Superior Court*, in which the San Diego District Attorney is prosecuting eight youths as adults. The high court agreed to review the case after the Fourth District Court of Appeal ruled that Proposition 21 unconstitutionally stripped judges of their power.

"This is a very disappointing ruling from the standpoint of juvenile justice because Proposition 21 is very bad policy," said Steven Mayer, chair of the ACLU-NC's legal committee, a partner at the law firm Howard Rice, and author of the ACLU's amicus brief. Experts on the issue point to studies showing that children who are channeled into

the adult criminal justice system are more likely to become repeat offenders later in life than their peers who are tried in the juvenile system.

“This ruling also tells us that in the area of criminal law the single-subject rule currently lacks teeth,” said Mayer. However, Mayer did identify a glimmer of hope in the ruling. In concurring opinions, Justices Moreno and Werdegar disagreed with the majority’s reasoning on the single-subject rule. In particular, Justice Moreno questioned the inclusion of provisions expanding the offenses that can trigger a Three Strikes sentence, and suggested that the court had applied too liberal a standard in earlier decisions on the rule. Referring to a 1949 case in which the court “assumed, without explanation” that the single-subject rule for initiatives should be defined in the same manner as the single-subject rule on legislation, Justice Moreno wrote:

“Unfortunately, our subsequent cases have uncritically followed *Perry v. Jordan*, employing a liberally interpreted “reasonably germane” test rather than a test designed, as the ballot argument to the single-subject rule states, to “eliminate [] the possibility” of voter confusion caused when “improper emphasis is placed upon one feature and the remaining features [are] ignored.”

“A lot of people think the ballot initiative process is out of control, with too many initiatives that are too sweeping in their scope. It may be that our case started a process that will lead to an evolving interpretation by the court on the single-subject rule,” said Mayer.

The ACLU’s remaining challenge to Proposition 21 is fully briefed and ready for oral argument in the court of appeal. In *League of Women Voters v. Davis*, the ACLU argues that Proposition 21 violated California election law because the version of the initiative

that was circulated by signature gatherers is different from the version that appeared on the ballot.

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## **California Police Chiefs Stand Up to Feds** **By Stella Richardson**

Claiming that its dragnet of 5,000 Middle Eastern men last November yielded “a significant number of leads,” the U.S. Department of Justice issued a new directive in March requiring law enforcement agencies to interview 3,000 more people of Middle Eastern origin. In an April 3<sup>rd</sup> letter to local police departments, civil rights and community organizations across northern California responded by calling the operation “a troubling and counterproductive manifestation of the practice of racial profiling” and urging local agencies not to participate.

The San Jose, San Francisco, Oakland, San Diego, and San Mateo Police Departments refused to take part in the earlier round up of 5,000 non-immigrant men last November.

“We understand the government’s need to gather information when investigating the terrorist attacks of September 11th,” said Jayashri Srikantiah, staff attorney with the ACLU-NC. “But broad-based targeting of individuals based on their ethnicity and national origin is nothing more than racial profiling. We thank the police departments who have taken a stand on this crucial issue,

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*“Broad-based investigations of thousands of people, especially when based on an ethnic profile, inevitably spread fear and anxiety in any community.”*

- Ziad Asali, President of the American-Arab Discrimination Committee.

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and urge every police department in northern California to avoid jeopardizing their relationship with communities of color by declining to participate in the discriminatory federal dragnet.”

The groups also questioned the government’s assertion that its earlier investigation was a success, pointing out that officials were able to claim only 20 arrests for visa violations; none with any relation at all to September 11<sup>th</sup>. Leaders in Arab and Muslim communities also challenged Attorney General John Ashcroft’s claim that the investigations helped build community relations.

“The Attorney General is wrong to think that these investigations have created a greater level of trust between the Arab-American community and law enforcement,” said Ziad Asali, President of the American-Arab Discrimination Committee. “Broad-based investigations of thousands of people, especially when based on an ethnic profile, inevitably spread fear and anxiety in any community.”

The groups that signed the letter included the Japanese American Citizens League, South Asian Bar Association of Northern California, Arab American Caucus of the California Democratic Party and the San Francisco Chapter of the National Lawyers Guild.

In a related development, in a letter sent to the Attorney General on April 10th, the California Police Chiefs Association expressed their strong opinion that local police should not be involved in enforcing federal immigration laws. The letter was issued in response to news reports that the U.S. Department of Justice was considering a controversial plan to give police the power to enforce federal immigration laws. The association represents municipal law enforcement agencies throughout California.



“It is the strong opinion of the California Police Chief’s leadership that in order for state and local law enforcement to be effective partners with their communities, it is imperative that they not be placed in the role of detaining and arresting individuals based solely on a change in their immigration status,” the letter said.”

We commend the California Police Chiefs Association for recognizing that local enforcement of immigration laws would only lead to the erosion of police community relations and would reduce their ability to solve crimes,” said Mark Schlosberg, police practices policy director of the ACLU-NC.

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## "One Strike" Drug Evictions Stand

“What has the Supreme Court been smoking?” asked syndicated columnist Arianna Huffington on April 1<sup>st</sup>.

Huffington was up in arms about the high court’s unanimous ruling in *HUD v. Rucker*, a case that the ACLU and ACLU-NC helped champion through federal district court all the way to the U.S. Supreme Court. In a bitter defeat on March 26<sup>th</sup>, the court upheld the federal government’s draconian “one strike and you’re out” rule permitting evictions for drug use in public housing. The ruling sanctioned the controversial practice of “no-fault evictions” of people who are unaware that their relatives or friends possess illegal drugs – people like Pearlie Rucker, the lead plaintiff in the case. The Oakland Housing Authority evicted Rucker, a 63-year-old grandmother, when her mentally disabled daughter was caught with cocaine three blocks away from Rucker’s apartment.

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*“There is simply no justification for evicting innocent people from their homes.”*

– Alan Schlosser

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“Regardless of knowledge, a tenant who cannot control drug crime, or other criminal activities by a household member which threaten health or safety of other residents, is a threat to other residents and the project,” wrote Chief Justice William H.

Rehnquist, who authored the majority opinion.

“We are very disappointed that the court overturned sound decisions by a federal district court in Oakland and the Ninth Circuit *en banc*, which both ruled that this statute does not apply to innocent bystanders,” said Alan Schlosser, legal director of ACLU-NC. “It’s absurd to characterize an elderly grandmother like Pearlie Rucker as a threat to others and there is simply no justification for evicting innocent people from their homes. The ACLU will explore other avenues for overturning this damaging policy.”

The ACLU national office and the ACLU-NC filed amicus briefs in the case.

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## **Sister Helen Prejean Speaks at Sonoma Chapter Annual Dinner** **By Lisa Maldonado**

Nearly four hundred people packed the Veteran's Memorial Hall in Santa Rosa to hear keynote Speaker Sister Helen Prejean speak against the death penalty at the Sonoma Chapter's Annual Dinner on March 7, 2002.

The event, which raised funds for the ACLU of Sonoma and the Death Penalty Moratorium Campaign, honored longtime social justice activist Maria Rifo with the Jack Green Civil Liberties Award.

After a lifetime of activism, including working with Cesar Chavez and the United Farm Workers for 12 years, Rifo is still an inspiring activist at the age 95. "There is work for all of us to do to fight injustice... I get up every day thankful that I am able to do something for others," she told the receptive crowd. Rifo is currently working with a Latina community group, Mujeres Unidas in Sonoma County, visiting inmates at Folsom State Prison, and has founded a scholarship fund at Santa Rosa Junior College.

A highlight of the event was the moving speech of Sister Helen Prejean, author of *Dead Man Walking*, who recounted her struggles as a spiritual advisor to Patrick Sonnier, a convicted killer who was sentenced to die in the electric chair at Louisiana's Angola State Prison. Sister Helen spoke vividly of her adventures as an activist who was awakened to the flaws in the execution process and whose life has been transformed as a result.

The audience was transfixed by her accounts of her experience as an educator, organizer and public speaker against the death penalty and of her struggle to work on behalf of the families of murder victims as well as inmates on death row. Sister Helen has witnessed five executions since becoming Sonnier's spiritual advisor and seen her book turned into an Academy Award winning movie and opera.

"We are making a difference," she told the crowd. "There is a growing feeling in this country that the death penalty is so ridden with flaws and unfairness that there must be a moratorium"

The event, which was organized by Sonoma Chapter activists, Steve Fabian, Wayne Gibb, David Grabill, Victor Chechanover, Leslie and Marvin Pederson and Irma Ramirez was one of the most successful dinners ever, and the chapter signed up over a hundred new ACLU members. "It's a lot of work putting this together as volunteers," said Chapter Chair Steve Fabian. "...but seeing people leave rededicated and inspired by these heroic women makes it all worthwhile".

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*To our readers*

For two decades, the ACLU News has tumbled through mailboxes throughout northern California bringing you civil liberties news six times a year under the masthead you see on page one.

Now, we're preparing to make a few changes.

News cycles move more quickly than ever today, and many of us rely on the Internet for up-to-the-minute information. In keeping with the times, the ACLU-NC plans to bring you updates and alerts through a new monthly "e-news" email newsletter. We'll supplement this with four issues a year of the **ACLU News** – featuring commentary, analysis and a range of civil liberties voices.

But before we make these changes, we want to hear from you.

Please tell a little about yourself, and tell us what you look for in the #ACLU News# – which news and features you can't live without – and which you can't live with. Your feedback will help us deliver you the kind of news you want to hear. All you have to do is answer the questions below. We won't share your information with anybody – but we do promise to read every survey that you send back.

Thank you for your help.

Rachel Swain, Editor ACLU News

Dorothy Ehrlich, Executive Director

Gigi Pandian, Program Assistant

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## Vallejo High Senior Wins ACLU Scholarship

By Andy Lurie

On Monday, April 15th, the ACLU announced that Vallejo's Lindsay Waggerman was among nine high school seniors nationwide who were selected to receive \$4,000 college scholarships in recognition of their activist work in civil liberties.

The ACLU's Youth Activist Scholarship Award was created in 2000 to recognize the efforts of graduating high school seniors who have demonstrated a strong commitment to the protection of civil liberties. The award, which is given annually, was made possible by a generous grant from an anonymous donor. The nine winners were judged on the strength and depth of their contributions to civil liberties and the rights of young people, the likelihood of their continuing commitment in the future, and the obstacles they had to overcome in their activist work.

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*"You can't give up the fight. There will always be oppression and opposition, but as long as you believe, you have to stick with it."*

- Lindsay Waggerman

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Waggerman, the president of the ACLU club at Vallejo Senior High School – the first high school ACLU club in the nation -- was understandably excited when she heard that she was among those selected to receive the scholarship. "It was nice to be recognized for doing something that is such an integral part of me," Waggerman said.

Since joining the club as a sophomore, Waggerman has actively explored a wide

range of issues related to civil liberties, from investigating the political, economic, and social forces driving the sex worker industry to holding student forums on the possible breaches of freedom that become especially relevant during a national crisis. She credits the ACLU-NC's Howard A. Friedman First Amendment Education Project with solidifying her grasp of and dedication to protecting the Bill of Rights. Currently one of the student participants, Waggerman would like to continue her affiliation with the Friedman Project when she matriculates to UC-Berkeley in the fall, where she will focus on American Studies. "I want to take the ACLU values and apply them to the world around me," she said. While she has yet to pare down her options for the future, Waggerman plans to do "something political, like fighting for civil rights and human rights."

Waggerman claims the work she has done to change her school's mascot as her biggest victory. As a not-so-proud Vallejo Apache, Waggerman started a campus-wide campaign—culminating in a series of forums and community demonstrations—to rid the school of its outdated mascot, which many American Indians find offensive and insensitive. Although the school has yet to make the changes she has demanded, Waggerman feels that she has increased both school and community awareness of issues central to Native Americans.

The road to positive change is a long and arduous one, but persistence pays off, according to Waggerman. "You can't give up the fight. There will always be oppression and opposition, but as long as you believe, you have to stick with it." This award should serve as notice to Berkeley and to wherever else Lindsay Waggerman goes during her life: wherever there is injustice, she'll be fighting on the front line.

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## **Say What??!! 2002 ACLU Youth Celebrate Freedom of Expression** **By Michael LaRiviere, Vallejo High School and** **Nancy Otto, Director, Friedman Education Project**

"Youth as Activists" was the theme at this year's annual *Say What??!! Youth Celebrating Freedom of Expression* conference on March 27th, 2002 at San Jose State University.

Over 350 students from high schools around the Bay Area attended the conference designed to raise awareness of issues that are of interest to today's youth. After an energizing performance by La Paz, a group of youth from Los Angeles who do politically conscious hip hop, a panel of high school students from Vallejo High School spoke about their struggle to change their high school's Indian mascot on the grounds that it is racially and religiously insensitive and disrespectful. Students from the audience talked of their own experiences of confronting exclusion and hate at school, speaking thoughtfully and honestly about how such behavior affects them on a day-to-day basis. The opening concluded with a powerful performance by the hip hop duo Company of Prophets.

The opening was followed by two sessions of eight workshops each on issues such as the need for an independent media, the rights of immigrants post September 11th, the rights of youth when dealing with the police, censorship in school, the institutional and systemic components of poverty, the separation of church and state, linking youth crime to domestic violence and child abuse, racial profiling, confronting hate on campus, inequities in education, legalizing prostitution, the plight of political prisoners, and the USA PATRIOT Act's toll on privacy.

ACLU student activists researched these issues and facilitated the discussions in each of these workshops, aided by adult resource experts who generously donated their time and energy. There were displays by several groups, including the poignant "Wall of Death: Police Brutality" exhibit. The closing entertainment was a performance by freestyle rap artist Tiffani Douglas, a senior from Skyline High School in Oakland.

Students and teachers felt the conference was very informative and fun. One teacher wrote, "Once again, thank you so much for the field trip to the conference and all that the ACLU did for my class. We couldn't have gone if it weren't for all of you. I plan to start an ACLU club at our school. Once again, thanks for everything and we'd love to attend the next conference at UC Berkeley."

The ACLU Friedman Education Project plans two youth rights conferences a year, one at UC Berkeley in the fall, and the other at San Jose State in the spring. The next conference will take place November at UC Berkeley and will focus more specifically on immigration issues to follow up on this summer's student field investigation on immigration issues from August 11th to 17th.

*For more information about the programs offered by the Friedman Education Project, please call 415/621-2493 x. 337.*

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