



ACLU NEWS

Newspaper of the
American Civil Liberties Union of Northern California

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Join the Campaigns

Two Dangerous Initiatives in March 2000 Primary Election

ANTI-YOUTH

Pete Wilson's Youth/Juvenile Crime Initiative, will put our youth into jail-track lives. The initiative imposes a harsh punitive approach to addressing juvenile crime by incarcerating many more juveniles for longer periods of time. The initiative, which makes hundreds of changes in California law, contains many failed proposals of former Governor Wilson that were rejected by the Legislature in prior years. If passed, this initiative will fill our prisons with youthful offenders placed alongside adult convicts and will make it nearly impossible for youthful offenders to rehabilitate.

ANTI-GAY

The so-called Defense of Marriage or Knight initiative spearheaded by State Senator Pete Knight would make it constitutionally impossible for any couple other than a man and a woman to marry in California. This initiative is a "wedge" issue which is intended to use homophobia to codify anti-gay measures. In states with similar legislation on the books, courts and policymakers have relied on such laws to deny adoptions by lesbian or gay parents, to defeat anti-discrimination measures for lesbians and gay men, and even to justify the elimination of protections provided by anti-hate crimes laws. The California State Assembly has already defeated similar bills five times.

You Can Help Stop These Initiatives!

CHECK AS MANY AS YOU WISH

[] Yes, I want to help defeat the Anti-Youth Initiative

[] Yes, I want to help defeat the Anti-Gay

[Suit Brings New Policies for Yuba Sheriff](#)

• [Profile of an Activist: Raha Jorjani](#)

• **Dear Fellow Civil Libertarians:** [A Letter from Molly Ivins](#)

Initiative

[] I'll work wherever you need me against either/both of these dangerous measures.

Name _____

Address _____

City _____ State ____ Zip ____

Your telephone____and/or Email _____

Send to or contact:

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ACLU News - The Newspaper of the ACLU of Northern California, November/December 1999

Governor Vetoes "DWB" Bill

ACLU Vows to Keep Up Challenge to Race-Based Police Stops

At five minutes to five on September 28 - hoping to sneak by reporters' news deadlines, Governor Gray Davis vetoed SB 78 - the "DWB - Driving While Black or Brown Bill," which would have required law enforcement agencies throughout California to collect data regarding the race and ethnicity of all drivers stopped by the police. The bill (formally "California Traffic Stops Statistics Act"), authored by Senator Kevin Murray (D-Los Angeles), overwhelmingly passed the Assembly 61-16 and the Senate 29-0 two weeks prior to the veto.

"Racial profiling by law enforcement agencies is a leading civil rights issue of the 1990's and by vetoing this historic bill Governor Davis is turning his back on California's communities of color" said Michelle Alexander, Director of the ACLU-NC Racial Justice Project. "For decades, people of color have been stopped by police simply because of the color of their skin. This bill would have been a small, but important, step in putting an end to racist police practices throughout the state."

Despite his futile attempt to bury the issue, Governor Davis was condemned throughout the state and nationally by civil rights groups, community leaders, and law enforcement agencies that represent officers of color.

Ronald Hampton, Executive Director of the National Black Police Association, representing 35,000 African American officers nationwide, said, "As working police officers we know how destructive the problem of racial profiling is to our ability to serve our communities. Governor Davis had an opportunity to help those of us in law enforcement get the attention of our colleagues in a state with a well-documented history of police misconduct problems. His veto, unfortunately, only encourages those in law enforcement who think they can simply ignore this issue. As a police officer and as an African American, I can tell the Governor that this issue is not going away," Hampton said.

Bob Stewart, Executive Director of the National Organization of Black Law Enforcement Executives (NOBLE) representing 3,500 high ranking African American police officials nationwide and a leader in law enforcement nationally in crafting and advocating for solutions to racial profiling problems, described Governor Davis' veto as "highly unfortunate and out of

sync with efforts in other states across the nation to proactively address this issue through comprehensive data collection."

An editorial in the San Francisco Chronicle noted that though the Governor called the practice of racial profiling "abhorrent," he "passed up the chance to really do something about it....No amount of rhetoric by the governor can compensate for his rejection of this bill's very modest attempt to get to the truth," the Chronicle editorial stated.



Ray Marshall, Chair of the State Bar Association, spoke out against law enforcement's use of race profiling. Marshall had been stopped and questioned in his own driveway by the Oakland police.

In his veto message, Governor Davis tried to take credit for "ordering" the California Highway Patrol (CHP) to collect similar data. In fact, the CHP had already publicly volunteered to collect this data - following similar moves by state police agencies in Florida, New Jersey, Michigan, Oregon and elsewhere.

In addition, Governor Davis' belated statement encouraging voluntary data collection by law enforcement agencies comes almost four full months after President Clinton issued the same challenge. In fact, 34 California agencies have already answered the President's challenge

with voluntary data collection programs, but hundreds of other California agencies - including those with some of the most severe police-community relations problems in the state (Los Angeles, Riverside) - have stubbornly refused. "Those agencies who still remain in denial on this issue are simply not going to respond to the Governor's timid encouragement," said John Crew, Director of the ACLU-NC Police Practice Project. "That's why a comprehensive statewide bill was crucial. His veto amounts to a `wink and a nod' to law enforcement that they don't have to take this issue seriously."

Crew called it "stunningly disingenuous" that Governor Davis would publicly claim that requiring statewide data collection on traffic stops would set a "bad precedent" of the state placing mandates on local agencies. For decades the state penal code has required local law enforcement agencies to collect and report a dizzying array of statistics on various activities. This bill would have simply added four new categories of data on traffic enforcement practices for just two years to a detailed statistical report long-published by the state on an annual basis.

"In fact, it is the Governor's veto that is establishing the horrible precedent," added Crew. "Governor Davis is sending a message to local law enforcement agencies across the state that the issue of racial profiling is not important enough for the state to assert its authority to protect the civil rights of all Californians against racist police practices" he said. "Decades ago, southern sheriffs like Bull Connor argued that local officials should be left to voluntarily address any local civil rights problems on their own. We are stunned that Governor Davis would be claiming -- in 1999 -- that it sets a `bad precedent' for the state to require local agencies to even study a crucial and widespread civil rights problem."

SB 78 was the only bill on the Governor's desk this year aimed at addressing police-community relations problems. Crew asked, "If the Governor would veto this modest bill in these circumstances where there is broad, national, bipartisan consensus, is there any police reform bill he would ever sign over the objection of his police supporters? This is a fair question for all Californians to ask - and especially Californians of color who have long borne the brunt of police misconduct - in the wake of the Governor's veto. This is a question that Latino and Black voters will remember at election time."

Governor Davis and his predecessor Pete Wilson are the only state governors to veto state legislation aimed at documenting the scope of racial profiling. (Wilson vetoed a similar bill last year.) The Republican governor of Connecticut and the Democratic governor of North Carolina recently signed similar bills. Bills are pending in several other states.

The ACLU-NC is continuing its statewide hotline 1-877-DWB- STOP. (The Spanish language hotline is 1-877-PARALOS, 1-877-727-2567). Since the hotline's initiation in October 1998, more than 2000 persons have called to report their stories of race-based police traffic stops. "Now more than ever," Crew emphasized, "it is crucial that people of color call 1-877-DWB- STOP to report suspected incidents of racial profiling. We will send a strong message to the

Governor and all public officials that they will not be allowed to duck this issue."

By vetoing the bill, Governor Davis ignored the stated wishes of the President and U.S. Attorney General that comprehensive traffic stop data be collected nationwide. He also positioned himself on the opposite side of the issue from both major Democratic presidential candidates, Vice President Al Gore (whom Davis has endorsed) and former Senator Bill Bradley - both of whom have issued strong public statements condemning racial profiling.

The bill was supported by the American Bar Association, the California Attorney General, U.S. Commission on Civil Rights, NAACP, and over fifty leading civil rights organizations in the state. Minority law enforcement organizations including the National Black Police Association, National Latino Peace Officers Association, and the National Organization of Black Law Enforcement Executives also supported the bill.

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Taking On The Youth Crime Initiative

BY VAN JONES
DIRECTOR, ELLA BAKER CENTER FOR HUMAN RIGHTS

The ACLU-NC is committed to fighting the Juvenile Justice Initiative slated for the March 2000 ballot. This dangerous initiative, initiated by former Governor Pete Wilson, will put our youth into jail track lives. Here, former ACLU-NC Board Member and youth advocate Van Jones, provides insight into the details and impact of the initiative, providing crucial information for ACLU activists who are mobilizing to fight this terrifying measure. After reading this analysis, please sign up to be part of the campaign to stop the initiative.

This is a complex initiative that amends a complex status quo. Although there is not enough space to explain all of the hundreds of changes in California law that this initiative would mandate, I will try to convey what is at stake here.

First of all, this is a massive incarceration measure. Hundreds - even thousands - of young people will be tried and sentenced as adults, swelling the state's prison population.

Second, this is a bold-faced power grab by prosecutors. They are blatantly attempting to usurp the power and discretion of judges, greatly increasing their role and authority. If it passes, we will effectively be turning loose several thousand Kenneth Starrs on the state's children.

Third, the passage of this measure would result in the *de facto* destruction of the juvenile justice system as we know it. Many of the basic protections for young people - that they won't be tried in adult courts, that they will get a clean record and a fresh start when they turn 18 - will be gone.

We also need to understand that this measure is being proposed in a particular political and social context. With tough new law after tough new law, shocking judicial decision after shocking judicial decision, brand new jail after brand new jail, the dominoes are falling. This initiative takes us one more stride down the road toward living in a complete "surveillance security state."

Lest you think I am over-stating my case, consider the following. If a law were on the ballot and all it did was let 14 year olds be tried and sentenced as adults, we would all be out in the streets screaming.

Or if a law were on the ballot and all it did was eliminate privacy and confidentiality for young offenders, using mistakes they made in their early teens to brand them as criminals for life, we would all be out in the streets screaming.

Or if a law were on the ballot and all it did was let the police wiretap the homes and families of young people whom the police brand as "gang members," we would all be out in the streets screaming. Or if a law were on the ballot and all it did was reduce felony vandalism from \$50,000 to \$400 - so that a youth who spray paints a glass door or writes his name in wet concrete could be convicted of a felony - we would all be out in the streets screaming.

Or if another law were on the ballot and all it did was require that we spend hundreds of millions of dollars locking up youth, but not a dime working to prevent youth from committing crimes, we would all be out in the streets screaming.

This one initiative does all of those things - and more. That's why we have to stop it.

In 1995, the Rand Corporation produced a study, with telling conclusions. It said, yes, the state could use tough, "Three Strikes And You're Out" measures to prevent crimes. But that the state could prevent *twice* as many crimes by spending the *same amount* of money on parenting classes. Or the state could prevent *four times* as many crimes, simply by using the money to give high school students monetary incentives to graduate.

Why aren't we pursuing these kinds of solutions?

I think that there is a real danger here - a danger for every person in this state. No matter what it looks like on television, all of these jails and prisons aren't being built to house only Black people. African-Americans make up only a tiny six percent of this state's population. We live in a state where the crime rate is rapidly falling, but the government is still building new prisons - literally around-the-clock. We have to wonder: who is going to fill these new prison cells?

In the 1800s, the central moral and political struggle was ending the enslavement of millions of African peoples on these shores. In the 1900s, the central moral struggle was the fight to end lynching and Jim Crow segregation. In the new century, the defining struggle will be the fight against the ever-encroaching "prison industrial complex."

The logic that would have us continue to trade away basic freedoms and human rights for a false sense of "public safety" must be opposed by a renewed commitment to solving our social

problems rationally and in a humane manner. That is the defining struggle of our time.

And even now, I see reasons for hope. Back in 1994, conservatives rammed through anti-immigrant Proposition 187 - and succeeded in turning many Latinos and Asians irrevocably against them. Five years on, the immigrant community is growing and naturalizing at an unprecedented rate - and the majority of that community clearly recognizes the agenda of the right wing as dangerous and morally repugnant. The Latino community especially is producing new leaders daily in the struggle against racism and social injustice. The right-wing won the battle on election day, but it will have to pay a tremendous cost for years and years to come.

The same outcome is possible on this fight. Conservative forces are now criminalizing a whole generation. Wherever I go, when young people hear about it, they get outraged. They want to get involved, speak out, fight back - even though many are too young to vote. This is our opportunity to expose a whole new generation of Californians to the dangers of this growing, runaway trend toward a police state. If we work together with the young people whose futures are imperiled, then - win or lose on election day - the new generation will be in a position to carry on the fight until justice is finally done.

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1999 ACLU-NC Activist Conference



Students (left to right) Sirena Putnam, William Walker, Rachel Aonan, Chris Uyeda, Cindy Downing, Shaffy Moeel, and Saba Moeel spoke about their summer journey with the Howard A. Friedman First Amendment Project exploring youth homelessness.

"There are more prison guards in California today than there were prisoners when Jerry Brown was governor."

"The Knight so-called "Definition of Marriage" Initiative would be a blow to equality and equal protection."

"Racial bias is pushing the expansion of the prison industry."

The wooded foothills of West Marin - more accustomed to the conversation of quail and the

howls of coyotes - were filled with weighty debates on the weekend of September 17-19, as ACLU-NC activists gathered for the 1999 Annual Conference at the Walker Creek Ranch.

The three plenaries of the conference focused on the key political issues in the state: the Juvenile Justice Initiative and the Knight Initiative, both of which will appear on the March 2000 ballot, and the campaign to halt law enforcement's practice of "Driving While Black or Brown."

In addition, a wealth of workshops allowed activists and experts to exchange ideas on issues ranging from disability rights and immigration law to the death penalty and school vouchers.

The opening plenary, "Fear of Youth: Pete Wilson's Juvenile Justice Initiative," featured William Walker, a fellow with the ACLU-NC Howard A. Friedman Project, and Van Jones, Director of Police Watch. Both are involved in the statewide campaign to defeat the initiative, which is slated for the March 2000 ballot.

Walker, a student at San Francisco City College, said that he has been involved in fighting the criminalization of youth since he was fifteen, starting with a fight against the youth curfew at the San Francisco Board of Supervisors. "The Juvenile Justice Initiative will allow a 14-year old to be judged as an adult for felonies," Walker warned. "We are looking at the future of the next generation: if we want them to be active in the struggle for their rights, it's important that we look at the root causes."

"This is a massive incarceration bill targeting young people," charged Jones. "It's a power grab for prosecutors - it will be like unleashing several thousand Kenneth Starrs on our young people. This measure virtually destroys the juvenile justice system. And it is occurring within the broader context of `no rules for the rich, no rights for the poor.'"

The panel on the Knight Initiative, also slated for the March 2000 ballot, featured Jeff Mittman, Chair of the ACLU-NC Lesbian, Gay, Bisexual, and Transgender Rights (LGBT) Chapter, ACLU-NC staff attorney Bob Kim and Mitzi Henderson, of PFLAG (Parents and Friends of Lesbians and Gays).

"If we lose a ballot initiative in California, other states will follow with similar bills," said Kim. "The ACLU will be very active in the campaign to defeat the initiative because we are very much against the State intervening in basic human rights. Marriage is a personal choice, it's a decision between two people that should be respected. Marriage is a fundamental right."

Kim charged that the initiative "would be a blow to equality and equal protection," and drew the parallel to interracial marriage, which was not sanctified by the Supreme Court until the 1960's.



ACLU-NC Board member Aundre Herron (l.) and Death Penalty Focus Executive Director Lance Lindsay are interviewed by KPFA radio about efforts to end capital punishment.

A highlight of the Activists Conference was a presentation by students from the Howard A. Friedman First Amendment Project who shared their experiences from a summer journey "Homelessness: Unplug-ged." Before speaking about the shelters and service centers they visited for homeless youth in the Bay Area and Los Angeles, students Cindy Downing and William Walker put the audience through a moving exercise: audience members were asked to list "five things that signify home to you." People read off their lists: music, pets, loved ones, gardens. Then the students asked us to imagine the loss of one of those things, then another, and another. As the lists got shorter, audience members gasped, and gulped and whispered "Oh no, I can't be without that."

"This is what we learned," said Downing gently, "this is how it feels to be without a home."

The Saturday evening plenary, "Race & Criminal Justice: Disparate Sentencing & the War on Drugs," featured Michelle Alexander, Director of the ACLU-NC Racial Justice Project and investigative journalist Gary Webb, author of *Dark Alliance: The CIA, the Contras and the Crack Cocaine Explosion*.

"Today we are witnessing the disappearance of our black children," said Alexander, after reading a parable from a book by Derrick Bell about a group of missing black school students. "But we know where they are going. They are going into the nation's prisons. In 1980, there were 330,000 prisoners, today there are 1.7 million people behind bars. While African Americans only make up 7% of the State's population, they are over 50% of the prison population. Today, three in five African Americans in California are in the criminal legal system."



Author and journalist Gary Webb and ACLU-NC Racial Justice Project Director Michelle Alexander address race and criminal justice issues.

"More than half of the prisons today were constructed in the last twenty years. The War on Drugs is the vehicle by which people of color are being imprisoned. Racial bias is pushing the expansion of the prison industry," Alexander charged.

Webb, who is currently a consultant to the California Legislature's Task Force on Government Oversight, spoke about Operation Pipeline, the federal DEA program that has trained thousands of state police officers how to identify "potential drug runners." Webb, who authored an Esquire magazine article on the racial profiling that results from the DEA guidelines, said that "DWB has become a national issue because the media has become sensitized to the issue and because of campaigns like the ACLU's."

The Conference was organized by Field Representative Lisa Maldonado and the Conference Planning Committee: Michelle Welsh, Chair of the Field Committee and Monterey Chapter; Ramon Gomez, Santa Cruz Chapter; Ken Russell, Mid-Peninsula Chapter; Joan Hall, Lenny Karpman, Marna Cohen, and Gerry Ellersdorfer of the Marin Chapter; and Chloe Watts of the Lesbian, Gay, Bisexual, Transgender Rights Chapter. The Conference Crew was headed by Program Assistant Melissa Schwartz and included David Harris, Bryan Freeman, Tom Faulds, Molly Hudgens, Mister Phillips, Judie Ellman, Regina Meade, Winona Reyes, Nancy Magidson, Stan Yogi, Jocelyn Wickers and Richard Rafael.

Maldonado offered special thanks to Marin Chapter leaders Lenny Karpman and Joan Hall for hosting the Welcome Reception, an effort that included creating outstanding hors d'oeuvres of stuffed grape leaves, roasted walnut pate, and figs with rose petal glaze. Conference attendees were also treated to an uproarious evening of comedy from Aundre the Wonderwoman (also known as ACLU-NC Board member Aundre Herron) and fellow stand-ups Rich Santiago and Charles Anthony Johnson. Night owls enjoyed music from the ACLU-NC in-

house chamber music duet, the Roving Rebel Band, as well as from the native night owls of the Walker Creek Ranch.

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Paler Shades of Gray

GOVERNOR SIGNS MAJOR GAY RIGHTS BILLS VETOES CRUCIAL CIVIL RIGHTS, FREE PRESS MEASURES

BY VALERIE SMALL NAVARRO
ACLU LEGISLATIVE ADVOCATE

Is Governor Gray Davis governing from the proverbial middle of road? It depends on whose road we're traveling. The road traveled by the Governor seems to have been paved in campaign contributions.

According to R.E. Graswich, a Sacramento Bee columnist, Brandy Capik, the daughter of the head of the prison guards union, Don Novey, was leaving her job as assistant manager at the Rocklin Wal-Mart to take a job in the Governor's office assisting with constituent problems. When asked whether there might have been a "political payoff," Michael Bustamante, the Governor's spokesman, reportedly replied that he "can't imagine why anyone would think that."

OTHER "UNIMAGINABLES"

As reported elsewhere in the ACLU News, the Governor vetoed crucial bills on both civil rights and the First Amendment. Davis vetoed SB 78 (Murray, D-L.A.) the "Driving while Black or Brown" bill, a measure so moderate that it garnered substantial Republican support but was still vehemently opposed by law enforcement unions. Similarly, there was strong Republican support for AB 1440 (Migden, D-S.F.), the "Media Access to Prisons" measure, but it too was vetoed.

BILLS SIGNED PROTECTING AGAINST DISCRIMINATION BASED ON SEXUAL ORIENTATION

Before speaking to approximately 1,000 attendees at the Gay and Lesbian Presidential Dinner in Beverly Hills on October 2, the Governor announced his signature on measures to protect Californians from discrimination based on sexual orientation. "These three bills will send a message across the country and around the world that we are determined to unleash the full potential of the human spirit here in California," said the Governor in remarks prepared for

delivery at the dinner.

Every year since her election in 1994, Assemblymember Shiela Kuehl (D-Encino) has brought a bill that would prohibit harassment and discrimination on the basis of sexual orientation in programs, opportunities, and activities offered by schools. This year she successfully passed and the Governor signed AB 537, a major victory.

Davis signed AB 1001 (Villaraigosa, D-L.A.) that moves the provision prohibiting employment discrimination on the basis of sexual orientation from the Labor Code to the Civil Code (FEHA) - capping a 20-year struggle. The protections currently afforded by the Labor Code are less extensive than those afforded by the Fair Employment and Housing Act. For example, there is a 30-day time limit for filing instead of the one year under FEHA and prevailing parties may not recover attorneys' fees.

Finally, AB 26 (Migden) creates a statewide domestic partnership registry for gay and lesbian couples and guarantees hospital visitation rights. In addition, the measure allows partners of gay state employees to receive health benefits.

BILLS PENDING AS OF PRESS TIME

The "California Civil Rights Amendments of 1999," AB 1670 (Kuehl), an omnibus legislative proposal intended to strengthen the civil rights protections afforded by the Fair Employment and Housing Act (FEHA), and other their civil rights statutes waits for the Governor's approval. The religious right added this measure to its "hit list" as a "homosexual" bill.

Another key measure, AB 103 (Migden) implementing for the first time a system of HIV reporting in California based on the use of a unique identifier (instead of using an individual's name) to track the trends of the epidemic still sits on the Governor's desk. People who fear that their names will be added to a government HIV list will be reluctant to be tested and may be reluctant to participate in partner notification because they fear their name may be revealed.

"Unleash[ing] the full potential of the human spirit" seems to depend on the wealth of humans.

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Governor Vetoes Bill for Media Access to Prisoners

On September 7, Governor Gray Davis defied the overwhelming majority of legislators and the state's news media and vetoed AB 1440, the bill to restore the right of journalists to interview specified state prisoners face to face.

The bill was approved by the state Legislature by votes of 69-7 in the Assembly and 28-7 in the Senate. In editorials, the state's major newspapers had virtually without exception urged the governor to sign the measure.

In his message vetoing the measure by Assembly member Carole Migden and a bipartisan group of co-sponsors, the governor said the bill would give journalists "virtually unlimited access" to convicted felons.

"Moreover," the governor's message said, "this bill is inconsistent with the national trend to reduce, not expand, rights of prisoners."

"This bill is about journalists' ability to cover the prisons effectively -- especially at a time when prisons are one of the largest and fastest-growing expenditures in the state's budget," said ACLU Legislative Director Francisco Lobaco.

Peter Sussman of the Society of Professional Journalists noted that currently reporters are not allowed use of cameras, tape recorders and sometimes even pencil and paper -- effectively cutting off television coverage and severely hampering coverage in all other media.

A bill restricting interviews had been vetoed previously by Governor Pete Wilson, whose administration had initiated the interview restrictions as well as an end to the confidentiality of prisoners' mail to the news media. Neither governor nor the California Department of Corrections had ever cited any abuse of interviews that led to the restrictions. The state had allowed face-to-face interviews with specified prisoners for more than 20 years before the practice was ended unilaterally in the fall of 1995 -- first informally and later by a change in regulations.

"By overturning this bill," said Tim Graham of the Society for Professional Journalists, "the governor is pandering to a Department of Corrections that routinely stands in the way of

reporters seeking access to inmates and prisons. Just weeks ago, the department was sued by a national garment workers union and two inmates who were punished for suspicion of telling the press about major apparent abuses in a prison factory. The governor has now defied the Legislature and tacitly accepted the department's self-defensive culture of secrecy."

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Fired Fresno Workers File Federal Suit for Language Discrimination

On October 1, two dozen Latina and Asian workers filed a federal class action lawsuit against the owners of a Fresno manufacturing plant that fired them because they had failed a company-created test of their written English skills. The 25 plaintiffs in the case, all former production workers, speak Spanish, Hmong, Lao, or Cambodian as their primary languages. They charge that NIBCO, Inc., the Indiana-based former owner of the plant, discriminatorily fired them even though they had all performed their jobs successfully for years, and despite the fact that the type of English language proficiency tested by the company's examination had no relation whatsoever to their ability to do their work.

The lawsuit, *Rivera, et al., v. NIBCO, Inc. and R.M. Wade & Co.*, was filed in U.S. District Court in Fresno by Language Rights Project attorneys from the ACLU-NC and the Employment Law Center. The suit asks the court to find that the testing requirement is illegal and to restore all of the plaintiffs to their former jobs, issue an injunction to prevent future testing, and award monetary damages, including back pay and compensatory and punitive damages. The plant manufactures irrigation systems.

"NIBCO fired our clients even though they were more than qualified to do their jobs. In fact, some of these workers had been commended for their work performance, and in some cases, had been employed by the company for as long as nineteen years," said attorney Donya Fernandez of the Employment Law Center. "The truth is that NIBCO's new management simply did not want limited-English speaking immigrants on their payroll."

"There's absolutely no reason why it should suddenly become necessary for us to know English to keep our jobs," said plaintiff Martha Rivera. "I worked at the plant for nine years and did my job well without being proficient in English. I can't believe NIBCO really thought that there was any justified business reason for this policy. It makes no sense at all."

LAW PROTECTS WORKERS

"The law protects people with limited English proficiency in the same way it protects other minority groups," said ACLU-NC staff attorney Ed Chen. "Whether you are black or brown or speak another language, employers cannot legally single you out on that basis and fire you

with no business justification."

Under the factory's previous ownership there was no English requirement because the work-- which includes making components for irrigation systems by manually assembling parts and operating production machines requires little communication in any language, let alone English.

"Employers break the laws of this country when they fire workers just because they happen not to have an absolute command of the English language," said Christopher Ho of the Employment Law Center. "Unless the type and degree of English proficiency demanded is exactly tailored to what the job actually requires, discrimination of this kind is just as unlawful as any other violation of an individual's civil rights."

The complaint alleges that by instituting the testing requirement and carrying out the terminations, NIBCO violated the anti-discrimination protections of Title VII of the federal Civil Rights Act of 1964 and the California Fair Employment and Housing Act. Because the plaintiffs and class members were singled out for firing because of their supposed lack of English proficiency, the testing requirement discriminated against them because of their national origin and ethnicity. The complaint also names R.M. Wade & Co., a Portland, Oregon-based firm, which purchased the plant from NIBCO in August.

In March, administrative charges were brought before the U.S. Equal Employment Opportunity Commission (EEOC), which issued right-to-sue notices, permitting plaintiffs to file suit. Prior to filing suit, plaintiffs' attorneys proposed a settlement with NIBCO and Wade in order to avoid litigation; however, NIBCO hastily rejected this offer, and Wade did not respond.

"I FELT HUMILIATED."

"I felt humiliated and discriminated against when I was let go after eighteen years," said former NIBCO employee Alicia Alvarez. "It has been difficult for me to support my children."

The purpose of the tests was to identify limited English employees who would later be fired. In implementing the testing regime, NIBCO segregated those employees who could not pass the exams into an inferior, specially-created job category. They were told they could not get raises and would be subject "lay offs," regardless of their seniority or job performance. Many of the demoted employees were reassigned to more onerous job duties, some requiring heavy physical exertion. Ultimately, those in the segregated job category were systematically fired between late July and late September of 1998.

"The law protects people with limited English proficiency in the same way it protects other minority groups," said attorney Ed Chen of ACLU-NC. "Whether you are black or brown or speak another language, employers cannot legally single you out on that basis and fire you

with no business justification.

The Language Rights Project works to combat language-based discrimination in the workplace and other sectors of society, and to ensure equal access to government services. The Language Rights Information Line (1-800-864-1664) offers free legal advice, representation, and referrals in English, Spanish, Mandarin, and Cantonese to individuals who believe they have been subjected to discrimination based on their language or accent. The Language Rights Project is a joint project of the Employment Law Center and the ACLU-NC. William J. Smith of the Fresno firm of Richtel & Smith is also representing the terminated employees.

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ACLU News - The Newspaper of the ACLU of Northern California, November/December 1999

Settlement in Hmong Family Suit Brings New Policies for Yuba Sheriff

On October 4, a consent decree was filed in U.S. District Court in Sacramento in *Her v. Yuba County* resulting in a package of new policies and procedures for the Yuba County Sheriff's Department. The consent decree, the related settlement agreement and policy changes were negotiated by the ACLU and private attorneys on behalf of the family of Vang Her. In a federal lawsuit filed in August 1997, the Her family alleged a series of acts of police misconduct by deputies in August and September 1996.

"These packages of reforms should help prevent police misconduct from occurring in the future and also help in the effort to ensure a strong working relationship between the Hmong community and the Sheriff's Department," said ACLU attorney John Crew. "All law enforcement agencies need to have strong policies protecting the Fourth Amendment rights of residents, procedures for identifying and investigating Hate Crimes, and policies that clearly protect parental rights."

The settlement package includes:

- A new department Search and Seizure General Order aimed at guarding against abuses of Fourth Amendment rights in private homes;
- A new Hate Crimes General Order to ensure that criminal acts of ethnic and racial hatred will be properly identified and thoroughly investigated;
- A new Temporary Custody of Juveniles General Order spelling out how children should be treated by deputies and ensuring the protection of parental rights if students are questioned by deputies while in school;
- A strengthened Personnel Complaint Procedure General Order to improve the department's handling of allegations of misconduct;
- The translation into Hmong, Spanish and Punjabi languages of key forms and materials on the complaints process and the right to refuse consent to searches of private homes;

- An agreement on the part of the current Sheriff to continue her problem-solving meetings with leaders of the local Hmong community and to, if necessary, agree to later assistance from the U.S. Justice Department's Community Relations Service to facilitate further discussions.

"We are hopeful that this case and the consent decree we were able to craft with Yuba County will both help improve the professionalism of the Sheriff's Department and address some of the concerns in the Hmong community," said attorney Mark Merin. "By agreeing to a number of new or strengthened policies and by readily agreeing to formalize a process of discussion and mutual problem solving with the Hmong community, we are hopeful that the current Sheriff is moving in the right direction."

The Her family had charged in the federal lawsuit that Yuba County Sheriff's deputies had repeatedly violated their rights under the Fourth and Fourteenth Amendments while responding to a neighbor's claim that the Her's three-year-old toddler allegedly fired a b.b. gun. From August to September 1996, the lawsuit alleged that the deputies subjected the family to unlawful searches, at one point detaining the family - including seven small children - at the sheriff's station. In addition, the lawsuit alleged that deputies interrogated the Her's ten-year-old daughter in a Sheriff's Department vehicle without her parents' consent. The suit also charged that the Her children were seized from their elementary school classes without their parents knowledge or consent.

The incidents occurred and the lawsuit was filed during the tenure of the prior Yuba County Sheriff, Gary Tindel. The settlement was agreed to by the current Sheriff, Virginia Black, who was elected in June 1998 and took office in January 1999.

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Profile of an Activist: Raha Jorjani

By David Harris



PIC CAPTION

Raha Jorjani has a unique perspective. As an activist, she is passionate about immigrant rights and human rights. As a senior at U.C. Berkeley, her thesis on identity issues of Iranian immigrants in San Francisco is borne out of her own family's experience. And as the youngest member of the ACLU-NC Board of Directors and an at-large member of the Field Committee, she brings impressive political savvy and practical experience to the Northern California affiliate.

"I'm still trying to figure out what role I can play as a Board Member," Jorjani said at an interview with the ACLU News during the ACLU Annual Conference at Walker Creek Ranch in Marin. "School is still my central focus. But I'm grateful to the ACLU for providing an outlet for youth activism and the organization's focus on reaching out to young people. Young people

don't always get a lot of credit."

In the summer of 1997, Jorjani traveled with the Howard A. Friedman First Amendment Education Project to explore the issue of immigration. Project Director Nancy Otto praised Jorjani's leadership role on the trip and follow-up activities. "Raha quickly rose to a leadership position in our Student Advisory Committee, but she did it in such a subtle and wonderful way that other students just gravitated toward her and learned by her example. She was an engaging and powerful speaker in the schools and at the conferences where she led workshops of more than 50 to 100 of her peers on complicated and controversial civil liberties issues, staying on topic and keeping everyone's interest. She is an outstanding activist, and a great example of how young people can come to the ACLU and become powerful advocates for civil liberties."

Jorjani also attended the National ACLU Biennial Conference in San Diego last June where she met delegates from all ACLU affiliates. The People of Color Caucus stood out for Jorjani as one of the most interesting parts of the event: addressing race and ethnicity issues is at the forefront of her own social and political agenda.

"I'm thinking about going into law as a career, and I'd like to combine civil liberties and human rights, perhaps by focusing on immigrant and refugee law," says Jorjani, who has also worked as a research assistant for a San Francisco-based immigration attorney. "All Americans, regardless of their racial and ethnic background or immigration status, are entitled to their constitutional rights."

Immigration has always been an important for Jorjani. When she was a child, her parents immigrated from Iran to the Bay Area. "You give up a lot," she said. You lose the social networks that you come from. There's a lot of uncertainty in that transition."

When the pro-Democracy student movements in Iran demonstrated earlier this year, Jorjani organized and educated her Cal classmates about the importance of student solidarity. She wrote articles for the Daily Californian and posted flyers around campus. Jorjani, a double major in Ethnic Studies and Peace and Conflict Studies, was also involved in the student protests against Berkeley administrators bent on gutting the university's Ethnic Studies Department last spring.

Jorjani tries hard to balance her time as an ACLU Board Member with her other activism. She's on the Legal Committee of the student-based Third World Liberation Front, a member of the San Francisco-based Women's Institute for Leadership Development (W.I.L.D.), and serving a second term on the Youth Advisory Board of the Young Girl's Program, which sponsors educational workshops for high school girls.

"I think immigrant rights and racial justice will always be important to me. As a Board member

and a Field Committee member, I'm excited to be part of the ACLU's grassroots efforts on racism, the death penalty and other priority issues," Jorjani said. "The Activist Conference is a great way to learn about key civil liberties issues."

David Harris is a contributor to the ACLU News.

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Dear Fellow Civil Libertarians

(and you uncivil ones as well),

I don't know about y'all, but I'm not planning to croak any time soon. I'm a spring chicken of 53 myself, and hope to do my bit to bankrupt Social Security for future generations.

But, as Charlie de Gaulle, that fun guy, once observed, "Rest assured, we shall die someday." And the way things are going lately, it will probably be before we overcome. In which case, those of us who are able to leave a little wherewithal to future freedom-fighters need to start thinking where to put the gelt so it will do the most good. I've done this by becoming a member of the ACLU Foundation's DeSilver Society.

In my life as a freedom-fighter I have endeavored to have a little fun while holding the Bill of Rights together, with some success (she added modestly). The time we mooned the Klan was actually quite entertaining. Now as we all know, civil libertarians, as a group, are not the friskiest crowd around--comes from forever being on the qui vive for the sound of jack-booted fascism coming down the pike. On the whole, we tend to be a sober lot, and we have a lot to be sober about. Personally, I think there might be more joie de vivre in our ranks if we weren't always out-manned, always out-gunned.

To this end, I have decided to leave a big chunk of my swag--and I've worked fairly hard for it--to the ACLU Foundation through my will, on the theory that this will not only help ensure the perpetuation of freedom in this nation, but might also make future civil libertarians into a famously fun bunch. And even if that doesn't happen, at least the Bill of Rights won't be nibbled to death by the gotch-eyed, blue-bellied, full-blooded nincompoops who constantly beset it.

I suppose we could leave our jack to universities or hospitals that will name buildings, or at least wings of buildings after us, and do some good at the same time. I suppose, if we have enough dough, we can buy our little chunk of immortality by getting our name chipped into granite or marble someplace outside a graveyard. Parks are nice. Schools are good. The relatives can always use more bread, or helping conquer a disease would be a boon to mankind.

As for me, I'm going to leave my money to freedom. And every time someone on down the line is irreverent about authority, I'll have my monument. Every time some kid who was born a nigger, a kike, a wop, a Polack, a gook, a gimp, a fag or just plain maverick lifts up her head and dares anyone to stop her, I'll have my monument. Every time they peaceably assemble to petition their government for a redress of a grievance, I'll be there. Whenever they worship as they please, or not at all, whenever they speak up and speak out and raise hell, I'll be there. And every time the press, which will probably be on the Internet by then, takes on some pinhead in the Congress or the county commission or the biggest employer in town and kicks his ass from hell to breakfast, you know I'll be there. Now that's immortality.

I don't have any children, so I've decided to claim all the future freedom-fighters and hell-raisers as my kin. And I hope you'll join me by making sure the ACLU is still around to defend their right to be a pain in the ass to whatever powers come to be. I figure freedom and justice beat having your name in marble any day. Besides, if there is another life after this one, think how much we'll get to laugh watching it all.

Yours for beaucoup de bucks for the toughest freedom-fighters around,

Molly Ivins

If you would like to become a member of The DeSilver Society, please contact Stan Yogi, Director of Planned Giving at the ACLU-NC Foundation, 415/621-2493, extension 330.

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