

ACLU SPRING 2006 news

BECAUSE FREEDOM CAN'T PROTECT ITSELF

VOLUME LXX ISSUE 2

The ACLU of Northern California is **MOVING!**

Beginning May 22, our new office will be located at 39 Drumm Street, San Francisco, CA 94111



ACLU FIGHTS ABUSIVE GOVERNMENT SPYING

By Stella Richardson

When UC Berkeley student Chelsea Collonge attended a peaceful campus event last year protesting military recruitment, little did she know that her activity would end up in the Department of Defense Threat and Local Observation Notice database, which was created in 2003 to monitor possible domestic terrorist threats.

"I was shocked," said Collonge. "I was raised to believe I lived in a country where I could safely express my political views. The last thing I imagined is that I would end up on a secret military list."

Collonge was not alone. When UC Santa Cruz student Kot Hordynski helped organize a nonviolent protest against military

recruiters last April, his activity was also listed in the Department of Defense (DOD) database. "When lawfully standing up for my beliefs—standing up for what I think is right and just—is a 'threat' to the government, something is fundamentally wrong in our country," said 20-year-old Hordynski.

The students' inclusion in the Threat and Local Observation



The March 7 news conference announcing the Freedom of Information Act lawsuit. Front row: ACLU-NC Police Practices Policy Director Mark Schlosberg, ACLU-NC Executive Director Dorothy Ehrlich, UC Santa Cruz student Kot Hordynski, and UC Berkeley student Chelsea Collonge. Back row: UC Santa Cruz students Jocelyn Bertovich and Mariah Kornblub, UC Berkeley student Matthew Taylor, and SF Bay Guardian Executive Editor Tim Redmond.

Notice (TALON) database first became public last December. MSNBC reported on a 400-page DOD document listing more than 1500 "suspicious incidents" over a 10-month period. Among them were the UC students' activities and a Florida Quaker meeting where a protest against military recruiting at high schools was being planned.

CONTINUED ON PAGE 5

LAWSUIT CHALLENGES LETHAL INJECTION PROTOCOL

By Amy Kurren

The ACLU of Northern California (ACLU-NC) filed a lawsuit on March 8 raising a constitutional challenge to California's three-drug execution protocol. The lawsuit, filed on behalf of Pacific News Service, states that the drug acts as a chemical curtain, violating the First Amendment rights of the press and the public to be fully informed about executions.

Pacific News Service (PNS) seeks a permanent injunction to prevent the California Department of Corrections and San Quentin State Prison from using the paralytic drug pancuronium bromide (also known as Pavulon) during executions. PNS believes the drug conceals significant information to which the public is constitutionally entitled.

The three-drug combination used to carry out executions in California starts with sodium pentothal, a short-acting barbiturate. The second drug, pancuronium bromide, paralyzes all voluntary muscles; the third, potassium chloride, causes cardiac arrest. The lawsuit challenges the use of the second drug, stating that it serves no legitimate purpose and masks any potential pain or suffering to which the inmate is subjected.

"The drugs the state uses to carry out executions amount to a chemical curtain that hides what really goes on in the death chamber," said Jon Streeter, ACLU-NC cooperating attorney with Keker & Van Nest, LLP. "In the name of freedom of the press, we are demanding that the state take that curtain down."

In *CFAC v. Woodford*, an ACLU case decided in 2002, federal courts held that the actual physical curtain used at the first lethal execution in California "was motivated at least in part by a desire to conceal the harsh reality of executions from the public."

"Today we have the same First Amendment concern in this case—that this chemical curtain does nothing more than sanitize the process by preventing the press and the public from being accurately informed about how the state is implementing its ultimate penalty," said Alan Schlosser, ACLU-NC Legal Director.

The method and drug combination used in California executions are also the subject of another current lawsuit, *Morales v. Woodford* (brought by the attorneys of Michael Morales), which claims that California's procedures constitute cruel and unusual punishment in violation of the Eighth Amendment. ■

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INSIDE THIS ISSUE:
The 2005 YEAR IN REVIEW!

WELCOME TO THE ACLU NEWS. READ MORE AT WWW.ACLUNC.ORG

GROWTH SPURS MOVE: ACLU-NC OPENS NEW HEADQUARTERS

by Jeff Vessels, ACLU-NC Capital Campaign Director

If you came by the ACLU of Northern California offices this spring, you would have noticed moving boxes. This May, after 26 years at 1663 Mission Street, the ACLU-NC is making a historic move to 39 Drumm Street in downtown San Francisco.

Packing up our homestead of a quarter century has been both nostalgic and exciting. Files and mementos remind us of the many victories won by the ACLU-NC and its members, and of the battles we still wage.

Our new Drumm Street headquarters provide Northern California with a rallying center for change at a perilous time. ACLU-NC membership stands at a historic high of 55,000. In response to the assault on civil liberties, ACLU membership nationwide has doubled. Millions are looking to us for leadership, with public opinion at a tipping point.

LITIGATION ALONE IS NOT ENOUGH TO WIN

A larger space is essential to our new strategies, which rely on increased community organizing, expanded coalition work, broad public education, and up-to-the-minute communications tactics. At 39 Drumm Street we will have over four times more gathering space for member and community events, coalition meetings, strategy sessions, and media briefings.

ACLU-NC will be centrally located, adjacent to the Embarcadero MUNI/BART transit station and just blocks from the San Francisco ferry and bus terminals. The new headquarters position us near law firms (of cooperating counsel and other public interest organizations), the courts, public officials, and media outlets. This move also returns us to our historic roots—locating the ACLU-NC near the site of the 1934 General



The ACLU-NC's new building.

Strike, which gave birth to our organization.

When we moved into our offices 26 years ago, we had 14 staff members and a cadre of wonderful volunteers. Now we have nearly 50 staff members and a small army of indispensable volunteers. We became so overcrowded that we had to distribute our operations over multiple locations in the Mission Street building and even across the bay.

UNDER ONE ROOF

With this move, the national ACLU Immigrants' Rights Project will rejoin us, having moved to Oakland when we ran out of space. The West Coast offices of the national ACLU Lesbian and Gay Rights Project will also share 39 Drumm Street. Bringing all Northern California ACLU projects under one roof only increases our strength.

Following an initial lease period, we will be able to purchase our 39 Drumm Street headquarters. By owning a building for the first time, we will save millions of dollars over the next 20 years. These savings will protect us from vacillations in the commercial rental market and allow us to devote more money to program work.

CIVIL LIBERTIES' NEW HOME

Early enthusiasm from supporters has made our expansion possible. In the coming months we will be inviting every member, donor, and volunteer to participate in creating a permanent, vibrant home for freedom in Northern California. We look forward to welcoming you to our new headquarters this summer! ■

Please note that our phone and fax numbers will remain the same: phone (415) 621-2493 and fax (415) 255-1478.



Susan Freiwald, Chair of the ACLU-NC Development Committee, presents Jeff Vessels, ACLU-NC Capital Campaign Director, with his DeSilver Society membership certificate. The Society honors individuals who remember the ACLU in their estate plans. By including a bequest to the ACLU Foundation in his will, Jeff generated an immediate cash grant for the ACLU through the "Legacy Challenge" program. Between now and December 31, 2006, you, too, can participate in the "Legacy Challenge." Include the ACLU Foundation in your will or living trust and generate an immediate grant matching 10 percent of your bequest's value. For more information, please contact Stan Yogi at (415) 621-2493 x330. ■



The passion and generosity of our donors made 2005 the most successful fundraising year in ACLU-NC history. The ACLU-NC Development Committee and staff celebrate exceeding the year's fundraising goal.

BACK ROW (L-R): Susan Freiwald, Millicent Rutherford, Howard Lewis, Quinn Delaney, Donna Brorby, Marlene DeLancie, Dennis McNally, Sandy Holmes, Jeff Vessels. MIDDLE ROW, SEATED (L-R): Denise Mock, Dorothy Ehrlich, Fran Strauss, Cheri Bryant. FRONT ROW (L-R): Cori Stell, Danielle Deutsch. ■

ACLU-NC REMEMBERS RICKA YOUNG



Ricka Young, long-time ACLU volunteer and supporter, passed away on December 1, 2005. Young served as a weekly complaint counselor at the ACLU of Northern California (ACLU-NC) for nearly 20 years.

Young was a dedicated volunteer. "Working at the ACLU meant a lot to her," Young's son Michael said. "She went to the ACLU as usual on the day of her death and I cannot think of a better nor more appropriate way for her to have spent her last day." ■

STAFF AND BOARD NEWS

Michael Risher has joined the ACLU-NC as an attorney in the legal department. Michael was a Deputy Public Defender in Alameda County from 1998 to 2005. He also served as a clerk for Judge Karen Nelson Moore on the U.S. Court of Appeals and as the Legal Affairs Advisor for the Lindesmith Center, a drug-policy think tank. A graduate of

Harvard College and Stanford Law School, Michael will focus on criminal justice and government surveillance issues.

BOARD UPDATE: Congratulations to ACLU-NC Board member **Ron Tyler**, who has begun serving as the new national ACLU Board representative. ■

ACLUnews

THE QUARTERLY PUBLICATION OF THE
AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA.

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Suzanne Samuel, WRITER
Gigi Pandian, DESIGNER AND EDITORIAL ASSISTANT

39 Drumm Street, San Francisco, CA 94111
(415) 621-2493

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GIGI PANDIAN

Anti-war activists Rebecca Gordon (left) and Jan Adams at the 2003 press conference.

FEDERAL GOVERNMENT TO PAY \$200,000 IN ATTORNEYS' FEES TO SETTLE NO-FLY LAWSUIT

by Stella Richardson

Ending a Freedom of Information and Privacy Act lawsuit that succeeded in making hundreds of documents about the government's secret no-fly list public for the first time, federal agencies have agreed to pay \$200,000 in attorneys' fees to the ACLU of Northern California.

The settlement was approved on Jan. 25, 2006 by U.S. District Judge Charles Breyer of the Northern District of California in San Francisco.

The ACLU of Northern California (ACLU-NC) filed the lawsuit, *Gordon v. FBI*, in April 2003 on behalf of the ACLU and two Bay Area antiwar activists, Rebecca Gordon and Jan Adams. In August 2002, Gordon and Adams were told by airline agents at San Francisco International Airport that their names appeared on an FBI no-fly list. They were detained and questioned by police before being allowed to fly.

"This case helped shed light on the existence and creation of the no-fly list and other secret transportation watch lists, raising serious questions about their effectiveness and value," said Thomas R. Burke, ACLU-NC cooperating attorney with Davis Wright Tremaine LLP in San Francisco. "As thousands of

innocent travelers continue to be mistakenly linked to names on the government's no-fly list, the public should be able to understand and meaningfully deliberate on whether the lists make us safer or are just a waste of government resources."

Frustrated by the government's stonewalling, in June 2004 Judge Breyer criticized the federal government for its "frivolous claims of exemption" and ordered the Transportation and Security Administration (TSA) and the FBI to produce some 300 pages of previously withheld records detailing how the no-fly list was created and implemented. The documents reflected confusion, inter-agency squabbling, and the admission that the criteria for placing names on the list are necessarily subjective and not hard and fast rules.

As of September 11, 2001, only 16 individuals were identified as being banned from air travel; the following day,

more than 400 were listed. By December 2001, there were 594 names; as of December 2002, 1000 names. The no-fly list is now believed to include tens of thousands of names. In November 2005, the TSA indicated that 30,000 people had contacted the agency in the last year alone because their name had been mistakenly matched to a name on the federal government's watch list.

"We brought the lawsuit because we believe the public has a right to know about the no-fly list and other secret government watch lists," said Jan Adams, the successful plaintiff. "And we succeeded in doing so by making public hundreds of pages of documents that not only confirmed the existence of the list, but also exposed many of the serious problems with the secret list. Only through informed public debate can we make our government accountable and our country safer." ■

LEGAL BRIEFS

ACLU DEFENDS BLOGGER'S FREE SPEECH RIGHT TO PARODY

Citing First Amendment protection for parodies, the ACLU-NC forced an anti-gay group to back away from an attempt to silence a Santa Rosa blogger who used the group's own billboard design to parody their anti-gay message. Justin Watt received a cease-and-desist letter demanding that he remove his website parody of an Exodus International billboard advertising so-called "reparative therapy."

Watt said he exercised free speech when he parodied a billboard sponsored by Exodus, an "ex-gay" ministry. The billboard read: "Gay? Unhappy? www.exodus.to." Watt posted an altered version on his website, Justinsomnia.org: "Straight? Unhappy? www.gay.com."

"When I saw the billboards last September, I was deeply offended. How would straight people feel if their very being, their sense of self was being so overtly disparaged?" said Watt.

Liberty Counsel, an anti-gay legal group representing Exodus, sent Watt a cease-and-desist letter claiming the parody violated the group's intellectual property rights and threatening legal action if Watt didn't take the image down.

In response, ACLU-NC cooperating attorney Laurence Pulgram of Fenwick & West sent a letter to Liberty Counsel on March 22 calling on Exodus to drop its attempts to censor Watt. The letter cited case law holding parodies to be constitutionally protected speech. Watt was represented by Pulgram, ACLU-NC staff attorney Ann Brick, and Tamara Lange of the ACLU LGBT Project.

"Justin's use of Exodus's own image to criticize its message is exactly the sort of speech the Constitution protects," said Pulgram, who heads the copyright litigation group at Fenwick & West. "The law protects people like Justin from groups like Exodus that try to use copyright as a method of bullying their critics into abandoning their First Amendment right to express their opinions through parody."

"Just as a group like Exodus has a constitutionally protected right to say whatever it wants about gay people," added ACLU-NC attorney Brick, "individuals like Justin have a right to use parody to express their own political views."

PUBLIC OUTCRY LEADS SCHOOL TO SUSPEND DOG-SNIFF SEARCH PROGRAM

Faced with a public outcry from parents, students, community groups, the NAACP, and the ACLU-NC, the Sausalito Marin City School District voted to suspend a program that allowed random dog-sniff searches at a mostly African-American middle school. On March 2, 2006, the ACLU-NC sent a letter to the Sausalito Marin City School District opposing the policy and calling for its revocation.

Last November, the district agreed to a \$2500 contract with Interquest Detection Canines to use the dogs in random searches once a month from January until the end of the school year at Martin Luther King, Jr. Academy, a small school of 38 students, who are predominantly African American. The parents, however, were not informed about the program until January, three days before the dogs would be on campus. When parents challenged the need for the program, the District conceded that there was no drug problem at the school.

At a special school board meeting on March 20, which was attended by over 100 people, ACLU-NC Legal Fellow Juniper Lesnik said that the use of drug-sniffing dogs raises constitutional questions under the Fourth Amendment, and is simply bad policy.

The ACLU-NC opposes drug-sniffing dogs, in part, because they criminalize the school environment. The use of dogs sends a particularly offensive message to the African-American community that attends MLK Academy. Dog-sniffs are also unreliable and ineffective: the majority of sniff alerts are false alarms. Lesnik emphasized that there are far more effective, reliable, and educative ways to address the issue of drugs in schools.

The Sausalito Marin City School District agreed to suspend the policy for two months to seek input from parents, students, and community groups. The NAACP has launched an investigation into the civil rights implications of the policy and plans to participate in upcoming efforts to recommend alternatives. On May 18, the school board will receive recommendations on whether or not to continue the program.

VICTORY FOR LGBT YOUTH

When the Department of Justice investigated the Hawaii Youth Correction Facility (HYCF) in 2004, it declared it "no exaggeration to describe HYCF as existing in a state of chaos." If a young person in the juvenile correctional facility is lesbian, gay, bisexual, or transgender, the conditions are even worse.

Marking the first time a case has specifically addressed LGBT youth in juvenile facilities, the ACLU obtained a preliminary injunction that will require the facility to establish policies and procedures and train staff to prevent further abuse of LGBT wards.

Citing an extensive and chilling list of incidents, U.S. District Judge J. Michael Seabright found that Hawaii's Office of Youth Services and HYCF officials ignored and even participated in an atmosphere of anti-gay harassment, humiliation, and fear.

The ACLU of Hawaii, working with the national ACLU LGBT Project, represented three young people: a 17-year-old male-to-female transgender girl, an 18-year-old lesbian, and an 18-year-old boy perceived to be gay.

The youths described harassment by staff, as well as incidents in which the facility did nothing to shield them from abuse by other facility residents. Both the transgender girl and the boy were "protected" by being forced to spend six days in solitary confinement, given nothing more than a pillow and blanket. Staff routinely slur LGBT youth, calling them names like "fag," "butchie," and "fruitcake."

Although incidents of harassment are often reported, as Judge Seabright stated, "with respect to the vast majority of instances, staff took no action. Even when staff documented incidents, disciplinary measures were either non-existent or were ineffective."

"While the conditions at HYCF are particularly bad," said Tamara Lange, ACLU Lesbian and Gay Rights Project staff attorney, "this should serve as a wake-up call to the juvenile justice system throughout the U.S." ■

YOUTH CONFERENCE GALVANIZES NEXT GENERATION OF ACTIVISTS

By Jonathan Malta-Weingard, *Communications Intern*

One word summarizes the culmination of expression released at the 2006 ACLU of Northern California's Youth Rights Conference: passion. With 20 workshops, 600 students, programming for teachers, a profound keynote speaker, and amazing spoken word performances, the conference directly impacted hundreds of Northern California high school students, and its ripples will reach thousands.

The conference was organized by the ACLU-NC's Howard A. Friedman First Amendment Education Project. Held on March 9, 2006 at UC Berkeley's Martin Luther King, Jr. Student Union, the Youth Rights Conference drew high school students from Grass Valley to San Jose.

The day began with a slow rumbling that became a thunder. The beat was a drum line from Loco Bloco, a San Francisco organization that offers an outlet for youth expression through free music, art, and theater classes.

Members of the Friedman Project Youth Activist Committee introduced the 32 high schools in attendance and gave a series of powerful speeches summarizing the ideas at the core of the conference.

Tina Garnanez delivered a sobering keynote address. An Iraq war veteran who served as a medic in both Kosovo and Iraq, Garnanez was honorably discharged in early 2005. She now devotes her time to pro-peace activism and has made a myriad of radio, television, and newspaper appearances. Tears cascaded down Garnanez's cheeks as the personal account of her experience began to unfold. Students hung onto her every word. Some started to cry as Garnanez put a personal face on each war statistic.

Following the opening session, students chose from a wide

variety of workshops. No topic was taboo. Issues ranged from national politics—"Execute Justice, Not People: Exploring the Death Penalty in the U.S." and "Fighting Wars, Objecting Consciously: Myths and Realities of Military Service,"—to the statewide, "Guilty Until Proven Innocent?: A Look Inside California's Juvenile Justice System"—to the deeply personal—"Dating Violence," "Fighting Slurs: Sticks and Stones May Break My Bones, But Words Can Really Hurt," "The Ins and Outs of the Foster Care System," and "Rainbow Rights: LG-BTQ Rights at School and Work."

Although the conference was targeted to students, there was also programming for the 30 teachers attending. Teachers spent most of the day attending the student workshops, but they also benefited from two sessions on teaching: "Each One Teach One: Preventing and Responding to Hate Violence in Schools" and "Fact or Fiction: Using Hollywood Films to Teach about Post-9/11 Surveillance, Technology, and Civil Liberties."

From the echoes of the microphone to the vibrations of the drums and the lyrical energy of the poets, the vibrant power and passion of youth was undeniable. One student explained why the conference was so important to him and to youth activism: "The best environment for youth is when a student



Friedman Project Youth Activist Committee members Silvia Wu (left) and Kiran Savage-Sangwan, facilitate a workshop for their peers on educational inequity in California.

does not hesitate to speak his mind. He must not hesitate to worry about his safety, his social group, his skin color, or doubt himself. Unfortunately, many high schools do not have this environment. This is why a conference like this is so necessary to high school students, because this is the only place they actually have unlimited growth."

The Howard A. Friedman First Amendment Education Project was established by the ACLU-NC in 1991. The Project works with high school students and teachers to improve students' understanding of the core principles underlying the Bill of Rights and to make the connection between these rights and the issues students face in their lives. The Project holds two conferences each year, a week-long summer trip, and a range of other activities. More information is available at <http://www.aclunc.org/youth>. ■

SPARKING THE MOVEMENT: REFLECTIONS FROM THE YOUTH CONFERENCE

By Brianda Castro, member of the Howard A. Friedman First Amendment Education Project Youth Activist Committee which organized the Youth Conference

The 2006 ACLU-NC Youth Conference was mandatory for me. I have a duty to humanity and to teach others about what's happening around them. That's why I am a youth activist. With the help of the ACLU, I am able to learn and be a participant in change.

I find this generation's potential amazing. The Youth Activist Committee nurtures the potential of youth so that we can showcase our talents. This conference and the ideas it generated are clear examples of the ability of youth to observe and think for ourselves, and to conduct an event that has significance.

The Youth Activist Committee began facilitation training, research, and planning in January to prepare for the conference. I was

"WITH THE HELP OF THE ACLU, I AM ABLE TO LEARN AND BE A PARTICIPANT IN CHANGE."

responsible for two workshops. In "Incorporated Slavery: Prison Industrial Complex," we explored the use of incarcerated humans for low-paid labor, the hidden workers behind some of this country's leading companies. My second workshop was "Missing Home: Homelessness in San Francisco." We discussed the hardships that homeless people encounter, shared statistics, and brainstormed causes and effects of homelessness.



Brianda Castro, age 16, is a sophomore at Gateway High School in San Francisco. Brianda read her poem (at right) at the 2006 ACLU-NC Youth Conference.

I was also part of the opening program. I had many ideas but only four minutes to speak. I managed to compile a lot of my thoughts into a poem (see sidebar). When I went up in front of the crowd of more than 600 people, it hit me: I can say anything I want and someone is going to hear me. I don't know how many people truly understood my poem, but I am sure that it sent a message to all who were present. If not the poem itself, the experience of having a young woman being listened to.

I hadn't planned on speaking on any other topics besides my poem. But I decided to take a risk and speak from my heart.

I spoke about the unnecessary hero we all await and the need of allies for substantial change. My history books highlight one person who happened to be a magnificent leader in the cause of a great movement. We can't afford to continue to let years pass as we search for the next Susan B. Anthony or Sojourner Truth. It is not fair to humanity to have abundant great minds who decide to keep quiet—we are all capable of continuing the legacy of social justice activists.

At the end of the day, we were left with a lot of cleaning to do. I was also left with a feeling of accomplishment. I had proved to myself that even if I am not alive to see the long-awaited revolution, I am going to be here to spark the movement. ■

I REMEMBER BUT...

By Brianda Castro

If only we could remember
 We might be able to get up and join fists
 Help our fellow activists
 Finish up the dream that Martin Luther King Jr.
 had in his sleep
 If only we could remember
 That we're not living in an animated magazine
 Where an individual can change the world in
 one scene
 Heroes no longer exist
 An individual cannot succeed in accomplishing
 everyone's needs
 If only we could remember
 That actions speak louder than words
 It is not enough to think that something is wrong
 We need to take our thoughts and revolt
 No one can tell us where we're from
 We need to learn the root to grow
 If only we could remember
 The pain we feel is real
 We struggle to survive
 And forget to strive to thrive
 If only we could remember
 That not too long ago I was
 The product of my mom's up bringing
 Now struggle is all I'm living
 If only we could remember
 That our mothers are NOT a race
 But a human being
 So unless you have a box with Maria Del Carmen
 next to it don't ask me to check it
 Because I'm not Mexican, Black, Chinese, White
 Or any other characteristic that POWER has
 chosen for me to classify by
 I am Brianda Alicia Castro Radilla
 Daughter of Humanity
 A Rebel of Injustice

TAKE ACTION ONLINE TO PROTECT CIVIL LIBERTIES: SIGN UP AT WWW.ACLUNC.ORG

ACLU CHALLENGES ABUSIVE GOVERNMENT SPYING CONTINUED FROM PAGE 1

On behalf of the students, the ACLU of Northern California (ACLU-NC) filed a Freedom of Information Act (FOIA) request on February 1 to learn more about this DOD program and the information collected on the students. ACLU affiliates in Florida, Georgia, Maine, Pennsylvania, and Rhode Island also filed similar FOIA requests seeking Pentagon files on local groups.

On March 8, after the Pentagon refused to respond expediently to the FOIA request, the ACLU-NC filed a federal FOIA lawsuit on behalf of UC Santa Cruz Students Against War and UC Berkeley's Stop the War Coalition, the student groups to which Hordynski and Collonge belong.

The San Francisco Bay Guardian joined the student groups in seeking expedited processing and release of DOD documents on the students' activities. The lawsuit was filed in the U.S. District Court for the Northern District of California by ACLU-NC cooperating attorneys Amitai Schwartz and Lisa Sitkin.

On March 10, NBC reported that Acting Deputy Undersecretary of Defense Roger Rogalski wrote in a letter to Senator Patrick Leahy (D-VT) that 43 names were improperly added to the database, including those from protest-related reports on events such as the Quaker meeting. "All reports concerning protest activities have been purged," Rogalski's letter said.

Mark Schlosberg, Police Practices Policy Director of the ACLU-NC, explained that basic questions still remain. "The students who participated in these demonstrations deserve to be

told why their activities were included in a Pentagon domestic terrorist database, what information was collected, and who it was shared with."

ACLU-NC cooperating attorney Amitai Schwartz added that fast public response to the FOIA request is critical, before the documents are purged: "There is no legal justification for delaying the processing of this FOIA request. The students and the public have a right to prompt public disclosure about this spying program."

Domestic spying has a long history at the Pentagon. In 1970, during the Vietnam War, former Army Intelligence Officer Christopher Pyle published an article in the Washington Monthly revealing that the Defense Department was spying on antiwar and civil rights protests. Public outcry and the congressional investigation that followed proved that the military had spied on at least 100,000 American citizens. More than 100 military personnel testified before Congress that they had been ordered to spy on private individuals. Following the investigation, Congress passed a new law placing limits on domestic military spying.

"Some 35 years later we find ourselves facing new allegations of military spying on First Amendment activity," said Dorothy Ehrlich, ACLU-NC Executive Director. "From the Pentagon to the NSA to the FBI, we are seeing a broad and disturbing pattern of unchecked government surveillance that has a chilling effect on the tradition of free speech in this country."



ACLU-NC client and UC Santa Cruz student Kot Hordynski.

The ACLU is exposing and challenging expanded domestic spying programs on many fronts. In January, the national ACLU filed a federal lawsuit on behalf of journalists, scholars, and attorneys against the National Security Agency (NSA) for illegally intercepting vast quantities of Americans' international telephone and Internet communications without court approval.

As part of the ACLU's national campaign to expose domestic spying by the FBI, NSA and the Pentagon, the ACLU filed FOIA requests for more than 150 organizations in 20 states. The groups included the American Friends Service Committee, Veterans for Peace, United for Peace and Justice, and Greenpeace. In response to the FOIA requests the government released documents that expose monitoring and infiltration by the FBI and local law enforcement. In Pennsylvania, the ACLU released documents on March 14 showing that the FBI monitored the antiwar activities of the Thomas Merton Center, describing the Pittsburgh peace and social justice group as "a left-wing organization advocating, among many political causes, pacifism."

"It makes no sense that the FBI would be spying on peace activists handing out flyers," said Jim Kleissler, Executive Director of the Thomas Merton Center. "Our members were simply offering leaflets to passersby, legally and peacefully, and now they're being investigated by a counterterrorism unit." ■

—UC SANTA CRUZ STUDENT KOT HORDYNSKI

ACLU USES MEDIA TO RAISE AWARENESS OF SURVEILLANCE

By Suzanne Samuel

Through documentaries, TV shows, and newspaper ads, the ACLU is using the media in innovative ways to inform the nation about threats to our civil liberties.

ACLU FREEDOM FILES TAKES TO THE AIR

The ACLU Freedom Files is a groundbreaking new television series created with *Outfoxed* director/producer Robert Greenwald. Each of the ten 30-minute episodes explores a different civil liberties issue. The series launched last year with "Beyond the Patriot Act."

Distribution channels are similarly revolutionary. A new website, aclu.tv, offers all 10 episodes, plus commentary, teaching materials, and opportunities for online activism. This spring Court TV began airing The ACLU Freedom Files, starting with the episode on religious freedom. Five million college students have access to the program via satellite Zilo TV. Other satellite subscribers watch it on Link TV.

The series is also available on DVD, offering opportunities for screening parties -- like the ACLU-NC event held on January 26, 2006. A showing of the Freedom Files episode "Dissent" drew nearly 300 young progressives to a Happy Hour at the hip 111 Minna gallery in downtown San Francisco. ACLU-NC co-hosted the event with the Equal Justice Society and Grassroots Enterprise. Responding to the enthusiasm of the youthful card-carrying crowd, ACLU-NC plans other Happy Hours in the future.



TRACKED IN AMERICA: SURVEILLANCE WEB DOCUMENTARY PREMIERES THIS SUMMER



Tracked in America: Stories from America's History of Surveillance is a forthcoming ACLU online documentary that uses personal stories to provide a revealing look at

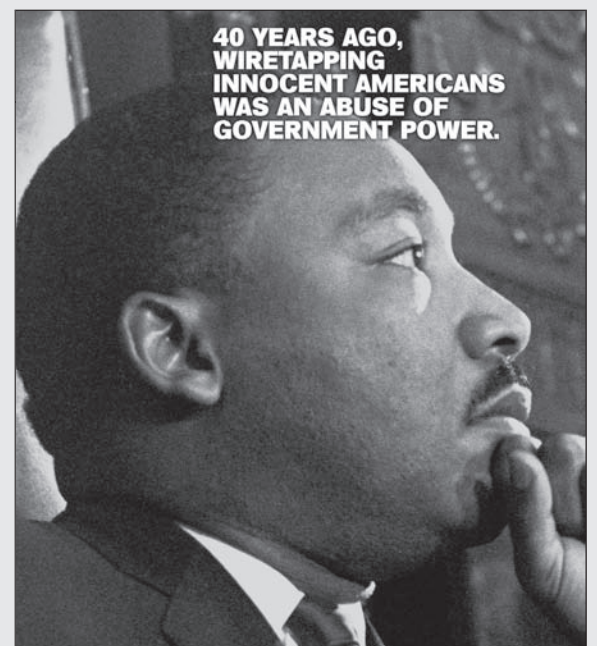
abusive acts of U.S. government surveillance. It begins with World War I and continues to the post-9/11 era. *Tracked in America*, which premieres this summer, offers a gripping experience for all viewers and a valuable curriculum tool for teachers.

First-hand audio accounts and rich photography illuminate the personal side of surveillance experiences from Japanese internment to the McCarthy era to contemporary anti-war protests. Renown historians and authors offer commentary. A "Take Action" Web page will enable *Tracked in America* site visitors to respond to current surveillance issues. With the support of the national ACLU, the ACLU-NC is producing this Web documentary for use nationwide.

ADS PROTEST GOVERNMENT SPYING

If you opened up the *Washington Post* on Martin Luther King, Jr. Day, you would have seen a full-page ACLU ad bearing a picture of King and the following reminder: "40 years ago, wiretapping innocent American citizens was an abuse of government power. It still is."

The ACLU ran ads in the *New York Times*, *Washington Post*, and *USA Today* over several months. Ads urged readers to demand an investigation into illegal government surveillance of citizens.



IT STILL IS.

At the time Martin Luther King Jr. was championing the rights of all Americans, the government was violating his rights by secretly wiretapping him in the name of national security. The sorry history of the surveillance and wiretapping of dissenters -- of those seen as "enemies" of the President -- led to a law that specifically requires the President to seek court approval for wiretaps of Americans, even for national security investigations. George Bush believes that he is not bound by this law. An American can be under illegal surveillance by the Bush administration without any judicial check on that power. That's not the America in Martin Luther King Jr.'s dream.

Call the White House (202-456-1414) and tell the administration to stop the illegal spying on Americans.



One advertisement had an image of President Nixon and the statement: "He lied to the American people and broke the law." Below it, with an image of President Bush, were the words, "So did he." All ads are online at www.aclu.org/spyads. ■

TAKE ACTION ONLINE TO PROTECT CIVIL LIBERTIES: SIGN UP AT WWW.ACLUNC.ORG

REAL ID ACT AND RFID TECHNOLOGY THREATEN CALIFORNIANS' PRIVACY AND PROMISE BUREAUCRATIC NIGHTMARE

By Nicole Ozer

The recent revelation that the federal government has been listening in on our phone calls and reading our email is yet another reminder of the dangers posed by the unbridled use of surveillance technology. Threats to our privacy are by no means limited to warrantless wiretapping.

The ACLU of Northern California (ACLU-NC) is working to prevent the government from further strengthening its invasive surveillance infrastructure. The ACLU-NC and the Sacramento Legislative office have been calling on California legislators to protect the privacy, personal safety, and financial security of Californians by asking hard questions about the Real ID Act and the use of Radio Frequency Identification (RFID) technology in government-issued identification documents.

REAL ID ACT

Passed by Congress in May 2005, the Real ID Act is scheduled to be fully implemented by 2008. It authorizes the creation of one of the most comprehensive personal databases in American history, with detailed information on virtually every American over age 16. The Real ID Act transforms our state driver's license into a first-ever national identity card.

Under the Real ID Act, personal information must be not only displayed on the face of the driver's license but also stored electronically for easy scanning by readers around the nation. This enables routine tracking of individuals by both government and businesses.

The Real ID Act will be a bureaucratic nightmare. Each Californian will have to produce documents like birth certificates—and prove their authenticity—before being allowed to renew a driver's license. No mail or Internet license renew-

als will be possible; everyone will have to stand in line at the DMV. Any changes on documents, such as a married last name or change in address, or any difficulty obtaining documents, such as being born outside the U.S., will further impede license renewal.

The Real ID Act is an unfunded federal mandate. The price tag of implementation—expected to be over \$500 million—is being passed on to California's taxpayers and drivers.

The ACLU is leading efforts to persuade state legislators and leaders to challenge implementation of this federal law, and to ask Congress to revisit passage of the Real ID Act. For more information, visit www.realnighmare.org.

SB 768 AND SB 433

The ACLU is also working on proactive legislation to safeguard Californians' privacy, personal safety, and financial security should larger Real ID Act efforts prove unsuccessful. SB 768 and SB 433, both authored by Senator Joe Simitian (D-Palo Alto), are two necessary and important steps.

Currently, California drivers' licenses store information electronically on a magnetic strip. California privacy laws control who is authorized to scan and collect the electronic information, and for what purposes. Yet under the Real ID Act, the Department of Homeland Security can select a single uniform technology for electronic drivers' license information in all states.

RFID tags—tiny computer chips that can be programmed with any information and then scanned at a distance without alerting the tag's holder—are being seriously considered by Homeland Security as the common machine-readable device for drivers' licenses. Without adequate privacy and security safeguards, RFID technology would enable tracking and monitoring of innocent Americans. Our personal and financial security would be threatened by identity thieves, who could obtain crucial identifying information using this technology.

SB 768, the Identity Information Protection Act, ensures that RFID technology will not be used in the government-issued identification cards without safeguards to prevent unauthorized remote access of personal information. SB 768 was passed by the state Senate with overwhelming bipartisan support. We need your help to get SB 768 past its final hurdles in the Assembly and signed into law.

SB 433, covering personal information on drivers' licenses, is another important step to protect privacy and security. The bill updates current protections to limit electronic scanning of drivers' license information to specific purposes. SB 433 has passed the Senate and is awaiting a vote in the Assembly.

For more information about SB 768 and SB 433, and to send a letter of support to your legislator, visit www.aclunc.org. ■

SACRAMENTO REPORT

By Vivek Malhotra

The second half of the 2005-2006 legislative session is well under way, and the ACLU has identified a number of important bills and issues in the state capitol. With the governor and most state lawmakers up for re-election in 2006 and a host of interest groups scrambling to put divisive initiatives on the statewide ballot, the ACLU faces a multitude of challenges in promoting and defending civil liberties in California this year.

SETBACK FOR DEATH PENALTY MORATORIUM

The failure of AB 1121, a death penalty moratorium bill, was an early setback this year. The ACLU co-sponsored AB 1121, which was introduced by Assembly Members Paul Koretz (D-West Hollywood) and Sally Lieber (D-Mountain View). The bill would have suspended executions in the state until the newly formed California Commission on the Fair Administration of Justice completes its investigations.

The Commission is reviewing the causes of wrongful conviction and wrongful execution in California. Its recommendations—specific policy reforms to ensure that California's criminal justice system is just, fair, and accurate—are expected to be issued to the state legislature and the governor by December 31, 2007.

AB 1121 garnered majority support in the Public Safety Committee. However, by late January it was held up in the Appropriations Committee and never made it to the floor for a full Assembly vote. Assembly Member Lieber has already introduced another death penalty moratorium bill, AB 2266, which the ACLU is monitoring closely.

KEY BILLS FOR 2006

Among our other current legislative priorities are the following key bills:

Protecting Choice at the End of Life—AB 651. The proposed California Compassionate Choices Act

is back again this year. This bill allows terminally ill Californians with six months or less to live to request a prescription from their doctor that will enable them to end their life on their own terms. When the U.S. Supreme Court upheld Oregon's right to implement its "Death with Dignity" law without interference by the federal government, the movement for passing a similar law in California gained new momentum. The bill, introduced by Assembly Members Patty Berg (D-Eureka) and Lloyd Levine (D-Van Nuys), must still pass state Senate committees before making it to the Senate floor for a vote this summer. From there, it must be approved by the Assembly before it reaches the governor's desk.

Fighting Discrimination Against Domestic Violence Victims—SB 1745. Sponsored by the ACLU and other groups, SB 1745 seeks to strengthen protections against discrimination in housing and employment for victims of domestic violence, sexual assault, and stalking. The bill, introduced by Senator Sheila Kuehl (D-Santa Monica), is headed to the Senate Judiciary Committee for a vote in April.

Reforming Eyewitness Identification—SB 1544. Another bill co-sponsored by the ACLU, SB 1544 requires law enforcement to adopt policies and procedures that will decrease misidentifications in police lineups and other eyewitness recall practices. Following reforms implemented successfully in other jurisdictions, the bill would strengthen the credibility of eyewitness identification and reduce the likelihood of convicting innocent people. SB 1544, introduced by Senator Carole Migden (D-San Francisco), will be assigned to the Senate Public Safety Committee for a hearing in April.

Defending Sexual Health Education—SB 1471. The bill requires state-funded sex education programs on preventing unintended pregnancies and sexually trans-

mitted diseases to be medically accurate, current, and objective. The bill also requires that instructors be appropriately trained, that programs not teach or promote religious doctrine or bias against specific groups, and that programs are culturally and linguistically appropriate. The bill, introduced by Senator Sheila Kuehl (D-Santa Monica), is headed to the Senate Education Committee for a hearing in April.

CONTINUING LEGISLATIVE PRIORITIES

Other continuing legislative priorities include protecting individual privacy in the midst of new identification technologies such as Radio Frequency Identification (RFID); videotaping the interrogations of criminal suspects, to reduce the number of false confessions and incarcerations of innocent people; guaranteeing media access to state prisons; and promoting the ability of parents with limited English proficiency to participate meaningfully in their children's education.

Finally, as predicted, the anti-immigrant forces are back with a barrage of bills targeting undocumented immigrants. Some of the harsher measures include proposals that would promote the use of local police to enforce federal immigration laws, prohibit nonprofit legal-service organizations from serving immigrants, and deny certain immigrants access to health care and higher education. The ACLU has joined forces with immigrant rights groups to ensure that civil rights and liberties are not imperiled as the California Legislature considers this assault on immigrant communities.

Your voice can make an enormous difference in all of these issues. Visit the ACLU of Northern California's "Take Action" Web page to learn what you can do to protect civil liberties in California: www.aclunc.org/takeaction.html. ■

WANT TO SUPPORT THE ACLU? GIVE ONLINE AT WWW.ACLUNC.ORG

ASK THE EXPERTS! GOVERNMENT SPYING AND YOUR RIGHTS

I'VE BEEN HEARING A LOT LATELY ABOUT GOVERNMENT SURVEILLANCE OF PRIVATE CITIZENS. WHAT'S GOING ON?

Since September 11, 2001, the government has made a concerted effort to expand surveillance programs at many levels. Collecting and analyzing information is an important law enforcement function. However, instead of simply focusing their efforts on terrorism, federal, state, and local law enforcement agencies have



Mark Schlosberg

also been monitoring individuals engaged in completely lawful political activity, such as nonviolent protests and planning meetings.

Three major revelations at the federal level have illuminated the civil liberties implications of these growing surveillance programs.

First, the *New York Times* disclosed last December that the National Security Agency (NSA) has been monitoring phone conversations and email of American citizens. Authorized by the President, the spying program was undertaken without any judicial review. In January, the ACLU national office filed a lawsuit on behalf of a number of activist organizations and journalists to stop this illegal program.

Second, NBC revealed in December that the Pentagon has been monitoring various anti-war and counter-recruitment protests. Information about the peaceful activities and the individuals involved was included in a terrorism database maintained by the Department of Defense (DOD). Some of the protests took place in Northern California, including

demonstrations against military recruitment at UC Berkeley and UC Santa Cruz.

Third, the national ACLU and several affiliates have obtained documents under FOIA showing that the FBI has monitored many activist groups, including Greenpeace, People for the Ethical Treatment of Animals, and United for Peace and Justice. One document recently obtained by the Pennsylvania ACLU shows that the FBI initiated a classified investigation into activities of the Thomas Merton Center, a Pittsburgh peace and social justice group, solely because of its anti-war activities.

Revelations on the national level mirror recent events in California. From the infiltration of Peace Fresno by the Fresno County Sheriff's Department to the monitoring of peaceful protesters by the California National Guard to undercover officers from the Contra Costa County Sheriff's Department keeping watch on a San Francisco labor rally, the government is spying on people engaged in lawful political advocacy. Attention from the national media has exposed the institutionalization of these programs and raised awareness.

Recent media reports have revealed new levels of government surveillance of private citizens. From the FBI to the Pentagon to local police departments, law enforcement agencies are monitoring citizens' peaceful activities in the name of counter-terrorism. Mark Schlosberg, ACLU-NC Police Practices Policy Director, updates us on what the government spies are up to—and when they are breaking the law, and violating our rights.

WHEN IS SURVEILLANCE OF INDIVIDUALS LEGAL, AND WHEN DOES IT VIOLATE OUR RIGHTS?

California has a strong constitutional right to privacy, adopted in 1972 amid growing revelations of government spying during the 1960s. *White v. Davis*, the leading California Supreme Court case on law enforcement surveillance, holds that police cannot conduct surveillance of people engaged in activity protected by the First Amendment without reasonable suspicion of a crime.

In September 2003, California Attorney General Bill Lockyer issued guidelines reaffirming this protection. "*White* is a warning to law enforcement in California," the guidelines state, "that it cannot operate from the premise that it can gather intelligence on citizens' activities regardless of any articulable connection to unlawful action."

California law is more protective than federal law. Under federal guidelines issued by then-Attorney General Ashcroft, FBI agents may go anywhere—including political and religious meetings—and monitor what is being said and who is

there. However, in California, state and local law enforcement officers must respect the protections afforded by the state constitution and the *White* case.

California state and local law enforcement officers may not spy on individuals engaging in free-speech activities without reasonable suspicion of criminal activity.

For more information on government spying and your rights, read the front-page story in this newsletter, and visit www.aclu.org/safefree/spyfiles. ■

"CALIFORNIA STATE AND LOCAL LAW ENFORCEMENT OFFICERS MAY NOT SPY ON INDIVIDUALS ENGAGING IN FREE-SPEECH ACTIVITIES WITHOUT REASONABLE SUSPICION OF CRIMINAL ACTIVITY."

NEW ACLU-NC WEB SITE LAUNCHES THIS SUMMER FEATURING... YOU!

JOIN OUR FAMILY ALBUM

As we move to our new San Francisco Drumm Street office building, we're revamping our virtual home as well. This summer www.aclunc.org launches, allowing for more interactivity, more content and a new look.

Help us build our new ACLU-NC virtual "Family Album"!

Who better to tell the world about the ACLU-NC than our members, our donors, and our activists. The new ACLU-NC website will feature short profiles of those like you who help to make the ACLU-NC the dynamic organization that it is.

Send us your name, city, and one or two sentences about what the ACLU-NC means to you or why you are a card-carrying member. Please limit your submission to 50 words or fewer.

Send your profile and any comments to newwebsite@aclunc.org.

Help us create the ACLU-NC virtual family. See you online!

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!

We 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 gpdian@aclunc.org or
Letter to the Editor
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