ACLU NEWS

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High Court Strikes Down Law Limiting Minors' Right to Abortion

On August 5 -- a decade after the California Legislature tried to restrict the reproductive freedom of California's teenagers -- the California Supreme Court ruled that the 1987 California law requiring teenagers under 18 to obtain parental or judicial consent for abortion violates the California Constitution's right to privacy. The ruling came in a lawsuit, *American Academy of Pediatrics v. Lungren*, which was argued before the state high court on May 7 by ACLU-NC staff attorney Margaret Crosby.

"This decision reaffirms the California Constitution's powerful protection for reproductive decisions, and in addition reaffirms the California Constitution's historic protection for the privacy rights for all people of all ages," said Crosby.

"We are pleased that this court, after rehearing arguments in this case, looked beyond the myths, beyond the stereotypes, beyond the misconceptions, to evaluate this law based on the best scientific evidence available. This is in the finest tradition of judicial review. The court fulfills its obligation to safeguard fundamental rights by putting the government to the task of proving that it has compelling justifications for invading citizens' fundamental rights."

"For the past 25 years, an entire generation of young women has been able to obtain reproductive health care in California. This important decision preserves the right of future generations to make one of life's most fundamental decisions: whether to bear a child," said Crosby at a San Francisco press conference applauding the ruling.

The medical care provider organizations who challenged the law, including the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, Planned Parenthood and the California Medical Association, were at the press conference as were their attorneys from the National Center for Youth Law and the law firm of Morrison & Foerster.

"If a young woman is mature enough to give permission without parental consent for prenatal care, labor and delivery, cesarean delivery, adoption or child raising, we believe she is able to give informed consent for termination of her pregnancy," said Charlotte Newhart, Director of the American College of Obstetricians and Gynecologists, District IX. ""We believe physicians should encourage adolescents to share all their medical conditions and concerns with their parents, however we also understand that such sharing of information can be physically and psychologically dangerous for many young women and delay their seeking necessary medical care."

Ten years ago, the Legislature passed a law requiring every teenager under 18 to obtain the written consent of a parent or a court order for abortion. "That law, fortunately, has never taken effect in California because of court orders issued in this case," explained Crosby. "Today's ruling ensures that the law will never take effect. The consequences are important for the health of young women, for the reproductive rights of all women, and for the privacy rights of all Californians."

"The Court's decision is critically important for the welfare of the state's young women," said attorney Abigail English of the National Center for Youth Law. "We have had 15 years of experience with laws mandating parental involvement in adolescents' abortions in other states. These laws, which may sound benign, inflict harm on the most vulnerable young women: teenagers from unhappy homes. Studies have shown that most pregnant teenagers do consult their parents -- without being forced to by law.

"But for many adolescents, revealing a pregnancy would produce not counsel but catastrophe. Some families simply cannot bear the stress of this explosive news. A law mandating parental consent, therefore, erects a barrier which a pregnant teenager must surmount by one of several treacherous routes: she may travel to another state with more enlightened health care policies; she may attempt an abortion without professional help; she may become a parent before she is ready, or she may go to court to try to persuade a judge to grant her permission for an abortion.

"Laws requiring parental involvement for abortion therefore undermine the very goal they purport to advance: the health of young women," added English.

"What has been a failed experiment in other states would have been a nightmare in California," Crosby said. California has the highest rate of teen pregnancy in the nation. Approximately 30,000 adolescents under 18 have abortions in this state every year. In 1987, a legislative analysis of California's teen abortion bill estimated that 11,000 pregnant teenagers would require court orders authorizing abortion every year. This state's teenage abortion docket would be spread through 58 counties, over 60 languages, over hundreds of miles.

The California Supreme Court has the final authority to decide this case because it involves the interpretation of the state Constitution.

The plaintiffs are represented by ACLU-NC staff attorneys Margaret Crosby and Ann Brick; Abigail English of the National Center for Youth Law's Adolescent Health Care Project; and Linda Shostak, David Robertson, Annette Carnegie and Lori Schechter of Morrison & Foerster who have litigated the case on a *pro bono* basis as cooperating attorneys for the ACLU-NC and the NCYL.

American Civil Liberties Union of Northern California
1663 Mission Street, Suite 460, San Francisco, CA 94103
(415) 621-2493

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Police Sued for Surprise Dawn Raid of Welfare Recipients

In the early dawn hours of March 13, residents of the Marina Vista Apartments in Vallejo were awakened when 60 law enforcement agents, many wearing raid jackets with the word "POLICE" in large yellow letters, entered their homes without warrants and conducted a highly-publicized mass raid. The operation, which involved seven state and local agencies and had been announced earlier to the media in an embargoed police department press release, targeted residents because they were public assistance recipients.

On September 17, the residents filed a federal class action lawsuit, *Lazenby v. City of Vallejo*, in U.S. District Court in Sacramento charging that the government agencies violated their constitutional rights to be free from unreasonable searches and seizures, to privacy and to due process.

"This was a high-profile mass raid by armed officers of innocent public assistance recipients," said ACLU-NC cooperating attorney Roxane A. Polidora of Pillsbury Madison & Sutro. "The operation treated public assistance recipients as dangerous criminals. The raid shocked and frightened residents. Children were traumatized when awakened by officers milling through their homes and interrogating their mothers.

"The agencies have publicly stated that they intend to repeat this type of law enforcement raid, both in Vallejo and elsewhere. As a result, we are asking the court to issue an injunction barring the agencies from conducting another unannounced early morning police raid targeting welfare recipients," Polidora added.

In addition to Polidora, the plaintiffs are represented by ACLU-NC Managing Attorney Alan Schlosser, attorney Jodie Berger of the Center on Poverty Law and Economic Opportunity, and cooperating attorneys Joseph A. Whitecavage and Alexa E. King of Pillsbury Madison & Sutro.

Atmosphere of Coercion

"By adopting high profile, high pressure law enforcement tactics for an operation whose primary targets were guilty of nothing more than being welfare recipients, the planners of this multi-agency operation intentionally subjected residents to an atmosphere ripe with intimidation and coercion," said ACLU-NC attorney Alan Schlosser. "The health and welfare agencies identified those households as receiving public benefits -- not households suspected of committing welfare fraud. Plaintiffs should not have to fear another pounding on their doors and entry into their homes by a team of law enforcement agents simply because they receive public assistance," Schlosser added.

The agents had no search warrants and were able to gain entry into the apartments because of the inherently coercive atmosphere and tactics of the surprise mass raid. They knocked loudly and rang doorbells persistently. In some cases, they threatened the residents that if they did not allow the officers in, they would be embarrassed in front of neighbors and television cameras by loud interrogation through the closed door. Officers also gained entry by sticking a foot in a partially-opened door to prevent the resident from closing it.

After being shocked out of bed at 6:00 AM by a loud pounding at her door, 60-year-old Barbara Jane Lazenby, who suffers from heart trouble and diabetes, found herself in her bedclothes and without her dentures facing a group of officers with guns and a television camera. They did not show her any identification, and questioned her about the make and model of a car, her grown children and if she had won the lottery. When she was finally allowed to go into the bathroom to get more fully dressed she could hear the agents searching her home.

Heart Was Racing

After conducting an unauthorized search of her home and questioning her for 15-20 minutes, the officers left. From her bedroom window, Lazenby saw 60 officers lined up outside the door to her apartment and feared they would return. "I was extremely distraught and had to take nitroglycerin because my heart was racing. I cried most of the day, and felt depressed all week. I went to the doctor because, as a result of this incident, my blood sugar rose. I am still feeling the after-effects.

"My whole life I have respected the law," said Lazenby, who has lived alone in the Marina Vista Apartments since 1975, "and I hope -- no I demand -- them to respect me."

When a police officer wedged a foot inside her cracked-open door, plaintiff Jessica Michelle Billingsley "felt that I did not have a choice about letting or not letting them into my apartment." After being told that she must let officials search her apartment and being barraged with Òpersistent and demandingÓ questions, she said, ÒI cooperated with them because I felt that they might become belligerent if I did not." She felt humiliated, threatened and worried about her ten-year-old son who was awakened during the raid, "After awakening, he was too frightened to move or say anything. It left me feeling that my rights had been violated and my privacy had been invaded," Billingsley said.

Once the teams gained entry, they interrogated the residents, mostly still in bed clothes, for between five to thirty minutes. Other agents searched rooms, closets and even closed drawers, often being filmed by a DHS camera person who was taping for "training purposes" for future raids.

At other apartments, the officers read residents' personal mail, followed a child into a bathroom, and demanded a signature on an unexplained document after refusing to allow a woman to get her glasses.

The Marina Vista raid was a pilot program for a plan code-named S.A.F.E. (Specialized Agency Fraud

Enforcement Project) whose alleged purpose is to reduce violent and drug-related crime. As Vallejo Police Lt. Tony Pearsall told a news reporter accompanying the raid, "The ones that are cheating on benefits of Medi-Cal, the fraud, are the same ones that are committing the crimes." Pearsall offered no explanation for this alleged connection nor did he explain why all public assistance recipients were raided without any suspicion of welfare fraud.

In addition to the Vallejo Police Department, the task force included the Special Investigations Bureau of the Solano County Health & Social Services Department; Solano County Probation Department; California Department of Health Services; California State Parole Office and members of state agencies recruited from as far away as Fresno, Los Angeles, San Jose and Sacramento. These agencies, and a number of individual law enforcement officers, are named as defendants.

The suit is asking the U.S. District Court to issue a preliminary injunction enjoining defendants from conducting any similar unannounced early morning multi-agency raids. The individual plaintiffs are also seeking damages.

American Civil Liberties Union of Northern California
1663 Mission Street, Suite 460, San Francisco, CA 94103
(415) 621-2493

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California Women Prisoners Win Improvements to Poor Medical Care

On August 14, the ACLU and other advocates for women prisoners asked a federal district judge to approve a settlement agreement aimed at improving medical care for women prisoners at two California institutions.

Prisoners at the Central California Women's Facility and the California Institution for Women filed a federal class action lawsuit, *Shumate v. Wilson*, against the state and the California Department of Corrections in April 1995 charging that prisoners with serious illnesses are denied crucial medical care and suffer needlessly.

The plaintiffs argued that they are systematically deprived of essential medical care, in violation of their constitutional right to be free from cruel and unusual punishment. Prisoners with HIV and AIDS charged that practices at the prisons resulted in routine disclosure of their HIV positive status.

If the settlement is approved by the Court, an Assessor will monitor health care in the two prisons with the assistance of four medical experts over a 16-month period to determine if the state is in compliance with requirements, including:

- Making timely referrals to physicians for patients needing urgent care;
- Prohibiting untrained employees from making judgments about prisoners' medical care;
- Ensuring that prisoners receive necessary medications without undue and potentially life-threatening delays;
- Providing necessary physical therapy;
- Offering preventive care, including periodic physicals, pelvic and breast exams, pap smears, and mammograms;
- Protecting patient privacy by restricting access to medical records and ending practices that publicly and unnecessarily identify women with HIV, AIDS and other infectious diseases;

If, after the first eight months, the Assessor reports that the state has not complied with the terms of the

settlement agreement, he will continue to monitor health care at the prisons for an additional eight months. If the Assessor determines that the state has met its obligations under the agreement, the case will be dismissed. If health care remains inadequate at the end of the assessment period, the case will proceed to trial.

"We are very pleased with the settlement," said lead counsel Elizabeth Alexander, Director of the ACLU's National Prison Project. "California's prisons have a responsibility to provide decent, humane health care for the women in their custody. I congratulate the women who brought this suit for their courage and perseverance."

Ellen Barry, Director of Legal Services for Prisoners with Children, agreed. "The women who brought this suit aren't asking for 'Cadillac Care' and they aren't out for money or fame," she said. "They've stuck their necks out and stood up to the state for one simple reason: to hold the state of California responsible for meeting their basic medical needs.

"We are hopeful that the settlement agreement will result in significant improvements in the provision of adequate health care for women prisoners," Barry said.

Barry noted some of the tragic results that resulted from lack of adequate medical care at the prison:

- A woman prisoner had painful lumps in her breasts for a long period. When a large lump developed on her right breast, she tried to convince a prison doctor to perform a biopsy. He refused. The lump grew so large that it protruded through the skin. A biopsy was finally performed in August 1995
- more than 10 years after she first complained of her symptoms to correctional officials
- and her cancerous right breast was removed. In late 1996 she was diagnosed with cancer in her left breast and underwent a second mastectomy.

- After experiencing chest pains for two days, a woman was taken to the prison infirmary, but not evaluated by a physician. She was returned to her cell, continuing to complain about chest pain. Only after the patient collapsed and two staff members were unable to revive her was a doctor called
- over four hours after she went to the infirmary. An ambulance finally arrived in time to pronounce her dead.

- A woman eventually diagnosed with cancer complained for months about pain, weight loss, and the passage of blood clots before she was allowed to see a doctor. Despite severe pain and debilitating swelling in her legs, she did not receive adequate pain medication and was forced to walk to the dining hall if she wanted to eat. She died approximately nine months after her diagnosis.

"These are not isolated cases, said Fresno attorney Jack Daniel. "The settlement gives hope to women

suffering from chronic diseases and other serious illnesses."

HIV-status confidentiality

Stephen Hibbard, a partner with McCutchen, Doyle, Brown & Enersen, which represented the group of plaintiffs with HIV and AIDS, said that they are entitled to have personal medical information kept private by doctors and medical staff, and to expect correctional officers and staff to obey state laws requiring that information about a prisoner's HIV status be kept confidential.

"The failure to adequately protect medical confidentiality can have serious consequences," Hibbard said. "Prisoners with HIV and AIDS face many forms of discrimination and are subject to violent attacks. When women cannot believe personal medical information will be kept private, they do not get tested and do not receive desperately needed medical treatment."

Hibbard said that he hopes the steps agreed to in the settlement will help protect the health and safety of the growing HIV-positive population in California's women's prisons.

Now that attorneys for both the plaintiffs and the state have signed the settlement agreement, it will be the subject of an as yet unscheduled fairness hearing conducted by U.S. District Judge William Shubb. He will determine whether the plaintiffs' interests have been addressed properly in the settlement and whether the settlement will take effect.

Many Risks

"We are happy with the agreement we've forged with the state," said Dale Rice, a partner with Heller, Ehrman, White & McAuliffe. "But Charisse Shumate and the other plaintiffs have endured too much suffering and taken too many risks by coming forward for us to consider that this case is over.

"We hope that the Department of Corrections will implement the settlement in good faith, but in case they do not, we are prepared to return to court to protect the women's constitutional rights," Rice added.

The plaintiffs are represented by attorneys from the National Prison Project of the ACLU; Legal Services for Prisoners with Children; attorneys Catherine Campbell and Jack Daniel; University of Southern California Post Conviction Justice Project; ACLU-NC staff attorney Ann Brick; and the law firms of Heller, Ehrman, White, & McAuliffe, and McCutchen, Doyle, Brown & Enersen, both of which are providing *pro bono* services.

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1663 Mission Street, Suite 460, San Francisco, CA 94103
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Judge Bars County "Drug Test" for GA Applicants

Contra Costa County can no longer require applicants for General Assistance (GA) to take SASSI, a controversial written "drug test," ruled Judge Maxine M. Chesney of the United States District Court in San Francisco on July 31. Judge Chesney's permanent injunction against the County's mandatory test came in the case of *Hunsaker v. County of Contra Costa* filed on behalf of welfare recipients and applicants by the ACLU NC, the Disability Rights and Education Fund, Inc. (DREDF) and the law firm of Wilson, Sonsini, Goodrich & Rosati (WSGR).

"Most people lie..."

The test, which the County began using about five years ago, is officially called the "Substance Abuse Subtle Screening Inventory," or SASSI-2. It asks 62 true/false questions such as "I believe everything is turning out just the way the Bible said it would.", "Most people would lie to get what they want.", Sometimes I have a hard time sitting still.", "Some crooks are so clever that I hope they get away with what they've done." and "Pornography and obscenity have become serious problems and must be curbed.". Twelve additional questions ask about alcohol and drug related experiences in the past year. The test is then scored as "CD" (chemically dependent) or "non-CD". A CD score requires the GA applicant to be further evaluated, and may lead to enrollment in a mandatory drug treatment program as a condition for continuing to receive County welfare.

Welfare applicants challenged the test in U.S. District Court in 1995 arguing that the test was unconstitutional, and a violation of the Americans with Disabilities Act (ADA). Several other counties in California, notably Alameda and San Diego, have used, or have considered using, the SASSI-2 as a screen. Last year, Alameda County agreed to cease using the test pending the outcome of the suit.

Until last year, the County required all test-takers scored as "chemically dependent" or "at risk" of dependency, to go through an onerous six-month treatment program. Based on the results of the test, thousands of GA applicants were referred to the drug treatment program. Many subsequently were dropped from the rolls when they failed to complete the program.

After this suit was filed in 1995, the County modified its use of the test, requiring persons scoring as "chemically dependent" to be further evaluated in a psychological interview for referral to the treatment program.

"Inaccurate results"

The plaintiffs argued that the test was totally unreliable and extremely inaccurate. Last year, the County and the plaintiffs agreed to jointly study the test's accuracy. The study revealed that the test incorrectly classified nearly half (44%) of the applicants scored as "CD." In other words, of the persons found by the test to be chemically dependent, half were not. The study also found that the test missed half of the truly chemically dependent. It also incorrectly identified many recovered and rehabilitated drug and alcohol users as currently dependent.

"The County was removing people from General Assistance based on a test not much more accurate than a coin toss," said David J. Berger, a litigation partner at WSGR and one of the plaintiffs' lawyers. "It wasn't serving any interest in getting the right people to treatment, while at the same time it was forcing non-chemically dependent people into extremely burdensome treatment programs."

False labels

"By falsely labeling recovered applicants as drug abusers, the test stigmatized the very people we should be supporting," added DREDF attorney Brad Seligman.

Judge Chesney found that the test violated the Americans with Disabilities Act because it placed a disproportionate burden on recovered former drug and alcohol abusers who are entitled to protection under the law by mislabeling tem as currently chemical dependent. Judge Chesney also noted that the joint study showed that 84% of recovered abusers were so mislabeled by the SASSI. A CD label requires these applicants to go through an intrusive evaluation process where they "must disclose sensitive personal information not "demanded" of persons who "pass" the SASSI. As a result, the Court held that "the County's policy of using the SASSI...places a disproportionate burden on persons protected under the ADA and is not necessary to effectuate the purposes of identifying CD individuals who apply for GA."

The Court's order permanently prohibits the County from using SASSI. Reserved for later determination is the amount of damages the County must pay.

In addition to Berger and Seligman, the plaintiffs were represented by ACLU-NC staff attorney Ed Chen and WSGR attorneys Millicent Meroney, Marthe LaRosiliere, and Dorothy Fernandez.

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Rights Commission To Hear Rights Groups on Scapegoating of Asian-Americans

By Michelle Chang

The United States Commission on Civil Rights announced on October 23 that it will hold a briefing in December on a petition charging scapegoating of Asian American political donors.

The petition was filed in September by ACLU of Northern California staff counsel Ed Chen and San Francisco attorney Dale Minami of Minami, Lew & Tamaki on behalf of a broad coalition of individuals and national Asian Pacific American groups.

In its civil rights complaint with the U.S. Commission on Civil Rights, the coalition said that members of Congress, the Democratic National Committee and National Republic Senatorial Committee and others have contributed to a hostile racial environment for Asian Pacific Americans.

"Five years ago, the United States Commission on Civil Rights issued a comprehensive report on Civil Rights Issues Facing Asian Americans in the 1990's," Chen said. "The Commission found that despite certain economic and educational accomplishments of some in the Asian Pacific American community, Asian Americans continue to face substantial barriers to full equality.

"Specifically, the Commission found that anti-Asian sentiment, racial stereotyping, persistent perception of Americans of Asian descent as foreigners, Asia-bashing by public leaders, and unbalanced and insensitive media coverage not only impedes their political empowerment and socio economic progress but also contribute to a hostile and violent environment against Asian Americans," Chen added.

"The campaign finance controversy which has unfolded over the last year has unfortunately become racialized, with injurious consequences to the Asian Pacific American community," Chen explained. "In response to allegations of wrongdoing by several individuals who happen to be Americans of Asian descent, members of our nation's most powerful institutions and leadership -- Congress, the major political parties, public figures, and the media -- have engaged in a pervasive pattern of racial stereotyping, gross generalizations, guilt by association based on common ethnicity, and scapegoating directed at Asian Pacific Americans in particular, and immigrants in general.

"These events regrettably demonstrate that the problems of bias and stereotyping identified by the Commission five years ago are as prevalent and as entrenched today as ever," Chen said.

The 27-page petition charges that in the Senate hearings on campaign fundraising abuses, which newspapers dubbed "The Asian Connection," "Chinagate," and "Chop Sueygate," members of the nation's most prominent institutions - the Congress, the nation's political parties, the media and prominent public officials - often singled out Asian Americans and legal immigrants by constantly placing a spotlight on their actions while ignoring many other finance violations.

As an example of scapegoating, the petition points to a set of bills before Congress that would limit the First Amendment rights of Asian American immigrants and other legal permanent residents by prohibiting campaign contributions by legal permanent residents to any federal political campaign even though the primary individuals being investigated are U.S. citizens. The groups also question a new policy of the Democratic National Committee, instituted in response to the accusations of improper fundraising, that bars legal permanent residents from contributing to the DNC, and prohibits them from attending White House or DNC Finance events or having photographs taken with the First Family.

"It's outrageous that some of the bills before Congress would make it illegal for legal permanent residents who live and work in this country, pay taxes, and serve in the armed forces, to write letters to politicians, to volunteer their time or donate money for political causes, or even to talk to their neighbors or coworkers about political issues," said Daphne Kwok, executive director of the Organization of Chinese Americans.

"We filed this petition in order to document pervasiveness of the discrimination, to educate the public about the corrosive and destructive effects of racial stereotyping and scapegoating, and ultimately to make recommendations to mitigate the hostile climate and to protect and promote the participation of Asian Pacific Americans in the political arena," explained Chen.

The petitioners include the National Asian Pacific American Legal Consortium, the Organization of Chinese Americans, the Japanese American Citizens' League, the Asian Pacific American Labor Alliance, and the Congressional Asian Pacific American Caucus Institute and others.

The full text of the complaint made to the United States Commission on Civil Rights is available on the website of the Organization of Chinese Americans at http://www2.ari.net/oca/camp/complain.html

Michelle Cheng, a sophomore at U.C. Berkeley, is an intern in the Public Information Department.

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1663 Mission Street, Suite 460, San Francisco, CA 94103
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Supreme Court Won't Hear 209 Challenge

On November 2, the United States Supreme Court announced that it would not hear the ACLU challenge to Proposition 209, the California initiative which aims to eliminate affirmative action in the state. The Supreme Court denied a *writ of certiorari* in the case of *Coalition for Economic Equity v. Wilson* filed by the ACLU and other civil rights organizations following the passage of the ballot initiative in November 1996.

ACLU-NC staff attorney Ed Chen said, "We are deeply disappointed with the high court's ruling. This leaves cities and counties in a horrible dilemma, without guidance on how to comply with federal law against discrimination and with Proposition 209 which bans affirmative action remedies.

"This ruling also leaves the nation without guidance as to the constitutionality of similar laws.

"We are now left with these gaping questions: What does 209 really mean? To what extent does federal law require affirmative action, Proposition 209 notwithstanding?

"This ruling leaves open lots of questions as cities, counties and other local government agencies try to comply with federal anti discrimination law and anti-discrimination obligations under the state Constitution, as well as with the divisive, discriminatory Proposition 209.

Chen also warned that "we should not read too much into the terse ruling. "This is not an affirmance by the court of Proposition 209, it is simply a refusal to hear the case. This could be for any number of reasons, including that the meaning of 209 is not yet clear -- courts often want to see what a measure really means before determining constitutionality," added Chen.

"Moreover, ours was a facial challenge -- meaning that we challenged the entire law. This still leaves open the question as to whether 209 is constitutional in specific instances.

"The incoming class at Boalt Hall -- where there is only one African American out of 250 first-year students -- reminds us what can lie ahead with Proposition 209. We do not think that the voters of California want to resegregate this state or to turn back the clock on equal opportunity for women and minorities."

Fighting on Many Fronts

ACLU-NC Executive Director Dorothy Ehrlich added, "Civil rights advocates will continue to fight on many fronts -- in the courts, in the Legislature and through grassroots activism and education -- to ensure that racial and social justice do not wither on California's vines."

Ehrlich said that civil rights organizations groups are meeting to plan educational campaigns and legislative efforts to save the numerous programs that Governor Pete Wilson has targeted for elimination under Proposition 209.

There are more than 30 programs -- ranging from summer science programs for elementary school students to hiring programs that ensure recruitment from minority communities -- that face eradication now that Proposition 209 is in effect. For example, SOAP, the Student Opportunity Access Participation, recruits and tutors over 4,000 African American, Latino and Native American junior high and high school students in Oakland.

Another program targeted by Wilson, the American Indian Early Childhood Education Program, has dramatically lowered dropout rates and raised the number of college-bound Native American in rural schools where at least ten percent of the students are Native American. James Graham, a teacher and program coordinator in Marysville, told the *San Francisco Examiner*, "It has made a big difference. A lot more of these students are graduating, going to colleges and becoming productive citizens in the community. Without these programs, that will cease. Unfortunately, Wilson and his cronies don't understand that."

ACLU Legislative Director Francisco Lobaco noted, however, that Wilson needs that approval of the Legislature to repeal these important programs. "When the Legislature reconvenes in Janaury, we and other civil rights advocates will strenuously opposes any effort to dismantle these crucial programs."

History of the Suit

On August 29, the ACLU affiliates of Northern and Southern California, the Lawyers Committee for Civil Rights, the Employment Law Center, Equal Rights Advocates, the NOW Legal Defense Fund and other public interest legal organizations filed the petition for certiorari in the U.S. Supreme Court and asked the Court to issue an emergency stay. The Court denied the emergency stay, and Proposition 209 became law in California on August 28.

On August 21 the Ninth Circuit Court of Appeals decided not to hear the case *en banc*, as requested by the plaintiffs. An injunction against the measure was granted in December 1996 by U.S. District Court Judge Thelton Henderson; that injunction was overturned by a three-judge panel of the Ninth Circuit in April.

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San Jose Library Internet to Remain Uncensored

On September 23, the San Jose City Council affirmed its "Library Bill of Rights" and endorsed uncensored access to the Internet in the city's libraries. "This is a victory for inquisitive students and for the First Amendment," said ACLU-NC staff attorney Ann Brick who testified against the proposal to install filtering software in the library to restrict minors' access to cyberspace.

"The United States Supreme Court has held that the Internet, as much as the books and newspapers found in our public libraries, is entitled to the very highest level of First Amendment protection," Brick said at the hearing. "That means that the First Amendment puts Internet censorship in the library off-limits for government, including city councils. Nor is that prohibition limited to censorship aimed at what adults have access to on the Internet. Sixteen-year-olds, as much as their older brothers and sisters of 26, are entitled to the First Amendment protections of our Constitution."

The Council was voting on a proposal to allow minors to use computers in the children's sections that contained special screening software which uses a keyword system to block out "objectionable" materials. The filtering software not only blocks material that is legally obscene for minors, it typically blocks a much wider spectrum of speech.

"Sometimes what the software does is almost laughable," said Brick, "for example when filtering software that blocks based on key words blocks the poetry of Anne Sexton because the word 'sex' is part of her name or when the White House web site was blocked because it used the term 'couple,' as in 'First Couple.'

"But it is no laughing matter when software intentionally blocks web sites because of their sexual content, often including life-saving information on safe sex practices, contraception, abortion, or information designed to help gay and lesbian teens. Nor is it a laughing matter when software blocks web sites with controversial political content as has happened to the National Organization of Women. Or when software blocks the web sites of those who criticize it," Brick added.

San Jose Librarian Jane Light and Mayor Susan Hammer played a leading role in opposing the proposed censorship. "I can't think of anything worse than government and politicians getting into the role of acting as censors," said Mayor Hammer.

The American Library Association has long recognized that it is the domain of parents, not librarians--or City Councils or faceless software companies--to oversee the library use of their children--and only their children. "Installing filtering software on the library computer is the antithesis of installing it at home,"

Brick explained. "At home, individual families make decisions about what is appropriate for them. When filtering software is installed on library computers, no account can be taken of the needs or wishes of individual families."

Ironically, even the librarians do not have control over what is censored and what is not. Software company employees, not trained librarians, decide what material will be permitted for minors at the library. And, most disturbing of all, because software companies consider the identity of the web sites that they block to be trade secrets, not even the librarians know which web sites are being blocked.

The San Jose decision is being closely watched as libraries and city governments around the nation face the question of library access to the Internet. Given the intense pressure from those who would censor the Internet, Brick applauded the leadership of San Jose's Mayor, librarians and City Council. "The use of filtering software at public libraries is fundamentally inconsistent with the role of a library as a storehouse of information and it is fundamentally inconsistent with the constitutional principles that protect and preserve our freedom," she said.

American Civil Liberties Union of Northern California
1663 Mission Street, Suite 460, San Francisco, CA 94103
(415) 621-2493

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Oakland Kills Video Surveillance

ACLU Cites Key Lesson for Other Cities

Adopting a recommendation from their own police department, on September 16 the Oakland City Council Public Safety Committee voted three to one to kill a proposed high tech video surveillance pilot project. "This decision strikes a blow against Big Brother," said ACLU-NC Police Practices Project Director John Crew who had protested the surveillance plan from the onset.

The Police Department's sudden opposition to video surveillance was a reversal of their year-long advocacy in favor of the use of this technology in public areas. The about-face occurred after the Department was ordered to carefully consider doubts about the technology uncovered by research presented by the ACLU. The Oakland City Attorney also concluded that the surveillance plan, as proposed, would violate constitutional rights to privacy.

Privacy in Public

"We were always confident that, if the issue was fully and fairly explored, high tech video surveillance would be rejected," Crew said. "At first, people simply assumed that video surveillance would reduce crime and that there was no right to privacy in public places. Once they considered this issue more closely, however, they found otherwise."

At its meeting, the Council Committee endorsed a report from Police Chief Joseph Samuels, Jr., concluding that "...concerns about governmental intrusions and abridgment of civil liberties from residents and merchants of this City will likely negate the advantages and potential of this method of crime prevention."

Fine print

The Oakland Police Department had first proposed the video surveillance plan in September 1996. At an April 1997 demonstration for the Council Committee, the Department showed off chillingly powerful video cameras that swivel every direction and can zoom in to read the fine print on a flyer from hundreds of yards away or can recognize a license plate or face from more than a mile away. As recently as July, the Department asked the Council to mount the cameras at pilot sites along Lakeshore Avenue and near the Oakland/Alameda Coliseum.

As the ACLU noted, these were hardly the sort of handheld video camcorders used by families or the low tech cameras mounted in convenience store. According to ACLU-NC Police Practices Project Director John Crew, "These are among the most powerful and invasive tools currently in Big Brother's arsenal." Crew pointed out that face recognition technology will soon allow individuals captured on video to be instantly identified through computerized searches of facial images already stored in a variety of government databases.

In July, the Council Committee for a written legal opinion addressing the ACLU's concerns. The Oakland City Attorney opinion concluded that a "... method of surveillance may be no greater than that which can be achieved by the naked eye. Mindful of the advances in technology, the California Supreme Court has held that `precious liberties derived from the Framers (do not) simply shrink as the government acquires new means of infringing upon them.' Additionally, the (U.S. Court of Appeals for the) Ninth Circuit has held that `the police may record what they normally may view with the naked eye.' Consequently, one may have a reasonable expectation of privacy from observation from a video camera equipped with zoom or magnifying capabilities."

In Chief Samuels' report to the Council, he stated that the Oakland Police Department had hoped to be "... among the pioneers in the field of taped video camera surveillance" but ultimately found that "... there is no conclusive way to establish that the presence of video surveillance cameras resulted in the prevention or reduction of crime."

ACLU-NC attorney Crew said, "We hope this is a lesson to other communities. Big Brother is often less effective, more expensive and much more intrusive than he may appear to be a first glance."

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High School Students Investigate Justice System

From a boy's boot camp to the cells of the largest women's prison in the country, for nine days, August 11-19, twenty seven Northern California high school students journeyed throughout California investigating the state's criminal justice system. During the trip entitled "Juvenile Justice: Unplugged," sponsored by the ACLU-NC Howard A. Friedman First Amendment Education Project, students spoke with people who make up the penal system's administrative framework as well as with people imprisoned in it. In October, the young investigators began sharing what they learned with others, making bi-weekly presentations in schools all over Northern California.

Below, Bryant Tan a senior from Lowell High School, provides a personal account of his experiences during the journey.

Juvenile Justice: Unplugged

by Bryant Tan

People often tell me I'm spoiled, and I rarely concede that this might be true. However, I admit that a trip this summer, "Juvenile Justice: Unplugged," spoiled me, but not with sugar and spice and everything nice. It spoiled me with reality. As I delved deep into California's criminal justice system, my fairy tale world took a nose-dive,

I once heard, that if a man digs a hole, he's bound to fall in it. Throughout the week-long trip, I saw men, women, boys and girls deep inside holes they had dug themselves - holes too deep and too dark for them to realize their predicament.

We visited prevention and intervention programs, which provide so-called "vagrant" and "at-risk" youth, a place to thrive in a positive light, but I wondered, "If everything's so great here, why is there a drug dealer two blocks away?" Unless the drug dealer has the will to participate in the programs offered, he can't be helped. Yet, although these programs cannot save many, they help shrink holes people dig for themselves so fewer fall. One person saved is better than none.

We also visited various detainment centers: Sacramento Boys' Ranch, Chaderjian School for Boys, and Valley State Women's Facility. The wardens and tour-guides of the facilities told us that justice was being served, that those who committed crimes were doing time, and that everything was perfect. The inmates had different stories to tell. We heard about injustices ranging from sexual harassment to private mail being read. The inmates did not feel that "justice" meant being stripped of their civil rights and of

their humanity.

The most extraordinary person I met during the trip lost his rights and humanity when he was found guilty of murder. In the confines of San Quentin's death row, he was defined as government property, but Marvin Walker, the man, reinvented himself as "Shaka."

In the two hours we had, we got to know each other. We smiled, laughed, and talked. Although he might have been a killer once, on that day, he was the man I admired most for his resilience and strength. It disturbed me that our criminal justice system tries to reform but fails and instead takes people away from us. I thought of how inconsequential my own problems were and how this man should not die at the government's hands .... at my hands.

I wouldn't trade anything for the experiences I had this summer, especially meeting the man sentenced to die. But sometimes I regret ever meeting Shaka. He became a part of me, and now I am also on death row. I don't know the solution to what causes us to dig holes and fall into them, but I give two claps to what has been accomplished, and a thump for what hasn't.

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Justice in Action, 1997 Activist Conference

"Race is not just a problem of the 20th century, but a fundamental part of this country going back to its founding. If we do not deal with race as an issue of critical importance - which is still a black and white issue - we fail to address the deep racial divide in this country," said longtime labor, feminist and civil rights leader Aileen Hernandez at the opening plenary of the 1997 ACLU-NC Annual Activist Conference, "Justice in Action."

On August 23, just a day after the Ninth Circuit Court of Appeals upheld the anti-affirmative action measure Proposition 209, 150 civil rights activists from throughout northern California gathered for workshops and plenaries in a full day information, advocacy, and action, in the heart of California's wine country at Sonoma State University.

During the opening plenary, "Why Race still Matters: New Directions in the Fight for Equality," Hernandez emphasized that long term strategies must be put in place to ensure that a quality education is available to all and to break down barriers that have long faced minorities in the job market. She urged the audience to work on changing a system that keeps minorities on the bottom rung of society and to push to the limit the legal protections against racial discrimination -- as few and as weak as they may be.

Fast-talking ACLU National Field Coordinator Bob Kearney, fit libraries of information in the workshop "Getting Organized: A Few New Rules for Radicals" and the plenary "Inside the Beltway: A Report from Washington DC." The workshop focused on strategies activists can use to convince elected officials to vote for civil liberties through letters, phone calls and personal meetings. "You don't have to debate the issue you're concerned about with elected officials. It's not your job to be an expert, but what you can do is to take a consistent ACLU message and personalize it," said Kearney.

In the plenary, Kearney gave a rundown of bills in the nation's capital that threaten and support civil liberties. Despite worrisome legislation on flagburning, the abridgement of rights in the criminal justice system, and prayer in school, he reported that due to the current in-fighting in the Republican Party, conservatives are having a difficult time passing much of anything.

Kearney said it has been equally difficult to push through bills upholding civil liberties, however, the Traffic Stop Statistics Act of 1997, which calls for a federal study of racially biased traffic stops actually has a good chance of passing. "Driving while black" seems to constitute criminal behavior in the eyes of law enforcement across the country; 73% of those stopped for traffic violations are African American yet this group makes up only 17% of the driving population. Another promising bill is the Employment Non-Discrimination Act (ENDA) which, if passed, would protect employees who are discriminated

against because of their sexual orientation.

The last plenary of the day "Poverty and Civil Liberties: What's the Connection?" featured ACLU-NC managing attorney Alan Schlosser, Golden Gate Law Professor Maria Ontiveros, and American Friends Service Committee Executive Director Wilson Riles Jr.

The three outlined new civil liberties concerns in the era of so-called welfare reform and the drastic cuts in public legal services, and gave examples of how homeless people and welfare recipients are unduly targeted for criminal investigation simply because they are poor. They also charted the interconnections of the rights of the poor and other civil rights issues such as reproductive rights, police practices and political access.

The conference included workshops on the death penalty, police brutality, censorship, as well as several chapter organizing workshops on board administration, fundraising, and creating newsletters and websites. In addition, the conference featured a lunch-time theater presentation by student participants on this year's Howard A Friedman trip, "Juvenile Justice Unplugged."

The conference was organized by the Activist Conference Committee: Judith Volkart, Greg Downing, Marvin Pederson, Wayne Gibb, David Grabill, Louise-Rothman Riemer and Steve Thornton headed by ACLU-NC Field Representative Lisa Maldonado and Program Secretary Rini Chakraborty. Special thanks to Field Department interns and volunteers Solange Echeverria, Craig Cowie, Karina Newton, Christine Padilla, Dan Rosen and Preet Sabharwal. The Continental Breakfast was sponsored by the Bill of Rights Campaign Committee and the Evening Wine Reception was hosted by the Sonoma County Chapter.

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News Briefs

Wilson Vetoes Bill Restoring Media Interviews with Inmates

On October 12, Governor Wilson vetoed a bill which would have lifted the California Department of Corrections (CDC) ban on face-to-face interviews with individual prisoners. SB 434 (Kopp, I-San Francisco), passed with a majority vote in the both houses of the state and was sent to the Governor on September 9.

"We are outraged by his veto," stated Francisco Lobaco, Legislative Director of the ACLU-NC. "The governor had the opportunity to shed light on our prisons and to uphold the basic right of the public to know what goes on behind prison walls. Instead, he has opted to maintain the veil of secrecy that enshrouds our prisons - an indefensible policy that is more reminiscent of a totalitarian system than our democratic society."

Sponsored by the Society of Professional Journalists and supported by the ACLU, the bill gained momentum at a September 10 press conference called by Senator Quentin Kopp bringing attention to two inmates who were punished because they allegedly alerted the media that prisoners, as part of their duties in a work program, were required to remove "Made in Honduras" labels from T-shirts, manufactured for a private company, and replace them with "Made in USA labels." One inmate was removed from his cell and sent to Administration Segregation better known as the "hole, and the other was transferred to another prison.

A CDC document justified the punishment stating the inmates were involved in "...a conspiracy to mastermind a sabotage effort to discredit a joint venture project at this institution."

The bill stems from the April, 1996 elimination of face-to-face interviews with specified prisoners and confidential mail between media and all prisoners. The CDC claimed the regulations were necessary to maintain security and to prevent criminals from becoming "celebrities."

Lobaco concluded, "We will continue our efforts to overturn the Department of Corrections regulations imposing a virtual ban on the ability of the media to interview prisoners. These regulations remain contrary to First Amendment principles and inconsistent with our free society."

ACLU Halts to Drug-Sniffing Dogs in School

Responding to the ACLU-NC's challenge to the use of drug-sniffing dogs to randomly search students and teachers, the Galt Unified School District Board of Trustees unanimously voted to end the dog searches on May 14.

"This case is important because forcing students to submit to dog sniff searches sends the message that the constitutional rights of students don't count," said ACLU cooperating attorney John Heller of Chapman, Popik & White. "At an age when high school students are learning about their rights and about their Constitution, bringing dogs on campus sends the wrong message. This is bad education."

Charging that the use of the dogs violated the students' constitutional guarantee against unreasonable searches and seizures, the ACLU-NC filed the suit against the Galt Unified School District on March 19 after Vice-Principal Donna Gill conducted a random search for drugs and weapons in a criminal justice class taught by teacher Michael Millet. When senior Jacob Reed refused to let the dogs sniff his belongings, he was taken to Principal Craig Murray's office where he was searched. Nothing was found. Meanwhile, the dog-sniff inspection continued in the classroom and the dog alerted officials to a jacket belonging to junior Chris Sulamo. SiSulamo was then taken out and searched, but, again school officials found that he had not contraband.

Galt Unified School District had contracted with Interquest Group Inc. to conduct these random dog-sniff inspections of lockers, classrooms, and vehicles for the purposes of detecting drugs, weapons, and other contraband on the students. Nearly 40 school districts throughout the Central Valley continue to make use of the dogs to search through students' belongings. This lawsuit is the first to challenge the constitutionality of policies by which school districts hire private companies to conduct random searches of students' belongings.

"Any use of the dogs in this manner is unconstitutional," Heller said. "No one is arguing that there isn't a drug problem, but you can't respond to the drug problem by trampling on the rights of students. Students don't automatically give up their rights once they pass through the school doors."

The plaintiffs in the suit were students Jacob Reed, Chris Sulamo, and their teacher Michael Millet.

In addition to Heller, plaintiffs were represented by ACLU-NC Managing Attorney Alan Schlosser, and cooperating attorneys Mark White and Robert Lash, also of Chapman, Popik & White.

Hmong Family Sues Yuba County Sheriff's Department for Harassment

After suffering repeated harassment at the hands of the Yuba County Sheriff's Department, on August 1, the Her family -- members of the Hmong community -- filed a federal lawsuit in U.S. District Court in Sacramento against Yuba County and five officers of the sheriffs' department asking for damages and a

jury trial. The family is represented by ACLU-NC staff attorney Kelli Evans and cooperating attorney Mark Merin of Dickstein & Merin.

The suit, *Her v. Yuba County*, charges that law enforcement officers repeatedly violated the Hers' rights under the Fourth and Fourteenth Amendments while responding to a neighbor's claim that the Hers' three-year-old toddler allegedly fired a b.b gun. From August to September 1996, officers subjected the Her family to unlawful searches, at one point detaining them - including seven small children - at the police station all day without a warrant. Additionally, officers interrogated the Hers' ten-year-old daughter in a police vehicle without her parents' consent until she burst into tears. They also seized the Hers' children from their elementary school classes without their parent's knowledge or consent. No b.b. gun was ever found.

The family's initial claim, filed in February 1997, was denied by the Yuba County Board of Supervisors. Since filing the federal suit, the Her family has received telephone threats from someone claiming to be a member of the Ku Klux Klan.

"The Hers, like all other families in America, have a right to be secure in their home and school and free from unreasonable searches and seizures," said Evans. "The Yuba County Sheriff's Department's treatment of the Hers was not only unreasonable, it was outrageous and cannot go unchallenged. The Fourth Amendment exists in order to prohibit the type of flagrant abuse of authority at issue in this case."

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