

# ACLUnews

SPRING 2004

BECAUSE FREEDOM CAN'T PROTECT ITSELF

VOLUME LXIV ISSUE 2

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## ACLU CHALLENGES NO-FLY LIST: CITIZENS TARGETED AS TERRORISTS

by Stella Richardson, Media Relations Director

A member of the military, a retired Presbyterian minister, and a social activist were among seven U.S. citizens who joined the ACLU's first nationwide, class-action challenge to the government's secret "No-Fly" list. The suit was filed in federal court April 6 in Seattle, Washington.

The No-Fly list is compiled by the federal Transportation Security Administration (TSA) and distributed to all airlines with instructions to stop or conduct extra searches of people suspected of being threats to aviation.

At the news conference announcing the suit, Michelle Green, Master Sergeant in the U.S. Air Force, told a packed room of reporters, "As someone who has served her country in the United States Air Force for nearly 16 years and who obeys the laws of the land, I was shocked to discover

that I am on this list." It was a feeling shared by all of the plaintiffs.

The effort to challenge the No-Fly list started in the fall of 2002, when the ACLU of Northern California (ACLU-NC) sent a Freedom of Information Act (FOIA) request to the TSA and the Federal Bureau of Investigation (FBI), asking basic questions about the list. The request was on behalf of two anti-war activists who were told they were on a "No-Fly" list when they attempted to fly from San Francisco to Boston to visit family.

CONTINUED ON PAGE 7

U.S. Air Force Master Sergeant Michelle Green, who discovered she was on a No-Fly list when she was flying on duty for the U.S. government, speaking at an ACLU news conference.

## CALIFORNIA LEADS THE WAY FOR SAME-SEX MARRIAGE

By Shannon Minter, Legal Director of the National Center for Lesbian Rights, and Tamara Lange, ACLU-NC Staff Attorney

On February 12, 2004, San Francisco Mayor Gavin Newsom altered the course of legal history by directing the San Francisco County Clerk to stop denying marriage licenses to same-sex couples. Over the next four weeks, more than 4,000 same-sex couples—many surrounded by their children and extended family members—pledged

their lives to one another as legally wedded spouses.

Del Martin and Phyllis Lyon, the first same-sex couple married in the United States, are a perfect example of the commitment, devotion, and legal vulnerability of thousands of couples previously denied the right to marry. They first met in 1950, when they both worked for a trade publication

CONTINUED ON PAGE 8

### NATIONAL ACLU MEMBERSHIP CONFERENCE

JULY 6-8, 2004, IN SAN FRANCISCO

## FEATURING SPEAKERS INCLUDING:

- SEYMOUR HERSH, investigative journalist for *The New Yorker*, who broke the Abu Ghraib detainee abuse story
- GAVIN NEWSOM, Mayor of San Francisco
- RICHARD CLARKE, former National Security Advisor and author of *Against All Enemies*
- HOWARD DEAN, former governor of Vermont, debating Governor BILL OWENS of Colorado
- COLEEN ROWLEY, FBI whistleblower
- EVE ENSLER, author of *The Vagina Monologues*

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# ACLU

AMERICAN CIVIL LIBERTIES UNION  
of NORTHERN CALIFORNIA

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NATIONAL ACLU  
MEMBERSHIP CONFERENCE  
JULY 6-8, 2004 IN SAN FRANCISCO  
DON'T MISS OUT—REGISTER NOW!

We need your help to make the case loud and clear to both current and future administrations that Americans will not sit by and have their rights trampled. Don't miss this opportunity to make a difference!

CONFERENCE FEATURES

The conference kicks off with ACLU president Nadine Strossen, local leaders from the Bay Area and surprise guests. Hear about the latest developments in the U.S. Supreme Court from ACLU legal director Steve Shapiro. Connect with old ACLU friends and make new ones over drinks and hors d'oeuvres. Listen to a keynote address by ACLU executive director Anthony Romero. Attend the Dinner and Gala Tribute to the First Amendment: A Celebration of Freedom of Expression, featuring world-renowned artists, writers, and performers.

SPEAKERS INCLUDE:

- **Seymour Hersh**, investigative journalist for *The New Yorker*, who broke the Abu Ghraib detainee abuse story
- **Richard Clarke**, former National Security Advisor and author of *Against All Enemies*
- **Howard Dean**, former governor of Vermont
- **Coleen Rowley**, FBI whistleblower
- **Eve Ensler**, author of *The Vagina Monologues*
- **Gavin Newsom**, Mayor of San Francisco

WORKSHOPS INCLUDE:

- Same-Sex Marriage and Gay Rights.
- Promises and Threats of Technology.
- Government Intrusion, Personal Autonomy and Privacy.

PLENARY SESSIONS INCLUDE:

- Say "I Do" to Same-Sex Marriage. Hear from ACLU clients and politicians who are challenging the status quo.

DEVOTED TO EACH OTHER — AND THE ACLU

by Stan Yogi, *Planned Giving Director*



Mickey Welsh (left) and Kathy Stoner.

emphasizing employment law, estate planning, and family law, they understand the importance of safeguarding their relationship.

Welsh and Stoner met in 1974 while students at Monterey College of Law. In 1978, they wanted to help defeat

Longtime ACLU Monterey Chapter activists Mickey Welsh and Kathy Stoner never dreamed they would be able to legally marry. But when San Francisco began offering marriage licenses to same-sex couples, they couldn't pass up the opportunity to solemnize their 30-year partnership. Attorneys in a private practice

the Briggs Initiative, which would have barred gays and lesbians from teaching in California schools. They found that the ACLU-NC's Monterey chapter opposed the initiative, and they joined the fray. The experience taught the couple an important political lesson: "Go to people when they have an issue and help them. Don't sit back and wait for them to come to you." They have both been key ACLU leaders ever since.

Stoner has remained active with the ACLU because "it's a broad organization that's proactive." Welsh enjoys serving as an ACLU volunteer attorney, knowing the organization's clout stands behind her.

In addition to their tireless activism, the couple contributes annually. They've also included the ACLU in their estate plans to continue giving beyond their lifetimes.

"Whether or not a couple is married or in a partnership," Stoner says, "it's important to think carefully about the legal consequences of your relationship and to plan for contingencies like the death of a partner." ■

ACTION CENTER:

Open throughout the conference, the activist hub is equipped with:

- **Activist Experts**—Meet face-to-face with staff members from the ACLU's Legislative Office in Washington, DC.
- **Issue Booths**—Pick up information on the issues most important to you and get your questions answered.
- **Training Sessions**—Get step-by-step instructions to take your first action or hone your activism skills.
- **Communications Hub**—Compose your message and send it to local, state and national officials.
- **Networking Bulletin Board**—Connect with other ACLU members who share your passion.
- **ACLU Store**—Find ACLU publications and souvenirs.

Register today at [www.aclunc.org/](http://www.aclunc.org/)

ACLU-NC PRIVACY POLICY

To our members...

Direct mail appeals to our members and the general public provide opportunities to describe complicated legal and political issues in ways not possible in other media. They enable us to explain, in detail, the benefits and provisions of the Constitution and the Bill of Rights, the complex ways our rights can be protected in the modern world, and the costs of preserving those rights. We use the mail to inform people of the importance of our legal work and to solicit funds that enable us to continue our litigation, public education, and legislative lobbying.

Sometimes, as part of our member recruitment program, we exchange or rent our list of members' names to like-minded organizations and publications.

The ACLU never makes its list available to partisan political groups or those whose programs are incompatible with the ACLU's mission. Whether by exchange or rental, the lists are governed by strict privacy procedures, as recommended by the U.S. Privacy Study Commission. Lists are never actually given into the physical possession of the organization that has rented them or exchanged for them. No organization ever possesses our list and no organization will ever see the names of the members on our list unless an individual responds to their mailing.

While direct mail appeals—under strict privacy guidelines—form the basis of our new member acquisition program, and are key to our growth, we understand some members do not wish to receive solicitations from other groups, and we gladly honor requests from our members to be removed from the process.

If you do not wish to receive materials from other organizations, please complete this coupon and send it to:

ACLU-NC Membership Department  
1663 Mission Street, Suite 460, San Francisco, CA 94103

- ☐ I prefer not to receive materials from other organizations.  
Please eliminate my name from membership exchange/rental lists.

Member # \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



ACLU-NC executive director Dorothy Ehrlich was honored for her longtime leadership in the civil rights community at the Asian Law Caucus's 32nd Anniversary Celebration April 30 in San Francisco. Attorney and caucus co-founder Dale Minami presented Ehrlich with a framed photo of Fred Korematsu and Ernie Besig. Besig, a predecessor of Ehrlich, challenged the unconstitutional detention of Korematsu and other Japanese Americans in the early 1940s.

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SUPREME COURT UPHOLDS  
CONTRACEPTION COVERAGE LAW

by Stella Richardson

In a huge victory for working women and for reproductive freedom, the California Supreme Court upheld a state law requiring employers that provide prescription drug benefits to include contraceptive coverage. The Court, by a 6-1 vote, rejected a claim by Catholic Charities that its religious freedom outweighed its employees' right to contraceptive coverage under the law.

"The court's decision ensures that working women, anywhere in California, can make their own birth control decisions, and that employers cannot impose religious views about family planning on employees who may not agree with them," said Margaret Crosby, an attorney at the ACLU of Northern California (ACLU-NC).

The California Women's Contraceptive Equity Act requires employers that offer health insurance with prescription drug benefits to include coverage for prescription contraceptives.

Before the law passed in 2000, about half of California's health plans had excluded women's contraceptive coverage, forcing women to pay up to 68 percent more for health care than men.

The law exempts religious employers, such as churches, mosques, and temples, whose main purpose is to inculcate religious values and who primarily employ and serve people who share their religious beliefs.

In its legal challenge, Catholic Charities conceded that it does not provide a religious service, that 74 percent of its employees are not Catholic, and that it serves the public at large. The March 1 court ruling applies statewide to the charitable agency's 1,600 employees, and to 52,000 employees of Catholic hospitals.

The Court noted that "women during their reproductive years spend as much as 68 percent more than men in out-of-pocket health costs," due in large part to the cost of contraception and unplanned pregnancies. It concluded that the Act "serves the compelling purpose of eliminating gender discrimination."

*Catholic Charities v. Superior Court* was closely watched nationwide because the Act's exemption for religious employers is seen as a model accommodation between efforts to extend health coverage and claims for religious liberty. The ACLU-NC, which drafted the religious employer exemption, submitted a friend-of-the-court brief in the law's defense.

An organization representing Catholic Charities, as well as Catholic hospitals and schools, said it would consider an appeal to the U.S. Supreme Court. The ACLU Foundation of Southern California and ACLU of San Diego and Imperial Counties are co-counsel in the case.

OTHER CHURCH-STATE ISSUES  
IN THE COURTS:

STATE AID FOR RELIGIOUS SCHOOLS

In another victory, the California Court of Appeal ruled that bond financing of buildings and equipment for pervasively religious schools that discriminate in hiring and restrict admissions along religious lines violates the California Constitution.



The California Statewide Community Development Authority had filed a petition asking the court to approve conduit financing for three Southern California religious schools that integrate fundamentalist religious doctrine into their course work and extra-curricular activities.

The ACLU-NC argued that by issuing tax-exempt bonds, the government was providing a form of aid to the religious institutions. Both the trial and appellate courts agreed with the ACLU's analysis. The government agency has asked the California Supreme Court to review the case.

PLEDGE OF ALLEGIANCE ARGUED

The ACLU urged the U.S. Supreme Court to uphold the Ninth Circuit Court of Appeals' 2002 ruling striking the phrase "under God" from the Pledge of Allegiance, because public schools are constitutionally barred from linking patriotism and religion.

Michael Newdow originally brought the case, *Elk Grove Unified School District v. Newdow*, against his daughter's public school district, where young children are asked to recite the Pledge. Newdow argued that the district's Pledge of Allegiance policy directly interfered with his parental right to influence his daughter's religious development and, at the same time, violated the Constitution's prohibition against government entanglement with religion. He argued his case before the

LEGAL BRIEFS

SCHOOL INTEGRATION AND PROP 209

An Alameda Superior Court Judge ruled in April that the Berkeley School District's plan to preserve ethnically and racially integrated schools does not violate Proposition 209, the 1996 initiative that banned the use of racial preferences in government, public education, and employment. The ruling was the result of a suit that was brought by the conservative Pacific Legal Foundation, on behalf of a Berkeley parent, claiming that the school district violated Proposition 209. The NAACP Legal Defense and Educational Fund (LDF), ACLU of Northern California (ACLU-NC), and the Lawyers' Committee for Civil Rights intervened on behalf of the Berkeley NAACP and parents who supported the school district's voluntary school desegregation plan. *Avila v. Berkeley Unified School District*

ANTI-SLAPP SUIT

Under California's anti-SLAPP statute, the ACLU-NC is seeking dismissal of a lawsuit filed against two day laborers, a San Francisco-based immigrant rights group, La Raza Centro Legal (LRCL), and members of its legal staff. The group's Day Labor Program filed a complaint with the State Labor Commission on behalf of the laborers, who were owed more than \$20,000 by their employer. The group launched a public effort — including peaceful picketing, leafleting, and letter writing — to highlight the plight of undocumented workers. The employer then filed a retaliatory lawsuit with a variety of claims, including emotional distress and violation of privacy. The ACLU motion was filed in Alameda Superior Court. In 1992, the California Legislature enacted the anti-SLAPP statute when they found a disturbing increase in lawsuits brought primarily to chill the valid exercise of First Amendment rights. *Maltez v. Mendez*

Supreme Court in March.

The ACLU noted in a friend-of-the-court brief that Congress added the phrase "under God" in 1953, at the height of the anti-communist McCarthy Era. In signing the bill, then-President Eisenhower said that the phrase "under God" was added so that schoolchildren would "daily proclaim...the dedication of our nation and our people to the Almighty."

In its 2002 ruling, the Ninth Circuit Court of Appeals found that "a profession that we are a nation 'under God' is identical, for Establishment Clause purposes, to a profession that we are a nation 'under Jesus,' a nation 'under Vishnu,' a nation 'under Zeus,' or a nation 'under no god,' because none of these professions can be neutral with respect to religion." The appeals court added that the coercive effect of this policy is "particularly pronounced in the school setting given the age and impressionability of schoolchildren."

Joining the ACLU in its friend-of-the-court brief are Americans United for Separation of Church and State and Americans for Religious Liberty. The Court has received almost 50 such briefs in the case, representing the broad range of opinion on this controversial issue. ■

CALIFORNIA WOMEN'S  
CONTRACEPTIVE EQUITY ACT:  
WHAT DOES IT DO?

By requiring employers to include contraception in their prescription drug coverage, this law:

- Ensures equal health benefits for men and women in the workplace;
- Protects a woman's right to privacy by allowing her to make the personal decision of whether to become a parent; and
- Greatly reduces the out-of-pocket health costs for women.

CYBERLIBERTIES

The Ninth Circuit has upheld a federal district court injunction prohibiting California state prisons from enforcing a policy that prohibits prisoners from receiving mailed copies of material that was printed from the Internet. The Court's ruling came in response to a lawsuit in which the ACLU-NC and the Prison Law Office represented a Pelican Bay prisoner who challenged the policy. The Ninth Circuit ruled that the policy bears no rational relationship to any legitimate penal interest. The Ninth Circuit also ruled that the district court correctly entered a statewide injunction against enforcement of the "no Internet mail" policy at any prison that had adopted it. The court noted that since "the policy is invalid at Pelican Bay, we can conceive of no reason why it would not be invalid elsewhere." *Clement v. California Department of Corrections*

# COMPASSIONATE RELEASE COULD SAVE LIVES, MONEY

# YOUTH MARCH FOR WOMEN'S LIVES

by Jeff Gillenkirk, Guest Editor

While serving a life sentence for rape and assault, Steven Martinez was stabbed in the neck by fellow inmates at Centinela State Prison—an injury that left him paralyzed from the neck down. As a result, Martinez requires a high level of medical care that his parents allege prison officials are either unwilling, or unable, to perform.

Under legislation currently proposed in Sacramento and supported by the ACLU and allies, Steven Martinez would be



Steven Martinez with his sons, Stevie, age 10, and Christian, age six, in the visiting room at Corcoran State Prison. Children of medically supervised inmates are only allowed to visit for two hours every three months. Able-bodied inmates can see their children every week.

eligible for “compassionate release” to be cared for outside of a prison setting. Assembly Bill 1946 would require that permanently incapacitated and dying prisoners and their families be notified of their rights to early release, and extend the period of release for terminally ill inmates from six months to a year before their anticipated death.

An earlier version of this legislation was vetoed by then-Governor Gray Davis. The current budget crisis has revived interest in compassionate release, with correctional expenditures swallowing an ever larger slice of the state budget pie. Alice do Valle, campaign coordinator for Justice Now, estimates that California could save more than \$52 million over the next 10 years by passing the new legislation.

“Compassionate release is both humane and cost-effective,” ACLU’s legislative office in Sacramento wrote to members of the State Assembly. “The release of terminally ill and medically incapacitated prisoners who can no longer pose a threat to the public safety can save the state taxpayers hundreds of thousands of dollars and provide these men and women with appropriate end-stage medical and palliative care.”

The cumbersome and secretive nature of the notification process under current law often leaves family members or advocates of dying prisoners in the dark about the inmate’s right to release. Many of those eligible for compassionate release die before the process is complete. An Open Forum article in the *San Francisco Chronicle* last December told of two terminally ill women who died in state prison custody, despite qualifying for compassionate release. “They died hospitalized and bed ridden, shackled to their beds, and guarded 24 hours a day by security officers earning overtime pay,” wrote Rashida Edmondson, a legal advocate for Justice Now.

Steven Martinez applied for compassionate release in 2001. His request was supported by the prison warden, but turned down by the director of prisons, Edward Alamedia, who re-

signed recently after a federal investigation began into the state prison system. Corrections officials estimate that Martinez, 34, may be California’s most expensive inmate. Surgery and rehabilitation for a bed sore wound last year cost more than \$600,000—nearly half of which was for guards to watch him around the clock. A recent study shows that by releasing Martinez and the department’s other long-term care wards, the state could realize savings in the millions of dollars.

“STEVEN’S BODY IS DESTROYED FOR LIFE... THERE IS NOTHING ELSE THE STATE OF CALIFORNIA CAN DO TO PUNISH HIM. BUT THEY WON’T LET HIM GO.”

—STEVEN MARTINEZ’S MOTHER, NORMA MARTINEZ

## TAKE ACTION

Urge the governor to sign AB 1946, the Compassionate Release Bill, when it reaches his desk.

Call the governor’s office at (916) 445-2841 and say:

“I am a California voter, and I urge the governor to sign AB 1946. The bill would allow compassionate release of dying prisoners and potentially save the state a lot of money.”

## GETTING SMART ON CRIME

By Ken Russell, Legislative Assistant

The ACLU of Northern California (ACLU-NC) is working to promote a “smart-on-crime” approach in California that will save the state millions of dollars while preserving public safety. The Sacramento office is working in coalition with the SEIU, Critical Resistance, California Attorneys for Criminal Justice, Families Against Mandatory Minimums and others to promote reforms such as pre-release education and planning, parole reform, and reducing barriers to reentry, including restoring food stamp benefits to those formerly incarcerated for felonies.

Hearings on abuses within prisons by Senators Jackie Speier and Gloria Romero have heightened public awareness of the need for reform. The Little Hoover Commission, an official, non-partisan state watchdog group, has released a report that calls the state’s parole system a “Billion Dollar Failure.” In California, people released from prison are twice as likely to end up back in jail as compared to the rest of the country. In contrast, the state of Maryland has realized savings of \$2 for every \$1 spent on prison education, and lowered their rate of recidivism.

Governor Schwarzenegger’s office has expressed support for reform and the need to trim \$400 million from the state corrections budget. Maryland’s success is one of many good arguments for spending on rehabilitation

## SACRAMENTO REPORT

over increased jail time. Other sensible budgeting measures proposed for the Department of Corrections by the ACLU and its allies include:

■ Early discharge from parole for nonviolent offenders. Estimated savings: \$100 million

People convicted of non-violent, non-serious offenses who have met the conditions of their parole for six, nine, or 12 months would be discharged early.

■ Parole in lieu of short sentences in prison. Estimated savings: \$155 million

This will allow people with non-violent/non-serious offenses with short sentences to be placed directly on parole without incarceration.

■ Place nonviolent people on parole earlier. Estimated savings: \$290 million

The ACLU-NC is promoting several other bills that would both save money and promote justice – without compromising public safety:

CRACK/POWDER COCAINE SENTENCING – AB 2274. ESTIMATED SAVINGS: \$50 MILLION

Crimes involving crack cocaine lead to much longer prison terms than those involving powder cocaine. This disparity

has contributed to the disproportionate number of incarcerated African Americans and Latinos. Civil rights leader Mervyn Dymally has introduced AB 2274 to bring penalties for crack cocaine down to those of powder.

GRAND THEFT – AB 2705

It has been more than 20 years since the state raised the threshold amount that separates petty theft, a misdemeanor, and grand theft, a felony. The threshold was raised in 1923 from \$50 to \$200, then to \$400 in 1983 where it still stands. According to the U.S. Department of Labor, the 1923 threshold, if adjusted for inflation, would be nearly \$2,200 today—the amount proposed by AB 2705. This measure would save an estimated \$5 million if it results in just a 5% reduction in grand theft admissions to state prison.

FOOD STAMPS FOR THOSE FORMERLY INCARCERATED FOR FELONIES – AB 1796

AB 1796 would restore food stamp benefits for people on parole who have served time for a drug felony. With this prohibition in place, those in need of this federal aid must rely on the state for assistance.

Please visit [www.aclunc.org/takeaction.html](http://www.aclunc.org/takeaction.html) for action alerts on this legislation.

By Danni Biondini and Cassandra Mitchell, ACLU Friedman Project Youth Activist Committee Members

April 25, 2004 – an epic day in women’s history. It’s been over 30 years since the Supreme Court legalized abortions, but the anti-choice activists refuse to accept that a woman’s body, mind, and spirit belong to her alone. Since 1995, states have passed nearly 400 measures blocking access to essential reproductive health services. As a result, reproductive health care has become increasingly out of reach for many women, particularly poor women, women of color, young women, and women living in rural areas.

The “March for Women’s Lives” was the pinnacle of the current reproductive debate over whether women should have the right to choose, whether they should be educated about their rights, and whether or not family planning should be available to women of all ages. Close to a million people filled the National Mall in Washington, DC to demand that women’s reproductive freedoms be safeguarded forever.

Seven Youth Activist Committee (YAC) members and two staff members from the Friedman Education Project represented the ACLU of Northern California (ACLU-NC). We wore fuschia shirts that read “My Body is not Public Property” and belated chants such as “A-C-L-U, we defend your right to choose!” Along with this energetic bunch, thousands of other ACLU members marched among the crowd.

We felt honored to march, realizing we

were a significant part of history. We marched because we wanted to guarantee that our constitutional rights and those of future generations would be protected.

“It’s our constitutional right to privacy,” said 18-year-old Jessica Medina, “so the government cannot tell us what to do with our own private lives and bodies.” Many men and women alike are concerned about stopping the backwards movement of abortion laws before women are forced once again to have illegal back alley abortions, from which many women died.

“At this point in our history, it’s one of the most important battles,” said

Maraya Massin-Levey, 17. “Women’s rights have progressed so far [that they should not move backwards]. This march is necessary.”

YAC members returned home feeling truly inspired. We hope to spread awareness about the continuing legislative battle that women face and ultimately, bring about change. ■

For more information about the March for Women’s Lives, see:

Official March website: <http://www.marchforwomen.org/>

ACLU March for Women’s Lives website: <http://www.aclu.org/marchforwomen>



ACLU executive director Anthony Romero (center) helps lead April’s historic march for reproductive freedom in Washington DC.



The ACLU-NC group. Top row: Eveline Chang, Danielle Silk, Lillian Junglieb, Claire Greenwood, Jessica Medina, Danni Biondini, Cassandra Mitchell, Maraya Massin-Levey. Bottom row: Shayna Gelender and Tynan Kelly.

## WHY WE MARCHED

CASSANDRA MITCHELL, SAN FRANCISCO, LICK-WILMERDING HIGH SCHOOL

“I marched to help draw attention to the fact that women’s rights really are in jeopardy because many people I associate with don’t even know about the Partial Birth Abortion Ban, nor do they care. I hope that I helped to open their eyes.”

JESSICA MEDINA, SAN FRANCISCO, MERCY HIGH SCHOOL

“Reproductive freedom is important to me because I am a young woman who is entitled to make her own decisions. I don’t want politicians thinking they can tell me, or millions of American women, what we can or can’t do with our bodies.”

DANNI BIONDINI, SAN FRANCISCO, MERCY HIGH SCHOOL

“As women, we all have an obligation to help ensure our collective rights, health, and well-being. The movement for choice is an essential part of the struggle for equality. We are in crucial times right now, being one vote away from overturning *Roe v. Wade*. I would like to be part of the historical movement that has worked to secure women’s rights.”

CLAIRE GREENWOOD, SAN FRANCISCO, URBAN HIGH SCHOOL

“I feel passionately about women’s health and reproductive rights, and participating in this event would be a

wonderful way to show my support, learn, and engage myself in true political change. Reproductive choice and access are absolutely essential to the state of freedom in this country, and to the well-being of all women. This march would be... the perfect way to honor [women’s] struggles.”

LILLIAN JUNGLEB, PORTOLA VALLEY, MENLO-ATHERTON HIGH SCHOOL

“I march for my little sister, so that she may live in a world where she owns her own body. I march for the women, like those in my family, who aren’t able to march because they have died from illegal abortions.”

MARAYA MASSIN-LEVEY, SAN FRANCISCO, SCHOOL OF THE ARTS

“Our society has regressed so extremely on the subject of women’s rights in general that actions like this march must be respected and valued as a fight to regain what women have already worked so hard for.”

DANIELLE SILK, ROHNERT PARK, RANCHO COTATE HIGH SCHOOL

“Reproductive freedom is important to me because freedom is important to me. I feel the government has no right to intervene with anything that a person chooses to do with one’s body.” ■



Over 750 high school students attended the ACLU of Northern California (ACLU-NC) Youth Rights Conference on March 10 at U.C. Berkeley. Pictured above (l-r) are Friedman Project Youth Activist Committee (YAC) members Jessica Medina, Ikkah Espinoza, Nick Stromberg, and Adam Chang, and Friedmand Project director Eveline Chang.

After watching an engaging performance by the Media Project: Theater for Incarcerated Women, and listening to keynote speeches from conscientious objectors, the students broke into workshops on subjects ranging from “Education not Incarceration,” to “So What Exactly is Environmental Racism?” The annual conference is prepared and run primarily by the high-school student members of the YAC.

For information on the YAC call Eveline Chang at (415) 621-2493 x337.

# LIFTING THE VEIL ON GOVERNMENT SURVEILLANCE

By Elaine Elinson, *ACLU News Contributor*

When Camille Russell, the president of Peace Fresno, read an obituary in the *Fresno Bee*, she made a shocking discovery. One of their members, who had participated in meetings, vigils and demonstrations for several months, was a government spy.

“It put a face on the Patriot Act,” said one Peace Fresno activist.

It is a face that is becoming both increasingly familiar and threatening as the federal government—with local law enforcement allies—steps up a campaign of domestic surveillance. Such widespread intrusion into citizens’ lives has not been seen for more than 30 years, when the government spied on anti-war groups, the Black Panthers, and even Reverend Martin Luther King, Jr. as part of the FBI’s notorious COINTELPRO program.

The *Washington Post*, citing statistics released on April 30 by the U.S. Department of Justice, noted that for the first time in history, the number of secret surveillance warrants issued in anti-terrorism and espionage cases exceeded the total number of wiretaps granted in criminal cases in 2003.

“Unfortunately, history has shown that expansions of domestic surveillance powers are used to violate the freedoms guaranteed by the Constitution and the Bill of Rights,” said ACLU of Northern California (ACLU-NC) executive director Dorothy Ehrlich.

The ACLU-NC has selected government surveillance as a

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LUTHER KING, JR. AS PART  
OF THE FBI’S NOTORIOUS  
COINTELPRO PROGRAM.

government surveillance on groups and individuals, people are naturally intimidated.”

As part of the Safe and Free Campaign, the ACLU’s nationwide campaign to challenge violations to civil liberties since 9/11, the national ACLU published a new report, “Bigger

Monster, Weaker Chains: The Growth of an American Surveillance Society.” It details how high-tech advances—including DNA chips, data-mining, brain wave fingerprinting, and implantable microchips—coupled with loosening regulations on government surveillance, unchecked private video and data surveillance, and powerful new surveillance infrastructures combine to form an unprecedented threat to our privacy rights.

(The full report is available for free at [www.aclu.org/privacy](http://www.aclu.org/privacy).)



## MUSLIMS, POLITICAL ACTIVISTS TARGETED

Kearney noted that the infiltration of Peace Fresno is just one example of the kind of government surveillance that is occurring in northern California, including surveillance of religious minorities. As with many other post-9/11 civil liberties violations, Muslims have borne the brunt of suspicion. Anecdotal evidence indicates that mosques have frequently been

targeted for surveillance. This has a chilling effect on religious freedom and is a form of racial profiling, yet many Muslims have been understandably hesitant about coming forward. The ACLU-NC plans to work closely with the Muslim community to help bring these stories to light.

Political dissenters are also in the government’s sights. The ACLU-NC has a long history of challenging surveillance and infiltration of anti-war activists, from federal spying on the Socialist Workers Party during World War II, to the FBI’s use of its National Crime Information Center to track and monitor anti-Vietnam War activists, to the Reagan Administration’s spying on domestic opponents of U.S. intervention in El Salvador.

The infiltration of Peace Fresno, and the use of local law enforcement agents as part of the national Joint Terrorism Task Force, indicate that Attorney General John Ashcroft’s Justice Department is engaged in active surveillance of groups that oppose current government policy. The ACLU-NC plans to monitor government surveillance at demonstrations, rallies, and meetings and will set up a hotline for local political groups to report suspected incidences of infiltration.

## HOMELAND SECURITY V. STRIKERS

During the recent supermarket strike, agents of the Contra Costa Sheriff’s Department Homeland Security Unit conducted undercover surveillance of labor activists on picket lines in Contra Costa County and San Francisco. ACLU-NC Police Practices Project director Mark Schlosberg is investigating why homeland security agents were spying on people engaged in legitimate trade union activity.

“This affiliate was founded to protect the rights of labor activists who were under siege by the state militia during the 1934 dockworkers’ strike,” said Ehrlich. “It is ironic and tragic

# SPYING ON FRESNO’S GRASSROOTS

A man identifying himself as Aaron Stokes started attending Peace Fresno meetings in January 2003. Stokes distributed flyers, participated in street protests against the war in Iraq, and took notes at the group’s meetings. Aaron Stokes was really Aaron Kilner, however, a member of the local sheriff’s anti-terrorism unit—though he never identified himself as such. Members of Peace Fresno only discovered his true identity when Kilner died in a motorcycle accident on August 30, 2003. The photo in the Fresno Bee obituary was that of the Peace Fresno member they knew as Aaron Stokes.

On April 21, the ACLU of Northern California (ACLU-NC) filed a formal complaint with California Attorney General Bill Lockyer requesting him to investigate the infiltration of Peace Fresno. “The six-month long undercover surveillance of Peace Fresno was an unjustified intrusion of constitutional dimension,” said ACLU-NC police practices policy director Mark Schlosberg in his complaint to Lockyer. Schlosberg asserted that the surveillance violated California’s constitutional right to privacy as explained in a 1975 California Supreme Court decision that said, “stationing of covert, undercover police agents...at association meetings, both public and private, constitutes ‘government snooping’ in the extreme.”

“It is still a shock that our small group, in a town that is off the beaten path, was being infiltrated,” said Nick DeGraff, a Peace Fresno activist. “It put a face to the Patriot Act.” DeGraff observed that if his small group was being infiltrated, it was probably happening elsewhere too. “This should be a lesson to peace activists all across the country.”

## RESOLUTIONS WATCH

TOTAL NUMBER OF RESOLUTIONS PASSED AGAINST THE USA PATRIOT ACT AS OF MAY 25, 2004:

319 IN 41 STATES

Since our last report in March, the following northern California communities have passed resolutions:

ALAMEDA COUNTY (MARCH 16)  
SANTA CLARA (MARCH 23)  
CALISTOGA, CA (APRIL 6)

that on our 70th anniversary we are still fighting for the rights of labor to organize freely without government harassment.”

Last year, in the wake of the Oakland police shooting live ammunition at anti-war protesters at the Port of Oakland, California Attorney General Bill Lockyer issued guidelines for police surveillance, *Criminal Intelligence Systems: A California Perspective*. Currently, the ACLU-NC Police Practices Project is making public records requests from sheriff and police departments to determine how local law enforcement agencies are implementing Lockyer’s guidelines. If the ACLU-NC research shows that the current guidelines are not effective in curbing law enforcement abuses, the Project will campaign for more streamlined, improved guidelines.

“The leadership and membership of the ACLU-NC have taken a bold step in selecting government surveillance as our priority issue for the year,” Kearney said. “If we can expose and challenge government spying on religious minorities, whose only crime is attending religious services, and political activists who are exercising their First Amendment rights of freedom of speech and assembly, we will truly be making this state both safe and free.” ■

## NO-FLY CASE CONTINUED FROM PAGE 1

“We wanted to find out, among other things: how a name gets on the list; how a name can be taken off the list; and whether First Amendment protected activity is ever a reason for being placed on the No-Fly list,” said Jayashri Srikantiah, then ACLU-NC’s associate legal director.

“THESE PASSENGERS HAVE NO IDEA WHY THEY HAVE BEEN PLACED ON THE NO-FLY LIST AND NO WAY TO CLEAR THEIR NAMES.”

—ACLU STAFF ATTORNEY REGINALD T. SHUFORD

When the government did not respond, ACLU-NC filed a lawsuit in U.S. District Court for northern California in the summer of 2003. In response to the suit, the TSA and FBI released some information that indicated the government was fully aware of the problems surrounding the No-Fly list. But “even more troubling,” said Srikantiah, “at the same time that the government was aware of problems with the list, we found out that they may have distributed it internationally to embassies across the world and domestically to local law enforcement agencies.” The ACLU-NC is still trying to get more information about the No-Fly list through its 2003 FOIA lawsuit.

Meanwhile, the national ACLU, ACLU of Washington, ACLU-NC, and cooperating attorney Michael E. Kipling of the Summit Law Group in Seattle have filed the first nationwide legal challenge. The ACLU is asking the court to declare that the No-Fly list violates airline passengers’ constitutional rights to freedom from unreasonable search and seizure and

## ARE YOU RED, YELLOW OR GREEN?

As early as this summer, the federal Transportation Security Administration (TSA) plans to begin testing a new security program called CAPPS II (Computer Assisted Passenger Prescreening System II) to collect data on the estimated 100 million Americans who fly on commercial airlines each year. Under CAPPS II, every time you reserve a flight your name, address, phone number, and date of birth will be sent through a computer program that uses secret law enforcement and intelligence databases to generate your “risk assessment” as a flyer. Not even the TSA will know what specific databases or risk criteria are used.

If your assessment is green, you will undergo only standard scrutiny at the airport. If your rating is yellow, you will receive more intensive scrutiny. And if you are rated red, you will be barred from flying and probably turned over to law enforcement.

TSA officials project that three to four percent of the approximately 100 million people who fly each year will fail to get a green light. “CAPPS II threatens both our privacy and our freedom,” said ACLU-NC staff attorney Ann Brick. The dangers of using massive commercial and government databases to make decisions about what color risk we are is obvious. Moreover, the kinds of databases that will be incorporated into CAPPS II are likely to grow.

“Because CAPPS II operates behind a veil of secrecy, individuals will not know why they have been blacklisted and have no way of challenging their label,” Brick added. “Anyone could get caught up in this system, with no way to get out.” ■

## TAKE ACTION

### GIVE CAPPS II A RED LIGHT

Go to [www.aclunc.org/takeaction.html](http://www.aclunc.org/takeaction.html). Or call the U.S. Capitol Switchboard TODAY! (202) 225-3121. Ask for the office of your Senator or Congressional representative and leave the following message:

“As your constituent, I urge you to oppose the CAPPS II program. I am deeply concerned that this program will put the government on a path towards ever more intrusive background checks, and hinder the security at our nation’s airports.”

to due process of law under the Fourth and Fifth Amendments. The ACLU is also asking the TSA to develop satisfactory procedures that will allow innocent people to fly without being treated as potential terrorists and subjected to humiliation and delays.

Reverend John Shaw, from Sammamish, Washington, is one of the plaintiffs. “I am joining the ACLU lawsuit because I have been repeatedly interrogated, delayed, and have experienced ‘enhanced’ screening procedures and detention since 2002. I have also tried without success to have my name removed from the list,” said the 74-year-old minister.

Another plaintiff, Mohamed Ibrahim, voiced concerns about being targeted because of his political activity. “I believe that I am on the list because I have exercised my protected First Amendment rights. For instance, I have regularly challenged the scope and purpose of the USA Patriot Act.” Ibrahim works with the American Friends Service Committee and has spoken on behalf of Amnesty International.

“This case is about innocent people who found out that their government considers them potential terrorists,” said Reginald T. Shuford, an ACLU senior staff attorney who is lead counsel in the national case. “For our clients and thousands like them, getting on a plane means repeated delays and the stigma of being singled out as a security threat in front of their family, their fellow passengers, and the flight crew,”



(L-R) Plaintiffs Mohamed Ibrahim and Sarosh Syed, ACLU of Washington staff attorney Aaron Caplan, and ACLU-NC staff attorney Jayashri Srikantiah, speaking at the April 6 news conference at the ACLU of Washington, in Seattle.

Shuford added. “What’s worse, these passengers have no idea why they have been placed on the No-Fly list and no way to clear their names.”

“When my young children see a police officer—a ‘good guy’—asking questions of me, I can see them wondering: Is Daddy a bad guy?” said David Nelson, an attorney who has been flagged more than 20 times at airports. “I am a patriot, and I would never stand by and let anyone even imply otherwise. And yet someone in my government has done exactly that: someone I have never met has branded me a potential terrorist.” ■

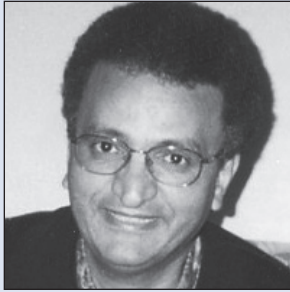
# NO-FLY PLAINTIFFS

(Green v. Transportation Security Administration)

MICHELLE D. GREEN, 36, has served her country for nearly 16 years as a Master Sergeant in the U.S. Air Force. On military orders to fly from Fairbanks, AK, to Seattle, WA, she was told she was on the No-Fly list and subjected to a physical pat down and other enhanced screening procedures. She is the mother of three children.



while traveling from Washington to Milwaukee, WI and again upon his return.



MOHAMED IBRAHIM, 51, is a coordinator for the American Friends Service Committee in Philadelphia, PA and frequently speaks on behalf of Amnesty International. He is of East African descent and a practicing Muslim.

He was flagged several times in the U.S. and in Cairo, Egypt when returning from a conference. He is married with two children.

DAVID NELSON, 34, an attorney from Belleville, Illinois, is a member of the Board of Governors of the Illinois State Bar Association. He was flagged at the airport 20 to 30 times, on some occasions in front of his family. He is married with three children.



ALEXANDRA HAY, 22, is a student at Middlebury College in Vermont who is studying in Paris. She was stopped when traveling home to Harrisburg, PA for Thanksgiving and again upon her return. She was told that her name appeared on the No-Fly List.

JOHN SHAW, 74, is a retired Presbyterian minister from Sammamish, Washington. He was flagged while traveling from Seattle to Medford, OR and told he was on the FBI list. He was stopped again when he traveled to South Africa. He is married with five adult children.



SAROSH SYED, 26, is a special projects coordinator at the ACLU of Washington in Seattle. Syed was flagged on five different occasions. “Syed” is a common Muslim name in Pakistan, where he was born.

DAVID C. FATHI, 41, is a senior staff attorney with the ACLU National Prison Project in Washington, DC. Of Middle Eastern descent, he was flagged



SAME-SEX MARRIAGE CONTINUED FROM PAGE 1

in Seattle. Throughout their five decades together, Del and Phyllis have shared a passionate commitment to the well-being of lesbian, gay, bisexual, and transgender people. In the 1950s, they founded the Daughters of Bilitis, the first national political organization for lesbians. In recent years, they have advocated for the rights of LGBT seniors. Their relationship has lasted longer than most marriages, but without the legal protections.

For Del and Phyllis, being married means not having to worry about whether their documents are in order if one of them is rushed to the hospital, or that one of them will lose their home when the other passes away. It means knowing that they will have the right to live together if they go into a nursing home, and that the vows they have lived for over 50 years are finally being respected by their government.

The day after Del and Phyllis married, two anti-gay groups filed separate lawsuits seeking emergency orders prohibiting San Francisco from continuing to issue licenses to same-sex couples. Neither lawsuit was successful. Within a week, two different judges in two separate hearings found that allowing same-sex couples to marry does not cause anyone irreparable harm and refused to enjoin the City's actions.

Shortly after those decisions, Attorney General Bill Lockyer filed a new action in the California Supreme Court, as did one of the anti-gay groups. On March 11, the Court issued a temporary order directing San Francisco to stop issuing marriages licenses to same-sex couples. The Court will hear oral arguments on May 25 to determine whether the city exceeded its authority by relying directly on the California Constitution to end marriage discrimination. It is not expected to rule on the constitutionality of the marriage restriction itself.

The day after the Supreme Court ordered San Francisco to stop issuing licenses, *Woo v. Lockyer* was filed in San Francisco Superior Court challenging the California statutes that deny marriage to same-sex couples. San Francisco City Attorney Dennis Herrera filed a similar challenge, and the two cases are now consolidated.

How will the California courts ultimately resolve these cases? If precedent is any indication, the outlook is positive. In 1948, the California Supreme Court became the first state court in the nation to strike down laws prohibiting interracial marriage in *Perez v. Lippold*, nearly 20 years before the U.S. Supreme Court did so in 1967.

Noting that the "essence of the right to marry is the freedom to join in marriage with the person of one's choice," the Court rejected the state's arguments that the marriage laws did not discriminate because they prohibited *both*

white people and people of color from marrying someone of a different race. The Court held that "the fact ... that the discrimination has been sanctioned by the state for many years does not supply ... justification." The Court also rejected the government's request to continue discriminating because 29 other states prohibited interracial marriage and California had always done so. Likewise, California's current restriction on marriage cannot be justified simply because it prohibits both men and women from marrying someone of the same sex, or because it has been in place for many years and reflects a "traditional" view of marriage. Rather, the current marriage laws violate the California

EQUAL PROTECTION OF THE LAWS REQUIRES THAT PEOPLE BE GOVERNED BY EQUAL LAWS; THE CREATION OF TWO SEPARATE SYSTEMS FOR GOVERNING FAMILY RELATIONSHIPS VIOLATES THAT PROMISE.

REAL FAMILIES,

Much of the press coverage since San Francisco's historic flood of same-sex marriages has focused on the legal efforts to gain marriage equality. The photos on these pages remind us of the simple yet profound stories behind this struggle—real people making real commitments to their spouses and children.

CHUNG-WOO FAMILY

*Lancy Woo (left) and Cristy Chung, pictured here with their five-year-old daughter, Olivia, have been together for 16 years. "It's for both legal reasons and love and commitment that marriage is important to us," says Cristy. "I'm a stay-at-home mom, and there are so many ways where legally our family isn't protected. And it's also about love, because we're always saying we want to spend the rest of our lives together. I want to tell the world."*



*At their home in San Francisco, Lancy and Cristy relax on the couch with their dogs, Spencer and Kaya. The family loves pets, and their household also includes a cat and several fish.*



*Cristy and Lancy like to surround themselves with photos of their friends and family, and drawings by Olivia.*

Constitution's due process, privacy, and equal protection provisions by making the right to marry dependent on a person's gender and sexual orientation.

As with racial equality, California has been a pioneer in ensuring gender equality within marriage. Since the late 1800s, the state has abolished laws restricting the rights of married women to own and manage property, adopted no-fault divorce and community property rules, eliminated the marital exemption for rape, and prohibited the use of gender stereotypes in custody decisions. California has eliminated all gender-based rules and distinctions relating to spousal rights—except for the statutory requirement that marriage must be between a man and a woman.

Restricting marriage to different-sex couples may be upheld only if it is necessary to advance a compelling state

interest—but no such interest exists. Equal protection of the laws requires that people be governed by equal laws; the creation of two separate systems for governing family relationships violates that promise.

Fifty-six years after *Perez*, the California Supreme Court has another opportunity to hold up the beacon light for liberty, human dignity, and marriage equality. Allowing same-sex couples to marry will not harm different-sex married couples in any way; nor will it jeopardize or undermine the institution of marriage. To the contrary, the institution of marriage in California will be strengthened and revitalized by ending an arbitrary and prejudicial restriction that excludes and stigmatizes thousands of loving, committed California couples and their families. ■

REAL MARRIAGES



*In their living room, Lancy plays a game with Olivia. "We do so much for the community," says Cristy, "supporting public schools, Lancy is a small business owner, we're on the parent advisory council... we do so much, and people don't support us as an equal family. It really hurts me." Both women are actively involved in doing volunteer work at their daughter's elementary school.*



*Cristy and Lancy make a snack of macaroni and cheese for Olivia, with Pace, the dog they're babysitting, looking on. "I had to adopt Olivia, and it was a huge process since we weren't married," says Lancy. "We're worried Lancy could lose her rights," adds Cristy.*

ADAMS AND BAKER FAMILY



*"I was raised to believe that when people loved each other they committed their lives to each other," says Art (right), seated at their dining room table. "That's what I wanted when I met Devin. The lawsuit brings to mind the things we can't do. If one of us were to get sick, we couldn't take care of each other. We are a real couple, with rights and responsibilities."*



*Devin (left) loves to cook. His favorite dish is a special family recipe from his grandmother for spaghetti sauce. "I think the reason it's my favorite is because it's a family tradition," he says, "which means a lot to me."*



*Art Adams and Devin Baker, pictured at their home in Mountain View, had already had a commitment ceremony years before the San Francisco marriages began. "The San Francisco marriages seemed like fulfilling a dream that I never thought I would have the opportunity to do," says Devin. "I was raised with traditional values – commitment, respect, the importance of love and feelings. I knew I wanted to get married some day. But when I came out I knew I had to give that up. I want to get married for the same reasons as anyone; I love Art, and I want that to be recognized."*



*"Family is so important to me," says Devin. "What I'm trying to demand [in this lawsuit] is that Art and I are a family. I want the same things as my parents and grandparents, with the good and the bad and everything that comes with it."*

# FIFTY YEARS AFTER BROWN V. BOARD OF EDUCATION: STILL SEPARATE, STILL UNEQUAL

By Maya Harris, *Racial Justice Project Director*

Reflecting back on that spring day in 1954 when *Brown v. Board of Education of Topeka, Kansas* was handed down by the U. S. Supreme Court, Thurgood Marshall—then the NAACP Legal Defense Fund attorney who argued the case—remembered: “I was so happy, I was numb.” Dr. Benjamin Mays, civil rights activist and educator, recalled: “people literally got out and danced in the streets.”

“EDUCATION IS PERHAPS THE MOST IMPORTANT FUNCTION OF STATE AND LOCAL GOVERNMENTS... IT IS THE VERY FOUNDATION OF GOOD CITIZENSHIP.”

— BROWN V. BOARD OF EDUCATION, 1954

At its core, however, *Brown* was a case about children and parents: children who wanted to learn and parents who were determined to equip their children with the education and opportunities they never enjoyed. Evident in the language of the opinion

itself, Chief Justice Earl Warren wrote for a unanimous Supreme Court:

*We must consider public education in the light of its full development and its present place in American life throughout the Nation. ... Today, education is perhaps the most important function of state and local governments. ... It is the very foundation of good citizenship. ... In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.*

Those words are as true today as they were 50 years ago. Yet, sadly, *Brown* is a promise that has yet to be fulfilled.

Today, many public schools are as segregated as they were in the 1960s. The vast majority of white children attend schools that are predominantly white, and children of color attend schools that are predominantly of color. According to a recent report by the Harvard Civil Rights

TODAY, MANY PUBLIC SCHOOLS ARE AS SEGREGATED AS THEY WERE IN THE 1960S...

FOR ALL ITS DIVERSITY, CALIFORNIA IS AMONG THE FOUR MOST SEGREGATED STATES IN THE NATION FOR BLACK AND LATINO CHILDREN.

resegregation of America's public schools. This trend has extraordinary consequences that go beyond the question

of whether we are achieving a desirable level of diversity in our schools.

Nearly 90 percent of intensely segregated minority schools face conditions of concentrated poverty, which is directly linked to unequal educational opportunity. Children in these schools are more likely to lack textbooks, functioning toilets, and credentialed teachers. They are less likely to have access to college preparatory and Advanced Placement courses or college guidance counselors.

The result: we are denying children an opportunity to learn, while at the same time instituting high-stakes testing that will deny them a diploma for failing a test for which they have not been adequately prepared.

Against this backdrop, it is not surprising that graduation rates for students of color are among the lowest in the nation. According to another recent report, *Losing Our Future: How Minority Youth are Being Left Behind* by the *Graduation Rate Crisis*, only half of all Black and Latino students graduate from high school. The report notes that these numbers can vary by district; the graduation rates for Black and Latino students in Oakland, California are only 23% and 25%, respectively.

This is an educational and civil rights crisis that we cannot ignore.

There is no doubt that change takes time. *Brown* itself, the culmination of two decades of desegregation litigation, is a testament to that. But 50 years after *Brown*, with so many children in failing schools—schools that are still separate and shockingly unequal—it's time for America to live up to the promise of one of the most important Supreme Court decisions in our history. ■

## LETTERS TO THE EDITOR

IN RESPONSE TO THE 'TOUCH SCREEN VOTING' TOPIC, OUR READERS SAID:

“The just reported “hacker” break-ins at two of the manufacturers [of TSV machines] only serve to prove that voting systems without audit trials should NEVER be used to conduct elections.”

—MARK CALLOW, CAMPBELL

“Has Secretary of State Kevin Shelley handed our votes over to a private corporation which will own our votes? Even though Shelley has mandated a paper audit trail on all CA TSV machines, the proprietary rights of corporations gives them the right to keep their program “codes” secret.

—AGNES WOOLSEY, MENDOCINO

See page 12 for our “Ask the Experts” Column on this topic.



MARTIN WALD

## SUIT SEEKS FAIRNESS FOR CALIFORNIA KIDS

On May 17, 2000—the 46th anniversary of *Brown v. Board of Education*—civil rights groups and attorneys in California (including the ACLU of Northern California and the ACLU of Southern California) filed an historic class-action lawsuit charging the state with having reneged on its constitutional obligation to provide at least the bare educational essentials to all students.

The case—*Williams et al v. State of California*—alleges that the conditions of the public schools violate equal protection guarantees, as most of the students in schools that fall below prevailing statewide standards are children of color. The suit was filed on behalf of California children who are deprived of educational opportunities because they attend public schools that lack such basic and necessary learning tools as books, trained teachers, and seats for students.

The case is the most comprehensive lawsuit concerning the bare minimum standards required for education ever to be brought against a state. ■



MARTIN WALD

Students and teachers marched in Sacramento last year to demand educational equity.

## AROUND THE REGION

### ANTI-BULLYING FILM IN MARIN

On March 30, the Marin County Chapter co-sponsored a screening of “Let’s Get Real,” a powerful new documentary film about name-calling and bullying, for Marin educators and law enforcement. The movie features children speaking about their own experiences with bullying. Academy-award winning filmmaker Debra Chasnoff spoke at the event.

### RUNNING START FOR MENDOCINO

ACLU-NC’s new Mendocino County chapter completed four weeks of highly successful events that addressed concerns of local youth, including racism and racial profiling. The series of programs brought together a coalition of activists in Willits, including the pastor of the Willits United Methodist Church, the principal of Sanhedrin High School, the local chief of police, and a representative of the U.S. Department of Justice. Events highlighted the traditions from Native American, Hispanic, Buddhist, and Sikh cultures. The Mendocino Chapter began May 31, 2003, after service as an Associate Chapter of ACLU-NC since February 2002.

### MID-PENINSULA TAKES ON PUBLIC PRAYER. PATRIOT ACT

The Mid-Peninsula chapter is focusing on several civil liberties issues during 2004, including working with the Redwood City Council to eliminate the use of a religious prayer to open the Council’s official meetings. The Chapter is also urging the installation and use of video cameras in police cars, as well as heading an effort to have the City Councils of Redwood City and Mountain View adopt a resolution opposing the Patriot Act. Finally, the chapter is questioning the Palo Alto City Council’s policy of renting a city-owned meeting room to a local troop of the Boy Scouts of America, whose anti-gay position is at odds with the city’s anti-discrimination policy.

### REDWOOD CHAPTER HONORS LOCAL LIBRARIANS

The Redwood Chapter (Humboldt County) awarded its First Annual Patriot Award to the Humboldt County Library Staff for their courageous and innovative policy decisions in response to the Patriot Act. ACLU-NC field organizer Sanjeev Bery joined local leaders on May 6 to present the award in Eureka.



*Redwood Chapter chair Christina Allbright (left) and Humboldt County Board of Supervisors representative John Wolley (right) making the presentation of the Patriot Award to Humboldt County Director of Library Services Carolyn Stacey, who accepted the award on behalf of the entire Humboldt County Library staff.*

### RIGHTS. WRONGS IN SANTA CRUZ

State Assembly member John Laird, ACLU-NC associate director Bob Kearney, and local lawyer Joyce Nordquist, who faced legal and financial difficulties connected with the death of her long-time female partner, discussed “Rights and Wrongs: Gay Marriage and the State of Lesbian, Gay,

Bisexual, and Transgender Rights in 2004” at a community forum on February 24. The chapter also continued its ongoing series, “The Politics of Fear,” which began with a panel on European fascism in the 1920s and 30s entitled, “Civil Liberties and Authoritarian Regimes.” Another panel, “Terror and the Patriot Act: The Congressional Response,” was presented on April 23. On May 20, Angela Y. Davis, UCSC professor and activist, Maya Harris, director of ACLU-NC’s Racial Justice Project, and others presented the third event in the series, “Civil Liberties and the U.S. Prison System.”

### HUNDREDS CELEBRATE CIVIL LIBERTIES IN SONOMA COUNTY

More than 300 people came to the Sonoma chapter’s Awards Ceremony and Annual Dinner on March 13 to meet, eat, and celebrate civil liberties. The keynote speaker was Jenny Martinez. She is an attorney for Jose Padilla, whose U.S. Supreme Court case challenges the detention of U.S. citizens as “enemy combatants.” The government refused to allow those classified as enemy combatants to even meet with their attorneys until after the case came before the Supreme Court this year.

The chapter also presented its Jack Green Civil Liberties Award to long-time activist Alice Waco. The Mario Savio Student Activist Award went to Mitzila Valdes, a student at Hutchins School of Liberal Studies at Sonoma State University. Awards were also presented to winners of the chapter’s high school student essay contest: first prize to Brian Price of Analy High School in Sebastopol; second prize to Angela Pustorino of Windsor High School; and third prize to Stacia Sherry of Valley Oaks High School in Petaluma.

Linda Kelley, mayor of Sebastopol, asked the chapter to support a City Council resolution supporting marriage equality and opposing a federal constitutional amendment banning those unions. Three days later the chapter board voted to support the resolution and spoke before the City Council, which passed the resolution. ■

## GET INVOLVED! LOCAL CHAPTER MEETINGS

Contact your local ACLU chapter and get involved!

**B-A-R-K (BERKELEY-ALBANY-RICHMOND-KENSINGTON) CHAPTER MEETING:** Third Wednesday of each month at 7p.m. Contact Jim Hausken for location and other info: (510) 558-0377.

**MARIN COUNTY CHAPTER MEETING:** Third Monday of each month at 7:30 p.m. at the public media room, Sewerage Agency of Southern Marin, 450 Sycamore Ave., Mill Valley, CA 94941. Contact Bob Harmon for more information: (415) 388-3980. Or call the Marin Chapter complaint hotline at (415) 456-0137.

**MENDOCINO COUNTY CHAPTER MEETING:** Second Saturday of each month. Locations rotate throughout Mendocino County. For information on next meeting, contact Jessie Jesulaitis at (707) 964-8099, or Chapter Chair Linda Leahy at (707) 937-3452 or lleahy@mcn.org.

**MID-PENINSULA CHAPTER MEETING:** First Wednesday of each month from 7:00 to 9:30 p.m. All meetings are in the conference room of Community Activities Building, Red Morton Community Park at 1400 Roosevelt Avenue. Contact Harry Anisgard for more information: (650) 856-9186.

**MONTEREY COUNTY CHAPTER MEETING:** Third Tuesday of the month at 7:15 p.m. at the Monterey Public Library. Contact Matt Friday to confirm time and location: (831) 899-2263. Or to report a civil liberties concern, call Monterey’s complaint line: (831) 622-9894. Visit [www.aclumontereycounty.org](http://www.aclumontereycounty.org).

**NORTH PENINSULA (DALY CITY TO SAN CARLOS) CHAPTER MEETING:** Usually third Monday of each month at 7:30 p.m. in the downstairs conference room at 700 Laurel Street (off Fifth Avenue), San Mateo. Contact Linda Martorana: (650) 697-5685.

**PAUL ROBESON (OAKLAND) CHAPTER MEETING:** Usually fourth Monday of each month at the Rockridge library (corner of Manila and College Ave.), Oakland. Contact Louise Rothman-Riemer: (510) 596-2580.

**REDWOOD (HUMBOLDT COUNTY) CHAPTER MEETING:** Third Tuesday of each month at 6 p.m. above 632 9th St. Arcata, CA 95525. Contact Roger Zoss: [rzoss@quik.com](mailto:rzoss@quik.com) or (707) 825-7636.

**SANTA CLARA VALLEY CHAPTER MEETING:** First Tuesday of each month, 1051 Morse Street (at Newhall), San Jose. For more information, contact [aclucsv@hotmail.com](mailto:aclucsv@hotmail.com) or visit [www.aclucsv.org](http://www.aclucsv.org).

**SANTA CRUZ COUNTY CHAPTER MEETING:** Third Tuesday of each month at 7 p.m. at 260 High Street. Contact Kathleen Hughes for more information: (831) 439-9467.

**SONOMA COUNTY CHAPTER MEETING:** Third Tuesday of each month, at 7 p.m. at the Peace and Justice Center, 467 Sebastopol Avenue, Santa Rosa (one block west of Santa Rosa Avenue). Call the Sonoma hotline at (707) 765-5005 or visit [www.aclusonoma.org](http://www.aclusonoma.org) for more information.

**YOLO COUNTY CHAPTER:** Contact Natalie Wormeli: (530) 756-1900.

## NEW CHAPTERS ORGANIZING

**CONTRA COSTA/MT. DIABLO CHAPTER MEETING:** Regular meetings. Contact Lee Lawrence for more information at (925) 376-9000 or [leehelenalawrence@yahoo.com](mailto:leehelenalawrence@yahoo.com). All ACLU members in central and eastern Contra Costa County are invited to participate.

**NAPA COUNTY CHAPTER MEETING:** Meetings to be announced. Call (415) 621-2493.

**SACRAMENTO COUNTY CHAPTER MEETING:** Regular meetings. Contact Mutahir Kazmi at (916) 480-9543.

**SAN FRANCISCO CHAPTER MEETING:** Meetings to be announced. Call (415) 621-2493.

**SAN JOAQUIN COUNTY CHAPTER MEETING:** Regular meetings. Contact Kamran Alavi for more information: (209) 833-0576 or [calm\\_ron@yahoo.com](mailto:calm_ron@yahoo.com).

**SOLANO CHAPTER:** Contact Bill Hatcher at (707) 449-0726.

**STANISLAUS COUNTY CHAPTER MEETING:** Fourth Wednesday of each month. Contact Tracy Herbeck at (209) 522-7149 for more information.

# ASK THE EXPERTS!

## TOUCH SCREEN VOTING: DEMOCRACY DEVELOPED OR DERAILED?

**A**s election season approaches, controversy is swirling around a new voting technology. Touch screen voting was supposed to prevent another election debacle *a la* Florida 2000. But does it simply expose Americans to new and sophisticated methods of election fraud? ACLU-NC attorney Ann Brick answers common questions about this complex issue.

### WHY TOUCH SCREEN VOTING NOW?

The 2000 elections clearly demonstrated the need for change. The spectacle of election workers scrutinizing pregnant chads to divine voters' intent made a mockery of democracy.

Two years later, Congress enacted the Help America Vote Act (HAVA), providing funds to upgrade voting systems, including funds for machines that are accessible to voters with disabilities. California also enacted legislation establishing a fund for counties to upgrade voting equipment and requiring that new voting equipment be accessible to visually impaired voters. Meanwhile, a court order resulting from a suit filed by the ACLU and voting rights groups required that

nine California counties replace their punch-card machines by the March 2004 presidential primary.

These reforms laid the groundwork for many counties to purchase computerized "direct recording electronic" voting systems, usually in the form of Touch Screen Voting (TSV).



Ann Brick

### HOW DOES TSV WORK?

It's simple and quick, much like using an ATM. Typically, the ballot appears on a computer screen. You touch the screen to indicate your choices. The screen then shows a summary of how you voted in each contest. If it's correct, you touch the "vote" button; if not, you go back and change your selections.

### WHAT'S GOOD ABOUT TSV?

It helps prevent common errors that can disqualify your vote, such as voting for more than one candidate for the same office, or failing to vote in a particular race.

TSV is easy for almost everyone to use. It can translate the ballot into many languages, or read the ballot out loud, thus, for the first time, enabling visually impaired, non-English speaking, or low-literacy voters to vote without someone else's help.

TSV also eliminates many of the hazards of paper ballots. Election officials do not have to guess whether a stray mark is a vote or an accidental smudge. Ballot boxes cannot be lost or stolen. And, it makes certain kinds of election fraud impossible.

### SO WHAT'S THE PROBLEM?

The main worry is that the computer screen will show we've voted one way, but the machine—either through error or deliberate tampering—records our vote differently. And if there is a problem with the machine, there is no other record of the vote, so you can't conduct a recount. Lack of adequate poll worker training or sloppy procedures can also lead to glitches, such as those reported during the March 2004 primary. In some counties poll workers had difficulty booting up machines; in Orange County, an estimated 2000 voters ended up using the wrong ballots because of mistakes by poll workers.

### HOW REAL IS THE THREAT OF VOTER FRAUD?

Very real. TSV software has millions of lines of code, making it almost impossible to detect erroneous or malicious code that could affect the outcome of an election.

Independent studies in Maryland and Ohio have revealed a number of weaknesses, many of which can be corrected, that make TSV systems subject to tampering. Some of these relate to the configuration of the software and "smart cards" the systems use; others are related to the physical design of the terminals. In addition, there are vulnerabilities in the GEMS servers (the computers used to accumulate and tabulate results from the precincts) that could make them subject to either remote or on-site attack.

### CAN WE ELIMINATE VOTER FRAUD?

There will always be unscrupulous people who try to rig elections. Over time, we have developed safeguards to lessen the chance of election fraud. But that risk has never been reduced to zero—and probably never will be.

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However, there are things that can be done to lessen the risks of TSV. Security procedures and poll worker training need to improve and, in some cases, changes should be made in the hardware or software. On April 30, Secretary of State Shelley issued a directive "de-certifying" the Diebold TSV system used by four counties because it contained uncertified software. In addition, he's requiring the 10 counties using other TSV systems to implement an array of security and procedural changes—including making paper ballots available to those who want them—before those counties can use their TSV systems in November.

### WHAT ABOUT A "PAPER TRAIL"?

Many argue that the best security measure is a printed copy of each voter's choices. We can then read it, confirm that it reflects our vote, and see the paper record deposited into a secure receptacle. This creates a voter-verified paper audit trail (V-VPAT), which can be used for recounts or even become the ballot of record.

Secretary Shelley is requiring all new TSV systems purchased for use in California to have a V-VPAT that is fully accessible to disabled or non-English proficient voters ("a fully accessible V-VPAT"). All existing TSV systems must meet this requirement by July 1, 2006.

At the moment, however, no voting system with a V-VPAT has been certified for use in California. And the V-VPAT has its own drawbacks. Reliability and ease of use by poll workers are big concerns. A simple paper jam or other printer problem could snarl the voting process and disenfranchise voters who don't have time to wait. Moreover, if the V-VPAT became the ballot of record, as many say it should, that will re-introduce all the risks inherent in paper ballots, including risks that they will be lost, tampered with, damaged, or simply miscounted as has happened in the past.

### WHAT DOES THE ACLU THINK ABOUT ALL OF THIS?

The ACLU-NC appointed an ad hoc committee,\* which included members from the other two California affiliates, to study these issues. After hearing from computer security experts, registrars of voters, representatives of the disabilities rights community, and others, the committee submitted its *Report and Recommendations on Electronic Voting*, which was adopted by the ACLU-NC Board in March and by the other two California affiliates.

Here's our position: Counties that already have TSV systems should be permitted to use them if, but only if, they implement a set of security measures similar to those mandated by Secretary Shelley. The remaining counties should not move to TSV until a fully accessible V-VPAT is available that meets rigorous standards of security and reliability. In the meantime, every county must provide enough TSV machines to accommodate the needs of disabled and non-English speaking voters. Finally, the adoption of V-VPAT should be viewed only as an interim measure. In the long run, we hope to see the development of a reliable and secure means of creating a completely independent electronic record of each electronically-cast vote for use in audits and recounts. ■

The *Report and Recommendations on Electronic Voting* is available on our website at [www.aclunc.org](http://www.aclunc.org).

\* Committee members: Philip Monrad (chair), Peter Kwan, Pam Samuelson, Jim Weston, Tom Willis, Ann Brick (ACLU-NC staff), Elizabeth Schroeder (ACLU-SC staff), Nancy Sasaki (ACLU-SDIC staff).

## ACLU FORUM

The ACLU Forum is the place where you, our readers and members, can ask questions of our experts and share your comments with us. In each issue, we will focus on one or two specific topics.

### WE WANT TO HEAR FROM YOU!

For the summer 2004 issue, please send us questions about:

### Police Surveillance and Your First Amendment Rights

We also encourage you to send letters to the editor on any of the subjects we cover, though we cannot print every letter or answer every question. Letters should not exceed 200 words.

Send your questions and comments to [gpandian@aclunc.org](mailto:gpandian@aclunc.org) or Gigi Pandian, 1663 Mission Street #460, San Francisco, CA 94103.