ACLU NEWS

Newspaper of the American Civil Liberties Union of Northern California

Volume LXII, No. 5 - September/October 1998

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1998 Bill of Rights Day Celebration

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Representative Ronald V. Dellums
With the Earl Warren Civil Liberties Award

Sunday, December 6
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Congressman Ronald V. Dellums retired in 1998 from a distinguished congressional career spanning three decades representing California's Eighth Congressional District Oakland and Berkeley in the House of Representatives. Nationally renowned for his

Governor's Desk

- **Obituary:**
  Activist, Advocate Tom Steel Team

courageous advocacy for the rights of the poor and disenfranchised, we in Northern California are proud to claim this outstanding legislator as our own. A tireless fighter for civil liberties, Dellums spoke out against the death penalty, the criminalization of inner city youth, attacks on lesbian and gay rights, and the denial of services to immigrants and welfare recipients.

First elected to Congress in 1970 as an opponent of the Vietnam War, this charismatic champion of peace became known as a recognized expert in military and foreign policy and ascended to the Chair of the House Armed Services Committee.

An eloquent proponent of the inextricable link between peace and justice, Dellums spearheaded initiatives to end the Reagan-era military build-up, sever U.S. support for apartheid in South Africa, and stop the roll back in affirmative action and civil rights. As Chair of the Congressional Black Caucus, he led the effort to redefine national priorities through the budget process, always advocating for a more just America.

For more information and for tickets, please call

Field Representative Lisa Maldonado at 415/621-2493

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6 issues a year: JanuaryÐFebruary, MarchÐApril, MayÐJune, July-August, September-October and NovemberÐDecember.

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.

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First Case Post-Proposition 209-
Civil Rights Groups Sue Contra Costa

At a packed press conference in the Federal Building, cooperating attorney David Berger announces a class action lawsuit against Contra Costa County for violating federal anti-discrimination laws with plaintiff Lucy Lacy (center), owner of Lucy's Sales and Michelle Alexander (left), Director of the ACLU-NC Racial Justice Project.

In the first case of its kind following the implementation of Proposition 209, civil rights advocates filed a federal class action lawsuit suit on July 29 in U.S. District Court against Contra Costa County, charging that the County systematically and intentionally excludes minority- and women-owned businesses from doing business with the County in violation of federal law.

The lawsuit, Lucy's Sales et al. v. Contra Costa County# was filed as a class action on behalf of all such businesses that are denied equal opportunity to compete for contracts with the County, the first local government in northern California to drop its affirmative action program in the wake of Proposition 209.

"Discrimination is still illegal in California," said Oren Sellstrom of the Lawyers' Committee for Civil Rights of the San Francisco Bay Area. "Proposition 209 is not a license to discriminate.

"The County has never had a contracting process that is open to women- and minority-owned firms," noted Sellstrom, "County officials are now trying to use Proposition 209 as a justification for scaling back any attempts to make their process more inclusive."

The County's own statistics show that white male-owned businesses receive almost 99% of the $100 million in County contracts for goods and services each year.

"For years the County has been well aware of the gross disparities, and the near total exclusion of women and people of color from public contracting, but has chosen to do nothing about it," said Michelle Alexander, Director of the ACLU-NC Racial Justice Project.

"The economic impact of the discrimination perpetrated by Contra Costa is tremendous. People wonder why women and people of color continue to find themselves at the bottom of the economic ladder in this country. But when local governments are channeling hundreds of millions of dollars into the community, and that money is given only to businesses owned by white men -- the answer should be obvious," Alexander said.

Plaintiff Lucy Lacy, an African American woman who is the owner of a supply company, said she has experienced the County's exclusionary policies firsthand. Despite the fact that she has been certified by the County as a minority and woman-owned business and has repeatedly approached the County for business, County officials have never even asked her to bid for an upcoming contract. "I can't even get my foot in the door," said Lacy. "All I want is a chance to compete, but the County's system is just closed off to anyone who's not in the `good ole boys' network." Lacy regularly does business with other local governments and private businesses, but has consistently been blocked from contracting with Contra Costa.

Other named plaintiffs include Lidia Tarango, a Hispanic owner of a trucking company; Lisa Harrison, owner of Harrison's Consulting; Glen Fox, owner of a flooring business; and Frederick Jordan, an African American civil engineer. Several organizations representing the interests of minority- and women-owned businesses are also parties to the lawsuit, including the Contra Costa branches of the NAACP, the Northern California Latin Business Association, and the Coalition for Economic Equity.

The suit was filed by the ACLU affiliates of Northern and Southern California, the Lawyers' Committee for Civil Rights, the Employment Law Center and Wilson Sonsini Goodrich & Rosati (WSGR), a major law firm based in Palo Alto that is donating its services pro bono.

"We are ready to take action necessary to end discrimination by local governments around the

state. A county may not use tax money to support an exclusionary public contracting system," said David J. Berger, a litigation partner at WSGR. "The private bar is ready and able to help fight any public entity that discriminates in this way." WSGR, a Palo Alto law firm with nearly 500 attorneys, regularly advises more than 300 public companies and 2,000 emerging growth companies.

The case is brought under the Equal Protection Clause of the United States Constitution, as well as under Title VI of the Civil Rights Act of 1964. "Federal law makes it quite clear that cities and counties cannot systematically exclude women and minorities from competing for contracts. Proposition 209 does not and cannot change that fact," Alexander said.

Additional plaintiffs' attorneys are Julian Gross, William McNeill and Patricia Shiu of the Employment Law Center; Ed Chen of the ACLU of Northern California, Mark Rosenbaum and Dan Tokaji of the ACLU of Southern California; Michele Rose, David O'Brien and Sean Petrie of WSGR; and Professor Karl Manheim of Loyola Law School.

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Prop. 227 Appealed:
Civil Rights Groups Seek Trial on Bilingual Ed Measure

ACLU-NC attorney Ed Chen (at mikes) explains to the press why Proposition 227 is unfair to CaliforniaÕs limited English students. Members of the legal team challenging Proposition 227 include Debora Escobedo (seated) of META, and (standing left to right) Maria Blanco of the Latino Civil Rights Network, Christopher Ho of the Employment Law Center and Joe Jaramillo of MALDEF.

The ACLU and a coalition of public interest groups are seeking a trial in federal court to determine the constitutionality of Proposition 227, the June ballot measure which eliminated bilingual education in California schools.

The class action lawsuit, Valeria G. v. Wilson, was filed on June 3, the day after the election, on behalf of Limited English Proficient (LEP) students, their parents and several immigrant rights organizations. The lawsuit seeks to invalidate the initiative for violating the Equal

Educational Opportunity Act of 1974, Title VI of the Civil Rights Act of 1964, and the Equal Protection clause of the 14th Amendment. The suit charges that Proposition 227 denies language minority children equal access to educational opportunity.

On July 15, in a courtroom packed with bilingual teachers, school administrators and immigrant parents accompanied by young children, attorneys Deborah Escobedo of META (MultiCultural Education Training and Adovcacy) and Thomas Saenz of MALDEF (Mexican American Legal Defense and Education Fund) argued eloquently against the elimination of the variety of programs now being used to educate California's 1.4 million students who are limited in English. Following a lengthy argument, U.S. District Court Judge Charles Legge denied the request to block implementation of Proposition 227. The following week, the groups filed an appeal with the Ninth Circuit Court of Appeals, and asked the court to stay the implementation of Proposition 227. After the request for the stay was denied, the plaintiffs then dismissed the appeal.

"The state should be the guarantor of educational opportunity for all children in California," said Escobedo at a press conference following Judge Legge's denial of the preliminary injunction. "The state is willing to put these children's future at risk. We are not -- and they shouldn't be."

ACLU-NC staff attorney Ed Chen said, "It is extremely shortsighted to throw 1.4 million children who are limited English proficient into such an unfounded, unprecedented and untested social experiment as that prescribed by Proposition 227. We hope that the federal trial will be a comprehensive forum where the real issues of educational needs of immigrant children can be addressed in a thorough, in-depth manner."

Because of the denial of the preliminary injunction, Proposition 227 is in effect as the school year begins. Local schools now need to find new materials on short notice and teachers must develop a new curriculum in a short time.

In addition to the ACLU-NC, META and MALDEF, the case is being litigated by attorneys from the ACLU of Southern California, Public Advocates, Inc., the Employment Law Center, Asian Law Caucus and the Asian Pacific American Legal Center.

There is no date yet scheduled for the federal court trial.

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ACLU Sues Oakland to Block Vehicle Seizure Ordinance

Charging that the City of Oakland vehicle seizure and forfeiture ordinance violates state law, on July 21, the ACLU-NC filed a petition for writ of mandate asking the Alameda County Superior Court to order the City to stop enforcing the measure.

The Oakland Police Department has used the ordinance, passed in 1997, as a tool to seize automobiles allegedly used to solicit acts of prostitution or acquire illegal drugs - even in instances where there is no criminal conviction. The ordinance allows the City to sell the seized vehicles, with the proceeds of the sale going directly to local law enforcement agencies.

The ordinance flies in the face of two statutes (one concerning prostitution and one concerning drug-related offenses) passed by the California Legislature mandating that law enforcement may only seize property when there has been a conviction. According to the California Constitution, such conflicting local laws are preempted by state law and thus void.

NECESSARY PROTECTIONS

The state's asset seizure law was passed in 1994 with specific protections to prevent innocent people from losing their property without due process. As the author of the legislation, then-Assemblyman John Burton, stated at the time, "The purpose of this bill is to put in place the necessary protections to ensure that people's property rights, and due process rights, are protected. The war on drugs should not be won at the expense of our hard won freedoms."

The ACLU filed the taxpayers' suit, *Horton v. City of Oakland* on behalf of Oakland residents who oppose the ordinance. Taxpayers may file lawsuits, acting in the public interest, when they believe their taxes are being spent in an unlawful manner.

"Because the revenue from civil forfeiture goes directly into the budgets of local law enforcement agencies, the state Legislature recognized a potential for abuse and enacted procedural protections for property owners," said ACLU-NC managing attorney Alan Schlosser. "Oakland is not free to just ignore state law and implement its own asset forfeiture operation that has none of these protections."

The ACLU-NC suit charges that the ordinance violates Article XI, Section 7 of the California

Constitution which forbids local government from enacting ordinances which are in conflict with state law.

The Oakland ordinance contains no protections for innocent owners. In fact, many registered owners who have lost their cars under the Oakland ordinance were not even present when the alleged crime took place.

"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 individual rights and innocent people is the wrong way to pursue this goal," said Schlosser.

According to public records obtained by the ACLU-NC, at least 17 of the seizures in the last few months were triggered by the attempted purchase of extremely small amounts of marijuana - $10 to $30 worth. Absent Oakland's ordinance, these individuals, if found guilty, would have only been fined a maximum of $100. However, under the new ordinance the City can collect the entire value of the cars allegedly involved in addition to substantial towing and storage fees.

In Oakland, after various towing, storage and administrative fees are covered, the police department, the district attorney's office and the city attorney split the remaining proceeds.

LEGISLATIVE COUNSEL OPINION

Before filing the lawsuit, the ACLU-NC repeatedly expressed civil rights concerns about the ordinance. In March, the State Legislative Counsel issued an advisory opinion on the matter concluding that the Oakland vehicle seizure ordinance "is void as contradictory to state law." The ACLU then asked the Oakland City Council to repeal the ordinance. They refused.

Oakland is the only city that is implementing its own local asset seizure ordinance. Press reports indicate that other California cities are watching the Oakland experiment and considering their own forfeiture ordinances. "Unless this lawsuit is successful, we can expect to see a proliferation of broad local forfeiture ordinances which will disregard the guidelines and protections of state law," Schlosser said.

The plaintiffs are represented by ACLU-NC managing attorney Alan Schlosser and ACLU-NC Police Practices Project Director John Crew as well as ACLU-NC cooperating attorney Michael Anderson.

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Court OK's Ban on Welfare Raids

Plaintiffs Barbara Lazenby (right) and Jessica Billingsley challenged the groundless dawn raid of their homes in Vallejo.

In the early dawn hours of March 13, 1997, residents of the Marina Vista Apartments in Vallejo were awakened when 60 law enforcement agents, many wearing raid jackets with the word "POLICE" in large yellow letters, entered their homes without warrants and conducted a highly-publicized mass raid. The operation, which involved seven state and local agencies and had been announced earlier to the media in an embargoed press release, targeted residents because they were public assistance recipients.

Seeking to vindicate their constitutional right to be free from unreasonable search and seizure, several of the Marina Vista families sought help from the ACLU.

On August 10, following a class action federal lawsuit filed by the ACLU-NC, the Employment Law Center and the law firm of Pillsbury, Madison & Sutro, a U.S. District Court judge in Sacramento entered a consent decree which bars such raids from ever happening again in Solano County. The settlement agreement also provides that the government agencies will pay compensation to the individual plaintiffs for damages inflicted by this intrusive operation.

The lawsuit, *Lazenby v. Vallejo*, charged that the officers and government agencies violated the residents' rights of privacy, due process and freedom from unreasonable searches and seizures. The residents are represented by attorneys Roxane Polidora, Pillsbury Madison & Sutro partner (who litigated the case pro bono), Alan Schlosser, ACLU-NC Managing Attorney and Jodie Berger of the Employment Law Center.

HIGH-PROFILE DAWN RAID

"This ruling will bar law enforcement agencies from conducting high-profile mass raids of innocent public assistance recipients," said attorney Polidora. "It will prevent groups of armed officers from raiding people's homes simply because they receive welfare."

The March 1997 raid was conducted jointly by state and Solano County welfare investigators, as well as officers of the Vallejo Police Department, the Solano County Probation Department, and the state parole division. The agencies involved agreed to important new constitutional safeguards. For example, under the consent decree, the Solano County Health and Social Services Department will no longer conduct home visits as a joint operation with law enforcement agencies. Similarly, the California Department of Health Services, which does verifications for Medi-Cal eligibility, agreed to adhere to the following restrictions in conducting multi-agency home visits of public assistance recipients in Solano County:

- such visits will not be planned and conducted as joint operations with law enforcement agencies;
- the home visits must occur during normal hours of family activity (7:30 AM - 8:00 PM);
- the visits will be conducted by no more than two clearly-identified persons who obtain voluntary consent for

  entry, and do not use of force, threats or duress. Denial of entry shall not be used to reduce or terminate benefits;
- the Department must obtain voluntary consent before conducting any entries or searches;
- the Department may not videotape the visit without consent, nor may they advise or invite the media to any home visits.

The highly-publicized mass raid in the dawn hours of March 13, 1997, code-named "Operation S.A.F.E." (Specialized Agency Fraud Enforcement), targeted residents because they were public assistance recipients. The residents were not under individual suspicion of committing

fraud.

NO SEARCH WARRANTS

The agents had no search warrants yet were able to gain entry into the apartments because of intimidating law enforcement tactics used during the surprise operation. Residents were afraid of losing their welfare benefits if they did not cooperate. The agents and investigators were accompanied by television cameras and reporters who had been alerted to the raid by the police.

After waking to a loud pounding on her door, 60-year-old Barbara Jane Lazenby, who suffers from heart trouble and diabetes, found herself in her bedclothes and without her dentures facing a group of officers and a TV camera. At other apartments, children were terrified when they awoke to officers interrogating their mothers. The agents searched the families' bedrooms, drawers and closets.

"Using high pressure law enforcement tactics to intimidate innocent people will no longer be tolerated. The consent decree effectively upholds welfare recipients' rights to protection from such coercive and threatening treatment," said ACLU-NC attorney Alan Schlosser. "People do not give up their constitutional rights as a condition of receiving public assistance."

"This agreement confirms that whether someone is receiving public aid is a private matter. Information about who is a recipient cannot be used for law enforcement or other purposes unrelated to administering a welfare program," said Jodie Berger of the Employment Law Center. "By assuring confidentiality, the agreement will prevent future raids targeting welfare recipients."

The provisions of the decree will be implemented immediately. For two years, the Department of Health Services will report any homes visits to the ACLU-NC so that compliance with the decree can be monitored effectively.

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ACLU Defends Livermore Library Against Internet Censorship

Moving to defend online free speech in libraries, the ACLU-NC filed a friend-of-the-court brief on July 10 in Alameda County Superior Court supporting a California library's policy of providing uncensored access to the Internet.

At issue is whether "Kathleen R.," a Concord woman, can obtain a court order to compel a Livermore, California library to eliminate its open access policy that allows uncensored use of the Internet. In a lawsuit *Kathleen R. v. City of Livermore*, filed on May 28, she argues that without such an order, Internet access at the library is a "public nuisance" and ought to be shut down.

In her lawsuit, Ms. R. sought to bar officials from spending public money on the city's public library computer system so long as minors or adults can use it to find sexual material considered "obscene" or "harmful to minors" under California law.

The ACLU's brief, filed in Alameda County Superior Court, asserts that both federal law and the First Amendment favor uncensored access to the Internet.

"It is no more legal for a parent to compel a library to censor the Internet than it is for the government to do so," said Ann Brick, staff attorney with the ACLU-NC which filed the brief on behalf of the ACLU-NC, the national ACLU, and People for the American Way.

Determining what is "obscene" or "harmful to minors," Brick said, is a matter for juries and judges to decide. "Parents have every right to supervise what their children access at home, but librarians have every right to provide constitutionally protected material to both children and adults. There is no way for the library to comply with the proposed court order without denying access to websites protected by the First Amendment," she added.

In its brief, the ACLU argues that under federal law, libraries are immune from civil suits trying to impose censorship because of their vital and longstanding role as an information resource for people of all ages and backgrounds.

The ACLU brief also argues that using blocking software to prevent access to potentially offensive material constitutes a "prior restraint" -- a virtual gag order -- that is prohibited by the

First Amendment.

Ann Beeson, National ACLU staff attorney, said that so far, 18 federal judges have ruled in favor of online free speech, in cases filed by the ACLU. "We think they'll also agree that in this context, forcing the library to censor the Internet is a prior restraint on free speech," Beeson said.

Beeson, an expert on cyberspace issues, is co-author of a recent ACLU report, *Censorship in a Box: Why Blocking Software is Wrong for Public Libraries.* The report proposes guidelines for libraries and schools looking for alternatives to clumsy and ineffective blocking software as a means of addressing controversial Internet content.

Problems with blocking software have been reported by a wide range of groups, Beeson said, because the software censors speech based on subjective views about what is offensive. She noted that the American Family Association, a conservative religious group, protested when it learned its website was blocked based on "intolerance" of homosexuality.

Beeson said that the new interest from the right marks a turning point in the fight for cyber-liberties. "Groups that in the past supported Internet censorship are now seeing things differently as they realize their speech is at risk, too." Beeson said.

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Legal Briefs

By Gigi Pandian

EXECUTIONS BEHIND CLOSED CURTAINS

On July 23, in the ACLU-NC case of *California First Amendment Coalition (CFAC) v. Calderon,* the Ninth Circuit Court of Appeals reopened the issue of the right of reporters to view executions in their entirety. Without overturning its April ruling in *CFAC* that San Quentin's restrictions are constitutional, the Court modified its decision to order the case sent back to federal district court to decide if the prison's safety and security concerns are justified and therefore provide a reason to limit the viewing of an execution.

The ACLU argues that because the issue of the death penalty is such a serious one, the public must be fully aware of how it is carried out. This requires the witnesses -- including the media -- to have full view of the entire execution process.

In April, a three-judge panel of the federal appellate court unanimously overturned a 1996 lower court ruling, finding that reporters have only limited rights to view the entire process of execution by lethal injection. Corrections officials argued that if the whole process of preparing a prisoner for execution was observed by the press, prison officers could be identified and their safety put at risk. The ACLU-NC, representing journalists and First Amendment advocates, argued that prison officials could not constitutionally prevent the press and public witnesses from viewing critical parts of the execution procedure, especially in view of the fact that the entire process had been viewed without incident since executions were moved inside prison walls 140 years ago. The ACLU also maintained that defendants had failed to present any evidence of retaliation or threats of retaliation which would justify limiting viewing rights.

TESTING WELFARE APPLICANTS

On July 20, the Ninth Circuit Court of Appeals decided that controversial written psychological tests used by Contra Costa County to screen welfare applicants for drug or alcohol addiction were not discriminatory. The court held in the case of *Hunsaker v. Contra Costa County* that the tests were legal because test results did not directly result in a denial of welfare benefits.

ACLU-NC cooperating attorney David Berger of Wilson Sonsini Goodrich & Rosati had argued that the `SASSI' test (Substance Abuse Subtle Screening Inventory) violated the Americans with Disabilities Act and the Due Process clause of the 14th Amendment. The ACLU maintains that the test disproportionately misidentified recovered alcoholics and drug users as chemically dependent and required them to go through a burdensome and invasive psychological interview to prove their "innocence" in order to obtain General Assistance benefits.

The County is not currently using the SASSI test because of earlier rulings in this case, but this decision will make it more difficult to sue under the Americans with Disabilities Act. On August 10 a petition was filed for a rehearing en banc, asking the full Court of Appeals to hear the case.

ANOTHER CITY, ANOTHER CROSS

Prompted by a letter from the ACLU-NC, the City of Fortuna has agreed to remove a 30-foot cross from city-owned land in Rohner Park. "Public officials in Fortuna have a duty to uphold fundamental principles of separation of church and state," stated ACLU-NC staff attorney Margaret Crosby. This principle has repeatedly been upheld by the courts when public officials have failed to do so, warned Crosby in her May 13 letter.

The ACLU-NC action was prompted by a Fortuna resident who objected when the city removed the cross to cut some trees and then reinstalled it in a concrete base in the public park.

In 1996 the ACLU-NC and other public interest organizations, representing several religious leaders and local residents, were successful in persuading the federal appeals court to order the City of San Francisco to divest itself of ownership of the large cross on Mt. Davidson. As a result of the lawsuit, the city auctioned the cross and the top of Mt. Davidson to the Coalition of Armenian-American Organizations.

Gigi Pandian is an ACLU News intern.

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Tribal Sovereignty: Unplugged

By Emma Oppenheim

With an itinerary that included spending a night on Alcatraz to visiting the largest Native American reservation in California, 26 high school students set out on a nine-day trip to explore U.S. policies toward Native Americans.

"Tribal Sovereignty: Unplugged," sponsored by the ACLU-NC Howard A. Friedman First Amendment Education Project, was organized by Project Director Nancy Otto and the ACLU-NC Student Advisory Committee. The diverse group of students, ranging in age 15-18, came from high schools throughout northern California -- from Vacaville, Hercules and Modesto, to San Jose, Oakland, and San Francisco. From August 3 through 11, the group traveled throughout California -- north to Humboldt and Hoopa, and south to Wards Valley and the Mojave desert. They met with students at Sherman Institute, the only remaining Indian boarding school in California, tribal leaders and community activists, representatives from the Bureau of Indian Affairs and organizers of the Indian Gaming Initiative, a measure on the November 1998 California ballot.

Here are some of the reflections on the journey, seen through the eyes of **Emma Oppenheim**, a 17-year old senior at Lick-Wilmerding High School in San Francisco.

The encampment at Ward's Valley where tribal and environmental activists are protesting the government plan to put a nuclear dump site.

The cover of my thick, spiral-bound book displays black doodlings surrounding the originally printed title, Information Packet for "TRIBAL SOVEREIGNTY: UNPLUGGED, A Field Investigation by and for Students, August 3 to 11, 1998." The book represents all that our group of students and chaperons did over the nine days, with background material on the people and places we visited and a detailed itinerary of each leg of the journey. The drawings that adorn my cover are the result of a long bus trip, one of many, while I was surrounded by sleeping friends. Yet these markings bear more significance than I ever intended.

Our trip took us all around California, from desert to cement to forests, and miles of road in between. We investigated sovereignty, as it related to gaming and casinos, use of land and natural resources, education, government, religion, and each individual's path in life.

Everywhere we went, with everyone we spoke, on every issue we discussed, sovereignty was the key word. In the dictionary, the word is defined as "supreme and independent power or authority in government as possessed or claimed by a state or community." This explanation, however, does not incorporate the lessons that our journey, Tribal Sov-ereignty: Unplugged, taught us. The formal speeches and the casual conversations, the community-wide pow-pow and the intimate music and dance presentations, the planned tours and the self-directed

explorations, the information we read in written material and the information we read in peoples' faces all added to the larger picture of sovereignty.

When we met with Cora Simmons, Cindy Pinket and others on the Round Valley reservation, we saw the fire in their eyes as they described their fight for equal treatment by the police and courts. To them, sovereignty was as simple as freeing a wrongly-accused loved one, Bear Lincoln, from jail and as far-reaching as demanding justice from a biased, callous law enforcement and judicial system. At Wards Valley, sovereignty was an encampment in the middle of the desert that activists from the Fort Mojave Reservation and environmental groups occupied to protest the government plan to create a nuclear dumping site on the land. Their act of resistance stood as a physical and symbolic impediment to that destructive scheme. It exemplified their passion to treat the land with respect and to save the nearby reservation from harmful contamination.

Dancer at the Sacramento Pow Wow.

At the Intertribal Friendship House in Oakland individuals were given the opportunity to connect with a wealth of community programs and people and history. Sovereignty meant being Indian while living and working in an urban setting.

At the Hoopa Reservation, Merv George spoke eloquently of sovereignty in his life as the Tribal Chairman and in the lives of the people of his tribe. The tribe runs its own social welfare programs, directs its own economic development and provides scholarships for young people to go to college. For Merv, sovereignty means leadership and ambitious future dreams for himself and his people.

Wally Antone, a member and employee of the tribal council of the Fort Mojave Reservation, explained that he prays in four directions daily. His words, beautiful and instinctive, continued to resonate as the black doodlings on my book come into focus for the first time. The central image, a dizzying, swirling, imperfect circle in the center of the page, is the struggle of the Indian peoples, incomplete but striking. From one off-center point, the power of these strivings moves outward in four directions along two sweeping lines, leaving four sections of endless possibility. The word SOVEREIGNTY floats above the circle, followed by a trail of dots.

I realize that we, the students who participated in Tribal Sovereignty: Unplugged, became a part of the picture when we decided to take on this issue, to involve ourselves in the struggle of the Indian people to retain some self-determination. Thus each one of our names takes its place on a star and adds its presence to the growing picture of the fight for Indian and tribal rights.

My definition of the word sovereignty expanded each day. From our pre-trip preparatory discussions on identity and ethnicity to our journal reflections and on-the-bus ponderings, we sought to grasp the meaning of sovereignty.

For me, the quest for tribal sovereignty is far from complete. Each of us who participated learned invaluable lessons on this trip. We now will share these lessons in schools, with our families, and in our daily interactions. We hope that our efforts will help others understand not only what we witnessed as Indian people work toward self-determination, but also how to define for themselves what sovereignty means. And how each of us can fight the small battles to help reach that goal.

Fort Mojave Tribe elder Wally Antone led students through Grapevine Valley, explaining the historical significance of Spirit Mountain.

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ACLU-NC Launches Racial Justice Project

By Dorothy Ehrlich
ACLU-NC Executive Director

If nothing else, the passage of Proposition 209 and subsequent court rulings upholding its legality, are clear and frightening signals that in the waning days of this century known for its historic struggles for civil rights, institutional racism is increasing rather than decreasing. Our commitment to racial justice then, must also increase. We are proud that an extraordinary gift to the ACLU will allow us to devote greater resources and attention to this significant problem. And we have responded by launching our new Racial Justice Project.

The Project will be staffed by two committed and creative individuals: Project Director Michelle Alexander, a former clerk to U.S. Supreme Court Justice Harry Blackmun with extensive experience in discrimination litigation, and ACLU-NC Public Information Director Elaine Elinson.

A primary goal of the Project is to identify bold and creative strategies for continuing the fight for equal opportunity in a post-Proposition 209 world. Through both public education and litigation we hope to tear down discriminatory barriers to racial equality in education, public contacting, employment and many other areas.

The Project will also formulate and realize strategies to combat racism, especially in the criminal justice and law enforcement systems. "The rapidly increasing incarceration rate of African American and Latino men is a major civil rights issue. It has become abundantly clear that people of color are granted enormous preferences at the jail house door but are barred from the doors of local universities. That has got to change," said Project Director Alexander.

The need for the Project is especially evident if we compare how our social climate and consciousness have changed in regards to race over the past two decades. Take affirmative action, for example. When I first came to the ACLU twenty years ago, shortly after the Bakke decision, affirmative action was seen as a vital and necessary means to level the playing field for people who historically have been discriminated against. Today, foes of affirmative action have successfully portrayed such programs as "illegal preferences," "reverse discrimination" or "quotas." This kind of rhetoric disguises the sad reality that without affirmative action, discrimination against qualified people of color and women would be rampant, and de facto

preferences for "old boys networks" based on family and social connections would prevail.

One of the Racial Justice Project's initial efforts is joining with other civil rights groups to sue Contra Costa County for violating federal anti-discrimination laws in the guise of complying with Proposition 209 (See page 1 for information on the lawsuit.)

Project staff are also working to pass a state law dubbed "Driving While Black or Brown," a bill to measure whether people of color are stopped in disproportionate numbers by law enforcement officers solely because of their race. The legislation would require law enforcement agents to collect data on the ethnicity, age, and gender of the motorists they stop and the reason for the stop. This data will help to ensure that all law enforcement practices are being carried out equitably and fairly. Working with our legislative staff, Alexander testified in favor of this bill at the Senate Appropriations Committee hearing in Sacramento on August 4 (see article in this issue)

Prior to joining the ACLU staff, Project Director Alexander served as a Consulting Professor at Stanford Law School and was an associate with Saperstein, Goldstein, Demchak & Baller, an Oakland law firm specializing in class action suits alleging race and gender discrimination in employment.

Elaine Elinson, the ACLU-NC's Public Information Director, will coordinate the Project's public education efforts. A veteran ACLU staffer of 18 years, Elinson also has coordinated media and public education efforts of a coalition of civil rights organizations involved in the struggle to preserve California state affirmative action programs. She is an editor of *Reaching for the Dream: Profiles in Affirmative Action* published by the coalition in March of this year.

The ACLU-NC is extremely grateful to the law firm of Pillsbury, Madison & Sutro, whose generous donation of a court-awarded fee to the ACLU-NC has allowed us to begin this important project. The fee came in the case of *Davis v. California Department of Corrections (CDC)*, in which the home of an African American woman in Richmond was invaded by police and CDC officers -- without a warrant or permission. The enduring legacy of our successful challenge to that illegal, unjustified raid and of the generosity of the firm who litigated the challenge is our new Racial Justice Project. Since the scope of the problems the Project is confronting is so vast and deep, we plan to keep the Project running initially for three years and, if possible beyond that. Because of this, we are also seeking foundation funding to enable us to sustain this crucial effort.

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ACLU news

ACLU News - The Newspaper of the ACLU of Northern California, September/October 1998

Profile of an ACLU Supporter: Doris Martini

ACLU activist and De Silver Society member Doris Martini

"How can they do this to me? This is America?"

Doris Martini recalls hearing these questions from callers when she volunteered at the ACLU-NC Complaint Desk. "They never thought about their civil rights until one of them was suddenly violated."

But the ACLU was there to respond. Even if a call was not civil liberties related, Doris and her fellow counselors were armed with Rolodexes to refer callers to the appropriate organizations for help.

"Who else besides the ACLU is fighting this hard for civil liberties?" asked Doris. In fact, she is so proud of the ACLU that she's joined *The DeSilver Society* (the ACLU's recognition group for supporters who have made planned gifts) by establishing four gift annuities, which will ultimately help the ACLU continue its vigilant fight.

A retired school teacher living in Mill Valley who serves on the ACLU Marin County Chapter

Board, Doris describes her hotline experience as "intense" and a "great education." "The phone was constantly ringing [with] people who felt their rights had been abused, who wanted help right away." She received calls from students and prisoners as well as from people who complained about religious liberty infractions, housing discrimination, and police brutality.

Surprisingly, Doris didn't think of herself as an "ACLU type" for most of her life. She describes her family background as politically active but very conservative. Though Doris ultimately changed her political affiliations, she held tight to her family's legacy of activism. As a mother she wonders, "What kind of a world are you going to hand over to your children if you don't do something when they're tiny? What's it going to be like when they're older, and you could have done something and didn't."

Doris has volunteered in presidential campaigns and joined a number of organizations, like Amnesty International and the Southern Poverty Law Center. She became an ACLU member almost overnight after seeing a movie about Skokie. It made a profound impression on her that the ACLU--despite its many Jewish members--was so dedicated to constitutional ideals that it defended the neo-Nazis' right to march and peaceably assemble, no matter how horrible their views are.

Today, Doris fears that most of America will "let their civil liberties go by default." She sees major threats to the civil rights victories of the '60s and '70s, resurgent governmental censorship, and a powerful Christian Coalition crusading to institute public prayer. A native of California, she also has serious concerns about the passage of Proposition 209. Doris believes that there are vast numbers of people who would be "more ACLU-oriented if they thought about it," but with "people enjoying a good economy, " they need to be "startled before they do anything."

The good economy, in fact, gave Doris an opportunity to do something positive for civil liberties. She used some of her appreciated stock to set up a gift annuity with the ACLU Foundation that pays her an attractive income for life. Her stock was paying a low dividend, and if she had sold the stock, she would have paid a large capital gains tax. By using the stock to establish a gift annuity, Doris avoided a substantial portion of the capital gains tax, received an increased income, and claimed a generous charitable income tax deduction. She had previously established three ACLU Foundation gift annuities with cash, which also provide her with significant income and tax benefits. After Doris's lifetime, the principal from her four gift annuities will go toward the ACLU's work to protect individual liberty.

Doris takes comfort in the fact that her gift is " a perpetual thing. . . it [isn't] something that will end with my life. All gifts of this type will ensure that the ACLU will have a steady source of income for the future. . . . It's a wonderful way to make your money do something good."

If you would like information on ACLU Foundation gift annuities, please contact Stan

Yogi at 415/621-2493, ext. 30.

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ACLU-NC Calls on Commission to Dismiss Charges Against Justice Kline

The ACLU of Northern California is urging the Commission on Judicial Performance to dismiss disciplinary charges against Justice J. Anthony Kline of the First District Court of Appeal.

The ACLU-NC charges that the disciplinary proceedings pose a threat to an independent judiciary, "the cornerstone of a living Constitution."

"The Commission's threatened sanctions against Justice Kline for his respectful and well-reasoned refusal to follow a Supreme Court precedent poses a serious threat to an independent court system in California," wrote Executive Director Dorothy Ehrlich and Staff Attorney Margaret Crosby in a July 24 letter.

"Judges must feel free to enforce the rights of the minority and the unpopular for civil liberties to survive," stated Ehrlich and Crosby.

The Commission has charged Justice Kline with willful misconduct, because of his stated refusal to follow a California Supreme Court precedent permitting parties to agree to the reversal of a lower court opinion. Justice Kline wrote that he conscientiously believed that stipulated reversals allow affluent litigants to purchase justice. Because those parties will not seek high court review, Justice Kline sought to return this issue to the California Supreme Court by refusing to accept a stipulated reversal.

"American constitutional history has been advanced by courageous judges who, in rare and significant cases, have taken bold steps to prod a higher court to re-examine prevailing legal doctrine," the ACLU-NC letter states. For example, the United States Supreme Court in 1940 allowed public schools to expel Jehovah's Witnesses school children for refusing to salute the flag. A three-judge court sided with the devout schoolchildren. On appeal, the Supreme Court reversed its own three-year-old precedent, in an eloquent, landmark precedent on right of individual conscience against government orthodoxy.

"California has a valid interest in preventing the judicial anarchy that would result from routine, recalcitrant refusal to follow precedent. But the rare, conscientious act of a judge who presses

hard for reconsideration of precedent by refusing to follow it does not create anarchy," wrote Ehrlich and Crosby."

The ACLU-NC letter notes that there is no need to "inject a heavy-handed disciplinary process against the judges who take rare steps to correct perceived injustice."

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"DWB" Bill Passes Senate, Assembly Now on Governor's Desk

For the first time in California, the public may soon have access to data regarding the race and ethnicity of motorists pulled over for routine traffic violations. This data would be a critical first step in addressing an issue widely understood to be a fact of life among people of color: being pulled over simply because of race.

Important legislation addressing the long-standing problem of "racial profiling" by police is at a critical stage. The bill, **AB 1264**, is formally titled the "California Traffic Stops Statistics Act," but is informally known as the "Driving While Black or Brown Bill." AB 1264 would require law enforcement to collect data regarding the race and ethnicity of motorists pulled over for routine traffic violations, and provide that information in an annual report to the state Department of Justice. This kind of data is already collected and compiled by police when an individual is arrested for a crime. AB 1264 would close a loophole in law enforcement data, by revealing the race and ethnicity of all individuals who are stopped and harassed by police even though they have committed no crime.

The bill has garnered strong support from minority law enforcement organizations. "Members of the National Black Police Association see first hand and in person the miscarriage of justice that takes place each day in our communities simply because of the color of our skin," said Executive Director Ronald Hampton, in a letter in support of AB 1264. The National Latino Peace Officers' Association, the National Organization of Black Law Enforcement Executives, and the California organization Minorities in Law Enforcement also endorsed the bill.

On August 4, the Senate Appropriations Committee held a hearing on AB 1264 to determine whether the estimated cost of the bill was justified. Michelle Alexander, Director of the ACLU-NC Racial Justice Project, testified that the bill was easily worth the cost. "For years, people of color have complained that they have been targeted by police, and stopped for no reason other than their race. These complaints have been largely ignored. Yet, the perception by people of color that they are often stopped for the innocent offense of Ôdriving while black or brown' creates an atmosphere of distrust and a general lack of faith in the criminal justice system."

Limited research and studies outside of California indicate that the problem is pervasive. For example, a recent case filed by the ACLU in Maryland revealed that while over 75% of all

drivers stopped and searched by police were African Amer-ican, only 17% of the drivers in the area were black. "In Cal-ifornia, the problem of racial profiling is not limited to African Americans. Latinos, Asian Americans and other minorities are also targeted by police," said Alexander.

The chair of the California Legislative Black Caucus, Assem-blymember Kevin Murray of Los Angeles, is the sponsor of AB 1264. Murray, himself, was stopped by Beverly Hills police, apparently on the basis of race, last June on his way to an election night dinner celebrating his nomination for the Democratic candidacy for the state Senate.

At the August 4 hearing, Murray read a letter from former Los Angeles prosecutor Christopher Darden explaining that he has been stopped dozens of times by several different police departments but has never received a ticket. "I have, however, been confronted by gun-toting officers demanding that I place my hands on the steering wheel or exit my vehicle and lie on the ground. In most of these cases, no legitimate reason was given for the initial stop. In many of these cases, officers searched my vehicle without a warrant, consent or probable cause." Darden emphasized that collecting this data imposed no burden on police -- financial or otherwise -- but could go a long way towards addressing a serious problem that exists between communities of color and police. "There is no excuse for not passing AB 1264," Darden concluded.

Action Alert

This measure passed the Senate by a vote of 22-13 on August 26. The following nightÐat midnightÐit passed the Assembly. It is now on the Governor's desk. Your voice is crucial. Please contact Governor Pete Wilson urging him to sign AB 1264. Governor Pete Wilson, State Capitol, Sacramento 95814; phone: 916/445-2841; FAX: 916/445-4633.

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Obituary: Activist, Advocate Tom Steel

Tom Steel (left) with his partner Milton Estes in the ACLU library in 1995.

The civil rights community lost one of the brightest stars in our constellation on July 18 when attorney Tom Steel died of AIDS at age 48. Steel, longtime partner of former ACLU-NC Board Chair Milton Estes, was an ACLU co-counsel, collaborator and committed supporter.

Steel's pioneering advocacy for civil liberties is legendary. A found-er of the Gay and Lesbian Commit-tee of the Nation-al Lawyers Guild and of Bay Area Lawyers for In-dividual Free-dom, this talented, passionate attorney contributed to the ACLU of Northern Califor-nia in a myriad of ways.

As a our co-counsel in *Carpenter v. City of San Francisco*, Steel helped win a federal court case in 1996 on behalf of several religious leaders and residents challenging the City's ownership of a 103-foot cross on the top of Mt. Davidson.

Working with our Police Practices Project and Supervisor Tom Ammiano, Steel, who had fought and won a number of police brutality cases in San Francisco, crafted Proposition G in 1995, a successful ballot measure that strengthened the Office of Citizen Complaints.

A gift that Steel made to the ACLU-NC Foundation in 1995 gives an insight into his remarkable generosity and creativity. Steel was part of a team of attorneys who represented 1,000 Berkeley tenants in a successful class action suit, Owens v. Vu. As part of the settlement, the tenants' attorneys obtained court approval for distribution of the funds remaining after all the qualified claimants were paid, to organizations that assist in legal work for tenants and poor people in the Bay Area. Steel presented a donation of $14,000 to the ACLU-NC Foundation, and enthusiastically announced, "We turned rent overcharges and unfair practices by a landlord into compensation for the tenants and substantial contributions to insure that the ACLU and others will be prepared for future battles to defend tenants' rights."

ACLU-NC Executive Director Dorothy Ehrlich said, "The loss to the legal and civil rights community is incalculable. Tom combined a deep commitment to fundamental rights, an innovative ap-proach to seeking justice and a zest for life. His contributions inspir-ed all of us."

Steel won cases against formidable op-ponents, including the U.S. military -- for operating a train at the Concord Naval Weapons Station that severed the legs of protestor Brian Willson as he tried to stop a shipment of weapons to El Salvador -- and the FBI -- for refusing for 15 years to release documents to *San Francisco Examiner* reporter Seth Rosenfeld about U.C. Berkeley's Free Speech Movement. Steel was honored for his outstanding work by the National Lawyers Guild in 1995.

"Everything Tom Steel did was informed by an incredible commitment to justice," said ACLU-NC Managing Attorney Alan Schlosser.

A memorial to Tom Steel at Green Gulch Farm in Mill Valley on July 22 was overflowing with family and friends from the ACLU, the Guild, BALIF, clients, judges, legislators, musicians, political activists, journalists and artists -- Tom Steel's life had touched them all.

The family asks that contributions in honor of Tom Steel be sent to the National Lawyers Guild (415/285-5066) or the ACLU Foundation of Northern California (415/621-2493).

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