

aclu NEWS

Volume LXVI

November - December 2002

No. 3

[Click here](#) to download the whole issue as a pdf file, or browse individual articles below.

What's Inside...

- [New ACLU Campaign - Keep America Safe and Free](#)
- [District Agrees To Sweeping Anti-Gay Harassment Program](#)
- [New Report Profiles Victims of September 11 Backlash](#)
- [Organizer/Advocate Joins ACLU Team](#)
- [First Amendment Victory in Landmark Prison Internet Case](#)
- [Appeals Court Rejects final Challenge to Proposition 21](#)
- [Court Upholds Media Access to Executions](#)
- ["No Parole" Policy Before High Court](#)
- [Annual Activist Conference: Defending Freedom in Times of Crisis](#)
 - [Activist Conference Workshop Highlights](#)
- [Students Explore *Maquiladoras* and Border Crossings on Summer Investigation - Immigration Unplugged, 2002](#)
- [Board of Directors Election](#)
 - [Voting Information](#)
 - [Candidates' Statements](#)
- [Sacramento Report - Governor Signs Crucial Reproductive Rights Bill - Vetoes Other Key Measures](#)
 - [An Historic moment for Reproductive Rights](#)
 - [Mixed Messages on Immigrants' Rights](#)
 - [A Moderate Anti-Terrorism Measure](#)
 - [Governor Stymies Criminal Justice Reform](#)
 - [Drug Policy Falls Victim to Veto Plan](#)
 - [Some Momentum on LGBT Rights](#)
- [The Values of the Pledge of Allegiance](#)
- [ACLU to SFPD: "End Racial Profiling"](#)

- Students and Educators Blast Internet Filter Law
- \$100,000 Challenge Gift Spurs Endowment Campaign
- Briefing for FrontLine Supporters
- Banned Books in a New Era
- Field Program Meetings

aclu news

Six 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

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

November - December 2002

New ACLU Campaign to Keep America Safe *and* Free

Almost a year to the day after Congress passed the USA Patriot Act into law, the ACLU has launched an unprecedented \$3.5 million campaign that includes paid television advertising and a massive mobilization of its supporters in a nationwide effort to safeguard the freedoms that Attorney General John Ashcroft and the Bush Administration have targeted since last year's terrorist attacks.

"Look what John Ashcroft is doing to our Constitution....He's seized powers for the Bush Administration no president should ever have. The right to investigate you for what you say, to intrude on your privacy, to hold you in jail without charging you with a crime." - Excerpts from the ACLU's new television ad, "Constitution."

"Those who ask the American people to choose whether they want to be "safe or free" are presenting a false and dangerous choice," says Nadine Strossen, national president of the ACLU. "The real difficult task ahead is to create a new and more powerful balance between two fundamental values — liberty and security. In this way America can be both safe *and* free."

The campaign represents an unprecedented engagement of the ACLU's resources, leadership and grassroots supporters in the organization's 80-year history. A crucial element in the campaign is a 30-second television spot – the ACLU's first national television advertisement – that graphically illustrates how essential freedoms have been curtailed in the name of security since Sept. 11.

"Look what John Ashcroft is doing to our Constitution," a voiceover says as the screen shows a pair of hands editing and cutting out portions of the Constitution and the Bill of Rights. "He's seized powers for the Bush Administration no president should ever have. The right to investigate you for what you say, to intrude on your privacy, to hold you in jail without charging you with a crime." The ad is online at: www.aclu.org/SafeandFree/

The ACLU launched the campaign on October 16 at news conferences around the nation. At a packed San Francisco news conference, Dorothy Ehrlich, executive director of the ACLU of Northern California, was joined by Strossen, as well as Jan Adams and Rebecca Gordon, local peace activists whose personal story provides a chilling illustration of government overreach since Sept. 11.

When Adams and Gordon arrived at San Francisco airport to check in for a flight to Boston in August 2002, an airline employee told them both their names had appeared on an "FBI no-fly list." They asked if there was any reason that our names could be on the list," says Adams. "Immediately, I thought 'War Times is bothering the government.'"

War Times is a publication founded by a group of activists including Adams and Gordon after Sept. 11. The publication, which appears in print and online, has criticized the government for its position on Afghanistan, the erosion of civil liberties in the wake of the attacks, and the looming invasion of Iraq.

Agents told the women that if their names appeared "on a master-list" they would be held for the FBI. The women were detained by three San Francisco police officers, who determined that Adams and Gordon were not on the master list and permitted them to fly – but not before their tickets were marked with a large, red "S," singling them out for special searches. Activists in other parts of the

country say they have experienced similar problems.

The source of the blacklist remains a mystery, with no federal agency admitting to administering the list. "The problem with this list is that there is no accountability," says Jayashri Srikantiah of the ACLU-NC. "People don't know why their names were put on the list and they don't know how to get them off."

Gordon, 50, and Adams, 55, are anxious to know how their names appeared on the list and how they can get them removed. But, while they worry about what will happen the next time they fly, they have decided to continue with their *War Times* work. "We've got a war to stop," says Adams. "We're more determined than ever to work for peace."

Ehrlich says that Adams and Gordon are far from alone. "In northern California and throughout the country there are a growing number of people who are frightened and angry about the government's anti-civil liberties response to the terrorist attacks," she says. Many people, including Gordon and Adams, says Ehrlich, "are ready to act."

The ACLU is working in partnership with other community and local organizations around the nation to introduce local resolutions designed to protect civil liberties and repeal provisions of the USA Patriot Act, as well as ordinances prohibiting local law enforcement participation in repressive federal initiatives. Nine communities including Berkeley, CA, have passed local initiatives already – and approximately 40 others are considering such measures.

The ACLU will also continue to monitor implementation of the USA PATRIOT Act and will work on a multi-year plan to secure its repeal. Strossen says that she has spoken with members of Congress who expressed misgivings about having voted for the USA Patriot Act under pressure and with just hours to review the final 300-page bill.

"We take heart from the efforts of key members of Congress who are actively attempting to monitor how the Department of Justice uses its broad new powers," said Strossen, "and we will do everything in our power to ensure that future efforts to restrict our liberty will be examined and debated in public, unlike the USA PATRIOT Act."

TAKE ACTION!

Visit <http://www.aclunc.org/911/safeandfree.html> for more information on how you can help in the campaign to Keep America Safe and Free. If you, or someone you know, has been a victim of government profiling or surveillance since Sept. 11, please call the ACLU-NC's hotline on 415-621-2493 x 357.

USA PATRIOT ACT: Troubling provisions of the Act include:

Permits Information Sharing: Allows information obtained during criminal investigations to be distributed to the CIA, NSA, INS, Secret Service and military, without judicial review, and with no limits as to how these agencies can use the information once they have it.

Authorizes "Sneak and Peek" Searches: Authorizes expanded use of covert searches for any criminal investigation, thus allowing the government to enter your home, office or other private place and conduct a search, take photographs, and download your computer files without notifying you until later.

Allows the CIA to Spy on Americans:

Gives the CIA the power to manage intelligence-gathering in America and mandate the disclosure of information about terrorism obtained by the FBI to the CIA - even if it is about law-abiding Americans.

Imposes Indefinite Detention:

Permits authorities to indefinitely detain non-citizens, without meaningful judicial review.

Reduces Privacy in Student Records:

Allows law enforcement to access, use and disseminate highly personal information about American and foreign students.

Expands Wiretap Authority:

Minimizes judicial supervision of law enforcement wiretap authority in several ways, including: permitting law enforcement to obtain the equivalent of "blank" warrants in the physical world; authorizing "roving" wiretaps that do not specify the phone to be tapped or require that only the target's conversations be eavesdropped upon; and allowing the FBI to use its "intelligence" authority to circumvent the judicial review of the probable cause requirement of the Fourth Amendment.

[Return to ACLU News November - December 2002]

Click here to download the whole issue as a printable pdf file.

November - December 2002

District Agrees To Sweeping Anti-Gay Harassment Program by Stella Richardson

The Visalia Unified School District has agreed to adopt far-reaching reforms to protect the rights of gay and lesbian students, including a groundbreaking training program designed to prevent harassment in schools before it starts. This landmark settlement, announced August 13, ends a federal lawsuit filed by the ACLU over persistent anti-gay harassment in the district. The suit was filed on behalf of George Loomis, who faced relentless discrimination as a senior at Golden West High School in Visalia, and the Gay Straight Alliance Network (GSAN).

"This milestone settlement shows schools how to meet their legal obligation to not only respond to anti-gay harassment, but to actively work to prevent it," says Ann Brick, an attorney with the ACLU of Northern California. "Students in Visalia will now have a shot at being treated equally, and the rest of California and the nation will have a strong model for addressing these issues."

"No student should have to go through the kind of harassment I did. And parents deserve to know their children will be safe when they're at school." – George Loomis

The settlement requires mandatory training, designed by the Intergroup Clearinghouse and the GSAN, for all high school students and for staff at all of the districts' schools. The settlement also requires the district to:

- Adopt policies explicitly forbidding staff or student harassment or discrimination based on gender or sexual orientation;
- Name "compliance coordinators" to help parents, students and teachers with incidents of discrimination;
- Establish a community advisory group to help address discrimination and assess how the settlement is working.

"No student should have to go through the kind of harassment I did," says Loomis. "And parents deserve to know their children will be safe when they're at school."

During Loomis' senior year, one of his teachers, referring to the young man's earring, told his class, "Only two kinds of guys wear earrings, pirates and faggots, and I don't see any water around here." Over the next few weeks the teacher continued making such remarks, sparking a wave of harassment and threats from other students and school staff that eventually drove the honor student from the school.

Loomis says that his personal experience has led him to become a full-time advocate for social change. He is currently working for Californians for Justice in Fresno and says that he is "glad to see such a positive outcome to this case."

"In terms of policy changes and lasting system-wide reform, this settlement sets the standard," says Kevin Lewis, an attorney with the San Francisco law firm of Howard, Rice, Nemerovski, Canady, Falk and Rabkin, who served as pro-bono co-counsel in the case. "This is a great victory, not just for our clients, but for students everywhere in America."

The suit was filed by the ACLU of Northern California.

[\[Return to ACLU News November - December 2002\]](#)

[Click here](#) to download the whole issue as a printable pdf file.

[Home Page](#) / [Press Releases](#) / [Search](#) / [Join the ACLU](#)

November - December 2002

New Report Profiles Victims of Sept. 11 Backlash

In the summer of 2002, the ACLU of Northern California, in collaboration with community and civil rights groups, set out to explore the Sept. 11 backlash here in northern California. We wanted to know how the fallout impacted people here, thousands of miles from where the twin towers fell. Has discrimination reached its tentacles into our schools, campuses and city streets? How have new government policies that curtail civil liberties impacted the people of this region? What has this year meant for those of Arab, Muslim and South Asian descent, and for political dissenters?

The result is *Caught in the Backlash: Stories from Northern California*, a report that tells the stories of 20 people from the region who were targets of private or government discrimination in the year following the attacks. The report, released on Nov. 13, 2002, is available online at www.aclunc.org, or by calling Gigi Pandian on 415-621-2493x358.

Here are some of the faces of the backlash.

Sugako Green Half-Palestinian, half-Japanese, and American Muslim, Sugako Green is no stranger to racism. Sugako, 26, grew up in foster homes and her own grandfather was interned in camps during World War II. But nothing prepared the young Oakland resident for the discrimination directed at her and her daughter by police officers, a college professor, a security guard and others in the months following Sept. 11.

Mustapha Ghezali Voicing unpopular opinions can get you into trouble these days when you're also a practicing Muslim, Mustapha Ghezali has learned. The effusive San Jose student's views on the U. S. media and the Middle East earned Mustapha a visit from two FBI agents shortly after Sept. 11. And they ultimately led to the U.S. citizen being arrested at gunpoint, jailed, and barred from campus -- during finals time.

Barry Reingold Barry Reingold always believed in freedom of speech. But he never expected that voicing his opinions would earn him a visit from federal agents. Yet, days after Barry criticized President Bush in a San Francisco gym, two FBI agents showed up at his door to question him about his political views.

Kamal Hakim When the FBI called in Kamal Hakim for questioning in the weeks following Sept. 11, he couldn't figure out why. But his attorney, Cara Jobson, had an idea: "I assume he was profiled because he's from Yemen," she said. Agents asked Kamal if where he prayed, what he read, how he spent his leisure time. They asked if he knew Osama bin Laden. And then they asked him to keep them informed on the activities of his neighbors. Kamal became afraid that a failure to comply would jeopardize the one thing he wanted most: U.S. citizenship.

Kate Raphael Kate Raphael is a peace activist who works on Middle East issues. She was shocked to return to her Berkeley home one night to find a message from the FBI asking "who she knew in the Middle East." When Kate refused to cooperate, agents threatened her with a subpoena. The incident was chilling, says Kate, but it was also peculiar. After all, she says: "If it's your job to hunt Islamic fundamentalist terrorists then it's your job to know that they don't hang out with Jewish lesbians in San Francisco."

Caught in the Backlash: Stories from Northern California is a project of the ACLU Foundation of Northern California, produced in collaboration with the Council on American Islamic Relations, the Intergroup Clearinghouse, Lawyers' Committee for Civil Rights, National Lawyers Guild, and the United Response Collaborative.

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[\[Return to ACLU News November - December 2002\]](#)

[Click here](#) to download the whole issue as a printable pdf file.

[Home Page](#) / [Press Releases](#) / [Search](#) / [Join the ACLU](#)

November - December 2002

Organizer/Advocate Joins ACLU Team by Gigi Pandian

Sanjeev Bery started in the new position of *Organizer/Advocate* at the ACLU-NC in September, 2002, with a tough but clear brief: help us organize in our communities to pass resolutions calling for repeal of provisions of the USA Patriot Act. Thanks to a generous grant from the National ACLU Foundation, Bery will be working alongside the affiliate's taskforce on post-Sept. 11 issues for six months, with the goal of building a groundswell of resistance to national measures that erode civil liberties.

Northern California native Bery comes to the ACLU-NC with a wealth of experience, including working as an advocate at U.S. Public Interest Research Group in Washington, DC, and most recently, on campaigns at Rainforest Action Network in San Francisco. "The ACLU has always stood up for civil liberties during unpopular times," Bery commented, "and it is so exciting to be part of this proactive organization at a time when elected officials aren't working on their own to protect civil liberties."

[\[Return to ACLU News November - December 2002\]](#)

[Click here](#) to download the whole issue as a printable pdf file.

November - December 2002

First Amendment Victory in Landmark Prison Internet Case By Stella Richardson

In major victory for First Amendment advocates, as well as for prisoners and those who correspond with them, a federal judge has struck down an attempt by some California state prisons to bar prisoners from receiving mail that contains material printed from the Internet. On September 9, U.S. District Judge Claudia Wilken entered a permanent injunction barring the California Department of Corrections (CDC) from enforcing such policies, ruling that they violate prisoners' First Amendment rights.

"The loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury

"Denying prisoners the right to surf the Internet is one thing," said Ann Brick, staff attorney with the ACLU of Northern California. "But denying them the ability to receive copies of material from the Internet is both irrational and completely out of step with the way people communicate with each other and obtain information today."

The ACLU of Northern California and the Prison Law Office represented Pelican Bay prisoner Frank Clement in the lawsuit.

The Pelican Bay policy, like similar policies at seven other prisons, classified material as contraband simply because it had been printed from the Internet. Thus the policies barred prisoners from receiving a copy of an email from a family member, while allowing them to receive a handwritten version of the same message. While a prisoner might receive a copy of the front page of the New York Times, the exact same articles would be confiscated if they came from the newspaper's online edition. Information about HIV/AIDS, Bible study material, materials about parole schedules and college financial aid, and information about prison rape were all banned if printed from the Internet.

"Prisoners were being barred from receiving timely information that is crucial to their health, education, religion or the process of an appeal," says Heather McKay, an attorney with the Prison Law Office in San Quentin. "Sometimes, this information is only available online, or can only be obtained offline at a later date or at additional cost."

Judge Wilken, who granted summary judgment for Mr. Clement, wrote that "the prison's policy of prohibiting Internet-produced material from being received by the prisoners violates the First Amendment," and cited earlier rulings that, "The loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury."

The defendants have now asked Judge Wilken to narrow her injunction so that it applies only to materials sent to Mr. Clement or only to prisoners at Pelican Bay. The hearing on that motion, which is being vigorously opposed by the ACLU-NC, will take place in early November. The national law firm of Pillsbury Winthrop is acting as cooperating attorneys in the case *Clement v. Corrections Department*.

[Click here](#) to download the whole issue as a printable pdf file.

November - December 2002

Appeal Court Rejects Final Challenge to Prop. 21 **by Stella Richardson**

On August 13, 2002, the California Court of Appeal rejected the ACLU's final challenge to Proposition 21, the controversial juvenile crime initiative passed into law by California voters on March 7, 2000. In *League of Women Voters v. Davis*, the ACLU of Northern California, representing the League of Women Voters of California, Children's Advocacy Institute, and Coleman Advocates for Children and Youth, argued that the initiative violates California's elections law because the text of the initiative that voters approved was different from the version circulated during the signature-gathering period.

"This case exposes grave flaws in the initiative process," said Steven Mayer, a partner with the law firm of Howard, Rice, Nemerovski, Canady, Falk & Rabkin and co-counsel with the ACLU. "The text of Proposition 21 placed before the voters was not the same as the version of Proposition 21 on the initiative petitions themselves. Nor did the ballot pamphlet accurately reflect the provisions of state law that Proposition 21 changed."

Mayer argued the case before the Court of Appeal on August 7, 2001. The lawsuit was filed in San Francisco Superior Court on June 7, 2000. The ACLU plans to monitor the implementation of Proposition 21 and participate in court cases and public advocacy in an attempt to mitigate the harsh effects of the measure on California's children.

[\[Return to ACLU News November - December 2002\]](#)

[Click here](#) to download the whole issue as a printable pdf file.

November - December 2002

Court Upholds Media Access to Executions **by Stella Richardson**

In a resounding victory for journalists, the Ninth Circuit Court of Appeals, in a unanimous and unprecedented three-judge ruling, ruled on August 2 that reporters and the public have a First Amendment right to witness executions from start to finish. The ruling in *California First Amendment Coalition v. Calderon*, clears the way for reporters and the public to view the entire process of executing a condemned inmate by lethal injection.

"It is critical that journalists continue to witness the entire execution of a condemned inmate and act as the eyes and ears of the public"

On First Amendment grounds, the court struck down the California Department of Corrections restrictions which prevented the public and media witnesses from observing the process until after the inmate had been brought into the chamber, strapped to the gurney and had the IV needles inserted into a vein.

"In a democracy it is critical that journalists continue to witness the entire execution of a condemned inmate and act as the eyes and ears of the public," said Alan Schlosser, legal director of the ACLU of Northern California. "Today's decision makes it clear that the First Amendment prohibits the government from limiting public information to the government's version of these critical parts of the method of execution."

The government was appealing an earlier ruling by U.S. District Court Judge Vaughn Walker. Judge Walker issued an injunction on July 27, 2000 following a trial in which the ACLU argued that journalists and public witnesses have a First Amendment right to witness executions in their entirety and that there is no evidence that media presence jeopardizes prison security. The ACLU filed the lawsuit on behalf of the California First Amendment Coalition and the Society of Professional Journalists on April 9, 1996.

On October 11, 2002, the Ninth Circuit denied the request for a rehearing at the full court. It is expected that the state will file a petition with the United States Supreme Court.

[[Return to ACLU News November - December 2002](#)]

[Click here](#) to download the whole issue as a printable pdf file.

November - December 2002

“No Parole” Policy Before High Court by Nick Oakley, ACLU Intern

When the California Supreme Court convened in Fresno for the first time in history on October 8, 2002, it heard argument on a crucial case. *In Re: Rosenkrantz* will determine the fate of San Luis Obispo inmate Robert Rosenkrantz, and the constitutionality of Governor Gray Davis’s “no parole” policy.

Davis, who stated shortly after becoming governor that he would not parole anyone convicted of murder, has granted parole in only two of the 112 cases that have come before him

Rosenkrantz was convicted of second-degree murder in 1985, when, at the age of 18, he killed a friend of his brother's who attacked, beat, and outed Rosenkrantz as gay. After serving the minimum 17-years-to-life sentence, Rosenkrantz became eligible for parole. Citing the evidence of his rehabilitation, the fact that while in prison Rosenkrantz completed a B.A. degree, became an expert in computers, had a perfect disciplinary record, and completed every psychological rehabilitation program there was to offer, the Board of Prison Terms (BPT) recommended that Rosenkrantz be paroled.

In spite of the recommendations of BPT, the victim's grandmother, the trial judge, and the detectives who investigated the homicide, Gov. Davis overturned the recommendation. Gov. Davis, who stated shortly after becoming governor that he would not parole anyone convicted of murder, has granted parole in only two of the 112 cases that have come before him, both times for battered women accused of killing their husbands. The BPT has conducted over 9,000 hearings during the Davis administration, and has found only 112 prisoners suitable for parole.

“The Governor has eviscerated California’s parole system by implementing a “no parole” policy unprecedented in its open rejection of the statutory, constitutional and moral underpinnings of the parole system in this state,” wrote Alan Schlosser of the ACLU-NC and Kyra Busby, an associate with the San Francisco law-firm Latham and Watkins, in a recent column on the subject. “As result, thousands of prisoners have had their sentences of life **with** the possibility of parole converted to life **without** the possibility of parole.”

Rosenkrantz challenged the Governor’s decision in Superior Court, then the Court of Appeal. Both state courts concurred that Davis had no legal basis for denying Rosenkrantz parole. In the last 14 months five superior courts in the state have taken the extraordinary step of ruling that the Governor acted unlawfully by reversing BPT parole grants. Faced with several challenges to the apparent policy, Gov. Davis asked the California Supreme Court to clarify his power to override the board's already infrequent grants of parole.

On October 8, the state's highest court heard this challenge, with Donald Spector, executive director of the Prison Law Office (PLO), arguing on behalf of Rosenkrantz. The ACLU-NC filed an amicus brief in the case on behalf of a diverse array of amici including Judge James Albracht, the trial judge in the criminal trial of Rosenkrantz; the California Council of Churches; the Board of Rabbis of Northern California and the Directors of the Office of Detention Ministry of the Twelve Dioceses of the State of California.

Spector argued that Davis' arbitrary denial of parole constitutes a denial of individualized

consideration that violates both the state and federal constitutions, and that Gov. Davis violated prohibitions against *ex post facto* laws by increasing Rosenkrantz's punishment.

The court will rule within 90 days of the hearing date.

[\[Return to ACLU News November - December 2002\]](#)

[Click here](#) to download the whole issue as a printable pdf file.

November - December 2002

2002 ANNUAL ACTIVIST CONFERENCE

Defending Freedom in Times of Crisis

By Gigi Pandian

"This day was designed to enable us to really figure out how to respond to *the* civil liberties crisis of a generation," ACLU-NC executive director Dorothy Ehrlich declared in her opening remarks at the affiliate's annual activist conference held on Saturday, September 21.

Throughout the day, attendees attended a range of workshops and talks designed to do just that.

Close to 200 people from throughout northern California gathered at San Jose State University's student union to listen, learn, and brainstorm about the current civil liberties crisis at the conference entitled *Defending Freedom*.

"The USA Patriot Act is over 300 pages and was passed in record time with such broad language that it has created relaxed standards for law enforcement." – Margaret Russell

A Chilling Investigation

The day kicked off with a keynote address by investigative reporter Seth Rosenfeld, who outlined his 17-year struggle to use the Freedom of Information Act to expose an orchestrated campaign by the FBI during the 1960s to thwart the Berkeley Free Speech Movement, intimidate activists, and oust then UC Berkeley Chancellor Clark Kerr.

Rosenfeld began his navigation through the court system while a graduate student in journalism at UC Berkeley, and obtained access to over 200,000 pages of confidential records only after his battle reached the U.S. Supreme Court. His odyssey culminated in a June 2002 *San Francisco Chronicle* exposé, "The Campus Files: Reagan, Hoover, and the UC Red Scare" – and in Rosenfeld's receipt of the California Newspaper Association's Freedom of Information Award.

At this new time of uncertainty, as then, Rosenfeld warned, government power must be kept in check so that secrecy and deception do not triumph over freedom. The Campus files can be viewed online at www.sfgate.com/campus.

Plenaries Tackle Ashcroft and Connerly

The plenary sessions dealt with two of the most pressing challenges facing the ACLU today: the Bush administration's erosion of civil liberties since Sept. 11, and Ward Connerly's divisive new ballot initiative, which would conceal crucial information about race discrimination in the state of California.

The 'War on Terrorism': A War on Civil Liberties was packed with information on civil liberties since Sept. 11, 2001. The first three speakers – ACLU-NC board chair and Santa Clara University law professor Margaret Russell, ACLU-NC police practices director Mark Schlosberg, and Stacy Tolchin, an attorney with the law firm Van Der Hout & Brigagliano – outlined the manifold ways in which the USA Patriot Act and subsequent executive orders broaden the scope of government power and undermine checks and balances.

"The language of legislation is tremendously important to the law," said Russell. "The USA Patriot Act is over 300 pages and was passed in record time with such *broad* language that it has created

relaxed standards for law enforcement." Schlosberg pointed to new powers that permit intelligence agencies to monitor churches, mosques and political meetings without suspicion of a crime, and spoke of the ACLU's work to ensure that any investigations conducted on California soil respect the state's constitutional right to privacy. Tolchin outlined a broad array of measures that have scapegoated immigrants since Sept. 11, including the detentions and deportations of hundreds of Arab and Muslim men in secret procedures that undermine open democracy.

Helal Omeira, executive director of the Council on American Islamic Relations (CAIR) of Northern California, and Rachel Swain, communications director of the ACLU-NC, turned the discussion to how these measures touch ordinary people's lives. Omeira talked about a disturbing rise in hate incidents, which was only enflamed by government actions targeting people of Arab, South Asian and Muslim descent. "Unfortunately, [our] community has been found guilty without due process," said Omeira. Swain noted that many victims of private and government discrimination are afraid to speak out, but told stories of some individuals who have agreed to be profiled in a new report, *Caught in the Backlash: Stories from Northern California*."

Fighting Discrimination in California

Ward Connerly's latest initiative will not be on the California ballot until March 2004, but the second plenary, *Erasing Race: The New Connerly Initiative*, illustrated why the affirmative action foe's "Race Information Ban" is already a crucial issue for activists around the state.

"The Connerly initiative is a devious attempt to undermine the enforcement of longstanding civil rights laws by making it impossible to document discrimination," said Ted Wang, policy director for Chinese for Affirmative Action. "If this initiative passes, most government agencies that are responsible for the enforcement of civil rights laws in California will not be able to ask or record a person's race or ethnicity even in the situation where an individual is trying to report a discrimination complaint."

Jan Liu of the Asian Pacific Islander American Health Forum explained that public health organizations and researchers depend on information that would be outlawed by the initiative in order to address pressing problems like teen smoking, breast cancer and asthma. "We need *more* information, not less," said Liu. Finally, Californians for Justice organizer Ed Lee stressed the need to gain momentum early in the campaign. For more information, visit www.aclunc.org/connerly_initiative.

Sonoma County ACLU Chapter Honored

The Dick Criley activist award is a tribute to life-long civil liberties advocate and leader Dick Criley, who carried out much of his activist work through the Monterey ACLU chapter. Each year the award recognizes the work of outstanding chapter activists.

This year, the Sonoma County ACLU received the award for their remarkable work on civil liberties in the difficult year after Sept. 11. Field committee chair Mickey Welsh presented Sonoma County Chapter co-chair Steve Fabian with the award. "They deserve our thanks and acknowledgment of their extraordinary effort," Welsh stated. "Widely distributing educational materials, sponsoring public forums, and signing up over 100 new ACLU member at their annual dinner – which featured Sister Helen Prejean this year – the chapter has truly done a commendable job."

Workshops Tips:

Mobilizing for Civil Liberties and Civil Rights After 9/11: What You Can Do

- *Write letters to the editor* — You don't have to be an expert to voice a thoughtful opinion, so pick your pen and write your local paper. For tips on writing a letter to the editor, [click here](#) or contact media relations director Stella Richardson at srichardson@aclunc.org
- *Pass Anti-USA PATRIOT Act Resolutions* — You can help turn the tide against the anti-civil liberties USA PATRIOT Act by working to pass a resolution opposing the Act in your community. Contact Sanjeev Bery at sbery@aclunc.org or (415) 621-2493 x365 if you want to help.
- *Get involved*— Join an ACLU Chapter in northern California and become an advocate for civil liberties. For information, see www.aclunc.org/chapters.html or call Maria Archuleta at (415) 621-2493 x346.

Workshop Highlights

Freedom to Marry

The fight is already underway to grant the right to marry for all Californians, gay or straight, but slightly over half of all Californians still oppose this goal. Jim De la Hunt, co-executive director of Marriage Equality California, and Mike Marshall, founder and executive director of Californians for Civil Marriage, provided organizing tips to win this right. Suggestions included writing letters to the editor, meeting with state legislators, and organizing “teach-ins”. For more information, see www.civilmarriage.org or call (415) 362-1011.

Death Penalty

The moratorium movement has been growing in California, with city after city passing resolutions against the death penalty. This year, Californians for a Moratorium on Executions presented a petition of almost 90,000 signatures to Governor Davis, asking for a statewide moratorium on executions. Executive director of Death Penalty Focus, Lance Lindsay, spoke about how to keep this movement growing. For more information, see www.californiamoratorium.org or call (415) 243-0143.

Chapter Organizing

ACLU Chapter activists Grover Dye (Paul Robeson Chapter) and Steve Fabian (Sonoma County Chapter) joined Cathy Rion from Californians for Justice to share their experience as long-time grassroots activists. All agreed that getting your organization's name known is key, along with sharing your message through public education materials. For information on joining an ACLU chapter, see www.aclunc.org/chapters.html or call Maria Archuleta at (415) 621-2493 x346.

“Immigration, Unplugged”

A highlight of the conference took place when several high school students who had just returned from a weeklong trip exploring immigration issues throughout California discussed some eye-opening encounters. The students shared stories of having their beliefs challenged by meeting with groups and individuals across the spectrum of opinions regarding immigration (see page 5 for more). During the question and answer session, two students burst through the door dressed as INS agents and screeched through a bull horn for the crowd to remain calm while they searched for a suspect – “Carry on,” they said, while they marched around the room intimidating people. The conference attendees knew it was a stunt, yet the presentation created a genuine unsettling effect. The crowd gave the students a standing ovation as the agents dragged off their suspects – the student speakers.

[\[Return to ACLU News November - December 2002\]](#)

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November - December 2002

Immigration Unplugged, 2002: Students Explore *Maquiladoras* and Border Crossings on Summer Investigation

By Lindsay Waggerman, 2002 graduate from Vallejo High School

Our trip began at Angel Island in the San Francisco Bay. We listened as the docent told us stories of the thousands who were held at the island's immigration station, and read us poems of despair that were carved into the walls. We are 25 high school and college students of the Howard A. Friedman First Amendment Education Project taking our first step to the platform to dive into the depths of immigration. Our trip is entitled, *Immigration Unplugged: 2002, A Field Investigation by and for Youth*.

On our investigative trip, we met with numerous groups from San Francisco to Tijuana, including the Intergroup Clearinghouse, the Youth Law Center, the San Francisco Day Laborers Program, Yuri Kochiama, Project USA, The Council on American Islamic Relations, Centro de Informacion para Trabajadoras/Trabajadores (CITTAC), the California Coalition for Immigration Reform, the San Diego Border Patrol Sector, and both the San Jose and Fremont police chiefs. Each speaker presented us a new aspect, opinion or experience concerning immigration.

We traveled to the border between the United States and Mexico. A simple line, a simple fence that withheld so much from people, and offered so much to others.

Why Immigrate?

The one component of immigration that every organization addressed was why someone would immigrate to the United States. Most people don't come by choice, we learned. We heard from recent immigrant youth who told us of their escapes from gangs, abusive parents, and poverty, which started them on their journeys to this land of opportunity. The youth we talked to were caught, sent back, caught, sent back until they finally arrived in the United States. Then, they were detained for months after arriving in this country, not allowed to see family members who legally reside within the U.S. borders.

Exploring *Maquiladoras*

We traveled to the border between the United States and Mexico. A simple line, a simple fence that withheld so much from people, and offered so much to others. A man-made barrier whose very existence prevents freedom. We crossed the border to Tijuana to meet with Jaime Cota of CITTAC, an active organizer of sweatshop workers. He told us of the oppression caused by American corporations who opened factories in Mexico, and brought home the issues of the *maquiladoras*, or sweatshops, which seem so distant when we are at home.

"I was moved and inspired by our meeting with Jaime. He described the desperate state of the *maquiladoras* in Mexico – the way they force birth control into women, sacrifice safety for profit, and pay workers ridiculously low wages," said Amelia Rosenman, junior at Lick-Wilmerding High School. "He also illuminated the complex causes and widespread effects of this economic and cultural exploitation."

The existence of American companies in foreign countries is an example of modern day imperialism: the workers can't make enough money to survive, but yet they can't live without the small amount of money they receive. Stuck with this predicament many workers decide to leave it all behind, and go to the United States to earn decent money.

But how is it that someone can cross from Mexico to the United States?

Crossing the Border

We trekked along the border in three large white vans until the border sank into the ocean. Each van had a San Diego Border Patrol agent at the steering wheel sharing with us their experiences of working at the border. Our tour of the border ended once we hit the Pacific Ocean and we turned around to drive along the beach for a while before heading back to the main station. The agents explained to us their job, of making sure that "illegals" don't get into the country. We saw their work in videos of border patrol agents rounding up immigrants along the border: three men on horses with ground sensors and well built fences tracking down people on their two feet, carrying what little belongings they had. The border patrol agents explained their tactics to us in ways that made it seem impossible for anyone with dirty clothes and dark skin to walk freely in the United States without being questioned.

Sweatshops and Day Labor in California

The obstacles don't stop at the border. Talking to Marissa Nuncio of Sweatshop Watch in Los Angeles we learned that there are 6,000 sweatshops in California, 5,000 of which are in Los Angeles. These sweatshops usually use immigrant labor because immigrants frequently don't know their rights and are often desperate for any job they can get. Beyond sweatshops, recent immigrants often work in the fields as day laborers. We met with two day laborers who are organizing around day laborers' rights. One of their goals is to create programs that ensure day laborers are paid appropriate wages, have safe places to wait for work, and to allow day laborers to organize themselves, instead of a city group dictating and controlling their organizing.

The Anti-Immigrant Rhetoric

In many ways immigrants are left with "bottom of the ladder" jobs, and their work keeps our economy ticking. Yet many people, we learned, have a very bleak view of immigrants. Brenda Walker of ProjectUSA and Tim Aaronson of the Bay Area Coalition for Immigration Reform presented us with a position that was challenging to accept. Their concerns of domestic overpopulation and overconsumption led them to one conclusion: tighten up the borders and prevent nearly everyone from entering the United States. It was painful to listen to people so easily disregard human rights for those who are not American. Representatives from the California Coalition for Immigration Reform (including Chairperson Barbara Coe and Pat Buchanan's ex-running mate, Isola Foster) also spoke to us, preaching that the immigrant culture allowed murderers and rapists, and was something that prevented the United States from growth.

Both of these anti-immigration groups left me appalled. What gives me more of a right to live comfortably than someone else? The issue of immigration formed a loop, said Mike Paurel, a recent graduate of Vallejo High School. "I see immigration issues merely as a further symptom of the racism, chauvinism, and corporate greed that have so long plagued our country." In order for the United States to handle the current flow of immigration, it seems apparent that it must also change its policies in other countries. The United States is largely the root of its own problem because in many ways it is responsible for the levels of poverty that are so oppressive in foreign countries.

Sharing the message

I came into the trip filled with questions: Why do people immigrate to this country? How do they get here? What do they face on the way? What do they encounter once they've completed their immigration? I ended it still unable to understand how a country founded by immigrants could be so cold to those who seek to immigrate here.

Yet the trip helped me understand my job going forward: I have to take advantage of the opportunity to leave a place that is comfortable, reach out to those who don't share my vision of the world, and talk to those who haven't seen, who don't know the reality of the challenges that new immigrants face. We're all one people, and it's time for us to look out for each other and move beyond man-made boundaries and cultural differences.

High School Students

- Aaron Leonard, 2002 graduate, Alhambra High School, Martinez
- Becca Chase, senior, University High School, San Francisco
- Laura Rosbrow, senior, University High School, Mill Valley
- Mike Paurel, 2002 graduate, Vallejo High School, Vallejo
- Lindsay Waggerman, 2002 graduate, Vallejo High School, Vallejo
- Tatianna Silver, senior, Merritt Middle College High School, Alameda
- Amelia Rosenman, junior, Lick-Wilmerding High School, San Mateo
- Tynan Kelly, sophomore, Carlmont High School, Belmont
- David Johnson-Igra, senior, Lick-Wilmerding High School, San Francisco
- Kyle Melton, junior, Davis High School, Davis
- Theresa Martinez, 2002 graduate, Berkeley High, El Cerrito
- Jose Camilo Artiga-Purcell, senior, Lick-Wilmerding High School, San Francisco
- David Cruz, junior, Menlo Atherton High School, East Palo Alto
- Lillian Jungleib, junior, Menlo Atherton High School, Portola Valley
- Angelo Sandoval, junior, Tennyson High School, Hayward
- Marcella Padilla, sophomore, Menlo High School, Redwood City
- Jacquelyn Landry, junior, The Athenian School, Oakland
- Caitlin Prendiville, senior, North Bay Marin School, San Rafael
- Jackson Yan, junior, Lowell High School, San Francisco
- Nick Harmon, senior, Lick-Wilmerding High School, San Francisco
- Diana Tran, 2002 graduate, Berkeley High School, Oakland
- Adrienna Wong, senior, University High School, San Francisco

Chaperones

- Rini Chakraborty, California Immigrant Welfare Collaborative, ACLU-NC Board Member
- Shayna Gelender, Mills College, Friedman Project Youth Advocate
- Lani Riccobuono, Mills College, Friedman Project Youth Advocate
- Luis Ramirez, UC Berkeley, Friedman Project Youth Advocate
- Viviane Scott, UC Berkeley, Friedman Fellow

We heard from recent immigrant youth who told us of their escapes from gangs, abusive parents, and poverty, which started them on their journeys to this land of opportunity

[\[Return to ACLU News November - December 2002\]](#)

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November - December 2002

BOARD OF DIRECTORS ELECTION

Voting Information

Who is eligible to vote?

The by-laws of the ACLU of Northern California call for the at-large Directors of the Board to be elected by the general membership. The general membership is those members in good standing who have joined or renewed their membership within the last twelve months.

The label affixed to this issue of the *ACLU News* indicates on the top line the year and month when your membership expires.

If you are not eligible to vote, you may choose to renew your membership, and thereby resume your membership in good standing, at the same time you submit your ballot.

If you share a joint membership, each individual is entitled to vote separately -- two spaces are provided on the ballot.

How are candidates nominated to run for the Board of Directors?

The ACLU-NC by-laws permit two methods of nomination. Candidates may be nominated by the current Board of Directors after consideration of the Nominating Committee's recommendations. Candidates also may be nominated by petition bearing the signatures of at least fifteen ACLU-NC members in good standing.

Ballot Instructions

Candidates are listed on these pages in alphabetical order. After marking your ballot, clip it and enclose the ballot and your address label from this issue of the *ACLU News* in an envelope. Your address label must be included to ensure voter eligibility. Address the envelope to:

Elections Committee
ACLU of Northern California
1663 Mission Street, Suite 460
San Francisco, CA 94103

If you have a joint membership, you may use both of the columns provided, and each of the members may vote separately.

If you wish to ensure the confidentiality of your ballot, insert your ballot in a double envelope with the special mailing label in the outer one. The envelopes will be separated before the counting of the ballots.

Ballots must be returned to the ACLU by noon on December 13, 2002.

Candidates' Statements

There are twelve candidates running to fill ten vacancies on the Board of Directors. You may vote for up to ten candidates.

For your consideration, we are publishing brief statements submitted by the candidates for election to the Board of Directors. Candidates are listed in alphabetical order.

Luz Buitrago

I am honored to have been asked to serve another term on the Board. I have served several prior terms as an active Board member. Currently, I represent the Northern California Affiliate on the National Board, chair ACLU-NC's Legislative Policy Committee, and am a member of the Executive Committee.

I am committed to continue to contribute to this wonderful organization, particularly given the extraordinary attacks on civil liberties and rights that have occurred post Sept. 11. I am committed to protecting all civil rights and liberties, but have a particular interest in the intersection of poverty and civil rights, anti-discrimination, reproductive rights, the rights of youth, and the rights of immigrants and limited English speakers.

I have been a public interest attorney for many years. I am the Director of the Law Center for Families--a non-profit agency that provides legal assistance and advocacy to low-income residents in Alameda County. I am a member of the California Advisory Committee to the U.S. Civil Rights Commission, am on the Board of Equal Rights Advocates and am active in civil rights related issues.

Nominated by: Board of Directors

Incumbent: Yes

Scott Burrell

I am truly honored to have been nominated for a seat on the Board. The ACLU's vigilance in the area of civil liberties and human rights is needed now more than ever. As the present era of anger and fear lead many to demand that hard-won civil liberties be relinquished, the ACLU's calm and clear leadership is needed to remind all that freedom and liberty are not the enemy, they are the goal.

Having practiced civil and criminal law in both private practice and the public sector, I am mindful of how easily laws can be enacted and utilized to deprive rather than protect rights. I have seen how tempting it can be to set aside basic constitutional protections in order to "get the bad guy."

As a former public defender I am particularly interested in the efforts of the ACLU to protect the rights of the unpopular and the criminally accused.

As a Gay African American man, I am also interested in the ACLU's groundbreaking work in its driving- while- black and brown campaign, and its tireless efforts against discrimination based upon race and sexual preference.

I truly appreciate your support and your vote.

Nominated by: Board of Directors

Incumbent: Yes

Harmeet Dhillon

I am deeply honored to have been nominated as a candidate for the Board of Directors. I am an attorney in Palo Alto, where I practice complex commercial litigation. Both my career as a lawyer and my former career as a journalist have impressed upon me the crucial importance of the First Amendment to our democracy. Throughout my legal career I have performed #pro bono# legal services for victims of human rights and civil rights violations, domestic abuse and employment discrimination, and have been recognized for my work on behalf of the Lawyers' Committee for Human Rights and the Network for Women's Services. I am committed to the values championed by the ACLU-NC.

I presently serve on the Boards of Directors of the Support Network for Battered Women (Santa Clara County), the South Asian Bar Association of Northern California, and The Sikh Foundation.

Nominated by: Board of Directors

Incumbent: No

Milton Estes

Because we are at a precarious moment in our nation's history, the work of the ACLU is more important than ever. To accomplish our work, we must have a healthy organization –financially and organizationally strong, and driven by principle. My commitment over the past many years of involvement in the ACLU has been to help our organization achieve this goal. I am a past Chair of the Northern California Board and a current member of the National Board and National Executive Committee. My work outside the ACLU is as a physician who cares for individuals with HIV disease in the San Francisco County Jails. If re-elected, I will endeavor to bring my experience within and without the ACLU-NC to the deliberations and work of the Board.

Nominated by: Board of Directors

Incumbent: Yes

Angel Garganta

I am a partner in the law firm of Bingham McCutchen LLP, where I specialize in commercial, unfair business practices and class action litigation. I have had the privilege of serving on the ACLU-NC Board since the year 2000 and would be honored to serve as an at-large member of the Board for an additional term. Our government has seen fit to use the attacks of Sept. 11 as an excuse to launch its own attack on the Constitution and our civil liberties. The ACLU has been at the vanguard of organizations resisting that attack, firm in the belief that there is no worthier form of patriotism than a vigorous defense of our constitutional freedoms. We must not allow the current administration to use the tragedy of Sept. 11 or the threat of terrorism, however grave, to erode those freedoms.

I am currently a member of the Board of the Bar Association of San Francisco, and have served on the Boards of the Lawyers' Committee for Civil Rights of the San Francisco Bay Area and La Raza Centro Legal, a non-profit legal organization serving San Francisco's Latino community. I would appreciate your vote and support.

Nominated by: Board of Directors

Incumbent: Yes

Peter Kwan

I am honored to be nominated by the Board of Directors. As a law professor, I have brought to my teaching on Constitutional Law an emphasis on the importance of bringing different perspectives to enrich our understanding of the fundamental principles embedded in our Bill of Rights. In addition, I have devoted much of my research to the ways identity theories can help build meaningful coalitions among minority communities to effect social change. My father taught me that one has a duty to serve one's community. To that end, I have been for many years the faculty advisor to the Asian Pacific American Law Students Association as well as the LGBT Law Students Association. I have been chair of the Association of American Law School's Sections on Law and the Humanities and currently am chair of the Section on Sexual Orientation and Gender Identities Issues. I have served as chair of the Santa Clara County Bar Association's Committee on Individual Rights and Constitutional Law, among other positions.

We are living in a time that challenges in very fundamental respects our commitment to constitutional principles. I believe in the vital work the ACLU does in preserving and safeguarding that commitment. I am eager to contribute my skills, time and attention to that mission.

Nominated by: Board of Directors

Incumbent: No

Phillip Mehas

I have been committed to and involved in the struggles for social justice since 1967 and an active member of the ACLU since 1989. I believe that my experiences and perspectives would make a strong contribution to the Affiliate Board, a Board I strongly support and respect.

I have been an activist on the SF Chapter Board for 8 years, Chairperson for 3 terms; a BARK (Berkeley, Albany, Richmond, Kensington) Board member since moving to the East Bay; served on Chapter and Affiliate Committees and was the 1995 recipient of the ACLU-NC's Lola Hanzel Courageous Advocacy Award.

We are in critical times. The ACLU is in the forefront of preserving civil liberties against a post 9/11 government, which continues to trample upon the Bill of Rights, the document that is at the very

core of this country's and the ACLU's values.

These are times that require important strategic decisions be made about defending those values through litigation, legislation and grass roots organizing. I would be honored to add my voice and my experience to this process. I would appreciate your vote.

Nominated by: Petition

Incumbent: No

Matt Murray

As a freshman at UC Berkeley, I was shocked to find that no ACLU chapter existed on campus. So I helped co-found one. That first year I served as Internal Vice President, and the following year as President. Now in its third year on campus, the Berkeley ACLU is one of the largest and most active ACLU student groups in the nation, organizing teach-ins and forums, conducting a student-run class on civil liberties, and standing up for the freedoms and liberties of all people, both on and off campus.

Due in most part to the leadership and dedication I showed through my work with the Berkeley ACLU, this past May I was chosen to be the 2003-2004 student Regent for the University of California system. Each year, only one student out of the over 187,000 undergraduates and graduates across the nine-campus system is selected to serve as the student Regent, and I am incredibly excited by the opportunity. I will take my passion for freedom of speech, equal rights, and racial justice to the UC Board of Regents, and I look forward to bringing that same tireless dedication and enthusiasm to the ACLU-NC Board of Directors.

Nominated by: Board of Directors

Incumbent: No

Helal Omeira

I am both honored and thrilled to be selected as a candidate for the ACLU-NC Board of Directors. As the Executive Director of the Council on American Islamic Relations-Northern California (CAIR-NCA), I work hard to defend the rights of Muslims living in the United States. My work includes, and is not limited to, workplace discrimination, illegal search and seizures, INS detentions, INS deportations, and political lobbying. Sept. 11 posed a serious threat to the civil rights of American Muslims, and I am committed to defending those rights. My commitment to civil liberties comes from my unwavering belief in the American Constitution and Bill of Rights. I am dedicated to the belief that all Americans deserve equal and just protection under the law. As an American-born Muslim, I hope to bring to the Board the often-unheard voice of American Muslims. I thank you for your support and consideration.

Nominated by: Board of Directors

Incumbent: No

Nancy S. Pemberton

My association with ACLU-NC began in 1979 and I can say with all honesty that the entire 23 years has been an honor and a joy. This affiliate has the most outstanding staff and board of any organization I know. I very much want to continue to be a part of it.

I have served the ACLU-NC in a number of capacities, including chairing the board from 1985 to 1989. I am currently doing my second stint as treasurer.

In my professional life I am a private investigator specializing in the defense of death penalty cases. I also train investigators how to develop mitigation for capital cases, as well as teach students the art of investigation at a number of Bay Area law schools.

In addition to my volunteer work with ACLU-NC, I am the founder and treasurer of the Institute of International Criminal Investigations, an organization dedicated to teaching professionals how to investigate war crimes and crimes against humanity.

I hope you will support my candidacy for Board member. Thank you.

Nominated by: Board of Directors

Incumbent: Yes

Zona Sage

The ACLU is vital to the political health of this country, and I am honored to assist in its endeavors as a member of the Board of Directors. In my previous service as an at-large member on the Board I worked with the development committee and will gladly do so again. I was active with the Lesbian and Gay Rights Chapter from its inception, serving as chair and as representative to the Board. I am an attorney in private practice in Oakland, with an emphasis on representing tenants.

Nominated by: Board of Directors

Incumbent: Yes

Gregory Wonderwheel

I'm a husband, father, and grandfather, and an attorney practicing in Santa Rosa. I'm a member of the National Association of Parliamentarians. I was an elected Vice President of SEIU Local 707, in Sonoma County. I was a conscientious objector in the Vietnam War.

I'm a candidate for two main reasons: First, to support the development of chapters. The recent "strategic plan" was a mistake. The members of ACLU-NC should be creating our future, not consultants who only regurgitate what the people who hired them want to hear. Second, the ACLU-NC must oppose corporate personhood and reverse the position taken in *Kasky v. Nike*. Whether it's campaign financing, war profiteering, prison labor, control of the media, racism, free speech, etc., big corporations are the primary threat to civil liberties today because they control the economics of lawmaking.

Nominated by: Petition

Incumbent: No

[\[Return to ACLU News November - December 2002\]](#)

[Click here](#) to download the whole issue as a printable pdf file.

November - December 2002

Governor Signs Crucial Reproductive Rights Bill - Vetoes Other Key Measures

As the ink dries on the last of the 264 bills Governor Gray Davis vetoed in 2002, here is a brief review of some of the key civil liberties bills that were signed or vetoed by the Governor this year. For a full summary of the fate of civil liberties bills this session, [click here](#).

An Historic Moment for Reproductive Rights

On September 5, 2002, a jubilant crowd gathered outside San Francisco's City Hall. Supporters from a broad coalition of organizations dedicated to protecting women's rights, health, and reproductive freedom watched as Gov. Davis signed into law four reproductive rights laws, including a landmark bill that protects Californians' right to make childbearing decisions free of government interference.

"The people of California deserved a reproductive privacy law that mirrors their respect for the Constitution and their desire for reproductive freedom. Once again California is taking the lead in the national forum on the issues of reproductive choice." - Senator Sheila Kuehl

The Reproductive Privacy Act, SB 1301, by Senator Sheila Kuehl, replaces California's antiquated 1967 abortion law with a new statute that reflects the constitutional principles of *Roe v. Wade*. It protects Californians' right to choose abortion, right to use birth control and right to bear a child. The new law provides women greater access to early non-surgical abortion methods by expanding the pool of qualified clinicians authorized to provide non-surgical abortions.

"This reform legislation is timely, long overdue, and necessary to protect reproductive freedom for future generations," said Margaret Crosby, staff attorney with the ACLU of Northern California. "The bill makes new abortion technology accessible to California women, repeals a restrictive abortion law that has been unconstitutional for 30 years, and writes *Roe v. Wade* principles into California law- so that California women will retain fundamental reproductive rights even if the Supreme Court overturns *Roe*." The ACLU and Planned Parenthood Affiliates of California worked closely with Senator Kuehl in drafting SB 1301.

"The people of California deserved a reproductive privacy law that mirrors their respect for the Constitution and their desire for reproductive freedom," said Senator Kuehl. "Once again California is taking the lead in the national forum on the issues of reproductive choice."

Mixed Messages on Immigrants' Rights

In an election year, Gov. Davis needs the support of immigrant communities. Nevertheless, the Governor vetoed **AB 60 (Cedillo-D)**, a crucial bill that would have allowed immigrants in the process of applying for legal status to receive a driver's license. A companion bill **SB 804 (Polanco-D)**, which included provisions requiring that applicants give a digital thumbprint, undergo a criminal background check, and submit proof of employment in California, was also returned unsigned.

The ACLU and immigrants' rights groups strongly opposed the background check provisions demanded by Gov. Davis and included in **SB804**, because they are unrelated to a person's ability to drive, do not address public safety concerns, and discriminate against immigrants. "These provisions are the first step down a slippery slope that will allow for the discriminatory treatment of immigrants

and dramatic curtailments of Americans' privacy rights," said ACLU legislative advocate Valerie Small Navarro.

The Governor vetoed both bills, writing that he wanted them to be "double-jointed" and "rise and fall together" and said he would not sign any such bill without the provisions included in **SB804**.

The Governor also vetoed **SB 987 (Escutia-D)**, a bill that sought to strengthen the Dymally-Alatorre Bilingual Services Act, which requires bilingual staffing and services at each state agency when five percent or more of its consumers speak a language other than English. Recent hearings have disclosed that most state agencies are not complying with the requirements of the Act.

Yet, in boost to immigrant communities, the Governor did sign **SB 1156 (Burton-D)**, a highly publicized bill that provides for binding mediation on contract negotiations between farm worker unions and growers. And he inked into law **SB 1818 (Romero-D)**, which mitigates the impact of a recent Supreme Court ruling precluding back pay awards to undocumented workers. **SB 1818** ensures that all protections, rights, and remedies available under state law extend to all workers, regardless of immigration status.

A Moderate Anti-Terrorism Measure

The year began with the Governor and Legislature's attention focused on developing the state's response to the terrorist attacks of Sept. 11.

Although most anti-terrorist bills that gave the ACLU cause for concern did not make it to the Governor's desk, **AB 74 (Washington-D)**, was signed into law. Initially, Gov. Davis sought to broaden the state wiretap law statute to allow "roving taps" of telephone and internet communications. This investigative tool is highly intrusive of innocent people's privacy -- over 90 percent of intercepted calls are innocent conversations -- and the roving wiretap amendments were quickly defeated, thanks to the ACLU. The version signed into law makes more modest expansions to the wiretap law, and includes an important new amendment that imposes statutory requirements on prosecutors to notify defendants who are identified as a result of a wiretap prior to the entry of a plea or trial.

Governor Stymies Criminal Justice Reform

Gov. Davis remains unwilling to sign bills that could be construed as "soft on crime" or do not have the support of the law enforcement community.

This year President Pro Tem John Burton used legislative maneuvering to obtain a signature on the one significant bill benefiting criminal defendants. **SB 1391** creates a process for attorneys in death penalty or life-without-the-possibility-of-parole cases to access discovery materials from prosecutors. In addition, it permits a defendant to vacate a judgment based on fraud or false evidence presented by government officials. Senator Burton made enactment of the Governor's wiretap bill (AB 74) contingent on the enactment of **SB 1391**— knowing that the Governor would not veto his own bill.

More typical was Gov. Davis' veto of **SB 1796 (Polanco-D)**. Intended to respond to instances of excessive punishment of political demonstrators, the bill would have lowered penalties for non-violent acts committed for purposes of political expression to two days in jail or \$100. While the bill recognized the importance of non-violent political protest in a democracy, the Governor, apparently, does not.

Drug Policy Falls Victim to Veto Pen

The "war on drugs" also claimed two new legislative victims. Particularly troubling was the Governor's veto of **SB 1785 (Vasconcellos-D)**. This bill would have permitted pharmacists or physicians to furnish up to 30 hypodermic needles and syringes to those over 18 years of age for personal use without a prescription, putting California in step with 44 other states that permit needles to be dispensed without a prescription. In California, needle sharing accounts for roughly 19 percent of all HIV/AIDS cases and 50 percent of all hepatitis C cases. But, when the California Narcotics Officer Association demanded a veto, the Governor listened to them, not the medical

community.

AB 1947 (Washington-D) would have permitted individuals enrolled in Proposition 36 drug treatment programs for non-violent drug possession to receive Food Stamp benefits if they otherwise would be eligible. Federal law imposes a lifetime ban on welfare benefits on any person convicted of a controlled substance-related, but 30 states have opted out of the federal rule. Not California. A recent report by the Sentencing Project estimates that the drug felon rule bans approximately 92,000 women nationwide from benefits and Food Stamps. This was the third time in four years that similar legislation has been vetoed by Gov. Davis

Some Momentum on LGBT rights

On lesbian, gay, bisexual and transgender rights, too, it was a mixed year for Gov. Davis. The governor vetoed **AB 2651 (Chu-D)**, which required that the Department of Social Services adopt clear anti-discrimination protecting foster children against sexual orientation and gender identity discrimination

However, the Governor did sign into law **AB 2216 (Keeley-D)**, an important bill that expanding the legal rights of a registered domestic partner to include the right to inherit property if one partner dies without a will. Although the Governor demanded the same provision be taken out of domestic partnership legislation last year, this year, he did the right thing.

This article is a modified version of a column written by ACLU California legislative director Francisco Lobaco for the *Daily Journal* (October 22, 2002).

[\[Return to ACLU News November - December 2002\]](#)

[Click here](#) to download the whole issue as a printable pdf file.

November - December 2002

The Values of the Pledge of Allegiance **By Margaret Crosby, Staff Attorney, ACLU-NC**

In striking down the McCarthy-era law that rewrote the Pledge of Allegiance to insert the words "under God," *Newdow v. United States Congress*, the Ninth Circuit breathed life into the Pledge's stirring ideal of a country "with liberty and justice for all." The decision secured liberty for children of minority faiths who have quietly been denied religious freedom for nearly 50 years, when pressured in public school to pledge allegiance to a God they do not worship. By enforcing the First Amendment, the Ninth Circuit provided justice for all children in the United States.

(M)any people of minority faith vividly remember feeling shamed, isolated, confused and coerced as children in American public schools by the daily recitation of the Pledge of Allegiance to a God foreign to the faith of their families.

The firestorm of protest sparked by the *Newdow* ruling is reminiscent of the public's reaction in 1962 to the original United States Supreme Court decision banning prayer in public school. (*Engel v. Vitale*, 370 U.S. 421 (1962)). Then, however, President John F. Kennedy stepped forward to support the court decision and the constitutional separation of church and state. He reminded Americans that the Supreme Court had not prevented anyone from worship. Families remained free to pray at home and in church, where, he pointed out, religious expression may be robust in ways it never can be when the government composes watered-down religious scripts for schoolchildren to recite.

Today's political leaders are no John Kennedys. Across the political spectrum, politicians leaped to microphones to denounce the #Newdow# decision. "Just nuts" (Majority Leader Tom Daschle's comment) and "embarrassing at best" (Senator Feinstein's comment) illustrate the analytical acuity of the attacks on the Court. President Bush announced that the decision proved that the country needs federal judges who have "common sense" (apparently a synonym for majoritarian supporters) and, chillingly, federal judges who "recognize that our rights come from God."

(A) law requiring school children to pledge allegiance to a nation "under God" cannot be reconciled with the Supreme Court's strict constitutional precedents on religion in public school.

In our system of government, fundamental rights come from the Constitution. The Ninth Circuit took those rights seriously in *Newdow*.

In adding "under God" to the Pledge of Allegiance in 1954, Congress intended to put religion in public school. As President Eisenhower said in signing the law, from "this day forward, the millions of our schoolchildren will daily proclaim, in every city and town, every village and rural schoolhouse, the dedication of our nation and our people to the Almighty." Since students were praying daily in many public schools, the new Pledge language was not subject to an immediate constitutional challenge. Courts had not yet recognized the rights of minority faiths to be free of religious coercion in public schools.

But 50 years later, a law requiring school children to pledge allegiance to a nation "under God" cannot be reconciled with the Supreme Court's strict constitutional precedents on religion in public

school. The Court has disallowed far less coercive practices, such as laws creating a moment of silence "for meditation or prayer" (*Wallace v. Jaffree*, 472 U.S. 38 (1985)) and far less official practices (such as policies allowing students to broadcast any message, including prayer, before school sporting events (*Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000))). The Court has insisted that government not make students of minority faiths feel like second-class citizens in public schools that exist to serve children of all religions.

How then can Congress write a religious reference into the Pledge of Allegiance that many states and local school districts require to be recited daily? Supporters of the Cold War Pledge offer justifications. They are wholly unpersuasive:

The phrase "under God" is inclusive, because everyone believes in some kind of god. No, they don't. The hallmark of the McCarthy era was its pressure to conform in politics and religion, in speech and belief. The prevailing assumption was that all good (non-Communist) Americans believed in a monotheistic God. Untrue in the 50s, this assumption is more strikingly untrue today. Many Americans subscribe to no religion. And even people who do worship a monotheistic God show great variation in their definition of the deity; many do not subscribe to the idea that God's role is to organize the affairs of humans and countries, as embodied in the phrase "one nation under God."

Moreover, immigration patterns and the growth of new indigenous faith communities have altered the religious geography of the United States greatly from the 1950s. Today's pluralistic America contains adherents to nontheistic religions (for example, Buddhism) and pantheistic religions (for example, Santeria). Other members of spiritual groups do not worship a Judeo-Christian deity (for example, Native Americans). On a national level, these minority faiths are apparently invisible to many people, but they are important members of local communities—certainly here in California—and, under the Constitution, have equal rights with the religious mainstream religions.

The silence of religious minorities—their reluctance to take on the combined power of government and majority by challenging the law rewriting the Pledge—is understandable. They simply feel too vulnerable to invite the kind of vituperative response that greeted the *Newdow* ruling. However, many people of minority faith vividly remember feeling shamed, isolated, confused and coerced as children in American public schools by the daily recitation of the Pledge of Allegiance to a God foreign to the faith of their families.

Students may decline to participate in the Pledge of Allegiance. True, and irrelevant. All of the school prayer cases have involved religious exercises that students are free not to join. As the Supreme Court has recognized, it is callous for the government to force schoolchildren of minority faiths to isolate themselves from their classmates to avoid participating in a religious exercise in violation of their conscience.

The phrase "under God" has never been religious is or has lost any religious meaning by rote repetition, and it's a trivial matter. Why, then, did Newdow provoke such an angry reaction? Plainly, because many people felt that the court had attacked their religion by restoring the Pledge of Allegiance to its original form. Pretending that the phrase is purely secular is both untrue and devalues religion.

The claim of secularization is central to the constitutional defense to "under God." Most frequently, the defense is phrased as "ceremonial deism," a category of permissible references to a deity that simply acknowledge this country's historically religious roots. But ceremonial deism is itself a doctrinally problematic rationale: courts invoke it to justify government endorsement of religion inconsistent with the First Amendment, reasoning, for example, that a city-owned Nativity Scene may be part of an official Christmas display. Moreover, the Pledge of Allegiance is inherently different from other mottos or references to a Deity. The Pledge is not simply a passive reference to religion; it calls upon children in public school to promise loyalty to the concept of their country as under God.

The final variant of the secularization rationale is the claim that the term "under God" has lost, through rote repetition, any true meaning. But why? Have the phrases in the original Pledge—say, the

parts about "liberty and justice for all"-also lost their meaning through repetition over time?

The Ninth Circuit didn't think so. And when we think with pride of a country founded on the ideals of liberty and justice for all, we should also be proud of the Court that made those ideals real.

This article first appeared in the Daily Journal September 3, 2002

[\[Return to ACLU News November - December 2002\]](#)

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November - December 2002

ACLU to SFPD: "End Racial Profiling"

The San Francisco Police Department (SFPD) is failing to "adequately address the issue of racial profiling," according to a new report issued by the ACLU of Northern California on October 7, 2002.

The report, *A Department in Denial - The San Francisco Police Department's Failure to Address Racial Profiling*, analyzed the first full year of traffic stop data collected by the department and found that racial profiling continues to be a significant problem in the City. Among the key findings:

- African Americans motorists are significantly more likely to be stopped by San Francisco police officers in every police district in the City;
- African Americans are 3.3 and Latinos are 2.6 times more likely to be searched following a traffic stop than whites;
- African Americans are more than twice as likely as whites to be asked for their consent to be searched without any probable cause of a crime;
- Despite this disparate treatment, San Francisco police officers are significantly less likely to find any evidence of criminality in searches of African Americans or Latinos;
- The problem may be much greater than the data reflects due to rampant under-reporting of stops and searches by San Francisco police officers.

"This shows that racial profiling continues to be a serious problem in the City of San Francisco," says ACLU-NC police policy practices director Mark Schlosberg, who authored the report. The report also charges that the SFPD has failed to take the issue of racial profiling seriously, and has not complied with basic directives of the City's Police Commission. "A potentially groundbreaking program has been continually undermined by a pattern of non-cooperation, delay, and denial," says Schlosberg.

The City began collecting data on all traffic stops in 1999 in order to determine the extent to which racial profiling was a problem within the SFPD. Although the Police Commission requested a full report by June 2001, it was July 2001 before the department even began to collect data. In May 2002 a *San Francisco Chronicle* report analyzed the first three months of SFPD data and found that African Americans and Latinos are more than whites to be stopped and searched. The Commission then asked the SFPD for a full report within one month. When no report was issued after three more months, the ACLU released its own analysis of the numbers.

"The city of San Francisco deserves better than this," says Schlosberg. "We need a clear policy prohibiting racial profiling, as well as an independent auditor to oversee the data collection program."

For a full copy of the report, visit www.aclunc.org/police/021007-report.pdf

"A potentially groundbreaking program has been continually undermined by a pattern of non-cooperation, delay, and denial... The City of San Francisco deserves better than this"

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November - December 2002

Students and Educators Blast Internet Filter Law by Gigi Pandian

As the Children's Internet Protection Act (CIPA) went into effect this September, activists and students around the nation criticized the new law as "closing the door to knowledge." CIPA requires public schools and libraries to block Internet access to materials deemed "harmful to minors" in order to receive certain federal funds.

At a San Francisco news conference on Sept. 18, high school student Dinah Shender, junior high school student Anu Khosla, librarian Terry Lai, ACLU-NC attorney Ann Brick and the Electronic Frontier Foundation's Will Doherty gathered with reporters on the steps of Mission High School.

"Rather than protecting children, blocking software does not keep out sites it is supposed to, but instead blocks tens of thousands of appropriate sites," said Doherty, citing results from a recently completed EFF study of the two most popular filters.

"A fundamental goal of the Internet is to open the door to knowledge, but internet blocking software slams this door," ACLU-NC staff attorney Ann Brick told reporters.

"Censorship," student Dinah Shender affirmed, "does not protect us."

[\[Return to ACLU News November - December 2002\]](#)

[Click here](#) to download the whole issue as a printable pdf file.

November - December 2002

\$100,000 Challenge Gift Spurs Endowment Campaign

Long-time ACLU supporters Jack Londen and Kathleen Blamey recently gave a challenge grant of \$100,000 to the *Trust for the Bill of Rights*, the ACLU's endowment fund. "This most generous – and strategic – challenge gives us just the momentum we need to complete our endowment campaign," said an enthused ACLU-NC executive director Dorothy Ehrlich. With the dedicated help of a core group of volunteers, the campaign is slated to end by Dec. 31.

Specifically, the Londen/Blamey challenge is this. **They will match, dollar-for-dollar, any gift for the Northern California Fund for Constitutional Rights (NCFRC) of under \$50,000, up to a total of \$100,000.** The NCFRC is a named fund within the *Trust for the Bill of Rights*, created to attract endowment gifts of all sizes from ACLU-NC supporters and to support new ACLU civil liberties initiatives.

Jack Londen is a partner with the San Francisco law firm of Morrison & Foerster LLP. Active in a variety of bar and civil rights organizations, Londen has a long history of involvement with the ACLU, as a pro bono cooperating attorney and as one of the founders of the ACLU Lawyers Council. His wife, Kathleen Blamey, is a Professor of Philosophy at California State University, Hayward.

The ACLU-NC began its endowment campaign several years ago in an effort to grow the stable base of support that the ACLU-NC needs to vigorously face future challenges. With key leadership contributions from Phyllis Friedman, Quinn Delaney and Wayne Jordan, and Jim Hormel, as well as with significant gifts from several other committed supporters, the campaign has now reached 70 percent of its \$5 million goal.

Anyone who might be interested in helping the ACLU-NC to meet the Londen/Blamey challenge is encouraged to contact Robert Nakatani, at (415) 621-2493 or at Rnakatani@aclunc.org.

[[Return to ACLU News November - December 2002](#)]

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Briefing for FrontLine Supporters by Stan Yogi

On October 11, Matt Coles, Director of the national ACLU Lesbian & Gay Rights and AIDS Projects, updated supporters of the FrontLine Campaign (the fundraising partnership between the ACLU-NC and the Projects) about cutting-edge issues that the Projects are addressing.

Dismantling State Sodomy Laws

These laws, Coles explained, criminalize same-sex intimacy and are used to discredit lesbians and gay men in the political process, deny visitation and custody rights to lesbian and gay parents, and mete out harsher punishments to gay people. Coles predicted that the U.S. Supreme Court will take up a case challenging such laws in the current term.

Protecting Lesbian, Gay, Bisexual, and Transgendered (LGBT) students.

Focusing on schools, Coles explained, is important for two reasons: LGBT students are extremely vulnerable, and we can achieve great progress by educating youth about LGBT rights. He explained that school officials know they cannot discriminate openly against lesbian and gay student groups, so they are now setting up bureaucratic obstacles to the recognition of such clubs. The Projects are actively helping courageous students across the country deal with these obstacles.

Fighting for the Rights of Lesbian and Gay Families.

In the past, Coles said, opponents of gay and lesbian equality have used the issue of "family" to attack gay people. More recently, however, public opinion is changing. That change is due in part to the ACLU's public education campaign based on a Florida case in which the Projects are representing two gay foster parents fighting to keep their family of seven intact in spite of efforts by the state to get a heterosexual family to adopt the children. In part because the case involves HIV-positive children and attracted the celebrity support of Rosie O'Donnell, it has dramatically changed Americans' perceptions of lesbian and gay men and their families. The Project's work, like the ACLU's efforts in general, is grounded in the belief that government must follow the rule of law, said Coles. He expressed dismay about how the federal government is flouting the rule of law, whether in its pursuit of the "war on terrorism," military action in Iraq, or the denial of lesbian and gay equality.

[\[Return to ACLU News November - December 2002\]](#)

[Click here](#) to download the whole issue as a printable pdf file.

November - December 2002

Banned Books In a New Era

On Tuesday, Sept. 24, Ann Brick, staff attorney at the ACLU-NC, joined Susan Hildrith, San Francisco City Librarian; Gerald Nicossia, author of the recent book, *Home to War*; and Ziltha Snyder, three time Newberry Honor Awardee, for a **Banned Books Week** panel discussion at the San Francisco Public Library. ACLU-NC field director, Maria Archuleta, moderated the event, which covered issues related to the USA PATRIOT Act and library monitoring, internet censorship, censorship in public schools, and the refusal of many publishers to print dissenting voices after 9/11.

– Nick Oakley

[\[Return to ACLU News November - December 2002\]](#)

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