

# ACLUnews

WINTER 2005

BECAUSE FREEDOM CAN'T PROTECT ITSELF

VOLUME LXIX ISSUE 1

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## LANDMARK VICTORY: OAKLAND POLICE TO REFORM

By Stella Richardson



Oakland Police at the Port of Oakland Protest.

Wooden bullets, Taser stun guns, pepper spray—no more. ACLU secures ban of weapons used for crowd control. The Oakland Police Department (OPD) has agreed to implement sweeping reforms to end the indiscriminate use of wooden or rubber bullets, Taser stun guns, and pepper spray to break up demonstrators or crowds.

The use of these weapons led to dozens of injuries last year at an anti-war protest at the Port of Oakland. The ACLU of Northern California (ACLU-NC), the National Lawyers Guild, and a team of prominent civil rights attorneys announced the unprecedented agreement at a November 9 news conference in Oakland.

“The new OPD crowd control policy is a model for police

departments throughout the country,” said Alan Schlosser, Legal Director of the ACLU-NC. “It prohibits the use of all the less lethal but obviously dangerous weapons that were used on April 7, 2003, against nonviolent anti-war protestors. With this agreement, Oakland becomes the first city in the nation where demonstrators will not have to incur the risk of serious injury from these weapons at the price of exercising their First Amend-

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## ACLU LEADS WAY POST ELECTION

By Lauren Asher

The November election brought some disappointing news for supporters of sensible criminal justice policies. However, while Proposition 66 and 69 ballot battles are over, the ACLU and others continue the fight for fair sentencing and DNA privacy.

### PROP 69: PUTTING DNA PRIVACY ON THE LINE

Like many states, California collects DNA from people convicted of violent and serious felonies, such as kidnappers, murderers, rapists and child molesters. Their DNA samples are stored in a database used for criminal investigations.

A 2004 ballot initiative proposed dramatically expanding that database. Under Proposition 69, the police would collect and store DNA from adults *arrested* for *any* felony offense—such as political protestors, medical marijuana users, and victims of racial profiling and identity theft—even if never charged or convicted.

The ACLU vigorously campaigned against Prop 69. Allies came from across the political spectrum, including the California Democratic, Green, and Libertarian Parties, and conservative former Republican Congressman Bob Barr.

With little money, the “No on 69” coalition used grassroots tactics to get its message across. The ACLU of Northern California (ACLU-NC) developed campaign materials; held speaker trainings; visited newspaper editorial boards; created two flash-movies forwarded to thousands of voters via email; and debated the issue on mainstream and conservative talk radio shows. Meanwhile, supporters of Prop 69, financed by millionaire Bruce Harrington, ran a misleading campaign. Proponents repeatedly characterized the new law as creat-

ing an “all-felon DNA database”; Governor Schwarzenegger described Prop 69 as a database for “convicted” felons in the glossy voter guide he mailed to 5 million Californians.

Despite the vocal opposition, Prop 69 passed with 62% of the vote. Under the new law, the DNA of innocent arrestees will be stored indefinitely and can be shared with law enforcement and private labs around the world. Those never charged or convicted must go to court to request expungement of their DNA information, with no right to appeal if the request is denied. The law is retroactive, requiring DNA collection from people who committed a felony in the past and have already fully completed their sentences.

The ACLU-NC moved quickly to challenge the law’s most egregious provisions—joined by

two California affiliates and cooperating attorneys from the law firm of Covington & Burling. On December 7, 2004, they filed a federal class action lawsuit in San Francisco on behalf of: 1) people who are arrested but never convicted of a felony offense and 2) those who were convicted of a felony in the past but have since paid their debt to society and are no longer under the supervision of the criminal justice system.

One of the plaintiffs in the case, Michael Weber, is a freshman at San Francisco State University who was arrested during an anti-war protest and charged with a felony. The

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# ACLU

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# NEW CALIFORNIA MEDIA HONORS JAYASHRI SRIKANTIAH AND ACLU

By Amy Kurren

New California Media (NCM), an association of more than 700 ethnic news outlets, honored former ACLU of Northern California (ACLU-NC) Associate Legal Director Jayashri Srikantiah and the ACLU at the 6th Annual NCM Awards Banquet on November 17, 2004. Srikantiah and the ACLU received one of three prestigious “Exceptional Communicators” awards for the ACLU’s defense of targeted ethnic and immigrant communities during post-9/11 heightened security measures.

Dubbed the “Ethnic Pulitzers” by the Jim Lehrer NewsHour, the NCM Awards were created to recognize exceptional journalism in ethnic media. They are part of NCM’s ongoing effort to raise the visibility of ethnic media as an increasingly important information source in American communications. NCM looks to enhance the editorial and economic capacity of ethnic media in California to provide accessible and relevant media content for California’s 17 million ethnic American residents. The NCM Awards are judged by journalists, academics, recognized leaders and innovators in different areas of ethnic media. The Exceptional Communicators Award was given to people and organizations commit-

formation suit concerning the “No-fly” list used to prevent persons from boarding airlines; and a class action lawsuit challenging the “No-fly” list on the grounds of due process. Srikantiah also ensured wide dissemination of “know-your-rights” information in immigrant communities, and created reporting hotlines for individuals who experienced discrimination as a result of post-9/11 government policies.

Jayashri Srikantiah worked at the ACLU of Northern California for four years. Before taking the position of Associate Legal Director of the ACLU-NC, she was a staff attorney focusing on immigrants’ and language rights. Srikantiah is currently an Associate Professor of Law at Stanford Law School, where she serves as the director of the Immigrants’ Rights Clinic. ■

ted to championing the rights of California’s ethnic communities.

The ACLU and Jayashri Srikantiah garnered the attention of NCM for their multi-disciplinary efforts to protect civil liberties and civil rights in the post-9/11 environment. Srikantiah and the ACLU supported litigation including: a race discrimination lawsuit against a major airline on behalf of a Bangladeshi-American man; a Freedom of In-



Bill Lee (left) of the Sacramento Observer, Jayashri Srikantiah (center), and Dorothy Ehrlich at the NCM media awards.

## MARK YOUR CALENDAR!

Plan to attend the

2005  
On the FrontLine  
Reception

Honoring Tanya Neiman  
Thursday, February 17, 2005  
SF Gay and Lesbian Community Center  
6:00 – 8:30 p.m.

For more information, please contact Jocelyn Wicker at  
(415) 621-2493 x344 or jwicker@aclunc.org.

The On the FrontLine award was established to honor an individual that has done significant and sustained work to protect the rights of lesbians, gay men, bisexuals, transgender people and people with HIV and AIDS.

## GREETINGS FROM THE NEW SAN JOSE DIRECTOR

Thanks to the generous support of our members, the ACLU of Northern California (ACLU-NC) is now able to open a new San Jose office. I look forward to the challenge of being the ACLU-NC San Jose Office Director. From defending immigrant communities to limiting the Patriot Act, there is much to be done across the Peninsula and South Bay.

San Jose is northern California’s largest city. It is one of the most diverse regions in the country—with its residents speaking more than 52 different languages. Together with thousands of ACLU-NC members in the surrounding community, the San Jose Office will work with local elected officials and organizations to make sure basic civil rights concerns are addressed.

The San Jose Office will tackle state and national issues as well. We will work with our members of Congress to make sure that the Patriot Act is neither extended nor expanded. And we will work with state legislators in Sacramento to advance criminal justice reform and protect privacy concerns.

The office will also be the home of Civil Liberties and Technology Policy Director Nicole Ozer. Ms. Ozer’s work will focus on the intersection of technology and civil liberties, and she will be working closely with academics, policy makers, and technology leaders. From public surveillance to internet privacy, she will lead the way for lasting positive change in the way technology is used.

While it is the support of ACLU members that makes opening this office possible, it will take even more involvement for it to be a success. ACLU-NC members know the community and know how important it is to stand up for civil liberties. And whether it is regarding the Patriot Act, the rights of the lesbian and gay community, or immigrant rights—don’t be surprised if you hear from the new San Jose Office.

—Sanjeev Bery

## ACLUnews

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# VICTORY: OAKLAND POLICE REFORM

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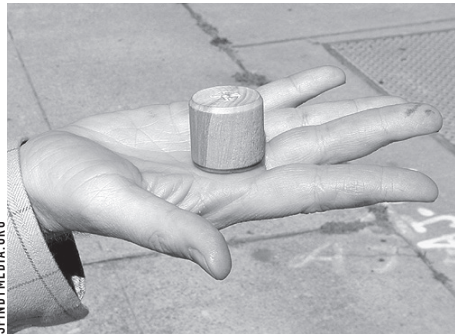
ment rights to protest and assemble.”

The new policy followed 10 months of discussion involving the plaintiff’s attorneys, Oakland Police, and the city attorney’s office.

At least 58 people, including nine dockworkers from Local 10, ILWU, were injured with large wooden bullets, stinger grenades and shot-filled bean bags in the most violent police response in the nation against individuals protesting the war in Iraq.

The agreement is the result of a federal class action lawsuit, *Local 10, ILWU vs. City of Oakland*, in which 52 people claim that their First Amendment rights to freedom of speech and assembly were violated when Oakland police opened fire on a peaceful anti-war protest on April 7, 2003.

“There was no justification for the Oakland Police to use any type of force to deal with the anti-war demonstration. It is only a matter of luck that no one died on that day,” said National Lawyers Guild attorney Rachel Lederman. “Hope-



Police wooden bullet.

skin graft. To date, she has incurred \$80,000 in medical bills and is still grappling with the emotional and physical scars left by the police attack.

“Today’s settlement will assure that what happened to me will never happen again in Oakland,” said Willow Rosenthal.

“I think this new policy is a first step in protecting everyone’s First Amendment and civil rights.”

Another plaintiff, Gulf War veteran and Marine, Eric Shaw, also welcomed the new policy, but added, “Since April 7, I have had trouble sleeping at night. I was shot in the back of my leg and had an enormous and painful bruise for many weeks. When I served during the Gulf War, I felt my job was to defend our basic human rights and our nation. I certainly never imagined that I would be attacked by American police officers while expressing my right to free speech—the very

“THE NEW OPD CROWD CONTROL POLICY IS A MODEL FOR POLICE DEPARTMENTS THROUGHOUT THE COUNTRY.”  
—ALAN SCHLOSSER, LEGAL DIRECTOR, ACLU-NC



Oakland Police at the Port of Oakland Protest.

## LEGAL BRIEFS

By Stella Richardson

### U.S. SUPREME COURT LEAVES INTACT CALIFORNIA LAW GIVING WOMEN RIGHT TO CONTRACEPTIVES

On October 4, the U.S. Supreme Court turned down a request by Catholic Charities to review a California State Supreme Court decision upholding a California law that requires employers that provide prescription drug benefits to include contraceptive coverage. By refusing to hear the case, the High Court leaves in place a ruling that the California Women’s Contraceptive Equity Act promotes women’s health and eliminates gender discrimination.

“This case affirms that institutions like Catholic Charities, that employ and serve people of many faiths and whose primary purpose is not religious, cannot impose religious views about family planning on employees who may not agree with them,” said Margaret Crosby, ACLU of Northern California (ACLU-NC) staff attorney.

The law in question requires employers that offer health insurance policies with prescription drug benefits to include coverage for prescription contraceptives. The law exempts religious employers, such as churches, mosques, and temples, whose main purpose is to promote religious doctrine and who primarily employ and serve people who share their religious beliefs.

The California case was closely watched nationwide because the Act’s exemption has been viewed as a model for ensuring expanded health care coverage and protecting religious liberty.

Lawyers on the ACLU brief, *Catholic Charities v. Superior Court*, include Louise Melling and Julie Sternberg of the ACLU Reproductive Freedom Project and Margaret Crosby of the ACLU-NC.

### BERKELEY SCHOOL DISTRICT’S INTEGRATION PLAN STANDS

The Pacific Legal Foundation (PLF), a conservative law firm, did not appeal a Superior Court’s ruling last April that the school district’s plan to preserve ethnically and racially integrated schools does not violate Proposition 209. Prop 209 is the 1996 initiative that banned the use of racial preferences in government, public education and employment. PLF had until August 31 to appeal the decision.

Last April, Alameda Superior Court Judge James Richman granted the NAACP Legal Defense and Educational Fund (LDF), ACLU-NC, and the Lawyers’ Committee for Civil Rights’ motion to intervene on behalf of the Berkeley NAACP and local parents who supported the school district’s voluntary school desegregation plan.

The case, *Avila v. Berkeley Unified School District*, was brought by a Berkeley parent who sued the school district, claiming that the Berkeley school plan violated Proposition 209. The Pacific Legal Foundation represented the parent.

In 1968, the Berkeley Unified School District became the first school district in the nation to voluntarily desegregate.

“The court’s now-final decision in this case provides affirmation to the school district’s courageous commitment to integration and to the determination of the district and the community to realize the promise of the 1954 *Brown v. Board of Education* Supreme Court decision,” said Alan Schlosser, Legal Director of the ACLU-NC.

## SETTLEMENT HIGHLIGHTS

■ Adoption of a new Crowd Management Policy that strictly limits the use of force, and mandates that the protection of the right to assemble and demonstrate must be a primary goal of the OPD in their planning for and management of demonstrations;

■ Prohibition of crowd dispersal methods that create risk of injury to crowd members and bystanders. Skip-fired wooden bullets, stinger grenades, Tasers, stun guns, motorcycle bumps, and dogs are prohibited;

■ Prohibition of the indiscriminate use of bean bags, aerosol pepper spray and batons against crowds or passive resisters;

■ Negotiation with protest leaders when crowd members break the law; OPD will give clear and audible orders to the crowd, allowing time for individuals to comply before taking enforcement action; and

■ Arrest of individuals who refuse to follow valid police orders, rather than use of weapons or other force to move them.

rights that I fought for.”

John Burris, civil rights attorney, added that the monetary damages remain unresolved and are scheduled for trial in January 2006. “The settlement reached is an important vindication for the plaintiffs whose civil rights were violated and we are committed to seeing that our clients are reasonably compensated for the injuries and trauma they suffered on April 7, 2003.”

The legal team representing the plaintiffs also includes civil rights attorneys James Chanin, Bobbie Stein, Osha Neumann and Rob Remar of Leonard, Carder LLP. ■

### FIRST AMENDMENT RIGHT TO ORIGINAL WRITINGS

The public has a First Amendment right to the original writings of Ted Kaczynski, who plead guilty to the “Unabomber” crimes, according to an ACLU-NC amicus brief filed on behalf of librarians, scholars and archivists. The brief urges the Ninth Circuit Court of Appeals to reverse a lower court’s decision allowing the government to preclude public access to the original writing of Ted Kaczynski. Kaczynski plans to donate his journals to the University of Michigan where they will be housed in a special collection of materials on radical social and political movements, known as the Joseph Labadie Collection. The University has agreed to accept the documents.

“For archivists the fundamental issue at stake in this case is the necessity of preserving an accurate record of the past to guide our future actions and decisions,” said Randall C. Jimerson, Ph.D., professor of History at Western Washington University and president of the Society of American Archivists. “The perspectives of terrorists and criminals are as important to understand as those of public officials and intellectual leaders as we respond to the challenges in our country and throughout the world today.”

The ACLU-NC filed the amicus brief on behalf of the Freedom to Read Foundation, founded by the American Library Association, and the Society of American Archivists on October 20, 2004.

Christopher Durbin of Cooley Godward LLP authored the brief, *United States v. Kaczynski*, with Cooley Godward lawyers Michael Traynor, Lori Ploeger, and Deborah Hussey, and ACLU-NC attorney Margaret Crosby. ■



# BILL OF RIGHTS DAY 2004, 70 YEARS FOR JUSTICE

By Amy Kurren

At the 70<sup>th</sup> anniversary celebration of the ACLU of Northern California (ACLU-NC), Executive Director Dorothy Ehrlich told a crowd of ACLU-NC supporters that she was proud to be among “people who will never give up the good fight for civil liberties.”

Perseverance was the theme of the ACLU-NC’s annual Bill of Rights Day, as speeches and presentations looked at ACLU-NC’s seventy-year past and called for continued dedication in the face of the assault on civil liberties today. Held on December 12, 2004 at the Fairmont Hotel in San Jose, the celebration brought together over 600 ACLU-NC members, supporters, and staff.

Congressman Mike Honda and Ehrlich compared the U.S. Patriot Act with the 18<sup>th</sup> century Alien and Sedition Acts and the special registration of Muslim men with the Japanese internment camps of World War II. “No civil liberties ever stay won,” Ehrlich stated.

NAACP Chairman Julian Bond, who was honored with the Chief Justice Earl Warren Civil Liberties Award, echoed Honda and Ehrlich in their call for a renewed commitment to civil liberties. Bond noted that the year 2004 was, in addition to the 70<sup>th</sup> anniversary of the ACLU-NC, the 50<sup>th</sup> anniversary of *Brown v. Board of Education* and the 40<sup>th</sup> anniversary of the 1964 Civil Rights Act. He spoke of the victories won and the victories lost since these historic moments, and used his life to demonstrate the value of persistence.

Bond’s career as a national civil rights advocate began during his college years at Morehouse, where he founded the Student Nonviolent Coordinating Committee (SNCC). With

SNCC, his dedication to sit-ins, voter registration, and protests helped change the landscape of America. In 1965, Bond was elected to the Georgia House of Representatives, but was unseated twice by members who objected to his opposition to the Vietnam War. Bond took his seat only after a unanimous decision of the United States Supreme Court. Bond also co-chaired a challenge delegation from Georgia to the 1968 Democratic Convention that successfully unseated Georgia’s regular Democrats.

In light of the divisions revealed in the nation’s recent presidential election, the ballroom broke into raucous applause as Bond declared, “Together we can constitute a



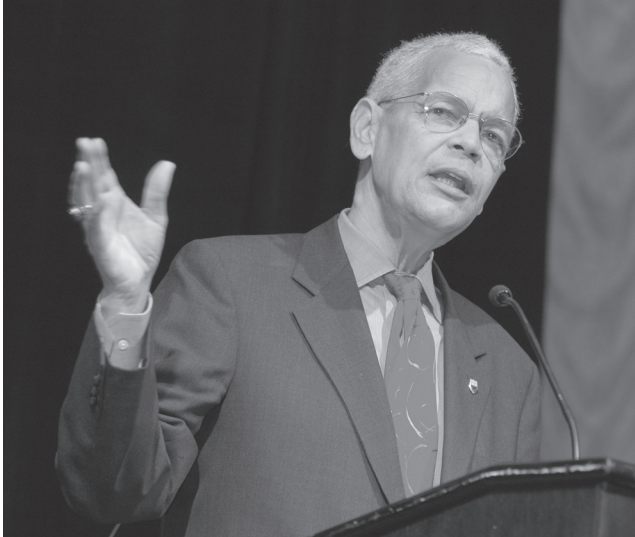
Dorothy Ehrlich presents Julian Bond with the Chief Justice Earl Warren Civil Liberties Award.



Sanjeev Bery presents the Dick Criley Outstanding Chapter Award to Kathleen Hughes and David Sweet, Santa Cruz Chapter.

the Santa Cruz Chapter of the ACLU-NC was given the Dick Criley Outstanding Chapter Award for the chapter’s work on statewide ballot initiatives and its outreach within the Santa Cruz community.

As part of this celebration, the ACLU-NC announced the launching of its San Jose Office (*See page 2*). Led by newly appointed Director Sanjeev Bery and Civil Liberties and Technology Policy Director Nicky Ozer, the San Jose office will advocate for civil liberties in the South Bay. ■



NAACP Chairman Julian Bond.

**BOND:** Probably in my early twenties working with SNCC. There was a remarkable guy running the ACLU office in Atlanta named Chuck Morgan. He was a white lawyer from Birmingham who’d been run out of Birmingham because he spoke up about the church bombing. When I was put out of the legislature, on the lower court level the ACLU and Chuck Morgan represented me.

ACLU lawyers were just everywhere. It’s interesting. I knew the ACLU because of its civil *rights* activities as much as because of its civil liberties activities. And in my case—*Bond v. Floyd*—was a civil liberties case. This was my right to free speech. And the ACLU helped me immeasurably in that.

**CLARK:** How do you see civil liberties and civil rights supporting one another?

**BOND:** Well, if you don’t have civil liberties I won’t say you can’t have civil rights, but it’s next to impossible to have civil rights because the most important civil liberties are the right to protest, the right to petition your government for redress of your grievances. And if you don’t have those then you can’t raise issues about things that bother you—about race or sex or age

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# INSIDE LOOK: ACLU TEACHER, STUDENT RETREAT

By Natalya Narine and Christina Standberry

When we heard about the third annual ACLU of Northern California’s (ACLU-NC’s) Activist Teacher and Student Retreat, we wanted to go because we thought it would be an incredible opportunity to learn about activism and making positive change on our high school campus.

The 3-day retreat was held at the idyllic Westerbeke Ranch, located in the town of Sonoma, on the weekend of Oct 22. It was hosted by the ACLU-NC’s Friedman First Amendment Education Project, a program that works with high school students and teachers to help students understand what their rights are, and how these rights relate to issues in their lives and in their communities.

The goal of the retreat was to bring together activist teachers and their key activist students to share their campus organizing experiences, ideas and, strategies. There were 26 participants at the retreat, including teachers and students from eight different high schools around the Bay Area and northern California. The following high schools were represented: Aragon High School (San Mateo), Communication Arts and Sciences of Berkeley High School (Berkeley), Davis High School (Davis), Fremont High School Media Academy (Oakland), Lincoln High School (San Francisco), Oasis High School (Oakland), Oceana High School (Pacifica), and Vallejo High School (Vallejo).

When we arrived on Friday evening, we introduced ourselves and started off with an “I am” poetry exercise. We each wrote poems about who we are and what inspires us, and then read them to the group. This was an interesting activity, because we had never done this before and it provided insight into what everyone was thinking. We were able to see how we all come from different backgrounds, but have a lot in common with the change that we want to see in the world.

Speaking with and listening to other students from different schools and different communities were truly highlights of the trip. When we broke out into the students-only session with ACLU-NC staff members Lindsay Waggener and Aaron Leonard, you could feel the tension between the students. Some great debates took place about certain issues we were dealing with at school—student apathy, student expression of sexuality, limited access to bathrooms, state takeover of school districts, military recruiters on campus, teen pregnancy, censorship of student fliers, and unlawful searches. We heard so many perspectives, which in the end helped us learn from each other’s experiences and gave us a better understanding of the issues at other schools.

Another important aspect of the retreat was that all the students got to teach, and we all had a chance to voice our opinions. One of the best activities was when all of the students participated in a student-only peer teach-in on what our teachers could do better. One of our conclusions was that when a teacher wants to help us out with a project, we don’t want them to take control of the idea, but rather to just support us.

On Saturday afternoon, the group met with ACLU-NC Staff Attorney Julia Harumi Mass for training on student rights. We really enjoyed the talk about student rights because when we came back to school, some students asked us about them and we were proud to say that we knew what our rights



26 high school students participated at the ACLU-NC’s Activist Teacher and Student Retreat at Westerbeke Ranch in Sonoma. Howard A. Friedman Project Director Eveline Chang pictured at far right.

were. We also discussed censorship or controlling what people say or do. We discussed how far student censorship should go. This was depressing, because we heard about students from other schools who could not even put posters up around their schools. Why is that? Who dictated that we, as students, can’t express our views and opinions on what is happening in our society today? We learned about the things that the ACLU has done to help people be allowed to express themselves. From that moment, we began to really appreciate this organization, because they never stop fighting for our rights. If someone’s rights have been violated, organizations like the ACLU will be there to stand up and defend this person until the end.

**THIS RETREAT MADE US WANT TO JOIN THE ACLU, PARTLY BECAUSE SOME OF OUR RIGHTS ARE BEING STRIPPED AWAY EVERYDAY. IF THERE AREN’T PEOPLE TO STAND UP AND SAY THAT THIS IS WRONG, PRETTY SOON WE’LL HAVE NO RIGHTS AT ALL.**

This retreat made us want to join the ACLU, partly because some of our rights are being stripped away everyday. If there aren’t people to stand up and say that this is wrong, pretty soon we’ll have no rights at all. All of the students and teachers were so dedicated to this cause and it made us feel like we could accomplish great things. Not only that, but in just two days the students got so close and it was amazing to see people working so

well together. With each discussion we had, we grew. We can honestly say that we were taught how to be realistic activists. The retreat ended too soon, but we left feeling that we had really done something and that we learned a lot to teach to our own communities. Hopefully more people will learn about how to fight for their rights, and we can change certain problems that are happening today.

Overall the retreat was a great experience. We met a lot of new people, all trying to make change in their communities. It made us realize that everyone everywhere has faced some sort of injustice in their lives. This retreat brought us all together and if all of us come together and work hard, we can make a change in the world we live in today. ■

Natalya Narine and Christina Standberry are students at Fremont High Media Academy, Oakland.

## STRAIGHT TALK: YOUTH VIDEO TAKES ON MILITARY

The Friedman Project’s Youth Activist Committee (YAC) has been working on an exciting new student video project in collaboration with Teaching Intermedia Literacy Tools (TILT), a local media organization that partners with youth groups to produce student-led short videos. The purpose of the video project is to provide young people with powerful tools to make their own media, and to publicly voice their perspectives and concerns.

After learning various filming techniques, YAC students elected to create a video addressing the controversial topic of

military recruitment in high schools. The video aims to broaden the public debate on military access to schools, to provide information that recruiters often

do not mention to young people, and to encourage young people to consider the realities behind military recruitment tactics. The Friedman Project plans to make the video and facilitated discussions available to classrooms and community groups in late spring 2005. For more information, call Friedman Project Director Eveline Chang, at (415) 621-2493 x337. ■



YAC member William Tien (center) holds a microphone for the student video project, with video project facilitator Alfred Hernandez (left) and YAC member Samantha Johnson pictured in the background.



# ACLU OF NORTHERN CALIFORNIA: 70 YEARS FOR JUSTICE

**F**ear. Hate. Repression. For seventy years, the ACLU of Northern California (ACLU-NC) has been fighting for justice. As we look back at the history of the ACLU-NC on its 70<sup>th</sup> anniversary, the social and political history of California itself is revealed. Since its founding in 1934, the ACLU-NC has tirelessly worked to preserve and expand our basic freedoms.

## 1930's

In 1934, one of the most dramatic labor struggles in the United States took place in San Francisco. In an attempt to gain union recognition and improve the notoriously bad working conditions on the waterfront, Bay Area longshoremen went on strike.

After vicious police attacks on strikers, culminating in Bloody Thursday when two trade unionists were shot in the back and killed outside the union hall, a general strike was called to support the longshoremen.

Governor Frank Merriam called in the National Guard. Law enforcement and vigilante groups attacked union halls, strike kitchens and strikers' homes with tear gas, bricks and bullets.

The New York based national ACLU, then 14 years old, sent two southern California organizers, Ernest Besig and Chester Williams, to help combat the attack on the workers' civil liberties.

They recruited the first ACLU-NC Board of Directors from local civic leaders. Their initial meeting, on September 21, 1934 in the Bellevue Hotel in San Francisco, drew 60 members.

Labor issues dominated the early years of the ACLU-NC. When the Holmes-Eureka lumber strike broke out, three pickets were killed and more than 150 workers arrested. No attorney in Humboldt County was willing to defend the strikers, so the ACLU-NC offered to provide legal counsel.

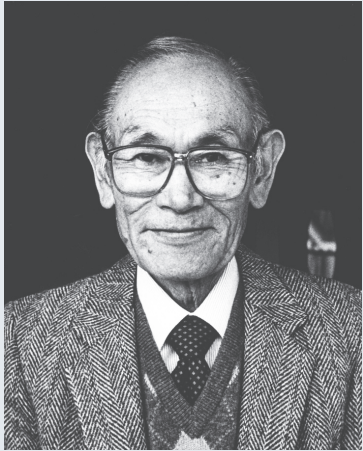
Besig planned to be in Eureka for 30 days. But those 30 days extended to a lifetime of service to the ACLU: he retired as Executive Director of the affiliate in 1971.

## 1940's

The outbreak of World War II brought new challenges for the ACLU-NC. In the tradition of the national ACLU, which was founded to defend conscientious objectors during World War I, the ACLU-NC fought for the rights of objectors.

But one of the proudest episodes of ACLU-NC history was its almost solitary challenge to the wartime relocation and forced detention of more than 120,000 Japanese Americans.

In 1942, San Leandro draftsman Fred Korematsu challenged Japanese internment.



Fred Korematsu challenged Japanese internment.

for refusing to obey President Franklin Delano Roosevelt's Executive Order 9066 ordering all citizens of Japanese descent to report to relocation centers.

"I was stunned, I couldn't believe this was happening in America," Korematsu recalled. "I was surprised when the guard came and told me I had a visitor. I didn't know him, but he introduced himself as Mr. Ernest Besig of the American Civil Liberties Union."

The ACLU-NC took the case all the way to the United States Supreme Court, arguing that the exclusion and detention laws violated basic constitutional rights; but in 1943, the high court upheld Korematsu's conviction and the war measures on the grounds of military necessity.

The national ACLU disagreed with the affiliate's strong stance against the internment and urged the ACLU-NC to drop its representation of Korematsu. This disagreement produced longstanding strain between the affiliate and the national office, which was not resolved until after Besig's retirement.

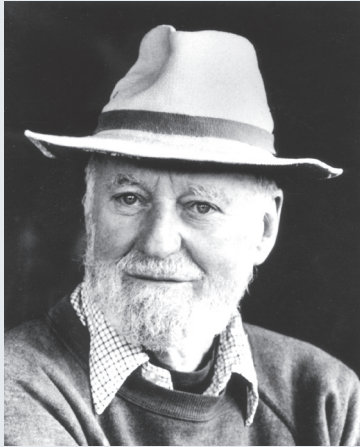
## 1950's

During the political witch-hunts of the McCarthy era, the ACLU-NC came to the defense of hundreds of victims of federal and state "loyalty and security" programs.

Against all odds in the Red Scare climate, the ACLU-NC won court decisions striking down a wide variety of loyalty oaths: from those requiring recipients of unemployment benefits to take a loyalty oath, to the Levering Act that exacted oaths from all public officials and state employees in California, including teachers.

After HUAC held its widely publicized hearings in San Francisco where labor leaders refused to testify and protestors were hosed down the steps of City Hall by police, the government released a distorted propaganda film *Operation Abolition*. In a counter-attack that was way ahead of his time, Besig produced a film refutation of the government version, *Operation Correction*, which was distributed nationally.

In 1957, poet Lawrence Ferlinghetti was put on trial for selling copies of poet Allen Ginsberg's *Howl* at his three-year-old bookstore, City Lights, in North Beach. The ACLU-NC successfully defended Ferlinghetti against charges of "obscenity." "If it hadn't been for the ACLU," Ferlinghetti said, "we'd have been out of business forever."



Lawrence Ferlinghetti of City Lights bookstore challenged censorship.



The ACLU-NC's newsletter over the years.

## 1960's

In 1964, the Free Speech Movement at UC Berkeley set off campus demonstrations around the state and country. The ACLU went to battle with university officials to protect the rights of students and academic freedom.

The ACLU-NC aided the growing civil rights movement by providing legal counsel for campaigns by African Americans, Latinos, Native Americans, and Asian Americans, protecting their rights to assemble, use public facilities and speak out about against racism.

The ACLU-NC challenged an initiative that permitted discrimination in rental housing and won the right for incarcerated Black Muslims to practice their religion.

As the lesbian and gay rights movement came out of the closet, the affiliate provided attorneys to protect their meeting places from police raids, publications from obscenity charges, and to respond to general persecution by the police.

An early advocate of reproductive



The Berkeley free speech movement.

freedom, the ACLU-NC successfully challenged anti-abortion laws in the state, making abortion legal (1969) even before *Roe v. Wade* was decided by the Supreme Court.



Marching for gay rights.

The political ferment of the 60s generated a significant growth in membership of the affiliate, which reached 12,500 by the end of the decade. The organization established chapters around the northern California. By 1963, there were ten local chapters and 80 members attended the first Chapter Conference held that year.



## 1970's

In 1972, the ACLU-NC authored and helped to pass a Privacy Amendment to the California Constitution. This innovative measure established the explicit right of privacy, and became the legal underpinning of a wide range of litigation: from protecting individual financial records and membership lists of political parties, to landmark victories protecting a woman's right to choose.

Later, the organization established the Police Practices Project to monitor, expose and challenge police abuse. The Project has tackled everything from political spying on demonstrators to police round-ups of homeless people.

In support of the burgeoning women's movement, the affiliate took cases on hiring, employment conditions, benefits, and residency requirements to ensure equal rights for women.

The organization also fought for the rights of those confined in prisons, laying the groundwork for religious freedom, decent medical care and safety, and the right to read inmate-edited newspapers; and in psychiatric hospitals, waging a major campaign against the forced drugging of mental patients.

The ACLU-NC participated in the lawsuit that ended the death penalty in California, a major victory that was to reverberate nationally and last a quarter century.

## 1980's

California's new wave of immigration was met by repressive laws on both federal and state levels. The ACLU-NC litigated against a probe of bilingual ballot seekers ordered by the U.S. Attorney and fought INS raids at workplaces and in immigrant neighborhoods.

The affiliate founded the Lesbian and Gay Rights Project, which pursued lawsuits on behalf of gay men and lesbians who experienced employment discrimination. The Project authored and helped to implement the first domestic partnership ordinances in the country, laws that became a model for hundreds of other cities and states.

When the AIDS epidemic emerged, the ACLU-NC took on the urgent task of ensuring that the rights of people with AIDS and HIV were not trampled by rash, shortsighted or homophobic government policies.

The legalization of abortion by the U.S. Supreme Court gave rise to a rabid anti-choice movement. In California, the ACLU-NC sought to maintain Medi-Cal funding for abortion for indigent women, after federal funding was cut off. In 1982, the ACLU-NC won a landmark victory in the California Supreme Court when Justice Matthew Tobriner, relying on the privacy amendment in the state Constitution, wrote: "Once the state furnishes medical care to poor women in general, it cannot withdraw part of that care solely because a woman exercised her constitutional right to have an abortion."

Another landmark case guaranteed that teenagers could receive an abortion without requiring them to have parental or judicial consent.



The pro-choice movement.

## 1990's

The beginning of the decade was marked by a massive effort to prevent the first execution in California in 25 years. The ACLU-NC Death Penalty Project directly represented Robert Harris, yet our efforts—all the way to the U.S. Supreme Court—could not prevent the return of capital punishment to California. The Language Rights Project, an outgrowth of our immigrants rights work, created a groundbreaking docket of legal challenges to language and accent discrimination in employment, government services and businesses.

The affiliate as well made a special commitment to the expressive freedoms inherent to the hi-tech revolution. Several key cases were won in support of the rights of library patrons to have access to the Internet, despite government and pro-censorship forces arrayed against them.

Recognizing the need to encourage a new generation of civil libertarians, the affiliate founded the Howard A. Friedman First Amendment Project for high school students. These young activists helped create a fresh docket of students' rights cases including, suppression of student expression in murals, high school drug testing, and support for lesbian and gay students.

We witnessed the upsurge in right-wing ballot initiatives on race, immigration, criminal justice, and gay rights. Proposition 187 would have cut off education, health care and all government services to undocumented immigrants. We lost at the ballot box, but defeated the measure in court. Proposition 209 eliminated affirmative action. Proposition 227 scrapped bilingual education. Initiatives were passed to enact the Three Strikes Law, to expand the death penalty and to incarcerate juveniles as adults.

The Racial Justice Project, working with other civil rights groups, filed successful lawsuits challenging unequal admissions in the U.C. system and deplorable learning conditions in schools that served communities of color.

The Project launched the innovative "Driving While Black or Brown" campaign to expose and stop the widespread practice of racial profiling by police. The campaign was replicated by the national ACLU and many other state affiliates.



Post September 11 demonstrators.

## 2000's

The government's response to the events of 9/11—round-up and detention of thousands of Muslim and Middle Eastern men, deportations without hearings, unblinking passage of the Patriot Act, special registration and racial profiling at airports—catapulted the ACLU, nationally and locally, into an unprecedented level of activity.

But even the overwhelming events of 2001 could not derail the organization. The skills, experience and tenacity gained from seven decades of fighting for civil liberties strengthened the ACLU-NC. Having honed our legal and communication skills; having built coalitions around race, women's rights, lesbian and gay rights, and criminal justice; having faced formidable opponents in the courts, in the Legislature, in the Governor's Office; having dared to speak out against Japanese American internment, the death penalty, immigrant raids, and race segregation—sometimes as a lone voice—the organization was steeled and ready to face the future.

As the late Edison Uno, an ACLU-NC Board member, noted, "We may have eliminated the statutory provisions for detention camps, but we must always remember it takes eternal vigilance to improve democracy. We must struggle to eliminate the camps of fear, hate, racism and repression." ■

*Written by Elaine Elinson, the Public Information Director of the ACLU-NC from 1980 to 2001. She is proud to have followed in the footsteps of Ernie Besig and Dorothy Ehrlich as editor of the ACLU News, which has been in continuous publication since 1936.*



# HISTORY REPEATS, ACLU DELIVERS REFLECTIONS FROM EXECUTIVE DIRECTOR DOROTHY EHRLICH

The ACLU of Northern California’s (ACLU-NC’s) 70<sup>th</sup> anniversary is a significant milestone. It presents us with a moment to reflect proudly upon our organization’s history, and to think deeply about the challenges the organization will confront in the future. Those challenges loom large during this post-election period. For four more years, we face an administration that has squarely defined itself as an aggressive opponent of civil liberties.

Since September 11, 2001, the Bush administration has led an unprecedented assault on civil liberties, from the secret round-ups, imprisonment and deportation of more than 1,000 Middle Eastern men; to the imprisonment on Guantanamo Bay of nearly 700 men from 44 countries, initially without charges or any semblance of a hearing; and to dragnet investigation of nearly 100,000 young men from 24 predominantly Muslim countries as part of a collection of “special registration” programs. It is an administration that has placed itself above the law, and has ignored the most basic checks and balances that our Constitution requires.

The ACLU’s response to these challenges has been remarkably effective, and nowhere is that more evident than here in northern California. Our organization has forged a united nationwide strategy. But unlike other dark periods for civil liberties, the ACLU has not stood alone. We have been joined by tens of thousands of new ACLU members, bipartisan organizations, and individuals committed to protecting civil liberties.

This unprecedented national effort has made significant progress. The campaign to call on Congress to reform the USA Patriot Act has resulted in 355 resolutions from across the nation—from Oklahoma City to New York City, from Alaska to Maine. We are proud that northern California has led the way with 54 resolutions.

We have also forged a leading legal strategy. We challenged the “No-fly” list and racial profiling at airports and continued to pry open information about what the government is doing through the Freedom of Information Act. The national ACLU began investigating the government’s torture policies, long before the abuses of Abu Ghraib prison came to light. At the ACLU-NC, we are seeking to uncover information about government surveillance of peaceful demonstrators and about the round-up of 10,000 Arab-American and Middle Eastern men as part of the “October Plan.”

In this most hostile climate we are learning key lessons that are sure to serve us well in the future. However, the old adage that “no civil liberties victory ever stays won,” warns us that our future challenges will be sadly predictable. For, our government’s habit of overreaching its authority when national security is threatened dates back to the Alien and Sedition Laws enacted shortly after the nation was founded. President Lincoln suspended the writ of Habeas Corpus during the Civil War and Franklin Roosevelt sent Japanese Americans to concentration camps during WWII.

Yet, even in the midst of war and a climate of fear, never has this nation seen such an overt and profound disagreement over “moral values.” Today, the division is so great that there is no shared understanding of what we even mean by moral values.



ACLU-NC Executive Director Dorothy Ehrlich.

Civil libertarians cannot morally abide by policies that exclude same-sex couples from marriage, limit reproductive rights for women or stifle religious freedom. We don’t believe its “pro-family” to yank a foster child from a loving family because the foster parents are gay, or to fire an employee from a government-funded “faith-based” agency because of her sexual orientation.

Religious freedom, civil libertarians believe, is best protected by keeping government out of religion—so we oppose prayer and the teaching of creationism, and other religious doctrine in public schools as well as government funding and vouchers for religious schools.

The fight for our values will continue on many fronts during the coming years. We are already planning litigation and public education efforts to protect gays and lesbians from discrimination, whether in marriage or the denial of other benefits based on sexual orientation, and will continue the important work of protecting abortion rights, religious liberty, and the separation of church and state.

Race is another issue that will continue to challenge us, especially racism in the criminal justice and educational systems. Here again, this is not a new issue, but our unequal criminal justice system, where African Americans and Latinos are treated with the harshest punishment, is growing worse at every stage, from traffic stops to the death penalty. Documented evidence of racial profiling combined with draconian drug laws has further exacerbated this grave injustice.

An unequal educational system results in a pipeline from the schoolhouse to jailhouse. The demise of affirmative action, due to Proposition 209, in public employment, public contracting and public education is taking its toll in a state that was already struggling with extreme disparities based on race.

The ACLU-NC Racial Justice Project, established seven years ago, has been a leader in developing innovative, multi-disciplinary strategies to change these discriminatory poli-

cies. Our campaign against racial profiling became a model for the nation. This work remains core to the organization’s mission in the future.

As we continue to pursue our advocacy in many arenas, our organization will evolve as we take our place in the multiracial, multiethnic state that California has become. Our public education and field efforts will need to expand to reach out to new Californians. We need to make a concerted effort to attract new diverse constituencies that will strengthen and broaden our membership.

Our efforts to bring more youth into the ACLU-NC, via the 13-year-old Howard A. Friedman First Amendment Education Project, has provided transformative leadership training for high school students. We are developing a new generation of civil liberties activists who give us real hope for the future.

Finally, the ACLU-NC must become a truly northern California organization in 2005, and not confine its efforts to the immediate bay area. Thus the opening of our San Jose office—the first regional office outside the immediate bay area, is a very exciting development for the future. Beyond the south bay, we will need to grow our effort in the San Joaquin Valley and continue to respond to civil liberties abuses in rural pockets throughout our region.

The new South Bay office staff includes a lawyer dedicated to protecting civil liberties from the threats posed by emerging new technologies, right in the heart of the high-tech revolution. Our ability to focus on technology will be imperative as the potential danger to privacy protections and First Amendment rights are greatly threatened by the vast databases being developed by both the private and public sectors. In this current political climate, with government surveillance on the rise, our effort to control the dissemination of private information is crucial.

As I review our expanding, vital programs and the extraordinary staff, Board members and activists who carry them out, I like to think that today’s ACLU-NC is the organization that its founders envisioned 70 years ago. On this historic anniversary I imagine that they would be enormously proud that we have adhered to these core principles, that we have never lost sight of the mission they established nor our responsibility to carry it out. I think that in those difficult early days during the General Strike, it would have seemed improbable that nearly 50,000 people would some day sign up as card-carrying members of the ACLU in northern California and that we would establish a reputation as the leading advocate for the Bill of Rights.

The ACLU-NC’s historic and future advocacy for civil liberties has been built by and will be sustained by the board members, the talented and dedicated staff members, and the activists who created a dynamic institution out of the courageous action of our founders. On our 70<sup>th</sup> anniversary, we commend our feisty founders for their vision. They will inspire us as we confront the many challenges we face during our next 70 years. ■

**[THE BUSH] ADMINISTRATION HAS PLACED ITSELF ABOVE THE LAW, AND HAS IGNORED THE MOST BASIC CHECKS AND BALANCES THAT OUR CONSTITUTION REQUIRES.**

**THE ACLU’S RESPONSE TO THESE CHALLENGES HAS BEEN REMARKABLY EFFECTIVE, AND NOWHERE IS THAT MORE EVIDENT THAN HERE IN NORTHERN CALIFORNIA.**

# SURVEILLANCE WATCH: ACLU DRAGS SHADY TERRORISM TASKFORCES INTO THE SPOTLIGHT

By Rachel Swain

Infiltration of political groups. Surveillance of religious meetings. What exactly are the agents of the FBI’s Joint Terrorism Taskforces up to? The ACLU says it’s time for these taskforces to come clean.

This summer, as federal officials suggested there might be a greater threat of terrorist attacks in the run-up to the presidential elections, troubling reports of widespread questioning in Muslim, Arab and South Asian communities began flowing into Mark Schlosberg’s office.

Schlosberg, Police Practices Policy Director for the ACLU of Northern California (ACLU-NC), was concerned. Coming on the heels of news of law enforcement’s infiltration of the anti-war group Peace Fresno, this new ‘voluntary’ dragnet was just the latest example of government overreach.

Agents with the FBI’s Joint Terrorism Task Forces (JTTFs) were reportedly targeting people for interview based on their ethnicity or religion, asking about their political and religious beliefs, and ignoring some requests to have an attorney present.

“We knew it was time to get some answers about the way that JTTFs operate in our state,” says Schlosberg.

Established in the 1980s and vastly expanded in the wake of 9/11, JTTFs “deputize” local law enforcement agents to work with the FBI and immigration officials, ostensibly to investigate terrorism. There are currently 66 JTTFs around the nation, three of them in northern California. On August 20, the ACLU-NC filed a Freedom of Information Act (FOIA) request in an effort to get some answers about local JTTF operations.

The ACLU-NC’s FOIA request was aimed at determining whether the JTTFs written policies that: ensure that practicing one’s religion or expressing dissent are not cause for investigation; prevent state and local officers from violating California’s constitutional right to privacy; and control the storage, use or destruction of personal information gathered during the interviews.

“If the government wants the public to believe these interviews are voluntary, why won’t they release policies requiring officers to respect the constitutional rights of people in California?” asks John Crew, an attorney for the ACLU-NC. “And if the right to have an attorney present will be respected, why do they refuse to release policies that say that?”

## EXPEDITED PROCESSING

Typically, the FBI’s response time to complex FOIA requests is between 370 and 558 days, according to Justice Department data.

That wasn’t quick enough for the ACLU-NC. Citing the urgency of informing the public about the situation, the ACLU-NC requested expedited processing.

On September 1, the FBI sent a letter denying the request for expedited processing, stating that there was “no particular urgency” to inform the public about JTTF activities.

Then, the situation got worse.

As the elections loomed, the government announced “the October Plan,” an aggressive plan to monitor people who are not suspected of any crime. The tactics, which included the sixth round of questioning since 9/11 and the collection of intelligence at mosques during Ramadan, drew fierce opposi-

tion from community groups.

“No one should have to answer questions about the places they worship or their views on the conflict in Iraq,” says Shirin Sinnar, president of the Bay Area Association of Muslim Lawyers. “Rather than focusing on terrorist threats, the broad sweep of the FBI’s questioning seems designed to intimidate a community and chill religious and political expression.”

## ACLU-NC TAKES TO THE COURTS

With the October plan already underway, the ACLU-NC went to court to challenge the FBI’s denial of expedited processing.

“Given the request is about questioning that is happening now, we want answers right away, not a year or two from now,” Crew says.

“The government has given us no other alternative,” adds Amitai Schwartz, cooperating attorney with the ACLU-NC who brought the legal action.

The lawsuit, filed October 21 in U.S. District Court, charges the FBI with stalling the release of records that would reveal the scope, purpose and policies behind the controversial tactics of the JTTFs in Northern California.

A hearing on the lawsuit is expected in early 2005.

## CONFLICTING INTELLIGENCE GUIDELINES

At the heart of the issue for the ACLU-NC is a conflict between California’s constitutional right to privacy and federal guidelines on intelligence gathering rewritten by former Attorney General John Ashcroft.

In 2002, Ashcroft unilaterally shredded decades-old guidelines designed to protect innocent Americans. For the first time since the 1970s, the Ashcroft guidelines permitted the FBI to monitor religious institutions and political meetings—without suspicion of a crime.

These regulations stand in stark contrast to California’s landmark privacy law. More than thirty years ago, Californians voted into law a constitutional right to privacy designed to stop—as the California Supreme Court put it—the “proliferation of government snooping and data collecting [that] is threatening to destroy our traditional freedoms.” (*White v. Davis*)

“White is a warning to law enforcement in California that it cannot operate from the premise that it can gather intelligence on citizens’ activities regardless of any articulable connection to unlawful action,” guidelines issued in late 2003 by state Attorney General Bill Lockyer state. “Put bluntly, it is a mistake of constitutional dimension to gather information for a criminal intelligence file where there is not reasonable suspicion of the existence of a criminal predicate.”

“Local and state officers operating on California soil must operate under the state’s privacy guidelines, not John Ashcroft’s—even if they’re deputized to the JTTFs,” Crew says. “We’re asking the FBI to show Californians that that’s what they’re doing.”

California is not the only region concerned about JTTFs.

**“IF THE GOVERNMENT WANTS THE PUBLIC TO BELIEVE THESE INTERVIEWS ARE VOLUNTARY, WHY WON’T THEY RELEASE POLICIES REQUIRING OFFICERS TO RESPECT THE CONSTITUTIONAL RIGHTS OF PEOPLE IN CALIFORNIA?” —JOHN CREW, ACLU-NC STAFF ATTORNEY**



RICK BECAMERA

Peace vigil in San Jose shortly after September 11, 2001, sponsored by the America-India Foundation.

## NATIONAL ACLU PROBES JTTFs

On December 2, the national ACLU and other affiliates jumped into the fray. Citing evidence that the FBI and local police are illegally spying on political, environmental and faith-based groups, the ACLU filed FOIA requests in ten states around the country to uncover information about the FBI’s use of JTTFs and local police to engage in surveillance of political organizations.

“The FBI is wasting its time and our tax dollars spying on groups that criticize the government, like the Quakers in Colorado or the Catholic Peace Ministries in Iowa,” says Ann Beeson, Associate Legal Director of the national ACLU. “Do Americans really want to return to the days when peaceful critics became the subject of government investigation?”

The ACLU points to many documented examples of JTTF involvement in the investigation of environmental activists, anti-war protesters, and others, including:

- infiltrating student peace activists and tracking down their parents;
- gathering files on Americans Friends Service Committee anti-war events;
- interrogating animal rights activists in their homes;
- sending undercover agents to National Lawyers Guild meetings;
- aggressively questioning Muslims and Arabs on the basis of religion or national origin.

The ACLU’s clients comprise a “Who’s Who” list of advocates for well-known causes, ranging from Greenpeace to Code Pink to the Arab-American Anti-Discrimination Committee. The requests were filed by the national ACLU as well as its affiliates in Colorado, Illinois, Iowa, Michigan, and Oregon. ■



SLAVERY TO PRISON, DISENFRANCHISEMENT  
PLAGUES AMERICA'S BALLOT BOX

By Maya Harris

In 1870, seeking to make good on the promise of equality articulated in the Declaration of Independence and spawned by the Emancipation Proclamation, the nation passed the 15th Amendment to the United States Constitution extending the right to vote to former slaves. However, in the decades that followed, a variety of Jim Crow laws were enacted to systematically erect barriers to the democratic participation of the new black electorate. Over a century later, one remnant of those exclusionary laws remains on the books and continues to deny scores of African Americans the right to vote: felony disenfranchisement.

While poll taxes, literacy tests, and grandfather clauses have long since been abandoned as un-American, nearly every state in the Union—Maine and Vermont being the only exceptions—disenfranchises people convicted of a felony offense. In many states, the voting prohibition continues even though the individual has fully paid his or her debt to society. Their present-day use justified under the guise of being tough on crime, felony disenfranchisement laws remain the single greatest instrument excluding people of color from the political process.

48 states prohibit people in prison from voting; 32 additionally disenfranchise people on probation and/or parole. In thirteen states, a felony conviction can result in a lifetime ban. The result: Nearly 5 million people were barred from voting in the November 2004 election due to a felony conviction—almost 2 million of them were African Americans.

Although they constitute only 8% of the general population, African American men comprise more than one-third of the disenfranchised population. At the current rate and pattern of incarceration, Human Rights Watch estimates that three in ten of the next generation of black men will be disenfranchised at some point in their lifetime and, in states with the most restrictive laws, 40% of black men are likely to *permanently* lose their right to vote.

Latinos are not far behind. In 2003, the Mexican American Legal Defense and Education Fund (MALDEF) surveyed 10 states and discovered a half million Latino citizens disenfranchised in those states alone.

ACLU ACTION ON PROP 66 & 69

charges were later dropped because the police had confused him with someone else in the crowd. But, under Prop 69, people like Weber will nonetheless have to turn over their DNA to law enforcement.

Another plaintiff, Rodney Ware, is an Air Force veteran and former Peace Corps volunteer. When his wallet was stolen in 1990, so was his identity. Since then, he has been charged with many crimes committed by someone else using his name. Said Ware, “I know first-hand how easy it is to get arrested by mistake, and how difficult it is to clear your name. I do not belong in a criminal database, and neither do the many, many other innocent people arrested every year.”

“California has the most draconian DNA database system in the country because of Prop 69,” said ACLU-NC attorney Julia Harumi Mass. “The lawsuit seeks an injunction against the testing, analysis, and indefinite storage of DNA from our clients and Californians like them.”

Unlike a fingerprint, DNA reveals personal, private information about individuals and their families, including predispositions to cancer and other diseases. The misuse or mishandling of this information can have devastating consequences. Healthy people have lost health insurance or jobs because of genetic predictions. And as the DNA database expands exponentially, so does the risk of mistakes. Already in cases in Texas, Oklahoma, and Nevada, innocent people have spent years in prison because their DNA was mishandled by crime labs.

“Trapping thousands of innocent people in a criminal DNA database is not going to make us safer,” said ACLU-NC attorney and Racial Justice Project Director Maya Harris. “In California, more than 50,000 felony arrests each year do not result in criminal charges. Before too long we’ll have more

California mirrors these national trends. As a result of state laws that disenfranchise people while in prison or on parole, over 288,000 Californians were prohibited from voting as of 2000—a significant majority of whom are African American and Latino.

Most of these individuals are not even incarcerated. About 3 million of the disenfranchised are people living in their home communities, either on probation or parole or having fully completed their sentences. The vast majority were convicted of a nonviolent crime, whether simple drug possession, shoplifting or writing a bad check.

Moreover, an untold number of people locked out of the voting booth pursuant to these laws have not been convicted of a felony at all.

It is now well-known that Florida officials, acting under that state’s felony disenfranchisement laws, purged the 2000 presidential election voter lists of thousands of citizens who were falsely attributed to having felony criminal records. Less known is the fact that it happened in Florida again this year. Community advocates secured a court order forcing pre-election disclosure of Florida’s 2004 purge list and dis-

covered that, once again, the list was riddled with inaccuracies. When the errors were publicized, the state withdrew its purge list.

And Florida may be just the tip of the iceberg. Voter purges are occurring in states across the country with virtually no standards, oversight, or accountability. An October 2004 report from the ACLU, Dêmos, and the Right to Vote coalition, *Purged!*, surveyed purge processes in fifteen states, including California. None of the states had specific or minimum criteria for matching felony conviction lists with voter lists to ensure that the right person is being purged from the voter rolls, and two-thirds of the states do not require that voters be notified that they are being purged. As a result, voters are denied the opportunity to contest erroneous purges and may not even find out that they have been purged until it is too late to do anything about it.

Voting is one of the most precious rights in our democracy. Yet, today, the United States remains the only democratic nation in the world that bans non-incarcerated individuals from

CONTINUED FROM PAGE 1

people in California’s criminal DNA database who have not been convicted of a crime than those who have.”

For more on the lawsuit against Prop 69, see <http://www.aclunc.org/pressrel/041207-dna.html>.

PROP 66: CLOSE CALL HAS LEGISLATORS LISTENING

When California voters passed the “Three Strikes and You’re Out” law in 1994, they wanted to make sure that dangerous, repeat offenders were kept off the streets. Unfortunately, few voters foresaw the sweeping effects of the law. Today, thousands of people are serving third-strike 25-years-to-life sentences for non-violent crimes as minor as stealing a t-shirt, at a cost to California taxpayers of more than \$8 billion.

The effort to reform Three Strikes took a leap forward in 2004 with Proposition 66, which would have required a serious or violent crime to trigger a life sentence. The ACLU and a broad coalition of civic, religious and labor groups backed this common-sense approach to sentencing. Joe Klaas, whose granddaughter Polly’s kidnapping and murder fueled the passage of the Three Strikes law, called life sentences for shoplifting and writing bad checks “un-American.” By mid-October, two-thirds of California voters and many of the state’s major newspapers concurred.

Throughout the campaign, opponents claimed falsely that Prop 66 would free tens of thousands of violent criminals, including child molesters and murderers. These scare tactics had little effect until the last week of the campaign when Governor Schwarzenegger ran sensational television and radio ads against Prop 66, financed by a last-minute \$3.5 million donation from telecom billionaire Henry T. Nicholas III.

Within days of this media onslaught, Prop 66 supporters saw

FELONY DISENFRANCHISEMENT  
STATE REPORT CARDS

**A+** Maine and Vermont never strip away voting rights due to felony convictions.

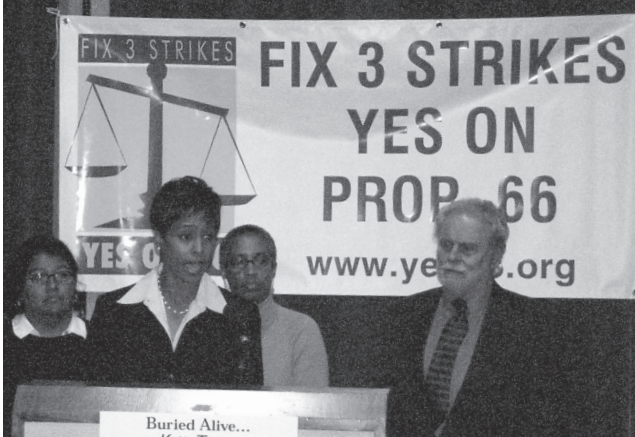
**B** Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Utah and the District of Columbia deny the vote to inmates, but allow citizens to vote who are out of prison, on probation, or on parole.

**D** California, Colorado, Connecticut, and New York only allow people on probation to vote. Parolees and those in prison are disenfranchised.

**D-** Alaska, Arkansas, Georgia, Maryland, Minnesota, Missouri, New Jersey, New Mexico, North Carolina, Oklahoma, Rhode Island, South Carolina, Texas, West Virginia, and Wisconsin disenfranchise all citizens on probation, in prison and on parole.

**F** Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Mississippi, Nebraska, Nevada, Tennessee, Virginia, Washington, and Wyoming effectively take away the vote for life from all or some citizens with felony convictions, including those who have fully completed the terms of their sentence. Some of these states may restore voting rights through a lengthy and difficult pardon, appeal, or clemency process.

*Compiled by Dêmos, a national nonpartisan public policy organization, available at <http://www.demos-usa.org>*



ACLU-NC Racial Justice Project Director Maya Harris speaking for Proposition 66.

their strong lead transformed into a dead heat. On Election Day, Prop 66 lost by a thin margin: 47% to 53%.

Still, the Three Strikes reform movement gained meaningful ground. During the campaign, even some Prop 66 opponents publicly acknowledged the need for reform. The day after the election, Schwarzenegger said he would “look into the three strikes system to see if there is anything that ought to be adjusted.” And proponents have vowed to continue the fight.

The ACLU and other reform supporters are pursuing a legislative fix in 2005. Said ACLU-NC Associate Director Bob Kearney, “The public clearly understands that Three Strikes needs fixing. It took an incredibly misleading and expensive campaign to defeat Prop 66, and the process made policymakers more aware of the need—and support—for reform than ever before.” ■

BOND: INTERVIEW

CONTINUED FROM PAGE 4

discrimination, about any of the other myriad kinds of problems people have. So civil liberties are the foundation of civil rights.

**CLARK:** You've said that you think marriage equality is a civil right.

**BOND:** Right. I have to emphasize this is my opinion and not the NAACP’s opinion. The NAACP doesn’t have an opinion about this. But, sure, of course it’s a civil right. We ought to be shouting hosannas to the rooftops that someone wants to be a part of this institution of marriage, which is in such serious trouble—half of them end in failure. I’ve had one failed marriage and I know how devastating that can be. So I’m just mystified of why people are so resistant to this.

**CLARK:** In this past election when eleven states voted to ban same-sex marriage—Do you think that that was a backlash response towards the advancements that have been made?

**BOND:** I think it’s a combination of different things. On one level it was a clever political ploy to split apart the progressive consensus. There had been a progressive consensus that included blacks and Latinos and the evangelical Christians—many evangelical Christians. But the opponents of gay marriage know that there’s a sector of religious America that feels very strongly opposed to this and if they could appear to be in favor of eliminating gay marriage then they could peel these votes away from the progressive consensus and to a very small effect with blacks they succeeded. The black vote in Ohio was higher than it had been four years ago for George Bush and that’s entirely attributable to the gay marriage issue and probably also to the faith-based social service work as well. So that’s part of it.

It’s probably heartfelt feelings of some deeply religious people and political posturing on the part of some other people.

**CLARK:** It seems like much of current politics resembles the past. Fear often gives rise to the political targeting of one group after another. Do you have any personal recollections of being under surveillance?

**BOND:** No, but I know we [civil rights leaders] were. Andy Young once said, “We live in a recording studio and J. Edgar Hoover is the engineer.” So you assumed that your telephone was tapped. You assumed that someone in your group was probably an informer. Now the sad thing is we didn’t know who—we now know who some of these people were thanks to the Freedom of Information Act. I’ve got my CIA files and my FBI files. I’ve got my files from the Detroit Police, from the Mississippi State Sovereignty Commission. And I’m sorry to say that all of this demonstrates I’m not the important figure I thought I was or else they’ve hidden something from me. [laughter]

**ANDY YOUNG ONCE SAID, “WE LIVE IN A RECORDING STUDIO AND J. EDGAR HOOVER IS THE ENGINEER.” SO YOU ASSUMED THAT YOUR TELEPHONE WAS TAPPED. —JULIAN BOND**

**CLARK:** What correlations, if any, would you draw with the surveillance of Arabs, South Asians, and Muslims following 9/11?

**BOND:** It’s just a repetition—a revival of the same thing and it makes you think that probably some police force or some law enforcement officials in the country never stopped doing it - they just got smarter about how they did it. And when 9/11 happened, the nation fell into this paranoia. Of course, the Patriot Act has re-legalized things, has made it easier for all this to be done, but it’s just frightening. What’s even more frightening, I think, is the extent to which people think, “Well, that’s okay. We can catch the bad people that way.” But, of course, it’s not okay. You can’t catch the bad people by being bad yourself.

**CLARK:** Right. So how can an organization like the NAACP be critical of any political figure and not be perceived as being partisan?

**BOND:** Well, in today’s climate—it’s really peculiar, I think. And I don’t remember anything like this in my lifetime where criticism of the President is taken as unpatriotic. And, that’s what’s really frightening about it. So many people have bought

into this. The other thing I find—I’ve become fond of quoting Ohio Senator Robert Taft. And I never thought I’d be quoting Robert Taft. But two weeks after Pearl Harbor was attacked, he made a bold statement that talked about criticism of the President. He said, ‘...there can be no doubt that criticism in time of war is essential to the maintenance of any kind of democratic government.’ You’ve got to do it [be critical] then. If you don’t do it then, when do you do it?

**CLARK:** If a frightening silence has befallen much of the country, how do you think we’re going to start to reverse it?

**BOND:** It starts to reverse when people begin to speak up and stand up. When they begin to say I don’t like what’s happening to the NAACP. I’m going to write my congressman, my senator and tell them I don’t like it and tell them they shouldn’t like it either. I’m going to say that the government shouldn’t be looking into religious groups and political groups, shouldn’t be targeting people because they’re Muslims or because they are Arabs. It only stops when enough people stand up and say stop. If they don’t then it will continue and it will get worse.

**CLARK:** So in closing, tomorrow you’re being awarded with the Chief Justice Earl Warren Award. The award, of course, is named in honor of a highly esteemed Justice and it’s presented to those who have made considerable contributions towards civil liberties and equality. How in the end do you want to be remembered?

**BOND:** You know, I’ve told my wife—I want to have a double-sided headstone. On one side it’s going to say “Race man.” Because we used to have in our community people called “race men.” The guy who has always put the race first. It doesn’t mean he put other races down; he just put his race first. I’m a race man. The other side is going to say, “Easily amused,” because I am easily amused.

**CLARK:** You have to keep a sense of humor.

**BOND:** That’s right. ■

GET INVOLVED! LOCAL CHAPTER MEETINGS

Local chapters are a force for change in their communities. Contact your local ACLU chapter (information below) to get involved!

**B.A.R.K. PLUS CHAPTER MEETING:** Third Wednesday of each month at 7 p.m. Contact Roberta Speickerman for more information: (510) 233-3316 or [rspeickerman@earthlink.net](mailto:rspeickerman@earthlink.net).

**CONTRA COSTA/MT. DIABLO CHAPTER MEETING:** Regular meetings. Contact Lee Lawrence for more information: (925) 376-9000 or [leehelenalawrence@yahoo.com](mailto:leehelenalawrence@yahoo.com). All ACLU members in central and eastern Contra Costa County are invited to participate.

**MARIN COUNTY CHAPTER MEETING:** Third Monday of each month at 7:30 p.m. at the West End Café, 1131 4th Street, San Rafael. Contact Aref Ahmadi for more information: (415) 454-1424. Or call the Marin Chapter complaint hotline at (415) 456-0137.

**MENDOCINO COUNTY CHAPTER MEETING:** Second Saturday of each month. Locations rotate throughout Mendocino County. For information on next meeting, contact Jessie Jesulaitis at (707) 964-8099, or Linda Leahy at (707) 937-3452 or [lleahy@mcn.org](mailto:lleahy@mcn.org).

**MID-PENINSULA CHAPTER MEETING:** First Wednesday of each month from 7 – 9:30 p.m. All meetings are at conference room of Community Activities Building in Red Morion Community Park at 1400 Roosevelt Avenue. Contact Harry Anisgard for more information: (650) 856-9186.

**MONTEREY COUNTY CHAPTER MEETING:** Third Tuesday of the month at 7:15 p.m. at the Monterey Public Library. 625 Pacific Street, Monterey. Contact Matt Friday for more information: (831) 899-2263 or visit [www.aclumontereycounty.org](http://www.aclumontereycounty.org). To report a civil liber-

ties concern, call the complaint line: (831) 622-9894 (Spanish translation available).

**NORTH PENINSULA (DALY CITY TO SAN CARLOS) CHAPTER MEETING:** Usually third Monday of each month at 8 p.m. in the downstairs conference room at 700 Laurel Street (off Fifth Avenue), San Mateo. Contact chapter hotline for more information: (650) 579-1789.

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

**REDWOOD (HUMBOLDT COUNTY) CHAPTER MEETING:** Third Tuesday of each month at 6 p.m. above 632 9th Street, Arcata. Contact Greg Allen for more information: (707) 825-0826.

**SAN FRANCISCO COUNTY CHAPTER MEETING:** Third Tuesday of each month at 7 p.m. at 1663 Mission Street, San Francisco. Contact Dennis McNally for more information: (415) 896-2198 or [dmscribe@aol.com](mailto:dmscribe@aol.com).

**SAN JOAQUIN COUNTY CHAPTER MEETING:** Regular meetings. Contact Kamran Alavi for more information: (209) 833-0576 or [calm\\_ron@yahoo.com](mailto:calm_ron@yahoo.com).

**SANTA CLARA VALLEY CHAPTER MEETING:** First Tuesday of each month, 1051 Morse Street (at Newhall), San Jose. For more information contact [acluscva@hotmail.com](mailto:acluscva@hotmail.com) or visit [www.acluscv.org](http://www.acluscv.org).

**SANTA CRUZ COUNTY CHAPTER BOARD MEETING:** Last Monday of every month at 7 p.m. at 260 High Street. For more information contact [aclusantacruz@yahoo.com](mailto:aclusantacruz@yahoo.com).

**SONOMA COUNTY CHAPTER MEETING:** Third Tuesday of each month, at 7 p.m. at the Peace and Justice Center, 467 Sebastopol Avenue, Santa Rosa (one block west of Santa Rosa Avenue). Contact the Sonoma hotline for more information: (707) 765-5005 or visit [www.aclusonoma.org](http://www.aclusonoma.org).

**STANISLAUS COUNTY MEETING:** Fourth Monday of every month at the Modesto Peace/Life Center, 720 13th Street, Modesto from 7 – 9:30 p.m. Contact Tracy Herbeck for more information:(209) 522-7149.

**YOLO COUNTY MEETING:** Every third Wednesday at 1175 Lake Blvd #144, Davis. Contact Natalie Wormeli for more information: (530) 756-1900.

NEW CHAPTERS ORGANIZING

**SACRAMENTO COUNTY CHAPTER MEETING:** Regular meetings. Contact Mutahir Kazmi for more information: (916) 480-9543.

**SOLANO CHAPTER:** Contact Bill Hatcher for more information: (707) 449-0726.

CAMPUS CLUBS

**UC BERKELEY ACLU:** 7:30 – 8:30 p.m. every Wednesday in 258 Dwinelle Hall. For more information, visit [www.berkeleyaclu.com](http://www.berkeleyaclu.com).



# ASK THE EXPERTS!

## MARRIAGE EQUALITY FOR ALL

### HOW MANY STATES HAVE LAWS EXCLUDING SAME-SEX COUPLES FROM MARRIAGE?

Thirty-nine states currently have laws prohibiting gays and lesbians from getting married. Of those 39 states, 13 have amended their state constitution to exclude same-sex couples from marriage. When a state has amended its constitution in this way, it means we can no longer argue that the restriction on marriage violates any part of that constitution, such as its assurance of equal protection and due process.

### WILL THE ACLU CONTINUE FIGHTING FOR EQUAL TREATMENT OF GAY AND LESBIAN COUPLES THROUGH THE COURTS?

Absolutely. Prior to the recent election, the ACLU and our colleague organizations were litigating cases here in California and in New York, Oregon, Washington, Maryland, Alaska, Montana, New Jersey, Connecticut, Florida, and Indiana, and those challenges will continue. And, in some states, we are considering challenges to the new constitutional amendments because their passage violated election rules designed to keep the process fair. In other states, we may go to state court and challenge the amendments on the grounds that they violate constitutional guarantees of fairness, liberty and equality. In some of the states, the language of the amendment is so unclear that we may need a state court to tell us what the amendment does and doesn't prohibit so that we can make a more informed decision about our next steps. In short, the recent passage of state constitutional amendments does nothing to stop the ACLU's efforts to achieve full recognition of same-sex couples.

### HOW WILL AB 205, CALIFORNIA'S COMPREHENSIVE DOMESTIC PARTNERSHIP LAW, PROTECT SAME-SEX RELATIONSHIPS?

With some important exceptions, AB 205 will give domestic partners many of the protections and responsibilities under California law that come with marriage. Like married couples, domestic partners will become financially responsible for each other—both during the relationship and possibly after it ends. As domestic partners you will be responsible for each other's debts. If your partner takes out a loan for a new car and fails to pay, the bank could come after you for repayment. If you decide to split up, a court would treat the breakup like a divorce and could order you to pay financial support to your partner (or the other way around).

California's community property system will also apply to domestic partnerships. So, your partner would automatically be entitled to a half interest in any property you buy after you become partners. If you break up, all the community property will be divided equally between you and your partner. Of course, this also means that you gain the right to use the court system to help you divide your assets.

Additional benefits under AB 205 will include access to housing for families, students, or senior citizens; rent control protections; treatment as spouse under worker's compensation and public assistance; and the right not to have to testify against your partner in a legal proceeding.



Christine Sun

The 1996 Defense of Marriage Act defines marriage as the union of a man and a woman. In the recent national election, marriage was on the ballot of 11 states. As the ACLU fights for marriage equality for all, ACLU-NC Lesbian, Gay, Bisexual and Transgender staff attorney Christine Sun, answers questions, fielding concerns on this important issue.

### SO DOESN'T AB 205 GIVE SAME-SEX COUPLES ALL THE PROTECTIONS OF MARRIAGE?

While the new law takes a giant step toward creating equality for same-sex couples, it doesn't give same-sex couples all the rights and responsibilities of marriage. To begin with, it doesn't allow couples to walk down the aisle, say "I do," and announce to the world that they are a married couple. There is a great deal of cultural, historical and social significance attached to that statement and the status that goes with it. It may be the single most important aspect of marriage.

Further, the new law does not give same-sex couples any of the more than 1000 protections and rights that the federal government gives to married couples, including the right to sponsor a partner for immigration purposes; the right to family-related Social Security benefits; the right to federal income and estate tax breaks; and the right to purchase continued health coverage for a partner after the loss of a job. And, right now, the federal government won't let any state extend these federal benefits to same-sex couples, no matter what the relationship is called.

Even under California law, same-sex couples will not be completely equal once the new law goes into effect. Domestic partners will not be able to file joint state income taxes and state employees will not be entitled to the same benefits under the state's long-term care benefits package.

In addition, if you enter into a California domestic partnership, many of the protections will not exist if and when you are outside California. For instance, if you or your partner are injured in another state, you may not be allowed hospital visitation or the right to make emergency medical decisions on behalf of your partner.

### WHAT IS GOING ON IN THE LAWSUIT CHALLENGING CALIFORNIA'S MARRIAGE EXCLUSION LAWS?

The lawsuit is proceeding in San Francisco Superior Court. The Court held a hearing on the ACLU's and our colleague organizations' petition to strike down California's marriage laws excluding gay and lesbian couples on December 22, 2004. We anticipate a ruling from the Court sometime in the spring of 2005.

### IS THE COUNTRY READY FOR MARRIAGE OF SAME-SEX COUPLES?

After the recent election, many were eager to proclaim that the country was not ready for same-sex couples and marriage. But no movement for freedom has ever had a smooth path to progress, and the movement to end the exclusion of same-sex couples from marriage is no different. When the mayor of San Francisco married thousands of lesbian and gay couples, we took a giant step forward. Millions of Americans learned how much gay people yearn for the

security and place in society that marriage represents. Millions began to understand the commitment members of same-sex couples make to each other, and how unfair it is to treat those couples as strangers.

During the recent election, we took a step backwards. Electorates in 11 states voted to amend their constitution to exclude same-sex couples from marriage. But we have to keep what happened on Election Day in perspective. Most

of these were states where we have hardly begun the discussion about the role of same-sex couples in American life.

At least in Oregon, more than 45 per cent of the people voted not to keep same-sex couples out of marriage. Only 10 years ago, we could hardly get 30 per cent of the public anywhere. The very concept of legal recognition of any kind for same-sex couples is just about 25 years old. Viewed in perspective, the rate of change has been nothing short of remarkable. And viewed in perspective, the direction of change has ultimately been toward the legal recognition of same-sex couples.

### WHAT CAN I DO TO SUPPORT MARRIAGE EQUALITY?

It's impossible to make lasting change without changing attitudes. As the votes of all of the recent amendment struggles show, we clearly have work to do in that area. What we learned from these fights, however, is that the way to change public opinion is to show people that same-sex couples make the same kinds of commitments to each other that straight couples make.

In other words, same-sex couples have to make their relationships more visible. To do that, we must advocate for recognition for same-sex relationships at the local level. So ask your employer to provide domestic partner benefits. Lobby for a domestic partner registry in your community. Encourage your local school to provide a safe schools program to protect LGBT students against violence and to promote tolerance.

Write your state legislators and urge them to support the marriage equality bill AB 19. See [www.aclunc.org](http://www.aclunc.org) for more information on AB 19 and the GET EQUAL web toolkit—a toolkit that can help you start working for the recognition that same-sex relationships deserve. Start changing hearts and minds today! ■

THE VERY CONCEPT OF LEGAL RECOGNITION OF SAME-SEX COUPLES IS JUST ABOUT 25 YEARS OLD. VIEWED IN PERSPECTIVE, THE RATE OF CHANGE HAS BEEN NOTHING SHORT OF REMARKABLE.

## 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 spring 2005 issue, please send us questions about:

#### Reproductive Freedom

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 [gpandian@aclunc.org](mailto:gpandian@aclunc.org) or Letter to the Editor, 1663 Mission Street #460, San Francisco, CA 94103.