POLICE FIRE ON PROTESTERS—ACLU SUES

By Sarah Nelson Wright, ACLU Intern

C
lads in full riot gear, they opened fire with wooden bullets, sting-ball grenades and shot-filled bean bags, scattering the crowd and wounding heads, bodies and limbs. Terrified protesters, dockworkers and bystanders fled the advancing police line, helping the injured along.

This was the scene at the Port of Oakland on April 7, when Oakland Police opened fire on peaceful anti-war protesters.

Willow Rosenthal, 31, never expected to sustain a life-altering injury when she attended the April 7 protest. But after Oakland police shot Rosenthal in the back of her right calf, she has suffered “probably the most excruciating pain I’ve ever experienced in my life… I will be disfigured for the rest of my life and I have permanent nerve damage,” Rosenthal says.

Rosenthal is one of 40 plaintiffs in a federal class action lawsuit filed on June 26 against the City of Oakland by the ACLU of Northern California (ACLU-NC), National Lawyers Guild (NLG), Local 10 of the International Longshore and Warehouse Union (ILWU), and a team of prominent civil rights attorneys including John Burris and James Chanin. The suit claims that the plaintiffs’ First Amendment rights to freedom of speech, assembly and association were violated that day.

“The Constitution itself was a victim on April 7, just like our clients,” says Alan Schlosser, legal director of the ACLU-NC. “Such indiscriminate and excessive use of force is illegal and unconstitutional, and people must not be deterred by this unprecedented police overreaction from exercising vigorously their constitutional right to dissent.”

“Numerous photographs taken at the scene show that the officers fired directly at demonstrators, thus, in effect, opting for a deadly force response to a non-violent demonstration,” says Chanin. “The serious injuries that resulted were clearly foreseeable.” The bullets, Chanin notes, were clearly labeled, “Do not fire directly at person as serious injury or death may result. Ricochet baton shell approximately 3 meters in front of persons.”

Legal observers sent by NLG were shot at during the protest. One powerful piece of evidence from a press conference held on June 26 is a notebook of one of the observers, spattered with his blood.

“Apparently police fired at him because he was taking notes,” said Rachel Lederman of the NLG. “This was the most outrageous incident of unprovoked mass police violence the National Lawyers Guild has seen in our 20 years of providing legal support to Bay Area demonstrations.”

The plaintiffs are seeking a court order forcing the city to develop policies that will keep police...
ACLU MEMBERS CONVERGE ON NATION’S CAPITAL

By Stella Richardson, Media Relations Director

Nearly 1,500 card-carrying members of the American Civil Liberties Union (ACLU) converged on the nation’s capital for the organization’s inaugural membership conference in June, as the ACLU called a national rallying cry against the government’s determination to cut back on civil liberties in the name of national security. The Washington, D.C. Conference was held from June 11-15 with more than 30 delegates from northern California, including many college and high school students.

From Vermont to California, ACLU members of all backgrounds and ages traveled to attend the first national gathering of an organization whose ranks have swelled to 400,000 – an unprecedented 33 percent jump – in the past 18 months. N owhere has the membership grown more than in northern California.

“We were proud to be in the nation’s capital representing close to 40,000 members from northern California,” says Dorothy Ehrlich, executive director of the ACLU of Northern California (ACLU-NC). “And our message was clear: the American public does not want the government to trade away our freedoms.”

About 1,000 conference attendees signed up for a Lobby Day that included visits with key legislators as well as drop-ins on the offices of presidential hopefuls. The northern California delegation met with Senator Feinstein’s office, Senator Boxer’s office, and Congressional representatives. Youth delegate and ACLU-NC board member William Walker was instrumental in organizing students for the conference. “This kind of meeting is especially important because the ACLU must find ways to tap into the energy of youth and cultivate the membership,” says Walker. “Young people are often doing the work of the ACLU – in the classroom, in college chapters, on the streets – it’s necessary for them to feel more a part of the organization. This conference is an important first step in mobilizing youth nationally.”

At least 30 percent of conference attendees were between the ages of 16 and 27.

In addition to lobbying Congress, ACLU members questioned top federal officials and other Washington insiders about where they stand, and enjoyed entertainment by top performers. Highlights included a reception with Supreme Court Justice Ruth Bader Ginsburg and the presentation of the ACLU Muhammad Ali Champion of Liberty Award to Ali himself – the first recipient of the award and a former ACLU client. FBI Director Robert S. Mueller III delivered a speech on “The New FBI” and took questions from ACLU members, and veteran New York Times columnist Anthony Lewis was presented with the Roger N. Baldwin Medal of Liberty Award for his outstanding writing on civil liberties.

The ACLU has 53 staffed affiliates in major cities and more than 300 chapters nationwide. The ACLU-NC is the largest affiliate in the nation.

THE DREAM TEAM
NEW LEADERS JOIN STAFF

BOB KEARNEY, formerly the national field director at the ACLU’s Legislative Office in Washington, D.C., began in April as the new associate director of the ACLU of Northern California (ACLU-NC). In his new role, Kearney is working to strengthen the ACLU-NC’s field and activist program. He has hit the ground running, expanding the ACLU-NC email action alert list (sign up at www.aclunc.org), training an overflow audience of people interested in speaking about civil liberties, and building a campaign against “Patriot Act II.”

MAYA HARRIS began as the new Racial Justice Project (RJP) director in July. No stranger to the ACLU, Harris is an expert on criminal justice, race and police practices who has worked closely with RJP in the past. Harris joins us from Oakland think-tank PolicyLink, where, as a senior associate, she researched community-centered policing. A graduate of Stanford Law School, she has taught at the University of San Francisco School of Law, Haas School of Business, and was dean at Lincoln Law School of San Jose.

Staff attorney JULIA HARUMI MAI S comes from Los Angeles union-side labor firm Rothner, Segal & Greenstone. She has previously worked on many issues dear to the ACLU, including a challenge to California’s ban on bilingual education. Harumi M as is now working on several cases, including the class action lawsuit on behalf of dockworkers and protesters injured by police during a peaceful protest at the Port of Oakland.

In July, TAMARA LANGE of the national ACLU’s Lesbian & Gay Rights and AIDS Projects moved her office to San Francisco. Here, she will continue her work to advance the rights of lesbian, gay, bisexual and transgender people and people living with HIV, working on cases with the northern California affiliate and the national office. After receiving her law degree from UC Berkeley, Lange worked at Heller, Ehrman, White & Mauilik in San Francisco and at Caldwell, Ledlin, Newcombe & Pettite in Los Angeles. (See photo, back page.)

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NOT A CARD-CARRYING MEMBER? JOIN ONLINE AT WWW.ACLUNC.ORG
By Stella Richardson

**FREE SPEECH VICTORY FOR INTEL WORKER**

In a major victory for the free speech rights of workers in the digital age, the California Supreme Court has ruled that Silicon Valley giant Intel Corporation may not stop a former employee from sending e-mails to Intel employees.

When Ken Hamidi sent email messages that criticized Intel to his former colleagues, he "no more invaded Intel's property than does a protector holding a sign or shouting through a bullhorn outside corporate headquarters," wrote the Court.

"The Court's decision restores the right of a former employee to criticize and harass his employer," said Ann Brick, staff attorney with the ACLU of Northern California (ACLU-NC). "It affirms the important First Amendment rights of employees."

The ACLU-NC, along with the national ACLU, filed an amicus brief in the California Supreme Court challenging an injunction that prohibited Hamidi from sending e-mail to Intel staff at their work addresses. Intel argued that Hamidi's e-mail messages were "spam" and claimed they were "trespassing" on Intel property. A lower court granted the injunction, accepting Intel's argument.

In its friend of the court brief, the ACLU argued that the First Amendment permits an injunction in a case like this only when the emails are so voluminous that they impair the ability of Intel's email to function, or physically damage the system. The ACLU argued that Hamidi's e-mail messages were not "spam" because he only sent six emails over a two-year period, and that Intel's actions were a heavy-handed attempt to silence a critic, not an effort to prevent overloading the system. The Supreme Court agreed, adopting the standard supported by the ACLU.

"The ancient tort of 'trespass to personal property' was never intended to be used as a tool to muzzle free speech," said Christopher A. Hansen, an attorney with the national ACLU. "Both the United States Supreme Court and the California Supreme Court have been very clear in saying that state tort laws may not be employed as a tool to silence those with whom we disagree."

By Stella Richardson

**RULING PROTECTS STUDENTS FROM HARRASSMENT**

When Alana Flores found a pornographic picture taped to her locker with a handwritten note that read, "Die, Die, Die... Die by bitch. Fuck off. We'll kill you," she turned to her school for help. But the response to Flores' request for a new locker did little to assuage the sophomore's fears. "Yes, sure, sure, later," the assistant principal told her... "Don't bring me this trash anymore. This is disgusting."

Later, the assistant principal told her, "Don't bring me this stuff anymore. This is disgusting." When Alana Flores found a pornographic picture taped to her locker with a handwritten note that read, "Die, Die, . . ." Don't bring me this stuff anymore. This is disgusting."

On July 11, the U.S. District Court in San Jose federal court in 1998. The case, Ewing v. California, was decided for now. The Court found that the three-strikes law was not constitutionally proportional and thus did not violate the Eighth Amendment's prohibition of cruel and unusual punishment. The ACLU and ACLU of Northern California (ACLU-NC) served as co-counsel in Lockyer v. Andrade.

**LEGAL BRIEFS**

**NATIONAL LIBRARY CENSORSHIP** – On June 23, the U.S. Supreme Court, in a 6-3 vote, upheld the right of Congress to insist that public libraries install blocking software on their computers to censor sexually explicit speech as a condition of receiving federal funding. The Court justified its decision by citing the government's interest in protecting children from exposure to sexually inappropriate material, even though it is undisputed that the currently available programs erroneously block thou- sands of adult web pages that are not obscene either for children or adults, and that some material that might be "harmful to minors" is nonetheless constitutionally protected for adults. However, the impact of the decision was blunted by the Court's interpretation of the statute as permitting an adult to request that the blocking software be turned off at any time. United States v. American Library Association.

**FIRST AMENDMENT** – In an important case dealing with the question of when speech by a business is "commercial speech," the California Supreme Court issued a disappointing 4-3 decision giving an extremely broad definition to the term commercial speech. The U.S. Supreme Court then agreed to hear the case, which involves a claim that statements on a company's web pages falsely advertise. The statements by Nike, which were made in a series of press releases, letters, and a letter to the editor of the New York Times, occurred in the context of a far-reaching public debate over the conditions under which Nike products are manufactured abroad. After hearing oral argument in the case, the U.S. Supreme Court concluded that its decision to review the case was premature, because the case has not yet gone to trial. Accordingly, the important First Amendment questions raised by the case remain undecided for now. Kasky v. Nike

See ACLU Forum, p.12, for more on recent U.S. Supreme Court Rulings.
When it comes to sex education, "Some schools are up to speed and others are just totally in the dark," says Linda Nyberg, 16, a student at University City High School in San Diego. Nyberg is one of 15 young people from around the state who studied sex ed policies and practices through the Policy Leadership Program (PLP) a project of the California Center for Civic Participation.

These young researchers found that many young Californians are exposed to learning on the mechanics of reproduction and the prevalence of sexually transmitted diseases (STDs), but do not get basic information about how to prevent pregnancy and protect against disease. "They teach about AIDS because they have to, but without emphasizing the fact that there are ways to prevent it," explained Nyberg. "It's really weird."

Yet there is a simple explanation: the law governing sex education in California is crying out for reform. That's why the ACLU is co-sponsoring a major bill, SB 71, to clarify and update the law.

While HIV/AIDS education is now mandated in California, sex education is not. An estimated 96 percent of schools do teach about sexual health, and those that do must abide by 11 different, sometimes conflicting statutes scattered throughout the Education Code. Divergent interpretations of these statutes have produced inconsistency in the content and quality of curriculum across districts and schools, with many school officials and teachers confused about what they may and may not teach.

A recent survey of sex education and HIV/AIDS prevention programs in over 150 California schools conducted by PB Consulting, in cooperation with the ACLU and other organizations, found that 85 percent violate the Education Code in some respect: by failing to cover required topics such as condom effectiveness, omitting teacher training requirements, or following improper parental notification procedures.

By Bob Kearney, Associate Director

The ACLU's lobbying team in Sacramento is hard at work every day on these and other bills affecting civil liberties in the state legislature. You can take action on any of these issues through our website, at www.alcun.org/takeaction.html.

FINANCIAL VICTORY

Advocates of financial privacy snatched victory from the jaws of defeat in August when they announced an agreement that will provide California with the strongest financial privacy protection law in the nation. Following a series of meetings with proponents, financial industry representatives dropped their opposition to SB 1 (Spierer-D) - a bill that they had spent over three years and millions of dollars lobbying to defeat. Governor Davis has pledged to sign the bill into law. If the Legislature fails to pass the revised version of SB 1 this August, Californians for Privacy Now will take the issue to the voters in a financial privacy initiative in March 2004. To learn more, visit www.californiaprivacynow.org.

DEATH PENALTY

SB 3 (Burton-D) implements the recent U.S. Supreme Court decision prohibiting the execution of the mentally retarded. By implementing a pre-trial hearing solely to determine mental retardation, the bill will ensure that the issue of mental retardation is not biased by the proceedings of the trial. SB 3 has passed the Senate and is now in the Assembly Appropriations Committee.

POLICE REFORM

There are three police reform bills that have been supported by the Police Practices Project at the ACLU of Northern California. AB 1119 (Wesson-D) would require law enforcement agencies to implement "early warning systems" to identify problematic patterns of police officers. These programs have been successful in numerous police departments in heading off problems through retraining and other non-disciplinary actions. AB 1077 (Wesson-D) would improve the current complaint procedures and make filing a complaint less intimidating by allowing complaints to be filed at locations other than in person at the police department. AB 1331 (Wesson-D and Hordon-R) requires the Attorney General to establish whistleblower protections in law enforcement agencies. These bills have all passed the Assembly and are currently in the Senate Appropriations Committee.

STUDENT INTERROGATION

AB 1012 (Steinberg-D) defends the rights of minors by increasing the participation of parents when their children are being questioned at school. The bill requires a school principal to seek the consent of the parent or guardian of an elementary school pupil before allowing the student to be questioned by police. For high school students, the school principal must offer the opportunity to have a parent or trusted member of the school staff present during questioning. AB 1012 is currently in the Senate Appropriations Committee after passing the Assembly.

FRONT-YARD FREE SPEECH

AB 1525 (Longville-D and Steinhberg-D) upholds the First Amendment by codifying that common interest housing developments may not prohibit homeowners from placing signs on their lawns or windows. AB 1525 would extend the free speech protections most of us take for granted to private homeowners who happen to live in common interest developments. The bill has passed the Assembly and is now in the Senate Judiciary Committee.

LGBTI RIGHTS

The ACLU is currently involved in three bills affirming LGBTI rights. AB 205 (Goldby-D) extends to domestic partners the same rights and responsibilities that are currently given to married couples under state law. This includes protections such as community property, financial support obligations, assumption of parenting responsibilities, and mutual responsibility for debts. SB 17 (Kehoe-D) would prohibit the state from contracting with vendors that do not offer benefits to employees' domestic partners that are equal to the benefits given to married spouses of employees. These two bills have passed the State Assembly. AB 1078 (Gibson-D) defines LGBTI as a category protected from illegal discrimination, has passed both houses and been signed by the Governor.

DRIVERS LICENSE

SB 60 (Cedillo-D) allows all Californians to obtain a driver's license, including immigrants who are in the process of applying for legal status. This bill will improve the safety of the roads by allowing every Californian to train for a license and to purchase car insurance. The bill is now in the Assembly Appropriations Committee after having passed the Senate. Governor Davis vetoed this bill last year, so efforts will focus on getting him to sign the bill.

POLITICAL PUSH FOR "ABSTINENCE-ONLY"

Meanwhile, organizations such as Focus on the Family and the Heritage Foundation are lobbying for an "abstinence-only" approach to sex education. All too often based on curricula that are outdated, replete with bias or simply inaccurate, the "just-say-no and get married" approach frequently teaches that sex outside a heterosexual marriage is wrong and dangerous, and prohibits teaching about contraceptives and other methods except to emphasize their failure rates.

It's an approach embraced in Washington, D.C., with the Bush Administration investing $120.75 million federal dollars to fund abstinence-only education in 2003. Nationally, 35 percent of schools that teach sex education take this approach.

Yet it's an approach that misses the mark in a world where 90 percent of teenagers have experienced sexual intercourse by 18th birthday, according to the Alan Guttmacher Institute. It's also out of step with public opinion in California, where a 1997 Field Poll found that 84 percent of adults support comprehensive sex ed.

Despite the family values rhetoric surrounding abstinence-only programs, there is no empirical evidence that they actually work. "Here we do not currently exist any abstinence-only programs with strong evidence that they either delay sex or reduce teen pregnancy," concluded a 2002 report by the National Campaign to Prevent Teen Pregnancy. Comprehensive approaches fare better. They are more effective in reducing the spread of STDs and unwanted pregnancies, according to several studies that compare the two methods.

California is a national leader in resisting the pressure to adopt unproven and insufficient abstinence-only programs. It is the only state to refuse participation in a federal matching-grant program for abstinence-only sex education. However, communities in California are feeling the bite of the abstinence-only "movement." Some school districts have adopted biased and inaccurate programs. Others have censored information on condoms and contraception from otherwise responsible curricula. In both cases, these districts are violating California law.

Abstinence-only programs are problematic not only because they are illegal here. Perhaps most troublingly, they
Evolving the Law

In an effort to clear up confusion and improve teen health, the ACLU and Planned Parenthood affiliates of California are sponsoring legislation that will provide public schools with guidelines for improving the quality and scope of sex education curricula. Introduced by Senator Sheila Kuehl (D), The Comprehensive Sexual Health and HIV/AIDS Prevention Education Act (SB 71) will require schools that teach about reproductive health to take a comprehensive approach.

"This bill, supported by a broad coalition of teacher's groups, school administrators, health organizations and civil rights groups, will ensure that sex education in California is medically accurate and free of bias. It's the education parents want and young people deserve," said Margaret Crosby, staff attorney with the ACLU of Northern California (ACLU-NC), who helped to draft the bill.

"By clarifying and consolidating different requirements that have been enacted over the years, SB 71 will make it easier for schools to implement California policy, which calls for science-based, comprehensive sex education," said Phyllida Burlingame, a researcher who has studied abstinence and adopted a curriculum that includes accurate information about how to prevent pregnancy and sexually transmitted diseases. That's the message he wants to send to policymakers and local administrators in his work to make the case for comprehensive sex ed.

SB 71 has passed the Senate and is now pending in the Assembly. Governor Davis has indicated that he will sign the bill.

Some Republican members of the Assembly object to the words "and committed relationships" in the following clause: "Instruction and materials shall teach respect for marriage and committed relationships." Organizations such as the California Parent Teacher Association (CPTA) and the California Association of School Administrators (CASA) are concerned about "abstinence-only" programs in schools.

"I talked to lobbyists and learned about the process of advocacy and how a bill becomes a law," said Ramos. "Gilbert has strong opinions about what a comprehensive approach should encompass. If he were to design M odesto High's sex ed curricu- lum, it would include lessons on how to talk to a partner about sex and on the financial and emotional stress involved in raising an infant. And it would open up dialogue about gay and lesbian relationships.

Leoty Jimenez, 18
Anaheim High School District

Leoty Jimenez spent much of her extracurricular time during her senior year persuading the Anaheim School District to place less emphasis on abstinence and adopt a curriculum that reflects real lives that teens lead.

"It's better for everyone to know what to expect, that they will be emotionally prepared and knowledgeable about the resources available to prevent pregnancy," she said.

"But without well-rounded sex ed, many teens just don't have a chance to finish high school," says Jimenez. "Gilbert thought it should be taught on its own, for a month or more. Not just one day per year."
PALO ALTO RESOLVED: HOW ONE COMMUNITY PASSED A RESOLUTION AGAINST THE PATRIOT ACT

By Sarah Nelson Wright, ACLU Intern

Meetings, phone calls, and a Yahoo group called P-A-Patriot: these are just some of the tools that Palo Alto community members used to pass a City Council resolution against the USA Patriot Act, the federal legislation that gives the government sweeping new powers that undermine the Bill of Rights.

The coalition included members of the community from many different walks of life: Stanford Law School graduates at ACLU Mid-Peninsula Chapter members, to the founder of a hotline for Arab, Muslim and South Asian communities, joined by a host of local activists, lawyers, librarians and bookstores, these individuals pooled their resources and worked together to advocate for a strong local resolution.

A COMMUNITY TAKES A STAND

“All of us play out the Constitution every day when we participate in citizenship,” said Aram James, an attorney and art activist. “There is no more important local issue than attacks on our Constitution.”

James was speaking at the Palo Alto Human Relations Commission (HRC) meeting on February 13. He joined 14 other community members speaking out against the Patriot Act. Faith Bell, who owns Palo Alto’s Belts Bookstore, also spoke at the meeting. She declared, “Our constitutionally protected freedom to read is profoundly at the heart of a true democracy. It's time to end the politics of fear.”

Saminah Faheem, who owns Palo Alto’s Bells Bookstore, also spoke at the meeting. She stated, “Our constitutionally protected freedom to read is profoundly at the heart of a true democracy. It's time to end the politics of fear.”

Saminah Faheem runs a hotline in Palo Alto since September 11, 2001. “This movement is a miracle,” she said. “Muslms had lost all faith and hope in the system. Now we are not alone anymore. We have fellow Americans standing with us.”

Palo Altans against the Patriot Act encountered clear support for the concept of a resolution from the first that passed meeting of the HRC. The next stage of the movement was to seek a resolution, as Stanford Law School graduates and ACLU intern Shirin Sinnar put it, “with teeth.”

A MEANINGFUL RESOLUTION

In a guest editorial in the Palo Alto Daily News, Sinnar wrote, “It is important that Palo Alto set clear limits, in advance, on its use of Patriot Act powers. We have fellow Americans standing with us.”

By the time the resolution reached the City Council, it was on the consent calendar, which meant that the Council would approve it without discussion, provided no one objected. “The resolution was very well examined by the Council,” said Paul Gilbert of the Palo Alto Human Relations Commission. “It is important that Palo Alto set clear limits, in advance, on its use of Patriot Act powers. We have fellow Americans standing with us.”

“It is important that Palo Alto set clear limits, in advance, on its use of Patriot Act powers. We have fellow Americans standing with us.”

but perhaps it is Samina Faheem who best sum up the spirit of community activism that worked so well in Palo Alto. “Never think one person can’t make a difference,” she said.

MUSLIMS HAD LOST ALL FAITH AND HOPE IN THE SYSTEM. NOW WE ARE NOT ALONE. ANYMORE. WE HAVE FELLOW AMERICANS STANDING WITH US.

— SAMINA FAEHEM

WORDS OF WISDOM

What lessons can the Palo Alto activists offer to others considering passing resolutions in their communities? “I think there’s a lot to learn from Palo Alto,” said Sanjeev Bery, field organizer with the ACLU of Northern California, who has been instrumental in helping many communities pass such resolutions. “The activists reached out to people across the political spectrum who care about civil liberties and rights. They built a broad, committed, effective coalition. And it was clear to lawmakers that this was a genuine grassroots effort – it grew from the community. It was sparked by local concerns.”

Paul George of the Peninsula Peace and Justice Center, who played a key role in coordinating and facilitating the coalition, emphasizes the importance of demonstrating widespread community support. “When you are asking a person in an elected position to go out on a limb, you have to demonstrate all along that they have the support of the electorate,” he says.

“There is value in trying to pass a resolution, even if you don’t ultimately succeed,” added George. “You are getting the public to think about the Patriot Act and how it affects our civil liberties.”

Eve Agewich, who chairs the HRC, added that the movement had larger benefits for the city government process. “It is great that community members recognized that there is a forum for people to address these issues,” she said.

City Councilwoman Judy Kleinberg echoed this enthusiasm, asserting that the resolution is an effort to “take the Patriot Act out of the shadows and shine a bright light on it.”

The resolution, she notes, will ensure that local enactment of the Patriot Act will be closely watched by the City Council to make certain that it follows the Constitution and the Bill of Rights.

SHARING YOUR STORY!

Tell us the secret of your success, or share challenges that your community has faced in the resolutions campaign. Send your comments to resolutions@aclu.org and we will try to include them in the next issue of the ACLU News.

To learn more about the national resolutions movement, download the ACLU’s new report: Independence Day 2003: Main Street America Fights the Federal Government’s Indecent Proposal. It’s available online at www.aclu.org/SafeandFree/SafeandFree.cfm?ID=130 and in PDF format.

To find out how you can become involved and to learn more about the Palo Alto campaign and other Northern California resolutions, visit http://acluweb.best.vwh.net/911/resolution/resolution.html.

KEEP AMERICA SAFE AND FREE. GET CAMPAIGN INFORMATION AND UPDATES AT WWW.ACLUNC.ORG
LOCKYER MOVES TO PROTECT PROTESTERS’ RIGHTS

By Sarah Nelson Wright

For almost two years, the ACLU has warned Attorney General Bill Lockyer and his staff that loosened standards for intelligence-gathering in the post-September 11 era pose grave dangers to basic freedoms of speech and assembly and privacy. On July 14: a victory. In a meeting with ACLU attorneys, Lockyer agreed to implement new guidelines to ensure that the California Anti-Terrorism Information Center (CATIC) will no longer monitor, collect or share information on the activities of political protesters. The decision, applauded by the ACLU, was sparked by new information that lent credence to our warnings.

On May 18, an explosive report by the Oakland Tribune revealed that since its inception shortly after September 11, 2001, CATIC has been gathering information not merely on terrorist threats as mandated, but also on protected First Amendment activity.

ACLU’S WORST FEARS CONFIRMED

“The revelations in the Oakland Tribune story confirm our worse fears: CATIC is not only being used to gather and disseminate information about non-violent protesters but also needlessly trampled individual rights,” said the ACLU’s Romero, who noted that CATIC spokesperson Mike Van Winkle, who justified monitoring political protests by defining terrorism as “the idea of terrorism that does not threaten civil liberties, and to ‘issue guidance to state and local law enforcement agencies that law enforcement agencies may not survey or monitor individual or organization engaged in peaceful protest activity in the absence of reasonable suspicion.’”

CATIC, OAKLAND PROTESTERS AS TERRORISTS

The Attorney General, who was reportedly shocked by the revelations in the Tribune report, swiftly disavowed the response of CATIC spokesperson Mike Van Winkle, who justified monitoring political protests by defining terrorism as...

continued on page 11

REPORTS: GOVERNMENT MISSTEPS AFTER SEPT. 11

Misrepresentations, bungled investigations, and abuses of immigrants’ rights: From the ACLU to the Justice Department’s own watchdog, reports engaged in peaceful protest activity in the absence of reasonable suspicion.”

July 21—Patriot Act Abuses Revealed: Justice Department investigators uphold 34 claims of abuse under the USA Patriot Act between December 16, 2002, and June 15, 2003. ACLU executive director Anthony Romero cites the reports as evidence that “there was a pattern of violating immigrants’ rights” after September 11, 2003. The New York Times reports that complaints include the following:

• The FBI was accused of illegally searching an Arab-American’s apartment, vandalizing it and seizing property, later to return “to plant drugs in the complainant’s home.”

• An immigrant reportedly was allegedly held a loaded gun to the head of a detainee, while another was said to have “rudely” asked a person being detained if he “wanted to kill Christians and Jews.”

• A prison doctor told a federal prison inmate: “If I was in charge I would execute every one of you…because of the crimes you all did.”

July 9—Patriot Act Propaganda: An ACLU report documents Justice Department efforts to whitewash the USA Patriot Act. In Seeking Truth from Justice, the ACLU outlines an orchestrated campaign to deceive the American people about the impact of the Act. For example:

MYTH: “There is no evidence...”

FACT: “The report documents...”

June 2—Detentions Remarked: A report from the Justice Department’s inspector general concludes that the department’s round-up of non-citizens after Sept. 11, 2001, was plagued with problems. Justices’ own watchdog finds that many people with no ties to terrorism languished behind bars in an investigation that made “little attempt to distinguish” between illegal residents with links to terrorism and those “coincidentally” swept up. The ACLU’s Romero notes: “The inspector general’s findings confirm our long-held view that civil liberties and the rights of immigrants were trampled in the aftermath of 9/11.” Among the findings:

• More than 760 illegal immigrants were held behind bars in the months after Sept. 11. Most have now been deported, and none has been charged as a terrorist.

• Immigrants arrested in New York City and housed at the Metropolitan Detention Center in Brooklyn faced a “pattern of physical and verbal abuse” and “unduly harsh” detention policies.

• Some prisoners were not notified of formal charges against them for more than a month.
SCANDAL ROCKS THE SF POLICE

Racial slurs and improper searches. Citizens beaten by off-duty officers. Allegations of obstruction of justice. A series of scandals has thrust the San Francisco Police Department (SFPD) into the spotlight in recent months. Here, the ACLU of Northern California (ACLU-NC)'s Mark Schlosberg, who is at the front and center of efforts to clean up the ugly underbelly of the SFPD, explains why a proposed charter amendment may hold the key to reform.

By Mark Schlosberg, Police Practices Policy Director

While the criminal charges against several high-ranking San Francisco officers in the “fajitagate” scandal have been dropped, serious questions about the incident remain. More significantly, the incident highlights a troubling breakdown in accountability mechanisms within the SFPD, underscoring the urgent need for reform.

“Fajitagate” began in the early hours of November 20, 2002. jade Santoro and Adam Snyder were standing outside a San Francisco bar when three off-duty officers demanded that Santoro hand over his steak fajitas. When Santoro refused, the officers launched a physical assault, according to a 911 call placed by Snyder.

The investigation that followed was suspect from the start. The three officers — Matthew Tonsing, David Lee and Alex Fagan, Jr., the son of then-Assistant Chief Alex Fagan — were not separated by the investigating officers. They were allowed to keep their cell phones and make multiple calls. Key pieces of evidence were not seized, and the victims were not brought in to identify the suspects. It was irregularities like these that led to criminal indictments against top SFPD brass for conspiracy to obstruct justice, leaving a command structure for additional exam-

The immediate need for reform is clear. According to the ACLU-NC's report, the SFPD's accountability mechanisms are woefully inadequate. The report calls for a fundamental change to the way the police department is run, including: 

1. **A Charter Amendment:**
   - **Proposed:** A charter amendment that will go before the voters this November will expand the powers of the Office of the Police Auditor (OCPA) and allow the Auditor to bring charges directly to the Civil Grand Jury.
   - **Impact:** This measure would give the OCPA the ability to investigate allegations of police misconduct and bring cases directly to the Civil Grand Jury, ensuring a more independent and thorough investigation process.

2. **A Charter Change:**
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SCANDAL AND THE SFPD: AN INGLORIOUS TIMELINE

01/24/03: San Francisco Chronicle reports that San Francisco ranks last among major U.S. cities in solving violent crimes.
01/21/02: ACLU-N.C. report details SFPD’s failure to combat racial profiling.
01/20/02: Police respond with overwhelming force to a fight at Thurgood Marshall High School. Police Commission subsequently ignores repeated requests for hearings.
1/17/02: Police respond with overwhelming force to a fight at Thurgood Marshall High School. Police Commission subsequently ignores repeated requests for hearings.
1/13/02: jade Santoro and Adam Snyder are assaulted outside a Union St. Bar by off-duty officers Matthew Tonsing, David Lee and Alex Fagan, Jr.
1/09/02: Mayor功力 approves charter amendment.

1/10/02: Police respond with overwhelming force to a fight at Thurgood Marshall High School. Police Commission subsequently ignores repeated requests for hearings.

FUNDAMENTAL CHANGES ARE NEEDED TO BOTH REPAIR A SERIOUSLY BROKEN SYSTEM AND RESTORE PUBLIC TRUST IN THE POLICE DEPARTMENT.

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For the latest news and opinions visit www.aclunc.org
CONNERLY continued from page 1

ally is urging voters to respond with a resounding “no.”
We all want a colorblind society,” says Dorothy Ehrlich, executive director of the ACLU of Northern California (ACLU-NC). “But in reality, we live in a state that is rife with disparities, where your racial or ethnic identity dramatically influences your chances of receiving a quality education, securing a well-paid job, or protecting your family’s health. Prop. 54 would not erase these differences. It would merely blindfold California by erasing the proof that they exist.”

Prop. 54 would prohibit state and local agencies from collecting, analyzing or using information about race and ethnicity – information that is crucial to developing programs that address pressing social problems. And perhaps nowhere is this of greater concern than in the field of public health.

PUBLIC HEALTH AT RISK

Take breast cancer, for example. It currently afflicts one in eight American women – but it is not a colorblind disease. While women are most likely to be diagnosed with breast cancer, while African American women are more likely to die from the disease.

In a bid to reduce preventable deaths, the Contra Costa County Health department recently set out to achieve parity in detection rates. With a program that specifically targeted African American women with appropriate, tailored messages the department was able to reach that goal – saving lives as well as taxpayer dollars.

Prop. 54 would eliminate data that makes programs like this possible – a prospect that has the health community in an uproar. Over 40 of the state’s leading health organizations, including the California Medical Association and the state’s African American women. These programs achieved parity in breast cancer detection rates between white and African American women. These programs worked because they identified and targeted the communities where disparities based on race still counts. If we are to create a culture that offers opportunity to all of our children, we must continue to collect data that reveals whether officers are profiling or not the state should be able to collect, sort and analyze data that can help law enforcement agents in parts of California than whites – even though they are no more likely to be carrying contraband. This data led to the historic settlement of Rodriguez v. California Highway Patrol (CHP), in which the CHP voluntarily banned practices that allow racial profiling to proliferate. Thanks to government race data, Rodriguez’s humiliating traffic stop was transformed from another tale of bias to a vibrant force for change.

Under Prop. 54, it warns, “Stories of discrimination will be dismissed as speculation, anec- dotes, figments of our imagination. Without the facts, remedy will become impossible.”

CHECKBOXES SAVE LIVES

“We may not like those checkboxes that ask us about our race,” says the ACLU-NC’s Ehrlich. “But the bottom line is, those checkboxes could just save your life.”

As well as tying the states hands by eliminating data that can reduce domes- tic violence, Prop. 54 endangers information that helps law enforcement solve crimes. Information, for example, that helped identify and reduce hate crimes against M. L. King Jr. American and South African communities in the wake of Sept. 11, may be lost under Prop. 54.

The hazards posed to public safety helped garnered the opposition of the states top law enforcement official. “This measure would handcuff law enforcement efforts to investigate and prosecute hate crimes. It would roll back efforts to combat racial profiling and promote equality, injustice and ignorance,” Attorney General Bill Lockyer recently said.

“For those who care deeply about and fight daily to protect the public’s safety, this poorly conceived initiative threatens to drain law enforcement and prevent them from doing their job.”

It is, perhaps, the range of impacts – on health care, educa- tion, contracting, employment and safety – that has sparked such widespread opposition to Prop. 54. Over 350 organizations – including labor unions, corporations like Kaiser Permanente, health care, environmental and civil rights organizations, currently oppose the initiative.

These advocates warn that, at least for now, we must con- tinue to monitor our progress and our problems. “As long as there is discrimination based on our skin color and health care disparities based on race,” says civil rights lawyer Eva Jefferson Paterson, “I think we need to have people checking boxes.”

For more information on the campaign, visit www.informedcalifornia.org.

PROP. 54:
WHAT ACLU VOTERS NEED TO KNOW

Don’t be fooled by the misinformation out there about this initiative! Here are some straight answers to common questions about Prop. 54.

IS THERE A MEDICAL EXEMPTION THAT PROTECTS OUR HEALTH?

No! A narrow exemption for “medical research sub- jects and patients” allows data to be collected by doctors or during clinical trials. But public health specialists need much more information to protect our health – information drawn from a range of public databases that Prop. 54 would ban.

In recent years, public agencies have slashed Californians smoking rate, reduced teen pregnancy, and achieved parity in breast cancer detection rates between white and African American women. These programs worked because they identified and targeted the communities most at risk. They relied on data that Prop. 54 would make illegal.

But don’t listen to us; listen to the experts. Forty lead- ing health organizations including the California Medical Association, American Public Health Association and American Cancer Society say the exemption is bunk. The bottom line if Prop. 54 passes, health care specialists will be denied the tools they need to protect our families’ health.

I’VE HEARD THAT THIS INITIATIVE WILL END RACIAL PROFILING. – WRONG! Far from ending racial profiling, this initiative will make it worse! Local agencies may continue to volun- tarily collect data that reveals whether officers are pulling motorists over because of their race. However, Prop. 54 expressly prohibits the Legislature from mandating that all agencies collect such data. Thus, Prop. 54 offers ZERO accountability for agencies that are not interested in stamping out racial profiling. It gives “bad players” a green light to profile.

ISN’T THIS INITIATIVE ABOUT INDIVIDUAL PRIVACY?

No! In fact, the Secretary of State changed its name from the “Racial Privacy Initiative” because the initiative has nothing to do with privacy. It has to do with whether or not the state should be able to collect, sort and ana- lyze impersonal, quantitative data – data that could save your job, your children’s education, or even your life. And you never have to tell the government about your race. It’s purely voluntary. Right now, Californians have a choice – a choice that Prop. 54 would eliminate.

DON’T YOU WANT A COLORBLIND SOCIETY?

Yes! But, as the U.S. Supreme Court recently con- cluded, supported by briefs from the U.S. military and corporate leaders like M. Croft, we’re not there yet. We live in a world with inequality, where the reality is that race still counts. If we are to create a culture that offers opportunity to all of our children, we must con- tinue to monitor both our progress and our problems. As Justice Harry Blackman wrote in 1978: “In order to get beyond racism we must first take account of race.”
Through Our Eyes
ACLU Youth Explore Gender Identity

On December 27, 2002, a group of ten high school students embarked on a four-day in-depth trip entitled Gender and Civil Liberties. The goal of the trip, organized by the Howard A. Friedman First Amendment Education Project of the ACLU of Northern California (ACLU-NC), was for the students to educate themselves about gender identity in order to take this knowledge back to our communities to create change. Here, Danielle Silk, from Rancho Cotati High School, Rohnert Park, gives her perspective on the trip.

By Danielle Silk, Youth Activist Committee Member

There we were on the cold streets of San Francisco’s Tenderloin district, watching fellow human beings, high on drugs, wearing halter-tops in the middle of winter. M ost, if not all of those who were selling themselves were homeless, transgender, people of color, women, and youth. It was such a sign that privilege still exists in America that I wanted to run away and never look back. But then I realized that if I hurt me, it must hurt a thousand times more to actually be them, to only see the backs of people’s heads when you look at them because they can’t look you in the eye.

Tracy Helton of Standing Against Global Exploitation (SAGE), herself a former sex worker, talked to us bluntly about being transgender on the street and what it takes to survive. She told us that if someone has recently had a sex change operation, and they are a sex worker, one rough trick can break the top of a new vagina, sending all those thousands of dollars—and untold emotional investment—down the drain.

On or off the streets, however, we soon learned that transgender people face daily hardships that few of us imagine—from finding someone to talk with to getting a job.

Securing identification, for example, is a simple enough process for most of us. But at the National Center for Lesbian Rights (NCLR), attorney Chris Daley taught us that getting valid ID is a barrier for many transgender individuals. She told us that if someone has recently had a sex change operation, and they are a sex worker, one rough trick can break the top of a new vagina, sending all those thousands of dollars—and untold emotional investment—down the drain.

The trip opened our eyes to the incredible challenges faced by transgender people in our society. But we also saw a positive side. At San Francisco’s Metropolitan Community Church, we found a warm and welcoming community for LGBTI people who wish to practice religion, where they can worship, be queer, and be accepted.

But imagine that you want to change your gender on a birth certificate. You must undergo some form of sexual reassignment surgery—which completely excludes those who do not wish to undergo surgery, or cannot afford it, or for whom it is too risky.

We also explored the challenges of work. The first obstacle for transgender candidates is overcoming the barrier of negative stereotypes in order to secure a job. Then, for those who go through a gender transition at a workplace, the second mount. Many transgender people lose their jobs or face intimidating environments because their bosses and coworkers do not feel “comfortable” with their coworker’s gender.

In prison, too, we learned that transgender people face unique challenges. If they are the most transgender people will be placed in a prison that does not correspond with their gender. To compound this, transgender prisoners face hormone deprivation, and increased likelihood of rape, strip searches and humiliation at the hands of fellow prisoners and the guards. The staff at California Prison Focus opened our eyes to an experience most of us have never imagined.

Isolation and lack of community support pose a severe problem for transgender youth, we learned at the Rainbow Community Center (RCC) in Concord, where 60-80 young people come from miles around to hang out. It’s no surprise that the suicide rate among queer and transgender youth is two to three times higher than that of non-transgender and heterosexual youth, according to RCC staff.

We also met with Sydney Levy of the Intersex Society of North America (ISNA), who briefed us on intersexuality, a condition that affects about one in 2,000 newborns. Intersexuality means having ambiguous reproductive organs, either internal or external, and is rarely life-threatening. In most cases doctors perform surgery in order to “normalize” the child, often sewing a penis that is deemed “too small” and constructing a vagina in its place. This can be a very painful process that lasts throughout the person’s childhood. ISNA passionately advocates against this practice, arguing that unless it is life-threatening, surgery should be put off until the children are old enough to tell their parents what gender they feel.

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A Gender Glossary

Transgender – an “umbrella” term that includes post-operative transsexuals, pre-operative transsexuals, masculine women, feminine men, drag kings, drag queens and others.

Genderqueer – a term used by people who do not identify as either male or female, express their gender differently at different times, or just do not agree with the gender binary system that says people have to identify as either male or female.

Two-Spirit – a Native American term that is used to describe transgender, gender non-conforming and gay people, especially within Native American and people of color communities. In Native American tradition, two-spirited people were often appointed to positions of leadership for their ability to see issues from different points of view.

Transphobia – the irrational fear or hatred of transgender people.

Intersex – the condition of being born with ambiguous sexual organs.

Thanks to Marcus de Mária Arana of the Human Rights Commission (HRC) for providing the students with these definitions. HRC emphasizes that these definitions are fluid and vary depending on the individual.

Nancy Otto Leaves ACLU

By Shayna Gelender, Youth Advocate

Since 1994, Nancy Otto has spearheaded the ACLU of Northern California (ACLU-NC’s) Howard A. Friedman First Amendment Education Project, which works with high school youth. Now, after many years of extraordinary service, Otto is leaving the ACLU to pursue artistic endeavors in glass. Otto brought significant new components to the Friedman Project, including high school student summer field investigations, LGBTI sensitiv ity trainings for high school staff and students, youth leaders on staff, a video lending library for teachers, and a unique collaboration of activist teachers and students.

She has also been a force for change outside the region, developing model curricula that have been used across the nation to develop “safe schools” trainings for teachers and school districts. “Nancy’s influence in the national as well as the local spheres just cannot be overstated,” said Dorothy Ehrlich, executive director of the ACLU-NC. “She has truly made a difference, both directly and indirectly, in the lives of thousands of young people across the country.”

Otto fostered a youth-run focus for the Project, which she says is essential because, “Youth can do it, and it’s a strong statement to say youth can plan a big conference, they can lead workshops of 100 of their peers, they can lobby government officials.” Otto is leaving the ACLU with sadness, and with hope. “The ACLU has been my family and the place I’ve grown up in,” she says. “I will always remain a part of the ACLU.”
The ACLU of Northern California includes a dozen chapters around the region, operated by dedicated volunteer activists. Here are some highlights of their recent work.

**POLICE FIRE, continued from page 1**

from taking such violent action against unarmed, nonviolent protesters in the future, as well as damages for injuries sustained. Of the 40 plaintiffs, nine were dockworkers with Local 10 of the ILWU, who were shot and injured while attempting to report to work at the Port of Oakland.

Billy Keppo was attempting to report for work when police shot him in the hand with a projectile, fracturing his thumb. “What I witnessed was a horror, what I felt was pain,” said Keppo. “We’re more than just workers and protesters – we’re people.”

Rosenthal says the experience of April 7 has seriously dented her trust in law enforcement authorities. “I never thought I would face personal danger from the police because of my politics,” she says. “But this incident has fundamentally altered that belief.”

**Bulletins shot at protesters were clearly labeled, “Do not fire directly at person as serious injury or death may result.” Ricochet baton shell almost 3 meters in front of persons.**

**LOCKYER, continued from page 7**

broadly as to exceed the parameters of any definition set forth by federal legislation, including the USA Patriot Act.

“You can make an easy kind of link that, if you have a protest group protesting a war where the cause that’s being fought against is international terrorism, you might have terrorism at that protest,” said Van Winkle. He concluded, “You can almost argue that protest against that is a terrorist act.”

CATIC sent out a warning on April 2, 2003, to California law enforcement agencies entitled, “National Day of Action I Includes Northern California Targets.” The warning included an advisory on possible violence at the April 7 anti-war protest at the Port of Oakland. The warning quoted the Department of Justice on the rights of protesters: “You have an absolute right to engage in peaceful protest to ‘shut down the war merchants,’ but failed to mention the Direct Action to Stop the War website calling for protesters to “shut down the war merchants,” or failed to mention the Department of Justice’s instructions to the protesters: “This is not a civil disobedience action... our goal is to maintain the picket line not to get arrested.”

**PROTESTERS’ RIGHTS PROTECTED**

After the July 14 meeting, Lockyer agreed to take several steps to protect protesters’ rights. Among these is a commitment to issue guidelines for CATIC and for local and state law enforcement agencies stating that they cannot monitor political or religious activities without reasonable suspicion of a crime. The CATIC guidelines will specifically establish that protest activity – including civil disobedience – cannot be considered terrorist activity.

“We are very pleased by the Attorney General’s commitment to institute significant and much-needed guidelines and regulations regarding CATIC and intelligence gathering procedures,” said Schiroberg. “The Attorney General is sending a strong message to Washington: in California we can be both safe and free.”

**JOIN THE CAMPAIGN FOR POLICE REFORM! HELP US RESTORE ACCOUNTABILITY TO THE SFPD IN TWO SIMPLE STEPS. HERE’S HOW IT WORKS:**

You: Fill out the form below and return to the ACLU.

We: Work to secure passage of a crucial amendment to San Francisco’s City Charter.

**YES! I WANT TO RESTORE OVERSIGHT AND ACCOUNTABILITY TO THE SFPD.**

- [ ] Sign me up as a volunteer

Name: 

Phone: 

Email: 

Please return this form to: Mark Schlosberg, ACLU-NC, 1663 Mission St. #460, San Francisco, CA 94103

See page 8 for more on the Charter Amendment Campaign.

**GET INVOLVED! LOCAL CHAPTER MEETINGS**

Contact your local ACLU chapter and become a force for change in your community.

**B-A-R-K (BERKELEY-ALBANY-RICHMOND-KENSINGTON) CHAPTER MEETING:** Meet on the third Tuesday of each month at 7:15 p.m. at the West End Café, 1131 Fourth Street in San Rafael. Contact Coleman Persily for more information: (415) 979-6699.

**REDWOOD (HUMBOLDT COUNTY) CHAPTER MEETING:** Meet at 11 a.m. on the third Saturday of each month. Contact Nancy Allgood for more information: (510) 856-9186.

**MONTEREY COUNTY CHAPTER MEETING:** Usually meet the third Tuesday of the month at 7:15 p.m. at the Monterey Public Library. Contact Matt Attfield to confirm time and location: (831) 899-2263. Or to report a civil liberties concern, call Monterey’s complaint line: (831) 646-9889.

**NEW CHAPTERS ORGANIZING**

Contact Contra Costa: Dialia: Contact Lee Lawrence at (925) 376-9000 or lee@leelawrence@yahoo.com.

Livingston/Oakland/Pleasanton: Contact Bob Cuddy at (925) 443-1980 or bcuddy@aol.com.

Mendocino: Contact Jesse jesula@usa.net at (707) 964-8099, or Chapter Chair Linda Leahy at (707) 937-3452 or leahy@mcn.org.

Napa: Meet the first Thursday of the month. Contact Ken Croft at (707) 592-3459 or M ary Walls at (707) 226-6756.

Sonoma: Contact Bill Hutch at (707) 449-0726.

Yolo County: Contact Natalie Wormald: (530) 756-1900.
**ASK THE EXPERTS!**

**SUPREME COURT FOCUS**

It was a season of blockbuster Supreme Court rulings, dealing with issues ranging from First Amendment rights in libraries to the future of affirmative action. Here, two ACLU-NC legal experts give their take on two significant rulings.

**WHAT'S SO SIGNIFICANT ABOUT THIS RULING?**

TL: The decision in Lawrence marks the beginning of a new era for gay rights. The Court affirmed that we all have a fundamental right to keep the government out of our bedrooms and found that so-called sodomy laws violate the right to privacy protected by the U.S. Constitution. The Court made it clear that lesbian and gay relationships must be respected, explaining that people in same-sex relationships have the same right to be intimate and to create family relationships that heterosexually oriented people have.

**WHAT'S THE NEXT STEP?**

TL: At www.aclu.org/getequal we have outlined small and large steps you can take to ensure LGBTI people are treated with dignity and respect. Do something simple, like sending a message to your representatives in Congress, or taking steps to protect your own relationship. Or do something more ambitious, like using the step-by-step guide to get an anti-harassment policy from your school district or a domestic partnership policy in your town or workplace. Either way, get busy and get equal!

**AFFIRMATIVE ACTION UPHOLD**

Intense speculation surrounded the Court’s decision in two high stakes cases that dealt with the future of affirmative action programs in university admissions. Would the justices affirm the policies of University of Michigan and University of Texas? What did this conservative Court nail shut the door to opportunity? Katayoon Majd, an attorney with the ACLU’s Racial Justice Project, discusses the historic ruling that upheld the use of race as a factor.

**WHAT WERE THE TWO CASES ABOUT?**

KM: Three white students who did not gain admission to the University of Michigan brought the cases, which questioned the constitutionality of using affirmative action in university admissions. Grutter v. Bollinger challenged the law school’s admissions policy, which uses race as one factor in considering each applicant. Gratz v. Bollinger dealt with the undergraduate admissions policy, which awarded 20 points out of a total 150 to applicants from underrepresented minority groups.

**WHAT DID THE COURT DECIDE?**

KM: In an historic ruling that ended 25 years of uncertainty, the Court ruled that universities may take race into account in order to achieve a diverse student body, so long as it does not exceed 200 words. The Court squarely addressed the question of the constitutionality of affirmative action.

**WHAT ARE THE FEW REMAINING BASTIONS: PRIVATE UNIVERSITIES?**

KM: Absolutely. In both opinions, the Court squarely endorses the principle of affirmative action in higher education and provides universities with a roadmap for how to implement such programs.

**WILL THE RULING HAVE ANY IMPACT HERE IN CALIFORNIA?**

KM: Yes and no. Californians voted to eliminate affirmative action in public university admissions in 1996, and Prop. 209 remains in effect. However, the stakes were high for California because a bad decision in the Michigan cases could have eliminated affirmative action in one of its few remaining bastions: private universities. The year that 209 went into effect, the number of underrepresented minorities admitted to the UC system plummeted. UC Berkeley’s Boat Hall School of Law enrolled just one African American student, and the number of Latinos admitted to Berkeley’s undergraduate program declined by half. While minority admissions across the UC system have risen since then, admissions at its two flagship campuses, UC Berkeley and UCLA, continue to lag behind pre-209 levels.

Hower, Stanford University, like other private universities, was able to continue an aggressive affirmative action program that enrolls one of the most diverse student bodies in the state. A bad decision in the Michigan cases could have changed all that for private schools that receive federal funds. The Court’s ruling unambiguously protects the efforts of private schools like Stanford to admit a diverse student body.

**NEW! 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.

**OUR RIGHTS AND THE USA PATRIOT ACT**

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

Send your questions and comments to gandia@aclunc.org

Gigi Pandian, 1663 Mission Street #440, San Francisco, CA 94103.

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