ACLU NEWS

Newspaper of the
American Civil Liberties Union of Northern California

Volume LXIII, No. 5 - September/October 1999

Annual Activist Conference

September 17-19
Walker Creek Ranch, Marin

Two Dangerous Initiatives in March 2000 Primary Election

ANTI-YOUTH

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

ANTI-GAY

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

You Can Help Stop These Initiatives!

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CHECK AS MANY AS YOU WISH

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

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

Name _____________________________________
Address __________________________________
City_____________________ State ___ Zip ___
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Send to or contact:
Lisa Maldonado, ACLU-NC Field Representative,
Email (lisam@aclunc.org)
Telephone: 415 621-2493
Address:
American Civil Liberties Union ofNorthern California,
1663 Mission Street, Suite 460, San Francisco, CA 94103
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aclu news

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

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

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

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ACLU Exposes Danger of Pepper Spray Against Redwoods Demonstrators

On August 11, the ACLU-NC submitted an amicus brief to the Ninth Circuit Court of Appeals in support of the appeal of a ruling that permits the use of pepper spray against nonviolent demonstrators engaged in civil disobedience. The brief argues that the case, Headwaters Forest Defense v. County of Humboldt, should be presented to a jury.

"The ACLU believes that the use of pepper spray as a kind of chemical cattle prod on nonviolent demonstrators resisting arrest constitutes excessive force and violates the Constitution," said ACLU-NC staff attorney Margaret Crosby. "Certainly, a jury should be afforded an opportunity to evaluate this new experimental use of a chemical weapon."

When the case was originally heard in 1997 the jury hung, and in an unusual judicial action, U. S. District Court Judge Vaughn Walker did not order a new jury trial. Instead he ruled that application of pepper spray to nonviolent protestors engaged in civil disobedience constituted reasonable force as a matter of law. The ACLU argues that, in justifying the denial of a jury trial, the district court and Humboldt overstated the constitutional authority to use pain compliance on demonstrators engaged in civil disobedience, and understated the harmful impact of pepper spray.

On three separate occasions, as a novel and dangerous experiment in facilitating the removal of demonstrators who had locked themselves together, sheriffs directed pepper spray at close range, or near the protestors' eyes--sometimes directly on the eyelids. The Humboldt Sheriff said, "what we have done here" with pepper spray "is new"--never before used in Humboldt County, in the state of California or in the nation.

The demonstrators sued the County and its officers in United States District Court, charging that the sheriffs' use of a chemical weapon to inflict pain in the eyes, face, throat, and lungs was an unconstitutional response to civil disobedience.

The ACLU-NC brief summarizes empirical, scientific and toxicological research on pepper spray. "Scientific literature refutes the repeated depiction, by the trial judge and by Humboldt, that pepper spray is a benign organic substance that causes only transient discomfort," Crosby noted.

"In fact, pepper spray ingredients, alone and in combination with solvents that create the weapon, have a variety of physiological effects. Courts have recognized that pepper spray may be a dangerous chemical weapon, resulting in liability to government or private parties, or incarceration to criminal defendants," Crosby argued.

The ACLU brief also noted that the Ninth Circuit Court of Appeals ruled earlier this year, in the context of senten-cing guidelines for criminal defendants, that pepper spray may constitute a dangerous weapon. Federal sentencing guidelines define a dangerous weapon as "capable of inflicting death or serious bodily injury," causing "extreme physical pain or the protracted impairment of a function of a bodily member, organ, or mental faculty; requiring medical interventions such as surgery, hospitalization or physical rehabilitation."

The ACLU argues that the use of pepper spray on environmental demonstrators requires a jury evaluation under established constitutional standards. The single most important consideration in assessing the reasonableness of the use of force is whether the suspect poses an immediate threat to the safety of the officers or others. Crosby noted, "The Humboldt authorities arrested peaceful demonstrators, seated, linked and locked into a metal device. They were dramatizing their commitment to protecting old-growth redwood trees. They were not menacing anyone."

Pepper spray weapons--both their active ingredients and their chemical solvents and propellants--may have damaging short- and long-term effects on a number of body systems and functions. These weapons are particularly dangerous for people with compromised health status and for young people. Several of the redwoods demonstrators were minors.

"Pepper spray's effects on the respiratory, ophthalmologic, and neurologic systems may be severe. Studies also show that pepper spray also may produce carcinogenic effects and disrupt the body's temperature regulation system," Crosby said.

The ACLU brief summarizes animal studies, research and case studies involving humans. The studies report incidents of correctional officers suffering physical injuries during training exercises with pepper spray, emergency room reports of eye injuries from pepper spray, children hospitalized after accidental exposure to pepper spray, spice workers suffering respiratory ailments from long-term exposure to pepper spray's active ingredients, and cancer rates in countries with high consumption of hot peppers.

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(415) 621-2493

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ACLU Fights Vehicle Forfeiture Ordinances

BY MARIA ARCHULETA

Following the City of Oakland's dubious lead, San Francisco and Sacramento are considering vehicle seizure ordinances that would authorize the seizure, forfeiture and sale of cars believed to have been used to solicit prostitution or to acquire, or attempt to acquire, drugs. Because neither ordinance would require a person to actually be convicted of a crime before valuable personal property is irretrievably lost, ACLU-NC Managing Attorney Alan Schlosser has fought these proposed laws in letters and testimony.

"The ACLU recognizes that prostitution and drug traffic adversely impacts local communities and are matters of legitimate government concern," testified Schlosser at the San Francisco Board of Supervisors Housing and Social Policy Committee on August 3. "However we urge San Francisco not to establish a harsh and overbroad local forfeiture operation that places at risk basic individual and property rights."

Under San Francisco's proposed Vehicle Seizure Ordinance--introduced by Mayor Willie Brown and Supervisor Amos Brown--a vehicle can be seized and sold without anyone being convicted, or even arrested, for the underlying criminal offense. Even an acquittal of the criminal charge would not result in the return of the vehicle.

Schlosser said, "The basic presumption of our justice system--innocent until proven guilty--is violated by the ordinance. Vehicles can be seized without any prior judicial hearing based on something more than a hunch but far less than what is necessary to prove guilt in a criminal court."

The unfairness is even more extreme in the City of Sacramento's proposed ordinance: a vehicle can be seized even if the owner is not present at the time of its suspected use in criminal activity. In an August letter to Sacramento Mayor Joe Serna and to the City Council members, Schlosser wrote, "Loaning your car to your teenager or your spouse or a friend would be sufficient grounds to be subjected to government confiscation and loss of title if it is used for illegal purposes."

In such circumstances, once the vehicle is seized the innocent owner has the burden of

fighting the system to regain his or her property. No public defender will represent indigent persons in civil forfeiture proceedings, ensuring that the ordinance would unfairly effect low-income persons. The unfairness is aggravated by the provision that owners have only ten days to file a claim before forever losing the right to attempt to regain their property.

In his letter to the Sacramento City Council, Schlosser pointed out that the ordinance would be inconsistent with state and federal law, which explicitly state that the vehicles of innocent owners used for illegal purposes without their knowledge or consent cannot be forfeited.

Besides being illegal and unfair, Schlosser charges that both the San Francisco and Sacramento ordinances would implement a "cash bounty system" of law enforcement, because the seizure and subsequent sale of vehicles directly generates revenue for the government, half of it slotted for local authorities. "There is an inherent conflict of interest built into the exercise of prosecutorial discretion when the local prosecutor will receive 50% of the forfeiture proceeds, and there will be a strong temptation for law enforcement to pursue assets and not convictions," said Schlosser. "To innocent owners or those guilty of a first time offense, this cash bounty system will seem very much like legalized extortion."

Schlosser warned both cities that because their proposed ordinances would authorize the seizure of valuable property for relatively minor offenses, the punishment would not be in proportion to the crime, which is prohibited by the Excessive Fines Clause of the Eighth Amendment. San Francisco Mayor Willie Brown was quoted in the press as looking forward to the seizure of BMW's used in the purchase of a "$10 bag a marijuana;" however, the maximum fine for the possession of small quantities of marijuana is $100 and no jail time.

Also of great concern is the likelihood that if passed, the ordinances would have a disparate impact on racial minorities because police are more likely to stop minority drivers, especially African-Americans and Hispanics. "In recent months, the phenomenon of Driving While Black has been widely discussed in the news and President Clinton has called for a national effort to document the problem of drivers being singled out by law enforcement based on race and ethnicity," Schlosser said. "In view of this well-documented problem, San Francisco and Sacramento should question the appropriateness of adding another weapon to the arsenal of the police that will give them both the discretion and the financial incentive to single out drivers suspected of minor offenses."

The ACLU-NC has repeatedly expressed civil rights concerns on vehicle seizure ordinances and legally challenged the Oakland ordinance on which the San Francisco and Sacramento proposals are modeled. The case Horton v. City of Oakland is pending in the California Court of Appeal.

Maria Archuleta is the former Associate Editor of the ACLU News.

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Racial Insults at the Workplace: Free Speech or Illegal Harassment?

BY MARGARET CROSBY
ACLU-NC STAFF ATTORNEY

On August 2, the California Supreme Court, in the case of Aguilar v. Avis Rent-a-Car System, Inc. upheld an injunction barring an Avis manager from continuing to call his Latino workers by such names as "motherfuckers" and "wetbacks." The ACLU of Northern California supported the Latino employees' effort to secure a workplace environment free of racial harassment. The Supreme Court's decision advances equality without threatening freedom of expression.

A jury had found Avis liable for race discrimination based on its supervisor's repeatedly hurling racist epithets at his Latino workers. The jury awarded money damages for this proven race discrimination. Avis did not challenge the damage award, thereby conceding that the speech was not constitutionally protected. The only question Avis presented on appeal was whether the court could restrain the supervisor from continuing his illegal harassment or whether the Latino workers were relegated to filing a series of repetitive damage suits.

On a soapbox, on a public street, an individual may express racially demeaning views. The government may not ban expression simply because most people find it offensive or even outrageous. Flag burning, salacious parodies, political messages with four letter words, are all protected against government censorship despite their strong emotive impact. These are important constitutional principles. The ACLU steadfastly defends the core right in a free society to speak out--including the right to proclaim racial superiority.

But the context of speech is also important. The workplace is not Hyde Park. Speech that is protected on the street corner may not be protected in the workplace. The Supreme Court has recognized that verbal harassment along protected lines, racial or sexual, may constitute an act of employment discrimination. Employees have the right to work in an environment free from discriminatory intimidation, ridicule and insult. While the Avis supervisor has the right to use the language of prejudice in the public square, he does not have a right to humiliate and harass the Latino workers he supervises.

As any employee knows, the realities of the workplace have an inevitable impact on the

application of the First Amendment to speech on the job. It is impossible, as a practical matter, for the victims of racial harassment in the workplace simply to walk away or shut their eyes when their own boss harasses them on the job.

An employer's speech to subordinates has a coercive character, because of the power imbalance inherent in the relationship. Speech that would be protected on a street corner may not be protected when the boss says it to the worker, who is not in a position to dispute it, or even walk away.

That problem is compounded, moreover, by the fact that harassment is rarely designed to elicit a response or, more to the point, to precipitate a dialogue. Usually, the constitutional remedy for provocative speech is more speech, not enforced silence. Thus, if the Klan plans to march down Main Street, its critics must not petition to revoke the Klan's permit, but stage a robust counter-demonstration in favor of equality.

The operating assumptions are very different in a workplace where many employees have little choice but "enforced silence" when they are harassed on the job by their own boss. The hierarchical relationship skews the robust exchange of ideas. In the Avis case, for example, the supervisor is insulated from the vigorous response he might expect were he to hurl racial slurs at passing strangers on a street corner. As subordinates, his workers are muzzled from responding as sharply as they might wish to the racial slurs their boss casts at them. This is not a fair exchange in the marketplace of ideas.

Pervasive racist invective on the job is therefore illegal. It is not constitutionally protected expression. If it were, a court could not award money damages for racial harassment. A court may punish and enjoin illegal verbal acts, like terrorist threats, bribes or securities frauds.

Avis had its day in court. The jury found that the supervisor's racist epithets created a hostile working environment for the Latino worker forced to endure them. Avis did not challenge the damage award based on that finding. An order requiring Avis and its supervisor to cease its proven illegal behavior is not a prior restraint. As Chief Justice Ronald George concluded: "Once a court has found that a specific pattern of speech is unlawful, an injunctive order prohibiting the repetition, perpetuation, or continuation of that practice is not a prohibited `prior restraint.'"

This decision does not make every workplace a zone sanitized of any provocative speech. The antidiscrimination laws do not prevent us from discussing racist literature or sexy movies. The law forbids only severe and pervasive behavior, which creates the kind of hostile working environment that most employers would and should not condone.

Most companies would fire, or at least discipline, a manager whose violation of the antidiscrimination laws had resulted in a substantial damage award. They would not champion

the supervisor's right to continue creating a hostile working environment. In most cases, an injunction restraining racist invective should and would not be necessary.

But where companies fail to protect workers from race discrimination, courts must act. The Constitution holds out a promise of equality as well as expressive freedom. The Constitution permits state and federal governments to enact laws securing the right of people all races to equal treatment at work. Those laws necessarily place some limits on the unrestrained speech of bigots in the workplace, particularly when they are in positions of authority on the job. In the Avis case, the Supreme Court, enforcing California's law against race discrimination, accommodated fundamental principles of equality and expression.

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Airline to Provide Domestic Partner Benefits

ACLU leaders applauded United Airlines for becoming the first U.S. carrier to provide comprehensive fringe benefits to the domestic partner of its lesbian and gay employees nationwide. The July 30 announcement "marked a huge step towards equality in the workforce," said ACLU-NC staff attorney Robert Kim.

"Social recognition of lesbian and gay couples has largely been the result of efforts to persuade local governments and major businesses to include them in fringe benefit plans," noted Kim. "Until United's decision, most of the progress had come from the high-tech, entertainment, and finance industries. This is a major addition to the growing list of businesses that treat lesbians and gay men fairly."

With United's decision to provide these benefits, transportation becomes the fourth major industry to recognize gay and lesbian relationships.

"United is the first major U.S. carrier to fully recognize domestic partners," said Matthew Coles, Director of the National ACLU Lesbian and Gay Rights Project. "Since it is the largest airline in the world, its domestic competitors have already followed suit."

Only few days after United's announcement, American Airlines, the second largest airline in the world, said that it would also offer domestic partner benefits to its lesbian and gay employees.

These changes in policy come after the City of San Francisco passed the controversial Equal Benefits Partners Ordinance in 1996, which requires companies that the City does business with to provide the same benefits to unmarried domestic partners that they provide to married couples.

Challenging their obligation to follow the ordinance, the American Transport Association filed suit in federal court against the City of San Francisco on behalf of major twenty six major airlines, including United. The ACLU, along with Lambda Legal Defense and Education Fund and the National Center for Lesbian Rights, filed a friend-of-the-court brief in defense of San Francisco's ordinance. Coles, Kim, and former ACLU-NC staff attorney Kelli Evans represented the ACLU.

In April, 1998 U.S. District Court Judge Claudia Wilken upheld the ordinance and ordered United to provide travel privileges, bereavement leave and medical leave to both same-sex and opposite-sex domestic partnerships.

Despite United's ground-breaking move for lesbian and gay rights, the Air Transport Association is still proceeding with its appeal on Wilken's ruling.

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ACLU Seeks Info from United

In July, the ACLU filed a friend-of-the-court brief in ATA v. San Francisco in support of the public's right of access to information submitted to the court as part of the ongoing litigation. At the initial stage of the airline industry lawsuit seeking to avoid compliance with the city's domestic partnership ordinance, the parties had agreed that documents containing highly sensitive trade secrets or business information could be sealed and removed from public scrutiny. However, according to staff attorney Robert Kim, the airlines were improperly sealing information that was outside the scope of the agreement.

"The public has a First Amendment right of access to information filed in a civil case," Kim said. "Litigation should not be shrouded in secrecy. The right to know what's going on in the courts is essential as a check on the judicial system. Materials that are filed with the court should not be hidden from view merely because they may prove embarrassing to the airlines.

"This is especially important in a civil rights case," Kim added. "If potential evidence of bigotry or unsavory comments would surface, then surface they should."

"In addition, where the government is a party to the litigation involving a matter of significant public interest, the public is especially entitled to know as much about the details of the lawsuit as possible."

The San Francisco Examiner also intervened in the lawsuit, asserting its right to print information about the case to the public. Kim expects that the airlines will agree to unseal most of the documents in dispute.

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Estes Honored with FrontLine Award

BY NANCY MAGIDSON

Tanya Neiman and honoree Milton Estes.

On July 14, in the spirit of Bastille Day liberation, more than 200 friends of the ACLU came together to celebrate and honor Dr. Milton Estes with the first "On the FrontLine" award at the Ed Hardy San Francisco gallery. "The FrontLine award is given to an individual who has done significant and sustained work to protect and preserve the rights of lesbians, gay men, bisexuals, transgender people, and people with HIV and AIDS. We especially want to honor those who do this work in the larger advocacy context of protecting civil and constitutional rights for all people," explained ACLU-NC Executive Director.

Ehrlich said that the innovative event is one component of the FrontLine fundraising campaign which gives donors an opportunity to evenly split their contributions between the National ACLU Lesbian and Gay Rights and HIV/AIDS Projects and all the civil liberties work of the ACLU-NC.

Nadine Strossen, president of the National Board, made a surprise visit to the Bay Area to honor Estes. Matt Coles, director of the National ACLU Lesbian and Gay Rights Project and HIV/AIDS Rights Project also flew in from New York for the event. "The ACLU is involved in more lesbian and gay rights litigation and legislative work combined than any other single organization in the country," Coles told the crowd of ACLU supporters.

Tanya Neiman, Director of Volunteer Legal Services for the San Francisco Bar Association presented the hand-crafted glass sculpture award to Dr. Estes. "Milton lives his life on the frontline every day; activism permeates all aspects of his daily life," Neiman said.

On receiving the award, Estes asked the crowd "to remember that gay and lesbian liberation has not as yet been realized, and that the struggles of lesbians and gay men are inextricably linked with the civil liberties and liberation of all people. " Always the organizer, Estes encouraged supporters to get involved in the campaign to defeat the Knight Initiative, the anti-gay marriage measure slated for the March 2000 ballot. To further bring home the real reasons for gathering, Estes invited his friend Carol Vendrillo to lead the singing of "We Shall Overcome."

Estes has focussed his efforts on protecting the rights of those with HIV and AIDS, working for freedom of speech and reproductive freedom, and striving to ensure racial justice. The first physician in Marin to treat people with AIDS, Estes currently serves as the Medical Director for the City of San Francisco's Forensic AIDS Project, dividing his time between his AIDS practice in Marin and providing compassionate care to those incarcerated in San Francisco jails. In addition to his medical work, Dr. Estes has dedicated substantial volunteer time to his work for the ACLU. He served four years as the first openly gay Chair of the Board of the ACLU-NC and currently serves as a vice-president of the national ACLU Board as well as the Chair of the Board's Lesbian and Gay Caucus.

"Because of his work and the way Milton has chosen to live his life, he became the obvious and unanimous choice for the award," said Executive Director Ehrlich.

Ehrlich also thanked Pacific Bell for underwriting the evening with a generous donation and Ed Hardy for inviting the gathering into his beautiful antique gallery for the event.

Nancy Magidson is the interim Major Gifts officer of the ACLU-NC.

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Court Orders Release of Unlawfully Imprisoned Asylum Seeker

Ruling that the Immigration and Naturalization Service had been unlawfully incarcerating Salvadoran immigrant Miguel Rivera for over a year, on July 13, U.S. District Court Judge Thelton Henderson ordered the San Francisco Office of the INS to grant Rivera a hearing to determine whether the asylum applicant could be released while his immigration case was pending. Less than two weeks later, Rivera was out of jail.

"Judge Henderson's decision is the first ruling in the Northern District of California to find that the INS is misinterpreting immigration detention statutes," said former ACLU National Immigrants' Rights Project attorney Chris Palamountain.

The ACLU filed a lawsuit for Rivera on June 22, charging that INS officials and Attorney General Janet Reno violated Rivera's Fifth Amendment due process rights and the Immigration and Nationality Act (INA). Specifically, the ACLU argued that the INS misread the INA as mandating Rivera's detention without giving him any opportunity to demonstrate that his imprisonment served no purpose because he is not a danger to the community or a flight risk.

"The Immigration and Nationality Act can not allow the government to strip people of their basic right to a hearing before being incarcerated, " said ACLU-NC managing attorney Alan Schlosser.

The judge who heard Rivera's asylum case carefully considered whether Rivera's six month jail sentence in 1994 might disqualify him from asylum and decided it did not, because of the highly favorable reports of his probation officer and his regular participation in Alcoholics Anonymous and an anti-domestic violence program. But only a few days after Rivera was granted asylum, President Clinton signed into law the Illegal Immigration Reform and Immigration Responsibility Act. As a result of the Act, the INS argued that Rivera is an "aggravated felon" and ineligible for asylum.

Because a state court later vacated Rivera's sentence, his conviction can no longer be considered an "aggravated felony. " However, on April 3, 1998 the INS ordered him to report for deportation- three full years after his release from his jail sentence. Rivera complied and was incarcerated without a hearing at the Tehama County jail on May 4, 1998, where he was held until the ACLU obtained the court ruling that his detention violated the Immigration Act

and the Constitution.

"This case proves, once again, that the federal courts are crucial to stopping the illegal practices of a federal agency with a sad history of ignoring the law and violating constitutional rights," said Lucas Guttentag, Director of the ACLU National Immigrants' Rights Project.

Rivera is represented by Chris Palamountain, Judy Rabinovitz and Lucas Guttentag of the ACLU National Immigrants' Rights Project, ACLU- NC managing attorney Alan Schlosser, and attorney Robert Lewis.

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Homelessness Unplugged

William Walker, Gabriel Martinez, Chris Uyeda, Zac Moon, Jamie Christiansen, and Cindy Downing take a break from food preparation at Glide Memorial Church in San Francisco.

For nine days in August, twenty high school students ranging in age from 15 to 18 went on a journey to explore the issue of youth homelessness. Sponsored by the ACLU-NC Howard A. Friedman First Amendment Education Project, the students traveled from San Francisco to Los Angeles, visiting youth drop-in centers, group homes, needle exchange programs, clinics, merchant associations, youth employment centers and the streets.

The students came from high schools throughout northern California - from Martinez and Oakland to Santa Rosa and Vallejo. Throughout the year, they will speak about their experiences to other high school students and publish a report "Through Our Eyes: Homelessness Unplugged."

Here, Shayna Gelender, a 17-year old senior from Castro Valley High School and

the editor-in-chief of her school newspaper, shares some her thoughts on the journey.

Long time heroin addict, sixth grade education, HIV positive, dirty, cold, hungry, weary, no where to go, no where to sleep, age 16. Who is he?

He is part of the rapidly growing generation of homeless youth, street kids. On our Homelessness Unplugged `99 trip we learned where he may have come from, why he stays on the streets, what services are available to him, and what can be done to prevent others like him from becoming homeless.

The Coalition on Homeless-ness, a political advocacy organization in San Francisco, taught us about the trend of systematic criminalization of homeless people. Cities pass laws making it illegal to hold signs on median strips or to sit on the sidewalks. These laws pass because there is a climate of vengeance and hatred against those without homes.

Police are often instructed to "clean up the streets," which translates into unlawful action taken against homeless people to remove them from public view. Police issue tickets to homeless folks for allegedly breaking laws regarding encampment or sleeping in the park. Yet it is not illegal to sleep in the park during the day. Simple tickets grow into warrants because homeless people often have trouble keeping court dates and can't pay fines.

In Hollywood, we learned that merchants hire private security called the Green Shirts, solely to harass homeless people. In reality, these guards have no more legal rights than any other citizen. But most people, homeless or otherwise, especially youth, do not know their rights. We seek to educate our peers on these issues.

Kathleen Flanagan, Saba Moeel, and Sanam Jorjani at Dome Village, an innovative housing community for homeless people in Los Angeles.

There's a stigma attached to homeless youth: the prevailing wisdom is that they're all irresponsible, runaway delinquents, out to have a party and get high, and that we should either pity or walk all over them. These are the myths.

What is true is that most all of them are running. Usually they are either running from poisonous homes or from a system that's repeatedly failed them. What they are running from in the home may be so horrific -- sexual, emotional, physical and mental abuse, or neglect -- that it's safer for them on the dangerous streets.

Many youth from across America seek refuge in San Francisco and Los Angeles. Not because of the so-called "magnet theory" that politicians would have us believe, that it's so "easy" to be homeless in these cities. Though the services provided here are often better than most other cities around the country, youth come to L.A. or San Francisco for reasons as varied as the individuals. Many youth flee to the Castro and the Haight seeking escape from families and communities who have made them outcasts for being gay, lesbian, bisexual, transgender, or questioning. A disproportionate number of street kids are GLBTQ.

Many homeless youth would like to go home but can't find a pathway through their pride and shame to make it back. We visited many programs in the Bay Area and Los Angeles that address the needs of homeless youth .

The Haight-Ashbury Youth Outreach Team provides a drop-in site, clinical referrals, counseling, street outreach, and other services. They offer assistance to youth without judgment or discrimination. Here, youth can be themselves and receive the care they need. My Friend's Place in LA and the Berkeley Chaplaincy are two other drop-in sites that provide outreach, educational opportunities, hygiene supplies, referrals to shelters, food, trusted adults, and a number of other services. Drop-in programs give homeless youth a place to go during the day where they can receive necessary services.

ACLU students work with activists from UNITE to survey homeless and low-income youth in Oakland.

Youth Industries in San Francisco takes another approach to assisting homeless youth. Here, youth are trained with marketable skills for self-sufficiency and are hired to work in one of the program's businesses, such as Einstein's Cafe, Pedal Revolution, or thrift stores.

Substance abuse, HIV, and hepatitis are major problems in the homeless community. We learned that drug addiction knows no class borders. Needle exchange programs seek to provide ways in which users can be safer. Needle exchanges provide clean needles, safety supplies for users, condoms, and oftentimes therapy, HIV testing, food, clothing and other services. In San Francisco we visited Horizons Unlimited, Clean Needles Now, and the San Francisco AIDS Foundation exchange site for women.

For the most part, needle exchanges are illegal but ignored, yet clients are often harassed by police upon exiting a site. One of the sites we visited is legal because it applies for "Public Emergency" status every two weeks.

Our journey took us to many facilities that provide assistance to homeless people: Harrison House, BOSS Youth Shelter, Huckleberry House, Marion House, AMASI, AQUA, and Larkin St. Youth Center in the Bay Area and Angels' Flight, Covenant House and LA Youth Network in Los Angeles. Although we were often highly critical of some of the programs' policies and limitations, our judgments are irrele- vant. What is relevant is that we learn to analyze the impact of approaches on solving the problems.

The homeless youth we met told us their sentiments: Youth often choose the streets over a shelter because they feel unsafe in some shelters. There are very, very few shelters available for minors, and most of them will call parents -- an obvious deterrent for youth who are running from their parents. There simply are not nearly enough shelter beds in the city for everyone. Youth often engage in survival sex work because the one thing they have control over are their bodies. Often, the money made by prostituting goes directly into feeding a drug addiction, which spirals them into further desperation, thus repeating the vicious cycle.

Well-meaning, effective, programs can and do help some individuals. With the numerous agencies already in existence helping homeless people, how can we do more? We can start by not permitting ourgovernment to simply throw money at "the homeless situation." Yes, city and county governments do give money to social services. However, this tiny amount of money is misdirected and with it comes strings attached that do not allow programs the freedom they need to operate successfully. Some of the facilities we visited receive most of their funding from private donors. These places are often more free to function as they see fit because individual donors are much less demanding than governments.

Ted Hayes, the founder of Dome Village in Los Angeles, taught us a great deal about being solution-oriented. Hayes voluntarily became homeless fifteen years ago so he could study homelessness firsthand, with the goal of eliminating it altogether. Since then, he created Dome Village and actively promotes his theory of the National Homeless Problem. Hayes's theory teaches that widespread, increasing homelessness cannot be handled locally. A viable, comprehensive plan backed by resources to put it into action is the only way to arrive at a national solution to the homeless problem.

There have always been homeless people, more in times of depression, and fewer in times of prosperity, until recently. Now, when our nation's economy is growing, the homeless population is also growing. There are lots of contributing factors to this phenomenon. Local governments are overwhelmingly ill-equipped and unwilling to handle the situations in their areas. The national budget must in-clude more funds to build Section 8 housing. Homeless people are moved from place to place; there is nowhere for them to go, and no one wants to take responsibility for housing them and providing necessary opportunities for self-sufficiency.

All the inspiring programs we visited are doing the best they can with limited resources. But agencies that serve homeless people are only "band aid" solutions. Food Not Bombs and the Meals Program at Glide Memorial Church specifically address the very real need of people to eat everyday. Feeding or housing an individual for a night is important; yes, people need to eat and sleep everyday. These measures however, do nothing to eradicate the deeply rooted societal causes of why a person is hungry and homeless to begin with. Why do we more readily fund programs that react to problems instead of those that prevent problems from occurring.

Our first priority as a student group is to educate our peers about what we've learned. At the same time, we need to keep learning, and start doing.

When we returned home to the comfort of our pampered lives and loving families, we were a bundle of contradictions; drained, empowered, baffled, and energized all at once. Yet we could not escape one single fact: we have a ton of work to do.

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Governor's Veto of Key Civil Rights Bill Draws Fury from Advocates

In a political move that outraged civil rights advocates throughout the state, Governor Gray Davis vetoed a key bill providing for equal opportunity for women and people of color in state employment and education.

The measure, SB 44, authored by Senator Richard Polanco (D-Los Angeles) supported outreach and recruitment programs for women and people of color and ensured equal access to information about opportunities in education and employment.

Moments after news of the veto came on July 28, the Coalition for Civil Rights fired off a letter to the Governor charging that his veto "sends the unequivocal message that your administration will make no room for the women and minorities that now constitute the majority of California's population."

"The Governor's veto places state and local agencies between the proverbial rock and a hard place," said Michelle Alexander, Director of the ACLU-NC Racial Justice Project. "Governmental entities have a constitutional duty not to discriminate. They have an obligation to distribute the more than $4 billion in annual public contracts, 200,000 state jobs, and 2 million in public higher education slots equitably. Where they have identified discrimination in the letting of contracts or hiring and promotion practices, governmental agencies are required to act affirmatively to remedy the situation. By precluding them from instituting such modest efforts as outreach and recruitment, the Governor is denying them the ability to act.

"Outreach on the basis of socioeconomic status or geographic area simply will not work. Race- and gender-based problems need race-and gender-conscious solutions," Alexander charged.

"The Governor's veto is contrary to the intent of the voters in passing Proposition 209. It is contrary to the authors and proponents of 209 who have stated repeatedly that the initiative was not meant to ban outreach and recruitment programs. And it is contrary to several court decisions that have held that "preferential treatment" does not encompass measures designed to level the playing field and equalize opportunities," said Beth Parker, Program Director of Equal Rights Advocates. "Indeed, Governor Davis's position that Proposition 209 prohibits any race based programs to achieve diversity -- is far more extreme than the position taken last

year by former Attorney General Dan Lungren when he supported the measure."

The Coalition, a group representing more than 50 organizations, noted that the "Governor's decision contradicts the will of the people in passing the initiative." Polling data taken before and after 209's passage showed that most voters supported outreach and recruitment. A pre-election survey conducted by Hewlett-Packard and Kaiser Permanente found that 70 percent supported outreach programs to expand minority enrollment in colleges and 68 percent supported targeted outreach efforts to recruit women and minorities for employment. Exit polls taken on election day similarly confirm that a substantial number of even those who voted for the initiative did not intend to eliminate equal opportunity for women and people of color.

Not surprisingly, Governor Davis was lauded in the media by U.C. Regent Ward Connerly, the architect of Proposition 209 who is now involved in a campaign to bring the same divisive measure to other states.

Civil rights activist and engineer Fred Jordan, director of a coalition of minority business owners, thought that Connerly's praise should be a source of worry for the Governor. "To take some action that Ward Connerly, perhaps the most despicable black man in America would applaud him for, is a major problem," said Jordan.

The Governor was lambasted in an editorial in the New York Times, which noted "The anti-affirmative action camp in California is trying to twist the meaning of Proposition 209 to ban outreach and recruitment efforts that merely encourage minorities and women to compete for jobs, contracts, and college slots. This pernicious attack, if successful, would take away a crucial remaining tool to remedy the lingering effects of racial and gender discrimination.

"Mr. Davis apparently believes that diversity in the workplace and on college campuses can be achieved solely through outreach programs based on nonracial characteristics like economic status or geographic residence. But the legacy of racial discrimination is not fully accounted for by measuring qualities like economic status.

"The attack on outreach programs looks like an attempt to deny minorities and women the very information they need to compete fairly," the Times editorial concluded.

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Governor Davis and the Legislative Endgame

BY VALERIE SMALL NAVARRO
LEGISLATIVE ADVOCATE

Governor Gray Davis has until October 10 to sign or veto the bills that were sent to him during this first year of our two-year legislative session. It is crucial that ACLU members write or FAX a letter to Governor Davis, State Capitol, Sacramento, CA 95814 (FAX 916/445-4633) on bills that will protect our civil liberties.

CIVIL RIGHTS

SB 78 (Murray) - The Traffic Stops Data Collection measure, a.k.a. the "Driving While Black or Brown" bill. This modest measure merely requires officers to keep statistical information regarding race, what the legal basis was for the stop, whether a search was conducted, and what was seized for traffic stops.

Although a similar bill was recently signed by the Republican Governor of Connecticut, our Governor has not indicated that he will sign this bill.

AB 1670 (Kuehl)- The "California Civil Rights Amendments of 1999" is an omnibus legislative proposal intended to strengthen the civil rights protections afforded by the Fair Employment and Housing Act (FEHA), and other their civil rights statutes. The religious right added this measure to its "hit list".

Among its most important provisions, AB 1670 would extend protections against harassment at the workplace to independent contractors; would require employers to provide reasonable accommodation to pregnant employees; would increase the amount of damages that can be awarded through the administrative process form $50,000 to $150,000; would prohibit genetic testing by employers; and would clarify that the current prohibitions against discrimination by agencies or entities receiving stated funds is enforceable through a civil action for equitable relief. The Governor has not indicated that he will sign this measure.

AB 1001 (Villaraigosa) - moves the provision prohibiting employment discrimination on the basis of sexual orientation from the Labor Code to the Civil Code (FEHA). The protections

currently afforded by the Labor Code are less extensive than those afforded by the Fair Employment and Housing Act. For example, there is a 30-day time limit for filing instead of the one year under FEHA and prevailing parties may not recover attorneys' fees. It is unclear whether the Governor will sign this bill.

PRIVACY RIGHTS

AB 103 (Migden) - implements for the first time a system of HIV reporting in California based on the use of a unique identifier (instead of using an individual's name) to track the trends of the epidemic. People who fear that their names will be added to a government HIV list will be reluctant to be tested and may be reluctant to participate in partner notification because they fear their name may be revealed. The Governor has not indicated whether he will sign this measure.

FIRST AMENDMENT

AB 1440 (Migden) - overturns a regulation that imposed a blanket ban on media interviews with specified prisoners. However there is a provision to allow the Department of Corrections to impose reasonable time, place, and manner restrictions; the bill also allows the Department to prohibit an interview that would pose an immediate and direct threat to the security of the institution or the physical safety of a member of the public.

As the ACLU News goes to press, the Governor has expressed grave reservations about the measure. However, this is a crucial freedom of press bill that would allow public scrutiny of our correctional system, one of the largest expenditures of taxpayer funds.

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"Censored!" Sculpture Exhibit Reaps Lively Discussion, Benefits for ACLU-NC

BY STAN YOGI

ACLU-NC Executive Director Dorothy Ehrlich (r. to l.) leads a panel on arts censorship with ACLU advisory counsel Ephraim Margolin, ACLU-NC staff attorney Ann Brick and Philip Linhares, Chief Curator of the Oakland Museum.

Amidst thought-provoking sculptures, 80 ACLU supporters gathered at A New Leaf Gallery in Berkeley on the afternoon of August 14 for an opening reception and benefit in conjunction with the exhibit "Censored! Sculptors Responding to the Wave of Puritanism in the 90s."

ACLU-NC Executive Director Dorothy Ehrlich, moderated a program which began with ACLU advisory counsel Ephraim Margolin describing with great vigor a 1964 censorship case he tried with former ACLU-NC legal director Marshall Krause. The two defended sculptor Ron Boise

against obscenity charges stemming from an exhibit of Boise's work at the Vorpal Gallery, which included 12 pieces based on the Kama Sutra. This was the first jury trial for Margolin, now a nationally renown defense attorney, and he successfully convinced the jurors that the works in question were not obscene. In appreciation for their efforts to defend his First Amendment rights, Boise gave Krause and Margolin each one of the sculptures in the Kama Sutra series. Margolin brought his piece to the event to share with the audience.

ACLU-NC staff attorney Ann Brick, an expert in censorship issues, reminded the crowd that the First Amendment goes hand in hand with artistic expression. Because art communicates ideas, the creation of art is essential to keeping the marketplace of ideas free and diverse. "Artists must be free to create or display their art, regardless of whether some members of our society consider their art blasphemous, disrespectful or overtly sexual," Brick said.

She explained, however, that the courts have placed limits on artistic expression. "Obscene" art, for example, can be prohibited. To be considered "obscene," a work must lack serious artistic value.

Philip Linhares, Chief Curator of Art at the Oakland Museum of California and the curator of the "Censored!" exhibit, described the role of the curator as that of a gatekeeper who makes judgments based on artistic merit and knowledge about audiences' tastes and values. He talked about recent objections from African American patrons of the Oakland Museum who found African American painter Robert Cole Scott's depiction of a particular black character offensive. Linhares explained that the Museum responded to these objections, not by taking down the work in question but by creating new interpretive materials that discussed the various perspectives on the painting.

He added that problems of censorship are currently more prevalent among performing artists, not visual artists. He noted, however, that the fundraising needs of art museums can result in wealthy donors exerting tremendous influence on the kind of art that is -- and is not --- shown in museums.

Brick echoed his remarks by noting the U.S. Supreme Court's recent decision in NEA v. Finley, a case focused on government funding of the arts. After controversies in the late 1980s regarding National Endowment for the Arts funding, Jesse Helms added an amendment to legislation authorizing federal funding of the arts instructing the arts endowment to take into consideration "general standards of decency" and the "beliefs of the American public" when making funding decisions.

Although lower courts had ruled this amendment unconstitutional, the Supreme Court last year decided not to strike down the amendment, instead saying that it is purely advisory. Because the amendment is still in place, it can have a "chilling effect" on artists and arts organizations who need NEA support and might self-censor their work in fear of jeopardizing their funding.

"The good news from the decision is that the Court ruled Congress cannot deny funding to a project because it disagrees with the content," Brick noted.

Executive Director Ehrlich gave special thanks to A New Leaf Gallery and its owners Brigitte Mickmacker and John Denning, and Gallery director Benjamin Rodefer for hosting the reception and for donating a portion of the sculpture sales during the week of the event to benefit the ACLU Foundation of Northern California.

Stan Yogi is the ACLU-NC Director of Planned Giving and Foundation Support.

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Edgar Morse's Enduring Gift to Civil Liberties

BY STAN YOGI

Edgar Morse

Long-time ACLU member, Edgar Morse, who passed away on June 13 of a sudden heart attack at the age of 72, left a powerful bequest to the ACLU Foundation of Northern California. Morse named the ACLU Foundation as the major beneficiary of his revocable living trust, which should generate approximately $1 million for the ACLU. This gift represents one of the largest bequests that the ACLU Foundation of Northern California has ever received.

"Our board of directors was thrilled to learn of Mr. Morse's generosity and commitment to the ACLU," said ACLU-NC Board Chair Dick Grosboll. "He is an inspiration to us all. His wonderful gift will help ensure that the ACLU will protect civil liberties for future generations."

Morse enjoyed a varied life that included three distinct professions: electrical engineer, professor of history, and antique dealer. Born in Chicago, he served in the Navy during World

War II and earned a degree in Physics from the Illinois Institute of Technology. Upon graduation, he worked as an electronic engineer in Chicago and Michigan before moving to Mountain View in 1957 to accept a position as a Supervising Engineer for Sylvania Electrical Products.

Although Morse was always interested in history (doing genealogical research which traced familial relationships to Samuel Morse, inventor of the telegraph), in 1962 he dramatically shifted the focus of his professional life and entered a doctoral program in history at UC Berkeley.

While at Berkeley during the days of the tumultuous Free Speech Movement, Morse witnessed events in the fight for freedom of expression that resulted in his lifelong devotion to First Amendment Rights. Although he was not himself an "on the streets" activist, he developed an enduring commitment to freedom of speech and the work of the ACLU.

After receiving his Ph.D. in the History of Science, he taught for 20 years in the innovative Hutchins School at Sonoma State University. As one of eight faculty members who organized and taught in this special program, his charge was to develop new ways to teach the liberal arts and sciences, making use of small discussion seminars, tutorials, and occasional lecture courses. He taught courses ranging from "Human Experience and the Arts" to "Science and Society."

In 1976, he co-founded, with his partner Michael Weller, Argentum Antiques, a San Francisco business that is the principal dealer in fine antique silver in the Western United States. Because of his expertise and interest in silver, it was no surprise that the Oakland Museum of California selected Morse to be the Consulting Curator and Editor of the 1985 exhibit "Silver in the Golden State."

Morse was a long-time member of the Sierra Club and served on the advisory board of the American Art Study Center at the De Young Museum. During the last several years of his life, he was a board member and enthusiastic supporter of the American Bach Soloists.

"The ACLU Foundation of Northern California is honored and moved to be the beneficiary of Edgar Morse's extraordinary generosity. We will use his remarkable bequest to defend the civil liberties that he cherished. He has left an extraordinary legacy, and we are deeply grateful," said ACLU-NC Chair Grosboll.

If you are interested in leaving a legacy to the ACLU, please contact Stan Yogi, Director of Planned Giving, at 415/621-2493, ext. 330.

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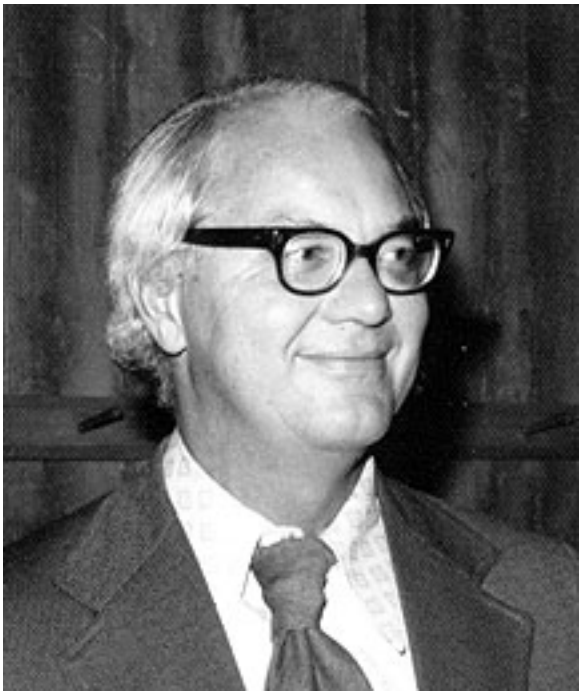
HOWARD JEWEL
Chair of ACLU-NC Board During Turbulent Times



Howard Jewel in 1974.

Former ACLU-NC Board Chair Howard Jewel, renowned civil liberties advocate, died on July 28. Jewel, who served as director of the constitutional rights unit of the state Department of Justice, was an attorney with the Oakland law firm of Neyhart and Grodin when he was elected ACLU-NC Chair in 1969.

"No one loved the Bill of Rights or the ACLU more than Howard," said Thomas Layton, President of the Gerbode Foundation and former ACLU-NC Associate Dir-ector. "He combined a passion for civil liberties with great leadership abilities and an extraordinarily wry sense of humor. He will be greatly missed."

Jewel presided over the affiliate during the turbulent political battles of the times ranging from abortion rights, to anti-war demonstrations to student dress codes. Under his leadership, the

ACLU-NC defended the rights of students, teachers and even military personnel to demonstrate. Perhaps one of the most pivotal decisions of the ACLU-NC Board, was the exceptional vote in 1970 to condemn the illegality of the U.S. government's involvement in the Vietnam War.

The burgeoning student movement - and subsequent backlash - drew the ACLU into litigation challenging suspension for long hair or political buttons and defending freedom of the press of underground newspapers. The ACLU was a leader in securing a woman's right to choose, both nationally and -- four years before Roe v. Wade -- in California.

"Howard guided our affiliate through its process of rejoining with the National ACLU, after our long separation as the result of National's refusal to support our challenge to the internment of more than one hundred thousand Japanese Am- ericans during World War II," Layton noted.

After leaving the Board Chair in 1973, Jewel served as the affiliate representative to the National Board of Directors. "Both locally and nationally, Howard played a played a key role in the decision to advocate for impeachment of Richard Nixon," Layton said.

Jewel, raised in Napa, was a graduate of U.C. Berkeley and Boalt Hall School of Law. He served as a public defender in Alameda County before being appointed to the Department of Justice post by then-Attorney General-elect Stanley Mosk, later a Supreme Court justice. After his retirement, he and his wife Nancy Meyer Strawbridge, who died in 1997, moved to Guatemala.

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ACLU-NC Supports Voices of Free Speech Radio

On July 28, when the doors of local community-sponsored radio station KPFA were padlocked and broadcasters were on the street instead of in the studios, the ACLU-NC wrote to Pacifica Foundation President Mary Francis Berry noting that Pacifica's actions had "weakened the exchange of ideas in northern California, not strengthened it."

"Over its remarkable fifty-year history, KPFA has been a voice for the voiceless, airing ideas from people who otherwise may never have been heard. Conscientious objectors, prisoners, demonstrators, poets angry and obscure, teenagers, philosophers and America's dissenters to wars from Vietnam to El Salvador to Iraq have all shared KPFA's airwaves," wrote ACLU-NC Board Chair Dick Grosboll and Executive Director Dorothy Ehrlich.

"As a listener-sponsored radio station that eschews commercial sponsorship, KPFA has brought these voices to communities that are alienated from mainstream news reporting," Grosboll and Ehrlich noted.

"As an organization that cherishes free speech, the ACLU must be concerned when a listener-sponsored radio station is shut down, locked up and silenced. Is the free exchange of ideas not threatened when:

- Armed guards drag a veteran broadcaster out of the studio and out of the building?
- A news director is accused of trespassing in the office she has worked out of for two decades?
- A studio built by the contributions of thousands of listeners is boarded up like an abandoned house, its doors chained shut?
- All staff are barred from the building, denied access to the airwaves, and prevented from protecting their own research, writing and files containing potentially sensitive information from confidential sources?
- There is no sound on 94.1 FM except canned speeches from years ago, accompanied by protest songs that grew out of movements supported by many of those same

listeners?"

"Because of KPFA, issues vital to civil liberties have been aired: listeners have learned about our prison system, about racism, about immigration, about workers' rights, about lesbian and gay rights and about attacks on reproductive freedom. This type of free, political speech is what makes democracy possible."

Grosboll and Ehrlich wrote Berry that the ACLU-NC supports a "resolution that allows KPFA's vibrant and eclectic voices once again to enhance the political and intellectual life of Northern California."

The station was reopened in August; several unresolved staffing, programming and management issues are still pending. The controversy is currently under scutiny by the Legislative Audit Committee of the California Legislature.

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CALL THE DWB HOTLINE

Share your experience -- and help put an end to race-based stops.
Call the ACLU toll free in California.

> More than 2,000 people have called the ACLU DWB Hotline since it was initiated last October. The respondents have called from cities, suburbs and rural areas throughout the entire state. Each story, each voice will help stop the practice of race-based police stops.

[The hotline has been discontinued. For legal matters contact the ACLU of Northern California's legal counseling line at **415-621-2488**.]

Help Pass SB 78

The "Traffic Stops Statistics Act" (SB 78), sponsored by Senator Kevin Murray (D-Culver City), mandates that data on race and traffic stops be collected by police and reported to the Department of Justice. The bill passed the full Senate and is heading for a vote in the Assembly. Then, it must be signed by Governor Davis. Last year, Governor Wilson, saying vetoed AB 1264, Murray's first attempt to require data collection on racial profiling.

As the ACLU News goes to press, Governor Davis has not yet stated whether or not he will sign this measure.

> Call, FAX or write Governor Gray Davis, urging him to vote YES on SB 78
>
> Write: Governor Gray Davis, 1st Floor State Capitol, Sacramento, CA 95814 Phone: 916/ 445-2841 Fax: 916/ 445-4663

- President Clinton, Attorney General Janet Reno, and the American Bar Association are calling upon states to enact comprehensive legislation. The President led the effort by issuing an executive order requiring federal law enforcement agencies to collect the type of data required by SB 78. The President also directly challenged state and local governments to follow his example.

- There has been national bipartisan support of efforts to halt the practice of race-based police stops. Democratic Governor Jim Hunt of North Carolina and Republican Governor John Rowland of Connecticut recently signed bills similar to SB 78. At least a dozen other states have other pending measures. Republican Governor Christine Todd Whitman of New Jersey headed an effort to address profiling practices after the state attorney general's office collected data confirming long standing complaints of profiling practices.

- All the law enforcement agencies in Alameda County and Stanislaus County as well as the police departments of San Diego, San Jose, and Sunnyvale have implemented voluntary traffic stop data collection efforts.

Now is the time to pass a state law in California!

Please send copies of your correspondence to Field Representative Lisa Maldonado, ACLU-NC, 1663 Mission Street, #460, San Francisco 94103.

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