

ACLU SUMMER 2003 news

BECAUSE FREEDOM CAN'T PROTECT ITSELF

VOLUME LXVIII ISSUE 4

WHAT'S INSIDE

PAGE 4

Sex Ed: Why It's Broke
and How to Fix It

PAGE 6

Palo Alto: One City's
Patriot Act Resolution



PAGE 7

Backlash Profile: Teen
Brothers Face Deportation

PAGE 8

Scandal Rocks
San Francisco Police

PAGE 10

Through Our Eyes – Youth
Explore Gender Identity

POLICE FIRE ON PROTESTERS – ACLU SUES

**"WE'RE MORE THAN JUST WORKERS
AND PROTESTERS – WE'RE PEOPLE."**

– BILLY KEPOO

By Sarah Nelson Wright, *ACLU Intern*

Clad 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.

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 [continued on page 11](#)



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.

VOTE "NO!" ON PROP. 54 ON OCT. 7 CONNERLY'S INITIATIVE WILL BLINDFOLD CALIFORNIA

He says that when the government asks us about our race it perpetuates division. He says that eliminating race checkboxes from government forms will build a colorblind society. He wants a state "where we see ourselves as one American family, all committed to do the same thing."

Ward Connerly's vision sounds like a wonderful thing. But delve a little deeper and it's crystal clear that this vision is profoundly flawed. That's why, as Californians prepare to go to the polls October 7 and cast their votes on Connerly's Classification by Race, Ethnicity, Color and National Origin Initiative (Proposition 54), the ACLU and a cast of unusual [continued on page 9](#)



Non-Profit
Organization
U.S. Postage
PAID



ACLU

AMERICAN CIVIL LIBERTIES UNION
of NORTHERN CALIFORNIA

**BE THERE!
SAVE THE DATE.**

SEPTEMBER 13 ACLU-NC Membership Conference, Holy Names College, Oakland

OCTOBER 7 Vote "NO" on Prop. 54

OCTOBER 30 ACLU-NC Fall Youth Rights Conference, San Jose State University

DECEMBER 14 Celebrate Bill of Rights Day! Argent Hotel, San Francisco

For details on events, visit www.aclunc.org or call 415-621-2493.

WELCOME TO THE
NEW ACLU NEWS.

READ MORE AT
WWW.ACLUNC.ORG

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, an event 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, DC 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. Nowhere 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



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.

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 con-

ference. “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.”

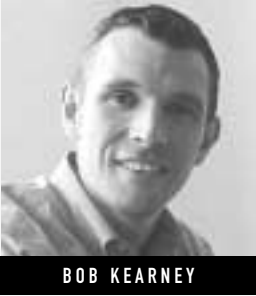
At least 30 percent of conference attendees were between the ages of 16 and 27.

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. ■

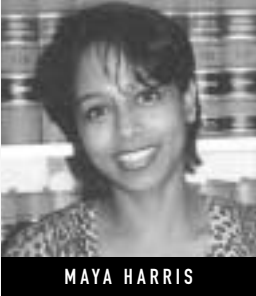
THE DREAM TEAM

NEW LEADERS JOIN STAFF



BOB KEARNEY

BOB KEARNEY, formerly the national field director at the ACLU’s Legislative Office in Washington, DC, 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

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, Hastings College of Law, New College School of Law, and was dean at Lincoln Law School of San Jose.

Staff attorney **JULIA HARUMI MASS** comes to us from Los Angeles union-side labor law firm Rothner, Segall & Greenstone. She has previously worked on many issues dear to the ACLU, including a challenge to California’s ban on bilingual education. Harumi Mass 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.



JULIA HARUMI MASS

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 & McAuliffe in San Francisco and at Caldwell, Leslie, Newcombe & Pettite in Los Angeles. (See photo, back page.)

GENEROUS GIFT LAUNCHES SPECIAL FUND



PATRICIA ADLER

By Robert Nakatani,
Endowment Campaign Director

The most recent addition to the endowment fund of the ACLU Foundation is the type of contribution every organization hopes for but rarely gets: thoughtful, significant, and completely unexpected.

In May, the Carol Walter Sinton Fund for Freedom of Expression was established with a \$50,000 gift from Henry Sinton of San Francisco and his children, Patricia Adler of Berkeley and Peter Sinton of San Francisco. This extraordinary contribution creates a special fund within *The Trust for the Bill of Rights*, the ACLU’s endowment, that will support in perpetuity the ACLU’s work to protect freedom of expression, artistic freedom and the right to dissent.

This gift was made to commemorate the life, works, and civil liberties passion of Carol Walter Sinton, who passed away last year. A member of a family that moved to San Francisco over 150 years ago, Sinton was a well-known fiber artist whose weaving and basketry were exhibited widely, including shows at the de Young Memorial Museum, Richmond Art Center, California Crafts Museum and Palo Alto Cultural Center. She served as a trustee for the American Craft Council and was the board chair of Fiberworks and the California Crafts Museum.

“My family and I are pleased to make this lasting contribution to the ACLU,” said Adler. “We think it’ll be an enduring legacy to Mom’s life and values, and we hope it’ll inspire others to do the same thing for their family members . . . and for the ACLU.” ■

SHELTER MORE THAN JUST YOUR MONEY

In these times of economic uncertainty, an ACLU Foundation Gift Annuity is more than just a safe investment. It is a way that you can preserve the Bill of Rights for future generations!

A minimum contribution of \$5,000 provides:

- Guaranteed income for life
- Income & estate tax savings
- A strong Bill of Rights.

Please send me information on:

- ☐ ACLU Foundation Gift Annuities.
- ☐ Remembering the ACLU Foundation in my will.

name		
address		
city	state	zip
phone	email	
date of birth		

Return to : Stan Yogi, 1663 Mission Street, Suite 460, San Francisco, CA 94103
phone: 415-621-2493 ext. 330 email: syogi@aclunc.org

ACLUnews

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

Membership (\$20 and up) includes a subscription to the *ACLU News*. For membership information call 415-621-2493 or visit www.aclunc.org/join.html.

Quinn Delaney, CHAIR
Dorothy Ehrlich, EXECUTIVE DIRECTOR
Rachel Swain, EDITOR
Gigi Pandian, EDITORIAL ASSISTANT
Underground Advertising, DESIGN

1663 Mission Street #460, San Francisco, CA 94103
415-621-2493

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

RULING PROTECTS STUDENTS FROM HARRASSMENT

By Stella Richardson

When Alana Flores found a pornographic picture taped to her locker with a handwritten note that read, “Die, Die, . . . Dyke 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.”

Now, thanks to a crucial 3-0 ruling from the Ninth Circuit Court of Appeals, school officials may be held liable for failing to protect students like Flores from anti-gay harassment. The Court ruled on April 8 that it’s not enough to have anti-discrimination policies on the books – school officials must also enforce them. The ruling covers school districts in California and eight other Western states.

“This is a most welcome decision,” said Ann Brick, staff attorney with the ACLU of Northern California (ACLU-NC). “It affirms that school officials have an obligation to protect students from anti-gay harassment and abuse by other students. They can no longer look the other way, as they have for so long.”

The decision comes in a lawsuit brought on behalf of Flores and five other high school students in the Morgan Hill Unified School District, who charged that school officials refused to take any action to protect them from ongoing anti-gay harassment. The students, five girls and one boy, were subjected to death threats, physical assaults, and a never-ending stream of verbal abuse. One student was hospitalized after a group of male students shouted “faggot” and other homophobic slurs while hitting and kicking him at a school bus stop in full view of the bus driver.

The harassment covered a span of over seven years, ending only when the students left school. The lawsuit was filed in San Jose federal court in 1998. The case, *Flores v. Morgan Hill*

Unified School District, will now return to the federal district court for trial in early January.

“Finally, it’s clear that schools can no longer stand back and turn a blind eye to the kind of debilitating harassment that so many lesbian, gay and bisexual students face every day,” said Kate Kendell, executive director for the National

Center for Lesbian Rights (NCLR).

James Emery and Stacey Wexler, of Keker & Van Nest, LLP, the ACLU-NC, the National ACLU Lesbian & Gay Rights Project, the NCLR, and attorneys Leslie Levy and Diane Ritchie are representing the students. ■

FREE SPEECH VICTORY FOR INTEL WORKER

By Stella Richardson

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

It has quickly become the preferred means of communication for millions of people across the country and around the world.”

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 e-mails over a two-year period, and that Intel’s actions were a heavy-handed attempt to silence a critic, not an effort to prevent overload on its e-mail system. The Supreme Court agreed, adopting the standard supported by the ACLU.



Intel’s property than does a protestor holding a sign or shouting through a bullhorn outside corporate headquarters,” wrote the Court.

“The Court’s decision protects the right of a former employee to criticize a large and powerful corporation,” said Ann Brick, staff attorney with the ACLU of Northern California (ACLU-NC). “Today, e-mail is the electronic version of a protestor’s picket sign and leaflet.

“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 smokescreen for silencing those with whom we disagree.” ■

LEGAL BRIEFS

By Stella Richardson

THREE STRIKES – On March 5, the U.S. Supreme Court, in a 5-4 vote, upheld two draconian sentences handed down under California’s “three strikes” law. The Court found that the two sentences – 25 years without the possibility of parole for stealing three golf clubs in *Ewing*, and 50 years without the possibility of parole for stealing videotapes worth approximately \$150 in *Andrade* – were not “grossly disproportionate” 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*.

MANDATORY DETENTIONS – On April 29, the U.S. Supreme Court, in a disappointing 5-4 vote, upheld the constitutionality of a mandatory immigration detention statute enacted by Congress. The statute requires the INS to incarcerate, throughout deportation proceedings, lawful permanent residents who are charged with deportability based on a criminal offense. The Court ruled that permanent residents could be subject to mandatory detention pending deportation proceedings without an individualized hearing to determine whether they are dangerous or a flight risk. Deportation proceedings may take up to several years. *Demore v. Kim*.

EDUCATIONAL DIVERSITY – On July 11, the U.S. District Court of Northern California granted a motion allowing a children’s theater company and a group of concerned parents to intervene as defendants in a case in the Novato

Unified School District. ACLU-NC, the ACLU of Southern California, the National Center for Lesbian Rights, and the national ACLU Lesbian & Gay Rights Project are representing the groups, who are defending the Novato Unified School District’s ability to provide diversity and tolerance-building educational programs. *Citizens for Parental Rights v. Novato Unified School District*.

UNIVERSITY ADMISSIONS – On June 9, a federal judge in San Francisco approved a consent decree in a civil rights lawsuit filed in 1999 on behalf of African American, Latino, and Pilipino American applicants to UC Berkeley. The students charged that the UC Berkeley undergraduate admissions process unfairly discriminated against disadvantaged applicants of color by not taking into account the full range of indicators of “merit.” The parties were able to settle the case because of UC Berkeley’s decision, while the litigation was pending, to use “comprehensive review” for every applicant. The settlement requires the Regents to take key steps to ensure compliance with civil rights laws. *Castaneda v. Regents of the University of California*.

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 inappro-

priate material, even though it is undisputed that the currently available programs erroneously block thousands of 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 made by shoe company Nike constitute false or misleading advertising. 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.

SEX EDUCATION

WHY IT'S BROKE, AND HOW A CRUCIAL BILL WILL FIX IT

By Laura Saponara, *ACLU News Contributor*

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 lessons 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.

POLITICAL PUSH FOR “ABSTINENCE-ONLY”

Meanwhile, organizations such as Focus on the Family and the Heritage Foundation are pushing 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 teachers from discussing contraceptive methods except to emphasize their failure rates.

It’s an approach embraced in Washington, DC, 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 six in ten teenage women and seven in ten teenage men are estimated to have had sexual intercourse by their 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. “There 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

SACRAMENTO REPORT

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.aclunc.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 (Speier-D) – a bill that they have 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 on its way to the Assembly floor.

POLICE REFORM

There are three police reform bills that have been sup-

ported 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 action. 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 Horton-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 Steinberg-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 will 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 (Goldberg-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 196 (Leno-D), which includes gender 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 drivers 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. ■

can have a deleterious impact on students. “It’s good to be a virgin,” said Sam Hilliard, a recent graduate of Vallejo High School. But abstinence-only “excludes people who have already done it and people who feel pressured to do it.” Referring to the youth who participated in her focus group, Nyberg recalled, “None of the kids knew about emergency contraception or that you can get it at a pharmacy.” Gilbert Ramos, 18, concurred: “People know about the [birth control] pill, but sometimes they don’t know that you have to take it every day. And they don’t know the side effects.”

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 sci-

“THERE DO NOT CURRENTLY EXIST ANY ABSTINENCE-ONLY PROGRAMS WITH STRONG EVIDENCE THAT THEY EITHER DELAY SEX OR REDUCE TEEN PREGNANCY.”

NATIONAL CAMPAIGN TO PREVENT TEEN PREGNANCY REPORT, 2002.

whenever they become sexually active. SB 71 also requires that sex ed instruction be appropriate for all of California’s diverse students, including English language learners; students with disabilities; gay, lesbian and bisexual students; and students from different races, ethnicities and cultural backgrounds. The goal is to provide all students with facts to help them to make informed personal choices – and to prevent unwanted pregnancies and disease. And SB 71 gives parents a choice by allowing them to remove their children from sex education and HIV/AIDS prevention instruction. It streamlines the current patchwork of notification and consent procedures that often leave school districts in violation of the law and parents in confusion. ■

ence-based, comprehensive sex education,” said Phyllida Burlingame, a researcher who has studied sex education in California and is serving as a consultant with the ACLU-NC. SB 71 emphasizes that abstinence is the only guaranteed way to prevent sexually transmitted diseases and unintended pregnancy. But it also ensures that students receive valuable information about condoms and contraception that they will need

TEEN ACTIVISTS SPEAK OUT ON SEX ED



GILBERT RAMOS, 18 Modesto High School

When Gilbert Ramos first started at Modesto High, family planning was taught as a one-week course. By building a relationship with the school principal, Ramos and fellow members of the organization Teen Life Challenge helped expand the course to a full month of learning. “The more teens know, the more they’re going to protect themselves,” said Ramos, a certified community health worker who counsels teens on birth control and STDs. That’s the message he has brought to policymakers and local administrators in his work to make the case for comprehensive sex ed.

Of trips to Sacramento, Ramos recalled with enthusiasm, “I talked to lobbyists and learned about the process of advocacy and how a bill becomes a law.” Ramos has strong opinions about what a comprehensive approach should encompass. If he were to design Modesto High’s sex ed curriculum, 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.

LEXTY JIMENEZ, 18 Anaheim High School District

Lexty 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, so that they’ll be emotionally prepared and knowledgeable about the resources available to prevent pregnancy,” she said. Jimenez believes that SB 71 will “open the eyes of every school district in California.” To open minds in Anaheim, she brought several of her friends, some of whom are teen moms, to a school board meeting. They called attention to the fact that their district has the fifth highest rate of teen pregnancy in the state, and described how difficult life can be for young moms struggling to stay in school and graduate. The meeting was packed with parents and teachers who broke into applause.

“Without well-rounded sex ed, many teens just don’t have a chance to finish high school,” says Jimenez. We think it should be taught on its own, for a month or more. Not just one day per year. ”

SPEAK UP 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 Traditional Values Coalition hold that the language undermines marriage between heterosexual people. The time is now for ACLU members to voice support for

evolving sex education by requiring schools to take a comprehensive, bias-free approach. Please contact your assembly member and let him or her know: ■ Nearly 90 percent of adults in California support teaching age-appropriate sexuality education in the schools. ■ More than 84 percent support a comprehensive approach that includes accurate information about how to prevent pregnancy and sexually transmitted diseases. To send a free fax, please visit our website at www.aclunc.org/takeaction.html.

IN THEIR OWN WORDS: WHAT ABSTINENCE-ONLY PROGRAMS SAY

- These are examples of what young people are actually being taught. All are from curricula that are in some way supported by federal funds.
- “THERE IS NO WAY TO HAVE PREMARITAL SEX WITHOUT HURTING SOMEONE.” – *Sex Respect*, Student Workbook, p. 35
 - “WATCH WHAT YOU WEAR, IF YOU DON’T AIM TO PLEASE, DON’T AIM TO TEASE.” – *Sex Respect*, Student Workbook, p. 82
 - “AT THE LEAST, THE CHANCES OF GETTING PREGNANT WITH A CONDOM ARE 1 OUT OF 6.” – *Me, My World, My Future*, p. 257. (When used correctly, condoms are 98 percent effective in preventing pregnancy.)
 - “ONE OF THE BEST WAYS TO AVOID AIDS IS TO ‘AVOID HOMOSEXUAL BEHAVIOR.’” – *Sex Respect*, Student Workbook, p. 25
 - “THERE IS NO SUCH THING AS ‘SAFE’ OR ‘SAFER’ PREMARITAL SEX.” – *FACTS*, Middle School Teacher’s Guide, p. 9



Fighting a rising tide of “abstinence-only” programs, the ACLU-NC is sponsoring a crucial bill, SB 71, which mandates a comprehensive and bias-free approach to sex education throughout California.

“WITHOUT WELL-ROUNDED SEX ED, MANY TEENS JUST DON’T HAVE A CHANCE TO FINISH HIGH SCHOOL”

-LEXTY JIMENEZ

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 to 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 booksellers, 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 Bells 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.”

Samina Faheem spoke on behalf of Muslim Americans in the community. She runs a hotline 24 hours a day, seven days a week, to answer questions about Special Registration, the USA Patriot Act, and other legislation and policy changes introduced since September 11, 2001.



Samina Faheem runs a hotline in Palo Alto

“This movement is a miracle,” 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.”

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

A MEANINGFUL RESOLUTION

In guest editorial in the *Palo Alto Daily News* Sinnar wrote, “It is important that Palo Alto set clear limits, in advance, on what types of activities its police will participate in, so that local police support only those activities that meet the standards of our federal and state constitutions.”

The Palo Alto activists knew that the difference between a strong resolution and a symbolic gesture lay in persuading the City Council to include a non-compliance clause and a demand for information. And they won out: in the resolution, the City Council directs the City Manager to obtain and report information from the federal government on how Patriot Act legislation is being enacted in Palo Alto and directs the Police Department not to comply with orders from the federal government that violate the Bill of Rights.

The HRC decided to adopt the stronger resolution after hearing from the community both in meetings and through individual letters, calls and e-mails.

Ken Russell, former HRC commissioner and chair of the Mid-Peninsula ACLU Board, and now a staff member in the ACLU’s Sacramento office, believes that vocal community support was the secret to Palo Alto’s success. “There is no

doubt,” he said, “that the sheer volume of emotion in the commission chamber pushed the commission to adopt the stronger resolution.”

BUILDING BLOCKS

Securing the support of ‘unlikely allies,’ including key City officials, was also instrumental in the campaign’s success. The Police Chief and the City Manager’s office were directly involved in drafting the resolution, with a series of meetings with the Police Chief ensuring that her department could and would comply with the resolution, and that the language was supportive of the Police Department rather than accusatory.

ANTI-PATRIOT ACT RESOLUTIONS IN NORTHERN CALIFORNIA		
15. SANTA CRUZ, 11/12/02	30. YOLO COUNTY, 1/28/03	84. MILL VALLEY, 4/7/03
19. SEBASTOPOL, 12/3/02	28. SAN ANSELMO, 2/12/03	89. DUBLIN, 4/16/03
24. FAIRFAX, 1/7/03	50. RICHMOND, 2/25/03	91. ALBANY, 4/21/03
27. ARCATA, 1/15/03	51. COTATI, 2/26/03	93. MENDOCINO COUNTY, 4/22/03
28. SAN FRANCISCO, 1/21/03	66. SONOMA, 3/5/03	98. SANTA CRUZ COUNTY, 4/30/03
	67. UNION CITY, 3/11/03	102. SAN MATEO COUNTY, 5/6/03
	72. EL CERRITO, 3/17/03	103. MARIN COUNTY, 5/6/03
	23. LOS GATOS, 3/17/03	104. SAUSALITO, 5/6/03
	77. WATSONVILLE, 3/25/03	106. SALINAS, 5/13/03
	79. PINOLE, 4/1/03	120. CONTRA COSTA COUNTY, 6/3/02
	81. UKIAH, 4/2/03	123. PALO ALTO, 6/9/03
		129. TEHAMA COUNTY, 6/26/03
		NEW!
		LAKE COUNTY, 7/8/03
		HAYWARD, 7/23/03

To bolster the already blossoming support, Stanford alums Sinnar and Luke Platzer released a report on the local impact of the Patriot Act. Their research generated a significant amount of media coverage and ensured that key players understood that this was a local – not merely a national – issue.

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 time it got to the City Council,” said Paul Gilbert of the ACLU Mid-Peninsula Chapter. “We made sure that everyone affected by the resolution supported it.”

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

— SAMINA FAHEEM

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 allies 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, which 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 Agiewich, 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.

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

SHARE 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 gpdian@aclunc.org, and we’ll 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 Insatiable Appetite for New Powers in the Post 9/11 Era* at www.aclu.org/SafeandFree/SafeandFree.cfm?ID=13060&c=206.

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>.

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's* Ian Hoffman 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

equates peaceful protest with terrorism itself," said the ACLU of Northern California (ACLU-NC)'s police practices policy director Mark Schlosberg on May 20.

That same day Schlosberg and Ben Wizner of the ACLU of Southern California sent a letter to the Attorney General expressing dismay at revelations that CATIC "since Day One" has gathered and analyzed information on protest activity and compiled dossiers on a wide range of organizations.

The letter called for the Attorney General to direct CATIC to cease collecting such information, to develop guidelines that implement a definition 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 individuals or organizations 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 protests by defining terrorism so

[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 from various sources in recent months have revealed disturbing missteps in the government's handling of the investigation of the Sept. 11 attacks. Here, we detail a few recent revelations that lend credence to the ACLU's long-held belief that the Bush administration has abused its powers and needlessly trampled individual rights.

JULY 22—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, 2001. 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 immigration official 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: "[T]here is concern that under the Patriot Act, federal agents are now able to review library records and books

checked out by U.S. Citizens... If you read the Act, that's absolutely not true... It can't be for U.S. citizens.

— *U.S. Attorney for Alaska testifying before a state Senate Committee.*

FACT: Section 215 of the USA Patriot makes clear that "U.S. persons" – a term referring to citizens and some non-citizens alike – can have their records seized.

MYTH: "For the FBI to check on a citizen's reading habits... it must convince a judge "there is probable cause that the person you are seeking the information for is a terrorist or a foreign spy."

— *Mark Corallo, Justice Department spokesperson, to the Bangor (Maine) Daily News.*

FACT: Section 215 of the USA Patriot Act allows the government to obtain materials like library records without probable cause.

MYTH: The USA Patriot Act "doesn't apply to the average American...It's only for people who are spying or members of a terrorist organization."

— *Mark Corallo, Justice Department spokesperson, to the Journal News (New York).*

FACT: Section 215 can be applied to anybody.

"[T]he errors documented in this report go beyond mere legal hair splitting; rather, they deal with core constitutional values like due process for Fourth Amendment protections against unreasonable search and seizure," says Laura Murphy, director of the ACLU's Washington Legislative Office. "They also raise serious questions about whether our leaders in Washington are intentionally misrepresenting the facts of a debate to deflect public or political criticism."

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" SWEEPED UP.

CAUGHT IN THE BACKLASH

By Gigi Pandian, Communications Assistant

One year ago, we published *Caught in the Backlash: Stories from Northern California* which tells the stories of people who experienced the discriminatory aftermath of September 11, 2001. Today, the backlash is still being felt in communities of color across the region. We will continue to highlight new



faces of the backlash on the pages of the *ACLU News* and online at <http://acluweb.best.vwh.net/911/backlash>.

AHMAD AND HASSAN AMIN

Ahmad and Hassan Amin think of themselves as regular American teenagers. Ahmad, 17, is a star on his Cupertino high school's football team. His brother, Hassan, 19, is studying accounting at De Anza College in Cupertino. Their friends are here, their family is here, and they want their future to be here. "We sold our house in Pakistan to come to this country so that my sons could have a better education and a better life," explains their mother, Tahira Manzur. "Our home is here."

Yet the brothers may soon be forced to return to Pakistan — a country with which they feel no connection and where they have no family to take them in. "I don't even know if I remember how to write my language," says Hassan.

Ahmad and Hassan believed they were in the U.S. legally, in the process of becoming permanent residents, when they took part in the INS Special Registration program, which requires non-citizen men over the age of 16 from a list of mostly Arab and

Muslim countries to register with their local INS office.

THEIR FRIENDS ARE HERE, THEIR FAMILY IS HERE, AND THEY WANT THEIR FUTURE TO BE HERE.

What the brothers didn't realize is that their visas had expired as a result of bad advice from an immigration lawyer. And that, combined with the discriminatory registration requirement, spelt disaster for the Amin boys.

Hassan was detained, arrested and sent to Yuba County, where he was held overnight in a criminal cell until the boys' older brother had him released on \$4,000 bail. Ahmad is required miss school every third Wednesday to register with the INS offices. Both brothers will likely soon face deportation. ■

Ahmad and Hassan recently told their stories at an ACLU-NC news conference.

JUNE 2—DETENTIONS DENOUNCED: 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. Justice's 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 in tatters and a city in shock.

Citing the absence of any evidence of an agreement

between the officers, the conspiracy charges were dismissed on April 4 by Judge Ksemia Tsenin. However, Judge Tsenin concluded that the three officers did, in fact, receive “preferential treatment,” referred to “numerous improper acts and events that transpired,” and described the senior officers’ conduct as “inappropriate,” “uncooperative,” and of “serious concern.” The Office of Citizen Complaints (OCC), the independent agency charged with investigating complaints of police misconduct, is still conducting an administrative review that could lead to discipline of some or all of the high-ranking officers.

While the scandal represents one very public and highly visible example of police misconduct, it is by no means unique (see timeline for additional examples). On April 23, the OCC issued a blistering and well-documented report charging that the department “routinely

obstructed and delayed” its investigations. Two days later, the San Francisco Controller’s office concluded a “best practices” review of the department’s accountability mechanisms and found them woefully inadequate.

Both reports followed on the heels of a report issued by the ACLU-NC, which highlighted the breakdown in accountability mechanisms and called for reform.

Today, fundamental changes are needed to both repair a seriously broken system and restore public trust in the Police Department. These changes must start at the top. While the Police Commission is charged with overseeing the Police Department, it has shown itself unwilling to address the issue of accountability, and that unwillingness stems, in part, from its lack of independence. All Commissioners are currently appointed by the Mayor and serve at will – characteristics that the city Controller described as “structural weaknesses.” At the same time, the OCC lacks the power to prevent departmental delays.

A charter amendment that will go before the voters this November will go a long way towards resolving these problems. The measure would make the Police Commission stronger, more representative and independent by expanding the number of Commissioners, allowing the Supervisors to appoint some of the members, and providing that no Commissioner may be removed without consent of the supervisors.

Additionally, the charter amendment would expand the powers of the OCC, allowing the agency to bring charges directly to the Commission after meeting and conferring with the Police Chief, and clarifying its authority to obtain documents in cases it is investigating. These reforms would allow the OCC to effectively investigate cases of police misconduct.

These reforms mirror recommendations made by the ACLU-NC, the OCC and the City Controller. Still, the Police Officers Association began a massive misinformation campaign, spending thousands of dollars to mislead San Francisco voters about the initiative before the language was even finalized. Passing this initiative will require a significant investment of time and resources. Yet, despite the obstacles ahead, we are confident that this amendment will win, making the SFPD stronger and San Franciscans safer.

To find out more about this campaign, please e-mail the author at mschlosberg@aclunc.org or call him at 415-621-2493 ext. 316. Turn to page 11 for information on how you can help! ■

SCANDAL AND THE SFPD: AN INGLORIOUS TIMELINE

05/02:
San Francisco Chronicle reports that San Francisco ranks last among major U.S. cities in solving violent crimes.

10/07/02:
ACLU-NC report details SFPD’s failure to combat racial profiling.

10/11/02:
Police respond with overwhelming force to a fight at Thurgood Marshall High School. Police Commission subsequently ignores repeated requests for hearings.

11/20/02:
Jade Santoro and Adam Snyder are assaulted outside a Union St. Bar by off-duty officers Matthew Tonsing, David Lee and Alex Fagan, Jr.

1/24/03:
Office of Citizen Complaints (OCC) sustains complaint finding that officers used racial slurs and improperly searched two teenage girls in Bayview. OCC cites a “policy failure” in response to allegations of a pattern of racial discrimination.

2/28/03:
Fagan, Jr., Tonsing and Lee are indicted on assault charges. Police Chief Earl Sanders, Assistant Chief Alex Fagan and other top brass are indicted on charges of obstruction of justice. District Attorney Terence



Hallinan subsequently drops charges against Sanders and Fagan, Sr.

3/13/03:
ACLU-NC report documents breakdown in accountability mechanisms within SFPD and calls for reform.

3/13/03:
Two SFPD attorneys reveal that SFPD withheld officer misconduct information from defense attorneys and courts. Public Defender Jeff Adachi calls for hearings. Police Commission ignores the request, although evidence later reveals that over 3,500 criminal cases may be affected.

3/13/03:
OCC finds that SFPD conducted undercover surveillance of major anti-war demonstrations without proper authorization.

4/4/03:
Judge Ksemia Tsenin dismisses conspiracy charges against the remaining senior members of the SFPD. She notes that the three off-duty officers received “preferential treatment” and that the senior officers’ conduct was of “serious concern.”

4/23/03
OCC report charges that SFPD has “routinely obstructed and delayed” its investigations, and echoes ACLU-NC’s call for reform.

4/25/03:
San Francisco controller’s “best practices” review finds SFPD’s accountability mechanisms inadequate and recommends reform.

5/13/03:
Supervisor Tom Ammiano introduces a ballot initiative that would amend the City Charter to bolster police accountability.

5/28/03:
San Francisco Civil Grand Jury report further confirms the breakdown in accountability and stresses need for reform.

6/5/03:
City pays \$500,000 to settle lawsuit over the April 2001 shooting of Idriss Stelly. The victim’s mother announces she will use the money to start a foundation to support victims of police abuse.

7/16/03:
Board of Supervisors approves charter amendment. The initiative will come before San Francisco voters in November 2003.



CONNERLY

continued from page 1

allies 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. White 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 American Academy of Pediatrics, recently wrote to Connerly, urging him to come clean about the initiative’s health effects.

“From AIDS and lung cancer to adolescent weight problems or childhood diabetes, the most effective prevention programs carefully target the communities that are the most at risk,” they wrote. “Your initiative would turn prevention into a guessing game rather than a knowledge-driven science, forcing California to take a one-size-fits-all approach to public health. This constitutes an unacceptable waste of taxpayers’ money and a threat to the basic health of all Californians.”

And the threats posed by Prop. 54 extend far beyond public health.

DISCRIMINATION CLAIMS UNPROVEN

“Communities of color are treated differently by the criminal justice community,” says Maya Harris, director of the ACLU-NC’s Racial Justice Project. “We have known this through stories for years, and now we have data that proves it.”

Curtis Rodriguez knows this first hand. He was driving over the Pacheco Pass near San Jose when he noticed several cars that had been pulled over by the police. All the stopped drivers were Latino, he remarked. Moments later, Rodriguez was waved over, too. He knew something was wrong – but how could he prove it?

The ACLU-NC filed suit on Rodriguez’s behalf, and obtained data during discovery that supported Rodriguez’s hunch. It revealed that African Americans and Latinos are two to three times more likely to be pulled over by drug 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, Harris warns, “Stories of discrimination will be dismissed as speculation, anecdotes, 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 state’s hands by eliminating data that can reduce domestic violence, Prop. 54 endangers information that helps law enforcement solve and prevent hate crimes. Information, for example, that helped identify and reduce hate crimes against Muslim, Arab American and South Asian communities

in the wake of Sept. 11 may be lost under Prop. 54.

The hazards posed to public safety helped garner the opposition of the state’s 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 inequality, 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 disarm law enforcement and prevent them from doing their job.”

It is, perhaps, the range of impacts – on health care, education, 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 continue to monitor our progress and our problems. “As long as there is discrimination based on my 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.

ISN’T THERE A MEDICAL EXEMPTION THAT PROTECTS OUR HEALTH?

NO! A narrow exemption for “medical research subjects 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 California’s 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 leading 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 guarantee it. Local agencies may continue to voluntarily 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 analyze 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 concluded, supported by briefs from the U.S. military and corporate leaders like Microsoft, we’re not there yet. We live in a world rife 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 continue to monitor both our progress and our problems. As Justice Harry Blackman wrote in *Regents of the University of California v. Bakke*, “In order to get beyond racism we must first take account of race. There is no other way.” Prop. 54 would build a blindfolded California, not a colorblind state. ■

INFORMATION SAVES LIVES

JOIN THE “NO ON 54” CAMPAIGN!

YES! I WANT TO HELP BEAT PROP. 54!

Name

Address

City, State, Zip

Phone 1

Phone 2

Email

- ☐ Sign me up for the ACLU-NC email action network
- ☐ Sign me up as a “No on 54” volunteer

Please return your form to:

PROP 54 Volunteers
ACLU-NC
1663 Mission Street #460
San Francisco, CA 94103

NOT AN ACLU MEMBER? JOIN ONLINE AT WWW.ACLUNC.ORG

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. Most, 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 it 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 hurdles 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. To get a drivers' license you just fill out a form, which is fine as long as you don't need to travel outside the country.

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 obstacles 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 pre-op, 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 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 severing 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.

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.



SHAYNA GELENDER

At the beginning of the trip I had so many questions. What is gender? How does my gender affect my life? How does it affect others? Why do people care when someone's gender differs from the “norm?” I learned that gender is a fluid thing that means something different to everybody. I am willing to do whatever I can to create change, because this trip has taught me that change is desperately needed. I know change starts with me and I sincerely hope it continues with you. ■

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.



Nancy Otto

Otto brought significant new components to the Friedman Project, including high school student summer field investigations, LGBTI sensitivity 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 sphere 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.” ■

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.

POST-OP – after sexual reassignment surgery or other physical changes to one's body.

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 Maria 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.

FOR EVENTS AND ACTIVITIES AROUND THE REGION: VISIT WWW.ACLUNC.ORG

AROUND THE REGION

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.



SANTA CRUZ: *Enemy Alien Files: Hidden Stories of World War II*, an exhibition co-sponsored by the Santa Cruz Chapter of the ACLU and the Friends of the Santa Cruz Public Library, told the stories of 31,000 immigrants and citizens of German, Italian and Japanese descent who faced internment or relocation by the U.S. government during the Second World War. The exhibit linked these government abuses with threats posed to liberty by the Bush administration's war on terrorism. At the opening at Santa Cruz's Central Branch Library, Santa Cruz ACLU chapter board member Mike Rodkin and ACLU-NC's Dorothy Ehrlich addressed a packed crowd.

RESOLUTIONS WATCH: Thanks to ACLU chapter activists working in partnership with other community members, resolutions against the USA Patriot Act have recently passed in Albany, Contra Costa County, Marin County, Mendocino, Palo Alto (see page 6 for details), Salinas and San Mateo County. Other chapters, including the Santa Clara Valley ACLU, are actively working to pass resolutions.

PATRIOT ACT EDUCATION: In Fresno, Humboldt County, Oakland, Mendocino, Sacramento, San Francisco, Sonoma County and Yolo County, among others, activists and chapters are holding forums and tabling at local events to involve community members in the ACLU-NC's campaign against Patriot Acts I and II.

See Chapter Meetings, below, to find out how you can get involved with the ACLU in your local community!

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 Kepoo 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 Kepoo. "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

Bullets shot at protesters 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."

though I would face personal danger from the police because of my politics," she says. "But this incident has fundamentally altered that belief." ■



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 a 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 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 Direct Action to Stop the War website calling for protesters to "shut down the war merchants," but failed to mention Direct Action'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 Schlosberg. "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 the third Wednesday of each month at 7 p.m. at a location to be announced. For more information, contact Jim Hausken: (510) 558-0377. **MARIN COUNTY CHAPTER MEETING:** Meet on the third Monday of each month at 7:30 p.m. Currently meeting at the West End Café, 1131 Fourth Street in San Rafael. Contact Coleman Persily for more information: (415) 479-1731. Or call the Marin Chapter complaint hotline at (415) 456-0137.

MID-PENINSULA CHAPTER MEETING: Meet at 11 a.m. on the third Saturday of the month. Contact Harry Anisgard for more information: (650) 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 Friday to confirm time and location: (831) 899-2263. Or to report a civil liberties concern, call Monterey's complaint line: (831) 622-9894.

NORTH PENINSULA (SAN MATEO AREA) CHAPTER MEETING: Meetings usually held at 7:30 p.m. on the third Monday of each month, at the downstairs conference room at 700

Laurel Street (off Fifth Avenue in San Mateo). Contact Linda Martorana: (650) 697-5685.

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

REDWOOD (HUMBOLDT COUNTY) CHAPTER MEETING: Meet the third Tuesday of each month at 7 p.m. above Moonrise Herbs in Arcata. Please contact Roger Zoss: rzoss@quik.com or (707) 786-4942. The chapter is currently seeking new board members.

SAN FRANCISCO CHAPTER MEETING: Meet the third Tuesday of each month at 6:45 p.m. at the ACLU-NC office (1663 Mission Street, Suite 460). Call the Chapter hotline: (415) 979-6699.

SANTA CLARA VALLEY CHAPTER MEETING: Meet the first Tuesday of each month at 1051 Morse Street (at Newhall) in San Jose. For more information and news on events, contact acluscv@hotmail.com or visit www.acluscv.org.

SANTA CRUZ COUNTY CHAPTER BOARD MEETING: Meet the third Tuesday of each month at 7 p.m. at 260 High Street. Contact Marge Frantz for more information: (831) 471-0810.

SONOMA COUNTY CHAPTER MEETING: Usually meet the third Tuesday of each month, at 7 p.m. at the Peace and Justice Center, located at 467 Sebastopol Avenue, Santa Rosa (one block west of Santa Rosa Avenue). Call the Sonoma hotline at (707) 765-5005 or visit www.aclu-sonoma.org for more information.

NEW CHAPTERS ORGANIZING

CONTRA COSTA/MT. DIABLO: Contact Lee Lawrence at (925) 376-9000 or leehelenalawrence@yahoo.com.

LIVERMORE/DUBLIN/PLEASANTON: Contact Bob Cuddy at (925) 443-1980 or bccuddy@aol.com.

MENDOCINO: Contact Jessie Jesulaitis at (707) 964-8099, or Chapter Chair Linda Leahy at (707) 937-3452 or lleahy@mcn.org.

NAPA: Meet the first Thursday of the month. Contact Ken Croft at (707) 592-3459 or Mary Wallis at (707) 226-6756.

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

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

AN END TO "SODOMY LAWS"

On September 17, 1998, county Sheriff's deputies in Texas, following a false tip about a weapons disturbance, broke into the home of John Lawrence. There, they found him in bed with another man. The couple was charged under Texas' "sodomy law", which makes it illegal for gay couples to engage in sexual intimacy. This began the chain



Tamara Lange

of events that led to the U.S. Supreme Court's historic decision to outlaw sodomy laws. Here, Attorney Tamara Lange explains the significance of Lawrence v. Texas.

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 heterosexual people have.

In no uncertain terms, the Court overruled its decision in *Bowers v. Hardwick*, which, for 17 years, has allowed the government to treat lesbian, gay and bisexual people as second-class citizens. In language that left LGBTI rights advocates weeping with joy, the Court made *Bowers* a dead letter, saying it was "not correct when it was decided, and it is not correct today" because it "demeans the lives of homosexual persons."

HOW WAS *BOWERS* USED TO DISCRIMINATE AGAINST GAY PEOPLE?

TL: In 1986, the U.S. Supreme Court ruled that Georgia could make sexual intimacy between consenting adults a crime. Even though the Georgia law applied to all couples, the Court rejected the argument that everyone has a right to privacy and said that the constitution did not include a fundamental right to engage in "homosexual sodomy." The ramifications were sweeping. The FBI said that *Bowers* defined gay people as a "criminal class," and the decision has been used to justify employment discrimination based on sexual orientation, to bar gay people from jobs as police officers or prosecutors, to defeat legislation protecting LGBTI people in state legislatures, and to take away or to limit parents' custody or visitation with their children.

ARE LAWS IN OTHER STATES AFFECTED BY THIS RULING?

TL: Yes. The Court invalidated similar laws against sexual intimacy in 12 other states. These include laws in Kansas, Missouri and Oklahoma that apply only to same-sex couples, as well as laws across the country that make "sodomy" a crime for all people.

WILL THIS RULING PAVE THE WAY TO OTHER RIGHTS FOR SAME-SEX COUPLES?

TL: This ruling will make it easier for lesbian, gay and

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.

bisexual people to protect their family relationships, to adopt children, to encourage more corporations and towns to recognize same-sex relationships, to ensure that schools are safe for LGBTI students, and to pass laws prohibiting anti-gay discrimination. Sodomy laws have consistently been used to deny LGBTI people their rights. With the Supreme Court now asserting that the right to privacy extends equally to lesbian, gay and bisexual people, homophobic forces have lost a key weapon in their artillery.

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. 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 UPHELD



Katayoon Majd

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 principle that race still matters? Or would this conservative Court nail shut the door to opportunity? Katayoon Majd, an attorney with the 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 they do not resort to mechanical quotas. Endorsing the approach to affirmative action first taken by Justice Powell in his 1978 opinion in *Bakke v. University of California (UC) Board of Regents*, the Court upheld the law school program in *Grutter*, but struck down the undergraduate program in *Gratz*.

WHY DID THE COURT STRIKE DOWN ONE PROGRAM BUT UPHOLD THE OTHER?

KM: The Court unequivocally held that public universities have a compelling interest in creating a diverse student body and that race may be treated as a "plus" factor in admissions in order to meet that interest. In upholding the law school's pro-

gram in *Grutter*, Justice O'Connor stressed that every applicant must be assessed individually and that race alone should not serve as the determining factor between admission and rejection. The Court struck down the undergraduate program in *Gratz* because it relied on a "mechanical" point system that automatically awarded extra points to all underrepresented minorities, rather than individually assessing every applicant.

DID THE "SPLIT" RULING RESOLVE THE QUESTION OF THE CONSTITUTIONALITY

OF AFFIRMATIVE ACTION?

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 Boalt Hall School of Law enrolled just one African American student, and the number of Latino admits 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.

However, 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.

WE WANT TO HEAR FROM YOU!

For the Fall 2003 issue, please send us questions about:

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 gipandian@aclunc.org
Gigi Pandian, 1663 Mission Street #460, San Francisco, CA 94103.