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aclu news

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January - February 2003

Freedom, not Fear **Bill of Rights Day, 2002**

It was a day of challenges, invocations, and inspiration, filled with serious issues but leavened by mirth. One by one, speakers at the ACLU-NC's 30th annual Bill of Rights Day celebration Sunday December 8 called on the rapt crowd not to allow fear to extinguish freedom in a post Sept. 11 world.

"We are here to celebrate the Bill of Rights and we won't let anyone bury it," declared Gregory Nojeim, associate director of the ACLU's Washington National Office over thunderous applause as he gave the keynote address. "We're gearing up, beefing up, psyching up for two years of hand to hand combat" [with John Ashcroft and the Bush administration]. Each night when we put our heads on our pillows, we must ask ourselves, "Did I do enough to keep the Bill of Rights safe?"

"We're no longer talking about threats to freedom, we're talking about freedom denied," warned ACLU-NC executive director Dorothy Ehrlich as she urged the 500-strong crowd at San Francisco's Argent Hotel to take action to restore civil liberties by signing up for the ACLU-NC's activist network and working to pass local resolutions opposed to the USA Patriot Act.

**"[We must] find common ground with our adversaries and form an alliance with them to take back our country."
– Eva Jefferson Paterson**

The theme of the day, 'Freedom, not Fear,' was inspired by Rick Rocamora's critically-acclaimed photographic exhibit *Freedom and Fear: Bay Area Muslims after September 11, 2001*, which was displayed in the lobby. It is a theme embodied by Eva Jefferson Paterson, who received the ACLU-NC's Earl Warren Civil Liberties Award for three courageous decades of work championing civil rights.

Paterson was thrust into the national spotlight as a student leader at Northwestern University when she debated then Vice President Spiro Agnew on live television in the aftermath of the shootings of student demonstrators at Kent State University. After earning a law degree from UC Berkeley's Boalt Hall, Paterson founded the ACLU-NC's first program for high school students before joining the Lawyers' Committee for Civil Rights (LCCR), where she has spent the last 25 years. Paterson was Vice President of the ACLU's national board for eight years, and served on the ACLU-NC's board from 1977 to 1983.

At LCCR, which guarantees litigation services to low-income clients, Paterson's greatest victories include desegregating local schools and the San Francisco Fire Department. But Paterson is more than a formidable intellect, according to Professor Shauna Marshall of Hastings College of Law who presented the award; she is also a "beacon of hope," a "big heart" with a singing voice and wit to match, a vigilant "town-crier for civil rights," and a coalition-builder who forms a "bridge for all our progressive communities."

Paterson thanked the ACLU for "being so brave and courageous and standing up and leading us" after Sept. 11, 2001. Reflecting on two years in politics where the President "was elected in a coup by the Supreme Court" ("even Judge Judy would have known to recuse herself,"), and where a sweeping overhaul of surveillance laws was passed before most members of Congress read it, Paterson said, "It sounds too much like an Oliver Stone movie...1984 came a few years late." But, calling despair a "tool of oppression," Paterson, too, closed with a rally cry, urging activists to "find

common ground with our adversaries and form an alliance with them to take back our country.”

After a report from Amelia Rosenman and Jackson Yan, advocates with the Howard A. Friedman First Amendment Education Project, on their investigation, “Immigration Unplugged 2002,” Paterson expressed faith that the next generation would keep the torch of liberty burning.

**Each night when we put our heads on our pillows, we must
ask ourselves, “Did I do enough to keep the Bill of Rights
safe?” – Greg Nojeim**

With visible emotion, Yan described his meeting with Yuri Kochiyama, who was interned during World War II and who was beside Malcolm X when he was assassinated. “After everything she went through she wasn’t bitter. It was still worth it [to be an activist]. That inspired me,” he said. Rosenman described an eye-opening visit to the *maquiladoras* of Tijuana, concluding, “Working with the ACLU has shown me that I don’t have to grow up before I start to care about the world.”

ACLU-NC volunteer complaint counselor [Carol Sugruhe](#) received the Lola Hanzel Courageous Advocacy Award. “Here’s to the ACLU’s beacon – may it always shine bright and never change course,” she said.

As the ACLU-NC’s Ehrlich gave the annual State of the Union address, she outlined the affiliate’s efforts to restore civil liberties in the wake of Sept. 11, and trumpeted key victories in other areas. “We are here to celebrate, not mourn the demise of, the Bill of Rights,” she said.

Ehrlich pointed to the ACLU-drafted Reproductive Privacy Act, which makes the state a bulwark for reproductive freedom at a time when choice is under national attack. Victories guaranteeing the rights of doctors to speak with patients about medical marijuana, of the media and public to witness full executions, and of prisoners to receive information downloaded from the Internet put the judicial seal on the promise of the First Amendment. And the historic settlement of George Loomis’ landmark suit against the Visalia Unified School District marked a key step toward creating a harassment-free environment for gay and lesbian students, Ehrlich said.

However, enormous challenges remain, she noted, including achieving criminal justice reform when an intransigent Governor consistently blocks all attempts at meaningful change.

Yet, as folk singer and political activist Holly Near reminded supporters, the fight must go on. Near held the crowd spellbound with three songs dealing with war, imagination and activism, including the powerful *Fired Up!*

“Children need schools more than they need jails,
That’s where our society fails.
Fired up, can’t take it no more,
Tied up, ain’t gonna take it no more,
You say cool down, we say step down,
You’re breaking my mother’s heart, shame shame.”

To approving nods and laughs from the crowd, Near encapsulated the spirit of the day, and of the ACLU. “I don’t always agree with the ACLU,” she said. “That’s why I’m a really good supporter of the ACLU.”

The event was organized by Maria Archuleta with assistance from Gigi Pandian, and underwritten by the law firm of Heller, Ehrman, White & McAuliffe and the law firm of Howard, Rice, Nemerovski, Canady, Falk & Rabkin.

Dedicated Counselor Honored With Lola Hanzel Award

photo: Carol Sughrue

By Gigi Pandian

In order to recognize and thank volunteers who have provided strength, dedication and leadership to the ACLU-NC by their exemplary efforts, the Board of Directors established the Lola Hanzel Courageous Advocacy Award in 1981. Before her death in 1980, Lola Hanzel served as a volunteer at the ACLU-NC for more than a decade, giving of her spirit and devotion in a way that inspired others.

For nearly nine years, Carol Sughrue has worked as a volunteer intake/complaint counselor at the ACLU-NC offices, tirelessly reading through countless letters and answering phone calls from people who call the ACLU for help. Even after moving to Sacramento, the dedicated Sughrue continued her commitment to helping people who contact the ACLU, making a five-hour round-trip journey every Monday.

Intake/complaint counselors work with the ACLU's legal department, staffing the ACLU-NC's complaint line. They receive training and serve as ACLU representatives to the public, providing information and referral services to callers. In addition to staffing phones, Sughrue is the one counselor who also answers letters – roughly 50 a week.

"The legal system is so overwhelming to people," Sughrue says, "at least I can give them a starting point. And it's rewarding to hear how grateful people are."

Sughrue sends callers literature, gives them contact details of organizations that can help them, and recommends new sources of information. And she brings to the attention of ACLU attorneys calls and letters that detail violations of civil liberties and rights.

One such call came from George Loomis, then a high school student who was facing relentless anti-gay discrimination at the hands of students and teachers at his Visalia school. Soon after Sughrue channeled his call to ACLU attorneys, the affiliate filed suit on Loomis' behalf. In August 2002 came victory: the Visalia Unified School District agreed to adopt sweeping reforms to stop anti-gay harassment before it starts, including groundbreaking measures to train staff and students. It is moments like these that convince Sughrue that her hard work is worthwhile.

Sughrue is also proud of her work to help an Orthodox Jewish inmate at San Quentin Prison who was placed in a cell with white supremacists. After his requests to be moved through the prison's appeal process were turned down, the man appealed to the ACLU in a simple one-page letter. Sughrue's efforts on his behalf led to the American Jewish Congress representing the prisoner.

The ACLU salutes Carol Sughrue for her compassionate commitment to assisting those who turn to the ACLU for help. Our work would not be possible without the generosity of volunteers like Carol Sughrue.

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ACLU Probes Secrets Behind "No-Fly" List

Jan Adams and Rebecca Gordon have been activists for most of their lives. Between them, they have fought for women's rights, taken testimony from people abused by the Nicaraguan Contras, monitored elections in El Salvador, and taught desktop publishing to anti-apartheid activists in South Africa.

They knew some of their work was controversial. But the couple never expected their commitment to peace to land them on a secret government watch list after Sept. 11.

After Adams and Gordon discovered that their names were on a "no fly" list when they checked in for a flight out of San Francisco Airport (SFO) this summer, they contacted the ACLU. On December 12, the ACLU-NC filed requests under the Freedom of Information Act (FOIA) and the Privacy Act seeking information about the "no fly" list and other government watch lists on the women's behalf. The requests were filed with the Transportation Security Agency, the FBI in Washington D.C., and the FBI in San Francisco.

"We want to find out how a person's name gets on government watch lists like the "no fly" list, and how a person can get their name off such lists," said Jayashri Srikantiah, staff attorney with the ACLU of Northern California. "There must be public accountability regarding government lists like these."

The requests also seek information on the number of names on the "no fly" list or other government watch lists, the number of times that individuals were incorrectly identified as being on such lists at SFO and other airports across the country, and whether individuals are targeted for such lists based on First Amendment activity.

On November 14, 2002, the ACLU-NC sent a request to SFO under the California Public Records Act asking for documents relating to the SFO incident involving Adams and Gordon. SFO responded by providing documentation confirming the existence of a "no-fly" list, and also confirming that the women's names were checked against a master "FBI list."

"We've spent our lives working against unjust violence – we couldn't be more opposed to terrorism," says Adams. Although the women were eventually permitted to fly to Boston, their names were checked against a "master list" and their tickets were branded with a large red "S," singling the women out for special searches and scrutiny.

Gordon and Adams are among the founders of War Times, an anti-war publication launched shortly after Sept. 11. The newspaper appears in print and online, and has criticized the government's position on the war in Afghanistan, the erosion of civil liberties in the wake of the attacks, and the looming invasion of Iraq.

Gordon, 50, and Adams, 55, are anxious to know how their names appeared on the list and how they can get them off. But, while they worry about what will happen the next time they fly, they have decided to continue with their War Times work. "We've got a war to stop," says Jan. "We're more determined than ever to work for peace."

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Major Win for Immigrant Airport Screeners

by Nick Oakley, ACLU Intern

On November 15, the ACLU scored a key victory in its legal challenge against the federal government's new citizenship requirement for airport screeners, securing a preliminary injunction that prohibits the Transportation Security Administration from barring non-citizens from working as airport screeners.

Federal District Court Judge Judge Robert Takasugi issued the preliminary injunction, stating that the government has "not established that the exclusion of all noncitizens is the least restrictive means to further the government interest in improving aviation security."

"We are very encouraged by this ruling. Discriminating against non-citizen airport screeners will not make us safer or more secure," said Alan Schlosser, legal director of the ACLU of Northern California. "In fact it will certainly decrease air travel security by eliminating much of the experienced and trained workforce."

Mark Rosenbaum, one of the ACLU attorneys arguing the case, said that the ruling demonstrates that "you can conduct a war on terrorism without taking civil liberties as the first casualty."

The Northern and Southern California Affiliates of the ACLU, along with the Service Employees Union International and a coalition of civil rights groups, filed the lawsuit, *Gebin v. Mineta*, on behalf of nine noncitizen airport screeners at Los Angeles International Airport and San Francisco Airport in January 2002. In November 2001, the Transportation and Aviation Security Act included a requirement that airport screeners be U.S. citizens, putting the jobs of 8,000 qualified screeners at risk.

Takasugi, who just days before issuing the injunction, denied the federal government's motion to dismiss the case, rejected Justice Department lawyers' contention that the citizenship requirement was valid under Congress' broad authority to regulate immigration.

Attorneys for the ACLU noted that other airport personnel who are responsible for security, such as baggage handlers, mechanics, flight attendants, pilots and the national guardsmen who patrol the airport, are not subjected to the requirement.

Concurring with the ACLU's argument, Takasugi stated that the "plaintiffs have...sufficiently alleged a constitutional deprivation to warrant a finding of irreparable harm."

Takasugi also denied a Department of Justice request to suspend the injunction while the government's appeal proceeds. Unless overturned by a higher court, the injunction will remain in effect until the case goes to trial.

The victory for some noncitizen screeners is bittersweet, however, since most of the federal positions have already been filled. In addition, in order to qualify for their old jobs, screeners must submit to a test that some community leaders say is unrelated to job performance and imposes unnecessary language and physical requirements.

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Youth Conference Tackles Immigration

by Alston Lew, ACLU Intern

They were encouraged to abandon their preconceptions, leave prejudice at the door, and join their peers in a frank exploration of one of the most pressing issues facing California today: Immigration.

Eight hundred high school students answered the call, flocking to the UC Berkeley Student Union Center on November 14, 2002 for a conference inspired by, and based on, the findings of peers who took part in a field trip investigating immigration this summer. Organized by advocates with the ACLU-NC's Howard A. First Amendment Education Project, the conference tackled thorny topics including "Examining your Prejudices," "Immigration and Racial Profiling since Sept. 11," "U.S. Foreign Policy" and "Public Schools and Immigration."

The conference opened with a lively plenary session in which students from the Friedman Project's Youth Advisory Committee introduced their new report, *Immigration Unplugged, 2002*. Hot off the press, the report uses poetry, prose and art to deliver an array of first-person perspectives on the people the students met and the issues they explored during the trip ([click here](#)).

Students chose from a wide menu of workshops throughout the day. In one workshop, "The Rights of Queer Immigrants," Marta Donayra from the National Center for Lesbian Rights outlined the tremendous challenges facing same-sex bi-national couples. When straight couples marry, a U.S. citizen may petition for their spouse to become a legal permanent resident. But because same-sex unions are not recognized under federal law, a U.S. citizen is powerless to help their gay or lesbian partner remain in the country. Holland is the only country in the world thus far to legalize same sex marriage, Donayra pointed out, while a handful of other countries do recognize some immigration rights for same-sex bi-national couples.

In a workshop on organizing, Yuri Kochiyama, a noted civil rights and anti-war activist and a former Japanese internee spoke to a packed room about her experience in the internment camps during World War II, as well as her subsequent fight for prisoners' rights. "The unfortunate thing about the U.S. is the fact that our answer for any crime or problem is to build more prisons," said Kochiyama. "Some prisoners are political prisoners, who continue to hope even after 40 years behind bars. Some of the brightest people I know are serving terms in prison." Kochiyama encouraged students to challenge what they read in the mainstream U.S. media about the war on terrorism, and to embrace alternative information sources. "Be careful what you read, but read everything," she told students.

In "The Patriot Act and Privacy Issues", speakers Dan Komarek and Lotus Yu, Co-presidents of the UC Berkley ACLU club spoke with students about the impact of the USA Patriot Act on privacy, activism and immigrants' rights, and encouraged students to write to their Member of Congress or Senator to protest the legislation.

Students also recounted personal experiences of discrimination, and talked frankly about what race and nationality mean to them. Tynan Kelly a student at Carlmount High School explained that he started an ACLU club at his school after a police officer pulled his friend over and began asking personal and inappropriate questions. "I believe immigrants should be granted equal rights and that the borders should be looser," said Kelly, who also noted, "The government only seems to target certain groups."

Students and teachers praised the conference for shining a light on tough questions that are pertinent to their ongoing studies. Rick Ayers, an English teacher at Berkley High School noted that

the conference fit perfectly into the school's Communication Arts and Science curriculum, which explores social justice issues, while Javeria Aleem, who works with AmeriCorps at Tennyson High School in Hayward, said that the conference was relevant to the school's ethnic studies program

Los Olivados

By Adrienna Wong

Here the streets are paved in gold:
white gold, set with blue-eyed
sapphire
Here the fiery grip of Democracy
And proximity
makes us melt
makes us spit and bubble/hiss
And if this land is a melting pot-
then the lid is shut
cauldron brimming already with an
unstirring
foundation
try to pour in a portion
of my bronze skin
but, already too full, borders bulging
there is not room for me.
And so I become but
Stream. I sublime
Or maybe I just
Disappear

Tijuana

By Amelia Rosenman

Three Dogs
barking at the fence
barking at the bus, at me.
Jaime Cota with maps and
fine fire mind and
smoother sautee Sapanish on high.
This room framed by flags, John Lennon, the eyes
Of so many heroes.
Sweat shops, bus stops, tough to talk when
a finger costs a peso or two, less than a shoe, less than breakfast.
White men
watching women wolf down water with pills
(to keep them from their wombs)
I can see the tombs, lined up like
one man's teeth that
won't
stop
falling
out.

These poems are excerpts from *Immigration Unplugged, 2002*, a report written by and for youth from the Howard A. Friedman First Amendment Education Project on their weeklong field investigation of immigration this summer. Amelia Rosenman is a junior at Lick-Wilmerding High School in San Mateo; Adrienna Wong is a senior at University High School in San Francisco.

Call Shayna Gelender at 415-621-2493 for a copy of the report or visit [our website](#).

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ACLU Urges Rehearing in Charged Death Penalty Case

The ACLU of Northern California and several civil rights groups filed an amicus brief in the Ninth Circuit Court of Appeals Wednesday November 6 in support of San Quentin death row inmate Stanley Williams's petition for rehearing *en banc*.

The trial prosecutor's past racial bias in selecting juries and his racist closing argument in Williams's trial should be relevant in determining whether he used racial bias in selecting the jury and disqualifying all of the African American jurors, according to the amici.

Williams, the founder of the Los Angeles Crips gang, was nominated for the 2001 Nobel Peace Prize for his work as an advocate of non-violence while behind bars. He was sentenced to death in 1981 for four murders by an all-white jury in Torrance, California.

"Courts must be vigilant to prevent racial bias and stereotyping from determining the selection of juries, particularly in a capital case where it is a matter of life and death," said Alan Schlosser, legal director for the ACLU of Northern California. "Exclusion from a jury on racial grounds undermines an individual's – and a community's – participation in the democratic process. Rehearing should be granted because the three-judge panel's decision in this case would exclude the best evidence of a prosecutor's racial bias."

During jury selection, the prosecutor removed the only African-American citizens called into the jury box and during the trial engaged in a racially-coded closing argument that compared Williams in trial to a Bengal tiger in the zoo and Williams "in his environment" to a Bengal Tiger in its "habitat." This same prosecutor was censured judicially twice for racial bias in jury selection.

Williams became internationally known when a member of the Swiss Parliament nominated him for the Nobel Peace Prize. In prison he became an advocate for gang summit peace talks, non-violence and an author of nine highly acclaimed gang prevention children's books that are in schools and libraries throughout the world.

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Free Speech for California Doctors

By Elizabeth Han, ACLU Intern

California doctors may “speak frankly and openly to patients” regarding the healing potential of medical marijuana, according to a landmark ruling handed down by the Ninth Circuit Court of Appeal in *Conant vs. Walters* date.

The case was brought in the wake of the passage of California’s Proposition 215, in which voters overwhelmingly approved the right of patients in the state to use marijuana for medicinal purposes as long as they have a doctor’s recommendation. Despite a mound of evidence demonstrating that pot has healing qualities and is not a “gateway” to harder drugs, the federal government classifies marijuana as a Schedule 1 drug – one with no medicinal qualities. Faced with a high-profile brouhaha over states’ rights and medical weed, then U.S. Drug Czar Barry McCaffrey responded with a gag order barring doctors from recommending marijuana to their patients on pain of losing their DEA-issued prescription drug licenses.

Since the case was filed in 1997, nine states have approved ballot initiatives or laws approving the use of medical marijuana (Alaska, Arizona, California, Colorado, Hawaii, Maine, Nevada, Oregon, and Washington). All but two of these states, Maine and Colorado, fall under the jurisdiction of the US Ninth Circuit Court of Appeals. Thus the court’s decision will affect almost all of the states whose laws present a challenge to the federal government’s drug policy.

The ruling suggested that the federal government may not use its power to undermine a controversial state law by “striking at core First Amendment interests of doctors and patients.”

“Physicians who have the sensitive task of informing patients about the risks and benefits of medical marijuana can now do so without the fear of government intervention,” said Graham Boyd of the ACLU’s Drug Policy Litigation Project, who argued the case before the court.

The government’s power to issue gag orders on physicians rested on the claim that the “public interest” outweighed any First Amendment considerations. In *Conant v. Walters*, the court unanimously upheld the significance of the First Amendment. In doing so, it let stand an earlier court order blocking the government from revoking doctor’s licenses.

“The court recognized that the government has no business using threats as a means of cutting off the free flow of information from the one source patients rely on the most: their doctors,” said co-counsel Ann Brick of the ACLU of Northern California. Milton Estes, a former chair of the ACLU-NC’s board of directors, was a physician plaintiff in the case.

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High Court Ruling Bolsters Internet Speech

By Alston Lew, ACLU Intern

California courts do not have jurisdiction over an individual whose only contact with the state is posting a controversial computer program online, according to a recent decision handed down by California Supreme Court on November 25, 2002. The ACLU-NC filed an amicus brief in support of the defendant in the case, *DVD Copy Control Association, Inc. v. Pavlovich*.

"The Court's ruling means that people can't be hauled into court in a far-distant state for doing nothing more than making information available on the Internet." –Ann Brick

Matthew Pavlovich was a student at Purdue University in Indiana when he posted a program on his website that would enable those who downloaded it to play legally purchased DVDs on DVD players that could not otherwise play them because they lacked the proper decryption program. Unfortunately for Pavlovich, the decryption mechanism in the program also allows users to copy the disk.

Enter the DVD Copy Control Association (DVD CCA). A nonprofit trade association created by the movie and DVD industries to protect DVDs against illegal copying, DVD CCA filed suit against a raft of individuals and websites, including Pavlovich, claiming that the defendants were illegally exposing trade secrets. But can a California court have jurisdiction over someone like Pavlovich, who has never been to California, and whose only contact with the state was his posting of the program on the Internet? The ACLU-NC's amicus brief argued that there is no jurisdiction, and the California Supreme Court agreed.

The Court found that there was insufficient evidence that Pavlovich expressly aimed his conduct at or intentionally targeted California. The decision sets an important precedent because it means that out-of-state defendants in cases like this will not be forced to travel to California to defend themselves. If defendants like Pavlovich cannot come to California to defend the suit, the court may issue a default judgment ordering that the disputed material be taken offline. "This is an important decision for everyone who posts information on the Internet," said ACLU-NC staff attorney Ann Brick, who filed the brief. "The Court's ruling means that people can't be hauled into court in a far-distant state for doing nothing more than making information available on the Internet. In addition, courts aren't going to be issuing default judgments that require that information be taken off the Internet simply because the defendants did not have the resources to come to court and raise a valid defense."

Justice Janice Rogers Brown in her majority opinion wrote that even if the Court's ruling prohibited DVD CCA from suing Pavlovich in California, the company can still sue him in either Indiana or Texas where the "problem" allegedly took place.

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Airport Discrimination Suit Moves Forward

An ACLU suit charging that Northwest Airlines discriminated against graduate student Arshad Chowdhury by prohibiting him from boarding a flight at San Francisco Airport even after he had cleared security may go forward, a federal judge has ruled.

U.S. District Court Judge Charles R. Breyer denied a motion to dismiss the civil rights lawsuit on Friday, December 6. The suit was filed in the Northern District of California by the ACLU of Northern California (ACLU-NC) and the Washington, DC, based civil rights law firm Relman & Associates.

"This ruling is significant because it recognizes that longstanding civil rights protections apply to individuals who suffer discrimination at the hands of airlines after September 11, 2001," said Jayashri Srikantiah, a staff attorney with the ACLU-NC.

"The airlines were indulging in discrimination, not enforcing security, when they ejected our client from this flight," said Kelli Evans of Relman & Associates.

On October 23, 2001, Chowdhury was returning to Pittsburgh after a weekend in San Francisco when Northwest Airlines refused to allow him to board his Detroit-bound flight. Even after the FBI and local law enforcement authorities had determined that he was not a security threat, airline employees told Chowdhury that the pilot had decided that he would not be allowed to fly on Northwest. Northwest booked him on a US Airways flight instead. Despite the security clearance by federal and local law enforcement professionals, Northwest input Chowdhury's name into a database that included the names of known terrorists, and failed to remove his name.

"I love America intensely and was deeply affected by the events of September 11," said Chowdhury. "I'm gratified that my case is going forward."

Chowdhury, a U.S. citizen of Bangladeshi descent and an MBA student at Carnegie Mellon University in Pittsburgh, PA, worked as an investment banker at Deutsche Bank in and across the road from the World Trade Center between 1998 and April 2001.

On October 18, 2002, federal district judge Dickinson R. Debevoise of the United States District Court in New Jersey allowed two similar lawsuits against Continental Airlines to proceed, ruling that the ACLU had "sufficiently alleged" that their clients' removal from flight on January 31, 2001, "was the production of intentional discrimination and not of a rational determination that their presence was 'inimical to safety.'"

Less than one week earlier, a federal judge in Los Angeles permitted similar claims against United Airlines to proceed, saying that pilots' discretion "does not grant them a license to discriminate."

For more information on the cases, visit the [National ACLU website](#).

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Supreme Court Considers Three Strikes Law

In arguments before the U.S. Supreme Court on November 5, the ACLU urged the Justices to invalidate a California man's 50-years-to-life sentence under the state's harsh "three strikes" law for stealing \$153 worth of children's videotapes, including "Snow White" and "Free Willy."

"The sentencing of Mr. Andrade to fifty years for shoplifting – when his prior strikes were nonviolent burglaries – is a violation of a bedrock principle that is part of our constitutional system," said Alan Schlosser, legal director of the ACLU of Northern California (ACLU-NC) and co-counsel in the case. "The state is not free to impose harsh and excessive sentences that violate basic principles of decency, humanity and common sense."

"It is completely irrational to put someone in prison for life for shoplifting," – Erwin Chemerinsky

The case, *Lockyer v. Andrade*, is the first Supreme Court challenge to the application of California's "three strikes" law. Andrade was argued in tandem with another case, *Ewing v. California*, in which Gary Ewing received 25 years to life for stealing \$1,200 worth of golf clubs.

"It is completely irrational to put someone in prison for life for shoplifting," said Erwin Chemerinsky, a University of Southern California law professor who is arguing the case on behalf of his client, Leandro Andrade. The ACLU's national office and its California affiliates are serving as co-counsel.

Passed in 1994, the law requires a prison term of 25 years to life for anyone convicted of a third felony after two previous serious or violent felony convictions. But Andrade and Ewing, as well as hundreds of others, are nonviolent criminals whose previous sentences were for burglary and petty theft. California is the only state in the country that allows such stiff punishment for a minor, nonviolent "third strike."

The argument focused on whether a potential life sentence for petty theft under the "three strikes" law constitutes "cruel and unusual" punishment.

In November 2001, the Ninth Circuit Court of Appeals overturned Andrade's sentence, agreeing with his claim that it was cruel and unusual punishment in violation of the federal Constitution's Eighth Amendment.

A recent report by the Sentencing Project, a Washington, DC-based policy group, concludes that the three strikes law has not contributed to the reduction of crime in California to any significant extent. The study also shows that the law has increased the number and severity of sentences for nonviolent offenders, who now make up two-thirds of the state's second and third "strike" sentences.

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ACLU's Romero Joins Ethnic Media Roundtable@

ACLU Intern **Nick Oakley** contributed to this report.

The FBI detained two young Afghan-Americans for 11 hours as they set off on a trip to Afghanistan with the human rights group Global Exchange. 50 FBI agents raided a Pakistani family's house after neighbors mistook food dishes for containers of anthrax. A Bay Area attorney and a turbaned Sikh, Mandeep Dhillon was called 'Osama' 15 to 20 times when he attended an Oakland A's game in the summer of 2002.

"Safety and freedom are not at odds...they are both essential ingredients in our democracy." - Anthony Romero

These give just a taste of the stories told on Tuesday, November 19, when around 50 representatives from Californian ethnic media outlets gathered at the San Francisco offices of the James Irvine Foundation for a roundtable discussion on civil liberties with ACLU executive director Anthony Romero. The event, which sought to provide a window on the ways that new policies are impacting communities of color, was organized by New California Media and co-sponsored by the ACLU-NC.

"We're here to discuss what we know is happening, but which the greater public does not believe is happening," said Romero.

One after the other, representatives from Filipino, Iranian, Pakistani, African American, Indian, Latino and Afghan media reported chilling stories of fear, intimidation and disappearances in their communities. In stark contrast to the diversity of the groups represented, the stories told were strikingly similar.

Jalal Ghazi of *WorldLink* explained that the targeting of people from Arab and South Asian communities based on their ethnic profile has led to widespread fear of law enforcement. "They say 'well, I'd better stay quiet, I'd better not voice my political opinion,'" he noted. Ghazi pointed to the stories of Alia Atanweh and Hiam Yassine, two Palestinian Muslim women who lost their jobs at Macy's shortly after Sept. 11 and are suing the store for discrimination. (Alia's story is featured in the ACLU-NC's new report [Caught in the Backlash: Stories from Northern California](#).)

Many Iranians no longer attend mosque out of fear that the government will target them for their religious beliefs, according to Jahansha Javid of [Iranian.com](#), who added that those who do go are suspicious of new faces, fearing that they might be FBI agents.

The 'New Disappeared'

Speaking of the "new disappeared," the 1,200 immigrants who were picked up, detained and deported after Sept. 11, many of them Pakistani nationals, Asim Mughal of the *Pakistani News Service* described a nightmare world where "wives can't find their husbands." "The dream of America as a free society where everyone has a right is being changed into, is no different from, the tyrannical third world, renegade country where people are abducted, where there's no respect for the law," he said.

The backlash is not limited to those of Arab and South Asian descent. "Latinos feel like they are absolutely not welcome in their communities," said Claudia Menendez of *Nuevo Mundo* Indeed, 63

Filipinos were handcuffed and flown out of El Centro, California, in the middle of the night for overstaying their visas, according to Rene CiriaCruz, associate editor of *Pacific News Service*.

"The expansion of government activities sets a dangerous precedent for other communities of color," said Jayashri Srikantiah of the ACLU-NC. Srikantiah pointed out that the Absconder Initiative initially focused on deporting 6,000 people of Middle Eastern descent who were under outstanding deportation orders, but soon extended to include over 300,000 people of varying ethnicities, many of them Central American.

Safety and Freedom not at Odds

Turning to a broader discussion of the changing fabric of politics and media since Sept. 11, the ACLU's Romero urged participants not to subscribe to the 'false dichotomy' of national security versus civil liberties. "Safety and freedom are not at odds," said Romero, "they are both essential ingredients in our democracy." We must not "allow the government to frame it as either or."

After Sept. 11, said Romero, the government has sought to "shut down dissent and debate," framing the war on terrorism as "you're either with us or against us," dismissing the views of dissenters as "giving ammunition to our enemies," and questioning the patriotism of Democrats who did not support the Iraq resolution.

At times, the government even views the mainstream media as an "complicit with them," according to Romero, who cited Condoleeza Rice's request that the television networks not air tapes of Osama bin Laden in October 2001, and the proposed Operation TIPS program, in which the government sought to enlist postal and transportation workers as volunteer spies. Operation TIPS, now outlawed by the Homeland Security Act, would have routed calls directly to a hotline at Fox's *America's Most Wanted*.

The veil of secrecy shrouding the government's actions after Sept. 11, Romero noted, has posed a particular challenge both for the ACLU and for the media, in particular, the government's refusal to release the names of those detained in the days following the attacks. Romero described a recent initiative by the ACLU to bypass the government and track down some of the individuals detained and deported in this secret operation.

Locating Pakistani Detainees

With the help of the Pakistani consulate and a human rights group in Pakistan, the ACLU identified and interviewed 21 people who were deported after Sept. 11. Eight of them are willing to tell their stories on camera, and ACLU staff will soon be returning to Pakistan with news crews from major mainstream media outlets. Their stories, said Romero, are deeply disturbing.

- Of the 21 tracked down, seven were married to U.S. citizens.
- Many agreed to be deported because they did not want to remain in detention.
- They were told they could get papers if they said they knew where Osama bin Laden was.
- At times, some were handcuffed and shackled, and one detainee was held for three days with no clothes.
- They were called 'Pakis' by the guards.
- They were only permitted to make collect calls.
- Some were deported without anything, even without access to bank accounts, and some were deported without being told where they were taken.

Even so, Romero said, many of them still talked about still loving America.

Chastizing the mainstream media for failing to do its job and leaving the ethnic media to tell the stories of the many "innocents who have been caught in the backlash," Romero ended with a rally cry to the ethnic news reporters. Calling "muckraking journalism" a part of the democratic process, he urged the reporters to document how secret powers are being used, to find librarians, individuals whose phones are being tapped or emails intercepted, and to write about how this is affecting our democracy.

"This is your challenge," said Romero, "to tell the truth of what happened in this country."

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Safe and Free: ACLU Campaign Update

Local Resolutions Pillory Patriot Act

By Sanjeev Bery, ACLU Advocate / Organizer

Though the USA PATRIOT Act sailed through Congress, it isn't getting the rubber stamp of the American people. Since its passage over a year ago, communities across the U.S. have been making their opposition publicly known.

These local resolutions send an important message to the White House and Congress: People across America do not support the recent rollbacks of civil liberties.

Already, some 17 communities have passed resolutions opposed to the scapegoating of immigrants, the expansion of Federal surveillance powers, and elements of the Patriot Act. City councils ranging from Denver, CO, to Cambridge, MA, have done so. Many more are expected to in the days ahead.

These local resolutions send an important message to the White House and Congress: People across America do not support the recent rollbacks of civil liberties.

They are also important for a second reason. They give ACLU lobbyists and other public interest advocates in Washington, DC, the backup they need when they tell elected officials that freedom cannot be sacrificed in the name of security.

Northern California is no stranger to this growing municipal movement. Already, Berkeley, Santa Cruz, and Sebastopol have all passed resolutions of opposition. The list of cities where resolutions may soon be considered is growing. In communities ranging from Davis and Sacramento to Watsonville and Salinas, coalitions of ACLU members and other organizations are forming to oppose the anti-civil liberties tide.

As the *ACLU News* went to press, the City of Oakland was set to vote on its own resolution, and we had just received word that the City of San Francisco was preparing to introduce one. What makes this growing movement so powerful is that it brings together people and organizations from a wide range of backgrounds and concerns. Since Sept. 11, the federal government's crackdown on civil liberties has targeted everyone from immigrants to library users to political activists.

FBI agents have contacted public libraries across the country to see what books patrons have been reading. South Asian, Arab, and Muslim immigrants have been detained and deported by the hundreds. No one knows how many secret search warrants and acts of Internet surveillance have occurred.

As a result, an entire cross section of activists and organizations -- from Internet privacy experts to immigration advocates to librarians -- is angry and ready to do something about it. Perhaps it is time to add your city and county to the growing number of communities that are standing up for civil liberties. To get your own organizing packet, please send an email to sbery@aclunc.org or call me at 415-621-2493x365.

Our elected officials need to hear from you.

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Iraqis Are New Targets of Unwarranted Questioning

by Stella Richardson

Media Relations Director

Days after the government announced new plans to question and monitor Iraqis and Iraqi-Americans, the ACLU of Northern California (ACLU-NC) joined with civil rights and community organizations in calling the program "a troubling and counterproductive manifestation of racial profiling."

One senior government official told the *[New York] Times* that this was the "largest and most aggressive program we've ever had."

In letters sent to the University of California Police Departments and members of the Joint Terrorism Task Forces in Northern California, the groups warn that the monitoring aspects of the program "threaten to violate California's precious constitutional right to privacy."

On November 17, the *New York Times* reported that the federal government has begun a program of tracking, monitoring, and questioning thousands of Iraqi immigrants, Iraqi-Americans, and possibly other individuals of Middle Eastern origin. One senior government official told the *Times* that this was the "largest and most aggressive program we've ever had." The program includes the Pentagon, the Central Intelligence Agency, the immigration service, the State Department and the National Security Agency.

"This new program is dangerous because individuals are being targeted for questioning and surveillance based on their ethnicity and not because they have done anything wrong," said Mark Schlosberg, police practices policy director with the ACLU-NC.

"By yet again targeting Arabs and Arab Americans for questioning, the federal government continues to contribute to the climate of scapegoating," said Heba Nimr of the American-Arab Anti-Discrimination Committee, San Francisco Chapter

The National Lawyers Guild, the ACLU-NC, the Lawyers' Committee for Civil Rights, the San Francisco Chapter of the Arab-American Anti-Discrimination Committee and the Council on American Islamic Relations sent the letters to law enforcement agencies, campus police at UC Berkeley, USF, and UC Davis and the Joint Terrorism Task Forces in Northern California.

The letters urge university police and local law enforcement to "take a strong stand against such discriminatory federal programs by declining to participate in this latest round of questioning and monitoring." In two previous rounds of FBI questioning of men of Middle Eastern and South Asian descent, several Northern California Police and Sheriff's Departments declined to participate, including police in San Francisco, San Jose, Oakland, the San Mateo County Sheriff's Department and others.

The civil rights groups are also distributing an informational bulletin in English and Arabic. The bulletin (see sidebar) is online at www.aclunc.org/911/bulletin.html. [For a copy of the letter, click here.](#)

Know Your Rights Bulletin

November 27, 2002

The FBI has begun a new round of questioning and interviews. The FBI will likely target Iraqi immigrants, Iraqi-Americans and others of Middle Eastern origin for the questioning. This bulletin informs you how to respond when the FBI, INS, or police contact you for questioning.

- If an FBI, INS, or police officer asks to speak to you, tell him you want to consult an attorney before deciding what to do. Telling the officer that you need to speak to an attorney before answering any questions is legal and appropriate. If you want to talk to the FBI, INS, or police, your attorney can contact them for the interview on your behalf.
- ANY information you give to an officer without an attorney, even if it seems harmless, can be used against you or someone else. Lying to an officer is a separate crime. Remaining silent is not a crime.
- You are not required to allow the officer into your home or office without a warrant. Ask to see the warrant. If the officer refuses to show you a warrant, do not obstruct him if he forces his way into your home or office. Tell the officer that he does not have your permission to enter.
- If the officer says that he has a warrant for your arrest, you have a right to see the warrant. You must go with the officer, but you do not have to answer questions until you consult an attorney.
- If you are detained, you should ask for an attorney and remain silent. If you are detained in an immigration detention center, ask for contact information for attorneys.

If the FBI, INS, local police or other law enforcement contact you, please write down the name, agency, and telephone number of the officer who calls or visits you. Then CONTACT US IMMEDIATELY. We have a FREE hotline that provides confidential legal assistance. The number is:

415-285-1055

Co-sponsors:

American Arab Anti-Discrimination Committee
American Civil Liberties Union of Northern California
Council on American Islamic Relations
Lawyers' Committee for Civil Rights
National Lawyers' Guild

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Goodbye TIPS, Hello Total Information Awareness

Homeland Security Act Outlaws TIPS

If there was a silver lining to the passage of the Homeland Security Act, it was the death of Operation Terrorist Information Prevention Services (TIPS), the government's misguided effort to encourage American workers to spy on their neighbors. TIPS was vociferously opposed by the ACLU.

Pointdexter once said that it was his duty as the national security advisor to withhold information from Congress.

The Act, signed into law by President Bush on (date), expressly prohibits the controversial TIPS program, which would have activated millions of American utility and transportation workers as volunteer informants. Incoming House Minority Leader, San Francisco's Nancy Pelosi, was instrumental in securing Democratic opposition to TIPS. On the Senate side, outgoing House Majority Leader Dick Arme (R-Texas) included provisions prohibiting both TIPS and a National ID card in the bill.

"There are much better ways to involve our communities in securing our homeland, said Arme. "After all, we are here today to defend our freedoms." Nevertheless, the final Homeland Security Act has serious drawbacks, including:

- Shielding information from public scrutiny. The bill exempts information about so-called "critical infrastructure" from the Freedom of Information Act (FOIA). It imposes criminal penalties for government officials who disclose this information. As a result, officials who blow the whistle on threats to public health or private sector incompetence could become criminals.
- Overly broad intelligence information sharing provisions between the Homeland Security department and other agencies, such as the FBI or the CIA, and even with foreign law enforcement agencies.
- Opening the door to a federal policy on forced vaccinations. Such a policy would not be effective as a public health measure, nor would it respect individual liberty.

"The Homeland Security Department will become a fixture of both official Washington and every American's daily life," said Laura Murphy, director of the ACLU's Washington National Office. "While we celebrate these important victories in killing TIPS and a national ID card, Congress and the public will have to scrupulously monitor this legislation to safeguard privacy, avoid undue secrecy and protect due process rights."

"The good news for the ACLU is bad news for civil liberties. We do best as an organization when the public understands that civil liberties are doing poorly. And that, unfortunately, is the case." -- Nadine Strossen, ACLU President

Big Brother is Back

Celebrations over TIPS' demise were quickly muted by revelations of a new Big Brother phenomenon brewing at the Pentagon. Dubbed 'Total Information Awareness' (TIA), this nascent program will use data-mining technology to create the most extensive electronic surveillance system in history, with the ostensible goal of tracking terrorists.

The program, whose spooky motto is *Scientia Est Potentia* (Knowledge is Power), is under the stewardship of John Pointdexter, a veteran of the Reagan administration and the Arms to Iran scandal. Pointdexter once said that it was his duty as the national security advisor to withhold information from Congress.

Data-mining is currently used by industry to track buying habits and target customers. It involves the computerized scrutiny of vast amounts of unrelated information in the hope of finding patterns that will predict future behavior. TIA will link a huge number of commercial and governmental databases, ranging from student grades to mental health history to travel records.

"Smile, you're on virtual candid camera," said Laura Murphy of the ACLU's Washington National Office. "If the Pentagon has its way, every American will find themselves under the accusatory cyber-state powerful national security apparatus."

Civil Liberties Poll: What the Public Says...

"To prevent terrorism, should the government violate your civil liberties?"

	January 2002	September 2002
YES	47%	23%
NO	33%	62%

CNN / Gallup poll, cited in USA Today, 12/11/02.

TAKE ACTION TO STOP GOVERNMENT SNOOPING!

You can stop TIA now! TAKE ACTION by writing on President Bush and ask him to end this new effort to invade our privacy. Please let the President know that:

- **Law-abiding people should be protected from government snooping.** It has been a hallmark of American democracy that our individual privacy is protected against government intervention and snooping as long as we are not guilty of wrongdoing. This new system would obliterate these protections -- the government would simply collect data on everyone so as to be able to investigate any one of us if and when they so decide to do so. Doing so would make us all suspects and in effect eliminate our personal privacy.
- **In searching for terrorists, we must not investigate everyone.** It has been suggested that searching for terrorists in our midst is like looking for a needle in a haystack. If this is true, then it certainly makes no sense to make the haystack even bigger by creating the means to investigate hundreds of millions of law-abiding Americans rather than focusing in on real suspects.
- **We must not sacrifice our freedom and liberty in order to prosecute the "War on Terrorism."** As Americans, we have every right to be proud of our constitutional rights and freedoms. And in being proud of these rights, we must make every effort to promote and enlarge our privacy rather than sacrifice it in a time of anxiety and concern.
To send a free fax to President Bush, visit the "Take Action" section at www.aclu.org.

ACLU Renaissance: 50,000 New Members Sign Up

If you follow the newspapers, you can't have missed this news: it's an ACLU renaissance! With our membership ranks swelling by 50,000 this last year – and the northern California affiliate contributing more members than any other affiliate in the nation – the only good news about the new civil liberties crisis is that the ACLU is on deck and winning support from Americans who want our freedoms back.

As ACLU president Nadine Strossen said, "The good news for the ACLU is bad news for civil liberties. We do best as an organization when the public understands that civil liberties are doing poorly. And that, unfortunately, is the case."

Strange Bedfellows: Conservatives Sign on With ACLU

In moves illustrating the broad reach of the ACLU since Sept. 11, former U.S. Rep. Bob Barr (R-

Georgia) has signed on as an ACLU consultant on privacy issues. The news came on the heels of a surprise announcement that outgoing house Majority leader Dick Armey (R-Texas) is also interested in working with the ACLU on privacy.

Even Rep Henry Hyde (R-Illinois) heaped praise on the ACLU's work. "They are a very useful and productive force in jurisprudence," he told the #Associated Press.# "I'm glad the ACLU raises the objections it does, because it forces the government and Congress to be mindful of Firs Amendment rights."

"There are no permanent enemies and no permanent friends," said ACLU executive director Anthony Romero.

Liberal, conservative or moderate, if you, your family or your friends care about civil liberties but are not members of the ACLU, NOW is the time to join! [Sign up now](#) or call 415-621-2493 for more information.

The New ACLU: What the Papers Say...

"Americans' growing awareness of the rottenness of all this has, for now, made the ACLU a tad more popular than it had been. Come to think of it, who can quarrel with an organization whose sole mission is to protect our Constitution?" – Sheryl McCarthy, *New York Newsday*, "It's Boomtime at the ACLU," December 12, 2002

"The Bush Administration's effort to track down terrorists appears to have had an unintended consequence: There are more card-carrying members of the American Civil Liberties Union than ever in its 82-year history." *ACLU Membership Surges in post 9/11 World*," *USA Today*, December 11, 2002

"[A]pparent ironies aside, in signing on with the nation's oldest civil liberties group, Armey and Barr send an important message too often overlooked by both conservatives and liberals: the battle to defend individual freedoms from government encroachment transcends partisan politics. It is a fight in which everyone across the ideological spectrum has a vital stake, even when the causes the ACLU champions are unpopular."
USA Today, editorial, November 26, 2002

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Sacramento Report - Review and Preview: 2002-2003

Killed Behind the Curtains

By Valerie Small Navarro, ACLU Legislative Advocate

Many important bills never make it to the Governor's desk because of lack of legislative willpower. This inertia flows from many sources including the Democratic leadership's unwillingness to allow the so-called moderate Democrats take a hard vote on issues that voters may disagree with, the Governor asking the leadership not to bring a bill to a vote, or lobbying by strong and well-heeled contributors.

Although the Governor had mentioned the importance of financial privacy in his state of the state address, his office continued to offer unacceptable industry-backed amendments and he reportedly lobbied members of the Assembly to kill the bill.

Three Strikes

Unfortunately, over the last few years, bills that would have ameliorated some of the more ludicrous sentences under the three strikes law or just study its impact on the state budget were killed -- usually in their first legislative house. This year Assemblymember Jackie Goldberg (D-Los Angeles) brought to the legislature the sixth bill of its kind. **AB 1790** sought to place on the March 2004 ballot an initiative asking California voters to amend the law they voted for ten years earlier by requiring that convictions triggering an enhanced second strike or a three strikes sentence be a serious or violent felony.

Recent data show that the three strikes law is being applied to many people who commit non-violent crimes. As of December 2001, of the 38,551 people serving second and third strike sentences, 2,392 are there for petty theft with a prior conviction and 10,641 are there for drug-related offenses. Though the bill passed out of the Assembly Public Safety Committee four votes to two (with Assemblymember Manny Diaz-D not voting), the bill was not even brought up before the Assembly Appropriations for a vote. There was not the political will to pass the bill despite Democrats holding 17 of the 24 seats on that committee and the committee staff analysis showing an #annual# General Fund cost avoidance of about \$500 million (offset by increased parole caseload costs of about \$15 million) and a savings of capital outlay for prison expansion of more than \$1 billion.

Executing the Mentally Retarded

After the U.S. Supreme Court decision in *Atkins v. Virginia* prohibited the execution of the mentally retarded, Assemblymember Dion Aroner (D-) amended a bill, **AB 557**, to create a pre-trial determination of whether the defendant who could be subjected to the death penalty was mentally retarded.

The bill passed the Senate but was not brought to a vote in the Assembly because the California District Attorneys Association and the Attorney General's office balked at a number of the protections in the bill, including the requirement that prosecutors prove beyond a reasonable doubt that the defendant is not mentally retarded.

Outgunned by Big Money

Although the right to privacy was added to the California Constitution by the voters and applies to

private entities as well as the government, banks and insurance companies waged a relentless war against simple privacy protections for their customers. The federal Financial Services Modernization Act of 1999 allowed for the creation of vast new financial conglomerates that combine the traditionally separate industries: banking, insurance and brokerage houses. Now, through shared databases, these conglomerates are now able to exploit our private information in new and powerful ways. **SB 773** (Senator Jackie Speier-D) was the fourth bill in three years to require privacy protections including obtaining consent before sharing customer information with other companies and allowing customers to opt out of sharing among affiliates of the company they do business with. This split opt-in/opt-out approach was based on Governor Davis's statements to the editorial board of the *San Francisco Chronicle* about the parameters of financial privacy bill he would sign. Although the Governor had mentioned the importance of financial privacy in his state of the state address, his office continued to offer unacceptable industry-backed amendments and he reportedly lobbied members of the Assembly to kill the bill.

Banks, insurance companies, and other financial institutions spent over \$20 million in campaign contributions and lobbying expenses – Governor Davis received more than \$1 million of those dollars -- during this legislative session according to the *San Francisco Chronicle*. Cadres of industry lobbyists roamed the halls of the legislature leading to the defeat of **SB 773** on the Assembly Floor 38 to 36 votes. The following Democrats either voted against or stayed off the vote denying the author the forty-one votes necessary to pass the bill: Tom Calderon (Montebello), Joe Canciamilla (Pittsburg), Denis Cardoza (Merced), Ed Chavez (La Puente), Lou Correa (Santa Ana), John Dutra (Fremont), Sally Havice (Cerritos), Bob Hertzberg (Van Nuys), Jerome Horton (Inglewood), Barbara Matthews (Tracy), Gloria Negrete McLeod (Chino), Lou Papan (Millbrae), Juan Vargas (San Diego), and Rod Wright (South Central Los Angeles). Furthermore, Assemblymember John Dutra-D in last minute maneuvering with consent of the Democratic leadership of the Assembly added hostile amendments to the bill that eliminated, among other provisions, consumer protections for affiliate-sharing of information. This amended bill passed the Assembly 51:9 leaving Senator Speier in the unenviable position of asking the Senate to kill her own bill. The Senate spoke clearly when the bill garnered only one vote on the Senate Floor.

Senator Speier already reintroduced the bill.

The Future – 2003

During the November election, California's Democrats swept all of the statewide offices and a clear majority in both houses of the legislature. The redistricting process for the most part entrenched each party's hold on the seats by increasing the number of voters from the dominant party in each seat. However, the Democrats lost one of the Senate seats and two of the Assembly seats that were formerly theirs. Of the 120 legislators there are 33 women, 27 Latinos, six African-Americans, six Asian Americans and five openly gay members (including for the first time two openly gay men). It appears that there may be more members committed to improving civil rights and civil liberties.

Unfortunately, we lost some champions of civil liberties due to term limits: Richard Polanco-D, Dion Aroner-D, and Carole Migden-D. Furthermore, at the end of this two-year session we will be losing John Burton-D, Byron Sher-D, and John Vasconcellos-D.

Plugging the \$21 billion and growing budget deficit facing California will consume the Legislature next year. Mustering the two thirds vote requirement in each house just got more difficult as the Democrats lost the two seats in the Assembly and the one Senate seat. During this time when many programs will be facing cuts, the ACLU will be working on bills that have little or no fiscal impact, for example:

- prohibiting the execution of the mentally retarded,
- expanding the rights and responsibilities of domestic partners,
- ensuring the privacy of personal financial records,
- providing comprehensive and accurate sex education, and
- providing driver's licenses to undocumented immigrants.

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In Brief: News from Around the Region

Marin Passes Moratorium Resolution

Marin County, home to California's San Quentin State Prison, marked International Human Rights Day on December 10 by passing a resolution calling for a temporary halt to executions until the state can show that the death penalty is being administered fairly. The 4-0 vote made Marin the 78th jurisdiction in the nation to pass such a resolution.

The resolution was spearheaded by the Marin Death Penalty Moratorium Movement, which includes the ACLU's Marin Chapter.

Since 1973, 102 people in 22 states have been released from death rows after evidence emerged of wrongful convictions, Sue Severin, president of the Moratorium Movement told the *Marin Independent Journal*. After reinstatement of the California death penalty in 1977, at least six men convicted of murder were subsequently freed after having been found to be wrongly convicted.

Marin County is the third county in California to adopt such a resolution; San Francisco and Santa Clara counties have already done so, as have eight California city councils, including East Palo Alto and Menlo Park. Marin County houses the largest death row population in the country with more than 600 men on death row at San Quentin State Prison.

ACLU Challenges Sonoma Suspensions

by Elizabeth Han, ACLU Intern

When 50 Petaluma High School students left class shortly before lunch on November 20, they left for a reason. They were exercising their First Amendment rights by participating in a national day of student protests against war.

But, back at school on Monday, November 25, the student activists were in for a nasty surprise. All 50 were slapped with suspensions.

"Petaluma High was the only school in Sonoma County where students were suspended for expressing their political views in a peaceful and non-disruptive fashion on this important issue," said ACLU of Sonoma County's co-chair Victor Chechanover in a letter to school Principal Michael Simpson. In the letter, the ACLU requested the removal of the suspensions from the students' records.

Neighboring Sonoma County schools did not discipline students for participating in the protest.

The California Education Code has made it clear that the intent of the Legislature is to impose "alternatives to suspensions or expulsions [...] against any pupil who is truant, tardy, or otherwise absent from school activities." In fact, the law requires that "[s]uspension shall be imposed only when other means of correction fail to bring about proper conduct." Chechanover writes: "It is our understanding that for most, if not all, of the students, this was a first offense."

"Moreover," the letter continues, "by selectively targeting expressive political activity for greater punishment than that imposed on other students who miss class without permission, your action

infringes on their Constitutional rights of free expression and equal protection under the law.”

ACLU Takes On San Mateo County Defender System

In most counties, public defenders represent indigent clients. But in San Mateo County, attorneys in the county’s Private Defender Program perform that function. Those attorneys balance the defense of low-income clients with a normal client caseload, and draw their primary salaries from private practice.

But needy defendants, especially from minority communities, are getting short shrift from the program, which gives attorneys no financial incentive to properly represent clients and falls short of its obligation to provide all defendants a fair trial, according to the ACLU’s North Peninsula Chapter, which has been working for two years to reform the program.

Speaking before a committee empaneled by the San Mateo County Board of Supervisors to review the program in November, the ACLU-NP and the San Mateo NAACP urged the committee to examine caseloads and pay rates for attorneys, and the lack of an adequate complaint procedure, and called for a financial audit to determine how county funds are spent. They also called for statistics regarding the program to be disclosed.

““We were appalled to learn that the Private Defender Program has refused to keep, or to make public, any direct statistics bearing on quality, such as the number of acquittals and number of cases taken to trial, and even now has not released attorney caseloads,” said Linda Martonara, president of the ACLU-NP.

Release of Student Information to the Military Draws ACLU Warning

School officials should protect the privacy of high school students from unwanted military recruitment solicitations, according to a letter sent to school superintendents across the state by the three California ACLU affiliates on November 13.

In January 2002, Congress passed the “No Child Left Behind Act,” which requires school districts that receive certain federal funding to provide students’ names, addresses and phone numbers on request to various branches of the United States military for recruiting purposes. At the same time, however, schools are required to notify both parents and students that they may tell schools **not** to release that information without first obtaining parental consent.

“Our concern is that parents and students not be blindsided by the release to the military of what is, to many people, very private information,” said Ann Brick, staff attorney with the ACLU of Northern California (ACLU-NC). “For example, families in the immigrant community who have been the target of a barrage of intimidating actions from the federal government—including FBI interrogations and new registration requirements—may find an unsolicited letter from the military to be ominous. Families need to know that this information is being provided to the military and that they have the right to tell schools not to release it.”

In the letter, the ACLU affiliates urge the school districts to protect student privacy by setting up user-friendly procedures that notify students and their families of their rights, and make it easy for them to opt out.

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SF Police Commission Acts on Racial Profiling

by Nick Oakley, ACLU Intern

In a groundbreaking step, the San Francisco Police Commission ordered the San Francisco Police Department to take immediate action to address the problem of racial profiling in traffic stops at a hearing on November 13. The move comes on the heels of the release of an ACLU-NC report documenting dramatic disparities in how African American and Latino motorists are treated by police officers in the city.

African Americans are twice as likely to be asked consent to search than white motorists; yet SFPD officers are no more likely to find contraband as a result of these searches.

Representatives from Bay Area Police Watch, La Raza Centro Legal, and other civil rights and community organizations joined the ACLU-NC at the hearings to urge the commission to take the necessary steps to end the practice of racial profiling. Many shared personal experiences of "driving while black or brown," and emphasized that the department's discriminatory practices were straining police-community relations.

The Police Commission directed the department to adopt a new policy prohibiting racial profiling that bars the use of race for *any reason* unless police have a specific description linking a special individual with a specific crime. Until now, officers could use race as a factor, as long as it was not the only factor.

The commission also required the SFPD to audit its data on traffic stops and report on the results of the data and audit monthly beginning January 1, 2003. If the data is still not being collected properly after 90 days, the commission will reconsider whether there should be an independent auditor.

"We applaud the Police Commission for showing real leadership and taking strong action to combat racial profiling in San Francisco," said ACLU-NC police practices director Mark Schlosberg, who authored the report, *A Department in Denial: The San Francisco Police Department's Failure to Address Racial Profiling*.

The ACLU-NC encouraged the Commission to go further by prohibiting consent searches (the practice of asking motorists who are not suspected of a crime for their consent to search their vehicle) as the California Highway Patrol (CHP) did last year. The ACLU-NC's report found that African Americans are twice as likely to be asked consent to search than white motorists; yet SFPD officers are no more likely to find contraband as a result of these searches. Further, consent searches were extremely ineffective and resulted in contraband being found less than ten percent of the time. The Commission will consider barring consent searches at a hearing on January 8th.

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