ACLU NEWS

Newspaper of the American Civil Liberties Union of Northern California

Volume LXIV, No. 6 - November/ December 2000

Parents, Teachers and Students

Call the toll-free statewide hotline to report poor conditions in your schools

1-877-53-CAL-ED or
1-877-532-2533

Please call and let us know if your schools lack textbooks, have untrained teachers, or filthy, run-down buildings or have failed to offer the bare minimum conditions for successful learning.

Activists' Profile

aclu news

6 issues a year: January-February, March-April, May-June, July-August, September-October and November-December.

Published by the American Civil Liberties Union of Northern California

Margaret Russell, Chairperson
Dorothy Ehrlich, Executive Director
Elaine Elinson, Editor
Lisa Maldonado, Field Representative
ZesTop Publishing, Design and Layout

1663 Mission St., 4th Floor
San Francisco, California 94103 (415) 621-2493
www.aclunc.org

Membership $20 and up, of which 50 cents is for a subscription to the *aclu news*.

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

ACLU News - The Newspaper of the ACLU of Northern California, November/December 2000

ACLU to Honor Death Penalty Foe with Rights Award

The fight against the death penalty requires many voices: capital defense lawyers, writers, orators, investigators, organizers, educators, and those who stand in silent vigil outside the gates of Death Row. Bryan A. Stevenson is all of these and more. He has dedicated his life to fighting the death penalty on all fronts.

The ACLU-NC will honor Stevenson with the Earl Warren Civil Liberties Award at the annual Bill of Rights Day Celebration on Sunday, December 10 at The Argent Hotel in San Francisco.

At the Celebration, the Lola Hanzel Courageous Advocacy Award will be presented to veteran Oakland activist Grover Dye, a leader in the ACLU-NC Paul Robeson Chapter. Octogenarian Dye began his grassroots organizing work in the civil rights movement in Washington, D.C. and continues to this day to fight against police abuse, censorship at the Oakland Library and ballot measures which target lesbians and gays, juveniles, and people of color.

The event will also feature a performance by Agustin Lira and Alma, an all-acoustic trio that brings to life the Chicano/Latino experience through music, and a presentation by students from the ACLU-NC Friedman Project who went on the "Corporate America: Unplugged" journey this summer.

Challenging Death Row

Stevenson is the Executive Director of the Equal Justice Initiative (EJI) of Alabama, challenging bias against the poor and people of color in the criminal justice system. In 1995, Stevenson won a prestigious MacArthur "genius" grant of $250,000 and devoted the prize money to the EJI to provide legal representation to capital defendants and death row prisoners. Alabama has the largest death row per capita in the South, and the third largest in the United States. The population of Alabama's death row has doubled since 1988, and has now reached 300. Stevenson did not choose an easy place to do battle: in Alabama there is no state-funded public defender system, compensation for attorneys who represent death row prisoners in state post-conviction proceedings is limited to $1000, and trial judges can (and do) override a jury changing a sentence of life imprisonment without parole to death.

Deep South

Stevenson has represented poor people in the Deep South since 1985, when he was a staff attorney with the Southern Center for Human Rights in Atlanta, Georgia. He later served as the Executive Director of the Alabama Capital Representation Resource Center.

Stevenson's work on behalf of a prisoner who spent six year's on death row for a crime he did not commit was featured on *60 Minutes*. Walter McMillian, a 45-year old African American contractor was convicted for the murder of a young white woman in his hometown of Monroeville, Alabama. Law enforcement officers were so convinced of McMillian's guilt that he was put on death row 13 months before his case even went to trial. Stevenson's four years of tenacious defense work showed that the police had concealed exculpatory statements from the state's primary witness. McMillian was set free in 1993.

As Stevenson later testified before the Senate Judiciary Committee, "The desire to achieve a capital murder conviction at any cost frequently results in proceedings where a reliable determination of guilt or innocence is not likely."

Stevenson is a graduate of Harvard Law School and the Harvard School of Government, where he was awarded the Kennedy Fellowship in Criminal Justice. He has served as a professor of law at the University of Michigan and New York University. Stevenson is the recipient of numerous honors including the Reebok Human Rights Award, the Thurgood Marshall Medal of Justice from Georgetown University Law School, and the 1991 Medal of Liberty awarded by the national ACLU.

His tireless efforts on behalf of the poor and people of color, especially those on Death Row, have led him from the halls of Congress to the backroads of Alabama. Walter McMillian, the man Stevenson freed from death row, is from Monroeville, Alabama, the same hometown as Harper Lee, author of *To Kill a Mockingbird*. Stevenson reminds us that when people read her novel, they all root for Atticus Finch, the lawyer who tries to defend a black man wrongfully accused of the rape of a young white woman. "But in real life, we act like we don't care if an innocent man dies. We must be better than that," Stevenson says.

In today's America, roughly two people a week are being executed. The only countries that execute more are China, Iran, Saudi Arabia and the Congo. Stevenson says "It is unconscionable for the nation to continue on its current course."

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

ACLU News - The Newspaper of the ACLU of Northern California, November/December 2000

ACLU Wins Free Speech Victory in Medical Marijuana Case

by Stella Richardson
Media Associate

Striking a victory for free speech, U.S. District Judge William Alsup ruled on September 7th that federal authorities can not revoke the licenses of doctors who recommend the medical use of marijuana to their patients. The ACLU-NC and the national ACLU Drug Policy Litigation Project represent the doctor and patient plaintiffs in the class action lawsuit, *Conant v. McCaffrey*.

"My hope is that this ruling puts an end to threats by the federal government," said Graham Boyd, a lawyer with the national ACLU Drug Policy Litigation Project. "Physicians have been working in fear and now with this order, doctors and patients can once again freely discuss marijuana without fear of federal punishment."

Judge Alsup issued a permanent injunction that bans the government from revoking doctor's licenses and prohibits the government from initiating investigations of physicians who have provided advice on the medical use of marijuana.

"It is critical that I be able to advise my patients on the medical use of marijuana without fear of being criminally prosecuted or losing my license," said Dr. Milton Estes. "I work with HIV-infected patients, and it is reassuring to feel that I can now freely speak to my patients." Dr. Estes, a plaintiff in this case and former Chair of the ACLU-NC Board of Directors, has a private practice in Marin and oversees the care of all HIV-positive inmates in San Francisco County jails.

Despite a temporary injunction issued against the government in 1997, doctors continued to feel threatened about advising patients on medical marijuana because of statements made by White House drug czar Barry McCaffrey. At issue is the language of Proposition 215, approved by California voters in November 1996, which makes it legal for patients to grow and possess marijuana for medical use when recommended by a doctor. The Clinton administration maintains that marijuana is illegal under federal law and pledged to punish doctors who recommend its use.

"Judge Alsup's decision allows doctors to get back to doing what we all want our doctors to be able to do: provide patients with their best medical advice without fear of government retaliation " said ACLU-NC staff attorney Ann Brick. "This ruling protects the free speech rights of doctors and should put an end to any further threats by the government."

The law firm of Altshuler, Berzon, Nussbaum, Rubin & Demain and the Lindesmith Center also participated in the case.

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

[Return to ACLU News November/December 2000]
[Home Page] [Press Releases] [Search] [Join the ACLU]

ACLU news

ACLU News - The Newspaper of the ACLU of Northern California, November/December 2000

Honors to ACLU-NC Staff and Board

*T*his season brings honors from many organizations to outstanding staff and board members of the ACLU of Northern California. Board members Aundre Herron and Michelle Welsh and staff members Michelle Alexander, Fran Beal and Margaret Crosby are being honored for their outstanding contributions to civil liberties and civil rights.

Michelle Alexander


Union Made

Michelle Alexander, Director of the ACLU-NC Racial Justice Project has been named the recipient of the Clinton W. White Advocacy Award by the Charles Houston Bar Association, an organization representing African American lawyers and judges throughout northern California. Alexander was cited for her outstanding work as an advocate for justice, particularly in the areas of education and racial profiling. Alexander is currently litigating *Rodriguez v. CHP*, a case against the California Highway Patrol for racial profiling, and *Williams v. Board of Education* which challenges pervasive substandard conditions in elementary and high schools, including lack of textbooks, unsanitary facilities, and teachers without credentials.

Alexander will be honored at the organization's annual dinner on December 16 at the Marriott City Center Hotel in Oakland.

For more information and tickets, call the Charles Houston Bar Association at 510/238-3493.

Fran Beal


Rick Rocamora

The Women of Color Resource Center honored Fran Beal with its Second Annual Sister of Fire Award on October 29 at its Tenth Anniversary Celebration in Oakland. Beal, Research Associate with the ACLU-NC Racial Justice Department, was honored as "peace and justice activist and writer who has focused her formidable energies on Black women and African American politics over the past three decades." Beal was cited for her history of work with Student

Nonviolent Coordinating Committee, the Third World Women's Alliance, where she was the editor of the newsletter *Triple Jeopardy*, and the National Council for Negro Women, where she edited *The Black Woman's Voice.* Beal has worked in the Legal Department of the ACLU since 1987.

Margaret Crosby


David Fisher

ACLU-NC staff attorney Margaret Crosby is being honored by the Exploratorium for her significant contributions in improving the health and lives of women. Crosby was nominated by Charlotte Newhart, Director of the American College of Obstetricians and Gynecologists, as "the leading attorney in California on issues of reproductive rights," and "a passionate leader for the adolescent and women's health care movement." Crosby has been on the legal staff of the ACLU-NC since 1976 and has successfully fought to protect reproductive rights, including litigating the cases that secured Medi-Cal funding for abortion for indigent women and struck down a law requiring teenagers seeking abortions to have permission from their parents or a judge.

A statement about Crosby's work will be on display at the Exploratorium as part of an exhibit "The Changing Face of Women's Health," which will run until the end of the year. The exhibition contains a mixture of interactive exhibits, art pieces, and personal stories to provide a focused examination of the issues and scientific research around women's health.

For information on hours and location, call the Exploratorium at 415/563-7337.

Aundre Herron


Grand Prints

ACLU-NC Board member Aundre Herron was honored for her outstanding abolition work - both inside and outside of the courtroom at the "Committing to Conscience" conference on November 18 in San Francisco. Herron is on the legal staff at the California Appellate Project where she represents Death Row prisoners. In addition, she serves on the Board of Death Penalty Focus, a statewide abolitionist organization. The national conference, sponsored by the American Friends Service Committee, Death Penalty Focus and the National Coalition to Abolish the Death Penalty, was attended by more than 500 death penalty activists from around the country.

In addition to her legal work and anti-death penalty advocacy, Herron - known as Aundre the Wonder Woman - is stand-up comedienne who wows audiences with her comically caustic routines.

Michelle Welsh

ACLU-NC Field Committee Chair and veteran Monterey County Chapter leader Michelle Welsh, will receive the Baha'i Human Rights" award in honor of her outstanding contributions to human rights. The award will be presented at a luncheon, co-sponsored by the United Nations Association, Amnesty International, and the Baha'i community of Monterey Bay, on December 2 at the Elks Lodge in Monterey. Welsh was nominated unanimously by the Monterey Chapter for "giving hours and hours of time to causes of racial, social and economic justice and religious freedom," said past Monterey Chapter Chair Jan Penney. "If Mickey is on your side, you can feel assured you are on the side of justice!"

For more information and reservations, please contact Lorita Fisher at 831/375-8301.

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

[Return to ACLU News November/December 2000]
[Home Page] [Press Releases] [Search] [Join the ACLU]

ACLU news

ACLU News - The Newspaper of the ACLU of Northern California, November/December 2000

Planned Parenthood Does Not Have to Yield Names, Addresses of Staff to Anti-Choice Picketers

by Jenesse Miller

On August 28, the California Court of Appeal ruled that Planned Parenthood Golden Gate does not have to disclose private information about Planned Parenthood staff and volunteers to anti-abortion advocates. The order came in the case of *Planned Parenthood v. Superior Court*, a case concerning the anti-choice protestors' access to information about clinic escorts whom they claim abused them when they picketed outside the Planned Parenthood clinic.

The ACLU-NC supported Planned Parenthood's appeal of an earlier ruling by the San Mateo Superior Court that Planned Parenthood Golden Gate must divulge the names, home addresses and home telephone numbers of clinic staff and volunteers to anti-choice activists suing Planned Parenthood.

In vacating the lower court ruling, the Court of Appeal stated that "The court failed to balance the constitutional privacy interests…against the state's interest in compelling disclosure of the information at issue."

"This is a very important decision," said ACLU-NC staff attorney Margaret Crosby, author of the ACLU's amicus brief. "The court recognized that the privacy of our homes is a value to be cherished, and that the courts must guard that privacy with particular zeal where there has been a concerted campaign of violence and terrorism against abortion providers."

An anti-choice activist who pickets outside Planned Parenthood clinics in San Mateo, Menlo Park and Redwood City "on a regular basis" alleged that escorts who volunteer to assist Planned Parenthood patients facing a phalanx of anti-choice demonstrators had engaged in misconduct. In September 1998, Planned Parenthood filed a cross-complaint against the anti-choice activists alleging that demonstrators harass and intimidate Planned Parenthood staff, volunteers, patients and their companions while protesting at clinics.

In the discovery requests that followed, anti-choice activists argued for the disclosure of residential addresses and telephone numbers of clinic staff and volunteers' that were not party to either suit. Planned Parenthood refused on the basis of the constitutional right to privacy.

The Superior Court ordered the information revealed.

In its appeal of the ruling, Planned Parenthood argued there is no compelling reason to disclose the personal information of Planned Parenthood staff and volunteers to individuals and attorneys involved in anti-abortion activities and the court agreed. "California's constitutional right to privacy is even broader and more protective of privacy than federal protections, " Crosby said. The court held that the disclosure order infringes on the rights of people not named in the lawsuits to freely and privately associate with Planned Parenthood, violating the First Amendment right to freedom of association.

"The privacy interests at issue are particularly strong because the consequences of disclosure of the private information are profound, " the court stated in its 25-page opinion. "Human experience compels us to conclude that disclosure carries with it serious risks which include the nationwide dissemination of the individual's private information…and the infliction of threats, force and violence." The court also noted that an Internet website entitled the 'Nuremberg Files' "is specific evidence that Planned Parenthood's staff and volunteers could well face unique and very real threats not just to their privacy, but to their safety and well-being if personal information about them is disclosed."

"A court order handing over the home information about clinic staff to anti-abortion activists would have a chilling effect on people's willingness to work or volunteer at family planning clinics," explained Crosby.

Federal and state laws have been passed in the wake of anti-abortion violence. The Freedom of Access to Clinic Entrances (FACE) Act of 1994, which established federal criminal penalties for violent and obstructive actions. A California law, which makes it unlawful to intentionally prevent an individual from entering or exiting a health care facility, directs courts to safeguard the privacy of patients, doctors and health care facility staff and clients.

"The court's decision creates a welcome safe haven in the unrelenting violence and harassment experienced by the people who make reproductive rights a reality," Crosby said.

Jenesse Miller is an intern in the ACLU-NC Public Information Department.

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

[Return to ACLU News November/December 2000]
[Home Page] [Press Releases] [Search] [Join the ACLU]

ACLU news

ACLU News - The Newspaper of the ACLU of Northern California, November/December 2000

ACLU Protects Speech on Internet

*T*he ability of ordinary people to use the Internet is increasingly coming under attack," charges ACLU-NC Ann Brick. "If the Internet is to fulfill its promise as providing a forum for those whose voices would otherwise go unheard, then it is important that the ACLU step in to be sure that those voices are not silenced."

In the two cases described below, Brick stepped in to fend off the censors - and was successful both in Alpine County and in Fresno.

Court Lifts Gag Order:Public Documents on the Internet Are Protected


Rick Rocamora

On September 13, the Alpine County Superior Court vacated a "gag" order that required all public court documents to be taken down from a controversial website, www.smalltownjustice.com, put up by Karl and Judy Hoelscher. The court's action came in response to a ruling in August by the Third District Court of Appeal agreeing to review the constitutionality of the gag order unless it was vacated by the Superior Court. The ACLU-NC filed an *amicus* brief in the appellate court in support of the Hoelschers' bid to have the gag order lifted.

"We are extremely pleased that the court has vacated its order," said ACLU-NC staff attorney Ann Brick. "All of the documents affected by the order were available to anyone who asked to see

them at the courthouse. The website simply opened the courthouse door to the rest of the world."

The dispute over the website began shortly after Karl Hoelscher put the site up in 1997, after his wife, Judy Komaroni Hoelscher, was sentenced to four months in jail as the result of a car chase with police. Their website was highly critical of both the CHP officer Gregory Mason who conducted the arrest and the manner in which the judicial system dealt with her case.

When Mason and his wife sued the Hoelschers for libel and invasion of privacy, the Hoelschers began posting documents filed in the case on their website. At the Masons' urging, the Alpine Superior Court issued a "gag" order on April 28 ordering the Hoelschers to remove all the of the court filings in the case from the website. The Hoelschers then asked the Court of Appeal to overturn the order.

"The court order reaffirms that individuals who publish websites are entitled to the same full First Amendment protections for their Internet speech as the traditional media receive for their publications," said Roger Myers, a partner with Steinhart & Falconer, who with associate Rachel Boehm prepared the ACLU *amicus* brief in support of the Hoelschers. "One of the wonders of the Internet is that it gives every individual with a computer the ability to be heard on issues fundamental to democracy, such as how the courts and the police are handling a given case.

Justice Department Says INS Can't Shut Down Agent's Website

When Border Patrol agent John Crockford entered set up his personal website "devoted to promoting the work of the men and women who staff the Fresno Border Patrol station," he did not expect that his employer of 23 years would order him to shut it down.

But after Crockford, who was the Patrol Agent in Charge of the Fresno Office of the Border Patrol, posted a *Fresno Bee* article reporting that employer sanctions has decreased since the INS took over the investigations from the Border Patrol, that's exactly what happened.

When Crockford's grievance to the INS brought no results, ACLU-NC staff attorney wrote several letters to the INS on behalf of Crockford, explaining that the agency's order to remove the website violates the First Amendment.

"Public employees have the First Amendment right to speak on matters concerning their work," explained Brick, " and as a general rule, the government may not punish a public employee's speech on a matter of public concern. Agent Crockford's posting of information about the Fresno Border Patrol Office - which had already run in the newspaper - is certainly a matter of public concern."

In a September 1 letter from the General Counsel of the INS, Crockford's rights were vindicated. The INS agreed with the ACLU that the agency had "acted precipitously" in ordering Crockford to close his website, and issued a directive allowing him to resume publication.

In addition, the INS agreed to draft a revised policy on employee websites, and disseminate it to field operations personnel, in order to "avoid

"The gag order would have dramatically limited Internet speech on these issues," added Myers, "by allowing courts to prevent websites from publishing court documents critical of law enforcement or the judicial system, which is one reason it was so important to have the order vacated."

this type of problem in the future."

"Our efforts to prevent website censorship were particularly important in this case," explained Brick, "where the censor's gag was being wielded by the government."

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

[Return to ACLU News November/December 2000]
[Home Page] [Press Releases] [Search] [Join the ACLU]

ACLU news

ACLU News - The Newspaper of the ACLU of Northern California, November/December 2000

Profs Agree to Dismiss Suit Against "Teacher Review" Webmaster

Just days before a scheduled hearing in San Francisco Superior Court, the ACLU-NC won a victory in *Curzon Brown v. San Francisco Community College District* when City College professors Daniel Curzon Brown and Jesse David Wall voluntarily agreed to dismiss their lawsuit against the operator of an Internet website where students can post critiques of their teachers. The defendant, Ryan Lathouwers, was represented by Bernard Burk and Amy Margolin of Howard, Rice, Nemerovski, Canady, Falk & Rabkin, and ACLU-NC staff attorneys Ann Brick and Margaret Crosby.

The Teacher Review website, which Lathouwers created while a City College student in 1997, provides an online resource for students trying to decide which teachers and courses to select. Lathouwers, who left City College in 1998, has continued to maintain the site without compensation as a service to the City College community. Curzon Brown and Wall, who had among the lowest overall ratings of the over 600 City College instructors reviewed on the site, were suing Lathouwers, the site's "webmaster" over their objections to comments about them that had been posted on Teacher Review, and over their objections to Lathouwers' administration of the site.

"The dismissal of this case is a victory for free speech on the Internet," said attorney Bernard Burk. "It fulfills the promise Congress made to Internet site and service providers in enacting the Communications Decency Act, and the promise the Founders made to everyone in adopting the First Amendment."

"The dismissal of this lawsuit is a true vindication for Ryan Lathouwers and for the hard work he has done in providing students at City College with an effective way to share information about teaching at the school," said ACLU-NC staff attorney Ann Brick. "It is also a real victory for the many working students at City College who would have lost a valuable resource had the plaintiffs succeeded in their lawsuit. This lawsuit threatened one of the most important and fundamental functions of the Internet: providing forums for the expression of opinion."

"I'm very glad the law provided the protections I needed to continue to offer the information and opinions Teacher Review makes available to the thousands of City College students who consult it every semester. Teacher Review may now continue as an open forum for the

students who find this website useful," said Lathouwers.

City College English professor Daniel Curzon Brown filed the lawsuit in October 1999on behalf of himself and all other City College employees "who have been or will be defamed by the content of Teacher Review." His lawsuit sought monetary damages, and an injunction prohibiting the posting of "defamatory" reviews on the website and prohibiting either City College or the Associated Students from linking to Teacher Review.

Physics professor Jesse David Wall joined the lawsuit last May, when a new and different amended complaint was filed. In the amended complaint, the two professors sought damages from Lathouwers for a variety of uncomplimentary and sometimes offensive comments students had posted about them on the website. They also sought damages from Lathouwers for his administration of the site and its content, which they claimed portrayed them unfairly. The ACLU-NC filed motions to dismiss the lawsuit showing that the teachers' claims had no proper legal or factual support, and seeking payment of attorneys' fees under California's anti-SLAPP suit statute.

Rather than have the Court decide the motion, Curzon Brown and Wall agreed to dismiss their case unconditionally, and to pay the ACLU a portion of Lathouwers' attorneys' fees. They have agreed not to file similar lawsuits in the future against Lathouwers, Teacher Review, or anyone involved in the website's administration or content. They also have agreed to stop posting anonymous reviews of themselves on the site, which they admitted having done during the litigation.

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

[Return to ACLU News November/December 2000]
[Home Page] [Press Releases] [Search] [Join the ACLU]

ACLU news

ACLU News - The Newspaper of the ACLU of Northern California, November/December 2000

ACLU Urges Appeals Court to Reconsider Napster Ruling, Citing Censorship Effect on Internet Users

*I*n a friend-of-the court brief filed in the Ninth Circuit Court of Appeals on August 25, the ACLU urged the court to lift the injunction issued against Napster, the popular music-sharing Internet site, and to direct the lower court to hear evidence in the case before deciding the difficult issues presented.

In the battle between giants in the record industry and the Internet service industry, the ACLU said in legal papers, "the district court overlooked the effect of the court's actions on individual Internet users."

"Whenever speech is enjoined, it is a matter of constitutional import," said Ann Brick, a staff attorney with the ACLU of Northern California, which filed the brief which together with the national ACLU in *A&M Records v. Napster*.

"Although still in its infancy, the Internet has become a medium of unprecedented, interactive mass communication. The injunction in this case has the potential for affecting this vital new medium of communication and cannot be taken lightly," she said.

The ACLU brief said that in order to comply with the District Court's order, Napster would have to stop most of the music exchanges its users engage in, not just those exchanges that are covered by the music companies' copyright.

In effect, the ACLU said, the injunction denies Napster users the opportunity to share almost any music, regardless of whether the exchange would violate the record company's copyright. In doing so, the injunction suppresses more speech than necessary to protect the copyright interests of the music companies and thus is unconstitutionally overbroad.

The ACLU takes no position on the underlying issue of whether or not the Napster system violates the copyright laws.

"The court should not have issued an injunction without first holding an evidentiary hearing," said Chris Hansen, a senior staff attorney with the national ACLU.

"In a case like this one where the evidence is both voluminous and hotly contested, it is crucial that there be a forum where disputed facts and expert opinions can be fully explicated and tested," he added. "This is especially true when the court's decision has the potential to affect a host of other file-transfer technologies on the Internet."

The District Court granted the plaintiffs' motion for a preliminary injunction against Napster on July 26. On July 28, the day the injunction was to go into effect, the Ninth Circuit issued a stay and ordered that the appeal proceed on an expedited basis, i.e., without an evidentiary hearing.

The ACLU brief was filed by Brick, and national ACLU attorneys Hansen and Ann Beeson.

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

[Return to ACLU News November/December 2000]
[Home Page] [Press Releases] [Search] [Join the ACLU]

ACLU news

ACLU News - The Newspaper of the ACLU of Northern California, November/December 2000

Back to School Without Books: Civil Rights Groups Demand a Survey

At a news conference on September 12 at the ACLU-NC office, the ACLU and other civil rights groups announced that they filed a motion to require that the State of California find out whether public school students have books to use in class and at home in each of their core subjects. The motion asks the San Francisco Superior Court to appoint a neutral expert to design and carry out a survey of California teachers asking them about the availability of books in their classes.

In its response to requests for information in the ACLU landmark education case, *Williams v. California*, filed in May of this year, the state responded that it does not know whether public school students in California have books to study and claimed that it has no responsibility for ensuring that they do.

"Students and teachers are back in school," said Michelle Alexander, Director of the ACLU-NC Racial Justice Project, "but the State of California is nowhere to be found. There's no control and no responsibility, and as a direct result many of California's students still don't have the most basic of all learning tools: a book."

In fact, the defendants in the class action

Olivia Saunders and Silas Moultrie, students at Luther Burbank Middle School, with their 1982 textbook.

Foerster, pro bono co-counsel in the case, "but the State's educational agencies don't respond, and don't even know when public schools fail to provide every student with the books and materials required for learning. The State should have a system for finding that out, but it doesn't. This motion seeks to address that gap in basic accounting."

The suit was filed on behalf of more than 100 student plaintiffs at 46 schools. "We don't get to take the books home for homework because there aren't enough

lawsuit, State Superintendent of Public Instruction Delaine Eastin, the California Department of Education, and the State Board of Education, confirmed through their attorneys that "The extent of educational materials in all districts is unknown."

The California Legislature, on the other hand, has clearly recognized that the California Constitution requires the state to ensure that all students have textbooks and other instructional materials.

In 1994, the Legislature declared that, "... education is a fundamental interest which is secured by the state constitutional guarantee of equal protection under the law, and...to the extent that every pupil does not have access to textbooks or instructional material in each subject, a pupil's right to educational opportunity is impaired."

"When schools fail, students have rights guaranteed by California's Constitution," said Michael Jacobs, at Morrison

books," said Silas Moultrie, an eighth grader at Luther Burbank Middle School in San Francisco, who displayed his 1982 torn Social Studies book at the news conference. "Without enough books, we're not getting the education we should be getting." Moultrie's book is six years older than he is, and has lessons on the "current" state of the Soviet Union and the Cold War.

"In my English class, we don't have our literature books yet this year," said Olivia Saunders, who is also an eighth grader at Luther Burbank Middle School. "The teacher already explained to us that when we get the books, we won't be able to take them home because we're not going to get enough for all the students in the classrooms."

The suit was filed by the ACLU affiliates of California, Morrison & Foerster LLP, Public Advocates, Inc., the Mexican American Legal Defense and Educational Fund, Center for Law in the Public Interest, Lawyers' Committee for Civil Rights, the Asian Pacific American Legal Center and others.

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

ACLU news

ACLU News - The Newspaper of the ACLU of Northern California, November/December 2000

Anti-Gay Harassment Suit for H.S. Students in Ninth Circuit

On October 5, the Ninth Circuit Court of Appeals heard arguments in *Flores v. Morgan Hill Unified School District* on behalf of six South Bay high school students who had been continually and cruelly harassed because they were perceived to be lesbian or gay.

The ACLU and the National Center for Lesbian Rights represent six former students at Live Oak High School who were the victims of cruel and unrelenting anti-gay harassment by their peers. In 1997, the students sued the Morgan Hill Unified School District and six of its administrators in U.S. District Court alleging that the school district discriminated against the students on the basis of their sexual orientation because of the administrators' deliberate indifference to the known verbal and physical attacks on the students.

"This case is important because it serves as a reminder that public schools are responsible for protecting students perceived to be gay or lesbian from harassment," said ACLU-NC staff attorney Bob Kim. "These students faced continual harassment and violent threats by their classmates without any protection from school authorities. Their pleas were ignored and the harassment continued unabated. This case allows the Ninth Circuit to reaffirm that in the public schools, all students deserve the same protections."

The issue before the Ninth Circuit is whether the school administrators must face a trial on the students' claims against them. The administrators argue that they are immune from the lawsuit because they could not be expected to know that their deliberate indifference to the known anti-gay harassment of the students in their school violates the equal protection clause of the federal Constitution. Last February, the district court rejected that defense and ruled that the students are entitled to a jury trial. It is that ruling - that the administrators are not immune from the suit - that is before the Ninth Circuit.

"It is troubling that these school officials continue to insist that the law permitted them to ignore complaints of harassment and violence simply because the students lodging the complaints were lesbian, gay or bisexual, or perceived to be," said Christine Hwang of the National Center for Lesbian Rights.

Cooperating attorney James Emery of Keker & Van Nest argued the case on behalf of the students. The students are represented by the American Civil Liberties Union of Northern

California, the National Center for Lesbian Rights, the National ACLU Lesbian/Gay Rights Project, and attorneys at the firm of Keker & Van Nest, LLP.

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

[Return to ACLU News November/December 2000]
[Home Page] [Press Releases] [Search] [Join the ACLU]

ACLU News - The Newspaper of the ACLU of Northern California, November/December 2000

Davis Denies Media Access to Prisoners

by Peter Sussman

On the last day of the legislative session, Governor Gray Davis vetoed **AB 2101**, a bill to restore the right of the news media to interview specified prisoners face to face and to receive confidential mail from inmates. This is the third time such a bill has been vetoed and the second time by Davis. The ACLU Legislative Office worked closely with the Society of Professional Journalists over the past several years to win bipartisan legislative support for the measure. This year, the bill, authored by Assembly Member Carole Migden, was watered down in an attempt to meet the objections cited by Davis for his previous veto.

Like its predecessor bills, AB 2101 had passed both houses of the Legislature by overwhelming, bipartisan margins and with the vigorous editorial support of most, if not all, of the state's daily newspapers. One Republican legislator summarized much of the legislative sentiment when he said, "We do not hold prisoners incommunicado in this country." In all three of its incarnations, the bills would have restored a system of face-to-face interviews that worked successfully for more than 20 years before it was ended unilaterally by the Department of Corrections -- at first secretly, in late 1995, and then through emergency regulations in 1996. The Department has been unable to cite any untoward incident that provoked the reversal of the decades-long practice of media interviews with people who are incarcerated.

"Apparently, Governor Davis wants to keep Californians in the dark on what happens behind prison walls," said ACLU Legislative Director Francisco Lobaco. "The only plausible explanation why this Governor wants to keep secret from the public what happens in our prisons is that he is afraid the truth will come out."

From the beginning of the five-year dispute, much of the support for these regulations has been based on the *content* of news coverage and on the views expressed in interviews -- which violates the First Amendment, Lobaco explained.

"Public trials might also be painful for victims and their families, but it would be unthinkable to close trials because they, like in-prison interviews, serve a public good that outweighs the possible emotional impact on victims and are constitutionally protected," Lobaco said.

"This measure was a compromise that would have simply allowed journalists the opportunity to do their jobs when they visit an inmate - conduct an interview with the 'tools of their trade,'" he added.

Journalists, media organizations and free press advocates plan to reintroduce the legislation next year.

Peter Sussman is the former President of the Society of Professional Journalists.

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

[Return to ACLU News November/December 2000]
[Home Page] [Press Releases] [Search] [Join the ACLU]

ACLU news

ACLU News - The Newspaper of the ACLU of Northern California, November/December 2000

Help Build the ACLU-NC

Join Phone Banks for Bill of Rights Campaign

We know your time is valuable so we ask you to consider joining us for just *one* evening of our annual Bill of Rights Pledge Campaign -- the money raised goes directly to support the ACLU's proven three-part strategy of legal advocacy, public education and community organizing.

Thanks to dozens of volunteer Advocates like Irving Hochman and Florence Moore (*pictured at right*) who participated last year, the ACLU-NC had the resources necessary to defend the rights of some of the most defenseless people in our community. This year, with your help, we'll do even more to ensure that we can assist those who need our help.

Florence Moore and Irving Hochman, active volunteers in the Bill of Rights Campaign, at a thank-you party for fundraising volunteers at Pauline's in San Francisco.

You can support our work by phoning members and taking pledges at one of our four phone bank evenings listed below. As a volunteer Advocate you'll receive a choice of two special thank you gifts, a set of parchment and gold-leaf note cards with the famous Jefferson quote, "Life, Liberty and the Pursuit of Happiness," (originally printed to commemorate the U.S. Bicentennial) or an elegant Statue of Liberty bookmark in etched metal with gold finish.

Think about it. The more members we reach, the more money we raise -- the more effectively we can protect civil liberties and guard the Bill of Rights.

All phone banks are held at the ACLU-NC office, 1663 Mission Street, San Francisco, from 6pm - 9pm. There is ample street parking and dinner is provided each night.

For more information, contact Bill Carpmill at 415/431-8651.

Thursday November 16 (Kick-Off Party)
Tuesday, November 28
Monday, December 4
Tuesday, December 5 (San Mateo)

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

[Return to ACLU News November/December 2000]
[Home Page] [Press Releases] [Search] [Join the ACLU]

ACLU news

ACLU News - The Newspaper of the ACLU of Northern California, November/December 2000

ACLU Helps Defeat S. F. Vehicle Forfeiture Law

Court Uphold Oakland Ordinance

By an 8 to 3 vote on September 25, the San Francisco Board of Supervisors defeated a vehicle forfeiture ordinance that would have allowed the police to seize vehicles from persons arrested - but not convicted - of soliciting prostitutes or drugs.

"We are pleased that the Board recognized that the proposed San Francisco ordinance was fundamentally at variance with basic civil liberties protections," said ACLU-NC managing attorney Alan Schlosser who testified against the measure, sponsored by Supervisor Amos Brown.

A few weeks later, however, on October 17, the California Supreme Court denied review of the ACLU-NC appeal of the California Court of Appeal July ruling upholding the Oakland asset seizure ordinance (*Horton v. City of Oakland*). The Oakland ordinance allows police officers to seize automobiles allegedly used to solicit acts of prostitution or acquire illegal drugs - even in instances where there is no criminal conviction. In addition, the ordinance allows the city to sell the seized vehicles, with the proceeds of the sale going directly to local law enforcement agencies, even if the owner of the vehicle had no knowledge that the car was being used for illegal activity.

The ACLU-NC argued that the Oakland law ignores basic legal standards established by the state Legislature to protect individual rights and innocent people, especially when the vehicle owner was not involved in the illegal activity or when the vehicle is the family's only car. Under California state law, vehicles may be forfeited only under limited circumstances, and state statute exempts innocent owners and a family's only car. Under the Oakland ordinance, the innocence of the owner and the hardships of the family are irrelevant.

"Both the California Legislature and Congress have recognized the well-documented history of abuse and excess in the implementation of civil asset forfeiture. Yet in enacting the first local forfeiture ordinance in this state, Oakland has chosen to impose forfeiture in its most expansive and onerous form," said Schlosser. "It is understandable that Oakland should take measures to deter crime in its neighborhoods. However, ignoring basic legal standards established by the Legislature to protect innocent people and prevent abuses is the wrong way to pursue this

goal."

Schlosser noted that there were several other cases pending in the courts challenging various aspects of the Oakland ordinance, including one where a judge ruled that seizure of a $5,000 truck was disproportionate punishment for a $20 marijuana buy.

"Unless other cities follow the principled example of the San Francisco Board of Supervisors, we are likely to see a balkanized forfeiture system in this state, with different communities competing to establish their own forfeiture operations, prompted by political pressures and the lure of revenue is generated from forfeiture sales," Schlosser added.

A bipartisan coalition in Congress recently enacted the Civil Asset Forfeiture Reform Act of 2000, which narrowed the scope of federal forfeiture laws and provided property owners with procedural protections and defenses. The bill's author, conservative Congressman Henry Hyde, made clear the basis for this legislative action: "Enlisted 25 years ago as a legitimate auxiliary tool in the so-called war on drugs, the legal doctrines of civil asset forfeiture have since been perverted to serve an entirely improper function in our democratic system of government -official confiscation from innocent citizens of their money and property with little or no due process of law or judicial protection."

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

[Return to ACLU News November/December 2000]
[Home Page] [Press Releases] [Search] [Join the ACLU]

ACLU news

ACLU News - The Newspaper of the ACLU of Northern California, November/December 2000

Activists' Profile

Welsh and Stoner Take on Monterey

By Melissa Schwartz

ACLU-NC Monterey Chapter activists since 1978, Mickey Welsh and Kathy Stoner have done it all. Partners for over 25 years, they have both served as Chapter chairs, members of the ACLU-NC Legal committee, cooperating counsel (most notably in the cases of *Bobb v. Superior Court*, which resulted in a published opinion prohibiting sex discrimination in jury selection, and *Ringler v. Monterey*, challenging the placement of a nativity scene in front of city hall), helped with the chapter's annual essay contest (now in its 17th year) and worked on every "No on Prop" campaign since they joined the chapter in what they call a "lifelong commitment to preserve and expand the constitutional rights of all people."

Currently, Welsh is the Chair of the Field Activist Committee, Chapter Representative to the ACLU-NC Board, and a member of both the Legal and Executive Committees. Stoner serves on the Legal Committee. They both are Monterey County Chapter Board members.

Welsh and Stoner got involved with the ACLU during the "NO on Prop 6" campaign in 1978, the anti-gay rights ballot initiative that would have barred teachers from discussing gay and lesbian issues in public schools. "When we went looking to join a coalition working to defeat the initiative, we met Dick Criley and a bunch of other straight ACLU activists," remembers Welsh. "That's where we first learned effective community organizing. Dick Criley knew that the best way to involve people in the ACLU was not to try to get them to buy into 'our issues' but to go to them and work on theirs."

Michelle Welsh (left) and Kathy Stoner flank the late Dick Criley, the mentor they met when they first volunteered with the ACLU.

Welsh and Stoner are also active in other community organizations. Welsh is a Board member emeritus of Monterey College of Law and Stoner is the current President of the Girl Scout Board of directors. The have both served as president of the Monterey County Bar Association and the Monterey County Women Lawyers Association. The couple founded and currently volunteer for the AIDS legal referral panel.

Welsh and Stoner met in law school and are graduates of the second class from the Monterey College of Law, a non-profit law school dedicated to community service, where they both are adjunct professors. Stoner also teaches mediation through the Center for Mediation and Law in Mill Valley. They founded and still work at the law firm of Stoner, Welsh & Schmidt.

Both Welsh and Stoner have been recognized for their civil rights advocacy and hard work. In 1992, Stoner was awarded the "Lola Hanzel Courageous Advocacy Award" at the ACLU-NC Bill of Rights Day Celebration. She was honored for her "tireless efforts within the Monterey Chapter," especially the revamping of the Chapter's complaint referral line and coordination of a manual for complaint line volunteers, which became a model for other ACLU-NC chapters. Welsh will be honored in December with the "Baha'i Human Rights Award in Monterey (#for details, see article page ?).

"Chapter activists have become the leading civil liberties campaigners in their communities. Welsh and Stoner set the standard with their work on the "NO" campaigns for Propositions 209, 21 and 22," said ACLU-NC Field Director Lisa Maldonado.

Melissa Schwartz is the Program Assistant for the Field and Public Information Departments of the ACLU-NC

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

[Return to ACLU News November/December 2000]
[Home Page] [Press Releases] [Search] [Join the ACLU]