

ACLU SPRING 2009 news

BECAUSE FREEDOM CAN'T PROTECT ITSELF

VOLUME LXXIII ISSUE 2

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DESEGREGATION VICTORY

Since the passage of Proposition 209 in 1996, advocates for racial equality have struggled to protect—let alone advance—voluntary desegregation in our state’s schools. Despite clear federal and state obligations to desegregate, school districts have been plagued by the question of how to do so without violating Prop. 209’s prohibitions on granting preferences based on race.

Now a landmark ACLU-NC case may be paving the way—and offering a national model as well. In March, a California Appellate Court ruled that Berkeley Unified School District’s plan to voluntarily desegregate its schools does not violate Prop. 209. In so doing, the court affirmed the value of a race-conscious approach, albeit a limited one, as a step towards equity in education.

The district’s plan, which is designed to achieve socioeconomic and racial diversity in all of the district’s schools, takes into account several neighborhood demographic factors in school assignment decisions. An individual student’s race is not considered; instead, the policy considers the average household income and education level in a neighborhood, as well as multi-year data on the racial composition of K-5 students.

The ACLU of Northern California (ACLU-NC) and the Lawyers’ Committee for Civil Rights are among the legal ad-

vocacy groups that represented Berkeley parents in support of the district.

“I’m very happy about the ruling,” said Berkeley parent Alison Bernstein. “What my kids get from learning with kids from different backgrounds is, in my mind, as critical as any other part of their public education. It’s how they learn to participate in a diverse democracy.”

The ruling has national implications as well. The U.S. Supreme Court recently struck down student assignment plans in Seattle and Louisville that expressly considered the race of individuals, but the Court allowed for the use of demographic data to achieve diversity and desegregation.

“School districts throughout California—and now, throughout the U.S.—have been caught on a tightrope between ensuring that they take steps to eliminate segregation and that they don’t use race to discriminate or grant preferences,” said Jory



ANGELA D WHITE

Steele, ACLU-NC Managing Attorney. “This ruling allows a pathway towards achieving equality.”

Other groups representing the parents include the ACLU of Southern California and the NAACP Legal Defense Fund. The District is represented by attorneys at Kecker & Van Nest. The Berkeley school district’s desegregation policy came under fire in 2006, when the Pacific Legal Foundation filed a lawsuit against the school district alleging that its plan violated Proposition 209.

As of this writing, the Pacific Legal Foundation has submitted a petition for review to the California Supreme Court. ■

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THIS YEAR, THE ACLU-NC TURNS 75!

It’s time to take stock of our legacy. Since our founding in San Francisco in 1934, the ACLU-NC has worked tirelessly to defend and protect the freedoms and fundamental rights of all Californians.

This July, ACLU members will help commemorate our 75th anniversary by hosting ACLU-themed parties in homes and backyards across Northern California.

To learn more about hosting or attending an event in your community, contact Shayna Gelender at 415.621.2493 ext. 384 or sgelender@aclunc.org.

75 YEARS We see justice through

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



ABDI SOLTANI TAKES THE HELM

By Isobel White

It was on a dusty road outside Kettleman City, CA that the ACLU-NC's new Executive Director Abdi Soltani altered his view of leadership.

"Up until then—all through high school and my first year of college—I had believed that I would create change by advancing myself as far as I could and then advocating for the issues I cared about," says Soltani.

But as he took part in a protest against a planned incinerator in this small Central Valley farmworker town, he saw the power of collective action. People from all over the southwest had come to help fight the incinerator. And they succeeded. "I saw that by working together, regular people can face down enormous power, whether it's corporate or governmental." This experience led Soltani to become a community organizer.

And now it has led him to the ACLU-NC. Soltani takes the helm after serving successfully as executive director of three nonprofits: Californians for Justice, the Campaign for College Opportunity, and PARS Community Foundation, the first Persian community foundation in the U.S. After an extensive national search, the Board of Directors chose him for his passion for civil liberties and civil rights, and his managerial acumen, political savvy, and fundraising smarts.

A card-carrying member of the ACLU for several years, Soltani specializes in leading campaigns that integrate the ACLU-NC's core strategies—public education, legislative advocacy, litigation and community organizing. And he has extensive experience with statewide ballot initiatives. As a leader in the No on 54 campaign in 2003, he worked alongside ACLU-NC leaders Dorothy Ehrlich, Maya Harris, Quinn Delaney and Michelle Alexander to help defeat a proposition aimed at significantly weak-

ening racial equality by barring state and local government agencies from collecting vital data on race, ethnicity, color or national origin.

Soltani understands well that rights on paper aren't enough. At the Campaign for College Opportunity he spearheaded "Save Me a Spot in College," an effort to pass legislation committing a spot in college and financial aid to students starting in middle school. The measure entailed no new funding; its power lay in raising expectations—a power he likens to the work of the ACLU. "It was one thing to have freedom of speech written into the Bill of Rights, but it's taken the work of the ACLU to bring it to life."

This respect for civil liberties stretches back decades to Soltani's childhood in Iran before and after the Iranian Revolution. He vividly remembers knowing at age 7 that he couldn't speak freely over the phone, because of the very real fear that government agents could be listening in.

"This fear squelches freedom of speech and assembly," says Soltani. "Ultimately, it stifles basic civil rights and liberty. I know that every social movement and every exercise of our democratic rights is drawn from the guarantees of freedom that the ACLU safeguards. I'm looking forward to an inspired collaboration with the ACLU-NC Board, staff, and chapters to uphold our mission and expand our impact."

Soltani takes the reins as the ACLU-NC nears its 75th anniversary, reaching back to celebrate history while looking forward to new challenges. "I have an unbelievable amount of respect for the previous generations who created this organization and worked for the level of rights that we enjoy today," he says. "At the same time, we have to do everything we can to develop the next generation of



BOB HSIAO PHOTOGRAPHY

"IT WAS ONE THING TO HAVE FREEDOM OF SPEECH WRITTEN INTO THE BILL OF RIGHTS, BUT IT'S TAKEN THE WORK OF THE ACLU TO BRING IT TO LIFE."

—ABDI SOLTANI

leaders who will make as strong a commitment to the cause as our predecessors."

This intergenerational collaboration is nothing new to Soltani, who lives in Berkeley with his wife Grace, sons Cyrus and Juno (one Persian name and one Korean name, reflecting their heritage), Grace's mother, Abdi's parents, and his brother. "Whether at work or at home," Abdi says with a laugh, "I love breaking down barriers that divide people. I relish getting everyone pulling in the same direction towards a common goal." It's a spirit that will serve him well at the ACLU-NC. ■

IN THEIR OWN WORDS: REFLECTIONS FROM CARD-CARRYING MEMBERS

"You can look at civil rights from a narrow perspective—like you have the right to free speech whether you live in a gated community or under a bridge. Or you can take a broader perspective that civil rights are only useful to the extent that you have the ability to exercise them. I am proud that the ACLU-NC recognizes that civil liberties are bound up with economic rights and human rights. And this perspective directly impacts the work of the ACLU today—for instance, when the police are sweeping up the homeless, it's a civil rights issue.

When I first joined the ACLU-NC board, there was a real debate over the rights of anti-abortion protesters to picket. They have rights, but at the same time, should their shouting keep people from exercising their right to an abortion? There really isn't a party line when it comes to issues like this. It was a very rich discussion and that's one of the reasons I enjoy being part of the ACLU.

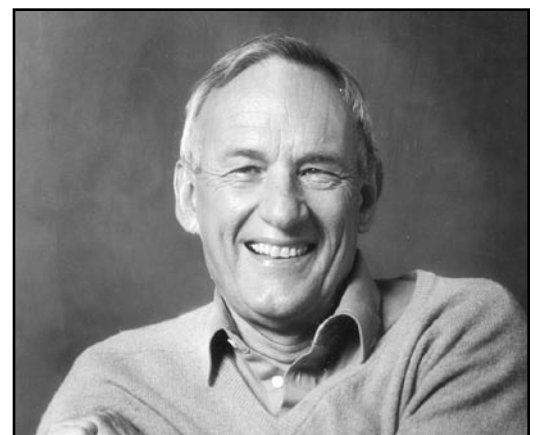
I'm also proud that the ACLU is a membership organization with active chapters. It's not purely a lobbying organization or a bunch of lawyers on white horses. ACLU-NC lawyers and lobbyists reflect the members' views. Otherwise it would just be like any other group that's susceptible to political whims. You've seen it happen with other organizations and it hasn't happened with the ACLU."

Bob Capistrano
Director of Litigation, Advocacy & Training, Bay Area Legal Aid
ACLU-NC Member and Donor
Former Board Member, 1993-1999 & 2001-2007



LAURA SAPONARA

IN MEMORIAM



Richard DeLancie, 1915-2009, served as Chairperson of the ACLU-NC Board from 1973 -1977. He also became a delegate to the National ACLU Board in 1974.

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STRAUSS V. HORTON: MARRIAGE EQUALITY AND THE CALIFORNIA CONSTITUTION

By Elizabeth Gill

On March 5, 2009, a year and a day after the oral arguments in *In re Marriage Cases*, the California Supreme Court heard oral arguments in *Strauss v. Horton*. The case, brought by the ACLU along with NCLR, Lambda Legal and others, sought to invalidate Proposition 8.

A year ago, the Court's questions and comments during oral argument inspired us to hope for marriage equality in California. And indeed, in its decision in the Marriage Cases, the Court surpassed all of our expectations—eloquently concluding not only that the California statute limiting marriage to a man and a woman violated the due process, privacy, and equal protection rights of gay and lesbian Californians, but that any government discrimination on the basis of sexual orientation must be subjected to the most rigorous level of review, or “strict scrutiny.” Since the issuance of the decision in May 2008, two other state supreme courts—Connecticut and Iowa—have gone on to rely on the decision's reasoning in striking down their own states' statutory marriage bans.

By contrast, our arguments in *Strauss* were met with palpable hostility. As of this writing, we await the decision. But if the Court's questions and comments are indicative of the outcome, then we are likely to lose—at least on our argument that Proposition 8 is a revision to the constitution, not an amendment, and as such could not be accomplished through the initiative process. The Court did seem likely to find that Proposition 8 does not apply retroactively to the 18,000 couples who married between June 2008 and November 4, 2009.

The Court's likely upholding of Proposition 8 going forward is profoundly disappointing—and not just because it sets us back in terms of marriage equality. Our argument in *Strauss* is that by depriving a single minority group, gay and lesbian Californians, from a fundamental right, Proposition 8



ACLU-NC staff attorney Elizabeth Gill, ACLU LGBT & AIDS Project Director Matt Coles, and ACLU Executive Director Anthony Romero, on their way to the March 5 oral arguments.

so undermines the equality guarantee in our state constitution as to result in a change to the very structure of our government. If Proposition 8 is upheld, our California Constitution could be amended to eliminate the fundamental rights of any minority by simple majority vote.

It may be that the Court tries to mitigate the effect of a decision to uphold Proposition 8 by, for example, holding that the “nomenclature” of marriage is not what constitutes the fundamental right to marry (which would sadly undermine the Court's own decision in the *Marriage Cases*). But even so, the very existence of Proposition 8 broadcasts the ability of a simple majority to exert direct control over the fundamental rights of minorities—undermining the efficacy of both our state constitution and our state courts.

As the Iowa Supreme Court so aptly put it a few months ago, “the very purpose of limiting the power of the elected branches of government by constitutional provisions like the Equal Protection Clause is to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.” (*Varnum v. Brien*, No 07-1499, pp. 13-14 (Iowa S.Ct. filed April 3, 2009).)

Thus, while we may win marriage equality back in California politically—we lost Proposition 8, after all, by a mere four percentage points, as opposed to our loss in 2000 of twenty-three percentage points on Proposition 22. But the California Supreme Court's upholding of Proposition 8 in *Strauss* could do much more lasting damage. ■

Elizabeth Gill is a Staff Attorney with the ACLU-NC and the National ACLU's LGBT & AIDS Project.

LEGAL & LEGISLATIVE BRIEFS

By Rebecca Farmer

OPPOSING PAT-DOWNS AT 49-ERS GAMES

In a March 2 unanimous ruling, the California Supreme Court said that the 49ers policy of mandatory pat downs for fans attending games raises privacy concerns that the team must justify at trial. This is great news for ACLU-NC and our clients, two long-time season ticket holders who felt the pat downs violated their privacy. The suit, first filed in 2005, had been dismissed by the trial court and the Court of Appeal on the grounds that, because the plaintiffs knew about the pat-downs when they renewed their season tickets, they had “consented” to them. The state Supreme Court ruling overturned those decisions, holding that people who choose to go to an entertainment event do not automatically consent “to any security measures the promoters may choose to impose no matter how intrusive or unnecessary.”

“Californians should not be forced to pay for goods and services with their privacy, whether it's admission to a football game, a shopping mall, or a college graduation,” said ACLU-NC staff attorney Ann Brick.

The California Constitution guarantees that Californians have a right to be free from unjustified intrusions on privacy. This fundamental right to privacy was enshrined in the state Constitution when voters passed the Privacy Initiative in 1972, a milestone that the ACLU-NC was instrumental in achieving.

In its ruling the Court made clear that people “certainly have, in general, a right not to have others pat them down.” The case, *Sheehan v. San Francisco* will now return to the trial court where the 49ers will have the burden of proving that the pat downs are actually necessary and effective in enhancing safety.

PUTTING TORTURE ON TRIAL

In an historic decision, on April 21, 2009, the U.S. Court of Appeals for the Ninth Circuit reinstated our landmark lawsuit against Boeing subsidiary Jeppesen DataPlan Inc. challenging its role in the Bush administration's unlawful extraordinary rendition program. The court ruled that cases like this one may not be dismissed on the grounds that “the very subject matter” of the lawsuit is a state secret. Rather, the government must invoke the state secrets privilege with respect to specific evidence, on an item-by-item basis. This ruling means that the courthouse doors remain open for judicial review of claims of executive abuse of power.

The ACLU-NC and the national ACLU filed the suit in May 2007, charging that Jeppesen knowingly provided logistical support for the CIA's extraordinary rendition flights. Our suit was brought on behalf of five men who were kidnapped, forcibly disappeared and secretly transferred to U.S.-run prisons or foreign intelligence agencies overseas where they were interrogated under torture. Jeppesen's actions violate the Alien Tort Statute, which permits non-U.S. nationals to sue in American courts for violations of the law of nations or a United States treaty.

The government moved to dismiss the case, arguing that litigation would harm national security by revealing “state secrets.” In opposing the government's motion, we submitted a wealth of detailed information that is already in the public domain, including a sworn statement by a former Jeppesen employee that shows that Jeppesen knew that it was helping with “torture flights.”

STEMMING TECH THREATS: BIOMETRICS

ACLU members were instrumental in stemming a high tech threat to personal privacy that lurked in Sacramento in January, largely hidden from public view until it was exposed by the ACLU's Sacramento office.

Without notifying the public, the Department of Motor Vehicles (DMV) sent a letter to the state Joint Legislative Budget Committee requesting that the biometric data of every Californian applying for a driver's license or state ID card be saved in a massive, searchable database. Biometrics are measurements of our physical characteristics, like computerized facial scans.

The DMV planned to use biometric technology to compare our facial scans against millions of other images to establish identity, and to begin doing so as early as June of this year. And the DMV wanted the legislature to approve these new powers through an expedited budget process, without adequate privacy safeguards to protect this sensitive information from being misused and abused.

Thousands of faxes and emails from ACLU members demanded that the legislature not rubber stamp this plan. The legislature listened, rejected the expedited approval process the DMV sought, and recognized the need to stop and consider the policy implications of using biometrics.

The vigilance of the ACLU Sacramento office and the activism of ACLU members put privacy rights back on the radar in the biometrics discussion. Now we are working to keep this issue entirely out of the budget process. Please stay tuned for updates in the months ahead. ■

“WORK IT OUT WITH THE ACLU” MY 21 YEARS AS AN ACLU LOBBYIST

By Francisco Lobaco

A law enforcement lobbyist in Sacramento recently commented to me that the ACLU provides “honest” policy arguments. I knew exactly what he meant—because unlike many of my lobbying colleagues, our ability to influence decision making is not colored by the amount of campaign contributions tendered.

I’ve been a lobbyist with the ACLU for 21 years. In that time, I’ve worked on just about every civil liberties issue under the sun, from police accountability to protecting the rights of immigrants to ridding ourselves of the McCarthy era loyalty oath. In just the past few years, legislation we sponsored has helped to raise the issue of racial profiling to political prominence, clarify homeowners’ rights to post political signs, ensure that students get unbiased and medically accurate sex education, make our state’s abortion laws consistent with the principles established in *Roe v. Wade*, and ban the covert use of radio frequency identification tags.

Affirmative legislation like this is an important part of my job. But equally crucial is the work I and my fellow ACLU lobbyists do each day to watch out for troublesome legislation.

Last session there were over 5,000 bills introduced. Each of those bills and every amendment land on my desk. I read them all. Our small staff in Sacramento typically monitors close to 1,500 bills per session and take an actual position on about 250 to 300 bills.

Without opposition, a bill generally has an easy ride to the Governor’s desk. By contrast, ACLU opposition means a bumpy road confronts an author. I like to view this part of my work as laying down “civil liberties speed bumps.”

Take just one small example. Toward the end of the ses-

sion last year, a bill was amended permitting school authorities to suspend or expel students for engaging in “cyberbullying”—using the Internet or text messages to harass fellow students. My due process radar always goes on alert when I see



amendments expanding the ability to suspend students. We immediately contacted the author and Education Committee staff to explain that we oppose the proposal’s vague definition of cyberbullying, and the overly broad language that would permit suspension for off-campus comments posted on the Internet. The author agreed to limit the bill only to on-campus acts. At the Education Committee hearing, I thanked him for his amendment and proceeded to inform the Committee members that we still had concerns, as the bill failed to adequately define cyberbullying. The Chair turned to the author and said “work it out with the ACLU.”

A couple of days later the author agreed to define cyberbullying consistent with existing law – a statute, by the way, that the ACLU had helped narrowly craft many years previously. We removed our opposition and the bill passed and was signed by the Governor.

This is the type of work I do day in and day out. It may be true that the public regards lobbyists as among the least honest and ethical professions, even below car salesmen and telemarketers. But when I am asked what I do for a living, I proudly answer, “I’m a lobbyist for the ACLU.”

Francisco Lobaco is the ACLU’s Legislative Director in California.

DEATH PENALTY TIPPING POINT?

By Natasha Minsker and Isobel White

What do we get for all the money we spend on the death penalty—and how else could we use that money to make our communities safe? Over the past few months, these questions have gathered steam in legislatures and among newspaper editorial boards as states struggle to patch gaping holes in their budgets.

This focus on the true cost of the death penalty has been a centerpiece of our work at the ACLU-NC. Last year, our comprehensive research on the full budgetary impact of the death penalty informed the work of the California Commission on the Fair Administration of Justice, a bipartisan panel of criminal justice experts appointed by the state Senate. The Commission found that the death penalty costs our state more than \$137 million each year *above* the cost of permanent imprisonment. Commissioners also concluded that to make our system fairer and functional on the most basic level, California taxpayers would have to spend more than \$100 million per year *beyond* current costs.

The financial argument for replacing the death penalty is resonating far beyond California. The Governor of Maryland recently led an effort to repeal the death penalty, resulting in substantial limitations on its use in that state. In Montana, a bill to end the death penalty passed the Republican-controlled Senate in February. In Kansas, a Republican lawmaker introduced a repeal bill, arguing that the state could no longer afford to waste public safety resources on its failed system. And most significantly, New Mexico became the 15th state in the country to end the death penalty in April, replacing it with permanent imprisonment. Governor Bill Richardson, a life-long supporter of the death penalty, chose to sign the bi-partisan bill because, after serious reflection and consideration, he concluded that years of experience had proven the death penalty too flawed to fix.

Unprecedented legislative scrutiny has caused equally unprecedented media attention to the death penalty’s high cost. An Associated Press story in February highlighted the California Commission’s findings, and quoted retired Judge Donald McCartin, once known as the “hanging judge” of Orange County, stating: “It’s a waste of time and money....The only thing it does is prolong the agony of the victims’ families.”

Similarly, on February 24 the *New York Times* ran a front page story on how the death penalty’s high cost is impacting the current policy debates. A letter to the editor describing our research appeared on March 1. Our research was also recently featured in a news story on the CNN website, comparing the costs of a death penalty and a non-death penalty trial. Finally, on May 7, the editorial board of the *Stockton Record* for the first time took an editorial position in favor of replacing the death penalty with permanent imprisonment, citing our research. The editorial said:

There is little justice surrounding the death penalty. It is always delayed and delayed and delayed, condemning the victim’s family to twist in a sort of penalty purgatory. And there certainly is no justice for the taxpayers, who are paying the multimillion expense every condemned person represents.

Through our research, organizing and media work, the ACLU-NC’s death penalty project is moving California and the nation closer to the day we end the death penalty for good. ■

See www.aclunc.org/deathpenalty for links to the articles mentioned above.



Anti-death penalty activist training in April in San Leandro.

HERE’S WHAT YOU CAN DO

1. Join us in Sacramento. Attend the Day of Action to End the Death Penalty, June 30. Following the hearing, we will proceed to the Capitol to tell lawmakers to save \$1 billion in five years by ending the death penalty. To RSVP for this event, visit www.aclunc.org/deathpenalty

Details on the public hearing:
9 a.m. to 3 p.m.
Department of Health Services
The Auditorium, 1500 Capitol Avenue
Sacramento, CA 95814

2. Submit written comments that express your personal opinion about why you object to the lethal injection procedures. Objections may be rooted in the tremendous financial costs of the death penalty; unnecessary restrictions on media access to executions; violations of the religious freedom of the condemned; and many other civil rights and civil liberties concerns. For instructions on how to comment, visit www.aclunc.org/deathpenalty

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

PRIVACY 2.0: JOIN THE DIGITAL PRIVACY REVOLUTION!

By Rebecca Farmer

Within the past month I've posted pictures to an online photo sharing web site, made a purchase on eBay, and communicated with friends on Facebook. Who has been tracking that information, and what can they do with it? As more of us rely increasingly on the Web and digital technology in our daily lives, the need for high-tech privacy protections also increases. For all our clicking and uploading, we often don't realize that information we share online is also compiled, stored, sold, and otherwise used in a number of ways that we don't control. Technology has evolved quickly. Laws haven't. Most of the laws and seminal court cases establishing privacy rights were decided before the Internet as we know it even existed.

New technologies are fun and convenient. But we shouldn't be forced to pay for them by handing over control of our personal information. Enter the ACLU of Northern California's work to ensure that we have the same privacy and free speech rights in our online activities that we do in the offline world.

"Our personal information is just that, personal, whether it's in our wallet or in a Web database," said Nicole Ozer, the ACLU-NC's Technology and Civil Liberties Policy Director. "Government officials must ensure that legal protections keep pace with innovations. And businesses need to understand that it's in their best interest to protect their customers' privacy and free speech."

Unfortunately, businesses have a spotty record of protecting user rights. Here are a few examples:

- Facebook has triggered waves of protest by revealing users' activities on other Web sites to their Facebook friends and by making it extremely difficult for users to delete their profiles.
- AT&T and Verizon remain locked in legal battles about their role in the NSA's warrantless wiretapping program.
- Yahoo! was slammed for handing over information about dissidents to the Chinese government.

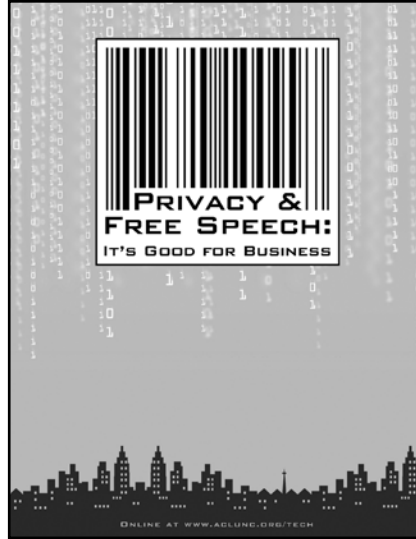
These actions haven't just generated bad press; they have affected customer trust, ruined business relationships, and resulted in massive legal costs and fines. Companies that fail to protect privacy and free speech see the consequences in their bottom line.

A key part of ACLU-NC's digital privacy initiative involves working with the tech business community. Ozer and her team created a first-of-its-kind primer, *Privacy and Free Speech: It's Good for Business*, which offers hands-on tips for how companies can make customer privacy part of their business model as well as dozens of case studies examining the benefits of protecting user rights and the costs of failing to do so. The publication is available online at dotrights.org/business/primer.

The primer is the first step in a broader effort by the ACLU-NC to upgrade current privacy laws to match our modern online world. Learn more, join the campaign, and help us spread the word at www.dotrights.org. ■



GIGI PANDIAN



"AN AMERICA WE CAN BE PROUD OF"

Many ACLU members are cautious and optimistic that under the Obama Administration, we will be able to reaffirm our country's commitment to the Constitution, restore honesty and openness in government, and demonstrate to other nations that we are people of integrity. *ACLU News* asked a handful of provocative thinkers to respond to an important question for our time: "When you think of the phrase 'an America we can be proud of,' what comes to mind?"

Integrity

"To keep one's own integrity," the poet Robinson Jeffers wrote, "be merciful and uncorrupted and not wish for evil, and not be duped/By dreams of universal justice or happiness. These dreams will not be fulfilled."

An America of which we can be proud, for me, would be an America in which integrity has been restored on every level—not just in international, national and local affairs but, more importantly, on a personal, individual level. If we are to regain the civil liberties lost in the panicked legislation after 9/11, assert the basic right of same-sex couples to marry, outlaw the death penalty, stop extraordinary rendition and torture—these and other needed changes will come from our integrity: the compassion we feel for others, our duty to act civilly, our willingness to seek the good in others, all with the recognition that we can never eradicate the ills that plague our society and our world.



—Elliot Ruchowitz-Roberts, Chair, Monterey County Chapter, ACLU-NC

Genuine Democracy

I am proud of an America that acknowledges the equal voice, power, and importance of all its citizens—an America that is truly of and for all people. By any definition, a genuine democracy grants all its citizens equal access to power and allows them universally accepted rights and liberties. A democratic America respects the rights, ideas, and lives of all people. It is an America that accepts responsibility for its mistakes, takes corrective measures and strives to learn from those errors. It honors its promises and constantly strives to set precedents we can be proud of.

It is flexible and able to adapt to the changing needs of the communities it shelters.

Such an America is not possible without the courage, dedication, and hope of its citizen members. Together and alone, we bear the responsibility to nurture these democratic principles of inclusion and optimism. From that, pride in America occurs naturally and freedom truly rings.

—Sterling Larnerd, Chair, Santa Clara Valley Chapter, ACLU-NC



Separation of Powers

In my professional work, I have argued that core constitutional values require extensive judicial oversight of modern law enforcement surveillance. That means that the same extensive procedural constraints we place on government wire tappers must also restrict the executive branches' use of modern surveillance tools that monitor our electronic movements and activities. Judges must make sure that electronic surveillance takes place only when justified, and the courts must provide meaningful relief to victims of unjustified surveillance. Congress must make sure that rules stay current with technologic innovations. We need to ensure that electronic dossiers are not used to stifle free speech or consolidate power. I can be proud of an America whose government remembers the importance of having each branch oversee the other whenever important constitutional values are at stake.



—Susan Freiwald, Professor of Law, University of San Francisco, former Board Member, ACLU-NC

Freedom

Our government has a chance to come back in line with American values by restoring respect for all people—from underprivileged people seeking a chance to improve their lot to unpopular people hoping to express their ideas, from prisoners attempting to reintegrate into society to people in love trying to marry each other without preapproval from the government. The United States was founded on the principle of respect for the individuals' freedom to define our lives as we see fit, within reasonable limits.

In recent decades, conservatives have recast that freedom as the ability of the strong to make any choices they wish—even those that impose significant costs on others. That is not a notion of freedom that can sustain society, nor is it the real freedom that forms the foundation of our country.

We see the costs of this dogmatic, unrealistic, extreme version of freedom today—in the form of an embittered populace, a growing chasm between rich and poor, degradation of the environment, torture of American and foreign prisoners, and governmental efforts to dictate family relationships.

I hope that the Obama Administration, Congress, the courts, and the media will take steps to return us to a saner and more workable vision of freedom—one that is more faithful to our heritage as Americans.

—Jahan Sagafi, Attorney, Board Member, ACLU-NC



CONTINUED ON PAGE 7

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THE 2009 ACLU YOUTH RIGHTS CONFERENCE: IS EDUCATION A RIGHT OR A PRIVILEGE?

By Gigi Pandian

Hundreds of young people from throughout northern California came together on March 19 for the 2009 ACLU Youth Rights Conference, titled *Is Education a Right or a Privilege? Exploring Educational Equity and Racial Justice in Our Communities*. The date held special significance. March 19 marked the sixth anniversary of the war in Iraq, a war that has drained funding for education.

“Our goal for this conference is to give everyone a chance to think about their communities and schools,” Ilham Awad of the Friedman Education Project’s Youth Activist Committee (YAC) told the packed house. “Our thoughts and opinions are important. Let that sink in.”

A group called BAY Peace: Better Alternatives for Youth kicked off the conference with a skit illustrating the effects of military recruitment on campuses, as well as the toll the military budget takes on struggling schools. “We could send every student to college for free,” Navy veteran and war resister Pablo Paredes said, “for the cost of the Iraq war.”

Derrick Smith, co-director of the June Jordan School for Equity, a public school in San Francisco where a majority of students are first-generation and college-bound, spoke about the intersection of collective action and individual responsibility. “While collective action is an important part of social change, you can’t forget the most important action you can take: Your own individual actions,” Smith offered.

Smith returned to the theme of the conference to express that while education is indeed a right, it is also a privilege. “Not everyone has the privilege that you in the room have,” he said, encouraging participants to take advantage of the opportunities afforded them. “Push the bar higher.”

After the empowering opening session, the youth activists were given a wide range of workshops to choose from, ranging from understanding the No Child Left Behind Act and the Williams court case to discussing sexism and bias in schools.

The conference was held at San Francisco State’s Cesar Chavez Student Union. Young people active in the YAC facilitated a number of the workshops, engaging their peers in opportunities to build knowledge and change.

“We are incredibly proud of the YAC,” said Bruin Runyan, Co-Director of the Friedman Project. “They have been working



Ilham Awad and Danny Khuu of the Youth Activist Committee.

since January, planning and writing curriculum, studying popular education and the best way to motivate and engage their peers, and having critical conversations about issues surrounding educational equity and racial justice. It is an honor and a privilege to support young people dedicated to improving their communities and speaking truth to power.” ■

Gigi Pandian is the ACLU of Northern California’s Graphic Designer and Publication Production Manager.

The Howard A. Friedman First Amendment Education Project was established by the ACLU-NC in 1991. The project works with young people, ages 13-19 to improve their understanding of the core principles underlying the Bill of Rights, to make connections between these rights and the issues in their lives and to build power and leadership among young people so they may take leadership on issues affecting them and their communities. To learn more about the project, visit www.aclunc.org/youth.

HIGHLIGHTS OF WORKSHOPS AT THE 2009 YOUTH RIGHTS CONFERENCE

- How Deep Does the Rabbit Hole Go? School to Prison Pipeline
- No Tolerance for Zero Tolerance: Finding an Effective Solution to School Violence
- X’s and Y’s Dictating Our Lives: Sexism in School
- Only God Can Judge Me: Criminalization and Youth
- The Gilded Truth of Military Recruitment
- What Are You Worth? Quality Education and the Williams Case
- The Truth Behind the Act: Understanding No Child Left Behind
- The Constitution Isn’t Just For Old People: Your Rights in School



FOR THE GRADUATE

If you’re looking for a special graduation gift, consider the gift of ACLU membership. Share your commitment to civil rights and liberties with your graduate as she or he steps out into the world and invite them to join in protecting these freedoms.

To give a gift membership, fill out the coupon below. Send with your check made payable to the ACLU to ACLU Membership, 39 Drumm Street, San Francisco, CA 94111.

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LOBBY DAY IN SACRAMENTO



ALICIA WALTERS

On April 26 and 27, approximately 100 ACLU-NC board members, chapter leaders, donors, activists, members, and staff gathered in Sacramento for the 2009 Activist Retreat and Lobby Day.

The retreat, held on April 26, included a moving 75th Anniversary panel between staff and board members tying the organization's future to its past. Other workshops focused on organizing around technology and privacy, abolishing the death penalty, and marriage equality. The evening ended with a keynote address from the inspiring Assemblymember Bill Monning (D-Carmel).

The lobby day kicked off with an address from ACLU California Legislative Director Francisco Lobaco, who emphasized the importance of criminal justice reform in California. Attendees then broke into groups based on legislative district and hit the Capitol to lobby their legislators on key civil liberties issues. ■

SAVE THE DATE!

We hope you'll join us for the
San Francisco
LGBT PRIDE PARADE

SUNDAY
JUNE 28, 2009



Contact organizing@aclunc.org
or (415) 621-2439 x372
for more information or if you
would like to participate in our
parade contingent.

"AN AMERICA WE CAN BE PROUD OF"

CONTINUED FROM PAGE 5

Freedom of Speech

As a community organizer volunteering with the ACLU and Code Pink: Women for Peace, I treasure the First Amendment's protection of the "freedom of speech" and "the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The ACLU protects the First Amendment, and Code Pink uses the heck out of it. The past eight years presented many challenges to those trying to exercise these important rights, including heightened surveillance, monitoring of political groups, no-fly lists, increased use of non-deadly force by law enforcement, and free speech zones. Fortunately, these techniques have been exposed and some have already been reversed, thanks to the work of the ACLU and other organizations.



An America that I can be proud of is full of concerned individuals participating in civic engagement fueled by the rights delineated in the First Amendment.

—Natalie Wormeli, Attorney, Board Member, ACLU-NC

ACLU-NC CHAPTER MEETING SCHEDULES

CONTACT YOUR LOCAL ACLU CHAPTER AND GET INVOLVED!

BERKELEY/NORTH EAST BAY CHAPTER MEETING: Third Wednesday of each month at 7 p.m. For more information, contact Jim Hausken at (510) 558-0377 or jhausken@redshift.com.

CHICO CHAPTER MEETING: For more information, contact Leslie Johnson at leslie@acluchico.org.

GREATER FRESNO CHAPTER MEETING: Contact Bill Simon, Chair, for more information at simonaclu@sbcglobal.net.

MT. DIABLO CHAPTER MEETING: Regular meetings. For more information, contact Lee Lawrence at (925) 376-9000 or leehelenalawrence@yahoo.com. All ACLU members in central and eastern Contra Costa County are invited to participate.

MARIN COUNTY CHAPTER MEETING: Third Monday of each month from 7–9 p.m. at the San Rafael Corporate Center. For more information, contact George Pegelow at (415) 492-8903 or gpegelow@sbcglobal.net. Or call the Marin Chapter complaint hotline at (415) 456-0137.

MID-PENINSULA CHAPTER MEETING: Fourth Tuesday of each month, from 7–9 p.m. at the Fair Oaks Community Center, Room #4, 2600 Middlefield Road, Redwood City. The chapter mailing address is PO Box 60825, Palo Alto, CA 94306. Contact Harry Anisgard for more information: (650) 856-9186.

MONTEREY COUNTY CHAPTER MEETING: Third Tuesday of the month (except August, December, and January) at 7:15 p.m. at the Monterey Public Library, 625 Pacific Street, Monterey. For more information, contact Elliot Ruchowitz-Roberts at (831) 624-1180 or visit www.aclumontereycounty.org. To report a civil liberties concern, call Monterey's complaint line at (831) 622-9894 (Spanish translation available).

NORTH PENINSULA (DALY CITY TO SAN CARLOS) CHAPTER MEETING: Third Monday of the month. The chapter mailing address is PO Box 51, San Mateo, CA 94401. For more information, contact the chapter hotline at (650) 579-1789 or npenaclu@comcast.net.

PAUL ROBESON (OAKLAND) CHAPTER MEETING: Fourth Monday of each month at the Rockridge Library (corner of Manila and College Ave.), Oakland. For more information, contact (510) 527-6592.

REDWOOD (HUMBOLDT COUNTY) CHAPTER MEETING: Third Tuesday of each month at noon. 917 3rd Street, Eureka, CA. For more information, contact (707) 442-4419 or visit redwoodaclu.blogspot.com.

SACRAMENTO COUNTY CHAPTER MEETING: For more information, contact Jim Updegraff at updegraf@pacbell.net.

SAN JOAQUIN COUNTY CHAPTER MEETING: Regular meetings. For more information, contact Amarjit Bal at amarjitbal2000@yahoo.com.

SANTA CLARA VALLEY CHAPTER MEETING: First Tuesday of each month at 7 p.m. at 1051 Morse Street (at Newhall), San Jose. For more information, contact acluscv@hotmail.com or visit www.acluscv.org. To leave a voice message for the chapter Chair, call (408) 327-9357.

SANTA CRUZ COUNTY CHAPTER MEETING: Fourth Monday of every month. For more information, contact info@aclusantacruz.org or visit www.aclusantacruz.org.

SHASTA-TEHAMA-TRINITY COUNTIES CHAPTER MEETING: Regular meetings are held in Redding. For more information, contact Don Yost, Chair, at donald@snowcrest.net or (530) 241-8421.

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). For more information, contact the chapter hotline at (707) 765-5005 or visit www.aclusonoma.org.

STANISLAUS COUNTY CHAPTER MEETING: Third Tuesday of every month from 7–9:30 p.m. at the Modesto Peace/Life Center, 720 13th Street, Modesto. For more information, contact the chapter hotline at (209) 526-4854 or contact stanaclu@earthlink.net.

YOLO COUNTY CHAPTER MEETING: Fourth Thursday of every month at 6:30 p.m. For meeting location, contact Natalie Wormeli at (530) 756-1900.

CAMPUS CLUBS

GOLDEN GATE UNIVERSITY: For information, contact Johanna LaBranch at jo.labranch@gmail.com.

SANTA CLARA UNIVERSITY LAW: For information, contact Lauren Vazquez at lvazquez821@yahoo.com.

STANFORD UNIVERSITY: For information, contact Eve Rips at erips@stanford.edu.

UC BERKELEY ACLU: For information, contact Brandon Hutchens at bhilton@berkeley.edu or Azeen Ghorayshi at azeen_ghorayshi@berkeley.edu.

UC DAVIS KING HALL LAW: For information, contact Aaron Thompson at asthompson@ucdavis.edu.

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Diana Tate Vermeire

ASK THE EXPERTS! SCHOOLS FOR ALL

As Racial Justice Project Director, Diana Tate Vermeire heads up Schools for All, a multidisciplinary campaign to ensure that all children attend schools that are inclusive and welcoming. Here, Diana addresses the school bias and pushout problem.

WHAT DREW YOU PERSONALLY TO WORK ON EDUCATION ISSUES?

I believe that education is the key to exercising and defending all of our other rights. Without education, access to the political process is quite often limited. So it's important to me that every child have the opportunity for a good education.

Before coming to the ACLU-NC in the fall of 2007, I worked with the Lawyers Committee for Civil Rights. I had several cases where I watched students who wanted to go to school and wanted to learn face unbelievable harassment. I saw students who stopped wanting to go to school because of the treatment they were receiving.

One of the stories that stays with me was an African-American student, the only one in his class, whose teacher thought it would be an educational exercise to recreate a slave auction and have this student stand in the middle of the classroom while his white peers bid on him. Not surprisingly, this student did not want to set foot in his school ever again. I worked with his parents to help educate the school district and get this student back on track. This was a particularly ugly example, but that kind of harassment based on race or other difference is unfortunately not that unusual in our schools.

CAN YOU EXPLAIN WHAT "PUSHOUT" IS?

Pushout occurs when students choose to leave or are forced out of school because their school environment is unwelcoming or even hostile. For example, students may experience unfair, harassing treatment by other students, teachers or administrators, and the situation may be so difficult that the student simply chooses not to attend. Or students may be subjected to such unjust treatment by teachers or administrators that they are excluded from school or pushed into the juvenile or criminal justice systems. For many students, pushout is a more accurate term than dropout.

Pushout happens at schools throughout our state. As a result, children are deprived of the opportunity to learn and we as a society are deprived of their contributions.

IN WHAT WAYS IN PARTICULAR ARE CHILDREN OF COLOR BEING PUSHED OUT?

Children of color experience pushout in a variety of ways, but unaddressed bias and harassment that then leads to behavior problems is one of the big issues. Studies show that children of color receive harsher discipline for similar behavior as their white peers.

In addition, young people are being disciplined and punished for a wider array of transgressions. Behavior that a generation ago would have been considered typical for teenagers can now lead to a referral to the police, particularly for students of color.

WHAT CAN BE DONE TO ADDRESS BIAS AND PUSHOUT IN OUR STATE'S SCHOOLS?

The Schools for All campaign aims to stem the pushout and bias problem through education of the public, implementation of better policies and practices, and by holding schools accountable through our legal system. The reality is that most teachers and administrators are well-intentioned and interested in serving children and their families, but they need to better understand the crucial role of a positive school environment. They need better tools and best practices to create schools that are welcoming and inclusive for all students.

WHAT IMPACT HAS NO CHILD LEFT BEHIND HAD ON SCHOOL BIAS AND PUSHOUT?

No Child Left Behind has put teachers and administrators under enormous pressure. They don't have enough funding and they don't have enough resources to meet accountability standards. In some school districts, an extension of "teaching to the test" is a desire to push out anyone who isn't making the grade.

But the real issue is that there isn't consensus on the ultimate goal of education. Is it simply job preparation, merely to teach appropriate behavior? I would argue that the fundamental purpose of education is to prepare the next generation of thoughtful, engaged citizens who are able to consider choices and feel responsible for their community. That's why, when students are prevented from

getting an education—due to lack of resources or due to bias—there's a ripple effect throughout our communities and throughout our nation.

It's important to emphasize that as stretched as our schools are, we must ensure that all students are educated without bias. It's state law and it's a matter of basic respect.

THE SCHOOLS FOR ALL CAMPAIGN HIGHLIGHTS PUSHOUT AS A PROBLEM FACING STUDENTS OF COLOR, LGBT STUDENTS, ENGLISH LEARNERS, SPECIAL EDUCATION STUDENTS, FOSTER YOUTH, AND PREGNANT AND PARENTING TEENS. WHY IS IT IMPORTANT TO CONSIDER ALL THESE GROUPS TOGETHER?

At both the Lawyers Committee and the ACLU, I've had the experience of working with a school district to help them grapple with and craft policies and procedures around a particular issue like LGBT harassment, for instance, and then finding out two or three years later that that same district was experiencing egregious cases of race-based harassment. The school districts were creating immediate stop-gap measures but weren't thinking through how the changes we worked on should translate into other types of bias.

So the Schools for All campaign is about saying enough is enough. There's no place for targeting or ostracizing any group of students. For any of these students, education is their best shot at a better life. So if we're denying any student an education, the impact is long-term and far reaching and it's just not acceptable. ■

Diana Tate Vermeire is the ACLU-NC Racial Justice Project Director.

ACLU-NC MAILING PREFERENCES

To Our Members:

Mailings to our members and the general public provide opportunities to describe complicated legal and political issues in ways not possible in other media and to describe strategies we plan to use for future actions. They enable us to explain, in detail, the benefits and provisions of the Constitution and the Bill of Rights, the ways our rights can be protected in today's 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 program to find and recruit members, we exchange or rent our list of members' names to like-minded organizations and publications. We do this so that we will be able to send our membership letters to their lists.

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 exchanges 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 mailings—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
39 Drumm Street, San Francisco, CA 94111

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

Member # _____

Name _____

Address _____

City, State, Zip _____